

1 A bill to be entitled

2 An act relating to temporary and concurrent custody of a
3 child; amending s. 61.13002, F.S.; providing that a parent
4 activated, deployed, or temporarily assigned to military
5 service on orders in excess of a specified period may
6 designate a person or persons to exercise time-sharing
7 with the child on the parent's behalf; limiting who may be
8 designated; providing for limited objections by the other
9 parent; providing for expedited hearings; requiring a
10 servicemember and a nonmilitary parent to cooperate with
11 each other to resolve issues; requiring information
12 sharing; providing for agreements for persons to exercise
13 time-sharing on a parent's behalf; providing for expedited
14 hearings to enforce time-sharing rights; revising ch. 751,
15 F.S., relating to petitions and court orders awarding the
16 temporary custody of a child to an extended family member,
17 to also provide for concurrent custody with the parents of
18 the child; amending s. 751.01, F.S.; conforming provisions
19 to changes made by the act; amending s. 751.011, F.S.;
20 revising definitions; defining the term "concurrent
21 custody"; amending s. 751.02, F.S.; providing requirements
22 for concurrent custody; amending s. 751.03, F.S.; revising
23 the petition for concurrent custody to require additional
24 information; amending s. 751.04, F.S.; conforming
25 provisions to changes made by the act; amending s. 751.05,
26 F.S.; providing that if a parent objects to a petition for
27 concurrent custody, the court may not grant the petition
28 and must give the petitioner the option of converting the

29 | petition to one for temporary custody; providing for
 30 | dismissal of the petition; providing that an order
 31 | granting concurrent custody does not affect the ability of
 32 | the parents to obtain the physical custody of the child at
 33 | any time; providing for the court to terminate an order
 34 | for concurrent custody if either or both parents object to
 35 | the order; providing for filing for temporary custody if
 36 | an order for concurrent custody has been terminated;
 37 | providing for the court to modify an existing child
 38 | support order; amending s. 49.011, F.S.; conforming
 39 | provisions to changes made by the act; providing an
 40 | effective date.

41 |

42 | Be It Enacted by the Legislature of the State of Florida:

43 |

44 | Section 1. Section 61.13002, Florida Statutes, is amended
 45 | to read:

46 | 61.13002 Temporary time-sharing modification and child
 47 | support modification due to military service.—

48 | (1) If a supplemental petition or a motion for
 49 | modification of time-sharing and parental responsibility is
 50 | filed because a parent is activated, deployed, or temporarily
 51 | assigned to military service and the parent's ability to comply
 52 | with time-sharing is materially affected as a result, the court
 53 | may not issue an order or modify or amend a previous judgment or
 54 | order that changes time-sharing as it existed on the date the
 55 | parent was activated, deployed, or temporarily assigned to
 56 | military service, except that a court may enter a temporary

57 | order to modify or amend time-sharing if there is clear and
58 | convincing evidence that the temporary modification or amendment
59 | is in the best interests of the child. When entering a temporary
60 | order under this section, the court shall consider and provide
61 | for, if feasible, contact between the military servicemember and
62 | his or her child, including, but not limited to, electronic
63 | communication by webcam, telephone, or other available means.
64 | The court shall also permit liberal time-sharing during periods
65 | of leave from military service, as it is in the child's best
66 | interests to maintain the parent-child bond during the parent's
67 | military service.

68 | (2) If a parent is activated, deployed, or temporarily
69 | assigned to military service on orders in excess of 90 days and
70 | the parent's ability to comply with time-sharing is materially
71 | affected as a result, the parent may designate a person or
72 | persons to exercise time-sharing with the child on the parent's
73 | behalf. The designation shall be limited to a family member, a
74 | stepparent, or a relative of the child by marriage. The
75 | designation shall be made in writing and provided to the other
76 | parent at least 10 working days before the court-ordered period
77 | of time-sharing commences. The other parent may only object to
78 | the appointment of the designee on the basis that the designee's
79 | time-sharing visitation is not in the best interests of the
80 | child. When unable to reach agreement on the delegation, either
81 | parent may request an expedited court hearing for a
82 | determination on the designation.

