

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
1		.	
2		.	
3		.	
4		.	

ORIGINAL STAMP BELOW

Representative(s) Roberts offered the following:

Amendment (with title amendment)

Remove from the bill: Everything after the enacting clause and insert in lieu thereof:

Section 1. Subsection (2) of section 25.385, Florida Statutes, is amended to read:

25.385 Standards for instruction of circuit and county court judges in handling domestic violence cases.--

(2) As used in this section:

(a) ~~The term~~ "Domestic violence" means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another, ~~who is or was residing in the same single dwelling unit.~~

(b) "Family or household member" means:

- 1. Spouse.
- 2. Former spouse.

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 3. Persons related by blood or marriage who are or
2 were residing in the same single dwelling unit.

3 4. Persons who are presently residing together, as if
4 a family.~~or~~

5 5. Persons who have resided together in the past, as
6 if a family.~~and~~

7 6. Persons who have a child in common regardless of
8 whether they have been married or have resided together at any
9 time.

10 Section 2. Subsections (1) and (3) of section 39.902,
11 Florida Statutes, are amended to read:

12 39.902 Definitions.--As used in this part, the term:

13 (1) "Domestic violence" means any assault, aggravated
14 assault, battery, aggravated battery, sexual assault, sexual
15 battery, stalking, aggravated stalking, kidnapping, false
16 imprisonment, or any criminal offense resulting in physical
17 injury or death of one family or household member by another
18 ~~who is or was residing in the same single dwelling unit.~~

19 (3) "Family or household member" means:

20 (a) Spouses.

21 (b) Former spouses.

22 (c) Persons ~~adults~~ related by blood or marriage who
23 are or were residing in the same single dwelling unit.

24 (d) Persons who are presently residing together, as if
25 a family.~~or~~

26 (e) Persons who have resided together in the past, as
27 if a family.~~and~~

28 (f) Persons who have a child in common regardless of
29 whether they have been married or have resided together at any
30 time.

31 Section 3. Subsection (3) of section 61.1825, Florida

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 Statutes, is amended to read:

2 61.1825 State Case Registry.--

3 (3)(a) For the purpose of this section, a family
4 violence indicator must be placed on a record when:

5 1. A party executes a sworn statement requesting that
6 a family violence indicator be placed on that party's record
7 which states that the party has reason to believe that release
8 of information to the Federal Case Registry may result in
9 physical or emotional harm to the party or the child;--

10 2. A temporary or final injunction for protection
11 against domestic violence has been granted pursuant to s.
12 741.30(6), an injunction for protection against domestic
13 violence has been issued by a court of a foreign state
14 pursuant to s. 741.315, or a temporary or final injunction for
15 protection against repeat violence has been granted pursuant
16 to s. 784.046; or

17 3. The department has received information on a Title
18 IV-D case from the Domestic and Repeat Violence Injunction
19 Statewide Verification System, established pursuant to s.
20 784.046(8)(b), that a court has granted a party a domestic
21 violence or repeat violence injunction.

22 (b) Before the family violence indicator can be
23 removed from a record, the protected person must be afforded
24 notice and an opportunity to appear before the court on the
25 issue of whether the disclosure will result in harm.

26 Section 4. Paragraphs (a) and (b) of subsection (1)
27 and subsection (2) of section 90.5036, Florida Statutes, are
28 amended to read:

29 90.5036 Domestic violence advocate-victim privilege.--

30 (1) For purposes of this section:

31 (a) A "domestic violence center" is any public or

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 private agency that offers assistance to victims of domestic
2 violence, as defined in s. 741.28, and their families as its
3 primary mission and is providing all the services mandated
4 under s. 39.905(1)(c).

5 (b) A "domestic violence advocate" means any employee
6 or volunteer who has 30 hours of training in assisting victims
7 of domestic violence and is an employee of or volunteer for a
8 ~~program for victims of domestic violence center whose primary~~
9 ~~purpose is the rendering of advice, counseling, or assistance~~
10 ~~to victims of domestic violence.~~

11 (2) A victim has a privilege to refuse to disclose,
12 and to prevent any other person from disclosing, a
13 confidential communication made by the victim to a domestic
14 violence advocate or any record made in the course of
15 advising, counseling, or assisting the victim. The privilege
16 applies to confidential communications made between the victim
17 and the domestic violence advocate and to records of those
18 communications only if the advocate is registered with the
19 Department of Children and Family Services ~~under s. 39.905~~ at
20 the time the communication is made. This privilege includes
21 any advice given by the domestic violence advocate in the
22 course of that relationship.

23 Section 5. Subsection (18) of section 470.002, Florida
24 Statutes, is amended to read:

25 470.002 Definitions.--As used in this chapter:

26 (18) "Legally authorized person" means, in the
27 priority listed, unless barred by s. 741.2901, the decedent,
28 when written inter vivos authorizations and directions are
29 provided by the decedent, the surviving spouse, son or
30 daughter who is 18 years of age or older, parent, brother or
31 sister 18 years of age or over, grandchild who is 18 years of

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 age or older, or grandparent; or any person in the next degree
 2 of kinship. In addition, the term may include, if no family
 3 exists or is available, the following: the guardian of the
 4 dead person at the time of death; the personal representative
 5 of the deceased; the attorney in fact of the dead person at
 6 the time of death; the health surrogate of the dead person at
 7 the time of death; a public health officer; the medical
 8 examiner, county commission or administrator acting under
 9 chapter 245, or other public administrator; a representative
 10 of a nursing home or other health care institution in charge
 11 of final disposition; or a friend or other person not listed
 12 in this subsection who is willing to assume the responsibility
 13 as authorized person.

14 Section 6. Subsections (1) and (2) of section 741.28,
 15 Florida Statutes, are amended to read:

16 741.28 Domestic violence; definitions.--As used in ss.
 17 741.28-741.31:

18 (1) "Domestic violence" means any assault, aggravated
 19 assault, battery, aggravated battery, sexual assault, sexual
 20 battery, stalking, aggravated stalking, kidnapping, false
 21 imprisonment, or any criminal offense resulting in physical
 22 injury or death of one family or household member by another
 23 ~~who is or was residing in the same single dwelling unit.~~

24 (2) "Family or household member" means:

25 (a) Spouses.7

26 (b) Former spouses.7

27 (c) Persons related by blood or marriage who are or
 28 were residing in the same single dwelling unit.7

29 (d) Persons who are presently residing together, as if
 30 a family.~~or~~

31 (e) Persons who have resided together in the past, as

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 if a family. ~~and~~

2 (f) Persons who have a child in common regardless of
3 whether they have been married or have resided together at any
4 time.

5 Section 7. Subsection (3) of section 741.2901, Florida
6 Statutes, is amended to read:

7 741.2901 Domestic violence cases; prosecutors;
8 legislative intent; investigation; duty of circuits; first
9 appearance.--

10 (3) Prior to a defendant's first appearance in any
11 charge of domestic violence as defined in s. 741.28, the State
12 Attorney's Office shall perform a thorough investigation of
13 the defendant's history, including, but not limited to: prior
14 arrests for domestic violence, prior arrests for nondomestic
15 charges, prior injunctions for protection against domestic and
16 repeat violence filed listing the defendant as respondent and
17 noting history of other victims, and prior walk-in domestic
18 complaints filed against the defendant. This information shall
19 be presented at first appearance, when setting bond, and when
20 passing sentence, for consideration by the court. When a
21 defendant is arrested for an act of domestic violence, the
22 defendant shall be held in custody until brought before the
23 court for admittanceto bail in accordance with chapter 903. A
24 family or household member arrested for or charged with
25 intentionally causing the death of another family or household
26 member shall not qualify as a "legally authorized person" as
27 defined in s. 470.002.In determining bail, the court shall
28 consider the safety of the victim, the victim's children, and
29 any other person who may be in danger if the defendant is
30 released.

31 Section 8. Subsections (1), (3), (5), and (6) of

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 section 741.30, Florida Statutes, are amended to read:

2 741.30 Domestic violence; injunction; powers and
3 duties of court and clerk; petition; notice and hearing;
4 temporary injunction; issuance of injunction; statewide
5 verification system; enforcement.--

6 (1) There is created a cause of action for an
7 injunction for protection against domestic violence.

8 (a) Any person described in paragraph (e), who is
9 either the victim of ~~any act of~~ domestic violence as defined
10 in s. 741.28, or has reasonable cause to believe he or she is
11 in imminent danger of becoming the victim of ~~any act of~~
12 domestic violence, has standing in the circuit court to file a
13 sworn petition for an injunction for protection against
14 domestic violence.

15 (b) This cause of action for an injunction may be
16 sought whether or not any other cause of action is currently
17 pending between the parties. However, the pendency of any such
18 cause of action shall be alleged in the petition.

19 (c) In the event a subsequent cause of action is filed
20 under chapter 61, any orders entered therein shall take
21 precedence over any inconsistent provisions of an injunction
22 issued under this section which addresses matters governed by
23 chapter 61.

24 (d) A person's right to petition for an injunction
25 shall not be affected by such person having left a residence
26 or household to avoid domestic violence.

27 (e) This cause of action for an injunction may be
28 sought by family or household members. No person shall be
29 precluded from seeking injunctive relief pursuant to this
30 chapter solely on the basis that such person is not a spouse.

31 (f) This cause of action for an injunction shall not

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 require that either party be represented by an attorney.

2 (g) Any person, including an officer of the court, who
3 offers evidence or recommendations relating to the cause of
4 action must either present the evidence or recommendations in
5 writing to the court with copies to each party and their
6 attorney, or must present the evidence under oath at a hearing
7 at which all parties are present.

8 (h) Nothing in this section shall affect the title to
9 any real estate.

