


Councilmember Phil Mendelson

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A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Councilmember Phil Mendelson introduced the following bill, which was referred to the
Committee on _____.

To enact the Uniform Child Abduction Prevention Act, to provide the Superior Court with
guidelines to follow during custody disputes and divorce proceedings, to help the Court
identify families at risk for abduction, and to provide methods to prevent the abduction of
children, and for other purposes.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
act may be cited as the “Uniform Child Abduction Prevention Act of 2008.”

Sec. 2. Title 16 of the District of Columbia Official Code is amended:

(a) by amending the table of contents by inserting the following:

“51. Uniform Child Abduction Prevention 16-5101”; and

(b) by adding the following new chapter:

“Chapter 51

“Uniform Child Abduction Prevention

“Section

“§ 16-5101. Short title.

“§ 16-5102. Definitions	1
“§ 16-5103. Cooperation and communication among courts.	2
“§ 16-5104. Actions for abduction prevention measures.	3
“§ 16-5105. Jurisdiction.	4
“§ 16-5106. Contents of petition.	5
“§ 16-5107. Factors to determine risk of abduction.	6
“§ 16-5108. Provisions and measures to prevent abduction.	7
“§ 16-5109. Warrant to take physical custody of child.	8
“§ 16-5110. Duration of abduction prevention order.	9
“§ 16-5111. Uniformity of application and construction.	10
“§ 16-5112. Relation to Electronic Signatures in Global and National Commerce Act.	11
“Sec. 16-5101. Short title.	12
“This chapter may be cited as the Uniform Child Abduction Prevention Act.	13
“Sec. 2. Definitions.	14
“In this chapter:	15
“(1) “Abduction” means the wrongful removal or wrongful retention of a child.	16
“(2) “Child” means an unemancipated individual who is less than 18 years of age.	17
“(3) “Child-custody determination” means a judgment, decree, or other order of a court	18
providing for the legal custody, physical custody, or visitation with respect to a child. The term	19
includes a permanent, temporary, initial, and modification order.	20
“(4) “Child-custody proceeding” means a proceeding in which legal custody, physical	21
custody, or visitation with respect to a child is at issue. The term includes a proceeding for	22

divorce, dissolution of marriage, separation, neglect, abuse, dependency, guardianship, paternity, 1
termination of parental rights, or protection from domestic violence. 2

“(5) “Court” means an entity authorized under the law of a state to establish, enforce, or 3
modify a child-custody determination. 4

“(6) “Petition” includes a motion or its equivalent. 5

“(7) “Record” means information that is inscribed on a tangible medium or that is stored 6
in an electronic or other medium and is retrievable in perceivable form. 7

“(8) “State” means a state of the United States, the District of Columbia, Puerto Rico, the 8
United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of 9
the United States. The term includes a federally recognized Indian tribe or nation. 10

“(9) “Travel document” means records relating to a travel itinerary, including travel 11
tickets, passes, reservations for transportation, or accommodations. The term does not include a 12
passport or visa. 13

“(10) “Wrongful removal” means the taking of a child that breaches rights of custody or 14
visitation given or recognized under the law of this state. 15

“(11) “Wrongful retention” means the keeping or concealing of a child that breaches 16
rights of custody or visitation given or recognized under the law of this state. 17

“§ 16-5103. Cooperation and communication among courts. 18

“§§ 16-4601.10, 16-4601.11, and 16-4601.12 apply to cooperation and communications 19
among courts in proceedings under this chapter. 20

“§ 16-5104. Actions for abduction prevention measures. 21

“(a) A court on its own motion may order abduction prevention measures in a child- 22

custody proceeding if the court finds that the evidence establishes a credible risk of abduction of the child.

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

“(c) The Attorney General for the District of Columbia may seek a warrant to take physical custody of a child under § 16-5109 or other appropriate prevention measures.

“§ 16-5105. Jurisdiction.

“(a) A petition under this chapter may be filed only in a court that has jurisdiction to make a child-custody determination with respect to the child at issue under §§ 16-4601.01 to 16-4604.02.

“(b) A court of this state has temporary emergency jurisdiction under § 16-4602.04 if the court finds a credible risk of abduction.

“§ 16-5106. Contents of petition.

“A petition under this chapter must be verified and include a copy of any existing child-custody determination, if available. The petition must specify the risk factors for abduction, including the relevant factors described in § 16-5107. Subject to § 16-4602.09(e), if reasonably ascertainable, the petition must contain:

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

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

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

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

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

“(6) any other information required to be submitted to the court for a child-custody
determination under § 16-4602.09.

“§ 16-5107. Factors to determine risk of abduction.

“(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:

“(A) abandoning employment;

“(B) selling a primary residence;

“(C) terminating a lease;

“(D) closing bank or other financial management accounts, liquidating
assets, hiding or destroying financial documents, or conducting any unusual financial activities;

“(E) applying for a passport or visa or obtaining travel documents for the
respondent, a family member, or the child; or

“(F) seeking to obtain the child's birth certificate or school or medical records; 1 2

“(4) has engaged in domestic violence, stalking, or child abuse or neglect; 3

“(5) has refused to follow a child-custody determination; 4

“(6) lacks strong familial, financial, emotional, or cultural ties to the state or the United States; 5 6

“(7) has strong familial, financial, emotional, or cultural ties to another state or country; 7 8

“(8) is likely to take the child to a country that: 9

 “(A) 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; 10 11 12

 “(B) is a party to the Hague Convention on the Civil Aspects of International Child Abduction but: 13 14

 “(i) the Hague Convention on the Civil Aspects of International Child Abduction is not in force between the United States and that country; 15 16

 “(ii) is noncompliant according to the most recent compliance report issued by the United States Department of State; or 17 18

