

By Senator Sobel

31-01533-10

20101862

1 A bill to be entitled
2 An act relating to child abduction prevention;
3 providing a short title; amending s. 61.45, F.S.;
4 authorizing additional persons to move to have certain
5 restrictions placed in parenting plans upon showing of
6 a risk that one party may violate the court's
7 parenting plan by removing a child from this state or
8 country or by concealing the child's whereabouts;
9 authorizing courts to impose certain restrictions in
10 parenting plans upon a specified finding; authorizing
11 a court to impose certain restrictions in addition to
12 or in lieu of a requirement that a child's passport be
13 surrendered; authorizing a court to impose specified
14 restrictions upon entry of an order to prevent removal
15 of a child from this state or country; providing
16 additional factors that may be considered in assessing
17 the risk that a party may violate a parenting plan by
18 removing a child from this state or country or by
19 concealing the child's whereabouts; providing that
20 violations may subject a violator to specified
21 penalties or other consequences; providing an
22 effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. This act may be cited as the "Child Abduction
27 Prevention Act."

28 Section 2. Section 61.45, Florida Statutes, is amended to
29 read:

31-01533-10

20101862__

30 61.45 Court-ordered parenting plan; risk of violation;
31 bond.—

32 (1) In any proceeding in which the court enters a parenting
33 plan, including a time-sharing schedule, including in a
34 modification proceeding, upon the presentation of competent
35 substantial evidence that there is a risk that one party may
36 violate the court's parenting plan by removing a child from this
37 state or country or by concealing the whereabouts of a child, ~~or~~
38 upon stipulation of the parties, upon the motion of another
39 individual or entity having a right under the law of this state,
40 or if the court finds evidence that establishes credible risk of
41 removal of the child, the court may:

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

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

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

53 (d) Require a parent to surrender the passport of the child
54 or require that:

55 1. The petitioner place the child's name in the Children's
56 Passport Issuance Alert Program of the United States Department
57 of State;

58 2. The respondent surrender to the court or the

31-01533-10

20101862

59 petitioner's attorney any United States or foreign passport
60 issued in the child's name, including a passport issued in the
61 name of both the parent and the child; and

62 3. The respondent not apply on behalf of the child for a
63 new or replacement passport or visa; or

64 (e) Require that party to post bond or other security in an
65 amount sufficient to serve as a financial deterrent to
66 abduction, the proceeds of which may be used to pay for the
67 reasonable expenses of recovery of the child, including
68 reasonable attorney's fees and costs, if the child is abducted.

69 (2) If the court enters a parenting plan, including a time-
70 sharing schedule, including in a modification proceeding, that
71 includes a provision entered under paragraph (1)(b) or paragraph
72 (1)(c), a certified copy of the order should be sent by the
73 parent who requested the restriction to the Passport Services
74 Office of the United States Department of State requesting that
75 they not issue a passport to the child without their signature
76 or further court order.

77 (3) If the court enters an order under paragraph (1)(a) or
78 paragraph (1)(b) to prevent the removal of the child from this
79 state or country, the order may include one or more of the
80 following:

81 (a) An imposition of travel restrictions that require that
82 a party traveling with the child outside a designated geographic
83 area provide the other party with the following:

84 1. The travel itinerary of the child.

85 2. A list of physical addresses and telephone numbers at
86 which the child can be reached at specified times.

87 3. Copies of all travel documents.

31-01533-10

20101862__

88 (b) A prohibition of the respondent directly or indirectly:

89 1. Removing the child from this state or country or another
90 specified geographic area without permission of the court or the
91 petitioner's written consent;

92 2. Removing or retaining the child in violation of a child
93 custody determination;

94 3. Removing the child from school or a child care or
95 similar facility; or

96 4. Approaching the child at any location other than a site
97 designated for supervised visitation.

98 (c) A requirement that a party register the order in
99 another state as a prerequisite to allowing the child to travel
100 to that state.

