

FLORIDA HOUSE OF REPRESENTATIVES

BILL ANALYSIS

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BILL #: [CS/HB 1385](#)

TITLE: Civil Remedy for Parental Abduction

SPONSOR(S): Aristide, Rayner

COMPANION BILL: None

LINKED BILLS: None

RELATED BILLS: [SB 1506](#) (Davis)

Committee References

[Civil Justice & Claims](#)

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SUMMARY

Effect of the Bill:

CS/HB 1385 creates a civil cause of action for the parental abduction of a minor child. Under the bill, a parent or legal guardian may bring a civil action against the other parent or legal guardian who has, without legal authority, knowingly or recklessly taken or enticed the minor child from the custody of his or her parent or guardian. The civil cause of action is available in certain egregious circumstances wherein the offending parent's actions meet the requirements of criminal interference with custody (a third-degree felony) and the offending parent has kept the minor child from the non-offending parent for more than 30 days.

The bill permits the court to award actual damages or \$10,000, whichever is greater, punitive damages, and reasonable attorney fees and costs. Further, the bill requires the civil action be heard by the presiding family law division which oversees the underlying family law matter whenever possible. The bill outlines affirmative defenses and provides for the award of attorney fees to the defendant if the court finds the action was brought without substantial fact or legal merit.

The bill has an effective date of July 1, 2025.

Fiscal or Economic Impact:

The bill may have a positive fiscal impact on a parent or legal guardian whose child has been abducted by the other parent without sufficient redress available under current law. The bill may have an indeterminate impact on state courts due to an increase in workload associated with the new civil remedy created by the bill.

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ANALYSIS

EFFECT OF THE BILL:

CS/HB 1385 creates [s. 772.11, F.S.](#), to create a civil remedy for [parental abduction](#). The bill allows a parent or legal guardian who is aggrieved by a violation of the criminal offense of "[interference with custody](#)" as established under [s. 787.03, F.S.](#), to file a civil action against the offending parent or legal guardian. Under the bill, when there is a [family law](#) court order or judgment governing the [timesharing schedule](#) of a minor child and another parent or legal guardian fails to follow the order, the non-offending parent may bring a [civil action](#) against the offending parent in certain situations. (Section [1](#)).

To be eligible for such a civil remedy, the offending parent must, without legal authority, knowingly or recklessly take or entice, or aid, abet, hire, or otherwise procure another to take or entice, any minor from the custody of the minor's other parent or guardian. The violation must be significant; the remedy created in the bill is only available when the offending parent or legal guardian has unlawfully kept the minor child for more than thirty days. Criminal charges need not be filed in order to be eligible for this civil remedy; however, the offending parent's actions must be such that would otherwise meet the criminal requirements established in [s. 787.03, F.S.](#) (Section [1](#)).

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The bill creates an additional remedy which can be used in conjunction with existing remedies for violations of a parenting plan or timesharing schedule under [ch. 61, F.S.](#) Under the bill, the aggrieved parent (also referred to as the “non-offending parent”) or legal guardian, that is, the parent or guardian who has been unlawfully prevented from exercising his or her timesharing with the minor child, may bring a civil cause of action for [actual damages](#) or \$10,000, whichever amount is greater. Further, the bill allows the court to award reasonable [attorney fees](#) and costs associated with bringing such an action. The burden of proof for this civil remedy is by the greater weight of the evidence. (Section [1](#)).

Additionally, the bill permits the court to award [punitive damages](#) against the offending parent in particularly grievous situations. Such punitive damages must be assessed pursuant to the provisions established in [ch. 768, F.S.](#) (Section [1](#)).

A defendant is entitled to reasonable attorney fees and costs if the court determines that civil action raised a claim that was without substantial fact or legal support. (Section [1](#)).

