

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 787

Child Abduction Prevention

**SPONSOR(S):** Policy Council, Public Safety & Domestic Security Policy Committee, Rouson and others

**TIED BILLS:**

**IDEN./SIM. BILLS:** CS/SB 1862

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	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	Public Safety & Domestic Security Policy Committee	10 Y, 0 N, As CS	Krol	Cunningham
2)	Policy Council	13 Y, 0 N, As CS	Varn	Ciccone
3)	Criminal & Civil Justice Policy Council	11 Y, 0 N	Krol	Havlicak
4)				
5)				

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### SUMMARY ANALYSIS

The bill provides additional risk factors for a judge to consider when deciding whether or not a child is at risk of parental abduction. The bill also clearly outlines and makes additions to preventative measures that a judge may order if the judge finds credible evidence that a child is at risk of abduction. Finally, the bill provides that violation of the parenting plan may subject the party to civil or criminal penalties or a federal or state warrant under federal or state law.

The bill does not appear to have a fiscal impact.

The bill provides an effective date of January 1, 2011.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Child Abduction**

Approximately 49 percent of child abductions are committed by a parent or relative.<sup>1</sup> When a child is abducted, it is often extremely difficult, time-consuming, and expensive to recover the child.<sup>2</sup> If the child has been taken overseas, the situation becomes worse and the child may be almost impossible to locate or recover.<sup>3</sup>

##### **Uniform Child Abduction Prevention Act**

The Uniform Child Abduction Prevention Act (UCAPA) was promulgated by the National Conference of Commissioners on Uniform States Laws (NCCUSL) in 2006.<sup>4</sup> The NCCUSL recommends laws for adoption by states in areas where it believes the laws should be uniform. The UCAPA's stated purpose is to provide a mechanism for a court to impose child abduction prevention measures at any time, both before and after the court has entered a custody decree, thereby deterring and preventing domestic and international abduction.<sup>5</sup> The abduction can be committed by a parent, persons acting on behalf of a parent, or others.

The UCAPA was created to complement and strengthen existing law, such as the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)<sup>6</sup>, the federal Parental Kidnapping Prevention Act (PKPA), and with regard to international child abduction, the Hague Convention on the Civil Aspects of

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<sup>1</sup> Karen A. Bilich, Parenting, *Child Abduction Facts*, <http://www.parents.com/kids/safety/stranger-safety/child-abduction-facts/>, (Last accessed March 17, 2010).

<sup>2</sup> Merle Weiner, *Uniform Child Abduction Prevention Act: Understanding the Basics*, Summer 2009, <http://www.haguedv.org/articles/Weiner%20&%20Mitchell%20UCAPA%20Synergy%202009.pdf>, (Last accessed March 17, 2010).

<sup>3</sup> *Ibid.*

<sup>4</sup> Illinois General Assembly, *Uniform Child Abduction Prevention Act (UCAPA)*, <http://www.ilga.gov/commission/lru/56.Abduction.pdf>, (Last accessed March 17, 2010).

<sup>5</sup> Child abduction is defined as "wrongful removal" or "wrongful retention" of an unemancipated minor. State of New Jersey Law Revision Commission, *Final Report Relating to Uniform Child Abduction Prevention Act*, [www.lawrev.state.nj.us/ucapa/ucapaFR122208.doc](http://www.lawrev.state.nj.us/ucapa/ucapaFR122208.doc), (Last accessed March 17, 2010).

<sup>6</sup> *Op. cit.*, Illinois General Assembly. The UCCJEA is the law in 48 states. In 2002, Florida enacted the Uniform Child Custody Jurisdiction and Enforcement Act to replace the outdated Uniform Child Custody Jurisdiction Act. See ss. 61.501-61.542, F.S.

