

By Senator Campbell

33-1291-00

See HB 377

1                                   A bill to be entitled  
2           An act relating to child custody jurisdiction  
3           and enforcement; creating the "Uniform Child  
4           Custody Jurisdiction and Enforcement Act";  
5           providing definitions; specifying proceedings  
6           not governed by the act; providing application  
7           to Indian tribes; providing international  
8           application of the act; providing the effect of  
9           a child custody determination; providing  
10          priority for questions of jurisdiction under  
11          the act; providing for notice to persons  
12          outside the state; providing for appearance at  
13          proceedings and limited immunity; providing for  
14          communication between courts of this state and  
15          courts of other states; providing for taking  
16          testimony in another state; providing for  
17          cooperation between courts and the preservation  
18          of records; providing for initial child custody  
19          jurisdiction; providing for exclusive,  
20          continuing jurisdiction; providing for  
21          jurisdiction to modify a child custody  
22          determination; providing for temporary  
23          emergency jurisdiction; providing for notice,  
24          opportunity to be heard, and joinder; providing  
25          procedures with respect to simultaneous  
26          proceedings; providing for determination of an  
27          inconvenient forum; providing procedures for a  
28          decline of jurisdiction by reason of conduct;  
29          specifying information to be submitted to the  
30          court; providing for the appearance of the  
31          parties and the child at proceedings; providing

1 definitions relating to enforcement; providing  
2 for enforcement under the Hague Convention;  
3 providing duty of the court to enforce child  
4 custody determinations of a court of another  
5 state; providing for temporary visitation;  
6 providing for registration of out-of-state  
7 child custody determinations; providing for  
8 enforcement of registered determinations;  
9 providing procedures with respect to  
10 simultaneous proceedings; providing for  
11 expedited enforcement of a child custody  
12 determination; providing for service of  
13 petition and order; providing for hearing and  
14 order; providing for issuance of a warrant to  
15 take physical custody of a child under certain  
16 circumstances; providing for award of costs,  
17 fees, and expenses to the prevailing party;  
18 providing for recognition of enforcement orders  
19 of a court of another state; providing for  
20 appeals; providing for actions by the state  
21 attorney; providing for actions by law  
22 enforcement officers; providing for assessment  
23 of costs and expenses incurred by the state  
24 attorney and law enforcement officers;  
25 providing for application and construction of  
26 the act; providing severability; providing for  
27 transition; amending ss. 39.502, 61.13, and  
28 741.30, F.S.; conforming references and  
29 cross-references; repealing ss. 61.1302,  
30 61.1304, 61.1306, 61.1308, 61.131, 61.1312,  
31 61.1314, 61.1316, 61.1318, 61.132, 61.1322,

1           61.1324, 61.1326, 61.1328, 61.133, 61.1332,  
2           61.1334, 61.1336, 61.1338, 61.134, 61.1342,  
3           61.1344, 61.1346, and 61.1348, F.S., relating  
4           to the "Uniform Child Custody Jurisdiction  
5           Act"; providing an effective date.

6  
7 Be It Enacted by the Legislature of the State of Florida:

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9           Section 1. Short title.--This act may be cited as the  
10 "Uniform Child Custody Jurisdiction and Enforcement Act."

11           Section 2. Definitions.--As used in this act, the  
12 term:

13           (1) "Abandoned" means left without provision for  
14 reasonable and necessary care or supervision.

15           (2) "Child" means an individual who has not attained  
16 18 years of age.

17           (3) "Child custody determination" means a judgment,  
18 decree, or other order of a court providing for the legal  
19 custody, physical custody, or visitation with respect to a  
20 child. The term includes a permanent, temporary, initial, and  
21 modification order. The term does not include an order  
22 relating to child support or other monetary obligation of an  
23 individual.

24           (4) "Child custody proceeding" means a proceeding in  
25 which legal custody, physical custody, or visitation with  
26 respect to a child is an issue. The term includes a proceeding  
27 for divorce, separation, neglect, abuse, dependency,  
28 guardianship, paternity, termination of parental rights, and  
29 protection from domestic violence, in which the issue may  
30 appear. The term does not include a proceeding involving  
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1 juvenile delinquency, contractual emancipation, or enforcement  
2 under sections 23 through 39.

3 (5) "Commencement" means the filing of the first  
4 pleading in a proceeding.

5 (6) "Court" means an entity authorized under the law  
6 of a state to establish, enforce, or modify a child custody  
7 determination.

8 (7) "Home state" means the state in which a child  
9 lived with a parent or a person acting as a parent for at  
10 least 6 consecutive months immediately before the commencement  
11 of a child custody proceeding. In the case of a child less  
12 than 6 months of age, the term means the state in which the  
13 child lived from birth with any of the persons mentioned. A  
14 period of temporary absence of any of the mentioned persons is  
15 part of the period.

16 (8) "Initial determination" means the first child  
17 custody determination concerning a particular child.

18 (9) "Issuing court" means the court that makes a child  
19 custody determination for which enforcement is sought under  
20 this act.

21 (10) "Issuing state" means the state in which a child  
22 custody determination is made.

23 (11) "Modification" means a child custody  
24 determination that changes, replaces, supersedes, or is  
25 otherwise made after a previous determination concerning the  
26 same child, whether or not it is made by the court that made  
27 the previous determination.

28 (12) "Person" means an individual, corporation,  
29 business trust, estate, trust, partnership, limited liability  
30 company, association, joint venture, or government;  
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1 governmental subdivision, agency, instrumentality, or public  
2 corporation; or any other legal or commercial entity.

3 (13) "Person acting as a parent" means a person, other  
4 than a parent, who:

5 (a) Has physical custody of the child or has had  
6 physical custody for a period of 6 consecutive months,  
7 including any temporary absence, within 1 year immediately  
8 before the commencement of a child custody proceeding; and

9 (b) Has been awarded legal custody by a court or  
10 claims a right to legal custody under the law of this state.

11 (14) "Physical custody" means the physical care and  
12 supervision of a child.

13 (15) "State" means a state of the United States, the  
14 District of Columbia, Puerto Rico, the United States Virgin  
15 Islands, or any territory or insular possession subject to the  
16 jurisdiction of the United States.

17 (16) "Tribe" means an Indian tribe, or band, or  
18 Alaskan Native village which is recognized by federal law or  
19 formally acknowledged by a state.

