

HB 211

2009

1 A bill to be entitled  
2 An act relating to child abduction prevention; creating  
3 pt. III of ch. 61, F.S.; creating s. 61.601, F.S.;  
4 providing a short title; creating s. 61.602, F.S.;  
5 providing definitions; creating s. 61.603, F.S.;  
6 authorizing a court to order abduction prevention  
7 measures; providing conditions under which certain parties  
8 may file a petition seeking abduction prevention measures;  
9 authorizing a state attorney to take custody of a child  
10 under certain circumstances; creating s. 61.604, F.S.;  
11 providing for jurisdiction and temporary emergency  
12 jurisdiction for filing a petition seeking child abduction  
13 prevention measures; creating s. 61.605, F.S.; specifying  
14 contents and requiring verification of the petition;  
15 creating s. 61.606, F.S.; requiring a court to consider  
16 specified factors in determinations relating to child  
17 abduction; creating s. 61.607, F.S.; requiring certain  
18 information to be included in a court order regarding  
19 prevention of child abduction; authorizing the court to  
20 enter a child abduction prevention order and specifying  
21 contents thereof; authorizing the court to impose  
22 conditions on the exercise of custody and visitation;  
23 creating s. 61.608, F.S.; providing conditions under which  
24 a court may issue and enforce a warrant to take physical  
25 custody of a child; specifying contents of the warrant;  
26 providing a respondent to be granted a hearing within a  
27 specified time period; authorizing the court to order a  
28 search of specified databases under certain circumstances;

Page 1 of 15

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb0211-00

29 providing conditions for service of a petition or warrant;  
 30 providing for law enforcement officers to forcibly enter  
 31 private property under certain circumstances; authorizing  
 32 the court to award certain fees and costs to the  
 33 respondent; creating s. 61.609, F.S.; providing for  
 34 duration of an abduction prevention order; creating s.  
 35 61.610, F.S.; providing for application and construction  
 36 of pt. III of ch. 61, F.S.; creating s. 61.611, F.S.;  
 37 providing for cooperation between courts and the  
 38 preservation of records; amending s. 61.612, F.S.;  
 39 providing for applicability of the federal Electronic  
 40 Signatures in Global and National Commerce Act; providing  
 41 an effective date.

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

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45 Section 1. Part III of chapter 61, Florida Statutes,  
 46 consisting of sections 61.601, 61.602, 61.603, 61.604, 61.605,  
 47 61.606, 61.607, 61.608, 61.609, 61.610, 61.611, and 61.612, is  
 48 created to read:

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PART III

50

UNIFORM CHILD ABDUCTION PREVENTION ACT

51

61.601 Short title.--This part may be cited as the

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"Uniform Child Abduction Prevention Act."

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61.602 Definitions.--As used in this part, the term:

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(1) "Abduction" means the wrongful removal or wrongful

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retention of a child.

HB 211

2009

56       (2) "Child" means an unemancipated individual who is less  
57 than 18 years of age.

58       (3) "Child custody determination" means a judgment,  
59 decree, or other order of a court providing for the legal  
60 custody, physical custody, or visitation with respect to a  
61 child. The term includes a permanent, temporary, initial, and  
62 modification order.

63       (4) "Child custody proceeding" means a proceeding in which  
64 legal custody, physical custody, or visitation with respect to a  
65 child is at issue. The term includes a proceeding for divorce,  
66 dissolution of marriage, separation, neglect, abuse, dependency,  
67 guardianship, paternity, termination of parental rights, and  
68 protection from domestic violence.

69       (5) "Court" means an entity authorized under the laws of a  
70 state to establish, enforce, or modify a child custody  
71 determination.

72       (6) "Petition" includes a motion or its equivalent.

73       (7) "Record" means information that is inscribed on a  
74 tangible medium or that is stored in an electronic or other  
75 medium and is retrievable in perceivable form.

