

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 341**

FINAL READING

Introduced by Schimek, 27; Flood, 19; Howard, 9; McGill, 26;  
Pedersen, 39; Aguilar, 35; Rogert, 16; Stuthman,  
22; Cornett, 45; Hudkins, 21; Dubas, 34; McDonald, 41

Read first time January 11, 2007

Committee: Judiciary

A BILL

1 FOR AN ACT relating to children; to amend section 43-1230, Reissue  
2 Revised Statutes of Nebraska; to adopt the Uniform Child  
3 Abduction Prevention Act; to change provisions relating  
4 to international jurisdiction with respect to child  
5 abduction and abuse; to repeal the original section;  
6 and to declare an emergency.  
7 Be it enacted by the people of the State of Nebraska,

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

3           Sec. 2. For purposes of the Uniform Child Abduction  
4 Prevention Act:

5           (1) Abduction means the wrongful removal or wrongful  
6 retention of a child;

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

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

13           (4) Child custody proceeding means a proceeding in which  
14 legal custody, physical custody, or visitation with respect to a  
15 child is at issue. The term includes a proceeding for divorce,  
16 dissolution of marriage, separation, neglect, abuse, dependency,  
17 guardianship, paternity, termination of parental rights, or  
18 protection from domestic violence;

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

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

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

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

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

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

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

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

19           Sec. 4. (a) A court on its own motion may order abduction  
20 prevention measures in a child custody proceeding if the court  
21 finds that the evidence establishes a credible risk of abduction of  
22 the child.

23           (b) A party to a child custody determination or another  
24 individual or entity having a right under the law of this state  
25 or any other state to seek a child custody determination for the

1 child may file a petition seeking abduction prevention measures to  
2 protect the child under the Uniform Child Abduction Prevention Act.

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

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

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

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

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

22 (2) the customary address and current physical location  
23 of the child;

24 (3) the identity, customary address, and current physical  
25 location of the respondent;

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

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

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

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

14           (1) has previously abducted or attempted to abduct the  
15 child;

16           (2) has threatened to abduct the child;

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

19           (A) abandoning employment;

20           (B) selling a primary residence;

21           (C) terminating a lease;

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

25           (E) applying for a passport or visa or obtaining travel

1 documents for the respondent, a family member, or the child; or  
2 (F) seeking to obtain the child's birth certificate or  
3 school or medical records;  
4 (4) has engaged in domestic violence, stalking, or child  
5 abuse or neglect;  
6 (5) has refused to follow a child custody determination;  
7 (6) lacks strong familial, financial, emotional, or  
8 cultural ties to the state or the United States;  
9 (7) has strong familial, financial, emotional, or  
10 cultural ties to another state or country;  
11 (8) is likely to take the child to a country that:  
12 (A) is not a party to the Hague Convention on the Civil  
13 Aspects of International Child Abduction and does not provide for  
14 the extradition of an abducting parent or for the return of an  
15 abducted child;  
16 (B) is a party to the Hague Convention on the Civil  
17 Aspects of International Child Abduction but:  
18 (i) the Hague Convention on the Civil Aspects of  
19 International Child Abduction is not in force between the United  
20 States and that country;  
21 (ii) is noncompliant according to the most recent  
22 compliance report issued by the United States Department of State;  
23 or  
24 (iii) lacks legal mechanisms for immediately and  
25 effectively enforcing a return order under the Hague Convention on

1 the Civil Aspects of International Child Abduction;

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

6 (D) has laws or practices that would:

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

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

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

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

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

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

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

24 (10) has had an application for United States citizenship  
25 denied;

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

7           (12) has used multiple names to attempt to mislead or  
8 defraud;

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

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

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

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

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

24           (2) the manner in which notice and opportunity to be  
25 heard were given to the persons entitled to notice of the

1 proceeding;

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

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

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

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

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

24 (1) an imposition of travel restrictions that require  
25 that a party traveling with the child outside a designated

1 geographical area provide the other party with the following:

2 (A) the travel itinerary of the child;

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

5 (C) copies of all travel documents;

6 (2) a prohibition of the respondent directly or  
7 indirectly:

8 (A) removing the child from this state, the United  
9 States, or another geographic area without permission of the court  
10 or the petitioner's written consent;

11 (B) removing or retaining the child in violation of a  
12 child custody determination;

