

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal and Civil Justice Appropriations Committee

BILL: CS/SB 1862

INTRODUCER: Criminal and Civil Justice Appropriations Committee and Senator Sobel

SUBJECT: Child Abduction Prevention

DATE: April 7, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hansson	Walsh	CF	Favorable
2.	Daniell	Maclure	JU	Favorable
3.	Hendon	Sadberry	JA	Fav/CS
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes
 B. AMENDMENTS..... Technical amendments were recommended
 Amendments were recommended
 Significant amendments were recommended

I. Summary:

This bill amends Florida law relating to court-ordered parenting plans and the risk that a parent may violate the parenting plan. Specifically, the bill creates additional risk factors for a judge to consider when deciding whether or not a child is at risk of abduction. The bill also clearly outlines and makes additions to preventative measures that a judge may order if the judge finds credible evidence that a child is at risk of abduction. Finally, the bill provides that violation of the parenting plan may subject the party to civil or criminal penalties or a federal or state warrant under federal or state law. The bill provides an effective date of January 1, 2011.

The bill substantially amends section 61.45, Florida Statutes.

II. Present Situation:

Child Abduction

There are three primary types of kidnapping: kidnapping by a relative of the victim (“family kidnapping”), kidnapping by an acquaintance of the victim (“acquaintance kidnapping”), and

kidnapping by a stranger to the victim (“stranger kidnapping”).¹ The most prevalent type of kidnapping is done by a family member, often a parent. Parental kidnapping has been defined as “the taking, retention or concealment of a child by a parent, other family member, or their agent, in derogation of the custody rights, including visitation rights, of another parent or family member.”² In 1999, an estimated 262,100 children were abducted, and approximately 203,900 of those children – or 78 percent – were abducted by a family member.³ When a child is abducted, it is often extremely difficult, time-consuming, and expensive to recover the child. If the child has been taken overseas, the child may be almost impossible to locate or recover.⁴

Legal Response to Parental Kidnapping

All 50 states, the District of Columbia, and Congress have enacted laws to address parental kidnapping, as well as interstate and international child custody and visitation disputes. The primary laws governing custody jurisdiction and enforcement are the Uniform Child Custody Jurisdiction Act (UCCJA), the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), and the Parental Kidnapping Prevention Act of 1980 (PKPA). Additionally, the Hague Convention on the Civil Aspects of International Child Abduction (Hague Convention) facilitates the return of an abducted child who is taken internationally. More recently, the Uniform Child Abduction Prevention Act (UCAPA) was promulgated to fill a void in a majority of states by identifying risk factors for abduction and providing measures to prevent abduction, whether before or after a custody order has been entered.

Uniform Child Custody Jurisdiction Act (UCCJA)

Prior to the UCCJA, parents who kidnapped their children had a high likelihood of obtaining custody because courts had the authority to issue a custody order based on the fact that the child was physically located in the state.⁵ The UCCJA, promulgated in 1968 and adopted by all 50 states and the District of Columbia, “governs jurisdiction to make and modify child custody determinations and requires interstate recognition and enforcement of custody orders.”⁶

Parental Kidnapping Prevention Act of 1980 (PKPA)

The PKPA, enacted in 1980, is a full faith and credit law, which means custody determinations made in one state are entitled to “full faith and credit” in all other states and cannot be modified except as provided by the PKPA. Specifically, the PKPA requires states to:

- Enforce and not modify custody and visitation determinations made by sister states;

¹ Klaas Kids Foundation, *Missing Child Statistics*, www.klaaskids.org/pg-mc-mcstatistics.htm (last visited Mar. 22, 2010).

² Patricia M. Hoff, legal consultant for the American Bar Ass’n, *Parental Kidnapping: Prevention and Remedies*, 1 (Dec. 2000), available at <http://www.abanet.org/child/pkprevrem.pdf> (last visited Mar. 22, 2010).

