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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

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A N A C T

RELATING TO DOMESTIC RELATIONS -- UNIFORM CHILD ABDUCTION
PREVENTION

Introduced By: Representatives O'Grady, Tanzi, Blazejewski, Guthrie, and Carnevale

Date Introduced: March 03, 2011

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 15 of the General Laws entitled "DOMESTIC RELATIONS" is
2 hereby amended by adding thereto the following chapter:

3 CHAPTER 31

4 UNIFORM CHILD ABDUCTION PREVENTION ACT

5 **15-31-1. Short title.** – This chapter shall be known and may be cited as the Uniform
6 Child Abduction Prevention Act.

7 **15-31-2. Definitions.** – In this chapter:

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

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

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

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

18 (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 in
4 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 jurisdiction of
7 the United States. The term includes a federally recognized Indian tribe or nation.

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

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

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

15 **15-31-3. Cooperation and communication among courts.** – Section 15-14.1-10 shall
16 apply to promote cooperation and communications among courts in proceedings under this
17 chapter.

18 **15-31-4. Actions for abduction prevention measures.** – (a) A court on its own motion
19 may order abduction prevention measures in a child custody proceeding if the court finds that the
20 evidence establishes a credible risk of 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 chapter.

24 (c) A prosecutor or public authority designated under section 15-14.1-37 may seek a
25 warrant to take physical custody of a child pursuant to section 15-31-9 or other appropriate
26 prevention measures.

27 **15-31-5. Jurisdiction.** -- (a) A petition under this chapter may be filed only in a court
28 that has jurisdiction to make a child-custody determination with respect to the child at issue
29 pursuant to sections 15-14.1-13, 15-14.1-14, 15-14.1-15 and 15-14.1-16 of the Uniform Child
30 Custody Jurisdiction and Enforcement act or the Uniform Child Custody Jurisdiction act.

31 (b) A court of this state has temporary emergency jurisdiction under section 15-14.1-16 if
32 the court finds a credible risk of abduction.

33 **15-31-6. Contents of petition.** – A petition under this chapter must be verified and
34 include a copy of any existing child-custody determination, if available. The petition must specify

1 the risk factors for abduction, including the relevant factors described in section 15-31-7, subject
2 to the family court's confidentiality rules. If reasonably ascertainable, the petition must contain:

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

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

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

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

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

12 (6) Any other information required to be submitted to the court for a child-custody
13 determination under chapter 15-14.1 et al.

14 **15-31-7. Factors to determine risk of abduction.** – (a) In determining whether there is a
15 credible risk of abduction of a child, the court shall consider any evidence that the petitioner or
16 respondent:

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

18 (2) Has threatened to abduct the child;

19 (3) Has recently engaged in activities that may indicate a planned abduction, including:

20 (i) Abandoning employment;

21 (ii) Selling a primary residence;

22 (iii) Terminating a lease;

23 (iv) Closing bank or other financial management accounts, liquidating assets, hiding or
24 destroying financial documents, or conducting any unusual financial activities;

25 (v) Applying for a passport or visa or obtaining travel documents for the respondent, a
26 family member, or the child; or

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

28 (4) Has engaged in domestic violence, stalking, or child abuse or neglect;

29 (5) Has refused to follow a child-custody determination;

30 (6) Lacks strong familial, financial, emotional, or cultural ties to the state or the United

31 States;

32 (7) Has strong familial, financial, emotional, or cultural ties to another state or country;

33 (8) Is likely to take the child to a country that:

34 (i) Is not a party to the Hague Convention on the Civil Aspects of International Child

1 Abduction and does not provide for the extradition of an abducting parent or for the return of an
2 abducted child;

3 (ii) Is a party to the Hague Convention on the Civil Aspects of International Child
4 Abduction but:

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

7 (B) Is noncompliant according to the most recent compliance report issued by the United
8 States Department of State; or

9 (C) Lacks legal mechanisms for immediately and effectively enforcing a return order
10 under the Hague Convention on the Civil Aspects of International Child Abduction;

11 (iii) Poses a risk that the child’s physical or emotional health or safety would be
12 endangered in the country because of specific circumstances relating to the child or because of
13 human rights violations committed against children;

14 (iv) Has laws or practices that would:

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

17 (B) Restrict the petitioner from freely traveling to or exiting from the country because of
18 the petitioner’s gender, nationality, marital status, or religion; or

19 (C) Restrict the child's ability legally to leave the country after the child reaches the age
20 of majority because of a child’s gender, nationality, or religion;

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

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

24 (vii) Is engaged in active military action or war, including a civil war, to which the child
25 may be exposed;

26 (9) Is undergoing a change in immigration or citizenship status that would adversely
27 affect the respondent’s ability to remain in the United States legally;

28 (10) Has had an application for United States citizenship denied;

29 (11) Has forged or presented misleading or false evidence on government forms or
30 supporting documents to obtain or attempt to obtain a passport, a visa, travel documents, a Social
31 Security card, a driver’s license, or other government-issued identification card or has made a
32 misrepresentation to the United States government;

33 (12) Has used multiple names to attempt to mislead or defraud; or

34 (13) Has engaged in any other conduct the court considers relevant to the risk of

1 abduction.

