

CHAPTER 133**(HB 91)**

AN ACT relating to adoption of the Uniform Child Custody Jurisdiction and Enforcement Act.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

ARTICLE 1.

GENERAL PROVISIONS

SECTION 1. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 41 of this Act:

- (1) *"Abandoned" means left without provision for reasonable and necessary care or supervision;*
- (2) *"Child" means an individual who has not attained eighteen (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, or visitation with respect to a child. The term includes permanent, temporary, initial, and modification orders. 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, 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 Sections 22 to 38 of this Act;*
- (5) *"Commencement" means the filing of the first pleading in a proceeding;*
- (6) *"Court" means an entity authorized under the law 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 six (6) consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six (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 Sections 1 to 41 of this Act;*
- (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, whether or not 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, government; governmental*

subdivision, agency, or instrumentality; 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 six (6) consecutive months, including any temporary absence, within one (1) year immediately before the commencement of a child custody proceeding; and*
 - (b) *Has been awarded legal custody by a court or claims a right to legal custody under the law 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, which is recognized by federal law or formally acknowledged by a state; and*
- (17) *"Warrant" means an order issued by a court authorizing law enforcement officers to take physical custody of a child.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 41 of this Act shall not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

SECTION 3. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

- (1) *A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. sec. 1901 et seq., is not subject to Sections 1 to 41 of this Act 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 the purpose of applying Sections 1 to 21 of this Act.*
- (3) *A child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of Sections 1 to 41 of this Act shall be recognized and enforced under Sections 22 to 38 of this Act.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

- (1) *A court of this state shall treat a foreign country as if it were a state of the United States for the purpose of applying Sections 1 to 21 of this Act.*
- (2) *Except as otherwise provided in subsection (3) of this section, a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of Sections 1 to 41 of this Act shall be recognized and enforced under Sections 22 to 38 of this Act.*
- (3) *A court of this state need not apply Sections 1 to 41 of this Act if the child custody law of a foreign country violates fundamental principles of human rights.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

A child custody determination made by a court of this state that had jurisdiction under Sections 1 to 41 of this Act binds all persons who have been served in accordance with the laws of this state or notified in accordance with Section 7 of this Act 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.

SECTION 6. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

If a question of existence or exercise of jurisdiction under Sections 1 to 41 of this Act is raised in a child custody proceeding, the question, upon request of a party, shall be given priority on the calendar and handled expeditiously.

SECTION 7. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

- (1) *Notice required for the exercise of jurisdiction when a person is outside this state shall be given in a manner prescribed by the law of this state for service of process or by the law of the state in which the service is made. Notice shall be given in a manner reasonably calculated to give actual notice but may be by warning order if other means are not effective.*
- (2) *Proof of service shall be made in the manner prescribed by the law of this state or by the law of the state in which the service is made.*
- (3) *Notice shall not be required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.*

SECTION 8. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

- (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) of this section does not extend to civil litigation based on acts unrelated to the participation in a proceeding under Sections 1 to 41 of this Act committed by an individual while present in this state.*

SECTION 9. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

- (1) *A court of this state may communicate with a court in another state concerning a proceeding arising under Sections 1 to 41 of this Act.*

- (2) *The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they shall be given an 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) of this section, a record shall be made of a communication under this section. The parties shall be informed promptly of the communication and granted access to the record.*
- (5) *As used in this section, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.*

SECTION 10. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

- (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 allowable 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) *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 do not produce an original writing shall not be excluded from evidence on an objection based on the means of transmission.*

SECTION 11. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

- (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 procedures of that state;*
 - (c) *Order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;*
 - (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) of this section.*

- (3) *Travel and other necessary and reasonable expenses incurred under subsections (1) and (2) of this section may be assessed against the parties according to the law of this state.*
- (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 eighteen (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 those records.*

ARTICLE 2.

