

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1449 Session of  
2012

INTRODUCED BY CORMAN, TOMLINSON, BROWNE, D. WHITE, RAFFERTY,  
ERICKSON, ALLOWAY, SOLOBAY, BAKER, TARTAGLIONE, FERLO, MENSCH  
AND LEACH, MARCH 20, 2012

REFERRED TO JUDICIARY, MARCH 20, 2012

AN ACT

1 Amending Title 23 (Domestic Relations) of the Pennsylvania  
2 Consolidated Statutes, providing for prevention of abduction  
3 of children.

4 The General Assembly of the Commonwealth of Pennsylvania  
5 hereby enacts as follows:

6 Section 1. Title 23 of the Pennsylvania Consolidated  
7 Statutes is amended by adding a chapter to read:

8 CHAPTER 52

9 UNIFORM CHILD ABDUCTION PREVENTION

10 Sec.

11 5201. Scope of chapter.

12 5202. Definitions.

13 5203. Cooperation and communication among courts.

14 5204. Actions for abduction prevention measures.

15 5205. Jurisdiction.

16 5206. Contents of petition.

17 5207. Factors to determine risk of abduction.

18 5208. Provisions and measures to prevent abduction.

5209. Warrant to take physical custody of child.  
5210. Duration of abduction prevention order.  
5211. Uniformity of application and construction.  
5212. Relation to Electronic Signatures in Global and National  
Commerce Act.

§ 5201. Scope of chapter.

This chapter relates to uniform child abduction prevention.

§ 5202. Definitions.

The following words and phrases when used in this chapter  
shall have the meanings given to them in this section unless the  
context clearly indicates otherwise:

"Abduction." The wrongful removal or wrongful retention of a  
child.

"Child." An unemancipated individual who is under 18 years  
of age.

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

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

"Court." An entity authorized under the law of a state to  
establish, enforce or modify a child custody determination.

"Petition." A motion or its equivalent.

"Record." Information that is inscribed on a tangible medium  
or that is stored in an electronic or other medium and is

1 retrievable in perceivable form.

2 "State." A state of the United States, the District of  
3 Columbia, Puerto Rico, the Virgin Islands or any territory or  
4 insular possession subject to the jurisdiction of the United  
5 States. The term includes a federally recognized Indian tribe or  
6 nation.

7 "Travel document." Records relating to a travel itinerary,  
8 including travel tickets, passes, reservations for  
9 transportation or accommodations. The term does not include a  
10 passport or visa.

11 "Wrongful removal." The taking of a child that breaches  
12 rights of custody or visitation given or recognized under the  
13 laws of this Commonwealth.

14 "Wrongful retention." The keeping or concealing of a child  
15 that breaches rights of custody or visitation given or  
16 recognized under the laws of this Commonwealth.

17 § 5203. Cooperation and communication among courts.

18 Sections 5410 (relating to communication between courts),  
19 5411 (relating to taking testimony in another state) and 5412  
20 (relating to cooperation between courts; preservation of  
21 records) apply to cooperation and communications among courts in  
22 proceedings under this chapter.

23 § 5204. Actions for abduction prevention measures.

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

28 (b) Party.--A party to a child custody determination or  
29 another individual or entity having a right under the laws of  
30 this Commonwealth or any other state to seek a child custody

determination for the child may file a petition seeking  
abduction prevention measures to protect the child under this  
chapter.

(c) Prosecutors or public officials.--A prosecutor or public  
authority designated under section 5455 (relating to role of  
prosecutor or public official) may seek a warrant to take  
physical custody of a child under section 5209 (relating to  
warrant to take physical custody of child) or other appropriate  
prevention measures.

§ 5205. Jurisdiction.

(a) General rule.--A petition under this chapter may be  
filed only in a court that has jurisdiction to make a child  
custody determination with respect to the child at issue under  
Chapter 54 (relating to uniform child custody jurisdiction and  
enforcement).