83 | (3) The servicemember and the nonmilitary parent shall
84 | cooperate with each other in an effort to reach a mutually

85 agreeable resolution of custody, visitation, delegation of
 86 visitation, and child support. Each party shall provide
 87 information to the other party in an effort to facilitate
 88 agreement on custody, visitation, delegation of visitation, and
 89 child support. Agreements on designation of persons to exercise
 90 time-sharing with the child on the parent's behalf may also be
 91 made at the time of dissolution of marriage or other child
 92 custody proceedings.

93 (4)~~(2)~~ If a temporary order is issued under this section,
 94 the court shall reinstate the time-sharing order previously in
 95 effect upon the servicemember parent's return from active
 96 military service, deployment, or temporary assignment.

97 (5) Upon motion of either parent for enforcement of rights
 98 under this section, the court shall, for good cause shown, hold
 99 an expedited hearing in custody and visitation matters
 100 instituted under this section, and shall permit the
 101 servicemember to testify by telephone, video teleconference,
 102 webcam, affidavit, or other means where the military duties of
 103 the servicemember parent have a material effect on the parent's
 104 ability, or anticipated ability, to appear in person at a
 105 regularly scheduled hearing.

106 (6)~~(3)~~ If a temporary order is entered under this section,
 107 the court may address the issue of support for the child by:

108 (a) Entering an order of temporary support from the
 109 servicemember to the other parent under s. 61.30;

110 (b) Requiring the servicemember to enroll the child as a
 111 military dependent with DEERs, TriCare, or other similar
 112 benefits available to military dependents as provided by the

113 service member's branch of service and federal regulations; or
 114 (c) Suspending, abating, or reducing the child support
 115 obligation of the nonservice member until the custody judgment
 116 or time-share order previously in effect is reinstated.

117 (7)~~(4)~~ This section does not apply to permanent change of
 118 station moves by military personnel, which shall be governed by
 119 s. 61.13001.

120 Section 2. Section 751.01, Florida Statutes, is amended to
 121 read:

122 751.01 Purpose of act.—The purposes of this chapter ~~ss.~~
 123 ~~751.01–751.05~~ are to:

124 (1) Recognize that many minor children in this state live
 125 with and are well cared for by members of their extended
 126 families. The parents of these children have often provided for
 127 their care by placing them temporarily with another family
 128 member who is better able to care for them. Because of the care
 129 being provided the children by their extended families, they are
 130 not dependent children.

131 (2) Provide for the welfare of a minor child who is living
 132 with extended family members. At present, such family members
 133 are unable to give complete care to the child in their custody
 134 because they lack a legal document that explains and defines
 135 their relationship to the child, and they are unable effectively
 136 to consent to the care of the child by third parties.

137 (3) Provide temporary or concurrent custody of a minor
 138 child to a family member having physical custody of the minor
 139 child to enable the custodian to:

140 (a) Consent to all necessary and reasonable medical and

141 dental care for the child, including nonemergency surgery and
 142 psychiatric care.~~†~~

143 (b) Secure copies of the child's records, held by third
 144 parties, that are necessary for ~~to~~ the care of the child,
 145 including, but not limited to:

- 146 1. Medical, dental, and psychiatric records.~~†~~
- 147 2. Birth certificates and other records.~~†~~ ~~and~~
- 148 3. Educational records.~~†~~

149 (c) Enroll the child in school and grant or withhold
 150 consent for a child to be tested or placed in special school
 151 programs, including exceptional education.~~†~~ ~~and~~

152 (d) Do all other things necessary for the care of the
 153 child.

154 Section 3. Section 751.011, Florida Statutes, is amended
 155 to read:

156 751.011 Definitions.—As used in this chapter ~~ss. 751.01-~~
 157 ~~751.05~~, the term:

158 (1) "Concurrent custody" means that an eligible extended
 159 family member is awarded custodial rights to care for a child
 160 concurrently with the child's parent or parents.

161 (2) "Extended family member" means a ~~is any~~ person who is:

162 (a) ~~(1)~~ A relative of a minor child within the third degree
 163 by blood or marriage to the parent; or

164 (b) ~~(2)~~ The stepparent of a minor child if the stepparent
 165 is currently married to the parent of the child and is not a
 166 party in a pending dissolution, separate maintenance, domestic
 167 violence, or other civil or criminal proceeding in any court of
 168 competent jurisdiction involving one or both of the child's

169 parents as an adverse party.

