

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 1490  
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Jurisprudence  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 1490 is in response to a case which occurred in Bexar County in November of 2009. Jean Philippe Lacombe, the father of a child who was the subject of a custody battle, filed an international child custody determination with allegations of physical harm. Therefore the judge issued a warrant to take physical custody of the child. The child was immediately given to the father and the father was told to appear the next Monday for a hearing in order to make the custody determination. The father—who had dual citizenship— immediately absconded with the child to a foreign country. It took the parent who rightfully had custody of the child a year in order to get her child back.

S.B. 1490 requires a record to be made of all proceedings and hearings when implementing Chapter 152 (Uniform Child Custody Jurisdiction and Enforcement Act), Family Code, for only international child custody determinations or proceedings.

The bill changes the warrant to take physical custody of a child, Section 152.311 (Warrant to Take Physical Custody of Child), Family Code, to require that if a petition contains allegations, and upon a finding that, a child is imminently likely to suffer serious physical harm or to be wrongfully removed, the court can issue a warrant directing law enforcement officers to take immediate physical custody of the child. The change is that the law enforcement officers will deliver the child to the Department of Protective and Regulatory Services in the manner provided for a return of a missing child.

The bill also adds Warrant to Take Physical Custody of the Child to Subchapter I (Prevention of International Parental Child Abduction), Chapter 153 (Conservatorship, Possession, and Access), Family Code, which deals with preventive measures for international parental child abductions.

S.B. 1490 would create a criminal penalty punishable as a felony of the third degree for an individual who makes a false statement as to the current child custody status.

These changes will put safeguards in place in order to prevent this from reoccurring in the future.

As proposed, S.B. 1490 amends current law relating to the recording of proceedings and the issuance of a warrant to take physical custody of a child in certain suits affecting the parent-child relationship and creates an offense.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 152.105, Family Code, by adding Subsection (d), to require a record of all of the proceedings under this chapter relating to a child custody determination made in a foreign country or to the enforcement of an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction to be made by a court reporter or as provided by Section 201.009 (Court Reporter; Record).

SECTION 2. Amends Section 152.311(c), Family Code, as follows:

(c) Requires a warrant to take physical custody of a child to:

- (1) recite the fact upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;
- (2) direct law enforcement officers to take physical custody of the child immediately;
- (3) provide for the delivery of the child to the Department of Family and Protective Services (DFPS) in the manner provided for the delivery of a missing child by Section 262.007(c) (relating to requiring a law enforcement officer to deliver a child to the Department of Protective and Regulatory Services if a person entitled to possession of the child is not immediately available to take possession of the child) pending the hearing on the petition, rather than provide for the placement of the child pending final relief; and
- (4) state the date for the hearing on the petition.

SECTION 3. Amends Subchapter I, Chapter 153, Family Code, by adding Section 153.504, as follows:

Sec. 153.504. WARRANT TO TAKE PHYSICAL CUSTODY OF CHILD. (a) Authorizes the court, in a suit described by Section 153.501(a) (relating to a suit in which credible evidence is presented to the court indicating a potential risk of international abduction of a child by a parent of the child), to issue a warrant to take physical custody of the child if the court, on the testimony of the petitioner or another witness, finds that the child is imminently likely to suffer serious physical harm or be removed from this state.

(b) Requires that a warrant to take physical custody of a child:

- (1) recite the facts on which a conclusion of imminent likelihood of serious physical harm or removal from the jurisdiction is based;
- (2) direct law enforcement officers to immediately take physical custody of the child;
- (3) provide for the delivery of the child to DFPS in the manner provided for the delivery of a missing child by Section 262.007(c) pending a hearing by the court; and
- (4) state the date for the hearing, which must be as early as possible.

(c) Requires the respondent to be served with the warrant immediately after the child is taken into physical custody.

(d) Provides that a warrant to take physical custody of a child is enforceable throughout this state. Authorizes the court, if the court finds on the basis of the testimony of the petitioner or another witness that a less intrusive remedy is not effective, to authorize law enforcement officers to enter private property to take physical custody of the child. Authorizes the court, if required by exigent circumstances of the case, to authorize law enforcement officers to make a forcible entry at any hour.

(e) Authorizes the court to impose conditions on placement of a child to ensure the appearance of the child and the child's custodian.

SECTION 4. Amends Chapter 37, Penal Code, by adding Section 37.14, as follows:

Sec. 37.14. FALSE STATEMENT REGARDING CHILD CUSTODY DETERMINATION. (a) Defines "child custody determination" for purposes of this section.

(b) Provides that a person commits an offense if the person knowingly makes or causes to be made a false statement relating to a child custody determination during a hearing held under Chapter 152 (Uniform Child Custody Jurisdiction and Enforcement Act) or 153 (Conservatorship, Possession, and Access), Family Code.

(c) Provides that an offense under this section is a felony of the third degree.

SECTION 5. Effective date: September 1, 2011.