

SENATE BILL No. 325

April 18, 2013, Introduced by Senators JONES, BIEDA and PROOS and referred to the Committee on Judiciary.

A bill to adopt the uniform child abduction prevention act; to allow courts in this state to impose measures to prevent the abduction of children; to establish standards for determining whether a child is subject to a significant risk of abduction; and to provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "uniform child abduction prevention act".

3 Sec. 2. As used in this act:

4 (a) "Abduction" means the wrongful removal or wrongful
5 retention of a child.

6 (b) "Child" means an unemancipated individual who is less than

1 18 years of age.

2 (c) "Child-custody determination" means a judgment, decree, or
3 other order of a court providing for the legal custody, physical
4 custody, or visitation with respect to a child. Child custody
5 determination includes a permanent, temporary, initial, or
6 modification order.

7 (d) "Child-custody proceeding" means a proceeding in which
8 legal custody, physical custody, or visitation with respect to a
9 child is at issue. Child-custody proceeding includes a proceeding
10 for divorce, dissolution of marriage, separation, neglect, abuse,
11 dependency, guardianship, paternity, termination of parental
12 rights, or protection from domestic violence.

13 (e) "Court" means an entity authorized under the law of a
14 state to establish, enforce, or modify a child-custody
15 determination.

16 (f) "Domestic violence" means that term as defined in section
17 1 of 1978 PA 389, MCL 400.1501.

18 (g) "Enhanced driver license" and "enhanced official state
19 personal identification card" mean those terms as defined in
20 section 2 of the enhanced driver license and enhanced official
21 state personal identification card act, 2008 PA 23, MCL 28.302.

22 (h) "Home state" means that term as defined in section 102 of
23 the uniform child-custody jurisdiction and enforcement act, 2001 PA
24 195, MCL 722.1102.

25 (i) "Petition" includes a motion or its equivalent.

26 (j) "Protection order" means either of the following:

27 (i) An order entered under section 2950 or 2950a of the revised

1 judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a,
2 under section 6b of chapter V or section 3(2)(o) of chapter XI of
3 the code of criminal procedure, 1927 PA 175, MCL 765.6b and 771.3,
4 under section 13a of chapter XIIIA of the probate code of 1939, 1939
5 PA 288, MCL 712a.13a, or under section 36(16) of the corrections
6 code of 1953, 1953 PA 232, MCL 791.236.

7 (ii) A foreign protection order as defined in section 2950h of
8 the revised judicature act of 1961, 1961 PA 236, MCL 600.2950h.

9 (k) "Record" means information that is inscribed on a tangible
10 medium or that is stored in an electronic or other medium and is
11 retrievable in perceivable form.

12 (l) "State" means a state of the United States, the District of
13 Columbia, Puerto Rico, the United States Virgin Islands, or any
14 territory or insular possession subject to the jurisdiction of the
15 United States. State includes a federally recognized Indian tribe
16 or nation.

17 (m) "Travel document" means records relating to a travel
18 itinerary, including travel tickets, passes, reservations for
19 transportation, or accommodations. Travel document does not include
20 a passport or visa.

21 (n) "Visitation" includes parenting time as that term is used
22 in the support and parenting time enforcement act, 1982 PA 295, MCL
23 552.601 to 552.650.

24 (o) "Wrongful removal" means the taking of a child that
25 breaches rights of custody or visitation given or recognized under
26 the law of this state. Wrongful removal does not include actions
27 taken to provide for the safety of a party or the child.

1 (p) "Wrongful retention" means the keeping or concealing of a
2 child that breaches rights of custody or visitation given or
3 recognized under the law of this state. Wrongful retention does not
4 include actions taken to provide for the safety of a party or the
5 child.

6 Sec. 3. Sections 110 to 112 of the uniform child-custody
7 jurisdiction and enforcement act, 2001 PA 195, MCL 722.1110 to
8 722.1112, apply to cooperation and communications among courts in
9 proceedings under this act.

10 Sec. 4. (1) A court on its own motion may order abduction
11 prevention measures in a child-custody proceeding if the court
12 finds that the evidence establishes a credible risk of abduction of
13 the child.

14 (2) A party to a child-custody determination or another
15 individual or entity having a right under the law of this state or
16 any other state to seek a child-custody determination for the child
17 may file a petition seeking abduction prevention measures to
18 protect the child under this act.

19 (3) A prosecutor or the attorney general may seek a warrant to
20 take physical custody of a child under section 9 or other
21 appropriate prevention measures.

