

By Representative Sobel

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 (3)(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 (4) 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, Florida
21 Statutes, and is certified as a law enforcement officer under
22 s. 943.1395, Florida Statutes.

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

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

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

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 (6) 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 (7) An emergency protective order may include:

21 (a) A protective order issued under ss. 741.28-741.31,
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 (8) 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 issued under ss. 741.28-741.31,
17 Florida 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 s. 775.082, s. 775.083, or s.
25 775.084, 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 s. 775.082, s. 775.083, or s.
31 775.084, 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, ss. 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, evade 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, 2002.

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LEGISLATIVE SUMMARY

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

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