

JAN 20 2010

S.B. NO. 2192

A BILL FOR AN ACT

RELATING TO THE UNIFORM CHILD ABDUCTION PREVENTION ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER

5 THE UNIFORM CHILD ABDUCTION PREVENTION ACT

6 § -1 Short title. This chapter may be cited as the
7 Uniform Child Abduction Prevention Act.

8 § -2 Definitions. In this chapter:

9 "Abduction" means the wrongful removal or wrongful
10 retention of a child.

11 "Child" means an unemancipated individual who is less than
12 eighteen years of age.

13 "Child-custody determination" means a judgment, decree, or other
14 order of a court providing for the legal custody, physical
15 custody, or visitation with respect to a child. The term
16 includes a permanent, temporary, initial, and modification
17 order.



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

7 "Court" means an entity authorized under the law of a state
8 to establish, enforce, or modify a child-custody determination.

9 "Petition" includes a motion or its equivalent.

10 "Record" means information that is inscribed on a tangible
11 medium or that is stored in an electronic or other medium and is
12 retrievable in perceivable form.

13 "State" means a state of the United States, the District of
14 Columbia, Puerto Rico, the United States Virgin Islands, or any
15 territory or insular possession subject to the jurisdiction of
16 the United States. The term includes a federally recognized
17 Indian tribe or nation.

18 "Travel document" means records relating to a travel
19 itinerary, including travel tickets, passes, reservations for
20 transportation, or accommodations. The term does not include a
21 passport or visa.



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

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

7 § -3 Cooperation and communication among courts.
8 Sections 583A-110, 583A-111, and 583A-112 of the Uniform Child-
9 Custody Jurisdiction and Enforcement Act apply to cooperation
10 and communications among courts in proceedings under this
11 chapter.

12 § -4 Actions for abduction prevention measures. (a) A
13 court on its own motion may order abduction prevention measures
14 in a child-custody proceeding if the court finds that the
15 evidence establishes a credible risk of abduction of the child.

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

21 (c) A prosecutor or public authority designated under
22 section 583A-315 may seek a warrant to take physical custody of



1 a child under section -9 or other appropriate prevention
2 measures.

3 § -5 Jurisdiction. (a) A petition under this chapter
4 may be filed only in a court that has jurisdiction to make a
5 child-custody determination with respect to the child at issue
6 under chapter 583A.

7 (b) A court of this State has temporary emergency
8 jurisdiction under section 583A-204 if the court finds a
9 credible risk of abduction.

10 § -6 Contents of petition. A petition under this
11 chapter must be verified and include a copy of any existing
12 child-custody determination, if available. The petition must
13 specify the risk factors for abduction, including the relevant
14 factors described in section -7. Subject to section 583A-
15 209(e), if reasonably 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
18 the child;
19 (3) The identity, customary address, and current physical
20 location of the respondent;
21 (4) A statement of whether a prior action to prevent
22 abduction or domestic violence has been filed by a



1 party or other individual or entity having custody of
2 the child, and the date, location, and disposition of
3 the action;

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

8 (6) Any other information required to be submitted to the
9 court for a child-custody determination under section
10 583A-209.

11 § -7 Factors to determine risk of abduction. (a) In
12 determining whether there is a credible risk of abduction of a
13 child, the court shall consider any evidence that the petitioner
14 or respondent:

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

17 (2) Has threatened to abduct the child;

18 (3) Has recently engaged in activities that may indicate a
19 planned abduction, including:

20 (A) Abandoning employment;

21 (B) Selling a primary residence;

22 (C) Terminating a lease;



(D) Closing bank or other financial management accounts, liquidating assets, hiding or destroying financial documents, or conducting any unusual financial activities;

(E) Applying for a passport or visa or obtaining travel documents for the respondent, a family member, or the child; or

(F) Seeking to obtain the child's birth certificate or school or medical records;

(4) Has engaged in domestic violence, stalking, or child abuse or neglect;

(5) Has refused to follow a child-custody determination;

(6) Lacks strong familial, financial, emotional, or cultural ties to the State or the United States;

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

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

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



(B) Is a party to the Hague Convention on the Civil Aspects of International Child Abduction but:

(i) The Hague Convention on the Civil Aspects of International Child Abduction is not in force between the United States and that country;

(ii) Is noncompliant according to the most recent compliance report issued by the United States Department of State; or

(iii) Lacks legal mechanisms for immediately and effectively enforcing a return order under the Hague Convention on the Civil Aspects of International Child Abduction;

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

(D) Has laws or practices that would:

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



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

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

(E) Is included by the United States Department of
State on a current list of state sponsors of
terrorism;

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

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

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

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



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

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

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

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

§ -8 Provisions and measures to prevent abduction.

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

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



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

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

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

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

12 (b) If, at a hearing on a petition under this chapter or
13 on the court's own motion, the court after reviewing the
14 evidence finds a credible risk of abduction of the child, the
15 court shall enter an abduction prevention order. The order must
16 include the provisions required by subsection (a) and measures
17 and conditions, including those in subsections (c), (d), and
18 (e), that are reasonably calculated to prevent abduction of the
19 child, giving due consideration to the custody and visitation
20 rights of the parties. The court shall consider the age of the
21 child, the potential harm to the child from an abduction, the
22 legal and practical difficulties of returning the child to the



1 jurisdiction if abducted, and the reasons for the potential
2 abduction, including evidence of domestic violence, stalking, or
3 child abuse or neglect.

