
HOUSE BILL 1182

State of Washington

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By Representatives Goodman, Rodne, Miloscia, Williams, and Ormsby; by request of Uniform Legislation Commission

Read first time 01/14/09. Referred to Committee on Judiciary.

1 AN ACT Relating to the uniform child abduction prevention act; and
2 adding a new chapter to Title 26 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** This act may be known and cited as the
5 uniform child abduction prevention act.

6 NEW SECTION. **Sec. 2.** In this chapter:

7 (1) "Abduction" means the wrongful removal or wrongful retention of
8 a child.

9 (2) "Child" means an unemancipated individual who is younger than
10 age eighteen.

11 (3) "Child custody determination" means a judgment, decree, or
12 other order of a court providing for the legal custody, physical
13 custody, or visitation with respect to a child. The term includes a
14 permanent, temporary, initial, and modification order.

15 (4) "Child custody proceeding" means a proceeding in which legal
16 custody, physical custody, or visitation with respect to a child is at
17 issue. The term includes a proceeding for divorce, dissolution of

1 marriage, separation, neglect, abuse, dependency, guardianship,
2 paternity, termination of parental rights, or protection from domestic
3 violence.

4 (5) "Court" means an entity authorized under the law of a state to
5 establish, enforce, or modify a child custody determination.

6 (6) "Petition" includes a motion or its equivalent.

7 (7) "Record" means information that is inscribed on a tangible
8 medium or that is stored in an electronic or other medium and is
9 retrievable in perceivable form.

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

15 (9) "Travel document" means records relating to a travel itinerary,
16 including travel tickets, passes, reservations for transportation, or
17 accommodations. The term does not include a passport or visa.

18 (10) "Wrongful removal" means the taking of a child that breaches
19 rights of custody or visitation given or recognized under the law of
20 this state.

21 (11) "Wrongful retention" means the keeping or concealing of a
22 child that breaches rights of custody or visitation given or recognized
23 under the law of this state.

24 NEW SECTION. **Sec. 3.** RCW 26.27.101, 26.27.111, and 26.27.121
25 apply to cooperation and communications among courts in proceedings
26 under this chapter.

27 NEW SECTION. **Sec. 4.** (1) A court on its own motion may order
28 abduction prevention measures in a child custody proceeding if the
29 court finds that the evidence establishes a credible risk of abduction
30 of the child.

31 (2) A party to a child custody determination or another individual
32 or entity having a right under the law of this state or any other state
33 to seek a child custody determination for the child may file a petition
34 seeking abduction prevention measures to protect the child under this
35 chapter.

1 (3) A prosecutor or public authority designated under RCW 26.27.541
2 may seek a warrant to take physical custody of a child under section 9
3 of this act or other appropriate prevention measures.

4 NEW SECTION. **Sec. 5.** (1) A petition under this chapter may be
5 filed only in a court that has jurisdiction to make a child custody
6 determination with respect to the child at issue under chapter 26.27
7 RCW.

8 (2) A court of this state has temporary emergency jurisdiction
9 under RCW 26.27.231 if the court finds a credible risk of abduction.

10 NEW SECTION. **Sec. 6.** A petition under this chapter must be
11 verified and include a copy of any existing child custody
12 determination, if available. The petition must specify the risk
13 factors for abduction, including the relevant factors described in
14 section 7 of this act. Subject to RCW 26.27.281(5), if reasonably
15 ascertainable, the petition must contain:

- 16 (1) The name, date of birth, and gender of the child;
- 17 (2) The customary address and current physical location of the
18 child;
- 19 (3) The identity, customary address, and current physical location
20 of the respondent;
- 21 (4) A statement of whether a prior action to prevent abduction or
22 domestic violence has been filed by a party or other individual or
23 entity having custody of the child, and the date, location, and
24 disposition of the action;
- 25 (5) A statement of whether a party to the proceeding has been
26 arrested for a crime related to domestic violence, stalking, or child
27 abuse or neglect, and the date, location, and disposition of the case;
28 and
- 29 (6) Any other information required to be submitted to the court for
30 a child custody determination under RCW 26.27.281.

