

SB0383/743220/1

BY: Judicial Proceedings Committee

AMENDMENTS TO SENATE BILL 383
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, strike beginning with “authorizing” in line 4 down through “child;” in line 5; strike beginning with “authorizing” in line 8 down through “parent” in line 11 and substitute “establishing requirements for a petition under this Act; providing factors for determining whether a credible risk of child abduction exists; establishing requirements for an abduction prevention order; authorizing a court to issue a warrant for physical custody of a child”; strike in their entirety lines 14 through 18, inclusive; and in line 26, strike “9.7–108” and substitute “9.7–111”.

AMENDMENT NO. 2

On page 2, strike in their entirety lines 5 through 32, inclusive.

On page 3, in line 24, strike the colon and substitute “THE WRONGFUL REMOVAL OR WRONGFUL RETENTION OF A CHILD.”; and strike lines 25 through 29.

AMENDMENT NO. 3

On page 4, after line 6, insert:

“(H) “RECORD” MEANS INFORMATION THAT IS INSCRIBED ON A TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.”;

in line 7, strike “(H)” and substitute “(I)”; after line 11, insert:

“(J) (1) “TRAVEL DOCUMENT” MEANS A RECORD RELATING TO A TRAVEL ITINERARY, INCLUDING A TRAVEL TICKET OR PASS OR A RESERVATION FOR TRANSPORTATION OR ACCOMMODATIONS.

(2) “TRAVEL DOCUMENT” DOES NOT INCLUDE A PASSPORT OR VISA.

(K) “WRONGFUL REMOVAL” MEANS A TAKING OF A CHILD THAT BREACHES RIGHTS OF CUSTODY OR VISITATION PROVIDED OR RECOGNIZED UNDER THE LAWS OF THE STATE.

(L) “WRONGFUL RETENTION” MEANS A KEEPING OR CONCEALING OF A CHILD THAT BREACHES RIGHTS OF CUSTODY OR VISITATION PROVIDED OR RECOGNIZED UNDER THE LAWS OF THE STATE.”;

after line 20, insert:

“SECTIONS 9.5-109 THROUGH 9.5-111 OF THIS ARTICLE APPLY TO COOPERATION AND COMMUNICATIONS AMONG COURTS IN A PROCEEDING UNDER THIS TITLE.

9.7-104.”;

after line 27, insert:

“(C) A PROSECUTOR OR PUBLIC AUTHORITY UNDER § 9.5-315 OF THIS ARTICLE MAY SEEK A WARRANT TO TAKE PHYSICAL CUSTODY OF A CHILD UNDER § 9.7-109 OF THIS TITLE OR TAKE OTHER APPROPRIATE PREVENTION MEASURES.”;

and in line 28, strike “9.7-104.” and substitute “9.7-105.”.

AMENDMENT NO. 4

On page 5, strike beginning with “UNDER” in line 2 down through “ACT” in line 3; in line 4, after “(B)” insert: “A COURT IN THIS STATE SHALL HAVE TEMPORARY EMERGENCY JURISDICTION UNDER § 9.5-204 OF THIS ARTICLE IF THE COURT FINDS A CREDIBLE RISK OF ABDUCTION OF A CHILD.”

9.7-106.

(A)”;

and strike beginning with “AND” in line 7 down through “STATE” in line 11 and substitute “INCLUDING THE RELEVANT FACTORS DESCRIBED IN § 9.7-107 OF THIS TITLE”; in line 12, strike “(C)” and substitute “(B)”.

On pages 5 through 7, strike in their entirety the lines beginning with line 29 on page 5 through line 3 on page 7, inclusive.

