

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.
Act 170 of the Regular Session

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005
4

A Bill

SENATE BILL 174

5 By: Senators Wilkinson, Altes
6 By: Representative Walters
7

For An Act To Be Entitled

10 AN ACT TO PREVENT THE INTERNATIONAL ABDUCTION OF
11 CHILDREN BY THEIR PARENTS; AND FOR OTHER
12 PURPOSES.
13

Subtitle

14 THE INTERNATIONAL CHILD ABDUCTION
15 PREVENTION ACT.
16
17
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

21 SECTION 1. Arkansas Code Title 9, Chapter 13 is amended to add an
22 additional subchapter to read as follows:

23 9-13-401. Title.

24 This subchapter shall be known and may be cited as the "International
25 Child Abduction Prevention Act".
26

27 9-13-402. Definitions.

28 For the purposes of this subchapter:

29 (1) "Child" means a minor under eighteen (18) years of age who
30 is the subject of a custody or visitation:

31 (A) Matter currently pending before a court; or

32 (B) Order that has been issued by a court;

33 (2) "Court" means any circuit court of competent jurisdiction;

34 (3) "Custodian" means the custodial parent, legal guardian, or
35 lawful custodian of the child as determined by a court of competent



1 jurisdiction in the State of Arkansas;

2 (4) "Dual nationality" means the simultaneous possession of
3 citizenship in two (2) countries;

4 (5)(A) "Human rights" means the basic principles that recognize
5 each child's freedom and right to be protected from abuse and neglect.

6 (B) "Human rights" includes the protection of children
7 from:

8 (i) Abuse and neglect;

9 (ii) Arranged marriages;

10 (iii) Child labor;

11 (iv) Genital mutilation;

12 (v) Sexual exploitation;

13 (vi) Slavery;

14 (vii) Torture and the deprivation of liberty; and

15 (viii) Armed conflicts.

16 (C) "Human rights" includes the right of children to:

17 (i) Survive and develop;

18 (ii) Have a name from birth;

19 (iii) Be granted a nationality;

20 (iv) Have the right of freedom of expression;

21 (v) Have the rights of freedom of thought,
22 conscience, and religion; and

23 (vi) Have the right to free and compulsory
24 education;

25 (6) "International child abduction" means the act of taking
26 away, enticing away, withholding, keeping, or concealing a child from his or
27 her parent or custodian by removing the child from the United States;

28 (7) "Parent" means the biological or adoptive parent of a child;

29 (8) "Registration" means the official act of notification or
30 documentation of the birth, name, or lineage of an individual; and

31 (9) "Security professional" means:

32 (A) A body guard;

33 (B) An off-duty certified law enforcement officer;

34 (C) A person who holds a license issued by the State of
35 Arkansas or another state; or

36 (D) A person who has past experience or training as a

1 professional in the area of securing the safety of persons.

2
3 9-13-403. Prevention of international child abduction.

4 A custodian or parent may petition or motion the court under this
5 subchapter to determine whether one (1) or more of the measures described in
6 § 9-13-406 is necessary to protect a child from the risk of international
7 child abduction.

8
9 9-13-404. Considerations of the court.

10 To determine a matter under this subchapter, the court shall consider:

11 (1) The best interests of the child;

12 (2) The right of a parent for frequent and continuing contact
13 with his or her child;

14 (3) The rights of a custodian under an order from a court of
15 competent jurisdiction in the State of Arkansas;

16 (4) The risk of the child's becoming a victim of international
17 child abduction by a parent, custodian, or any person acting on the behalf of
18 the parent or custodian, based on the court's evaluation of the risk factors
19 described in § 9-13-405;

20 (5) Any obstacles to locating, recovering, or returning the
21 child if the child is a victim of international child abduction; and

22 (6) The potential physical or psychological harm to the child if
23 the child is a victim of international child abduction.

24
25 9-13-405. Abduction risk factors.

26 (a) To determine if there is a risk of international child abduction,
27 the court shall consider:

28 (1)(A) Whether the parent, custodian, or anyone acting on behalf
29 of the parent or custodian has committed international child abduction as
30 defined in this subchapter.

31 (B) In defense of this factor, the parent or custodian may
32 establish that he or she had a good faith belief that his or her conduct was
33 necessary to avoid imminent harm to the child;

34 (2) Whether the parent, custodian, or anyone acting on behalf of
35 the parent or custodian has threatened to commit the act of international
36 child abduction as defined under this subchapter;

1 (3) Whether the parent, custodian, or anyone acting on behalf of
2 the parent or custodian has attempted to commit the act of international
3 child abduction as defined under this subchapter;

4 (4) Whether the parent, custodian, or anyone acting on behalf of
5 the parent or custodian has taken a step that constitutes an overt act toward
6 the accomplishment of international child abduction as defined under this
7 subchapter;

8 (5)(A) Whether the parent or custodian lacks a financial reason
9 to stay in the United States.

