

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1312

SPONSOR: Committee on Judiciary and Senator Campbell

SUBJECT: Custody and Support of Children

DATE: March 7, 2002 REVISED: 03/11/02 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matthews</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable/CS</u>
2.	<u>Dowds</u>	<u>Whiddon</u>	<u>CF</u>	<u>Fav/ 5 Amendments</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill amends provisions of law governing child custody jurisdiction and enforcement as follows:

Creates the Uniform Child Custody Jurisdiction and Enforcement Act to replace the outdated Uniform Child Custody Jurisdiction Act in ch. 61, F.S.

Authorizes the court to require a bond or security in proceedings involving child custody or visitation orders in the following cases:

- Where there has been a material violation of a custody or visitation order and the bond acts as a security against future violations; and
- Where there is competent substantial evidence of a risk that a party may violate the child custody or visitation order in the future by removing the child from this state or this country or by concealing the whereabouts of the child.

The bill also provides the court with options for conditions to apply to the child custody or visitation order when there is competent substantial evidence of risk that the party may remove the child from this state or country or conceal the child. A list of factors for assessing this risk and, therefore, the need for the bond are also delineated. The bill provides for the specific disposition of the proceeds of a forfeited bond or other security.

This bill substantially amends section 63.13 of the Florida Statutes. The bill creates the following sections of the Florida Statutes: 61.501, 61.502, 61.503, 61.504, 61.505, 61.506, 61.507, 61.508, 61.509, 61.510, 61.511, 61.512, 61.513, 61.514, 61.515, 61.516, 61.517, 61.518, 61.519, 61.520, 61.521, 61.522, 61.523, 61.524, 61.525, 61.526, 61.527, 61.528, 61.529, 61.530, 61.531, 61.532, 61.533, 61.534, 61.535, 61.536, 61.537, 61.538, 61.539, 61.540, 61.541, 61.542, 61.543, and

61.544. The bill reenacts section 44.102, of the Florida Statutes, to incorporate the amendments to section 63.13, of the Florida Statutes, as cross-referenced in section 44.102, of the Florida Statutes.

II. Present Situation:

Violations of Custody and Visitation Orders

Under current law, when there is a violation of a custody or visitation order, a court may order appropriate civil relief as follows to enforce compliance:

- Extra visitation or custody time in a manner consistent with the best interest of the child and the convenience of the person whose custody or visitation right was violated under the order.
- Payment of reasonable court costs and attorney's fees incurred in the enforcement of the order.
- Attendance at a parenting course.
- Participation in community service.
- Financial responsibility for ensuring frequent and continuing contact between the child and noncustodial parent when they reside more than 60 miles apart.
- Custody, rotating custody, or primary residence to the noncustodial parent, if in the child's best interest.
- Any other reasonable sanction. *See* s. 61.13(4)(c), F.S.

Parental Abduction

Currently, the legal system provides a number of deterrents to parental abduction through the use of state and federal laws identified below.

Florida law provides criminal penalties for the following activities:

- Kidnapping; kidnapping of child under the age of 13 years, aggravating circumstances (s. 787.01, F.S.);
- False imprisonment; false imprisonment of child under the age of 13 years, aggravating circumstances (s. 787.02, F.S.);
- Interference with custody (s. 787.03, F.S.); and
- Removing minors from state or concealing minors contrary to state agency order or court order (s. 787.04, F.S.).

Additionally, there are three major federal statutes that address the issue of parental child abduction and provide a mechanism for returning children who have been abducted by a parent to their state of residence:

- The Uniform Child Custody Jurisdiction Act of 1968 (UCCJA), 9 U.L.A. ' 115 (1988).
- The Parental Kidnapping Prevention Act of 1980 (PKPA), 28 U.S.C. ' 1738A (1994).
- The Hague Convention on the Civil Aspects of International Child Abduction opened for signature on October 25, 1980, T.I.A.S. No. 11,670, 1343 U.N.T.S. 89.

Each of these statutes has specific provisions to assist the legal system in resolving situations created when a parent takes a child across state or national lines.