10 (i) The court is prohibited from issuing mutual orders
11 of protection. This does not preclude the court from issuing
12 separate injunctions for protection against domestic violence
13 where each party has complied with the provisions of this
14 section. Compliance with the provisions of this section cannot
15 be waived.

16 (3)(a) The sworn petition shall allege the existence
17 of such domestic violence and shall include the specific facts
18 and circumstances upon the basis of which relief is sought.

19 (b) The sworn petition shall be in substantially the
20 following form:

21

22

23

24

25

26 Before me, the undersigned authority, personally appeared
27 Petitioner ...(Name)..., who has been sworn and says that the
28 following statements are true:

29 (a) Petitioner resides at: ...(address)...

30 (Petitioner may furnish address to the court in a
31 separate confidential filing if, for safety reasons, the

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 petitioner requires the location of the current residence to
2 be confidential.)

3 (b) Respondent resides at: ...(last known address)...

4 (c) Respondent's last known place of employment:
5 ...(name of business and address)...

6 (d) Physical description of respondent:

7 Race....

8 Sex....

9 Date of birth....

10 Height....

11 Weight....

12 Eye color....

13 Hair color....

14 Distinguishing marks or scars....

15 (e) Aliases of respondent:

16 (f) Respondent is the spouse or former spouse of the
17 petitioner or is any other person related by blood or marriage
18 to the petitioner or is any other person who is or was
19 residing within a single dwelling unit with the petitioner, as
20 if a family, or is a person with whom the petitioner has a
21 child in common, regardless of whether the petitioner and
22 respondent are or were married or residing together, as if a
23 family.

24 (g) The following describes any other cause of action
25 currently pending between the petitioner and respondent:
26

27 The petitioner should also describe any previous or
28 pending attempts by the petitioner to obtain an injunction for
29 protection against domestic violence in this or any other
30 circuit, and the results of that attempt.....
31

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. (for drafter's use only)

1 Case numbers should be included if available.

2 (h) Petitioner has suffered or has reasonable cause to
3 fear imminent domestic violence because respondent has (check
4 off all that apply and describe in the space(s) below the
5 incidents of violence or threats of violence, including when
6 and where they occurred):

7Committed or threatened to commit domestic violence
8 as defined in s. 741.28.

9Previously threatened, harassed, stalked, or
10 physically abused the petitioner.

11Attempted to harm the petitioner or family members
12 or individuals associated with the petitioner.

13Threatened to conceal, kidnap, or harm the child.

14Intentionally injured or killed a family pet.

15Used or has threatened to use any weapons such as
16 guns or knives against the petitioner.

17Physically restrained the petitioner from leaving
18 the home or calling law enforcement.

19A criminal history involving violence or the threat
20 of violence (if known).

21Another order of protection issued against him or
22 her previously or from another jurisdiction (if known).

23Engaged in any other behavior or conduct that leads
24 the petitioner to believe he or she is in imminent danger of
25 becoming a victim of domestic violence.

26 (i) Petitioner alleges the following additional
27 specific facts: (mark appropriate sections)

28Petitioner is the custodian of a minor child or
29 children whose names and ages are as follows:

30Petitioner needs the exclusive use and possession
31 of the dwelling that the parties share.

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 Petitioner is unable to obtain safe alternative
2 housing because:

3 Petitioner genuinely fears that respondent
4 imminently will abuse, remove, or hide the minor child or
5 children from petitioner because:

6

7 (j) Petitioner genuinely fears imminent domestic
8 violence by respondent.

9 (k) Petitioner seeks an injunction: (mark appropriate
10 section or sections)

11 Immediately restraining the respondent from
12 committing any acts of domestic violence.

13 Restraining the respondent from committing any acts
14 of domestic violence.

15 Awarding to the petitioner the temporary exclusive
16 use and possession of the dwelling that the parties share or
17 excluding the respondent from the residence of the petitioner.

18 Awarding temporary custody of, or temporary
19 visitation rights with regard to, the minor child or children
20 of the parties, or prohibiting or limiting visitation to that
21 which is supervised by a third party.

22 Establishing temporary support for the minor child
23 or children or the petitioner.

24 Directing the respondent to participate in a
25 batterers' intervention program or other treatment pursuant to
26 s. 39.901.

27 Providing any terms the court deems necessary for
28 the protection of a victim of domestic violence, or any minor
29 children of the victim, including any injunctions or
30 directives to law enforcement agencies.

31 (c) Every petition for an injunction against domestic

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 violence shall contain, directly above the signature line, a
2 statement in all capital letters and bold type not smaller
3 than the surrounding text, as follows:

4
5 I HAVE READ EVERY STATEMENT MADE IN THIS
6 PETITION AND EACH STATEMENT IS TRUE AND
7 CORRECT. I UNDERSTAND THAT THE STATEMENTS MADE
8 IN THIS PETITION ARE BEING MADE UNDER PENALTY
9 OF PERJURY, PUNISHABLE AS PROVIDED IN SECTION
10 837.02, FLORIDA STATUTES.

11 ... (initials) ...

12
13 (d) If the sworn petition seeks to determine issues of
14 custody or visitation with regard to the minor child or
15 children of the parties, the sworn petition shall be
16 accompanied by or shall incorporate the allegations required
17 by s. 61.132 of the Uniform Child Custody Jurisdiction Act.

18 (5)(a) When it appears to the court that an immediate
19 and present danger of domestic violence exists, the court may
20 grant a temporary injunction ex parte, pending a full hearing,
21 and may grant such relief as the court deems proper, including
22 an injunction:

23 1. Restraining the respondent from committing any acts
24 of domestic violence.

25 2. Awarding to the petitioner the temporary exclusive
26 use and possession of the dwelling that the parties share or
27 excluding the respondent from the residence of the petitioner.

28 3. On the same basis as provided in s. 61.13(2), (3),
29 (4), and (5), granting to the petitioner temporary custody of
30 a minor child or children.

31 (b) In a hearing ex parte for the purpose of obtaining

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 such ex parte temporary injunction, no evidence other than
2 verified pleadings or affidavits shall be used as evidence,
3 unless the respondent appears at the hearing or has received
4 reasonable notice of the hearing. A denial of a petition for
5 an ex parte injunction shall be by written order noting the
6 legal grounds for denial. When the only ground for denial is
7 no appearance of an immediate and present danger of domestic
8 violence, the court shall set a full hearing on the petition
9 for injunction with notice at the earliest possible time.
10 Nothing herein affects a petitioner's right to promptly amend
11 any petition, or otherwise be heard in person on any petition
12 consistent with the Florida Rules of Civil Procedure.

13 (c) Any such ex parte temporary injunction shall be
14 effective for a fixed period not to exceed 15 days.

15 (d) A full hearing, as provided by this section, shall
16 be set for a date no later than the date when the temporary
17 injunction ceases to be effective. It is the intent of the
18 Legislature that lack of service of process during the ex
19 parte injunction process not leave the victim unprotected.
20 Therefore, the court may grant an extension of the temporary
21 injunction and a continuance of the full hearing before or
22 during a hearing for good cause shown by any party, or upon
23 its own motion for good cause, including failure which shall
24 include a continuance to obtain service of process. Any
25 injunction shall be extended if necessary to remain in full
26 force and effect during any period of continuance.

27 (6)(a) Upon notice and hearing, when it appears to the
28 court that the petitioner is either the victim of domestic
29 violence as defined by s. 741.28, or the court has reasonable
30 cause to believe the petitioner is in imminent danger of
31 becoming a victim of domestic violence, the court may grant

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 such relief as the court deems proper, including an
2 injunction:

3 1. Restraining the respondent from committing any acts
4 of domestic violence.

5 2. Awarding to the petitioner the exclusive use and
6 possession of the dwelling that the parties share or excluding
7 the respondent from the residence of the petitioner.

8 3. On the same basis as provided in chapter 61,
9 awarding temporary custody of, or temporary visitation rights
10 with regard to, a minor child or children of the parties.

11 4. On the same basis as provided in chapter 61,
12 establishing temporary support for a minor child or children
13 or the petitioner.

14 5. Ordering the respondent to participate in
15 treatment, intervention, or counseling services to be paid for
16 by the respondent. When the court orders the respondent to
17 participate in a batterers' intervention program, the court,
18 or any entity designated by the court, must provide the
19 respondent with a list of all certified batterers'
20 intervention programs and all programs which have submitted an
21 application to the Department of Corrections to become
22 certified under s. 741.325, from which the respondent must
23 choose a program in which to participate. If there are no
24 certified batterers' intervention programs in the circuit, the
25 court shall provide a list of acceptable programs from which
26 the respondent must choose a program in which to participate.
27 A batterers' intervention program shall provide to the court a
28 notification of the respondent's enrollment and discharge from
29 the program to be placed in the case file. The notification of
30 discharge shall specify one of the following categories for
31 discharge, and reason for discharge if other than completion:

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 completion of the program, rejection of services, or
2 termination from the program.

3 6. Referring a petitioner to a certified domestic
4 violence center. The court must provide the petitioner with a
5 list of certified domestic violence centers in the circuit
6 which the petitioner may contact.

7 7. Ordering such other relief as the court deems
8 necessary for the protection of a victim of domestic violence,
9 including injunctions or directives to law enforcement
10 agencies, as provided in this section.

11 (b) In determining whether a petitioner has reasonable
12 cause to believe he or she is in imminent danger of becoming a
13 victim of domestic violence, the court shall consider and
14 evaluate all relevant factors alleged in the petition,
15 including, but not limited to:

16 1. The history of the relationship between the
17 petitioner and the respondent, including threats, harassment,
18 stalking, and physical abuse.

19 2. Whether the respondent has attempted to harm the
20 petitioner or family members or individuals associated with
21 the petitioner.

22 3. Whether the respondent has threatened to conceal,
23 kidnap, or harm the child.

24 4. Whether the respondent has intentionally injured or
25 killed a family pet.