101 (d) As a prerequisite to exercising custody or visitation,
102 a requirement that the respondent provide the following:

103 1. An authenticated copy of the order detailing passport
104 and travel restrictions for the child to the Office of
105 Children's Issues within the Bureau of Consular Affairs of the
106 United States Department of State and the relevant foreign
107 consulate or embassy.

108 2. Proof to the court that the respondent has provided the
109 information in subparagraph 1.

110 3. An acknowledgment to the court in a record from the
111 relevant foreign consulate or embassy that no passport
112 application has been made, or passport issued, on behalf of the
113 child.

114 4. Proof to the petitioner and court of registration with
115 the United States embassy or other United States diplomatic
116 presence in the destination country and with the destination

31-01533-10

20101862__

117 country's central authority for the Hague Convention on the
118 Civil Aspects of International Child Abduction, if that
119 convention is in effect between this country and the destination
120 country, unless one of the parties objects.

121 5. A written waiver under the Privacy Act, 5 U.S.C. s.
122 552a, as amended, with respect to any document, application, or
123 other information pertaining to the child or the respondent
124 authorizing its disclosure to the court and the petitioner.

125 6. A written waiver with respect to any document,
126 application, or other information pertaining to the child or the
127 respondent in records held by the United States Bureau of
128 Citizenship and Immigration Services authorizing its disclosure
129 to the court and the petitioner.

130 7. Upon the court's request, a requirement that the
131 respondent obtain an order from the relevant foreign country
132 containing terms identical to the child custody determination
133 issued in this country.

134 8. Upon the court's request, a requirement that the
135 respondent be entered in the Prevent Departure Program of the
136 United States Department of State or a similar federal program
137 designed to prevent unauthorized departures to foreign
138 countries.

139 (e) The court may impose conditions on the exercise of
140 custody or visitation that limit visitation or require that
141 visitation with the child by the respondent be supervised until
142 the court finds that supervision is no longer necessary and
143 orders the respondent to pay the costs of supervision.

144 (4) ~~(3)~~ In assessing the need for a bond or other security,
145 the court may consider any reasonable factor bearing upon the

31-01533-10

20101862

146 risk that a party may violate a parenting plan by removing a
147 child from this state or country or by concealing the
148 whereabouts of a child, including but not limited to whether:

149 (a) A court has previously found that a party previously
150 removed a child from Florida or another state in violation of a
151 parenting plan, or whether a court had found that a party has
152 threatened to take a child out of Florida or another state in
153 violation of a parenting plan;

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

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

159 (d) The party has engaged in activities that suggest plans
160 to leave Florida, such as quitting employment; sale of a
161 residence or termination of a lease on a residence, without
162 efforts to acquire an alternative residence in the state;
163 closing bank accounts or otherwise liquidating assets; ~~or~~
164 applying for a passport or visa or obtaining travel documents
165 for the respondent, a family member, or the child;

166 (e) The party has sought to obtain the child's birth
167 certificate or school or medical records;

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

174 (g) ~~(f)~~ The party has a criminal record; ~~or~~

31-01533-10

20101862

175 (h) The party is likely to take the child to a country
176 that:

177 1. Is not a party to the Hague Convention on the Civil
178 Aspects of International Child Abduction and does not provide
179 for the extradition of an abducting parent or for the return of
180 an abducted child;

181 2. Is a party to the Hague Convention on the Civil Aspects
182 of International Child Abduction, but:

183 a. The Hague Convention on the Civil Aspects of
184 International Child Abduction is not in force between this
185 country and that country;

186 b. Is noncompliant or demonstrating patterns of
187 noncompliance according to the most recent compliance report
188 issued by the United States Department of State; or

189 c. Lacks legal mechanisms for immediately and effectively
190 enforcing a return order under the Hague Convention on the Civil
191 Aspects of International Child Abduction;

