

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 762 Session of
2011

INTRODUCED BY CONKLIN, COHEN, DALEY, DEASY, FREEMAN, GEIST,
GOODMAN, HARKINS, JOSEPHS, KORTZ, KULA, MANN, MIRABITO, MOUL,
MURT, M. O'BRIEN, READSHAW, J. TAYLOR, VULAKOVICH, WAGNER AND
YOUNGBLOOD, FEBRUARY 23, 2011

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 23, 2011

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.

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15 5205. Jurisdiction.

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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

1 or that is stored in an electronic or other medium and is
2 retrievable in perceivable form.

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

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

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

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

18 § 5203. Cooperation and communication among courts.

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

24 § 5204. Actions for abduction prevention measures.

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

29 (b) Party.--A party to a child custody determination or
30 another individual or entity having a right under the laws of

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

1 of the child;

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

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

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

12 (6) any other information required to be submitted to
13 the court for a child custody determination under section
14 5429.

15 § 5207. Factors to determine risk of abduction.

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

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

21 (2) has threatened to abduct the child;

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

24 (i) abandoning employment;

25 (ii) selling a primary residence;

26 (iii) terminating a lease;

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

1 (v) applying for a passport or visa or obtaining
2 travel documents for the respondent, a family member or
3 the child; or

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

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

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

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

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

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

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

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

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

23 (B) according to the most recent compliance
24 report issued by the United States Department of
25 State, is noncompliant, not fully compliant, "of
26 concern," or subject to enforcement problems; or

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

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

6 (iv) has laws or practices that would:

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

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

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

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

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

21 (vii) is engaged in active military action or war,
22 including a civil war, to which the child may be exposed;

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

26 (10) has had an application for United States
27 citizenship denied;

28 (11) has forged or presented misleading or false
29 evidence on government forms or supporting documents to
30 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

1 on the court's own motion, the court after reviewing the
2 evidence finds a credible risk of abduction of the child, the
3 court shall enter an abduction prevention order.

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

10 (3) The court shall consider:

11 (i) the age of the child;

12 (ii) the potential harm to the child from an
13 abduction;

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

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

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

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

24 (i) the travel itinerary of the child;

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

28 (iii) copies of all travel documents;

29 (2) a prohibition of the respondent directly or
30 indirectly:

1 (i) removing the child from this Commonwealth, the
2 United States or another geographic area without
3 permission of the court or the petitioner's written
4 consent;

5 (ii) removing or retaining the child in violation of
6 a child custody determination;

7 (iii) removing the child from school or a child-care
8 or similar facility; or

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

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

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

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

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

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

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

28 (i) to the United States Department of State Office
29 of Children's Issues and the relevant foreign consulate
30 or embassy, an authenticated copy of the order detailing

1 passport and travel restrictions for the child;

2 (ii) to the court:

3 (A) proof that the respondent has provided the
4 information in subparagraph (i); and

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

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

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

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

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

29 (1) limit visitation or require that visitation with the
30 child by the respondent be supervised until the court finds

1 that supervision is no longer necessary and order the
2 respondent to pay the costs of supervision;

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

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

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

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

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

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

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

27 § 5209. Warrant to take physical custody of child.

28 (a) Ex parte.--If a petition under this chapter contains
29 allegations and the court finds that there is a credible risk
30 that the child is imminently likely to be wrongfully removed,

1 the court may issue an ex parte warrant to take physical custody
2 of the child.

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

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

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

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

16 (3) State the date and time for the hearing on the
17 petition.

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

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

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

30 (f) Enforcement.--

1 (1) A warrant to take physical custody of a child,
2 issued by this Commonwealth or another state, is enforceable
3 throughout this Commonwealth.

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

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

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

18 § 5210. Duration of abduction prevention order.

19 An abduction prevention order remains in effect until the
20 earliest of:

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

30 § 5211. Uniformity of application and construction.

1 In applying and construing this chapter, consideration must
2 be given to the need to promote uniformity of the law with
3 respect to its subject matter among states that enact it.

4 § 5212. Relation to Electronic Signatures in Global and
5 National Commerce Act.

6 This chapter modifies, limits and supersedes the Electronic
7 Signatures in Global and National Commerce Act (Public Law
8 106-229, 15 U.S.C. § 7001 et seq.) but does not modify, limit or
9 supersede section 101(c) of that act (15 U.S.C. § 7001(c)) or
10 authorize electronic delivery of any of the notices described in
11 section 103(b) of that act (15 U.S.C. § 7003(b)).

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