

D R A F T
FOR DISCUSSION ONLY

**STANDARDS FOR THE PROTECTION OF CHILDREN
FROM INTERNATIONAL ABDUCTION ACT**

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM LAWS

August 24, 2004

With Prefatory Note and Comments

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**STANDARDS FOR THE PROTECTION OF CHILDREN FROM
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STANDARDS FOR THE PROTECTION OF CHILDREN FROM INTERNATIONAL ABDUCTION ACT

Prefatory Note

On 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 possible scope of the project was discussed at a meeting of the Joint Editorial Board for Uniform Family Law Acts on October 18, 2003. The Joint Editorial Board urged the NCCUSL Committee on Scope and Program to recommend the rapid creation of a drafting committee in this area.

Child abduction is a serious problem. The Office of Juvenile Justice and Delinquency Prevention estimated that 262,100 children were abducted in 1999; 203,900 of them (or 78%) were abducted by a family member. Stranger abductions accounted for only 115 cases. *See* Second National Incidence Studies of Missing, Abducted, Runaway, and Thrownaway Children (NISMAART-2) published in October 2002.

An abducting parent views the child's needs as secondary to the parental agenda which is to provoke, agitate, control, attack or psychologically torture the other parent. D.C. Rand, *The Spectrum of the Parental Alienation Syndrome*, 15 AMER. J. FORENSICS PSYCHOLOGY 3 (1997). Indeed, while in a few instances a parent is protecting a child from real or imagined abuse, the primary motives appear to be to force a reconciliation with the other parent; to blame or punish the other parent; to reduce the fear of losing custody or visitation. Janet Chiancone, *Parental Abduction: A Review of the Literature* (U.S. Dep't of Justice, OJJDP 2002).

Studies have demonstrated that preceding an abduction, there are warning signs, or common red flags, such as: (a) a parent has previously abducted the child or threatened to do so; (b) a parent has no strong ties to the child's home state; (c) a parent has citizenship in another country, strong emotional ties to the country of origin; (d) a parent has friends or family living abroad; (e) a parent has a strong support network; (f) a parent has no financial reasons to stay in the area; (g) a parent is engaged in planning activities which indicate an attempt to move; (h) a parent shows a history of marital instability, violence or child abuse, or a prior criminal record. *See* Janet Johnston & Linda Girdner, *Family Abductors: Descriptive Profiles and Preventative Interventions* (U.S. Dep't of Justice, OJJDP 2001); ABA - Early Identification of Risk Factors for Parental Abduction (NCJ185026).

Texas and California both have statutes specifically addressing the problem of international child abduction. They have been passed with little opposition and set a framework to alert the court on concerns about abductions and methods to prevent it. The initial mandate to the committee was:

Resolved, that a drafting committee on the Prevention of Child

Abduction in International Custody Disputes be approved by the Committee on Scope and Program to draft model or uniform legislation in this area, with an initial scope as suggested in this report.

The Conference subsequently appointed a Drafting committee on the Prevention of International Child Abduction. Lyle Hillyard, Utah, was appointed as chair of the drafting committee. Drafting committee members include: Cynthia Bosco; Vincent DeLiberato, Jr.; Michael Dunn; Peter Munson; Marian Opala; Martha Starkey. Others participating are: ABA Advisor, Bruce Boyer; Observers Jeff Atkinson, ABA Family Law Section; Tera Lauderdale; Jenni Thompson, Polly Klaas organization. Professor Linda Elrod is the reporter.

The first issue discussed at the introductory meeting in April, 2004, was whether to expand the scope of the act. More child abductions occur within the United States rather than internationally. Seventy eight percent of all abductions are family abductions. 1773 family abductions occur for every stranger abduction. Families going through custody disputes and divorce proceedings are the highest risk group for potential abductions. *When the Kidnapper is Kin, supra* at 10-11.

NCCUSL expanded the drafting committee's scope to prevent domestic as well as international abductions in August, 2004.

1 **STANDARDS FOR THE PROTECTION OF CHILDREN**
2 **FROM INTERNATIONAL ABDUCTION**

3
4 **PART I**

5 **GENERAL PROVISIONS**

6 **SECTION 101. SHORT TITLE.** This Act may be cited as the Standards for the
7 Protection of Children from International Abduction Act. The purpose of this Act is to deter
8 child abductions by family members both within and outside of the United States through use of
9 preventive measures.

