

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2398 Session of  
2006

INTRODUCED BY HERMAN, CALTAGIRONE, HARPER, TRUE, FRANKEL, JAMES,  
BEYER, COHEN, CREIGHTON, DeWEESE, FREEMAN, GEIST, GINGRICH,  
RAPP, READSHAW, REED, SCHRODER, SEMMEL, SIPTROTH, SOLOBAY,  
STABACK, E. Z. TAYLOR, THOMAS, TIGUE AND YOUNGBLOOD,  
JANUARY 26, 2006

REFERRED TO COMMITTEE ON JUDICIARY, JANUARY 26, 2006

AN ACT

1 Amending Title 23 (Domestic Relations) of the Pennsylvania  
2 Consolidated Statutes, providing, in child custody, for  
3 international abduction.

4 The General Assembly of the Commonwealth of Pennsylvania  
5 hereby enacts as follows:

6 Section 1. Title 23 of the Pennsylvania Consolidated  
7 Statutes is amended by adding a section to read:

8 § 5308.1. International abduction.

9 (a) Procedure.--

10 (1) A parent or guardian of a child who is at risk for  
11 international abduction by the child's parent may bring an  
12 action for relief under this section.

13 (2) The action must be initiated by a petition in a  
14 court of competent jurisdiction naming as respondent the  
15 parent who is placing the child at risk.

16 (3) Upon filing of a petition, the court shall conduct a  
17 hearing to do all of the following:

1           (i) Determine the risk of international abduction  
2           under subsection (b).

3           (ii) Evaluate the risk of international abduction  
4           under subsection (c).

5           (iii) Take measures to avoid international  
6           abduction.

7       (b) Determination of risk.--To determine whether there is a  
8       risk of the international abduction of a child by the  
9       respondent, the court shall consider evidence that any of the  
10       following apply:

11           (1) The respondent has taken, enticed away, withheld or  
12           concealed a child in violation of another person's right of  
13           possession of or access to the child. This paragraph does not  
14           apply if the respondent presents evidence that the respondent  
15           believed in good faith that the respondent's conduct was  
16           necessary to avoid imminent harm to the child or to the  
17           respondent.

18           (2) The respondent previously threatened an action under  
19           paragraph (1).

20           (3) The respondent lacks financial reason to stay in the  
21           United States. This paragraph includes the fact that the  
22           respondent is:

23                   (i) financially independent;

24                   (ii) able to work outside of the United States; or

25                   (iii) unemployed.

26           (4) The respondent has recently engaged in planning  
27           activities which could facilitate the removal of the child  
28           from the United States by the respondent. This paragraph does  
29           not apply if the respondent presents evidence that the  
30           planning activities are part of a safety plan to flee from

domestic violence. This paragraph includes:

(i) Quitting a job.

(ii) Selling a primary residence.

(iii) Terminating a lease.

(iv) Closing several bank accounts.

(v) Liquidating assets.

(vi) Hiding or destroying documents.

(vii) Applying for a passport or visa or obtaining  
other travel documents for the respondent or the child.

(viii) Applying to obtain the child's birth  
certificate or school or medical records.

(5) The respondent has a history of domestic violence.

(6) The respondent has a criminal record or a history of  
violating court orders.

(c) Evaluation of risk.--If the court finds that there is  
credible evidence of a risk of international abduction of the  
child by the respondent based on the court's consideration of  
the factors in subsection (b), the court shall also consider  
evidence regarding the following factors to evaluate the risk:

(1) Whether the respondent has strong familial,  
emotional or cultural ties to another country, particularly a  
country which is not a signatory to or not compliant with the  
Hague Convention on the Civil Aspects of International Child  
Abduction.

(2) Whether the respondent lacks strong ties to the  
United States, regardless of whether the respondent is a  
citizen or permanent resident of the United States.

(3) Whether the respondent is undergoing a change in  
immigration or citizenship status with the United States  
Government that would adversely affect the respondent's

1 ability to legally remain in the United States.

2 (4) Whether the respondent's application for United  
3 States citizenship has been denied.

4 (5) Whether the respondent has ever forged or presented  
5 misleading or false evidence to obtain a visa, a passport, a  
6 Social Security card or any other identification card or has  
7 made any misrepresentation to the Federal Government.

8 (6) Whether any of the following apply to the foreign  
9 country to which the respondent has ties:

10 (i) There are obstacles to the recovery and return  
11 of a child who is abducted to the country from the United  
12 States.

13 (ii) There are no legal mechanisms for immediately  
14 and effectively enforcing an order regarding the  
15 possession of or access to the child issued by the  
16 Commonwealth.

17 (iii) The country has laws or practices which would:

18 (A) enable the respondent to prevent the  
19 petitioner from contacting the child without due  
20 cause;

21 (B) restrict the petitioner from freely  
22 traveling to or exiting from the country because of  
23 the petitioner's gender, nationality or religion; or

24 (C) restrict the child's ability to legally  
25 leave the country after the child reaches the age of  
26 majority because of the child's gender, nationality  
27 or religion.