22 Sec. 5. (1) A petition under this act may be filed only in a
23 court that has jurisdiction to make a child-custody determination
24 with respect to the child at issue under the uniform child-custody
25 jurisdiction and enforcement act, 2001 PA 195, MCL 722.1101 to
26 722.1406.

27 (2) A court of this state has temporary emergency jurisdiction

1 under section 204 of the uniform child-custody jurisdiction and
2 enforcement act, 2001 PA 195, MCL 722.1204, if the court finds a
3 credible risk of abduction.

4 Sec. 6. A petition under this act shall be verified and
5 include a copy of any existing child-custody determination, if
6 available. The petition shall specify the risk factors for
7 abduction, including the relevant factors described in section 7.
8 Subject to section 209(5) of the uniform child-custody jurisdiction
9 and enforcement act, 2001 PA 195, MCL 722.1209, if reasonably
10 ascertainable, the petition must contain all of the following:

11 (a) The name, date of birth, and gender of the child.

12 (b) The customary address and current physical location of the
13 child.

14 (c) The identity, customary address, and current physical
15 location of the respondent.

16 (d) A statement of whether a prior action to prevent abduction
17 or domestic violence has been filed by a party or other individual
18 or entity having custody of the child, and the date, location, and
19 disposition of the action.

20 (e) A statement of whether a party to the proceeding has been
21 arrested for a crime related to domestic violence, stalking, or
22 child abuse or neglect, and the date, location, and disposition of
23 the case.

24 (f) Information regarding any protection order previously
25 entered involving either party or the child.

26 (g) Any other information required to be submitted to the
27 court for a child-custody determination under section 209 of the

1 uniform child-custody jurisdiction and enforcement act, 2001 PA
2 195, MCL 722.1209.

3 Sec. 7. (1) In determining whether there is a credible risk of
4 abduction of a child, the court shall consider any evidence that
5 the petitioner or respondent has done any of the following or that
6 any of the following apply to the petitioner or respondent:

7 (a) Previously abducted or attempted to abduct the child.

8 (b) Threatened to abduct the child.

9 (c) Except for planning activities related to providing for
10 the safety of a party or the child while avoiding or attempting to
11 avoid domestic violence, recently engaged in activities that may
12 indicate a planned abduction, including any of the following:

13 (i) Abandoning employment.

14 (ii) Selling a primary residence.

15 (iii) Terminating a lease.

16 (iv) Closing bank or other financial management accounts,
17 liquidating assets, hiding or destroying financial documents, or
18 conducting any unusual financial activities.

19 (v) Applying for a passport or visa or obtaining travel
20 documents for the respondent, a family member, or the child.

21 (vi) Applying for or obtaining an enhanced driver license or
22 enhanced official state personal identification card for the
23 respondent, a family member, or the child.

24 (vii) Seeking to obtain the child's birth certificate or school
25 or medical records.

26 (d) Engaged in domestic violence, stalking, or child abuse or
27 neglect.

1 (e) Refused to follow a child-custody determination.

2 (f) Lacks strong familial, financial, emotional, or cultural
3 ties to this state or the United States.

4 (g) Has strong familial, financial, emotional, or cultural
5 ties to another state or country.

6 (h) Is likely to take the child to a country to which any of
7 the following apply:

8 (i) The country is not a party to the Hague convention on the
9 civil aspects of international child abduction and does not provide
10 for the extradition of an abducting parent or for the return of an
11 abducted child.

12 (ii) The country is a party to the Hague convention on the
13 civil aspects of international child abduction but 1 or more of the
14 following apply:

15 (A) The Hague convention on the civil aspects of international
16 child abduction is not in force between the United States and the
17 country.

18 (B) The country is noncompliant according to the most recent
19 compliance report issued by the United States department of state.

20 (C) The country lacks legal mechanisms for immediately and
21 effectively enforcing a return order under the Hague convention on
22 the civil aspects of international child abduction.

23 (iii) The country poses a risk that the child's physical or
24 emotional health or safety would be endangered in the country
25 because of specific circumstances relating to the child or because
26 of human rights violations committed against children.

27 (iv) The country has laws or practices that would do 1 or more

1 of the following:

2 (A) Enable the respondent, without due cause, to prevent the
3 petitioner from contacting the child.

4 (B) Restrict the petitioner from freely traveling to or
5 exiting from the country because of the petitioner's gender,
6 nationality, marital status, or religion.

7 (C) Restrict the child's ability legally to leave the country
8 after the child reaches the age of majority because of the child's
9 gender, nationality, or religion.

