

ASSEMBLY BILL

No. 3013

Introduced by Assembly Member Levine

February 22, 2008

An act to amend Section 3048 of the Family Code, relating to child custody.

LEGISLATIVE COUNSEL'S DIGEST

AB 3013, as introduced, Levine. Child custody: abduction.

Existing law makes it a crime to take, entice away, keep, withhold, or conceal a child and maliciously deprive a lawful custodian of a right to custody, or a person of a right to visitation. Existing law provides immunity from this crime for certain persons, including, but not limited to, a person with a right to custody of a child who has been a victim of domestic violence and who complies with specified requirements. Existing law, which incorporates the federal Synclair-Cannon Child Abduction Prevention Act of 2002, requires a court, in cases in which the court becomes aware of facts that may indicate a risk of abduction of a child, to consider specified factors in determining the risk of abduction and whether measures are needed to prevent that abduction. If the court makes a finding that there is a need for preventative measures after considering those factors, existing law requires the court to consider taking one or more of several enumerated measures to prevent the abduction of the child.

This bill would require the court in determining the risk of abduction and whether measures are needed to prevent that abduction, to consider the importance of parental and custodial rights, the harmful effects of abduction by a parent, and the potential threat of producing psychological trauma to abducted children and left-behind parents. This

bill would require the court to consider whether a foreign country will cooperate with the enforcement of a custody order, when determining whether measures are needed to prevent the abduction of the child by one parent. In determining the risk of abduction, this bill would require the court to consider whether a party is recognized by a government agency for intentionally filing false or misleading claims on government documents.

This bill would also enumerate factors the court must consider in determining whether a threat of abduction of a minor child to a foreign country is present. This bill would also require that any conditions selected by the court to prevent the abduction of the child must be selected to guarantee the safety of the child, enforce the best interests of the child, and eliminate the threat of abduction.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3048 of the Family Code is amended to
2 read:
3 3048. (a) Notwithstanding any other provision of law, in any
4 proceeding to determine child custody or visitation with a child,
5 every custody or visitation order shall contain all of the following:
6 (1) The basis for the court’s exercise of jurisdiction.
7 (2) The manner in which notice and opportunity to be heard
8 were given.
9 (3) A clear description of the custody and visitation rights of
10 each party.
11 (4) A provision stating that a violation of the order may subject
12 the party in violation to civil or criminal penalties, or both.
13 (5) Identification of the country of habitual residence of the
14 child or children.
15 (b) (1) In cases in which the court becomes aware of facts which
16 may indicate that there is a risk of abduction of a child, the court
17 shall, either on its own motion or at the request of a party,
18 determine whether measures are needed to prevent the abduction
19 of the child by one parent. To make that determination, the court
20 shall consider the risk of abduction of the child, obstacles to
21 location, recovery, and return if the child is abducted, and ~~potential~~

1 ~~harm to the child if he or she is abducted whether a foreign country~~
2 ~~will cooperate with the enforcement of a custody order. To~~

3 (2) To determine whether there is a risk of abduction, the court
4 shall consider the following factors:

5 (A) Whether a party has previously taken, enticed away, kept,
6 withheld, or concealed a child in violation of the right of custody
7 or of visitation of a person.

8 (B) Whether a party has previously threatened to take, entice
9 away, keep, withhold, or conceal a child in violation of the right
10 of custody or of visitation of a person.

11 (C) Whether a party lacks strong ties to this ~~state~~ *county*. For
12 purposes of this section, “Strong ties” means permanent or
13 long-term affiliations that connect a party to this state, such as
14 marriage to a United States citizen, ownership of real property in
15 the United States, or United States citizenship.

16 (D) Whether a party has strong familial, emotional, or cultural
17 ties to another state or country, including foreign citizenship. This
18 factor shall be considered only if evidence exists in support of
19 another factor specified in this section.

20 (E) Whether a party has no financial reason to stay in this state,
21 including whether the party is unemployed, is able to work
22 anywhere, or is financially independent.

23 (F) Whether a party has engaged in planning activities that
24 would facilitate the removal of a child from the state, including
25 quitting a job, selling his or her primary residence, terminating a
26 lease, closing a bank account, liquidating other assets, hiding or
27 destroying documents, applying for a passport, applying to obtain
28 a birth certificate or school or medical records, or purchasing
29 airplane or other travel tickets, with consideration given to whether
30 a party is carrying out a safety plan to flee from domestic violence.

31 (G) Whether a party has a history of a lack of parental
32 cooperation or child abuse, or there is substantiated evidence that
33 a party has perpetrated domestic violence.

34 (H) Whether a party has a criminal record.

35 (I) Whether a party is recognized by a government agency for
36 intentionally filing false or misleading claims on government
37 documents.

38 (c) To make the determinations in subdivision (b), the court
39 shall also consider the following.

40 (1) The importance of parental and custodial rights.

