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HOUSE BILL 56

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Mimi Stewart

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;

10 F. a statement of whether a party or other
11 individual having custody of the child has sought the
12 assistance of a domestic violence shelter and, if known, the
13 approximate date and name of the person seeking the assistance
14 of the shelter; and

15 G. any other information required to be submitted
16 to the court for a child-custody determination pursuant to
17 Section 40-10A-209 NMSA 1978.

18 SECTION 7. FACTORS TO DETERMINE RISK OF ABDUCTION.--

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

- 22 (1) has previously abducted or attempted to
23 abduct the child;
- 24 (2) has threatened to abduct the child;
- 25 (3) has recently engaged in activities that

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1 may indicate a planned abduction, including:

- 2 (a) abandoning employment;
- 3 (b) selling a primary residence;
- 4 (c) terminating a lease;
- 5 (d) closing bank or other financial
- 6 management accounts, liquidating assets, hiding or destroying
- 7 financial documents or conducting any unusual financial
- 8 activities;
- 9 (e) applying for a passport or visa or
- 10 obtaining travel documents for the respondent, a family member
- 11 or the child; or
- 12 (f) seeking to obtain the child's birth
- 13 certificate or school or medical records;
- 14 (4) has engaged in domestic violence, stalking
- 15 or child abuse or neglect;
- 16 (5) has refused to follow a child-custody
- 17 determination;
- 18 (6) lacks strong familial, financial,
- 19 emotional or cultural ties to the state or the United States;
- 20 (7) has strong familial, financial, emotional
- 21 or cultural ties to another state or country;
- 22 (8) is likely to take the child to a country
- 23 that:
- 24 (a) is not a party to the Hague
- 25 Convention on the Civil Aspects of International Child

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1 Abduction and does not provide for the extradition of an
2 abducting parent or for the return of an abducted child;

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

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

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

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1 (e) is included by the United States
2 department of state on a current list of state sponsors of
3 terrorism;

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

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

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

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

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

20 (12) has used multiple names to attempt to
21 mislead or defraud; or

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

24 B. In the hearing on a petition pursuant to the
25 Uniform Child Abduction Prevention Act, the court shall

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1 consider any evidence that the respondent believed in good
2 faith that the respondent's conduct was necessary to avoid
3 imminent harm to the child or respondent and any other evidence
4 that may be relevant to whether the respondent may be permitted
5 to remove or retain the child.

6 C. In applying the provisions of the Uniform Child
7 Abduction Prevention Act, a court shall consider that parents
8 abduct their children before as well as during and after
9 custody litigation. The court shall also consider that some of
10 the risk factors set forth in Subsection A of this section
11 involve the same activities that might be undertaken by a
12 victim of domestic violence who is trying to relocate or flee
13 to escape violence. If the evidence shows that the parent
14 preparing to leave is fleeing domestic violence, the court
15 shall consider that any order restricting departure or
16 transferring custody may pose safety issues for the victim and
17 the child.

18 SECTION 8. PROVISIONS AND MEASURES TO PREVENT
19 ABDUCTION.--

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

- 23 (1) the basis for the court's exercise of
24 jurisdiction;
25 (2) the manner in which notice and opportunity

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1 to be heard were given to the persons entitled to notice of the
2 proceeding;

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

6 (4) a provision stating that a violation of
7 the order may subject the party in violation to civil and
8 criminal penalties; and

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

11 B. If at a hearing on a petition pursuant to the
12 Uniform Child Abduction Prevention Act or on the court's own
13 motion, the court, after reviewing the evidence, finds a
14 credible risk of abduction of the child, the court shall enter
15 an abduction prevention order. The order shall include the
16 provisions required by Subsection A of this section and
17 measures and conditions, including those set forth in
18 Subsections C, D and E of this section, that are reasonably
19 calculated to prevent abduction of the child, giving due
20 consideration to the custody and visitation rights of the
21 parties. The court shall consider the age of the child, the
22 potential harm to the child from an abduction, the legal and
23 practical difficulties of returning the child to the
24 jurisdiction if abducted and the reasons for the potential
25 abduction, including evidence of domestic violence, stalking or

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1 child abuse or neglect.

