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HOUSE BILL 150

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Elias Barela

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO CHILD CUSTODY; PROVIDING FOR PETITIONS FOR AND
ISSUANCE OF CHILD ABDUCTION PREVENTION ORDERS; PROVIDING
PENALTIES; ENACTING THE UNIFORM CHILD ABDUCTION PREVENTION ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Uniform Child Abduction Prevention Act".

Section 2. DEFINITIONS.--As used in the Uniform Child
Abduction Prevention Act:

A. "abduction" means the wrongful removal or
wrongful retention of a child;

B. "child" means an unemancipated individual who is
less than eighteen years of age;

C. "child-custody determination" means a judgment,
decree or other order of a court providing for the legal

1 custody, physical custody or visitation with respect to a
2 child. "Child-custody determination" includes a permanent,
3 temporary, initial and modification order;

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

11 E. "court" means an entity authorized pursuant to
12 the law of a state to establish, enforce or modify a child-
13 custody determination;

14 F. "petition" includes a motion or its equivalent;

15 G. "record" means information that is inscribed on
16 a tangible medium or that is stored in an electronic or other
17 medium and is retrievable in perceivable form;

18 H. "state" means a state of the United States, the
19 District of Columbia, Puerto Rico, the United States Virgin
20 Islands or any territory or insular possession subject to the
21 jurisdiction of the United States. "State" includes a
22 federally recognized Indian nation, tribe or pueblo;

23 I. "travel document" means records relating to a
24 travel itinerary, including travel tickets, passes,
25 reservations for transportation or accommodations. "Travel

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1 document" does not include a passport or visa;

2 J. "wrongful removal" means the taking of a child,
3 which taking breaches rights of custody or visitation given or
4 recognized pursuant to the law of this state; and

5 K. "wrongful retention" means the keeping or
6 concealing of a child, which keeping or concealing breaches
7 rights of custody or visitation given or recognized pursuant to
8 the law of this state.

9 Section 3. COOPERATION AND COMMUNICATION AMONG COURTS.--
10 Sections 40-10A-110 through 40-10A-112 NMSA 1978 apply to
11 cooperation and communication among courts in proceedings
12 pursuant to the Uniform Child Abduction Prevention Act.

13 Section 4. ACTIONS FOR ABDUCTION PREVENTION MEASURES.--

14 A. A court on its own motion may order abduction
15 prevention measures in a child-custody proceeding if the court
16 finds that the evidence establishes a credible risk of
17 abduction of the child.

18 B. A party to a child-custody determination or
19 another individual or entity having a right pursuant to the law
20 of this state or any other state to seek a child-custody
21 determination for the child may file a petition seeking
22 abduction prevention measures to protect the child pursuant to
23 the Uniform Child Abduction Prevention Act.

24 C. A prosecutor or public authority designated
25 pursuant to Section 40-10A-315 NMSA 1978 may seek a warrant to

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1 take physical custody of a child pursuant to Section 9 of the
2 Uniform Child Abduction Prevention Act or other appropriate
3 prevention measures.

4 Section 5. JURISDICTION.--

5 A. A petition pursuant to the Uniform Child
6 Abduction Prevention Act may be filed only in a court that has
7 jurisdiction to make a child-custody determination with respect
8 to the child at issue pursuant to the Uniform Child-Custody
9 Jurisdiction and Enforcement Act.

10 B. A court of this state has temporary emergency
11 jurisdiction pursuant to Section 40-10A-204 NMSA 1978 if the
12 court finds a credible risk of abduction.

13 Section 6. CONTENTS OF PETITION.--A petition pursuant to
14 the Uniform Child Abduction Prevention Act shall be verified
15 and include a copy of any existing child-custody determination,
16 if available. The petition shall specify the risk factors for
17 abduction, including the relevant factors described in Section
18 7 of the Uniform Child Abduction Prevention Act. Subject to
19 the provisions of Subsection (e) of Section 40-10A-209 NMSA
20 1978, and if the information is reasonably ascertainable, the
21 petition shall contain:

22 A. the name, date of birth and gender of the child;

23 B. the customary address and current physical
24 location of the child;

25 C. the identity, customary address and current

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1 physical location of the respondent;

2 D. a statement of whether a prior action to prevent
3 abduction or domestic violence has been filed by a party or
4 other individual or entity having custody of the child and the
5 date, location and disposition of the action;

6 E. 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 and
9 disposition of the case; and

10 F. any other information required to be submitted
11 to the court for a child-custody determination pursuant to
12 Section 40-10A-209 NMSA 1978.