JURISDICTION

SECTION 12. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as otherwise provided in Section 15 of this Act, a court of this state shall have 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 six (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; or*
 - (b) *A court of another state does not have jurisdiction under paragraph (a) of this subsection, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under Section 18 or 19 of this Act; and*
 - 1. *The child and the child's parents, or the child and at least one (1) 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; or*
 - (c) *All courts having jurisdiction under paragraph (a) or (b) or this subsection have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under Section 18 or 19 of this Act; or*
 - (d) *No court of any other state would have jurisdiction under the criteria specified in paragraph (a), (b), or (c) of this subsection.*
- (2) *Subsection (1) of this section 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.*

SECTION 13. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as otherwise provided in Section 15 of this Act, a court of this state which has made a child custody determination consistent with Section 12 or 14 of this Act has exclusive, continuing jurisdiction over the determination until:*

- (a) *A court of this state determines that neither the child, nor the child and one (1) parent, nor the child and a person acting as a parent 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 parents, and any other person acting as a parent do 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 Section 12.*

SECTION 14. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

Except as otherwise provided in Section 15 of this Act, a court of this state shall 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 subsection (1)(a) or (1)(b) of Section 12 of this Act and:

- (1) *The court of the other state determines that it no longer has exclusive, continuing jurisdiction under Section 13 of this Act or that a court of this state would be a more convenient forum under Section 18 of this Act; 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 do not presently reside in the other state.*

SECTION 15. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

- (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 Sections 1 to 41 of this Act and a child custody proceeding has not been commenced in a court of a state having jurisdiction under Sections 12, 13, and 14 of this Act, 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 Sections 12, 13, and 14 of this Act. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under Sections 12, 13, and 14 of this Act, 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 Sections 1 to 41 of this Act, or a child custody proceeding has been commenced in a court of a state having jurisdiction under Sections 12, 13, and 14 of this Act, any order issued by a court of this state under this section shall 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 Sections 12, 13, and 14 of this Act. 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 Sections 12, 13, and 14 of this Act, shall immediately communicate with the other court. A court of this state which is exercising jurisdiction pursuant to Sections 12, 13, and 14 of this Act, upon being informed that a child custody proceeding has been commenced in, or a child custody determination had 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.*

SECTION 16. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

- (1) *Before a child custody determination is made under Sections 1 to 41 of this Act, notice and an opportunity to be heard in accordance with the standards of Section 7 of this Act shall be given to all persons entitled to notice under the law 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 having physical custody of the child.*
- (2) *Sections 1 to 41 of this Act do 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 Sections 1 to 41 of this Act are governed by the law of this state as in child custody proceedings between residents of this state.*

SECTION 17. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as otherwise provided in Section 15 of this Act, a court of this state shall not exercise jurisdiction under Sections 12 to 21 of this Act if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with Sections 1 to 41 of this Act, 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 Section 18 of this Act.*
- (2) *Except as otherwise provided in Section 15 of this Act, 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 Section 20 of this Act. If the court determines that a child custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with Sections 1 to 41 of this Act, 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 Sections 1 to 41 of this Act 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 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.*

SECTION 18. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

- (1) *A court of this state which has jurisdiction under Sections 1 to 41 of this Act 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 Sections 1 to 41 of this Act 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.*

SECTION 19. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as otherwise provided in Section 15 of this Act, or by other law of this state, if a court of this state has jurisdiction under Sections 1 to 41 of this Act 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 Sections 12, 13, and 14 of this Act determines that this state is a more appropriate forum under Section 18 of this Act; or*
 - (c) *No court of any other state would have jurisdiction under the criteria specified in Sections 12, 13, and 14 of this Act.*
- (2) *If a court of this state declines to exercise its jurisdiction pursuant to subsection (1) of this section, 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 Sections 12, 13, and 14 of this Act.*
- (3) *If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection (1) of this section, 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 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 shall not assess fees, costs, or expenses against this state unless authorized by law other than Sections 1 to 41 of this Act.*

SECTION 20. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

- (1) *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 five (5) years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit shall 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) of this section 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 subsection (1) of this section 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 the 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 that could affect the current proceeding.*
- (5) *If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information, the information shall be sealed and shall not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.*

SECTION 21. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

- (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 Section 7 of this Act 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 order 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) of this section or desires to appear personally 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.*

ARTICLE 3.

