

CHAPTER 2010-59

Council Substitute for Committee Substitute for House Bill No. 787

An act relating to child abduction prevention; providing a short title; amending s. 61.45, F.S.; authorizing additional persons to move to have certain restrictions placed in parenting plans upon showing of a risk that one party may violate the court's parenting plan by removing a child from this state or country or by concealing the child's whereabouts; authorizing courts to impose certain restrictions in parenting plans upon a specified finding; authorizing a court to impose certain restrictions in addition to or in lieu of a requirement that a child's passport be surrendered; authorizing a court to impose specified restrictions upon entry of an order to prevent removal of a child from this state or country; providing additional factors that may be considered in assessing the risk that a party may violate a parenting plan by removing a child from this state or country or by concealing the child's whereabouts; providing that violations may subject a violator to specified penalties or other consequences; providing an effective date.

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

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

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

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

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

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

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

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

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

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

2. 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 the child; and

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

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

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

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

(a) 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 following:

1. The travel itinerary of the child.

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

3. Copies of all travel documents.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) 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.

(4)(3) 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) A court has previously 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;

(b) 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;

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

(d) 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 or visa; or obtaining travel documents for the respondent or the child;

(e) 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 under s. 741.30, medical records, affidavits, or any other relevant information; ~~or~~

(f) The party has a criminal record;-

(g) The party is likely to take the child to a country that:

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

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

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

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

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

3. 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;

4. Has laws or practices that would:

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

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

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

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

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

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

(h) 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;

(i) The party has had an application for United States citizenship denied;

(j) 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, travel documents, a social security card, a driver's license, or other government-issued identification card or has made a misrepresentation to the United States government;

(k) The party has used multiple names to attempt to mislead or defraud;

(l) The party has been diagnosed with a mental health disorder that the court considers relevant to the risk of abduction; or

(m) The party has engaged in any other conduct that the court considers relevant to the risk of abduction.

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

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

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

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

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

1. Reimburse the nonviolating party for actual costs or damages incurred in upholding the court’s parenting plan.
2. Locate and return the child to the residence as set forth in the parenting plan.
3. Reimburse reasonable fees and costs as determined by the court.

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

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

(10) A violation of this section 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, and may subject the violating parent to apprehension by a law enforcement officer.

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

Approved by the Governor May 11, 2010.

Filed in Office Secretary of State May 11, 2010.