A defendant in a civil action for parental kidnapping may raise any of the following affirmative defenses in response to such a civil suit:

- The defendant had reasonable cause to believe that his or her action was necessary to preserve the minor child from danger to his or her welfare.
- The defendant was the victim of an act of domestic violence or had reasonable cause to believe that he or she was about to become the victim of an act of domestic violence as defined in [s. 741.28, F.S.](#), and the defendant had reasonable cause to believe that the action was necessary in order for the defendant to escape from, or protect himself or herself from, the domestic violence, or to preserve the minor child from exposure to the domestic violence.
- The minor child was taken away at his or her own instigation without enticement and without purpose to commit a criminal offense with or against the minor child, and the defendant establishes that it was reasonable to rely on the instigating acts of the minor child.
- The defendant’s action was pursuant to a valid court order. (Section [1](#)).

The civil action filed under the provisions of the bill must be assigned to the family law division judge previously, or simultaneously, exercising jurisdiction over the underlying family law matter, whenever possible. (Section [1](#)).

The bill designates a short title, providing that the new section in statute be called the “Parental Abduction Act.” (Section [1](#)).

The bill has an effective date of July 1, 2025. (Section [2](#)).

FISCAL OR ECONOMIC IMPACT:

STATE GOVERNMENT:

The bill may have an indeterminate fiscal impact on the circuit civil court system due to an increase in workload associated with the creation of a new civil remedy. However, the remedy is narrowly tailored to prevent frivolous filings and applies to more egregious violations.

PRIVATE SECTOR:

The bill may have a positive fiscal impact on a parent or guardian whose child has been abducted by the other parent without sufficient redress available under current law.

RELEVANT INFORMATION

SUBJECT OVERVIEW:

[Parental and Family Abduction](#)

Generally, three primary characteristics distinguish family abduction from a typical custody battle: concealment, intent to prevent contact, and flight.¹ Although many child custody matters involve a parent who may make it difficult for the other parent to have access to his or her child, in family abduction matters the abducting parent or family member generally conceals the whereabouts of the child from the other parent or family member.² Further, in family abduction matters, the abducting person may intend to prevent contact between the child and anyone involved with the parent searching for the child for an indefinite period of time.³ Commonly, the abducting family member will transport the child out of state or out of the country to make recovery of the child more difficult, and in some cases, impossible.⁴

The implications and effects of family abduction on a child can be severe and life-altering. Some children may be abducted by a parent who is regularly cruel and abusive, whereas others may be taken by a family member the child does not know very well.⁵ In any case, the child is the one who suffers, as he or she is removed, in an instant, from the other parent, friends, other family members, pets, school, activities, and even personal belongings. The instantaneous loss of community can lead to lasting depression, the loss of security or stability, a compromised ability to trust oneself or others, and a fear of abandonment, among other concerns.⁶

Further, the abducted child is often deceived about the searching parent.⁷ The child may be told by the abducting parent or family member that the other parent was so dangerous or violent that they had to flee to save their lives.⁸ Additionally, the child may be told that the searching parent “did not love them,” “did not want them,” or even that the other parent died in an accident.^{9,10} All of these scenarios can have a significant impact on the child and the parent left searching for his or her child after the abduction.

The National Center for Missing and Exploited Children (“NCMEC”) estimates that approximately 200,000 of the 260,000 children abducted each year are taken by a parent or other family member.¹¹ Additionally, the NCMEC estimated that 59% of all AMBER alerts issued in 2023 were for family abduction cases.¹²

The Civil Justice System in General

The main purpose of Florida’s civil justice system is to properly and fairly redress the civil wrongs caused throughout the state, whether such wrongs be in the form of tortious conduct, breaches of contract, or other non-criminal harm for which the law provides a remedy. The civil justice system accomplishes this goal by providing a neutral court system empowered to decide the amount of monetary damages required to make each wronged person whole again. A functioning civil justice system, when it operates justly:

- Provides a fair and equitable forum to resolve disputes;
- Discourages persons from resorting to self-help methods to redress wrongs;
- Appropriately compensates legitimately harmed persons;
- Shifts losses to responsible parties;
- Provides incentives to prevent future harm; and
- Deters undesirable behavior.¹³

¹ U.S. Dep’t. of Justice, *The Crime of Family Abduction: A Child’s and Parent’s Perspective* (May 2010), 1, <https://www.ojp.gov/pdffiles1/ojdp/229933.pdf> (last visited April 7, 2025).