76       (8) "State" means a state of the United States, the  
77 District of Columbia, Puerto Rico, the United States Virgin  
78 Islands, or any territory or insular possession subject to the  
79 jurisdiction of the United States. The term includes a federally  
80 recognized Indian tribe or nation.

81       (9) "Travel document" means records relating to a travel  
82 itinerary, including travel tickets, passes, reservations for

HB 211

2009

83 transportation, or reservations for accommodations. The term  
84 does not include a passport or visa.

85 (10) "Wrongful removal" means the taking of a child that  
86 breaches rights of custody or visitation given or recognized  
87 under the laws of this state.

88 (11) "Wrongful retention" means the keeping or concealing  
89 of a child that breaches rights of custody or visitation given  
90 or recognized under the laws of this state.

91 61.603 Actions for abduction prevention measures.--

92 (1) A court on its own motion may order abduction  
93 prevention measures in a child custody proceeding if the court  
94 finds that the evidence establishes a credible risk of abduction  
95 of the child.

96 (2) A party to a child custody determination or another  
97 individual or entity having a right under the law of this state  
98 or any other state to seek a child custody determination for the  
99 child may file a petition seeking abduction prevention measures  
100 to protect the child under this part.

101 (3) A state attorney designated under s. 61.538 may seek a  
102 warrant to take physical custody of a child under s. 61.608.

103 61.604 Jurisdiction.--

104 (1) A petition under this part may be filed only in a  
105 court that has jurisdiction to make a child custody  
106 determination with respect to the child at issue under s.  
107 61.514.

108 (2) A court of this state has temporary emergency  
109 jurisdiction under s. 61.517 if the court finds a credible risk  
110 of abduction.

HB 211

2009

111 61.605 Contents of petition.--A petition filed under this  
112 part must be verified and include a copy of any existing child  
113 custody determination, if available. The petition must specify  
114 the risk factors for abduction, including the relevant factors  
115 described in s. 61.606. In accordance with s. 61.522, the  
116 petition shall contain all of the following:

117 (1) The name, date of birth, and gender of the child.

118 (2) The last known address and current physical location  
119 of the child.

120 (3) The identity, last known address, and current physical  
121 location of the respondent.

122 (4) A statement of whether a prior action to prevent  
123 abduction or domestic violence has been filed by a party or  
124 other individual or entity having custody of the child and the  
125 date, location, and disposition of the action.

126 (5) A statement of whether a party to the proceeding has  
127 been arrested for a crime related to domestic violence,  
128 stalking, or child abuse or neglect and the date, location, and  
129 disposition of the case.

130 (6) Any other information required to be submitted to the  
131 court for a child custody determination under s. 61.522.

132 61.606 Factors to determine risk of abduction.--

133 (1) In determining whether there is a credible risk of  
134 abduction of a child, the court shall consider any evidence that  
135 the petitioner or respondent:

136 (a) Has previously abducted or attempted to abduct the  
137 child;

138 (b) Has threatened to abduct the child;

139 (c) Has recently engaged in activities that may indicate a  
 140 planned abduction, including:

- 141 1. Abandoning employment;
- 142 2. Selling a primary residence;
- 143 3. Terminating a lease;
- 144 4. Closing bank or other financial management accounts,  
 145 liquidating assets, hiding or destroying financial documents, or  
 146 conducting any unusual financial activities;
- 147 5. Applying for a passport or visa or obtaining travel  
 148 documents for the respondent, a family member, or the child; or
- 149 6. Seeking to obtain the child's birth certificate or  
 150 school or medical records;

151 (d) Has engaged in domestic violence, stalking, or child  
 152 abuse or neglect;

153 (e) Has refused to follow a child custody determination;

154 (f) Lacks strong familial, financial, emotional, or  
 155 cultural ties to this state or the United States;

156 (g) Has strong familial, financial, emotional, or cultural  
 157 ties to another state or country;

