

Committee Substitute for House Bill No. 549

An act relating to child custody jurisdiction and enforcement; amending s. 39.502, F.S.; conforming references and cross references; re-enacting s. 44.102, F.S.; to incorporate an amendment to s. 61.13, F.S.; amending s. 61.13, F.S.; conforming a reference; providing for the posting of a bond with respect to certain orders of child custody or visitation; providing criteria for the court to use in assessing the need for a bond; providing for forfeiture of the bond under certain circumstances; creating sections 61.501 through 61.542, F.S., cited as the “Uniform Child Custody Jurisdiction and Enforcement Act”; providing purposes; providing definitions; specifying proceedings not governed by the act; providing application to Indian tribes; providing international application of the act; providing the effect of a child custody determination; providing priority for questions jurisdiction under the act; providing for notice to persons outside the state; providing for appearance at proceedings and limited immunity; providing for communication between courts of this state and courts of other states; providing for taking testimony in another state; providing for cooperation between courts and the preservation of records; providing for initial child custody jurisdiction; providing for exclusive, continuing jurisdiction; providing for jurisdiction to modify a child custody determination; providing for temporary emergency jurisdiction; providing for notice, opportunity to be heard, and joinder; providing procedures with respect to simultaneous proceedings; providing for determination of an inconvenient forum; providing procedures for a court to decline jurisdiction by reason of conduct; specifying information to be submitted to the court; providing for the appearance of the parties and the child at proceedings; providing definitions relating to enforcement; providing for enforcement under the Hague Convention; providing duty of the court to enforce child custody determinations of a court of another state; providing for temporary visitation; providing for registration of out-of-state child custody determinations; providing for enforcement of registered determinations; providing procedures with respect to simultaneous proceedings; providing for expedited enforcement of a child custody determination; providing for service of petition and order; providing for hearing and order; providing for issuance of a warrant to take physical custody of a child under certain circumstances; providing for award of costs, fees, and expenses to the prevailing party; providing for recognition of enforcement orders of a court of another state; providing for appeals; providing for actions by the state attorney; providing for actions by law enforcement officers; providing for assessment of costs and expenses incurred by the state attorney and law enforcement officers; providing for application and construction of the act; providing for transition; amending s. 741.30, F.S.; conforming references and cross references; repealing ss. 61.1302, 61.1304, 61.1306, 61.1308, 61.131, 61.1312, 61.1314, 61.1316, 61.1318, 61.132, 61.1322, 61.1324, 61.1326, 61.1328, 61.133, 61.1332, 61.1334, 61.1336, 61.1338, 61.134, 61.1342,

61.1344, 61.1346, and 61.1348, F.S., relating to the “Uniform Child Custody Jurisdiction Act”; providing an effective date.

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

Section 1. Subsection (7) of section 39.502, Florida Statutes, is amended to read:

39.502 Notice, process, and service.—

(7) Service of the summons and service of pleadings, papers, and notices subsequent to the summons on persons outside this state must be made pursuant to s. 61.509 ~~s. 61.1312~~.

Section 2. For purposes of incorporating amendments to s. 61.13, F.S., subsection (2) of section 44.102, F.S., is re-enacted to read:

44.102 Court-ordered mediation.—

(2) A court, under rules adopted by the Supreme Court:

(a) Must, upon request of one party, refer to mediation any filed civil action for monetary damages, provided the requesting party is willing and able to pay the costs of the mediation or the costs can be equitably divided between the parties, unless:

1. The action is a landlord and tenant dispute that does not include a claim for personal injury.

2. The action is filed for the purpose of collecting a debt.

3. The action is a claim of medical malpractice.

4. The action is governed by the Florida Small Claims Rules.

5. The court determines that the action is proper for referral to nonbinding arbitration under this chapter.

6. The parties have agreed to binding arbitration.

7. The parties have agreed to an expedited trial pursuant to s. 45.075.

8. The parties have agreed to voluntary trial resolution pursuant to s. 44.104.

(b) May refer to mediation all or any part of a filed civil action for which mediation is not required under this section.

(c) In circuits in which a family mediation program has been established and upon a court finding of a dispute, shall refer to mediation all or part of custody, visitation, or other parental responsibility issues as defined in s. 61.13. Upon motion or request of a party, a court shall not refer any case to mediation if it finds there has been a history of domestic violence that would compromise the mediation process.