26 5. Whether the respondent has used or has threatened
27 to use any weapons such as guns or knives against the
28 petitioner.

29 6. Whether the respondent has physically restrained
30 the petitioner from leaving the home or calling law
31 enforcement.

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 7. Whether the respondent has a criminal history
2 involving violence or the threat of violence.

3 8. The existence of a verifiable order of protection
4 issued previously or from another jurisdiction.

5 9. Any other behavior or conduct that leads the court
6 to believe that the petitioner is in imminent danger of
7 becoming a victim of domestic violence.

8
9 In making its determination under this section, the court is
10 not limited to those factors enumerated in subparagraphs 1.-9.

11 ~~(c)(b)~~ The terms of an injunction restraining the
12 respondent under subparagraph (a)1. or ordering other relief
13 for the protection of the victim under subparagraph (a)7.
14 shall remain in effect until modified or dissolved. Either
15 party may move at any time to modify or dissolve the
16 injunction. No specific allegations are required. Such relief
17 may be granted in addition to other civil or criminal
18 remedies. A respondent who requests to dissolve an injunction
19 must have completed a batterers' intervention program if
20 ordered as a condition of his or her injunction, unless the
21 court finds that there is substantial justification for the
22 respondent's failure to complete the program. The court shall
23 not grant the respondent's request to dissolve the injunction
24 unless there is substantial justification for the respondent's
25 failure to complete the program. Further, the court shall not
26 grant a respondent's request to modify the injunction unless
27 the respondent shows good cause for failure to complete the
28 program or good cause for a modification of the injunction.

29 ~~(d)(e)~~ A temporary or final judgment on injunction for
30 protection against domestic violence entered pursuant to this
31 section shall, on its face, indicate that:

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

- 1 1. The injunction is valid and enforceable in all
2 counties of the State of Florida.
- 3 2. Law enforcement officers may use their arrest
4 powers pursuant to s. 901.15(6) to enforce the terms of the
5 injunction.
- 6 3. The court had jurisdiction over the parties and
7 matter under the laws of Florida and that reasonable notice
8 and opportunity to be heard was given to the person against
9 whom the order is sought sufficient to protect that person's
10 right to due process.
- 11 4. The date respondent was served with the temporary
12 or final order, if obtainable.
- 13 ~~(d)~~ (e) An injunction for protection against domestic
14 violence entered pursuant to this section, on its face, may
15 order that the respondent attend a batterers' intervention
16 program as a condition of the injunction. Unless the court
17 makes written factual findings in its judgment or order which
18 are based on substantial evidence, stating why batterers'
19 intervention programs would be inappropriate, the court shall
20 order the respondent to attend a batterers' intervention
21 program if:
- 22 1. It finds that the respondent willfully violated the
23 ex parte injunction;
- 24 2. The respondent, in this state or any other state,
25 has been convicted of, had adjudication withheld on, or pled
26 nolo contendere to a crime involving violence or a threat of
27 violence; or
- 28 3. The respondent, in this state or any other state,
29 has had at any time a prior injunction for protection entered
30 against the respondent after a hearing with notice.
- 31

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 It is mandatory that such programs be certified under s.
2 741.32.

3 (f)~~(e)~~ The fact that a separate order of protection is
4 granted to each opposing party shall not be legally sufficient
5 to deny any remedy to either party or to prove that the
6 parties are equally at fault or equally endangered.

7 (g)~~(f)~~ A final judgment on injunction for protection
8 against domestic violence entered pursuant to this section
9 must, on its face, indicate that it is a violation of s.
10 790.233, and a first degree misdemeanor, for the respondent to
11 have in his or her care, custody, possession, or control any
12 firearm or ammunition.

13 (h) All proceedings under this subsection shall be
14 recorded if the court chooses to provide for the recording and
15 has adequate existing court resources for any associated
16 costs. Recording may be by electronic means, as provided by
17 the Rules of Judicial Administration. If the means to record
18 the proceedings are not available, the parties must be
19 notified prior to the full hearing. This notification shall
20 include a statement that the parties may arrange for the court
21 reporting of the proceedings, provided such court reporting is
22 consistent with the Rules of Judicial Administration. The
23 parties arranging for such court reporting shall be
24 responsible for paying the reporting fees.

25 Section 9. Subsection (2) of section 943.171, Florida
26 Statutes, is amended to read:

27 943.171 Basic skills training in handling domestic
28 violence cases.--

29 (2) As used in this section, the term:

30 (a) "Domestic violence" means any assault, aggravated
31 assault, battery, aggravated battery, sexual assault, sexual

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 battery, stalking, aggravated stalking, kidnapping, false
2 imprisonment, or any criminal offense resulting in the
3 physical injury or death of one family or household member by
4 another who is or was residing in the same single dwelling
5 unit.

6 (b) "Family or household member" means:

7 1. Spouse.

8 2. Former spouse.

9 3. Persons related by blood or marriage who are or
10 were residing in the same single dwelling unit.

11 4. Persons who are presently residing together, as if
12 a family. ~~or~~

13 5. Persons who have resided together in the past, as
14 if a family. ~~and~~

15 6. Persons who have a child in common regardless of
16 whether they have been married or have resided together at any
17 time.

18 Section 10. The Office of the State Courts
19 Administrator shall examine the current practice of the courts
20 with respect to the determination of visitation and custody
21 and the terms of visitation and custody when an injunction for
22 protection has been ordered, the consideration of custody and
23 visitation in the injunction hearings, and the issuing of
24 injunctions for protection during a dissolution-of-marriage
25 proceeding. Based on the findings of this examination, the
26 Office of the State Courts Administrator shall develop
27 recommendations for ensuring the most appropriate
28 consideration of custody and visitation issues during the
29 injunction process and of injunction for protection issues
30 during the dissolution-of-marriage process. This examination
31 and development of recommendations must be conducted in

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 collaboration with the Department of Children and Family
2 Services, the Governor's Task Force on Domestic Violence, the
3 Department of Revenue, the Florida Sheriffs Association, the
4 Florida Coalition Against Domestic Violence, the Family Law
5 Section of The Florida Bar, and any other interested
6 organizations identified by the Office of the State Courts
7 Administrator. All participants in this process shall attend
8 meetings at their own expense. A report of the recommendations
9 shall be submitted to the Governor, the President of the
10 Senate, and the Speaker of the House of Representatives by
11 January 1, 2001.

12 Section 11. The Legislature declares that protection
13 against domestic violence is of utmost importance. Further,
14 the Legislature finds that lack of service of process during
15 the ex parte temporary injunction process can leave the victim
16 unprotected unless the injunction remains in effect. The
17 Legislature therefore requests the Supreme Court to examine
18 its current practice and rules of court with respect to ex
19 parte temporary injunctions for protection against domestic
20 violence and the conditions under which continued protection
21 is necessary, and to consider revising and adopting rules to
22 effectuate the legislative expression of this act.

23 Section 12. Subsection (5) of section 414.0252,
24 Florida Statutes, is amended to read:

25 414.0252 Definitions.--As used in ss. 414.015-414.45,
26 the term:

27 (5) "Family" means the assistance group or the
28 individuals whose needs, resources, and income are considered
29 when determining eligibility for temporary assistance. The
30 family for purposes of temporary assistance includes the minor
31 child, custodial parent, or caretaker relative who resides in

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 the same house or living unit. The family may also include
2 individuals whose income and resources are considered in whole
3 or in part in determining eligibility for temporary assistance
4 but whose needs, due to federal or state restrictions, are not
5 considered. These individuals include, but are not limited to,
6 ineligible noncitizens or sanctioned individuals. For the
7 purpose of Temporary Assistance to Needy Families (TANF)
8 services that meet the goal of encouraging the formation and
9 maintenance of two-parent families in 45 C.F.R. s. 260.20(d)
10 and s. 260.31(b)(6), family includes the noncustodial parent
11 who does not reside in the same house or living unit. The
12 noncustodial parent's income shall not be considered in
13 determining the eligibility of the family that includes the
14 custodial parent except to the extent that support payments
15 are provided.

16 Section 13. Section 753.01, Florida Statutes, is
17 created to read:

18 753.01 Supervised visitation programs; legislative
19 findings and intent.--

20 (1) The Legislature finds that a large number of
21 children experience the separation or divorce of their parents
22 and that some of those children have been determined by the
23 court to be at risk or are allegedly at risk for physical,
24 emotional, or sexual abuse, parental abduction, domestic
25 violence, or parental impairment due to substance abuse or
26 mental illness.

27 (2) The Legislature further finds that there are
28 children who have been adjudicated dependent by the court and
29 ordered into out-of-home placements as a result of those same
30 risks.

31 (3) The Legislature recognizes that Florida is

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 witnessing the rapid development of supervised visitation
2 centers across the state. These programs offer an opportunity
3 for nonresidential parents to maintain contact with their
4 children in a safe environment. Supervised visitation centers
5 provide a critically needed service in facilitating safe
6 contact between perpetrators of domestic violence and their
7 children. These centers provide the judiciary with an
8 important tool to safeguard against abuse or exposure to other
9 behaviors that may be unduly stressful or traumatic to a
10 child.

11 (4) Recognizing that in some circumstances it is
12 necessary to provide a safe and structured setting for child
13 visitation and exchange, the Legislature intends through this
14 chapter, subject to specific appropriations, to assist in the
15 development of supervised visitation programs and to provide a
16 means by which uniform standards for the administration and
17 certification of such programs can be developed.

18 Section 14. Section 753.02, Florida Statutes, is
19 created to read:

20 753.02 Definitions.--As used in this chapter:

21 (1) "Child" means an unmarried person under the age of
22 18 who has not been emancipated by order of the court and
23 whose contact with a noncustodial parent requires supervision
24 pursuant to a court order.