² *Id.* at 13.

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 17.

⁶ *Id.*

⁷ *Id.* at 22.

⁸ *Id.*

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¹⁰ *Id.*

¹¹ Child Crime Prevention & Safety Center, *Family Abduction*, <https://childsafety.losangelescriminallawyer.pro/family-abduction.html> (last visited April 7, 2025).

¹² National Center for Missing and Exploited Children, *Family Abduction*, <https://www.missingkids.org/theissues/familyabduction> (last visited April 7, 2025).

¹³ *Cf.* Am. Jur. 2d Torts s. 2.

Family Law

In Florida, the general reference to “family law” matters include many different types of cases. Family law courts have jurisdiction over cases involving:

- Dissolution of marriage.
- Annulment.
- Child support.
- Paternity.
- Adoption.
- Name changes.
- Civil domestic violence, repeat violence, dating violence, stalking, and sexual violence injunctions.
- Juvenile dependency.
- Modifications and enforcements of orders, and more.¹⁴

Best Interests of the Child Standard

Throughout all family law proceedings involving a minor child, the primary focus of the court on the best interest of the minor child. Thus, when determining any issue involving child custody, the judge must first assess how his or her order would impact the child. Florida law provides a non-exhaustive list of 20 factors that a court must consider to determine the best interests of a minor child.¹⁵ Pursuant to [s. 61.13\(3\), F.S.](#), the factors affecting the welfare and interests of the child and the circumstances of the family, include, but are not limited to the:

- Demonstrated capacity and disposition of each parent to facilitate and encourage a continuing parent-child relationship, honor the timesharing schedule, and accommodate necessary changes.
- Anticipated division of parental responsibilities after the litigation, including the extent to which parental responsibilities will be delegated to third parties.
- Demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child.
- Length of time the child has lived in a stable environment and the desirability of maintaining continuity.
- Geographic viability of the parenting plan, with special attention paid to the needs of school-age children and the amount of time to be spent traveling to effectuate the parenting plan.
- Mental health, physical health, and moral fitness of the parents.
- Home, school, and community record of the child.
- Reasonable preference of the child.
- Demonstrated knowledge, capacity, and disposition of each parent to be informed of the circumstances of the minor child, including the child’s friends, teachers, and daily activities.
- Demonstrated capacity and disposition of each parent to:
 - Provide a consistent routine; and
 - Communicate with and keep the other parent informed of issues and activities regarding the minor child, and the willingness of each parent to adopt a unified front on all major issues when dealing with the child.
- Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, or evidence that a parent has or has had a reasonable cause to believe that he or she or his or her minor child or children are in imminent danger of becoming victims of an act of domestic violence.
- Evidence that either parent has ever knowingly provided false information about to the court regarding any prior or pending action regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect.
- Particular parenting tasks customarily performed by each parent, including the extent to which parenting responsibilities were undertaken by third parties.
- Demonstrated capacity and disposition of each parent to participate and be involved in the child’s school and extracurricular activities.

¹⁴ Florida Office of the State Courts Administrator, *Family Court in Florida*, <https://www.flcourts.gov/Resources-Services/Office-of-Family-Courts/Family-Court-in-Florida> (last visited March 14, 2025).

¹⁵ S. [61.13\(3\), F.S.](#)

- Demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse.
- Capacity and disposition of each parent to protect the child from the ongoing litigation regarding child custody.
- Developmental stages and needs of the child and the demonstrated capacity and disposition of each parent to meet the child's developmental needs.
- Any other factor that is relevant to the determination of a specific parenting plan, including the time-sharing schedule.