13 Section 7. FACTORS TO DETERMINE RISK OF ABDUCTION.--

14 A. In determining whether there is a credible risk
15 of abduction of a child, the court shall consider any evidence
16 that the petitioner or respondent:

17 (1) has previously abducted or attempted to
18 abduct the child;

19 (2) has threatened to abduct the child;

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

22 (a) abandoning employment;

23 (b) selling a primary residence;

24 (c) terminating a lease;

25 (d) closing bank or other financial

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1 management accounts, liquidating assets, hiding or destroying
2 financial documents or conducting any unusual financial
3 activities;

4 (e) applying for a passport or visa or
5 obtaining travel documents for the respondent, a family member
6 or the child; or

7 (f) seeking to obtain the child's birth
8 certificate or school or medical records;

9 (4) has engaged in domestic violence, stalking
10 or child abuse or neglect;

11 (5) has refused to follow a child-custody
12 determination;

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

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

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

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

23 (b) is a party to the Hague Convention
24 on the Civil Aspects of International Child Abduction but: 1)
25 the Hague Convention on the Civil Aspects of International

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1 Child Abduction is not in force between the United States and
2 that country; 2) the country is noncompliant according to the
3 most recent compliance report issued by the United States
4 department of state; or 3) the country lacks legal mechanisms
5 for immediately and effectively enforcing a return order
6 pursuant to the Hague Convention on the Civil Aspects of
7 International Child Abduction;

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

12 (d) has laws or practices that would: 1)
13 enable the respondent, without due cause, to prevent the
14 petitioner from contacting the child; 2) restrict the
15 petitioner from freely traveling to or exiting from the country
16 because of the petitioner's gender, nationality, marital status
17 or religion; or 3) restrict the child's ability legally to
18 leave the country after the child reaches the age of majority
19 because of a child's gender, nationality or religion;

20 (e) is included by the United States
21 department of state on a current list of state sponsors of
22 terrorism;

23 (f) does not have an official United States
24 diplomatic presence in the country; or

25 (g) is engaged in active military action or

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1 war, including a civil war, to which the child may be exposed;

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

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

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

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

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

17 B. In the hearing on a petition pursuant to the
18 Uniform Child Abduction Prevention Act, the court shall
19 consider any evidence that the respondent believed in good
20 faith that the respondent's conduct was necessary to avoid
21 imminent harm to the child or respondent and any other evidence
22 that may be relevant to whether the respondent may be permitted
23 to remove or retain the child.

24 Section 8. PROVISIONS AND MEASURES TO PREVENT
25 ABDUCTION.--

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1 A. If a petition is filed pursuant to the Uniform
2 Child Abduction Prevention Act, the court may enter an order
3 that shall include:

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

6 (2) the manner in which notice and opportunity
7 to be heard were given to the persons entitled to notice of the
8 proceeding;

9 (3) a detailed description of each party's
10 custody and visitation rights and residential arrangements for
11 the child;

12 (4) a provision stating that a violation of
13 the order may subject the party in violation to civil and
14 criminal penalties; and

15 (5) identification of the child's country of
16 habitual residence at the time of the issuance of the order.

17 B. If at a hearing on a petition pursuant to the
18 Uniform Child Abduction Prevention Act or on the court's own
19 motion, the court, after reviewing the evidence, finds a
20 credible risk of abduction of the child, the court shall enter
21 an abduction prevention order. The order shall include the
22 provisions required by Subsection A of this section and
23 measures and conditions, including those set forth in
24 Subsections C, D and E of this section, that are reasonably
25 calculated to prevent abduction of the child, giving due

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1 consideration to the custody and visitation rights of the
2 parties. The court shall consider the age of the child, the
3 potential harm to the child from an abduction, the legal and
4 practical difficulties of returning the child to the
5 jurisdiction if abducted and the reasons for the potential
6 abduction, including evidence of domestic violence, stalking or
7 child abuse or neglect.

8 C. An abduction prevention order may include one or
9 more of the following:

10 (1) an imposition of travel restrictions that
11 require that a party traveling with the child outside a
12 designated geographical area provide the other party with the
13 following:

14 (a) the travel itinerary of the child;
15 (b) a list of physical addresses and
16 telephone numbers at which the child can be reached at
17 specified times; and

18 (c) copies of all travel documents;
19 (2) a prohibition of the respondent directly
20 or indirectly:

21 (a) removing the child from this state,
22 the United States or another geographic area without permission
23 of the court or the petitioner's written consent;

24 (b) removing or retaining the child in
25 violation of a child-custody determination;

1 (c) removing the child from school or a
2 child-care or similar facility; or

3 (d) approaching the child at any
4 location other than a site designated for supervised
5 visitation;

6 (3) a requirement that a party register the
7 order in another state as a prerequisite to allowing the child
8 to travel to that state;

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

10 (a) a direction that the petitioner
11 place the child's name in the United States department of
12 state's child passport issuance alert program;

13 (b) a requirement that the respondent
14 surrender to the court or the petitioner's attorney any United
15 States or foreign passport issued in the child's name,
16 including a passport issued in the name of both the parent and
17 the child; and

18 (c) a prohibition upon the respondent
19 from applying on behalf of the child for a new or replacement
20 passport or visa;

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

23 (a) to the United States department of
24 state office of children's issues and the relevant foreign
25 consulate or embassy, an authenticated copy of the order

