

D R A F T

FOR APPROVAL

UNIFORM CHILD ABDUCTION PREVENTION ACT

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

MEETING IN ITS ONE-HUNDRED-AND-FIFTEENTH YEAR
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UNIFORM CHILD ABDUCTION PREVENTION ACT

WITH PREFATORY NOTE AND COMMENTS

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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UNIFORM CHILD ABDUCTION PREVENTION ACT

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UNIFORM CHILD ABDUCTION PREVENTION ACT

Prefatory Note

In August, 2003, the National Conference of Commissioners on Uniform State Laws appointed a study committee to explore the feasibility of a uniform law to prevent international child abduction. The Joint Editorial Board for Uniform Family Law Acts in October, 2003, urged the Committee on Scope and Program to recommend the creation of a drafting committee. A Committee was appointed to draft Standards for the Prevention of International Child Abduction.¹ The Scope Committee, at the request of the drafting committee, expanded the drafting committee's task by including measures to prevent domestic as well as international abductions.

Child abduction is a serious problem both in scope and effect. Abducted children may suffer long-lasting harm. Parental abduction has been characterized as child abuse.² The Office of Juvenile Justice and Delinquency Prevention estimated that 262,100 children were abducted in 1999; 203,900 of them (or 78 per cent) were abducted by a family member; approximately 1000 of the abductions were international.³

This act is civil law and complements existing state law. It applies to predecree and intrastate cases, emergency situations, and when existing child-custody determinations do not

¹ Lyle Hillyard of Utah chaired the committee and Professor Linda Elrod of Kansas served as the Reporter. The original drafting committee appointed in 2004 consisted of Cynthia Bosco, Vince Deliberato, Michael Dunn, Gorman Houston, Jr., Peter Munson, and Marian Opala. Cam Ward was appointed in 2006. Martha Starkey served ex officio from 2004 to fall 2005 when Tom Bolt began to serve. The official ABA advisor has been Professor Bruce Boyer, Loyola Law School. Observers have been Jeff Atkinson, ABA Family Law Section; Richard Barry, American Academy of Matrimonial Lawyers; Patricia Hoff, Legal Consultant; Teresa Lauderdale, parent; Texas; Jenni Thompson, consultant, formerly with the Polly Klaas Foundation; Merle Weiner, Family Law Professor University of Oregon; and Lawrence R. Whyte, parent, Houston, Texas. The drafting committee met on April 9 - 11, 2004; September 10 - 12, 2004; April 8 -10, 2005; July 26 and 27, 2005, for first reading at the annual meeting in Pittsburgh, Pennsylvania; November 11 and 12, 2005; March 17 - 19, and April 28 and 29, 2006.

² International Child Abduction Remedies Act, 42 U.S.C. § 11601(a)(1) ("The Congress makes the following findings: (1) The international abduction or wrongful retention of children is harmful to their well-being"). See also Dorothy S. Huntington, Parental Kidnapping: A New Form of Child Abuse, available at http://www.hiltonhouse.com/articles/child_abuse-huntington.txt

³ See Second National Incidence Studies of Missing, Abducted, Runaway, and Thrownaway Children (NISMAART-2) (Oct. 2002).

contain abduction prevention measures. The Uniform Child Custody Jurisdiction and Enforcement Act, 9 U.L.A. Part I 657 (1999), and the Uniform Child Custody Jurisdiction Act, 9 U.L.A. Part I 115 (1988) specify the jurisdictional requirements for making and enforcing a child-custody determination. The Parental Kidnapping Prevention Act of 1980⁴ requires that states give full faith and credit to sister state decrees made in accordance with its principles which are the same as the Uniform Child Custody Jurisdiction and Enforcement Act.

If an abduction occurs after a child-custody determination, all states have enforcement remedies, with forty-five jurisdictions using the procedures in Article 3 of the Uniform Child Custody Jurisdiction and Enforcement Act. Several federal laws help locate missing children.⁵ Federal and state laws make parental kidnapping a crime.⁶ While every state criminally forbids custodial interference by parents or relatives of the child, the laws differ as to the elements of the offenses, the punishments given, and whether a child-custody determination must exist for a violation to occur. If an abduction occurs after a child-custody determination, a court may find an abductor in contempt. An injured party may sue in tort for custodial interference.

If the abduction is international, the Hague Convention on the Civil Aspects of International Child Abduction, currently in effect between the United States and fifty-five countries, facilitates the return of an abducted child to the child's habitual residence.⁷ Many countries, however, have not ratified the Hague Abduction Convention, the United States has not accepted all nations' accessions, and some countries that have ratified do not comply with the treaty obligations.

Many abductions, however, occur before the court has entered a child-custody determination. Children at the center of custody disputes are at the highest risk for potential

⁴ 28 U.S.C. § 1738A.

⁵Missing Children Act, 28 U.S.C. § 534 (1982); Missing Children Search Assistance Act and the National Child Search Assistance Act, 42 U.S.C. § 5779 & § 5780 (1990); and the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act of 2003, Pub. L. 108-21, 117 Stat. 650 (AMBER Alert Program).