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

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

8 (a) the travel itinerary of the child;

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

12 (c) copies of all travel documents;

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

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

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

20 (c) removing the child from school or a
21 child care or similar facility; or

22 (d) approaching the child at any
23 location other than a site designated for supervised
24 visitation;

25 (3) a requirement that a party register the

1 order in another state as a prerequisite to allowing the child
2 to travel to that state;

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

4 (a) a direction that the petitioner
5 place the child's name in the United States department of
6 state's child passport issuance alert program;

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

12 (c) a prohibition upon the respondent
13 from applying on behalf of the child for a new or replacement
14 passport or visa;

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

17 (a) to the United States department of
18 state office of children's issues and the relevant foreign
19 consulate or embassy, an authenticated copy of the order
20 detailing passport and travel restrictions for the child;

21 (b) to the court: 1) proof that the
22 respondent has provided the information in Subparagraph (a) of
23 this paragraph; and 2) an acknowledgment in a record from the
24 relevant foreign consulate or embassy that no passport
25 application has been made, nor passport issued, on behalf of

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1 the child;

2 (c) to the petitioner, proof of
3 registration with the United States embassy or other United
4 States diplomatic presence in the destination country and with
5 the central authority for the Hague Convention on the Civil
6 Aspects of International Child Abduction, if that convention is
7 in effect between the United States and the destination
8 country, unless one of the parties objects; and

9 (d) a written waiver pursuant to the
10 Privacy Act of 1974, 5 U.S.C. Section 552a, as amended, with
11 respect to any document, application or other information
12 pertaining to the child authorizing its disclosure to the court
13 and the petitioner; and

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

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

21 (1) limit visitation or require that
22 visitation with the child by the respondent be supervised until
23 the court finds that supervision is no longer necessary and
24 order the respondent to pay the costs of supervision;

25 (2) require the respondent to post a bond or

1 provide other security in an amount sufficient to serve as a
2 financial deterrent to abduction, the proceeds of which may be
3 used to pay for the reasonable expenses of recovery of the
4 child, including reasonable attorney fees and costs if there is
5 an abduction; and

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

8 E. To prevent imminent abduction of a child, a
9 court may:

10 (1) issue a warrant to take physical custody
11 of the child pursuant to Section 9 of the Uniform Child
12 Abduction Prevention Act;

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

17 (3) grant any other relief allowed pursuant to
18 the law of this state other than the Uniform Child Abduction
19 Prevention Act.

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

23 G. A court shall not require the disclosure of a
24 confidential communication that is protected by the Victim
25 Counselor Confidentiality Act, the physician-patient privilege

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1 or the psychotherapist-patient privilege.

2 SECTION 9. WARRANT TO TAKE PHYSICAL CUSTODY OF CHILD.--

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

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

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

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

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

23 (3) state the date and time for the hearing on
24 the petition; and

25 (4) provide for the safe interim placement of

1 the child pending further order of the court.

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

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

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

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

25 H. The Uniform Child Abduction Prevention Act does

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1 not affect the availability of relief allowed pursuant to the
2 law of this state other than that act.

3 SECTION 10. DURATION OF ABDUCTION PREVENTION ORDER.--An
4 abduction prevention order remains in effect until the earliest
5 of:

- 6 A. the time stated in the order;
- 7 B. the emancipation of the child;
- 8 C. the child's attaining eighteen years of age; or
- 9 D. the time the order is modified, revoked, vacated
10 or superseded by a court with jurisdiction pursuant to Sections
11 40-10A-201 through 40-10A-203 NMSA 1978.

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

17 SECTION 12. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL
18 AND NATIONAL COMMERCE ACT.--The Uniform Child Abduction
19 Prevention Act modifies, limits and supersedes the federal
20 Electronic Signatures in Global and National Commerce Act, 15
21 U.S.C. Section 7001, et seq., but does not modify, limit or
22 supersede Section 101(c) of that act, 15 U.S.C. Section
23 7001(c), or authorize electronic delivery of any of the notices
24 described in Section 103(b) of that act, 15 U.S.C. Section
25 7003(b).

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SECTION 13. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2012.