

SUBJECT: Preventing the international abduction of a child by a parent of the child

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 6 ayes — Dutton, Goodman, Baxter, Hodge, Morrison, Reyna

0 nays

3 absent — Castro, Dunnam, J. Moreno

WITNESSES: For — Gregory Allen; Catherine L. Brown; Ty Cunningham; Regina Lauderdale; Teresa Lauderdale; Lawrence Robert Whyte

Against — None

BACKGROUND: Family Code, ch. 152, governs child custody jurisdiction and enforcement. It provides that unless the child custody law of a foreign country violates fundamental principles of human rights, a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of ch. 152 must be recognized and enforced. A Texas court may enforce an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child custody determination.

Upon filing a petition seeking enforcement of a child custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is in imminent danger of suffering serious physical harm or being removed from the state.

Family Code, ch. 153, establishes that the public policy of the state is to:

- assure that children have frequent and continuing contact with parents who have shown the ability to act in the best interest of the child;
- provide a safe, stable, and nonviolent environment for the child; and
- encourage parents to share in the rights and duties of raising their child after the parents have separated or dissolved their marriage.

The best interest of the child always must be the court's primary consideration in determining the issues of conservatorship and possession of and access to the child.

DIGEST:

CSHB 1899 would create a new subchapter within Family Code, ch. 153, to prevent international child abduction by parents. If credible evidence is presented to the court indicating a potential risk of international abduction of a child by a parent, the court would have to determine whether it was necessary to take certain measures to protect the child. In making that determination, the court would have to consider:

- the public policies of the state contained in Family Code, ch. 153, and the best interest of the child;
- any obstacles to locating, recovering, and returning the child if the child was abducted to a foreign country;
- the potential physical or psychological harm to the child if the child was abducted; and
- the risk of international abduction of the child by a parent based on an evaluation of certain risk factors.

The risk factors that a court would have to consider would include evidence that the parent:

- had taken, withheld, or concealed a child in violation of another person's right of possession of or access to the child, unless the parent presented evidence that he or she believed in good faith that the conduct was necessary to avoid imminent harm to the child;
- had previously threatened to take, withhold, or conceal a child in violation of another's right of possession of or access to the child;
- lacked financial reason to stay in the United States, including evidence that the parent was financially independent, able to work abroad, or unemployed;
- had recently engaged in planning that could facilitate the removal of the child from the United States by the parent, including quitting a job, selling a primary residence, terminating a lease, closing bank accounts, applying for a passport or visa for the parent or the child, or applying to obtain the child's birth certificate, school, or medical records;

- had a history of domestic violence; or
- had a criminal history or a history of violating court orders.

If the court found that there was credible evidence of a risk of abduction based on the above factors, the court also would have to consider evidence regarding the following factors:

- whether the parent had strong familial or cultural ties to another country, particularly a country that was not a signatory to or compliant with the Hague Convention on the Civil Aspects of International Child Abduction; and
- whether the parent lacked strong ties to the United States, regardless of citizenship or permanent resident status.

If the court found credible evidence of a risk of abduction based on the above factors, the court also could consider evidence of the following factors to evaluate the risk of international abduction:

- whether the parent was undergoing a change in status with the United States Immigration and Naturalization Service (INS) that would adversely affect the parent's ability to remain in the United States;
- whether the parent's application for U.S. citizenship had been denied by INS; or
- whether the parent had forged or presented false evidence to obtain an identification card or had made any misrepresentation to the U.S. government.

The court also could consider evidence of the following factors about a foreign country to which the parent had ties:

- whether the country presented obstacles to the recovery and return of an abducted child, or had legal mechanisms for enforcing an order issued by a Texas court regarding the possession of or access to the child;
- whether the country had local laws or practices that would enable the parent to prevent the other parent from contacting the child, restrict the child's other parent from traveling to or exiting the country because of that person's gender, nationality, or religion, or restrict the child's

- ability to leave the country after the child grew up due to the child's gender, nationality, or religion;
- whether the country was on a U.S. Department of State list of countries that sponsor terrorism, or for which there was a travel warning for U.S. citizens;
 - whether the country had a U.S. embassy, or was engaged in any active military action;
 - whether the country was a party to and compliant with the Hague Convention on the Civil Aspects of International Child Abduction or provided for the extradition of a parental abductor and the return of the child to the United States; or
 - whether the country posed a risk that the child's physical health or safety would be endangered due to human rights violations committed there against children.