10 **Comment**

11
12 The stated purpose is to deter child abductions by ensuring that courts use as many
13 preventive measures as may be necessary to prevent the abduction of a child. This Act works
14 with the Uniform Child Custody Jurisdiction and Enforcement Act which also seeks to deter
15 abductions.

16
17 **SECTION 102. DEFINITIONS.** In this Act:

18 (1) “Abduction” means taking, keeping, withholding access to or concealing a
19 child from a lawful custodian or an individual with rights of access for the purpose or removing
20 the child to another county, state or country.

21 (2) “Certified order” means a copy of an order signed and certified as a true copy
22 by the clerk of the court with whom the original order was filed. Some jurisdictions use terms
23 such as “exemplified” or “teste” orders.

24 (3) “Child” means an individual who is:

25 (1) under 18 years of age; or

1 (2) disabled -- unable, due to a diagnosed medical or mental condition, to
2 function independently.

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

6 (5) “Child-custody proceeding” means a proceeding in which legal custody,
7 physical custody, or visitation with respect to a child is an issue. The term includes a proceeding
8 for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of
9 parental rights, and protection from domestic violence, in which the issue may appear.

10 (6) “Court” means an entity authorized under the law of a State to establish,
11 enforce, or modify a child-custody determination.

12 (7) “Custodial parent” means the parent who has been awarded sole or joint
13 custody by a court.

14 (8) “Initial determination” means the first child-custody determination concerning
15 a particular child.

16 (9) “Physical custody” means the physical care and supervision of a child.

17 (10) “State” means a State of the United States, the District of Columbia, Puerto
18 Rico, the United States Virgin Islands, or any territory or insular possession subject to the
19 jurisdiction of the United States.

20 [(11) “Tribe” means an Indian tribe or band, or Alaskan Native village, which is
21 recognized by federal law or formally acknowledged by a State.]

22 **Comment**

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The definition of a child as a person under age 18 is basically the same as in the Uniform Child Custody Jurisdiction and Enforcement Act and the Parental Kidnapping Prevention Act. The definition also includes as a child a “disabled” child.

The definition of “child-custody determination” tracks both the UCCJEA and PKPA definition and encompasses any judgment, decree or other, regardless of local terminology, including such labels as “managing conservatorship” or “parenting plan.”

The definition of “child-custody proceeding” follows the Uniform Child Custody Jurisdiction and Enforcement Act.

1 **PART II**

2 **CHILD-CUSTODY DETERMINATION**

3 **SECTION 201. CONTENT OF CHILD-CUSTODY DETERMINATION.**

4 Notwithstanding any other provision of law, in any child-custody proceeding, every child-
5 custody determination shall contain all of the following:

6 (1) The basis for the court's exercise of jurisdiction under existing law.

7 (2) The manner in which notice and opportunity to be heard were given to the
8 other parent.

9 (3) A clear description of the parenting time, custody, visitation or access rights of
10 each parent and any one else who may have been granted visitation.

11 (4) A provision stating that a violation of the order may subject the party in
12 violation to civil or criminal penalties, or both.

13 [(5) Identification of the country of habitual residence of the child or children at
14 the time of the child-custody determination.]

15 **Comment**

16
17 Because subject matter jurisdiction is determined at the time of institution of the action,
18 every child-custody determination should contain a statement specifying the basis for the court's
19 exercise of jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act or
20 Uniform Child Custody Jurisdiction Act and the Parental Kidnapping Prevention Act, 28 U.S.C.
21 1738A. The more apparent on the face of the document that the court issuing the child-custody
22 determination had proper jurisdiction, the more likely courts in other states and countries are to
23 recognize the child-custody determination as valid. It is useful to include provisions to facilitate
24 use of the Uniform Child Custody Jurisdiction and Enforcement Act and the Hague Convention
25 on the Civil Aspects of International Child Abduction (implemented pursuant to 42 U.S.C. Sec.
26 11601 et seq.).

27
28 Due process requires that notice be given to interested parties. *See* UCCJEA 205. There
29 should be a statement that parents were properly served and given adequate notice.

