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HOUSE BILL NO. 1641

Offered January 12, 2011

Prefiled January 10, 2011

A *BILL to amend the Code of Virginia by adding in Title 20 a chapter numbered 7.2, consisting of sections numbered 20-146.39 through 20-146.49, relating to the Uniform Child Abduction Prevention Act.*

Patron—O'Bannon

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 20 a chapter numbered 7.2, consisting of sections numbered 20-146.39 through 20-146.49, as follows:

CHAPTER 7.2.**UNIFORM CHILD ABDUCTION PREVENTION ACT.****§ 20-146.39. Definitions.**

As used in this chapter:

"Abduction" means the wrongful removal or wrongful retention of a child.

"Child" means an unemancipated individual who is less than 18 years of age.

"Child-custody determination" means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

"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, in which the issue may appear.

"Court" means a court of competent jurisdiction as determined by otherwise applicable Virginia law to establish, enforce, or modify a child-custody determination or an entity authorized under the law of another state to establish, enforce or modify a child-custody determination.

"Petition" includes a motion or its equivalent.

"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.

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

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

"Wrongful removal" means the taking of a child that breaches rights of custody or visitation given or recognized under the law of the Commonwealth.

"Wrongful retention" means the keeping or concealing of a child that breaches rights of custody or visitation given or recognized under the law of the Commonwealth.

§ 20-146.40. Cooperation and communication among courts.

Sections 20-146.9, 20-146.10, and 20-146.11 apply to cooperation and communications among courts in proceedings under this act.

§ 20-146.41. 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 the Commonwealth 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 act.

C. The attorney for the Commonwealth may seek a warrant to take physical custody of a child under § 20-146.46 or other appropriate prevention measures.

§ 20-146.42. Jurisdiction.

A. A petition under this act may be filed only in a court that has jurisdiction to make a child-custody determination with respect to the child at issue under Chapter 7.1 (§ 20-146.1 et seq.).

B. A court of the Commonwealth has temporary emergency jurisdiction under § 20-146.15 if the court finds a credible risk of abduction.

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59 § 20-146.43. *Contents of petition.*

60 A petition under this act shall be verified and include a copy of any existing child-custody
61 determination, if available. The petition shall specify the risk factors for abduction, including the
62 relevant factors described in § 20-146.44. Subject to subsection E of § 20-146.20, if reasonably
63 ascertainable, the petition shall contain:

64 1. The name, date of birth, and gender of the child;

65 2. The customary address and current physical location of the child;

66 3. The identity, customary address, and current physical location of the respondent;

67 4. A statement of whether a prior action to prevent abduction or domestic violence has been filed by
68 a party or other individual or entity having custody of the child, and the date, location, and disposition
69 of the action;

70 5. A statement of whether a party to the proceeding has been arrested for a crime related to
71 domestic violence, stalking, or child abuse or neglect, and the date, location, and disposition of the
72 case; and

73 6. Any other information required to be submitted to the court for a child-custody determination
74 under § 20-146.20.

75 § 20-146.44. *Factors to determine risk of abduction.*

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

78 1. Has previously abducted or attempted to abduct the child;

79 2. Has threatened to abduct the child;

80 3. Has recently engaged in activities that may indicate a planned abduction, including:

81 a. Abandoning employment;

82 b. Selling a primary residence;

83 c. Terminating a lease;

84 d. Closing bank or other financial management accounts, liquidating assets, hiding or destroying
85 financial documents, or conducting any unusual financial activities;

86 e. Applying for a passport or visa or obtaining travel documents for the respondent, a family
87 member, or the child; or

88 f. Seeking to obtain the child's birth certificate or school or medical records;

89 4. Has engaged in domestic violence, stalking, or child abuse or neglect;

90 5. Has refused to follow a child-custody determination;

91 6. Lacks strong familial, financial, emotional, or cultural ties to the Commonwealth or the United
92 States;

93 7. Has strong familial, financial, emotional, or cultural ties to another state or country;

94 8. Is likely to take the child to a country that:

95 a. Is not a party to the Hague Convention on the Civil Aspects of International Child Abduction and
96 does not provide for the extradition of an abducting parent or for the return of an abducted child;

97 b. Is a party to the Hague Convention on the Civil Aspects of International Child Abduction but:

98 (1) The Hague Convention on the Civil Aspects of International Child Abduction is not in force
99 between the United States and that country;

100 (2) Is noncompliant according to the most recent compliance report issued by the U.S. Department of
101 State; or

102 (3) Lacks legal mechanisms for immediately and effectively enforcing a return order under the Hague
103 Convention on the Civil Aspects of International Child Abduction;

104 c. Poses a risk that the child's physical or emotional health or safety would be endangered in the
105 country because of specific circumstances relating to the child or because of human rights violations
106 committed against children;

107 d. Has laws or practices that would:

108 (1) Enable the respondent, without due cause, to prevent the petitioner from contacting the child;

109 (2) Restrict the petitioner from freely traveling to or exiting from the country because of the
110 petitioner's gender, nationality, marital status, or religion; or

111 (3) Restrict the child's ability legally to leave the country after the child reaches the age of majority
112 because of a child's gender, nationality, or religion;

113 e. Is included by the U.S. Department of State on a current list of state sponsors of terrorism;

114 f. Does not have an official United States diplomatic presence in the country; or

115 g. Is engaged in active military action or war, including a civil war, to which the child may be
116 exposed;

117 9. Is undergoing a change in immigration or citizenship status that would adversely affect the
118 respondent's ability to remain in the United States legally;

119 10. Has had an application for United States citizenship denied;

120 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 act, 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.