- 1 (2) *The harmful effects of abduction by a parent.*
- 2 (3) *The potential threat of producing psychological trauma to*
- 3 *abducted children and left-behind parents.*
- 4 (d) (1) *In determining whether a threat of international*
- 5 *abduction of a minor child to foreign country is present, either on*
- 6 *the court’s own motion or at the request of a party, a court shall*
- 7 *consider the following factors as reasons to keep the child within*
- 8 *the United States:*
- 9 (A) *The risk of abduction.*
- 10 (B) *The potential harm the child would likely suffer if abducted.*
- 11 (C) *The obstacles to locating and recovering the child if an*
- 12 *abduction were to occur in this country.*
- 13 (D) *The obstacles to locating and recovering the child if an*
- 14 *abduction were to occur in a foreign country.*
- 15 (2) *For purposes of this section, “custody order” means any*
- 16 *order or judgment establishing or modifying custody of, or*
- 17 *parenting time or visitation with, a minor child as described in*
- 18 *Sections 3040 and 3041.*
- 19 (3) *For purposes of this section, “foreign country” means any*
- 20 *country that:*
- 21 (A) *Is not a signatory to the Hague Convention on the Civil*
- 22 *Aspects of International Child Abduction.*
- 23 (B) *Does not provide for the extradition to the United States of*
- 24 *a parental abductor and minor child.*
- 25 (C) *Has laws or practices that would disregard a custody order*
- 26 *from within the United States.*
- 27 (D) *Has laws or practices that would restrict the other parent*
- 28 *of the minor child from freely traveling to or exiting from the*
- 29 *country because of the gender, race, or religion of the other parent.*
- 30 (E) *Has laws or practices that would restrict the ability of the*
- 31 *minor child from legally leaving the country after the child reaches*
- 32 *the age of majority because of the gender, race, or religion of the*
- 33 *child.*
- 34 (F) *Lacks the legal mechanisms to efficiently enforce a custody*
- 35 *order.*
- 36 (G) *Poses a significant threat that the physical or mental health*
- 37 *or safety of the minor child would be endangered in the country*
- 38 *as a result of war, human rights violations, or specific*
- 39 *circumstances related to the needs of the child.*
- 40 (2)

- 1 (4) If the court makes a finding that there is a need for
2 preventative measures after considering the factors listed in
3 paragraph (1) of subdivision (b), the court shall ~~consider taking~~
4 *apply* one or more of the following measures to prevent the
5 abduction of the child:
- 6 (A) Ordering supervised visitation.
 - 7 (B) Requiring a parent to post a bond in an amount sufficient
8 to serve as a financial deterrent to abduction, the proceeds of which
9 may be used to offset the cost of recovery of the child in the event
10 there is an abduction.
 - 11 (C) Restricting the right of the custodial or noncustodial parent
12 to remove the child from the county, the state, or the country.
 - 13 (D) Restricting the right of the custodial parent to relocate with
14 the child, unless the custodial parent provides advance notice to,
15 and obtains the written agreement of, the noncustodial parent, or
16 obtains the approval of the court, before relocating with the child.
 - 17 (E) Requiring the surrender of passports and other travel
18 documents.
 - 19 (F) Prohibiting a parent from applying for a new or replacement
20 passport for the child.
 - 21 (G) Requiring a parent to notify a relevant foreign consulate or
22 embassy of passport restrictions and to provide the court with proof
23 of that notification.
 - 24 (H) Requiring a party to register a California order in another
25 state as a prerequisite to allowing a child to travel to that state for
26 visits, or to obtain an order from another country containing terms
27 identical to the custody and visitation order issued in the United
28 States (recognizing that these orders may be modified or enforced
29 pursuant to the laws of the other country), as a prerequisite to
30 allowing a child to travel to that county for visits.
 - 31 (I) Obtaining assurances that a party will return from foreign
32 visits by requiring the traveling parent to provide the court or the
33 other parent or guardian with any of the following:
 - 34 (i) The travel itinerary of the child.
 - 35 (ii) Copies of round trip airline tickets.
 - 36 (iii) A list of addresses and telephone numbers where the child
37 can be reached at all times.
 - 38 (iv) An open airline ticket for the left-behind parent in case the
39 child is not returned.

1 (J) Including provisions in the custody order to facilitate use of
 2 the Uniform Child Custody Jurisdiction and Enforcement Act (Part
 3 3 (commencing with Section 3400)) and the Hague Convention
 4 on the Civil Aspects of International Child Abduction
 5 (implemented pursuant to 42 U.S.C. Sec. 11601 et seq.), such as
 6 identifying California as the home state of the child or otherwise
 7 defining the basis for the California court’s exercise of jurisdiction
 8 under Part 3 (commencing with Section 3400), identifying the
 9 United States as the country of habitual residence of the child
 10 pursuant to the Hague Convention, defining custody rights pursuant
 11 to the Hague Convention, obtaining the express agreement of the
 12 parents that the United States is the country of habitual residence
 13 of the child, or that California or the United States is the most
 14 appropriate forum for addressing custody and visitation orders.

15 (K) Authorizing the assistance of law enforcement.

16 ~~(3)~~

17 (5) If the court imposes any or all of the conditions listed in
 18 paragraph ~~(2)~~ (4), those conditions shall be specifically noted on
 19 the minute order of the court proceedings. *Additionally, the*
 20 *conditions selected by the court must be selected to guarantee the*
 21 *safety of the child, enforce the best interests of the child, and*
 22 *eliminate the threat of abduction.*

23 ~~(4)~~

24 (6) If the court determines there is a risk of abduction that is
 25 sufficient to warrant the application of one or more of the
 26 prevention measures authorized by this section, the court shall
 27 inform the parties of the telephone number and address of the Child
 28 Abduction Unit in the office of the district attorney in the county
 29 where the custody or visitation order is being entered.

30 ~~(e)~~

31 (e) The Judicial Council shall make the changes to its child
 32 custody order forms that are necessary for the implementation of
 33 subdivision (b). This subdivision shall become operative on July
 34 1, 2003.

35 ~~(d)~~

36 (f) Nothing in this section affects the applicability of Section
 37 278.7 of the Penal Code.