25 (2) "Clearinghouse" means the Clearinghouse on
26 Supervised Visitation within the Institute for Family Violence
27 Studies of the Florida State University School of Social Work.

28 (3) "Client" means the residential parent,
29 nonresidential parent, or child receiving supervised contact
30 services pursuant to a court referral to a supervised
31 visitation program.

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 (4) "Supervised exchange" means the supervision of the
2 movement of the child from the residential parent to the
3 nonresidential parent at the start of the supervised
4 visitation, and from the nonresidential parent back to the
5 residential parent at the end of the supervised visitation.

6 (5) "Supervised visitation" means the contact between
7 a nonresidential parent and child which occurs in the presence
8 of an independent third party.

9 (6) "Supervised Visitation Network" means the
10 international association of agencies and individuals created
11 to share information, to establish and improve on supervised
12 visitation as an integral part of services for families, to
13 provide a forum for the exchange of information and supervised
14 visitation services, to develop standards of practice of
15 supervised visitation, to educate professionals and the public
16 about the value of supervised visitation, and to promote
17 public awareness about the need for supervised visitation.

18 (7) "Supervised visitation program" means a program
19 created to provide facilities, resources, and administrative
20 services in the course of offering a safe and structured
21 setting for supervised visitation and exchange. Only for the
22 purposes of obtaining criminal history information on
23 potential employees and volunteers, a supervised visitation
24 program is a qualified entity, providing care, as defined in
25 s. 943.0542.

26 Section 15. Section 753.03, Florida Statutes, is
27 created to read:

28 753.03 Office for Certification and Monitoring of
29 Supervised Visitation Programs.--There is established the
30 Office for Certification and Monitoring of Supervised
31 Visitation Programs under the Clearinghouse on Supervised

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 Visitation within the Institute for Family Violence Studies of
2 the Florida State University School of Social Work. The
3 clearinghouse may certify and monitor all supervised
4 visitation programs that receive court referrals. The purpose
5 of the certification of programs is to uniformly and
6 systematically standardize supervised visitation programs to
7 ensure the safety of the children, parents, and others who use
8 the programs, as well as the safety of the staff and
9 surrounding community.

10 Section 16. Section 753.04, Florida Statutes, is
11 created to read:

12 753.04 Duties of the Clearinghouse on Supervised
13 Visitation.--The Clearinghouse on Supervised Visitation shall
14 promulgate minimum standards to govern the purpose, policies,
15 standards of practice, program content, security measures,
16 qualifications of providers, training and credentials of
17 staff, and procedures governing all aspects of supervised
18 visitation program standards. In promulgating the minimum
19 standards, the clearinghouse shall collaborate with the
20 executive board of the Florida Chapter of the Supervised
21 Visitation Network and the advisory board created in this
22 section. The clearinghouse shall:

23 (1) Create an advisory board to assist in promulgating
24 minimum standards. The members of the advisory board shall
25 include:

26 (a) Two members of the executive board of the Florida
27 Chapter of the Supervised Visitation Network, appointed by the
28 president of the Florida Chapter of the Supervised Visitation
29 Network.

30 (b) A representative from the Office of the State
31 Courts Administrator, appointed by the State Courts

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 Administrator.

2 (c) A representative from the Department of Children
3 and Family Services, appointed by the Secretary of Children
4 and Family Services.

5 (d) A representative from the Florida Coalition
6 Against Domestic Violence, appointed by the executive director
7 of the Florida Coalition Against Domestic Violence.

8 (e) A representative from a Florida law enforcement
9 agency, appointed by the executive director of the Florida
10 Sheriffs Association.

11 (f) A family law judge, appointed by the Chief Justice
12 of the Florida Supreme Court.

13 (g) Up to two representatives of supervised visitation
14 programs, appointed by the director of the clearinghouse.

15 (h) A representative from the Junior League, selected
16 from among those chapters of the Junior League that contribute
17 funding to supervised visitation programs. The name of the
18 representative must be provided to the clearinghouse within 30
19 days after the effective date of this act.

20 (2) Develop by rule criteria for the approval or
21 rejection of certification or funding of supervised visitation
22 programs.

23 (3) Develop by rule minimum standards for the
24 administration and implementation of supervised visitation
25 programs to ensure the safety of families and staff in the
26 programs.

27 (4) Receive, and approve or reject, applications for
28 certification of supervised visitation programs and receive,
29 and approve or reject, applications for funding of supervised
30 visitation programs. When approving funding for a newly
31 certified supervised visitation program, every effort shall be

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 made to avoid duplication of services and to minimize any
2 adverse economic impact on existing certified programs or
3 services provided in the same judicial circuit.

4 (5) Monitor each certified supervised visitation
5 program annually to ensure compliance with the minimum
6 standards.

7 (6) Create a formula for the distribution of funds
8 available for supervised visitation programs, with the advice
9 of the advisory board. In developing the formula, the
10 following shall be considered: population, express support of
11 the local judiciary, a rural and geographical area factor, the
12 incidence of domestic violence, and the number of petitions
13 for dissolution of marriage, injunctions for protection
14 against domestic violence, and petitions for dependency filed
15 in the judicial circuit.

16 (7) Continue to develop competency-based training
17 materials on supervised visitation, continue to produce and
18 disseminate a newsletter on supervised visitation issues,
19 continue to compile data on program utilization, and continue
20 to provide technical and legal assistance and research to
21 supervised visitation programs.

22 (8) Adopt rules to implement this section.

23 Section 17. Sections 753.001, 753.002, and 753.004,
24 Florida Statutes, are repealed.

25 Section 18. The Division of Statutory Revision of the
26 Office of Legislative Services is directed to retitle chapter
27 753, Florida Statutes, "Supervised Family Visitation."

28 Section 19. Implementation of any specific provision
29 of this act relating to supervised family visitation is
30 contingent upon a specific appropriation in the General
31 Appropriations Act.

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 Section 20. No funds from the General Appropriations
2 Act for fiscal year 2000-2001 are provided for the Center for
3 Marriage and Family within the College of Human Sciences at
4 Florida State University, and Florida State University shall
5 not expend any funds from the General Appropriations Act on
6 the Center for Marriage and Family.

7 Section 21. Short title.--Sections 21 through 62 of
8 this act may be cited as the "Uniform Child Custody
9 Jurisdiction and Enforcement Act."

10 Section 22. Definitions.--In this act:

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

13 (2) "Child" means an individual who has not attained
14 18 years of age.

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

22 (4) "Child custody proceeding" means a proceeding in
23 which legal custody, physical custody, or visitation with
24 respect to a child is an issue. The term includes a proceeding
25 for divorce, separation, neglect, abuse, dependency,
26 guardianship, paternity, termination of parental rights, and
27 protection from domestic violence, in which the issue may
28 appear. The term does not include a proceeding involving
29 juvenile delinquency, contractual emancipation, or enforcement
30 under sections 43 through 59.

31 (5) "Commencement" means the filing of the first

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 pleading in a proceeding.

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

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

13 (8) "Initial determination" means the first child
14 custody determination concerning a particular child.

15 (9) "Issuing court" means the court that makes a child
16 custody determination for which enforcement is sought under
17 this act.

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

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

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

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

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

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

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

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

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

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

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

19 Section 23. Proceedings governed by other law.--This
20 act does not govern an adoption proceeding or a proceeding
21 pertaining to the authorization of emergency medical care for
22 a child.

23 Section 24. Application to Indian tribes.--

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

28 (2) A court of this state shall treat a tribe as if it
29 were a state of the United States for purposes of applying
30 sections 21 through 42.

31 (3) A child custody determination made by a tribe

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 under factual circumstances in substantial conformity with the
2 jurisdictional standards of this act must be recognized and
3 enforced under sections 43 through 59.

4 Section 25. International application of act.--

5 (1) A court of this state shall treat a foreign
6 country as if it were a state of the United States for
7 purposes of applying sections 21 through 42.

8 (2) Except as otherwise provided in subsection (3), a
9 child custody determination made in a foreign country under
10 factual circumstances in substantial conformity with the
11 jurisdictional standards of this act must be recognized and
12 enforced under sections 43 through 59.

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

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

25 Section 27. Priority.--If a question of existence or
26 exercise of jurisdiction under this act is raised in a child
27 custody proceeding, the question, upon request of a party,
28 must be given priority on the calendar and handled
29 expeditiously.

30 Section 28. Notice to persons outside the state.--

31 (1) Notice required for the exercise of jurisdiction

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

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

7 (2) Proof of service may be made in the manner
8 prescribed by the law of this state or by the law of the state
9 in which the service is made.

10 (3) Notice is not required for the exercise of
11 jurisdiction with respect to a person who submits to the
12 jurisdiction of the court.

13 Section 29. Appearance and limited immunity.--

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

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

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

31 Section 30. Communication between courts.--

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

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

4 (2) The court may allow the parties to participate in
5 the communication. If the parties are not able to participate
6 in the communication, they must be given the opportunity to
7 present facts and legal arguments before a decision on
8 jurisdiction is made.

9 (3) Communication between courts on schedules,
10 calendars, court records, and similar matters may occur
11 without informing the parties. A record need not be made of
12 the communication.

13 (4) Except as otherwise provided in subsection (3), a
14 record must be made of a communication under this section. The
15 parties must be informed promptly of the communication and
16 granted access to the record.

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

21 Section 31. Taking testimony in another state.--

22 (1) In addition to other procedures available to a
23 party, a party to a child custody proceeding may offer
24 testimony of witnesses who are located in another state,
25 including testimony of the parties and the child, by
26 deposition or other means allowable in this state for
27 testimony taken in another state. The court on its own motion
28 may order that the testimony of a person be taken in another
29 state and may prescribe the manner in which and the terms upon
30 which the testimony is taken.

