

1 HB213  
2 115735-2  
3 By Representative Ward  
4 RFD: Judiciary  
5 First Read: 12-JAN-10

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ENROLLED, An Act,

To adopt the Uniform Child Abduction Prevention Act; to clarify procedures for a parent or guardian and for a court to follow to prevent a child abduction; to provide that the Uniform Child Custody Enforcement Act applies to cooperation and communications under this act; to provide for jurisdiction; to provide for the contents of a petition seeking protection; to provide factors to be considered to determine if there is a credible risk for abduction; to provide for emergency measures; and to provide that the uniform act shall be construed to promote uniformity between states.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. SHORT TITLE.

This act may be cited as the Alabama Uniform Child Abduction Prevention Act.

Section 2. DEFINITIONS.

In this act, the following terms have the following meanings:

(1) ABDUCTION. The wrongful removal or wrongful retention of a child.

(2) CHILD. An unemancipated individual who is less than 19 years of age.

1           (3) CHILD-CUSTODY DETERMINATION. A judgment, decree,  
2 or other order of a court providing for the legal custody,  
3 physical custody, or visitation with respect to a child. The  
4 term includes a permanent, temporary, initial, and  
5 modification order. The term does not include an order  
6 relating to child support or other monetary obligation of an  
7 individual.

8           (4) CHILD-CUSTODY PROCEEDING. A court proceeding in  
9 which legal custody, physical custody, or visitation with  
10 respect to a child is at issue. The term includes a proceeding  
11 for divorce, dissolution of marriage, legal separation,  
12 neglect, abuse, dependency, paternity, termination of parental  
13 rights, or protection from domestic violence. The term does  
14 not include a court proceeding, involving juvenile  
15 delinquency, contractual emancipation, guardianship  
16 proceeding, adoption, or enforcement under Article 3 of  
17 Chapter 3B of Title 30, Uniform Child Custody Jurisdiction and  
18 Enforcement Act.

19           (5) COURT. An entity authorized under the law of a  
20 state to establish, enforce, or modify a child-custody  
21 determination.

22           (6) PETITION. Includes a motion or its equivalent.

23           (7) RECORD. Information that is inscribed on a  
24 tangible medium or that is stored in an electronic or other  
25 medium and is retrievable in perceivable form.

1           (8) STATE. 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  
5 federally recognized Indian tribe or nation.

6           (9) TRAVEL DOCUMENT. A record relating to a travel  
7 itinerary, including travel tickets, passes, reservations for  
8 transportation, or accommodations. The term does not include a  
9 passport or visa.

10           (10) WRONGFUL REMOVAL. The taking of a child that  
11 breaches rights of custody or visitation given or recognized  
12 under the law of this state.

13           (11) WRONGFUL RETENTION. The keeping or concealing  
14 of a child that breaches rights of custody or visitation given  
15 or recognized under the law of this state.

16           Section 3. COOPERATION AND COMMUNICATION AMONG  
17 COURTS. Sections 30-3B-110, 30-3B-111, and 30-3B-112, Code of  
18 Alabama 1975, of the Uniform Child Custody Jurisdiction and  
19 Enforcement Act, apply to cooperation and communications among  
20 courts in proceedings under this act.

21           Section 4. ACTIONS FOR ABDUCTION PREVENTION  
22 MEASURES.

23           (a) A court on its own motion may order abduction  
24 prevention measures in a child-custody proceeding if the court

1 finds that the evidence establishes a credible risk of  
2 abduction of the child.

3 (b) A party to a child-custody determination or  
4 another individual or entity having a right under the law of  
5 this state or any other state to seek a child-custody  
6 determination for the child may file a petition seeking  
7 abduction prevention measures to protect the child under this  
8 act. This act creates no new requirement on the Department of  
9 Human Resources or any other social services agency or entity  
10 to file a petition seeking abduction prevention measures on  
11 behalf of a child.

12 Section 5. JURISDICTION.

13 (a) A petition under this act may be filed only in a  
14 court that has jurisdiction to make a child-custody  
15 determination with respect to the child at issue under the  
16 Uniform Child Custody Jurisdiction and Enforcement Act,  
17 Chapter 3B of Title 30, Code of Alabama 1975.

18 (b) Notwithstanding subsection (a), a court of this  
19 state has temporary emergency jurisdiction to take action  
20 under this act if a child is present in this state and the  
21 court finds there is a credible risk of abduction.