³ National Conference of Comm’rs on Uniform State Laws, *Summary, Uniform Child Abduction Prevention Act*, http://www.nccusl.org/Update/uniformact_summaries/uniformacts-s-ucapa.asp (last visited Mar. 22, 2010).

⁴ Merle Weiner and Darren Mitchell, *The Uniform Child Abduction Prevention Act: Understanding the Basics* (2009), available at <http://www.haguedv.org/articles/Weiner%20%20Mitchell%20UCAPA%20Synergy%202009.pdf> (last visited Mar. 22, 2010).

⁵ Hoff, *supra* note 2, at 2.

⁶ *Id.*

- Defer to the “exclusive, continuing jurisdiction” of the decree state;
- Refrain from exercising jurisdiction while another state is exercising jurisdiction over a matter; and
- Ensure that certain interested persons are provided reasonable notice and an opportunity to be heard.⁷

Because the PKPA is a federal law, it will govern if there is a conflict with another state law; however, the PKPA does not apply to international cases.⁸

Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)

Due to problems with the UCCJA, the National Conference of Commissioners on Uniform State Laws (NCCUSL)⁹ adopted the UCCJEA in 1997. The UCCJEA:

- Makes a child’s “home state” the preferred basis for jurisdiction for initial custody orders and confers exclusive continuing jurisdiction on that state under certain conditions.
- Expands emergency jurisdiction to cover family violence situations.
- Provides procedures to streamline and expedite interstate child custody and visitation enforcement.
- Allows a court to decline jurisdiction in certain situations.
- Provides that its jurisdiction and enforcement provisions apply in international cases.¹⁰

Florida enacted the UCCJEA in 2002 to replace the UCCJA.¹¹ As of 2007, 48 jurisdictions had adopted the UCCJEA.¹²

Hague Convention on the Civil Aspects of International Child Abduction (Hague Convention)

In 1988, the Hague Convention came into effect in the United States after Congress enacted the International Child Abduction Remedies Act. The Hague Convention “establishes administrative and judicial mechanisms to expedite the return of children (usually to their country of habitual residence) who have been abducted or wrongfully retained and to facilitate the exercise of visitation across international borders.”¹³ A parent may only invoke the Hague Convention if it is

⁷ Patricia Hoff, legal consultant for the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Dep’t of Justice, *The Uniform Child-Custody Jurisdiction and Enforcement Act*, JUVENILE JUSTICE BULLETIN (Dec. 2001), available at <http://www.ncjrs.gov/pdffiles1/ojjdp/189181.pdf> (last visited Mar. 22, 2010) [hereinafter referred to as JUVENILE JUSTICE BULLETIN].

⁸ Hoff, *supra* note 2, at 3.

⁹ The NCCUSL is an organization that “provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of the law. NCCUSL’s work supports the federal system and facilitates the movement of individuals and the business of organizations with rules that are consistent from state to state.” National Conference of Comm’rs on Uniform State Laws, *Uniform Law Commission*, <http://www.nccusl.org/Update/> (last visited Mar. 22, 2010).

¹⁰ Hoff, *supra* note 2, at 4-5.

¹¹ Chapter 2002-65, s. 5, Laws of Fla., codified in ss. 61.501-61.542, F.S.

¹² Illinois General Assembly, *Uniform Child Abduction Prevention Act (UCAPA)* (April 2007), available at <http://www.ilga.gov/commission/lru/56.Abduction.pdf> (last visited Mar. 22, 2010).

¹³ JUVENILE JUSTICE BULLETIN, *supra* note 7, at 3.

also in force in the country where the child is taken. Currently, the Hague Convention is in effect between the United State and 75 countries.¹⁴

Uniform Child Abduction Prevention Act (UCAPA)

The UCAPA was promulgated by the NCCUSL in 2006, “premised on the general principle that preventing abduction is in a child’s best interests.”¹⁵ The UCAPA’s stated purpose is to provide a mechanism for a court to impose child abduction prevention measures at any time (both before and after the court has entered a custody decree), in order to help deter and prevent domestic and international abduction.¹⁶ The abduction can be committed by a parent, persons acting on behalf of a parent, or others.