20 (17) "Warrant" means an order issued by a court  
21 authorizing law enforcement officers to take physical custody  
22 of a child.

23 Section 3. Proceedings governed by other law.--This  
24 act does not govern an adoption proceeding or a proceeding  
25 pertaining to the authorization of emergency medical care for  
26 a child.

27 Section 4. Application to Indian tribes.--

28 (1) A child custody proceeding that pertains to an  
29 Indian child as defined in the Indian Child Welfare Act, 25  
30 U.S.C. s. 1901 et seq., is not subject to this act to the  
31 extent that it is governed by the Indian Child Welfare Act.

1           (2) A court of this state shall treat a tribe as if it  
2 were a state of the United States for purposes of applying  
3 sections 1 through 22.

4           (3) A child custody determination made by a tribe  
5 under factual circumstances in substantial conformity with the  
6 jurisdictional standards of this act must be recognized and  
7 enforced under sections 23 through 39.

8           Section 5. International application of act.--

9           (1) A court of this state shall treat a foreign  
10 country as if it were a state of the United States for  
11 purposes of applying sections 1 through 22.

12           (2) Except as otherwise provided in subsection (3), a  
13 child custody determination made in a foreign country under  
14 factual circumstances in substantial conformity with the  
15 jurisdictional standards of this act must be recognized and  
16 enforced under sections 23 through 39.

17           (3) A court of this state need not apply this act if  
18 the child custody law of a foreign country violates  
19 fundamental principles of human rights.

20           Section 6. Effect of child custody determination.--A  
21 child custody determination made by a court of this state that  
22 had jurisdiction under this act binds all persons who have  
23 been served in accordance with the laws of this state or  
24 notified in accordance with section 8 or who have submitted to  
25 the jurisdiction of the court, and who have been given an  
26 opportunity to be heard. As to those persons, the  
27 determination is conclusive as to all decided issues of law  
28 and fact except to the extent the determination is modified.

29           Section 7. Priority.--If a question of existence or  
30 exercise of jurisdiction under this act is raised in a child  
31 custody proceeding, the question, upon request of a party,

1 must be given priority on the calendar and handled  
2 expeditiously.

3 Section 8. Notice to persons outside the state.--

4 (1) Notice required for the exercise of jurisdiction  
5 when a person is outside this state may be given in a manner  
6 prescribed by the laws of this state for the service of  
7 process or by the laws of the state in which the service is  
8 made. Notice must be given in a manner reasonably calculated  
9 to give actual notice, but may be by publication if other  
10 means are not effective.

11 (2) Proof of service may be made in the manner  
12 prescribed by the law of this state or by the law of the state  
13 in which the service is made.

14 (3) Notice is not required for the exercise of  
15 jurisdiction with respect to a person who submits to the  
16 jurisdiction of the court.

17 Section 9. Appearance and limited immunity.--

18 (1) A party to a child custody proceeding, including a  
19 modification proceeding, or a petitioner or respondent in a  
20 proceeding to enforce or register a child custody  
21 determination, is not subject to personal jurisdiction in this  
22 state for another proceeding or purpose solely by reason of  
23 having participated, or of having been physically present for  
24 the purpose of participating, in the proceeding.

25 (2) A person who is subject to personal jurisdiction  
26 in this state on a basis other than physical presence is not  
27 immune from service of process in this state. A party present  
28 in this state who is subject to the jurisdiction of another  
29 state is not immune from service of process allowable under  
30 the laws of that state.

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1           (3) The immunity granted by subsection (1) does not  
2 extend to civil litigation based on acts unrelated to the  
3 participation in a proceeding under this act committed by an  
4 individual while present in this state.

5           Section 10. Communication between courts.--

6           (1) A court of this state may communicate with a court  
7 in another state concerning a proceeding arising under this  
8 act.

9           (2) The court may allow the parties to participate in  
10 the communication. If the parties are not able to participate  
11 in the communication, they must be given the opportunity to  
12 present facts and legal arguments before a decision on  
13 jurisdiction is made.

14           (3) Communication between courts on schedules,  
15 calendars, court records, and similar matters may occur  
16 without informing the parties. A record need not be made of  
17 the communication.

18           (4) Except as otherwise provided in subsection (3), a  
19 record must be made of a communication under this section. The  
20 parties must be informed promptly of the communication and  
21 granted access to the record.

22           (5) For the purposes of this section, "record" means  
23 information that is inscribed on a tangible medium or that is  
24 stored in an electronic or other medium and is retrievable in  
25 perceivable form.

26           Section 11. Taking testimony in another state.--

27           (1) In addition to other procedures available to a  
28 party, a party to a child custody proceeding may offer  
29 testimony of witnesses who are located in another state,  
30 including testimony of the parties and the child, by  
31 deposition or other means allowable in this state for



1 testimony taken in another state. The court on its own motion  
2 may order that the testimony of a person be taken in another  
3 state and may prescribe the manner in which and the terms upon  
4 which the testimony is taken.

5 (2) A court of this state may permit an individual  
6 residing in another state to be deposed or to testify by  
7 telephone, audiovisual means, or other electronic means before  
8 a designated court or at another location in that state. A  
9 court of this state shall cooperate with courts of other  
10 states in designating an appropriate location for the  
11 deposition or testimony.

12 (3) Documentary evidence transmitted from another  
13 state to a court of this state by technological means that do  
14 not produce an original writing may not be excluded from  
15 evidence on an objection based on the means of transmission.

16 Section 12. Cooperation between courts; preservation  
17 of records.--

18 (1) A court of this state may request the appropriate  
19 court of another state to:

20 (a) Hold an evidentiary hearing;

21 (b) Order a person to produce or give evidence  
22 pursuant to procedures of that state;

23 (c) Order that an evaluation be made with respect to  
24 the custody of a child involved in a pending proceeding;

25 (d) Forward to the court of this state a certified  
26 copy of the transcript of the record of the hearing, the  
27 evidence otherwise presented, and any evaluation prepared in  
28 compliance with the request; and

29 (e) Order a party to a child custody proceeding or any  
30 person having physical custody of the child to appear in the  
31 proceeding with or without the child.

1           (2) Upon request of a court of another state, a court  
2 of this state may hold a hearing or enter an order described  
3 in subsection (1).

4           (3) Travel and other necessary and reasonable expenses  
5 incurred under subsections (1) and (2) may be assessed against  
6 the parties according to the laws of this state.

