

1 **UNIFORM CHILD ABDUCTION PREVENTION**

2 **ACT**

3 2007 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Lyle W. Hillyard**

6 House Sponsor: Scott L Wyatt

7

LONG TITLE

8 **General Description:**

9 This bill enacts the Utah Uniform Child Abduction Prevention Act.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ sets guidelines for judges to determine when a child is at risk for abduction;
- 13 ▶ requires a party to file a petition with the court specifying risk factors that might
- 14 lead to an abduction;
- 15 ▶ addresses specific issues for international abductions; and
- 16 ▶ allows a court to issue a warrant to take immediate physical custody of a child it
- 17 determines is at risk for abduction.

18 **Monies Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 This bill takes effect on January 1, 2008.

22 **Utah Code Sections Affected:**

23 ENACTS:

24 **78-62-101**, Utah Code Annotated 1953

25 **78-62-102**, Utah Code Annotated 1953

26 **78-62-103**, Utah Code Annotated 1953



- 28 **78-62-104**, Utah Code Annotated 1953
- 29 **78-62-105**, Utah Code Annotated 1953
- 30 **78-62-106**, Utah Code Annotated 1953
- 31 **78-62-107**, Utah Code Annotated 1953
- 32 **78-62-108**, Utah Code Annotated 1953
- 33 **78-62-109**, Utah Code Annotated 1953
- 34 **78-62-110**, Utah Code Annotated 1953
- 35 **78-62-111**, Utah Code Annotated 1953
- 36 **78-62-112**, Utah Code Annotated 1953

37

38 *Be it enacted by the Legislature of the state of Utah:*

39 Section 1. Section **78-62-101** is enacted to read:

40 **CHAPTER 62. UTAH UNIFORM CHILD ABDUCTION PREVENTION ACT**

41 **78-62-101. Title.**

42 This chapter is known as the "Utah Uniform Child Abduction Prevention Act."

43 Section 2. Section **78-62-102** is enacted to read:

44 **78-62-102. Definitions.**

45 In this chapter:

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

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

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

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

55 (5) "Court" means an entity authorized under the law of a state to establish, enforce, or
56 modify a child custody determination.

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

58 (7) "Record" means information inscribed on a tangible medium or stored in an

59 electronic or other medium and is retrievable in perceivable form.

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

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

66 (10) "Wrongful removal" means the taking of a child that breaches rights of custody,
67 visitation, or parent-time given or recognized under the law of this state.

68 (11) "Wrongful retention" means the keeping or concealing of a child that breaches
69 rights of custody, visitation, or parent-time given or recognized under the law of this state.

70 Section 3. Section **78-62-103** is enacted to read:

71 **78-62-103. Cooperation and communication among courts.**

72 Sections 78-45c-110, 78-45c-111, and 78-45c-112 apply to cooperation and
73 communications among courts in proceedings under this chapter.

74 Section 4. Section **78-62-104** is enacted to read:

75 **78-62-104. Actions for abduction prevention measures.**

76 (1) A court on its own motion may order abduction prevention measures in a child
77 custody proceeding if the court finds that the evidence establishes a credible risk of abduction
78 of the child.

79 (2) A party to a child custody determination or another individual or entity having a
80 right under the law of this state or any other state to seek a child custody determination for the
81 child may file a petition seeking abduction prevention measures to protect the child under this
82 chapter.

83 (3) A prosecutor or public authority designated under Section 78-45c-315 may seek a
84 warrant to take physical custody of a child under Section 78-62-109 or other appropriate
85 prevention measures.

86 Section 5. Section **78-62-105** is enacted to read:

87 **78-62-105. Jurisdiction.**

88 (1) A petition under this chapter may be filed only in a court that has jurisdiction to
89 make a child custody determination with respect to the child at issue under Title 78, Chapter

90 45c, Utah Uniform Child Custody Jurisdiction and Enforcement Act.

91 (2) A court of this state has temporary emergency jurisdiction under Section
92 78-45c-204 if the court finds a credible risk of abduction.

