

By Senator Geller

29-1420-01

1                                   A bill to be entitled  
2           An act relating to child custody; creating the  
3           "Vivian Trout Parental Kidnapping Prevention  
4           Act"; authorizing the court to issue a  
5           protective custody warrant to secure the  
6           recovery of an unlawfully detained child;  
7           providing for the court to order the appearance  
8           of parties; providing for serving a protective  
9           custody warrant; requiring payment of the  
10          expenses of a party directed to appear before  
11          the court; providing definitions; authorizing  
12          the court to issue an emergency protective  
13          order under certain circumstances; providing  
14          requirements for notice; prohibiting the  
15          detention or concealment of a child from the  
16          lawful custodian or a person with a right to  
17          visitation; providing penalties; requiring that  
18          the court consider certain aggravating factors  
19          when sentencing a person for such violation;  
20          specifying certain mitigating factors;  
21          providing for payment of restitution to the  
22          state attorney or victim; providing certain  
23          exceptions to application of the act;  
24          specifying circumstances under which a law  
25          enforcement officer may take a child into  
26          protective custody; providing for the court to  
27          issue orders with respect to conflicting  
28          custodial orders; providing for determining  
29          jurisdiction; providing for enforcement;  
30          providing for review of a court order;  
31          providing an effective date.

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

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3 Section 1. Parental kidnapping.--

4 (1) This section may be cited as the "Vivian Trout  
5 Parental Kidnapping Prevention Act."

6 (2)(a) Upon the request of the state attorney, the  
7 court may issue a protective custody warrant to secure the  
8 recovery of an unlawfully detained or concealed child. The  
9 protective custody warrant for the child must contain an order  
10 that the arresting agency place the child in protective  
11 custody or return the child as directed by the court. The  
12 protective custody warrant may be served in any county in the  
13 same manner as a warrant of arrest and may be served at any  
14 time of the day or night.

15 (b) Upon a declaration of the state attorney that the  
16 child has been recovered or that the warrant is otherwise no  
17 longer required, the court may dismiss the warrant without  
18 further court proceedings.

19 (2)(a) The court may order any party to the proceeding  
20 who is within or without this state to appear personally  
21 before the court. If that party has physical custody of the  
22 child, the court may order him or her to appear personally  
23 with the child. If the party who is ordered to appear with the  
24 child cannot be served or fails to obey the order, or if it  
25 appears the order will be ineffective, the court may issue a  
26 warrant of arrest against the party and a protective custody  
27 warrant for the child, to secure the party's or the child's  
28 appearance before the court. The protective custody warrant  
29 for the child must contain an order that the arresting agency  
30 place the child in protective custody, or return the child as  
31 directed by the court. The protective custody warrant may be

1 served in any county in the same manner as a warrant of arrest  
2 and may be served at any time of the day or night.

3 (b) If a party to the proceeding whose presence is  
4 desired by the court is outside this state with or without the  
5 child, the court may order that the party be directed to  
6 appear personally with or without the child and notified that  
7 failure to appear may result in a decision adverse to that  
8 party and the issuance of a warrant under paragraph (a).

9 (c) If a party to the proceeding who is outside this  
10 state is directed to appear under paragraph (b) or desires to  
11 appear personally before the court with or without the child,  
12 the court may require another party to pay to the clerk of the  
13 court travel and other necessary expenses of the party so  
14 appearing and of the child if this is just and proper under  
15 the circumstances.

16 (3) As used in this section, the term:

17 (a) "Law enforcement officer" means any person who is  
18 elected, appointed, or employed by any municipality or the  
19 state or any political subdivision thereof who meets the  
20 minimum qualifications established in s. 943.13 and is  
21 certified as a law enforcement officer under s. 943.1395.

22 (b) "Abduct" means take, entice away, keep, withhold,  
23 or conceal.

24 (4) A court may issue an ex parte emergency protective  
25 order if a law enforcement officer asserts reasonable grounds  
26 to believe that:

27 (a) A person is in immediate and present danger of  
28 domestic violence, based on the person's allegation of a  
29 recent incident of abuse or threat of abuse by the person  
30 against whom the order is sought.

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1           (b) A child is in immediate and present danger of  
2 abuse by a family or household member, based on an allegation  
3 of a recent incident of abuse or threat of abuse by the family  
4 or household member.

5           (c) A child is in immediate and present danger of  
6 being abducted by a parent or relative, based on a reasonable  
7 belief that a person has an intent to abduct the child or flee  
8 with the child from the jurisdiction of the state or based on  
9 an allegation of a recent threat to abduct the child or flee  
10 with the child from the jurisdiction of the state.