(d) In circuits in which a dependency or in need of services mediation program has been established, may refer to mediation all or any portion of a matter relating to dependency or to a child in need of services or a family in need of services.

Section 3. Paragraph (b) of subsection (2) of section 61.13, Florida Statutes, is amended to read:

61.13 Custody and support of children; visitation rights; power of court in making orders.—

(2)

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

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

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

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

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

3. Access to records and information pertaining to a minor child, including, but not limited to, medical, dental, and school records, may not be denied to a parent because the parent is not the child's primary residential parent. Full rights under this subparagraph apply to either parent unless a court order specifically revokes these rights, including any restrictions on these rights as provided in a domestic violence injunction. A parent having rights under this subparagraph has the same rights upon request as to form, substance, and manner of access as are available to the other parent of a child, including, without limitation, the right to in-person communication with medical, dental, and education providers.

Section 4. (1) In a proceeding in which the court enters an order of child custody or visitation, including in a modification proceeding, upon the presentation of competent substantial evidence that there is a risk that one party may violate the court's order of visitation or custody by removing a child from this state or country or by concealing the whereabouts of a child, or upon stipulation of the parties, the court may:

(a) Order that a parent may not remove the child from this state without the notarized written permission of both parents or further court order;

(b) Order that a parent may not remove the child from this country without the notarized written permission of both parents or further court order;

(c) Order that a parent may not take the child to a country that has not ratified or acceded to the Hague Convention on the Civil Aspects of International Child Abduction unless the other parent agrees in writing that the child may be taken to the country;

(d) Require a parent to surrender the passport of the child; or

(e) Require that party to post bond or other security.

(2) If the court enters an order of child custody or visitation, including in a modification proceeding, that includes a provision entered under paragraph (1)(b) or paragraph (1)(c), a certified copy of the order should be sent by the parent who requested the restriction to the Passport Services Office of the U.S. Department of State requesting that they not issue a passport to the child without their signature or further court order.

(3) In assessing the need for a bond or other security, the court may consider any reasonable factor bearing upon the risk that a party may violate a visitation or custody order by removing a child from this state or

country or by concealing the whereabouts of a child, including but not limited to whether:

(a) A court has previously found that a party previously removed a child from Florida or another state in violation of a custody or visitation order, or whether a court had found that a party has threatened to take a child out of Florida or another state in violation of a custody or visitation order;

(b) The party has strong family and community ties to Florida or to other states or countries, including whether the party or child is a citizen of another country;

(c) The party has strong financial reasons to remain in Florida or to relocate to another state or country;

(d) The party has engaged in activities that suggest plans to leave Florida, such as quitting employment; sale of a residence or termination of a lease on a residence, without efforts to acquire an alternative residence in the state; closing bank accounts or otherwise liquidating assets; or applying for a passport;

(e) Either party has had a history of domestic violence as either a victim or perpetrator, child abuse or child neglect evidenced by criminal history, including but not limited to, arrest, an injunction for protection against domestic violence issued after notice and hearing under s. 741.30, medical records, affidavits, or any other relevant information; or

(f) The party has a criminal record.

(4) The court must consider the party's financial resources prior to setting the bond amount under this section. Under no circumstances may the court set a bond that is unreasonable.

(5) Any deficiency of bond or security shall not absolve the violating party of responsibility to pay the full amount of damages determined by the court.

(6)(a) Upon a material violation of any custody or visitation order by removing a child from this state or this country or by concealing the whereabouts of a child, the court may order the bond or other security forfeited in whole or in part.

(b) This section, including the requirement to post a bond or other security, does not apply to a parent who, in a proceeding to order or modify child custody or visitation, the court determines is a victim of an act of domestic violence or has reasonable cause to believe he or she is about to become the victim of an act of domestic violence, as defined in section 741.28, Florida Statutes. An injunction for protection against domestic violence issued pursuant to section 741.30, Florida Statutes, for a parent as the petitioner which is in effect at the time of the court proceeding shall be one means of demonstrating sufficient evidence that the parent is a victim of domestic violence or is about to become the victim of an act of domestic violence, as defined in section 741.28, Florida Statutes, and shall exempt the parent from this section, including the requirement to post a bond or other security.