According to the NCCUSL:

[The Uniform Child Abduction Prevention Act] sets out a wide variety of factors that should be considered in determining whether there is a credible risk that a child will be abducted. These factors include overt signs such as previous abductions, attempts to abduct the child, or threats of abduction, as well as signs of general abuse including domestic violence, negligence, or refusal to obey a child-custody determination. The act also includes a wide range of activities that may indicate a planned abduction including abandoning employment, liquidating assets, obtaining travel documents or travel tickets, or requesting the child’s school or medical records.

The act also addresses the special problems involved with international child abduction by including several risk factors specifically related to international abduction. In particular, the act requires courts to consider whether the party in question is likely to take a child to a country that isn’t a party to the Hague Convention on the Civil Aspects of International Child Abduction, or to a country that places the child at risk, has laws that would restrict access to the child, that is on the current list of state sponsors of terrorism, or is engaged in an active military action or war. In addition, a court will consider issues related to citizenship such as a recent change in citizenship status or a denial of United States Citizenship.

If a court determines that a credible risk exists that the child will be abducted, it may then enter an order containing provisions and measures meant to prevent abduction. The act lists a number of specific measures that a court may order. These include imposing travel restrictions, prohibiting the individual from removing the child from the State or other set geographic area, placing the child’s name in the United States Department of State’s Child Passport Issuance Alert

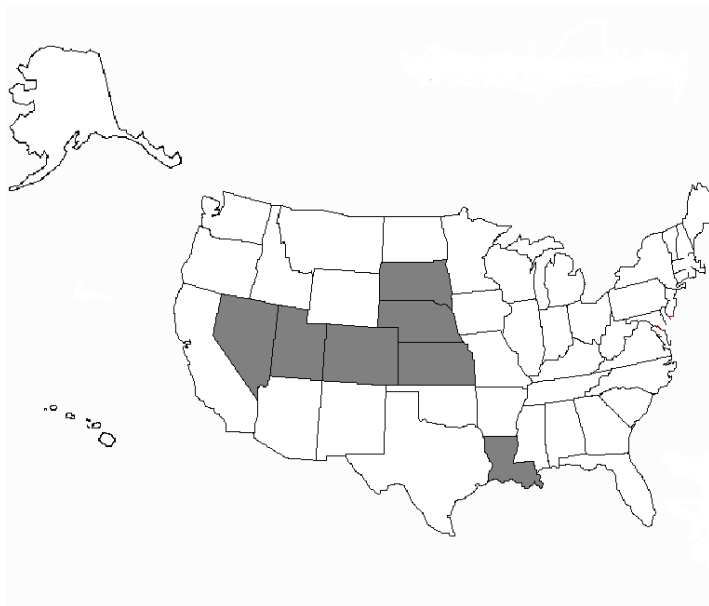
¹⁴ United States Dep’t of State, *Hague Abduction Convention Country List*, http://www.travel.state.gov/family/abduction/hague_issues/hague_issues_1487.html (last visited Mar. 22, 2010).

¹⁵ National Conference of Comm’rs on Uniform State Laws, *Uniform Child Abduction Prevention Act* (Prefatory Note) (July 2006), available at http://207.58.181.246/pdf_files/library/Uniform_Child_Abd_prev_act.pdf (last visited Mar. 22, 2010).

¹⁶ New Jersey Law Revision Comm’n, *Final Report Relating to Uniform Child Abduction Prevention Act*, 2 (Dec. 2008), available at www.lawrev.state.nj.us/ucapa/ucapaFR122208.doc (last visited Mar. 22, 2010).

