

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 684

Short Title: Uniform Child Abduction Prevention Act. (Public)

Sponsors: Representative Blust (Primary Sponsor).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Judiciary Subcommittee A.

April 7, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE UNIFORM CHILD ABDUCTION PREVENTION ACT.

3 The General Assembly of North Carolina enacts:

4 SECTION 1. The General Statutes are amended by adding a new Chapter to read:

5 "**Chapter 50D.**

6 "**Uniform Child Abduction Prevention Act.**

7 "**§ 50D-1. Short title.**

8 This Chapter may be cited as the Uniform Child Abduction Prevention Act.

9 "**§ 50D-2. Definitions.**

10 As used in this Chapter:

- 11 (1) "Abduction" means the wrongful removal or wrongful retention of a child.
12 (2) "Child" means an unemancipated individual who is less than 18 years of age.
13 (3) "Child-custody determination" means a judgment, decree, or other order of a
14 court providing for the legal custody, physical custody, or visitation with
15 respect to a child. The term includes a permanent, temporary, initial, and
16 modification order.
17 (4) "Child-custody proceeding" means a proceeding in which legal custody,
18 physical custody, or visitation with respect to a child is at issue. The term
19 includes a proceeding for divorce, dissolution of marriage, separation,
20 neglect, abuse, dependency, guardianship, paternity, termination of parental
21 rights, or protection from domestic violence.
22 (5) "Court" means an entity authorized under the law of a state to establish,
23 enforce, or modify a child-custody determination.
24 (6) "Petition" includes a motion or its equivalent.
25 (7) "Record" means information that is inscribed on a tangible medium or that is
26 stored in an electronic or other medium and is retrievable in perceivable
27 form.
28 (8) "State" means a state of the United States, the District of Columbia, Puerto
29 Rico, the United States Virgin Islands, or any territory or insular possession
30 subject to the jurisdiction of the United States. The term includes a federally
31 recognized Indian tribe or nation.
32 (9) "Travel document" means records relating to a travel itinerary, including
33 travel tickets, passes, reservations for transportation, or accommodations.
34 The term does not include a passport or visa.



1 (10) "Wrongful removal" means the taking of a child that breaches rights of
2 custody or visitation given or recognized under the law of this State.

3 (11) "Wrongful retention" means the keeping or concealing of a child that
4 breaches rights of custody or visitation given or recognized under the law of
5 this State.

6 **"§ 50D-3. Cooperation and communication among courts.**

7 G.S. 50A-110, 50A-111, and 50A-112 of the Uniform Child-Custody Jurisdiction and
8 Enforcement Act apply to cooperation and communications among courts in proceedings under
9 this Chapter.

10 **"§ 50D-4. Actions for abduction prevention measures.**

11 (a) A court on its own motion may order abduction prevention measures in a child–
12 custody proceeding if the court finds that the evidence establishes a credible risk of abduction
13 of the child.

14 (b) A party to a child-custody determination or another individual or entity having a
15 right under the law of this State or any other state to seek a child-custody determination for the
16 child may file a petition seeking abduction prevention measures to protect the child under this
17 act.

18 (c) A prosecutor or public authority designated under G.S. 50A-315 of the Uniform
19 Child-Custody Jurisdiction and Enforcement Act may seek a warrant to take physical custody
20 of a child under G.S. 50D-9 or other appropriate prevention measures.

21 **"§ 50D-5. Jurisdiction.**

22 (a) A petition under this Chapter may be filed only in a court that has jurisdiction to
23 make a child-custody determination with respect to the child at issue under the Uniform
24 Child-Custody Jurisdiction Act, Article 2 of Chapter 50A of the General Statutes.

25 (b) A court of this State has temporary emergency jurisdiction under G.S. 50A-204 of
26 the Uniform Child-Custody Jurisdiction and Enforcement Act if the court finds a credible risk
27 of abduction.