Parental Responsibility

Florida courts have consistently ruled that a parent's desire and right to the companionship, care, custody, and management of his or her children is an important interest that warrants deference and, absent a powerful countervailing interest, protection. Further, a parent has general responsibilities owed to his or her children, including supervision, health and safety, education, care, and protection. In Florida, parenting is broken down into two distinct components: parental responsibility (decision-making) and timesharing (physical visitation with the child based on a parenting plan). Although the right to integrity of the family is among one of the most fundamental rights, when parents divorce or separate, the parents' rights are subject to the overriding concern for the ultimate welfare or best interests of their children.

In family law matters, the commonly referred to idea of "custody" is broken down into parental responsibility and timesharing. Parental responsibility refers to the legal duty and right of a parent to care for, protect, and raise his or her child, including making important decisions regarding the child's upbringing and welfare such as religion, medical decisions, and education issues. Timesharing refers to the actual schedule each parent spends with the child according to a timesharing schedule detailed in a parenting plan.

Under Florida law, a court generally orders parental responsibility of a minor child to be shared by both parents.¹⁶ However, a court may deviate from shared parental responsibility if it finds that shared parental responsibility would be detrimental to the minor child.¹⁷ In determining whether there would be a detriment to the child, the court shall consider:

- Evidence of domestic violence, as defined in [s. 741.28, F.S.](#);
- Whether either parent has or has had a reasonable cause to believe that he or she or his or her minor child or children are or have been in imminent danger of becoming victims of domestic violence or sexual violence by the other parent against the parent or against the child or children whom the parents share in common, regardless of whether a cause of action has been brought or is pending on the issue;
- Whether either parent has or has had reasonable cause to believe that his or her minor child or children are or have been in imminent danger of becoming victims of an act of abuse, abandonment, or neglect by the other parent; and
- Any other relevant factors.¹⁸

Further, [s. 61.13\(2\)\(c\)\(3\), F.S.](#), provides factors that create a rebuttable presumption that shared parental responsibility is detrimental to the child, as follows:

- A parent has been convicted of a first-degree misdemeanor or higher level of crime involving domestic violence as defined in [s. 741.28, F.S.](#), and [ch. 775, F.S.](#);
- A parent meets the criteria for the termination of his or her parental rights under [s. 39.806\(1\)\(d\), F.S.](#) relating to a parent who is incarcerated; or
- A parent has been convicted of or had adjudication withheld as a sexual offender for an offense enumerated in [s. 943.0435\(1\)\(h\)1.a., F.S.](#), and at the time of the offense the parent was 18 years old or older and the victim was under 18 years old or the parent believed the victim to be under 18.

¹⁶ [S. 61.13\(2\)\(c\)\(2\), F.S.](#)

¹⁷ *Id.*

¹⁸ [S. 61.13\(2\)\(c\)\(2\), F.S.](#)

Parenting Plan

A court may prescribe a “parenting plan”¹⁹ by which the parents are ordered to share decision-making and physical custody of the minor child. The parenting plan may order parents to exercise shared parental responsibility, it may delegate decision-making authority over specific matters to one parent, or it may grant a parent sole parental responsibility over the minor child. Common issues concerning a minor child may include education, healthcare, and social or emotional wellbeing.

A parenting plan is a document created to govern the relationship between parents relating to decisions that must be made regarding the minor child at issue.²⁰ A parenting plan must contain a timesharing schedule for the parents and the child.²¹ The parenting plan should attempt to address all issues concerning the minor child, including, but not limited to, the child’s education, health care, and physical, social, and emotional well-being.²² In creating the parenting plan, the court must consider all circumstances between the parents, including their historic relationship, domestic violence, and other factors.²³ A parenting plan is either created and agreed to by both parents and approved by the court, or is established by the court if the parents cannot agree to a plan or the parents agree to a plan that is not approved by the court.²⁴ A parenting plan may be utilized in cases involving minor children unrelated to a dissolution of marriage or in connection to a dissolution of marriage.

