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**BRYAN FAGAN**  
— PLLC —



# PARENTAL KIDNAPPING IN HOUSTON, TX

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## INTRODUCTION

Thank you for downloading our special report: about Parental Kidnapping, with information that will help you protect your assets and secure your future. For more insider divorce tips, please download our other special reports about Dirty Divorce Tricks, How to Plan and Prepare for Divorce, and Divorce after 50. We understand that you have a lot of questions and concerns about your divorce and we want to help you feel as comfortable with the process as we can. If you would like to speak to one of our highly skilled Law Office of Bryan Fagan, PLLC attorneys, we encourage you to contact us to schedule a free confidential consultation. We're here for you, always. Sincerely, Bryan Fagan, Law Office of Bryan Fagan

## PARENTAL KIDNAPPING ISSUES IN HOUSTON, TX

### HAVE A HOUSTON FAMILY LAW ATTORNEY ON YOUR SIDE; CALL NOW!

Parental kidnapping is when one parent refuses to relinquish control of their children or return them to the other parent when their visitation period comes to an end. This is a blatant violation of the rights of the other parent, which is against the law and taken extremely seriously by the courts. There are many reasons a parent may choose to resort to abducting their own children; while most of these instances spur from disputes over divorce terms and provisions, other times may be purely selfish desires or general malice towards the other parent.

If you are dealing with a parental kidnapping situation, you need to secure legal counsel who can protect your rights and fight for the well-being of your children. At The Law Office of Bryan Fagan, PLLC, our Houston family lawyers understand how terrifying and emotionally tumultuous one of these instances can be. We know how important it is to respond quickly for both you and your kids, and we work quickly to help you recover custody when your parenting rights are harmed. Our team is dedicated to providing you with reputable and experienced representation and a decisive plan of action that can help you not only recover your children from their kidnapped parent, but then work to claim full custody over them so you can protect them from falling victim to a similar ordeal ever again.

- ☑ The Dirty Trick of Moving Out of State with the Kids
- ☑ Children's Passports and International Travel after Texas Divorce
- ☑ Help!! My Ex-Spouse Kidnapped my Child

### TRAUMATIC FOR CHILDREN

What many parents who kidnap their children don't realize is just how upsetting the experience can be on those children. Kids are often frightened and nervous when they aren't returned back to the other parent when they normally would be. If the kidnapping parent suddenly takes them away on a long trip far from home, kids often become scared at what might be happening to them. This puts a huge strain a child's ability to trust their parent and even other family members.

### AVOIDING PARENTAL KIDNAPPING

Parental kidnapping may seem like a good idea, but as attorneys let us assure you, it's far from it in every situation. Some parents may think it's their only way to protect their children from the other parent who they believe to be abusive. Other parents may simply believe their rights as a parent have been infringed upon by the decision of their family law judge. In each of these instances, it's never okay to retain control over your children for longer than your divorce agreement specifies.

### HERE ARE A FEW WAYS TO AVOID BEING ACCUSED OF PARENTAL KIDNAPPING:

- ☑ Do not withhold visitation time because of unpaid child or spousal support; use a state-approved method of order enforcement, but continue to grant the time as mandated.
- ☑ Do not take any long trips or vacations without first notifying the other spouse of your intent, including where you are going and how long your trip will be.
- ☑ Do not take custody of your child for longer than you are legally authorized. If you wish to keep your child longer, follow all communication rules set between you and the other parent
- ☑ Alert the appropriate authorities about suspected domestic violence or abuse against your children as soon as possible to protect your child's safety.



## THE DIRTY TRICK OF MOVING OUT OF STATE WITH THE KIDS

I have seen spouses use the trick of moving out of the state with the children very effectively to the detriment of the other spouse during a Texas divorce. However, in some cases, this move can backfire and a judge will grant custody of the children to the other spouse because of what the court believes to be wrongful conduct.

We will now touch on a topic of parents moving out of state with their children and how this can impact Texas divorce proceedings.

