

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 267
Judiciary

(Delegate Bartlett, *et al.*)

Judicial Proceedings

Family Law - Maryland Child Abduction Prevention Act

This bill authorizes a court to order abduction prevention measures in a child custody proceeding if the court finds that the evidence establishes a credible risk of abduction of the child and establishes procedures by which a party or another individual or entity, as specified, may file a petition seeking such measures. The bill also authorizes a court to issue an *ex parte* warrant for physical custody of the child if the court finds that there is a credible risk of abduction and establishes related requirements and procedures.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State finances but may have an operational effect on the Judiciary, as discussed below.

Local Effect: The bill is not anticipated to materially affect local government finances but may have an operational effect on the circuit courts, as discussed below.

Small Business Effect: None.

Analysis

Bill Summary:

Select Definitions

“Abduction” is the wrongful removal or wrongful retention of a child.

“Wrongful removal” means a taking of a child that breaches rights of custody or visitation provided or recognized under the laws of the State.

“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.

Abduction Prevention Measures – In General

A court, on its own motion, may order abduction prevention measures in a child custody proceeding if the court finds that the evidence establishes a credible risk of abduction of the child. A party to a child custody determination or another individual or entity having standing, as specified, may file a petition seeking abduction prevention measures to protect the child.

A petition may be filed only in a court that has jurisdiction to make a child custody determination with respect to the child at issue under Title 9.5 of the Family Law Article (the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)). A court in the State must have temporary emergency jurisdiction under UCCJEA if the court finds a credible risk of abduction. Specified provisions of UCCJEA apply to cooperation and communications among courts in a proceeding under the bill.

Contents of Petition

A petition must (1) be verified and include a copy, if available, of any existing child custody determination and (2) subject to specified exceptions regarding the disclosure of identifying information that jeopardizes the health, safety, or liberty of a child or party, contain specified information, including a statement as to whether a party to the proceeding has been arrested for a crime related to domestic violence, stalking, or child abuse and neglect.

The petition must also specify the risk factors for abduction, including relevant factors as specified in the bill. These factors, which the court must consider in determining whether there is a credible risk of abduction, include (among other items), any evidence that the petitioner or respondent:

- has previously abducted or attempted to abduct the child;
- has threatened to abduct the child;
- has recently engaged in activities that may indicate a planned abduction (*e.g.*, abandoning employment, selling a residence or terminating a lease, applying for a passport or obtaining travel documents, etc.);

- has strong familial, financial, emotional, or cultural ties to another state or country (or lacks such ties to the State or the United States);
- is likely to take the child to a country that meets specified criteria, such as not having an official U.S. diplomatic presence or having laws or practices that would restrict the child's ability to leave the country after the child reaches the age of majority because of a child's gender, nationality, or religion;
- has used multiple names to attempt to mislead or defraud; or
- has engaged in any other conduct the court considers relevant to the risk of abduction.

Court Orders

If a petition is filed, the court may enter an order that must 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 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 the order is issued.

If, at a hearing, the court finds a credible risk of abduction of the child, the court must enter an abduction prevention order. Such an order must include the provisions required above and measures and conditions that are reasonably calculated to prevent abduction of the child, as specified, giving due consideration to the custody and visitation rights of the parties. The court must 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). Furthermore, the court must 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.

An abduction prevention order may include, among other provisions:

- an imposition of travel restrictions that require that a party traveling with the child outside a designated geographic area provide the other party with specified travel documents and contact information;
- a prohibition on the respondent, directly or indirectly, removing the child from the State, the country, or another geographic area without permission of the court or the petitioner's written consent;

- a requirement that a party register the order in another state as a prerequisite to allowing the child to travel to that state; and
- specified protections regarding the child's passport, including a prohibition on the respondent applying on behalf of the child for a new or replacement passport or visa.

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 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, as specified; and (3) require the respondent to obtain education on the potentially harmful effects to the child from abduction.

An abduction prevention order remains in effect until the earliest of (1) the time stated in the order; (2) the emancipation of the child; (3) the child attaining age 18; or (4) the time the order is modified, revoked, vacated, or superseded by a court with jurisdiction pursuant to UCCJEA.

Ex Parte Warrants and Other Remedies

To prevent imminent abduction of a child, a court may (1) issue a warrant to take physical custody of the child, as specified; (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 State law. The specified remedies (including those included in the orders referenced above) are cumulative and do not affect the availability of other remedies to prevent abduction.

If a petition 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. The respondent must be afforded an opportunity to be heard at the earliest possible time after the warrant is executed, but no later than the next business day (unless a hearing on the next business day is impossible). A prosecutor or other authority, as specified, may seek a warrant to take physical custody of a child.

Among other requirements, an *ex parte* warrant must direct law enforcement officers to take physical custody of the child immediately and provide for the safe interim placement of the child pending further order of the court. If feasible, prior to issuing a warrant and before determining interim placement for the child, the court may order a search of relevant databases to determine if either the petitioner or the respondent has a history of domestic violence, stalking, or child abuse or neglect. A warrant to take physical custody issued by the State or another state is enforceable in the State.

The petition and the warrant must be served on the respondent when or immediately after the child is taken into physical custody. In specified circumstances, the court may authorize law enforcement officers to enter private property to take physical custody of the child and/or to make a forcible entry at any hour. If the court finds, after a hearing, that a petitioner sought an *ex parte* warrant for the purpose of harassment or in bad faith, the court may award the respondent reasonable attorney's fees, costs, and expenses.

Current Law: Federal law prohibits a parent from removing a child from the United States or retaining a child in another country with intent to obstruct another parent's custodial rights. U.S. Customs and Border Protection, in conjunction with the U.S. Department of State and other federal agencies, has established a program that seeks to prevent the departure of a child from the United States when presented with a valid, enforceable court order that prohibits the child's removal from the country (the Prevent Abduction Program).

UCCJEA provides interstate enforcement provisions for child custody orders and sets forth provisions for one state to establish jurisdiction in order to eliminate competing custody orders between states.

State/Local Fiscal Effect: The bill's provisions regarding hearings on the next business day following the execution of an *ex parte* warrant may result in operational impacts for the Judiciary and the circuit courts, as some courts may have difficulty accommodating such hearings without affecting the court's ability to handle other matters scheduled for that day. The Judiciary further notes that some of the bill's pertinent definitions (*e.g.*, "abduction," "wrongful retention," etc.) are broad and could be used to initiate the process set forth in the bill for custody and visitation disputes that are more frequent in nature and involve potentially justifiable conduct (such as unforeseen delays in dropping off a child to the other parent following a scheduled visitation).

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 383 (Senator McKay) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Human Services; U.S. Department of Homeland Security; Department of Legislative Services

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