28 **"§ 50D-6. Contents of petition.**

29 A petition under this Chapter must be verified and include a copy of any existing
30 child-custody determination, if available. The petition must specify the risk factors for
31 abduction, including the relevant factors described in G.S. 50D-7. Subject to G.S. 50A-209(e)
32 of the Uniform Child-Custody Jurisdiction and Enforcement Act if reasonably ascertainable,
33 the petition must contain:

34 (1) The name, date of birth, and gender of the child;

35 (2) The customary address and current physical location of the child;

36 (3) The identity, customary address, and current physical location of the
37 respondent;

38 (4) A statement of whether a prior action to prevent abduction or domestic
39 violence has been filed by a party or other individual or entity having
40 custody of the child, and the date, location, and disposition of the action;

41 (5) A statement of whether a party to the proceeding has been arrested for a
42 crime related to domestic violence, stalking, or child abuse or neglect, and
43 the date, location, and disposition of the case; and

44 (6) Any other information required to be submitted to the court for a
45 child-custody determination under the Uniform Child-Custody Jurisdiction
46 Act, Article 2 of Chapter 50A of the General Statutes.

47 **"§ 50D-7. Factors to determine risk of abduction.**

48 (a) In determining whether there is a credible risk of abduction of a child, the court
49 shall consider any evidence that the petitioner or respondent:

50 (1) Has previously abducted or attempted to abduct the child;

51 (2) Has threatened to abduct the child;

- 1 (3) Has recently engaged in activities that may indicate a planned abduction,
2 including:
3 a. Abandoning employment;
4 b. Selling a primary residence;
5 c. Terminating a lease;
6 d. Closing bank or other financial management accounts, liquidating
7 assets, hiding or destroying financial documents, or conducting any
8 unusual financial activities;
9 e. Applying for a passport or visa or obtaining travel documents for the
10 respondent, a family member, or the child; or
11 f. Seeking to obtain the child's birth certificate or school or medical
12 records.
- 13 (4) Has engaged in domestic violence, stalking, or child abuse or neglect;
14 (5) Has refused to follow a child-custody determination;
15 (6) Lacks strong familial, financial, emotional, or cultural ties to the State or the
16 United States;
17 (7) Has strong familial, financial, emotional, or cultural ties to another state or
18 country;
19 (8) Is likely to take the child to a country that:
20 a. Is not a party to the Hague Convention on the Civil Aspects of
21 International Child Abduction and does not provide for the
22 extradition of an abducting parent or for the return of an abducted
23 child;
24 b. Is a party to the Hague Convention on the Civil Aspects of
25 International Child Abduction but:
26 1. The Hague Convention on the Civil Aspects of International
27 Child Abduction is not in force between the United States and
28 that country;
29 2. I noncompliant according to the most recent compliance
30 report issued by the United States Department of State; or
31 3. Lacks legal mechanisms for immediately and effectively
32 enforcing a return order under the Hague Convention on the
33 Civil Aspects of International Child Abduction;
34 c. Poses a risk that the child's physical or emotional health or safety
35 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 d. Has laws or practices that would:
39 1. Enable the respondent, without due cause, to prevent the
40 petitioner from contacting the child;
41 2. Restrict the petitioner from freely traveling to or exiting from
42 the country because of the petitioner's gender, nationality,
43 marital status, or religion; or
44 3. Restrict the child's ability legally to leave the country after the
45 child reaches the age of majority because of a child's gender,
46 nationality, or religion;
47 e. Is included by the United States Department of State on a current list
48 of state sponsors of terrorism;
49 f. Does not have an official United States diplomatic presence in the
50 country; or

1 g. Is engaged in active military action or war, including a civil war, to
2 which the child may be exposed;

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

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

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

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

13 (13) Has engaged in any other conduct the court considers relevant to the risk of
14 abduction.