7           (4) A court of this state shall preserve the  
8 pleadings, orders, decrees, records of hearings, evaluations,  
9 and other pertinent records with respect to a child custody  
10 proceeding until the child attains 18 years of age. Upon  
11 appropriate request by a court or law enforcement official of  
12 another state, the court shall forward a certified copy of  
13 these records.

14           Section 13. Initial child custody jurisdiction.--

15           (1) Except as otherwise provided in section 16, a  
16 court of this state has jurisdiction to make an initial child  
17 custody determination only if:

18           (a) This state is the home state of the child on the  
19 date of the commencement of the proceeding, or was the home  
20 state of the child within 6 months before the commencement of  
21 the proceeding and the child is absent from this state but a  
22 parent or person acting as a parent continues to live in this  
23 state;

24           (b) A court of another state does not have  
25 jurisdiction under paragraph (a), or a court of the home state  
26 of the child has declined to exercise jurisdiction on the  
27 ground that this state is the more appropriate forum under  
28 section 19 or section 20, and:

29           1. The child and the child's parents, or the child and  
30 at least one parent or a person acting as a parent, have a  
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1 significant connection with this state other than mere  
2 physical presence; and  
3 2. Substantial evidence is available in this state  
4 concerning the child's care, protection, training, and  
5 personal relationships;  
6 (c) All courts having jurisdiction under paragraph (a)  
7 or paragraph (b) have declined to exercise jurisdiction on the  
8 ground that a court of this state is the more appropriate  
9 forum to determine the custody of the child under section 19  
10 or section 20; or  
11 (d) No court of any other state would have  
12 jurisdiction under the criteria specified in paragraph (a),  
13 paragraph (b), or paragraph (c).  
14 (2) Subsection (1) is the exclusive jurisdictional  
15 basis for making a child custody determination by a court of  
16 this state.  
17 (3) Physical presence of, or personal jurisdiction  
18 over, a party or a child is not necessary or sufficient to  
19 make a child custody determination.  
20 Section 14. Exclusive, continuing jurisdiction.--  
21 (1) Except as otherwise provided in section 16, a  
22 court of this state which has made a child custody  
23 determination consistent with section 13 or section 15 has  
24 exclusive, continuing jurisdiction over the determination  
25 until:  
26 (a) A court of this state determines that the child,  
27 the child's parents, and any person acting as a parent do not  
28 have a significant connection with this state and that  
29 substantial evidence is no longer available in this state  
30 concerning the child's care, protection, training, and  
31 personal relationships; or

1           (b) A court of this state or a court of another state  
2 determines that the child, the child's parent, and any person  
3 acting as a parent do not presently reside in this state.

4           (2) A court of this state that has made a child  
5 custody determination and does not have exclusive, continuing  
6 jurisdiction under this section may modify that determination  
7 only if it has jurisdiction to make an initial determination  
8 under section 13.

9           Section 15. Jurisdiction to modify  
10 determination.--Except as otherwise provided in section 16, a  
11 court of this state may not modify a child custody  
12 determination made by a court of another state unless a court  
13 of this state has jurisdiction to make an initial  
14 determination under section 13(1)(a) or (b) and:

15           (1) The court of the other state determines it no  
16 longer has exclusive, continuing jurisdiction under section 14  
17 or that a court of this state would be a more convenient forum  
18 under section 19; or

19           (2) A court of this state or a court of the other  
20 state determines that the child, the child's parents, and any  
21 person acting as a parent do not presently reside in the other  
22 state.

23           Section 16. Temporary emergency jurisdiction.--

24           (1) A court of this state has temporary emergency  
25 jurisdiction if the child is present in this state and the  
26 child has been abandoned or it is necessary in an emergency to  
27 protect the child because the child, or a sibling or parent of  
28 the child, is subjected to or threatened with mistreatment or  
29 abuse.

30           (2) If there is no previous child custody  
31 determination that is entitled to be enforced under this act,

1 and a child custody proceeding has not been commenced in a  
2 court of a state having jurisdiction under sections 13 through  
3 15, a child custody determination made under this section  
4 remains in effect until an order is obtained from a court of a  
5 state having jurisdiction under sections 13 through 15. If a  
6 child custody proceeding has not been or is not commenced in a  
7 court of a state having jurisdiction under sections 13 through  
8 15, a child custody determination made under this section  
9 becomes a final determination, if it so provides and this  
10 state becomes the home state of the child.

11 (3) If there is a previous child custody determination  
12 that is entitled to be enforced under this act, or a child  
13 custody proceeding has been commenced in a court of a state  
14 having jurisdiction under sections 13 through 15, any order  
15 issued by a court of this state under this section must  
16 specify in the order a period which the court considers  
17 adequate to allow the person seeking an order to obtain an  
18 order from the state having jurisdiction under sections 13  
19 through 15. The order issued in this state remains in effect  
20 until an order is obtained from the other state within the  
21 period specified or the period expires.

22 (4) A court of this state which has been asked to make  
23 a child custody determination under this section, upon being  
24 informed that a child custody proceeding has been commenced  
25 in, or a child custody determination has been made by, a court  
26 of a state having jurisdiction under sections 13 through 15,  
27 shall immediately communicate with the other court. A court of  
28 this state which is exercising jurisdiction pursuant to  
29 sections 13 through 15, upon being informed that a child  
30 custody proceeding has been commenced in, or a child custody  
31 determination has been made by, a court of another state under

1 a statute similar to this section shall immediately  
2 communicate with the court of that state to resolve the  
3 emergency, protect the safety of the parties and the child,  
4 and determine a period for the duration of the temporary  
5 order.

6 Section 17. Notice; opportunity to be heard;  
7 joinder.--

8 (1) Before a child custody determination is made under  
9 this act, notice and an opportunity to be heard in accordance  
10 with the standards of section 8 must be given to all persons  
11 entitled to notice under the laws of this state as in child  
12 custody proceedings between residents of this state, any  
13 parent whose parental rights have not been previously  
14 terminated, and any person having physical custody of the  
15 child.

16 (2) This act does not govern the enforceability of a  
17 child custody determination made without notice or an  
18 opportunity to be heard.

19 (3) The obligation to join a party and the right to  
20 intervene as a party in a child custody proceeding under this  
21 act are governed by the laws of this state as in child custody  
22 proceedings between residents of this state.