28 (iv) The country is included by the United States  
29 Department of State on a list of state sponsors of  
30 terrorism.

1           (v) The United States has issued a travel warning to  
2           United States citizens regarding travel to the country.

3           (vi) There is no embassy of the United States in the  
4           country.

5           (vii) The country is engaged in active military  
6           action or war. This subparagraph includes a civil war.

7           (viii) According to the most recent report on  
8           compliance issued by the United States Department of  
9           State, the country is not a party to or not compliant  
10          with the Hague Convention on the Civil Aspects of  
11          International Child Abduction.

12          (ix) There are no provisions for the extradition of  
13          a parental abductor and the return of the child to the  
14          United States.

15          (x) There is a risk that the child's physical health  
16          or safety would be endangered in the country because of  
17          any of the following:

18                (A) Specific circumstances relating to the  
19                child.

20                (B) Human rights violations committed against  
21                children. This subclause includes:

22                      (I) Arranged marriages.

23                      (II) Lack of freedom of religion.

24                      (III) Poorly regulated child labor.

25                      (IV) Lack of child abuse laws.

26                      (V) Female genital mutilation.

27                      (VI) Slavery.

28          (d) Abduction prevention measures.--If the court finds that  
29          it is necessary under subsection (a), (b) or (c) to take  
30          measures to protect a child from international abduction by the

1 respondent, the court may take any of the following actions:

2 (1) Award sole custody to a person other than the  
3 respondent.

4 (2) Require supervised visitation of the respondent by a  
5 visitation center or independent organization until the court  
6 finds that supervised visitation is no longer necessary.

7 (3) Enjoin the respondent or any person acting on the  
8 respondent's behalf from doing any of the following:

9 (i) Removing the child from the care of the person  
10 with lawful custody except as may be allowed during  
11 court-ordered visitation periods.

12 (ii) Disrupting or removing the child from the  
13 school or child-care facility in which the child is  
14 enrolled.

15 (iii) Approaching the child at any location other  
16 than a site designated for supervised visitation.

17 (4) Order passport and travel controls. This paragraph  
18 includes:

19 (i) Prohibiting the respondent and any person acting  
20 on the respondent's behalf from removing the child from  
21 this Commonwealth. An order under this subparagraph  
22 should be written to comply with the Hague Convention on  
23 the Civil Aspects of International Child Abduction.

24 (ii) Requiring the respondent to surrender any  
25 passport issued in the child's name, including any  
26 passport issued in the name of both the respondent and  
27 the child.

28 (iii) Prohibiting the respondent from applying on  
29 behalf of the child for a new or replacement passport or  
30 international travel visa.

1       (5) Require the respondent to do all of the following:

2           (i) Provide to the United States Department of  
3       State's Office of Children's Issues and the relevant  
4       foreign consulate or embassy:

5           (A) written notice of the court-ordered passport  
6       and travel restrictions for the child; and

7           (B) a properly authenticated copy of the court  
8       order detailing the restrictions and documentation of  
9       the respondent's agreement to the restrictions.

10       (ii) Provide to the court proof of receipt of the  
11       written notice required by subparagraph (i)(A).

12       (6) Order the respondent to execute a bond or deposit  
13       security in an amount sufficient to offset the cost of  
14       recovering the child if the child is abducted by the  
15       respondent to a foreign country.

16       (7) Authorize appropriate law enforcement agencies  
17       throughout this Commonwealth to take measures to prevent the  
18       abduction of the child by a parent, including arrest for  
19       contempt of court of an individual who violates an order  
20       under paragraph (3) or (4)(i). An arrest under this paragraph  
21       may be without warrant upon probable cause whether or not the  
22       violation is committed in the presence of the police officer  
23       in circumstances where the defendant has violated a provision  
24       of the order. The police officer may verify the existence of  
25       an order by telephone, radio or other electronic  
26       communication with the issuing authority. Subsequent to an  
27       arrest, the defendant shall be taken by the police officer  
28       without unnecessary delay before the court in the judicial  
29       district where the contempt is alleged to have occurred. If  
30       that court is unavailable, the police officer shall convey

1 the defendant to a magisterial district judge designated as  
2 appropriate by local rules of court or, in the City of  
3 Pittsburgh, to a magistrate of the Pittsburgh Magistrates  
4 Court or, in counties of the first class, to the appropriate  
5 hearing officer. For purposes of procedure relating to  
6 arraignments for arrest for violation of an order issued  
7 under paragraph (3) or (4)(i), the judges of Pittsburgh  
8 Magistrates Court shall be deemed to be magisterial district  
9 judges.

10 (8) Include in its order provisions:

11 (i) identifying the United States as the country of  
12 habitual residence of the child;

13 (ii) defining the basis for the court's exercise of  
14 jurisdiction; and

15 (iii) stating that a party's violation of the order  
16 may subject the party to a civil penalty or criminal  
17 penalty or to both civil and criminal penalties.

18 Section 2. This act shall take effect immediately.