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

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. This act may be cited as the "Child Abduction
25 Prevention Act."

26 Section 2. Section 61.45, Florida Statutes, is amended to
27 read:

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28 | 61.45 Court-ordered parenting plan; risk of violation;
 29 | bond.—

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

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

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

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

51 | (d) Require a parent to surrender the passport of the
 52 | child or require that:

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

56 2. The respondent surrender to the court or the
 57 petitioner's attorney any United States or foreign passport
 58 issued in the child's name, including a passport issued in the
 59 name of both the parent and the child; and

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

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

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

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

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

82 1. The travel itinerary of the child.

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

85 3. Copies of all travel documents.

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

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

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

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

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

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

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

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

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

109 3. An acknowledgment to the court in a record from the
 110 relevant foreign consulate or embassy that no passport

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111 application has been made, or passport issued, on behalf of the
112 child.

113 4. Proof to the petitioner and court of registration with
114 the United States embassy or other United States diplomatic
115 presence in the destination country and with the destination
116 country's central authority for the Hague Convention on the
117 Civil Aspects of International Child Abduction, if that
118 convention is in effect between this country and the destination
119 country, unless one of the parties objects.

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

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

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

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

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

143 ~~(4)(3)~~ In assessing the need for a bond or other security,
 144 the court may consider any reasonable factor bearing upon the
 145 risk that a party may violate a parenting plan by removing a
 146 child from this state or country or by concealing the
 147 whereabouts of a child, including but not limited to whether:

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

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

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

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

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

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

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

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

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

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

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

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

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

191 3. Poses a risk that the child's physical or emotional
192 health or safety would be endangered in the country because of

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193 specific circumstances relating to the child or because of human
194 rights violations committed against children;

195 4. Has laws or practices that would:

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

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

201 c. Restrict the child's ability legally to leave the
202 country after the child reaches the age of majority because of a
203 child's gender, nationality, or religion;

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

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

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

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

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

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

221 (l) The party has used multiple names to attempt to
 222 mislead or defraud;
 223 (m) The party is a delusional paranoiac;
 224 (n) The party is severely sociopathic; or
 225 (o) The party has engaged in any other conduct the court
 226 considers relevant to the risk of abduction.

227 (5)~~(4)~~ The court must consider the party's financial
 228 resources prior to setting the bond amount under this section.
 229 Under no circumstances may the court set a bond that is
 230 unreasonable.

231 (6)~~(5)~~ Any deficiency of bond or security shall not
 232 absolve the violating party of responsibility to pay the full
 233 amount of damages determined by the court.

234 (7)~~(6)~~(a) Upon a material violation of any parenting plan
 235 by removing a child from this state or ~~this~~ country or by
 236 concealing the whereabouts of a child, the court may order the
 237 bond or other security forfeited in whole or in part.

238 (b) This section, including the requirement to post a bond
 239 or other security, does not apply to a parent who, in a
 240 proceeding to order or modify a parenting plan or time-sharing
 241 schedule, is determined by the court to be a victim of an act of
 242 domestic violence or provides the court with reasonable cause to
 243 believe that he or she is about to become the victim of an act
 244 of domestic violence, as defined in s. 741.28. An injunction for
 245 protection against domestic violence issued pursuant to s.
 246 741.30 for a parent as the petitioner which is in effect at the
 247 time of the court proceeding shall be one means of demonstrating
 248 sufficient evidence that the parent is a victim of domestic

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249 | violence or is about to become the victim of an act of domestic
250 | violence, as defined in s. 741.28, and shall exempt the parent
251 | from this section, including the requirement to post a bond or
252 | other security. A parent who is determined by the court to be
253 | exempt from the requirements of this section must meet the
254 | requirements of s. 787.03(6) if an offense of interference with
255 | the parenting plan or time-sharing schedule is committed.

256 | (8)~~(7)~~(a) Upon an order of forfeiture, the proceeds of any
257 | bond or other security posted pursuant to this subsection may
258 | only be used to:

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

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

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

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

271 | (9)~~(8)~~ At any time after the forfeiture of the bond or
272 | other security, the party who posted the bond or other security,
273 | or the court on its own motion may request that the party
274 | provide documentation substantiating that the proceeds received
275 | as a result of the forfeiture have been used solely in
276 | accordance with this subsection. Any party using such proceeds

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277 | for purposes not in accordance with this section may be found in
278 | contempt of court.

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

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