

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

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8 SYNOPSIS: Existing law provides for criminal
9 penalties where a child is abducted as the result
10 of a custody dispute. The bill would propose
11 adoption of the Uniform Child Abduction Prevention
12 Act.

13 This bill would clarify the procedures for a
14 parent or guardian and for a court to follow to
15 prevent a child abduction in a custody dispute
16 where there is a credible risk that an abduction
17 may occur.

18 This bill would establish a procedure by
19 which a parent or guardian could petition a court
20 to impose abduction prevention measures such as
21 travel restrictions and placing the name of the
22 child on the state department's child passport
23 issuance alert program.

24 This bill would provide for special measures
25 where there is a risk of international abduction.

1 This bill would provide factors to be
2 considered to determine whether there is a credible
3 risk that the child may be abducted.

4 This bill would authorize a court, where
5 abduction appears imminent, to direct law
6 enforcement to locate and take physical custody of
7 a child.

8
9 A BILL
10 TO BE ENTITLED
11 AN ACT

12
13 To adopt the Uniform Child Abduction Prevention Act;
14 to clarify procedures for a parent or guardian and for a court
15 to follow to prevent a child abduction; to provide that the
16 Uniform Child Custody Enforcement Act applies to cooperation
17 and communications under this act; to provide for
18 jurisdiction; to provide for the contents of a petition
19 seeking protection; to provide factors to be considered to
20 determine if there is a credible risk for abduction; to
21 provide for emergency measures; and to provide that the
22 uniform act shall be construed to promote uniformity between
23 states.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. SHORT TITLE.

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

1 Section 2. DEFINITIONS.

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

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

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

8 (3) CHILD-CUSTODY DETERMINATION. A judgment, decree,
9 or other order of a court providing for the legal custody,
10 physical custody, or visitation with respect to a child. The
11 term includes a permanent, temporary, initial, and
12 modification order. The term does not include an order
13 relating to child support or other monetary obligation of an
14 individual.

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

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

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

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

8 (8) STATE. A state of the United States, the
9 District of Columbia, Puerto Rico, the United States Virgin
10 Islands, or any territory or insular possession subject to the
11 jurisdiction of the United States. The term includes a
12 federally recognized Indian tribe or nation.

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

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

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

23 Section 3. COOPERATION AND COMMUNICATION AMONG
24 COURTS. Sections 30-3B-110, 30-3B-111, and 30-3B-112, Code of
25 Alabama 1975, of the Uniform Child Custody Jurisdiction and
26 Enforcement Act, apply to cooperation and communications among
27 courts in proceedings under this act.

1 Section 4. ACTIONS FOR ABDUCTION PREVENTION
2 MEASURES.

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

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

16 Section 5. JURISDICTION.

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

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

26 Section 6. CONTENTS OF PETITION. A petition under
27 this act must be verified and include a copy of any existing

1 child-custody determination, if available. If a child-custody
2 determination is not available, the petition must state the
3 petitioner's right to make a petition, as described under
4 subsection (b) of Section 4, and provide the basis for that
5 right to make a petition under this act. The petition also
6 must specify the risk factors for abduction, including the
7 relevant factors described in Section 7. Subject to the
8 protections provided by subsection (e) of Section 30-3B-209,
9 Code of Alabama 1975, of the Uniform Child Custody
10 Jurisdiction and Enforcement Act, if reasonably ascertainable,
11 the petition must contain:

12 (1) the name, date of birth, and gender of the
13 child;

14 (2) the usual places of abode and current physical
15 location of the child;

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

22 (4) a statement of whether a prior action to prevent
23 abduction or domestic violence has been filed by or against a
24 party or other individual who has custody of the child, and
25 the date, location, and status of the action. If the
26 petitioner is the Department of Human Resources or any agency
27 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:

26 (A) abandoning employment;

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

3 (C) terminating a lease;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (D) has laws or practices that would:

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

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

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

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

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

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

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

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

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

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

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

18 (b) In the hearing on a petition under this act, the
19 court shall consider any evidence that the respondent believed
20 in good faith that the respondent's conduct was necessary to
21 avoid imminent harm to the child or respondent and any other
22 evidence that may be relevant to whether the respondent may be
23 permitted to remove or retain the child.

24 Section 8. EMERGENCY MEASURES TO PREVENT ABDUCTION.

25 (a) In response to a petition filed under this act,
26 before a hearing on the matter, the court may enter an ex
27 parte order for emergency measures to prevent abduction,

1 including an ex parte warrant to take physical custody of the
2 child, or an order for any other emergency relief as necessary
3 to prevent abduction of a child, including imposing travel
4 restrictions with the child, on the petitioner, or the
5 respondent or on both the petitioner and the respondent.