22 Section 6. CONTENTS OF PETITION. A petition under  
23 this act must be verified and include a copy of any existing  
24 child-custody determination, if available. If a child-custody  
25 determination is not available, the petition must state the

1 petitioner's right to make a petition, as described under  
2 subsection (b) of Section 4, and provide the basis for that  
3 right to make a petition under this act. The petition also  
4 must specify the risk factors for abduction, including the  
5 relevant factors described in Section 7. Subject to the  
6 protections provided by subsection (e) of Section 30-3B-209,  
7 Code of Alabama 1975, of the Uniform Child Custody  
8 Jurisdiction and Enforcement Act, if reasonably ascertainable,  
9 the petition must contain:

10 (1) the name, date of birth, and gender of the  
11 child;

12 (2) the usual places of abode and current physical  
13 location of the child;

14 (3) the identity, usual places of abode, and current  
15 physical location of the petitioner and respondent, and an  
16 explanation of the relationship between petitioner and the  
17 child at issue in the petition that states the authority of  
18 petitioner to make a petition under this act, in accordance  
19 with subsection (b) of Section 4;

20 (4) a statement of whether a prior action to prevent  
21 abduction or domestic violence has been filed by or against a  
22 party or other individual who has custody of the child, and  
23 the date, location, and status of the action. If the  
24 petitioner is the Department of Human Resources or any agency  
25 or entity, that has custody of the child at issue under the

1 petition, that entity need only provide a statement of whether  
2 a prior action to prevent abduction or domestic violence has  
3 been filed with regard to the child at issue in the petition  
4 being made, and need not make a statement of all such filings  
5 made in other cases by such entity;

6 (5) a statement of whether a party to the proceeding  
7 has been arrested for a crime related to domestic violence,  
8 stalking, or child abuse or neglect, and the date, location,  
9 and disposition of the case;

10 (6) any other information required to be submitted  
11 to the court for a child-custody determination under Section  
12 30-3B-209, Code of Alabama 1975, of the Uniform Child Custody  
13 Jurisdiction and Enforcement Act; and

14 (7) a statement of any action taken pursuant to  
15 Article 7A of Chapter 3 of Title 30, Code of Alabama 1975, the  
16 Parent-Child Relationship Act.

17 Section 7. FACTORS TO DETERMINE RISK OF ABDUCTION.

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

21 (1) has previously abducted or attempted to abduct a  
22 child;

23 (2) has threatened to abduct a child;

24 (3) has recently engaged in activities that may  
25 indicate a planned abduction, including:

1 (A) abandoning employment;

2 (B) preparing to move from, abandoning, or selling a  
3 primary residence;

4 (C) terminating a lease;

5 (D) closing bank or other financial management  
6 accounts, liquidating assets, hiding or destroying financial  
7 documents, or conducting any unusual financial activities;

8 (E) applying for a passport or visa or obtaining  
9 travel documents for the respondent, a family member, or the  
10 child; or

11 (F) seeking to obtain the child's birth certificate  
12 or school or medical records;

13 (4) has engaged in domestic violence, stalking, or  
14 child abuse or neglect;

15 (5) has refused to follow a child-custody  
16 determination;

17 (6) lacks strong familial, financial, emotional, or  
18 cultural ties to the state or the United States;

19 (7) has strong familial, financial, emotional, or  
20 cultural ties to another state or country;

21 (8) is likely to take the child to a country that:

22 (A) is not a party to the Hague Convention on the  
23 Civil Aspects of International Child Abduction and does not  
24 provide for the extradition of an abducting parent or for the  
25 return of an abducted child;



1 (B) is a party to the Hague Convention on the Civil  
2 Aspects of International Child Abduction but:

3 (i) the Hague Convention on the Civil Aspects of  
4 International Child Abduction is not in force between the  
5 United States and that country;

6 (ii) is noncompliant according to the most recent  
7 compliance report issued by the United States Department of  
8 State; or

9 (iii) lacks legal mechanisms for immediately and  
10 effectively enforcing a return order under the Hague  
11 Convention on the Civil Aspects of International Child  
12 Abduction;

13 (C) poses a risk that the child's physical or  
14 emotional health or safety would be endangered in the country  
15 because of specific circumstances relating to the child or  
16 because of human rights violations committed against children;

17 (D) has laws or practices that would:

18 (i) enable the respondent, without due cause, to  
19 prevent the petitioner from contacting the child;

20 (ii) restrict the petitioner from freely traveling  
21 to or exiting from the country because of the petitioner's  
22 gender, nationality, marital status, or religion; or

23 (iii) restrict the child's ability legally to leave  
24 the country after the child reaches the age of majority  
25 because of a child's gender, nationality, or religion;

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

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

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

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

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

12           (11) has forged or presented misleading or false  
13 evidence on government forms or supporting documents to obtain  
14 or attempt to obtain a passport, a visa, travel documents, a  
15 Social Security card, a driver's license, or other  
16 government-issued identification card or has made a  
17 misrepresentation to the United States government;

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

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

22           (b) In the hearing on a petition under this act, the  
23 court shall consider any evidence that the respondent believed  
24 in good faith that the respondent's conduct was necessary to  
25 avoid imminent harm to the child or respondent and any other

1 evidence that may be relevant to whether the respondent may be  
2 permitted to remove or retain the child.

