

DRAFT
FOR DISCUSSION ONLY

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

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM LAWS

March 30, 2005

With Prefatory Note and Comments

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

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STANDARDS FOR THE PROTECTION OF CHILDREN FROM INTERNATIONAL ABDUCTION

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 child abduction in international custody disputes. 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) (Oct. 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).

Studies have documented the emotional, and often physical, harm to abducted children. Abducted children suffer depression; loss of community; loss of medical benefits; loss of stability, security and trust; excessive fearfulness; loneliness; anger; helplessness; disruption in identity formation; and fear of abandonment. D.S. HUNTINGTON, PARENTAL KIDNAPPING: A NEW FORM OF CHILD ABUSE (1982); PATRICIA M. HOFF, KIDNAPPING: PREVENTION AND REMEDIES (ABA CENTER FOR CHILDREN AND THE LAW 1997).

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 with Lyle Hillyard, Utah, as chair. In addition to the drafting committee and official advisors, observers are Jeff Atkinson, ABA Family Law Section; Teresa Lauderdale, parent, Texas; Jenni Thompson, Polly Klaas organization; Lawrence R. Whyte, parent, Houston, Texas.

The first meeting was held on April, 2004. The committee decided to ask to expand the scope of the act because more child abductions occur within the United States 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.

The second meeting of the committee was September 10-12, 2004, in Chicago. The purpose of the Act is to deter child abductions by family members both inside and outside of the United States.

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

3
4 **SECTION 1. SHORT TITLE.** This [a]ct may be cited as the Standards for the
5 Protection of Children from Family Abduction Act.

6 **Comment**

7
8 The purpose of this Act is to deter child abductions by family members both within and
9 outside of the United States through use of preventive measures. The Act is civil law. It ensures
10 that courts are aware of and use as many preventive measures as may be necessary to prevent the
11 abduction of a child. This Act complements other existing legislation aimed at protecting
12 children from abduction, such as the Uniform Child Custody Jurisdiction and Enforcement Act, 9
13 U.L.A. Part I 657 (1999); the Uniform Child Custody Jurisdiction Act, 9 U.L.A. Part I 115
14 (1988); the Parental Kidnapping Prevention Act of 1980, 28 U.S.C. 1738A; the Hague
15 Convention on the Civil Aspects of International Child Abduction, 51 Fed. Reg. 10494 et seq.
16 (1986); and the International Child Abduction Remedies Act (ICARA), 42 U.S.C. § 11601-
17 11610, which also seek to deter abductions.

18
19 There are also other federal laws aimed at helping to locate missing children, including
20 the Missing Children Act, 28 U.S.C. 534 (1982)(requires law enforcement to enter complete
21 descriptions of missing children into the National Crime Information Center’s (NCIC) Missing
22 Person File, even if the abductor has not been charged with a crime. If the parent has been
23 charged with a crime, it may be entered into the NCIC by federal, state, and local law
24 enforcement agents. *See* <http://www.fas.org/irp/agency/doj/fbi/is/ncic.htm>.); Missing Children
25 Act, 42 U.S.C. 5771 (1984)(which established the National Center for Missing and Exploited
26 Children in the Office of Juvenile Justice and Delinquency Prevention); National Child Search
27 Assistance Act, 42 U.S.C. 5779 & 5780 (mandates elimination of waiting periods before law
28 enforcement takes a missing child report, including family abduction cases; requires immediate
29 entry of information into the NCIC Missing Person file; Requires close liaison with the National
30 Center for Missing and Exploited Children (NCMEC); State Missing Children Clearinghouses
31 (all states have established missing children clearinghouses to assist in locating and returning
32 children).

33
34 Federal and state laws also make parental kidnapping a crime. The International Parental
35 Kidnapping Crime Act (IPKCA),18 U.S.C. 1204, makes it a federal felony to remove a child
36 under 16 from the United States, or to retain a child outside the United States with the intent to
37 obstruct the lawful exercise of parental rights. A federal appellate court held that the International
38 Parental Kidnapping Act was applicable to a father who took his children from the United States

1 to India even though the pre-decree abduction was not illegal under state law. United States v.
2 Fazal-Ur-Raheman-Fazal, 355 F.3d 40 (1st Cir. 2004). The Fugitive Felon Act, 18 U.S.C. 1073
3 enhances the ability of states to pursue abductors beyond state and national borders; permits the
4 FBI to investigate cases that would otherwise be under state jurisdiction and authorizes use of
5 UFAP warrants in parental kidnapping cases. Extradition Treaties Interpretation Act of 1998, 18
6 U.S.C. 3181, authorizes the United States to interpret extradition treaties that list "kidnapping" as
7 encompassing the offense of parental kidnapping. In addition, the Alien Exclusion Act, 8 U.S.C.
8 (A)(9)(C)(I) provides that any alien who, in violation of a custody order issued by a court in the
9 United States, takes or retains a child out of the United States, may be excluded from the United
10 States.

11
12 Currently, almost every state criminally forbids custodial interference by parents or
13 relatives of the child. States differ as to whether a custody order must exist.
14

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

16 (1) "Abduction" means [unlawfully, unauthorized, wrongfully] taking, keeping,
17 withholding access to, or concealing a child from a lawful custodian [for the purpose of
18 removing the child to another jurisdiction] for the purpose of depriving the lawful custodian with
19 rights of access.