### IS IT ILLEGAL FOR A PARENT TO MOVE OUT OF STATE WITHOUT THE PERMISSION OF THE OTHER PARENT?

If it happens before there is an order of the court in place regarding custody, then no. Both parents have equal rights to possession and access of the child.

Either parent can make decisions regarding the child without consulting with or notifying the other parent prior to making that decision.

The solution to this problem is to get a court order identifying what each parent's rights and duties are to the children.

### CAN I KEEP THE OTHER PARENT FROM LEAVING THE STATE WITH MY CHILDREN IF THERE IS AN ORDER?

In most cases, no. When it is your time to have the children, it is your time. When it is the other parent's time to have the children, it is their time. This means either of you can leave the state when it is your time.

However, sometimes through negotiations, travel restrictions can be put in place. Alternatively, if there are some extenuating circumstances, a court will decide on a case-by-case basis if additional restrictions are needed.

### WHAT STATE HAS THE RIGHT TO MAKE ORDERS REGARDING THE CHILD?

Under Texas Family Code 152.201, a new case can be established regarding a child if:

- ☑ The state is the "Home State" of a child on the date the commencement of the proceeding.
- ☑ A court of another state does not have jurisdiction or has declined jurisdiction

Under the Texas Family Code Section 152.102, Texas has defined "Home State" to mean "the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with a parent or a person acting as a parent."

### HOME STATE AND DIVORCE PROCEEDINGS

What the above statute basically means is that the only state that can make orders regarding a child is the state in which the child has lived for the last six months.

### WHY AM I PAYING FOR CHILD SUPPORT FOR CHILDREN I DO NOT GET TO SEE?

As I mentioned in the introduction, moving to another state can be an effective dirty trick. One reason for this is if you wait for six months to file for divorce, Texas will lose jurisdiction over the children. This means:

- ☑ Texas cannot make visitation orders
- ☑ Texas cannot give you any decision-making rights
- ☑ Texas cannot force your ex to move back to Texas with the children

**However, Texas can force you to pay child support for your children under Texas Family Code 159.401:**



- ☑ A parent can ask for the establish of child support in Texas even though the child does not reside in Texas
- ☑ As long as the parent on whom child support is to be established is in Texas

### **CAN I MAKE THE OTHER PARENT MOVE BACK TO TEXAS?**

One of the questions I frequently get asked when a parent has moved to another state with the children is “can I make the other parent move back to Texas?”

If Texas is still the home state of the children, an approach I have seen Family Courts use is to give a parent the choice of:

- ☑ Either moving back to Texas with the children or
- ☑ Staying where they are and turning over the children to their ex

This means if you would like to ask the court for this relief, it is important that you file for divorce in Texas prior to your ex living in the new state for six months.

### **WHAT IF TEXAS IS NO LONGER THE HOME STATE OF THE CHILDREN?**

If Texas is no longer the Home State:

- ☑ In most circumstances, Texas cannot make any orders regarding the child other than child support.
- ☑ However, if you still want to get a divorce in Texas you are still able to do so.

If Texas is no longer the Home State:

- ☑ A parent was not interested in receiving any sort of visitation and just wanted to be divorced.
- ☑ I have also had cases in which they did want visitation but wanted to get the divorce part over with.

## **CHILDREN'S PASSPORTS AND INTERNATIONAL TRAVEL AFTER TEXAS DIVORCE**

One of issues that comes up in some of my divorces cases in Texas is international travel with children. There are times when divorcing parents may wish to travel internationally with their children.

However, when there is not an amicable relationship with an ex-spouse may this can be a contentious issue. This can be the non-traveling has concerns that the other party may try to keep the child in a foreign country where enforcing a Texas custody Order may be very difficult.

