

UNIFORM CHILD ABDUCTION PREVENTION ACT*

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ON UNIFORM STATE LAWS

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UNIFORM CHILD ABDUCTION PREVENTION ACT

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UNIFORM CHILD ABDUCTION PREVENTION ACT

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UNIFORM CHILD ABDUCTION PREVENTION ACT

SECTION 1. SHORT TITLE. This [act] may be cited as the Uniform Child Abduction Prevention Act.

SECTION 2. DEFINITIONS. In this [act]:

- (1) “Abduction” means the wrongful removal or wrongful retention of a child.
- (2) “Child” means an unemancipated individual who is less than 18 years of age.
- (3) “Child-custody determination” means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order.
- (4) “Child-custody proceeding” means a proceeding in which legal custody, physical custody, or visitation with respect to a child is at issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence.
- (5) “Court” means an entity authorized under the law of a state to establish, enforce, or modify a child-custody determination.
- (6) “Petition” includes a motion or its equivalent.
- (7) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (8) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe or nation.
- (9) “Travel documents” mean records relating to a travel itinerary, including passes, reservations for transportation and accommodations. The term does not include a passport or international visa.
- (10) “Wrongful removal” means the taking of a child that breaches rights of custody or visitation given or recognized under the law of this state.
- (11) “Wrongful retention” means the keeping or concealing of a child that breaches rights of custody or visitation given or recognized under the law of this state.

SECTION 3. COOPERATION AND COMMUNICATION AMONG COURTS.

Sections [110], [111] and [112] of [insert citation to the provisions of the Uniform Child Custody Jurisdiction and Enforcement Act or its equivalent in the state] apply to proceedings under this [act].

SECTION 4. ACTIONS FOR ABDUCTION PREVENTION MEASURES.

(a) A court on its own motion may order abduction prevention measures in a child-custody proceeding if the court finds that the evidence establishes a credible risk of abduction of the child.

(b) A party to a child-custody determination or an individual or entity having a right under state law to seek a child-custody determination for the child may file a petition seeking abduction prevention measures to protect the child under this [act].

(c) An individual or entity entitled to bring an action under subsection (b) may file a petition seeking abduction prevention measures with respect to a child who is not yet the subject of a child-custody determination.

(d) A prosecutor or public authority designated under [insert citation to Uniform Child Custody Jurisdiction and Enforcement Act Section 315 or applicable law of this state] may petition for a warrant to take physical custody of a child under Section 9 of this [act].

SECTION 5. JURISDICTION.

(a) A petition under this [act] may be filed only in a court that has jurisdiction to make a child-custody determination with respect to the child at issue under [insert citation to Uniform Child Custody Jurisdiction and Enforcement Act or the Uniform Child Custody Jurisdiction Act].

(b) A court of this state has temporary emergency jurisdiction under [insert citation to Section 204 of the Uniform Child Custody Jurisdiction and Enforcement Act or Section 3(a)(3) of the Uniform Child Custody Jurisdiction Act] if the court finds a credible risk of abduction.

SECTION 6. CONTENTS OF PETITION. A petition for abduction prevention measures must be verified and include a copy of an existing child-custody determination, if any and if available. The petition must specify the risk factors for abduction, including the relevant ones described in Section 7. In addition, subject to [insert citation to Section 209(e) the Uniform Child Custody Jurisdiction and Enforcement Act or cite the law of this state providing for the

confidentiality of procedures, addresses, and other identifying information], if reasonably ascertainable, the petition must contain:

- (1) the name, birthdate, and gender of the child at risk for abduction;
- (2) the customary address and current physical location of the child;
- (3) the identity, customary address, and current physical location of the respondent;
- (4) a statement of whether a prior action to prevent abduction or domestic violence has been filed by a party or other individual or entity having custody of the child, and the date, location, and disposition of such action;
- (5) a statement of whether either party to the action has been arrested for a crime related to domestic violence or child abuse, and the date, location, and disposition of such case; and
- (6) any other information required to be submitted to the court for a child-custody determination under [insert citation to Section 209 of the Uniform Child Custody Jurisdiction and Enforcement Act or applicable law of this state].

SECTION 7. FACTORS TO DETERMINE RISK OF ABDUCTION.