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

19 "**§ 50D-8. Provisions and measures to prevent abduction.**"

20 (a) If a petition is filed under this Chapter, the court may enter an order that must
21 include:

22 (1) The basis for the court's exercise of jurisdiction;

23 (2) The manner in which notice and opportunity to be heard were given to the
24 persons entitled to notice of the proceeding;

25 (3) A detailed description of each party's custody and visitation rights and
26 residential arrangements for the child;

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

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

31 (b) If, at a hearing on a petition under this Chapter or on the court's own motion, the
32 court after reviewing the evidence finds a credible risk of abduction of the child, the court shall
33 enter an abduction prevention order. The order must include the provisions required by
34 subsection (a) and measures and conditions, including those in subsections (c), (d), and (e), that
35 are reasonably calculated to prevent abduction of the child, giving due consideration to the
36 custody and visitation rights of the parties. The court shall consider the age of the child, the
37 potential harm to the child from an abduction, the legal and practical difficulties of returning
38 the child to the jurisdiction if abducted, and the reasons for the potential abduction, including
39 evidence of domestic violence, stalking, or child abuse or neglect.

40 (c) An abduction prevention order may include one or more of the following:

41 (1) An imposition of travel restrictions that require that a party traveling with
42 the child outside a designated geographical area provide the other party with
43 the following:

44 a. The travel itinerary of the child;

45 b. A list of physical addresses and telephone numbers at which the child
46 can be reached at specified times; and

47 c. Copies of all travel documents;

48 (2) A prohibition of the respondent directly or indirectly:

49 a. Removing the child from this State, the United States, or another
50 geographic area without permission of the court or the petitioner's
51 written consent;

- 1 b. Removing or retaining the child in violation of a child-custody
2 determination;
3 c. Removing the child from school or a child-care or similar facility; or
4 d. Approaching the child at any location other than a site designated for
5 supervised visitation;
6 (3) A requirement that a party register the order in another state as a prerequisite
7 to allowing the child to travel to that state;
8 (4) With regard to the child's passport:
9 a. A direction that the petitioner place the child's name in the United
10 States Department of State's Child Passport Issuance Alert Program;
11 b. A requirement that the respondent surrender to the court or the
12 petitioner's attorney any United States or foreign passport issued in
13 the child's name, including a passport issued in the name of both the
14 parent and the child; and
15 c. A prohibition upon the respondent from applying on behalf of the
16 child for a new or replacement passport or visa;
17 (5) As a prerequisite to exercising custody or visitation, a requirement that the
18 respondent provide:
19 a. To the United States Department of State Office of Children's Issues
20 and the relevant foreign consulate or embassy, an authenticated copy
21 of the order detailing passport and travel restrictions for the child;
22 b. To the court:
23 1. Proof that the respondent has provided the information in
24 subdivision a; and
25 2. An acknowledgment in a record from the relevant foreign
26 consulate or embassy that no passport application has been
27 made, or passport issued, on behalf of the child;
28 c. To the petitioner, proof of registration with the United States
29 Embassy or other United States diplomatic presence in the
30 destination country and with the Central Authority for the Hague
31 Convention on the Civil Aspects of International Child Abduction, if
32 that Convention is in effect between the United States and the
33 destination country, unless one of the parties objects; and
34 d. A written waiver under the Privacy Act, 5 U.S.C. § 552a [as
35 amended], with respect to any document, application, or other
36 information pertaining to the child, authorizing its disclosure to the
37 court and the petitioner; and
38 (6) Upon the petitioner's request, a requirement that the respondent obtain an
39 order from the relevant foreign country containing terms identical to the
40 child-custody determination issued in the United States.
41 (d) In an abduction prevention order, the court may impose conditions on the exercise
42 of custody or visitation that:
43 (1) Limit visitation or require that visitation with the child by the respondent be
44 supervised until the court finds that supervision is no longer necessary and
45 order the respondent to pay the costs of supervision;
46 (2) Require the respondent to post a bond or provide other security in an amount
47 sufficient to serve as a financial deterrent to abduction, the proceeds of
48 which may be used to pay for the reasonable expenses of recovery of the
49 child, including reasonable attorneys' fees and costs if there is an abduction;
50 and

