

BILL ANALYSIS

H.B. 1207
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Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Courts need better procedures to identify children at risk of abduction and methods to prevent abduction. To address this problem, H.B. 1207 establishes the Uniform Child Abduction Prevention Act to provide courts with guidelines to follow during certain custody disputes and court proceedings and enable courts to order certain measures when presented with evidence that could indicate an increased risk of abduction.

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.

ANALYSIS

H.B. 1207 amends the Family Code to adopt provisions relating to child abduction prevention. The bill authorizes a court on its own motion to order abduction prevention measures in a child custody proceeding if the court finds that the evidence establishes a credible risk of abduction of the child. The bill authorizes a party to a child custody determination or an individual or entity having a right under state law to seek a child custody determination for the child to file a petition seeking abduction prevention measures to protect the child and authorizes an individual or entity entitled to bring such an action to file a petition seeking prevention measures with respect to a child who is not yet the subject of a child custody determination. The bill authorizes a prosecutor or public authority designated under the Uniform Child Custody Jurisdiction and Enforcement Act to petition for a warrant to take physical custody of a child. The bill authorizes a petition to be filed only in a court that has jurisdiction to make a child custody determination with respect to the child at issue under that act. The bill grants a court of this state temporary emergency jurisdiction in accordance with provisions of that act if the court finds a credible risk of abduction and sets out requirements for the contents of a petition for abduction prevention measures.

H.B. 1207 the requires the court, in determining whether there is a credible risk of abduction of a child, to consider evidence that the respondent or the petitioner has previously abducted or attempted to abduct the child; has threatened to abduct the child; has recently engaged in certain activities, other than planning activities related to carrying out a safety plan to flee from family violence, that may indicate a planned abduction; has engaged in family violence, stalking, or child abuse or neglect; has failed or refused to follow a child custody determination; lacks strong familial, financial, emotional, or cultural ties to the state or the United States, regardless of whether the other parent is a citizen or permanent resident of the United States; has strong familial, financial, emotional, or cultural ties to another state or country and is likely to take the child to that country, particularly a country that meets certain specifications; is undergoing a change in immigration or citizenship status that would adversely affect the respondent's ability to remain in the United States legally; has had an application for United States citizenship denied; has forged or presented misleading or false evidence on government forms or supporting documents to obtain or attempt to obtain a passport, a visa, travel documents, a social security

card, a driver's license, or another government-issued identification card or has made a misrepresentation to the United States government; has used multiple names to attempt to mislead or defraud; or has engaged in any other conduct the court considers relevant to the risk of abduction. The bill requires the court, in a hearing on a petition for abduction prevention measures, to consider evidence that the respondent believed in good faith that the respondent's conduct was necessary to avoid imminent harm to the child or respondent and any other evidence that may be relevant to whether the respondent may be permitted to remove or retain the child.

H.B. 1207 authorizes the court, if a petition has been filed under the bill's provisions, to enter an order that includes the basis for the court's exercise of jurisdiction, the manner in which notice and opportunity to be heard were given to the persons entitled to notice of the proceeding under the Texas Rules of Civil Procedure, a detailed description of each parent's custody and visitation rights and residential arrangements for the child, a provision stating that a violation of the order may subject the party in violation to civil and criminal penalties, and identification of the child's country of habitual residence at the time of the issuance of the order. The bill requires a court that finds a credible risk of abduction of the child after reviewing the evidence at a hearing on a petition or the court's own motion to enter an abduction prevention order. The bill requires the order to include, in addition to previously specified elements, the measures and conditions that are reasonably calculated to prevent abduction of the child, giving due consideration to the custody and visitation rights of both parents. The bill requires the court, in determining the measures to be ordered, to consider the child's age, 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 or child abuse.

H.B. 1207 authorizes an abduction prevention order to include one or more of the following measures: the imposition of travel restrictions that require that a party traveling with the child outside a designated geographical area provide the other party with certain travel documents; a prohibition against the respondent directly or indirectly removing the child from certain geographical areas without permission of the court or the petitioner's written consent, removing or retaining the child in violation of the child custody determination, removing the child from school or a child-care or similar facility, or approaching the child at any location other than a site designated for supervised visitation; requiring a party to register the order in another state as a prerequisite to allowing the child to travel to that state; taking certain actions with regard to the child's passport; requiring the respondent, as a prerequisite to exercising custody or visitation, to provide certain items to the court, the petitioner, and the United States Department of State Office of Children's Issues; and, on 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. The bill authorizes the court, in an abduction prevention order, to impose certain conditions on the exercise of custody or visitation. The bill authorizes the court, to prevent imminent abduction of a child, to issue a warrant to take physical custody of the child; 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 under state law; and grant any other relief allowed under state law. The bill establishes that the remedies provided are cumulative and do not affect the availability of other state remedies to prevent child abduction.

H.B. 1207 authorizes the court, if a petition contains allegations and the court finds that there is a credible risk that the child is imminently likely to be wrongfully removed, to issue an ex parte warrant to take physical custody of the child; establishes requirements for the warrant; and requires the respondent on a petition to be afforded an opportunity to be heard at the earliest possible time after the ex parte warrant is executed. The bill authorizes the court, if feasible and before issuing a warrant and determining the placement of the child after the warrant is executed, to order a search of the relevant databases of the National Crime Information Center system and similar state databases to determine if either the petitioner or the respondent has a history of

family violence or child abuse. The bill requires the respondent to be served with the petition and warrant when, or immediately after, the child is taken into physical custody. The bill establishes that a warrant to take physical custody of a child, issued by this state or another state, is enforceable throughout this state. The bill authorizes a court, if it finds that a less intrusive remedy will not be effective, to authorize law enforcement officers to enter private property to take physical custody of the child and to make a forcible entry at any hour if required by exigent circumstances. The bill authorizes a court that finds, after hearing, that a petitioner sought an ex parte warrant for the purpose of harassment or in bad faith to award the respondent reasonable attorney's fees, expenses, and costs. The bill provides that its provisions do not affect the availability of relief allowed under other state law.

H.B. 1207 establishes that an abduction prevention order remains in effect until the earliest of the following: a time stated in the order; the date the child is emancipated; the date of the child's 18th birthday; or the date the order is modified, revoked, vacated, or superseded by a court with jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act.

H.B. 1207 provides that provisions of the Uniform Child Custody Jurisdiction and Enforcement Act relating to cooperation and communication among courts apply to a proceeding under the bill's provisions.

H.B. 1207 requires that, in applying and construing the bill's provisions, consideration be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

H.B. 1207 provides that its provisions modify, limit, and supersede the federal Electronic Signatures in Global and National Commerce Act, but do not modify, limit, or supersede provisions of that act relating to consumer disclosures or authorize electronic delivery of any of the notices described in certain provisions of that act.

H.B. 1207 provides a short title, the Uniform Child Abduction Prevention Act, for purposes of citing its provisions and defines "abduction," "child," "child custody determination," "child custody proceeding," "court," "petition," "record," "state," "travel document," "wrongful removal," and "wrongful retention."

H.B. 1207 repeals Subchapter I, Chapter 153, Family Code, relating to the prevention of international parental child abduction.

EFFECTIVE DATE

September 1, 2011.