

SENATE BILL REPORT

HB 1042

As Reported by Senate Committee On:
Law & Justice, February 25, 2021

Title: An act relating to revising the international application of the uniform child custody jurisdiction and enforcement act to protect families from facing the death penalty in certain foreign jurisdictions on the basis of religious beliefs, political beliefs, or sexual orientation.

Brief Description: Revising the international application of the uniform child custody jurisdiction and enforcement act to protect families from facing the death penalty in certain foreign jurisdictions on the basis of religious beliefs, political beliefs, or sexual orientation.

Sponsors: Representatives Thai, Walen, Ortiz-Self, Lekanoff, Gregerson, Callan, Frame, Santos and Macri.

Brief History: Passed House: 1/22/21, 95-3.

Committee Activity: Law & Justice: 2/15/21, 2/25/21 [DPA].

Brief Summary of Amended Bill

- Allows Washington courts to refrain from applying Uniform Child Custody Jurisdiction and Enforcement Act standards in international custody matters if a parent or child are at demonstrable risk of being subject to laws of a foreign country that carries a death sentence for apostasy, or a sincerely held religious belief or practice, or homosexuality.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; McCune, Assistant Ranking Member; Darneille, Holy, Kuderer, Salomon and Wagoner.

Staff: Tim Ford (786-7423)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Background: Child custody disputes can become complicated when the parties live in different states. The different courts must determine which state has jurisdiction over the matter and when one state can enter or modify a custody order.

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), was adopted by Washington in 2001. One of the purposes of the UCCJEA is to avoid conflict between states regarding custody cases, promote cooperation and communication between states, and deter child abductions.

Jurisdiction. The UCCJEA grants initial custody jurisdiction to the courts of the 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. The state issuing the initial order remains the state with exclusive and continuing jurisdiction until the child, the child's parent, and any person acting as a parent no longer has significant connections with the state and substantial evidence about the child's care, training, and personal relationships is no longer available in that state. Jurisdiction also ceases if the child and the parents no longer reside in the issuing state. A state may not modify a custody order issued by another state unless the other state no longer has exclusive jurisdiction or declines jurisdiction.

Temporary Emergency Jurisdiction. The UCCJEA allows a state to obtain jurisdiction temporarily when the child is present in the state and is abandoned or needs protection because the child, a sibling, or parent of the child is subjected to abuse. The emergency custody order lasts until an order is obtained from a state having jurisdiction over the custody proceedings.

Enforcement. A court must enforce a custody determination from another state, if that state exercised jurisdiction in substantial conformity with the provisions of the UCCJEA. Procedures are set out in the UCCJEA for registration of a child custody determination issued by a court of another state. If a custody order is properly registered, the court in Washington must enforce it as if it were issued by this state.

Simultaneous Proceedings. If a court of this state has been asked to make a child custody determination and is informed a custody proceeding has been commenced in another state having jurisdiction substantially in accordance with the UCCJEA, the court in this state must immediately communicate with the court in the other state to determine the more appropriate forum.

Application to Indian Tribes. A child custody proceeding that pertains to an Indian child is not subject to the UCCJEA to the extent it is governed by the federal Indian Child Welfare Act.

Application to Foreign Nations. The UCCJEA requires courts to recognize and enforce custody decrees from a foreign country as if it were a state, provided the foreign jurisdiction is in substantial conformity with the jurisdictional standards set out by the UCCJEA, and

the child custody laws of the country do not violate fundamental principles of human rights.

Summary of Amended Bill: A court of this state need not apply the UCCJEA if the law of a foreign country holds that apostasy, or a sincerely held religious belief or practice, or homosexuality are punishable by death, and a parent or child may be at demonstrable risk of being subject to such laws. "Apostasy" means the abandonment or renunciation of a religious or political belief.

EFFECT OF LAW & JUSTICE COMMITTEE AMENDMENT(S):

- Adds a sincerely held religious belief or practice as a basis for a court to not apply the UCCJEA in a child custody legal proceeding if the law of a foreign country holds that the sincerely held religious belief or practice is punishable by death and a parent or child may be at demonstrable risk of being subject to such laws.

Appropriation: None.

Fiscal Note: Not requested.

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

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony on House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Under the UCCJEA courts may only consider specifically if the child custody law of a foreign nation violates principles human rights. It neglects the reality that in some foreign jurisdictions the life of a parent may be placed in risk of death due to discriminatory laws surrounding adherence to or rejection of certain faith, or sexual orientation. It additionally neglects to address gender discrimination or other systems of modern forms of slavery which may exist within a foreign nation which could severely limit a parent's right to protect themselves or their child from dangerous situations, or their right to due process under the law. Amending the human rights clause of the UCCJEA would give Washington judges the legal framework to rule on custody cases fairly. In Saudi Arabia there is a history of gender discrimination, and homosexuality is punishable by death.

My daughter and I remain at risk from Saudi Arabia law. I would be subject to imprisonment and possible death if returned to Saudi Arabia. Apostasy is a crime punishable by death and beheading. Nobody should be executed over different beliefs.

This bill simply protects people from being executed for apostasy or homosexuality through child custody laws.

Persons Testifying: PRO: Representative My-Linh Thai, Prime Sponsor; Hassan El-Tayyab, Friends Committee on National Legislation; Bethany Alhaidari, Saudi American Justice Project; Rebecca Faust; Sunjeev Bery, Freedom Forward.

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