1 Vague language such as “reasonable visitation” can lead to conflicts between the parents
2 and make it difficult for law enforcement officers to know if someone is violating the order. The
3 dates and times for each parent’s parenting time should be specified.
4

5 The requirement that the order identify the country of habitual residence of a child may
6 have little use unless abduction is feared soon after the order is given. The determination of
7 habitual residence under the Hague Convention on the Civil Aspects of International Child
8 Abduction will be made by the court in the country to which the child has been abducted at the
9 time the issue is raised. To determine habitual residence, the court must focus on the child, not
10 the parents, and examine past experience, not future intentions. The determination is fact
11 specific. *See* *Mozes v. Mozes*, 239 F.3d 1067 (9th Cir. 2001); *Friedrich v. Friedrich*, 983 F.2d
12 1396 (6th Cir. 1993). There can be only one habitual residence. *Miller v. Miller*, 240 F.3d 392
13 (4th Cir. 2001).
14

15 **SECTION 202. CONSIDERATIONS.** In determining whether to take any protective
16 measures and which to take, the court shall consider:

17 (1) the best interests of the child and the state’s policy of providing both parents
18 with meaningful access to their child;

19 (2) the risk of abduction of the child by a parent of the child based on the court’s
20 evaluation of the risk factors described by Section 306;

21 (3) any obstacles to locating, recovering, and returning the child if the child is
22 abducted;

23 (4) the potential physical or psychological harm to the child if the child is
24 abducted.

25 **Comment**

26
27 There is some fear that a parent may use the “risk of abduction” to alienate or deprive the
28 other parent of access. This section is to set the framework for the judge to consider the least
29 restrictive measures to maximize opportunities for parental contract while minimizing
30 opportunities for abduction. For example, different protective measures may be warranted if the
31 parent is contemplating an abduction to a neighboring county or state than to a country which has
32 a different culture and legal system which does not recognize the legal rights of women.

1 Children suffer severe negative consequences from abduction. In addition to losing
2 medical care and education, abducted children suffer depression, loss of community, loss of
3 stability, security and trust; excessive fearfulness; loneliness; anger; helplessness; disruption in
4 identity formation; and fear of abandonment. D.S. Huntington, *Parental Kidnapping: A New*
5 *Form of Child Abuse* (1982). Abducted children suffer emotionally and sometimes physically at
6 the hands of abductor - parents. Patricia M. Hoff, *Kidnapping: Prevention and Remedies* (ABA
7 Center for Children and the Law 1997). Psychologists have now classified family abduction as
8 child abuse because of the “intense secrecy, isolation and separation of the child from their loved
9 ones and long term emotional trauma.” Polly Klaas Foundation, *America’s Hidden Crime: When*
10 *the Kidnapper is Kin* 8 (March 2004).

1 **PART III**

2 **EVIDENCE OF RISK OF ABDUCTION**

3 **SECTION 301. JURISDICTION.** A request for relief under this Act can be brought
4 before any court which has jurisdiction to make a child-custody determination.

5 **SECTION 302. PETITION.** A parent may file an independent petition or a motion in
6 an existing case alleging that the other parent poses a risk to abduct a child of the parties. The
7 responding parent will be served in accordance with the law of the State. Unless an emergency is
8 alleged under Section 304, the court shall schedule a hearing within ten (10) days of the day set
9 for the other parent to respond.

10 **SECTION 303. HEARING.** The petitioning party must show by a preponderance of
11 the evidence, that, based on the factors under Section 305, there is a substantial risk that the
12 responding parent will abduct the child. If the parent shows credible risk of abduction, the court,
13 on its own motion or at the request of a party to the suit, shall determine whether it is necessary
14 for the court to take one or more of the measures described in Section 401 and 402 to protect the
15 child from the risk of abduction by the parent.

16 **SECTION 304. EMERGENCY EX PARTE RELIEF.** If there is credible evidence to
17 support petitioner's allegation that an emergency exists and that abduction is imminent, the court
18 may order immediate ex parte relief to the extent necessary to prevent the abduction.

19 **Comment**

20
21 Both UCCJA and UCCJEA recognize that emergencies require prompt judicial action. In
22 both statutes the child must be present in the state for a court to exercise emergency jurisdiction.
23

24 **SECTION 305. GENERAL ABDUCTION RISK FACTORS.** To determine whether

1 there is a risk of the abduction of a child by a parent, the court may consider evidence that the
2 parent:

3 (1) has taken, enticed away, kept, withheld, or concealed a child in violation of
4 another person's right of possession of or access to the child, [unless the parent presents evidence
5 that the parent believed in [good faith] that the parent's conduct was necessary to avoid imminent
6 harm to the child;]

7 (2) has previously threatened to take, entice away, keep, withhold, or conceal a
8 child in violation of another person's right of possession of or access to the child;

9 (3) lacks financial reason to stay in the state or in the United States, [including
10 evidence that the parent is financially independent, or is able to work outside of the state or
11 United States, or has lost a job;]