23 Section 18. Simultaneous proceedings.--

24 (1) Except as otherwise provided in section 16, a  
25 court of this state may not exercise its jurisdiction under  
26 sections 13 through 23 if, at the time of the commencement of  
27 the proceeding, a proceeding concerning the custody of the  
28 child had been commenced in a court of another state having  
29 jurisdiction substantially in conformity with this act, unless  
30 the proceeding has been terminated or is stayed by the court  
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1 of the other state because a court of this state is a more  
2 convenient forum under section 19.

3 (2) Except as otherwise provided in section 16, a  
4 court of this state, before hearing a child custody  
5 proceeding, shall examine the court documents and other  
6 information supplied by the parties pursuant to section 21. If  
7 the court determines that a child custody proceeding was  
8 previously commenced in a court in another state having  
9 jurisdiction substantially in accordance with this act, the  
10 court of this state shall stay its proceeding and communicate  
11 with the court of the other state. If the court of the state  
12 having jurisdiction substantially in accordance with this act  
13 does not determine that the court of this state is a more  
14 appropriate forum, the court of this state shall dismiss the  
15 proceeding.

16 (3) In a proceeding to modify a child custody  
17 determination, a court of this state shall determine whether a  
18 proceeding to enforce the determination has been commenced in  
19 another state. If a proceeding to enforce a child custody  
20 determination has been commenced in another state, the court  
21 may:

22 (a) Stay the proceeding for modification pending the  
23 entry of an order of a court of the other state enforcing,  
24 staying, denying, or dismissing the proceeding for  
25 enforcement;

26 (b) Enjoin the parties from continuing with the  
27 proceeding for enforcement; or

28 (c) Proceed with the modification under conditions it  
29 considers appropriate.

30 Section 19. Inconvenient forum.--  
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1           (1) A court of this state which has jurisdiction under  
2 this act to make a child custody determination may decline to  
3 exercise its jurisdiction at any time if it determines that it  
4 is an inconvenient forum under the circumstances and that a  
5 court of another state is a more appropriate forum. The issue  
6 of inconvenient forum may be raised upon motion of a party,  
7 the court's own motion, or request of another court.

8           (2) Before determining whether it is an inconvenient  
9 forum, a court of this state shall consider whether it is  
10 appropriate for a court of another state to exercise  
11 jurisdiction. For this purpose, the court shall allow the  
12 parties to submit information and shall consider all relevant  
13 factors, including:

14           (a) Whether domestic violence has occurred and is  
15 likely to continue in the future and which state could best  
16 protect the parties and the child;

17           (b) The length of time the child has resided outside  
18 this state;

19           (c) The distance between the court in this state and  
20 the court in the state that would assume jurisdiction;

21           (d) The relative financial circumstances of the  
22 parties;

23           (e) Any agreement of the parties as to which state  
24 should assume jurisdiction;

25           (f) The nature and location of the evidence required  
26 to resolve the pending litigation, including testimony of the  
27 child;

28           (g) The ability of the court of each state to decide  
29 the issue expeditiously and the procedures necessary to  
30 present the evidence; and

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1           (h) The familiarity of the court of each state with  
2 the facts and issues in the pending litigation.

3           (3) If a court of this state determines that it is an  
4 inconvenient forum and that a court of another state is a more  
5 appropriate forum, it shall stay the proceedings upon  
6 condition that a child custody proceeding be promptly  
7 commenced in another designated state and may impose any other  
8 condition the court considers just and proper.

9           (4) A court of this state may decline to exercise its  
10 jurisdiction under this act if a child custody determination  
11 is incidental to an action for divorce or another proceeding  
12 while still retaining jurisdiction over the divorce or other  
13 proceeding.

14           Section 20. Jurisdiction declined by reason of  
15 conduct.--

16           (1) Except as otherwise provided in section 16 or by  
17 other law of this state, if a court of this state has  
18 jurisdiction under this act because a person seeking to invoke  
19 its jurisdiction has engaged in unjustifiable conduct, the  
20 court shall decline to exercise its jurisdiction unless:

21           (a) The parents and all persons acting as parents have  
22 acquiesced in the exercise of jurisdiction;

23           (b) A court of the state otherwise having jurisdiction  
24 under sections 13 through 15 determines that this state is a  
25 more appropriate forum under section 19; or

26           (c) No court of any other state would have  
27 jurisdiction under the criteria specified in sections 13  
28 through 15.

29           (2) If a court of this state declines to exercise its  
30 jurisdiction pursuant to subsection (1), it may fashion an  
31 appropriate remedy to ensure the safety of the child and

1 prevent a repetition of the unjustifiable conduct, including  
2 staying the proceeding until a child custody proceeding is  
3 commenced in a court having jurisdiction under sections 13  
4 through 15.

5 (3) If a court dismisses a petition or stays a  
6 proceeding because it declines to exercise its jurisdiction  
7 pursuant to subsection (1), it shall assess against the party  
8 seeking to invoke its jurisdiction necessary and reasonable  
9 expenses, including costs, communication expenses, attorney's  
10 fees, investigative fees, expenses for witnesses, travel  
11 expenses, and child care during the course of the proceedings,  
12 unless the party from whom fees are sought establishes that  
13 the assessment would be clearly inappropriate. The court may  
14 not assess fees, costs, or expenses against this state unless  
15 authorized by law other than this act.

16 Section 21. Information to be submitted to the  
17 court.--

18 (1) Subject to local law providing for the  
19 confidentiality of procedures, addresses, and other  
20 identifying information in a child custody proceeding, each  
21 party, in its first pleading or in an attached affidavit,  
22 shall give information, if reasonably ascertainable, under  
23 oath as to the child's present address or whereabouts, the  
24 places where the child has lived during the last 5 years, and  
25 the names and present addresses of the persons with whom the  
26 child has lived during that period. The pleading or affidavit  
27 must state whether the party:

28 (a) Has participated, as a party or witness or in any  
29 other capacity, in any other proceeding concerning the custody  
30 of or visitation with the child and, if so, identify the  
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1 court, the case number, and the date of the child custody  
2 determination, if any;

3 (b) Knows of any proceeding that could affect the  
4 current proceeding, including proceedings for enforcement and  
5 proceedings relating to domestic violence, protective orders,  
6 termination of parental rights, and adoptions and, if so,  
7 identify the court, the case number, and the nature of the  
8 proceeding; and

9 (c) Knows the names and addresses of any person not a  
10 party to the proceeding who has physical custody of the child  
11 or claims rights of legal custody or physical custody of, or  
12 visitation with, the child and, if so, the names and addresses  
13 of those persons.