If the court found that it was necessary to take measures to protect a child from international abduction, the court could take any of the following actions:

- appoint a person other than the parent of the child who presented a risk of abduction as the sole managing conservator;
- require supervised visitation;
- enjoin the parent from removing the child from school or child-care facilities or approaching the child at any location other than a site designated for supervised visitation;
- order passport and travel controls, including preventing the parent from removing the child from Texas or the United States;
- require the parent to provide to the U.S. Department of State's Office of Children's Issues and the relevant foreign consulate or embassy, written notice of the court-ordered passport and travel restrictions;
- order the parent to execute a bond or deposit security in an amount sufficient to offset the cost of recovering the child if the child were abducted;
- authorize law enforcement agencies to take measures to prevent the abduction of the child; or
- include in the order provisions identifying the United States as the child's country of residence and stating that a party's violation of the order could subject the party to a civil or criminal penalty or both.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

**SUPPORTERS
SAY:**

CSHB 1899 would help prevent the international abduction of a child by a parent, which is devastating for the parent left behind as well as the child. It would ensure that courts considered risk factors and ordered preventive measures when necessary to prevent international abductions from occurring. According to the U.S. State Department, about 1,000 international abductions of children from this country take place every year. The recommendations in the bill are adapted from a study published by the American Bar Association Center on Children, as well as reports published by various federal departments and the National Center for Missing and Exploited Children.

Because the consequences of international abduction are grave, prevention is key. Parental abduction is one of the worst forms of child abuse. Abduction has a traumatic effect on children, who often are taken to a foreign place where they have no friends, do not speak the language, are kept deliberately from the other parent, and often are in the custody of a parent ill-equipped to provide the comfort and security that the child needs. The parent left behind is robbed of the opportunity to have a relationship with the child and often must expend an enormous amount of resources in an effort to recover the child. Furthermore, government and law enforcement resources often must be spent in an effort to locate and secure the return of an abducted child. The parent left behind faces an uphill battle that often results in a permanent loss of the child.

The bill would give courts the necessary tools to prevent many international abductions from happening. It would help make family courts aware of various "red flag" indicators of a potential abduction, such as a parent moving out of his or her home, closing bank accounts, and other actions that indicate an intent to leave the country. Although some of the recommended safeguards already have been used successfully in family court, most courts remain unaware of or underestimate the risk factors, which means that some Texas children remain at high risk for international abduction with no legal remedies available to parents to secure the child's return or even to gain access to the child in the foreign country.

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 it or compliant with its enforcement. Existing U.S. and Texas laws prohibit the abduction of a child in violation of the other parent's rights, but many foreign countries refuse to recognize U.S. 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 issue passports to children they consider to be dual nationals, despite U.S. court orders prohibiting such issuance. For these reasons, state family courts must implement effective safeguards to prevent an abduction in the first place.

This bill would provide courts with a common-sense list of risk factors to consider before deciding whether certain preventive safeguards were necessary. It would not violate the constitutional right of equal protection because a court could not even consider a person's ties to a foreign country until the initial threshold was met establishing credible evidence of a risk of abduction. At that point, it would be appropriate for a court to consider whether the parent had strong ties to another country, particularly one that was not a signatory to the Hague Convention, and to evaluate certain factors about that country, such as whether the child's physical health or safety would be endangered there. Furthermore, characteristics of the foreign country would just be one factor among many that a court could consider and would not alone determine the issue.

Family courts can be trusted to use their discretion in an appropriate manner about the risk of international abduction, just as they are trusted to make decisions on all other aspects of the parent-child relationship. There is one court of exclusive, continuing jurisdiction in such cases, which means that the family court is well-equipped to make determinations such as this.

**OPPONENTS
SAY:**

A parent suspected of plotting an abduction potentially could be sanctioned for a variety of innocent behaviors, such as being financially independent or unemployed, quitting a job, selling a residence, closing a bank account, or applying for a visa. Furthermore, immigrants or parents with strong ties to certain foreign countries automatically would be discriminated against under the bill, contrary to the constitutional right to equal protection under the law.

The sanctions would include appointing another person as the sole managing conservator of the child, requiring supervised visitation, enjoining the parent from even approaching the child at any location other than the site designated for supervised visitation, passport and travel restrictions, and the execution of a bond or deposit security. These sanctions would deprive the parent of the freedom to travel and raise the child, which would infringe seriously upon their liberty interests.

CSHB 1899 would give courts too much leeway to impose harsh sanctions on parents and would not contain adequate safeguards to ensure due process for parents suspected of plotting to abduct a child. The bill would not specify whether suspected parents would be entitled to notice and a hearing on the issue, or what standard of proof must be met before imposing the sanctions. Courts would be required and permitted to consider a broad array of factors in making their determination, but would not be given guidelines about what weight to attach to those factors.

NOTES:

The committee substitute reorganized many provisions of the bill as introduced and would require, rather than allow, the court to consider the parent's familial ties to another country and lack of strong ties to the United States. The committee substitute also would make it discretionary, rather than mandatory, for the court to consider evidence regarding whether the parent had forged or presented misleading evidence to obtain an identification card or had made any misrepresentation to the U.S. government.