ENFORCEMENT

SECTION 22. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

As used in Sections 22 to 38 of this Act:

- (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; and*
- (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.*

SECTION 23. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

Under Sections 22 to 38 of this Act, a court of this state may enforce an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child custody determination.

SECTION 24. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

- (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 Sections 1 to 41 of this Act or the determination was made under factual circumstances meeting the jurisdictional standards of Sections 1 to 41 of this Act and the determination has not been modified in accordance with Sections 1 to 41 of this Act.*
- (2) A court of this state may utilize any remedy available under other law of this state to enforce a child custody determination made by a court of another state. The remedies provided in Sections 22 to 38 of this Act are cumulative and do not affect the availability of other remedies to enforce a child custody determination.*

SECTION 25. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

- (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 that does not provide for a specific visitation schedule.**
- (2) If a court of this state makes an order under subsection (1)(b) of this section, 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 Sections 12 to 21 of this Act. The order shall remain in effect until an order is obtained from the other court or the period expires.*

SECTION 26. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

- (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 enforcement, by sending to a court with jurisdiction in this state:
 - (a) A letter or other document requesting registration;*
 - (b) Two (2) copies, including one (1) 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 Section 20 of this Act, 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) of this section, the registering court shall:*

- (a) *Cause the determination to be filed as a foreign judgment, together with one (1) copy of any accompanying documents and information, regardless of their form; and*
 - (b) *Serve notice upon the persons named pursuant to subsection (1)(c) of this section and provide them with an opportunity to contest the registration in accordance with this section.*
- (3) *The notice required by subsection (2)(b) of this section shall 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 shall be requested within twenty (20) days after service of notice; and*
 - (c) *Failure to contest the registration shall 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 shall request a hearing within twenty (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 Sections 12 to 21 of this Act;*
 - (b) *The child custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under Sections 12 to 21 of this Act; or*
 - (c) *The person contesting registration was entitled to notice, but notice was not given in accordance with the standards of Section 7 of this Act, 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 shall 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.*

SECTION 27. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

- (1) *A court of this state may grant any relief normally available under the law 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 shall not modify, except in accordance with Sections 12 to 21 of this Act, a registered child custody determination made by a court of another state.*

SECTION 28. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

If a proceeding for enforcement under Sections 22 to 38 of this Act 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 Sections 12 to 21

of this Act, 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.

SECTION 29. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

- (1) *A petition under Sections 22 to 38 of this Act shall be verified. Certified copies of all orders sought to be enforced and of any order confirming registration shall 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 shall state:*
 - (a) *Whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;*
 - (b) *Whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision is entitled to enforcement under Sections 1 to 41 of this Act 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 officials and, if so, the relief sought; and*
 - (f) *If the child custody determination has been registered and confirmed under Section 26 of this Act, 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 shall 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 hearing at the request of the petitioner.*
- (4) *An order issued under subsection (3) of this section shall 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 Section 33 of this Act, 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 Section 26 of this Act and that:*
 1. *The issuing court did not have jurisdiction under Sections 12 to 21 of this Act;*
 2. *The child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court having jurisdiction to do so under Sections 12 to 21 of this Act; or*

3. *The respondent was entitled to notice, but notice was not given in accordance with the standards of Section 7 of this Act, 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 Section 26 of this Act but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Sections 12 to 21 of this Act.*

SECTION 30. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

Except as otherwise provided in Section 32 of this Act, the petition and order shall be served, by any method authorized by the law of this state, upon respondent and any person who has physical custody of the child.

