

By Senator Campbell

33-31-01

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

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

1 61.1314, 61.1316, 61.1318, 61.132, 61.1322,
2 61.1324, 61.1326, 61.1328, 61.133, 61.1332,
3 61.1334, 61.1336, 61.1338, 61.134, 61.1342,
4 61.1344, 61.1346, and 61.1348, F.S., relating
5 to the "Uniform Child Custody Jurisdiction
6 Act"; providing an effective date.

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

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10 Section 1. Short title.--Sections 1 through 43 of this
11 act may be cited as the "Uniform Child Custody Jurisdiction
12 and Enforcement Act."

13 Section 2. Purposes of act; construction of
14 provisions.--The general purposes of this act are to:

15 (1) Avoid jurisdictional competition and conflict with
16 courts of other states in matters of child custody which have
17 in the past resulted in the shifting of children from state to
18 state with harmful effects on their well-being.

19 (2) Promote cooperation with the courts of other
20 states to the end that a custody decree is rendered in the
21 state which can best decide the case in the interest of the
22 child.

23 (3) Discourage the use of the interstate system for
24 continuing controversies over child custody.

25 (4) Deter abductions.

26 (5) Avoid relitigation of custody decisions of other
27 states in this state.

28 (6) Facilitate the enforcement of custody decrees of
29 other states.

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1 (7) Promote and expand the exchange of information and
2 other forms of mutual assistance between the courts of this
3 state and those of other states concerned with the same child.

4 (8) Make uniform the law with respect to the subject
5 of this act among states enacting it.

6 Section 3. Definitions.--As used in sections 1 through
7 43 of this act, the term:

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

10 (2) "Child" means an individual who has not attained
11 18 years of age.

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

19 (4) "Child custody proceeding" means a proceeding in
20 which legal custody, physical custody, or visitation with
21 respect to a child is an issue. The term includes a proceeding
22 for divorce, separation, neglect, abuse, dependency,
23 guardianship, paternity, termination of parental rights, and
24 protection from domestic violence, in which the issue may
25 appear. The term does not include a proceeding involving
26 juvenile delinquency, contractual emancipation, or enforcement
27 under sections 24 through 40.

28 (5) "Commencement" means the filing of the first
29 pleading in a proceeding.

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

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

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

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

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

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

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

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

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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 4. 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 5. 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 1 through 23.

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1 (3) A child custody determination made by a tribe
2 under factual circumstances in substantial conformity with the
3 jurisdictional standards of this act must be recognized and
4 enforced under sections 24 through 40.

5 Section 6. International application of act.--

6 (1) A court of this state shall treat a foreign
7 country as if it were a state of the United States for
8 purposes of applying sections 1 through 23.

9 (2) Except as otherwise provided in subsection (3), a
10 child custody determination made in a foreign country under
11 factual circumstances in substantial conformity with the
12 jurisdictional standards of this act must be recognized and
13 enforced under sections 24 through 40.

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

17 Section 7. Effect of child custody determination.--A
18 child custody determination made by a court of this state that
19 had jurisdiction under this act binds all persons who have
20 been served in accordance with the laws of this state or
21 notified in accordance with section 9 or who have submitted to
22 the jurisdiction of the court, and who have been given an
23 opportunity to be heard. As to those persons, the
24 determination is conclusive as to all decided issues of law
25 and fact except to the extent the determination is modified.

26 Section 8. Priority.--If a question of existence or
27 exercise of jurisdiction under this act is raised in a child
28 custody proceeding, the question, upon request of a party,
29 must be given priority on the calendar and handled
30 expeditiously.

31 Section 9. Notice to persons outside the state.--

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

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

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

14 Section 10. Appearance and limited immunity.--

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

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

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

1 Section 11. Communication between courts.--

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

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

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

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

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

22 Section 12. Taking testimony in another state.--

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

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

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

12 Section 13. Cooperation between courts; preservation
13 of records.--

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

16 (a) Hold an evidentiary hearing;

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

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

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

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

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

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

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

11 Section 14. Initial child custody jurisdiction.--

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

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

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

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

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

4 (c) All courts having jurisdiction under paragraph (a)
5 or paragraph (b) have declined to exercise jurisdiction on the
6 ground that a court of this state is the more appropriate
7 forum to determine the custody of the child under section 20
8 or section 21; or

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

12 (2) Subsection (1) is the exclusive jurisdictional
13 basis for making a child custody determination by a court of
14 this state.

15 (3) Physical presence of, or personal jurisdiction
16 over, a party or a child is not necessary or sufficient to
17 make a child custody determination.