Program, or requiring the individual to obtain an order from a foreign country containing identical terms to the child-custody determination. An abduction prevention order is effective until the earliest of the order's expiration, the child's emancipation, the child's 18th birthday, or until the order is modified, revoked, or vacated.¹⁷

The UCAPA was created to complement and strengthen existing law, such as the UCCJA, UCCJEA, or PKPA, and with regard to international child abduction, the Hague Convention.¹⁸ The UCAPA will become the law of a state only if the state enacts it. As of 2009, seven states had adopted the UCAPA, in whole or in part, and nine other jurisdictions were considering its adoption.¹⁹ The map below shows the seven states where the UCAPA has been adopted.



Child Abduction Prevention in Florida

Section 61.45, F.S., provides that when imposing a parenting plan, the court must consider a variety of factors in determining whether there is a risk that the plan will be violated. The court may also impose a bond if it believes there is a risk that the plan will be violated. In a proceeding in which the court enters a parenting plan, if competent substantial evidence is presented that there is a risk one party may violate the court's parenting plan by removing the child from the state or country or concealing the whereabouts of the child, the court may:

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

¹⁷ National Conference of Comm'rs on Uniform State Laws, *supra* note 3.

¹⁸ New Jersey Law Revision Comm'n, *supra* note 16, at 2.

¹⁹ The seven states that have adopted the UCAPA are: Colorado, Kansas, Louisiana, Nebraska, Nevada, South Dakota, and Utah. The nine jurisdictions considering its adoption are: the District of Columbia, Florida, Minnesota, Mississippi, New Hampshire, New Mexico, Pennsylvania, South Carolina, and Washington. Weiner and Mitchell, *supra* note 4.

- Order that a parent may not remove the child from this country without the notarized written permission of both parents or further court order;
- 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 (Hague Convention) unless the other parent agrees in writing that the child may be taken to the country;
- Require a parent to surrender the passport of the child; or
- Require that party to post bond or other security.

If the court enters a parenting plan that includes a provision that the party not remove the child from the country or take the child to a country that has not ratified or acceded to the Hague Convention, 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 the office not issue a passport to the child without their signature or further court order.

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 court has found that a party previously removed a child from Florida or another state in violation of a parenting plan, or has found that a party has threatened to take a child out of Florida or another state in violation of a parenting plan;
- 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;
- The party has strong financial reasons to remain in Florida or to relocate to another state or country;
- 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;
- Either party has had a history of domestic violence as either a victim or perpetrator, child abuse, or child neglect evidenced by criminal history; or
- The party has a criminal record.

Section 61.45, F.S., also makes provisions for the determination and forfeiture of the bond or security. It provides an exception to the bond requirements for a parent determined by the court to be a victim or potential victim of domestic violence. The statute also provides for allocation of the bond proceeds upon entry of a forfeiture order.

III. Effect of Proposed Changes:

This bill adopts provisions from the Uniform Child Abduction Prevention Act and provides that the act may be cited as the “Child Abduction Prevention Act.”

New Preventative Measures

Currently, preventative measures may be ordered by a judge if one of the parties presents competent substantial evidence there is a risk of abduction or if both parties agree there is a risk of abduction. This bill would also permit a judge to order preventative measure upon the motion of another individual or entity having a right under the law of Florida. Additionally, the bill would allow the court to order preventative measures if the court finds evidence that establishes credible risk of removal of the child. The bill does not define who is an “individual or entity having a right under the law of this state,” and it appears that the provision could be read broadly.

In addition to the existing preventative measure for a party to surrender the child’s passport, the court may also require that:

- The petitioner place the child’s name in the Children’s Passport Issuance Alert Program of the United States Department of State;²⁰
- 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
- The respondent may not apply on behalf of the child for a new or replacement passport or visa.

Although the bill provides that the respondent may not apply on behalf of the child for a new or replacement visa, neither the bill, nor current law, requires that the respondent surrender the child’s visa.

The bill provides that the court may require the 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 for the reasonable expenses of recovery of the child, including reasonable attorney’s fees and costs, if the child is abducted.

