

# SENATE BILL No. 743

October 11, 2011, Introduced by Senators JONES, SCHUITMAKER and MARLEAU and referred to the Committee on Judiciary.

A bill to adopt the uniform child abduction prevention act; to allow courts in this state to impose measures to prevent the abduction of children; to establish standards for determining whether a child is subject to a significant risk of abduction; and to provide remedies.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 1. This act shall be known and may be cited as the  
2       "uniform child abduction prevention act".

3       Sec. 2. As used in this act:

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

6       (b) "Child" means an unemancipated individual who is less than  
7       18 years of age.

1 (c) "Child-custody determination" means a judgment, decree, or  
2 other order of a court providing for the legal custody, physical  
3 custody, or visitation with respect to a child. Child custody  
4 determination includes a permanent, temporary, initial, or  
5 modification order.

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

12 (e) "Court" means an entity authorized under the law of a  
13 state to establish, enforce, or modify a child-custody  
14 determination.

15 (f) "Petition" includes a motion or its equivalent.

16 (g) "Record" means information that is inscribed on a tangible  
17 medium or that is stored in an electronic or other medium and is  
18 retrievable in perceivable form.

19 (h) "State" means a state of the United States, the District  
20 of Columbia, Puerto Rico, the United States Virgin Islands, or any  
21 territory or insular possession subject to the jurisdiction of the  
22 United States. State includes a federally recognized Indian tribe  
23 or nation.

24 (i) "Travel document" means records relating to a travel  
25 itinerary, including travel tickets, passes, reservations for  
26 transportation, or accommodations. Travel document does not include  
27 a passport or visa.

1 (j) "Visitation" includes parenting time as that term is used  
2 in the support and parenting time enforcement act, 1982 PA 295, MCL  
3 552.601 to 552.650.

4 (k) "Wrongful removal" means the taking of a child that  
5 breaches rights of custody or visitation given or recognized under  
6 the law of this state.

7 (l) "Wrongful retention" means the keeping or concealing of a  
8 child that breaches rights of custody or visitation given or  
9 recognized under the law of this state.

10 Sec. 3. Sections 110 to 112 of the uniform child-custody  
11 jurisdiction and enforcement act, 2001 PA 195, MCL 722.1110 to  
12 722.1112, apply to cooperation and communications among courts in  
13 proceedings under this act.

14 Sec. 4. (1) A court on its own motion may order abduction  
15 prevention measures in a child-custody proceeding if the court  
16 finds that the evidence establishes a credible risk of abduction of  
17 the child.

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

23 (3) A prosecutor or the attorney general may seek a warrant to  
24 take physical custody of a child under section 9 or other  
25 appropriate prevention measures.

26 Sec. 5. (1) A petition under this act may be filed only in a  
27 court that has jurisdiction to make a child-custody determination

1 with respect to the child at issue under the uniform child-custody  
2 jurisdiction and enforcement act, 2001 PA 195, MCL 722.1101 to  
3 722.1406.

4 (2) A court of this state has temporary emergency jurisdiction  
5 under section 204 of the uniform child-custody jurisdiction and  
6 enforcement act, 2001 PA 195, MCL 722.1204, if the court finds a  
7 credible risk of abduction.

8 Sec. 6. A petition under this act shall be verified and  
9 include a copy of any existing child-custody determination, if  
10 available. The petition shall specify the risk factors for  
11 abduction, including the relevant factors described in section 7.  
12 Subject to section 209(5) of the uniform child-custody jurisdiction  
13 and enforcement act, 2001 PA 195, MCL 722.1209, if reasonably  
14 ascertainable, the petition must contain all of the following:

15 (a) The name, date of birth, and gender of the child.

16 (b) The customary address and current physical location of the  
17 child.

18 (c) The identity, customary address, and current physical  
19 location of the respondent.

20 (d) A statement of whether a prior action to prevent abduction  
21 or domestic violence has been filed by a party or other individual  
22 or entity having custody of the child, and the date, location, and  
23 disposition of the action.