⁶ *See* International Parental Kidnapping Crime Act (IPKCA), 18 U.S.C. § 1204; The Fugitive Felon Act, 18 U.S.C. § 1073; and The Extradition Treaties Interpretation Act of 1998, 18 U.S.C. § 3181.

⁷*See* The Hague Convention on the Civil Aspects of International Child Abduction, 51 Fed. Reg. § 10494 et seq. (1986), and the International Child Abduction Remedies Act (ICARA), 42 U.S.C. §§ 11601-11610. For a current list of United States treaty partners, visit www.travel.state.gov/family/abduction/hague_issues/hague_issues_1487.html.

abductions.⁸ Many existing child-custody determinations do not contain sufficient provisions to prevent an abduction because the orders are either too vague or contain no restrictions on custody and visitation. If judges have sufficient information about abduction risk factors, they can prevent abductions through use of appropriate language and restrictions. Dealing appropriately with the risk factors at the time of an initial child-custody determination will help protect children from the threat of abduction. Only three states have enacted comprehensive child abduction prevention statutes;⁹ two other states include provisions to reduce the risk of abduction.¹⁰

The purpose of this Act is to deter both predecree and postdecree domestic and international child abductions by parents or any persons acting on behalf of the parent through identification of risk factors and imposition of appropriate preventive measures. This Act is not meant to prevent a legitimate relocation action filed in accordance with the law of the state having jurisdiction to make a child-custody determination nor to prevent a victim of domestic violence from escaping abuse.

This Act will fill a void in the majority of states by identifying circumstances indicating a risk of abduction and providing measures to prevent the abduction of children, pre or post decree by a parent or those acting on the parent's behalf. The Uniform Child Abduction Prevention Act is premised on the general principle that preventing abduction is in a child's best interests.

⁸AMERICA'S HIDDEN CRIME: WHEN THE KIDNAPPER IS KIN 10-11 (Polly Klaas Foundation 2004).

⁹See ARK. STAT. ANN. § 9-13-401-407 (2005); CAL. FAM. CODE § 3048 (2004); TEX. FAM. CODE § 153.501- §153.503 (2003).

¹⁰ See FLA. STAT. § 61.45 (2005); OR. REV. STAT. § 109.035 (2005).

1 **UNIFORM CHILD ABDUCTION PREVENTION ACT**

2
3 **SECTION 1. SHORT TITLE.** This [act] may be cited as the Uniform Child Abduction
4 Prevention Act.

5 **SECTION 2. DEFINITIONS.** In this [act]:

6 (1) “Abduction” means the wrongful removal or wrongful retention of a child by a parent
7 or individual acting on behalf of the parent.

8 (2) “Child” means an unemancipated individual who is less than 18 years of age.

9 (3) “Child-custody determination” means a judgment, decree, or other order of a court
10 providing for the legal custody, physical custody, or visitation with respect to a child. The term
11 includes a permanent, temporary, initial, and modification order.

12 (4) “Child-custody proceeding” means a proceeding in which legal custody, physical
13 custody, or visitation with respect to a child is at issue. The term includes a proceeding for
14 divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental
15 rights, and protection from domestic violence.

16 (5) “Court” means an entity authorized under the law of a state to establish, enforce, or
17 modify a child-custody determination.

18 (6) “Petition” includes a motion or its equivalent.

19 (7) “Record” means information that is inscribed on a tangible medium or that is stored
20 in an electronic or other medium and is retrievable in perceivable form.

21 (8) “State” means a state of the United States, the District of Columbia, Puerto Rico, the
22 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of

1 the United States.

2 (9) “Travel documents” mean records relating to a travel itinerary, including passes,
3 reservations for transportation and accommodations. The term does not include a passport or
4 international visa.

5 (10) “Wrongful removal” means the taking of a child that breaches rights of custody or
6 visitation given under the law of this state.

7 (11) “Wrongful retention” means the keeping or concealing of a child that breaches
8 rights of custody or visitation given under the law of this state.

9 **Comment**

10 The definition of abduction covers wrongful removal or retention committed by either
11 parent or a person acting on behalf of the parent. Generally both parents have the right to
12 companionship and access to their child unless a court states otherwise. Abductions can occur
13 against an individual or other entity with custody rights, as well as against an individual with
14 visitation or access rights. A parent with joint legal or physical custody rights (by operation of
15 law, court order, or legally binding agreement) commits an abduction by wrongfully interfering
16 with the other parent’s rights. A removal or retention of a child can be “wrongful” predecree or
17 postdecree. An abduction is wrongful where it is in breach of a “child-custody determination”
18 or, if predecree, in violation of rights attributed to a person by operation of law.
19

20 To the extent possible, the definitions track the Uniform Child Custody Jurisdiction and
21 Enforcement Act. The definition of a child as a person under age 18 is the same as in the
22 Uniform Child Custody Jurisdiction and Enforcement Act § 102(2). State law determines when a
23 child becomes emancipated before age 18. This Act is limited to the abduction of minors even
24 though the risk of abduction may apply to a disabled adult who has an appointed adult guardian.
25

26 The definition of “child-custody determination” is the same as the definition in Uniform
27 Child Custody Jurisdiction and Enforcement Act § 102(3). This Act uses the traditional
28 terminology of “custody” and “visitation” because that is the language used in the Uniform Child
29 Custody Jurisdiction and Enforcement Act although local terminology may differ. The definition
30 of a child-custody proceeding differs insignificantly from the Uniform Child Custody
31 Jurisdiction and Enforcement Act § 102(4).
32

1 **SECTION 3. COOPERATION AND COMMUNICATION AMONG COURTS.**

2 Sections [110], [111] and [112] of [insert citation to the provisions of the Uniform Child Custody
3 Jurisdiction and Enforcement Act or its equivalent in the state] apply to proceedings under this
4 [act].