- 1 (3) Require the respondent to obtain education on the potentially harmful effects
2 to the child from abduction.
- 3 (e) To prevent imminent abduction of a child, a court may:
- 4 (1) Issue a warrant to take physical custody of the child under Section 9 or the
5 law of this State other than this Chapter;
- 6 (2) Direct the use of law enforcement to take any action reasonably necessary to
7 locate the child, obtain return of the child, or enforce a custody
8 determination under this Chapter or the law of this State other than this
9 Chapter; or
- 10 (3) Grant any other relief allowed under the law of this State other than this
11 Chapter.

12 (f) The remedies provided in this Chapter are cumulative and do not affect the availability
13 of other remedies to prevent abduction.

14 **"§ 50D-9. Warrant to take physical custody of a child.**

15 (a) If a petition under this Chapter contains allegations, and the court finds that there is
16 a credible risk that the child is imminently likely to be wrongfully removed, the court may issue
17 an ex parte warrant to take physical custody of the child.

18 (b) The respondent on a petition under subsection (a) of this section must be afforded an
19 opportunity to be heard at the earliest possible time after the ex parte warrant is executed, but
20 not later than the next judicial day unless a hearing on that date is impossible. In that event, the
21 court shall hold the hearing on the first judicial day possible.

22 (c) An ex parte warrant under subsection (a) of this section to take physical custody of a
23 child must:

- 24 (1) Recite the facts upon which a determination of a credible risk of imminent
25 wrongful removal of the child is based;
- 26 (2) Direct law enforcement officers to take physical custody of the child
27 immediately;
- 28 (3) State the date and time for the hearing on the petition; and
- 29 (4) Provide for the safe interim placement of the child pending further order of
30 the court.

31 (d) If feasible, before issuing a warrant and before determining the placement of the
32 child after the warrant is executed, the court may order a search of the relevant databases of the
33 National Crime Information Center system and similar state databases to determine if either the
34 petitioner or respondent has a history of domestic violence, stalking, or child abuse or neglect.

35 (e) The petition and warrant must be served on the respondent when or immediately
36 after the child is taken into physical custody.

37 (f) A warrant to take physical custody of a child, issued by this State or another state, is
38 enforceable throughout this State. If the court finds that a less intrusive remedy will not be
39 effective, it may authorize law enforcement officers to enter private property to take physical
40 custody of the child. If required by exigent circumstances, the court may authorize law
41 enforcement officers to make a forcible entry at any hour.

42 (g) If the court finds, after a hearing, that a petitioner sought an ex parte warrant under
43 subsection (a) of this section for the purpose of harassment or in bad faith, the court may award
44 the respondent reasonable attorney's fees, costs, and expenses.

45 (h) This Chapter does not affect the availability of relief allowed under the laws of this
46 State other than this Chapter.

47 **"§ 50D-10. Duration of abduction prevention order.**

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

- 49 (1) The time stated in the order;
- 50 (2) The emancipation of the child;
- 51 (3) The child's attaining 18 years of age; or

1 (4) The time the order is modified, revoked, vacated, or superseded by a court
2 with jurisdiction under G.S. 50A-201 through G.S. 50A-203 of the Uniform
3 Child-Custody Jurisdiction and Enforcement Act or Section 3 of the
4 Uniform Child Custody Jurisdiction Act and applicable laws of this State.

5 **"§ 50D-11. Uniformity of application and construction.**

6 In applying and construing this uniform act, consideration must be given to the need to
7 promote uniformity of the law with respect to its subject matter among states that enact it.

8 **"§ 50D-12. Relation to Electronic Signatures in Global and National Commerce Act.**

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

13 **SECTION 12.** This act becomes effective January 1, 2012.