

AMENDED IN SENATE MAY 1, 2012  
AMENDED IN SENATE APRIL 12, 2012

**SENATE BILL**

**No. 1206**

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**Introduced by Senator Walters**

February 22, 2012

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An act to amend Sections 2040, ~~3048~~, and 3134.5 of the Family Code, relating to child abduction prevention.

LEGISLATIVE COUNSEL'S DIGEST

SB 1206, as amended, Walters. Child abduction prevention.

(1) Existing law requires, upon the commencement of proceedings for dissolution or nullity of marriage or legal separation of the parties, that the summons contain a temporary restraining order restraining both parties from, among other things, removing the minor child or children of the parties, if any, from the state without the prior written consent of the other party or an order of the court.

This bill would, additionally, provide that the temporary restraining order restrain the parties from applying for a new or replacement passport for the minor child or children of the parties without the prior written consent of the other party or an order of the court.

~~(2) Existing law requires the 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. These preventative measures may include requiring the surrender of passports and other travel documents and prohibiting a parent from applying for a new or replacement passport for the child.~~

~~If the court orders a parent to surrender passports and other travel documents as part of the preventative measures described above, and~~

~~if the parent is a foreign national, this bill would require the court to request that the name of the parent and the child or children be placed in the Prevent Departure Program of the United States Department of Homeland Security by contacting the Office of Children's Issues at the United States Department of State. If the court orders a parent to surrender passports and other travel documents, and prohibits the parent from applying for a new or replacement passport, this bill would also require the court to enter the name of the child or children in the Children's Passport Issuance Alert Program of the United States Department of State by contacting the Office of Children's Issues at the United States Department of State and submitting the appropriate form with a court order showing that the court has jurisdiction over the matter.~~

~~(3)~~

(2) Existing law authorizes the court, upon request of the district attorney, to issue a protective custody warrant to secure the recovery of an unlawfully detained or concealed child. The protective custody warrant for the child is required to contain an order that the arresting agency shall place the child in protective custody, or return the child as directed by the court.

This bill would authorize the court to also include within the protective custody warrant for the child an order to freeze the California assets, *as defined*, of the party alleged to be in possession of the child.

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

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

1 SECTION 1. This act shall be known and may be cited as  
2 Keisuke's Law.

3 SEC. 2. Section 2040 of the Family Code is amended to read:

4 2040. (a) In addition to the contents required by Section 412.20  
5 of the Code of Civil Procedure, the summons shall contain a  
6 temporary restraining order:

7 (1) Restraining both parties from removing the minor child or  
8 children of the parties, if any, from the state, or from applying for  
9 a new or replacement passport for the minor child or children,  
10 without the prior written consent of the other party or an order of  
11 the court.

1 (2) Restraining both parties from transferring, encumbering,  
2 hypothecating, concealing, or in any way disposing of any property,  
3 real or personal, whether community, quasi-community, or  
4 separate, without the written consent of the other party or an order  
5 of the court, except in the usual course of business or for the  
6 necessities of life, and requiring each party to notify the other party  
7 of any proposed extraordinary expenditures at least five business  
8 days before incurring those expenditures and to account to the  
9 court for all extraordinary expenditures made after service of the  
10 summons on that party.

11 Notwithstanding the foregoing, nothing in the restraining order  
12 shall preclude a party from using community property,  
13 quasi-community property, or the party's own separate property  
14 to pay reasonable attorney's fees and costs in order to retain legal  
15 counsel in the proceeding. A party who uses community property  
16 or quasi-community property to pay his or her attorney's retainer  
17 for fees and costs under this provision shall account to the  
18 community for the use of the property. A party who uses other  
19 property that is subsequently determined to be the separate property  
20 of the other party to pay his or her attorney's retainer for fees and  
21 costs under this provision shall account to the other party for the  
22 use of the property.

23 (3) Restraining both parties from cashing, borrowing against,  
24 canceling, transferring, disposing of, or changing the beneficiaries  
25 of any insurance or other coverage, including life, health,  
26 automobile, and disability, held for the benefit of the parties and  
27 their child or children for whom support may be ordered.

28 (4) Restraining both parties from creating a nonprobate transfer  
29 or modifying a nonprobate transfer in a manner that affects the  
30 disposition of property subject to the transfer, without the written  
31 consent of the other party or an order of the court.

32 (b) Nothing in this section restrains any of the following:

33 (1) Creation, modification, or revocation of a will.

34 (2) Revocation of a nonprobate transfer, including a revocable  
35 trust, pursuant to the instrument, provided that notice of the change  
36 is filed and served on the other party before the change takes effect.

37 (3) Elimination of a right of survivorship to property, provided  
38 that notice of the change is filed and served on the other party  
39 before the change takes effect.

40 (4) Creation of an unfunded revocable or irrevocable trust.