11           (5) An emergency protective order may be issued only  
12 if the court finds:

13           (a) Reasonable grounds have been asserted to believe  
14 that an immediate and present danger of domestic violence  
15 exists or that a child is in immediate and present danger of  
16 abuse or abduction; and

17           (b) An emergency protective order is necessary to  
18 prevent the occurrence or recurrence of domestic violence,  
19 child abuse, or child abduction.

20           (6) An emergency protective order may include:

21           (a) A protective order, as defined in section 741.28,  
22 Florida Statutes.

23           (b) An order determining the temporary care and  
24 control of any minor child of the endangered person and the  
25 person against whom the order is sought.

26           (c) An order determining the temporary care and  
27 control of any minor child who is in danger of being abducted.

28           (7) An emergency protective order must include:

29           (a) A statement of the grounds asserted for the order;

30           (b) The date and time the order expires;

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1           (c) The address of the court for the district or  
2 county in which the endangered person or child in danger of  
3 being abducted resides; and

4           (d)1. The following statements, printed in English and  
5 Spanish:

6           a. "To the Protected Person: This order will last only  
7 until the date and time noted above. If you wish to seek  
8 continuing protection, you will have to apply for an order  
9 from the court, at the address noted above. You may seek the  
10 advice of an attorney as to any matter connected with your  
11 application for any future court orders. The attorney should  
12 be consulted promptly so that the attorney may assist you in  
13 making your application."

14           b. "To the Restrained Person: This order will last  
15 until the date and time noted above. The protected party may,  
16 however, obtain a more permanent restraining order from the  
17 court. You may seek the advice of an attorney as to any matter  
18 connected with the application. The attorney should be  
19 consulted promptly so that the attorney may assist you in  
20 responding to the application."

21           2. The following statement in the case of a child in  
22 danger of being abducted, which must be printed in English and  
23 Spanish: "This order will last only until the date and time  
24 noted above. You may apply for a child custody order from the  
25 court, at the address noted above. You may seek the advice of  
26 an attorney as to any matter connected with the application.  
27 The attorney should be consulted promptly so that the attorney  
28 may assist you in responding to the application."

29           Section 2. Child abduction.--

30           (1) As used in this section, the term:

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1           (a) "Abduct" means take, entice away, keep, withhold,  
2 or conceal.

3           (b) "Child" means a person under 18 years of age.

4           (c) "Court order" or "custody order" means a decree,  
5 judgment, or order issued by a court of competent  
6 jurisdiction, whether permanent or temporary, initial or  
7 modified, which affects the custody or visitation of a child  
8 and is issued in the context of a custody proceeding. An  
9 order, once made, continues in effect until it expires, is  
10 modified, is rescinded, or terminates by operation of law.

11           (d) "Custody proceeding" means a proceeding in which a  
12 custody determination is an issue, including, but not limited  
13 to, an action for dissolution or separation, dependency,  
14 guardianship, termination of parental rights, adoption,  
15 paternity, or protection from domestic violence, including an  
16 emergency protective order under section 741.28, Florida  
17 Statutes.

18           (e) "Domestic violence" means any assault, aggravated  
19 assault, battery, aggravated battery, sexual assault, sexual  
20 battery, stalking, aggravated stalking, kidnapping, false  
21 imprisonment, or any criminal offense resulting in physical  
22 injury or death of one family or household member by another  
23 who is or was residing in the same single dwelling unit.

24           (f) "Keeps" or "withholds" means to retain physical  
25 possession of a child regardless of whether the child resists  
26 or objects.

27           (g) "Lawful custodian" means a person, guardian, or  
28 public agency having a right to custody of a child.

29           (h) "Person" includes, but is not limited to, a parent  
30 or an agent of a parent.

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1           (i) "Visitation" means the time for access to the  
2 child allotted to any person by court order.

3           (2)(a) Whenever a public agency takes protective  
4 custody or jurisdiction of the care, custody, control, or  
5 conduct of a child by law or court order, that agency is a  
6 lawful custodian of the child and has a right to physical  
7 custody of the child. In any subsequent placement of the  
8 child, the public agency continues to be a lawful custodian  
9 with a right to physical custody of the child until the public  
10 agency's right of custody is terminated by an order of a court  
11 of competent jurisdiction or by operation of law.

12           (b) In the absence of a court order to the contrary, a  
13 parent loses his or her right to custody of the child to the  
14 other parent if the parent having the right to custody is  
15 dead, is unable or refuses to take the custody, or has  
16 abandoned his or her family. A natural parent whose parental  
17 rights have been terminated by court order is not a lawful  
18 custodian of the child and does not have a right to physical  
19 custody of the child.