12 (4) has recently engaged in planning activities that could facilitate the removal of
13 the child from the state or the United States by the parent, including:

14 (A) quitting a job;

15 (B) selling a primary residence;

16 (C) terminating a lease;

17 (D) closing bank accounts;

18 (E) liquidating other assets;

19 (F) hiding or destroying documents;

20 (G) applying for a passport or visa for the parent or the child; or

21 (H) applying to obtain the child's birth certificate or school or medical
22 records;

- 1 (I) purchasing airplane or other travel tickets;
- 2 (5) has a history of domestic violence or child abuse;
- 3 (6) has a history of lack of cooperation or a criminal history of violating court
- 4 orders;
- 5 (7) any other factor the court considers relevant to the possibility of abduction.

6 **Comment**

7
8 The list includes the risk factors found in both the California and Texas statutes. *See*
9 CAL. FAM. CODE § 3408(b)(1); Tex. Fam. Code § 153.502. The risk factors are adapted from a
10 study done by Dr. Janet Johnston and Dr. Linda Girdner which found the risk factors to include
11 parents who have threatened to abduct or abducted previously; are suspicious and distrustful due
12 to a belief abuse occurred; are paranoid-delusional; are sociopathic; have strong ties to another
13 country; and feel disenfranchised by the system. *See* Janet Johnston & Linda Girdner, *Family*
14 *Abductors: Descriptive Profiles and Preventative Interventions* (U.S. Dep't of Justice, OJJDP
15 2001). One of the problems with the risk factors is that some of the same activities might be
16 undertaken by a victim of domestic violence.
17

18 **SECTION 306. INTERNATIONAL ABDUCTION RISK FACTORS.**

19 (a) If the court finds that there is credible evidence of a risk of abduction of the
20 child by a parent of the child based on the court's consideration of the factors in Section 305, the
21 court shall also consider evidence regarding the following factors to evaluate the risk of
22 international abduction of the child by a parent:

23 (1) whether the parent has strong familial, emotional, or cultural ties to
24 another country, particularly a country that is not a signatory to or compliant with the Hague
25 Convention on the Civil Aspects of International Child Abduction; and

26 (2) whether the parent lacks strong ties to the United States, regardless of
27 whether the parent is a citizen or permanent resident of the United States.

1 (b) If the court finds that there is credible evidence of a risk of abduction of the
2 child by a parent of the child based on the court's consideration of the factors in Subsection (a),
3 the court may also consider evidence regarding the following factors to evaluate the risk of
4 international abduction of the child by a parent:

5 (1) whether the parent is undergoing a change in status with the United
6 States Immigration and Naturalization Service that would adversely affect that parent's ability to
7 legally remain in the United States;

8 (2) whether the parent's application for United States citizenship has been
9 denied by the United States Immigration and Naturalization Service;

10 (3) whether the parent has forged or presented misleading or false
11 evidence to obtain a visa, a passport, a social security card, or any other identification card or has
12 made any misrepresentation to the United States government; or

13 (4) whether the foreign country to which the parent has ties:

14 (A) presents obstacles to the recovery and return of a child who is
15 abducted to the country from the United States;

16 (B) has any legal mechanisms for immediately and effectively
17 enforcing an order regarding the possession of or access to the child issued by this state;

18 (C) has local laws or practices that would:

19 (i) enable the parent to prevent the child's other parent
20 from contacting the child without due cause;

21 (ii) restrict the child's other parent from freely traveling to
22 or exiting from the country because of that parent's gender, nationality, or religion; or

1 (iii) restrict the child's ability to legally leave the country
2 after the child reaches the age of majority because of the child's gender, nationality, or religion;

3 (D) is included by the United States Department of State on a list
4 of state sponsors of terrorism;

5 (E) is a country for which the United States Department of State
6 has issued a travel warning to United States citizens regarding travel to the country;

7 (F) has an embassy of the United States in the country;

8 (G) is engaged in any active military action or war, including a
9 civil war;

10 (H) is a party to and compliant with the Hague Convention on the
11 Civil Aspects of International Child Abduction according to the most recent report on
12 compliance issued by the United States Department of State;

13 (I) provides for the extradition of a parental abductor and the
14 return of the child to the United States; or

15 (J) poses a risk that the child's physical health or safety would be
16 endangered in the country because of specific circumstances relating to the child or because of
17 human rights violations committed against children, including arranged marriages, lack of
18 freedom of religion, child labor, lack of child abuse laws, female genital mutilation, and any form
19 of slavery.