14 (2) If the information required by subsection (1) is  
15 not furnished, the court, upon motion of a party or its own  
16 motion, may stay the proceeding until the information is  
17 furnished.

18 (3) If the declaration as to any of the items  
19 described in paragraphs (1)(a)-(c) is in the affirmative, the  
20 declarant shall give additional information under oath as  
21 required by the court. The court may examine the parties under  
22 oath as to details of the information furnished and other  
23 matters pertinent to the court's jurisdiction and the  
24 disposition of the case.

25 (4) Each party has a continuing duty to inform the  
26 court of any proceeding in this or any other state that could  
27 affect the current proceeding.

28 Section 22. Appearance of parties and child.--

29 (1) In a child custody proceeding in this state, the  
30 court may order a party to the proceeding who is in this state  
31 to appear before the court in person with or without the

1 child. The court may order any person who is in this state and  
2 who has physical custody or control of the child to appear in  
3 person with the child.

4 (2) If a party to a child custody proceeding whose  
5 presence is desired by the court is outside this state, the  
6 court may order that a notice given pursuant to section 8  
7 include a statement directing the party to appear in person  
8 with or without the child and informing the party that failure  
9 to appear may result in a decision adverse to the party.

10 (3) The court may enter any orders necessary to ensure  
11 the safety of the child and of any person ordered to appear  
12 under this section.

13 (4) If a party to a child custody proceeding who is  
14 outside this state is directed to appear under subsection (2)  
15 or desires to appear in person before the court with or  
16 without the child, the court may require another party to pay  
17 reasonable and necessary travel and other expenses of the  
18 party so appearing and of the child.

19 Section 23. Definitions.--As used in sections 23  
20 through 39, the term:

21 (1) "Petitioner" means a person who seeks enforcement  
22 of an order for return of a child under the Hague Convention  
23 on the Civil Aspects of International Child Abduction or  
24 enforcement of a child custody determination.

25 (2) "Respondent" means a person against whom a  
26 proceeding has been commenced for enforcement of an order for  
27 return of a child under the Hague Convention on the Civil  
28 Aspects of International Child Abduction or enforcement of a  
29 child custody determination.

30 Section 24. Enforcement under the Hague  
31 Convention.--Under this act, a court of this state may enforce

1 an order for the return of a child made under the Hague  
2 Convention on the Civil Aspects of International Child  
3 Abduction as if it were a child custody determination.

4 Section 25. Duty to enforce.--

5 (1) A court of this state shall recognize and enforce  
6 a child custody determination of a court of another state if  
7 the latter court exercised jurisdiction in substantial  
8 conformity with this act or the determination was made under  
9 factual circumstances meeting the jurisdictional standards of  
10 this act and the determination has not been modified in  
11 accordance with this act.

12 (2) A court of this state may utilize any remedy  
13 available under other law of this state to enforce a child  
14 custody determination made by a court of another state. The  
15 remedies provided by sections 23 through 39 are cumulative and  
16 do not affect the availability of other remedies to enforce a  
17 child custody determination.

18 Section 26. Temporary visitation.--

19 (1) A court of this state which does not have  
20 jurisdiction to modify a child custody determination may issue  
21 a temporary order enforcing:

22 (a) A visitation schedule made by a court of another  
23 state; or

24 (b) The visitation provisions of a child custody  
25 determination of another state that does not provide for a  
26 specific visitation schedule.

27 (2) If a court of this state makes an order under  
28 paragraph (1)(b), it shall specify in the order a period that  
29 it considers adequate to allow the petitioner to obtain an  
30 order from a court having jurisdiction under the criteria  
31 specified in sections 13 through 22. The order remains in

1 effect until an order is obtained from the other court or the  
2 period expires.

3 Section 27. Registration of child custody  
4 determination.--

5 (1) A child custody determination issued by a court of  
6 another state may be registered in this state, with or without  
7 a simultaneous request for enforcement, by sending to the  
8 appropriate court in this state:

9 (a) A letter or other document requesting  
10 registration;

11 (b) Two copies, including one certified copy, of the  
12 determination sought to be registered, and a statement under  
13 penalty of perjury that to the best of the knowledge and  
14 belief of the person seeking registration the order has not  
15 been modified; and

16 (c) Except as otherwise provided in section 21, the  
17 name and address of the person seeking registration and any  
18 parent or person acting as a parent who has been awarded  
19 custody or visitation in the child custody determination  
20 sought to be registered.

21 (2) On receipt of the documents required by subsection  
22 (1), the registering court shall:

23 (a) Cause the determination to be filed as a foreign  
24 judgment, together with one copy of any accompanying documents  
25 and information, regardless of their form; and

26 (b) Serve notice upon the persons named pursuant to  
27 paragraph (1)(c) and provide them with an opportunity to  
28 contest the registration in accordance with this section.

29 (3) The notice required by paragraph (2)(b) must state  
30 that:

31

1       (a) A registered determination is enforceable as of  
2 the date of the registration in the same manner as a  
3 determination issued by a court of this state;

4       (b) A hearing to contest the validity of the  
5 registered determination must be requested within 20 days  
6 after service of notice; and

7       (c) Failure to contest the registration will result in  
8 confirmation of the child custody determination and preclude  
9 further contest of that determination with respect to any  
10 matter that could have been asserted.

11       (4) A person seeking to contest the validity of a  
12 registered order must request a hearing within 20 days after  
13 service of the notice. At that hearing, the court shall  
14 confirm the registered order unless the person contesting  
15 registration establishes that:

16       (a) The issuing court did not have jurisdiction under  
17 sections 13 through 22;

18       (b) The child custody determination sought to be  
19 registered has been vacated, stayed, or modified by a court  
20 having jurisdiction to do so under sections 13 through 22; or

21       (c) The person contesting registration was entitled to  
22 notice, but notice was not given in accordance with the  
23 standards of section 8 in the proceedings before the court  
24 that issued the order for which registration is sought.

25       (5) If a timely request for a hearing to contest the  
26 validity of the registration is not made, the registration is  
27 confirmed as a matter of law and the person requesting  
28 registration and all persons served must be notified of the  
29 confirmation.