A parent who is determined by the court to be exempt from the requirements of this section must meet the requirements of section 787.03(6), Florida Statutes, if an offense of interference with custody is committed.

(7)(a) Upon an order of forfeiture, the proceeds of any bond or other security posted pursuant to this subsection may only be used to:

1. Reimburse the nonviolating party for actual costs or damages incurred in upholding the court's order of custody or visitation.
2. Locate and return the child to the residence as set forth in the visitation or custody order.
3. Reimburse reasonable fees and costs as determined by the court.

(b) Any remaining proceeds shall be held as further security if deemed necessary by the court, and if further security is not found to be necessary; applied to any child support arrears owed by the parent against whom the bond was required, and if no arrears exists; all remaining proceeds will be allocated by the court in the best interest of the child.

(8) At any time after the forfeiture of the bond or other security, the party who posted the bond or other security, or the court on its own motion may request that the party provide documentation substantiating that the proceeds received as a result of the forfeiture have been used solely in accordance with this subsection. Any party using such proceeds for purposes not in accordance with this section may be found in contempt of court.

Section 5. Sections 61.501 through 61.542, Florida Statutes, are created to read:

61.501 Short title.—This part may be cited as the “Uniform Child Custody Jurisdiction and Enforcement Act.”

61.502 Purposes of part; construction of provisions.—The general purposes of this part are to:

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

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

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

(4) Deter abductions.

(5) Avoid relitigating the custody decisions of other states in this state.

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

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

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

61.503 Definitions.—As used in this part, the term:

(1) “Abandoned” means left without provision for reasonable and necessary care or supervision.

(2) “Child” means an individual who has not attained 18 years of age.

(3) “Child custody determination” means a judgment, decree, or other order of a court providing for the legal custody, physical custody, residential care, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

(4) “Child custody proceeding” means a proceeding in which legal custody, physical custody, residential care or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under ss. 61.524-61.540.

(5) “Commencement” means the filing of the first pleading in a proceeding.

(6) “Court” means an entity authorized under the laws of a state to establish, enforce, or modify a child custody determination.

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

(8) “Initial determination” means the first child custody determination concerning a particular child.

(9) “Issuing court” means the court that makes a child custody determination for which enforcement is sought under this part.

(10) “Issuing state” means the state in which a child custody determination is made.

(11) “Modification” means a child custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, regardless of whether it is made by the court that made the previous determination.

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

(13) “Person acting as a parent” means a person, other than a parent, who:

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

(b) Has been awarded a child-custody determination by a court or claims a right to a child-custody determination under the laws of this state.

(14) “Physical custody” means the physical care and supervision of a child.

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

(16) “Tribe” means an Indian tribe, or band, or Alaskan Native village that is recognized by federal law or formally acknowledged by a state.

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

61.504 Proceedings governed by other law.—This part does not govern a proceeding pertaining to the authorization of emergency medical care for a child.

61.505 Application to Indian tribes.—

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

(2) A court of this state shall treat a tribe as if it were a state of the United States for purposes of applying ss. 61.501-61.523.

(3) A child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this part must be recognized and enforced under ss. 61.524-61.540.

61.506 International application of part.—

(1) A court of this state shall treat a foreign country as if it were a state of the United States for purposes of applying ss. 61.501-61.523.

(2) Except as otherwise provided in subsection (3), a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this part must be recognized and enforced under ss. 61.524-61.540.

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

61.507 Effect of child custody determination.—A child custody determination made by a court of this state which had jurisdiction under this part binds all persons who have been served in accordance with the laws of this state or notified in accordance with s. 61.509 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

61.508 Priority.—If a question of existence or exercise of jurisdiction under this part is raised in a child custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously.

61.509 Notice to persons outside the state.—

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

(2) Proof of service may be made in the manner prescribed by the laws of the state in which the service is made.

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

61.510 Appearance and limited immunity.—

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

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

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

61.511 Communication between courts.—

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

(2) The court shall allow the parties to participate in the communication. If the parties elect to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

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

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

(5) For purposes of this section, the term “record” means a form of information, including, but not limited to, an electronic recording or transcription by a court reporter which creates a verbatim memorialization of any communication between two or more individuals or entities.

