

Regular Session, 2007

SENATE BILL NO. 73

BY SENATOR BROOME

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CHILDREN. Enacts the Uniform Child Abduction Prevention Act. (8/15/07)

AN ACT

To enact Part V of Chapter 6 of Title 13 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 13:1851 through 1862, relative to child abduction prevention; to provide definitions; to provide relative to cooperation and communication among courts; to provide relative to actions for abduction prevention; to provide relative to jurisdiction in child abduction cases; to provide relative to factors to determine risk of abduction and measures to prevent abductions; to provide relative to court actions and orders; to provide relative to the duration of an abduction prevention order; to provide for uniform application; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Part V of Chapter 6 of Title 13 of the Louisiana Revised Statutes of 1950, comprised of R.S. 13:1851 through 1862, is hereby enacted to read as follows:

PART V. UNIFORM CHILD ABDUCTION PREVENTION ACT

SUBPART A. GENERAL PROVISIONS

§1851. Short title

This Part may be cited as the Uniform Child Abduction Prevention Act.

1 **§1852. Definitions**

2 **For purposes of this Part, the following terms shall have the following**
3 **meanings unless the context clearly indicates otherwise:**

4 **(1) “Abduction” means the wrongful removal or wrongful retention of**
5 **a child.**

6 **(2) “Child” means an unemancipated individual who is less than eighteen**
7 **years of age.**

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

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

17 **(5) “Court” means an entity authorized under the law of a state to**
18 **establish, enforce, or modify a child-custody determination.**

19 **(6) “Petition” includes a motion or its equivalent.**

20 **(7) “Record” means information that is inscribed on a tangible medium**
21 **or that is stored in an electronic or other medium and is retrievable in**
22 **perceivable form.**

23 **(8) “State” means a state of the United States, the District of Columbia,**
24 **Puerto Rico, the United States Virgin Islands, or any territory or insular**
25 **possession subject to the jurisdiction of the United States. The term includes a**
26 **federally recognized Indian tribe or nation.**

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

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

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

6 §1853. Cooperation and communication among courts

7 The provisions of R.S. 13:1810 through 1812 apply to cooperation and
8 communications among courts in proceedings under this Part.

9 §1854. Actions for abduction prevention measures

10 A. A court on its own motion may order abduction prevention measures
11 in a child-custody proceeding if the court finds that the evidence establishes a
12 credible risk of abduction of the child.

13 B. A party to a child-custody determination or another individual or
14 entity having a right under the law of this state or any other state to seek a
15 child-custody determination for the child may file a petition seeking abduction
16 prevention measures to protect the child under this Part.

17 C. A prosecutor or public authority designated under R.S. 13:1837 may
18 seek a warrant to take physical custody of a child under R.S. 13:1859 or other
19 appropriate prevention measures.

20 SUBPART B. JURISDICTION

21 §1855. Jurisdiction

22 A. A petition under this Part may be filed only in a court that has
23 jurisdiction to make a child-custody determination with respect to the child at
24 issue under the provisions of R.S. 13:1813 through 1816 or R.S. 13:1702.

25 B. A court of this state has temporary emergency jurisdiction under the
26 provisions of R.S. 13:1816 or R.S. 13:1702, if the court finds a credible risk of
27 abduction.

28 SUBPART C. ENFORCEMENT

29 §1856. Contents of petition

1 A petition under this Part must be verified and include a copy of any
2 existing child-custody determination, if available. The petition must specify the
3 risk factors for abduction, including the relevant factors described in R.S.
4 13:1857. Subject to the provisions of R.S. 13:1821(E), if reasonably
5 ascertainable, the petition must contain:

6 (1) The name, date of birth, and gender of the child.

7 (2) The customary address and current physical location of the child.

8 (3) The identity, customary address, and current physical location of the
9 respondent.

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

13 (5) A statement of whether a party to the proceeding has been arrested
14 for a crime related to domestic violence, stalking, or child abuse or neglect, and
15 the date, location, and disposition of the case.