6 (b) An ex parte order for relief under this act
7 shall include:

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

10 (2) the manner in which notice and opportunity to be
11 heard were given to the persons entitled to notice of the
12 proceeding, including a finding by the court of compliance
13 with Rule 65 of the Alabama Rules of Civil Procedure, if
14 applicable;

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

18 (4) a provision stating that a violation of the
19 order may subject the party in violation to civil and criminal
20 penalties; and

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

24 (c) If a petition under this act contains
25 allegations and the court finds that there is a credible risk
26 of imminent child abduction, the court may issue an ex parte

1 order, including a warrant to take physical custody of the
2 child. If the court issues an ex parte warrant:

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

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

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

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

12 (C) state the date and time for the hearing on the
13 petition; and

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

16 (3) If feasible, before issuing a warrant and before
17 determining the placement of the child after the warrant is
18 executed, the court may order a search of the relevant
19 databases of the National Crime Information Center system and
20 similar state databases to determine if either the petitioner
21 or respondent has a history of domestic violence, stalking, or
22 child abuse or neglect, or other criminal offenses relevant to
23 the health and welfare of the child.

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

1 (5) If the court finds that a less intrusive remedy
2 will not be effective, it may authorize law enforcement
3 officers to enter private property to take physical custody of
4 the child. If required by exigent circumstances, the court may
5 authorize law enforcement officers to make a forcible entry at
6 any hour.

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

11 (d) This act does not affect the availability of
12 relief allowed under the law of this state other than this
13 act.

14 Section 9. HEARING ON PETITION TO PREVENT ABDUCTION.

15 (a) If a petition is filed under this act, the court
16 may set a preliminary hearing as necessary, and shall cause to
17 be issued all summonses and notices as required by law and
18 otherwise deemed necessary and appropriate. Should the court
19 determine from the petition, or on evidence presented at a
20 preliminary hearing, that no emergency or temporary orders are
21 appropriate, then the court shall set the petition for a final
22 hearing at such time as the court deems appropriate and as the
23 best interests of the child require.

24 (b) If, at a hearing on a petition under this act,
25 the court after reviewing the evidence finds a credible risk
26 of abduction of the child, the court shall enter an abduction
27 prevention order. The order must include the provisions

1 required by subsection (c), specifying measures that are
2 reasonably calculated to prevent abduction of the child and
3 giving due consideration to the custody and visitation rights
4 of the parties. The court shall consider the age of the child,
5 the potential harm to the child from an abduction, the legal
6 and practical difficulties of returning the child to the
7 jurisdiction if abducted, and the risks for the potential
8 abduction, including but not limited to evidence of domestic
9 violence, stalking, or child abuse or neglect, or history
10 thereof.

11 (c) An order for relief under this act shall
12 include:

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

15 (2) the manner in which notice and opportunity to be
16 heard were given to the persons entitled to notice of the
17 proceeding;

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

21 (4) a provision stating that a violation of the
22 order may subject the party in violation to being held in
23 contempt with civil and criminal penalties as provided by law;
24 and

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

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

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

7 (A) the travel itinerary of the child;

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

11 (C) copies of all travel documents;

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

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

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

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

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

23 (3) a requirement that a party register the order in
24 another state as a prerequisite to allowing the child to
25 travel to that state;

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

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

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

9 (C) a prohibition upon the respondent from applying
10 on behalf of the child for a new or replacement passport or
11 visa;

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

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

18 (B) to the court:

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

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

24 (C) to the petitioner, proof of registration of an
25 authenticated copy of the order detailing passport and travel
26 restrictions for the child with the United States Embassy or
27 other United States diplomatic presence in the destination

1 country and with the Central Authority for the Hague
2 Convention on the Civil Aspects of International Child
3 Abduction, if that convention is in effect between the United
4 States and the destination country; and

5 (D) a written waiver under the Privacy Act, 5 U.S.C.
6 Section 552a as amended, with respect to any document,
7 application, or other information pertaining to the child
8 authorizing its disclosure to the court and the petitioner;
9 and

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

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

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

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

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

1 (g) The remedies provided in this act are cumulative
2 and do not affect the availability of other remedies to
3 prevent abduction.

4 Section 10. DURATION OF ABDUCTION PREVENTION ORDER.

5 An abduction prevention order remains in effect
6 until the earliest of:

7 (1) the time stated in the order;

8 (2) the emancipation of the child;

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

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

14 Section 11. COSTS, FEES, AND EXPENSES.

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

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

24 Section 12. UNIFORMITY OF APPLICATION AND
25 CONSTRUCTION.

26 In applying and construing this uniform act,
27 consideration must be given to the need to promote uniformity

1 of the law with respect to its subject matter among states
2 that enact it.

3 Section 13. RELATION TO ELECTRONIC SIGNATURES IN
4 GLOBAL AND NATIONAL COMMERCE ACT.

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

12 Section 14. This act shall become effective on
13 January 1, 2011.