

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 211 Child Abduction Prevention
SPONSOR(S): Schwartz
TIED BILLS: None **IDEN./SIM. BILLS:** None

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Civil Justice & Courts Policy Committee		DeZego	De La Paz
2)	Health Care Services Policy Committee			
3)	Criminal & Civil Justice Policy Council			
4)	Criminal & Civil Justice Appropriations Committee			
5)	Full Appropriations Council on General Government & Health Care			

SUMMARY ANALYSIS

Florida law currently provides prevention measures to deter domestic and international abductions once a custody proceeding has begun or there is a court order regarding custody or visitation. Section 61.45, F.S., provides risk factors that a court may look at to determine prevention measures for abduction. Prevention measures include orders not to remove a child from the court's jurisdiction and the ability to require a bond or other security as a deterrent to abduction.

This bill enacts the Uniform Child Abduction Prevention Act (UCAPA), which was promulgated by the Uniform Law Commissioners and approved by the National Conference of Commissioners on Uniform State Laws in 2006. The UCAPA provides guidelines for judges in identifying children at risk of abduction, both domestic and international. A petition for prevention measures under this bill may be made either pre-custody decree or post-custody decree to a court as long as the court has jurisdiction over the case according to the UCCJEA. A court may also order abduction prevention measures on its own motion.

The UCAPA lists risk factors that a judge must consider when determining the risk of a domestic or international abduction. If a credible risk of abduction is found by the court, then the court must order prevention methods. Some of the methods include travel restrictions and the requirement of a bond or other security. In addition, the UCAPA allows for an ex parte warrant to take physical custody of the child if the court finds that there is a credible risk that the child is imminently likely to be wrongfully removed. The respondent must be afforded an opportunity to be heard at the earliest time after the warrant is executed not later than the next judicial day unless a hearing on that day is impossible.

Section 61.45, F.S., appears to conflict with and limit this bill.

This bill appears to have an indeterminate positive fiscal impact on state and local governments.

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:

Background

The National Incidence Studies of Missing, Abducted, Runaway, and Thrownaway Children consist of several studies conducted by the U.S. Department of Justice.¹ According to the studies, around 797,500 children in the U.S. were reported missing in 1999. This is equivalent to a rate of 11.4 children per 1,000.² Of these, an estimated 203,900 children were victims of a family member abduction.³

Uniform Child Custody Jurisdiction Act

Prior to the enactment of the Uniform Child Custody Jurisdiction Act (UCCJA), state courts could exercise jurisdiction over a child-custody case based on a child's presence in the state. Courts often modified other state's child-custody orders, which fostered abduction and forum shopping.⁴ The National Conference of Commissioners on Uniform State Laws (NCCUSL) responded with the UCCJA in 1968. The UCCJA operated on principles that established jurisdiction over a child-custody case in one state and protected a custody order of that state from modification in any other state, so long as the original state retained jurisdiction over the case. The incentive to run with the child was believed to be greatly diminished if a non-custodial parent could not take the child to another state and petition the court of that state for a favorable modification of an existing custody order. Florida adopted the UCCJA in 1977, and it became law in all 50 states by 1981.⁵

Parental Kidnapping Prevention Act

In 1980, Congress enacted the Parental Kidnapping Prevention Act (PKPA), which provided the federal enforcement mechanism for ensuring that states honor custody determinations in other states.⁶ The PKPA requires courts to enforce, rather than modify, custody and visitation orders entered by courts already exercising jurisdiction.⁷

¹ U.S. Department of Justice, Highlights From the NISMART Bulletins, October 2002.

² *Id.*

³ *Id.* at 2.

⁴ U.S. Department of Justice, *The Uniform Child-Custody Jurisdiction and Enforcement Act*, Juvenile Justice Bulletin, December 2001.

⁵ *Id.* at 2.

⁶ *Id.* at 3.

⁷ *Id.* at 1.