International Child Abduction (Hague Convention.)<sup>7</sup> The UCAPA is “premised on the general principle that preventing abduction is in a child’s best interests.”<sup>8</sup>

Thus, the UCAPA, “provides states with a valuable tool for deterring both domestic and international child abductions by parents and people acting on behalf of the parents.”<sup>9</sup> The UCAPA will become the law of a state only if the state enacts it.<sup>10</sup> During its initial legislative year (2007), seven states enacted the UCAPA into law.<sup>11</sup>

### **Child Abduction Prevention in Florida**

Section 61.45, F.S., provides that when imposing a parenting plan, the court will consider a variety of factors in determining whether there is a risk that the plan will be violated. The court may also impose a bond if they believe there is a risk that the plan will be violated. In a proceeding in which the court enters a parenting plan, if competent substantial evidence is presented that there is a risk one party may violate the court’s parenting plan by removing the child from the state or country or concealing the whereabouts of the child, the court may impose the following preventative measures:

- Order that a parent may not remove the child from this state without the notarized written permission of both parents or further court order;
- Order that a parent may not remove the child from this country without the notarized written permission of both parents or further court order;
- Order that a parent may not take the child to a country that has not ratified or acceded to the Hague Convention unless the other parent agrees in writing that the child may be taken to the country;
- Require a parent to surrender the passport of the child; or
- Require a party to post bond or other security.

If the court enters a parenting plan that includes a provision that the party not remove the child from the country without notarized written permission of both parents or take the child to a country that has not ratified or acceded to the Hague Convention, a certified copy of the order should be sent by the parent who requested the restriction to the Passport Services Office of the U.S. Department of State requesting that the office not issue a passport to the child without the parents’ signature or further court order.

In assessing the need for a bond or other security, the court may consider any reasonable factor bearing upon the risk that a party may violate a parenting plan by removing a child from this state or country or by concealing the whereabouts of a child, including but not limited to whether:

- A court has found that a party previously removed a child from Florida or another state in violation of a parenting plan, or whether a court had found that a party has threatened to take a child out of Florida or another state in violation of a parenting plan;
- The party has strong family and community ties to Florida or to other states or countries, including whether the party or child is a citizen of another country;
- The party has strong financial reasons to remain in Florida or to relocate to another state or country;
- The party has engaged in activities that suggest plans to leave Florida, such as quitting employment; sale of a residence or termination of a lease on a residence, without efforts to acquire an alternative residence in the state; closing bank accounts or otherwise liquidating assets; or applying for a passport;

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<sup>7</sup> 81 countries have ratified the Hague Convention. *The Hague Convention on the Civil Aspects of International Child Abduction*, [http://hcch.evison.nl/index\\_en.php?act=conventions.status&cid=24#nonmem](http://hcch.evison.nl/index_en.php?act=conventions.status&cid=24#nonmem), (Last accessed March 17, 2010).

<sup>8</sup> *Ibid.*

<sup>9</sup> The National Conference of Commissioners on Uniform State Laws, *Summary: Uniform Child Abduction Prevention Act*, [http://www.nccusl.org/Update/uniformact\\_summaries/uniformacts-s-ucapa.asp](http://www.nccusl.org/Update/uniformact_summaries/uniformacts-s-ucapa.asp), (Last accessed March 17, 2010).

<sup>10</sup> *Op. cit.*, Weiner.

<sup>11</sup> *Op. cit.*, Illinois General Assembly. The seven states include: Colorado; Kansas; Louisiana; Nebraska; Nevada; South Dakota; and Utah.

- Either party has had a history of domestic violence as either a victim or perpetrator, child abuse or child neglect evidenced by criminal history, including but not limited to, arrest, an injunction for protection against domestic violence issued after notice and hearing, medical records, affidavits, or any other relevant information; or
- The party has a criminal record.

Section 61.45, F.S., also makes provisions for the determination and forfeiture of the bond or security. It provides an exception to the bond requirements for a parent determined by the court to be a victim or potential victim of domestic violence. The statute also provides for allocation of the bond proceeds upon entry of a forfeiture order.

### **Effect of Proposed Changes**

The bill adds additional risk factors for a judge to consider when deciding whether or not a child is at risk of parental abduction. The bill also clearly outlines and makes additions to preventative measures that a judge may order if the judge finds credible evidence that a child is at risk of abduction. The bill also provides that a violation of the parenting plan may subject the party to civil or criminal penalties or a federal or state warrant under federal or state law. The bill renames s. 61.45, F.S., to the "Child Abduction Prevention Act."

### **New Preventative Measures**

Currently, preventative measures may be ordered by a judge if one of the parties presents competent substantial evidence there is a risk of abduction or if both parties agree there is a risk of abduction. The bill would also permit a judge to order preventative measures upon the motion of another individual or entity having a right under the laws of Florida. Additionally, the bill would allow the court to order preventative measures, if the court finds evidence that establishes credible risk of removal of the child.