Uniform Child Custody Jurisdiction Act

Specifically, the Uniform Child Custody Jurisdiction Act is Florida's governing law on interstate custody matters. *See* ch. 77-433, *L.O.F.* (1977); ss. 61.1302-61.1348, F.S. The law, however, is over 25 years old and was originally adopted as the Uniform Child Custody Jurisdiction Act (UCCJA) in 1977. The UCCJA is based on a 1968 draft of an uniform act by the National Conference of Commissioners on Uniform State Laws ("NCCUSL"). By 1981, all 50 states had adopted the uniform act. The uniform act was intended to avoid jurisdictional competition and conflict among state courts in interstate child custody matters, to discourage forum shopping and to deter interstate kidnapping of children by their non-custodial parents. Over the last 25 years, specific problems have developed with the uniform act. Major areas of concern have been identified as follows: 1) confusion over proceedings subject to the application of the Act, 2) conflicts over the establishment and relinquishment of primary jurisdiction, 3) ambiguity and inconsistency with applications and interpretations of subsequently adopted federal and international law, 4) lack of effective enforcement procedures, and 5) lack of uniformity due to state variations of the UCCJA. To date, more than 27 states have enacted the new UCCJEA.

Custody Bonds

The National Center for Missing and Exploited Children, in conjunction with the American Bar Association Center on Children and the Law, has encouraged families to consider a number of provisions in child custody orders to prevent child kidnapping in their publication *Family Abduction: How to Prevent an Abduction and What to Do If Your Child is Abducted* (1994). One of the recommended provisions is to request that the court order the potential abductor to post a bond to ensure the child's return at the end of the visitation period when there is a history of custodial interference or likelihood of future custodial interference. The custody bond is intended to discourage an abduction. If an abduction or custodial interference occurs, the bond forfeiture can be used to search for and recover the child. The report explains that convincing evidence of the likelihood of an abduction will usually need to be provided to secure a custody bond, such as the previous use of a court pick-up order directing law enforcement to pick up the abducted child.

There are currently three companies in the nation providing child custody bonds. Accredited Bonds in Winter Park, Florida helped develop custody bonds at the request of the National Center for Missing and Exploited Children. The amount of the bond is set by the court's order. A person who is ordered to post a bond is charged a premium based on the percentage of the bond amount. The premium charged is 10 percent for the first year, 8 percent for the second year, 6 percent for the third year, 4 percent for the fourth year, 2 percent for each year thereafter. In addition, the bond company collateralizes the difference in value between the bond amount and the premium paid. To date, Accredited Bonds has sold 2 bonds ordered by Florida courts.

Currently, s. 61.18, F.S., allows for the posting of a bond to ensure the payment of alimony or child support. If there is a breach of the condition of the bond, the court may order payment to the party entitled to the principal.

III. Effect of Proposed Changes:

Interstate Child Custody

This bill repeals the old Uniform Child Custody Jurisdiction Act (ss. 61.1302- 61.1348, F.S.) and replaces the Act, respectively, with the updated Uniform Child Custody Jurisdiction and Enforcement Act (ss. 61.501- 61.542, F.S.). It creates part IV of ch. 61, F.S. to encompass the new provisions. The new Act remedies many years of inconsistent interpretations of the interstate custody act and discrepancies with other state and federal enactments affecting interstate custody jurisdiction and enforcement. The major provisions of this Act apply to the modification and enforcement of child custody determinations. It provides for the establishment of priority court jurisdiction based on the child's home state, mechanisms for granting temporary emergency jurisdiction, and procedures for the enforcement of out-of-state custody orders, including assistance from state attorneys and law enforcement in locating a child and enforcing an out-of-state decree. It facilitates resolution of interstate custody matters as may arise in a unified family court model program or other civil proceeding impacting custody, residence, visitation or responsibility of a child. In addition, s. 39.502, F.S. (relating to notice and process in dependency proceedings) and s. 741.30, F.S. (relating to domestic violence injunctions), and s. 787.03, F.S. (relating to interference with custody proceedings), respectively, to conform with statutory cross-references to the Uniform Child Custody Jurisdiction and Enforcement Act.