In addition to the existing preventative measure for a court to order a party not to remove the child from the state or country without notarized written permission of both parents, a court may order:

- An imposition of travel restrictions that requires that a party traveling with the child outside a designated geographic area provide the other party with the travel itinerary of the child; a list of physical addresses and telephone numbers at which the child can be reached at specified times; and copies of all travel documents;

²⁰ The Children’s Passport Issuance Alert Program allows a parent to register his or her United States citizen children under the age of 18 in the Department of State’s Passport Lookout System. The parent or parents receive an alert from the Department of State if an application is submitted for a child who is registered in the program. The parent then has 30 days to consent or object to the issuance of the passport. This system gives all United States passport agencies, as well as United States embassies and consulates abroad, an alert on a child’s name if a parent or guardian registers an objection to passport issuance for his or her child. United States Dep’t of State, *The Children’s Passport Issuance Alert Program*, http://travel.state.gov/family/abduction/resources/resources_554.html (last visited Mar. 22, 2010).

- A prohibition of the respondent from, directly or indirectly:
 - Removing the child from the state or country or specified region without permission of the court or written consent from the petitioner;
 - Removing or retaining a child in violation of a child custody determination;
 - Removing the child from school or a child care or similar facility; or
 - Approaching the child at any location other than a site designated for supervised visitation.
- A party to register the order in another state as a prerequisite to allowing the child to travel to that state;
- That the respondent provide the following as a prerequisite to exercising custody or visitation:
 - An authenticated court 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 relevant foreign consulate or embassy;
 - Proof to the court that the respondent has provided the information as noted above;
 - An acknowledgement to the court in a record from the relevant foreign consulate or embassy that no passport application has been made or issued on behalf of the child;
 - Proof to the petitioner and court of registration with the United States embassy or other diplomatic presence in the destination country and with the destination country's central authority for the Hague Convention, if the convention is in effect between this country and the destination country, unless one of the parties objects;
 - A written waiver under the Privacy Act,²¹ with respect to any document, application, or other information pertaining to the child or respondent authorizing its disclosure to the court;
 - A written waiver with respect to any document, application, or other information pertaining to the child in records held by the United States Bureau of Citizenship and Immigration Services authorizing its disclosure to the court and the petitioner;
 - An order from the relevant foreign country, upon the court's request, containing terms identical to the child custody determination issued in this country; or
 - That the child is entered, upon the court's request, into the Prevent Departure Program of the United States Department of State or a similar federal program designed to prevent unauthorized departure into foreign country.
- The imposition of 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.

New Risk Factors

The bill imposes additional risk factors that suggest a party may violate the parenting plan by abducting the child. The new factors include whether:

²¹ 5 U.S.C. s. 552(a).

- The party has engaged in activities that suggest plans to leave Florida, such as applying for a passport or visa or obtaining travel documents for the respondent, or the child;
- The party has sought to obtain the child's birth certificate or school or medical records;
- The party is likely to take the child to a country that:
 - Is not a party to the Hague Convention and does not provide for the extradition of an abducting parent or for the return of an abducted child;
 - Is a party to the Hague Convention, but:
 - The Hague Convention is not in force between this country and that country;
 - Is noncompliant or demonstrating patterns of noncompliance according to the most recent compliance report issued by the United States Department of State; or
 - Lacks legal mechanisms for immediately and effectively enforcing a return order under the Hague Convention;
 - 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;
 - Has laws or practices that would:
 - Enable the respondent, without due cause, to prevent the petitioner from contacting the child;
 - Restrict the petitioner from freely traveling to or exiting from the country because of the petitioner's gender, nationality, marital status, or religion; or
 - Restrict the child's ability legally to leave the country after the child reaches the age of majority because of the child's gender, nationality, or religion;
 - Is included on a current list of state sponsors of terrorism;
 - Does not have an official United States 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.
- 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;
- The party has had an application for United States citizenship denied;
- The party has forged or presented misleading or false evidence on government forms or supporting documents to obtain or attempt to obtain a passport, visa, travel documents, social security card, driver's license, or other government-issued identification card or has made a misrepresentation to the United States government;
- The party has used multiple names to attempt to mislead or defraud;
- The party has a diagnosed mental health disorder; or
- The party is engaged in any other conduct the court considers relevant to the risk of abduction.