5 **Comment**

6
7 It is possible, even likely, that abduction situations will involve more than one state.
8 Thus, there is a need for mechanisms for communication among courts, for testimony by means
9 other than physical presence, and for a way for courts to cooperate. Most states have adopted the
10 Uniform Child Custody Jurisdiction and Enforcement Act and §§ 110, 111, and 112 provide
11 mechanisms to deal with those issues.
12

13 **SECTION 4. ACTIONS FOR ABDUCTION PREVENTION MEASURES.**

14 (a) A court on its own motion may order abduction prevention measures in a child-
15 custody proceeding if the court finds that the evidence establishes a credible risk of abduction of
16 the child.

17 (b) A party to a child-custody determination or an individual or entity having a right
18 under state law to seek a child-custody determination for the child may file a petition seeking
19 abduction prevention measures to protect the child under this [act].

20 (c) A petition seeking abduction prevention measures may be filed with respect to a child
21 who is not yet the subject of a child-custody determination.

22 (d) A prosecutor or public authority designated under [insert citation to Uniform Child
23 Custody Jurisdiction and Enforcement Act Section 315 or applicable law of this state] may
24 petition for a warrant to take physical custody of a child under section 7 of this [act].

25 **Comment**

1 A court hearing a child custody case may determine that the evidence shows a credible
2 risk of abduction. Therefore, even without a party filing a petition under this act, the court on its
3 own motion can impose abduction prevention measures if the court feels that they are warranted.
4

5 An abduction may occur before a child-custody proceeding has commenced, before entry
6 of a child-custody determination, or in violation of an existing child-custody determination.
7 Usually the petition will be filed by a parent who fears that the other parent or family members
8 are preparing to abduct the child in the context of an existing custody dispute. A state child
9 welfare agency which has lawful custody may file a petition alleging the risk of abduction. An
10 action under this act can be filed, however, even if there has not been a child-custody
11 determination. An individual or entity with a right to custody of the child can file a petition under
12 this act for a child-custody determination and seek abduction prevention measures in the
13 appropriate court.
14

15 The last subsection allows a prosecutor or public authority designated in the Uniform
16 Child Custody Jurisdiction and Enforcement Act § 315 to seek a warrant under section 7 if there
17 is an imminent risk of wrongful removal.
18
19

20 **SECTION 5. JURISDICTION.**

21 (a) A request for relief under this [act] may be brought only in a court that has
22 jurisdiction to make a child-custody determination with respect to the child at issue under [insert
23 citation to Uniform Child Custody Jurisdiction and Enforcement Act or the Uniform Child
24 Custody Jurisdiction Act].

25 (b) For purposes of exercising temporary emergency jurisdiction, a credible risk of
26 abduction of a child constitutes a threat of mistreatment or abuse under [insert citation to Section
27 204 of the Uniform Child Custody Jurisdiction and Enforcement Act or Section 3(a)(3) of the
28 Uniform Child Custody Jurisdiction Act].

29 **Comment**

30 This Act complements, but does not limit, contradict, or supercede the Uniform Child
31 Custody Jurisdiction and Enforcement Act or the Uniform Child Custody Jurisdiction Act. A
32 court must have jurisdiction, initial, modification, or temporary emergency, to make a child-
33 custody determination to issue prevention measures under this Act.

1 A court has temporary emergency jurisdiction under the Uniform Child Custody
2 Jurisdiction and Enforcement Act only if the child has been abandoned or it is necessary in an
3 emergency to protect the child because the child, or a sibling or parent of the child, is subjected
4 to or threatened with mistreatment or abuse. Subsection (b) specifies that a credible risk of
5 abduction constitutes threatened mistreatment or abuse for emergency jurisdiction purposes. If a
6 state would be able to exercise emergency jurisdiction under § 204 the Uniform Child Custody
7 Jurisdiction and Enforcement Act, it can do so even if another court has issued a child-custody
8 determination and has continuing exclusive jurisdiction. The reference to § 204 brings in all of its
9 provisions which include communication, length of time of temporary orders, and the like.

