

Sixty-ninth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2126

Introduced by

Judiciary Committee

(At the request of the Commission on Uniform State Laws)

1 A BILL for an Act to create and enact chapter 14-14.2 of the North Dakota Century Code,
2 relating to the adoption of the Uniform Child Abduction Prevention Act.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** Chapter 14-14.2 of the North Dakota Century Code is created and enacted as
5 follows:

6 **14-14.2-01. Definitions.**

7 As used in this chapter:

- 8 1. "Abduction" means the wrongful removal or wrongful retention of a child.
9 2. "Child" means an unemancipated individual who is seventeen years of age or younger.
10 3. "Child-custody determination" means a judgment, decree, or other order of a court
11 providing for the legal custody, physical custody, or visitation with respect to a child.
12 The term includes a permanent, temporary, initial, and modification order.
13 4. "Child-custody proceeding" means a proceeding in which legal custody, physical
14 custody, or visitation with respect to a child is at issue. The term includes a proceeding
15 for divorce, dissolution of marriage, separation, neglect, abuse, dependency,
16 guardianship, paternity, termination of parental rights, or protection from domestic
17 violence.
18 5. "Court" means the district court.
19 6. "Petition" includes a motion or its equivalent.
20 7. "Record" means information inscribed on a tangible medium or stored in an electronic
21 or other medium and is retrievable in perceivable form.
22 8. "State" means a state of the United States, the District of Columbia, Puerto Rico, the
23 United States Virgin Islands, or any territory or insular possession subject to the

1 jurisdiction of the United States. The term includes a federally recognized Indian tribe
2 or nation.

3 9. "Travel document" means a record relating to a travel itinerary, including a travel ticket,
4 pass, or reservation for transportation or accommodations. The term does not include
5 a passport or visa.

6 10. "Wrongful removal" means the taking of a child which breaches rights of custody or
7 visitation given or recognized under the law of this state.

8 11. "Wrongful retention" means the keeping or concealing of a child which breaches rights
9 of custody or visitation given or recognized under the law of this state.

10 **14-14.2-02. Cooperation and communication among courts.**

11 Sections 14-14.1-09, 14-14.1-10, and 14-14.1-11 apply to cooperation and communications
12 among courts in proceedings under this chapter.

13 **14-14.2-03. Actions for abduction prevention measures.**

14 1. If a court finds the evidence establishes a credible risk of abduction of the child, the
15 court on its own motion may order abduction prevention measures in a child-custody
16 proceeding.

17 2. A party to a child-custody determination or another individual or entity having a right
18 under the law of this state or any other state to seek a child-custody determination for
19 the child may file a petition seeking abduction prevention measures to protect the child
20 under this chapter.

21 3. A prosecutor or public authority designated under section 14-14.1-35 may seek a
22 warrant to take physical custody of a child under section 14-14.2-08 or other
23 appropriate prevention measures.

24 **14-14.2-04. Jurisdiction.**

25 1. A petition under this chapter may be filed in a court that has jurisdiction to make a
26 child-custody determination with respect to the child at issue under chapter 14-14.1.

27 2. A court of this state has temporary emergency jurisdiction under section 14-14.1-15 if
28 the court finds a credible risk of abduction.

29 **14-14.2-05. Contents of petition.**

30 A petition under this chapter must be verified and include a copy of any existing child-
31 custody determination, if available. The petition must specify the risk factors for abduction.

1 including the relevant factors described in section 14-14.2-06. Subject to section 14-12.2-24, if
2 reasonably ascertainable, the petition must contain:

- 3 1. The name, date of birth, and gender of the child;
- 4 2. The customary address and current physical location of the child;
- 5 3. The identity, customary address, and current physical location of the respondent;
- 6 4. A statement of whether a prior action to prevent abduction or domestic violence has
7 been filed by a party or other individual or entity having custody of the child, and the
8 date, location, and disposition of the action;
- 9 5. A statement of whether a party to the proceeding has been arrested for a crime related
10 to domestic violence, stalking, or child abuse or neglect, and the date, location, and
11 disposition of the case; and
- 12 6. Any other information required to be submitted to the court for a child-custody
13 determination under section 14-14.1-20.

14 **14-14.2-06. Factors to determine risk of abduction.**

- 15 1. In determining whether there is a credible risk of abduction of a child, the court shall
16 consider whether the petitioner or respondent:
 - 17 a. Has previously abducted or attempted to abduct the child;
 - 18 b. Has threatened to abduct the child;
 - 19 c. Has recently engaged in activities that may indicate a planned abduction,
20 including:
 - 21 (1) Abandoning employment;
 - 22 (2) Selling a primary residence;
 - 23 (3) Terminating a lease;
 - 24 (4) Closing bank or other financial management accounts, liquidating assets,
25 hiding or destroying financial documents, or conducting any unusual
26 financial activities;
 - 27 (5) Applying for a passport or visa or obtaining travel documents for the
28 respondent, a family member, or the child; or
 - 29 (6) Seeking to obtain the child's birth certificate or school or medical records;
 - 30 d. Has engaged in domestic violence, stalking, or child abuse or neglect;
 - 31 e. Has refused to follow a child-custody determination;