13 (C) removing the child from school or a child care or  
14 similar facility; or

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

17 (3) a requirement that a party register the order in  
18 another state as a prerequisite to allowing the child to travel to  
19 that state;

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

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

24 (B) a requirement that the respondent surrender to the  
25 court or the petitioner's attorney any United States or foreign

1 passport issued in the child's name, including a passport issued in  
2 the name of both the parent and the child; and

3 (C) a prohibition upon the respondent from applying on  
4 behalf of the child for a new or replacement passport or visa;

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

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

11 (B) to the court:

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

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

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

24 (D) a written waiver under the Privacy Act, 5 U.S.C.  
25 section 552a, with respect to any document, application, or other

1 information pertaining to the child authorizing its disclosure to  
2 the court and the petitioner; and

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

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

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

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

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

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

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

25 (2) direct the use of law enforcement to take any action

1 reasonably necessary to locate the child, obtain return of the  
2 child, or enforce a custody determination under the act or the law  
3 of this state other than the act; or

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

6 (f) The remedies provided in the act are cumulative  
7 and do not affect the availability of other remedies to prevent  
8 abduction.

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

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

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

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

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

1           (3) state the date and time for the hearing on the  
2 petition; and

3           (4) provide for the safe interim placement of the child  
4 pending further order of the court.

5           (d) If feasible, before issuing a warrant and before  
6 determining the placement of the child after the warrant is  
7 executed, the court may order a search of the relevant data bases  
8 of the National Crime Information Center system and similar state  
9 data bases to determine if either the petitioner or respondent  
10 has a history of domestic violence, stalking, or child abuse or  
11 neglect.

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

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

22           (g) If the court finds, after a hearing, that a  
23 petitioner sought an ex parte warrant under subsection (a) of  
24 this section for the purpose of harassment or in bad faith, the  
25 court may award the respondent reasonable attorney's fees, costs,

1 and expenses.

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

4 Sec. 10. An abduction prevention order remains in effect  
5 until the earliest of:

6 (1) the time stated in the order;

7 (2) the emancipation of the child;

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

9 (4) the time the order is modified, revoked, vacated, or  
10 superseded by a court with jurisdiction under sections 43-1238 to  
11 43-1240.

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

16 Sec. 12. The Uniform Child Abduction Prevention Act  
17 modifies, limits, and supersedes the federal Electronic Signatures  
18 in Global and National Commerce Act, 15 U.S.C. 7001 et seq., but  
19 does not modify, limit, or supersede section 101(c) of such act, 15  
20 U.S.C. 7001(c), of such act or authorize electronic delivery of any  
21 of the notices described in section 103(b) of such act, 15 U.S.C.  
22 7003(b).

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

25 43-1230 (a) A court of this state shall treat a foreign

1 country as if it were a state of the United States for the purpose  
2 of applying sections 43-1226 to 43-1247.

3 (b) Except as otherwise provided in ~~subsection (e)~~  
4 subsection (c) or (d) of this section, a child custody  
5 determination made in a foreign country under factual circumstances  
6 in substantial conformity with the jurisdictional standards of the  
7 Uniform Child Custody Jurisdiction and Enforcement Act shall be  
8 recognized and enforced under sections 43-1248 to 43-1264.

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

12 (d) A court of this state need not recognize and enforce  
13 an otherwise valid child custody determination of a foreign  
14 court under the act if it determines (1) that the child is a  
15 habitual resident of Nebraska as defined under the provisions of  
16 the Hague Convention on the Civil Aspects of International Child  
17 Abduction, as implemented by the International Child Abduction  
18 Remedies Act, 42 U.S.C. 11601 et seq., and (2) that the child  
19 would be at significant and demonstrable risk of child abuse or  
20 neglect as defined in section 28-710 if the foreign child custody  
21 determination is recognized and enforced. Such a determination  
22 shall create a rebuttable presumption against recognition and  
23 enforcement of the foreign child custody determination and,  
24 thereafter, a court of this state may exercise child custody  
25 jurisdiction pursuant to subdivision (a) (1) of section 43-1238.

1           (e) The changes made to this section by this legislative  
2 bill shall be deemed remedial and shall apply to all cases pending  
3 on or before the effective date of this act and to all cases  
4 initiated subsequent thereto.

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

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