10
11 Under the Uniform Child Custody Jurisdiction and Enforcement Act § 208, if a court has
12 jurisdiction because a person seeking to invoke its jurisdiction has engaged in unjustifiable
13 conduct, the court shall decline to exercise its jurisdiction. However, as the comment to Section
14 208 explains, domestic violence victims should not be charged with unjustifiable conduct for
15 conduct that occurred in the process of fleeing domestic violence. Domestic violence also shall
16 be considered in a court's inconvenient forum analysis under Uniform Child Custody Jurisdiction
17 and Enforcement Act § 207(b)(1).
18

19 **SECTION 6. CONTENTS OF PETITION.** A petition for abduction prevention
20 measures must be verified and include a copy of an existing child-custody determination, if any
21 and if available. The petition must specify the risk factors for abduction, including the relevant
22 ones described in section 8. In addition, subject to [insert citation to Section 209(e) the Uniform
23 Child Custody Jurisdiction and Enforcement Act or cite the law of this state providing for the
24 confidentiality of procedures, addresses, and other identifying information], if reasonably
25 ascertainable, the petition must contain:

- 26 (1) the name, birthdate, and gender of the child at risk for abduction;
27 (2) the present address or physical location of the child, if known;
28 (3) the identity and location of the respondent, if known;
29 (4) a statement of whether a prior action to prevent abduction or domestic violence has
30 been filed by either parent and the date, location, and disposition of such action;

1 (5) a statement of whether either party has been arrested for a crime related to domestic
2 violence or child abuse, and the date, location, and disposition of such case; and

3 (6) any other information required to be submitted to the court for a child-custody
4 determination under [insert citation to Section 209 of the Uniform Child Custody Jurisdiction
5 and Enforcement Act or applicable law of this state].

6 **Comment**

7 The contents of the petition follow those for pleadings under the Uniform Child Custody
8 Jurisdiction and Enforcement Act § 209. The information is made subject to state law on the
9 protection of names or identifying information in certain cases. A number of states have enacted
10 laws relating to the protection of victims in domestic violence and child abuse cases by keeping
11 confidential the victims' names, addresses, and other information. These procedures must be
12 followed if the state law requires their applicability. If a state does not protect names and
13 addresses, then a provision similar to Uniform Child Custody Jurisdiction and Enforcement Act
14 § 209(e) should be added. That provision reads:

15
16 If a party alleges in an affidavit or a pleading under oath that the health, safety, or
17 liberty of a party or child would be jeopardized by disclosure of identifying
18 information, the information must be sealed and may not be disclosed to the other
19 party or the public unless the court orders the disclosure to be made after a hearing
20 in which the court takes into consideration the health, safety, or liberty of the party
21 or child and determines that the disclosure is in the interest of justice.
22

23 Judges need to be sensitive to issues of domestic violence so that an abuser cannot use
24 this act to gain temporary custody. A person who has committed domestic violence or child
25 abuse poses a risk of harm to the child and should not be awarded custody or additional
26 visitation in an uncontested hearing. Such a person, however, may still seek relief in a contested
27 hearing where the issues can be fully examined by the court. In order to screen for domestic
28 violence or child abuse, the petition requires disclosure of all relevant information and the court
29 can inquire about domestic violence at any hearing.
30

31 Notice and opportunity to be heard should be given according to the law of the state and
32 may be by publication if other means are not effective. See Uniform Child Custody Jurisdiction
33 and Enforcement Act § 108(a).
34

1 **SECTION 7. WARRANT TO TAKE PHYSICAL CUSTODY OF CHILD.**

2 (a) If a petition under this [act] contains allegations, and the court finds upon testimony
3 of the petitioner or other witness that there is a credible risk that the child is imminently likely to
4 be wrongfully removed, the court may issue an ex parte warrant to take physical custody of the
5 child.

6 (b) The respondent on a petition under subsection (a) must be afforded an opportunity to
7 be heard at the earliest possible time after the ex parte warrant is executed, but not later than the
8 next judicial day unless that date is impossible. In that event, the court shall hold the hearing on
9 the first judicial day possible.

10 (c) An ex parte warrant to take physical custody of a child must provide each of the
11 following:

12 (1) recite the facts upon which a determination of a credible risk of imminent
13 wrongful removal of the child is based;

14 (2) direct law enforcement officers to take physical custody of the child
15 immediately;

16 (3) state the date for the hearing on the petition; and

17 (4) provide for the safe interim placement of the child pending further order of
18 the court.

19 (d) If feasible, before issuing a warrant and determining the placement of the child after
20 the warrant is executed, the court shall conduct a search of the relevant databases of the National
21 Crime Information Center system, including those pertaining to protection orders, historical
22 protection orders, warrants, sex offender registry, and the persons on supervised release, and

1 similar state databases to determine if either the petitioner or respondent has a history of
2 domestic or family violence or child abuse.

3 (e) The respondent must be served with the petition and warrant when or immediately
4 after the child is taken into physical custody.

5 (f) A warrant to take physical custody of a child, issued by this state or another state, is
6 enforceable throughout this state. If the court finds on the basis of sworn testimony that a less
7 intrusive remedy will not be effective, it may authorize law enforcement officers to enter private
8 property to take physical custody of the child. If required by exigent circumstances, the court may
9 authorize law enforcement officers to make a forcible entry at any hour.

10 (g) If the court finds, after hearing, that a petitioner sought an ex parte warrant under
11 subsection (a) for the purpose of harassment or in bad faith, the court may award the respondent
12 reasonable attorney fees, expenses, and costs.

13 (h) This [act] does not affect the availability of relief allowed under the law of this state
14 other than this [act].