170 Section 4. Section 751.02, Florida Statutes, is amended to
 171 read:

172 751.02 ~~Determination of~~ Temporary or concurrent custody
 173 proceedings; jurisdiction.—

174 (1) The following individuals may bring proceedings in the
 175 circuit court to determine the temporary or concurrent custody
 176 of a minor child:

177 (a) ~~(1)~~ Any extended family member who has the signed,
 178 notarized consent of the child's legal parents; or

179 (b) ~~(2)~~ Any extended family member who is caring full time
 180 for the child in the role of a substitute parent and with whom
 181 the child is presently living.

182 (2) In addition to the requirements of subsection (1), an
 183 individual seeking concurrent custody must:

184 (a) Currently have physical custody of the child and have
 185 had physical custody of the child for at least 10 days in any
 186 30-day period within the last 12 months; and

187 (b) Not have signed, written documentation from a parent
 188 which is sufficient to enable the custodian to do all of the
 189 things necessary to care for the child which are available to
 190 custodians who have an order issued under s. 751.05.

191 Section 5. Section 751.03, Florida Statutes, is amended to
 192 read:

193 751.03 Petition for temporary or concurrent custody;
 194 contents.—Each petition for temporary or concurrent custody of a
 195 minor child must be verified by the petitioner, who must be an
 196 extended family member, and must contain statements, to the best

197 of the petitioner's knowledge and belief, providing ~~showing~~:

198 (1) The name, date of birth, and current address of the
199 child.†

200 (2) The names and current addresses of the child's
201 parents.†

202 (3) The names and current addresses of the persons with
203 whom the child has lived during the past 5 years.†

204 (4) The places where the child has lived during the past 5
205 years.†

206 (5) Information concerning any custody proceeding in this
207 or any other state with respect to the child.†

208 (6) The residence and post office address of the
209 petitioner.†

210 (7) The petitioner's relationship to the child.†

211 (8) If concurrent custody is being requested:

212 (a) The time periods during the last 12 months that the
213 child resided with the petitioner;

214 (b) The type of document, if any, provided by the parent
215 or parents to enable the petitioner to act on behalf of the
216 child;

217 (c) The services or actions that the petitioner is unable
218 to obtain or undertake without an order of custody; and

219 (d) Whether each parent has consented in writing to the
220 entry of an order of concurrent custody.

221
222 A copy of the written consent and any documents provided by the
223 parent to assist the petitioner in obtaining services must be
224 attached to the petition.

225 (9)~~(8)~~ If temporary custody is being requested, the
 226 consent of the child's parents, or the specific acts or
 227 omissions of the parents which demonstrate that the parents have
 228 abused, abandoned, or neglected the child as defined in chapter
 229 39.~~7~~

230 (10)~~(9)~~ Any temporary or permanent orders for child
 231 support, the court entering the order, and the case number.~~7~~

232 (11)~~(10)~~ Any temporary or permanent order for protection
 233 entered on behalf of or against either parent, the petitioner,
 234 or the child; the court entering the order; and the case
 235 number.~~7~~

236 (12)~~(11)~~ That it is in the best interest of the child for
 237 the petitioner to have custody of the child.~~7~~ ~~and~~

238 (13)~~(12)~~ A statement of the period of time the petitioner
 239 is requesting temporary custody, including a statement of the
 240 reasons supporting that request.

241
 242 ~~Only an extended family member may file a petition under this~~
 243 ~~chapter.~~

244 Section 6. Section 751.04, Florida Statutes, is amended to
 245 read:

246 751.04 Notice and opportunity to be heard.—Before a decree
 247 is made under this chapter ~~ss. 751.01-751.05~~, reasonable notice
 248 and opportunity to be heard must be given to the parents of the
 249 minor child by service of process, either personal or
 250 constructive.

251 Section 7. Section 751.05, Florida Statutes, is amended to
 252 read:

253 | 751.05 Order granting temporary or concurrent custody.—

254 | (1) At the hearing on the petition for temporary or
 255 | concurrent custody, the court must hear the evidence concerning
 256 | a minor child's need for care by the petitioner, all other
 257 | matters required to be set forth in the petition, and the
 258 | objections or other testimony of the child's parents, if
 259 | present.

260 | (2) Unless the minor child's parents object, the court
 261 | shall award ~~the~~ temporary or concurrent custody of the child to
 262 | the petitioner if ~~when~~ it is in the best interest of the child
 263 | ~~to do so~~.