(a) In determining whether there is a credible risk of abduction of a child, the court shall consider evidence that the respondent or the petitioner:

- (1) has previously abducted or attempted to abduct the child;
- (2) has threatened to abduct the child;
- (3) has recently engaged in activities that may indicate a planned abduction, including:

- (A) abandoning employment;
- (B) selling a primary residence or terminating a lease;
- (C) closing bank or other financial management accounts, liquidating assets, hiding or destroying financial documents, or conducting any other unusual financial activities;
- (D) applying for a passport or visa, or obtaining travel documents, or purchasing travel tickets for the respondent, another family member, or the child; or
- (E) seeking to obtain the child's birth certificate or school or medical records;

- (4) has engaged in domestic violence, stalking, or child abuse or neglect;
- (5) has refused to follow a child-custody determination;
- (6) lacks strong familial, financial, emotional, or cultural ties to the state or the United States;
- (7) has strong familial, financial, emotional, or cultural ties to another state or country;
- (8) is likely to take the child to a country that:
 - (A) 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;
 - (B) is a party to the Hague Convention on the Civil Aspects of International Child Abduction but:
 - (i) the Hague Convention on the Civil Aspects of International Child Abduction is not in force between the United States and that country;
 - (ii) is noncompliant according to the most recent compliance report issued by the United States Department of State; or
 - (iii) lacks legal mechanisms for immediately and effectively enforcing a return order under the Hague Convention on the Civil Aspects of International Child Abduction;
 - (C) 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;
 - (D) has laws or practices that would:
 - (i) enable the respondent, without due cause, to prevent the petitioner from contacting the child;
 - (ii) restrict the petitioner from freely traveling to or exiting from the country because of the petitioner's gender, nationality, marital status, or religion; or
 - (iii) restrict the child's ability legally to leave the country after the child reaches the age of majority because of a child's gender, nationality, or religion;

(E) is included by the United States Department of State on a current list of state sponsors of terrorism;

(F) does not have an official United States diplomatic presence in the country; or

(G) is engaged in active military action or war, including a civil war, to which the child may be exposed;

(9) is undergoing a change in immigration or citizenship status that would adversely affect the respondent's ability to remain in the United States legally;

(10) has had an application for United States citizenship denied;

(11) 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;

(12) has used multiple names to attempt to mislead or defraud; or

(13) has engaged in any other conduct the court considers relevant to the risk of abduction.

(b) In the hearing on a petition for abduction prevention measures, the court shall consider evidence that the respondent believed in good faith that the respondent's conduct was necessary to avoid imminent harm to the child or parent and any other evidence that may be relevant to whether the respondent may be permitted to remove or retain the child.

SECTION 8. PROVISIONS AND MEASURES TO PREVENT ABDUCTION.

(a) If a petition has been filed under this [act], the court may enter an order which shall include:

(1) the basis for the court's exercise of jurisdiction;

(2) the manner in which notice and opportunity to be heard were given to the persons entitled to notice of the proceeding under [applicable state law];

(3) a detailed description of each parent's custody and visitation rights and residential arrangements for the child;

(4) a provision stating that a violation of the order may subject the party in

violation to civil and criminal penalties; and

(5) identification of the child's country of habitual residence at the time of the issuance of the order.

(b) If, after reviewing the evidence, at a hearing on a petition under this [act] or on the court's own motion, the court finds a credible risk of abduction of the child, the court shall enter an abduction prevention order. The order shall include the provisions described in subsection (a) and the measures and conditions, including those described in subsections (c), (d), and (e), that are reasonably calculated to prevent abduction of the child, giving due consideration to the custody and visitation rights of both parents. In determining the measures to be ordered, the court shall consider the age of the child, the potential harm to the child from an abduction, the legal and practical difficulties of returning the child to the jurisdiction if abducted, and the reasons for the potential abduction, including evidence of domestic violence or child abuse.

(c) An abduction prevention order may include one or more of the following:

(1) the imposition of travel restrictions that require that a party traveling with the child outside a designated geographical area provide the other party with the following:

(A) the travel itinerary of the child;

(B) a list of physical addresses and telephone numbers at which the child can be reached at specified times; and

(C) copies of all travel documents;

(2) prohibition of the respondent from directly or indirectly

(A) removing the child from this state, the United States, or another geographic area without permission of the court or the petitioner's written consent;

(B) removing or retaining the child in violation of the child-custody determination;

(C) removing the child from school or child-care or similar facility; or

(D) approaching the child at any location other than a site designated for supervised visitation;

(3) requiring a party to register the order in another state as a prerequisite to allowing the child to travel to that state;