15 **Comment**

16 This section authorizes issuance of a warrant in an emergency situation, such as an
17 allegation that the respondent is preparing to abduct the child to a foreign country and is on the
18 way to the airport. The harm is the credible risk of imminent removal. If the court finds such a
19 risk, the court should temporarily waive the notice requirements and issue a warrant to take
20 physical custody of the child. Immediately after the warrant is executed, the respondent is to
21 receive notice of the proceedings. This section mirrors the Uniform Child Custody Jurisdiction
22 and Enforcement Act § 311 on warrants to pick up a child which are available when there is an
23 existing child-custody determination. In many states, the term used in civil cases is “writ of
24 attachment.”

25
26 The court must hear the testimony of the petitioner or another witness before issuing the
27 warrant. The testimony may be heard in person, via telephone, or by any other means acceptable
28 under local law, which may include video conferencing or use of other technology.

1 Because some batterers may try to use the warrant procedure to prevent victims and the
2 children from escaping domestic violence or child abuse, the court should check relevant state
3 and national databases to see if either the petitioner or respondent's name is listed or if relevant
4 information exists that has not been disclosed before issuing the warrant and ordering placement.
5 LUNDY BANCROFT & JAY G. SILVERMAN, THE BATTERER AS PARENT: ADDRESSING THE IMPACT
6 OF DOMESTIC VIOLENCE ON FAMILY DYNAMICS 73, 75 (2002)(indicating that most parental
7 abductions take place in the context of a history of domestic violence because threatening to take
8 the child from the mother is a form of control).

9
10 Some courts have computer terminals on the bench and a database search takes seconds.
11 Courts without computer access can seek the assistance of law enforcement. Unless
12 impracticable, the court should conduct a search of all person databases of the National Crime
13 Information Center system, including the protection order file, the historical protection order file,
14 the warrants file, the sex offender registry, and the persons on supervised release file. In addition,
15 it is recommended that courts run searches in the National Law Enforcement Telecommunication
16 System in the petitioner's state of birth, current state of residence, and other recent states of
17 residence. Civil courts are authorized by statute and National Crime Information Center policy to
18 have access to information in several files for domestic violence and stalking cases. Because
19 child abduction involves family members and can harm children, and violence between the
20 parents is often a factor leading to child abduction, cases in which a parent alleges a risk of
21 wrongful removal should permit access to the relevant databases.

22
23 The court should also view comparable state databases, such as the state department of
24 social service registry of persons found to have abused or neglected children. If the petitioner or
25 respondent are listed for a reason related to a crime of domestic or family violence, the court may
26 refuse to issue a warrant or order any appropriate placement authorized under the laws of the
27 state. The warrant must provide for the placement of a child pending the hearing. Temporary
28 placement will most often be with the petitioner unless the database check reveals the petitioner
29 is a likely or known abuser.

30
31 The court must state the reasons for issuance of the warrant. The warrant can be enforced
32 by law enforcement officers wherever the child is found in the state. The warrant may authorize
33 entry upon private property to pick up the child if no less intrusive means are possible. In
34 extraordinary cases, the warrant may authorize law enforcement to make a forcible entry at any
35 hour. This section also authorizes law enforcement officers to enforce out of state warrants.

36
37 Section 7 applies only to a wrongful removal, not a wrongful retention. It does not hinder
38 a court from issuing any other immediate ex parte relief to prevent a wrongful removal or
39 wrongful retention as may be allowed under law other than this act.

1 **SECTION 8. FACTORS TO DETERMINE RISK OF ABDUCTION.**

2 (a) In determining whether there is a credible risk of abduction of a child, the court shall
3 consider any evidence that the respondent:

4 (1) has previously abducted or attempted to abduct the child;

5 (2) has threatened to abduct the child;

6 (3) has recently engaged in activities that may indicate a planned abduction,

7 including:

8 (A) abandoning employment;

9 (B) selling a primary residence or terminating a lease;

10 (C) closing bank or other financial management accounts, liquidating
11 assets, hiding or destroying financial documents, or conducting any other unusual financial
12 activities;

13 (D) applying for a passport or visa, or obtaining other travel documents,
14 or purchasing travel tickets for the respondent, another family member, or the child; or

15 (E) seeking to obtain the child’s birth certificate or school or medical
16 records;

17 (4) has engaged in domestic violence, stalking, or child abuse or neglect;

18 (5) has refused to follow a child-custody determination;

19 (6) lacks strong familial, financial, emotional, or cultural ties to the state or the
20 United States;

21 (7) has strong familial, financial, emotional, or cultural ties to another state or
22 country;

1 (8) is likely to take the child to a country that:

2 (A) is not a party to the Hague Convention on the Civil Aspects of
3 International Child Abduction and does not provide for the extradition of an abducting parent or
4 for the return of an abducted child;

5 (B) is a party to the Hague Convention on the Civil Aspects of
6 International Child Abduction but:

7 (i) the Hague Convention on the Civil Aspects of International
8 Child Abduction is not in force between the United States and that country;

9 (ii) is noncompliant according to the most recent compliance
10 report issued by the United States Department of State; or

11 (iii) lacks legal mechanisms for immediately and effectively
12 enforcing a return order under the Hague Convention on the Civil Aspects of International Child
13 Abduction;

