



**Hundredth Legislature - First Session - 2007  
Revised Committee Statement  
LB 341**

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**Hearing Date:** January 25, 2007  
**Committee On:** Judiciary

**Introducer(s):** (Schimek, 27)  
**Title:** Change Uniform Child Custody Jurisdiction Act provisions

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**Roll Call Vote – Final Committee Action:**

- Advanced to General File
  - X Advanced to General File with Amendments
  - Indefinitely Postponed
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**Vote Results:**

- |   |     |   |
|---|-----|---|
| 8 | Yes | Ashford, Chambers, Lathrop McDonald,<br>McGill, Pedersen, Pirsch, Schimek |
| 0 | No  | Present, not voting<br>Absent   |
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**Proponents: Susan Lien, private citizen**  
Richard Ducote  
Susan Lien  
Sheri Wortman  
Senator Schimek

**Representing:**  
Attorney  
Private Citizen  
Attorney

**Opponents:**  
Michael Kerr  
Eric Fish  
Larry Ruth

**Representing:**  
Uniform Law Commissioners  
Uniform Law Commissioners  
NSBA

**Neutral:**

**Representing:**

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**Summary of purpose and/or changes:**

The emergency clause remains in the proposed language of the bill. Under current law, the Uniform Child Custody Jurisdiction and Enforcement Act (Act) controls jurisdictional disputes in custody cases in Nebraska (N.R.S. §§43-1201 – 25). Under the Act, the court which issued the original custody determination retains exclusive and continuing

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jurisdiction over the custody of the child even if that child no longer lives in the court's jurisdictional area. In the case of an international custody dispute, any custody determination made by a court of a foreign country must be honored by Nebraska courts as if the order was issued by a court in any state of the United States. Nebraska courts have a duty to recognize, enforce and not modify the valid original custody determinations issued by another state.

The Act does not apply to any custody law that violates fundamental principles of human rights. However, the Act does not define what constitutes a violation.

Additionally, the Act includes a provision allowing a Nebraska court to exercise temporary emergency jurisdiction when a custody order needs to be issued to protect a child from abuse or the threat of abuse under §43-1241.

Legislative Bill 341 amends N.R.S. §43-1230 to repeal the language regarding application of the Act to international custody disputes. The bill gives courts of this state, with jurisdiction over the custody of a child, the authority to exercise such jurisdiction without regard to objections from a court of a foreign country. Nebraska courts could make custody orders that would override orders issued by any court of a foreign country. Furthermore, Nebraska courts must issue orders necessary to thwart the interference, from a court or government agency of a foreign country, with custody orders issued by Nebraska courts. Such orders could include: restricting supervised visitation, posting of bond, passport surrender, law enforcement assistance, and notifying the U.S. State Department of any threat.

The bill provides a remedy that did not previously exist. If and when it gets enacted, the bill will apply to any case pending in the state.

There is an emergency clause in this bill. Therefore, the provisions are effective as soon as the bill is passed into law.

### **Committee Amendment**

The Committee Amendment replaces the green copy and does not repeal any existing language in the Act. Instead, it adds a provision allowing a Nebraska court to assume child custody jurisdiction in an international custody dispute under certain conditions, and adopts the Uniform Child Abduction Prevention Act.

Under this amendment to N.R.S. §43-1230, a Nebraska court does not need to recognize or enforce a foreign custody determination if the situation satisfies a two-prong test. First, the child must be a habitual resident of Nebraska, as defined in the Hague Convention on Civil Aspects of International Child Abduction (Convention). Second, if the foreign custody determination is recognized and enforced, the child would be at significant and demonstrable risk of abuse or neglect. If the test is satisfied, there is a rebuttable presumption against enforcing the order. The Nebraska court then has the authority to exercise jurisdiction over the custody of the child.

The amendment provides a remedy that did not previously exist. If and when it gets enacted, the amendment will apply to any case pending in the state.

Additionally, the amendment adds the Uniform Child Abduction Prevention Act (UCAPA). The UCAPA provides mechanisms to help courts deter domestic and international abductions during custody disputes and divorce proceedings. In cases where the court, the prosecutor, the public attorney or one of the parties perceives that a child is at risk for abduction, an action for prevention measures may be brought. The party seeking the measures would file a petition with the court identifying the child and the person against whom measures are being sought and specifying the risk factors. Additionally, the petition must include statements regarding prior arrests or actions related to abduction, domestic violence and/or child abuse by either party. UCAPA sets out a wide variety of risk factors for courts to consider in determining whether there is a credible risk the child will be abducted. These factors include overt signs such as previous abductions, attempts to abduct, threats of abduction, signs of general abuse including domestic violence, negligence, or refusal to obey child custody determinations. Other considerations include activities indicating a planned abduction including abandoning employment, liquidating assets, obtaining travel documents/tickets, or requesting the child's school/medical records. With regard to international child abduction, UCAPA specifies risk factors for the courts to consider including: the possibility that the party in question will take the child to a country that isn't a party to the Convention, a country that places the child at risk, a country with laws that would restrict the access to the child, a country that is on the current list of state sponsors of terrorism, or a country that is engaged in an active military action or war; changes in citizenship status; and/or denial of United States Citizenship.

If the court identifies a credible risk of abduction, it may enter an order containing provisions and measures meant to prevent abduction including, but not limited to the following: imposing travel restrictions; prohibiting the individual from removing the child from the state or other area; placing the child's name in the U.S. Department of State's Child Passport Issuance Alert Program; or requiring the individual to obtain an order from a foreign country containing identical terms to the custody determination.

If the court identifies an imminent threat of abduction, it may take the following action: issue a warrant to take physical custody of the child; direct law enforcement officers to take steps to locate and return the child; or exercise any appropriate powers under existing state laws.

The emergency clause remains in the proposed language of the bill.

**Explanation of amendments, if any:**

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**Senator Brad Ashford, Chairperson**