

AN ACT

*Codification
District of
Columbia
Official Code*

2001 Edition

2009 Summer
Supp.

West Group
Publisher

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend Title 16 of the District of Columbia Official Code to enact the Uniform Child Abduction Prevention Act of 2008, to provide the Superior Court of the District of Columbia 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.

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. Chapter 46 of Title 16 of the District of Columbia Official Code is amended as follows:

(a) The table of contents is amended as follows:

(1) Strike the phrase “16-4603.15. Corporation Counsel.” and insert the phrase “16-4603.15. Attorney General for the District of Columbia.” in its place.

(2) The references to subchapter IV are amended to read as follows:

“Subchapter IV. Child Abduction Prevention.

“16-4604.01. Short title.

“16-4604.02. Definitions

“16-4604.03. Cooperation and communication among courts.

“16-4604.04. Actions for abduction prevention measures.

“16-4604.05. Jurisdiction.

“16-4604.06. Contents of petition.

“16-4604.07. Factors to determine risk of abduction.

“16-4604.08. Provisions and measures to prevent abduction.

“16-4604.09. Warrant to take physical custody of child.

“16-4604.10. Duration of abduction prevention order.”.

(3) A new subchapter V is added to read as follows:

“Subchapter V. Miscellaneous Provisions.

“16-4605.01. Uniformity of application and construction.

“16-4605.02. Relation to Electronic Signatures in Global and National Commerce Act.
“16-4605.03. Transitional provision.”.

(b) Subchapter III is amended as follows:

(1) Section 16-4603.15 is amended as follows:

(A) The section heading is amended by striking the phrase “Corporation Counsel” and inserting the phrase “Attorney General for the District of Columbia” in its place.

(B) Subsection (a) is amended by striking the phrase “Corporation Counsel” and inserting the phrase “Attorney General for the District of Columbia” in its place.

(C) Subsection (b) is amended by striking the phrase “Corporation Counsel” and inserting the phrase “Attorney General for the District of Columbia” in its place.

(2) Section 16-4603.16 is amended by striking the phrase “Corporation Counsel” both times it appears and inserting the phrase “Attorney General for the District of Columbia” in its place.

(3) Section 16-4603.17 is amended by striking the phrase “Corporation Counsel” and inserting the phrase “Attorney General for the District of Columbia” in its place.

(c) Redesignate subchapter IV as subchapter V.

(d) A new subchapter IV is added to read as follows:

“Subchapter IV. Child Abduction Prevention.

“§ 16-4604.01. Short title.

“This subchapter may be cited as the “Uniform Child Abduction Prevention Act”.

“§ 16-4604.02. Definitions.

“For the purposes of this subchapter, the term:

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

“(2) “Child” means an unemancipated individual who is less than 18 years of age.

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

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

“(5) “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.

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

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

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

“§ 16-4604.03. Cooperation and communication among courts.

“Sections 16-4601.10, 16-4601.11, and 16-4601.12 apply to cooperation and communications among courts in proceedings under this subchapter.

“§ 16-4604.04. Actions for abduction prevention measures.

“(a) 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.

“(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 subchapter.

“(c) The Attorney General for the District of Columbia may seek a warrant to take physical custody of a child under § 16-4604.09 or other appropriate prevention measures.

“§ 16-4604.05. Jurisdiction.

“(a) A petition under this subchapter 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.

“§ 16-4604.06. Contents of petition.

“A petition under this subchapter shall be verified and include a copy of any existing child-custody determination, if available. The petition shall specify the risk factors for abduction, including the relevant factors described in § 16-4604.07. Subject to § 16-4602.09(e), if reasonably ascertainable, the petition shall 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.

“§ 16-4604.07. 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;
- “(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:
 - “(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;
 - “(B) Is a party to the Hague Convention on the Civil Aspects of International Child Abduction but:
 - “(i) The Hague Convention on the Civil Aspects of International Child Abduction is not in force between the United States and that country;
 - “(ii) Is noncompliant according to the most recent compliance report issued by the United States Department of State; or
 - “(iii) Lacks legal mechanisms for immediately and effectively enforcing a return order under the Hague Convention on the Civil Aspects of International Child Abduction;
 - “(C) 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;
 - “(D) Has laws or practices that would:
 - “(i) Enable the respondent, without due cause, to prevent the petitioner from contacting the child;
 - “(ii) Restrict the petitioner from freely traveling to or exiting from the country because of the petitioner’s gender, nationality, marital status, or religion; or

“(iii) 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;

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

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

“(G) 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 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 the hearing on a petition under this subchapter, 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.

“§ 16-4604.08. Provisions and measures to prevent abduction.

“(a) If a petition is filed under this subchapter, 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 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 of the issuance of the order.

“(b) If, at a hearing on a petition under this subchapter or on the court's own motion, the court after reviewing the evidence finds a credible risk of abduction of the child by a preponderance of the evidence, the court shall enter an abduction prevention order. The order 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. The court shall consider:

“(1) The age of the child;

“(2) The potential harm to the child from an abduction;

“(3) The legal and practical difficulties of returning the child to the jurisdiction if abducted; and

“(4) 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:

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

“(B) 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

“(C) A prohibition upon the respondent from 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:

“(A) To the United States Department of State 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;

“(B) To the court:

“(i) Proof that the respondent has provided the information in subparagraph (A) of this paragraph; and

“(ii) 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;

“(C) 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

“(D) A written waiver under 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 § 16-4604.09 or the law of this state other than this subchapter;

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

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

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

“§ 16-4604.09. Warrant to take physical custody of child.

“(a) If a petition under this subchapter 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) 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 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) of this section to take physical custody of a child shall:

“(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.

“(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 state 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 shall be served on the respondent when or immediately after the child is taken into physical custody.

“(f) A warrant to take physical custody of a child, issued by this state or another state, is enforceable throughout this state. If the court finds that a less intrusive remedy will not be effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances, the 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 subchapter does not affect the availability of relief allowed under the law of this state other than this subchapter.

“§ 16-4604.10. Duration of abduction prevention order.

“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’s attaining 18 years of age; or

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

(e) The newly designated subchapter V is amended to read as follows:

“Subchapter V. Miscellaneous Provisions.

“§ 16-4605.01. Uniformity of application and construction.

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

“§ 16-4605.02. Relation to Electronic Signatures in Global and National Commerce Act.

“This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, approved June 30, 2000 (114 Stat. 464; 15 U.S.C. § 7001 *et seq.*), but does not modify, limit, or supersede section 101(c) of that act (15 U.S.C. § 7001(c)), or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. § 7003(b)).

“§ 16-4605.03. Transitional provision.

“A motion or other request for relief made in a child-custody proceeding or to enforce a child-custody determination which was commenced before April 27, 2001 is governed by the law in effect at the time the motion or other request was made.”.

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

ENROLLED ORIGINAL

24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia