

1-1 By: Eiland (Senate Sponsor - Wentworth) H.B. No. 2770
1-2 (In the Senate - Received from the House April 27, 2007;
1-3 May 1, 2007, read first time and referred to Committee on
1-4 Jurisprudence; May 19, 2007, reported favorably by the following
1-5 vote: Yeas 4, Nays 0; May 19, 2007, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to adoption of the Uniform Child Abduction Prevention Act.
1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. Subtitle B, Title 5, Family Code, is amended by
1-11 adding Chapter 163 to read as follows:

1-12 CHAPTER 163. UNIFORM CHILD ABDUCTION PREVENTION ACT

1-13 Sec. 163.001. SHORT TITLE. This chapter may be cited as the
1-14 Uniform Child Abduction Prevention Act.

1-15 Sec. 163.002. DEFINITIONS. In this chapter:

1-16 (1) "Abduction" means the wrongful removal of a child
1-17 to another state or nation or the wrongful retention of a child in
1-18 another state or nation.

1-19 (2) "Child" means an unemancipated individual who is
1-20 less than 18 years of age.

1-21 (3) "Child custody determination" means a judgment,
1-22 decree, or other order of a court providing for legal custody,
1-23 physical custody, or visitation with respect to a child. The term
1-24 includes a permanent, temporary, initial, and modification order.

1-25 (4) "Child custody proceeding" means a proceeding in
1-26 which legal custody, physical custody, or visitation with respect
1-27 to a child is at issue. The term includes a proceeding for divorce,
1-28 separation, neglect, abuse, dependency, guardianship, paternity,
1-29 termination of parental rights, and protection from domestic
1-30 violence.

1-31 (5) "Court" means an entity authorized under the law
1-32 of a state to establish, enforce, or modify a child custody
1-33 determination.

1-34 (6) "Petition" includes a motion or its equivalent.

1-35 (7) "Record" means information that is inscribed on a
1-36 tangible medium or that is stored in an electronic or other medium
1-37 and is retrievable in perceivable form.

1-38 (8) "State" means a state of the United States, the
1-39 District of Columbia, Puerto Rico, the United States Virgin
1-40 Islands, or any territory or insular possession subject to the
1-41 jurisdiction of the United States. The term includes a federally
1-42 recognized Indian tribe or nation.

1-43 (9) "Travel document" means a record relating to a
1-44 travel itinerary, including a pass and a reservation for
1-45 transportation and accommodations. The term does not include a
1-46 passport or international visa.

1-47 (10) "Wrongful removal" means the taking of a child
1-48 that breaches a right of custody or visitation given or recognized
1-49 under the law of this state.

1-50 (11) "Wrongful retention" means the keeping or
1-51 concealing of a child that breaches a right of custody or visitation
1-52 provided or recognized under the law of this state.

1-53 Sec. 163.003. COOPERATION AND COMMUNICATION AMONG COURTS.
1-54 Sections 152.110, 152.111, and 152.112 apply to a proceeding under
1-55 this chapter.

1-56 Sec. 163.004. ACTIONS FOR ABDUCTION PREVENTION MEASURES.

1-57 (a) A court on its own motion may order abduction prevention
1-58 measures in a child custody proceeding if the court finds that the
1-59 evidence establishes a credible risk of abduction of the child.

1-60 (b) A party to a child custody determination or an
1-61 individual or entity having a right under state law to seek a child
1-62 custody determination for the child may file a petition seeking
1-63 abduction prevention measures to protect the child under this
1-64 chapter.

2-1 (c) An individual or entity entitled to bring an action
 2-2 under Subsection (b) may file a petition seeking abduction
 2-3 prevention measures with respect to a child who is not yet the
 2-4 subject of a child custody determination.

2-5 (d) A prosecutor or public authority designated under
 2-6 Section 152.315 may petition for a warrant to take physical custody
 2-7 of a child under Section 163.009.

2-8 Sec. 163.005. JURISDICTION. (a) A petition under this
 2-9 chapter may be filed only in a court that has jurisdiction to make a
 2-10 child custody determination with respect to the child at issue
 2-11 under Chapter 152.

2-12 (b) A court of this state has temporary emergency
 2-13 jurisdiction under Section 152.204 if the court finds a credible
 2-14 risk of abduction.