158 (h) Is likely to take the child to a country that:

- 159 1. Is not a party to the Hague Convention on the Civil  
 160 Aspects of International Child Abduction and does not provide  
 161 for the extradition of an abducting parent or for the return of  
 162 an abducted child;
- 163 2. Is a party to the Hague Convention on the Civil Aspects  
 164 of International Child Abduction, but:

HB 211

2009

- 165 a. The Hague Convention on the Civil Aspects of  
166 International Child Abduction is not in force between the United  
167 States and that country;
- 168 b. Is noncompliant according to the most recent compliance  
169 report issued by the United States Department of State; or
- 170 c. Lacks legal mechanisms for immediately and effectively  
171 enforcing a return order under the Hague Convention on the Civil  
172 Aspects of International Child Abduction;
- 173 3. Poses a risk that the child's physical or emotional  
174 health or safety would be endangered in the country because of  
175 specific circumstances relating to the child or because of human  
176 rights violations committed against children;
- 177 4. Has laws or practices that would:
- 178 a. Enable the respondent, without due cause, to prevent  
179 the petitioner from contacting the child;
- 180 b. Restrict the petitioner from freely traveling to or  
181 exiting from the country because of the petitioner's gender,  
182 nationality, marital status, or religion; or
- 183 c. Restrict the child's ability to legally leave the  
184 country after the child reaches the age of majority because of  
185 the child's gender, nationality, or religion;
- 186 5. Is included by the United States Department of State on  
187 a current list of state sponsors of terrorism;
- 188 6. Does not have an official United States diplomatic  
189 presence in the country; or
- 190 7. Is engaged in active military action or war, including  
191 a civil war, to which the child may be exposed;

192        (i) Is undergoing a change in immigration or citizenship  
 193 status that would adversely affect the respondent's ability to  
 194 legally remain in the United States;

195        (j) Has had an application for United States citizenship  
 196 denied;

197        (k) Has forged or presented misleading or false evidence  
 198 on government forms or supporting documents to obtain or attempt  
 199 to obtain a passport, a visa, travel documents, a social  
 200 security card, a driver's license, or other government-issued  
 201 identification card or has made a misrepresentation to the  
 202 United States Government;

203        (l) Has used multiple names to attempt to mislead or  
 204 defraud; or

205        (m) Has engaged in any other conduct the court considers  
 206 relevant to the risk of abduction.

207        (2) In the hearing on a petition filed under this part,  
 208 the court shall consider any evidence that the respondent  
 209 believed in good faith that the respondent's conduct was  
 210 necessary to avoid imminent harm to the child or the respondent  
 211 and any other evidence that may be relevant to whether the  
 212 respondent may be permitted to remove or retain the child.

213        61.607 Provisions and measures to prevent abduction.--

214        (1) If a petition is filed under this part, the court may  
 215 enter an order that shall include all of the following:

216        (a) The basis for the court's exercise of jurisdiction.

217        (b) The manner in which notice and opportunity to be heard  
 218 were given to the persons entitled to notice of the proceeding.



HB 211

2009

219 (c) A detailed description of each party's custody and  
220 visitation rights and residential arrangements for the child.

221 (d) A provision stating that a violation of the order may  
222 subject the party in violation to civil and criminal penalties.

223 (e) Identification of the child's country of habitual  
224 residence at the time of the issuance of the order.

225 (2) If, at a hearing on a petition filed under this part  
226 or on the court's own motion, the court after reviewing the  
227 evidence finds a credible risk of abduction of the child, the  
228 court shall enter an abduction prevention order. The order must  
229 include the provisions required under subsection (1) and  
230 measures and conditions, including those provided in subsections  
231 (3), (4), and (5), that are reasonably calculated to prevent  
232 abduction of the child, giving due consideration to the custody  
233 and visitation rights of the parties. The court shall consider  
234 the age of the child, the potential harm to the child from an  
235 abduction, the legal and practical difficulties of returning the  
236 child to the jurisdiction of the court if abducted, and the  
237 reasons for the potential abduction, including evidence of  
238 domestic violence, stalking, or child abuse or neglect.