10 (v) The country is included by the United States department of
11 state on a current list of state sponsors of terrorism.

12 (vi) The country does not have an official United States
13 diplomatic presence in the country.

14 (vii) The country is engaged in active military action or war,
15 including a civil war, to which the child may be exposed.

16 (i) Is undergoing a change in immigration or citizenship
17 status that would adversely affect the respondent's ability to
18 remain in the United States legally.

19 (j) Has had an application for United States citizenship
20 denied.

21 (k) Has forged or presented misleading or false evidence on
22 government forms or supporting documents to obtain or attempt to
23 obtain a passport, a visa, travel documents, a social security
24 card, a driver license, or other government-issued identification
25 card or has made a misrepresentation to the United States
26 government.

27 (l) Has used multiple names to attempt to mislead or defraud.

1 (m) Has engaged in any other conduct the court considers
2 relevant to the risk of abduction.

3 (2) If the court finds during a hearing on a petition under
4 this act that the respondent's conduct was intended to avoid
5 domestic violence or imminent harm to the child or the respondent,
6 the court shall not issue an abduction prevention order.

7 Sec. 8. (1) If a petition is filed under this act, the court
8 may enter an order. If entered, the order shall include all of the
9 following:

10 (a) The basis for the court's exercise of jurisdiction.

11 (b) The manner in which notice and opportunity to be heard
12 were given to the persons entitled to notice of the proceeding.

13 (c) A detailed description of each party's custody and
14 visitation rights and residential arrangements for the child.

15 (d) A provision stating that a violation of the order may
16 subject the party in violation to civil and criminal penalties.

17 (e) Identification of the child's home state or country of
18 habitual residence at the time of the issuance of the order.

19 (2) If, at a hearing on a petition under this act or on the
20 court's own motion, the court after reviewing the evidence finds a
21 credible risk of abduction of the child, the court shall enter an
22 abduction prevention order. The order shall include the provisions
23 required by subsection (1) and measures and conditions, including
24 those in subsections (3) to (5), that are reasonably calculated to
25 prevent abduction of the child, giving due consideration to the
26 custody and visitation rights of the parties and the safety of the
27 parties and the child. The court shall consider the age of the

1 child, the potential harm to the child from an abduction, the legal
2 and practical difficulties of returning the child to the
3 jurisdiction if abducted, and the reasons for the potential
4 abduction, including evidence of domestic violence, stalking, or
5 child abuse or neglect.

6 (3) An abduction prevention order may include 1 or more of the
7 following:

8 (a) An imposition of travel restrictions that require that a
9 party traveling with the child outside a designated geographical
10 area provide the other party with all of the following:

11 (i) The travel itinerary of the child.

12 (ii) A list of physical addresses and telephone numbers at
13 which the child can be reached at specified times.

14 (iii) Copies of all travel documents.

15 (b) A prohibition of the respondent directly or indirectly
16 doing any of the following:

17 (i) Removing the child from this state, the United States, or
18 another geographic area without permission of the court or the
19 petitioner's written consent.

20 (ii) Removing or retaining the child in violation of a child-
21 custody determination.

22 (iii) Removing the child from school or a child care or similar
23 facility.

24 (iv) Approaching the child at any location other than a site
25 designated for supervised visitation.

26 (c) A requirement that a party register the order in another
27 state as a prerequisite to allowing the child to travel to that

1 state.

2 (d) With regard to the child's passport, any of the following:

3 (i) A direction that the petitioner place the child's name in
4 the United States department of state's child passport issuance
5 alert program.

6 (ii) A requirement that the respondent surrender to the court
7 or the petitioner's attorney any United States or foreign passport
8 issued in the child's name, including a passport issued in the name
9 of both the parent and the child.

10 (iii) A requirement that the respondent surrender to the court
11 or the petitioner's attorney his or her enhanced driver license or
12 enhanced official state personal identification card issued in the
13 child's name.

14 (iv) A prohibition on the respondent applying on behalf of the
15 child for a new or replacement passport or visa.

16 (e) As a prerequisite to exercising custody or visitation, a
17 requirement that the respondent provide 1 or more of the following:

18 (i) To the United States department of state office of
19 children's issues and the relevant foreign consulate or embassy, an
20 authenticated copy of the order detailing passport and travel
21 restrictions for the child.

22 (ii) To the court, 1 or both of the following:

23 (A) Proof that the respondent has provided the information in
24 subparagraph (i).