Bond in Child Custody and Visitation Proceedings

The bill authorizes the court to require a bond or security under two different sets of circumstances: when there is the risk that one party may remove a child from the state or the country or may conceal the whereabouts of a child, or there is material violation of a visitation or custody order. Specifically, the bill creates paragraph (e) of subsection (2) of s. 61.13, F.S., to authorize the court to require a reasonable bond to be posted when either parent materially violates a visitation or custody order without proper cause or consent of the other parent in addition to whatever other remedies and sanctions are available by law. The amount of the bond may be ordered in an amount sufficient to cover economic damages for future violation.

The bond requirement under this paragraph is excepted in cases involving domestic violence. In order to be exempted, however, an affidavit in accordance with s. 787.03(6)(b), F.S. relating to interference with child custody, must be filed within 10 days after the violation. If there is a material violation in the future, the court may order a bond forfeited in whole or in part. The proceeds of the bond or other posted security may be used to reimburse the nonviolating party for actual costs or damages. The court must consider the party's financial resources prior to setting the bond amount. A deficiency in the bond or security does not absolve the violating party of its obligation to pay the full amount of damages. Any remaining proceeds are to be held as additional security, if necessary, to be applied to any child support arrearage or to be allocated by the court in the child's best interest. If forfeiture is required of the bond or other security, the violating party may request supporting documentation that the proceeds were used solely in accordance with this section; otherwise the party using the proceeds may be found in contempt of court.

An undesignated section of law is created authorizing the court to require a bond in cases in which there is competent substantial evidence of risk of violation of a custody or visitation order by removal of the child from the state or the country or concealment of the child or in which the

parties stipulate to the posting of a bond. The court may condition the terms of a child's removal from the state or country as follows:

- Require a notarized written permission or prior court approval before a child is removed from this state;
- Require a notarized written permission of both parents or prior court approval before a child is removed from this country;
- Prohibit removal of a child to a country that has not ratified or acceded to the Hague Convention on the Civil Aspects of International Child Abduction unless agreed to in writing by the other parent;
- Require the other parent to surrender the passport of the child;
- Require a parent to post bond or other security.

Any such order entered in turn requires the party requesting the restriction to send a certified copy to the Passport Services Office of the United States Department requesting that the office not issue a passport to the child without the signature of the requesting party or without further order of the court.

In assessing the need for the bond, the court may consider reasonable factors bearing on the competent substantial evidence of risk including:

- Previous court finding of child removal from the state or violation of such order.
- Previous court finding of a threat to remove the child out of state or to withhold contact between the child and the other parent without good cause.
- Previous violation of s. 787.03, F.S., relating to the third degree felony offense of interference with child custody.
- Strong family and community ties to the state, including citizenship.
- Strong financial reasons to remain in state or to relocate.
- Participation in activities that suggest plans to leave or relocate (e.g., quitting work, selling house or terminating lease, closing bank account, liquidating bank account or other assets, or applying for a passport).
- History of domestic violence, child abuse or child neglect.
- History of criminal record.

The court must consider the party's financial resources prior to setting the bond amount. A deficiency in the bond or security does not absolve the violating party of its obligation to pay the full amount of damages. A material violation of the custody or visitation order will result in the forfeiture in full or in part of the bond. This provision does not apply in cases of domestic violence or in cases where the parent believed his or her actions were necessary to preserve the child from danger. In order to be exempted, however, an affidavit in accordance with s. 787.03(6)(b), F.S, relating to interference with child custody, must be filed within 10 days after the violation.

The proceeds of the forfeited bond or other security may be used solely to reimburse for actual costs and damages incurred in upholding the child custody or visitation order, to locate the child and return the child to the appropriate residence, and to reimburse reasonable fees and costs as determined by the court. Any remaining proceeds are to be held as additional security, if necessary, to be applied to any child support arrearage or to be allocated by the court in the

child's best interest. If forfeiture is required of the bond or other security, the violating party may request supporting documentation that the proceeds were used solely in accordance with this section; otherwise the party using the proceeds may be found in contempt of court.

The act takes effect on July 1, 2002.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may generate business for bond companies that provide child custody bonds.