30       (6) Confirmation of a registered order, whether by  
31 operation of law or after notice and hearing, precludes

1 further contest of the order with respect to any matter which  
2 could have been asserted at the time of registration.

3 Section 28. Enforcement of registered determination.--

4 (1) A court of this state may grant any relief  
5 normally available under the laws of this state to enforce a  
6 registered child custody determination made by a court of  
7 another state.

8 (2) A court of this state shall recognize and enforce,  
9 but may not modify, except in accordance with sections 13  
10 through 22, a registered child custody determination of  
11 another state.

12 Section 29. Simultaneous proceedings.--If a proceeding  
13 for enforcement under sections 23 through 39 is commenced in a  
14 court of this state and the court determines that a proceeding  
15 to modify the determination is pending in a court of another  
16 state having jurisdiction to modify the determination under  
17 sections 13 through 22, the enforcing court shall immediately  
18 communicate with the modifying court. The proceeding for  
19 enforcement continues unless the enforcing court, after  
20 consultation with the modifying court, stays or dismisses the  
21 proceeding.

22 Section 30. Expedited enforcement of child custody  
23 determination.--

24 (1) A petition under sections 23 through 39 must be  
25 verified. Certified copies of all orders sought to be enforced  
26 and of any order confirming registration must be attached to  
27 the petition. A copy of a certified copy of an order may be  
28 attached instead of the original.

29 (2) A petition for enforcement of a child custody  
30 determination must state:

31



1           (a) Whether the court that issued the determination  
2 identified the jurisdictional basis it relied upon in  
3 exercising jurisdiction and, if so, what the basis was;

4           (b) Whether the determination for which enforcement is  
5 sought has been vacated, stayed, or modified by a court whose  
6 decision must be enforced under this act and, if so, identify  
7 the court, the case number, and the nature of the proceeding;

8           (c) Whether any proceeding has been commenced that  
9 could affect the current proceeding, including proceedings  
10 relating to domestic violence, protective orders, termination  
11 of parental rights, and adoptions and, if so, identify the  
12 court, the case number, and the nature of the proceeding;

13           (d) The present physical address of the child and the  
14 respondent, if known;

15           (e) Whether relief in addition to the immediate  
16 physical custody of the child and attorney's fees is sought,  
17 including a request for assistance from law enforcement  
18 officers and, if so, the relief sought; and

19           (f) If the child custody determination has been  
20 registered and confirmed under section 27, the date and place  
21 of registration.

22           (3) Upon the filing of a petition, the court shall  
23 issue an order directing the respondent to appear in person  
24 with or without the child at a hearing and may enter any order  
25 necessary to ensure the safety of the parties and the child.  
26 The hearing must be held on the next judicial day after  
27 service of the order unless that date is impossible. In that  
28 event, the court shall hold the hearing on the first judicial  
29 day possible. The court may extend the date of the hearing at  
30 the request of the petitioner.

31

1           (4) An order issued under subsection (3) must state  
2 the time and place of the hearing and advise the respondent  
3 that at the hearing the court will order that the petitioner  
4 may take immediate physical custody of the child and the  
5 payment of fees, costs, and expenses under section 34, and may  
6 schedule a hearing to determine whether further relief is  
7 appropriate, unless the respondent appears and establishes  
8 that:

9           (a) The child custody determination has not been  
10 registered and confirmed under section 27 and that:

11           1. The issuing court did not have jurisdiction under  
12 sections 13 through 22;

13           2. The child custody determination for which  
14 enforcement is sought has been vacated, stayed, or modified by  
15 a court of a state having jurisdiction to do so under sections  
16 13 through 22; or

17           3. The respondent was entitled to notice, but notice  
18 was not given in accordance with the standards of section 8 in  
19 the proceedings before the court that issued the order for  
20 which enforcement is sought; or

21           (b) The child custody determination for which  
22 enforcement is sought was registered and confirmed under  
23 section 27, but has been vacated, stayed, or modified by a  
24 court of a state having jurisdiction to do so under sections  
25 13 through 22.

26           Section 31. Service of petition and order.--Except as  
27 otherwise provided in section 33, the petition and order must  
28 be served by any method authorized by the laws of this state  
29 upon the respondent and any person who has physical custody of  
30 the child.

31           Section 32. Hearing and order.--

1           (1) Unless the court enters a temporary emergency  
2 order pursuant to section 16, upon a finding that a petitioner  
3 is entitled to immediate physical custody of the child, the  
4 court shall order that the petitioner may take immediate  
5 physical custody of the child unless the respondent  
6 establishes that:

7           (a) The child custody determination has not been  
8 registered and confirmed under section 27 and that:

9           1. The issuing court did not have jurisdiction under  
10 sections 13 through 22;

11           2. The child custody determination for which  
12 enforcement is sought has been vacated, stayed, or modified by  
13 a court of a state having jurisdiction to do so under sections  
14 13 through 22; or

15           3. The respondent was entitled to notice, but notice  
16 was not given in accordance with the standards of section 8 in  
17 the proceedings before the court that issued the order for  
18 which enforcement is sought; or

19           (b) The child custody determination for which  
20 enforcement is sought was registered and confirmed under  
21 section 27, but has been vacated, stayed, or modified by a  
22 court of a state having jurisdiction to do so under sections  
23 13 through 22.

24           (2) The court shall award the fees, costs, and  
25 expenses authorized under section 34 and may grant additional  
26 relief, including a request for the assistance of law  
27 enforcement officers, and set a further hearing to determine  
28 whether additional relief is appropriate.

29           (3) If a party called to testify refuses to answer on  
30 the ground that the testimony may be self-incriminating, the  
31 court may draw an adverse inference from the refusal.

1           (4) A privilege against disclosure of communications  
2 between spouses and a defense of immunity based on the  
3 relationship of husband and wife or parent and child may not  
4 be invoked in a proceeding under sections 23 through 39.

5           Section 33. Warrant to take physical custody of  
6 child.--

7           (1) Upon the filing of a petition seeking enforcement  
8 of a child custody determination, the petitioner may file a  
9 verified application for the issuance of a warrant to take  
10 physical custody of the child if the child is likely to  
11 imminently suffer serious physical harm or removal from this  
12 state.