20           (3)(a) Any person, not having a right to custody, who  
21 maliciously takes, entices away, keeps, withholds, or conceals  
22 any child with the intent to detain or conceal that child from  
23 a lawful custodian commits a felony of the third degree,  
24 punishable as provided in section 775.082, section 775.083, or  
25 section 775.084, Florida Statutes.

26           (b) Any person who takes, entices away, keeps,  
27 withholds, or conceals a child and maliciously deprives a  
28 lawful custodian of a right to custody, or a person of a right  
29 to visitation, commits a felony of the third degree,  
30 punishable as provided in section 775.082, section 775.083, or  
31 section 775.084, Florida Statutes.

1           (c) This section does not limit the court's contempt  
2 power.

3           (d) A custody order obtained after the taking,  
4 enticing away, keeping, withholding, or concealing of a child  
5 is not a defense to a crime charged under this section.

6           (4)(a) At the sentencing hearing following a  
7 conviction for a violation of paragraph (3)(a) or paragraph  
8 (3)(b), the court shall consider any relevant factors and  
9 circumstances in aggravation, including, but not limited to:

10           1. The child was exposed to a substantial risk of  
11 physical injury or illness.

12           2. The defendant inflicted or threatened to inflict  
13 physical harm on a parent or lawful custodian of the child or  
14 on the child at the time of or during the abduction.

15           3. The defendant harmed or abandoned the child during  
16 the abduction.

17           4. The child was taken, enticed away, kept, withheld,  
18 or concealed outside the United States.

19           5. The child has not been returned to the lawful  
20 custodian.

21           6. The defendant previously abducted or threatened to  
22 abduct the child.

23           7. The defendant substantially altered the appearance  
24 or the name of the child.

25           8. The defendant denied the child appropriate  
26 education during the abduction.

27           9. The length of the abduction.

28           10. The age of the child.

29           (b) At a sentencing hearing following a conviction for  
30 a violation of paragraph (3)(a) or paragraph (3)(b), the court  
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1 shall consider any relevant factors and circumstances in  
2 mitigation, including, but not limited to:

3 1. The defendant returned the child unharmed and  
4 before arrest or issuance of a warrant for arrest.

5 2. The defendant provided information and assistance  
6 leading to the child's safe return.

7 (c) In addition to any other penalties, the court  
8 shall order the defendant to pay restitution to the state  
9 attorney for any costs incurred in locating and returning the  
10 child to the lawful custodian and for any expenses and costs  
11 reasonably incurred by, or on behalf of, the victim in  
12 locating and recovering the child. An award made under this  
13 section constitutes a final judgment and is enforceable as  
14 such.

15 (5)(a) This section does not apply to a person with a  
16 right to custody of a child who, with a good-faith and  
17 reasonable belief that the child, if left with the other  
18 person, will suffer immediate bodily injury or emotional harm,  
19 takes, entices away, keeps, withholds, or conceals that child.

20 (b) This section does not apply to a person with a  
21 right to custody of a child who has been a victim of domestic  
22 violence who, with a good-faith and reasonable belief that the  
23 child, if left with the other person, will suffer immediate  
24 bodily injury or emotional harm, takes, entices away, keeps,  
25 withholds, or conceals that child. As used in this paragraph,  
26 the term "emotional harm" includes having a parent who has  
27 committed domestic violence against the parent who is taking,  
28 enticing away, keeping, withholding, or concealing the child.

29 (c) Any person who takes, entices away, keeps,  
30 withholds, or conceals a child must:

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1           1. Within a reasonable time after the taking, enticing  
2 away, keeping, withholding, or concealing, make a report to  
3 the office of the state attorney of the county where the child  
4 resided before the action. The report must include the name of  
5 the person, the current address and telephone number of the  
6 child and the person, and the reasons the child was taken,  
7 enticed away, kept, withheld, or concealed.

8           2. Within a reasonable time after the taking, enticing  
9 away, keeping, withholding, or concealing, commence a custody  
10 proceeding in a court of competent jurisdiction consistent  
11 with the federal Parental Kidnapping Prevention Act, Section  
12 1738A, Title 28, United States Code, or the Uniform Child  
13 Custody Jurisdiction Act, sections 61.1302-61.1348, Florida  
14 Statutes.

15           3. Inform the state attorney's office of any change of  
16 address or telephone number of the person and the child.

17           (d) For the purposes of this section, a reasonable  
18 time within which to make a report to the state attorney's  
19 office is at least 10 days and a reasonable time to commence a  
20 custody proceeding is at least 30 days. This section does not  
21 preclude a person from making a report to the state attorney's  
22 office or commencing custody proceedings earlier than those  
23 specified times.