24 (e) A statement of whether a party to the proceeding has been  
25 arrested for a crime related to domestic violence, stalking, or  
26 child abuse or neglect, and the date, location, and disposition of  
27 the case.

1 (f) Any other information required to be submitted to the  
2 court for a child-custody determination under section 209 of the  
3 uniform child-custody jurisdiction and enforcement act, 2001 PA  
4 195, MCL 722.1209.

5 Sec. 7. (1) In determining whether there is a credible risk of  
6 abduction of a child, the court shall consider any evidence that  
7 the petitioner or respondent has done any of the following or that  
8 any of the following apply to the petitioner or respondent:

9 (a) Previously abducted or attempted to abduct the child.

10 (b) Threatened to abduct the child.

11 (c) Recently engaged in activities that may indicate a planned  
12 abduction, including any of the following:

13 (i) Abandoning employment.

14 (ii) Selling a primary residence.

15 (iii) Terminating a lease.

16 (iv) Closing bank or other financial management accounts,  
17 liquidating assets, hiding or destroying financial documents, or  
18 conducting any unusual financial activities.

19 (v) Applying for a passport or visa or obtaining travel  
20 documents for the respondent, a family member, or the child.

21 (vi) Seeking to obtain the child's birth certificate or school  
22 or medical records.

23 (d) Engaged in domestic violence, stalking, or child abuse or  
24 neglect.

25 (e) Refused to follow a child-custody determination.

26 (f) Lacks strong familial, financial, emotional, or cultural  
27 ties to this state or the United States.

1 (g) Has strong familial, financial, emotional, or cultural  
2 ties to another state or country.

3 (h) Is likely to take the child to a country to which any of  
4 the following apply:

5 (i) The country is not a party to the Hague convention on the  
6 civil aspects of international child abduction and does not provide  
7 for the extradition of an abducting parent or for the return of an  
8 abducted child.

9 (ii) The country is a party to the Hague convention on the  
10 civil aspects of international child abduction but 1 or more of the  
11 following apply:

12 (A) The Hague convention on the civil aspects of international  
13 child abduction is not in force between the United States and the  
14 country.

15 (B) The country is noncompliant according to the most recent  
16 compliance report issued by the United States department of state.

17 (C) The country lacks legal mechanisms for immediately and  
18 effectively enforcing a return order under the Hague convention on  
19 the civil aspects of international child abduction.

20 (iii) The country poses a risk that the child's physical or  
21 emotional health or safety would be endangered in the country  
22 because of specific circumstances relating to the child or because  
23 of human rights violations committed against children.

24 (iv) The country has laws or practices that would do 1 or more  
25 of the following:

26 (A) Enable the respondent, without due cause, to prevent the  
27 petitioner from contacting the child.

1 (B) Restrict the petitioner from freely traveling to or  
2 exiting from the country because of the petitioner's gender,  
3 nationality, marital status, or religion.

4 (C) Restrict the child's ability legally to leave the country  
5 after the child reaches the age of majority because of the child's  
6 gender, nationality, or religion.

7 (v) The country is included by the United States department of  
8 state on a current list of state sponsors of terrorism.

9 (vi) The country does not have an official United States  
10 diplomatic presence in the country.

11 (vii) The country is engaged in active military action or war,  
12 including a civil war, to which the child may be exposed.

13 (i) Is undergoing a change in immigration or citizenship  
14 status that would adversely affect the respondent's ability to  
15 remain in the United States legally.

16 (j) Has had an application for United States citizenship  
17 denied.

18 (k) Has forged or presented misleading or false evidence on  
19 government forms or supporting documents to obtain or attempt to  
20 obtain a passport, a visa, travel documents, a social security  
21 card, a driver license, or other government-issued identification  
22 card or has made a misrepresentation to the United States  
23 government.

