

I MINA' TRENTAI DOS NA LIHESLATURAN GUÅHAN
2013 (First) Regular Session

Bill No. 10-32(COR)

Introduced by:

B.J.F. Cruz

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**AN ACT TO ADD A NEW CHAPTER 39A TO TITLE 7 OF
THE GUAM CODE ANNOTATED RELATIVE TO CREATING
THE UNIFORM CHILD ABDUCTION PREVENTION ACT.**

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Creation of ‘The Uniform Child Abduction Prevention Act.’

A new Chapter 39A is added to Title 7 of the Guam Code Annotated to read as follows:

“Chapter 39A

The Uniform Child Abduction Prevention Act

§ 39A000. Title: The Uniform Child Abduction Prevention Act

§ 39A101. Definitions

§ 39A102. Cooperation and Communication Among Courts

§ 39A103. Actions for Abduction Prevention Measures

§ 39A104. Jurisdiction

§ 39A105. Contents of Petition

§ 39A106. Factors to Determine Risk of Abduction

§ 39A107. Provisions and Measures to Prevent Abduction

§ 39A108. Warrant to Take Physical Custody of Child

§ 39A109. Duration of Abduction Prevention Order

1 **§ 39A000. Title.**

2 This Chapter shall be known, and may be cited as “The Uniform Child
3 Abduction Prevention Act.”

4 **§ 39A101. Definitions.**

5 (1) ‘*Abduction*’ means the wrongful removal or wrongful retention of a
6 child.

7 (2) ‘*Child*’ means an unemancipated individual who is less than 18 years of
8 age.

9 (3) ‘*Child-custody determination*’ means a judgment, decree, or other order
10 of a court providing for the legal custody, physical custody, or visitation with
11 respect to a child. The term includes a permanent, temporary, initial, and
12 modification order.

13 (4) ‘*Child-custody proceeding*’ means a proceeding in which legal custody,
14 physical custody, or visitation with respect to a child is at issue. The term includes
15 a proceeding for divorce, dissolution of marriage, separation, neglect, abuse,
16 dependency, guardianship, paternity, termination of parental rights, or protection
17 from domestic violence.

18 (5) ‘*Court*’ means an entity authorized under the law of a state to establish,
19 enforce, or modify a child-custody determination.

20 (6) ‘*Petition*’ includes a motion or its equivalent.

21 (7) ‘*Record*’ means information that is inscribed on a tangible medium or
22 that is stored in an electronic or other medium and is retrievable in perceivable
23 form.

24 (8) ‘*State*’ means a state of the United States, the District of Columbia,
25 Puerto Rico, the United States Virgin Islands, Guam or any territory or insular
26 possession subject to the jurisdiction of the United States. The term includes a
27 federally recognized Indian tribe or nation.

1 (9) ‘*Travel document*’ means records relating to a travel itinerary, including
2 travel tickets, passes, reservations for transportation, or accommodations. The
3 term does not include a passport or visa.

4 (10) ‘*Wrongful removal*’ means the taking of a child that breaches rights of
5 custody or visitation given or recognized under the law of this state.

6 (11) ‘*Wrongful retention*’ means the keeping or concealing of a child that
7 breaches rights of custody or visitation given or recognized under the law of this
8 state.

9 **§ 39A102. Cooperation and Communication Among Courts.**

10 Sections §39110, §39111, and §39112 of Uniform Child Custody
11 Jurisdiction and Enforcement Act apply to cooperation and communications
12 among courts in proceedings under this Act.

13 **§ 39A103. Actions for Abduction Prevention Measures.**

14 (a) A court on its own motion may order abduction prevention measures in a
15 child custody proceeding if the court finds that the evidence establishes a credible
16 risk of abduction of the child.

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

21 (c) A prosecutor or public authority designated under §39315 of the Uniform
22 Child Custody Jurisdiction and Enforcement Act may seek a warrant to take
23 physical custody of a child under § 39A109 or other appropriate prevention
24 measures.

25 **§ 39A104. Jurisdiction.**

1 (a) A petition under this Act may be filed only in a court that has jurisdiction
2 to make a child-custody determination with respect to the child at issue under
3 §39309 of the Uniform Child Custody Jurisdiction and Enforcement Act.