31 (2) A court of this state may permit an individual

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 residing in another state to be deposed or to testify by
2 telephone, audiovisual means, or other electronic means before
3 a designated court or at another location in that state. A
4 court of this state shall cooperate with courts of other
5 states in designating an appropriate location for the
6 deposition or testimony.

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

11 Section 32. Cooperation between courts; preservation
12 of records.--

13 (1) A court of this state may request the appropriate
14 court of another state to:

15 (a) Hold an evidentiary hearing;

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

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

20 (d) Forward to the court of this state a certified
21 copy of the transcript of the record of the hearing, the
22 evidence otherwise presented, and any evaluation prepared in
23 compliance with the request; and

24 (e) Order a party to a child custody proceeding or any
25 person having physical custody of the child to appear in the
26 proceeding with or without the child.

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

30 (3) Travel and other necessary and reasonable expenses
31 incurred under subsections (1) and (2) may be assessed against

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 the parties according to the laws of this state.

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

9 Section 33. Initial child custody jurisdiction.--

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

13 (a) This state is the home state of the child on the
14 date of the commencement of the proceeding, or was the home
15 state of the child within 6 months before the commencement of
16 the proceeding and the child is absent from this state but a
17 parent or person acting as a parent continues to live in this
18 state;

19 (b) A court of another state does not have
20 jurisdiction under paragraph (a), or a court of the home state
21 of the child has declined to exercise jurisdiction on the
22 ground that this state is the more appropriate forum under
23 section 39 or section 40, and:

24 1. The child and the child's parents, or the child and
25 at least one parent or a person acting as a parent, have a
26 significant connection with this state other than mere
27 physical presence; and

28 2. Substantial evidence is available in this state
29 concerning the child's care, protection, training, and
30 personal relationships;

31 (c) All courts having jurisdiction under paragraph (a)

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 or paragraph (b) have declined to exercise jurisdiction on the
2 ground that a court of this state is the more appropriate
3 forum to determine the custody of the child under section 39
4 or section 40; or

5 (d) No court of any other state would have
6 jurisdiction under the criteria specified in paragraph (a),
7 paragraph (b), or paragraph (c).

8 (2) Subsection (1) is the exclusive jurisdictional
9 basis for making a child custody determination by a court of
10 this state.

11 (3) Physical presence of, or personal jurisdiction
12 over, a party or a child is not necessary or sufficient to
13 make a child custody determination.

14 Section 34. Exclusive, continuing jurisdiction.--

15 (1) Except as otherwise provided in section 36, a
16 court of this state which has made a child custody
17 determination consistent with section 33 or section 35 has
18 exclusive, continuing jurisdiction over the determination
19 until:

20 (a) A court of this state determines that the child,
21 the child's parents, and any person acting as a parent do not
22 have a significant connection with this state and that
23 substantial evidence is no longer available in this state
24 concerning the child's care, protection, training, and
25 personal relationships; or

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

29 (2) A court of this state that has made a child
30 custody determination and does not have exclusive, continuing
31 jurisdiction under this section may modify that determination

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 only if it has jurisdiction to make an initial determination
2 under section 33.

3 Section 35. Jurisdiction to modify
4 determination.--Except as otherwise provided in section 16, a
5 court of this state may not modify a child custody
6 determination made by a court of another state unless a court
7 of this state has jurisdiction to make an initial
8 determination under section 33(1)(a) or (b) and:

9 (1) The court of the other state determines it no
10 longer has exclusive, continuing jurisdiction under section 34
11 or that a court of this state would be a more convenient forum
12 under section 39; or

13 (2) A court of this state or a court of the other
14 state determines that the child, the child's parents, and any
15 person acting as a parent do not presently reside in the other
16 state.

17 Section 36. Temporary emergency jurisdiction.--

18 (1) A court of this state has temporary emergency
19 jurisdiction if the child is present in this state and the
20 child has been abandoned or it is necessary in an emergency to
21 protect the child because the child, or a sibling or parent of
22 the child, is subjected to or threatened with mistreatment or
23 abuse.

24 (2) If there is no previous child custody
25 determination that is entitled to be enforced under this act,
26 and a child custody proceeding has not been commenced in a
27 court of a state having jurisdiction under sections 33 through
28 35, a child custody determination made under this section
29 remains in effect until an order is obtained from a court of a
30 state having jurisdiction under sections 33 through 35. If a
31 child custody proceeding has not been or is not commenced in a

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 court of a state having jurisdiction under sections 33 through
2 35, a child custody determination made under this section
3 becomes a final determination, if it so provides and this
4 state becomes the home state of the child.

5 (3) If there is a previous child custody determination
6 that is entitled to be enforced under this act, or a child
7 custody proceeding has been commenced in a court of a state
8 having jurisdiction under sections 33 through 35, any order
9 issued by a court of this state under this section must
10 specify in the order a period which the court considers
11 adequate to allow the person seeking an order to obtain an
12 order from the state having jurisdiction under sections 33
13 through 35. The order issued in this state remains in effect
14 until an order is obtained from the other state within the
15 period specified or the period expires.

16 (4) A court of this state which has been asked to make
17 a child custody determination under this section, upon being
18 informed that a child custody proceeding has been commenced
19 in, or a child custody determination has been made by, a court
20 of a state having jurisdiction under sections 33 through 35,
21 shall immediately communicate with the other court. A court of
22 this state which is exercising jurisdiction pursuant to
23 sections 33 through 35, upon being informed that a child
24 custody proceeding has been commenced in, or a child custody
25 determination has been made by, a court of another state under
26 a statute similar to this section shall immediately
27 communicate with the court of that state to resolve the
28 emergency, protect the safety of the parties and the child,
29 and determine a period for the duration of the temporary
30 order.

31 Section 37. Notice; opportunity to be heard;

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 joinder.--

2 (1) Before a child custody determination is made under
3 this act, notice and an opportunity to be heard in accordance
4 with the standards of section 28 must be given to all persons
5 entitled to notice under the laws of this state as in child
6 custody proceedings between residents of this state, any
7 parent whose parental rights have not been previously
8 terminated, and any person having physical custody of the
9 child.

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

13 (3) The obligation to join a party and the right to
14 intervene as a party in a child custody proceeding under this
15 act are governed by the laws of this state as in child custody
16 proceedings between residents of this state.

17 Section 38. Simultaneous proceedings.--

18 (1) Except as otherwise provided in section 36, a
19 court of this state may not exercise its jurisdiction under
20 sections 33 through 43 if, at the time of the commencement of
21 the proceeding, a proceeding concerning the custody of the
22 child had been commenced in a court of another state having
23 jurisdiction substantially in conformity with this act, unless
24 the proceeding has been terminated or is stayed by the court
25 of the other state because a court of this state is a more
26 convenient forum under section 39.

27 (2) Except as otherwise provided in section 36, a
28 court of this state, before hearing a child custody
29 proceeding, shall examine the court documents and other
30 information supplied by the parties pursuant to section 41. If
31 the court determines that a child custody proceeding was

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 previously commenced in a court in another state having
2 jurisdiction substantially in accordance with this act, the
3 court of this state shall stay its proceeding and communicate
4 with the court of the other state. If the court of the state
5 having jurisdiction substantially in accordance with this act
6 does not determine that the court of this state is a more
7 appropriate forum, the court of this state shall dismiss the
8 proceeding.

9 (3) In a proceeding to modify a child custody
10 determination, a court of this state shall determine whether a
11 proceeding to enforce the determination has been commenced in
12 another state. If a proceeding to enforce a child custody
13 determination has been commenced in another state, the court
14 may:

15 (a) Stay the proceeding for modification pending the
16 entry of an order of a court of the other state enforcing,
17 staying, denying, or dismissing the proceeding for
18 enforcement;

19 (b) Enjoin the parties from continuing with the
20 proceeding for enforcement; or

21 (c) Proceed with the modification under conditions it
22 considers appropriate.

23 Section 39. Inconvenient forum.--

24 (1) A court of this state which has jurisdiction under
25 this act to make a child custody determination may decline to
26 exercise its jurisdiction at any time if it determines that it
27 is an inconvenient forum under the circumstances and that a
28 court of another state is a more appropriate forum. The issue
29 of inconvenient forum may be raised upon motion of a party,
30 the court's own motion, or request of another court.

31 (2) Before determining whether it is an inconvenient

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 forum, a court of this state shall consider whether it is
2 appropriate for a court of another state to exercise
3 jurisdiction. For this purpose, the court shall allow the
4 parties to submit information and shall consider all relevant
5 factors, including:

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

9 (b) The length of time the child has resided outside
10 this state;

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

13 (d) The relative financial circumstances of the
14 parties;

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

17 (f) The nature and location of the evidence required
18 to resolve the pending litigation, including testimony of the
19 child;

20 (g) The ability of the court of each state to decide
21 the issue expeditiously and the procedures necessary to
22 present the evidence; and

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

25 (3) If a court of this state determines that it is an
26 inconvenient forum and that a court of another state is a more
27 appropriate forum, it shall stay the proceedings upon
28 condition that a child custody proceeding be promptly
29 commenced in another designated state and may impose any other
30 condition the court considers just and proper.

31 (4) A court of this state may decline to exercise its

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 jurisdiction under this act if a child custody determination
2 is incidental to an action for divorce or another proceeding
3 while still retaining jurisdiction over the divorce or other
4 proceeding.

5 Section 40. Jurisdiction declined by reason of
6 conduct.--

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

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

14 (b) A court of the state otherwise having jurisdiction
15 under sections 33 through 35 determines that this state is a
16 more appropriate forum under section 39; or

17 (c) No court of any other state would have
18 jurisdiction under the criteria specified in sections 33
19 through 35.