13           (2) If the court, upon the testimony of the petitioner  
14 or other witness, finds that the child is likely to imminently  
15 suffer serious physical harm or removal from this state, it  
16 may issue a warrant to take physical custody of the child. The  
17 petition must be heard on the next judicial day after the  
18 warrant is executed unless that date is impossible. In that  
19 event, the court shall hold the hearing on the first judicial  
20 day possible. The application for the warrant must include the  
21 statements required by section 30(2).

22           (3) A warrant to take physical custody of a child  
23 must:

24           (a) Recite the facts upon which a conclusion of  
25 imminent serious physical harm or removal from the  
26 jurisdiction is based;

27           (b) Direct law enforcement officers to take physical  
28 custody of the child immediately; and

29           (c) Provide for the placement of the child pending  
30 final relief.

31

1           (4) The respondent must be served with the petition,  
2 warrant, and order immediately after the child is taken into  
3 physical custody.

4           (5) A warrant to take physical custody of a child is  
5 enforceable throughout this state. If the court finds on the  
6 basis of the testimony of the petitioner or other witness that  
7 a less intrusive remedy is not effective, it may authorize law  
8 enforcement officers to enter private property to take  
9 physical custody of the child. If required by exigent  
10 circumstances of the case, the court may authorize law  
11 enforcement officers to make a forcible entry at any hour.

12           (6) The court may impose conditions upon placement of  
13 a child to ensure the appearance of the child and the child's  
14 custodian.

15           Section 34. Costs, fees, and expenses.--

16           (1) The court shall award the prevailing party,  
17 including a state, necessary and reasonable expenses incurred  
18 by or on behalf of the party, including costs, communication  
19 expenses, attorney's fees, investigative fees, expenses for  
20 witnesses, travel expenses, and child care during the course  
21 of the proceedings, unless the party from whom fees or  
22 expenses are sought establishes that the award would be  
23 clearly inappropriate.

24           (2) The court may not assess fees, costs, or expenses  
25 against a state unless authorized by law other than this act.

26           Section 35. Recognition and enforcement.--A court of  
27 this state shall accord full faith and credit to an order  
28 issued by another state and consistent with this act which  
29 enforces a child custody determination by a court of another  
30 state unless the order has been vacated, stayed, or modified

31

1 by a court having jurisdiction to do so under sections 13  
2 through 22.

3       Section 36. Appeals.--An appeal may be taken from a  
4 final order in a proceeding under sections 23 through 39 in  
5 accordance with expedited appellate procedures in other civil  
6 cases. Unless the court enters a temporary emergency order  
7 under section 16, the enforcing court may not stay an order  
8 enforcing a child custody determination pending appeal.

9       Section 37. Role of state attorney.--

10       (1) In a case arising under this act or involving the  
11 Hague Convention on the Civil Aspects of International Child  
12 Abduction, the state attorney may take any lawful action,  
13 including resort to a proceeding under sections 23 through 39  
14 or any other available civil proceeding, to locate a child,  
15 obtain the return of a child, or enforce a child custody  
16 determination, if there is:

17       (a) An existing child custody determination;

18       (b) A request to do so from a court in a pending child  
19 custody proceeding;

20       (c) A reasonable belief that a criminal statute has  
21 been violated; or

22       (d) A reasonable belief that the child has been  
23 wrongfully removed or retained in violation of the Hague  
24 Convention on the Civil Aspects of International Child  
25 Abduction.

26       (2) A state attorney acting under this section acts on  
27 behalf of the court and may not represent any party.

28       Section 38. Role of law enforcement officers.--At the  
29 request of a state attorney acting under section 37, a law  
30 enforcement officer may take any lawful action reasonably  
31

1 necessary to locate a child or a party and assist a state  
2 attorney with responsibilities under section 37.

3 Section 39. Costs and expenses.--If the respondent is  
4 not the prevailing party, the court may assess against the  
5 respondent all direct expenses and costs incurred by the state  
6 attorney and law enforcement officers under section 37 or  
7 section 38.

8 Section 40. Application and construction.--In applying  
9 and construing this act, consideration must be given to the  
10 need to promote uniformity of the law with respect to its  
11 subject matter among states that enact it.

12 Section 41. Severability clause.--If any provision of  
13 this act or its application to any person or circumstance is  
14 held invalid, the invalidity does not affect other provisions  
15 or applications of this act which can be given effect without  
16 the invalid provision or application, and to this end the  
17 provisions of this act are severable.

18 Section 42. Transitional provision.--A motion or other  
19 request for relief made in a child custody proceeding or to  
20 enforce a child custody determination which was commenced  
21 before the effective date of this act is governed by the law  
22 in effect at the time the motion or other request was made.

23 Section 43. Subsection (7) of section 39.502, Florida  
24 Statutes, is amended to read:

25 39.502 Notice, process, and service.--

26 (7) Service of the summons and service of pleadings,  
27 papers, and notices subsequent to the summons on persons  
28 outside this state must be made pursuant to section 8 of the  
29 Uniform Child Custody Jurisdiction and Enforcement Act ~~s.~~  
30 ~~61.1312.~~

31

1           Section 44. Paragraph (b) of subsection (2) of section  
2 61.13, Florida Statutes, is amended to read:

3           61.13 Custody and support of children; visitation  
4 rights; power of court in making orders.--

5           (2)

6           (b)1. The court shall determine all matters relating  
7 to custody of each minor child of the parties in accordance  
8 with the best interests of the child and in accordance with  
9 the Uniform Child Custody Jurisdiction and Enforcement Act. It  
10 is the public policy of this state to assure that each minor  
11 child has frequent and continuing contact with both parents  
12 after the parents separate or the marriage of the parties is  
13 dissolved and to encourage parents to share the rights and  
14 responsibilities, and joys, of childrearing. After considering  
15 all relevant facts, the father of the child shall be given the  
16 same consideration as the mother in determining the primary  
17 residence of a child irrespective of the age or sex of the  
18 child.

19           2. The court shall order that the parental  
20 responsibility for a minor child be shared by both parents  
21 unless the court finds that shared parental responsibility  
22 would be detrimental to the child. Evidence that a parent has  
23 been convicted of a felony of the third degree or higher  
24 involving domestic violence, as defined in s. 741.28 and  
25 chapter 775, or meets the criteria of s. 39.806(1)(d), creates  
26 a rebuttable presumption of detriment to the child. If the  
27 presumption is not rebutted, shared parental responsibility,  
28 including visitation, residence of the child, and decisions  
29 made regarding the child, may not be granted to the convicted  
30 parent. However, the convicted parent is not relieved of any  
31 obligation to provide financial support. If the court



1 determines that shared parental responsibility would be  
2 detrimental to the child, it may order sole parental  
3 responsibility and make such arrangements for visitation as  
4 will best protect the child or abused spouse from further  
5 harm. Whether or not there is a conviction of any offense of  
6 domestic violence or child abuse or the existence of an  
7 injunction for protection against domestic violence, the court  
8 shall consider evidence of domestic violence or child abuse as  
9 evidence of detriment to the child.