C. Government Sector Impact:

It is indeterminate what, if any, fiscal impact this bill will have on court workload.

VI. Technical Deficiencies:

The bill requires that a party who requested the restriction identified in paragraphs (2)(b) and (2)(c) of section 4 of the bill send a certified copy of the order to the Passport Services Office. Paragraphs (2)(b) and (2)(c) do not exist. However, paragraphs (1)(b) and (1)(c) provide for stipulations that could be included in custody or visitation orders that pertain to not permitting the parent to remove the child from the country.

The risk factor in assessing if there is a need for a bond pertaining to domestic violence reads "Either party has a history of domestic violence as either a victim or perpetrator *of* child abuse or child neglect as evidenced by ..." This is probably intended to read "Either party has a history of domestic violence as either a victim or perpetrator *or of* child abuse or child neglect ..."

The following sections of Florida Statutes reference the Uniform Child Custody Jurisdiction Act and have not been amended to reflect the newly created Uniform Child Custody Jurisdiction and Enforcement Act: ss. 63.052(7), 63.087(6)(f), 63.102, and 787.03(6)(b), F.S.

VII. Related Issues:

This bill requires a parent requesting and obtaining an order posting a bond to forward a certified copy of the order to the United States passport office for purposes of alerting the office to prohibit the issuance of a child's passport without the parent's written permission or without further court order. It is unknown to what extent the office is able to comply with such a request.

While a list of factors is provided to assess the risk that a party may remove a child from the state or country, the only condition that appears to be required before a bond can be ordered to prevent future violations of the visitation or custody order is that there has been a "material violation" of the visitation or custody order. While finding of "material violation" is intended to qualify those violations that could result in the ordering of a bond, it is not clear as to the level of infraction intended before the preventive measure of a bond is warranted. There is potential for wide variations in interpretation as to what constitutes "material violation" and for bonds to be ordered for more minor infractions.

The imposition of a bond may help to deter parental abduction of children. It also provides nonviolating parties with another potential tool for ensuring compliance with custody and visitation orders. However, whether a parent is represented by an attorney has the potential to impact a parent's ability to secure a bond against the other parent or to provide a defense to imposing the bond or forfeiting the bond. The examination of family court cases conducted by the Office of State Courts Administrator found that the income level of litigants who were represented by attorneys was significantly higher than those who chose to represent themselves. The severity of the visitation order violation and circumstances and history surrounding the violations under which bonds are ordered will impact whether this tool prevents abuses of the ordered custody and visitation arrangement or whether it perpetuates high-conflict cases or gives some parents undue control over the other parent.

The bill exempts a parent who is a victim of domestic violence or has reasonable cause to believe he or she will become a victim of domestic violence as defined in s. 741.28, F.S., if the parent files an affidavit within 10 days after the violation explaining the basis for claiming the exemption. The requirement to file an affidavit explaining the basis for being the victim of domestic violence or believing he/she will become a victim of domestic violence would have already been determined by the court, using the same criteria, for individuals with active injunctions for protection against domestic violence.

VIII. Amendments:

#1 by Children and Families:

This is a conforming amendment that specifies in s. 63.052, F.S., the Uniform Custody Jurisdiction and Enforcement Act instead of the Uniform Custody Jurisdiction Act.

#2 by Children and Families:

This is a conforming amendment that specifies in s. 63.087, F.S., the Uniform Custody Jurisdiction and Enforcement Act instead of the Uniform Custody Jurisdiction Act.

#3 by Children and Families:

This is a conforming amendment that specifies in s. 63.102, F.S., the Uniform Custody Jurisdiction and Enforcement Act instead of the Uniform Custody Jurisdiction Act.

#4 by Children and Families:

This is a conforming amendment that specifies in s. 787.03, F.S., the Uniform Custody Jurisdiction and Enforcement Act instead of the Uniform Custody Jurisdiction Act.

#5 by Children and Families:

This amendment eliminates the authorization provided to the courts to require a bond or security when there is the risk that one party may remove a child from the state or country or when there is a material violation of a visitation or custody order.