

By: S. Davis of Harris

H.B. No. 1207

A BILL TO BE ENTITLED

AN ACT

relating to adoption of the Uniform Child Abduction Prevention Act.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

CHAPTER 163. UNIFORM CHILD ABDUCTION PREVENTION ACT

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

Sec. 163.002. DEFINITIONS. In this chapter:

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

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

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

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

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

4 (6) "Petition" includes a motion or its equivalent.

5 (7) "Record" means information that is inscribed on a
6 tangible medium or that is stored in an electronic or other medium
7 and is retrievable in perceivable form.

8 (8) "State" means a state of the United States, the
9 District of Columbia, Puerto Rico, the United States Virgin
10 Islands, or any territory or insular possession subject to the
11 jurisdiction of the United States. The term includes a federally
12 recognized Indian tribe or nation.

13 (9) "Travel document" means a record relating to a
14 travel itinerary, including a pass and a reservation for
15 transportation and accommodations. The term does not include a
16 passport or international visa.

17 (10) "Wrongful removal" means the taking of a child
18 that breaches a right of custody or visitation given or recognized
19 under the law of this state.

20 (11) "Wrongful retention" means the keeping or
21 concealing of a child that breaches a right of custody or visitation
22 provided or recognized under the law of this state.

23 Sec. 163.003. COOPERATION AND COMMUNICATION AMONG COURTS.
24 Sections 152.110, 152.111, and 152.112 apply to a proceeding under
25 this chapter.

26 Sec. 163.004. ACTIONS FOR ABDUCTION PREVENTION MEASURES.
27 (a) A court on its own motion may order abduction prevention

1 measures in a child custody proceeding if the court finds that the
2 evidence establishes a credible risk of abduction of the child.

3 (b) A party to a child custody determination or an
4 individual or entity having a right under state law to seek a child
5 custody determination for the child may file a petition seeking
6 abduction prevention measures to protect the child under this
7 chapter.

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

12 (d) A prosecutor or public authority designated under
13 Section 152.315 may petition for a warrant to take physical custody
14 of a child under Section 163.009.

15 Sec. 163.005. JURISDICTION. (a) A petition under this
16 chapter may be filed only in a court that has jurisdiction to make a
17 child custody determination with respect to the child at issue
18 under Chapter 152.

19 (b) A court of this state has temporary emergency
20 jurisdiction under Section 152.204 if the court finds a credible
21 risk of abduction.

22 Sec. 163.006. CONTENTS OF PETITION. A petition for
23 abduction prevention measures must:

24 (1) be verified;

25 (2) include a copy of an existing child custody
26 determination, if any, and if available;

27 (3) specify the risk factors for abduction, including

1 the relevant factors described by Section 163.007; and

2 (4) subject to Section 152.209(e), if reasonably
3 ascertainable, contain:

4 (A) the name, birth date, and gender of the child
5 at risk for abduction;

6 (B) the customary address and current physical
7 location of the child;

8 (C) the identity, customary address, and current
9 physical location of the respondent;

10 (D) a statement of whether a prior action to
11 prevent abduction or domestic violence has been filed by a party or
12 other individual or entity having custody of the child, and the
13 date, location, and disposition of such an action;

14 (E) a statement of whether either party to the
15 action has been arrested for a crime related to family violence or
16 child abuse, and the date, location, and disposition of such a case;
17 and

18 (F) any other information required to be
19 submitted to the court for a child custody determination under
20 Section 152.209.

21 Sec. 163.007. FACTORS TO DETERMINE RISK OF ABDUCTION. (a)
22 In determining whether there is a credible risk of abduction of a
23 child, the court shall consider evidence that the respondent or the
24 petitioner:

25 (1) has previously abducted or attempted to abduct the
26 child;

27 (2) has threatened to abduct the child;

1 (3) has recently engaged in activities, other than
2 planning activities related to carrying out a safety plan to flee
3 from family violence, that may indicate a planned abduction,
4 including:

5 (A) abandoning employment;

6 (B) selling a primary residence or terminating a
7 lease;

8 (C) closing bank or other financial management
9 accounts, liquidating assets, hiding or destroying financial
10 documents, or conducting any other unusual financial activities;

11 (D) applying for a passport or visa, obtaining
12 travel documents, or purchasing travel tickets for the respondent,
13 another family member, or the child; or

14 (E) seeking to obtain the child's birth
15 certificate or school or medical records;

16 (4) has engaged in family violence, stalking, or child
17 abuse or neglect;

18 (5) has failed or refused to follow a child custody
19 determination;

20 (6) lacks strong familial, financial, emotional, or
21 cultural ties to the state or the United States, regardless of
22 whether the other parent is a citizen or permanent resident of the
23 United States;

24 (7) has strong familial, financial, emotional, or
25 cultural ties to another state or country and is likely to take the
26 child to that country, particularly a country that:

27 (A) is not a party to the Hague Convention on the

1 Civil Aspects of International Child Abduction and does not provide
2 for the extradition of an abducting parent or for the return of an
3 abducted child;

4 (B) is a party to the Hague Convention on the
5 Civil Aspects of International Child Abduction but:

6 (i) the Hague Convention on the Civil
7 Aspects of International Child Abduction is not in force between
8 the United States and that country;

9 (ii) is noncompliant according to the most
10 recent compliance report issued by the United States Department of
11 State; or

12 (iii) lacks legal mechanisms for
13 immediately and effectively enforcing a return order under the
14 Hague Convention on the Civil Aspects of International Child
15 Abduction;

16 (C) poses a risk that the child's physical or
17 emotional health or safety would be endangered in the country
18 because of specific circumstances relating to the child or because
19 of human rights violations committed against children;

20 (D) has laws or practices that would:

21 (i) enable the respondent, without due
22 cause, to prevent the petitioner from contacting the child;

23 (ii) restrict the petitioner from freely
24 traveling to or exiting from the country because of the
25 petitioner's gender, nationality, marital status, or religion; or

26 (iii) restrict the child's ability legally
27 to leave the country after the child reaches the age of majority

1 because of a child's gender, nationality, or religion;

2 (E) is included by the United States Department
3 of State on a current list of state sponsors of terrorism;

4 (F) does not have an official United States
5 diplomatic presence in the country; or

6 (G) is engaged in active military action or war,
7 including a civil war, to which the child may be exposed;

8 (8) is undergoing a change in immigration or
9 citizenship status that would adversely affect the respondent's
10 ability to remain in the United States legally;

11 (9) has had an application for United States
12 citizenship denied;

13 (10) has forged or presented misleading or false
14 evidence on government forms or supporting documents to obtain or
15 attempt to obtain a passport, a visa, travel documents, a social
16 security card, a driver's license, or another government-issued
17 identification card or has made a misrepresentation to the United
18 States government;

19 (11) has used multiple names to attempt to mislead or
20 defraud; or

21 (12) has engaged in any other conduct the court
22 considers relevant to the risk of abduction.

23 (b) In the hearing on a petition for abduction prevention
24 measures, the court shall consider:

25 (1) evidence that the respondent believed in good
26 faith that the respondent's conduct was necessary to avoid imminent
27 harm to the child or respondent; and

1 (2) any other evidence that may be relevant to whether
2 the respondent may be permitted to remove or retain the child.

3 Sec. 163.008. PROVISIONS AND MEASURES TO PREVENT ABDUCTION.

4 (a) If a petition has been filed under this chapter, the court may
5 enter an order that includes:

6 (1) the basis for the court's exercise of
7 jurisdiction;

8 (2) the manner in which notice and opportunity to be
9 heard were given to the persons entitled to notice of the proceeding
10 under the Texas Rules of Civil Procedure;

11 (3) a detailed description of each parent's custody
12 and visitation rights and residential arrangements for the child;

13 (4) a provision stating that a violation of the order
14 may subject the party in violation to civil and criminal penalties;
15 and

16 (5) identification of the child's country of habitual
17 residence at the time of the issuance of the order.

18 (b) If after reviewing the evidence, at a hearing on a
19 petition under this chapter or on the court's own motion, the court
20 finds a credible risk of abduction of the child, the court shall
21 enter an abduction prevention order. The order must include the
22 provisions described in Subsection (a) and the measures and
23 conditions, including those described in Subsections (c), (d), and
24 (e), that are reasonably calculated to prevent abduction of the
25 child, giving due consideration to the custody and visitation
26 rights of both parents. In determining the measures to be ordered,
27 the court shall consider:

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

7 (c) An abduction prevention order may include one or more of
8 the following:

9 (1) the imposition of travel restrictions that require
10 that a party traveling with the child outside a designated
11 geographical area provide the other party with the following:

12 (A) the travel itinerary of the child;

13 (B) a list of physical addresses and telephone
14 numbers at which the child can be reached at specified times; and

15 (C) copies of all travel documents;

16 (2) a prohibition against the respondent directly or
17 indirectly:

18 (A) removing the child from this state, the
19 United States, or another geographic area without permission of the
20 court or the petitioner's written consent;

21 (B) removing or retaining the child in violation
22 of the child custody determination;

23 (C) removing the child from school or a
24 child-care or similar facility; or

25 (D) approaching the child at any location other
26 than a site designated for supervised visitation;

27 (3) requiring a party to register the order in another

1 state as a prerequisite to allowing the child to travel to that
2 state;

3 (4) with regard to the child's passport:

4 (A) directing the petitioner to place the child's
5 name in the United States Department of State's Children's Passport
6 Issuance Alert Program (CPIAP);

7 (B) requiring the respondent to surrender to the
8 court or the petitioner's attorney any United States or foreign
9 passport issued in the child's name, including a passport issued in
10 the name of both the respondent and the child; and