10       a. In ordering shared parental responsibility, the  
11 court may consider the expressed desires of the parents and  
12 may grant to one party the ultimate responsibility over  
13 specific aspects of the child's welfare or may divide those  
14 responsibilities between the parties based on the best  
15 interests of the child. Areas of responsibility may include  
16 primary residence, education, medical and dental care, and any  
17 other responsibilities that the court finds unique to a  
18 particular family.

19       b. The court shall order "sole parental  
20 responsibility, with or without visitation rights, to the  
21 other parent when it is in the best interests of" the minor  
22 child.

23       c. The court may award the grandparents visitation  
24 rights with a minor child if it is in the child's best  
25 interest. Grandparents have legal standing to seek judicial  
26 enforcement of such an award. This section does not require  
27 that grandparents be made parties or given notice of  
28 ~~dissolution pleadings or proceedings, nor do grandparents have~~  
29 ~~legal standing as "contestants" as defined in s. 61.1306.~~ A  
30 court may not order that a child be kept within the state or  
31

1 jurisdiction of the court solely for the purpose of permitting  
2 visitation by the grandparents.

3 3. Access to records and information pertaining to a  
4 minor child, including, but not limited to, medical, dental,  
5 and school records, may not be denied to a parent because the  
6 parent is not the child's primary residential parent.

7 Section 45. Paragraph (d) of subsection (3),  
8 subsection (4), and paragraph (a) of subsection (7) of section  
9 741.30, Florida Statutes, are amended to read:

10 741.30 Domestic violence; injunction; powers and  
11 duties of court and clerk; petition; notice and hearing;  
12 temporary injunction; issuance of injunction; statewide  
13 verification system; enforcement.--

14 (3)

15 (d) If the sworn petition seeks to determine issues of  
16 custody or visitation with regard to the minor child or  
17 children of the parties, the sworn petition shall be  
18 accompanied by or shall incorporate the allegations required  
19 by section 21 ~~s. 61.132~~ of the Uniform Child Custody  
20 Jurisdiction and Enforcement Act.

21 (4) Upon the filing of the petition, the court shall  
22 set a hearing to be held at the earliest possible time. The  
23 respondent shall be personally served with a copy of the  
24 petition, financial affidavit, uniform child custody  
25 jurisdiction and enforcement act affidavit, if any, notice of  
26 hearing, and temporary injunction, if any, prior to the  
27 hearing.

28 (7)(a)1. The clerk of the court shall furnish a copy  
29 of the petition, financial affidavit, uniform child custody  
30 jurisdiction and enforcement act affidavit, if any, notice of  
31 hearing, and temporary injunction, if any, to the sheriff or a

1 law enforcement agency of the county where the respondent  
2 resides or can be found, who shall serve it upon the  
3 respondent as soon thereafter as possible on any day of the  
4 week and at any time of the day or night. The clerk of the  
5 court shall be responsible for furnishing to the sheriff such  
6 information on the respondent's physical description and  
7 location as is required by the department to comply with the  
8 verification procedures set forth in this section.

9 Notwithstanding any other provision of law to the contrary,  
10 the chief judge of each circuit, in consultation with the  
11 appropriate sheriff, may authorize a law enforcement agency  
12 within the jurisdiction to effect service. A law enforcement  
13 agency serving injunctions pursuant to this section shall use  
14 service and verification procedures consistent with those of  
15 the sheriff.

16         2. When an injunction is issued, if the petitioner  
17 requests the assistance of a law enforcement agency, the court  
18 may order that an officer from the appropriate law enforcement  
19 agency accompany the petitioner and assist in placing the  
20 petitioner in possession of the dwelling or residence, or  
21 otherwise assist in the execution or service of the  
22 injunction. A law enforcement officer shall accept a copy of  
23 an injunction for protection against domestic violence,  
24 certified by the clerk of the court, from the petitioner and  
25 immediately serve it upon a respondent who has been located  
26 but not yet served.

27         3. All orders issued, changed, continued, extended, or  
28 vacated subsequent to the original service of documents  
29 enumerated under subparagraph 1., shall be certified by the  
30 clerk of the court and delivered to the parties at the time of  
31 the entry of the order. The parties may acknowledge receipt

1 of such order in writing on the face of the original order.  
2 In the event a party fails or refuses to acknowledge the  
3 receipt of a certified copy of an order, the clerk shall note  
4 on the original order that service was effected. If delivery  
5 at the hearing is not possible, the clerk shall mail certified  
6 copies of the order to the parties at the last known address  
7 of each party. Service by mail is complete upon mailing.  
8 When an order is served pursuant to this subsection, the clerk  
9 shall prepare a written certification to be placed in the  
10 court file specifying the time, date, and method of service  
11 and shall notify the sheriff.

12

13 If the respondent has been served previously with the  
14 temporary injunction and has failed to appear at the initial  
15 hearing on the temporary injunction, any subsequent petition  
16 for injunction seeking an extension of time may be served on  
17 the respondent by the clerk of the court by certified mail in  
18 lieu of personal service by a law enforcement officer.

19 Section 46. Sections 61.1302, 61.1304, 61.1306,  
20 61.1308, 61.131, 61.1312, 61.1314, 61.1316, 61.1318, 61.132,  
21 61.1322, 61.1324, 61.1326, 61.1328, 61.133, 61.1332, 61.1334,  
22 61.1336, 61.1338, 61.134, 61.1342, 61.1344, 61.1346, and  
23 61.1348, Florida Statutes, are repealed.

24 Section 47. This act shall take effect October 1,  
25 2000.

26

27 \*\*\*\*\*

28 LEGISLATIVE SUMMARY

29

30 Creates the "Uniform Child Custody Jurisdiction and  
31 Enforcement Act," governing interstate child custody and  
enforcement proceedings. Repeals the existing "Uniform  
Child Custody Jurisdiction Act."