SECTION 31. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

- (1) *Unless the court issues a temporary emergency order pursuant to Section 15 of this Act, 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 Section 26 of this Act and that:*
 1. *The issuing court did not have jurisdiction under Sections 12 to 21 of this Act;*
 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 Sections 12 to 21 of this Act; or*
 3. *The respondent was entitled to notice, but notice was not given in accordance with the standards of Section 7 of this Act, 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 Section 26 of this Act but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Sections 12 to 21 of this Act.*
- (2) *The court shall award the fees, costs, and expenses authorized under Section 33 of this Act and may grant additional relief, including a request for the assistance of law enforcement officials, 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 on 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 Sections 22 to 38 of this Act.*

SECTION 32. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

- (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 immediately likely to suffer serious physical harm or be removed from this state.*
- (2) *If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from this state, it may issue a warrant to take physical custody of the child. The petition shall 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 shall include the statements required by subsection (2) of Section 29 of this Act.*
- (3) *A warrant to take physical custody of a child shall:*
 - (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 shall 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.*

SECTION 33. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

- (1) *The court may 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 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 shall not assess fees, costs, or expenses against a state unless authorized by law other than Sections 1 to 41 of this Act.*

SECTION 34. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

A court of this state shall accord full faith and credit to an order issued by another state and consistent with Sections 1 to 41 of this Act 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 Sections 12 to 21 of this Act.

SECTION 35. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

A party may move for an expedited appeal from a final order in a proceeding under Sections 22 to 38 of this Act. Unless the court enters a temporary emergency order under Section 15 of this Act, the enforcing court shall not stay an order enforcing a child custody determination pending appeal.

SECTION 36. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

- (1) *In a case arising under Sections 1 to 41 of this Act or involving the Hague Convention on the Civil Aspects of International Child Abduction, the county attorney or other appropriate public official may take any lawful action, including resort to a proceeding under Sections 22 to 38 of this Act 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 county attorney or other appropriate public official acting under this section acts on behalf of the court and shall not represent any party.*

SECTION 37. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

At the request of a county attorney or other appropriate public official acting under Section 36 of this Act, a peace officer may take any lawful action reasonably necessary to locate a child or a party and assist a county attorney or other appropriate public official with responsibilities under Section 36 of this Act.

SECTION 38. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the county attorney or other appropriate public official and peace officers under Section 36 or 37 of this Act.

ARTICLE 4.

MISCELLANEOUS PROVISIONS

SECTION 39. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

In applying and construing Sections 1 to 41 of this Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 40. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

- (1) *A motion or other request for relief made in a child custody proceeding or to enforce a child custody determination which was commenced before the effective date of Sections 1 to 41 of this Act is governed by the law in effect at the time the motion or other request was made.*
- (2) *Custody decrees previously registered in this state under the provisions of KRS 403.400 to 403.620 shall be deemed registered under the provisions of Sections 1 to 41 of this Act.*

SECTION 41. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 41 of this Act may be cited as the Uniform Child Custody Jurisdiction and Enforcement Act.

Section 42. KRS 403.270 is amended to read as follows:

- (1) (a) As used in this chapter and KRS 405.020, unless the context requires otherwise, "de facto custodian" means a person who has been shown by clear and convincing evidence to have been the primary caregiver for, and financial supporter of, a child who has resided with the person for a period of six (6) months or more if the child is under three (3) years of age and for a period of one (1) year or more if the child is three (3) years of age or older or has been placed by the Department for Community Based Services. Any period of time after a legal proceeding has been commenced by a parent seeking to regain custody of the child shall not be included in determining whether the child has resided with the person for the required minimum period.
- (b) A person shall not be a de facto custodian until a court determines by clear and convincing evidence that the person meets the definition of de facto custodian established in paragraph (a) of this subsection. Once a court determines that a person meets the definition of de facto custodian, the court shall give the person the same standing in custody matters that is given to each parent under this section and KRS 403.280, 403.340, 403.350, *Section 12 of this Act*~~[403.420]~~, and 405.020.
- (2) The court shall determine custody in accordance with the best interests of the child and equal consideration shall be given to each parent and to any de facto custodian. The court shall consider all relevant factors including:
 - (a) The wishes of the child's parent or parents, and any de facto custodian, as to his custody;
 - (b) The wishes of the child as to his custodian;
 - (c) The interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interests;
 - (d) The child's adjustment to his home, school, and community;
 - (e) The mental and physical health of all individuals involved;
 - (f) Information, records, and evidence of domestic violence as defined in KRS 403.720;
 - (g) The extent to which the child has been cared for, nurtured, and supported by any de facto custodian;
 - (h) The intent of the parent or parents in placing the child with a de facto custodian; and
 - (i) The circumstances under which the child was placed or allowed to remain in the custody of a de facto custodian, including whether the parent now seeking custody

