

BILL ANALYSIS

Senate Research Center

H.B. 2770
By: Eiland (Wentworth)
Jurisprudence
5/15/2007
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 2770 provides courts with guidelines to follow during custody disputes and court proceedings. This is designed to help courts identify children at risk of abduction and to provide methods to prevent abduction. Under the Uniform Child Abduction Prevention Act, evidence that could indicate an increased risk of abduction based upon statutorily provided risk factors may be heard before the court.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle B, Title 5, Family Code, by adding Chapter 163, as follows:

CHAPTER 163. UNIFORM CHILD ABDUCTION PREVENTION ACT

Sec. 163.001. SHORT TITLE. Authorizes this chapter to be cited as the Uniform Child Abduction Prevention Act.

Sec. 163.002. DEFINITIONS. Defines "abduction," "child," "child custody determination," "child custody proceeding," "court," "petition," "record," "state," "travel document," "wrongful removal," and "wrongful retention."

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

Sec. 163.004. ACTIONS FOR ABDUCTION PREVENTION MEASURES. (a) 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.

(b) 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 under this chapter.

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

(d) Authorizes a prosecutor or public authority designated under Section 152.315 (Role of Prosecutor or Public Official), Family Code, to petition for a warrant to take physical custody of a child under Section 163.009, Family Code.

Sec. 163.005. JURISDICTION. (a) Authorizes a petition under this chapter to be filed only in a court that has jurisdiction to make a child custody determination with respect to

the child at issue under Chapter 152 (Uniform Child Custody Jurisdiction and Enforcement Act), Family Code.

(b) Provides that a court of this state has temporary emergency jurisdiction under Section 152.204 (Temporary Emergency Jurisdiction), Family Code, if the court finds a credible risk of abduction.

Sec. 163.006. CONTENTS OF PETITION. Requires a petition for abduction prevention measures to be verified, include a copy of an existing child custody determination if available, specify the risk factors for abduction, include the relevant factors described by Section 163.007, and subject to Section 152.209(e) (regarding affidavits or pleadings under oath pertaining to the health, safety, or liberty of a party or child), Family Code, contain certain information, if reasonably ascertainable.

Sec. 163.007. FACTORS TO DETERMINE RISK OF ABDUCTION. (a) Requires the court, in determining whether there is a credible risk of abduction of a child, to consider certain evidence.

(b) Requires the court, in the 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.

Sec. 163.008. PROVISIONS AND MEASURES TO PREVENT ABDUCTION. (a) Authorizes the court to enter an order including certain information, if a petition has been filed under this chapter.

(b) Requires the court to enter an abduction prevention order if after reviewing the evidence, at a hearing on a petition under this chapter or on the court's own motion, the court finds a credible risk of abduction of the child. Requires the order to include the provisions described in Subsection (a) and the measures and conditions that are reasonably calculated to prevent abduction of the child including those described in Subsections (c), (d), and (e), giving due consideration to the custody and visitation rights of both parents. Requires the court to consider certain information in determining the measures to be ordered.

(c) Authorizes an abduction prevention order to include certain provisions.

(d) Authorizes the court to impose certain conditions on the exercise of custody or visitation in an abduction prevention order.

(e) Authorizes the court to take certain actions to prevent imminent abduction of a child.

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

Sec. 163.009. WARRANT TO TAKE PHYSICAL CUSTODY OF CHILD. (a) Authorizes the court to issue an ex parte warrant to take physical custody of the child if a petition under this chapter contains allegations and the court finds that there is a credible risk that the child is imminently likely to be wrongfully removed.

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

(c) Requires an ex parte warrant to take physical custody of a child to contain certain information and provisions.

(d) Authorizes the court 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 before issuing a warrant and determining the placement of the child after the warrant is executed, if feasible.

(e) Requires the respondent to be served with the petition and warrant when, or immediately after, the child is taken into physical custody.

(f) Provides that a warrant to take physical custody of a child, issued by this state or another state, is enforceable throughout this state. Authorizes the court to authorize law enforcement officers to enter private property to take physical custody of the child, if it finds that a less intrusive remedy will not be effective. Authorizes the court, if required by exigent circumstances, to authorize law enforcement officers to make a forcible entry at any hour.

(g) Authorizes the court, if it finds through a hearing that a petitioner sought an ex parte warrant under Subsection (a) for the purpose of harassment or in bad faith, to award the respondent reasonable attorney's fees, expenses, and costs.

(h) Provides that this chapter does not affect the availability of relief allowed under other law of this state.

Sec. 163.010. DURATION OF ABDUCTION PREVENTION ORDER. Provides that an abduction prevention order remains in effect until the earliest of certain dates.

Sec. 163.011. UNIFORMITY OF APPLICATION AND CONSTRUCTION. Requires consideration to be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it in applying and construing this chapter.

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

SECTION 2. Repealer: Subchapter I (Prevention of International Parental Child Abduction), Chapter 153, Family Code.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2007.