4 (b) A court of this state has temporary emergency jurisdiction under §39204
5 of the Uniform Child Custody Jurisdiction and Enforcement Act if the court finds a
6 credible risk of abduction.

7 **§ 39A105. Contents of Petition.**

8 A petition under this [act] must be verified and include a copy of any
9 existing child-custody determination, if available. The petition must specify the
10 risk factors for abduction, including the relevant factors described in §39A106.
11 Subject to §39209(e) of the Uniform Child Custody Jurisdiction and Enforcement
12 Act, the petition must contain:

13 (1) the name, date of birth, and gender of the child;

14 (2) the customary address and current physical location of the child;

15 (3) the identity, customary address, and current physical location of the
16 respondent;

17 (4) a statement of whether a prior action to prevent abduction or domestic
18 violence has been filed by a party or other individual or entity having custody of
19 the child, and the date, location, and disposition of the action;

20 (5) a statement of whether a party to the proceeding has been arrested for a
21 crime related to domestic violence, stalking, or child abuse or neglect, and the date,
22 location, and disposition of the case; and

23 (6) any other information required to be submitted to the court for a child
24 custody determination under [insert citation to Section §39209 of the Uniform
25 Child Custody Jurisdiction and Enforcement Act.

26 **§ 39A106. Factors to Determine Risk of Abduction.**

1 (a) In determining whether there is a credible risk of abduction of a child, the
2 court shall consider any evidence that the petitioner or respondent:

3 (1) has previously abducted or attempted to abduct the child;

4 (2) has threatened to abduct the child;

5 (3) has recently engaged in activities that may indicate a planned
6 abduction, including:

7 (A) abandoning employment;

8 (B) selling a primary residence;

9 (C) terminating a lease;

10 (D) closing bank or other financial management accounts,
11 liquidating assets, hiding or destroying financial documents, or
12 conducting any unusual financial activities;

13 (E) applying for a passport or visa or obtaining travel
14 documents for the respondent, a family member, or the child; or

15 (F) seeking to obtain the child's birth certificate or school or
16 medical records;

17 (4) has engaged in domestic violence, stalking, or child abuse or
18 neglect;

19 (5) has refused to follow a child-custody determination;

20 (6) lacks strong familial, financial, emotional, or cultural ties to the
21 state or the United States;

22 (7) has strong familial, financial, emotional, or cultural ties to another
23 state or country;

24 (8) is likely to take the child to a country that:

25 (A) is not a party to the Hague Convention on the Civil Aspects
26 of International Child Abduction and does not provide for the

1 extradition of an abducting parent or for the return of an abducted
2 child;

3 (B) is a party to the Hague Convention on the Civil Aspects of
4 International Child Abduction but:

5 (i) the Hague Convention on the Civil Aspects of
6 International Child Abduction is not in force between the
7 United States and that country;

8 (ii) is noncompliant according to the most recent
9 compliance report issued by the United States Department of
10 State; or

11 (iii) lacks legal mechanisms for immediately and
12 effectively enforcing a return order under the Hague
13 Convention on the Civil Aspects of International Child
14 Abduction;

15 (C) poses a risk that the child's physical or emotional health or
16 safety would be endangered in the country because of specific
17 circumstances relating to the child or because of human rights
18 violations committed against children;

19 (D) has laws or practices that would:

20 (i) enable the respondent, without due cause, to prevent
21 the petitioner from contacting the child;

22 (ii) restrict the petitioner from freely traveling to or
23 exiting from the country because of the petitioner's gender,
24 nationality, marital status, or religion; or

25 (iii) restrict the child's ability legally to leave the country
26 after the child reaches the age of majority because of a child's
27 gender, nationality, or religion;

1 (E) is included by the United States Department of State on a
2 current list of state sponsors of terrorism;

3 (F) does not have an official United States diplomatic presence
4 in the country; or

5 (G) is engaged in active military action or war, including a civil
6 war, to which the child may be exposed;

7 (9) is undergoing a change in immigration or citizenship status that
8 would adversely affect the respondent's ability to remain in the United
9 States legally;

10 (10) has had an application for United States citizenship denied;

11 (11) has forged or presented misleading or false evidence on
12 government forms or supporting documents to obtain or attempt to
13 obtain a passport, a visa, travel documents, a Social Security card, a
14 driver's license, or other government-issued identification card or has
15 made a misrepresentation to the United States government;

16 (12) has used multiple names to attempt to mislead or defraud; or

17 (13) has engaged in any other conduct the court considers relevant to
18 the risk of abduction.