10 (B) Evidence of this factor shall include, but not be
11 limited to, evidence that the parent or custodian is:

12 (i) Financially independent;

13 (ii) Able to work outside of the United States; or

14 (iii) Unemployed;

15 (6) Whether the parent, custodian, or anyone acting on behalf of
16 the parent or custodian has recently engaged in activities that could
17 facilitate the removal of the child from the United States by the parent or
18 custodian, including, but not limited to:

19 (A) Quitting a job;

20 (B) Selling a primary residence;

21 (C) Terminating a lease;

22 (D) Closing bank accounts;

23 (E) Liquidating other assets;

24 (F) Hiding or destroying documents;

25 (G) Applying for a passport or visa for the parent,
26 custodian, or child;

27 (H) Applying to obtain birth certificate, school records,
28 or medical records of the child;

29 (I) Making travel arrangements for the parent, custodian,
30 or child; or

31 (J) Purchasing airline, railway, cruise ship, or other
32 travel tickets for the parent, custodian, or child;

33 (7) Whether the parent or custodian has a history of:

34 (A) Child abuse;

35 (B) Domestic violence;

36 (C) Marital instability; or

1 (D) Not cooperating with the other parent or custodian;

2 (8) Whether the parent or custodian has a criminal history;

3 (9) Whether the parent or custodian has a history of violating
4 court orders;

5 (10) Whether the parent or custodian:

6 (A) Has strong familial, emotional, or cultural ties to
7 another country, particularly a country that is not a signatory to or
8 compliant with the Hague Convention on the Civil Aspects of International
9 Child Abduction; and

10 (B) Lacks strong ties to the United States, regardless of
11 whether the parent or custodian is a citizen or permanent resident of the
12 United States; or

13 (11) Any other factor that the court finds to be relevant to the
14 determination of the risk for international child abduction.

15 (b) If the court finds that there is credible evidence of a risk of
16 international child abduction based on the court's consideration of the
17 factors in subsection (a) of this section, then the court shall also consider
18 evidence regarding the following factors to evaluate the risk of
19 international child abduction:

20 (1) Whether the parent or custodian is undergoing a change in
21 status with the United States Citizenship and Immigration Services of the
22 Department of Homeland Security that would adversely affect that his or her
23 ability to legally remain in the United States;

24 (2) Whether the parent's or custodian's application for United
25 States citizenship has been denied by the United States Citizenship and
26 Immigration Services of the Department of Homeland Security;

27 (3) Whether the parent, custodian, or anyone acting on behalf of
28 the parent or custodian has forged or presented misleading or false evidence
29 to obtain a visa, a passport, a social security card, or any other
30 identification card or has made any misrepresentations to the United States
31 government; or

32 (4) Whether the foreign country to which the parent or custodian
33 has ties:

34 (A) Presents obstacles to the recovery and return of a
35 child who is abducted to the country from the United States;

36 (B) Has no legal mechanisms for immediately and

1 effectively enforcing an order issued by a court of this state regarding the
2 possession of or access to the child;

3 (C) Has laws or practices that would:

4 (i) Enable the parent, custodian, or any person
5 acting on behalf of the parent or custodian to obtain registration of the
6 child with the country for the purposes of citizenship or for other purposes;

7 (ii) Enable the parent, custodian, or any person
8 acting on the behalf of the parent or custodian to obtain for the child a
9 passport or other travel documents from the country;

10 (iii) Allow entry of the child into the country
11 without a passport or other travel documents;

12 (iv) Bestow nationality of the country on the child
13 through automatic acquisition or other means;

14 (v) Not recognize, accept, or allow dual nationality
15 of citizens of the country;

16 (vi) Enable the parent, custodian, or any person
17 acting on the behalf of the parent or custodian to prevent the child's other
18 parent or custodian from contacting the child without due cause;

19 (vii) Restrict the child's other parent or custodian
20 from freely traveling to or exiting from the country because of that parent's
21 or custodian's gender, nationality, or religion; or

22 (viii) Restrict the child's ability to legally leave
23 the country after the child reaches the age of majority because of the
24 child's gender, nationality, or religion;

25 (D) Is included by the United States Department of State
26 on a list of state sponsors of terrorism;

27 (E) Is a country for which the United States Department of
28 State has issued a travel warning to United States citizens regarding travel
29 to the country;

30 (F) Does not have an embassy of the United States in the
31 country;

32 (G) Is engaged in any active military action or war,
33 including a civil war;

34 (H) Is a party to and compliant with the Hague Convention
35 on the Civil Aspects of International Child Abduction, according to the most
36 recent report on compliance issued by the United States Department of State;

1 (I) Does not provide for the extradition of a perpetrator
2 of international child abduction or the return of the child to the United
3 States; or

4 (J) Poses a risk that the child's physical health or
5 safety would be endangered in the country because of specific circumstances
6 relating to the child or because of human rights violations that are being
7 committed against children.

8
9 9-13-406. Abduction prevention measures.

10 (a) If the court finds that it is in the best interest of the child to
11 take measures to protect the child from international child abduction under
12 this subchapter, then the court may take any of the following actions:

13 (1) Appoint a person, other than the parent or custodian who
14 presents a risk of international child abduction, as the sole managing
15 custodian of the child;

16 (2) Change the existing order regarding custody or visitation to
17 avoid the risk of international child abduction;

18 (3)(A) Order supervised visitation to prevent the child from
19 becoming a victim of international child abduction for any of the following
20 who present a risk of international child abduction under this subchapter:

21 (i) The parent;

22 (ii) The custodian; or

23 (iii) Any other individual who has been granted
24 visitation rights.