24 (l) Has used multiple names to attempt to mislead or defraud.

25 (m) Has engaged in any other conduct the court considers  
26 relevant to the risk of abduction.

27 (2) In the hearing on a petition under this act, the court

1 shall consider any evidence that the respondent believed in good  
2 faith that the respondent's conduct was necessary to avoid imminent  
3 harm to the child or respondent and any other evidence that may be  
4 relevant to whether the respondent may be permitted to remove or  
5 retain the child.

6 Sec. 8. (1) If a petition is filed under this act, the court  
7 may enter an order. If entered, the order shall include all of the  
8 following:

9 (a) The basis for the court's exercise of jurisdiction.

10 (b) The manner in which notice and opportunity to be heard  
11 were given to the persons entitled to notice of the proceeding.

12 (c) A detailed description of each party's custody and  
13 visitation rights and residential arrangements for the child.

14 (d) A provision stating that a violation of the order may  
15 subject the party in violation to civil and criminal penalties.

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

18 (2) If, at a hearing on a petition under this act or on the  
19 court's own motion, the court after reviewing the evidence finds a  
20 credible risk of abduction of the child, the court shall enter an  
21 abduction prevention order. The order shall include the provisions  
22 required by subsection (1) and measures and conditions, including  
23 those in subsections (3) to (5), that are reasonably calculated to  
24 prevent abduction of the child, giving due consideration to the  
25 custody and visitation rights of the parties. The court shall  
26 consider the age of the child, the potential harm to the child from  
27 an abduction, the legal and practical difficulties of returning the

1 child to the jurisdiction if abducted, and the reasons for the  
2 potential abduction, including evidence of domestic violence,  
3 stalking, or child abuse or neglect.

4 (3) An abduction prevention order may include 1 or more of the  
5 following:

6 (a) An imposition of travel restrictions that require that a  
7 party traveling with the child outside a designated geographical  
8 area provide the other party with all of the following:

9 (i) The travel itinerary of the child.

10 (ii) A list of physical addresses and telephone numbers at  
11 which the child can be reached at specified times.

12 (iii) Copies of all travel documents.

13 (b) A prohibition of the respondent directly or indirectly  
14 doing any of the following:

15 (i) Removing the child from this state, the United States, or  
16 another geographic area without permission of the court or the  
17 petitioner's written consent.

18 (ii) Removing or retaining the child in violation of a child-  
19 custody determination.

20 (iii) Removing the child from school or a child care or similar  
21 facility.

22 (iv) Approaching the child at any location other than a site  
23 designated for supervised visitation.

24 (c) A requirement that a party register the order in another  
25 state as a prerequisite to allowing the child to travel to that  
26 state.

27 (d) With regard to the child's passport, any of the following:

1           (i) A direction that the petitioner place the child's name in  
2 the United States department of state's child passport issuance  
3 alert program.

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

8           (iii) A prohibition on the respondent applying on behalf of the  
9 child for a new or replacement passport or visa.

10          (e) As a prerequisite to exercising custody or visitation, a  
11 requirement that the respondent provide 1 or more of the following:

12           (i) To the United States department of state office of  
13 children's issues and the relevant foreign consulate or embassy, an  
14 authenticated copy of the order detailing passport and travel  
15 restrictions for the child.

16           (ii) To the court, 1 or both of the following:

17           (A) Proof that the respondent has provided the information in  
18 subparagraph (i) .

19           (B) An acknowledgment in a record from the relevant foreign  
20 consulate or embassy that no passport application has been made, or  
21 passport issued, on behalf of the child.

22           (iii) To the petitioner, proof of registration with the United  
23 States embassy or other United States diplomatic presence in the  
24 destination country and with the central authority for the Hague  
25 convention on the civil aspects of international child abduction,  
26 if that convention is in effect between the United States and the  
27 destination country, unless 1 of the parties objects.

