

ASSEMBLY BILL NO. 15—ASSEMBLYMAN HORNE

PREFILED JANUARY 18, 2007

Referred to Committee on Judiciary

SUMMARY—Enacts the Uniform Child Abduction Prevention Act.
(BDR 11-732)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to abduction of children; enacting the Uniform
Child Abduction Prevention Act; and providing other
matters properly relating thereto.

Legislative Counsel's Digest:

The Uniform Law Commissioners promulgated the Uniform Child Abduction Prevention Act in 2006. The Act is designed to deter domestic and international child abductions by parents and any persons acting on behalf of the parents. Because abduction situations will likely involve more than one state, the Act is drafted to be compatible with and to augment the existing mechanisms for interstate jurisdiction and enforcement of orders that are contained in the Uniform Child Custody Jurisdiction and Enforcement Act. (Chapter 125A of NRS)

Section 16 of this bill provides that an action for abduction prevention measures may be brought by a court on its own motion, by a party to a child custody determination, by a person who has a right to seek a child custody determination, by a district attorney or by the Attorney General. **Section 17** of this bill provides that the party seeking the abduction prevention measures must file a petition with the court specifying the risk factors for abduction, as well as other biographical information. **Section 19** of this bill 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, 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. **Section 19** also identifies a wide range of activities that may indicate a planned abduction, such as abandoning employment, liquidating assets, obtaining travel documents or travel tickets, or requesting the child's school or medical records, and recognizes the special problems involved with international child abduction by including several risk factors specifically related to international abduction.



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24 **Section 20** of this bill provides that if a court determines that a credible risk
25 exists that the child will be abducted, the court may enter an order containing
26 provisions and measures meant to prevent abduction, such as imposing travel
27 restrictions, prohibiting the individual from removing the child from the State or
28 requiring the individual to obtain an order from a foreign country containing
29 identical terms to the child custody determination. If abduction appears imminent,
30 **section 21** of this bill provides that a court may issue a warrant to take physical
31 custody of the child. **Section 22** of this bill provides that an abduction prevention
32 order is effective until the earliest of the order's expiration, the child's
33 emancipation, the child's 18th birthday or until the order is modified, revoked or
34 vacated.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Title 11 of NRS is hereby amended by adding
2 thereto a new chapter to consist of the provisions set forth as
3 sections 2 to 24 inclusive, of this act.

4 **Sec. 2.** *This chapter may be cited as the Uniform Child*
5 *Abduction Prevention Act.*

6 **Sec. 3.** *As used in this chapter, unless the context otherwise*
7 *requires, the words and terms defined in sections 4 to 14,*
8 *inclusive, of this act have the meanings ascribed to them in those*
9 *sections.*

10 **Sec. 4.** *"Abduction" means the wrongful removal or*
11 *wrongful retention of a child.*

12 **Sec. 5.** *"Child" means an unemancipated individual who is*
13 *less than 18 years of age.*

14 **Sec. 6.** *"Child custody determination" means a judgment,*
15 *decree or other order of a court providing for the legal custody,*
16 *physical custody or visitation with respect to a child. The term*
17 *includes a permanent, temporary, initial and modification order.*

18 **Sec. 7.** *"Child custody proceeding" means a proceeding in*
19 *which legal custody, physical custody or visitation with respect to a*
20 *child is at issue. The term includes a proceeding for divorce,*
21 *dissolution of marriage, separation, neglect, abuse, dependency,*
22 *guardianship, paternity, termination of parental rights or*
23 *protection from domestic violence.*

24 **Sec. 8.** *"Court" means an entity authorized pursuant to the*
25 *law of a state to establish, enforce or modify a child custody*
26 *determination.*

27 **Sec. 9.** *"Petition" includes a motion or its equivalent.*

28 **Sec. 10.** *"Record" means information that is inscribed on a*
29 *tangible medium or that is stored in an electronic or other medium*
30 *and is retrievable in perceivable form.*



1 **Sec. 11.** *“State” means a state of the United States, the*
2 *District of Columbia, Puerto Rico, the United States Virgin*
3 *Islands or any territory or insular possession subject to the*
4 *jurisdiction of the United States. The term includes a federally*
5 *recognized Indian tribe or nation.*

6 **Sec. 12.** *“Travel document” means records relating to a*
7 *travel itinerary, including travel*
8 *tickets, passes, reservations for transportation or accommodations.*
9 *The term does not include a passport or visa.*

10 **Sec. 13.** *“Wrongful removal” means the taking of a child*
11 *that breaches rights of custody or visitation given or recognized*
12 *pursuant to the law of this State.*

