

HOUSE BILL REPORT

SHB 1121

As Passed House:
February 8, 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:

Committee Activity:

Civil Rights & Judiciary: 1/18/23, 1/27/23 [DPS].

Floor Activity:

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

Brief Summary of Substitute Bill

- Adopts the Uniform Child Abduction Prevention Act to provide a process by which a court may impose preventative restrictions and conditions if the court finds there is a credible risk of child abduction.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Hansen, Chair; Farivar, Vice Chair; Walsh, Ranking Minority Member; Graham, Assistant Ranking Minority Member; Cheney, Entenman, Goodman, Peterson, Rude and Walen.

Staff: Yelena Baker (786-7301).

Background:

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.

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 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 Substitute Bill:

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 the taking or keeping of 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.

In determining whether there is a credible risk of abduction, the court must consider whether 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 that 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:

- lacks strong family, financial, emotional, or cultural ties to the state or the country;
- is undergoing a change in immigration or citizenship status that would adversely affect the person's ability to remain in the country legally;
- 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); and
- 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 or because of the country's laws or practices that restrict travel based on a person's gender, gender identity, sexual orientation, nationality, marital status, or religion, or a country that is listed as a sponsor of terrorism 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 the court finds that the respondent's conduct was intended to avoid domestic violence or imminent harm to the child or the respondent. Additionally, a court may not order abduction prevention measures against the 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 that the respondent exercise supervised visitation and require the respondent 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 that 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.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill deals with the issue of intrastate, interstate, and international abductions perpetrated by a parent or another family member, so it is particularly important to enact a uniform law in this area. Family abduction is not a harmless act and can have long-lasting and even tragic consequences. In 2020 and 2021, 49 family abductions were reported to the National Center for Missing and Exploited Children from Washington, and 46 of those were parental abductions.

The guiding principle of this bill is that preventing an abduction is always in the child's best interest. This bill supplements existing state law, such as the Uniform Child Custody Jurisdiction and Enforcement Act, by focusing on prevention and providing judges with a framework to help prevent abductions from occurring in the first place. If the court finds that there is a credible risk of abduction, the court may on its own issue an abduction prevention order. There was an inquiry as to whether this would be like a protection order, and that will need to be clarified, but the idea is that this would not be a uniform order like there are under other laws. Instead, it would be more tailored to the circumstances.

A party who has the right to seek custody may also petition the court to prevent abduction. A prosecutor or a public authority may also issue a warrant to keep the child in the state.

There is no definition of "credible risk of abduction," but the bill contains a long list of factors that a court may consider in determining whether there is a credible risk of abduction. The more factors are present in a case, the higher the probability of abduction. The bill provides judges with a catalog of possible remedies, including travel restrictions, supervised visitation, and emergency relief.

The purpose of the bill is to prevent the wrongful removal or retention of a child and not to hinder legitimate relocations or justifiable activities undertaken to protect a parent or child. When this bill was last introduced several years ago, survivors of domestic violence provided feedback that the bill would give abusers a tool to have domestic violence victims arrested when victims tried to escape abuse by leaving the state together with their child. This version of the bill makes it very explicit that if there are any indicia of domestic violence, the abuser will not be able to use this law to prevent the victim from escaping to

safety for the victim and the victim's child. Additionally, the bill penalizes the misuse of this law by requiring payment of attorneys' fees and costs.

(Opposed) None.

Persons Testifying: Representative Roger Goodman, prime sponsor; Libby Snyder, Uniform Law Commission; and Daton Lynch, National Center for Missing and Exploited Children.

Persons Signed In To Testify But Not Testifying: None.