(4) with regard to the child's passport:

(A) directing the petitioner to place the child's name in the United States Department of State's Child Passport Issuance Alert Program;

(B) requiring the respondent to 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

(C) prohibiting the respondent from applying on behalf of the child for a new or replacement passport or visa;

(5) as a prerequisite to exercising custody or visitation, requiring respondent to provide:

(A) to the United States Department of State Office of Children's Issues and the relevant foreign consulate or embassy, an authenticated copy of a court order detailing passport and travel restrictions for the child;

(B) to the court:

(i) proof that the respondent has provided the information in subparagraph (A); and

(ii) an acknowledgment 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;

(C) to the petitioner, proof of registration with the United States Embassy or other United States diplomatic presence in the destination country, and, with the Central Authority for the Hague Convention on the Civil Aspects of International Child Abduction, if that Convention is in effect between the United States and the destination country, unless one of the parents objects; and

(D) a written waiver under the Privacy Act, 5 U.S.C. 552a [as amended], with respect to any document, application, or other information pertaining to the child authorizing disclosure of them to the court and the petitioner; and

(6) upon the petitioner'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 the United States.

(d) In an abduction prevention order, the court may impose conditions on the exercise of custody or visitation that:

(1) 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 order the respondent to pay for the supervision;

(2) require the respondent to post a bond or provide 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 expenses of recovery of the child, including attorneys fees and actual costs if there is an abduction; and

(3) require the respondent to obtain education on the potentially harmful effects to the child from abduction.

(e) To prevent imminent abduction of a child, a court may:

(1) issue a warrant to take physical custody of the child under Section 9 of this [act] or the law of this state other than this [act];

(2) direct the use of law enforcement to take any action reasonably necessary to locate the child, obtain return of the child, or enforce a custody determination under this [act] or the law of this state other than this [act]; and

(3) grant any other relief allowed under the law of this state other than this [act].

(f) The remedies provided in this [act] are cumulative and do not affect the availability of other state remedies to prevent child abduction.

SECTION 9. WARRANT TO TAKE PHYSICAL CUSTODY OF CHILD.

(a) If a petition under this [act] contains allegations, and the court finds that there is a credible risk that the child is imminently likely to be wrongfully removed, the court may issue an ex parte warrant to take physical custody of the child.

(b) The respondent on a petition under subsection (a) must be afforded an opportunity to be heard at the earliest possible time after the ex parte warrant is executed, but not later than the next judicial day unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible.

(c) An ex parte warrant to take physical custody of a child must:

(1) recite the facts upon which a determination of a credible risk of imminent wrongful removal of the child is based;

(2) direct law enforcement officers to take physical custody of the child immediately;

(3) state the date for the hearing on the petition; and

(4) provide for the safe interim placement of the child pending further order of the court.

(d) If feasible, before issuing a warrant and determining the placement of the child after the warrant is executed, the court may order a search of the relevant databases of the National Crime Information Center system, including those pertaining to protection orders, historical protection orders, warrants, sex offender registry, and the persons on supervised release, and similar state databases to determine if either the petitioner or respondent has a history of domestic or family violence or child abuse.

(e) The respondent must be served with the petition and warrant when or immediately after the child is taken into physical custody.

(f) A warrant to take physical custody of a child, issued by this state or another state, is enforceable throughout this state. If the court finds that a less intrusive remedy will not be effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances, the court may authorize law enforcement officers to make a forcible entry at any hour.

(g) If the court finds, after hearing, that a petitioner sought an ex parte warrant under subsection (a) for the purpose of harassment or in bad faith, the court may award the respondent reasonable attorney fees, expenses, and costs.

(h) This [act] does not affect the availability of relief allowed under the law of this state other than this [act].

SECTION 10. DURATION OF ABDUCTION PREVENTION ORDER. An abduction prevention order remains in effect until the earliest of a time stated in the order, emancipation of the child, the child's attaining age 18, or the order is modified, revoked, vacated

or superseded by a court with jurisdiction under [insert citation to Sections 201 through 203 of the Uniform Child Custody Jurisdiction and Enforcement Act or Section 3 of the Uniform Child Custody Jurisdiction Act and applicable law of this state].

SECTION 11. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 12. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001, et seq.) but does not modify, limit, or supersede Section 101(c) of the act (15 U.S.C. Section 7001(c)) of that act or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)).

SECTION 13. EFFECTIVE DATE. This [act] takes effect on