

AMENDMENTS TO LB 341

Introduced by Judiciary Committee:

1 1. Strike the original sections and insert the following
2 sections:

3 Section 1. Sections 1 to 12 of this act may be cited as
4 the Uniform Child Abduction Prevention Act.

5 Sec. 2. For purposes of the Uniform Child Abduction
6 Prevention Act:

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

9 (2) Child means an unemancipated individual who is less
10 than eighteen years of age;

11 (3) Child custody determination means a judgment, decree,
12 or 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
16 legal custody, physical custody, or visitation with respect to a
17 child is at issue. The term includes a proceeding for divorce,
18 dissolution of marriage, separation, neglect, abuse, dependency,
19 guardianship, paternity, termination of parental rights, or
20 protection from domestic violence;

21 (5) Court means an entity authorized under the law
22 of a state to establish, enforce, or modify a child custody
23 determination;

1 (6) Petition includes a motion or its equivalent;

2 (7) Record means information that is inscribed on a
3 tangible medium or that is stored in an electronic or other medium
4 and is retrievable in perceivable form;

5 (8) State means a state of the United States, the
6 District of Columbia, Puerto Rico, the United States Virgin
7 Islands, or any territory or insular possession subject to the
8 jurisdiction of the United States. The term includes a federally
9 recognized Indian tribe or nation;

10 (9) Travel document means records relating to a travel
11 itinerary, including travel tickets, passes, reservations for
12 transportation, or accommodations. The term does not include a
13 passport or visa;

14 (10) Wrongful removal means the taking of a child that
15 breaches rights of custody or visitation given or recognized under
16 the law of this state; and

17 (11) Wrongful retention means the keeping or concealing
18 of a child that breaches rights of custody or visitation given or
19 recognized under the law of this state.

20 Sec. 3. Sections 43-1235, 43-1236, and 43-1237 apply to
21 cooperation and communications among courts in proceedings under
22 the Uniform Child Abduction Prevention Act.

23 Sec. 4. (a) A court on its own motion may order abduction
24 prevention measures in a child custody proceeding if the court
25 finds that the evidence establishes a credible risk of abduction of
26 the child.

27 (b) A party to a child custody determination or another

1 individual or entity having a right under the law of this state
2 or any other state to seek a child custody determination for the
3 child may file a petition seeking abduction prevention measures to
4 protect the child under the Uniform Child Custody Jurisdiction and
5 Enforcement Act.

6 (c) A county attorney or the Attorney General may seek a
7 warrant to take physical custody of a child under section 9 of this
8 act or other appropriate prevention measures.

9 Sec. 5. (a) A petition under the Uniform Child Abduction
10 Prevention Act may be filed only in a court that has jurisdiction
11 to make a child custody determination with respect to the child at
12 issue under the Uniform Child Custody Jurisdiction and Enforcement
13 Act.

14 (b) A court of this state has temporary emergency
15 jurisdiction under section 43-1241 if the court finds a credible
16 risk of abduction.

17 Sec. 6. A petition under the Uniform Child Abduction
18 Prevention Act must be verified and include a copy of any
19 existing child custody determination, if available. The petition
20 must specify the risk factors for abduction, including the relevant
21 factors described in section 7 of this act. Subject to subsection
22 (e) of section 43-1246, if reasonably ascertainable, the petition
23 must contain:

- 24 (1) the name, date of birth, and gender of the child;
25 (2) the customary address and current physical location
26 of the child;
27 (3) the identity, customary address, and current physical

1 location of the respondent;

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

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

10 (6) any other information required to be submitted to the
11 court for a child custody determination under section 43-1246.