24           (6)(a) A violation of paragraph (3)(a) or paragraph  
25 (3)(b) by a person who was not a resident of, or present in,  
26 this state at the time of the alleged offense is punishable in  
27 this state, regardless of whether the intent to commit the  
28 offense is formed within or outside this state, if:

29           1. The child was a resident of, or present in, this  
30 state at the time the child was taken, enticed away, kept,  
31 withheld, or concealed.

1           2. The child thereafter is found in this state.  
2           3. A lawful custodian or a person with a right to  
3 visitation is a resident of this state at the time the child  
4 was taken, enticed away, kept, withheld, or concealed.  
5           (b) The offenses enumerated in paragraphs (3)(a) and  
6 (3)(b) are continuous in nature, and continue for as long as  
7 the minor child is concealed or detained.  
8           (7) When a person is arrested for an alleged violation  
9 of paragraph (3)(a) or paragraph (3)(b), the court, in setting  
10 bail, shall take into consideration whether the child has been  
11 returned to the lawful custodian, and if not, shall consider  
12 whether there is an increased risk that the child may not be  
13 returned or the defendant may flee the jurisdiction of the  
14 court, or, by flight or concealment, may evade the authority  
15 of the court.  
16           (a) A law enforcement officer may take a child into  
17 protective custody if:  
18           1. It reasonably appears to the officer that a person  
19 is likely to conceal the child, flee the jurisdiction of the  
20 court with the child, or, by flight or concealment, evaded the  
21 authority of the court.  
22           2. There is no lawful custodian available to take  
23 custody of the child.  
24           3. There are conflicting custody orders or conflicting  
25 claims to custody and the parties are unable to agree which  
26 party should take custody of the child.  
27           4. The child is an abducted child.  
28           (b) When a law enforcement officer takes a child into  
29 protective custody under this subsection, the officer must:  
30           1. Release the child to the lawful custodian of the  
31 child, unless it reasonably appears that the release would

1 cause the child to be endangered, abducted, or removed from  
2 the jurisdiction of the court.

3 2. Obtain an emergency protective order ordering  
4 placement of the child with an interim custodian who agrees in  
5 writing to accept interim custody.

6 3. Release the child to the social services agency  
7 responsible for arranging shelter or foster care.

8 4. Return the child as ordered by a court of competent  
9 jurisdiction.

10 (c) Upon the arrest of a person for a violation of  
11 paragraph (3)(a) or paragraph (3)(b), a law enforcement  
12 officer shall take possession of an abducted child who is  
13 found in the company of, or under the control of, the arrested  
14 person and deliver the child as directed in paragraph (b).

15 (d) Notwithstanding any other law, when a person is  
16 arrested for an alleged violation of paragraph (3)(a) or  
17 paragraph (3)(b), the court shall, at the time of the  
18 arraignment or thereafter, order that the child be returned to  
19 the lawful custodian by or on a specific date, or that the  
20 person show cause on that date why the child has not been  
21 returned as ordered. If conflicting custodial orders exist  
22 within this state, or between this state and another state,  
23 the court shall set a hearing within 5 business days to  
24 determine which court has jurisdiction under the laws of this  
25 state and determine which state has subject matter  
26 jurisdiction to issue a custodial order under the laws of this  
27 state, the Uniform Child Custody Jurisdiction Act, or federal  
28 law, if applicable. At the conclusion of the hearing, or if  
29 the child has not been returned as ordered by the court at the  
30 time of arraignment, the court shall enter an order as to  
31 which custody order is valid and is to be enforced. If the

1 child has not been returned at the conclusion of the hearing,  
2 the court shall set a date within a reasonable time by which  
3 the child must be returned to the lawful custodian, and order  
4 the defendant to comply by that date or show cause on that  
5 date why he or she has not returned the child as directed. The  
6 court shall enforce its order, or any subsequent order, for  
7 the return of the child to ensure that the child is promptly  
8 placed with the lawful custodian. An order is reviewable by a  
9 writ of mandate or prohibition addressed to the appropriate  
10 court.

11 Section 3. This act shall take effect October 1, 2001.

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14 SENATE SUMMARY

15 Creates the "Vivian Trout Parental Kidnapping Prevention  
16 Act." Authorizes the court to issue a protective custody  
17 warrant to secure the recovery of an unlawfully detained  
18 child. Authorizes the court to issue an emergency  
19 protective order when a child is in immediate and present  
20 danger. Provides that detaining or concealing a child  
21 from the lawful custodian or a person with a right to  
22 visitation is a third-degree felony. Provides  
23 circumstances under which a law enforcement officer may  
24 take a child into protective custody. Provides for the  
25 court to issue orders resolving conflicting custodial  
26 orders and determining jurisdiction. (See bill for  
27 details.)

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