On page 7, after line 4, insert:

“(A) IN DETERMINING WHETHER THERE IS A CREDIBLE RISK OF ABDUCTION OF A CHILD, THE COURT SHALL CONSIDER ANY EVIDENCE THAT THE PETITIONER OR RESPONDENT:

(1) HAS PREVIOUSLY ABDUCTED OR ATTEMPTED TO ABDUCT THE CHILD;

(2) HAS THREATENED TO ABDUCT THE CHILD;

(3) HAS RECENTLY ENGAGED IN ACTIVITIES THAT MAY INDICATE A PLANNED ABDUCTION, INCLUDING:

(Over)

(I) ABANDONING EMPLOYMENT;

(II) SELLING A PRIMARY RESIDENCE;

(III) TERMINATING A LEASE;

(IV) CLOSING A BANK OR OTHER FINANCIAL MANAGEMENT ACCOUNT, LIQUIDATING ASSETS, HIDING OR DESTROYING FINANCIAL DOCUMENTS, OR CONDUCTING ANY UNUSUAL FINANCIAL ACTIVITIES;

(V) APPLYING FOR A PASSPORT OR VISA OR OBTAINING TRAVEL DOCUMENTS FOR THE RESPONDENT, A FAMILY MEMBER, OR THE CHILD; OR

(VI) SEEKING TO OBTAIN THE CHILD'S BIRTH CERTIFICATE OR SCHOOL OR MEDICAL RECORDS;

(4) HAS ENGAGED IN DOMESTIC VIOLENCE, STALKING, OR CHILD ABUSE OR NEGLECT;

(5) HAS REFUSED TO FOLLOW A CHILD CUSTODY DETERMINATION;

(6) LACKS STRONG FAMILIAL, FINANCIAL, EMOTIONAL, OR CULTURAL TIES TO THE STATE OR THE UNITED STATES;

(7) HAS STRONG FAMILIAL, FINANCIAL, EMOTIONAL, OR CULTURAL TIES TO ANOTHER STATE OR COUNTRY;

(8) IS LIKELY TO TAKE THE CHILD TO A COUNTRY THAT:

(i) IS NOT A PARTY TO THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION AND DOES NOT PROVIDE FOR THE EXTRADITION OF AN ABDUCTING PARENT OR FOR THE RETURN OF AN ABDUCTED CHILD;

(ii) IS A PARTY TO THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION BUT:

1. THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION IS NOT IN FORCE BETWEEN THE UNITED STATES AND THAT COUNTRY;

2. IS NONCOMPLIANT ACCORDING TO THE MOST RECENT COMPLIANCE REPORT ISSUED BY THE UNITED STATES DEPARTMENT OF STATE; OR

3. LACKS LEGAL MECHANISMS FOR IMMEDIATELY AND EFFECTIVELY ENFORCING A RETURN ORDER UNDER THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION;

(iii) POSES A RISK THAT THE CHILD'S PHYSICAL OR 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:

(Over)

1. ENABLE THE RESPONDENT, WITHOUT DUE CAUSE, TO PREVENT THE PETITIONER FROM CONTACTING THE CHILD;

2. RESTRICT THE PETITIONER FROM FREELY TRAVELING TO OR EXITING FROM THE COUNTRY BECAUSE OF THE PETITIONER'S GENDER, NATIONALITY, MARITAL STATUS, OR RELIGION; OR

3. 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 ANY 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) IN A HEARING ON A PETITION UNDER THIS TITLE, 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.

9.7-108.

(A) IF A PETITION IS FILED UNDER THIS TITLE, THE COURT MAY ENTER AN ORDER THAT SHALL INCLUDE:

(1) THE BASIS FOR THE COURT'S EXERCISE OF JURISDICTION;

(2) THE MANNER IN WHICH NOTICE AND AN 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

(Over)

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) (1) IF, AT A HEARING ON A PETITION UNDER THIS TITLE OR ON THE COURT'S OWN MOTION, THE COURT AFTER REVIEWING THE EVIDENCE FINDS A CREDIBLE RISK OF ABDUCTION OF THE CHILD, THE COURT SHALL ENTER AN ABDUCTION PREVENTION ORDER.