2-15 Sec. 163.006. CONTENTS OF PETITION. A petition for
 2-16 abduction prevention measures must:

2-17 (1) be verified;
 2-18 (2) include a copy of an existing child custody
 2-19 determination, if any, and if available;

2-20 (3) specify the risk factors for abduction, including
 2-21 the relevant factors described by Section 163.007; and

2-22 (4) subject to Section 152.209(e), if reasonably
 2-23 ascertainable, contain:

2-24 (A) the name, birth date, and gender of the child
 2-25 at risk for abduction;

2-26 (B) the customary address and current physical
 2-27 location of the child;

2-28 (C) the identity, customary address, and current
 2-29 physical location of the respondent;

2-30 (D) a statement of whether a prior action to
 2-31 prevent abduction or domestic violence has been filed by a party or
 2-32 other individual or entity having custody of the child, and the
 2-33 date, location, and disposition of such an action;

2-34 (E) a statement of whether either party to the
 2-35 action has been arrested for a crime related to family violence or
 2-36 child abuse, and the date, location, and disposition of such a case;
 2-37 and

2-38 (F) any other information required to be
 2-39 submitted to the court for a child custody determination under
 2-40 Section 152.209.

2-41 Sec. 163.007. FACTORS TO DETERMINE RISK OF ABDUCTION. (a)
 2-42 In determining whether there is a credible risk of abduction of a
 2-43 child, the court shall consider evidence that the respondent or the
 2-44 petitioner:

2-45 (1) has previously abducted or attempted to abduct the
 2-46 child;

2-47 (2) has threatened to abduct the child;
 2-48 (3) has recently engaged in activities, other than
 2-49 planning activities related to carrying out a safety plan to flee
 2-50 from family violence, that may indicate a planned abduction,
 2-51 including:

2-52 (A) abandoning employment;
 2-53 (B) selling a primary residence or terminating a
 2-54 lease;

2-55 (C) closing bank or other financial management
 2-56 accounts, liquidating assets, hiding or destroying financial
 2-57 documents, or conducting any other unusual financial activities;

2-58 (D) applying for a passport or visa, obtaining
 2-59 travel documents, or purchasing travel tickets for the respondent,
 2-60 another family member, or the child; or

2-61 (E) seeking to obtain the child's birth
 2-62 certificate or school or medical records;

2-63 (4) has engaged in family violence, stalking, or child
 2-64 abuse or neglect;

2-65 (5) has failed or refused to follow a child custody
 2-66 determination;

2-67 (6) lacks strong familial, financial, emotional, or
 2-68 cultural ties to the state or the United States, regardless of
 2-69 whether the other parent is a citizen or permanent resident of the

3-1 United States;
3-2 (7) has strong familial, financial, emotional, or
3-3 cultural ties to another state or country and is likely to take the
3-4 child to that country, particularly a country that:
3-5 (A) is not a party to the Hague Convention on the
3-6 Civil Aspects of International Child Abduction and does not provide
3-7 for the extradition of an abducting parent or for the return of an
3-8 abducted child;
3-9 (B) is a party to the Hague Convention on the
3-10 Civil Aspects of International Child Abduction but:
3-11 (i) the Hague Convention on the Civil
3-12 Aspects of International Child Abduction is not in force between
3-13 the United States and that country;
3-14 (ii) is noncompliant according to the most
3-15 recent compliance report issued by the United States Department of
3-16 State; or
3-17 (iii) lacks legal mechanisms for
3-18 immediately and effectively enforcing a return order under the
3-19 Hague Convention on the Civil Aspects of International Child
3-20 Abduction;
3-21 (C) poses a risk that the child's physical or
3-22 emotional health or safety would be endangered in the country
3-23 because of specific circumstances relating to the child or because
3-24 of human rights violations committed against children;
3-25 (D) has laws or practices that would:
3-26 (i) enable the respondent, without due
3-27 cause, to prevent the petitioner from contacting the child;
3-28 (ii) restrict the petitioner from freely
3-29 traveling to or exiting from the country because of the
3-30 petitioner's gender, nationality, marital status, or religion; or
3-31 (iii) restrict the child's ability legally
3-32 to leave the country after the child reaches the age of majority
3-33 because of a child's gender, nationality, or religion;
3-34 (E) is included by the United States Department
3-35 of State on a current list of state sponsors of terrorism;
3-36 (F) does not have an official United States
3-37 diplomatic presence in the country; or
3-38 (G) is engaged in active military action or war,
3-39 including a civil war, to which the child may be exposed;
3-40 (8) is undergoing a change in immigration or
3-41 citizenship status that would adversely affect the respondent's
3-42 ability to remain in the United States legally;
3-43 (9) has had an application for United States
3-44 citizenship denied;
3-45 (10) has forged or presented misleading or false
3-46 evidence on government forms or supporting documents to obtain or
3-47 attempt to obtain a passport, visa, travel documents, social
3-48 security card, driver's license, or other government-issued
3-49 identification card or has made a misrepresentation to the United
3-50 States government;
3-51 (11) has used multiple names to attempt to mislead or
3-52 defraud; or
3-53 (12) has engaged in any other conduct the court
3-54 considers relevant to the risk of abduction.
3-55 (b) In the hearing on a petition for abduction prevention
3-56 measures, the court shall consider evidence that:
3-57 (1) the respondent believed in good faith that the
3-58 respondent's conduct was necessary to avoid imminent harm to the
3-59 child or respondent; and
3-60 (2) any other evidence that may be relevant to whether
3-61 the respondent may be permitted to remove or retain the child.
3-62 Sec. 163.008. PROVISIONS AND MEASURES TO PREVENT ABDUCTION.
3-63 (a) If a petition has been filed under this chapter, the court may
3-64 enter an order that includes:
3-65 (1) the basis for the court's exercise of
3-66 jurisdiction;
3-67 (2) the manner in which notice and opportunity to be
3-68 heard were given to the persons entitled to notice of the proceeding
3-69 under the Texas Rules of Civil Procedure;