12 Sec. 7. (a) In determining whether there is a credible
13 risk of abduction of a child, the court shall consider any evidence
14 that the petitioner 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
19 a planned abduction, including:

20 (A) abandoning employment;

21 (B) selling a primary residence;

22 (C) terminating a lease;

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

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

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

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

5 (5) has refused to follow a child custody determination;

6 (6) lacks strong familial, financial, emotional, or
7 cultural ties to the state or the United States;

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

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

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

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

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

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

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

26 (C) poses a risk that the child's physical or emotional
27 health or safety would be endangered in the country because of

1 specific circumstances relating to the child or because of human
2 rights violations committed against children;

3 (D) has laws or practices that would:

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

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

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

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

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

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

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

21 (10) has had an application for United States citizenship
22 denied;

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

1 government;

2 (12) has used multiple names to attempt to mislead or
3 defraud;

4 (13) is likely to disregard a determination by a court
5 of this state to not recognize and enforce a foreign child custody
6 determination pursuant to subsection (d) of section 43-1230; or

7 (14) has engaged in any other conduct the court considers
8 relevant to the risk of abduction.

9 (b) In the hearing on a petition under the Uniform Child
10 Abduction Prevention Act, the court shall consider any evidence
11 that the respondent believed in good faith that the respondent's
12 conduct was necessary to avoid imminent harm to the child or
13 respondent and any other evidence that may be relevant to whether
14 the respondent may be permitted to remove or retain the child.

15 Sec. 8. (a) If a petition is filed under the Uniform
16 Child Abduction Prevention Act, the court may enter an order that
17 must include:

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

19 (2) the manner in which notice and opportunity to be
20 heard were given to the persons entitled to notice of the
21 proceeding;

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

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

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

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

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

17 (1) an imposition of travel restrictions that require
18 that a party traveling with the child outside a designated
19 geographical area provide the other party with the following:

20 (A) the travel itinerary of the child;

21 (B) a list of physical addresses and telephone numbers at
22 which the child can be reached at specified times; and

23 (C) copies of all travel documents;

24 (2) a prohibition of the respondent directly or
25 indirectly:

26 (A) removing the child from this state, the United
27 States, or another geographic area without permission of the court

1 or the petitioner's written consent;

2 (B) removing or retaining the child in violation of a
3 child custody determination;

4 (C) removing the child from school or a child care or
5 similar facility; or

6 (D) approaching the child at any location other than a
7 site designated for supervised visitation;

8 (3) a requirement that a party register the order in
9 another state as a prerequisite to allowing the child to travel to
10 that state;

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

12 (A) a direction that the petitioner place the child's
13 name in the United States Department of State's Child Passport
14 Issuance Alert Program;

15 (B) a requirement that the respondent surrender to the
16 court or the petitioner's attorney any United States or foreign
17 passport issued in the child's name, including a passport issued in
18 the name of both the parent and the child; and

19 (C) a prohibition upon the respondent from applying on
20 behalf of the child for a new or replacement 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 State Office of
24 Children's Issues and the relevant foreign consulate or embassy,
25 an authenticated copy of the order detailing passport and travel
26 restrictions for the child;

27 (B) to the court:

1 (i) proof that the respondent has provided the
2 information in subdivision (5) (A) of this section; and

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

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

13 (D) a written waiver under the Privacy Act, 5 U.S.C.
14 section 552a, with respect to any document, application, or other
15 information pertaining to the child authorizing its disclosure to
16 the court and the petitioner; and

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

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

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

27 (2) require the respondent to post a bond or provide

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

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

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

9 (1) issue a warrant to take physical custody of the child
10 under section 9 of this act or the law of this state other than the
11 act;

12 (2) direct the use of law enforcement to take any action
13 reasonably necessary to locate the child, obtain return of the
14 child, or enforce a custody determination under the act or the law
15 of this state other than the act; or

16 (3) grant any other relief allowed under the law of this
17 state other than the act.

18 (f) The remedies provided in the act are cumulative
19 and do not affect the availability of other remedies to prevent
20 abduction.

21 Sec. 9. (a) If a petition under the Uniform Child
22 Abduction Prevention Act contains allegations, and the court finds
23 that there is a credible risk that the child is imminently likely
24 to be wrongfully removed, the court may issue an ex parte warrant
25 to take physical custody of the child.