14 (C) poses a risk that the child's physical or emotional health or safety
15 would be endangered in the country because of specific circumstances relating to the child or
16 because of human rights violations committed against children;

17 (D) has laws or practices that would:

18 (i) enable the respondent, without due cause, to prevent the
19 petitioner from contacting the child;

20 (ii) restrict the petitioner from freely traveling to or exiting from
21 the country because of the petitioner's gender, nationality, marital status, or religion; or

22 (iii) restrict the child's ability legally to leave the country after the

1 child reaches the age of majority because of a child’s gender, nationality, or religion;

2 (E) is included by the United States Department of State on a current list
3 of state sponsors of terrorism;

4 (F) does not have an official United States diplomatic presence in the
5 country; or

6 (G) is engaged in active military action or war, including a civil war, to
7 which the child may be exposed;

8 (9) is undergoing a change in immigration or citizenship status that would
9 adversely affect the respondent’s ability to remain in the United States legally;

10 (10) has had an application for United States citizenship denied;

11 (11) has forged or presented misleading or false evidence on government forms
12 or supporting documents to obtain or attempt to obtain a passport, visa, travel documents, Social
13 Security card, driver’s license, or other government-issued identification card or has made a
14 misrepresentation to the United States government;

15 (12) has used multiple names to attempt to mislead or defraud; or

16 (13) has engaged in any other conduct the court considers relevant to the risk of
17 abduction.

18 (b) In the hearing on a petition for abduction prevention measures, the court shall
19 consider evidence that the respondent believed in good faith that the respondent’s conduct was
20 necessary to avoid imminent harm to the child or parent.

21 **Comment**

22 (a) The more of these factors that are present, the more likely the chance of an abduction.

1 However, the mere presence of one or more of these factors does not mean that an abduction will
2 occur just as the absence of these factors does not guarantee that no abduction will occur. Some
3 conduct described in the factors can be done in conjunction with a relocation petition, which
4 would negate an inference that the parent is planning to abduct the child.
5

6 The risk factors are based on research that has been done during the last twelve years.
7 Research also shows that abducting parents dismiss the value of the other parent in the child's
8 life; have young children or children vulnerable to influence; and often have the support of their
9 family and others. See Janet Johnston & Linda Girdner, *Family Abductors: Descriptive Profiles
10 and Preventative Interventions* (U.S. Dep't of Justice, OJJDP 2001 NCJ 182788); ABA, EARLY
11 IDENTIFICATION OF RISK FACTORS FOR PARENTAL ABDUCTION (NCJ185026).
12

13 International abductions pose more obstacles to return of a child than do abductions
14 within the United States. Courts should consider evidence that the respondent was raised in
15 another country and has family support there, has a legal right to work in a foreign country and
16 has the ability to speak that foreign language. There are difficulties associated with securing
17 return of children from countries that have not ratified or acceded to the Hague Convention on
18 the Civil Aspects of Child Abduction or are not compliant with the Convention. Compliance
19 Reports are available at the United States Department of State website or may be obtained by
20 contacting the Office of Children's Issues in Department of State.
21

22 Courts should be particularly sensitive to the importance of preventive measures where
23 there is an identified risk of a child being removed to countries that are guilty of human rights
24 violations, including arranged marriages of children, child labor, lack of child abuse laws, female
25 genital mutilation, sexual exploitation, any form of child slavery, torture, and the deprivation of
26 liberty. These countries pose potentially serious obstacles to return of a child and pose the
27 possibility of harm.
28

29 (b) Courts need to be particularly aware of the dynamics of domestic violence. Some of
30 the risk factors involve the same activities that might be undertaken by a victim of domestic
31 violence. Therefore, the court should look at evidence that the parent preparing to leave is fleeing
32 domestic violence. In such a situation, the court must consider that any order restricting
33 departure or transferring custody may pose safety issues for the respondent and the child, and
34 therefore, should be imposed only when the risk of abduction, the likely harm from the
35 abduction, and the chances of recovery outweigh the risk of harm to the respondent and the child.
36 The Comment to § 208 of the Uniform Child Custody Jurisdiction and Enforcement Act
37 (Jurisdiction Declined by Reason of Conduct) states that "Domestic violence victims should not
38 be charged with unjustifiable conduct for conduct that occurred in the process of fleeing
39 domestic violence, even if their conduct is technically illegal. An inquiry must be made whether
40 the flight was justified under the circumstances of the case."
41

1 **SECTION 9. PROVISIONS AND MEASURES TO PREVENT ABDUCTION.**

2 (a) An abduction prevention order shall include the following provisions:

3 (1) the basis for the court’s exercise of jurisdiction;

4 (2) the manner in which notice and opportunity to be heard were given to the
5 persons entitled to notice of the proceeding;

6 (3) a detailed description of each parent’s custody and visitation rights and
7 residential arrangements for the child;

8 (4) a provision stating that a violation of the order may subject the party in
9 violation to civil and criminal penalties; and

10 (5) identification of the child’s country of habitual residence at the time of the
11 issuance of the order.