1 (5) Execution and filing of a disclaimer pursuant to Part 8  
2 (commencing with Section 260) of Division 2 of the Probate Code.

3 (c) In all actions filed on and after January 1, 1995, the summons  
4 shall contain the following notice:

5  
6 “WARNING: California law provides that, for purposes of  
7 division of property upon dissolution of marriage or legal  
8 separation, property acquired by the parties during marriage in  
9 joint form is presumed to be community property. If either party  
10 to this action should die before the jointly held community property  
11 is divided, the language of how title is held in the deed (i.e., joint  
12 tenancy, tenants in common, or community property) will be  
13 controlling and not the community property presumption. You  
14 should consult your attorney if you want the community property  
15 presumption to be written into the recorded title to the property.”  
16

17 (d) For the purposes of this section:

18 (1) “Nonprobate transfer” means an instrument, other than a  
19 will, that makes a transfer of property on death, including a  
20 revocable trust, pay on death account in a financial institution,  
21 Totten trust, transfer on death registration of personal property, or  
22 other instrument of a type described in Section 5000 of the Probate  
23 Code.

24 (2) “Nonprobate transfer” does not include a provision for the  
25 transfer of property on death in an insurance policy or other  
26 coverage held for the benefit of the parties and their child or  
27 children for whom support may be ordered, to the extent that the  
28 provision is subject to paragraph (3) of subdivision (a).

29 (e) The restraining order included in the summons shall include  
30 descriptions of the notices required by paragraphs (2) and (3) of  
31 subdivision (b).

32 ~~SEC. 3.— Section 3048 of the Family Code is amended to read:~~

33 ~~3048. (a) Notwithstanding any other law, in any proceeding~~  
34 ~~to determine child custody or visitation with a child, every custody~~  
35 ~~or visitation order shall contain all of the following:~~

36 ~~(1) The basis for the court’s exercise of jurisdiction.~~

37 ~~(2) The manner in which notice and opportunity to be heard~~  
38 ~~were given.~~

39 ~~(3) A clear description of the custody and visitation rights of~~  
40 ~~each party.~~

1 ~~(4) A provision stating that a violation of the order may subject~~  
2 ~~the party in violation to civil or criminal penalties, or both.~~

3 ~~(5) Identification of the country of habitual residence of the~~  
4 ~~child or children.~~

5 ~~(b) (1) In cases in which the court becomes aware of facts that~~  
6 ~~may indicate that there is a risk of abduction of a child, the court~~  
7 ~~shall, either on its own motion or at the request of a party,~~  
8 ~~determine whether measures are needed to prevent the abduction~~  
9 ~~of the child by one parent. To make that determination, the court~~  
10 ~~shall consider the risk of abduction of the child, obstacles to~~  
11 ~~location, recovery, and return if the child is abducted, and potential~~  
12 ~~harm to the child if he or she is abducted. To determine whether~~  
13 ~~there is a risk of abduction, the court shall consider the following~~  
14 ~~factors:~~

15 ~~(A) Whether a party has previously taken, enticed away, kept,~~  
16 ~~withheld, or concealed a child in violation of the right of custody~~  
17 ~~or of visitation of a person.~~

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

21 ~~(C) Whether a party lacks strong ties to this state.~~

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

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

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

37 ~~(G) Whether a party has a history of a lack of parental~~  
38 ~~cooperation or child abuse, or there is substantiated evidence that~~  
39 ~~a party has perpetrated domestic violence.~~

40 ~~(H) Whether a party has a criminal record.~~

- 1     ~~(2) If the court makes a finding that there is a need for~~  
2     ~~preventative measures after considering the factors listed in~~  
3     ~~paragraph (1), the court shall consider taking one or more of the~~  
4     ~~following measures to prevent the abduction of the child:~~
- 5     ~~(A) Ordering supervised visitation.~~
- 6     ~~(B) Requiring a parent to post a bond in an amount sufficient~~  
7     ~~to serve as a financial deterrent to abduction, the proceeds of which~~  
8     ~~may be used to offset the cost of recovery of the child in the event~~  
9     ~~there is an abduction.~~
- 10    ~~(C) Restricting the right of the custodial or noncustodial parent~~  
11    ~~to remove the child from the county, the state, or the country.~~
- 12    ~~(D) Restricting the right of the custodial parent to relocate with~~  
13    ~~the child, unless the custodial parent provides advance notice to,~~  
14    ~~and obtains the written agreement of, the noncustodial parent, or~~  
15    ~~obtains the approval of the court, before relocating with the child.~~
- 16    ~~(E) Requiring the surrender of passports and other travel~~  
17    ~~documents. If a parent is ordered to surrender passports and other~~  
18    ~~travel documents pursuant to this subparagraph, and if the parent~~  
19    ~~is a foreign national, the court shall request that the names of the~~  
20    ~~parent and the child or children be placed in the Prevent Departure~~  
21    ~~Program of the United States Department of Homeland Security~~  
22    ~~by contacting the Office of Children's Issues at the United States~~  
23    ~~Department of State.~~
- 24    ~~(F) Prohibiting a parent from applying for a new or replacement~~  
25    ~~passport for the child. If a parent is ordered to surrender passports~~  
26    ~~and other travel documents pursuant to subparagraph (E) and is~~  
27    ~~prohibited from applying for a new or replacement passport~~  
28    ~~pursuant to this subparagraph, the court shall enter the name of~~  
29    ~~the child or children in the Children's Passport Issuance Alert~~  
30    ~~Program of the United States Department of State by contacting~~  
31    ~~the Office of Children's Issues at the United States Department of~~  
32    ~~State and submitting the appropriate form with a court order~~  
33    ~~showing that the court has jurisdiction over the matter.~~
- 34    ~~(G) Requiring a parent to notify a relevant foreign consulate or~~  
35    ~~embassy of passport restrictions and to provide the court with proof~~  
36    ~~of that notification.~~
- 37    ~~(H) Requiring a party to register a California order in another~~  
38    ~~state as a prerequisite to allowing a child to travel to that state for~~  
39    ~~visits, or to obtain an order from another country containing terms~~  
40    ~~identical to the custody and visitation order issued in the United~~