239 (3) An abduction prevention order may include one or more  
240 of the following:

241 (a) An imposition of travel restrictions that require a  
242 party traveling with the child outside a designated geographical  
243 area to provide the other party with the following:

- 244 1. The travel itinerary of the child;  
245 2. A list of physical addresses and telephone numbers at  
246 which the child may be reached at specified times; and

247       3. Copies of all travel documents;  
 248       (b) A prohibition upon the respondent directly or  
 249 indirectly:  
 250       1. Removing the child from this state, the United States,  
 251 or another geographic area without permission of the court or  
 252 the petitioner's written consent;  
 253       2. Removing or retaining the child in violation of a child  
 254 custody determination;  
 255       3. Removing the child from a school or a child care  
 256 facility or similar facility; or  
 257       4. Approaching the child at any location other than a site  
 258 designated for supervised visitation;  
 259       (c) A requirement that a party register the order in  
 260 another state before the child is allowed to travel to that  
 261 state;  
 262       (d) With regard to the child's passport:  
 263       1. A direction that the petitioner place the child's name  
 264 in the United States Department of State's Children's Passport  
 265 Issuance Alert Program;  
 266       2. A requirement that the respondent surrender to the  
 267 court or the petitioner's attorney any United States or foreign  
 268 passport issued in the child's name, including a passport issued  
 269 in the name of both the parent and the child; and  
 270       3. A prohibition upon the respondent from applying on  
 271 behalf of the child for a new or replacement passport or visa;  
 272       (e) As a prerequisite to exercising custody or visitation,  
 273 a requirement that the respondent provide:

HB 211

2009

274 1. To the United States Department of State's Office of  
275 Children's Issues and the relevant foreign consulate or embassy,  
276 an authenticated copy of the order detailing passport and travel  
277 restrictions for the child;

278 2. To the court:

279 a. Proof that the respondent has provided the information  
280 in subparagraph 1.; and

281 b. An acknowledgement in a record from the relevant  
282 foreign consulate or embassy that no passport application has  
283 been made nor has a passport been issued on behalf of the child;

284 3. To the petitioner, proof of registration with the  
285 United States Embassy or other United States diplomatic presence  
286 in the destination country and with the Central Authority for  
287 the Hague Convention on the Civil Aspects of International Child  
288 Abduction, if that convention is in effect between the United  
289 States and the destination country, unless one of the parties  
290 objects; and

291 4. A written waiver under the Federal Privacy Act, 5  
292 U.S.C. s. 552(a), as amended, with respect to any document,  
293 application, or other information pertaining to the child  
294 authorizing the disclosure of such document, application, or  
295 other information to the court and the petitioner; or

296 (f) Upon the petitioner's request, a requirement that the  
297 respondent obtain an order from the relevant foreign country  
298 containing terms identical to the child custody determination  
299 issued in the United States.

300 (4) In an abduction prevention order, the court may impose  
301 conditions on the exercise of custody or visitation that:

302 (a) Limit visitation or require that visitation with the  
 303 child by the respondent be supervised until the court finds that  
 304 supervision is no longer necessary and order the respondent to  
 305 pay the costs of supervision.

306 (b) Require the respondent to post a bond or provide other  
 307 security in an amount sufficient to serve as a financial  
 308 deterrent to abduction, the proceeds of which may be used to pay  
 309 for the reasonable expenses of recovery of the child, including  
 310 reasonable attorney's fees and costs if the child is abducted.

311 (c) Require the respondent to obtain education on the  
 312 potentially harmful effects to the child from abduction.