93 Section 6. Section **78-62-106** is enacted to read:

94 **78-62-106. Contents of petition.**

95 (1) A petition under this chapter must be verified and include a copy of any existing
96 child custody determination, if available. The petition must specify the risk factors for
97 abduction, including the relevant factors described in Section 78-62-107.

98 (2) Subject to Subsection 78-45c-209(5), if reasonably ascertainable, the petition must
99 contain:

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

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

102 (c) the identity, customary address, and current physical location of the respondent;

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

106 (e) a statement of whether a party to the proceeding has been arrested for a crime
107 related to domestic violence, stalking, or child abuse or neglect, and the date, location, and
108 disposition of the case; and

109 (f) any other information required to be submitted to the court for a child custody
110 determination under Section 78-45c-209.

111 Section 7. Section **78-62-107** is enacted to read:

112 **78-62-107. Factors to determine risk of abduction.**

113 (1) In determining whether there is a credible risk of abduction of a child, the court
114 shall consider any evidence that the petitioner or respondent:

115 (a) has previously abducted or attempted to abduct the child;

116 (b) has threatened to abduct the child;

117 (c) has recently engaged in activities that may indicate a planned abduction, including:

118 (i) abandoning employment;

119 (ii) selling a primary residence;

120 (iii) terminating a lease;

- 121 (iv) closing bank or other financial management accounts, liquidating assets, hiding or
122 destroying financial documents, or conducting any unusual financial activities;
- 123 (v) applying for a passport or visa or obtaining travel documents for the respondent, a
124 family member, or the child; or
- 125 (vi) seeking to obtain the child's birth certificate or school or medical records;
- 126 (d) has engaged in domestic violence, stalking, or child abuse or neglect;
- 127 (e) has refused to follow a child custody determination;
- 128 (f) lacks strong familial, financial, emotional, or cultural ties to the state or the United
129 States;
- 130 (g) has strong familial, financial, emotional, or cultural ties to another state or country;
- 131 (h) is likely to take the child to a country that:
- 132 (i) is not a party to the Hague Convention on the Civil Aspects of International Child
133 Abduction and does not provide for the extradition of an abducting parent or for the return of
134 an abducted child;
- 135 (ii) is a party to the Hague Convention on the Civil Aspects of International Child
136 Abduction but:
- 137 (A) the Hague Convention on the Civil Aspects of International Child Abduction is not
138 in force between the United States and that country;
- 139 (B) is noncompliant according to the most recent compliance report issued by the
140 United States Department of State; or
- 141 (C) lacks legal mechanisms for immediately and effectively enforcing a return order
142 under the Hague Convention on the Civil Aspects of International Child Abduction;
- 143 (iii) poses a risk that the child's physical or emotional health or safety would be
144 endangered in the country because of specific circumstances relating to the child or because of
145 human rights violations committed against children;
- 146 (iv) has laws or practices that would:
- 147 (A) enable the respondent, without due cause, to prevent the petitioner from contacting
148 the child;
- 149 (B) restrict the petitioner from freely traveling to or exiting from the country because of
150 the petitioner's gender, nationality, marital status, or religion; or
- 151 (C) restrict the child's ability legally to leave the country after the child reaches the age

152 of majority because of a child's gender, nationality, or religion;

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

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

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

158 (i) is undergoing a change in immigration or citizenship status that would adversely
159 affect the respondent's ability to remain in the United States legally;

160 (j) has had an application for United States citizenship denied;

161 (k) has forged or presented misleading or false evidence on government forms or
162 supporting documents to obtain or attempt to obtain a passport, a visa, travel documents, a
163 Social Security card, a driver license, or other government-issued identification card or has
164 made a misrepresentation to the United States government;

165 (l) has used multiple names to attempt to mislead or defraud; or

166 (m) has engaged in any other conduct the court considers relevant to the risk of
167 abduction.

168 (2) In the hearing on a petition under this chapter, the court shall consider any evidence
169 that the respondent believed in good faith that the respondent's conduct was necessary to avoid
170 imminent harm to the child or respondent and any other evidence that may be relevant to
171 whether the respondent may be permitted to remove or retain the child.