31 NEW SECTION. **Sec. 7.** (1) In determining whether there is a
32 credible risk of abduction of a child, the court shall consider any
33 evidence that the petitioner or respondent:

- 34 (a) Has previously abducted or attempted to abduct the child;
- 35 (b) Has threatened to abduct the child;

1 (c) Has recently engaged in activities that may indicate a planned
2 abduction, including:

- 3 (i) Abandoning employment;
- 4 (ii) Selling a primary residence;
- 5 (iii) Terminating a lease;
- 6 (iv) Closing bank or other financial management accounts,
7 liquidating assets, hiding or destroying financial documents, or
8 conducting any unusual financial activities;
- 9 (v) Applying for a passport or visa or obtaining travel documents
10 for the respondent, a family member, or the child; or
- 11 (vi) Seeking to obtain the child's birth certificate or school or
12 medical records;

13 (d) Has engaged in domestic violence, stalking, or child abuse or
14 neglect;

15 (e) Has refused to follow a child custody determination;

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

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

20 (h) Is likely to take the child to a country that:

- 21 (i) Is not a party to the Hague Convention on the Civil Aspects of
22 International Child Abduction and does not provide for the extradition
23 of an abducting parent or for the return of an abducted child;
- 24 (ii) Is a party to the Hague Convention on the Civil Aspects of
25 International Child Abduction but:
 - 26 (A) The Hague Convention on the Civil Aspects of International
27 Child Abduction is not in force between the United States and that
28 country;
 - 29 (B) Is noncompliant according to the most recent compliance report
30 issued by the United States department of state; or
 - 31 (C) Lacks legal mechanisms for immediately and effectively
32 enforcing a return order under the Hague Convention on the Civil
33 Aspects of International Child Abduction;
- 34 (iii) Poses a risk that the child's physical or emotional health or
35 safety would be endangered in the country because of specific
36 circumstances relating to the child or because of human rights
37 violations committed against children;
- 38 (iv) Has laws or practices that would:

1 (A) Enable the respondent, without due cause, to prevent the
2 petitioner from contacting the child;

3 (B) Restrict the petitioner from freely traveling to or exiting
4 from the country because of the petitioner's gender, nationality,
5 marital status, or religion; or

6 (C) Restrict the child's ability legally to leave the country after
7 the child reaches the age of majority because of a child's gender,
8 nationality, or religion;

9 (v) Is included by the United States department of state on a
10 current list of state sponsors of terrorism;

11 (vi) Does not have an official United States diplomatic presence in
12 the country; or

13 (vii) Is engaged in active military action or war, including a
14 civil war, to which the child may be exposed;

15 (i) Is undergoing a change in immigration or citizenship status
16 that would adversely affect the respondent's ability to remain in the
17 United States legally;

18 (j) Has had an application for United States citizenship denied;

19 (k) Has forged or presented misleading or false evidence on
20 government forms or supporting documents to obtain or attempt to obtain
21 a passport, a visa, travel documents, a social security card, a
22 driver's license, or other government-issued identification card or has
23 made a misrepresentation to the United States government;

24 (l) Has used multiple names to attempt to mislead or defraud; or

25 (m) Has engaged in any other conduct the court considers relevant
26 to the risk of abduction.

27 (2) In the hearing on a petition under this chapter, the court
28 shall consider any evidence that the respondent believed in good faith
29 that the respondent's conduct was necessary to avoid imminent harm to
30 the child or respondent and any other evidence that may be relevant to
31 whether the respondent may be permitted to remove or retain the child.

32 NEW SECTION. **Sec. 8.** (1) If a petition is filed under this
33 chapter, the court may enter an order that must include:

34 (a) The basis for the court's exercise of jurisdiction;

35 (b) The manner in which notice and opportunity to be heard were
36 given to the persons entitled to notice of the proceeding;

1 (c) A detailed description of each party's custody and visitation
2 rights and residential arrangements for the child;

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

5 (e) Identification of the child's country of habitual residence at
6 the time of the issuance of the order.

7 (2) If, at a hearing on a petition under this chapter or on the
8 court's own motion, the court after reviewing the evidence finds a
9 credible risk of abduction of the child, the court shall enter an
10 abduction prevention order. The order must include the provisions
11 required by subsection (1) of this section and measures and conditions,
12 including those in subsections (3), (4), and (5) of this section, that
13 are reasonably calculated to prevent abduction of the child, giving due
14 consideration to the custody and visitation rights of the parties. The
15 court shall consider the age of the child, the potential harm to the
16 child from an abduction, the legal and practical difficulties of
17 returning the child to the jurisdiction if abducted, and the reasons
18 for the potential abduction, including evidence of domestic violence,
19 stalking, or child abuse or neglect.