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1 detailing passport and travel restrictions for the child;

2 (b) to the court: 1) proof that the
3 respondent has provided the information in Subparagraph (a) of
4 this paragraph; and 2) an acknowledgment in a record from the
5 relevant foreign consulate or embassy that no passport
6 application has been made, nor passport issued, on behalf of
7 the child;

8 (c) to the petitioner, proof of
9 registration with the United States embassy or other United
10 States diplomatic presence in the destination country and with
11 the central authority for the Hague Convention on the Civil
12 Aspects of International Child Abduction, if that convention is
13 in effect between the United States and the destination
14 country, unless one of the parties objects; and

15 (d) a written waiver pursuant to the
16 Privacy Act, 5 U.S.C. Section 552a, as amended, with respect to
17 any document, application or other information pertaining to
18 the child authorizing its disclosure to the court and the
19 petitioner; and

20 (6) upon the petitioner's request, a
21 requirement that the respondent obtain an order from the
22 relevant foreign country containing terms identical to the
23 child-custody determination issued in the United States.

24 D. In an abduction prevention order, the court may
25 impose conditions on the exercise of custody or visitation

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1 that:

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

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

12 (3) require the respondent to obtain education
13 on the potentially harmful effects to the child from abduction.

14 E. To prevent imminent abduction of a child, a
15 court may:

16 (1) issue a warrant to take physical custody
17 of the child pursuant to Section 9 of the Uniform Child
18 Abduction Prevention Act;

19 (2) direct the use of law enforcement to take
20 any action reasonably necessary to locate the child, obtain
21 return of the child or enforce a custody determination pursuant
22 to the Uniform Child Abduction Prevention Act; or

23 (3) grant any other relief allowed pursuant to
24 the law of this state other than the Uniform Child Abduction
25 Prevention Act.

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1 F. The remedies provided in the Uniform Child
2 Abduction Prevention Act are cumulative and do not affect the
3 availability of other remedies to prevent abduction.

4 Section 9. WARRANT TO TAKE PHYSICAL CUSTODY OF CHILD.--

5 A. If a petition pursuant to the Uniform Child
6 Abduction Prevention Act contains allegations that the child is
7 imminently likely to be wrongfully removed and the court finds
8 that there is a credible risk that the child is imminently
9 likely to be wrongfully removed, the court may issue an ex
10 parte warrant to take physical custody of the child.

11 B. The respondent on a petition pursuant to
12 Subsection A of this section shall be afforded an opportunity
13 to be heard at the earliest possible time after the ex parte
14 warrant is executed, but not later than the next judicial day
15 unless a hearing on that date is impossible. In that event,
16 the court shall hold the hearing on the first judicial day
17 possible.

18 C. An ex parte warrant pursuant to Subsection A of
19 this section to take physical custody of a child shall:

20 (1) recite the facts upon which a
21 determination of a credible risk of imminent wrongful removal
22 of the child is based;

23 (2) direct law enforcement officers to take
24 physical custody of the child immediately;

25 (3) state the date and time for the hearing on

1 the petition; and

2 (4) provide for the safe interim placement of
3 the child pending further order of the court.

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

11 E. The petition and warrant shall be served on the
12 respondent when or immediately after the child is taken into
13 physical custody.

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

22 G. If the court finds, after a hearing, that a
23 petitioner sought an ex parte warrant pursuant to Subsection A
24 of this section for the purpose of harassment or in bad faith,
25 the court may award the respondent reasonable attorney fees,

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1 costs and expenses.

2 H. The Uniform Child Abduction Prevention Act does
3 not affect the availability of relief allowed pursuant to the
4 law of this state other than that act.

5 Section 10. DURATION OF ABDUCTION PREVENTION ORDER.--An
6 abduction prevention order remains in effect until the earliest
7 of:

8 A. the time stated in the order;

9 B. the emancipation of the child;

10 C. the child's attaining eighteen years of age; or

11 D. the time the order is modified, revoked, vacated
12 or superseded by a court with jurisdiction pursuant to Sections
13 40-10A-201 through 40-10A-203 NMSA 1978.

14 Section 11. UNIFORMITY OF APPLICATION AND CONSTRUCTION.--
15 In applying and construing the Uniform Child Abduction
16 Prevention Act, consideration shall be given to the need to
17 promote uniformity of the law with respect to its subject
18 matter among states that enact it.

19 Section 12. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL
20 AND NATIONAL COMMERCE ACT.--The Uniform Child Abduction
21 Prevention Act modifies, limits and supersedes the federal
22 Electronic Signatures in Global and National Commerce Act, 15
23 U.S.C. Section 7001, et seq., but does not modify, limit or
24 supersede Section 101(c) of that act, 15 U.S.C. Section
25 7001(c), or authorize electronic delivery of any of the notices

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1 described in Section 103(b) of that act, 15 U.S.C. Section
2 7003(b).

3 Section 13. EFFECTIVE DATE.--The effective date of the
4 provisions of this act is July 1, 2009.

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