18 Section 15. Exclusive, continuing jurisdiction.--

19 (1) Except as otherwise provided in section 17, a
20 court of this state which has made a child custody
21 determination consistent with section 14 or section 16 has
22 exclusive, continuing jurisdiction over the determination
23 until:

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

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

4 (2) A court of this state that has made a child
5 custody determination and does not have exclusive, continuing
6 jurisdiction under this section may modify that determination
7 only if it has jurisdiction to make an initial determination
8 under section 14.

9 Section 16. Jurisdiction to modify
10 determination.--Except as otherwise provided in section 17, a
11 court of this state may not modify a child custody
12 determination made by a court of another state unless a court
13 of this state has jurisdiction to make an initial
14 determination under section 14(1)(a) or (b) and:

15 (1) The court of the other state determines it no
16 longer has exclusive, continuing jurisdiction under section 15
17 or that a court of this state would be a more convenient forum
18 under section 20; or

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

23 Section 17. Temporary emergency jurisdiction.--

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

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

1 and a child custody proceeding has not been commenced in a
2 court of a state having jurisdiction under sections 14 through
3 16, a child custody determination made under this section
4 remains in effect until an order is obtained from a court of a
5 state having jurisdiction under sections 14 through 16. If a
6 child custody proceeding has not been or is not commenced in a
7 court of a state having jurisdiction under sections 14 through
8 16, a child custody determination made under this section
9 becomes a final determination, if it so provides and this
10 state becomes the home state of the child.

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

22 (4) A court of this state which has been asked to make
23 a child custody determination under this section, upon being
24 informed that a child custody proceeding has been commenced
25 in, or a child custody determination has been made by, a court
26 of a state having jurisdiction under sections 14 through 16,
27 shall immediately communicate with the other court. A court of
28 this state which is exercising jurisdiction pursuant to
29 sections 14 through 16, upon being informed that a child
30 custody proceeding has been commenced in, or a child custody
31 determination has been made by, a court of another state under

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

6 Section 18. Notice; opportunity to be heard;
7 joinder.--

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

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

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

23 Section 19. Simultaneous proceedings.--

24 (1) Except as otherwise provided in section 17, a
25 court of this state may not exercise its jurisdiction under
26 sections 14 through 24 if, at the time of the commencement of
27 the proceeding, a proceeding concerning the custody of the
28 child had been commenced in a court of another state having
29 jurisdiction substantially in conformity with this act, unless
30 the proceeding has been terminated or is stayed by the court
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1 of the other state because a court of this state is a more
2 convenient forum under section 20.

3 (2) Except as otherwise provided in section 17, a
4 court of this state, before hearing a child custody
5 proceeding, shall examine the court documents and other
6 information supplied by the parties pursuant to section 22. If
7 the court determines that a child custody proceeding was
8 previously commenced in a court in another state having
9 jurisdiction substantially in accordance with this act, the
10 court of this state shall stay its proceeding and communicate
11 with the court of the other state. If the court of the state
12 having jurisdiction substantially in accordance with this act
13 does not determine that the court of this state is a more
14 appropriate forum, the court of this state shall dismiss the
15 proceeding.

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

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

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

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

30 Section 20. Inconvenient forum.--
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1 (1) A court of this state which has jurisdiction under
2 this act to make a child custody determination may decline to
3 exercise its jurisdiction at any time if it determines that it
4 is an inconvenient forum under the circumstances and that a
5 court of another state is a more appropriate forum. The issue
6 of inconvenient forum may be raised upon motion of a party,
7 the court's own motion, or request of another court.

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

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

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

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

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

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

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

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

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

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

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

14 Section 21. Jurisdiction declined by reason of
15 conduct.--

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

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

23 (b) A court of the state otherwise having jurisdiction
24 under sections 14 through 16 determines that this state is a
25 more appropriate forum under section 20; or

26 (c) No court of any other state would have
27 jurisdiction under the criteria specified in sections 14
28 through 16.

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

1 prevent a repetition of the unjustifiable conduct, including
2 staying the proceeding until a child custody proceeding is
3 commenced in a court having jurisdiction under sections 14
4 through 16.

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

16 Section 22. Information to be submitted to the
17 court.--

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

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

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

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

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

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

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

28 Section 23. Appearance of parties and child.--

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

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

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

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

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

19 Section 24. Definitions.--As used in sections 24
20 through 40, the term:

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

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

30 Section 25. Enforcement under the Hague
31 Convention.--Under this act, a court of this state may enforce

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

4 Section 26. Duty to enforce.--

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

12 (2) A court of this state may utilize any remedy
13 available under other law of this state to enforce a child
14 custody determination made by a court of another state. The
15 remedies provided by sections 24 through 40 are cumulative and
16 do not affect the availability of other remedies to enforce a
17 child custody determination.