12 (b) If, after reviewing the evidence, at a hearing on a petition under this [act] or on the
13 court’s own motion, the court finds a credible risk of abduction of the child, the court shall enter
14 an abduction prevention order. The order shall include the provisions described in subsection (a)
15 and the measures and conditions, including those described in subsections (c), (d), and (e), that
16 are reasonably calculated to prevent abduction of the child, giving due consideration to the
17 custody and visitation rights of both parents. In determining the measures to be ordered, the
18 court shall consider the age of the child, the potential harm to the child from an abduction, the
19 legal and practical difficulties of returning the child to the jurisdiction if abducted, and the
20 reasons for the potential abduction, including evidence of domestic violence or child abuse.

21 (c) An abduction prevention order may include one or more of the following:

22 (1) the imposition of travel restrictions that require that a party traveling with the

1 child outside a designated geographical area provide the other party with the following:

2 (A) the travel itinerary of the child;

3 (B) a list of physical addresses and telephone numbers at which the child
4 can be reached at specified times; and

5 (C) copies of all travel documents;

6 (2) prohibition of the respondent from directly or indirectly

7 (A) removing the child from this state, the United States, or another
8 geographic area without permission of the court or the petitioner's written consent;

9 (B) removing or retaining the child in violation of the child-custody
10 determination;

11 (C) removing the child from school or child-care or similar facility; or

12 (D) approaching the child at any location other than a site designated for
13 supervised visitation;

14 (3) requiring a party to register the order in another state as a prerequisite to
15 allowing the child to travel to that state;

16 (4) with regard to the child's passport:

17 (A) directing the petitioner to place the child's name in the United States
18 Department of State's Child Passport Issuance Alert Program;

19 (B) requiring the respondent to surrender to the court or the petitioner's
20 attorney any United States or foreign passport issued in the child's name, including a passport
21 issued in the name of both the parent and the child; and

22 (C) prohibiting the respondent from applying on behalf of the child for a

1 new or replacement passport or visa;

2 (5) as a prerequisite to exercising custody or visitation, requiring respondent to
3 provide:

4 (A) to the United States Department of State Office of Children's Issues
5 and the relevant foreign consulate or embassy, an authenticated copy of a court order detailing
6 passport and travel restrictions for the child;

7 (B) to the court:

8 (i) proof that the respondent has provided the information in
9 subparagraph (A); and

10 (ii) written acknowledgment from the relevant foreign consulate or
11 embassy that no passport application has been made, or passport issued, on behalf of the child;

12 (C) to the petitioner, proof of registration with the United States Embassy
13 or other United States diplomatic presence in the destination country, and, with the Central
14 Authority for the Hague Convention on the Civil Aspects of International Child Abduction, if
15 that Convention is in effect between the United States and the destination country, unless one of
16 the parents objects; and

17 (D) a written waiver under the Privacy Act, 5 U.S.C. 552a, with respect to
18 any document, application, or other information pertaining to the child authorizing disclosure of
19 them to the court and the petitioner; and

20 (6) upon the petitioner's request, a requirement that the respondent obtain an
21 order from the relevant foreign country containing terms identical to the child-custody
22 determination issued in the United States.

1 (d) In an abduction prevention order, the court may impose conditions on the exercise of
2 custody or visitation that:

3 (1) limit visitation or require that visitation with the child by the respondent be
4 supervised until the court finds that supervision is no longer necessary and order the respondent
5 to pay for the supervision;

6 (2) require the respondent to post a bond or provide other security in an amount
7 sufficient to serve as a financial deterrent to abduction, the proceeds of which may be used to pay
8 for the expenses of recovery of the child, including attorneys fees and actual costs if there is an
9 abduction; and

10 (3) require the respondent to obtain education on the potentially harmful effects
11 to the child from abduction.

12 (e) To prevent imminent abduction of a child, a court may:

13 (1) issue a warrant to take physical custody of the child under section 7 of this
14 [act] or the law of this state other than this [act];

15 (2) direct the use of law enforcement to take any action reasonably necessary to
16 locate the child, obtain return of the child, or enforce a custody determination under this [act], or
17 the law of this state other than this [act]; and

18 (3) grant any other relief allowed under the law of this state other than this [act].

19 (f) The remedies provided in this [act] are cumulative and do not affect the availability of
20 other state remedies to prevent child abduction.

21 **Comment**

22 This act provides courts with a choice of remedies. Ideally the court will choose the least

1 restrictive measures and conditions to maximize opportunities for continued parental contact
2 while minimizing the opportunities for abduction. The most restrictive measures should be used
3 when there have been prior custody violations and overt threats to take the child; when the child
4 faces substantial potential harm from an abducting parent who may have serious mental or
5 personality disorder, history of abuse or violence or no prior relationship with the child; or when
6 the obstacles to recovering the child are formidable due to countries not cooperating and
7 enforcing orders from the United States, not being Hague signatories or non-compliant. This
8 section lists the possible prevention measures categorized as travel restrictions, conditions on the
9 exercise of custody and visitation, and urgent measures when abduction is imminent or in
10 progress.

