

LEGISLATIVE BILL 341

Approved by the Governor February 1, 2007

Introduced by Schimek, 27; Flood, 19; Howard, 9; McGill, 26; Pedersen, 39; Aguilar, 35; Rogert, 16; Stuthman, 22; Cornett, 45; Hudkins, 21; Dubas, 34; McDonald, 41

FOR AN ACT relating to children; to amend section 43-1230, Reissue Revised Statutes of Nebraska; to adopt the Uniform Child Abduction Prevention Act; to change provisions relating to international jurisdiction with respect to child abduction and abuse; to repeal the original section; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 12 of this act may be cited as the Uniform Child Abduction Prevention Act.

Sec. 2. For purposes of the Uniform Child Abduction Prevention Act:

(1) Abduction means the wrongful removal or wrongful retention of a child;

(2) Child means an unemancipated individual who is less than eighteen 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, dissolution of marriage, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, or 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 document means records relating to a travel itinerary, including travel tickets, passes, reservations for transportation, or accommodations. The term does not include a passport or 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; and

(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.

Sec. 3. Sections 43-1235, 43-1236, and 43-1237 apply to cooperation and communications among courts in proceedings under the Uniform Child Abduction Prevention Act.

Sec. 4. (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 another individual or entity having a right under the law of this state or any other state to seek a child custody determination for the child may file a petition seeking abduction prevention measures to protect the child under the Uniform Child Abduction Prevention Act.

(c) A county attorney or the Attorney General may seek a warrant to take physical custody of a child under section 9 of this act or other appropriate prevention measures.

Sec. 5. (a) A petition under the Uniform Child Abduction Prevention 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 the Uniform Child Custody Jurisdiction and Enforcement Act.

(b) A court of this state has temporary emergency jurisdiction under section 43-1241 if the court finds a credible risk of abduction.

Sec. 6. A petition under the Uniform Child Abduction Prevention Act must be verified and include a copy of any existing child custody

determination, if available. The petition must specify the risk factors for abduction, including the relevant factors described in section 7 of this act. Subject to subsection (e) of section 43-1246, if reasonably ascertainable, the petition must contain:

- (1) the name, date of birth, and gender of the child;
- (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 the action;
- (5) a statement of whether a party to the proceeding has been arrested for a crime related to domestic violence, stalking, or child abuse or neglect, and the date, location, and disposition of the case; and
- (6) any other information required to be submitted to the court for a child custody determination under section 43-1246.

Sec. 7. (a) In determining whether there is a credible risk of abduction of a child, the court shall consider any evidence that the petitioner or respondent:

- (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;
 - (C) terminating a lease;
 - (D) closing bank or other financial management accounts, liquidating assets, hiding or destroying financial documents, or conducting any unusual financial activities;
 - (E) applying for a passport or visa or obtaining travel documents for the respondent, a family member, or the child; or
 - (F) 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, 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;

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

(13) is likely to disregard a determination by a court of this state to not recognize and enforce a foreign child custody determination pursuant to subsection (d) of section 43-1230; or

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

(b) In the hearing on a petition under the Uniform Child Abduction Prevention Act, the court shall consider any evidence that the respondent believed in good faith that the respondent's conduct was necessary to avoid imminent harm to the child or respondent and any other evidence that may be relevant to whether the respondent may be permitted to remove or retain the child.

Sec. 8. (a) If a petition is filed under the Uniform Child Abduction Prevention Act, the court may enter an order that must 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;

(3) a detailed description of each party'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, at a hearing on a petition under the act or on the court's own motion, the court after reviewing the evidence finds a credible risk of abduction of the child, the court shall enter an abduction prevention order. The order must include the provisions required by subsection (a) of this section, and measures and conditions, including those in subsections (c), (d), and (e) of this section, that are reasonably calculated to prevent abduction of the child, giving due consideration to the custody and visitation rights of the parties. 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, stalking, or child abuse or neglect.

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

(1) an 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) a prohibition of the respondent 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 a child custody determination;

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

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

(3) a requirement that a party 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) a direction that the petitioner place the child's name in the United States Department of State's Child Passport Issuance Alert Program;

(B) a requirement that 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

(C) a prohibition upon 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, a requirement that the respondent 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 the order detailing passport and travel restrictions for the child;

(B) to the court:

(i) proof that the respondent has provided the information in subdivision (5)(A) of this section; 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 parties objects; and

(D) a written waiver under the Privacy Act, 5 U.S.C. section 552a, with respect to any document, application, or other information pertaining to the child authorizing its disclosure 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 the costs of 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 reasonable expenses of recovery of the child, including reasonable attorney's fees and 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 the 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 the act or the law of this state other than the act; or

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

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

Sec. 9. (a) If a petition under the Uniform Child Abduction Prevention 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) of this section 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 a hearing on that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible.

(c) An ex parte warrant under subsection (a) of this section 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 and time 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 before determining the placement of the child after the warrant is executed, the court may order a search of the relevant data bases of the National Crime Information Center system and similar state data bases to determine if either the petitioner or

respondent has a history of domestic violence, stalking, or child abuse or neglect.

(e) The petition and warrant must be served on the respondent 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 a hearing, that a petitioner sought an ex parte warrant under subsection (a) of this section for the purpose of harassment or in bad faith, the court may award the respondent reasonable attorney's fees, costs, and expenses.

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

Sec. 10. An abduction prevention order remains in effect until the earliest of:

- (1) the time stated in the order;
- (2) the emancipation of the child;
- (3) the child's attaining eighteen years of age; or
- (4) the time the order is modified, revoked, vacated, or superseded by a court with jurisdiction under sections 43-1238 to 43-1240.

Sec. 11. In applying and construing the Uniform Child Abduction Prevention 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.

Sec. 12. The Uniform Child Abduction Prevention Act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., but does not modify, limit, or supersede section 101(c) of such act, 15 U.S.C. 7001(c), of such act or authorize electronic delivery of any of the notices described in section 103(b) of such act, 15 U.S.C. 7003(b).

Sec. 13. Section 43-1230, Reissue Revised Statutes of Nebraska, is amended to read:

43-1230 (a) A court of this state shall treat a foreign country as if it were a state of the United States for the purpose of applying sections 43-1226 to 43-1247.

(b) Except as otherwise provided in ~~subsection (e)~~ subsection (c) or (d) of this section, a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of the Uniform Child Custody Jurisdiction and Enforcement Act shall be recognized and enforced under sections 43-1248 to 43-1264.

(c) A court of this state need not apply the act if the child custody law of a foreign country violates fundamental principles of human rights.

(d) A court of this state need not recognize and enforce an otherwise valid child custody determination of a foreign court under the act if it determines (1) that the child is a habitual resident of Nebraska as defined under the provisions of the Hague Convention on the Civil Aspects of International Child Abduction, as implemented by the International Child Abduction Remedies Act, 42 U.S.C. 11601 et seq., and (2) that the child would be at significant and demonstrable risk of child abuse or neglect as defined in section 28-710 if the foreign child custody determination is recognized and enforced. Such a determination shall create a rebuttable presumption against recognition and enforcement of the foreign child custody determination and, thereafter, a court of this state may exercise child custody jurisdiction pursuant to subdivision (a)(1) of section 43-1238.

(e) The changes made to this section by this legislative bill shall be deemed remedial and shall apply to all cases pending on or before the effective date of this act and to all cases initiated subsequent thereto.

Sec. 14. Original section 43-1230, Reissue Revised Statutes of Nebraska, is repealed.

Sec. 15. Since an emergency exists, this act takes effect when passed and approved according to law.