

BILL ANALYSIS

C.S.H.B. 1899

By: Nixon

Juvenile Justice & Family Issues
Committee Report (Substituted)

BACKGROUND AND PURPOSE

This bill adds provisions to the Family Code related to the prevention of international parental child abduction. The new subchapter advocates the best interests of the child by providing a statutory basis to ensure courts determine the risk of abduction in certain cases, and order preventive measures based on that risk if the court deems it necessary.

The recommendations within this bill are adapted from a study published by the American Bar Association Center on Children and the Law, and from numerous reports published and disseminated by the United States Department of State's Office of Children's Issues; the United States Department of Justice's Office of Juvenile Justice and Delinquency Programs; the National Center for Missing and Exploited Children; and other sources. It is important to note that the recommended safeguards have already been successfully utilized in some Texas family court cases to discourage or prevent abductions in high risk cases.

The primary problem today is that most Texas family courts remain unaware or underestimate various "red flag" indicators and the need for preventative safeguards. As a result, Texas children continue to remain at high risk for international parental child abduction. When the abduction is to a foreign country, the return of the child is extremely difficult, if not impossible in some cases—warranting more emphasis on preventing such abductions before they occur.

While existing federal law implements the provisions of the Hague Convention on the Civil Aspects of International Child Abduction, which provide remedies for the wrongful removal or retention of a child in cases of international child abduction, many foreign countries are not parties to or compliant with its enforcement.

Existing United States and Texas laws prohibit the abduction of a child in violation of the right of custody or access of a person. However, many foreign countries refuse to recognize United States custody orders. A large number of parents succeed in abducting children internationally because exit controls in the United States are nonexistent and some foreign countries (including their embassies and consulates located in the U.S.) issue passports to children they consider to be dual nationals, despite United States court orders prohibiting such issuance. Many of the abducting foreign national parents are also United States citizens or Permanent Residents who have resided in the United States for many years and/or have successful jobs or businesses, leading courts to mistakenly conclude they do not pose a risk.

Among many foreign countries, there are no legal remedies to enable an American parent to secure the return of a child to the United States or to gain access to the child in the foreign country. As a result, many American parents have had their children literally stolen, with little recourse available under the law. Consequently, the United States Department of Justice's Office of Juvenile Justice and Delinquency Programs (OJJDP) recommends that state legislatures pass statutes to *prevent* parental abductions.

C.S.H.B.1899 would supplement current Texas family law to provide that, in any child custody proceeding in which the court is made aware of evidence indicating a possible risk of international abduction of the child, the court shall consider certain factors ("red flags") to determine whether safeguards are needed to prevent such an abduction. If the court determines that the need exists, it may take specified measures to discourage or prevent the abduction of the child.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 153, Family Code by adding Subchapter I, which provides that if credible evidence is presented, a court is required to make a determination as to whether there is sufficient risk of international parental child abduction to warrant preventative measures. The court can make such a determination on its own motion, or at the request of either party. The court must consider public policy and the best interest of the child, as already defined under the Family Code, as well as specific risk factors of international parental child abduction as added by this Act.

To determine whether there is a risk of the international abduction of a child by a parent of the child, the court shall consider evidence that the parent has violated prior custody orders, made prior threats, or recently engaged in planning activities to abduct or withhold access to the child; the parent lacks financial incentives to stay in the United States; the parent has a history of domestic violence or a criminal history; obstacles to the location and return of the child; and the potential harm to the child as a consequence of abduction.

If the court finds credible evidence that a risk of international parental child abduction is present, the court shall then consider certain additional factors, including whether the parent has strong ties to a country that is not a party to or compliant with the Hague Convention on the Civil Aspects of International Child Abduction, and whether the parent lacks strong ties to the United States, regardless of whether the parent is a citizen or permanent resident.

If the court finds credible evidence that a risk of international parental child abduction is present, the court may also consider additional factors, including the parent's citizenship status with the United States Immigration and Naturalization Service and any prior attempts at forgery or false evidence relating to various United States identification documents, and aspects of the laws and practices in the foreign country to which the parent has ties.

Based on the court's determination of these risk factors, the court may implement various safeguards to prevent an international parental child abduction. These steps would include, appointing the parent other than the one who presents the risk of abduction as sole managing conservator to enable him or her to obtain the full immediate assistance from law enforcement in the event of an abduction; supervised visitation by a visitation center or an independent organization (supervision by family members, friends or acquaintances of the potential abductor parent is not adequate); and various other restrictions and limits on visitation, passports and travel.

SECTION 2. The changes in law made by this Act apply to a suit affecting the parent-child relationship pending in a trial court on the effective date of this Act or filed on or after the effective date of this Act.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the

members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2003.

EFFECTIVE DATE

September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B.1899 modifies the original H.B.1899 by substituting “country” with “United States” under Section 153.502(3) and (4), Family Code. Amends changes to Section 153.502(4), to provide consideration of evidence that the parent has forged or presented misleading or false evidence to obtain a visa, passport, social security card, or any other identification card or has made any misrepresentation to the United States government regarding the parent’s identity. The substitute also changes “may” to “shall.” Eliminates subsection (A) and changes “(B)” to “(2)” under Section 153.502(b). Additionally, the substitute adds language to subsection (c) to provide that if the court finds that there is credible evidence of a risk of abduction of the child by a parent of the child based on the court’s consideration of the factors in Subsection (a), the court may also consider evidence regarding the following factors to evaluate the risk of international abduction of the child by a parent. The substitute changes “(C)” to “(1),” as well as provides additional language with respect to forged or misleading evidence presented by the parent. The substitute further changes “(3)” to “(4)” under Section 153.502(c) and substitutes the word “race” with “nationality” under 153.502(c)(4)(C)(ii) and (iii). Additionally substitutes “signatory to or” with “party to” under 153.502(c)(4)(H), and deletes subsection (1) under Section 153.503. C.S.H.B.1899 further substitutes “(A)” with “(1),” “(B)” with “(2),” and changes “(2)” to “(3),” “(3)” to “(4),” “(4)” to “(5),” “(5)” to “(6),” “(6)” to “(7),” and “(7)” to “(8).”