

State of South Dakota

EIGHTY-SECOND SESSION LEGISLATIVE ASSEMBLY, 2007

742N0501

SENATE BILL NO. 88

Introduced by: Senators McCracken, Heidepriem, Jerstad, and Knudson and Representatives
Lust, Cutler, and Engels

1 FOR AN ACT ENTITLED, An Act to adopt the Uniform Child Abduction Prevention Act.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. This Act may be cited as the Uniform Child Abduction Prevention Act.

4 Section 2. In this Act:

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

6 (2) "Child" means an unemancipated individual who is less than 18 years of age.

7 (3) "Child-custody determination" means a judgment, decree, or other order of a court
8 providing for the legal custody, physical custody, or visitation with respect to a child.

9 The term includes a permanent, temporary, initial, and modification order.

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

15 (5) "Court" means an entity authorized under the law of a state to establish, enforce, or



1 modify a child-custody determination.

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

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

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

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

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

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

16 Section 3. Sections 26-5B-110, 26-5B-111, and 26-5B-112 apply to cooperation and
17 communications among courts in proceedings under this Act.

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

21 (b) A party to a child-custody determination or another individual or entity having a right
22 under the law of this state or any other state to seek a child-custody determination for the child
23 may file a petition seeking abduction prevention measures to protect the child under this Act.

24 (c) A prosecutor or public authority designated under § 26-5B-315 may seek a warrant to

1 take physical custody of a child under section 9 of this Act or other appropriate prevention
2 measures.

3 Section 5. (a) A petition under this Act may be filed only in a court that has jurisdiction to
4 make a child-custody determination with respect to the child at issue under chapter 26-5B.

5 (b) A court of this state has temporary emergency jurisdiction under § 26-5B-204 if the court
6 finds a credible risk of abduction.

7 Section 6. A petition under this Act must be verified and include a copy of any existing
8 child-custody determination, if available. The petition must specify the risk factors for
9 abduction, including the relevant factors described in section 7 of this Act. Subject to subsection
10 26-5B-209(e), if reasonably ascertainable, the petition must contain:

- 11 (1) The name, date of birth, and gender of the child;
- 12 (2) The customary address and current physical location of the child;
- 13 (3) The identity, customary address, and current physical location of the respondent;
- 14 (4) A statement of whether a prior action to prevent abduction or domestic violence has
15 been filed by a party or other individual or entity having custody of the child, and the
16 date, location, and disposition of the action;
- 17 (5) A statement of whether a party to the proceeding has been arrested for a crime related
18 to domestic violence, stalking, or child abuse or neglect, and the date, location, and
19 disposition of the case; and
- 20 (6) Any other information required to be submitted to the court for a child-custody
21 determination under § 26-5B-209.

22 Section 7. (a) In determining whether there is a credible risk of abduction of a child, the
23 court shall consider any evidence that the petitioner or respondent:

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

- 1 (2) Has threatened to abduct the child;
- 2 (3) Has recently engaged in activities that may indicate a planned abduction, 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 assets,
7 hiding or destroying financial documents, or conducting any unusual financial
8 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 records;
- 12 (4) Has engaged in domestic violence, stalking, or child abuse or neglect;
- 13 (5) Has refused to follow a child-custody determination;
- 14 (6) Lacks strong familial, financial, emotional, or cultural ties to the state or the United
15 States;
- 16 (7) Has strong familial, financial, emotional, or cultural ties to another state or country;
- 17 (8) Is likely to take the child to a country that:
 - 18 (A) Is not a party to the Hague Convention on the Civil Aspects of International
19 Child Abduction and does not provide for the extradition of an abducting
20 parent or for the return of an abducted child;
 - 21 (B) Is a party to the Hague Convention on the Civil Aspects of International Child
22 Abduction but:
 - 23 (i) The Hague Convention on the Civil Aspects of International Child
24 Abduction is not in force between the United States and that country;

- 1 (ii) Is noncompliant according to the most recent compliance report issued
- 2 by the United States Department of State; or
- 3 (iii) Lacks legal mechanisms for immediately and effectively enforcing a
- 4 return order under the Hague Convention on the Civil Aspects of
- 5 International Child Abduction;
- 6 (C) Poses a risk that the child's physical or emotional health or safety would be
- 7 endangered in the country because of specific circumstances relating to the
- 8 child or because of human rights violations committed against children;
- 9 (D) Has laws or practices that would:
- 10 (i) Enable the respondent, without due cause, to prevent the petitioner
- 11 from contacting the child;
- 12 (ii) Restrict the petitioner from freely traveling to or exiting from the
- 13 country because of the petitioner's gender, nationality, marital status, or
- 14 religion; or
- 15 (iii) Restrict the child's ability legally to leave the country after the child
- 16 reaches the age of majority because of a child's gender, nationality, or
- 17 religion;
- 18 (E) Is included by the United States Department of State on a current list of state
- 19 sponsors of terrorism;
- 20 (F) Does not have an official United States diplomatic presence in the country; or
- 21 (G) Is engaged in active military action or war, including a civil war, to which the
- 22 child may be exposed;
- 23 (9) Is undergoing a change in immigration or citizenship status that would adversely
- 24 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 Act, 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.

Section 8. (a) If a petition is filed under this Act, the court may enter an order that must include:

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

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

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

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

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

(b) If, at a hearing on a petition under this Act or on the court's own motion, the court after

1 reviewing the evidence finds a credible risk of abduction of the child, the court shall enter an
2 abduction prevention order. The order must include the provisions required by subsection (a)
3 and measures and conditions, including those in subsections (c), (d), and (e), that are reasonably
4 calculated to prevent abduction of the child, giving due consideration to the custody and
5 visitation rights of the parties. The court shall consider the age of the child, the potential harm
6 to the child from an abduction, the legal and practical difficulties of returning the child to the
7 jurisdiction if abducted, and the reasons for the potential abduction, including evidence of
8 domestic violence, stalking, or child abuse or neglect.

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

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

12 (A) The travel itinerary of the child;

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

15 (C) Copies of all travel documents;

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

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

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

20 (C) Removing the child from school or a child-care or similar facility; or

21 (D) Approaching the child at any location other than a site designated for
22 supervised visitation;

23 (3) A requirement that a party to register the order in another state as a prerequisite to
24 allowing the child to travel to that state;

1 (4) With regard to the child's passport:

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

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

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

9 (5) As a prerequisite to exercising custody or visitation, a requirement that the
10 respondent provide:

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

14 (B) To the court:

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

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

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

1 and

2 (D) A written waiver under the Privacy Act, 5 U.S.C. Section 552a, with respect
3 to any document, application, or other information pertaining to the child
4 authorizing its disclosure to the court and the petitioner; and

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

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

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

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

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

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

20 (1) Issue a warrant to take physical custody of the child under section 9 of this Act or the
21 law of this state other than this Act;

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

1 (3) Grant any other relief allowed under the law of this state other than this Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (h) This Act does not affect the availability of relief allowed under the law of this state other
8 than this Act.

9 Section 10. An abduction prevention order remains in effect until the earliest of:

- 10 (1) The time stated in the order;
11 (2) The emancipation of the child;
12 (3) The child's attaining eighteen years of age; or
13 (4) The time the order is modified, revoked, vacated, or superseded by a court with
14 jurisdiction under §§ 26-5B-201 to 26-5B-203, inclusive.

15 Section 11. In applying and construing this uniform act, consideration must be given to the
16 need to promote uniformity of the law with respect to its subject matter among states that enact
17 it.

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