19 (b) In the hearing on a petition under this [act], the court shall consider any
20 evidence that the respondent believed in good faith that the respondent's
21 conduct was necessary to avoid imminent harm to the child or respondent
22 and any other evidence that may be relevant to whether the respondent may
23 be permitted to remove or retain the child.

24 **§ 39A107. Provisions and Measures to Prevent Abduction**

25 (a) If a petition is filed under this Act, the court may enter an order that must
26 include:

27 (1) the basis for the court's exercise of jurisdiction;

1 (2) the manner in which notice and opportunity to be heard were given
2 to the persons entitled to notice of the proceeding;

3 (3) a detailed description of each party's custody and visitation rights
4 and residential arrangements for the child;

5 (4) a provision stating that a violation of the order may subject the
6 party in violation to civil and criminal penalties; and

7 (5) identification of the child's country of habitual residence at the
8 time of the issuance of the order.

9 (b) If, at a hearing on a petition under this Act or on the court's own motion,
10 the court after reviewing the evidence finds a credible risk of abduction of
11 the child, the court shall enter an abduction prevention order. The order
12 must include the provisions required by subsection (a) and measures and
13 conditions, including those in subsections (c), (d), and (e), that are
14 reasonably calculated to prevent abduction of the child, giving due
15 consideration to the custody and visitation rights of the parties. The court
16 shall consider the age of the child, the potential harm to the child from an
17 abduction, the legal and practical difficulties of returning the child to the
18 jurisdiction if abducted, and the reasons for the potential abduction,
19 including evidence of domestic violence, stalking, or child abuse or neglect.

20 (c) An abduction prevention order may include one or more of the
21 following:

22 (1) an imposition of travel restrictions that require that a party
23 traveling with the child outside a designated geographical area provide the
24 other party with the following:

25 (A) the travel itinerary of the child;

26 (B) a list of physical addresses and telephone numbers at which
27 the child can be reached at specified times; and

1 (C) copies of all travel documents;

2 (2) a prohibition of the respondent directly or indirectly:

3 (A) removing the child from this state, the United States, or
4 another geographic area without permission of the court or the
5 petitioner's written consent;

6 (B) removing or retaining the child in violation of a child-
7 custody determination;

8 (C) removing the child from school or a child-care or similar
9 facility; or

10 (D) approaching the child at any location other than a site
11 designated for supervised visitation;

12 (3) a requirement that a party to register the order in another state as a
13 prerequisite to allowing the child to travel to that state;

14 (4) with regard to the child's passport:

15 (A) a direction that the petitioner to place the child's name in
16 the United States Department of State's Child Passport Issuance Alert
17 Program;

18 (B) a requirement that the respondent surrender to the court or
19 the petitioner's attorney any United States or foreign passport issued
20 in the child's name, including a passport issued in the name of both the
21 parent and the child; and

22 (C) a prohibition upon the respondent from applying on behalf
23 of the child for a new or replacement passport or visa;

24 (5) as a prerequisite to exercising custody or visitation, a requirement
25 that the respondent provide:

26 (A) to the United States Department of State Office of
27 Children's Issues and the relevant foreign consulate or embassy, an

1 authenticated copy of the order detailing passport and travel
2 restrictions for the child;

3 (B) to the court:

4 (i) proof that the respondent has provided the information
5 in subparagraph (A); and

6 (ii) an acknowledgment in a record from the relevant
7 foreign consulate or embassy that no passport application has
8 been made, or passport issued, on behalf of the child;

9 (C) to the petitioner, proof of registration with the United States
10 Embassy or other United States diplomatic presence in the destination
11 country and with the Central Authority for the Hague Convention on
12 the Civil Aspects of International Child Abduction, if that Convention
13 is in effect between the United States and the destination country,
14 unless one of the parties objects; and

15 (D) a written waiver under the Privacy Act, 5 U.S.C. Section
16 552a [as amended], with respect to any document, application, or
17 other information pertaining to the child authorizing its disclosure to
18 the court and the petitioner; and

19 (6) upon the petitioner's request, a requirement that the respondent
20 obtain an order from the relevant foreign country containing terms
21 identical to the child-custody determination issued in the United
22 States.