18 Section 27. Temporary visitation.--

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

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

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

27 (2) If a court of this state makes an order under
28 paragraph (1)(b), it shall specify in the order a period that
29 it considers adequate to allow the petitioner to obtain an
30 order from a court having jurisdiction under the criteria
31 specified in sections 14 through 23. The order remains in

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

3 Section 28. Registration of child custody
4 determination.--

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

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

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

16 (c) Except as otherwise provided in section 22, the
17 name and address of the person seeking registration and any
18 parent or person acting as a parent who has been awarded
19 custody or visitation in the child custody determination
20 sought to be registered.

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

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

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

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

31

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

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

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

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

16 (a) The issuing court did not have jurisdiction under
17 sections 14 through 23;

18 (b) The child custody determination sought to be
19 registered has been vacated, stayed, or modified by a court
20 having jurisdiction to do so under sections 14 through 23; or

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

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

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

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

3 Section 29. Enforcement of registered determination.--

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

8 (2) A court of this state shall recognize and enforce,
9 but may not modify, except in accordance with sections 14
10 through 23, a registered child custody determination of
11 another state.

12 Section 30. Simultaneous proceedings.--If a proceeding
13 for enforcement under sections 24 through 40 is commenced in a
14 court of this state and the court determines that a proceeding
15 to modify the determination is pending in a court of another
16 state having jurisdiction to modify the determination under
17 sections 14 through 23, the enforcing court shall immediately
18 communicate with the modifying court. The proceeding for
19 enforcement continues unless the enforcing court, after
20 consultation with the modifying court, stays or dismisses the
21 proceeding.

22 Section 31. Expedited enforcement of child custody
23 determination.--

24 (1) A petition under sections 24 through 40 must be
25 verified. Certified copies of all orders sought to be enforced
26 and of any order confirming registration must be attached to
27 the petition. A copy of a certified copy of an order may be
28 attached instead of the original.

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

31

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

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

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

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

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

19 (f) If the child custody determination has been
20 registered and confirmed under section 28, the date and place
21 of registration.

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

31

1 (4) An order issued under subsection (3) must state
2 the time and place of the hearing and advise the respondent
3 that at the hearing the court will order that the petitioner
4 may take immediate physical custody of the child and the
5 payment of fees, costs, and expenses under section 35, and may
6 schedule a hearing to determine whether further relief is
7 appropriate, unless the respondent appears and establishes
8 that:

9 (a) The child custody determination has not been
10 registered and confirmed under section 28 and that:

11 1. The issuing court did not have jurisdiction under
12 sections 14 through 23;

13 2. The child custody determination for which
14 enforcement is sought has been vacated, stayed, or modified by
15 a court of a state having jurisdiction to do so under sections
16 14 through 23; or

17 3. The respondent was entitled to notice, but notice
18 was not given in accordance with the standards of section 9 in
19 the proceedings before the court that issued the order for
20 which enforcement is sought; or

21 (b) The child custody determination for which
22 enforcement is sought was registered and confirmed under
23 section 28, but has been vacated, stayed, or modified by a
24 court of a state having jurisdiction to do so under sections
25 14 through 23.

26 Section 32. Service of petition and order.--Except as
27 otherwise provided in section 34, the petition and order must
28 be served by any method authorized by the laws of this state
29 upon the respondent and any person who has physical custody of
30 the child.

31 Section 33. Hearing and order.--

1 (1) Unless the court enters a temporary emergency
2 order pursuant to section 17, upon a finding that a petitioner
3 is entitled to immediate physical custody of the child, the
4 court shall order that the petitioner may take immediate
5 physical custody of the child unless the respondent
6 establishes that:

7 (a) The child custody determination has not been
8 registered and confirmed under section 28 and that:

9 1. The issuing court did not have jurisdiction under
10 sections 14 through 23;

11 2. The child custody determination for which
12 enforcement is sought has been vacated, stayed, or modified by
13 a court of a state having jurisdiction to do so under sections
14 14 through 23; or

15 3. The respondent was entitled to notice, but notice
16 was not given in accordance with the standards of section 9 in
17 the proceedings before the court that issued the order for
18 which enforcement is sought; or

19 (b) The child custody determination for which
20 enforcement is sought was registered and confirmed under
21 section 28, but has been vacated, stayed, or modified by a
22 court of a state having jurisdiction to do so under sections
23 14 through 23.

24 (2) The court shall award the fees, costs, and
25 expenses authorized under section 35 and may grant additional
26 relief, including a request for the assistance of law
27 enforcement officers, and set a further hearing to determine
28 whether additional relief is appropriate.

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

1 (4) A privilege against disclosure of communications
2 between spouses and a defense of immunity based on the
3 relationship of husband and wife or parent and child may not
4 be invoked in a proceeding under sections 24 through 40.