25 (B) An acknowledgment in a record from the relevant foreign
26 consulate or embassy that no passport application has been made, or
27 passport issued, on behalf of the child.

1 (iii) To the petitioner, proof of registration with the United
2 States embassy or other United States diplomatic presence in the
3 destination country and with the central authority for the Hague
4 convention on the civil aspects of international child abduction,
5 if that convention is in effect between the United States and the
6 destination country, unless 1 of the parties objects.

7 (iv) A written waiver under 5 USC 552a, popularly known as the
8 privacy act, with respect to any document, application, or other
9 information pertaining to the child authorizing its disclosure to
10 the court and the petitioner.

11 (f) On the petitioner's request, a requirement that the
12 respondent obtain an order from the relevant foreign country
13 containing terms identical to the child-custody determination
14 issued in the United States.

15 (4) In an abduction prevention order, the court may impose
16 conditions on the exercise of custody or visitation that do 1 or
17 more of the following:

18 (a) Limit visitation or require that visitation with the child
19 by the respondent be supervised until the court finds that
20 supervision is no longer necessary and order the respondent to pay
21 the costs of supervision.

22 (b) Require the respondent to post a bond or provide other
23 security in an amount sufficient to serve as a financial deterrent
24 to abduction, the proceeds of which may be used to pay for the
25 reasonable expenses of recovery of the child, including reasonable
26 attorney fees and costs if there is an abduction.

27 (c) Require the respondent to obtain education on the

1 potentially harmful effects to the child from abduction.

2 (5) To prevent imminent abduction of a child, a court may do 1
3 or more of the following:

4 (a) Issue a warrant to take physical custody of the child
5 under section 9 or other law of this state.

6 (b) Direct the use of law enforcement to take any action
7 reasonably necessary to locate the child, obtain return of the
8 child, or enforce a custody determination under this act or other
9 law of this state.

10 (c) Grant any other relief allowed under the law of this
11 state.

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

14 Sec. 9. (1) If a petition under this act alleges and the court
15 finds that there is a credible risk that the child is imminently
16 likely to be wrongfully removed, the court may issue an ex parte
17 warrant to take physical custody of the child.

18 (2) The respondent to a petition under subsection (1) shall be
19 afforded an opportunity to be heard at the earliest possible time
20 after the ex parte warrant is executed, but not later than the next
21 judicial day unless a hearing on that date is impossible. If a
22 hearing on the next judicial day is impossible, the court shall
23 hold the hearing on the first judicial day possible.

24 (3) An ex parte warrant under subsection (1) to take physical
25 custody of a child shall do all of the following:

26 (a) Recite the facts on which a determination of a credible
27 risk of imminent wrongful removal of the child is based.

1 (b) Direct law enforcement officers to take physical custody
2 of the child immediately.

3 (c) State the date and time for the hearing on the petition.

4 (d) Provide for the safe interim placement of the child
5 pending further order of the court.

6 (4) If feasible, before issuing a warrant under this section
7 and before determining the placement of the child after the warrant
8 is executed, the court may order a search of the relevant databases
9 of the national crime information center system and similar state
10 databases to determine if either the petitioner or respondent has a
11 history of domestic violence, stalking, or child abuse or neglect.

12 (5) A petition and warrant under this section shall be served
13 on the respondent when or immediately after the child is taken into
14 physical custody.

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

22 (7) If the court finds, after a hearing, that a petitioner
23 sought an ex parte warrant under subsection (1) for the purpose of
24 harassment or in bad faith, the court may award the respondent
25 reasonable attorney fees, costs, and expenses.

26 (8) This act does not affect the availability of relief
27 allowed under other law of this state.

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

3 (a) The time stated in the order.

4 (b) The emancipation of the child.

5 (c) The child's attaining 18 years of age.

6 (d) The time the order is modified, revoked, vacated, or
7 superseded by a court with jurisdiction under sections 201 to 203
8 of the uniform child-custody jurisdiction and enforcement act, 2001
9 PA 195, MCL 722.1201 to 722.1203, or other applicable law of this
10 state.

11 Sec. 11. In applying and construing this uniform act, a court
12 shall consider the need to promote uniformity of the law with
13 respect to its subject matter among states that enact it.

14 Sec. 12. This act modifies, limits, and supersedes the federal
15 electronic signatures in global and national commerce act, 15 USC
16 7001 to 7031, but does not modify, limit, or supersede 15 USC
17 7001(c) or authorize electronic delivery of any of the notices
18 described in 15 USC 7003(b).