Pursuant to [s. 61.13\(2\)\(b\), F.S.](#), a parenting plan approved by the court must, at a minimum:

- Describe in adequate detail how the parents will share and be responsible for the daily tasks associated with raising the minor child;
- Include the timesharing schedule arrangements that specify the time that the minor child will spend with each parent;
- Designate which parent will be responsible for healthcare, school-related matters, and other activities; and
- Describe in adequate detail the methods and technologies the parents will use to communicate with the child.²⁵

Given the potential for heated disputes in matters involving a minor child, it is imperative that the parenting plan be as detailed as possible to eliminate ambiguity surrounding each parent’s responsibilities and specific timesharing with the minor child. This generally includes a detailed description of the various holidays and with which parent the child will spend each holiday,²⁶ the location of the exchange from one parent’s timesharing to the other parent’s timesharing, who is responsible for the child’s travel expenses, the times during which one parent will ensure the minor child is available to communicate with the other parent, the delegation of specific decision-making topics, and more.²⁷

To assist parties with creating a parenting plan that meets the requirements under [s. 61.13, F.S.](#), the Florida Supreme Court has published a standardized parenting plan form, Form 12.995(a).²⁸ The form attempts to cover all possible aspects of an acceptable parenting plan including which parent can enroll the child in extra-curricular activities, the specific meaning of academic breaks and holidays, the process by which a parent should request a

¹⁹ A “parenting plan” is a document created to govern the relationship between the parents relating to decisions which must be made regarding the child and must contain a timesharing schedule for the parents and child. S. [61.046\(14\), F.S.](#) If a parenting plan is agreed to by the parties, it must be approved by the court.

²⁰ S. [61.046\(14\), F.S.](#)

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ S. [61.13\(2\)\(b\), F.S.](#)

²⁶ See *Mills v. Johnson*, 147 So. 3d 1023 (Fla. 2d DCA 2014) in which the trial court erred by adopting a timesharing schedule that did not address holiday timesharing given the historically contentious parenting relationship between the parties.

²⁷ See generally *Magdziak v. Sullivan*, 185 So. 3d 1291 (Fla. 5th DCA 2016); see also *Scudder v. Scudder*, 296 So. 3d 426 (Fla. 4th DCA 2020).

²⁸ Florida Supreme Court Approved Family Law Form 12.995(a), Parenting Plan (Feb. 2018), https://www.flcourts.gov/content/download/686031/file_pdf/995a.pdf (last visited Mar. 14, 2025).

temporary schedule change, the specific days the child should be with each parent, and the specific time the exchange should occur.

[Timesharing](#)

Under current law, a rebuttable presumption exists that equal time-sharing of a minor child is in the child's best interests.²⁹ As such, a court will start with the presumption that time-sharing should be divided equally (commonly referred to as "50/50") between both parents. However, either parent may rebut the presumption by proving that such equal-timesharing is not in the minor child's best interests.

To successfully overcome the presumption, the parent seeking to rebut the presumption must prove that 50/50 timesharing is not in the child's best interests by a preponderance of the evidence (that is, that the evidence presented is more convincing and likely true than the other parent's evidence, or in other words, meaning it's more probable than not). In establishing a timesharing schedule, except for when the parties agree to a schedule without court intervention, the court must consider the best interests of the child³⁰ and evaluate all "best interest" factors provided under [s. 61.13\(3\), F.S.](#)

When creating or modifying a time-sharing schedule, the court must evaluate all factors and must make specific written findings of fact related to each factor.³¹

[Remedies Available Under Current Law](#)

Currently, a parent may seek a number of different remedies against another parent who has refused or failed to follow a court ordered timesharing schedule or has otherwise withheld the minor child from the non-offending parent. Some of the more common remedies for enforcement in family law matters include:

- Civil or criminal contempt;³²
- Motions to enforce;
- Emergency Ex Parte Motion for Child Pick-Up Order;³³
- Motion for Child Pick-Up Order with Notice;
- Writs of Habeas Corpus;
- Criminal Prosecution; and
- Contacting the National Center for Missing and Exploited Children.