13 **Sec. 14.** *“Wrongful retention” means the keeping or*
14 *concealing of a child that breaches rights of custody or visitation*
15 *given or recognized pursuant to the law of this State.*

16 **Sec. 15.** *NRS 125A.275, 125A.285 and 125A.295 apply to*
17 *cooperation and communication among courts in proceedings*
18 *pursuant to the provisions of this chapter.*

19 **Sec. 16.** 1. *A court on its own motion may order abduction*
20 *prevention measures in a child custody proceeding if the court*
21 *finds that the evidence establishes a credible risk of abduction of*
22 *the child.*

23 2. *A party to a child custody determination or another*
24 *individual or entity having a right pursuant to the law of this State*
25 *or any other state to seek a child custody determination for the*
26 *child may file a petition seeking abduction prevention measures to*
27 *protect the child pursuant to the provisions of this chapter.*

28 3. *A district attorney or the Attorney General acting pursuant*
29 *to NRS 125A.565 may seek a warrant to take physical custody of a*
30 *child pursuant to section 21 of this act or other appropriate*
31 *abduction prevention measures.*

32 **Sec. 17.** 1. *A petition pursuant to the provisions of this*
33 *chapter may be filed only in a court that has jurisdiction to make a*
34 *child custody determination with respect to the child at issue*
35 *pursuant to the provisions of chapter 125A of NRS.*

36 2. *A court of this State has temporary emergency jurisdiction*
37 *pursuant to NRS 125A.335 if the court finds a credible risk of*
38 *abduction.*

39 **Sec. 18.** *A petition pursuant to the provisions of this chapter*
40 *must be verified and include a copy of any existing child custody*
41 *determination, if available. The petition must specify the risk*
42 *factors for abduction, including the relevant factors described in*
43 *section 19 of this act. Subject to subsection 5 of NRS 125A.385, if*
44 *reasonably ascertainable, the petition must contain:*

45 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 pursuant to NRS 125A.385.

Sec. 19. 1. In determining whether there is a credible risk of abduction of a child, the court shall consider any evidence that the petitioner or respondent:

(a) Has previously abducted or attempted to abduct the child;

(b) Has threatened to abduct the child;

(c) Has recently engaged in activities that may indicate a planned abduction, including:

(1) Abandoning employment;

(2) Selling a primary residence;

(3) Terminating a lease;

(4) Closing bank or other financial management accounts, liquidating assets, hiding or destroying financial documents, or conducting any unusual financial activities;

(5) Applying for a passport or visa or obtaining travel documents for the respondent, a family member or the child; or

(6) Seeking to obtain the child's birth certificate or school or medical records;

(d) Has engaged in domestic violence, stalking, or child abuse or neglect;

(e) Has refused to follow a child custody determination;

(f) Lacks strong familial, financial, emotional or cultural ties to the State or the United States;

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

(h) Is likely to take the child to a country that:

(1) 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;



(2) *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 pursuant to the Hague Convention on the Civil Aspects of International Child Abduction;*

(3) *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;*

(4) *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 the child's gender, nationality or religion;*

(5) *Is included by the United States Department of State on a current list of state sponsors of terrorism;*

(6) *Does not have an official United States diplomatic presence in the country; or*

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

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

(j) *Has had an application for United States citizenship denied;*

(k) *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;*

(l) *Has used multiple names to attempt to mislead or defraud;*
or

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



2. *In the hearing on a petition pursuant to the provisions of this chapter, 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. 20. 1. *If a petition is filed pursuant to the provisions of this chapter, the court may enter an order that must include:*

- (a) The basis for the court's exercise of jurisdiction;*
- (b) The manner in which notice and opportunity to be heard were given to the persons entitled to notice of the proceeding;*
- (c) A detailed description of each party's custody and visitation rights and residential arrangements for the child;*
- (d) A provision stating that a violation of the order may subject the party in violation to civil and criminal penalties; and*
- (e) Identification of the child's country of habitual residence at the time of the issuance of the order.*

2. *If, at a hearing on a petition pursuant to the provisions of this chapter 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 1 and measures and conditions, including those in subsections 3, 4 and 5, 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.*

3. *An abduction prevention order may include one or more of the following:*

(a) 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:

- (1) The travel itinerary of the child;*
- (2) A list of physical addresses and telephone numbers at which the child can be reached at specified times; and*
- (3) Copies of all travel documents;*

(b) A prohibition of the respondent directly or indirectly:

- (1) Removing the child from this State, the United States or another geographic area without permission of the court or the petitioner's written consent;*
- (2) Removing or retaining the child in violation of a child custody determination;*



(3) Removing the child from school or a child care or similar facility; or

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

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

(d) With regard to the child's passport:

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

(2) 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

(3) A prohibition upon the respondent from applying on behalf of the child for a new or replacement passport or visa;

(e) As a prerequisite to exercising custody or visitation, a requirement that the respondent provide:

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

(2) To the court:

(I) Proof that the respondent has provided the information in subparagraph (1); 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;

(3) 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

(4) A written waiver pursuant to the provisions of the Privacy Act, 5 U.S.C. § 552a, as amended, with respect to any document, application or other information pertaining to the child authorizing its disclosure to the court and the petitioner; and

(f) 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.