23 (d) In an abduction prevention order, the court may impose conditions on the
24 exercise of custody or visitation that:

25 (1) limit visitation or require that visitation with the child by the
26 respondent be supervised until the court finds that supervision is no

1 longer necessary and order the respondent to pay the costs of
2 supervision;

3 (2) require the respondent to post a bond or provide other security in
4 an amount sufficient to serve as a financial deterrent to abduction, the
5 proceeds of which may be used to pay for the reasonable expenses of
6 recovery of the child, including reasonable attorneys fees and costs if
7 there is an abduction; and

8 (3) require the respondent to obtain education on the potentially
9 harmful effects to the child from abduction.

10 (e) To prevent imminent abduction of a child, a court may:

11 (1) issue a warrant to take physical custody of the child under
12 §39A109 of this Act;

13 (2) direct the use of law enforcement to take any action reasonably
14 necessary to locate the child, obtain return of the child, or enforce a
15 custody determination under this Act or the law of this state other than
16 this Act; or

17 (3) grant any other relief allowed under the law of this state other than
18 this Act.

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

21 **§ 39A108. Warrant to Take Physical Custody of Child.**

22 (a) If a petition under this Act contains allegations, and the court finds that
23 there is a credible risk that the child is imminently likely to be wrongfully
24 removed, the court may issue an ex parte warrant to take physical custody of the
25 child.

26 (b) The respondent on a petition under subsection (a) must be afforded an
27 opportunity to be heard at the earliest possible time after the ex parte warrant is

1 executed, but not later than the next judicial day unless a hearing on that date is
2 impossible. In that event, the court shall hold the hearing on the first judicial day
3 possible.

4 (c) An ex parte warrant under subsection (a) to take physical custody of a
5 child must:

6 (1) recite the facts upon which a determination of a credible risk of
7 imminent wrongful removal of the child is based;

8 (2) direct law enforcement officers to take physical custody of the
9 child immediately;

10 (3) state the date and time for the hearing on the petition; and

11 (4) provide for the safe interim placement of the child pending further
12 order of the court.

13 (d) If feasible, before issuing a warrant and before determining the
14 placement of the child after the warrant is executed, the court may order a search
15 of the relevant databases of the National Crime Information Center system and
16 similar databases to determine if either the petitioner or respondent has a history of
17 domestic violence, stalking, or child abuse or neglect.

18 (e) The petition and warrant must be served on the respondent when or
19 immediately after the child is taken into physical custody.

20 (f) A warrant to take physical custody of a child, issued by this state or
21 another state, is enforceable throughout this state. If the court finds that a less
22 intrusive remedy will not be effective, it may authorize law enforcement officers to
23 enter private property to take physical custody of the child. If required by exigent
24 circumstances, the court may authorize law enforcement officers to make a forcible
25 entry at any hour.

1 (g) If the court finds, after a hearing, that a petitioner sought an ex parte
2 warrant under subsection (a) for the purpose of harassment or in bad faith, the
3 court may award the respondent reasonable attorney's fees, costs, and expenses.

4 **§ 39A109. Duration of Abduction Prevention Order.**

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

6 (1) the time stated in the order;

7 (2) the emancipation of the child;

8 (3) the child's attaining 18 years of age; or

9 (4) the time the order is modified, revoked, vacated, or superseded by
10 a court with jurisdiction under §39201 through §39203 of the Uniform Child
11 Custody Jurisdiction and Enforcement Act.”

12 **Section 2. Effective Date.** This Act shall be effective upon enactment into law.