16 (6) Any other information required to be submitted to the court for a
17 child-custody determination under R.S. 13:1821.

18 §1857. Factors to determine risk of abduction

19 A. In determining whether there is a credible risk of abduction of a
20 child, the court shall consider any evidence that the petitioner or respondent:

21 (1) Has previously abducted or attempted to abduct the child.

22 (2) Has threatened to abduct the child.

23 (3) Has recently engaged in activities that may indicate a planned
24 abduction, including any of the following:

25 (a) Abandoning employment.

26 (b) Selling a primary residence.

27 (c) Terminating a lease.

28 (d) Closing bank or other financial management accounts, liquidating
29 assets, hiding or destroying financial documents, or conducting any unusual

1 financial activities.

2 (e) Applying for a passport or visa or obtaining travel documents for the
3 respondent, a family member, or the child.

4 (f) Seeking to obtain the child's birth certificate or school or medical
5 records.

6 (4) Has engaged in domestic violence, stalking, or child abuse or neglect.

7 (5) Has refused to follow a child-custody determination.

8 (6) Lacks strong familial, financial, emotional, or cultural ties to the state
9 or the United States.

10 (7) Has strong familial, financial, emotional, or cultural ties to another
11 state or country.

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

13 (a) Is not a party to the Hague Convention on the Civil Aspects of
14 International Child Abduction and does not provide for the extradition of an
15 abducting parent or for the return of an abducted child.

16 (b) Is a party to the Hague Convention on the Civil Aspects of
17 International Child Abduction but either:

18 (i) The Hague Convention on the Civil Aspects of International Child
19 Abduction is not in force between the United States and that country.

20 (ii) Is noncompliant according to the most recent compliance report
21 issued by the United States Department of State.

22 (iii) Lacks legal mechanisms for immediately and effectively enforcing
23 a return order under the Hague Convention on the Civil Aspects of
24 International Child Abduction.

25 (c) Poses a risk that the child's physical or emotional health or safety
26 would be endangered in the country because of specific circumstances relating
27 to the child or because of human rights violations committed against children.

28 (d) Has laws or practices that would either:

29 (i) Enable the respondent, without due cause, to prevent the petitioner

1 from contacting the child.

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

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

7 (e) Is included by the United States Department of State on a current list
8 of state sponsors of terrorism.

9 (f) Does not have an official United States diplomatic presence in the
10 country.

11 (g) Is engaged in active military action or war, including a civil war, to
12 which the child may be exposed.

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

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

17 (11) Has forged or presented misleading or false evidence on government
18 forms or supporting documents to obtain or attempt to obtain a passport, a visa,
19 travel documents, a Social Security card, a driver's license, or other
20 government-issued identification card or has made a misrepresentation to the
21 United States government.

22 (12) Has used multiple names to attempt to mislead or defraud.

23 (13) Has engaged in any other conduct the court considers relevant to the
24 risk of abduction.

25 B. In the hearing on a petition under this Part, the court shall consider
26 any evidence that the respondent believed in good faith that the respondent's
27 conduct was necessary to avoid imminent harm to the child or respondent and
28 any other evidence that may be relevant to whether the respondent may be
29 permitted to remove or retain the child.

1 **§1858. Provisions and measures to prevent abduction**

2 **A. If a petition is filed under this Part, the court may enter an order that**
3 **must include:**

4 **(1) The basis for the court's exercise of jurisdiction.**

5 **(2) The manner in which notice and opportunity to be heard were given**
6 **to the persons entitled to notice of the proceeding.**

7 **(3) A detailed description of each party's custody and visitation rights**
8 **and residential arrangements for the child.**

9 **(4) A provision stating that a violation of the order may subject the party**
10 **in violation to civil and criminal penalties.**

11 **(5) Identification of the child's country of habitual residence at the time**
12 **of the issuance of the order.**