264 | (3) If one of the minor child's parents objects to:

265 | (a) The petition for concurrent custody, in writing, the
 266 | court may not grant the petition even if the other parent
 267 | consents, in writing, to the entry of the order. The court shall
 268 | give the petitioner the option of converting the petition to a
 269 | petition for temporary custody. If the petitioner so elects, the
 270 | court shall set the matter for further hearing, provide notice
 271 | to the parent or parents, and proceed pursuant to paragraph (b).
 272 | If the petition is not converted into a petition for temporary
 273 | custody, it shall be dismissed without prejudice.

274 | (b) The petition for temporary custody ~~granting of~~
 275 | ~~temporary custody to the petitioner~~, the court shall grant the
 276 | petition only upon a finding, by clear and convincing evidence,
 277 | that the child's parent or parents are unfit to provide for the
 278 | care and control of the child. In determining that a parent is
 279 | unfit, the court must find that the parent has abused,
 280 | abandoned, or neglected the child, as defined in chapter 39.

281 (4) The order granting:

282 (a) Concurrent custody of the minor child may not

283 eliminate or diminish the custodial rights of the child's parent

284 or parents. The order must expressly state that the grant of

285 custody does not affect the ability of the child's parent or

286 parents to obtain physical custody of the child at any time.

287 (b) Temporary custody of the minor child to the petitioner

288 may also grant visitation rights to the child's parent or

289 parents, if it is in the best interest of the child ~~to do so.~~

290 (5)~~(a)~~ The order granting temporary or concurrent custody

291 of the minor child to the petitioner:

292 (a) May not include an order for the support of the child

293 unless the parent has received personal or substituted service

294 of process, the petition requests an order for the support of

295 the child, and there is evidence of the parent's ability to pay

296 the support ordered.

297 **~~(b) The order granting temporary custody~~** May redirect all

298 or part of an existing child support obligation to be paid to

299 the extended family member who is granted temporary or

300 concurrent custody of the child. If the court redirects an

301 existing child support obligation, the order granting temporary

302 or concurrent custody must include, if possible, the

303 determination of arrearages owed to the obligee and the person

304 awarded temporary or concurrent custody and must order payment

305 of the arrearages. The clerk of the circuit court in which the

306 ~~temporary custody~~ order is entered shall transmit a certified

307 copy ~~thereof~~ to the court originally entering the child support

308 order. The temporary or concurrent custody order shall be

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309 recorded and filed in the original action in which child support
310 was determined and become a part thereof. A copy of the
311 temporary or concurrent custody order shall also be filed with
312 the depository that serves as the official recordkeeper for
313 support payments due under the support order. The depository
314 must ~~shall~~ maintain separate accounts and separate account
315 numbers for individual obligees.

316 (6) At any time, either or both of the child's parents may
317 petition the court to modify or terminate the order granting
318 temporary custody. The court shall terminate the order upon a
319 finding that the parent is a fit parent, or by consent of the
320 parties. The court may modify an order granting temporary
321 custody if the parties consent or if modification is in the best
322 interest of the child.

323 (7) At any time, the petitioner or either or both of the
324 child's parents may move the court to terminate the order
325 granting concurrent custody. The court shall terminate the order
326 upon a finding that either or both of the child's parents object
327 to the order. The fact that an order for concurrent custody has
328 been terminated does not preclude any person who is otherwise
329 eligible to petition for temporary custody from filing such
330 petition.

331 (8) At any time, the petitioner or either or both of the
332 child's parents may move the court to modify the existing child
333 support order pursuant to chapter 61. The court may modify an
334 existing order granting child support if the parties consent and
335 if modification is in the best interest of the child. Any order

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336 modifying child support in a concurrent custody proceeding shall
337 be copied and placed in the related family court files.

338 Section 8. Subsection (14) of section 49.011, Florida
339 Statutes, is amended to read:

340 49.011 Service of process by publication; cases in which
341 allowed.—Service of process by publication may be made in any
342 court on any party identified in s. 49.021 in any action or
343 proceeding:

344 (14) For temporary custody of a minor child, under chapter
345 751 ~~ss. 751.01-751.05~~.

346 Section 9. This act shall take effect July 1, 2010.