172 Section 8. Section **78-62-108** is enacted to read:

173 **78-62-108. Provisions and measures to prevent abduction.**

174 (1) If a petition is filed under this chapter, the court may enter an order which must
175 include:

176 (a) the basis for the court's exercise of jurisdiction;

177 (b) the manner in which notice and opportunity to be heard were given to the persons
178 entitled to notice of the proceeding;

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

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

183 (e) identification of the child's country of habitual residence at the time of the issuance
184 of the order.

185 (2) If, at a hearing on a petition under this chapter or on the court's own motion, the
186 court after reviewing the evidence finds a credible risk of abduction of the child, the court shall
187 enter an abduction prevention order. The order must include the provisions required by
188 Subsection (1) and measures and conditions, including those in Subsections (3), (4), and (5),
189 that are reasonably calculated to prevent abduction of the child, giving due consideration to the
190 custody, visitation, and parent-time rights of the parties. The court shall consider the age of the
191 child, the potential harm to the child from an abduction, the legal and practical difficulties of
192 returning the child to the jurisdiction if abducted, and the reasons for the potential abduction,
193 including evidence of domestic violence, stalking, or child abuse or neglect.

194 (3) An abduction prevention order may include one or more of the following:

195 (a) an imposition of travel restrictions that require that a party traveling with the child
196 outside a designated geographical area provide the other party with the following:

197 (i) the travel itinerary of the child;

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

200 (iii) copies of all travel documents;

201 (b) a prohibition of the respondent directly or indirectly:

202 (i) removing the child from this state, the United States, or another geographic area
203 without permission of the court or the petitioner's written consent;

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

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

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

208 (c) a requirement that a party to register the order in another state as a prerequisite to
209 allowing the child to travel to that state;

210 (d) with regard to the child's passport:

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

213 (ii) a requirement that the respondent surrender to the court or the petitioner's attorney

214 any United States or foreign passport issued in the child's name, including a passport issued in
215 the name of both the parent and the child; and

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

218 (e) as a prerequisite to exercising custody, visitation, or parent-time, a requirement that
219 the respondent provide:

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

223 (ii) to the court:

224 (A) proof that the respondent has provided the information in Subsection (3)(e)(i); and

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

227 (iii) to the petitioner, proof of registration with the United States Embassy or other
228 United States diplomatic presence in the destination country and with the Central Authority for
229 the Hague Convention on the Civil Aspects of International Child Abduction, if that
230 convention is in effect between the United States and the destination country, unless one of the
231 parties objects; and

232 (iv) a written waiver under the Privacy Act, 5 U.S.C. Section 552a, with respect to any
233 document, application, or other information pertaining to the child authorizing its disclosure to
234 the court and the petitioner; and

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

238 (4) In an abduction prevention order, the court may impose conditions on the exercise
239 of custody or visitation that:

240 (a) limit visitation or require that visitation with the child by the respondent be
241 supervised until the court finds that supervision is no longer necessary and order the respondent
242 to pay the costs of supervision;

243 (b) require the respondent to post a bond or provide other security in an amount
244 sufficient to serve as a financial deterrent to abduction, the proceeds of which may be used to

245 pay for the reasonable expenses of recovery of the child, including reasonable attorney fees and
246 costs if there is an abduction; and

247 (c) require the respondent to obtain education on the potentially harmful effects to the
248 child from abduction.

249 (5) To prevent imminent abduction of a child, a court may:

250 (a) issue a warrant to take physical custody of the child under Section 78-62-109 or the
251 law of this state other than this chapter;

252 (b) direct the use of law enforcement to take any action reasonably necessary to locate
253 the child, obtain return of the child, or enforce a custody determination under this chapter or
254 the law of this state other than this chapter; or

255 (c) grant any other relief allowed under the law of this state other than this chapter.

256 (6) The remedies provided in this chapter are cumulative and do not affect the
257 availability of other remedies to prevent abduction.