25 (4) Enjoin the parent, custodian, or any person acting on the
26 behalf of the parent or custodian who presents a risk of international child
27 abduction from:

28 (A) Disrupting or removing the child from the school or
29 child care facility in which the child is enrolled; or

30 (B) Approaching the child at any location other than a
31 site designated for supervised visitation;

32 (5) Order passport and travel controls, including controls that
33 prohibit the parent, custodian, or any person acting on the behalf of the
34 parent or custodian who presents a risk of international child abduction:

35 (A) From removing the child from this state or the United
36 States;

1 (B) To surrender any passport issued in the child's name,
2 including any passport issued in the name of both the parent and the child;
3 and

4 (C) From applying on behalf of the child for a new or
5 replacement passport or international travel visa;

6 (6) Require the parent or custodian who presents a risk of
7 international child abduction to provide:

8 (A) To the Office of Children's Issues within the United
9 States Department of State and the relevant foreign consulate or embassy:

10 (i) Written notice of the court-ordered passport and
11 travel restrictions for the child; and

12 (ii) A properly authenticated copy of the court
13 order detailing the restrictions and documentation of the parent's or
14 custodian's agreement to the restrictions; and

15 (B) To the court, proof of receipt of the written notice
16 required by subdivision (a)(6)(A)(i) of this section by the Office of
17 Children's Issues within the United States Department of State and the
18 relevant foreign consulate or embassy;

19 (7) Order the parent, custodian, or person acting on behalf of
20 the parent or custodian who presents a risk of international child abduction
21 to execute a bond or deposit security in an amount sufficient to offset the
22 cost of recovering the child if the child is abducted by that person to a
23 foreign country;

24 (8) Authorize the appropriate law enforcement agencies to take
25 measures to prevent the child from becoming a victim of international child
26 abduction; or

27 (9) Include in the court's order provisions that:

28 (A) Identify the United States as the country of habitual
29 residence of the child;

30 (B) Define the basis for the court's exercise of
31 jurisdiction under the Uniform Child-Custody Jurisdiction and Enforcement
32 Act, § 9-19-101 et seq.;

33 (C) State the manner in which notice and opportunity to be
34 heard were given to other parties to the matter, including the parent or
35 custodian;

36 (D) State a thorough description of the following:

- 1 (i) Who has custody of the child;
- 2 (ii) Who has visitation rights with the child;
- 3 (iii) Whose visitation rights must be supervised;
- 4 (iv) The specific requirements of any ordered
- 5 supervised visitation as applied to each person with visitation rights; and
- 6 (v) Any other limitations regarding custody or
- 7 visitation; and

8 (E) State that a party’s violation of the order may
 9 subject the party to a civil penalty, a criminal penalty under § 5-26-501
 10 through 5-26-502, or to both civil and criminal penalties.

11 (b)(1) If a court orders supervised visitation under subdivision
 12 (a)(3) of this section, then the court shall order the supervised visitation
 13 to continue until the court finds that supervised visitation is no longer
 14 necessary or until the child reaches eighteen (18) years of age.

15 (2) If the court orders supervised visitation under subdivision
 16 (a)(3) of this section, then the court’s order regarding supervised
 17 visitation shall require:

18 (A) That the supervisor be present with the child at all
 19 times;

20 (B) That the supervised visitation takes place at all
 21 times at a visitation center or other location that is adequate to prevent
 22 the child from becoming a victim of international child abduction;

23 (C) The usage of all necessary security professionals,
 24 protocols, procedures, or devices that are:

25 (i) Adequate to prevent the child from becoming a
 26 victim of international child abduction;

27 (ii) Available in the geographic area of the
 28 supervised visitation location; and

29 (iii) Recognized in the security profession as
 30 effective in securing a location and the safety of a person.

31 (c) The court shall consider the requests of the parent or custodian
 32 who does not pose a risk of international child abduction when determining
 33 the best methods to prevent the international abduction of a child at risk of
 34 becoming a victim of international child abduction.

35
 36 9-13-407. Ex parte relief.

1 (a) A court shall immediately conduct an ex parte hearing if a
2 petitioner:

3 (1) Alleges that:

4 (A) An emergency exists; and

5 (B) His or her child is in imminent danger of becoming a
6 victim of international child abduction as defined under this subchapter; and

7 (2) Requests an ex parte hearing on the issue seeking temporary
8 and immediate relief.

9 (b) At an ex parte hearing under this section, a court may grant the
10 temporary relief necessary to prevent the child from becoming a victim of
11 international child abduction until a full hearing on the matter can be held
12 if the petitioner presents credible evidence that supports his or her
13 allegation that his or her child is in imminent danger of becoming a victim
14 of international child abduction.

15 (c) A temporary order issued under this section shall not be effective
16 for more than ninety (90) days.

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19 APPROVED: 2/15/2005

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