1           (iv) A written waiver under 5 USC 552a, popularly known as the  
2 privacy act, with respect to any document, application, or other  
3 information pertaining to the child authorizing its disclosure to  
4 the court and the petitioner.

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

9           (4) In an abduction prevention order, the court may impose  
10 conditions on the exercise of custody or visitation that do 1 or  
11 more of the following:

12           (a) Limit visitation or require that visitation with the child  
13 by the respondent be supervised until the court finds that  
14 supervision is no longer necessary and order the respondent to pay  
15 the costs of supervision.

16           (b) Require the respondent to post a bond or provide other  
17 security in an amount sufficient to serve as a financial deterrent  
18 to abduction, the proceeds of which may be used to pay for the  
19 reasonable expenses of recovery of the child, including reasonable  
20 attorney fees and costs if there is an abduction.

21           (c) Require the respondent to obtain education on the  
22 potentially harmful effects to the child from abduction.

23           (5) To prevent imminent abduction of a child, a court may do 1  
24 or more of the following:

25           (a) Issue a warrant to take physical custody of the child  
26 under section 9 or other law of this state.

27           (b) 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 this act or other  
3 law of this state.

4 (c) Grant any other relief allowed under the law of this  
5 state.

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

8 Sec. 9. (1) If a petition under this act alleges and the court  
9 finds that there is a credible risk that the child is imminently  
10 likely to be wrongfully removed, the court may issue an ex parte  
11 warrant to take physical custody of the child.

12 (2) The respondent to a petition under subsection (1) shall be  
13 afforded an opportunity to be heard at the earliest possible time  
14 after the ex parte warrant is executed, but not later than the next  
15 judicial day unless a hearing on that date is impossible. If a  
16 hearing on the next judicial day is impossible, the court shall  
17 hold the hearing on the first judicial day possible.

18 (3) An ex parte warrant under subsection (1) to take physical  
19 custody of a child shall do all of the following:

20 (a) Recite the facts on which a determination of a credible  
21 risk of imminent wrongful removal of the child is based.

22 (b) Direct law enforcement officers to take physical custody  
23 of the child immediately.

24 (c) State the date and time for the hearing on the petition.

25 (d) Provide for the safe interim placement of the child  
26 pending further order of the court.

27 (4) If feasible, before issuing a warrant under this section

1 and before determining the placement of the child after the warrant  
2 is executed, the court may order a search of the relevant databases  
3 of the national crime information center system and similar state  
4 databases to determine if either the petitioner or respondent has a  
5 history of domestic violence, stalking, or child abuse or neglect.

6 (5) A petition and warrant under this section shall be served  
7 on the respondent when or immediately after the child is taken into  
8 physical custody.

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

16 (7) If the court finds, after a hearing, that a petitioner  
17 sought an ex parte warrant under subsection (1) for the purpose of  
18 harassment or in bad faith, the court may award the respondent  
19 reasonable attorney fees, costs, and expenses.

20 (8) This act does not affect the availability of relief  
21 allowed under other law of this state.

22 Sec. 10. An abduction prevention order remains in effect until  
23 the earliest of the following:

24 (a) The time stated in the order.

25 (b) The emancipation of the child.

26 (c) The child's attaining 18 years of age.

27 (d) The time the order is modified, revoked, vacated, or

1 superseded by a court with jurisdiction under sections 201 to 203  
2 of the uniform child-custody jurisdiction and enforcement act, 2001  
3 PA 195, MCL 722.1201 to 722.1203, or other applicable law of this  
4 state.

5       Sec. 11. In applying and construing this uniform act, a court  
6 shall consider the need to promote uniformity of the law with  
7 respect to its subject matter among states that enact it.

8       Sec. 12. This act modifies, limits, and supersedes the federal  
9 electronic signatures in global and national commerce act, 15 USC  
10 7001 to 7031, but does not modify, limit, or supersede 15 USC  
11 7001(c) or authorize electronic delivery of any of the notices  
12 described in 15 USC 7003(b).