11
12 If a petition is filed under the act, even if the court decides not to order restrictive
13 measures or impose conditions, the court may make enter some provisions. To enter an abduction
14 prevention order, the court must have jurisdiction to make a child-custody determination even if
15 it is emergency jurisdiction. The court should set out the basis for the court’s exercise of
16 jurisdiction. The more apparent on the face of the document that the court issuing the order had
17 proper jurisdiction, the more likely courts in other states and countries are to recognize it as
18 valid. The court should also include a statement showing that the parties were properly served
19 and given adequate notice. This makes it apparent on the face of the order that due process was
20 met. *See* Uniform Child Custody Jurisdiction and Enforcement Act § 108 and § 205. States do
21 not require personal jurisdiction to make a child-custody determination.

22
23 As with any child custody determination, an abduction prevention order should be clear
24 and specific. Vague orders are difficult to enforce without additional litigation. The dates and
25 times for each parent’s custody and visitation should be specified, including holidays, birthdays,
26 and telephone or Internet contact. The term “reasonable visitation” can lead to conflicts between
27 the parents and make it difficult for law enforcement officers to know if the order is being
28 violated. Because joint custody arrangements create special enforcement problems, the court
29 should specify, or encourage the parents to agree to, a child’s residential placement at all times. If
30 there is a threat of abduction, awarding sole custody to one parent makes enforcement easier.

31
32 The prevention order should make it clear to both parties that it is important to comply
33 with the court order. The order can state in bold language: “VIOLATION OF THIS ORDER
34 MAY SUBJECT THE PARTY IN VIOLATION TO CIVIL AND CRIMINAL PENALTIES.”

35
36 Because every abduction case may be a potential international abduction case, the
37 prevention order should identify the place of habitual residence of a child. Although the Hague
38 Convention on the Civil Aspects of International Child Abduction does not define “habitual
39 residence” and the determination is made by the court in the country hearing a petition for return
40 of a child, a statement in the child-custody determination or prevention order may help.

41
42 If the court finds a credible risk of abduction, the act provides numerous measures to
43 prevent an abduction. Courts can require a party traveling outside a specified geographical area to

1 provide the other party with all relevant information about where the child will be and how to
2 contact the child. The court can impose travel restrictions prohibiting the respondent from
3 leaving the United States or a specific geographical area; from removing the child from school,
4 day care or other facilities, and can restrict contact other than as specified in the order. The court
5 may also impose passport restrictions and require the respondent to provide assurances and
6 safeguards as a condition of traveling with the child.

7
8 The court may also choose to impose restrictions on custody or visitation. The most
9 common, and one of the most effective, restrictions is supervised visitation. Visitation should
10 remain supervised until the court decides the threat of abduction has passed. In addition, the court
11 may require the posting of a bond sufficient to serve both as a deterrent and as a source of funds
12 for return of the child. If domestic violence is present, the court may want to order the abusive
13 person to obtain education, counseling or attend a batterers' intervention and prevention
14 program.

15
16 Because of international abduction cases are the most complex and difficult, all
17 reasonable restrictions to prevent such abductions are necessary. If a credible risk of international
18 abduction of the child exists, passport controls are indispensable as are travel restrictions. It may
19 be possible to obtain a "mirror" or reciprocal order. Before exercising rights, the respondent
20 would need to get a custody order from the country to which the respondent will travel that
21 recognizes both the United States order and the court's continuing jurisdiction. The foreign court
22 would need to agree to order return of the child if the child was taken in violation of the court
23 order. This potentially expensive and time consuming remedy should only be ordered when
24 likely to be of assistance. Because the foreign court may subsequently modify its order, problems
25 can arise.

26
27 The court may do whatever is necessary to prevent an abduction, including using the
28 warrant procedure under this act or under the law of the state. Many law enforcement officers are
29 unclear about their role in responding to parental kidnapping cases. One study showed that 70
30 percent of law enforcement agencies reported that they did not have written policies and
31 procedures governing family abduction cases. A provision in the custody order directing law
32 enforcement officer to "accompany and assist" a parent to recover an abducted child may be
33 useful. The language tracks the Uniform Child Custody Jurisdiction and Enforcement Act § 316
34 which authorizes law enforcement to take any lawful action reasonably necessary to locate a
35 child or a party and assist a prosecutor or appropriate public official in obtaining return of a child
36 or enforcing a child-custody determination.

37
38 The remedies provided in this act are intended to be supplemental and complement
39 existing state law.
40

41 **SECTION 10. DURATION OF ABDUCTION PREVENTION ORDER.** An

1 abduction prevention order remains in effect until the earliest of a time stated in the order,
2 emancipation of the child, the child’s attaining age 18, or the order is modified, revoked, vacated
3 or superseded by a court with jurisdiction under [insert citation to Sections 201 through 203 of
4 the Uniform Child Custody Jurisdiction and Enforcement Act or Section 3 of the Uniform Child
5 Custody Jurisdiction Act and applicable law of this state].

6 **SECTION 11. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
7 applying and construing this uniform act, consideration must be given to the need to promote
8 uniformity of the law with respect to its subject matter among states that enact it.

9 **SECTION 12. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**
10 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal
11 Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001, et seq.)
12 but does not modify, limit, or supersede Section 101(c) of the act (15 U.S.C. Section 7001(c)) of
13 that act or authorize electronic delivery of any of the notices described in Section 103(b) of that
14 act (15 U.S.C. Section 7003(b)).

15 **SECTION 13. EFFECTIVE DATE.** This [act] takes effect on