### **UNITED STATES RESTRICTIONS ON INTERNATIONAL TRAVEL**

Much of the law regarding international travel with children after a divorce is governed by United States Federal Law. Some ways that the United States Government tries limit international abductions includes:

- ☑ Passport Applications - when applying for a passport for a child under the age of 16, both parents must be present or a single parent must have proof of sole custody.
- ☑ State Department's Children's Passport Issuance Alert Program notifies a parent if a passport is requested in a child's name if that individual has been enrolled in the program.
- ☑ Parents who are not traveling with their children must provide notarized consent for their children to leave the country.

### **TEXAS FAMILY INTERNATIONAL RESTRICTIONS – RISK OF ABDUCTION**

As mentioned above international travel is governed by Federal Law. However, under Federal Texas as well as other states have been given the authority to:

- ☑ A Texas Court can take possession of a passport as long as it deems necessary to reduce the likelihood of the removal of a minor child from the United States.
- ☑ In such cases where a Texas Court takes possession of the passport, the action to withhold the passport should be reported to the “Office of Children’s Issues” to prevent unauthorized attempts to replace it.



If there is a risk of abduction a some of the additional safety precautions a Texas Court may take under Texas Family Code Section 153.503 include:

- ☑ appoint a person other than the parent of the child who presents a risk of abducting the child as the sole managing conservator of the child;
- ☑ require supervised visitation of the parent by a visitation until the court finds under that supervised visitation is no longer necessary;
- ☑ Depending on the circumstances a parent might ask that it be required for the traveling party to post a ne exeat bond prior to any international travel. The bond would be posted for an amount that would be contemplated to cover the cost of pursuing an abduction case across international borders.

### **INTENTIONAL ABDUCTION RISK FACTORS**

When Considering if there is a risk of an international abductions the factors a Texas Court will look at under Texas Family Code 153.502 include has a parent:

- ☑ Taken, enticed away, kept, withheld, or concealed a child in violation of another person's right of possession of or access to the child, unless the parent presents evidence that the parent believed in good faith that the parent's conduct was necessary to avoid imminent harm to the child;
- ☑ Previously threatened to take, entice away, keep, withhold, or conceal a child in violation of another person's right of possession of or access to the child;
- ☑ lacks financial reason to stay in the United States, including evidence that the parent is financially independent, is able to work outside of the United States, or is unemployed;
- ☑ has recently engaged in planning activities that could facilitate the removal of the child from the United States

### **TEXAS FAMILY INTERNATIONAL RESTRICTIONS – NO RISK OF ABDUCTION**

When there is not a risk of abduction the court may require only language that applies to the application and possession of a child's passports. Those provisions include:

- ☑ Which parent is authorized to apply for a passport for the child.
- ☑ If a party applies for a passport for the child, that party is ORDERED to notify the other conservator of that fact no later than 5 days after the application.
- ☑ Which parent has the right to maintain possession of the passports and the requirements for delivery of the passport to the other parent.
- ☑ Written notice to the other parent regarding international travel and what that written notice should include such as date, time, and location of the child's departure from the United States.

If a parent violates these provisions of that have been Ordered they then the other parent could bring a Petition to Enforce by Contempt. In such situation if the court could Order monitory damages, reimbursement costs including attorney's fees, or possible jail time.

If an ex-spouse has plans for international travel, it may be prudent for you to discuss the trip with a Texas Family Law Attorney. A Texas Family Law Attorney who is familiar with Texas family law may be able to help you develop a plan that protects your children.

## **HELP!! MY EX-SPOUSE KIDNAPPED MY CHILD**

Each month I have a consult with at least one parent who has questions regarding their ex who has taken the kids and is refusing to return them.

One the questions I get is, "How do I protect myself and my children from my ex-spouse violating the custody agreement you agreed upon in court?" There is good news: your Houston divorce lawyer may be able to help you pinpoint risk factors and head off potential problems before they come up.



## WHAT STATE HAS THE RIGHT TO MAKE ORDERS REGARDING MY CHILD?

Under Texas Family Code 152.201 a new case can be established regarding a child if:

- ☑ The State is the "Home State" of a child on the date the commencement of the proceeding.
- ☑ A court of another state does not have Jurisdiction or has declined Jurisdiction

Under the Texas Family Code Section 152.102 Texas has defined "Home State" to mean "the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding.