20 (3) An abduction prevention order may include one or more of the
21 following:

22 (a) An imposition of travel restrictions that require that a party
23 traveling with the child outside a designated geographical area provide
24 the other party with the following:

25 (i) The travel itinerary of the child;

26 (ii) A list of physical addresses and telephone numbers at which
27 the child can be reached at specified times; and

28 (iii) Copies of all travel documents;

29 (b) A prohibition of the respondent directly or indirectly:

30 (i) Removing the child from this state, the United States, or
31 another geographic area without permission of the court or the
32 petitioner's written consent;

33 (ii) Removing or retaining the child in violation of a child
34 custody determination;

35 (iii) Removing the child from school or a child care or similar
36 facility; or

37 (iv) Approaching the child at any location other than a site
38 designated for supervised visitation;

1 (c) A requirement that a party register the order in another state
2 as a prerequisite to allowing the child to travel to that state;

3 (d) With regard to the child's passport:

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

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

11 (iii) A prohibition upon the respondent from applying on behalf of
12 the child for a new or replacement passport or visa;

13 (e) As a prerequisite to exercising custody or visitation, a
14 requirement that the respondent provide:

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

19 (ii) To the court:

20 (A) Proof that the respondent has provided the information in
21 (e)(i) of this subsection; and

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

25 (iii) To the petitioner, proof of registration with the United
26 States embassy or other United States diplomatic presence in the
27 destination country and with the central authority for the Hague
28 Convention on the Civil Aspects of International Child Abduction, if
29 that convention is in effect between the United States and the
30 destination country, unless one of the parties objects; and

31 (iv) A written waiver under the privacy act, 5 U.S.C. Section 552a,
32 as amended, with respect to any document, application, or other
33 information pertaining to the child authorizing its disclosure to the
34 court and the petitioner; and

35 (f) Upon the petitioner's request, a requirement that the
36 respondent obtain an order from the relevant foreign country containing
37 terms identical to the child custody determination issued in the United
38 States.

1 (4) In an abduction prevention order, the court may impose
2 conditions on the exercise of custody or visitation that:

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

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

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

14 (5) To prevent imminent abduction of a child, a court may:

15 (a) Issue a warrant to take physical custody of the child under
16 section 9 of this act or other laws of this state;

17 (b) Direct the use of law enforcement to take any action reasonably
18 necessary to locate the child, obtain return of the child, or enforce
19 a child custody determination under this chapter or other laws of this
20 state; or

21 (c) Grant any other relief allowed under the law of this state
22 other than this chapter.

23 (6) The remedies provided in this chapter are cumulative and do not
24 affect the availability of other remedies to prevent abduction.

25 NEW SECTION. **Sec. 9.** (1) If a petition under this chapter
26 contains allegations, and the court finds that there is a credible risk
27 that the child is imminently likely to be wrongfully removed, the court
28 may issue an ex parte warrant to take physical custody of the child.

29 (2) The respondent on a petition under subsection (1) of this
30 section must be afforded an opportunity to be heard at the earliest
31 possible time after the ex parte warrant is executed, but not later
32 than the next judicial day unless a hearing on that date is impossible.
33 In that event, the court shall hold the hearing on the first judicial
34 day possible.

35 (3) An ex parte warrant under subsection (1) of this section to
36 take physical custody of a child must:

1 (a) Recite the facts upon which a determination of a credible risk
2 of imminent wrongful removal of the child is based;

3 (b) Direct law enforcement officers to take physical custody of the
4 child immediately;

5 (c) State the date and time for the hearing on the petition; and

6 (d) Provide for the safe interim placement of the child pending
7 further order of the court.

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

14 (5) The petition and warrant must be served on the respondent when
15 or immediately after the child is taken into physical custody.

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

23 (7) If the court finds, after a hearing, that a petitioner sought
24 an ex parte warrant under subsection (1) of this section for the
25 purpose of harassment or in bad faith, the court may award the
26 respondent reasonable attorneys' fees, costs, and expenses.

27 (8) This chapter does not affect the availability of relief allowed
28 under other laws of this state.

29 NEW SECTION. **Sec. 10.** An abduction prevention order remains in
30 effect until the earliest of:

31 (1) The time stated in the order;

32 (2) The emancipation of the child;

33 (3) The child's attaining eighteen years of age; or

34 (4) The time the order is modified, revoked, vacated, or superseded
35 by a court with jurisdiction under RCW 26.27.201, 26.27.211, and
36 26.27.221.

1 NEW SECTION. **Sec. 11.** In applying and construing this uniform
2 act, consideration must be given to the need to promote uniformity of
3 the law with respect to its subject matter among states that enact it.

4 NEW SECTION. **Sec. 12.** This act modifies, limits, and supersedes
5 the federal electronic signatures in global and national commerce act,
6 15 U.S.C. Sec. 7001, et seq., but does not modify, limit, or supersede
7 section 101(c) of the act, 15 U.S.C. Sec. 7001(c) of that act, or
8 authorize electronic delivery of any of the notices described in
9 section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

10 NEW SECTION. **Sec. 13.** Sections 1 through 12 of this act
11 constitute a new chapter in Title 26 RCW.

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