26 (b) The respondent on a petition under subsection (a) of
27 this section must be afforded an opportunity to be heard at the

1 earliest possible time after the ex parte warrant is executed, but
2 not later than the next judicial day unless a hearing on that date
3 is impossible. In that event, the court shall hold the hearing on
4 the first judicial day possible.

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

7 (1) recite the facts upon which a determination of a
8 credible risk of imminent wrongful removal of the 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 data bases
18 of the National Crime Information Center system and similar state
19 data bases to determine if either the petitioner or respondent
20 has a history of domestic violence, stalking, or child abuse or
21 neglect.

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

25 (f) A warrant to take physical custody of a child, issued
26 by this state or another state, is enforceable throughout this
27 state. If the court finds that a less intrusive remedy will not

1 be effective, it may authorize law enforcement officers to enter
2 private property to take physical custody of the child. If required
3 by exigent circumstances, the court may authorize law enforcement
4 officers to make a forcible entry at any hour.

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

10 (h) The act does not affect the availability of relief
11 allowed under the law of this state other than the act.

12 Sec. 10. An abduction prevention order remains in effect
13 until the earliest of:

14 (1) the time stated in the order;

15 (2) the emancipation of the child;

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

17 (4) the time the order is modified, revoked, vacated, or
18 superseded by a court with jurisdiction under sections 43-1238 to
19 43-1240.

20 Sec. 11. In applying and construing the Uniform Child
21 Abduction Prevention Act, consideration must be given to the need
22 to promote uniformity of the law with respect to its subject matter
23 among states that enact it.

24 Sec. 12. The Uniform Child Abduction Prevention Act
25 modifies, limits, and supersedes the federal Electronic Signatures
26 in Global and National Commerce Act, 15 U.S.C. 7001, et seq., but
27 does not modify, limit, or supersede section 101(c) of such act, 15

1 U.S.C. 7001(c), of such act or authorize electronic delivery of any
2 of the notices described in section 103(b) of such act, 15 U.S.C.
3 7003(b).

4 Sec. 13. Section 43-1230, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 43-1230 (a) A court of this state shall treat a foreign
7 country as if it were a state of the United States for the purpose
8 of applying sections 43-1226 to 43-1247.

9 (b) Except as otherwise provided in ~~subsection (c)~~
10 subsection (c) or (d) of this section, a child custody
11 determination made in a foreign country under factual circumstances
12 in substantial conformity with the jurisdictional standards of the
13 Uniform Child Custody Jurisdiction and Enforcement Act shall be
14 recognized and enforced under sections 43-1248 to 43-1264.

15 (c) A court of this state need not apply the act if
16 the child custody law of a foreign country violates fundamental
17 principles of human rights.

18 (d) A court of this state need not recognize and enforce
19 an otherwise valid child custody determination of a foreign
20 court under the act if it determines (1) that the child is a
21 habitual resident of Nebraska as defined under the provisions of
22 the Hague Convention on the Civil Aspects of International Child
23 Abduction, as implemented by the International Child Abduction
24 Remedies Act, 42 U.S.C. 11601 et seq., and (2) that the child
25 would be at significant and demonstrable risk of child abuse or
26 neglect as defined in section 28-710 if the foreign child custody
27 determination is recognized and enforced. Such a determination

1 shall create a rebuttable presumption against recognition and
2 enforcement of the foreign child custody determination and,
3 thereafter, a court of this state may exercise child custody
4 jurisdiction pursuant to subdivision (a)(1) of section 43-1238.

5 (e) The changes made to this section by this act shall
6 be deemed remedial and shall apply to all cases pending on or
7 before the effective date of this act and to all cases initiated
8 subsequent thereto.

9 Sec. 14. Original section 43-1230, Reissue Revised
10 Statutes of Nebraska, is repealed.

11 Sec. 15. Since an emergency exists, this act takes effect
12 when passed and approved according to law.