

NEW MEXICO STATE STATUTES – DOMESTIC AFFAIRS

Section 40-10C-8: Provisions and Measures to Prevent Abduction. (Effective January 1, 2014.)

A. If a petition is filed pursuant to the Uniform Child Abduction Prevention 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 pursuant to the Uniform Child Abduction Prevention 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 of this section and measures and conditions, including those set forth 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 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 requires 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: 1) proof that the respondent has provided the information in Subparagraph (a) of this paragraph; and 2) an acknowledgment in a record from the relevant foreign consulate or embassy that no passport application has been made, nor 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 pursuant to the Privacy Act of 1974, 5 U.S.C. Section 552a, as amended, 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 attorney 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 pursuant to Section 9 of the Uniform Child Abduction Prevention Act;
 - (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 pursuant to the Uniform Child Abduction Prevention Act; or
 - (3) grant any other relief allowed pursuant to the law of this state other than the Uniform Child Abduction Prevention Act.

F. The remedies provided in the Uniform Child Abduction Prevention Act are cumulative and do not affect the availability of other remedies to prevent abduction.

G. A court shall not require the disclosure of a confidential communication that is protected by the Victim Counselor Confidentiality Act [[31-25-1](#) to [31-25-6](#) NMSA 1978], the physician-patient privilege or the psychotherapist-patient privilege.

History: Laws 2013, ch. 156, § 8.