4. In an abduction prevention order, the court may impose conditions on the exercise of custody or visitation that:



1 (a) *Limit visitation or require that visitation with the child by*
2 *the respondent be supervised until the court finds that supervision*
3 *is no longer necessary, and order the respondent to pay the costs*
4 *of supervision;*

5 (b) *Require the respondent to post a bond or provide other*
6 *security in an amount sufficient to serve as a financial deterrent to*
7 *abduction, the proceeds of which may be used to pay for the*
8 *reasonable expenses of recovery of the child, including reasonable*
9 *attorney's fees and costs if there is an abduction; and*

10 (c) *Require the respondent to obtain education on the*
11 *potentially harmful effects to the child from abduction.*

12 5. *To prevent imminent abduction of a child, a court may:*

13 (a) *Issue a warrant to take physical custody of the child*
14 *pursuant to section 21 of this act or the law of this State other than*
15 *this chapter;*

16 (b) *Direct the use of law enforcement to take any action*
17 *reasonably necessary to locate the child, obtain return of the child*
18 *or enforce a custody determination pursuant to the provisions of*
19 *this chapter or the law of this State other than this chapter; or*

20 (c) *Grant any other relief allowed pursuant to the law of this*
21 *State other than this chapter.*

22 6. *The remedies provided in this chapter are cumulative and*
23 *do not affect the availability of other remedies to prevent*
24 *abduction.*

25 **Sec. 21. 1.** *If a petition pursuant to the provisions of this*
26 *chapter contains allegations, and the court finds that there is a*
27 *credible risk that the child is imminently likely to be wrongfully*
28 *removed, the court may issue an ex parte warrant to take physical*
29 *custody of the child.*

30 2. *The respondent on a petition pursuant to subsection 1 must*
31 *be afforded an opportunity to be heard at the earliest possible time*
32 *after the ex parte warrant is executed, but not later than the next*
33 *judicial day unless a hearing on that date is impossible. In that*
34 *event, the court shall hold the hearing on the first judicial day*
35 *possible.*

36 3. *An ex parte warrant pursuant to subsection 1 to take*
37 *physical custody of a child must:*

38 (a) *Recite the facts upon which a determination of a credible*
39 *risk of imminent wrongful removal of the child is based;*

40 (b) *Direct law enforcement officers to take physical custody of*
41 *the child immediately;*

42 (c) *State the date and time for the hearing on the petition; and*

43 (d) *Provide for the safe interim placement of the child pending*
44 *further order of the court.*



1 4. If feasible, before issuing a warrant and before
2 determining the placement of the child after the warrant is
3 executed, the court may order a search of the relevant databases of
4 the National Crime Information Center and similar state
5 databases to determine if either the petitioner or respondent has a
6 history of domestic violence, stalking, or child abuse or neglect.

7 5. The petition and warrant must be served on the respondent
8 when or immediately after the child is taken into physical custody.

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

16 7. If the court finds, after a hearing, that a petitioner sought
17 an ex parte warrant pursuant to subsection 1 for the purpose of
18 harassment or in bad faith, the court may award the respondent
19 reasonable attorney's fees, costs and expenses.

20 8. This chapter does not affect the availability of relief
21 allowed pursuant to the law of this State other than this chapter.

22 **Sec. 22.** An abduction prevention order remains in effect
23 until the earliest of:

24 1. The time stated in the order;

25 2. The emancipation of the child;

26 3. The child's attaining 18 years of age; or

27 4. The time the order is modified, revoked, vacated or
28 superseded by a court with jurisdiction pursuant to NRS
29 125A.305, 125A.315 and 125A.325.

30 **Sec. 23.** In applying and construing the Uniform Child
31 Abduction Prevention Act, consideration must be given to the need
32 to promote uniformity of the law with respect to its subject matter
33 among states that enact it.

34 **Sec. 24.** This chapter modifies, limits and supersedes the
35 federal Electronic Signatures in Global and National Commerce
36 Act, 15 U.S.C. §§ 7001, et seq., but does not modify, limit or
37 supersede 15 U.S.C. § 7001(c), or authorize electronic delivery of
38 any of the notices described in 15 U.S.C. § 7003(b).