was previously prevented from doing so as a result of domestic violence as defined in KRS 403.720 and whether the child was placed with a de facto custodian to allow the parent now seeking custody to seek employment, work, or attend school.

- (3) The court shall not consider conduct of a proposed custodian that does not affect his relationship to the child. If domestic violence and abuse is alleged, the court shall determine the extent to which the domestic violence and abuse has affected the child and the child's relationship to both parents.
- (4) The abandonment of the family residence by a custodial party shall not be considered where said party was physically harmed or was seriously threatened with physical harm by his or her spouse, when such harm or threat of harm was causally related to the abandonment.
- (5) The court may grant joint custody to the child's parents, or to the child's parents and a de facto custodian, if it is in the best interest of the child.
- (6) If the court grants custody to a de facto custodian, the de facto custodian shall have legal custody under the laws of the Commonwealth.

Section 43. KRS 403.280 is amended to read as follows:

- (1) A party to a custody proceeding may move for a temporary custody order. The motion must be supported by an affidavit as provided in KRS 403.350. The court may award temporary custody under the standards of KRS 403.270 after a hearing, or, if there is no objection, solely on the basis of the affidavits.
- (2) If a proceeding for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the court finds, after a hearing, that the circumstances of the parents and the best interests of the child require that a custody decree be issued.
- (3) If a custody proceeding commenced in the absence of a petition for dissolution of marriage or legal separation under *subsection (1)(a) or (1)(b) of Section 12 of this Act* ~~KRS 403.420(1)(a) or (b)~~ is dismissed, any temporary custody order is vacated.
- (4) If a court determines by clear and convincing evidence that a person is a de facto custodian, the court shall join that person in the action, as a party needed for just adjudication under Rule 19 of the Kentucky Rules of Civil Procedure.

Section 44. KRS 403.740 is amended to read as follows:

- (1) If, upon review of the petition, as provided for in KRS 403.735, the court determines that the allegations contained therein indicate the presence of an immediate and present danger of domestic violence and abuse, the court shall issue, upon proper motion, ex parte, an emergency protective order:
 - (a) Restraining the adverse party from any contact or communication with the petitioner except as directed by the court;
 - (b) Restraining the adverse party from committing further acts of domestic violence and abuse;
 - (c) Restraining the adverse party from disposing of or damaging any of the property of the parties;
 - (d) Directing the adverse party to vacate the residence shared by the parties to the action;

- (e) Utilizing the criteria set forth in KRS 403.270, 403.320, and *Section 12 of this Act*~~[403.420]~~, grant temporary custody; or
 - (f) Enter other orders the court believes will be of assistance in eliminating future acts of domestic violence and abuse; or any combination thereof.
- (2) Except as provided in KRS 403.036, if the court issues an emergency protective order pursuant to subsection (1) of this section, the court shall not order or refer the parties to mediation for resolution of the issues alleged in the petition filed pursuant to KRS 403.735.
 - (3) An emergency protective order issued in accordance with this section shall be issued without bond being required of the petitioner.
 - (4) An emergency protective order issued in accordance with this section shall be effective for a period of time fixed in the order, but not to exceed fourteen (14) days. Upon the issuance of an emergency protective order, a date for a full hearing, as provided for in KRS 403.745, shall be fixed not later than the expiration date of the emergency protective order. An emergency protective order shall be reissued for a period not to exceed fourteen (14) days if service has not been made on the adverse party by the fixed court date and time or as the court determines is necessary for the protection of the petitioner.
 - (5) The adverse party shall be personally served with a copy of the emergency protective order, a copy of the notice setting the full hearing, and a copy of the petition. Service may be made in the manner and by the persons authorized to serve subpoenas under the provisions of Rule 45.03 of the Rules of Civil Procedure. No service fee shall be assessed to the petitioner.