In addition to the existing preventative measure for a parent to surrender the child's passport, the court may also require that:

- The petitioner place the child's name in the Children's Passport Issuance Alert Program of the U.S. Department of State;<sup>12</sup>
- The respondent surrender to the court or the petitioner's attorney any United States or foreign passport issued in the child's name, including a passport issued in the name of both the parent and child; and
- The respondent may not apply on behalf of the child for a new or replacement passport or visa.

As noted above, the court may require the party to post bond or other security in an amount sufficient to serve as a financial deterrent to abduction. The bill specifies that the bond may be used to pay for the reasonable expenses of recovery of the child, including reasonable attorney's fees and costs, if the child is abducted.

In addition to the existing preventative measure for a court to order a party not to remove the child from the state or country without notarized written permission, a court may order:

- An imposition of travel restrictions that require that a party traveling with the child outside a designated geographic area provide the other party with the travel itinerary of the child; a list of physical addresses and telephone numbers at which the child can be reached at specified times; and copies of all travel documents;

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<sup>12</sup> The Children's Passport Issuance Alert Program of the U.S. Department of State allows a parent to register his or her U.S. citizen children under the age of 18 in the Department of State's Passport Lookout System. The parent or parents receive an alert from the Department of State if an application is submitted for a child that is registered in the program. The passport lookout system gives all U.S. passport agencies as well as U.S. embassies and consulates abroad an alert on a child's name if a parent or guardian registers an objection to passport issuance for his or her child. U.S. Passport Service Guide, *The Children's Passport Issuance Alert Program*, available at: [http://travel.state.gov/family/abduction/resources/resources\\_554.html](http://travel.state.gov/family/abduction/resources/resources_554.html). (Last accessed March 17, 2010).

- A prohibition of the respondent from, directly or indirectly:
  - Removing the child from the state, country or specified region without the court's permission or the petitioner's written consent;
  - Removing or retaining a child in violation of a child custody determination;
  - Removing the child from school, child care or similar facility; or
  - Approaching the child at any location other than a site designated for supervised visitation.
- A requirement that a party register the order in another state as a prerequisite to allowing the child to travel to that state;
- As a prerequisite to exercising custody or visitation, a court may order a requirement that the respondent provide the following:
  - Authenticated court order detailing passport and travel restrictions for the child to the Office of Children's Issues within the Bureau of Consular Affairs of the U.S. Department of State and relevant foreign consulate or embassy;
  - Proof to the court that the respondent has provided the information as noted above;
  - An acknowledgement to the court in a record from the relevant foreign consulate or embassy that no passport application has been made or issued on behalf of the child;
  - Proof to the petitioner and court of registration with the U.S. embassy or other U.S. diplomatic presence in the destination country and with the destination country's central authority for the Hague Convention, if that convention is in effect between this country and the destination country, unless one of the parties objects;
  - A written waiver under the Privacy Act, 5 U.S.C. s. 552(a), as amended, with respect to any document, application, or other information pertaining to the child or party authorizing its disclosure to the court;
  - A written waiver with respect to any document application, or other information pertaining to the child or respondent in records held by the U.S. Bureau of Citizenship and Immigration Services authorizing its disclosure to the court;
  - Upon the court's request, a requirement that the party obtain an order from the relevant foreign country, containing terms identical to the child custody determination issued in this country; or
  - Upon the court's request, a requirement that the child be entered into the Prevent Departure Program of the U.S. Department of State<sup>13</sup> or a similar federal program designed to prevent unauthorized departure into foreign country.
- The court may impose conditions on the exercise of custody or visitation that limit visitation or require that visitation with the child by the respondent be supervised until the court finds that supervision is no longer necessary and orders the respondent to pay the costs of supervision.