- 1 f. Lacks strong familial, financial, emotional, or cultural ties to the state or the
2 United States;
- 3 g. Has strong familial, financial, emotional, or cultural ties to another state or
4 country;
- 5 h. Is likely to take the child to a country that:
- 6 (1) Is not a party to the Hague convention on the civil aspects of international
7 child abduction and does not provide for the extradition of an abducting
8 parent or for the return of an abducted child;
- 9 (2) Is a party to the Hague convention on the civil aspects of international child
10 abduction but:
- 11 (a) The Hague convention on the civil aspects of international child
12 abduction is not in force between the United States and that country;
- 13 (b) Is noncompliant according to the most recent compliance report
14 issued by the United States department of state; or
- 15 (c) Lacks legal mechanisms for immediately and effectively enforcing a
16 return order under the Hague convention on the civil aspects of
17 international child abduction;
- 18 (3) Poses a risk that the child's physical or emotional health or safety would be
19 endangered in the country because of specific circumstances relating to the
20 child or because of human rights violations committed against children;
- 21 (4) Has laws or practices that would:
- 22 (a) Enable the respondent, without due cause, to prevent the petitioner
23 from contacting the child;
- 24 (b) Restrict the petitioner from freely traveling to or exiting from the
25 country because of the petitioner's gender, nationality, marital status,
26 or religion; or
- 27 (c) Restrict the child's ability legally to leave the country after the child
28 reaches the age of majority because of a child's gender, nationality, or
29 religion;
- 30 (5) Is included by the United States department of state on a current list of state
31 sponsors of terrorism;

1 (6) Does not have an official United States diplomatic presence in the country;
2 or

3 (7) Is engaged in active military action or war, including a civil war, to which the
4 child may be exposed;

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

7 j. Has had an application for United States citizenship denied;

8 k. Has forged or presented misleading or false evidence on government forms or
9 supporting documents to obtain or attempt to obtain a passport, a visa, travel
10 documents, a social security card, a driver's license, or other government-issued
11 identification card or has made a misrepresentation to the United States
12 government;

13 l. Has used multiple names to attempt to mislead or defraud; or

14 m. Has engaged in any other conduct the court considers relevant to the risk of
15 abduction.

16 2. In the hearing on a petition under this chapter, the court shall consider any evidence
17 the respondent in good faith believed the respondent's conduct was necessary to
18 avoid imminent harm to the child or respondent and any other evidence that may be
19 relevant to whether the respondent may be permitted to remove or retain the child.

20 **14-14.2-07. Provisions and measures to prevent abduction.**

21 1. If a petition is filed under this chapter, the court may enter an order that must include:

22 a. The basis for the court's exercise of jurisdiction;

23 b. The manner notice and the opportunity to be heard were given to the persons
24 entitled to notice of the proceeding;

25 c. A detailed description of each party's custody and visitation rights and residential
26 arrangements for the child;

27 d. A provision stating a violation of the order may subject the party in violation to
28 civil and criminal penalties; and

29 e. Identification of the child's country of habitual residence at the time of the
30 issuance of the order.

- 1 2. If, at a hearing on a petition under this chapter or on the court's own motion, the court
2 after reviewing the evidence finds a credible risk of abduction of the child, the court
3 shall enter an abduction prevention order. The order must include the provisions
4 required by subsection 1 and measures and conditions, including those in
5 subsections 3, 4, and 5, which are reasonably calculated to prevent abduction of the
6 child, giving due consideration to the custody and visitation rights of the parties. The
7 court shall consider the age of the child, the potential harm to the child from an
8 abduction, the legal and practical difficulties of returning the child to the jurisdiction if
9 abducted, and the reasons for the potential abduction, including evidence of domestic
10 violence, stalking, or child abuse or neglect.
- 11 3. An abduction prevention order may include:
- 12 a. An imposition of travel restrictions that require a party traveling with the child
13 outside a designated geographical area to provide the other party with:
- 14 (1) The travel itinerary of the child;
15 (2) A list of physical addresses and telephone numbers at which the child can
16 be reached at specified times; and
17 (3) Copies of all travel documents;
- 18 b. A prohibition on the respondent directly or indirectly:
- 19 (1) Removing the child from this state, the United States, or another geographic
20 area without permission of the court or the petitioner's written consent;
21 (2) Removing or retaining the child in violation of a child-custody determination;
22 (3) Removing the child from school or a child-care or similar facility; or
23 (4) Approaching the child at any location other than a site designated for
24 supervised visitation;
- 25 c. A requirement a party register the order in another state as a prerequisite to
26 allowing the child to travel to that state;
- 27 d. Regarding the child's passport:
- 28 (1) A requirement the petitioner place the child's name in the United States
29 department of state's child passport issuance alert program;

1 (2) A requirement the respondent surrender any United States or foreign
2 passport issued in the child's name, including a passport issued in the name
3 of both the parent and the child to the court or the petitioner's attorney; and