Section 45. KRS 403.750 is amended to read as follows:

- (1) Following the hearing provided for under KRS 403.740 and 403.745, the court, if it finds from a preponderance of the evidence that an act or acts of domestic violence and abuse have occurred and may again occur, may:
 - (a) Restrain the adverse party from any contact or communication with the petitioner except as directed by the court;
 - (b) Restrain the adverse party from committing further acts of domestic violence and abuse;
 - (c) Restrain the adverse party from disposing of or damaging any of the property of the parties;
 - (d) Direct the adverse party to vacate the residence shared by the parties to the action;
 - (e) Utilizing the criteria set forth in KRS 403.270, 403.320, and *Section 12 of this Act*~~[403.420]~~, award temporary custody;
 - (f) Utilizing the criteria set forth in KRS 403.211, 403.212, and 403.213, award temporary support;
 - (g) Direct that either or both parties receive counseling services available in the community, except that the court shall not order or refer the parties to participate in mediation for resolution of the issues alleged in the petition filed pursuant to KRS 403.715 to 403.785; or
 - (h) Enter other orders the court believes will be of assistance in eliminating future acts of domestic violence and abuse.

- (2) Any order entered pursuant to this section shall be effective for a period of time, fixed by the court, not to exceed three (3) years and may be reissued upon expiration for an additional period of up to three (3) years. The number of times an order may be reissued shall not be limited. With respect to whether an order should be reissued, any party may present to the court testimony relating to the importance of the fact that acts of domestic violence or abuse have not occurred during the pendency of the order.
- (3) Upon proper filing of a motion, either party may seek to amend a domestic violence order.
- (4) When temporary child support is granted under the provisions of this section, the court shall enter an order detailing how the child support is to be paid and collected. The enforcement procedures for child support orders, entered pursuant to KRS 403.211, 403.212, and 403.213, including but not limited to 403.215, shall be available to temporary child support orders issued under KRS 403.715 to 403.785.
- (5) Any order entered pursuant to this section restraining a party or parties to an action shall be issued without bond being required of the petitioner.

Section 46. The following KRS sections are repealed:

- 403.400 Purposes -- Construction.
- 403.410 Definitions.
- 403.420 Prerequisites to jurisdiction -- Commencement of proceeding.
- 403.430 Notice and opportunity to be heard.
- 403.440 Notice to persons outside state -- Exception.
- 403.450 Simultaneous proceedings in other states.
- 403.460 Inconvenient forum.
- 403.470 Jurisdiction declined by reason of conduct.
- 403.480 Information under oath to be submitted to court -- Continuing duty.
- 403.490 Joinder of parties.
- 403.500 Court appearance of parties and the child.
- 403.510 Binding force and res judicata effect of custody decree.
- 403.520 Recognition of out-of-state decree.
- 403.530 Modification of decree of another state.
- 403.540 Filing and enforcement of custody decree of another state.
- 403.550 Registry of out-of-state custody decrees and proceedings.
- 403.560 Certified copies of custody decree.
- 403.570 Taking testimony in another state.
- 403.580 Hearings and studies in another state -- Orders to appear.
- 403.590 Assistance to courts of other states.
- 403.600 Preservation of court records -- Use in other states.
- 403.610 Request for court records of another state.

403.620 International application.

403.630 Short title.

Approved April 22, 2004