### **New Risk Factors**

The bill imposes additional risk factors that a party has engaged in activities that suggest that he or she may violate the parenting plan by abducting the child. The new factors include whether:

- The party has engaged in activities that suggest plans to leave Florida such as applying for a passport or visa or obtaining travel documents for the respondent or the child;
- The party is likely to take the child to a country that:
  - Is not a party to the Hague Convention and does not provide for the extradition of an abducting parent or for the return of an abducted child;
  - Is a party to the Hague Convention, but:
    - The Hague Convention is not in force between this country and that country;
    - Is noncompliant or demonstrating patterns of noncompliance according to the most recent compliance report issued by the U.S. Department of State; or
    - Lacks legal mechanisms for immediately and effectively enforcing a return order under the Hague Convention;

<sup>13</sup> The Department of Homeland Security's Prevent Departure Program prevents non-U.S. citizens from leaving the U.S. The program only applies to aliens. It is not available to stop U.S. citizens or dual U.S./foreign citizens from leaving the country. Office of Juvenile Justice and Delinquency Prevention. *A Family Resource Guide on International Parental Kidnapping*.

<http://www.ncjrs.gov/pdffiles1/ojdp/215476.pdf>. (Last accessed March 17, 2010).

- Poses a risk that the child's physical or emotional health or safety would be endangered in the country because of specific circumstances relating to the child or because of human rights violations committed against children;
- Has laws or practices that would:
  - Enable the respondent, without due cause, to prevent the petitioner from contacting the child;
  - Restrict the petitioner from freely traveling to or exiting from the country because of the petitioner's gender, nationality, marital status, or religion; or
  - Restrict the child's ability legally to leave the country after the child reaches the age of majority because of a child's gender, nationality, or religion;
- Is included by the U.S. Department of State on a current list of state sponsors of terrorism;
- Does not have an official U.S. diplomatic presence in the country; or
- Is engaged in active military action or war, including a civil war, to which the child may be exposed.
- The party is undergoing a change in immigration or citizenship status that would adversely affect the respondent's ability to remain in this country legally;
- The party has had an application for U.S. citizenship denied;
- The party has forged or presented misleading or false evidence on government forms or supporting documents to obtain or attempt to obtain a passport, a visa, or travel documents, a social security card, a driver's license, or other government-issued identification card or has made a misrepresentation to the U.S. government;
- The party has used multiple names to attempt to mislead or defraud;
- The party has been diagnosed with a mental health disorder the court considers relevant to the risk of abduction; or
- The party is engaged in any other conduct the court considers relevant to the risk of abduction.

A violation of the court-ordered parenting plan may subject the party committing the violation to civil or criminal penalties or a federal or state warrant under federal or state laws, including the International Parental Kidnapping Crime Act,<sup>14</sup> and may subject the violating parent to apprehension by a law enforcement officer.

The bill provides an effective date of January 1, 2011.

## B. SECTION DIRECTORY:

Section 1. Names the act as the "Child Abduction Prevention Act."

Section 2. Amends s. 61.45, F.S., relating to court-ordered parenting plan; risk of violation; bond.

Section 3. Provides an effective date of January 1, 2011.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

See "Fiscal Comments."

<sup>14</sup> The International Parental Kidnapping Crime Act (IPKCA) of 1993 provides that a criminal arrest warrant can be issued for a parent who takes a juvenile under 16 outside of the U.S. without the other custodial parent's permission. Federal Bureau of Investigation, *Crimes Against Children*, <http://www.fbi.gov/hq/cid/cac/family.htm>, (Last accessed March 17, 2010).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This bill provides that law enforcement officers may be required to take a child into custody in certain situations, which could cause an increase in workload. However, to the extent that this bill could prevent the abduction of a child, courts and law enforcement officers are likely to see a reduction in litigation and enforcement costs respectively.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to spend funds or take any action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

This bill allows a court to evaluate certain risk factors, and, if it decides that a credible risk exists that a child may be abducted, the court may enter an order containing provisions and measures meant to prevent abduction. For example, the court may impose travel restrictions, such as prohibiting an individual from removing the child from the state, country, or other geographic area.

The right to travel has been found to be a basic and fundamental right recognized by the United States Constitution through the privileges and immunities clause, the due process clause, the equal protection clause, the commerce clause, and the First Amendment.<sup>15</sup> Typically, when a fundamental right is involved, the government must show a compelling state interest for its action and that it has used the least intrusive means to further that interest.<sup>16</sup> Courts have generally found that a person's constitutional right to travel may be restricted when that person is the custodial parent of a child. One court stated:

[w]hile we recognize that citizens of this nation ordinarily have the constitutional right to travel from one state to another and to take up residence in the state of one's choice, we also recognize a

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<sup>15</sup> 16A C.J.S. *Constitutional Law* s. 690.