The bill provides that a party committing a violation may be subject to civil or criminal penalties or a federal or state warrant under federal or state laws, including the International Parental

Kidnapping Crime Act.²² A violation may also subject the violating parent to apprehension by a law enforcement officer. The bill does not specify whether the violation is a violation of the statute or a violation of the parenting plan.

The bill provides an effective date of January 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This bill allows a court to evaluate certain risk factors, and, if it decides that a credible risk exists that a child may be abducted, the court may enter an order containing provisions and measures meant to prevent abduction. For example, the court may impose travel restrictions, such as prohibiting an individual from removing the child from the state, country, or other geographic area.

The right to travel has been found to be a basic and fundamental right recognized by the United States Constitution through the privileges and immunities clause, the due process clause, the equal protection clause, the commerce clause, and the First Amendment.²³ Typically, when a fundamental right is involved, the government must show a compelling state interest for its action and that it has used the least intrusive means to further that interest.²⁴ Courts have generally found that a person's constitutional right to travel may be restricted when that person is the custodial parent of a child. One court stated:

[w]hile we recognize that citizens of this nation ordinarily have the constitutional right to travel from one state to another and to take up residence in the state of one's choice, we also recognize a legitimate state interest in restricting the residence of a custodial parent.²⁵

²² The International Parental Kidnapping Crime Act (IPKCA) of 1993 provides that a criminal arrest warrant can be issued for a parent who takes a juvenile under the age of 16 outside of the United States without the other custodial parent's permission. Federal Bureau of Investigation, *Crimes Against Children, Family Child Abductions*, <http://www.fbi.gov/hg/cid/cac/family.htm> (last visited Mar. 22, 2010).

²³ 16A C.J.S. *Constitutional Law* s. 690.

²⁴ See *A.W. v. Dep't of Children and Families*, 969 So. 2d 496, 504 (Fla. 1st DCA 2007) (citing *North Fla. Women's Health and Counseling Servs., Inc. v. State*, 866 So. 2d 612, 625 n. 16 (Fla. 2003)).

²⁵ Child Custody Prac. & Proc. s. 17:27 (quoting *Carlson v. Carlson*, 661 P.2d 833 (Kan. Ct. App. 1983)); but see Arthur B. LaFrance, *Child Custody and Relocation: A Constitutional Perspective*, 34 U. LOUISVILLE J. FAM. L. 1, 68-81 (1995-96)

A court may impose travel restrictions on a custodial parent because “[t]he best interest of the child standard is a compelling state interest that can restrict the constitutional right of a custodial parent to travel, and is the most appropriate way to fairly balance parents’ competing interests, when a custodial parent seeks to relocate with a child.”²⁶

A court may not infringe on a constitutional right without a legitimate state interest, and it must do so in the least restrictive means. The bill allows a court to restrict a party’s right to travel with the person’s child based on a possibility that there is a risk that the respondent may abduct the child. This is determined by examining certain factors enumerated in statute. However, some of the factors that a court may consider are whether the respondent is obtaining travel documents for himself or herself, a family member, or the child, or obtaining the child’s school or medical records. None of these things, in and of themselves, are illegal or suspect, yet a court may consider them when deciding whether to restrict the respondent’s constitutional rights. Additionally, by including the fact that the respondent obtained travel documents for himself or herself as a risk factor, it may preclude the respondent from traveling because of the fear that he or she will be considered a “risk” for abducting the child. This could also be considered an infringement on a person’s right to travel. To the extent a court finds that the state has a legitimate interest in protecting a child from abduction, the bill may pass a constitutional challenge. However, if a court finds that the bill is not using the least restrictive means to infringe on the respondent’s constitutional right to travel, the bill may be subject to a constitutional challenge.

