



GENERAL STATUTES COMMISSION

300 N. Salisbury Street, Suite 401
Raleigh, NC 27603-5925
Tel. 919-733-6660 Fax 919-715-5459

David C. Unwin
Revisor of Statutes

Caroline Pantoja
Assistant Revisor of Statutes

MEMORANDUM

To: House Judiciary 1
From: General Statutes Commission
Re: HB 370 (GSC Uniform Acts Regarding Children)
Date: March 17, 2025

General Comments

This proposed committee substitute (PCS), which is recommended by the General Statutes Commission, enacts the Uniform Child Abduction Prevention Act and Article 3 of the Uniform Unregulated Child Custody Transfer Act. The Commission reviewed these Acts pursuant to its statutory duty under G.S. 164-13 to consider Acts promulgated by the Uniform Law Commission. The Uniform Child Abduction Prevention Act has been enacted in eighteen jurisdictions, including South Carolina and Tennessee, and has been introduced this year in Oklahoma, Missouri, North Dakota, and West Virginia. The Uniform Unregulated Child Custody Transfer Act has been enacted in Oklahoma, Colorado, Utah, and Washington and has been introduced this year in Texas, Missouri, and the District of Columbia.

This PCS incorporates comments from the North Carolina Sheriffs' Association and the Administrative Office of the Courts. Last biennium, the House passed Article 3 of the Uniform Unregulated Child Custody Transfer Act as House Bill 104.

Part I of this PCS enacts the Uniform Child Abduction Prevention Act. This Act gives courts a means to identify whether there is a credible risk of child abduction and the authority to order a wide variety of abduction prevention measures. A court on its own motion may order abduction prevention measures in a child-custody proceeding, and a party to a child-custody determination or a person having a right to seek a child-custody determination may file a petition seeking abduction prevention measures. In determining whether there is a credible risk of child abduction, a court shall consider several factors, such as whether a party has previously attempted to abduct or threatened to abduct the child, has recently engaged in activities that may indicate a planned abduction, or has engaged in domestic violence, stalking, or child abuse or neglect. A court shall also consider factors relating to international abduction, such as whether a party is likely to take the child to a country that is not a party to or does not comply with the Hague Convention on the Civil Aspects of International Child Abduction.

A court may order a wide variety of abduction prevention measures, including imposing travel restrictions requiring that a party traveling with the child outside a designated geographical area share with the other party the child's travel itinerary, a list of physical addresses and telephone numbers at which the child can be reached, and copies of all travel documents. A court may also prohibit the respondent from removing the child from a designated geographic area without permission of the court or the petitioner's written consent and may require that the respondent obtain an order from a foreign country containing terms identical to the child-custody determination issued in this country. If there is a credible risk that the child is imminently likely to be wrongfully removed, a court may also issue an ex parte warrant to take physical custody of the child.

Part II of this PCS enacts Article 3 of the Uniform Unregulated Child Custody Transfer Act. The purpose of this provision is to prevent unlawful transfers of custody of minors by better preparing adoptive parents for issues that may arise when caring for certain adopted minors. It requires adoption agencies to provide all of the following to prospective adoptive parents of minors who fall within the scope of the PCS: general information about adoption, specific information about the minor, guidance and instruction on effectively meeting the needs of the minor, and, after placement for adoption, information about financial assistance and support services. The PCS gives the Department of Health and Human Services authority to enforce the new provisions.

In addition to publishing all its drafts online, the General Statutes Commission circulated a draft to the Administrative Office of the Courts, North Carolina Bar Association, Department of Health and Human Services, Department of Justice, UNC School of Government, North Carolina Advocates for Justice, North Carolina Justice Center, and others.

Background

Current law prohibits the transfer of physical custody of a minor to a person other than a relative, or other individual that has a substantial relationship with the minor, without legal authorization or in a manner that is grossly negligent in the care of the minor. Current law also requires certain disclosures to prospective adoptive parents about any minor before placing the minor for adoption.

Specific Comments

Part I of this PCS enacts the Uniform Child Abduction Prevention Act:

Section 1(a) amends the title of Chapter 50A of the General Statutes to refer more generally to "Uniform Acts on Children" to accommodate the new Uniform Act being added by this PCS.

Section 1(b) adds a new Article consisting of the following provisions:

G.S. 50A-411 ("Short title") provides that the new Article is entitled the "Uniform Child Abduction Prevention Act."

G.S. 50A-412 ("Definitions") provides definitions for the new Article. Among other definitions, it defines "abduction" as the "wrongful removal or wrongful retention of a child" and defines "wrongful removal" and "wrongful retention" as the taking, keeping, or concealing of a child that breaches rights of custody or visitation given or recognized under State law.