313 (5) To prevent imminent abduction of a child, a court may:

314 (a) Issue a warrant to take physical custody of the child  
 315 under s. 61.608 or the laws of this state other than this part;

316 (b) Direct the use of law enforcement to take any action  
 317 reasonably necessary to locate the child, obtain return of the  
 318 child, or enforce a custody determination under this part or the  
 319 laws of this state other than this part; or

320 (c) Grant any other relief allowed under the laws of this  
 321 state other than this part.

322 (6) The remedies provided in this part are cumulative and  
 323 do not affect the availability of other remedies to prevent  
 324 abduction.

325 61.608 Warrant to take physical custody of a child.--

326 (1) If a petition under this part contains allegations and  
 327 the court finds that there is a credible risk that the child is  
 328 imminently likely to be wrongfully removed, the court may issue  
 329 an ex parte warrant to take physical custody of the child.

HB 211

2009

330       (2) The respondent on a petition under subsection (1) must  
331 be afforded an opportunity to be heard at the earliest possible  
332 time after the ex parte warrant is executed, but not later than  
333 the next judicial day unless a hearing on that date is  
334 impossible. In that event, the court shall hold the hearing on  
335 the first judicial day possible.

336       (3) An ex parte warrant under subsection (1) to take  
337 physical custody of a child must:

338       (a) Recite the facts upon which a determination of a  
339 credible risk of imminent wrongful removal of the child is  
340 based.

341       (b) Direct law enforcement officers to immediately take  
342 physical custody of the child.

343       (c) State the date and time for the hearing on the  
344 petition.

345       (d) Provide for the safe interim placement of the child  
346 pending further order of the court.

347       (4) If feasible, before issuing a warrant and before  
348 determining the placement of the child after the warrant is  
349 executed, the court may order a search of the relevant databases  
350 of the National Crime Information Center system and similar  
351 state databases to determine if either the petitioner or the  
352 respondent has a history of domestic violence, stalking, or  
353 child abuse or neglect.

354       (5) The petition and warrant must be served on the  
355 respondent when or immediately after the child is taken into  
356 physical custody.

HB 211

2009

357 (6) A warrant to take physical custody of a child, issued  
358 by this state or another state, is enforceable throughout this  
359 state. If the court finds that a less intrusive remedy is not  
360 effective, it may authorize law enforcement officers to enter  
361 private property to take physical custody of the child. If  
362 required by exigent circumstances of the case, the court may  
363 authorize law enforcement officers to make a forcible entry at  
364 any hour.

365 (7) If the court finds, after a hearing, that a petitioner  
366 sought an ex parte warrant under subsection (1) for the purpose  
367 of harassment or in bad faith, the court may award the  
368 respondent reasonable attorney's fees, costs, and expenses.

369 61.609 Duration of abduction prevention order.--An  
370 abduction prevention order remains in effect until the earliest  
371 of:

372 (1) The time stated in the order;

373 (2) The emancipation of the child;

374 (3) The child's attaining 18 years of age; or

375 (4) The time the order is modified, revoked, vacated, or  
376 superseded by a court with jurisdiction under ss. 61.514-61.516.

377 61.610 Application and construction.--In applying and  
378 construing this part, consideration must be given to the need to  
379 promote uniformity of the law with respect to its subject matter  
380 among states that enact the Uniform Child Abduction Prevention  
381 Act.

382 61.611 Cooperation between courts; preservation of  
383 records.--Sections 61.511-61.513 apply to cooperation and  
384 communications among courts in proceedings under this part.

HB 211

2009

385           61.612 Applicability of federal Electronic Signatures in  
386 Global and National Commerce Act.--This part modifies, limits,  
387 and supersedes the federal Electronic Signatures in Global and  
388 National Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not  
389 modify, limit, or supersede s. 101(c) of the act, 15 U.S.C. s.  
390 7001(c), or authorize electronic delivery of any of the notices  
391 described in s. 103(b) of the act, 15 U.S.C. s. 7003(b).

392           Section 2. This act shall take effect July 1, 2009.