192 3. Poses a risk that the child's physical or emotional
193 health or safety would be endangered in the country because of
194 specific circumstances relating to the child or because of human
195 rights violations committed against children;

196 4. Has laws or practices that would:

197 a. Enable the respondent, without due cause, to prevent the
198 petitioner from contacting the child;

199 b. Restrict the petitioner from freely traveling to or
200 exiting from the country because of the petitioner's gender,
201 nationality, marital status, or religion; or

202 c. Restrict the child's ability legally to leave the
203 country after the child reaches the age of majority because of a

31-01533-10

20101862

204 child's gender, nationality, or religion;

205 5. Is included by the United States Department of State on
206 a current list of state sponsors of terrorism;

207 6. Does not have an official United States diplomatic
208 presence in the country; or

209 7. Is engaged in active military action or war, including a
210 civil war, to which the child may be exposed;

211 (i) The party is undergoing a change in immigration or
212 citizenship status that would adversely affect the respondent's
213 ability to remain in this country legally;

214 (j) The party has had an application for United States
215 citizenship denied;

216 (k) The party has forged or presented misleading or false
217 evidence on government forms or supporting documents to obtain
218 or attempt to obtain a passport, a visa, travel documents, a
219 social security card, a driver's license, or other government-
220 issued identification card or has made a misrepresentation to
221 the United States government;

222 (l) The party has used multiple names to attempt to mislead
223 or defraud;

224 (m) The party is a delusional paranoiac;

225 (n) The party is severely sociopathic; or

226 (o) The party has engaged in any other conduct the court
227 considers relevant to the risk of abduction.

228 (5)-(4) The court must consider the party's financial
229 resources prior to setting the bond amount under this section.
230 Under no circumstances may the court set a bond that is
231 unreasonable.

232 (6)-(5) Any deficiency of bond or security shall not absolve

31-01533-10

20101862

233 the violating party of responsibility to pay the full amount of
234 damages determined by the court.

235 (7)~~(6)~~ (a) Upon a material violation of any parenting plan
236 by removing a child from this state or ~~this~~ country or by
237 concealing the whereabouts of a child, the court may order the
238 bond or other security forfeited in whole or in part.

239 (b) This section, including the requirement to post a bond
240 or other security, does not apply to a parent who, in a
241 proceeding to order or modify a parenting plan or time-sharing
242 schedule, is determined by the court to be a victim of an act of
243 domestic violence or provides the court with reasonable cause to
244 believe that he or she is about to become the victim of an act
245 of domestic violence, as defined in s. 741.28. An injunction for
246 protection against domestic violence issued pursuant to s.
247 741.30 for a parent as the petitioner which is in effect at the
248 time of the court proceeding shall be one means of demonstrating
249 sufficient evidence that the parent is a victim of domestic
250 violence or is about to become the victim of an act of domestic
251 violence, as defined in s. 741.28, and shall exempt the parent
252 from this section, including the requirement to post a bond or
253 other security. A parent who is determined by the court to be
254 exempt from the requirements of this section must meet the
255 requirements of s. 787.03(6) if an offense of interference with
256 the parenting plan or time-sharing schedule is committed.

257 (8)~~(7)~~ (a) Upon an order of forfeiture, the proceeds of any
258 bond or other security posted pursuant to this subsection may
259 only be used to:

260 1. Reimburse the nonviolating party for actual costs or
261 damages incurred in upholding the court's parenting plan.

31-01533-10

20101862__

262 2. Locate and return the child to the residence as set
263 forth in the parenting plan.

264 3. Reimburse reasonable fees and costs as determined by the
265 court.

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

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

280 (10) A violation may subject the party committing the
281 violation to civil or criminal penalties or a federal or state
282 warrant under federal or state laws, including the International
283 Parental Kidnapping Crime Act, and may subject the violating
284 parent to apprehension by a law enforcement officer.

285 Section 3. This act shall take effect July 1, 2010.