20 (2) If a court of this state declines to exercise its
21 jurisdiction pursuant to subsection (1), it may fashion an
22 appropriate remedy to ensure the safety of the child and
23 prevent a repetition of the unjustifiable conduct, including
24 staying the proceeding until a child custody proceeding is
25 commenced in a court having jurisdiction under sections 33
26 through 35.

27 (3) If a court dismisses a petition or stays a
28 proceeding because it declines to exercise its jurisdiction
29 pursuant to subsection (1), it shall assess against the party
30 seeking to invoke its jurisdiction necessary and reasonable
31 expenses, including costs, communication expenses, attorney's

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 fees, investigative fees, expenses for witnesses, travel
2 expenses, and child care during the course of the proceedings,
3 unless the party from whom fees are sought establishes that
4 the assessment would be clearly inappropriate. The court may
5 not assess fees, costs, or expenses against this state unless
6 authorized by law other than this act.

7 Section 41. Information to be submitted to the
8 court.--

9 (1) Subject to local law providing for the
10 confidentiality of procedures, addresses, and other
11 identifying information in a child custody proceeding, each
12 party, in its first pleading or in an attached affidavit,
13 shall give information, if reasonably ascertainable, under
14 oath as to the child's present address or whereabouts, the
15 places where the child has lived during the last 5 years, and
16 the names and present addresses of the persons with whom the
17 child has lived during that period. The pleading or affidavit
18 must state whether the party:

19 (a) Has participated, as a party or witness or in any
20 other capacity, in any other proceeding concerning the custody
21 of or visitation with the child and, if so, identify the
22 court, the case number, and the date of the child custody
23 determination, if any;

24 (b) Knows of any proceeding that could affect the
25 current proceeding, including proceedings for enforcement and
26 proceedings relating to domestic violence, protective orders,
27 termination of parental rights, and adoptions and, if so,
28 identify the court, the case number, and the nature of the
29 proceeding; and

30 (c) Knows the names and addresses of any person not a
31 party to the proceeding who has physical custody of the child

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 or claims rights of legal custody or physical custody of, or
2 visitation with, the child and, if so, the names and addresses
3 of those persons.

4 (2) If the information required by subsection (1) is
5 not furnished, the court, upon motion of a party or its own
6 motion, may stay the proceeding until the information is
7 furnished.

8 (3) If the declaration as to any of the items
9 described in paragraphs (1)(a)-(c) is in the affirmative, the
10 declarant shall give additional information under oath as
11 required by the court. The court may examine the parties under
12 oath as to details of the information furnished and other
13 matters pertinent to the court's jurisdiction and the
14 disposition of the case.

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

18 Section 42. Appearance of parties and child.--

19 (1) In a child custody proceeding in this state, the
20 court may order a party to the proceeding who is in this state
21 to appear before the court in person with or without the
22 child. The court may order any person who is in this state and
23 who has physical custody or control of the child to appear in
24 person with the child.

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

31 (3) The court may enter any orders necessary to ensure

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 the safety of the child and of any person ordered to appear
2 under this section.

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

9 Section 43. Definitions.--In sections 43 through 59:

10 (1) "Petitioner" means a person who seeks enforcement
11 of an order for return of a child under the Hague Convention
12 on the Civil Aspects of International Child Abduction or
13 enforcement of a child custody determination.

14 (2) "Respondent" means a person against whom a
15 proceeding has been commenced for enforcement of an order for
16 return of a child under the Hague Convention on the Civil
17 Aspects of International Child Abduction or enforcement of a
18 child custody determination.

19 Section 44. Enforcement under the Hague
20 Convention.--Under this act, a court of this state may enforce
21 an order for the return of a child made under the Hague
22 Convention on the Civil Aspects of International Child
23 Abduction as if it were a child custody determination.

24 Section 45. Duty to enforce.--

25 (1) A court of this state shall recognize and enforce
26 a child custody determination of a court of another state if
27 the latter court exercised jurisdiction in substantial
28 conformity with this act or the determination was made under
29 factual circumstances meeting the jurisdictional standards of
30 this act and the determination has not been modified in
31 accordance with this act.

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 (2) A court of this state may utilize any remedy
2 available under other law of this state to enforce a child
3 custody determination made by a court of another state. The
4 remedies provided by sections 43 through 59 are cumulative and
5 do not affect the availability of other remedies to enforce a
6 child custody determination.

7 Section 46. Temporary visitation.--

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

11 (a) A visitation schedule made by a court of another
12 state; or

13 (b) The visitation provisions of a child custody
14 determination of another state that does not provide for a
15 specific visitation schedule.

16 (2) If a court of this state makes an order under
17 paragraph (1)(b), it shall specify in the order a period that
18 it considers adequate to allow the petitioner to obtain an
19 order from a court having jurisdiction under the criteria
20 specified in sections 33 through 42. The order remains in
21 effect until an order is obtained from the other court or the
22 period expires.

23 Section 47. Registration of child custody
24 determination.--

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

29 (a) A letter or other document requesting
30 registration;

31 (b) Two copies, including one certified copy, of the

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 determination sought to be registered, and a statement under
2 penalty of perjury that to the best of the knowledge and
3 belief of the person seeking registration the order has not
4 been modified; and

5 (c) Except as otherwise provided in section 41, the
6 name and address of the person seeking registration and any
7 parent or person acting as a parent who has been awarded
8 custody or visitation in the child custody determination
9 sought to be registered.

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

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

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

18 (3) The notice required by paragraph (2)(b) must state
19 that:

20 (a) A registered determination is enforceable as of
21 the date of the registration in the same manner as a
22 determination issued by a court of this state;

23 (b) A hearing to contest the validity of the
24 registered determination must be requested within 20 days
25 after service of notice; and

26 (c) Failure to contest the registration will result in
27 confirmation of the child custody determination and preclude
28 further contest of that determination with respect to any
29 matter that could have been asserted.

30 (4) A person seeking to contest the validity of a
31 registered order must request a hearing within 20 days after

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 service of the notice. At that hearing, the court shall
2 confirm the registered order unless the person contesting
3 registration establishes that:

4 (a) The issuing court did not have jurisdiction under
5 sections 33 through 42;

6 (b) The child custody determination sought to be
7 registered has been vacated, stayed, or modified by a court
8 having jurisdiction to do so under sections 33 through 42; or

9 (c) The person contesting registration was entitled to
10 notice, but notice was not given in accordance with the
11 standards of section 28 in the proceedings before the court
12 that issued the order for which registration is sought.

13 (5) If a timely request for a hearing to contest the
14 validity of the registration is not made, the registration is
15 confirmed as a matter of law and the person requesting
16 registration and all persons served must be notified of the
17 confirmation.

18 (6) Confirmation of a registered order, whether by
19 operation of law or after notice and hearing, precludes
20 further contest of the order with respect to any matter which
21 could have been asserted at the time of registration.

22 Section 48. Enforcement of registered determination.--

23 (1) A court of this state may grant any relief
24 normally available under the laws of this state to enforce a
25 registered child custody determination made by a court of
26 another state.

27 (2) A court of this state shall recognize and enforce,
28 but may not modify, except in accordance with sections 33
29 through 42, a registered child custody determination of
30 another state.

31 Section 49. Simultaneous proceedings.--If a proceeding

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 for enforcement under sections 43 through 59 is commenced in a
2 court of this state and the court determines that a proceeding
3 to modify the determination is pending in a court of another
4 state having jurisdiction to modify the determination under
5 sections 33 through 42, the enforcing court shall immediately
6 communicate with the modifying court. The proceeding for
7 enforcement continues unless the enforcing court, after
8 consultation with the modifying court, stays or dismisses the
9 proceeding.

10 Section 50. Expedited enforcement of child custody
11 determination.--

12 (1) A petition under sections 43 through 59 must be
13 verified. Certified copies of all orders sought to be enforced
14 and of any order confirming registration must be attached to
15 the petition. A copy of a certified copy of an order may be
16 attached instead of the original.

17 (2) A petition for enforcement of a child custody
18 determination must state:

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

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

26 (c) Whether any proceeding has been commenced that
27 could affect the current proceeding, including proceedings
28 relating to domestic violence, protective orders, termination
29 of parental rights, and adoptions and, if so, identify the
30 court, the case number, and the nature of the proceeding;

31 (d) The present physical address of the child and the

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 respondent, if known;

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

6 (f) If the child custody determination has been
7 registered and confirmed under section 47, the date and place
8 of registration.

9 (3) Upon the filing of a petition, the court shall
10 issue an order directing the respondent to appear in person
11 with or without the child at a hearing and may enter any order
12 necessary to ensure the safety of the parties and the child.
13 The hearing must be held on the next judicial day after
14 service of the order unless that date is impossible. In that
15 event, the court shall hold the hearing on the first judicial
16 day possible. The court may extend the date of the hearing at
17 the request of the petitioner.

18 (4) An order issued under subsection (3) must state
19 the time and place of the hearing and advise the respondent
20 that at the hearing the court will order that the petitioner
21 may take immediate physical custody of the child and the
22 payment of fees, costs, and expenses under section 54, and may
23 schedule a hearing to determine whether further relief is
24 appropriate, unless the respondent appears and establishes
25 that:

26 (a) The child custody determination has not been
27 registered and confirmed under section 47 and that:

28 1. The issuing court did not have jurisdiction under
29 sections 33 through 42;

30 2. The child custody determination for which
31 enforcement is sought has been vacated, stayed, or modified by

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 a court of a state having jurisdiction to do so under sections
2 33 through 42; or

3 3. The respondent was entitled to notice, but notice
4 was not given in accordance with the standards of section 28
5 in the proceedings before the court that issued the order for
6 which enforcement is sought; or

7 (b) The child custody determination for which
8 enforcement is sought was registered and confirmed under
9 section 47, but has been vacated, stayed, or modified by a
10 court of a state having jurisdiction to do so under sections
11 33 through 42.

