

REASONS FOR ENACTMENT OF UCAPA OVER PRESENT VERSION OF 61.45:

1. Present statute (even with proposed amendment) is narrow in its application.

F.S. 61.45 apparently applies to pending child proceedings **where a parenting plan is enacted**. UCAPA Section 5 – Jurisdiction -- provides broader jurisdiction where a petition under the act or petition for abduction prevention measures to be implemented can be made **when there is jurisdiction to make a child custody determination under the UCCJEA or if there is temporary emergency jurisdiction under the UCCJEA**. No order has to be entered for a parenting plan in order to help avoid abduction.

Concern: If F.S. 61.45 requires the entry of a parenting plan before a court has authority to act, we are not affording equal protection to individuals with no parenting plan [to petition for anti-removal protections if there is a credible threat or risk of abduction].

CONCERN WARRANTING FURTHER THOUGHT: If 61.45 requires entry of a parenting plan before a court has authority to act – where does this leave children born out of wedlock? Statistics place this number near 40% of children in Florida. Mothers may have 100% timesharing under default provisions of the law (F.S. 744.301 Natural guardian statute states the mother of a child born out of wedlock is the natural guardian of the child and is entitled to primary residential care and custody of the child unless a court of competent jurisdiction enters an order stating otherwise and F.S. 742.031(2) If a judgment of paternity contains only a child support award with no parenting plan or time-sharing schedule, the obligee parent shall receive all of the time-sharing and sole parental responsibility).

2. As to concern regarding UCAPA Section 8(e) -- provision for protection of imminent abduction by **taking a child into physical custody**, there should not be hesitation to adopt in that Florida already has a similar provision enacted in Florida Statute 61.534 (Uniform Child Custody Jurisdiction and Enforcement Act, this provision enacted in 2002) which provides:

(1) Upon the filing of a petition seeking enforcement of a child custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is likely to imminently suffer serious physical harm or removal from this state.

(2) If the court, upon the testimony of the petitioner or other witness, finds that the child is likely to imminently suffer serious physical harm or removal from this state, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by s. 61.531(2).

(3) A warrant to take physical custody of a child must:

- (a) Recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;
 - (b) Direct law enforcement officers to take physical custody of the child immediately; and
 - (c) Provide for the placement of the child pending final relief.
- (4) The respondent must be served with the petition, warrant, and order immediately after the child is taken into physical custody.
- (5) A warrant to take physical custody of a child is enforceable throughout this state. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.
- (6) The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

There is only one reported appellate decision which mentions this statute and is not a direct challenge of this provision.

3. The proposed changes to the statute basically incorporate substantial portions of Sections 7 and 8 of the UCAPA making additional relief available when there is risk/threat of an abduction. The statute, however, lacks procedural guidance and protections that are provided in UCAPA. For example, the ability of “third parties” to requests anti-abduction protections in being introduced in this bill, however, “third parties” is not defined. UCAPA provides a definition in Section 4.

It is not clear whether actions under F.S. 61.45 (current or revised) are brought by motion or petition. UCAPA Section 6 suggests an action should be commenced by a petition. UCAPA also provides more clarity on the burden of proof to obtain relief and has 2 sections devoted to the procedural process that is to be followed.

4. Finally, the Family Law Section prefers UCAPA be adopted in total to promote the uniformity intended in the adoption of such acts.