

## CHAPTER 2010-30

### Council Substitute for Committee Substitute for House Bill No. 25

An act relating to temporary and concurrent custody of a child; amending s. 61.13002, F.S.; providing that a parent activated, deployed, or temporarily assigned to military service on orders in excess of a specified period may designate a person or persons to exercise time-sharing with the child on the parent's behalf; limiting who may be designated; providing for limited objections by the other parent; providing for expedited hearings; requiring a servicemember and a nonmilitary parent to cooperate with each other to resolve issues; requiring information sharing; providing for agreements for persons to exercise time-sharing on a parent's behalf; providing for expedited hearings to enforce time-sharing rights; revising ch. 751, F.S., relating to petitions and court orders awarding the temporary custody of a child to an extended family member, to also provide for concurrent custody with the parents of the child; amending s. 751.01, F.S.; conforming provisions to changes made by the act; amending s. 751.011, F.S.; revising definitions; defining the term "concurrent custody"; amending s. 751.02, F.S.; providing requirements for concurrent custody; amending s. 751.03, F.S.; revising the petition for concurrent custody to require additional information; amending s. 751.04, F.S.; conforming provisions to changes made by the act; amending s. 751.05, F.S.; providing that if a parent objects to a petition for concurrent custody, the court may not grant the petition and must give the petitioner the option of converting the petition to one for temporary custody; providing for dismissal of the petition; providing that an order granting concurrent custody does not affect the ability of the parents to obtain the physical custody of the child at any time; providing for the court to terminate an order for concurrent custody if either or both parents object to the order; providing for filing for temporary custody if an order for concurrent custody has been terminated; providing for the court to modify an existing child support order; amending s. 49.011, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

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

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

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

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

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

(3) The servicemember and the nonmilitary parent shall cooperate with each other in an effort to reach a mutually agreeable resolution of custody, visitation, delegation of visitation, and child support. Each party shall provide information to the other party in an effort to facilitate agreement on custody, visitation, delegation of visitation, and child support. Agreements on designation of persons to exercise time-sharing with the child on the parent's behalf may also be made at the time of dissolution of marriage or other child custody proceedings.

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

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

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

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

(b) Requiring the servicemember to enroll the child as a military dependent with DEERs, TriCare, or other similar benefits available to military dependents as provided by the service member’s branch of service and federal regulations; or

(c) Suspending, abating, or reducing the child support obligation of the nonservice member until the custody judgment or time-share order previously in effect is reinstated.

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

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

751.01 Purpose of act.—The purposes of this chapter ss. 751.01-751.05 are to:

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

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

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

(a) Consent to all necessary and reasonable medical and dental care for the child, including nonemergency surgery and psychiatric care.;

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

1. Medical, dental, and psychiatric records.;
2. Birth certificates and other records.;
3. Educational records.;

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

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

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

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

(1) “Concurrent custody” means that an eligible extended family member is awarded custodial rights to care for a child concurrently with the child’s parent or parents.

(2) “Extended family member” means a ~~is any~~ person who is:

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

(b)(2) The stepparent of a minor child if the stepparent is currently married to the parent of the child and is not a party in a pending dissolution, separate maintenance, domestic violence, or other civil or criminal proceeding in any court of competent jurisdiction involving one or both of the child’s parents as an adverse party.

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

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

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

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

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

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

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

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

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

751.03 Petition for temporary or concurrent custody; contents.—Each petition for temporary or concurrent custody of a minor child must be verified

by the petitioner, who must be an extended family member, and must contain statements, to the best of the petitioner’s knowledge and belief, providing showing:

- (1) The name, date of birth, and current address of the child.;
- (2) The names and current addresses of the child’s parents.;
- (3) The names and current addresses of the persons with whom the child has lived during the past 5 years.;
- (4) The places where the child has lived during the past 5 years.;
- (5) Information concerning any custody proceeding in this or any other state with respect to the child.;
- (6) The residence and post office address of the petitioner.;
- (7) The petitioner’s relationship to the child.;
- (8) If concurrent custody is being requested:
  - (a) The time periods during the last 12 months that the child resided with the petitioner;
  - (b) The type of document, if any, provided by the parent or parents to enable the petitioner to act on behalf of the child;
  - (c) The services or actions that the petitioner is unable to obtain or undertake without an order of custody; and
  - (d) Whether each parent has consented in writing to the entry of an order of concurrent custody.

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

~~(9)~~(8) If temporary custody is being requested, the consent of the child’s parents, or the specific acts or omissions of the parents which demonstrate that the parents have abused, abandoned, or neglected the child as defined in chapter 39.;

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

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

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

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

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

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

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

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

751.05 Order granting temporary or concurrent custody.—

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

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

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

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

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

(4) The order granting:

(a) Concurrent custody of the minor child may not eliminate or diminish the custodial rights of the child's parent or parents. The order must expressly state that the grant of custody does not affect the ability of the child's parent or parents to obtain physical custody of the child at any time.

(b) Temporary custody of the minor child to the petitioner may also grant visitation rights to the child's parent or parents, if it is in the best interest of the child ~~to do so~~.

(5)(a) The order granting temporary or concurrent custody of the minor child to the petitioner:

(a) May not include an order for the support of the child unless the parent has received personal or substituted service of process, the petition requests an order for the support of the child, and there is evidence of the parent's ability to pay the support ordered.

(b) ~~The order granting temporary custody~~ May redirect all or part of an existing child support obligation to be paid to the extended family member who is granted temporary or concurrent custody of the child. If the court redirects an existing child support obligation, the order granting temporary or concurrent custody must include, if possible, the determination of arrearages owed to the obligee and the person awarded temporary or concurrent custody and must order payment of the arrearages. The clerk of the circuit court in which the ~~temporary custody~~ order is entered shall transmit a certified copy thereof to the court originally entering the child support order. The temporary or concurrent custody order shall be recorded and filed in the original action in which child support was determined and become a part thereof. A copy of the temporary or concurrent custody order shall also be filed with the depository that serves as the official recordkeeper for support payments due under the support order. The depository must ~~shall~~ maintain separate accounts and separate account numbers for individual obligees.

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

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

(8) At any time, the petitioner or either or both of the child's parents may move the court to modify the existing child support order pursuant to chapter 61. The court may modify an existing order granting child support if the parties consent and if modification is in the best interest of the child. Any order modifying child support in a concurrent custody proceeding shall be copied and placed in the related family court files.

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

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

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

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

Approved by the Governor May 7, 2010.

Filed in Office Secretary of State May 7, 2010.