 “(iii) lacks legal mechanisms for immediately and effectively enforcing a return order under the Hague Convention on the Civil Aspects of International Child Abduction; 19 20 21

 “(C) poses a risk that the child’s physical or emotional health or safety 22

would be endangered in the country because of specific circumstances relating to the child or 1
because of human rights violations committed against children; 2

“(D) has laws or practices that would: 3

“(i) enable the respondent, without due cause, to prevent the 4
petitioner from contacting the child; 5

“(ii) restrict the petitioner from freely traveling to or exiting from 6
the country because of the petitioner’s gender, nationality, marital status, or religion; or 7

“(iii) restrict the child's ability legally to leave the country after the 8
child reaches the age of majority because of a child’s gender, nationality, or religion; 9

“(E) is included by the United States Department of State on a current list 10
of state sponsors of terrorism; 11

“(F) does not have an official United States diplomatic presence in the 12
country; or 13

“(G) is engaged in active military action or war, including a civil war, to 14
which the child may be exposed; 15

“(9) is undergoing a change in immigration or citizenship status that would 16
adversely affect the respondent’s ability to remain in the United States legally; 17

“(10) has had an application for United States citizenship denied; 18

“(11) has forged or presented misleading or false evidence on government forms 19
or supporting documents to obtain or attempt to obtain a passport, a visa, travel documents, a 20
Social Security card, a driver’s license, or other government-issued identification card or has 21
made a misrepresentation to the United States government; 22

“(12) has used multiple names to attempt to mislead or defraud; or 1
“(13) has engaged in any other conduct the court considers relevant to the risk of 2
abduction. 3

(b) In the hearing on a petition under this chapter, the court shall consider any evidence 4
that the respondent believed in good faith that the respondent’s conduct was necessary to avoid 5
imminent harm to the child or respondent and any other evidence that may be relevant to whether 6
the respondent may be permitted to remove or retain the child. 7

“§ 16-5108. Provisions and measures to prevent abduction. 8

“(a) If a petition is filed under this chapter, the court may enter an order that must include: 9

“(1) the basis for the court’s exercise of jurisdiction; 10

“(2) the manner in which notice and opportunity to be heard were given to the 11
persons entitled to notice of the proceeding; 12

“(3) a detailed description of each party’s custody and visitation rights and 13
residential arrangements for the child; 14

“(4) a provision stating that a violation of the order may subject the party in 15
violation to civil and criminal penalties; and 16

“(5) identification of the child’s country of habitual residence at the time of the 17
issuance of the order. 18

“(b) If, at a hearing on a petition under this chapter or on the court’s own motion, the 19
court after reviewing the evidence finds a credible risk of abduction of the child, the court shall 20
enter an abduction prevention order. The order must include the provisions required by 21
subsection (a) and measures and conditions, including those in subsections (c), (d), and (e), that 22

are reasonably calculated to prevent abduction of the child, giving due consideration to the custody and visitation rights of the parties. 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 geographical area provide the other party with the following:

“(A) the travel itinerary of the child;

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

“(C) copies of all travel documents;

“(2) a prohibition of the respondent directly or indirectly:

“(A) removing the child from this state, the United States, or another geographic area without permission of the court or the petitioner’s written consent;

“(B) removing or retaining the child in violation of a child-custody determination;

“(C) removing the child from school or a child-care or similar facility; or

“(D) 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 that state;

“(4) with regard to the child’s passport: 1

 “(A) a direction that the petitioner place the child’s name in the United 2
States Department of State’s Child Passport Issuance Alert Program; 3

 “(B) a requirement that the respondent surrender to the court or the 4
petitioner’s attorney any United States or foreign passport issued in the child’s name, including a 5
passport issued in the name of both the parent and the child; and 6

 “(C) a prohibition upon the respondent from applying on behalf of the 7
child for a new or replacement passport or visa; 8

“(5) as a prerequisite to exercising custody or visitation, a requirement that the 9
respondent provide: 10

 “(A) to the United States Department of State Office of Children’s Issues 11
and the relevant foreign consulate or embassy, an authenticated copy of the order detailing 12
passport and travel restrictions for the child; 13

 “(B) to the court: 14

 “(i) proof that the respondent has provided the information in 15
subparagraph (A); and 16

 “(ii) an acknowledgment in a record from the relevant foreign 17
consulate or embassy that no passport application has been made, or passport issued, on behalf of 18
the child; 19

 “(C) to the petitioner, proof of registration with the United States Embassy 20
or other United States diplomatic presence in the destination country and with the Central 21
Authority for the Hague Convention on the Civil Aspects of International Child Abduction, if 22

that Convention is in effect between the United States and the destination country, unless one of
the parties objects; and

“(D) a written waiver under the 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) upon 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) 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 order the respondent
to pay the costs of 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 attorneys 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 § 16-5109 or the
law of this state other than this chapter;

“(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 this chapter or the law of this state other than this chapter; or

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

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

“§ 16-5109. Warrant to take physical custody of child.

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

“(b) The respondent on a petition under subsection (a) must 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 judicial day unless a hearing on that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible.

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

“(1) recite the facts upon 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 pending further order of

the court. 1

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

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

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

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

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

“§ 16-5110. 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 18 years of age; or 22

“(4) the time the order is modified, revoked, vacated, or superseded by a court with jurisdiction under §§ 16-4602.01 to 16-4602.03.

“§ 16-5111. Uniformity of application and construction.

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

“§ 16-5112. Relation to Electronic Signatures in Global and National Commerce Act.

“This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001, et seq., but does not modify, limit, or supersede Section 101(c) of the act, 15 U.S.C. § 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. § 7003(b).”

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.