11 (C) prohibiting the respondent from applying on
12 behalf of the child for a new or replacement passport or visa;

13 (5) as a prerequisite to exercising custody or
14 visitation, requiring the respondent to provide:

15 (A) to the United States Department of State
16 Office of Children's Issues and the relevant foreign consulate or
17 embassy an authenticated copy of a court order detailing passport
18 and travel restrictions for the child;

19 (B) to the court:

20 (i) proof that the respondent has provided
21 the information in Paragraph (A); and

22 (ii) an acknowledgment in a record from the
23 relevant foreign consulate or embassy that no passport application
24 has been made, or passport issued, on behalf of the child;

25 (C) to the petitioner, proof of registration with
26 the United States embassy or other United States diplomatic
27 presence in the destination country, and with the Central Authority

1 for the Hague Convention on the Civil Aspects of International
2 Child Abduction, if that convention is in effect between the United
3 States and the destination country, unless one of the parents
4 objects; and

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

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

13 (d) In an abduction prevention order, the court may impose
14 conditions on the exercise of custody or visitation that:

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

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

24 (3) require the respondent to obtain education on the
25 potentially harmful effects to the child from abduction.

26 (e) To prevent imminent abduction of a child, a court may:

27 (1) issue a warrant to take physical custody of the

1 child under Section 163.009 or other law of this state;

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

6 (3) grant any other relief allowed under other law of
7 this state.

8 (f) The remedies provided in this chapter are cumulative and
9 do not affect the availability of other state remedies to prevent
10 child abduction.

11 Sec. 163.009. WARRANT TO TAKE PHYSICAL CUSTODY OF CHILD.

12 (a) If a petition under this chapter contains allegations, and the
13 court finds that there is a credible risk that the child is
14 imminently likely to be wrongfully removed, the court may issue an
15 ex parte warrant to take physical custody of the child.

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

21 (c) An ex parte warrant to take physical custody of a child
22 must:

23 (1) recite the facts on which a determination of a
24 credible risk of imminent wrongful removal of the child is based;

25 (2) direct law enforcement officers to take physical
26 custody of the child immediately;

27 (3) state the date for the hearing on the petition; and

1 (4) provide for the safe interim placement of the
2 child pending further order of the court.

3 (d) If feasible, before issuing a warrant and determining
4 the placement of the child after the warrant is executed, the court
5 may order a search of the relevant databases of the National Crime
6 Information Center system, including those pertaining to
7 protection orders, historical protection orders, warrants, sex
8 offender registries, and persons on supervised release, and similar
9 state databases to determine if either the petitioner or the
10 respondent has a history of family violence or child abuse.

11 (e) The respondent must be served with the petition and
12 warrant when, or immediately after, the child is taken into
13 physical custody.

14 (f) A warrant to take physical custody of a child, issued by
15 this state or another state, is enforceable throughout this state.
16 If the court finds that a less intrusive remedy will not be
17 effective, it may authorize law enforcement officers to enter
18 private property to take physical custody of the child. If required
19 by exigent circumstances, the court may authorize law enforcement
20 officers to make a forcible entry at any hour.

21 (g) If the court finds, after hearing, that a petitioner
22 sought an ex parte warrant under Subsection (a) for the purpose of
23 harassment or in bad faith, the court may award the respondent
24 reasonable attorney's fees, expenses, and costs.

25 (h) This chapter does not affect the availability of relief
26 allowed under other law of this state.

27 Sec. 163.010. DURATION OF ABDUCTION PREVENTION ORDER. An

1 abduction prevention order remains in effect until the earliest of:
2 (1) a time stated in the order;
3 (2) the date the child is emancipated;
4 (3) the date of the child's 18th birthday; or
5 (4) the date the order is modified, revoked, vacated,
6 or superseded by a court with jurisdiction under Sections 152.201
7 through 152.203.

8 Sec. 163.011. UNIFORMITY OF APPLICATION AND CONSTRUCTION.
9 In applying and construing this chapter, consideration must be
10 given to the need to promote uniformity of the law with respect to
11 its subject matter among states that enact it.

12 Sec. 163.012. RELATION TO FEDERAL ELECTRONIC SIGNATURES IN
13 GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits,
14 and supersedes the federal Electronic Signatures in Global and
15 National Commerce Act (15 U.S.C. Section 7001 et seq.) but does not
16 modify, limit, or supersede Section 101(c) of that Act or authorize
17 electronic delivery of any of the notices described in Section
18 103(b) of that Act.

19 SECTION 2. Subchapter I, Chapter 153, Family Code, is
20 repealed.

21 SECTION 3. The changes in law made by this Act apply to a
22 suit affecting the parent-child relationship pending in a trial
23 court on the effective date of this Act or filed on or after that
24 date.

25 SECTION 4. This Act takes effect September 1, 2011.