5 Section 34. Warrant to take physical custody of
6 child.--

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

13 (2) If the court, upon the testimony of the petitioner
14 or other witness, finds that the child is likely to imminently
15 suffer serious physical harm or removal from this state, it
16 may issue a warrant to take physical custody of the child. The
17 petition must be heard on the next judicial day after the
18 warrant is executed unless that date is impossible. In that
19 event, the court shall hold the hearing on the first judicial
20 day possible. The application for the warrant must include the
21 statements required by section 31(2).

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

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

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

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

31

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

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

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

15 Section 35. Costs, fees, and expenses.--

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

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

26 Section 36. Recognition and enforcement.--A court of
27 this state shall accord full faith and credit to an order
28 issued by another state and consistent with this act which
29 enforces a child custody determination by a court of another
30 state unless the order has been vacated, stayed, or modified

31

1 by a court having jurisdiction to do so under sections 14
2 through 23.

3 Section 37. Appeals.--An appeal may be taken from a
4 final order in a proceeding under sections 24 through 40 in
5 accordance with expedited appellate procedures in other civil
6 cases. Unless the court enters a temporary emergency order
7 under section 17, the enforcing court may not stay an order
8 enforcing a child custody determination pending appeal.

9 Section 38. Role of state attorney.--

10 (1) In a case arising under this act or involving the
11 Hague Convention on the Civil Aspects of International Child
12 Abduction, the state attorney may take any lawful action,
13 including resort to a proceeding under sections 24 through 40
14 or any other available civil proceeding, to locate a child,
15 obtain the return of a child, or enforce a child custody
16 determination, if there is:

17 (a) An existing child custody determination;

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

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

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

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

28 Section 39. Role of law enforcement officers.--At the
29 request of a state attorney acting under section 38, a law
30 enforcement officer may take any lawful action reasonably
31

1 necessary to locate a child or a party and assist a state
2 attorney with responsibilities under section 38.

3 Section 40. Costs and expenses.--If the respondent is
4 not the prevailing party, the court may assess against the
5 respondent all direct expenses and costs incurred by the state
6 attorney and law enforcement officers under section 38 or
7 section 39.

8 Section 41. Application and construction.--In applying
9 and construing this act, consideration must be given to the
10 need to promote uniformity of the law with respect to its
11 subject matter among states that enact it.

12 Section 42. Severability clause.--If any provision of
13 this act or its application to any person or circumstance is
14 held invalid, the invalidity does not affect other provisions
15 or applications of this act which can be given effect without
16 the invalid provision or application, and to this end the
17 provisions of this act are severable.

18 Section 43. Transitional provision.--A motion or other
19 request for relief made in a child custody proceeding or to
20 enforce a child custody determination which was commenced
21 before the effective date of this act is governed by the law
22 in effect at the time the motion or other request was made.

23 Section 44. Subsection (7) of section 39.502, Florida
24 Statutes, is amended to read:

25 39.502 Notice, process, and service.--

26 (7) Service of the summons and service of pleadings,
27 papers, and notices subsequent to the summons on persons
28 outside this state must be made pursuant to section 9 of the
29 Uniform Child Custody Jurisdiction and Enforcement Act ~~s.~~
30 ~~61.1312.~~

31

1 Section 45. Paragraph (b) of subsection (2) of section
2 61.13, Florida Statutes, is amended to read:

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

5 (2)

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

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

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

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

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

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

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

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

7 Section 46. Paragraph (d) of subsection (3),
8 subsection (4), and paragraph (a) of subsection (7) of section
9 741.30, Florida Statutes, are amended to read:

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

14 (3)

15 (d) If the sworn petition seeks to determine issues of
16 custody or visitation with regard to the minor child or
17 children of the parties, the sworn petition shall be
18 accompanied by or shall incorporate the allegations required
19 by section 22 ~~s. 61.132~~ of the Uniform Child Custody
20 Jurisdiction and Enforcement Act.

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

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

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

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

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

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

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

12

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

19 Section 47. Sections 61.1302, 61.1304, 61.1306,
20 61.1308, 61.131, 61.1312, 61.1314, 61.1316, 61.1318, 61.132,
21 61.1322, 61.1324, 61.1326, 61.1328, 61.133, 61.1332, 61.1334,
22 61.1336, 61.1338, 61.134, 61.1342, 61.1344, 61.1346, and
23 61.1348, Florida Statutes, are repealed.

24 Section 48. This act shall take effect October 1,
25 2001.

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SENATE SUMMARY

Creates the "Uniform Child Custody Jurisdiction and Enforcement Act," governing interstate child custody and enforcement proceedings. Provides for applicability of the act to Indian tribes and foreign countries under prescribed circumstances. Provides for jurisdiction, procedures, notice, definitions, enforcement, costs and fees, and appeals and prescribes the role of state attorneys and law enforcement officers. Repeals the existing "Uniform Child Custody Jurisdiction Act."