G.S. 50A-413 ("Cooperation and communication among courts") provides that courts in this State may communicate and cooperate with courts in other states.

G.S. 50A-414 ("Actions for abduction prevention measures") provides that a court on its own motion may order abduction prevention measures in a child-custody proceeding, and a party to a child-custody determination or a person having a right to seek a child-custody determination may file a petition seeking abduction prevention measures.

G.S. 50A-415 ("Jurisdiction") provides that a petition under this Article may be filed only in a court that has jurisdiction to make a child-custody determination under the Uniform Child-Custody Jurisdiction and Enforcement Act (Article 2 of Chapter 50A of the General Statutes). It

also provides that a court in this State has temporary emergency jurisdiction if the court finds a credible risk of abduction.

G.S. 50A-416 ("Contents of petition") provides that a petition under this Article must be verified, must include a copy of any existing child-custody determination, if available, must specify the risk factors for abduction, and must contain certain information about the child and parties.

G.S. 50A-417 ("Factors to determine risk of abduction") provides that, in determining whether there is a credible risk of abduction, a court must consider numerous factors including whether a party has done or is doing any of the following:

- Has previously abducted, attempted to abduct, or threatened to abduct the child.
- Has recently engaged in activities that may indicate a planned abduction.
- Has engaged in domestic violence, stalking, or child abuse or neglect.
- Has refused to follow a child-custody determination.
- Lacks strong familial, financial, emotional, or cultural ties to this State or country or has strong familial, financial, emotional, or cultural ties to another state or country.
- Is likely to take the child to a country that is not a party to or does not comply with the Hague Convention on the Civil Aspects of International Child Abduction or a country that poses a risk to the child's health or safety.
- Is undergoing a change in immigration or citizenship status that would adversely affect the person's ability to remain in the country lawfully or has had an application for U.S. citizenship denied.
- Has forged or presented misleading or false evidence on government forms or has made a misrepresentation to the U.S. government.
- Has used multiple names to attempt to mislead or defraud.

G.S. 50A-418 ("Provisions and measures to prevent abduction") provides that, if a court finds a credible risk of abduction of the child, the court must enter an abduction prevention order. The abduction prevention order may include one or more abduction prevention measures, such as the following:

- An imposition of travel restrictions that require that a party traveling with the child outside a designated geographical area share with the other party the child's travel itinerary, a list of physical addresses and telephone numbers at which the child can be reached, and copies of all travel documents.
- A prohibition of the respondent removing the child from a geographic area without permission of the court or the petitioner's written consent, removing or retaining the child in violation of a child-custody determination, removing the child from school or a child-care facility, or approaching the child at any location other than a site designated for supervised visitation.
- A requirement that a party register the order in another state as a prerequisite to allowing the child to travel to that state.
- A direction that the petitioner place the child's name in the U.S. Department of State's Child Passport Issuance Alert Program, a requirement that the respondent surrender to the court or the petitioner's attorney a passport issued in the child's name, or a prohibition upon the respondent from applying on behalf of the child for a new or replacement passport or visa.

- A requirement that the respondent provide an authenticated copy of the order to the U.S. Department of State Office of Children's Issues and the relevant foreign consulate or embassy.
- 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 this country.

This section also allows the court to impose conditions on the exercise of custody or visitation, such as requiring that the respondent's visitation with the child be supervised, requiring the respondent to post a bond to serve as a financial deterrent to abduction, or requiring the respondent to obtain education on the potentially harmful effects to the child from abduction. This section also provides that a court, to prevent the imminent abduction of a child, may issue an order to take physical custody of the child under the following section or other State law or direct law enforcement to take any action reasonably necessary to locate the child, obtain return of the child, or enforce a child-custody determination.

G.S. 50A-419 ("Warrant to take physical custody of child") provides that, if a petition under this Article contains allegations, and the courts 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. It also provides that the respondent must be afforded an opportunity to be heard at the earliest possible time and that, 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, which may include forcible entry at any hour. It further provides that, if the court finds that a petitioner sought an ex parte warrant for the purpose of harassment or in bad faith, the court may award the respondent reasonable attorneys' fees, costs, and expenses.

G.S. 50A-420 ("Duration of abduction prevention order") provides that an abduction prevention order remains in effect until the earliest of the time stated in the order, the emancipation of the child, the child's attaining 18 years of age, or the time the order is modified, revoked, vacated, or superseded.

G.S. 50A-421 and **G.S. 50A-422** are standard uniform act provisions relating to uniformity of application and construction and to the federal Electronic Signatures in Global and National Commerce (ESIGN) Act, respectively.

Section 1(c) authorizes the publishing of drafters comments.