(2) AN ORDER ENTERED UNDER THIS SUBSECTION SHALL INCLUDE THE PROVISIONS REQUIRED BY SUBSECTION (A) OF THIS SECTION AND MEASURES AND CONDITIONS, INCLUDING THOSE IN SUBSECTIONS (C), (D), AND (E) OF THIS SECTION, THAT ARE REASONABLY CALCULATED TO PREVENT ABDUCTION OF THE CHILD, GIVING DUE CONSIDERATION TO THE CUSTODY AND VISITATION RIGHTS OF THE PARTIES.

(3) THE COURT SHALL CONSIDER THE AGE OF THE CHILD, THE POTENTIAL HARM TO THE CHILD FROM AN ABDUCTION, THE LEGAL AND PRACTICAL DIFFICULTIES OF RETURNING THE CHILD TO THE JURISDICTION IF ABDUCTED, AND THE REASONS FOR THE POTENTIAL ABDUCTION, INCLUDING EVIDENCE OF DOMESTIC VIOLENCE, STALKING, OR CHILD ABUSE OR NEGLECT.

(C) AN ABDUCTION PREVENTION ORDER MAY INCLUDE ONE OR MORE OF THE FOLLOWING:

(1) AN IMPOSITION OF TRAVEL RESTRICTIONS THAT REQUIRE THAT A PARTY TRAVELING WITH THE CHILD OUTSIDE A DESIGNATED GEOGRAPHIC AREA PROVIDE THE OTHER PARTY WITH THE FOLLOWING:

(I) THE TRAVEL ITINERARY OF THE CHILD;

(II) A LIST OF PHYSICAL ADDRESSES AND TELEPHONE NUMBERS AT WHICH THE CHILD CAN BE REACHED AT SPECIFIED TIMES; AND

(III) COPIES OF ALL TRAVEL DOCUMENTS;

(2) A PROHIBITION ON THE RESPONDENT DIRECTLY OR INDIRECTLY:

(I) REMOVING THE CHILD FROM THE STATE, THE UNITED STATES, OR ANOTHER GEOGRAPHIC AREA WITHOUT PERMISSION OF THE COURT OR THE PETITIONER'S WRITTEN CONSENT;

(II) REMOVING OR RETAINING THE CHILD IN VIOLATION OF A CHILD CUSTODY DETERMINATION;

(III) REMOVING THE CHILD FROM SCHOOL OR A CHILD CARE OR SIMILAR FACILITY; OR

(IV) APPROACHING THE CHILD AT ANY LOCATION OTHER THAN A SITE DESIGNATED FOR SUPERVISED VISITATION;

(3) A REQUIREMENT THAT A PARTY REGISTER THE ORDER IN ANOTHER STATE AS A PREREQUISITE TO ALLOWING THE CHILD TO TRAVEL TO

(Over)

THAT STATE;

(4) WITH REGARD TO THE CHILD'S PASSPORT:

(I) A DIRECTION THAT THE PETITIONER PLACE THE CHILD'S NAME IN THE UNITED STATES DEPARTMENT OF STATE'S CHILD PASSPORT ISSUANCE ALERT PROGRAM;

(II) A REQUIREMENT THAT THE RESPONDENT SURRENDER TO THE COURT OR THE PETITIONER'S ATTORNEY ANY UNITED STATES OR FOREIGN PASSPORT ISSUED IN THE CHILD'S NAME, INCLUDING A PASSPORT ISSUED IN THE NAME OF BOTH THE PARENT AND THE CHILD; AND

(III) A PROHIBITION ON THE RESPONDENT APPLYING ON BEHALF OF THE CHILD FOR A NEW OR REPLACEMENT PASSPORT OR VISA;

(5) AS A PREREQUISITE TO EXERCISING CUSTODY OR VISITATION, A REQUIREMENT THAT THE RESPONDENT PROVIDE:

(I) TO THE UNITED STATES DEPARTMENT OF STATE'S OFFICE OF CHILDREN'S ISSUES AND THE RELEVANT FOREIGN CONSULATE OR EMBASSY, AN AUTHENTICATED COPY OF THE ORDER DETAILING PASSPORT AND TRAVEL RESTRICTIONS FOR THE CHILD;