13 **B. If, at a hearing on a petition under this Part or on the court's own**
14 **motion, the court after reviewing the evidence finds a credible risk of abduction**
15 **of the child, the court shall enter an abduction prevention order. The order**
16 **must include the provisions required by Subsection A and measures and**
17 **conditions, including those in Subsections C, D, and E, that are reasonably**
18 **calculated to prevent abduction of the child, giving due consideration to the**
19 **custody and visitation rights of the parties. The court shall consider the age of**
20 **the child, the potential harm to the child from an abduction, the legal and**
21 **practical difficulties of returning the child to the jurisdiction if abducted, and**
22 **the reasons for the potential abduction, including evidence of domestic violence,**
23 **stalking, or child abuse or neglect.**

24 **C. An abduction prevention order may include one or more of the**
25 **following:**

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

29 **(a) The travel itinerary of the child.**

1 **(b) A list of physical addresses and telephone numbers at which the child**
2 **can be reached at specified times.**

3 **(c) Copies of all travel documents.**

4 **(2) A prohibition of the respondent directly or indirectly, either:**

5 **(a) Removing the child from this state, the United States, or another**
6 **geographical area without permission of the court or the petitioner's written**
7 **consent.**

8 **(b) Removing or retaining the child in violation of a child-custody**
9 **determination.**

10 **(c) Removing the child from school or a child-care or similar facility.**

11 **(d) Approaching the child at any location other than a site designated for**
12 **supervised visitation.**

13 **(3) A requirement that a party register the order in another state as a**
14 **prerequisite to allowing the child to travel to that state.**

15 **(4) With regard to the child's passport, all of the following:**

16 **(a) A direction that the petitioner is to place the child's name in the**
17 **United States Department of State's Child Passport Issuance Alert Program.**

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

21 **(c) A prohibition upon the respondent from applying on behalf of the**
22 **child for a new or replacement passport or visa.**

23 **(5) As a prerequisite to exercising custody or visitation, a requirement**
24 **that the respondent provide all of the following:**

25 **(a) To the United States Department of State Office of Children's Issues**
26 **and the relevant foreign consulate or embassy, an authenticated copy of the**
27 **order detailing passport and travel restrictions for the child.**

28 **(b) To the court:**

29 **(i) Proof that the respondent has provided the information in**

1 **Subparagraph a.**

2 **(ii) An acknowledgment in a record from the relevant foreign consulate**
3 **or embassy that no passport application has been made, or passport issued, on**
4 **behalf of the child.**

5 **(c) To the petitioner, proof of registration with the United States**
6 **Embassy or other United States diplomatic presence in the destination country**
7 **and with the Central Authority for the Hague Convention on the Civil Aspects**
8 **of International Child Abduction, if that convention is in effect between the**
9 **United States and the destination country, unless one of the parties objects.**

10 **(d) A written waiver under the Privacy Act, 5 U.S.C. Section 552a, with**
11 **respect to any document, application, or other information pertaining to the**
12 **child authorizing its disclosure to the court and the petitioner.**

13 **(6) Upon the petitioner's request, a requirement that the respondent**
14 **obtain an order from the relevant foreign country containing terms identical to**
15 **the child-custody determination issued in the United States.**

16 **D. In an abduction prevention order, the court may impose conditions**
17 **on the exercise of custody or visitation that:**

18 **(1) Limit visitation or require that visitation with the child by the**
19 **respondent be supervised until the court finds that supervision is no longer**
20 **necessary and order the respondent to pay the costs of supervision.**

21 **(2) Require the respondent to post a bond or provide other security in an**
22 **amount sufficient to serve as a financial deterrent to abduction, the proceeds of**
23 **which may be used to pay for the reasonable expenses of recovery of the child,**
24 **including reasonable attorney fees and costs if there is an abduction.**

25 **(3) Require the respondent to obtain education on the potentially**
26 **harmful effects to the child from abduction.**

27 **E. To prevent imminent abduction of a child, a court may either:**

28 **(1) Issue a warrant to take physical custody of the child under R.S. 13:**
29 **1859 or the law of this state other than this Part.**

1 (2) Direct the use of law enforcement to take any action reasonably
2 necessary to locate the child, obtain return of the child, or enforce a custody
3 determination under this Part or the law of this state other than this Part.

