

State of Arkansas  
85th General Assembly  
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# A Bill

SENATE BILL 174

By: Senators Wilkinson, Altes  
By: Representative Walters

## For An Act To Be Entitled

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

## Subtitle

THE INTERNATIONAL CHILD ABDUCTION  
PREVENTION ACT.

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

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

9-13-401. Title.

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

9-13-402. Definitions.

For the purposes of this subchapter:

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

(A) Matter currently pending before a court; or

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

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

(3) "Custodian" means the custodial parent, legal guardian, or lawful custodian of the child as determined by a court of competent jurisdiction in the State of Arkansas;



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

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

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

7                   (i) Abuse and neglect;

8                   (ii) Arranged marriages;

9                   (iii) Child labor;

10                  (iv) Genital mutilation;

11                  (v) Sexual exploitation;

12                  (vi) Slavery;

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

14                  (viii) Armed conflicts.

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

16                   (i) Survive and develop;

17                   (ii) Have a name from birth;

18                   (iii) Be granted a nationality;

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

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

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

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

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

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

30           (9) "Security professional" means:

31                   (A) A body guard;

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

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

35                   (D) A person who has past experience or training as a  
 36 professional in the area of securing the safety of persons.

1  
2 9-13-403. Prevention of international child abduction.

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

7  
8 9-13-404. Considerations of the court.

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

10 (1) The best interests of the child;

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

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

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

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

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

23  
24 9-13-405. Abduction risk factors.

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

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

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

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

36 (3) Whether the parent, custodian, or anyone acting on behalf of

1 the parent or custodian has attempted to commit the act of international  
2 child abduction as defined under this subchapter;

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

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

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

11 (i) Financially independent;

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

13 (iii) Unemployed;

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

18 (A) Quitting a job;

19 (B) Selling a primary residence;

20 (C) Terminating a lease;

21 (D) Closing bank accounts;

22 (E) Liquidating other assets;

23 (F) Hiding or destroying documents;

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

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

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

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

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

33 (A) Child abuse;

34 (B) Domestic violence;

35 (C) Marital instability; or

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

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

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

4           (10) Whether the parent or custodian:

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

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

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

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

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

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

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

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

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

35                   (B) Has no legal mechanisms for immediately and  
36 effectively enforcing an order issued by a court of this state regarding the

1 possession of or access to the child;

2 (C) Has laws or practices that would:

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (I) Does not provide for the extradition of a perpetrator

1 of international child abduction or the return of the child to the United  
2 States; or

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

7  
8 9-13-406. Abduction prevention measures.

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

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

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

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

20 (i) The parent;

21 (ii) The custodian; or

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

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

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

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

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

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

36 (B) To surrender any passport issued in the child's name,

1 including any passport issued in the name of both the parent and the child;  
2 and

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (i) Who has custody of the child;



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

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

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

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

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

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

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

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

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

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

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

34  
 35           9-13-407. Ex parte relief.

36           (a) A court shall immediately conduct an ex parte hearing if a

1 petitioner:

2 (1) Alleges that:

3 (A) An emergency exists; and

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

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

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

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