(b) Emergency jurisdiction.--A court of this Commonwealth  
has temporary emergency jurisdiction under section 5424  
(relating to temporary emergency jurisdiction) if the court  
finds a credible risk of abduction.

§ 5206. Contents of petition.

A petition under this chapter must be verified and include a  
copy of any existing child custody determination, if available.  
The petition must specify the risk factors for abduction,  
including the relevant factors described under section 5207  
(relating to factors to determine risk of abduction). Subject to  
section 5429(e) (relating to information to be submitted to  
court), if reasonably ascertainable, the petition must contain:

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

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

1       (3) the identity, customary address and current physical  
2 location of the respondent;

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

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

11       (6) any other information required to be submitted to  
12 the court for a child custody determination under section  
13 5429.

14 § 5207. Factors to determine risk of abduction.

15       (a) Evidence supporting risk.--In determining whether there  
16 is a credible risk of abduction of a child, the court shall  
17 consider any evidence that the petitioner or respondent:

18           (1) has previously abducted or attempted to abduct the  
19 child;

20           (2) has threatened to abduct the child;

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

23                   (i) abandoning employment;

24                   (ii) selling a primary residence;

25                   (iii) terminating a lease;

26                   (iv) closing bank or other financial management  
27 accounts, liquidating assets, hiding or destroying  
28 financial documents or conducting any unusual financial  
29 activities;

30                   (v) applying for a passport or visa or obtaining

1 travel documents for the respondent, a family member or  
2 the child; or

3 (vi) seeking to obtain the child's birth certificate  
4 or school or medical records;

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

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

8 (6) lacks strong familial, financial, emotional or  
9 cultural ties to this Commonwealth or the United States;

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

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

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

17 (ii) is a party to the Hague Convention on the Civil  
18 Aspects of International Child Abduction but:

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

22 (B) according to the most recent compliance  
23 report issued by the United States Department of  
24 State, is noncompliant; or

25 (C) lacks legal mechanisms for immediately and  
26 effectively enforcing a return order under the Hague  
27 Convention on the Civil Aspects of International  
28 Child Abduction;

29 (iii) poses a risk that the child's physical or  
30 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;

(iv) has laws or practices that would:

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

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

(C) 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;

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

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

(vii) 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) Good faith.--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.

§ 5208. Provisions and measures to prevent abduction.

(a) Contents of discretionary orders.--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;

(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) Abduction prevention orders.--

(1) If, at a hearing on a petition under this chapter or on the court's own motion, the court after reviewing the evidence finds a credible risk of abduction of the child, the



1 court shall enter an abduction prevention order.

2 (2) The order must include the provisions required by  
3 subsection (a) and measures and conditions, including those  
4 in subsections (c), (d) and (e), that are reasonably  
5 calculated to prevent abduction of the child, giving due  
6 consideration to the custody and visitation rights of the  
7 parties.

8 (3) The court shall consider:

9 (i) the age of the child;

10 (ii) the potential harm to the child from an  
11 abduction;

12 (iii) the legal and practical difficulties of  
13 returning the child to the jurisdiction if abducted; and

14 (iv) the reasons for the potential abduction,  
15 including evidence of domestic violence, stalking or  
16 child abuse or neglect.

17 (c) Restrictions.--An abduction prevention order may include  
18 one or more of the following:

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

22 (i) the travel itinerary of the child;

23 (ii) a list of physical addresses and telephone  
24 numbers at which the child can be reached at specified  
25 times; and

26 (iii) copies of all travel documents;

27 (2) a prohibition of the respondent directly or  
28 indirectly:

29 (i) removing the child from this Commonwealth, the  
30 United States or another geographic area without

1 permission of the court or the petitioner's written  
2 consent;

3 (ii) removing or retaining the child in violation of  
4 a child custody determination;

5 (iii) removing the child from school or a child-care  
6 or similar facility; or

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

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

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

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

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

21 (iii) a prohibition upon the respondent from  
22 applying on behalf of the child for a new or replacement  
23 passport or visa;