<sup>16</sup> See *A.W. v. Dep't of Children and Families*, 969 So. 2d 496, 504 (Fla. 1st DCA 2007) (citing *North Fla. Women's Health and Counseling Servs., Inc. v. State*, 866 So. 2d 612, 625 n. 16 (Fla. 2003)).

legitimate state interest in restricting the residence of a custodial parent.<sup>17</sup>

A court may impose travel restrictions on a custodial parent because “[t]he best interest of the child standard is a compelling state interest that can restrict the constitutional right of a custodial parent to travel, and is the most appropriate way to fairly balance parents’ competing interests, when a custodial parent seeks to relocate with a child.”<sup>18</sup>

A court may not infringe on a constitutional right without a legitimate state interest, and it must do so in the least restrictive means. The bill allows a court to restrict a party’s right to travel with the person’s child based on a possibility that there is a risk that the respondent may abduct the child. This is determined by examining certain factors enumerated in statute. However, one factor that a court may consider is whether the respondent is obtaining travel documents for himself or herself or the child. This in and of itself, is not illegal or suspect, yet a court may consider it when deciding whether to restrict the respondent’s constitutional rights. Additionally, by including the fact that the respondent obtained travel documents for himself or herself as a risk factor, it may preclude the respondent from traveling because of the fear that he or she will be considered a “risk” for abducting the child. This could also be considered an infringement on a person’s right to travel. To the extent a court finds that the state has a legitimate interest in protecting a child from abduction, the bill may pass a constitutional challenge. However, if a court finds that the bill is not using the least restrictive means to infringe on the respondent’s constitutional right to travel, the bill may be subject to a constitutional challenge.

The bill also permits a court to require a written waiver by the respondent of his or her privacy rights with respect to “any document, application, or other information pertaining to the child or the respondent.” Florida has an explicit constitutional right to privacy under article I, section 23, of the Florida Constitution. In right of privacy cases where a reasonable expectation of privacy exists, the Florida Supreme Court has applied the compelling state interest standard of review.<sup>19</sup> The bill’s provision appears to be broadly written and may raise constitutional concerns.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

Several states have considered adopting the UCAPA, but declined to do so. One of the reasons some states did not adopt the UCAPA is that they believe that the measures to prevent abduction took away certain fundamental liberties, such as the right to travel.<sup>20</sup> Some states have rectified some of the problems by modifying the UCAPA to apply only to international child abductions.<sup>21</sup>

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On March 22, 2010, the Public Safety & Domestic Security Policy Committee adopted an amendment to the bill. The amendment:

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<sup>17</sup> Child Custody Prac. & Proc. s. 17:27 (quoting *Carlson v. Carlson*, 661 P.2d 833 (Kan. Ct. App. 1983)); *but see* Arthur B. LaFrance, *Child Custody and Relocation: A Constitutional Perspective*, 34 U. LOUISVILLE J. FAM. L. 1, 68-81 (1995-96) (providing an argument for why it is against a custodial parent’s constitutional right to travel to place relocation restrictions in a custody order).

<sup>18</sup> 16B Am. Jur. 2d *Constitutional Law* s. 665.

<sup>19</sup> *Winfield v. Division of Pari-Mutuel Wagering*, 477 So. 2d 544 (Fla. 1985).

<sup>20</sup> *Op. cit.*, State of New Jersey Law Revision Commission.

<sup>21</sup> *Ibid.* Louisiana is one state that has adopted a version of UCAPA that applies exclusively to international abductions.



- Removes “delusional paranoiac” and “severely sociopathic” from the risk factors the court can consider; and
- Adds to the list of risk factors: “The party has been diagnosed with a mental health disorder the court considers relevant to the risk of abduction.”

The bill was reported favorably as a Committee Substitute.

On April 9, 2010, the Policy Council adopted a strike-all amendment to the Committee Substitute. The amendment made the following changes:

- Changed the effective date from July 1, 2010 to January 1, 2011;
- Removed making of travel plans for a family member and obtaining birth certificate or medical records as risk factors; and
- Made technical changes.

The bill was reported favorably as a Council Substitute for the Committee Substitute. This analysis reflects the Council Substitute for the Committee Substitute.