In the case of a child less than six months of age, the term means the state in which the child lived from birth with a parent or a person acting as a parent."

This means that if your child has lived in Texas for at least six months or if under six months old has lived in Texas since birth then Texas can make orders regarding that child so long as no other state has made prior orders regarding that child.

## CAN A PARENT MOVE TO ANOTHER STATE AND MODIFY CUSTODY?

If a Court has made an initial custody determination regarding a child as described above, then that Court has exclusive continuing Jurisdiction under Texas Family Code Section 152.202 until:

- ☑ A court of this state determines that neither the child, nor the child and one parent, nor the child and a person acting as a parent, have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships; or
- ☑ A court of this state or a court of another state determines the child's parents, and any person acting as a parent do not presently reside in this state.

A court of this state when deciding whether or not it can modify the order of another state looks to see if

- ☑ The Court of the other state determines it no longer has exclusive jurisdiction under section 152.202 or that a court of this state would be more convenient forum under Section 152.207 or
- ☑ A court of this state or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

## PARENTAL KIDNAPPING PREVENTION ACT

The Parental Kidnapping Prevention Act of 1980 dictates that the child's home state has jurisdiction over custody.

Most states follow a uniform law regarding the determination of appropriate state jurisdiction in custody matters known as the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), and related statutes laws which enforce or set procedures regarding proper jurisdiction such as the Parental Kidnapping Prevention Act. Texas has adopted these statutes.

The Act states, among other things, that a court may rule on custody issues if the Child:

- ☑ Has continually lived in that state for 6 months or longer
- ☑ Was living in the state before being wrongfully taken elsewhere by a parent seeking custody in another state
- ☑ Has an established relationship with people (family, relatives or teachers), ties, and attachments in the state
- ☑ Has been abandoned: or is safe in the current state, but could be in danger of neglect or abuse in the home state

## ENFORCEMENT OF OTHER STATE'S CHILD CUSTODY DETERMINATIONS

Under the Texas Family Code Section 152.303(a), Texas courts shall recognize and enforce a child custody determination of a court of another state if the issuing state exercised jurisdiction. This is in compliance with the Parental Kidnapping Prevention Act.



Enforcement may be through:

- ☑ A temporary visitation order
- ☑ registration of the child custody determination (using procedures similar to those found in the Uniform Interstate Family Support Act),
- ☑ through an expedited enforcement proceeding,
- ☑ or through a warrant to take physical custody of a child.

## TEMPORARY VISITATION

A Texas court may issue a temporary order enforcing the visitation provisions of an out of state order, even if it does not have jurisdiction to modify a child custody determination.

## REGISTRATION OF CHILD CUSTODY DETERMINATION

As in UIFSA, the UCCJEA provides for the registration of an out of state order that can be used to predetermine the enforceability of a custody determination. It may even be registered in Texas without a request for enforcement.

The registration process requires that a letter requesting the registration be filed, along with 2 copies of the determination to be registered and a statement made under oath that the order sought to be registered has not otherwise been modified.

Texas Family Code Section 152.305(a) provides that the name and address of the person seeking the registration, along with the name and address of any parent or person acting as a parent who has been awarded custody or visitation must be provided.

Once received, the registering court must file the determination as a foreign judgment and serve notice on those persons named, providing them with an opportunity to contest the registration.

The notice must advise the Respondents that the determination will be enforceable as of the

date of the registration, that should they wish to contest the registration, they must request a hearing within 20 days of service of the notice; and that failure to contest the registration will result in the child custody determination being confirmed and will preclude further contest of the order.

Texas Family Code Section 152.305(c). Once registered, the child custody determination can be enforced as if it was a child custody determination of Texas.

However, it remains a child custody determination of the issuing state and is not subject to modification except as under Section 152.203.