61.512 Taking testimony in another state.—

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

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

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

61.513 Cooperation between courts; preservation of records.—

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

(a) Hold an evidentiary hearing;

(b) Order a person to produce or give evidence pursuant to the laws of that state;

(c) Order that an evaluation be made with respect to the custody of a child involved in a pending proceeding pursuant to the laws of the state where the proceeding is pending;

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

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

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

(3) Travel and other necessary and reasonable expenses incurred under subsections (1) and (2) may be assessed against the parties according to the laws of this state if the court has personal jurisdiction over the party against whom these expenses are being assessed.

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

61.514 Initial child custody jurisdiction.—

(1) Except as otherwise provided in s. 61.517, a court of this state has jurisdiction to make an initial child custody determination only if:

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

(b) A court of another state does not have jurisdiction under paragraph (a), or a court of the home state of the child has declined to exercise jurisdiction on the grounds that this state is the more appropriate forum under s. 61.520 or s. 61.521, and:

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

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

(c) All courts having jurisdiction under paragraph (a) or paragraph (b) have declined to exercise jurisdiction on the grounds that a court of this state is the more appropriate forum to determine the custody of the child under s. 61.520 or s. 61.521; or

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

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

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

61.515 Exclusive, continuing jurisdiction.—

(1) Except as otherwise provided in s. 61.517, a court of this state which has made a child custody determination consistent with s. 61.514 or s. 61.516 has exclusive, continuing jurisdiction over the determination until:

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

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

(2) A court of this state which has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under s. 61.514.

61.516 Jurisdiction to modify a determination.—Except as otherwise provided in s. 61.517, a court of this state may not modify a child custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under s. 61.514(1)(a) or s. 61.514(1)(b) and:

(1) The court of the other state determines it no longer has exclusive, continuing jurisdiction under s. 61.515 or that a court of this state would be a more convenient forum under s. 61.520; or

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

61.517 Temporary emergency jurisdiction.—

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

(2) If there is no previous child custody determination that is entitled to be enforced under this part, and a child custody proceeding has not been commenced in a court of a state having jurisdiction under ss. 61.514-61.616, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under ss. 61.514-61.516. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under ss. 61.514-61.516, a child custody determination made under this section becomes a final determination if it so provides and this state becomes the home state of the child.

(3) If there is a previous child custody determination that is entitled to be enforced under this part, or a child custody proceeding has been commenced in a court of a state having jurisdiction under ss. 61.514-61.516, any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under ss. 61.514-61.516. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

(4) A court of this state which has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under ss. 61.514-61.516, shall immediately communicate with the other court. A court of this state which is exercising jurisdiction under ss. 61.514-61.516, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

61.518 Notice; opportunity to be heard; joinder.—

(1) Before a child custody determination is made under this part, notice and an opportunity to be heard in accordance with the standards of s. 61.509 must be given to all persons entitled to notice under the laws of this state as in child custody proceedings between residents of this state, any parent whose parental rights have not been previously terminated, and any person acting as a parent.

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

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

61.519 Simultaneous proceedings.—

(1) Except as otherwise provided in s. 61.517, a court of this state may not exercise its jurisdiction under ss. 61.514-61.524 if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child had been commenced in a court of another state having jurisdiction substantially in conformity with this part, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under s. 61.520.

(2) Except as otherwise provided in s. 61.517, a court of this state, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to s. 61.522. If the court determines that a child custody proceeding was previously commenced in a court in another state having jurisdiction substantially in accordance with

this part, the court of this state shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this part does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the proceeding.

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

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

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

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

61.520 Inconvenient forum.—

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

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

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

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

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

(d) The relative financial circumstances of the parties;

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

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

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

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

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

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

61.521 Jurisdiction declined by reason of conduct.—

(1) Except as otherwise provided in s. 61.517 or by other law of this state, if a court of this state has jurisdiction under this part because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

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

(b) A court of the state otherwise having jurisdiction under ss. 61.514-61.516 determines that this state is a more appropriate forum under s. 61.520; or

(c) No court of any other state would have jurisdiction under the criteria specified in ss. 61.514-61.516.