1 States (recognizing that these orders may be modified or enforced  
2 pursuant to the laws of the other country), as a prerequisite to  
3 allowing a child to travel to that country for visits.

4 (I) ~~Obtaining assurances that a party will return from foreign  
5 visits by requiring the traveling parent to provide the court or the  
6 other parent or guardian with any of the following:~~

- 7 (i) ~~The travel itinerary of the child.~~
- 8 (ii) ~~Copies of round trip airline tickets.~~
- 9 (iii) ~~A list of addresses and telephone numbers where the child  
10 can be reached at all times.~~

11 (iv) ~~An open airline ticket for the left-behind parent in case the  
12 child is not returned.~~

13 (J) ~~Including provisions in the custody order to facilitate use of  
14 the Uniform Child Custody Jurisdiction and Enforcement Act (Part  
15 3 (commencing with Section 3400)) and the Hague Convention  
16 on the Civil Aspects of International Child Abduction  
17 (implemented pursuant to 42 U.S.C. Sec. 11601 et seq.), such as  
18 identifying California as the home state of the child or otherwise  
19 defining the basis for the California court's exercise of jurisdiction  
20 under Part 3 (commencing with Section 3400), identifying the  
21 United States as the country of habitual residence of the child  
22 pursuant to the Hague Convention, defining custody rights pursuant  
23 to the Hague Convention, obtaining the express agreement of the  
24 parents that the United States is the country of habitual residence  
25 of the child, or that California or the United States is the most  
26 appropriate forum for addressing custody and visitation orders.~~

27 (K) ~~Authorizing the assistance of law enforcement.~~

28 (3) ~~If the court imposes any or all of the conditions listed in  
29 paragraph (2), those conditions shall be specifically noted on the  
30 minute order of the court proceedings.~~

31 (4) ~~If the court determines there is a risk of abduction that is  
32 sufficient to warrant the application of one or more of the  
33 prevention measures authorized by this section, the court shall  
34 inform the parties of the telephone number and address of the Child  
35 Abduction Unit in the office of the district attorney in the county  
36 where the custody or visitation order is being entered.~~

37 (e) ~~The Judicial Council shall make the changes to its child  
38 custody order forms that are necessary for the implementation of  
39 subdivision (b). This subdivision shall become operative on July  
40 1, 2003.~~

1 ~~(d) Nothing in this section affects the applicability of Section~~  
2 ~~278.7 of the Penal Code.~~  
3 ~~SEC. 4.~~  
4 *SEC. 3.* Section 3134.5 of the Family Code is amended to read:  
5 3134.5. (a) Upon request of the district attorney, the court may  
6 issue a protective custody warrant to secure the recovery of an  
7 unlawfully detained or concealed child. The request by the district  
8 attorney shall include a written declaration under penalty of perjury  
9 that a warrant for the child is necessary in order for the district  
10 attorney to perform the duties described in Sections 3130 and 3131.  
11 The protective custody warrant for the child shall contain an order  
12 that the arresting agency shall place the child in protective custody,  
13 or return the child as directed by the court. The protective custody  
14 warrant for the child may also contain an order to freeze the  
15 California assets of the party alleged to be in possession of the  
16 child. The protective custody warrant may be served in any county  
17 in the same manner as a warrant of arrest and may be served at  
18 any time of the day or night. *For purposes of this subdivision,*  
19 *“assets” means funds contained in a bank account held in*  
20 *California.*  
21 (b) Upon a declaration of the district attorney that the child has  
22 been recovered or that the warrant is otherwise no longer required,  
23 the court may dismiss the warrant without further court  
24 proceedings.