4-1 (3) a detailed description of each parent's custody
 4-2 and visitation rights and residential arrangements for the child;

4-3 (4) a provision stating that a violation of the order
 4-4 may subject the party in violation to civil and criminal penalties;
 4-5 and

4-6 (5) identification of the child's country of habitual
 4-7 residence at the time of the issuance of the order.

4-8 (b) If after reviewing the evidence, at a hearing on a
 4-9 petition under this chapter or on the court's own motion, the court
 4-10 finds a credible risk of abduction of the child, the court shall
 4-11 enter an abduction prevention order. The order must include the
 4-12 provisions described in Subsection (a) and the measures and
 4-13 conditions, including those described in Subsections (c), (d), and
 4-14 (e), that are reasonably calculated to prevent abduction of the
 4-15 child, giving due consideration to the custody and visitation
 4-16 rights of both parents. In determining the measures to be ordered,
 4-17 the court shall consider:

4-18 (1) the age of the child;
 4-19 (2) the potential harm to the child from an abduction;
 4-20 (3) the legal and practical difficulties of returning
 4-21 the child to the jurisdiction if abducted; and
 4-22 (4) the reasons for the potential abduction, including
 4-23 evidence of domestic violence or child abuse.

4-24 (c) An abduction prevention order may include one or more of
 4-25 the following:

4-26 (1) the imposition of travel restrictions that require
 4-27 that a party traveling with the child outside a designated
 4-28 geographical area provide the other party with the following:

4-29 (A) the travel itinerary of the child;
 4-30 (B) a list of physical addresses and telephone
 4-31 numbers at which the child can be reached at specified times; and
 4-32 (C) copies of all travel documents;

4-33 (2) a prohibition against the respondent directly or
 4-34 indirectly:

4-35 (A) removing the child from this state, the
 4-36 United States, or another geographic area without permission of the
 4-37 court or the petitioner's written consent;

4-38 (B) removing or retaining the child in violation
 4-39 of the child custody determination;

4-40 (C) removing the child from school or a
 4-41 child-care or similar facility; or

4-42 (D) approaching the child at any location other
 4-43 than a site designated for supervised visitation;

4-44 (3) requiring a party to register the order in another
 4-45 state as a prerequisite to allowing the child to travel to that
 4-46 state;

4-47 (4) with regard to the child's passport:
 4-48 (A) directing the petitioner to place the child's
 4-49 name in the United States Department of State's Children's Passport
 4-50 Issuance Alert Program (CPIAP);

4-51 (B) requiring the respondent to surrender to the
 4-52 court or the petitioner's attorney any United States or foreign
 4-53 passport issued in the child's name, including a passport issued in
 4-54 the name of both the respondent and the child; and

4-55 (C) prohibiting the respondent from applying on
 4-56 behalf of the child for a new or replacement passport or visa;

4-57 (5) as a prerequisite to exercising custody or
 4-58 visitation, requiring the respondent to provide:

4-59 (A) to the United States Department of State
 4-60 Office of Children's Issues and the relevant foreign consulate or
 4-61 embassy an authenticated copy of a court order detailing passport
 4-62 and travel restrictions for the child;

4-63 (B) to the court:
 4-64 (i) proof that the respondent has provided
 4-65 the information in Paragraph (A); and

4-66 (ii) an acknowledgment in a record from the
 4-67 relevant foreign consulate or embassy that no passport application
 4-68 has been made, or passport issued, on behalf of the child;

4-69 (C) to the petitioner, proof of registration with

5-1 the United States embassy or other United States diplomatic
 5-2 presence in the destination country, and with the Central Authority
 5-3 for the Hague Convention on the Civil Aspects of International
 5-4 Child Abduction, if that convention is in effect between the United
 5-5 States and the destination country, unless one of the parents
 5-6 objects; and

5-7 (D) a written waiver under the federal Privacy
 5-8 Act of 1974 (5 U.S.C. Section 552a), with respect to any document,
 5-9 application, or other information pertaining to the child
 5-10 authorizing disclosure of them to the court and the petitioner; and

5-11 (6) on the petitioner's request, a requirement that
 5-12 the respondent obtain an order from the relevant foreign country
 5-13 containing terms identical to the child custody determination
 5-14 issued in the United States.

5-15 (d) In an abduction prevention order, the court may impose
 5-16 conditions on the exercise of custody or visitation that:

5-17 (1) limit visitation or require that visitation with
 5-18 the child by the respondent be supervised until the court finds that
 5-19 supervision is no longer necessary and order the respondent to pay
 5-20 for the supervision;

5-21 (2) require the respondent to post a bond or provide
 5-22 other security in an amount sufficient to serve as a financial
 5-23 deterrent to abduction, the proceeds of which may be used to pay for
 5-24 the expenses of recovery of the child, including attorney's fees
 5-25 and actual costs if there is an abduction; and

5-26 (3) require the respondent to obtain education on the
 5-27 potentially harmful effects to the child from abduction.

5-28 (e) To prevent imminent abduction of a child, a court may:

5-29 (1) issue a warrant to take physical custody of the
 5-30 child under Section 163.009 or other law of this state;

5-31 (2) direct the use of law enforcement to take any
 5-32 action reasonably necessary to locate the child, obtain return of
 5-33 the child, or enforce a custody determination under this chapter or
 5-34 other law of this state; and

5-35 (3) grant any other relief allowed under other law of
 5-36 this state.

5-37 (f) The remedies provided in this chapter are cumulative and
 5-38 do not affect the availability of other state remedies to prevent
 5-39 child abduction.

5-40 Sec. 163.009. WARRANT TO TAKE PHYSICAL CUSTODY OF CHILD.

5-41 (a) If a petition under this chapter contains allegations, and the
 5-42 court finds that there is a credible risk that the child is
 5-43 imminently likely to be wrongfully removed, the court may issue an
 5-44 ex parte warrant to take physical custody of the child.

5-45 (b) The respondent on a petition under Subsection (a) must
 5-46 be afforded an opportunity to be heard at the earliest possible time
 5-47 after the ex parte warrant is executed, but not later than the next
 5-48 judicial day unless that date is impossible. In that event, the
 5-49 court shall hold the hearing on the first judicial day possible.

5-50 (c) An ex parte warrant to take physical custody of a child
 5-51 must:

5-52 (1) recite the facts on which a determination of a
 5-53 credible risk of imminent wrongful removal of the child is based;

5-54 (2) direct law enforcement officers to take physical
 5-55 custody of the child immediately;

5-56 (3) state the date for the hearing on the petition; and

5-57 (4) provide for the safe interim placement of the
 5-58 child pending further order of the court.

5-59 (d) If feasible, before issuing a warrant and determining
 5-60 the placement of the child after the warrant is executed, the court
 5-61 may order a search of the relevant databases of the National Crime
 5-62 Information Center system, including those pertaining to
 5-63 protection orders, historical protection orders, warrants, sex
 5-64 offender registries, and persons on supervised release, and similar
 5-65 state databases to determine if either the petitioner or the
 5-66 respondent has a history of family violence or child abuse.

5-67 (e) The respondent must be served with the petition and
 5-68 warrant when, or immediately after, the child is taken into
 5-69 physical custody.