(II) TO THE COURT:

1. PROOF THAT THE RESPONDENT HAS PROVIDED THE INFORMATION IN ITEM (I) OF THIS ITEM; AND

2. AN ACKNOWLEDGMENT IN A RECORD FROM THE RELEVANT FOREIGN CONSULATE OR EMBASSY THAT NO PASSPORT APPLICATION HAS BEEN MADE, OR PASSPORT ISSUED, ON BEHALF OF THE CHILD;

(III) TO THE PETITIONER, PROOF OF REGISTRATION WITH THE UNITED STATES EMBASSY OR OTHER UNITED STATES DIPLOMATIC PRESENCE IN THE DESTINATION COUNTRY AND WITH THE CENTRAL AUTHORITY FOR THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION, IF THAT CONVENTION IS IN EFFECT BETWEEN THE UNITED STATES AND THE DESTINATION COUNTRY, UNLESS ONE OF THE PARTIES OBJECTS; AND

(IV) A WRITTEN WAIVER UNDER THE FEDERAL PRIVACY ACT, 5 U.S.C. § 552A, WITH RESPECT TO ANY DOCUMENT, APPLICATION, OR OTHER INFORMATION PERTAINING TO THE CHILD AUTHORIZING ITS DISCLOSURE TO THE COURT AND THE PETITIONER; AND

(6) ON THE PETITIONER'S REQUEST, A REQUIREMENT THAT THE RESPONDENT OBTAIN AN ORDER FROM THE RELEVANT FOREIGN COUNTRY CONTAINING TERMS IDENTICAL TO THE CHILD CUSTODY DETERMINATION ISSUED IN THE UNITED STATES.

(D) IN AN ABDUCTION PREVENTION ORDER THE COURT MAY IMPOSE CONDITIONS ON THE EXERCISE OF CUSTODY OR VISITATION THAT:

(1) (I) LIMIT VISITATION OR REQUIRE THAT VISITATION WITH THE CHILD BY THE RESPONDENT BE SUPERVISED UNTIL THE COURT FINDS THAT SUPERVISION IS NO LONGER NECESSARY; AND

(Over)

(II) ORDER THE RESPONDENT TO PAY THE COSTS OF ANY SUPERVISION;

(2) REQUIRE THE RESPONDENT TO POST A BOND OR PROVIDE OTHER SECURITY IN AN AMOUNT SUFFICIENT TO SERVE AS A FINANCIAL DETERRENT TO ABDUCTION, THE PROCEEDS OF WHICH MAY BE USED TO PAY FOR THE REASONABLE EXPENSES OF RECOVERY OF THE CHILD, INCLUDING REASONABLE ATTORNEY'S FEES AND COSTS IF THERE IS AN ABDUCTION; AND

(3) REQUIRE THE RESPONDENT TO OBTAIN EDUCATION ON THE POTENTIALLY HARMFUL EFFECTS TO THE CHILD FROM ABDUCTION.

(E) TO PREVENT IMMINENT ABDUCTION OF A CHILD, A COURT MAY:

(1) ISSUE A WARRANT TO TAKE PHYSICAL CUSTODY OF THE CHILD UNDER § 9.7-109 OF THIS TITLE OR UNDER ANY OTHER LAW OF THE STATE;

(2) DIRECT THE USE OF LAW ENFORCEMENT TO TAKE ANY ACTION REASONABLY NECESSARY TO LOCATE THE CHILD, OBTAIN RETURN OF THE CHILD, OR ENFORCE A CUSTODY DETERMINATION UNDER THE LAWS OF THE STATE; OR

(3) GRANT ANY OTHER RELIEF ALLOWED UNDER THE LAWS OF THE STATE.

(F) THE REMEDIES PROVIDED IN THIS SECTION ARE CUMULATIVE AND DO NOT AFFECT THE AVAILABILITY OF OTHER REMEDIES TO PREVENT ABDUCTION.

9.7-109.