§ 20-146.45. Provisions and measures to prevent abduction.

A. If a petition is filed under this act, 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 act 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. The order shall include the provisions required by subsection A and measures and conditions, including those in subsections C, D, and E, 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 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 the Commonwealth, 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 U.S. Department of State's Children's 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. 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 U.S. 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:

(1) Proof that the respondent has provided the information in subdivision 5 a; 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;

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

182 d. A written waiver under the Privacy Act, 5 U.S.C. § 552a, as amended, with respect to any
183 document, application, or other information pertaining to the child authorizing its disclosure to the
184 court and the petitioner; and

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

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

189 1. Limit visitation or require that visitation with the child by the respondent be supervised until the
190 court finds that supervision is no longer necessary and order the respondent to pay the costs of
191 supervision;

192 2. Require the respondent to post a bond or provide other security in an amount sufficient to serve
193 as a financial deterrent to abduction, the proceeds of which may be used to pay for the reasonable
194 expenses of recovery of the child, including reasonable attorney fees and costs if there is an abduction;
195 and

196 3. Require the respondent to obtain education on the potentially harmful effects to the child from
197 abduction.

198 E. To prevent imminent abduction of a child, a court may:

199 1. Issue a warrant to take physical custody of the child under § 20-146.46 or the law of the
200 Commonwealth other than this act;

201 2. Direct the use of law enforcement to take any action reasonably necessary to locate the child,
202 obtain return of the child, or enforce a custody determination under this act or the law of the
203 Commonwealth other than this act; or

204 3. Grant any other relief allowed under the law of the Commonwealth other than this act.

205 F. The remedies provided in this act are cumulative and do not affect the availability of other
206 remedies to prevent abduction.

207 § 20-146.46. Warrant to take physical custody of child.

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

211 B. The respondent on a petition under subsection A shall be afforded an opportunity to be heard at
212 the earliest possible time after the ex parte warrant is executed, but not later than the next judicial day
213 unless a hearing on that date is impossible. In that event, the court shall hold the hearing on the first
214 judicial day possible.

215 C. An ex parte warrant under subsection A to take physical custody of a child shall:

216 1. Recite the facts upon which a determination of a credible risk of imminent wrongful removal of
217 the child is based;

218 2. Direct law-enforcement officers to take physical custody of the child immediately;

219 3. State the date and time for the hearing on the petition; and

220 4. Provide for the safe interim placement of the child pending further order of the court.

221 D. If feasible, before issuing a warrant and before determining the placement of the child after the
222 warrant is executed, the court may order a search of the relevant databases of the National Crime
223 Information Center system and similar state databases to determine if either the petitioner or respondent
224 has a history of domestic violence, stalking, or child abuse or neglect.

225 E. The petition and warrant shall be served on the respondent when or immediately after the child is
226 taken into physical custody.

227 F. A warrant to take physical custody of a child, issued by a court of the Commonwealth or another
228 state, is enforceable throughout the Commonwealth. If the court finds that a less intrusive remedy will
229 not be effective, it may authorize law-enforcement officers to enter private property to take physical
230 custody of the child. If required by exigent circumstances, the court may authorize law-enforcement
231 officers to make a forcible entry at any hour.

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

235 H. This act does not affect the availability of relief allowed under the law of the Commonwealth
236 other than this act.

237 § 20-146.47. Duration of abduction prevention order.

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

239 1. The time stated in the order;

240 2. The emancipation of the child;

241 3. The child's attaining 18 years of age; or

242 4. The time the order is modified, revoked, vacated, or superseded by a court with jurisdiction under

243 § 20-146.12, 20-146.13, or 20-146.14.

244 § 20-146.48. Uniformity of application and construction.
245 In applying and construing this act, consideration shall be given to the need to promote uniformity
246 of the law with respect to its subject matter among states that enact it.
247 § 20-146.49. Relation to Electronic Signatures in Global and National Commerce Act.
248 This act modifies, limits, and supersedes the federal Electronic Signatures in Global and National
249 Commerce Act, 15 U.S.C. § 7001 et seq., but does not modify, limit, or supersede § 101(c) of that act,
250 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in § 103(b) of that
251 act, 15 U.S.C. § 7003(b).