## EXPEDITED ENFORCEMENT PROCEEDING

A petition for expedited enforcement must be verified, and certified copies, or copies of certified copies, of all orders sought to be enforced, as well as any order confirming registration of the order, must be attached to the petition. The petition must state:

- ☑ whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;
- ☑ whether the determination sought to be enforced has been vacated, stayed, or modified by a court whose decision must be enforced, and if so, the identity of that court, the case number, and the nature of the proceeding;
- ☑ whether any other proceeding has been commenced that could affect the current proceeding, including any proceeding related to domestic violence, protective orders, termination, or adoption, and if such a proceeding has been commenced, the court, case number, and the nature of that proceeding;



- ☑ the current physical address of the child and the Respondent, if known; and (e)
- ☑ whether any other relief in addition to the immediate physical custody of the child and attorney's fees is being requested and, if so, what is being requested, including any special request for assistance from a law enforcement agency.

On the filing of the petition, the court shall issue an order directing the Respondent to appear in court, in person, either with or without the child, at a hearing. The court may also enter any other orders necessary to ensure the safety of the parties and the child.

The hearing must be held on the next judicial day after service unless that date is impossible, in which case the court shall hold the hearing on the first judicial day possible. The court can only extend the hearing date upon the request of the Petitioner.

### **WARRANT TO TAKE PHYSICAL CUSTODY OF A CHILD**

Under Texas Family Code Section 152.311 a petition for physical custody under this section may also on verified pleading, include an application for the issuance of a warrant to take physical custody of the child.

If the court, after hearing the testimony of the Petitioner or another witness, finds that the child is immediately likely to suffer serious physical harm or to be removed from the State, it may issue a warrant to take physical custody of the child.

### **PARENTAL ABDUCTION - INTERFERENCE WITH CHILD CUSTODY CHARGES IN TEXAS**

Texas is a state that has a particular law regarding the parental kidnapping. Under Texas Penal Code Section. 25.03, interference with child custody, a person commits this offense when he or she takes or retains a child under the age of 18:

- ☑ When they know that it violates the terms of a judgment, a court order, or a temporary order that addresses the child's custody;
- ☑ When that person has not been awarded custody of the child of the court of jurisdiction and knows that a divorce lawsuit or a civil suit has been filed regarding the child's child custody, and takes the child out of the geographical area, or out of the county without the court's permission;
- ☑ They take the child outside of the United States as to deprive the other parent possession and access to the child without that person's permission; or
- ☑ The noncustodial parent persuades the child to leave the custody of the other parent.

In Texas, an offense under this section is a state jail felony, punishable by 180 days to 2 years imprisonment, and a maximum fine of \$10,000.

### **DEFENSES**

- ☑ It is a defense if the parent returned the child to the geographical area of the court's jurisdiction within three days of committing the offense.
- ☑ It is an affirmative defense if the taking and possession of the child was pursuant to a valid court order, which provided for possession and access to the child.
- ☑ Lastly, it is an affirmative defense if the actor can prove that the retention of the child was only due to circumstances beyond their control; for example, if a flight was delayed, or if their car broke down.
- ☑ In the case of an unexpected delay, the actor must have provided notice or made reasonable attempts to provide notice to the other parent, letting them know of the circumstances that led to their retention of the child.

### **INTERNATIONAL PARENTAL KIDNAPPING**

In some cases, parents attempt to go to their home countries and keep the children there. Both mothers and fathers are guilty of international child abduction, and it can pose unique challenges for the parent who's left behind. One of our Houston divorce lawyers at the Law Office of Bryan Fagan, PLLC can provide you with case-specific advice if this might apply to you.







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## **WE'RE HERE FOR YOU**

When it comes to your financial future, your peace of mind matters. No matter where you are in the divorce process, we are always available to help you protect your assets and safeguard your future. As a Texas law firm exclusively devoted to divorce and family law, our experienced divorce attorneys will explain your options and support you throughout the process. Please contact us at (281) 810-9760 if you would like to schedule a free confidential consultation

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