(2) If a court of this state declines to exercise its jurisdiction under subsection (1), it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child custody proceeding is commenced in a court having jurisdiction under ss. 61.514-61.516.

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

61.522 Information to be submitted to the court.—

(1) Subject to Florida law providing for the confidentiality of procedures, addresses, and other identifying information in a child custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present

address or whereabouts, the places where the child has lived during the last 5 years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

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

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

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

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

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

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

61.523 Appearance of parties and child.—

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

(2) If a party to a child custody proceeding whose presence is desired by the court is outside this state, the court may order that a notice given pursuant to s. 61.509 include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

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

(4) If a party to a child custody proceeding who is outside this state is directed to appear under subsection (2) or desires to appear in person before

the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

61.524 Definitions.—As used in ss. 61.524-61.540, the term:

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

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

61.525 Enforcement under the Hague Convention.—Under this part, a court of this state may enforce an order for the return of a child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child custody determination.

61.526 Duty to enforce.—

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

(2) A court of this state may use any remedy available under other laws of this state to enforce a child custody determination made by a court of another state. The remedies provided by ss. 61.524-61.540 are cumulative and do not affect the availability of other remedies to enforce a child custody determination.

61.527 Temporary visitation.—

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

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

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

(2) If a court of this state makes an order under paragraph (1)(b), it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in ss. 61.514-61.523. The order remains in effect until an order is obtained from the other court or the period expires.

61.528 Registration of child custody determination.—

(1) A child custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for en-

forcement, by sending to the circuit court of the county where the petitioner or respondent resides or where a simultaneous request for enforcement is sought:

(a) A letter or other document requesting registration;

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

(c) Except as otherwise provided in s. 61.522, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered.

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

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

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

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

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

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

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

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

(a) The issuing court did not have jurisdiction under ss. 61.514-61.523;

(b) The child custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under ss. 61.514-61.523; or

(c) The person contesting registration was entitled to notice, but notice was not given in accordance with the standards of s. 61.509 in the proceedings before the court that issued the order for which registration is sought.

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

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

61.529 Enforcement of registered determination.—

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

(2) A court of this state shall recognize and enforce but may not modify, except in accordance with ss. 61.514-61.523, a registered child custody determination of another state.

61.530 Simultaneous proceedings.—If a proceeding for enforcement under ss. 61.524-61.540 is commenced in a court of this state and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under ss. 61.514-61.523, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

61.531 Expedited enforcement of child custody determination.—

(1) A petition under ss. 61.524-61.540 must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

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

(a) Whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, specify the basis;

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

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

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

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

(f) If the child custody determination has been registered and confirmed under s. 61.528, the date and place of registration.

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

(4) An order issued under subsection (3) must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs, and expenses under s. 61.535 and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

(a) The child custody determination has not been registered and confirmed under s. 61.528 and that:

1. The issuing court did not have jurisdiction under ss. 61.514-61.523;

2. The child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under ss. 61.514-61.523; or

3. The respondent was entitled to notice, but notice was not given in accordance with the standards of s. 61.509 in the proceedings before the court that issued the order for which enforcement is sought; or

(b) The child custody determination for which enforcement is sought was registered and confirmed under s. 61.528, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under ss. 61.514-61.523.

61.532 Service of petition and order.—Except as otherwise provided in s. 61.534, the petition and order must be served by any method authorized by the laws of this state upon the respondent and any person who has physical custody of the child.

61.533 Hearing and order.—

(1) Unless the court enters a temporary emergency order under s. 61.517, upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

(a) The child custody determination has not been registered and confirmed under s. 61.528 and that:

1. The issuing court did not have jurisdiction under ss. 61.514-61.523;
2. The child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under ss. 61.514-61.523; or
3. The respondent was entitled to notice, but notice was not given in accordance with the standards of s. 61.509 in the proceedings before the court that issued the order for which enforcement is sought; or
 - (b) The child custody determination for which enforcement is sought was registered and confirmed under s. 61.528, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under ss. 61.514-61.523.
- (2) The court shall award the fees, costs, and expenses authorized under s. 61.535 and may grant additional relief, including a request for the assistance of law enforcement officers, and set a further hearing to determine whether additional relief is appropriate.
- (3) If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.
- (4) A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under ss. 61.524-61.540.