258 Section 9. Section **78-62-109** is enacted to read:

259 **78-62-109. Warrant to take physical custody of child.**

260 (1) If a petition under this chapter contains allegations, and the court finds that there is
261 a credible risk that the child is imminently likely to be wrongfully removed, the court may issue
262 an ex parte warrant to take physical custody of the child.

263 (2) The respondent on a petition under Subsection (1) must be afforded an opportunity
264 to be heard at the earliest possible time after the ex parte warrant is executed, but not later than
265 the next judicial day unless a hearing on that date is impossible. In that event, the court shall
266 hold the hearing on the first judicial day possible.

267 (3) An ex parte warrant under Subsection (1) to take physical custody of a child must:

268 (a) recite the facts upon which a determination of a credible risk of imminent wrongful
269 removal of the child is based;

270 (b) direct law enforcement officers to take physical custody of the child immediately;

271 (c) state the date and time for the hearing on the petition; and

272 (d) provide for the safe interim placement of the child pending further order of the
273 court.

274 (4) If feasible, before issuing a warrant and before determining the placement of the
275 child after the warrant is executed, the court may order a search of the relevant databases of the

276 National Crime Information Center system and similar state databases to determine if either the
 277 petitioner or respondent has a history of domestic violence, stalking, or child abuse or neglect.

278 (5) The petition and warrant must be served on the respondent when or immediately
 279 after the child is taken into physical custody.

280 (6) A warrant to take physical custody of a child, issued by this state or another state, is
 281 enforceable throughout this state. If the court finds that a less intrusive remedy will not be
 282 effective, it may authorize law enforcement officers to enter private property to take physical
 283 custody of the child. If required by exigent circumstances, the court may authorize law
 284 enforcement officers to make a forcible entry at any hour.

285 (7) If the court finds, after a hearing, that a petitioner sought an ex parte warrant under
 286 Subsection (1) for the purpose of harassment or in bad faith, the court may award the
 287 respondent reasonable attorney fees, costs, and ~~Ĥ~~→ other reasonable ←Ĥ expenses ~~Ĥ~~→ and
 287a losses arising out of the issuance of the ex parte warrant ←Ĥ .

288 (8) This chapter does not affect the availability of relief allowed under the law of this
 289 state other than this chapter.

290 Section 10. Section **78-62-110** is enacted to read:

291 **78-62-110. Duration of abduction prevention order.**

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

293 (1) the time stated in the order;

294 (2) the emancipation of the child;

295 (3) the child's attaining 18 years of age; or

296 (4) the time the order is modified, revoked, vacated, or superseded by a court with
 297 jurisdiction under Sections 78-45c-201 through 78-45c-203.

298 Section 11. Section **78-62-111** is enacted to read:

299 **78-62-111. Uniformity of application and construction.**

300 This chapter is a uniform act. In applying and construing it, consideration must be
 301 given to the need to promote uniformity of the law with respect to its subject matter among
 302 states that enact it.

303 Section 12. Section **78-62-112** is enacted to read:

304 **78-62-112. Relation to electronic signatures in global and national commerce act.**

305 This chapter modifies, limits, and supersedes the federal Electronic Signatures in
 306 Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify,

307 limit, or supersede Section 101(c) of the act, 15 U.S.C. Section 7001(c), or authorize electronic
308 delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section
309 7003(b).

310 Section 13. **Effective date.**

311 This bill takes effect on January 1, 2008.

Legislative Review Note
as of 11-16-06 10:04 AM

Office of Legislative Research and General Counsel

S.B. 35 - Uniform Child Abduction Prevention Act

Fiscal Note

2007 General Session
State of Utah

State Impact

Increased petition filings expected from enactment of this bill are expected to cost the Courts about \$7,300 annually. An initial surge of filings is expected and will require an additional one-time appropriation of \$7,200 from the General Fund in FY 2008.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>
General Fund	\$0	\$7,300	\$7,300	\$0	\$0	\$0
General Fund, One-Time	\$0	\$7,200	\$0	\$0	\$0	\$0
Total	\$0	\$14,500	\$7,300	\$0	\$0	\$0

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for businesses or local governments. Individuals involved in child custody matters would likely see an increase in costs.