4 (3) A prohibition on the respondent applying for a new or replacement passport
5 or visa on behalf of the child;

6 e. As a prerequisite to exercising custody or visitation, a requirement the
7 respondent provide:

8 (1) To the United States department of state's office of children's issues and the
9 relevant foreign consulate or embassy, an authenticated copy of the order
10 detailing passport and travel restrictions for the child;

11 (2) To the court:

12 (a) Proof the respondent has provided the information in paragraph 1;
13 and

14 (b) An acknowledgment in a record from the relevant foreign consulate or
15 embassy no passport application has been made, or passport issued,
16 on behalf of the child;

17 (3) To the petitioner, proof of registration with the United States embassy or
18 other United States diplomatic presence in the destination country and with
19 the central authority for the Hague convention on the civil aspects of
20 international child abduction, if the convention is in effect between the
21 United States and the destination country, unless one of the parties objects;
22 and

23 (4) A written waiver under the Privacy Act, as amended [5 U.S.C. Section 552a]
24 with respect to any document, application, or other information pertaining to
25 the child authorizing its disclosure to the court and the petitioner; and

26 f. Upon the petitioner's request, a requirement the respondent obtain an order from
27 the relevant foreign country containing terms identical to the child-custody
28 determination issued in the United States.

29 4. In an abduction prevention order, the court may impose conditions on the exercise of
30 custody or visitation which:

- 1 a. Limit visitation or require visitation with the child by the respondent be supervised
2 until the court finds supervision is no longer necessary and order the respondent
3 to pay the costs of supervision;
- 4 b. Require the respondent to post a bond or provide other security in an amount
5 sufficient to serve as a financial deterrent to abduction, the proceeds of which
6 may be used to pay for the reasonable expenses of recovery of the child,
7 including reasonable attorneys fees and costs if there is an abduction; and
- 8 c. Require the respondent to obtain education on the potentially harmful effects to
9 the child from abduction.

10 5. To prevent imminent abduction of a child, a court may:

- 11 a. Issue a warrant to take physical custody of the child under any provision of law,
12 including section 14-14.2-08;
- 13 b. Direct law enforcement to act as reasonably necessary to locate the child, obtain
14 return of the child, or enforce a custody determination under any provision of law,
15 including this chapter; or
- 16 c. Grant any other relief allowed under law.

17 6. The remedies provided in this chapter are cumulative and do not affect the availability
18 of other remedies to prevent abduction.

19 **14-14.2-08. Warrant to take physical custody of child.**

- 20 1. If a petition under this chapter contains allegations, and the court finds there is a
21 credible risk the child is imminently likely to be wrongfully removed, the court may
22 issue an ex parte warrant to take physical custody of the child.
- 23 2. The court shall afford a respondent on a petition under subsection 1 an opportunity to
24 be heard at the earliest possible time after the ex parte warrant is executed, but not
25 later than the next judicial day unless a hearing on that date is impossible. In that
26 event, the court shall hold the hearing on the first judicial day possible.
- 27 3. An ex parte warrant under subsection 1 to take physical custody of a child must:
 - 28 a. Recite the facts upon which a determination of a credible risk of imminent
29 wrongful removal of the child is based;
 - 30 b. Direct law enforcement officers to take physical custody of the child immediately;
 - 31 c. State the date and time for the hearing on the petition; and

1 d. Provide for the safe interim placement of the child pending further order of the
2 court.

3 4. If feasible, before issuing a warrant and determining the placement of the child after
4 the warrant is executed, the court may order a search of the relevant databases of the
5 national crime information center system and similar state databases to determine
6 whether the petitioner or respondent has a history of domestic violence, stalking, or
7 child abuse or neglect.

8 5. The court shall serve the petition and warrant on the respondent at the time, or
9 immediately after, the child is taken into physical custody.

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

15 7. If the court finds, after a hearing, a petitioner sought an ex parte warrant under
16 subsection 1 for the purpose of harassment or in bad faith, the court may award the
17 respondent reasonable attorney's fees, costs, and expenses.

18 8. This chapter does not affect the availability of additional relief allowed under the law.

19 **14-14.2-09. Duration of abduction prevention order.**

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

21 1. The time stated in the order;

22 2. The emancipation of the child;

23 3. The child attaining eighteen years of age; or

24 4. The time the order is modified, revoked, vacated, or superseded by a court with
25 jurisdiction under sections 14-14.1-12 through 14-14.1-14.

26 **14-14.2-10. Uniformity of application and construction.**

27 In applying and construing this chapter, a court shall consider the promotion of uniformity of
28 the law among the jurisdictions that enact it.

29 **14-14.2-11. Relation to Electronic Signatures in Global and National Commerce Act.**

30 This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global
31 and National Commerce Act [15 U.S.C. 7001, et seq.] but does not modify, limit, or supersede

- 1 section 101(c) of the act or authorize electronic delivery of any of the notices described in
- 2 section 103(b) of the act.