Uniform Child Custody Jurisdiction and Enforcement Act

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) was unanimously adopted by the NCCUSL in 1997 and received approval from the American Bar Association House of Delegates in 1998. The UCCJEA revised the UCCJA to conform to the PKPA. The UCCJEA clearly gives initial jurisdiction to the home state over a significant contact and defines a foreign country as a "state" for purposes of the act. The UCCJEA has been adopted in 46 states as well as the District of Columbia and the U.S. Virgin Islands. It was introduced in legislation in two more states in 2009. Florida repealed the UCCJA and adopted the UCCJEA in 2002.⁸

The Hague Convention

In 1988, the United States signed the Hague Convention on the Civil Aspects of International Child Abduction ("Convention").⁹ This was designed to ensure that abducted children are returned to the country of habitual residence. The Convention is not an extradition remedy but is a civil remedy for abduction. Subsequently in 1988, Congress enacted the International Child Abduction Remedies Act (ICARA) to implement and maintain uniform international interpretation of the Convention in the U.S.¹⁰ ICARA is currently in effect between the U.S. and fifty-five countries.¹¹

Effect of Bill

Current Law

Along with the adoption of the UCCJEA in 2002, Florida adopted other provisions to reduce the risk of child abduction once a custody proceeding has begun or there is a court order regarding custody or visitation.¹² Florida law currently provides that in a proceeding related to custody or upon the presentation of competent substantial evidence of a risk that one party may violate a court's order of visitation or custody, or upon stipulation of the parties, the court may¹³:

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

Furthermore, Florida law provides that if the court orders a parent not to leave the country, then a certified copy of the order should be sent by the parent who requested the order to the Passport Services Office of the U.S. Department of State requesting that a passport not be issued for the child without the signature of the requesting parent or further court action.¹⁴

Currently, courts may require a bond or other security as a deterrent for child abduction. The court may consider all reasonable factors to require a bond or other security, including but not limited to:¹⁵

- A court has previously found that the party removed or threatened to remove a child from Florida or another state in violation of a parenting plan;
- The party has strong family and community ties to Florida or to another state or country;

⁸ See Chapter 2002-65, Laws of Florida.

⁹ 42 U.S.C. 11601 et seq.

¹⁰ See The Hague Convention on the Civil Aspects of International Child Abduction, 51 Fed. Ref. § 10494 et seq. (1986); the International Child Abduction Remedies Act (ICARA), 42 U.S.C. §§11601-11610.

¹¹ See www.travel.state.gov/family/abduction/hague_issues/hague_issues_1487.html. Last accessed February 11, 2009.

¹² See Chapter 2002-65, Laws of Florida.

¹³ Section 61.45(1), F.S.

¹⁴ Section 61.45(2), F.S.

¹⁵ Section 61.45(3), F.S.

- The party has strong financial reasons to remain in Florida or relocate to another state or country;
- The party engaged in activities that suggest he or she plans to leave Florida. These activities include quitting employment, sale of a residence or termination of a lease on a residence without efforts to acquire another residence in the state; closing bank accounts or liquidating assets, or applying for a passport;
- Either party has a history of domestic violence either as a victim or as a perpetrator, child abuse or child neglect evidence by criminal history, or an injunction for protection against domestic violence issued after notice and hearing, medical records, and affidavits; or
- The party has a criminal record.

The court may consider the party's financial resources prior to setting a reasonable bond amount.¹⁶ A deficiency of bond or security does not absolve the violating party of responsibility to pay the full amount of damages.¹⁷ If a material violation of any parenting plan occurs, then the court may order the bond or other security forfeited in whole or in part.¹⁸ However, if a person is determined by the court to be a victim of domestic violence or provides the court with reasonable cause to believe he or she is about to become the victim of an act of domestic violence, then the requirement to post a bond or other security does not apply to that party.¹⁹

If the bond or other security is ordered forfeited by the court, it may only be used to:²⁰

- Reimburse the nonviolating party for actual costs or damages incurred in upholding the court's parenting plan;
- Locate and return the child to the residence as provided in the parenting plan; or
- Reimburse reasonable fees and costs as determined by the court.

Any remaining proceeds will be held as further security if the court finds it necessary or applied to any child support arrears owed by the party against whom the bond was required. All remaining proceeds will be allocated by the court in the best interest of the child.²¹ The court may request documentation providing that any forfeiture of the bond or other security was used as specified in this section.²²

Proposed Changes

UCAPA

This bill creates Part III of chapter 61, Florida Statutes, and enacts the Uniform Child Abduction Prevention Act (UCAPA), which was promulgated by the Uniform Law Commissioners and approved by the National Conference of Commissioners on Uniform State Laws in 2006.²³ The American Bar Association House of Delegates endorsed the Act in 2007. The UCAPA has been adopted in seven states and introduced for legislation in four states in 2009, including Florida.²⁴

The UCAPA applies to unemancipated children under 18 years of age to prevent abduction, which is the wrongful removal or the wrongful retention of a child. Wrongful removal and retentions together defined under this bill include the taking, keeping, or concealing of a child in violation of custody or visitation rights given or recognized under the laws of Florida. The UCAPA does not limit, contradict or supersede the UCCJEA. The UCAPA provides guidelines for judges in identifying children at risk of abduction, both domestic and international, and provides prevention measures.