4 (3) Grant any other relief allowed under any law of this state other than
5 this Part.

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

8 §1859. Warrant to take physical custody of child

9 A. If a petition under this Part contains allegations, and the court finds
10 that there is a credible risk that the child is imminently likely to be wrongfully
11 removed, the court may issue an ex parte warrant to take physical custody of
12 the child.

13 B. The respondent on a petition under Subsection A must be afforded
14 an opportunity to be heard at the earliest possible time after the ex parte
15 warrant is executed, but not later than the next judicial day unless a hearing on
16 that date is impossible. In that event, the court shall hold the hearing on the
17 first judicial day possible.

18 C. An ex parte warrant under Subsection A to take physical custody of
19 a child must:

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

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

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

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

27 D. If feasible, before issuing a warrant and before determining the
28 placement of the child after the warrant is executed, the court may order a
29 search of the relevant databases of the National Crime Information Center

1 system and similar state databases to determine if either the petitioner or
2 respondent has a history of domestic violence, stalking, or child abuse or
3 neglect.

4 E. The petition and warrant must be served on the respondent when or
5 immediately after the child is taken into physical custody.

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

12 G. If the court finds, after a hearing, that a petitioner sought an ex parte
13 warrant under Subsection A for the purpose of harassment or in bad faith, the
14 court may award the respondent reasonable attorney fees, costs, and expenses.

15 H. This Part does not affect the availability of relief allowed under the
16 laws of this state other than this Part.

17 §1860. Duration of abduction prevention order

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

19 (1) The time stated in the order.

20 (2) The emancipation of the child.

21 (3) The child's attaining eighteen years of age.

22 (4) The time the order is modified, revoked, vacated, or superseded by
23 a court with jurisdiction under the provisions of R.S. 13:1813 through 1815 or
24 R.S. 13:1702 and other applicable law of this state.

25 SUBPART D. APPLICATION

26 §1861. Uniformity of application and construction

27 In applying and construing this Part, consideration must be given to the
28 need to promote uniformity of the law with respect to its subject matter among
29 states that enact it.

SUBPART E. MISCELLANEOUS PROVISION**§1862. Relation to electronic signatures in Global and National Commerce Act****and the Louisiana Electronic Transactions Act**

This Part modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., and the Louisiana Electronic Transactions Act, R.S. 9:2601 et seq., but does not modify, limit, or supersede Section 101(c) of the Act, 15 U.S.C. Section 7001(c), of that Act or authorize electronic delivery of any of the notices described in Section 103(b) of that Act, 15 U.S.C. Section 7003(b) or R.S. 9:2603(B)(4).

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Angela Lockett-DeJean.

DIGEST

Broome (SB 73)

Proposed law creates the Uniform Child Abduction Prevention Act.

Proposed law provides that a petition under the Uniform Child Abduction Prevention Act may be filed only in a court that has jurisdiction to make a custody determination with respect to the child at issue under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) or the Uniform Child Custody Jurisdiction Act (UCCJA).

Proposed law requires cooperation and communication among courts in proceedings under the Uniform Child Abduction Prevention Act.

Proposed law provides factors to determine risk of abduction and measures to prevent abduction.

Proposed law provides for pleadings and authorizes court to determine and impose abduction prevention measures and remedies.

Proposed law authorizes the court to issue an ex parte warrant to take physical custody of the child if there is a credible risk that the child is imminently likely to be wrongfully removed.

Proposed law provides that an abduction prevention order remains in effect until the earliest of the time stated in the order, the emancipation of the child, the child's attaining 18 years of age, or the time the order is modified, revoked, vacated or superseded by a court jurisdiction under the UCCJEA or the UCCJA.

Effective August 15, 2007.

(Adds R.S. 13:1851-1862)