

COMMITTEE BILL ANALYSIS

Bill: Senate Bill 689

Printer's No.: 677

Sponsor: Senator Corman

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Synopsis: This bill amends the Domestic Relations Code, Title 23 of the Pennsylvania Consolidated Statutes, to enact the Uniform Child Abduction Prevention Act as Chapter 52.

Summary: A court on its own motion may 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 (§5204). In addition, a party to a child custody determination or other individual who has a right to seek a child custody determination for the child may file a petition seeking abduction prevention measures.

Petition

A petition may be filed in a court that has jurisdiction to make a child custody determination with respect to the child (§5205). The petition must be verified and include a copy of any existing child custody determination (§5206). The petition must specify the risk factors for abduction and to the extent possible include the following information:

- (1) The name, date of birth and gender of the child.
- (2) The customary address and current physical location of the child.
- (3) The identity, customary address and current physical location of the respondent.
- (4) A statement of whether prior action to prevent abduction or domestic violence has been filed by a party or other individual or entity having custody of the child.
- (5) A statement of whether a party to the proceeding has been arrested for a crime related to domestic violence, stalking or child abuse or neglect.
- (6) Any other information required by law.

Factors

In determining whether there is a credible risk of an abduction of a child, the court shall consider any evidence relating to the risk (§5207). The evidence includes information that the petitioner or respondent:

- (1) Has previously abducted or attempted to abduct the child.

- (2) Has threatened to abduct the child.
- (3) Has recently engaged in activities that may indicate a planned abduction.
- (4) Has engaged in domestic violence, stalking or child abuse or neglect.
- (5) Has refused to follow a child custody determination.
- (6) Lacks strong familial, financial, emotional or cultural ties to Pennsylvania or the United States.
- (7) Has strong familial, financial, emotional or cultural ties to another state or country.
- (8) Is likely to take the child to a country that is not a party to the Hague Convention on the Civil Aspects of International Child Abduction or is a party to the Hague Convention but the convention is not in force between the United States and that country or the United States and that country do not have diplomatic ties, or that country is noncompliant.
- (9) Is undergoing a change in immigration or citizenship status that would adversely affect the respondent's ability to remain in the United States.
- (10) Has had an application for United States citizenship denied.
- (11) Has forged or presented misleading or false evidence on government forms to obtain a passport, a visa, travel documents, a Social Security card, a driver's license or other government-issued card.
- (12) Has used multiple names to attempt to mislead or defraud.
- (13) Has engaged in any other conduct relevant to the risk of abduction.

The court shall consider any evidence that the respondent believed in good faith that the respondent's conduct was necessary to avoid imminent harm to the child or respondent. The court shall consider any other evidence that may be relevant to whether the respondent may remove or retain the child.

Contents of orders

The legislation provides for the contents of orders including prevention measures (§5208). The court may enter an order that must include:

- (1) The basis for the court's exercise of jurisdiction.
- (2) The manner in which notice and opportunity to be heard were given.
- (3) A detailed description of each party's custody and visitation rights.
- (4) A provision stating that a violation of the order may subject the party to civil and criminal penalties.
- (5) Identification of the child's country of habitual residence.

If the court finds a credible risk of abduction of the child, the court shall enter an abduction prevention order. In addition to the information required above, the abduction prevention order may include one or more of the following:

- (1) An imposition of travel restrictions.
- (2) A prohibition on the respondent from removing the child from Pennsylvania, the United States or another geographical location.
- (3) A requirement that a party register the order in another state as a prerequisite to allowing the child to travel to that state.
- (4) A direction that the petitioner place the child's name in the United States Department of State's Child Passport Issuance Alert Program and other passport restrictions.
- (5) A requirement that the respondent provide to the United States Department of State's Office of Children's Issues and the relevant foreign consulate a copy of the order detailing the travel and passport restrictions.
- (6) Upon the petitioner's request, a requirement that the respondent obtain an order from the relevant foreign country containing terms identical to the child custody determination issued in the United States.

Conditions on custody or visitation

The court may impose conditions on the exercise of custody or visitation that:

- (1) Limit visitation or require supervised visitation.
- (2) Require the respondent to post a bond to serve as a financial deterrent to abduction.
- (3) Require the respondent to obtain education on the potential harmful effects to the child from abduction.

To prevent imminent abduction of a child, the court may:

- (1) Issue a warrant to take physical custody of the child.
- (2) Direct the use of law enforcement to take any action necessary to locate the child, obtain return of the child and enforce a custody determination.
- (3) Grant any other relief allowed under law.

Warrants

If a petition under the legislation contains allegations and the court finds there is a credible risk that the child is imminently likely to be wrongfully removed, the court may issue an ex parte warrant to take physical custody (§5209). The respondent must be afforded an opportunity to be heard at the earliest possible time after the ex parte warrant is executed. The ex parte order must:

- (1) Recite the facts upon which a determination of credible risk is based.
- (2) Direct law enforcement officers to take physical custody of the child immediately.
- (3) State the date and time for the hearing.
- (4) Provide for the safe interim placement of the child.

Before issuing a warrant and before determining the placement of the child, 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 petition and warrant must be served on the respondent when or immediately after the child is taken into physical custody.

A warrant to take physical custody is enforceable throughout Pennsylvania. If the court finds a less intrusive method will not be effective, the court may authorize law enforcement officers to enter private property to take physical custody including, in exigent circumstances, forcible entry at any hour.

If the court finds that a petitioner sought an ex parte order for the purpose of harassment or in bad faith, the court may award the respondent reasonable attorney fees, costs and expenses.

Duration of orders

An abduction prevention order remains in effect until the earliest of the time stated in the order; the emancipation of the child; the child's attaining 18 years of age; or the time the order is modified, revoked, vacated or superseded by a court with jurisdiction (§5210).

In applying and construing this legislation, consideration must be given to the need to promote uniformity among the states (§5211).

Effective date

This act takes effect in 90 days.

Background:

In 2006 the National Conference of Commissioners on Uniform State Laws (NCCUSL) promulgated the Uniform Child Abduction Prevention Act (UCAPA) to deter both domestic and international child abductions by parents and persons acting on behalf of parents. The uniform law provides courts with guidelines to follow during custody disputes and divorce proceedings when there is a risk of abduction and provides courts with methods to prevent the abduction of children.

Recognizing that most states have already developed substantial bodies of law regarding child custody determinations and enforcement, including specifically the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), the NCCUSL drafted the UCAPA to be compatible with and to augment existing law. The UCCJEA governs interstate custody disputes. In Pennsylvania, statutory provisions relating to custody are found at 23 Pa.C.S. Ch. 53. The UCCJEA is found at 23 Pa.C.S. Ch. 54. The UCAPA makes specific references to the UCCJEA and encourages cooperation among the courts (§5203).

Twelve states and the District of Columbia have enacted this uniform act.

Legislative history

During the 2009-2010 session, the House of Representatives passed this legislation, House Bill 90, by a vote of 193 to 0. The Senate Judiciary Committee reported House Bill 90 from committee. The Senate tabled the bill. During the 2011-2012 session, the House of Representatives passed the legislation, House Bill 2136, by a 193 to 0 vote. The Senate Judiciary Committee reported the same legislation, Senate Bill 1449, from committee. The Senate passed Senate Bill 1449 by a 49 to 0 vote.

This session the House of Representatives passed the legislation, House Bill 286, by a 196 to 0 vote.