



**House
Legislative
Analysis
Section**

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INTERNATIONAL CHILD-SNATCHING

House Bill 4685 (Substitute H-1)
First Analysis (5-18-89)

RECEIVED
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Sponsor: Rep. Francis R. Spaniola
Committee: Judiciary

Mich. State Law Library

THE APPARENT PROBLEM:

In 1984, Betty Mahmoody and her Iranian-born, American-educated husband traveled to Iran for what was supposed to be a two-week vacation. Their four-year-old daughter accompanied them. Instead of a vacation, the trip turned into a forced stay in a country where wives and children are regarded as the husband's property. Some 18 months later, Ms. Mahmoody escaped with her daughter to Turkey and eventually made her way back to Michigan. A similarly harrowing experience was endured by the Lansing-area Swint family, who in the end hired commandos to get their pregnant daughter and her child out of Tunisia. Both women fear future attempts to kidnap their children and take them out of the country.

The problem of kidnapping across international borders is, according to testimony before the House Judiciary Committee, a growing one. Annually, some 400 children in the United States are victims of international abduction. The number of cases reported to the U. S. State Department has risen 84 percent since 1983, according to the testimony. While the most effective solutions necessarily would be federal ones, at least one problem with Michigan statute has been identified, at least for those people who would like to divorce their foreign spouses.

In order to be divorced in Michigan, at least one of the parties must have resided in the state for 180 days and at least one must have resided in the county of filing for at least the ten days immediately preceding the filing for divorce. Some people are concerned about the way the latter requirement would serve to disclose where the complainant had been living — a matter of some consequence for women threatened with harm to themselves and their children. A special exemption from the ten-day residency requirement has been proposed for people who are divorcing foreign nationals and who have children at risk of being kidnapped out of the United States.

THE CONTENT OF THE BILL:

The bill would amend the divorce law to lift the ten-day county residency requirement for cases in which a person with minor children was divorcing someone born in, or a citizen of, another country. There would have to be information that would allow the court to reasonably conclude that the minor child or children were at risk of being taken out of the United States and being retained in another country by the defendant.

MCL 552.9

FISCAL IMPLICATIONS:

Fiscal information is not available at present. (5-17-89)

ARGUMENTS:

For:

The bill would preserve a degree of privacy for people with legitimate concerns that filing for divorce would tip off a foreign spouse likely to kidnap the children and take

them to a distant country. By being able to file in any county, rather than only in the county of residence, such people could keep their whereabouts a secret from the threatening spouse.

Against:

The bill would not be effective. The real "problem" with the divorce and custody process is that the defendant must be notified and given a chance to present his or her side of the story. If the complainant's address is to remain confidential throughout the process, then various provisions of the laws on divorce, custody, and visitation would have to be addressed. However, allowing divorce and custody matters to proceed through a county other than the one where the complainant resides could be unduly burdensome for that court. For example, the Friend of the Court could be obliged to investigate visitation issues for children living some distance from where the agency normally operates.

Response: The bill would affect very few divorce cases. It would not lead to massive increases in the burdens on any one court. In addition, although the bill by itself may not be adequate to protect the women and children whose stories prompted its introduction, other amendments to state statute are being contemplated, and a bill is pending in Congress. The bill is not unreasonable.

Against:

All people are entitled to due process of law, but the bill may in effect propose a first step in the erosion of that right for foreign nationals whose children reside in Michigan.

POSITIONS:

The Michigan Judges Association supports the bill. (5-16-89)

H.B. 4685 (5-18-89)