

SENATE BILL REPORT

SHB 1121

As of March 13, 2023

Title: An act relating to the uniform child abduction prevention act.

Brief Description: Concerning the uniform child abduction prevention act.

Sponsors: House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Goodman, Leavitt, Reeves, Lekanoff and Wylie; by request of Uniform Law Commission).

Brief History: Passed House: 2/8/23, 96-0.

Committee Activity: Law & Justice: 3/13/23.

Brief Summary of Bill

- Adopts the Uniform Child Abduction Prevention Act.
- Provides a court process for assessing the risk of a child abduction and imposing restrictions to prevent an abduction.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Tim Ford (786-7423)

Background: State and Federal Laws Addressing Child Abduction Issues. The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), adopted by Washington and nearly all other states, and the federal Parental Kidnapping Prevention Act (PKPA), enacted by Congress in 1980, both address jurisdictional issues over child custody determinations when more than one state is involved.

The UCCJEA establishes procedures to determine when one state has jurisdiction to enter or modify a child custody order and when it must recognize another state's order. The UCCJEA gives exclusive and continuing jurisdiction over child custody to the courts of the

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child's home state, defined for the most part as the state where the child has lived with a parent for six consecutive months prior to the commencement of the proceeding. It also provides a uniform procedure to register and enforce child custody orders across state lines. The UCCJEA provides a court with temporary emergency jurisdiction, even if another state has issued a custody order, if a child is present in the state and needs protection due to abuse or abandonment.

The PKPA requires that states give full faith and credit to other states' custody determinations so long as those determinations are made consistent with the PKPA. The PKPA provides that only those child custody determinations made by a child's home state are eligible for full faith and credit treatment.

The Hague Convention on the Civil Aspects of International Child Abduction. The Hague Convention on the Civil Aspects of International Child Abduction, currently in effect between the United States and approximately 100 countries, facilitates the return of an abducted child to the child's habitual residence. Parents, not the governments, are parties to the legal action, and a treaty obligation requires return of an abducted child if the parent applies for a return order within a specified period of time from the abduction.

The Uniform Child Abduction Prevention Act. The Uniform Law Commission (ULC) is an organization that authors and promotes enactment of uniform laws in areas of law where national uniformity is desirable and practical. In 2006, the ULC promulgated the Uniform Child Abduction Prevention Act (UCAPA), which has since been enacted in 15 states. The UCAPA provides a mechanism for a court to impose child abduction prevention measures at any time to deter and prevent domestic and international abductions. The UCAPA does not create criminal offenses or establish child custody.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Striking Amendment): The Uniform Child Abduction Prevention Act (UCAPA) is adopted and provides a process by which a court may impose various preventative restrictions and conditions on a respondent, if the court finds there is a credible risk of child abduction.

Key Definitions. An abduction is the wrongful removal or wrongful retention of a child. A wrongful removal or wrongful retention means taking or keeping a child that breaches rights of custody or visitation given or recognized under state law.

Actions for Abduction Prevention Measures. A court on its own motion may order abduction prevention measures if the court finds the evidence establishes a credible risk of abduction of the child.

A party to a child custody determination or anyone with the right to seek a child custody determination may petition the court for an abduction prevention order. A person may not

file a petition seeking abduction prevention measures against the Department of Children, Youth, and Families (DCYF), or against a parent or a caregiver in a proceeding relating to dependency of a child, termination of a parent-child relationship, or a guardianship proceeding.

The UCAPA allows a prosecutor or the Attorney General to seek a warrant to take physical custody of a child or seek other appropriate prevention measures.

Petitions may be filed only in a court that has jurisdiction to make child custody determinations with respect to that child. A court has temporary emergency jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act if the court finds a credible risk of abduction.

Contents of a Petition. The petition must be signed under penalty of perjury and must include certain information, including factors showing a risk of abduction; whether there has been prior action to prevent abduction or domestic violence; whether a party has been arrested for domestic violence, stalking, or child abuse or neglect; and information regarding any protection order previously entered involving either party or the child.

Factors to Determine the Risk of Abduction. When determining whether there is a credible risk of abduction, the court must consider if the petitioner or respondent has engaged in certain activities that may indicate an abduction and that were not undertaken as planning activities related to providing for the safety of a party or the child while avoiding or attempting to avoid domestic violence. Such activities may include abandoning employment; selling the home; terminating a lease; closing bank accounts; unusual financial activities; applying for a passport, visa, or other travel documents; or seeking to obtain the child's birth certificate or school records.

Additional factors the court must consider include whether a party has engaged in domestic violence, stalking, or child abuse or neglect, or whether a party has refused to follow a custody determination.

The UCAPA specifies other evidence the court must consider pertaining to possible international abductions, including whether the petitioner or respondent:

- has forged or presented misleading evidence on government forms to obtain a passport, travel documents, or other government-issued documents;
- is likely to take the child to a country from which it would be difficult to have the child returned—a country that is not a party to, does not comply with, or lacks the legal mechanisms for enforcement of the Hague Convention on Civil Aspects of International Child Abduction, or doesn't provide extradition;
- is likely to take the child to a country that poses a risk of harm to the child's physical or emotional health or safety because of the country's human rights violations committed against children;
- is likely to take the child to a country that restricts the child's ability to leave the

- country because of the person's gender, gender identity, sexual orientation, nationality, or religion; or
- is likely to take the child to a country that is listed as a sponsor of terrorism, does not have an official US diplomatic presence in the country, or is engaged in military action or war to which the child may be exposed.