12 Section 51. Service of petition and order.--Except as
13 otherwise provided in section 53, the petition and order must
14 be served by any method authorized by the laws of this state
15 upon the respondent and any person who has physical custody of
16 the child.

17 Section 52. Hearing and order.--

18 (1) Unless the court enters a temporary emergency
19 order pursuant to section 36, upon a finding that a petitioner
20 is entitled to immediate physical custody of the child, the
21 court shall order that the petitioner may take immediate
22 physical custody of the child unless the respondent
23 establishes that:

24 (a) The child custody determination has not been
25 registered and confirmed under section 47 and that:

26 1. The issuing court did not have jurisdiction under
27 sections 33 through 42;

28 2. The child custody determination for which
29 enforcement is sought has been vacated, stayed, or modified by
30 a court of a state having jurisdiction to do so under sections
31 33 through 42; or

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 3. The respondent was entitled to notice, but notice
2 was not given in accordance with the standards of section 28
3 in the proceedings before the court that issued the order for
4 which enforcement is sought; or

5 (b) The child custody determination for which
6 enforcement is sought was registered and confirmed under
7 section 47, but has been vacated, stayed, or modified by a
8 court of a state having jurisdiction to do so under sections
9 33 through 42.

10 (2) The court shall award the fees, costs, and
11 expenses authorized under section 54 and may grant additional
12 relief, including a request for the assistance of law
13 enforcement officers, and set a further hearing to determine
14 whether additional relief is appropriate.

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

18 (4) A privilege against disclosure of communications
19 between spouses and a defense of immunity based on the
20 relationship of husband and wife or parent and child may not
21 be invoked in a proceeding under sections 43 through 59.

22 Section 53. Warrant to take physical custody of
23 child.--

24 (1) Upon the filing of a petition seeking enforcement
25 of a child custody determination, the petitioner may file a
26 verified application for the issuance of a warrant to take
27 physical custody of the child if the child is likely to
28 imminently suffer serious physical harm or removal from this
29 state.

30 (2) If the court, upon the testimony of the petitioner
31 or other witness, finds that the child is likely to imminently

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 suffer serious physical harm or removal from this state, it
2 may issue a warrant to take physical custody of the child. The
3 petition must be heard on the next judicial day after the
4 warrant is executed unless that date is impossible. In that
5 event, the court shall hold the hearing on the first judicial
6 day possible. The application for the warrant must include the
7 statements required by section 50(2).

8 (3) A warrant to take physical custody of a child
9 must:

10 (a) Recite the facts upon which a conclusion of
11 imminent serious physical harm or removal from the
12 jurisdiction is based;

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

15 (c) Provide for the placement of the child pending
16 final relief.

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

20 (5) A warrant to take physical custody of a child is
21 enforceable throughout this state. If the court finds on the
22 basis of the testimony of the petitioner or other witness that
23 a less intrusive remedy is not effective, it may authorize law
24 enforcement officers to enter private property to take
25 physical custody of the child. If required by exigent
26 circumstances of the case, the court may authorize law
27 enforcement officers to make a forcible entry at any hour.

28 (6) The court may impose conditions upon placement of
29 a child to ensure the appearance of the child and the child's
30 custodian.

31 Section 54. Costs, fees, and expenses.--

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 (1) The court shall award the prevailing party,
2 including a state, necessary and reasonable expenses incurred
3 by or on behalf of the party, including costs, communication
4 expenses, attorney's fees, investigative fees, expenses for
5 witnesses, travel expenses, and child care during the course
6 of the proceedings, unless the party from whom fees or
7 expenses are sought establishes that the award would be
8 clearly inappropriate.

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

11 Section 55. Recognition and enforcement.--A court of
12 this state shall accord full faith and credit to an order
13 issued by another state and consistent with this act which
14 enforces a child custody determination by a court of another
15 state unless the order has been vacated, stayed, or modified
16 by a court having jurisdiction to do so under sections 33
17 through 42.

18 Section 56. Appeals.--An appeal may be taken from a
19 final order in a proceeding under sections 43 through 59 in
20 accordance with expedited appellate procedures in other civil
21 cases. Unless the court enters a temporary emergency order
22 under section 36, the enforcing court may not stay an order
23 enforcing a child custody determination pending appeal.

24 Section 57. Role of state attorney.--

25 (1) In a case arising under this act or involving the
26 Hague Convention on the Civil Aspects of International Child
27 Abduction, the state attorney may take any lawful action,
28 including resort to a proceeding under sections 43 through 59
29 or any other available civil proceeding, to locate a child,
30 obtain the return of a child, or enforce a child custody
31 determination, if there is:

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

- 1 (a) An existing child custody determination;
- 2 (b) A request to do so from a court in a pending child
- 3 custody proceeding;
- 4 (c) A reasonable belief that a criminal statute has
- 5 been violated; or
- 6 (d) A reasonable belief that the child has been
- 7 wrongfully removed or retained in violation of the Hague
- 8 Convention on the Civil Aspects of International Child
- 9 Abduction.

10 (2) A state attorney acting under this section acts on

11 behalf of the court and may not represent any party.

12 Section 58. Role of law enforcement officers.--At the

13 request of a state attorney acting under section 57, a law

14 enforcement officer may take any lawful action reasonably

15 necessary to locate a child or a party and assist a state

16 attorney with responsibilities under section 57.

17 Section 59. Costs and expenses.--If the respondent is

18 not the prevailing party, the court may assess against the

19 respondent all direct expenses and costs incurred by the state

20 attorney and law enforcement officers under section 57 or

21 section 58.

22 Section 60. Application and construction.--In applying

23 and construing this act, consideration must be given to the

24 need to promote uniformity of the law with respect to its

25 subject matter among states that enact it.

26 Section 61. Severability clause.--If any provision of

27 this act or its application to any person or circumstance is

28 held invalid, the invalidity does not affect other provisions

29 or applications of this act which can be given effect without

30 the invalid provision or application, and to this end the

31 provisions of this act are severable.

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 Section 62. Transitional provision.--A motion or other
2 request for relief made in a child custody proceeding or to
3 enforce a child custody determination which was commenced
4 before the effective date of this act is governed by the law
5 in effect at the time the motion or other request was made.

6 Section 63. Effective October 1, 2000, subsection (7)
7 of section 39.502, Florida Statutes, is amended to read:

8 39.502 Notice, process, and service.--

9 (7) Service of the summons and service of pleadings,
10 papers, and notices subsequent to the summons on persons
11 outside this state must be made pursuant to section 28 of the
12 Uniform Child Custody Jurisdiction and Enforcement Act ~~s.~~
13 ~~61.1312~~.

14 Section 64. Effective October 1, 2000, paragraph (b)
15 of subsection (2) of section 61.13, Florida Statutes, is
16 amended to read:

17 61.13 Custody and support of children; visitation
18 rights; power of court in making orders.--

19 (2)

20 (b)1. The court shall determine all matters relating
21 to custody of each minor child of the parties in accordance
22 with the best interests of the child and in accordance with
23 the Uniform Child Custody Jurisdiction and Enforcement Act. It
24 is the public policy of this state to assure that each minor
25 child has frequent and continuing contact with both parents
26 after the parents separate or the marriage of the parties is
27 dissolved and to encourage parents to share the rights and
28 responsibilities, and joys, of childrearing. After considering
29 all relevant facts, the father of the child shall be given the
30 same consideration as the mother in determining the primary
31 residence of a child irrespective of the age or sex of the

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 child.

2 2. The court shall order that the parental
3 responsibility for a minor child be shared by both parents
4 unless the court finds that shared parental responsibility
5 would be detrimental to the child. Evidence that a parent has
6 been convicted of a felony of the third degree or higher
7 involving domestic violence, as defined in s. 741.28 and
8 chapter 775, or meets the criteria of s. 39.806(1)(d), creates
9 a rebuttable presumption of detriment to the child. If the
10 presumption is not rebutted, shared parental responsibility,
11 including visitation, residence of the child, and decisions
12 made regarding the child, may not be granted to the convicted
13 parent. However, the convicted parent is not relieved of any
14 obligation to provide financial support. If the court
15 determines that shared parental responsibility would be
16 detrimental to the child, it may order sole parental
17 responsibility and make such arrangements for visitation as
18 will best protect the child or abused spouse from further
19 harm. Whether or not there is a conviction of any offense of
20 domestic violence or child abuse or the existence of an
21 injunction for protection against domestic violence, the court
22 shall consider evidence of domestic violence or child abuse as
23 evidence of detriment to the child.

24 a. In ordering shared parental responsibility, the
25 court may consider the expressed desires of the parents and
26 may grant to one party the ultimate responsibility over
27 specific aspects of the child's welfare or may divide those
28 responsibilities between the parties based on the best
29 interests of the child. Areas of responsibility may include
30 primary residence, education, medical and dental care, and any
31 other responsibilities that the court finds unique to a

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 particular family.

2 b. The court shall order "sole parental
3 responsibility, with or without visitation rights, to the
4 other parent when it is in the best interests of" the minor
5 child.

6 c. The court may award the grandparents visitation
7 rights with a minor child if it is in the child's best
8 interest. Grandparents have legal standing to seek judicial
9 enforcement of such an award. This section does not require
10 that grandparents be made parties or given notice of
11 dissolution pleadings or proceedings, ~~nor do grandparents have~~
12 ~~legal standing as "contestants" as defined in s. 61.1306.~~ A
13 court may not order that a child be kept within the state or
14 jurisdiction of the court solely for the purpose of permitting
15 visitation by the grandparents.