The current remedies available for enforcement and contempt within the family court system may not be sufficient in matters of truly egregious parental abduction. Additionally, some parents may not find the threat of civil or even criminal contempt, among other remedies, as strong or forceful enough to actually deter his or her bad behavior and failure to abide by the court ordered timesharing schedule.

The commonly used remedies under current law require a pleading to be filed and, generally, a hearing to be held on the matter before the presiding judge. Additionally, a non-emergent pleading may be met with a delay of weeks or months before an actual hearing can be held on the matter. This delay may provide the offending parent additional time to keep the minor child from the searching parent and the opportunity to further elude the court's reach by leaving the state or the country. Further, and most importantly, the child's best interests may be

²⁹ [S. 61.13\(2\)\(c\)\(1\), F.S.](#)

³⁰ [S. 61.13\(2\)\(c\), F.S.](#)

³¹ [S. 61.13\(2\)\(c\)\(1\), F.S.](#)

³² "Contempt" is the refusal to obey any legal order, mandate, or decree, made or given by any judge relative to any of the business of the court. [S. 38.23, F.S.](#) Civil contempt is a remedial remedy used to coerce the an offending party into complying with a court order, whereas criminal contempt is a punitive remedy. *See Alves v. Barnett Mrtg. Co.*, 688 So. 2d 459 (Fla. 4th DCA 1997); *Johnson v. Bednar*, 573 So. 2d 822 (Fla. 1991).

³³ An Emergency Motion for Ex Parte Child Pick-Up Order is an extreme remedy and generally must be supported by evidence of an actual and true emergency where a child is threatened with physical harm or is about to be improperly removed from the state. *See Stanley-Baker v. Baker*, 789 So. 2d 353 (Fla. 4th DCA 2001); *see also Loudermilk v. Loudermilk*, 693 So. 2d 666 (Fla. 2d DCA 1997).

negatively impacted by the lapse in time between being taken from the other parent and an eventual hearing on the matter.

Attorney Fees

Historical Treatment of Attorney Fees

The traditional “English rule” entitled a prevailing party in civil litigation to attorney fees as a matter of right. However, Florida and a majority of other United States jurisdictions have adopted the “American rule,” where each party bears its own attorney fees unless a “fee-shifting statute” provides an entitlement to fees. In Florida, several such fee-shifting statutes entitle the prevailing party or, more specifically, a particular prevailing claimant or plaintiff, to have his or her fees paid by the other party.³⁴

Statutorily-Provided Attorney Fees

Several Florida and federal statutes state that a prevailing party in court proceedings is entitled to attorney fees as a matter of right.³⁵ These statutes are known as “fee-shifting statutes” and often entitle the prevailing party to a reasonable attorney fee, which must be paid by the other party. When a fee-shifting statute applies, the court must determine and calculate what constitutes a reasonable attorney fee.

Lodestar Approach

In 1985, the Florida Supreme Court held that courts should calculate the amount of statutorily-authorized attorney fees under the “lodestar approach.”³⁶ Under this approach, the first step is for the court to determine the number of hours reasonably expended by an attorney on the case. The second step requires the court to determine a reasonable hourly rate. The number of hours reasonably expended (determined in the first step), multiplied by the reasonable hourly rate (determined in the second step), produces the “lodestar amount,” which is considered an objective basis for what the attorney fee amount should be.