(A) IF A PETITION UNDER THIS TITLE CONTAINS ALLEGATIONS, AND THE COURT FINDS THAT THERE IS A CREDIBLE RISK OF ABDUCTION, THE COURT MAY ISSUE AN EX PARTE WARRANT FOR PHYSICAL CUSTODY OF THE CHILD.

(B) (1) THE RESPONDENT IN A PETITION UNDER SUBSECTION (A) OF THIS SECTION SHALL BE AFFORDED AN OPPORTUNITY TO BE HEARD AT THE EARLIEST POSSIBLE TIME AFTER THE EX PARTE WARRANT IS EXECUTED, BUT NOT LATER THAN THE NEXT BUSINESS DAY, UNLESS A HEARING ON THE NEXT BUSINESS DAY IS IMPOSSIBLE.

(2) IF A HEARING UNDER PARAGRAPH (1) OF THIS SUBSECTION IS NOT POSSIBLE, THE COURT SHALL HOLD THE HEARING ON THE NEXT BUSINESS DAY.

(C) AN EX PARTE WARRANT UNDER SUBSECTION (A) OF THIS SECTION SHALL:

(1) RECITE THE FACTS ON WHICH A DETERMINATION OF A CREDIBLE RISK OF IMMINENT WRONGFUL REMOVAL OF THE CHILD IS BASED;

(2) DIRECT LAW ENFORCEMENT OFFICERS TO TAKE PHYSICAL CUSTODY OF THE CHILD IMMEDIATELY;

(3) STATE THE DATE AND TIME FOR THE HEARING ON THE PETITION; AND

(4) PROVIDE FOR THE SAFE INTERIM PLACEMENT OF THE CHILD

(Over)

PENDING FURTHER ORDER OF THE COURT.

(D) IF FEASIBLE, BEFORE ISSUING A WARRANT AND BEFORE DETERMINING THE PLACEMENT OF THE CHILD AFTER THE WARRANT IS EXECUTED, THE COURT MAY ORDER A SEARCH OF THE RELEVANT DATABASES OF THE NATIONAL CRIME INFORMATION CENTER SYSTEM AND SIMILAR DATABASES TO DETERMINE IF EITHER THE PETITIONER OR RESPONDENT HAS A HISTORY OF DOMESTIC VIOLENCE, STALKING, OR CHILD ABUSE OR NEGLECT.

(E) THE PETITION AND WARRANT MUST BE SERVED ON THE RESPONDENT WHEN OR IMMEDIATELY AFTER THE CHILD IS TAKEN INTO PHYSICAL CUSTODY.

(F) (1) A WARRANT TO TAKE PHYSICAL CUSTODY OF A CHILD ISSUED BY THIS STATE IS ENFORCEABLE IN THIS STATE.

(2) IF THE COURT FINDS THAT A LESS INTRUSIVE REMEDY WILL NOT BE EFFECTIVE, THE COURT MAY AUTHORIZE LAW ENFORCEMENT OFFICERS TO ENTER PRIVATE PROPERTY TO TAKE PHYSICAL CUSTODY OF THE CHILD.

(3) IF REQUIRED BY EXIGENT CIRCUMSTANCES, A COURT MAY AUTHORIZE LAW ENFORCEMENT OFFICERS TO MAKE A FORCIBLE ENTRY AT ANY HOUR.

(G) IF THE COURT FINDS, AFTER A HEARING, THAT A PETITIONER SOUGHT AN EX PARTE WARRANT UNDER SUBSECTION (A) OF THIS SECTION FOR THE PURPOSE OF HARASSMENT OR IN BAD FAITH, THE COURT MAY AWARD THE RESPONDENT REASONABLE ATTORNEY'S FEES, COSTS, AND EXPENSES.

**(H) THIS TITLE DOES NOT AFFECT THE AVAILABILITY OF RELIEF IN
OTHER PROVISIONS OF STATE LAW.**

9.7-110.”;

in line 13, strike “**9.7-108.**” and substitute “**9.7-111.**”; and strike beginning with “AND”
in line 16 down through “3.” in line 20.