¹⁶ Section 61.45(4), F.S.

¹⁷ Section 61.45(5), F.S.

¹⁸ Section 61.45(6)(a), F.S.

¹⁹ Section 61.45(6)(b), F.S.

²⁰ Section 61.45(7)(a), F.S.

²¹ Section 61.45(7)(b), F.S.

²² Section 61.45(8), F.S.

²³ See http://www.nccusl.org/Update/uniformact_summaries/uniformacts-s-ucapa.asp. Last accessed February 11, 2009.

²⁴ *Id.*

Petition for Preventive Measures

This bill provides that a petition for prevention measures may be brought by a party to a child custody determination or another individual or entity having a right under state law to seek a child custody determination. A court may also order abduction prevention measures on its own motion.

A court under the UCAPA must have jurisdiction sufficient under the UCCJEA to make an initial child-custody determination, a modification, or temporary emergency jurisdiction²⁵ to issue preventive measures. A petition for prevention measures under this bill may be made either pre-custody decree or post-custody decree.

The petition must contain in part the name, date of birth and gender of the child; whether a prior abduction or domestic violence case was filed against a party; and whether there is a history of domestic violence or similar crime. Furthermore, the petition must list the name and address of any other party who has custody or claims a right to custody or visitation with the child.

Risk Factors for Abduction

This bill provides that the petition must also list the relevant risk factors for abduction. The court must use these factors to determine the risk of abduction and provide preventive measures.

Under this bill, the court may consider any evidence that the petitioner or respondent:

- Previously abducted or attempted to abduct the child;
- Threatened to abduct the child;
- Recently engaged in activities that may indicate a planned abduction such as abandoning employment, selling a primary residence, terminating a lease, closing a bank account or other financial accounts and liquidating assets, applying for a passport or visa for the respondent, a family member or the child, or seeking to obtain the child's birth certificate or school or medical records;
- Engaged in domestic violence, stalking, child abuse or neglect;
- Refused to follow a child custody determination;
- Lacks strong familial, financial, emotional or cultural ties to Florida; or
- Has strong familial, financial, emotional or cultural ties to another State.

The UCAPA also provides risk factors to determine the risk of an international abduction. The court may consider evidence that the respondent or petitioner:

- Lacks strong familial, financial, emotional, or cultural ties to the U.S.;
- Has strong familial, financial, emotional, or cultural ties to another country;
- Is undergoing a change in immigration or citizenship status which would adversely affect the respondent's ability to legally remain in the U.S.
- Has had an application for U.S. citizenship denied; and
- Is likely to take the child to a country that:
 - Is not a party to the Convention;
 - Is a party to the Convention but the Convention is:
 - Not in force between the U.S. and that country;
 - The country is noncompliant according to the most recent compliance report issued by the U.S. Department of State; or
 - The country lacks legal mechanism for immediately and effectively enforcing a return order under the Convention;

²⁵ A court has temporary emergency jurisdiction under s. 61.517, F.S., of the UCCJEA when the child has been abandoned or it is necessary in an emergency to protect the child because the child, sibling or parent of the child, is subject to or threatened with mistreatment or abuse.

- Poses a risk that the child's physical or emotional health or safety would be endangered in the country due to specific circumstances or because of human rights violations committed against children;
- Has laws or practices that would:
 - Enable the respondent to prevent, without due cause, the petitioner from contacting the child;
 - Restrict the petitioner from freely traveling to or exiting the country because of the petitioner's gender, nationality, marital status or religion; or
 - Restrict the child's ability to legally leave the country after the child reaches the age of majority because of 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.

Furthermore, this bill provides that the court may also consider evidence that the petitioner or respondent:

- Has forged or presented misleading or false evidence on government forms 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 U.S. government;
- Has used multiple names to attempt to mislead or defraud; or
- Has engaged in any other conduct the court considers relevant to the risk of abduction.