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

26 (i) to the United States Department of State Office  
27 of Children's Issues and the relevant foreign consulate  
28 or embassy, an authenticated copy of the order detailing  
29 passport and travel restrictions for the child;

30 (ii) to the court:

1           (A) proof that the respondent has provided the  
2           information in subparagraph (i); and

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

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

15           (iv) a written waiver under the Privacy Act, 5  
16           U.S.C. § 552a (relating to records maintained on  
17           individuals), with respect to any document, application  
18           or other information pertaining to the child authorizing  
19           its disclosure to the court and the petitioner; and

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

24           (d) Conditions on custody and visitation.--In an abduction  
25           prevention order, the court may impose conditions on the  
26           exercise of custody or visitation that:

27           (1) limit visitation or require that visitation with the  
28           child by the respondent be supervised until the court finds  
29           that supervision is no longer necessary and order the  
30           respondent to pay the costs of supervision;

1       (2) require the respondent to post a bond or provide  
2       other security in an amount sufficient to serve as a  
3       financial deterrent to abduction, the proceeds of which may  
4       be used to pay for the reasonable expenses of recovery of the  
5       child, including reasonable attorney fees and costs if there  
6       is an abduction; and

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

9       (e) Prevention of imminent abduction.--To prevent imminent  
10      abduction of a child, a court may:

11       (1) issue a warrant to take physical custody of the  
12       child under section 5209 (relating to warrant to take  
13       physical custody of child) or the laws of this Commonwealth  
14       other than this chapter;

15       (2) direct the use of law enforcement to take any action  
16       reasonably necessary to locate the child, obtain return of  
17       the child or enforce a custody determination under this  
18       chapter or the laws of this Commonwealth other than this  
19       chapter; or

20       (3) grant any other relief allowed under the laws of  
21       this Commonwealth other than this chapter.

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

25      § 5209. Warrant to take physical custody of child.

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

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

7     (c) Requirements.--An ex parte warrant under subsection (a)  
8 to take physical custody of a child must:

9         (1) Recite the facts upon which a determination of a  
10         credible risk of imminent wrongful removal of the child is  
11         based.

12         (2) Direct law enforcement officers to take physical  
13         custody of the child immediately.

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

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

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

25     (e) Service.--The petition and warrant must be served on the  
26 respondent when or immediately after the child is taken into  
27 physical custody.

28     (f) Enforcement.--

29         (1) A warrant to take physical custody of a child,  
30         issued by this Commonwealth or another state, is enforceable

1 throughout this Commonwealth.

2 (2) If the court finds that a less intrusive remedy will  
3 not be effective, it may authorize law enforcement officers  
4 to enter private property to take physical custody of the  
5 child. If required by exigent circumstances, the court may  
6 authorize law enforcement officers to make a forcible entry  
7 at any hour.

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

13 (h) Other relief.--This chapter does not affect the  
14 availability of relief allowed under the laws of this  
15 Commonwealth other than this chapter.

16 § 5210. Duration of abduction prevention order.

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

- 19 (1) the time stated in the order;  
20 (2) the emancipation of the child;  
21 (3) the child's attaining 18 years of age; or  
22 (4) the time the order is modified, revoked, vacated or  
23 superseded by a court with jurisdiction under sections 5421  
24 (relating to initial child custody jurisdiction), 5422  
25 (relating to exclusive, continuing jurisdiction) and 5423  
26 (relating to jurisdiction to modify determination) and  
27 applicable laws of this Commonwealth.

28 § 5211. Uniformity of application and construction.

29 In applying and construing this chapter, consideration must  
30 be given to the need to promote uniformity of the law with

1 respect to its subject matter among states that enact it.  
2 § 5212. Relation to Electronic Signatures in Global and  
3 National Commerce Act.

4 To the extent permitted by section 102 of the Electronic  
5 Signatures in Global and National Commerce Act (Public Law  
6 106-229, 15 U.S.C. § 7002), this chapter may supersede  
7 provisions of that act.

8 Section 2. This act shall take effect in 60 days.