Compensatory (Actual) Damages

Actual damages, also called compensatory damages, are damages the plaintiff actually suffered as the result of the injury.³⁷ Juries award compensatory damages to compensate an injured person for a defendant’s negligent acts.³⁸ Compensatory damages consist of both:

- “Economic damages,” which typically consist of financial losses that can be easily quantified, such as lost wages, the cost to replace damaged property, or the cost of medical treatment; and
- “Non-economic damages,” which typically consist of nonfinancial losses that cannot be easily quantified, such as pain and suffering, inconvenience, physical impairment, mental anguish, disfigurement, and loss of the capacity to enjoy life.³⁹

Punitive Damages

³⁴ See, e.g., [s. 400.023, F.S.](#) (nursing home resident); [s. 440.34, F.S.](#) (claimant in a workers’ compensation case in certain situations); [s. 501.2105, F.S.](#) (plaintiff in specified FDUTPA actions); ss. 626.9373 and [627.428, F.S.](#) (prevailing insured party in a case brought against an insurer); [s. 790.33, F.S.](#) (plaintiff in a suit to enforce his or her firearm rights); see also 42 U.S.C. s. 1988(b) (federal fee-shifting statute for prevailing parties in actions to enforce certain civil rights statutes).

³⁵ See, e.g., [s. 627.428, F.S.](#) (providing that an insured who prevails against an insurer is entitled to “a reasonable sum” of attorney fees); [s. 501.2105, F.S.](#) (providing that the prevailing party in an action under the Florida Deceptive and Unfair Trade Practices Act (FDUTPA) is entitled to “a reasonable legal fee”); [42 U.S.C. s. 1988\(b\)](#) (providing that a prevailing party seeking to enforce specified civil rights statutes may recover “a reasonable attorney’s fee”).

³⁶ *Fla. Patient’s Comp. Fund v. Rowe*, 472 So. 2d 1145 (Fla. 1985).³⁷ *Birdsall v. Coolidge*, 93 U.S. 64 (1876).

³⁷ *Birdsall v. Coolidge*, 93 U.S. 64 (1876).

³⁸ *St. Regis Paper Co. v. Watson*, 428 So. 2d 243 (Fla. 1983).

³⁹ Cf. [s. 766.202\(8\), F.S.](#)

In certain limited situations, a court may also award “punitive damages,” the purpose of which is to punish a defendant for bad behavior and deter future bad conduct, rather than to compensate the plaintiff for a loss.⁴⁰ Punitive damages are sometimes referred to as “exemplary damages,” but both terms convey the same idea; that is, extra damages awarded beyond that actually incurred by the plaintiff.⁴¹ Under Florida Law, an award of punitive damages generally may not exceed three times the value of the compensatory damages awarded, or \$500,000.⁴² In order to be awarded punitive damages, a plaintiff must prove by clear and convincing evidence that he or she is entitled to such (the burden of proof for a determination of regular, non-punitive damages is by the greater weight of the evidence, which is a lower burden than clear and convincing evidence).⁴³

Criminal Offense of Interference with Custody

Under current law, a person may be charged with the criminal offense of interference with custody under [s. 787.03, F.S.](#) Pursuant to [s. 787.03, F.S.](#), a person who, without lawful intent, knowingly or recklessly takes or entices, or aids, abets, hires, or otherwise procures another to take or entice, any minor or incompetent person from the custody of the minor’s or incompetent person’s parent, his or her guardian, a public agency having the lawful charge of the subject minor or incompetent person, or any other lawful custodian, commits the offense of interference with custody.

Interference with custody is a third-degree felony punishable by up to three years in prison and a fine of up to \$5,000.⁴⁴ The criminal statute provides defenses that may be raised by a defendant charged with interference with custody, including that the:

- Defendant had reasonable cause to believe that his or her action was necessary to preserve the minor or the incompetent person from danger to his or her welfare.
- Defendant was the victim of an act of domestic violence or had reasonable cause to believe that he or she was about to become the victim of an act of domestic violence as defined in [s. 741.28](#), and the defendant had reasonable cause to believe that the action was necessary in order for the defendant to escape from, or protect himself or herself from, the domestic violence or to preserve the minor or incompetent person from exposure to the domestic violence.
- Minor or incompetent person was taken away at his or her own instigation without enticement and without purpose to commit a criminal offense with or against the minor or incompetent person, and the defendant establishes that it was reasonable to rely on the instigating acts of the minor or incompetent person.