The bill also permits a court to require a written waiver by the respondent of his or her privacy rights with respect to “any document, application, or other information pertaining to the child or the respondent.” Florida has an explicit constitutional right to privacy under article I, section 23, of the Florida Constitution. In right of privacy cases where a reasonable expectation of privacy exists, the Florida Supreme Court has applied the compelling state interest standard of review.²⁷ The bill’s provision appears to be broadly written and may raise constitutional concerns.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill amends s. 61.45, F.S., to include additional risk factors for a judge to consider when deciding whether or not a child is at risk of abduction and whether to assess a bond or other security. Additionally, the bill provides that the court may require a party to post

(providing an argument for why it is against a custodial parent’s constitutional right to travel to place relocation restrictions in a custody order).

²⁶ 16B Am. Jur. 2d *Constitutional Law* s. 665.

²⁷ *Winfield v. Division of Pari-Mutuel Wagering*, 477 So. 2d 544 (Fla. 1985).

bond or other security in an amount sufficient to serve as a financial deterrent to the abduction. Due to the additional risk factors that may be considered and the fact that the bond is to serve as a financial deterrent, the bill may have a fiscal impact on certain parties to a parenting plan; however, the exact fiscal impact is unknown.

C. Government Sector Impact:

According to the Office of the State Courts Administrator (OSCA), the bill “may require five or more of the Florida Supreme Court Approved Family Law Forms to be amended. Accordingly, the workload of OSCA staff and the forms workgroup of the Supreme Court of Florida may increase temporarily due to this bill.”²⁸

VI. Technical Deficiencies:

The bill provides that the court may require that the respondent not apply on behalf of the child for a new or replacement passport or visa. Elsewhere in the bill, it provides that the court may require the respondent to surrender any United States or foreign passport of the child or require the respondent to acknowledge to the court that no passport application has been made, or passport issued, on behalf of the child; however, it does not mention a visa in either of these provisions. It is unclear whether a visa was intentionally left out of these provisions or whether it should be included.

Additionally, there are several parts of the bill, when read with sections of current law, that are repetitious.

VII. Related Issues:

Several states have considered adopting the Uniform Child Abduction Prevention Act (UCAPA), but have either declined to do so or have enacted a modified version of it. One of the reasons stated for this is that the measures to prevent abduction appear to affect certain fundamental liberties, such as the right to travel. Another reason was that some of the factors that the court may consider to determine whether a credible risk of abduction of a child exists do not in and of themselves display evidence of such a risk and may be used by a parent as a control mechanism. Examples include obtaining a child’s school or medical records or birth certificate, a parent changing jobs, or the purchase of airline tickets. These actions may evidence parental responsibility or a change of circumstances, rather than evidence a possible abduction.²⁹ Some states have addressed some of their concerns by modifying the UCAPA to apply only to international child abductions.³⁰

²⁸ Office of the State Courts Administrator, *Judicial Impact Statement SB 1862* (Mar. 3, 2010) (on file with the Senate Committee on Judiciary).

²⁹ New Jersey Law Revision Comm’n, *supra* note 16, at 3-4.

³⁰ Louisiana is one state that has adopted a version of UCAPA that applies exclusively to international abductions. *Id.*

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal and Civil Justice Appropriations on April 6, 2010:

- Removes provisions authorizing the disclosure of private information to the respondent and petitioner.
- Removes the making of travel plans for a family member and obtaining birth certificate, school, or medical records as a risk factor for the court to consider in assessing a bond to ensure that a party does not remove a child from the state or country.
- Replaces two specific mental health disorders for the court to consider in assessing a bond to ensure that a party does not remove a child from the state or country with a more general requirement that the court consider any mental health disorder relevant to the risk of abduction.

- B. **Amendments:**

None.