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

6 **15-31-8. Provisions and measures to prevent abduction.** – (a) If a petition is filed
7 under this chapter, the court may enter an order that must include:

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

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

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

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

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

17 (b) If, at a hearing on a petition under this chapter or on the court's own motion, the court
18 after reviewing the evidence finds a credible risk of abduction of the child, the court shall enter an
19 abduction prevention order. The order must include the provisions required by subsection (a) and
20 measures and conditions, including those in subsections (c), (d), and (e), that are reasonably
21 calculated to prevent abduction of the child, giving due consideration to the custody and visitation
22 rights of the parties. The court shall consider the age of the child, the potential harm to the child
23 from an abduction, the legal and practical difficulties of returning the child to the jurisdiction if
24 abducted, and the reasons for the potential abduction, including evidence of domestic violence,
25 stalking, or child abuse or neglect.

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

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

29 (i) The travel itinerary of the child;

30 (ii) A list of physical addresses and telephone numbers at which the child can be reached
31 at specified times; and

32 (iii) Copies of all travel documents;

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

34 (i) Removing the child from this state, the United States, or another geographic area

1 without permission of the court or the petitioner's written consent;

2 (ii) Removing or retaining the child in violation of a child-custody determination;

3 (iii) Removing the child from school or a child-care or similar facility; or

4 (iv) Approaching the child at any location other than a site designated for supervised

5 visitation;

6 (3) A requirement that a party register the order in another state as a prerequisite to

7 allowing the child to travel to that state;

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

9 (i) A direction that the petitioner place the child's name in the United States Department

10 of State's Child Passport Issuance Alert Program;

11 (ii) A requirement that the respondent surrender to the court or the petitioner's attorney

12 any United States or foreign passport issued in the child's name, including a passport issued in the

13 name of both the parent and the child; and

14 (iii) A prohibition upon the respondent from applying on behalf of the child for a new or

15 replacement passport or visa;

16 (5) As a prerequisite to exercising custody or visitation, a requirement that the respondent

17 provide:

18 (i) To the United States Department of State Office of Children's Issues and the relevant

19 foreign consulate or embassy, an authenticated copy of the order detailing passport and travel

20 restrictions for the child;

21 (ii) To the court:

22 (A) Proof that the respondent has provided the information in paragraph (i); and

23 (B) An acknowledgment in a record from the relevant foreign consulate or embassy that

24 no passport application has been made, or passport issued, on behalf of the child;

25 (iii) To the petitioner, proof of registration with the United States Embassy or other

26 United States diplomatic presence in the destination country and with the Central Authority for

27 the Hague Convention on the Civil Aspects of International Child Abduction, if that Convention

28 is in effect between the United States and the destination country, unless one of the parties

29 objects; and

30 (iv) A written waiver under the Privacy Act, 5 U.S.C. Section 552a as amended, with

31 respect to any document, application, or other information pertaining to the child authorizing its

32 disclosure to the court and the petitioner;

33 (6) Upon the petitioner's request, a requirement that the respondent obtain an order from

34 the relevant foreign country containing terms identical to the child-custody determination issued

1 in the United States.

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

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

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

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

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

14 (1) Issue a warrant to take physical custody of the child under section 15-31-9 or any
15 other applicable law;

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

19 (3) Grant any other relief allowed by this chapter or any other applicable law.

20 (f) The remedies provided in this chapter are cumulative and do not affect the availability
21 of other remedies to prevent abduction.

22 **15-31-9. Warrant to take physical custody of child.** – (a) If a petition under this
23 chapter contains allegations, and the court finds that there is a credible risk that the child is
24 imminently likely to be wrongfully removed, the court may issue an ex parte warrant to take
25 physical custody of the child.

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

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

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

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

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

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

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

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

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

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

16 (h) This chapter does not affect the availability of relief allowed under the law of this
17 state.

18 **15-31-10. Duration of abduction prevention order.** – An abduction prevention order
19 remains in effect until the earliest of:

- 20 (1) The time stated in the order;
- 21 (2) The emancipation of the child;
- 22 (3) The child's attaining eighteen (18) years of age; or
- 23 (4) The time the order is modified, revoked, vacated, or superseded by a court with
24 jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement act, or chapter 15-
25 14.1 et al and any other applicable law.

26 **15-31-11. Uniformity of application and construction.** -- In applying and construing
27 this uniform act, consideration must be given to the need to promote uniformity of the law with
28 respect to its subject matter among states that enact it.

29 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO DOMESTIC RELATIONS -- UNIFORM CHILD ABDUCTION
PREVENTION

- 1 This act would deter both the pre-court or post-court order domestic and international
- 2 child abductions by parents, persons acting on behalf of a parent or others. It would foster
- 3 cooperation between the state and the federal government to prevent child abduction.
- 4 This act would take effect upon passage.

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