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

20 Section 65. Effective October 1, 2000, paragraph (d)
21 of subsection (3), subsection (4), and paragraph (a) of
22 subsection (7) of section 741.30, Florida Statutes, are
23 amended to read:

24 741.30 Domestic violence; injunction; powers and
25 duties of court and clerk; petition; notice and hearing;
26 temporary injunction; issuance of injunction; statewide
27 verification system; enforcement.--

28 (3)

29 (d) If the sworn petition seeks to determine issues of
30 custody or visitation with regard to the minor child or
31 children of the parties, the sworn petition shall be

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 accompanied by or shall incorporate the allegations required
2 by section 41 ~~s. 61.132~~ of the Uniform Child Custody
3 Jurisdiction and Enforcement Act.

4 (4) Upon the filing of the petition, the court shall
5 set a hearing to be held at the earliest possible time. The
6 respondent shall be personally served with a copy of the
7 petition, financial affidavit, uniform child custody
8 jurisdiction and enforcement act affidavit, if any, notice of
9 hearing, and temporary injunction, if any, prior to the
10 hearing.

11 (7)(a)1. The clerk of the court shall furnish a copy
12 of the petition, financial affidavit, uniform child custody
13 jurisdiction and enforcement act affidavit, if any, notice of
14 hearing, and temporary injunction, if any, to the sheriff or a
15 law enforcement agency of the county where the respondent
16 resides or can be found, who shall serve it upon the
17 respondent as soon thereafter as possible on any day of the
18 week and at any time of the day or night. The clerk of the
19 court shall be responsible for furnishing to the sheriff such
20 information on the respondent's physical description and
21 location as is required by the department to comply with the
22 verification procedures set forth in this section.

23 Notwithstanding any other provision of law to the contrary,
24 the chief judge of each circuit, in consultation with the
25 appropriate sheriff, may authorize a law enforcement agency
26 within the jurisdiction to effect service. A law enforcement
27 agency serving injunctions pursuant to this section shall use
28 service and verification procedures consistent with those of
29 the sheriff.

30 2. When an injunction is issued, if the petitioner
31 requests the assistance of a law enforcement agency, the court

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 may order that an officer from the appropriate law enforcement
2 agency accompany the petitioner and assist in placing the
3 petitioner in possession of the dwelling or residence, or
4 otherwise assist in the execution or service of the
5 injunction. A law enforcement officer shall accept a copy of
6 an injunction for protection against domestic violence,
7 certified by the clerk of the court, from the petitioner and
8 immediately serve it upon a respondent who has been located
9 but not yet served.

10 3. All orders issued, changed, continued, extended, or
11 vacated subsequent to the original service of documents
12 enumerated under subparagraph 1., shall be certified by the
13 clerk of the court and delivered to the parties at the time of
14 the entry of the order. The parties may acknowledge receipt
15 of such order in writing on the face of the original order.
16 In the event a party fails or refuses to acknowledge the
17 receipt of a certified copy of an order, the clerk shall note
18 on the original order that service was effected. If delivery
19 at the hearing is not possible, the clerk shall mail certified
20 copies of the order to the parties at the last known address
21 of each party. Service by mail is complete upon mailing.
22 When an order is served pursuant to this subsection, the clerk
23 shall prepare a written certification to be placed in the
24 court file specifying the time, date, and method of service
25 and shall notify the sheriff.

26

27 If the respondent has been served previously with the
28 temporary injunction and has failed to appear at the initial
29 hearing on the temporary injunction, any subsequent petition
30 for injunction seeking an extension of time may be served on
31 the respondent by the clerk of the court by certified mail in

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 lieu of personal service by a law enforcement officer.

2 Section 66. Effective October 1, 2000, sections
3 61.1302, 61.1304, 61.1306, 61.1308, 61.131, 61.1312, 61.1314,
4 61.1316, 61.1318, 61.132, 61.1322, 61.1324, 61.1326, 61.1328,
5 61.133, 61.1332, 61.1334, 61.1336, 61.1338, 61.134, 61.1342,
6 61.1344, 61.1346, and 61.1348, Florida Statutes, are repealed.

7 Section 67. This act shall take effect July 1, 2000,
8 except that the provisions of the Uniform Child Custody
9 Jurisdiction and Enforcement Act shall take effect October 1,
10 2000.

11
12

13 ===== T I T L E A M E N D M E N T =====

14 And the title is amended as follows:

15 remove from the title of the bill: the entire title

16

17 and insert in lieu thereof:

18 A bill to be entitled
19 An act relating to family safety; amending ss.
20 25.385, 39.902, 741.28, and 943.171, F.S.;
21 redefining the terms "domestic violence" and
22 "family or household member"; amending s.
23 61.1825, F.S.; providing for additional
24 circumstances when a family violence indicator
25 must be placed on a record; amending s.
26 90.5036, F.S.; redefining the terms "domestic
27 violence center" and "domestic violence
28 advocate"; specifying the persons to whom
29 confidential communication provisions apply;
30 providing for confidentiality of certain
31 communications only if the domestic violence

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 advocate is registered with the Department of
2 Children and Family Services; amending s.
3 470.002, F.S.; revising the definition of
4 "legally authorized person" for purposes of
5 domestic violence cases; amending s. 741.2901,
6 F.S.; prohibiting certain family or household
7 members from qualifying as legally authorized
8 persons in cases involving domestic violence;
9 amending s. 741.30, F.S.; specifying when a
10 person has standing to file a petition for an
11 injunction against domestic violence; providing
12 for incidents that describe violence or threats
13 of violence; providing legislative intent with
14 regard to victim protection; authorizing the
15 court to grant extensions of temporary
16 injunctions; specifying when a court may grant
17 relief; providing factors for the court to
18 consider in determining imminent danger;
19 requiring a batterers' intervention program to
20 provide notification of discharge; providing
21 that respondents must complete a batterers'
22 intervention program if ordered; providing
23 circumstances under which the court may not
24 grant a request to modify or dissolve an
25 injunction; providing for recording of
26 proceedings; directing the Office of the State
27 Courts Administrator to examine and develop
28 recommendations concerning certain court
29 practices; requiring a report to the Governor
30 and Legislature; amending s. 414.0252, F.S.;
31 modifying the definition of "family" under the

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 WAGES Program, for specified purposes; creating
2 s. 753.01, F.S.; providing legislative findings
3 and intent; creating s. 753.02, F.S.; providing
4 definitions; creating s. 753.03, F.S.;
5 establishing the Office for Certification and
6 Monitoring of Supervised Visitation Programs
7 under the Clearinghouse on Supervised
8 Visitation within the Institute for Family
9 Violence Studies of the Florida State
10 University School of Social Work; providing for
11 certification and monitoring of supervised
12 visitation programs; creating s. 753.04, F.S.;
13 providing duties of the Clearinghouse on
14 Supervised Visitation; providing for minimum
15 program standards; providing for appointment of
16 an advisory board; providing board membership;
17 providing for approval of program certification
18 and funding; providing for certain training and
19 assistance for supervised visitation programs;
20 providing for rules; repealing ss. 753.001,
21 753.002, and 753.004, F.S., relating to the
22 Florida Family Visitation Network and
23 supervised visitation projects; providing a
24 directive to statute editors; providing that
25 implementation of provisions of this act
26 relating to supervised family visitation is
27 contingent on appropriations; restricting
28 certain appropriations expenditures; creating
29 the "Uniform Child Custody Jurisdiction and
30 Enforcement Act"; providing definitions;
31 specifying proceedings not governed by the act;

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 providing application to Indian tribes;
2 providing international application of the act;
3 providing the effect of a child custody
4 determination; providing priority for questions
5 of jurisdiction under the act; providing for
6 notice to persons outside the state; providing
7 for appearance at proceedings and limited
8 immunity; providing for communication between
9 courts of this state and courts of other
10 states; providing for taking testimony in
11 another state; providing for cooperation
12 between courts and the preservation of records;
13 providing for initial child custody
14 jurisdiction; providing for exclusive,
15 continuing jurisdiction; providing for
16 jurisdiction to modify a child custody
17 determination; providing for temporary
18 emergency jurisdiction; providing for notice,
19 opportunity to be heard, and joinder; providing
20 procedures with respect to simultaneous
21 proceedings; providing for determination of an
22 inconvenient forum; providing procedures for a
23 decline of jurisdiction by reason of conduct;
24 specifying information to be submitted to the
25 court; providing for the appearance of the
26 parties and the child at proceedings; providing
27 definitions relating to enforcement; providing
28 for enforcement under the Hague Convention;
29 providing duty of the court to enforce child
30 custody determinations of a court of another
31 state; providing for temporary visitation;

hbd-08

Bill No. CS for SB 708, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 providing for registration of out-of-state
2 child custody determinations; providing for
3 enforcement of registered determinations;
4 providing procedures with respect to
5 simultaneous proceedings; providing for
6 expedited enforcement of a child custody
7 determination; providing for service of
8 petition and order; providing for hearing and
9 order; providing for issuance of a warrant to
10 take physical custody of a child under certain
11 circumstances; providing for award of costs,
12 fees, and expenses to the prevailing party;
13 providing for recognition of enforcement orders
14 of a court of another state; providing for
15 appeals; providing for actions by the state
16 attorney; providing for actions by law
17 enforcement officers; providing for assessment
18 of costs and expenses incurred by the state
19 attorney and law enforcement officers;
20 providing for application and construction of
21 the act; providing severability; providing for
22 transition; amending ss. 39.502, 61.13, and
23 741.30, F.S.; conforming references and cross
24 references; repealing ss. 61.1302, 61.1304,
25 61.1306, 61.1308, 61.131, 61.1312, 61.1314,
26 61.1316, 61.1318, 61.132, 61.1322, 61.1324,
27 61.1326, 61.1328, 61.133, 61.1332, 61.1334,
28 61.1336, 61.1338, 61.134, 61.1342, 61.1344,
29 61.1346, and 61.1348, F.S., relating to the
30 "Uniform Child Custody Jurisdiction Act";
31 providing effective dates.