

SUBJECT: Considering international abduction risk factors in certain custody cases

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 5 ayes — Dutton, Goodman, Castro, Nixon, Strama
1 nay — Y. Davis
2 absent — Dunnam, J. Moreno, Thompson

WITNESSES: For — Roy Getting, Texas Father's Alliance; Greg Allen
Against — None

BACKGROUND: In 2003, the 78th Legislature enacted HB 1899 by Nixon, which requires a court to determine whether it is necessary to take measures to protect a child against a potential risk of international abduction. The bill established circumstances that could be used as a basis for assessing the risk of flight.

A court may consider the preference of child 12 years of age or older involved in a custody suit in determining with which parent the child should reside.

DIGEST: CSHB 2159 would establish a rebuttable presumption that it would not in the best interest of a child for a parent to have unsupervised visitation if one or more international abduction risk factors was present.

If one or more abduction risk factors was present or abduction prevention measures had been taken, a court could not consider a child's preference in determining custody.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005.

**SUPPORTERS
SAY:**

International abduction can injure a child who is the innocent victim of a demonstration of parental malice. While a handful of parents may have cause to take the extreme measure of fleeing the country, most often, an abducting parent views the child's needs as secondary to the parental agenda of provoking, controlling, or psychologically attacking the other parent. Abducted children often needlessly suffer from depression, fearfulness, or a loss of community, stability, and trust.

Risk factors such as suddenly selling a residence, liquidating assets, or destroying documents are not everyday behaviors and are indicative of premeditation to flee the country. This has been proven through studies and has been validated by the adoption of HB 1899 as model legislation in other states.

These factors are a reasonable basis upon which to deny unsupervised visitation and to exclude a child's preference for residing with a parent. Children are impressionable, and a parent that was willing to take the extreme measure of abducting his or her child would have no qualms about manipulating or threatening the child to tell the court the parent's will. When a child is undergoing circumstances that suggest a great likelihood of manipulation, then the court should not accept the child's testimony.

**OPPONENTS
SAY:**

The presence of a single risk factor for international flight is not a reasonable basis upon which to prevent unsupervised visitation and ignore the will of a child in a custody hearing. Many of the risk factors for international flight are also everyday occurrences in an average person's life. Simply because an individual quits a job or closes a bank account does not mean that the individual is plotting to abduct a child. Unfortunately, if someone wants to abduct a child, that person could find an opportunity to do so even if unsupervised visits were not permitted. This bill would not serve its intended purpose and might instead prevent an innocent parent from seeing a child or a court from acknowledging a child's opinion in a custody decision.

NOTES:

The original bill did not include the provision regarding unsupervised visitation.