3 Section 8. EMERGENCY MEASURES TO PREVENT ABDUCTION.

4 (a) In response to a petition filed under this act,  
5 before a hearing on the matter, the court may enter an ex  
6 parte order for emergency measures to prevent abduction,  
7 including an ex parte warrant to take physical custody of the  
8 child, or an order for any other emergency relief as necessary  
9 to prevent abduction of a child, including imposing travel  
10 restrictions with the child, on the petitioner, or the  
11 respondent or on both the petitioner and the respondent.

12 (b) An ex parte order for relief under this act  
13 shall include:

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

16 (2) the manner in which notice and opportunity to be  
17 heard were given to the persons entitled to notice of the  
18 proceeding, including a finding by the court of compliance  
19 with Rule 65 of the Alabama Rules of Civil Procedure, if  
20 applicable;

21 (3) a detailed description of each party's custody  
22 and visitation rights and residential arrangements for the  
23 child at the time the petition under this act was filed;

1           (4) a provision stating that a violation of the  
2 order may subject the party in violation to civil and criminal  
3 penalties; and

4           (5) identification of the child's county, state, and  
5 country of habitual residence at the time of the issuance of  
6 the order.

7           (c) If a petition under this act contains  
8 allegations and the court finds that there is a credible risk  
9 of imminent child abduction, the court may issue an ex parte  
10 order, including a warrant to take physical custody of the  
11 child. If the court issues an ex parte warrant:

12           (1) The respondent on a petition under subsection  
13 (c) must be afforded an opportunity to be heard within 72  
14 hours after the ex parte warrant is executed.

15           (2) An ex parte warrant under subsection (c) to take  
16 physical custody of a child must:

17           (A) recite the facts upon which a determination of a  
18 credible risk of imminent abduction of the child is based;

19           (B) direct law enforcement officers to take physical  
20 custody of the child immediately;

21           (C) state the date and time for the hearing on the  
22 petition; and

23           (D) provide for the safe interim placement of the  
24 child pending further order of the court.

1           (3) 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  
4 databases of the National Crime Information Center system and  
5 similar state databases to determine if either the petitioner  
6 or respondent has a history of domestic violence, stalking, or  
7 child abuse or neglect, or other criminal offenses relevant to  
8 the health and welfare of the child.

9           (4) The petition, order, and warrant must be served  
10 on the respondent when or immediately after the child is taken  
11 into physical custody.

12           (5) If the court finds that a less intrusive remedy  
13 will not be effective, it may authorize law enforcement  
14 officers to enter private property to take physical custody of  
15 the child. If required by exigent circumstances, the court may  
16 authorize law enforcement officers to make a forcible entry at  
17 any hour.

18           (6) A warrant to take physical custody of a child,  
19 issued by another state, is enforceable throughout this state,  
20 provided however, that nothing contained herein shall alter or  
21 delete any rights, substantive or procedural in nature.

22           (d) This act does not affect the availability of  
23 relief allowed under the law of this state other than this  
24 act.

25           Section 9. HEARING ON PETITION TO PREVENT ABDUCTION.

1           (a) If a petition is filed under this act, the court  
2 may set a preliminary hearing as necessary, and shall cause to  
3 be issued all summonses and notices as required by law and  
4 otherwise deemed necessary and appropriate. Should the court  
5 determine from the petition, or on evidence presented at a  
6 preliminary hearing, that no emergency or temporary orders are  
7 appropriate, then the court shall set the petition for a final  
8 hearing at such time as the court deems appropriate and as the  
9 best interests of the child require.

10           (b) If, at a hearing on a petition under this act,  
11 the court after reviewing the evidence finds a credible risk  
12 of abduction of the child, the court shall enter an abduction  
13 prevention order. The order must include the provisions  
14 required by subsection (c), specifying measures that are  
15 reasonably calculated to prevent abduction of the child and  
16 giving due consideration to the custody and visitation rights  
17 of the parties. The court shall consider the age of the child,  
18 the potential harm to the child from an abduction, the legal  
19 and practical difficulties of returning the child to the  
20 jurisdiction if abducted, and the risks for the potential  
21 abduction, including but not limited to evidence of domestic  
22 violence, stalking, or child abuse or neglect, or history  
23 thereof.