Section 1(d) provides that the section becomes effective October 1, 2025, and applies to petitions filed or motions made on or after that date.

Part II of the PCS enacts Article 3 of the Uniform Unregulated Child Custody Transfer Act:

Section 2(a) enacts a new Part ("Information and Guidance") in Article 3 of Chapter 48 of the General Statutes that consists of the following new sections:

G.S. 48-3-230 ("Title and purpose") provides that this Part may be cited as the Information and Guidance Provisions of the Uniform Unregulated Child Custody Transfer Act. The General Statutes Commission added that the purpose of the Part is to prevent the unlawful transfer of custody of minors as prohibited by G.S. 14-321.2. The Uniform Unregulated Child Custody Transfer Act includes an article to prohibit unlawful transfers of custody of minors but that article

is not included in this PCS because G.S. 14-321.2 already prohibits this conduct. The purpose language in G.S. 48-3-230 provides a link between the existing prohibition on unlawful transfers of custody and the requirements of this new Part.

G.S. 48-3-231 ("Definitions") defines certain terms. Some terms used in this Part are defined in G.S. 48-1-101 and apply to all of Chapter 48. For example, the term "agency" is defined in G.S. 48-1-101(4) as an entity licensed or otherwise authorized to place minors for adoption, including a county department of social services in this State.

G.S. 48-3-232 ("Scope") provides that this Part applies to a minor that has been or is in foster or institutional care, has previously been adopted, has been or is being adopted under the law of a foreign country, has come or is coming from a foreign country to be adopted, or is not a citizen of the United States.

G.S. 48-3-233 ("General adoption information") requires that, before placing a minor to whom this Part applies for adoption, an agency must provide the prospective adoptive parent general adoption information. The information has to address certain physical, mental, emotional, and behavioral issues an adopted minor may experience, the effect that resources may have on meeting the needs of the minor, things that can cause disruption or dissolution of an adoption and how to avoid disruption or dissolution, and the criminal prohibition on unlawful transfers of the custody of minors under G.S. 14-321.2

G.S. 48-3-234 ("Nonidentifying information about minor") provides that, before placing a minor to whom this Part applies for adoption, an agency must provide information that is nonidentifying but that is specific to the minor, in addition to the health and family background information provided under G.S. 48-3-205. This additional information includes any circumstances that could adversely affect the minor's physical, mental, emotional, or behavioral health, the history of prior adoption or placement of the minor and the reason the adoption or placement ended, and resources available to the adoptive parent and the minor to assist in responding effectively to difficulties. The agency must also provide records relevant to all of the information provided and must provide updated information if it later becomes known to the agency.

G.S. 48-3-235 ("Guidance and instruction") requires that, before an adoption is finalized (or in accordance with federal law for an intercountry adoption), an agency must provide to the prospective adoptive parent guidance and instruction specific to the minor to help the parent respond effectively to the minor's needs. The information must address the potential effect on the minor of the following, if applicable: any previous adoptions or placements, trauma, malnutrition, neglect, abuse, drug exposure, separation from a sibling or caregiver, and a difference in cultural identity between the prospective parent and minor. The agency must also provide information about the process of US citizenship for the minor.

G.S. 48-3-236 ("Information about financial assistance and support services") provides that, when requested by an adopted minor or the minor's adoptive parent, an agency must provide information on how to obtain financial assistance or support services to respond effectively to challenges and to help preserve the placement or adoption.

G.S. 48-3-237 ("Agency compliance") provides that the Department of Health and Human services may investigate allegations that an agency has failed to comply with this Part and may initiate administrative proceedings and take appropriate enforcement action.

G.S. 48-3-238 and **G.S. 48-3-239** are standard uniform act provisions relating to uniformity of application and construction and to the federal Electronic Signatures in Global and National Commerce (ESIGN) Act, respectively.

Section 2(b) amends G.S. 48-3-205 as follows:

- In subsection (a), removes language notwithstanding any other provision of law since no other provision of law is known to be in direct conflict with this G.S. section, changes "must" to "shall" for internal consistency, adds clarifying language for an inclusive list, modernizes the format of the list, replaces legalese with plain English, and removes unnecessary language.
- In subsection (b), replaces legalese with plain English and changes "may not" to "shall not" to conform to this State's drafting conventions.

Section 2(c) provides that, if a court holds a provision of this section to be invalid, the provisions of this section are severable.

Section 2(d) authorizes the Revisor of Statutes to print drafters comments.

Section 2(e) provides that this section is effective when it becomes law and applies to placement of a minor for adoption beginning 60 days after that date.

Part III of this PCS provides that, except as otherwise provided, this act is effective when it becomes law.