

BILL ANALYSIS

S.B. 1490
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Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

S.B. 1490 is in response to a case which occurred in Bexar County in November of 2009. Jean Philippe Lacombe, the father of a child who was the subject of a custody battle, filed an international child custody determination with allegations of physical harm. Therefore the judge issued a warrant to take physical custody of the child. The child was immediately given to the father and the father was told to appear the next Monday for a hearing in order to make the custody determination. The father—who had dual citizenship— immediately absconded with the child to a foreign country. It took the parent who rightfully had custody of the child a year in order to get her child back.

S.B. 1490 requires a record to be made of all proceedings and hearings when implementing Chapter 152 (Uniform Child Custody Jurisdiction and Enforcement Act), Family Code, for only international child custody determinations or proceedings.

The bill changes the warrant to take physical custody of a child, Section 152.311 (Warrant to Take Physical Custody of Child), Family Code, to require that if a petition contains allegations, and upon a finding that, a child is imminently likely to suffer serious physical harm or to be wrongfully removed, the court can issue a warrant directing law enforcement officers to take immediate physical custody of the child. The change is that the law enforcement officers will deliver the child to the Department of Protective and Regulatory Services in the manner provided for a return of a missing child.

The bill also adds Warrant to Take Physical Custody of the Child to Subchapter I (Prevention of International Parental Child Abduction), Chapter 153 (Conservatorship, Possession, and Access), Family Code, which deals with preventive measures for international parental child abductions.

S.B. 1490 would create a criminal penalty punishable as a felony of the third degree for an individual who makes a false statement as to the current child custody status.

These changes will put safeguards in place in order to prevent this from reoccurring in the future.

S.B. 1490 amends current law relating to the recording of proceedings and the issuance of a warrant to take physical custody of a child in certain suits affecting the parent-child relationship and creates an offense.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

ANALYSIS

SECTION 1. Amends Section 152.105, Family Code, by adding Subsection (d), to require a record of all of the proceedings under this chapter relating to a child custody determination made in a foreign country or to the enforcement of an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction to be made by a court reporter or as provided by Section 201.009 (Court Reporter; Record).

SECTION 2. Amends Section 152.311, Family Code, by amending Subsection (c) and adding Subsection (c-1), as follows:

(c) Requires a warrant to take physical custody of a child to:

- (1) recite the fact upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;
- (2) direct law enforcement officers to take physical custody of the child immediately;
- (3) state the date for the hearing on the petition; and
- (4) provide for the safe interim placement of the child pending further order of the court and impose conditions on placement of the child to ensure the appearance of the child and the child's custodian.

Deletes existing text requiring a warrant to take physical custody of a child to provide for the placement of the child pending final relief.

(c-1) Authorizes the court, if the petition seeks to enforce a child custody determination made in a foreign country or an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction, to place a child with a parent or family member in accordance with Subsection (c)(4) only if the parent or family member has significant ties to the jurisdiction of the court. Requires the court, if the parent or family member of the child does not have significant ties to the jurisdiction of the court, to provide for the delivery of the child to the Department of Family and Protective Services in the manner provided for the delivery of a missing child by Section 262.007(c) (relating to requiring a law enforcement officer to deliver a child to the Department of Protective and Regulatory Services if a person entitled to possession of the child is not immediately available to take possession of the child).

SECTION 3. Amends Chapter 37, Penal Code, by adding Section 37.14, as follows:

Sec. 37.14. FALSE STATEMENT REGARDING CHILD CUSTODY DETERMINATION MADE IN FOREIGN COUNTRY. (a) Defines "child custody determination" for purposes of this section.

(b) Provides that a person commits an offense if the person knowingly makes or causes to be made a false statement relating to a child custody determination made in a foreign country during a hearing held under Chapter 152 (Uniform Child Custody Jurisdiction and Enforcement Act) or Subchapter I (Prevention of International Parental Child Abduction), Chapter 153 (Conservatorship, Possession, and Access), Family Code.

(c) Provides that an offense under this section is a felony of the third degree.

SECTION 4. Repealer: Section 152.311(f) (relating to authorizing the court to impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian), Family Code.

EFFECTIVE DATE

September 1, 2011.