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CS/CS/HB 787

2010 Legislature

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:

28 61.45 Court-ordered parenting plan; risk of violation;

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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

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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 a 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 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.

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

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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.

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.

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

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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 or the child;

165 (e) Either party has had a history of domestic violence as
166 either a victim or perpetrator, child abuse or child neglect
167 evidenced by criminal history, including but not limited to,
168 arrest, an injunction for protection against domestic violence

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169 issued after notice and hearing under s. 741.30, medical
 170 records, affidavits, or any other relevant information; ~~or~~
 171 (f) The party has a criminal record;
 172 (g) The party is likely to take the child to a country
 173 that:
 174 1. Is not a party to the Hague Convention on the Civil
 175 Aspects of International Child Abduction and does not provide
 176 for the extradition of an abducting parent or for the return of
 177 an abducted child;
 178 2. Is a party to the Hague Convention on the Civil Aspects
 179 of International Child Abduction, but:
 180 a. The Hague Convention on the Civil Aspects of
 181 International Child Abduction is not in force between this
 182 country and that country;
 183 b. Is noncompliant or demonstrating patterns of
 184 noncompliance according to the most recent compliance report
 185 issued by the United States Department of State; or
 186 c. Lacks legal mechanisms for immediately and effectively
 187 enforcing a return order under the Hague Convention on the Civil
 188 Aspects of International Child Abduction;
 189 3. Poses a risk that the child's physical or emotional
 190 health or safety would be endangered in the country because of
 191 specific circumstances relating to the child or because of human
 192 rights violations committed against children;
 193 4. Has laws or practices that would:
 194 a. Enable the respondent, without due cause, to prevent
 195 the petitioner from contacting the child;
 196 b. Restrict the petitioner from freely traveling to or

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197 exiting from the country because of the petitioner's gender,
 198 nationality, marital status, or religion; or
 199 c. Restrict the child's ability to legally leave the
 200 country after the child reaches the age of majority because of a
 201 child's gender, nationality, or religion;
 202 5. Is included by the United States Department of State on
 203 a current list of state sponsors of terrorism;
 204 6. Does not have an official United States diplomatic
 205 presence in the country; or
 206 7. Is engaged in active military action or war, including
 207 a civil war, to which the child may be exposed;
 208 (h) The party is undergoing a change in immigration or
 209 citizenship status that would adversely affect the respondent's
 210 ability to remain in this country legally;
 211 (i) The party has had an application for United States
 212 citizenship denied;
 213 (j) The party has forged or presented misleading or false
 214 evidence on government forms or supporting documents to obtain
 215 or attempt to obtain a passport, a visa, travel documents, a
 216 social security card, a driver's license, or other government-
 217 issued identification card or has made a misrepresentation to
 218 the United States government;
 219 (k) The party has used multiple names to attempt to
 220 mislead or defraud;
 221 (l) The party has been diagnosed with a mental health
 222 disorder that the court considers relevant to the risk of
 223 abduction; or
 224 (m) The party has engaged in any other conduct that the

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225 court considers relevant to the risk of abduction.

226 (5)~~(4)~~ The court must consider the party's financial
227 resources prior to setting the bond amount under this section.
228 Under no circumstances may the court set a bond that is
229 unreasonable.

230 (6)~~(5)~~ Any deficiency of bond or security does ~~shall~~ not
231 absolve the violating party of responsibility to pay the full
232 amount of damages determined by the court.

233 (7)~~(6)~~(a) Upon a material violation of any parenting plan
234 by removing a child from this state or ~~this~~ country or by
235 concealing the whereabouts of a child, the court may order the
236 bond or other security forfeited in whole or in part.

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

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253 requirements of s. 787.03(6) if an offense of interference with
254 the parenting plan or time-sharing schedule is committed.

255 ~~(8)-(7)~~ (a) Upon an order of forfeiture, the proceeds of any
256 bond or other security posted pursuant to this subsection may
257 only be used to:

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

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

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

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

270 ~~(9)-(8)~~ At any time after the forfeiture of the bond or
271 other security, the party who posted the bond or other security,
272 or the court on its own motion may request that the party
273 provide documentation substantiating that the proceeds received
274 as a result of the forfeiture have been used solely in
275 accordance with this subsection. Any party using such proceeds
276 for purposes not in accordance with this section may be found in
277 contempt of court.

278 (10) A violation of this section may subject the party
279 committing the violation to civil or criminal penalties or a
280 federal or state warrant under federal or state laws, including

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281 | the International Parental Kidnapping Crime Act, and may subject
282 | the violating parent to apprehension by a law enforcement
283 | officer.

284 | Section 3. This act shall take effect January 1, 2011.