24           (c) An order for relief under this act shall  
25 include:

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

3           (2) the manner in which notice and opportunity to be  
4 heard were given to the persons entitled to notice of the  
5 proceeding;

6           (3) a detailed description of each party's custody  
7 and visitation rights and residential arrangements for the  
8 child at the time the petition under this act was filed;

9           (4) a provision stating that a violation of the  
10 order may subject the party in violation to being held in  
11 contempt with civil and criminal penalties as provided by law;  
12 and

13           (5) identification of the child's county, state, and  
14 country of habitual residence at the time of the issuance of  
15 the order.

16           (d) An abduction prevention order may include one or  
17 more of the following:

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

22           (A) the travel itinerary of the child;

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

1 (C) copies of all travel documents;

2 (2) a prohibition of the respondent directly or  
3 indirectly:

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

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

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

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

13 (3) a requirement that a party register the order in  
14 another state as a prerequisite to allowing the child to  
15 travel to that state;

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

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

20 (B) a requirement that the respondent surrender to  
21 the court or the petitioner's attorney any United States or  
22 foreign passport issued in the child's name, including a  
23 passport issued in the name of both the parent and the child;  
24 and



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

4 (5) as a prerequisite to exercising custody or  
5 visitation, a requirement that the respondent provide:

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

10 (B) to the court:

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

13 (ii) an acknowledgment in a record from the relevant  
14 foreign consulate or embassy that no passport application has  
15 been made, or passport issued, on behalf of the child;

16 (C) to the petitioner, proof of registration of an  
17 authenticated copy of the order detailing passport and travel  
18 restrictions for the child with the United States Embassy or  
19 other United States diplomatic presence in the destination  
20 country and with the Central Authority for the Hague  
21 Convention on the Civil Aspects of International Child  
22 Abduction, if that convention is in effect between the United  
23 States and the destination country; and

24 (D) a written waiver under the Privacy Act, 5 U.S.C.  
25 Section 552a as amended, with respect to any document,

1 application, or other information pertaining to the child  
2 authorizing its disclosure to the court and the petitioner;  
3 and

4 (6) upon the petitioner's request, a requirement  
5 that the respondent obtain an order from the relevant foreign  
6 country containing terms consistent with the child-custody  
7 determination issued in the United States.

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

11 (1) limit visitation or require that visitation with  
12 the child by the respondent be supervised until the court  
13 finds that supervision is no longer necessary and may order  
14 the parties to pay the costs of supervision; and

15 (2) require the posting of a bond or provide other  
16 security in an amount sufficient to serve as a financial  
17 deterrent to abduction.

18 (f) To prevent abduction of a child, a court may  
19 grant any other relief allowed under the law of this state  
20 other than this act.

21 (g) The remedies provided in this act are cumulative  
22 and do not affect the availability of other remedies to  
23 prevent abduction.

24 Section 10. DURATION OF ABDUCTION PREVENTION ORDER.

1           An abduction prevention order remains in effect  
2 until the earliest of:

3           (1) the time stated in the order;

4           (2) the emancipation of the child;

5           (3) the child's attaining 19 years of age; or

6           (4) the time the order is modified, revoked,  
7 vacated, or superseded by a court with jurisdiction under  
8 Sections 30-3B-201 through 30-3B-203, Code of Alabama 1975, of  
9 the Uniform Child Custody Jurisdiction and Enforcement Act.

10           Section 11. COSTS, FEES, AND EXPENSES.

11           (a) Under this act, a court may award or assess  
12 against any party, necessary and reasonable expenses incurred  
13 by or on behalf of the party, including costs, communication  
14 expenses, attorney's fees, state agency expenses,  
15 investigative fees, expenses for witnesses, travel expenses,  
16 and child care during the course of the proceedings.

17           (b) The court may not assess fees, costs, or  
18 expenses against a state unless authorized by law other than  
19 this act.

20           Section 12. UNIFORMITY OF APPLICATION AND  
21 CONSTRUCTION.

22           In applying and construing this uniform act,  
23 consideration must be given to the need to promote uniformity  
24 of the law with respect to its subject matter among states  
25 that enact it.

1                   Section 13. RELATION TO ELECTRONIC SIGNATURES IN  
2 GLOBAL AND NATIONAL COMMERCE ACT.

3                   This act modifies, limits, and supersedes the  
4 federal Electronic Signatures in Global and National Commerce  
5 Act, 15 U.S.C. Section 7001, et seq., but does not modify,  
6 limit, or supersede Section 101(c) of the act, 15 U.S.C.  
7 Section 7001(c), or authorize electronic delivery of any of  
8 the notices described in Section 103(b) of that act, 15 U.S.C.  
9 Section 7003(b).

10                   Section 14. This act shall become effective on  
11 January 1, 2011.

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Speaker of the House of Representatives

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President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in  
and was passed by the House 26-JAN-10.

Greg Pappas  
Clerk

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Senate

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09-MAR-10

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Passed