



## 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.

In addition, Florida law provides criminal penalties for the following activities:

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

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, *Laws of Florida* (1977); ss. 61.1302-61.1348, F.S. The law however is over 25 years 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 (ANCCUSL®). 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, over 27 states have enacted the new UCCJEA.

#### *Custody Bonds*

In recent years, the National Center for Missing Children in conjunction with the American Bar Association Center on Children and the Law, have encouraged families to consider a number of provisions in child custody and visitation agreements including the posting of a bond or other security. Child custody bonds are most typically sought in high-conflict dissolution of marriage and custody cases where there is a high-risk of noncompliance or abduction of a child in contravention of a custody or visitation order. The bond acts as a security to secure enforcement of such orders. There typically has to be a sufficient reason for issuing the bond order. Excessive or unreasonable amounts of bond can be reduced or modified on motion. When a condition of the bond is breached, the amount of the bond is forfeited.

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.

### **III. Effect of Proposed Changes:**

#### *Interstate Child Custody*

This bill repeals the old Uniform Child Custody Jurisdiction Act (ss. 61.1302-.1348, F.S.) and replaces the Act, respectively, with the updated Uniform Child Custody Jurisdiction and Enforcement Act (ss. 61.501-.542, F.S.). It creates part IV of chapter 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, ss. 39.502, F.S. (relating to notice and process

in dependency proceedings) and s. 741.30, F.S. (relating to domestic violence injunctions), and 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.

This bill also amends s. 61.13(4)(c), F.S., relating to violation of child custody and visitation orders by custodial parents. This bill expressly authorizes the court to impose an additional sanction of a requisite bond or security in an amount sufficient to cover, in the event of material violation, costs and damages incurred for enforcement, costs associated with the location and return of the child, and reasonable fees and costs.

*Bond in Child Custody and Visitation Proceedings*

The bill also creates paragraph (e) of subsection (2) of section 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 require the bond to be in 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.

A bond may also be required 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 who 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 provides nonviolating parties with another potential tool for ensuring compliance with custody and visitation orders. The imposition of a bond may help to deter non-compliance and abduction of children. The bill may generate business for bond companies who 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:**

None.

**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.

**VIII. Amendments:**

None.