1 **PART IV**

2 **MEASURES TO PREVENT ABDUCTIONS**

3 **SECTION 401. GENERAL MEASURES TO PREVENT ABDUCTIONS.**

4 (a) After considering the risk factors, if the court finds that it is necessary to take
5 measures to protect a child from abduction by a parent of the child, the court may take any of the
6 following actions:

7 (1) appoint an appropriate person other than the person who presents a
8 risk of abducting the child as the sole custodian of the child;

9 (2) adjust the existing custodial relationship in such a way as to avoid the
10 risk of abduction;

11 (3) require supervised visitation of the parent by a visitation center or
12 independent organization until the court finds that supervised visitation is no longer necessary;

13 (4) enjoin the parent or any person acting on the parent's behalf from:

14 (A) disrupting or removing the child from the school, child-care
15 facility or similar location in which the child is enrolled; or

16 (B) approaching the child at any location other than a site
17 designated for supervised visitation.

18 (5) require the parent to post a bond in an amount sufficient to serve as a
19 financial deterrent to abduction, the proceeds of which may be used to offset the cost of recovery
20 of the child in the event there is an abduction.

21 (6) restrict the right of either parent to remove the child from the county,
22 the state, or the country without permission of the other parent or the court;

1 (7) require a party to register a custody order in another state as a
2 prerequisite to allowing a child to travel to that state for visits.

3 (8) authorizing the assistance of law enforcement.

4 (b) Nothing in this section affects the applicability of the State's Penal Code.

5 **Comment**
6

7 A judge finding that any of the risk factors have been proved by a preponderance of the
8 evidence should not award joint custody. The finding of a risk factor is sufficient to overcome
9 the presumption in favor of joint custody.
10

11 **SECTION 402. MEASURES TO PREVENT INTERNATIONAL ABDUCTIONS.**

12 If the court finds it necessary to take measures to protect a child from international abduction, the
13 court may order any or all of the following:

14 (1) order passport and travel controls, including controls that:

15 (A) prohibit the parent and any person acting on the parent's behalf from
16 removing the child from this state or the United States;

17 (B) require the parent to surrender any passport issued in the child's name,
18 including any passport issued in the name of both the parent and the child; and

19 (C) prohibit the parent from applying on behalf of the child for a new or
20 replacement passport or international travel visa;

21 (D) require a parent to notify a relevant foreign consulate or embassy of
22 passport restrictions and to provide the court with proof of that notification.

23 (2) Obtaining assurances that a party will return from foreign visits by requiring
24 the traveling parent to provide the court or the other parent or guardian with any of the following:

1 (A) The travel itinerary of the child.

2 (B) Copies of round trip airline tickets.

3 (C) A list of addresses and telephone numbers where the child can be
4 reached at all times.

5 [(D) An open airline ticket for the left-behind parent in case the child is
6 not returned.]

7 (3) Obtain an order from another country containing terms identical to the
8 custody and visitation order issued in the United States (recognizing that these orders may be
9 modified or enforced pursuant to the laws of the other country), as a prerequisite to allowing a
10 child to travel to that country for visits.

11 (4) order the parent to execute a bond or deposit security in an amount sufficient
12 to offset the cost of recovering the child if the child is abducted by the parent to a foreign
13 country;

14 (5) require the parent to provide:

15 (A) to the United States Department of State's Office of Children's Issues
16 and the relevant foreign consulate or embassy:

17 (i) written notice of the court-ordered passport and travel
18 restrictions for the child; and

19 (ii) a properly authenticated copy of the court order detailing the
20 restrictions and documentation of the parent's agreement to the restrictions; and

21 (B) to the court proof of receipt of the written notice required by
22 Paragraph (A)(i) by the United States Department of State's Office of Children's Issues and the

1 relevant foreign consulate or embassy.

2 **SECTION 403. RESTRICTIONS NOTED.**

3 (a) If the court imposes any or all of the conditions listed in either Section 401 or
4 402, those conditions shall be specifically noted on the minute order of the court proceedings.

5 (b) If the court determines there is a risk of abduction that is sufficient to warrant
6 the application of one or more of the prevention measures authorized by Section 401 or 402, the
7 court shall inform the parties of the telephone number and address of the Child Abduction Unit
8 in the office of the district attorney in the county where the custody or visitation order is being
9 entered.

10 **Comment**

11
12 Abductors born outside the United States fled to their countries of origin in 75% of cases.
13 Greef & Hagar (1993).