61.534 Warrant to take physical custody of child.—

- (1) Upon the filing of a petition seeking enforcement of a child custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is likely to imminently suffer serious physical harm or removal from this state.
- (2) If the court, upon the testimony of the petitioner or other witness, finds that the child is likely to imminently suffer serious physical harm or removal from this state, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by s. 61.531(2).
- (3) A warrant to take physical custody of a child must:
 - (a) Recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;
 - (b) Direct law enforcement officers to take physical custody of the child immediately; and
 - (c) Provide for the placement of the child pending final relief.

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

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

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

61.535 Costs, fees, and expenses.—

(1) So long as the court has personal jurisdiction over the party against whom the expenses are being assessed, the court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and expenses for child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

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

61.536 Recognition and enforcement.—A court of this state shall accord full faith and credit to an order issued by another state and consistent with this part which enforces a child custody determination by a court of another state unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under ss. 61.514-61.523.

61.537 Appeals.—An appeal may be taken from a final order in a proceeding under ss. 61.524-61.540 in accordance with expedited appellate procedures in other civil cases. Unless the court enters a temporary emergency order under s. 61.517, the enforcing court may not stay an order enforcing a child custody determination pending appeal.

61.538 Role of state attorney.—

(1) In a case arising under this part or involving the Hague Convention on the Civil Aspects of International Child Abduction, the state attorney may take any lawful action, including resort to a proceeding under ss. 61.524-61.540 or any other available civil proceeding, to locate a child, obtain the return of a child, or enforce a child custody determination, if there is:

(a) An existing child custody determination;

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

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

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

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

61.539 Role of law enforcement officers.—At the request of a state attorney acting under s. 61.538, a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist a state attorney with responsibilities under s. 61.538.

61.540 Costs and expenses.—The court may assess against the non-prevailing party all direct expenses and costs incurred by the state attorney and law enforcement officers under s. 61.538 or s. 61.539 so long as the court has personal jurisdiction over the nonprevailing party.

61.541 Application and construction.—In applying and construing this part, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

61.542 Transitional provision.—A motion or other request for relief made in a child custody proceeding or to enforce a child custody determination that was commenced before the effective date of this part is governed by the law in effect at the time the motion or other request was made.

Section 6. Paragraph (d) of subsection (3), subsection (4), and paragraph (a) of subsection (7) of section 741.30, Florida Statutes, are amended to read:

741.30 Domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement.—

(3)

(d) If the sworn petition seeks to determine issues of custody or visitation with regard to the minor child or children of the parties, the sworn petition shall be accompanied by or shall incorporate the allegations required by s. 61.522 ~~s. 61.132~~ of the Uniform Child Custody Jurisdiction and Enforcement Act.

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

(7)(a)1. The clerk of the court shall furnish a copy of the petition, financial affidavit, uniform child custody jurisdiction and enforcement act affidavit, if any, notice of hearing, and temporary injunction, if any, to the sheriff or a law enforcement agency of the county where the respondent resides or can be found, who shall serve it upon the respondent as soon thereafter as

possible on any day of the week and at any time of the day or night. The clerk of the court shall be responsible for furnishing to the sheriff such information on the respondent's physical description and location as is required by the department to comply with the verification procedures set forth in this section. Notwithstanding any other provision of law to the contrary, the chief judge of each circuit, in consultation with the appropriate sheriff, may authorize a law enforcement agency within the jurisdiction to effect service. A law enforcement agency serving injunctions pursuant to this section shall use service and verification procedures consistent with those of the sheriff.

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

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

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

Section 7. Sections 61.1302, 61.1304, 61.1306, 61.1308, 61.131, 61.1312, 61.1314, 61.1316, 61.1318, 61.132, 61.1322, 61.1324, 61.1326, 61.1328, 61.133, 61.1332, 61.1334, 61.1336, 61.1338, 61.134, 61.1342, 61.1344, 61.1346, and 61.1348, Florida Statutes, are repealed.

Section 8. This act shall take effect October 1, 2002.

Approved by the Governor April 22, 2002.

Filed in Office Secretary of State April 22, 2002.