Further, a defendant raising the defense that he or she had reasonable cause to believe his or her action was necessary to preserve the minor or incompetent person from danger must also:

- Within 10 days after taking the minor or incompetent person, make a report to the sheriff’s office or state attorney’s office in the county in which the minor or incompetent person resided in at the time he or she was taken. The report to the sheriff or state attorney must include:
 - The name of the person taking the minor or incompetent person;
 - The current address and telephone number of the person;
 - The current address and telephone number of the minor or incompetent person; and
 - The reasons the minor or incompetent person was taken.
- Within a reasonable time after taking a minor, commence a custody proceeding that is consistent with the federal Parental Kidnapping Prevention Act, [28 U.S.C. s. 1738A](#), or the Uniform Child Custody Jurisdiction and Enforcement Act, [s. 61.501, F.S.](#)- [s. 61.542, F.S.](#)
- Inform the sheriff’s office or state attorney of any change of address or telephone number of the minor or incompetent person.

⁴⁰ See ss. [768.72](#), [768.725](#), and [768.73, F.S.](#) (providing standards and requirements for awarding punitive damages).

⁴¹ Cornell Law School, *Exemplary Damages*, https://www.law.cornell.edu/wex/exemplary_damages (last visited March 23, 2025).

⁴² S. [768.73, F.S.](#) provides for an increased limit to punitive damages under certain situations such as motivation or intent of the defendant.

⁴³ S. [768.725, F.S.](#)

⁴⁴ Ss. [775.082, F.S.](#) and [775.083, F.S.](#)

Civil matters, particularly those arising out of family court, have been historically considered to be a private matter that the state should not intrude upon or interfere with pursuant to the longstanding interpretation of the privacy clause of the Florida Constitution. Pursuant to Article I, section 23 of the Florida Constitution, “every natural person has the right to be let alone and free from governmental intrusion into the person’s private life” except as otherwise provided or limited by the state Constitution. The Florida Supreme Court has interpreted this constitutional provision to protect a parent’s fundamental right to raise his or her children except in cases where the child is threatened with harm.⁴⁵

OTHER RESOURCES:

[U.S. Department of Justice: The Crime of Family Abduction.](#)

[U.S. Dep't of State: Annual Report on International Child Abduction \(2024\).](#)

BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
Civil Justice & Claims Subcommittee	13 Y, 0 N, As CS	4/10/2025	Jones	Mathews
THE CHANGES ADOPTED BY THE COMMITTEE:	<ul style="list-style-type: none">• Created a civil cause of action for certain egregious parental abduction for more than 30 days that would otherwise meet the requirement of criminal interference with custody under s. 787.03, F.S.• Permitted the award of compensatory and punitive damages and attorney fees and.• Provided that the burden of proof is by the greater weight of the evidence.• Provided certain affirmative defenses.• Entitled the defendant in such an action to recover attorney fees and costs if the court finds that the plaintiff’s claim was without substantial fact or legal support.• Required the civil cause of action to be assigned to the family law division which presided over the underlying family law matter, if possible.• Applied the provisions of the bill prospectively after the effective date of the bill.			

THIS BILL ANALYSIS HAS BEEN UPDATED TO INCORPORATE ALL OF THE CHANGES DESCRIBED ABOVE.

⁴⁵ *Beagle v. Beagle*, 678 So. 2d 1271, 1275-1276 (Fla. 1996)(holding that in Florida, an individual’s fundamental liberty interest in parenting... is specifically protected by our [state constitutional] privacy policy;” *See also Planned Parenthood of Southwest and Central Fla. v. Florida*, 384 So. 3d 67, 74 (Fla. 2024)(wherein the Court explicitly declined to reconsider its previous rulings with respect to the privacy clause and its application to the right to parent in the state).

