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HOUSE BILL 504

**48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

INTRODUCED BY

Daniel R. Foley

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

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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 that 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 that breaches rights of custody or  
7 visitation given or recognized pursuant to the law of this  
8 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

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

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

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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, 2008.

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