The UCAPA provides that the court must consider any evidence that the respondent believed in good faith that his or her conduct was necessary to avoid imminent harm to the child or the respondent and any other evidence that may be relevant to whether the respondent may be permitted to remove or retain the child.

Abduction Prevention Order

This bill provides that a court must issue an abduction prevention order when the court finds a credible risk of abduction based on evidence presented at a hearing under the UCAPA. Courts can also issue prevention orders on their own motion in other child custody proceedings under this bill when the evidence establishes a credible risk of abduction.

The bill specifies several requirements for abduction prevention orders and authorizes the inclusion of provisions reasonably calculated to prevent abduction. The order must give due consideration to the custody and visitation rights of the parties and may include travel restrictions, prohibitions against removing the child from a geographic area without consent or court permission, conditions on the exercise of custody or visitation, and other abduction prevention measures depending on the particular circumstances of the case.

An abduction prevention order remains in effect until the earliest of:

- The time stated on the order;
- The emancipation of the child;
- The child's attaining 18 years of age; or
- The order is modified, revoked, vacated, or superseded by a court with jurisdiction.

Relief for Imminent Abductions

Under this bill the court may issue an ex parte warrant to take physical custody of the child if the court finds that there is a credible risk that the child is imminently likely to be wrongfully removed. The respondent must be afforded an opportunity to be heard at the earliest time after the warrant is

executed not later than the next judicial day unless a hearing on that day is impossible. If it is impossible, then the hearing must be held on the first judicial day possible. The warrant must be served on the respondent when or immediately after the child is taken into physical custody.

This bill provides that the warrant must list the facts upon which a determination of credible risk is based, direct law enforcement officers to immediately take custody of the child, state the date and time for the hearing, and provide for the safe interim placement of the child pending further order of the court. The court may order a search of relevant databases of the National Crime Information Center and similar databases before the warrant is served and before determining the placement of the child after the warrant is served. The search is to determine if either the petitioner or the respondent has a history of domestic violence, stalking, or child abuse or neglect.

In addition, this bill recognizes the warrant to take physical custody of a child in Florida as well as other states. The court may authorize law enforcement officers to enter private party residences to take physical custody of the child if less intrusive remedies are not effective. In exigent circumstances, the court may authorize law enforcement officers to make a forcible entry at any hour.

If the court finds, after a hearing, that the petitioner sought the warrant in bad faith or for the purpose of harassment, then the court may award the respondent reasonable attorney's fees, costs, and expenses.

Federal Electronic Signatures in National Commerce Act

The Electronic Signatures in Global and National Commerce Act (ESIGN) was enacted June 2000 to facilitate the use of electronic records and signatures in interstate and foreign commerce and makes electronic or digital signatures legally valid and enforceable in the U.S.²⁶ This bill provides that the UCAPA supersedes ESIGN in regards to all provisions except s. 7001(c).²⁷ In addition, this bill provides that the UCAPA does not authorize electronic delivery of any of the notices described in s. 7003(b) of ESIGN.²⁸

B. SECTION DIRECTORY:

Section 1 creates part III of ch. 61, F.S., relating to the Uniform Child Abduction Prevention Act.

Section 2 provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

²⁶ 15 U.S.C. §7001

²⁷ 15 U.S.C. §7001(c) provides in part that if a statute, regulation, or other rule of law requires information relating to a transaction affecting interstate or foreign commerce be provided in writing, then the use of an electronic record to provide the information satisfies the requirement to be in writing in certain circumstances.

²⁸ The provisions of s. 7001 do not apply to court orders or notices, or official court documents; utility service cancellations, real property foreclosure and defaults; insurance benefits cancellations; product recall notices; and documents related to hazardous materials and dangerous substances. See 15 U.S.C. Sec. 7003(b).

See Fiscal Comments.

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 increase the time and expense for law enforcement officers. 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. This bill appears to have an indeterminate positive fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 61.45, F.S., is similar to this bill and appears to conflict with and limit this bill. For instance, s. 61.45, F.S., only provides two instances where a court may order abduction prevention methods: where a party brings evidence of a substantial risk or there is a stipulation by the parties. However, this bill allows a court to order abduction prevention methods on its own motion. In addition, current law provides only five prevention methods that a court may order. However, this bill provides over a dozen prevention methods that a court may utilize. It is unclear how a court would apply the provisions of both this bill and current law.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

N/A