Provisions and Measures to Prevent Abduction. If, at a hearing, the court finds a credible risk of abduction, it must enter an abduction prevention order that specifies the basis for the court's jurisdiction, the manner in which notice was provided to persons entitled to notice, a detailed description of each party's custody and visitation rights and residential arrangements, and other provisions.

The court shall not issue an abduction prevention order if it finds the respondent's conduct was intended to avoid domestic violence or imminent harm to the child or the respondent. A court may not order abduction prevention measures against DCYF, or against a parent or a caregiver in a proceeding relating to dependency of a child, termination of a parent-child relationship, or a guardianship proceeding.

When imposing abduction prevention measure and conditions, the court must consider, among other things custody and visitation rights; the difficulties of returning the child if abducted; and the reasons for the potential abduction, including evidence of domestic violence, stalking, or child abuse or neglect.

The measures and conditions must be reasonably calculated to prevent abduction. Measures and conditions may include:

- imposing travel restrictions and requiring the party traveling with the child to provide the other party with travel itinerary and copies of travel documents;
- prohibiting the respondent from removing the child from the state, the country, or other geographic location without permission from the court or consent from the petitioner;
- prohibiting the respondent from removing the child from school or day care or approaching the child at any location other than a supervised visitation site;
- requiring a party to register the order in another state before allowing travel to that state;
- directing the petitioner to place the child's name in the federal passport alert program;
- requiring the respondent to surrender the child's passport to the court or the petitioner's attorney;
- requiring the respondent to provide to the federal agency handling abduction issues copies of travel restrictions before the respondent can exercise custody or visitation; and
- requiring the respondent to provide to the court an acknowledgment from a foreign consulate that no passport application has been made on behalf of the child before the respondent may exercise custody or visitation.

The court may also require the respondent exercise supervised visitation and to post a bond or security as a financial deterrent to abduction before exercising visitation or custody.

Warrant to Take Physical Custody of a Child. The court may issue an ex parte warrant to take physical custody of the child if the court finds there is a credible risk that the child is imminently likely to be wrongfully removed. The warrant must recite the facts upon which a determination of credible risk of imminent wrongful removal is based and provide for the safe interim placement of the child.

If feasible, before issuing a warrant and determining the placement of the child after the warrant is executed, the court may order a search of relevant databases to determine if either the petitioner or respondent has a history of domestic violence, stalking, or child abuse or neglect.

The respondent must be served with the warrant when or immediately after the child is taken into custody and must be given a hearing at the earliest possible time after the ex parte warrant is executed. The court may authorize law enforcement to enter private property if a less-intrusive remedy would not be effective. The court may also allow law enforcement to make a forcible entry at any hour if required by exigent circumstances.

If the court finds, after a hearing, that a petitioner sought an ex parte warrant in bad faith, the court may award the respondent reasonable attorneys' fees, cost, and expenses.

Duration of Abduction Prevention Order. An abduction prevention order remains in effect until the earliest of:

- the time specified in the order;
- the emancipation of the child; the child's 18th birthday; or
- the time the order is modified, revoked, vacated, or superseded.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony On Proposed Striking Amendment: PRO: 14 states and the District of Columbia have enacted UCAPA. UCAPA deals with domestic and international child abduction that is perpetrated by parents or other family members. UCAPA provides evidence-based guidance for judges to help them identify children who are at risk for abduction using a variety of risk factors. This bill has many safeguards built in to prevent giving domestic abusers a tool to use against their victims. If there are any indications of domestic violence, prevention measures cannot be issued on the behalf of the

abuser. If the victim is taking measures to protect themselves, the court will take that into consideration. The committee should amend the prevention tools in in section eight of the bill to prioritize cases determined to be of demonstrated risk so they can receive a valid, enforceable US court order prohibiting the child from being removed from their current county, Washington State, or the United States. The concerned party should be advised to contact the US Department of State's Office of Children's Issues and request entry into the federal prevent abduction program managed by CBP. This committee should reconsider striking section seven, F and G, evaluating the lack of ties to a state, and stronger ties to another state or country. These are established important determining factors in UCAPA in domestic and international parental child abduction prevention cases.

CON: This bill is flawed. It was crafted without stakeholder input from those who represent survivors in family court, or from survivor parents who have navigated the system. Almost half of parental kidnappings were victims of domestic violence fleeing to protect their children. This bill requires no finding of fact only finding of risk. It does not provide a definition of credible risk of abduction. It does not clarify how many of the section seven risk factors must be present for a court to find sufficient evidence to suggest a credible risk of abduction. It does not require a judge to weigh some section seven risk factors more heavily than others. The factors themselves are broad, vague, and encompass normal acts of daily life. This bill operates under a burden shifting framework. Once the allegation is made and the order granted, the burden shifts to the other parent to show that their conduct or characteristics are merely coincidental to the allegation of risk. This bill requires a survivor parent to testify in their defense that their alleged activities were to escape abuse. This statute will give civil petitioners criminal court power by transferring the process to civil court. This bill should provide training to judicial officers about the dynamics of domestic violence and the pressure placed on survivors to leave their relationships while protecting their children.

Persons Testifying: PRO: Representative Roger Goodman, Prime Sponsor; Libby Snyder, Uniform Law Commission; Daton Lynch, National Center for Missing & Exploited Children; Jeffery Morehouse, Bring Abducted Children Home.

CON: Shira Cole, People Advancing Youth Safety And Equity; Rasham Nassar; Evangeline Stratton, Family Violence Appellate Project.

Persons Signed In To Testify But Not Testifying: No one.