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

6 (1) An imposition of travel restrictions that require that
7 a party traveling with the child outside a designated
8 geographical area provide the other party with the
9 following:

10 (A) The travel itinerary of the child;

11 (B) A list of physical addresses and telephone
12 numbers at which the child can be reached at
13 specified times; and

14 (C) Copies of all travel documents;

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

17 (A) Removing the child from this state, the United
18 States, or another geographic area without
19 permission of the court or the petitioner's
20 written consent;

21 (B) Removing or retaining the child in violation of a
22 child-custody determination;



- 1 (C) Removing the child from school or a child-care or
2 similar facility; or
- 3 (D) Approaching the child at any location other than
4 a site designated for supervised visitation;
- 5 (3) A requirement that a party register the order in
6 another state as a prerequisite to allowing the child
7 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
10 name in the United States Department of State's
11 Child Passport Issuance Alert Program;
- 12 (B) A requirement that the respondent surrender to
13 the court or the petitioner's attorney any United
14 States or foreign passport issued in the child's
15 name, including a passport issued in the name of
16 both the parent and the child; and
- 17 (C) A prohibition upon the respondent from applying
18 on behalf of the child for a new or replacement
19 passport or visa;
- 20 (5) As a prerequisite to exercising custody or visitation,
21 a requirement that the respondent provide:



(A) To the United States Department of State Office of Children's Issues and the relevant foreign consulate or embassy, an authenticated copy of the order detailing passport and travel restrictions for the child;

(B) To the court:

(i) Proof that the respondent has provided the information in subparagraph (A); and

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

(C) To the petitioner, proof of registration with the United States Embassy or other United States diplomatic presence in the destination country and with the Central Authority for the Hague Convention on the Civil Aspects of International Child Abduction, if that Convention is in effect between the United States and the destination country, unless one of the parties objects; and

(D) A written waiver under the Privacy Act, 5 U.S.C. section 552a, with respect to any document,



1 application, or other information pertaining to
2 the child authorizing its disclosure to the court
3 and the petitioner; and

4 (6) Upon the petitioner's request, a requirement that the
5 respondent obtain an order from the relevant foreign
6 country containing terms identical to the child-
7 custody determination issued in the United States.

8 (d) In an abduction prevention order, the court may impose
9 conditions on the exercise of custody or visitation that:

10 (1) Limit visitation or require that visitation with the
11 child by the respondent be supervised until the court
12 finds that supervision is no longer necessary and
13 order the respondent to pay the costs of supervision;

14 (2) Require the respondent to post a bond or provide other
15 security in an amount sufficient to serve as a
16 financial deterrent to abduction, the proceeds of
17 which may be used to pay for the reasonable expenses
18 of recovery of the child, including reasonable
19 attorneys fees and costs if there is an abduction; and

20 (3) Require the respondent to obtain education on the
21 potentially harmful effects to the child from
22 abduction.



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

(1) Issue a warrant to take physical custody of the child under section -9 or the law of this State other than this chapter;

(2) Direct the use of law enforcement to take any action reasonably necessary to locate the child, obtain return of the child, or enforce a custody determination under this chapter or the law of this State other than this chapter; or

(3) Grant any other relief allowed under the law of this State other than this chapter.

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

§ -9 Warrant to take physical custody of child. (a) If a petition under this chapter contains allegations, and the court finds that there is a credible risk that the child is imminently likely to be wrongfully removed, the court may issue an ex parte warrant to take physical custody of the child.

(b) The respondent on a petition under subsection (a) must be afforded an opportunity to be heard at the earliest possible time after the ex parte warrant is executed, but not later than



1 the next judicial day unless a hearing on that date is
2 impossible. In that event, the court shall hold the hearing on
3 the first judicial day possible.

4 (c) An ex parte warrant under subsection (a) to take
5 physical custody of a child must:

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

9 (2) Direct law enforcement officers to take physical
10 custody of the child immediately;

11 (3) State the date and time for the hearing on the
12 petition; and

13 (4) Provide for the safe interim placement of the child
14 pending further order of the court.

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



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

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

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

15 (h) This chapter does not affect the availability of
16 relief allowed under the law of this State other than this
17 chapter.

18 § -10 Duration of abduction prevention order. An
19 abduction prevention order remains in effect until the earliest
20 of:

21 (1) The time stated in the order;

22 (2) The emancipation of the child;



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

(4) The time the order is modified, revoked, vacated, or

superseded by a court with jurisdiction under sections

583A-201 through 583A-203.

§ -11 Relation to electronic signatures in global and

national commerce act. This chapter modifies, limits, and

supersedes the federal Electronic Signatures in Global and

National Commerce Act, 15 U.S.C. section 7001, et seq., but does

not modify, limit, or supersede section 101(c) of the act, 15

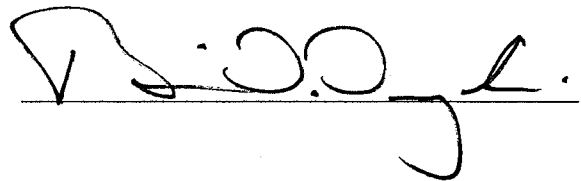
U.S.C. section 7001(c), or authorize electronic delivery of any

of the notices described in section 103(b) of that act, 15

U.S.C. section 7003(b)."

SECTION 2. This Act shall take effect upon its approval.

INTRODUCED BY:



Report Title:

Uniform Child Abduction Prevention Act

Description:

Establishes comprehensive child abduction prevention law. Lists factors to determine risk of abduction, and establishes measures courts may include in order to prevent abduction both before and after issuance of child custody decrees.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