20 (2) "[Certified][exemplified][teste] order" means a copy of an order relating to
21 the legal or physical custody of or access to a child, certified as a true copy by the clerk of the
22 court with which the original order was filed.

23 (3) "Child" means an individual under 18 years of age.

24 (4) "Child-custody determination" means a judgment, decree, or other order of a
25 court providing for the legal or physical custody of, or visitation with, a child. The term includes
26 a permanent, temporary, initial, and modification order.

27 (5) "Child-custody proceeding" means a proceeding in which legal or physical
28 custody of, or visitation with, a child is an issue. The term includes a proceeding for divorce,

1 separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights,
2 and protection from domestic violence.

3 (6) “Court” means a tribunal authorized under the law of a state to establish,
4 enforce, or modify a child-custody determination.

5 (7) “Custodial parent” means a parent to whom a court has awarded sole or joint
6 custody of a child.

7 (8) “International abduction” means [unlawfully, unauthorized, wrongfully]
8 taking, keeping, withholding access to, or concealing a child from a lawful custodian [for the
9 purpose of removing the child to another jurisdiction] for the purpose of depriving the lawful
10 custodian with rights of access.

11 (9) “Jurisdiction” means a county, state, tribe or country.

12 (10) “Lawful custody” means the right to provide physical care to and exercise
13 supervision over a child, pursuant to a court order or otherwise.

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

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

19 [(13) “Tribe” means an Indian nation, tribe, or band, or Alaskan Native village,
20 recognized by federal law or formally acknowledged by a state.]

21 **Comment**

22 A biological or legal parent has a natural right to the care and custody of a child. A
23

1 divorce or other legal proceeding may designate that a parent or another person is entitled to legal
2 or physical custody. A parent who has visitation or access rights has the right to physical custody
3 during the visitation periods.
4

5 The definition of a child as a person under age 18 is basically the same as in the Uniform
6 Child Custody Jurisdiction and Enforcement Act and the Parental Kidnapping Prevention Act.
7 State law determines when a child becomes emancipated before age 18 and whether a “disabled”
8 child over the age of 18 would be included.
9

10 The definition of “child-custody determination” tracks both the UCCJEA and PKPA
11 definition and encompasses any judgment, decree or other, regardless of local terminology,
12 including such labels as “managing conservatorship” or “parenting plan.” One of the problems in
13 this area is terminology. Both parents may retain legal custody rights, but only one parent at a
14 time may have the right to physical custody. Therefore, abductions can occur against a parent
15 who has visitation or access rights.
16

17 The definition of “child-custody proceeding” follows the Uniform Child Custody
18 Jurisdiction and Enforcement Act.
19

20 **SECTION 3. CONTENT OF ORDER FOR CUSTODY OF A CHILD.**

21 (a) To facilitate the enforcement of the rights of lawful custodians, any order
22 setting out the custody rights to a child [shall][may] contain all of the following:

- 23 (1) the basis for the court's exercise of jurisdiction;
- 24 (2) the manner in which notice and opportunity to be heard were given to
25 the parent to whom custody was not granted;
- 26 (3) a clear description of the [parenting time, custody, visitation, or access
27 rights] of each parent and the visitation rights of any one else who has been granted visitation;
- 28 (4) a provision stating that a violation of the order may subject the party in
29 violation to civil or criminal penalties, or both[; and]
- 30 [(5) identification of the country of habitual residence of the child or
31 children at the time of the child-custody determination.]

1 (b) The failure to include the provisions specified in subsection (a) does not
2 invalidate a child custody determination or make the order unenforceable.

3 **Comment**
4

5 (1) Because subject matter jurisdiction is determined at the time of institution of the
6 action, every child-custody determination should contain a statement specifying the basis for the
7 court’s exercise of jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement
8 Act or Uniform Child Custody Jurisdiction Act and the Parental Kidnapping Prevention Act, 28
9 U.S.C. 1738A. The more apparent on the face of the document that the court issuing the child-
10 custody determination had proper jurisdiction, the more likely courts in other states and countries
11 are to recognize the child-custody determination as valid. It is useful to include provisions to
12 facilitate use of the Uniform Child Custody Jurisdiction and Enforcement Act and the Hague
13 Convention on the Civil Aspects of International Child Abduction (implemented pursuant to 42
14 U.S.C. § 11601 et seq.).
15

16 (2) Due process requires that notice be given to interested parties. *See* UCCJEA § 205.
17 There should be a statement that parties were properly served and given adequate notice.
18

19 (3) Vague language such as “reasonable visitation” can lead to conflicts between the
20 parents and make it difficult for law enforcement officers to know if someone is violating the
21 order. Parenting time and visitation should be defined as precisely as possible in the court order.
22 The dates and times for each parent’s parenting time should be specified, including holidays and
23 birthdays. Telephone or internet contact provisions should be included.
24

25 (4) Judges need to impress upon both parties the importance of complying with the court
26 order. It is suggested that the order state in bold language: **VIOLATION OF THIS ORDER**
27 **MAY SUBJECT THE PARTY IN VIOLATION TO CIVIL AND/OR CRIMINAL PENALTIES.**
28

29 (5) The requirement that the order identify the country of habitual residence of a child
30 may have little use unless abduction is feared soon after the order is given. The determination of
31 habitual residence under the Hague Convention on the Civil Aspects of International Child
32 Abduction will be made by the court in the country to which the child has been abducted at the
33 time the issue is raised. To determine habitual residence, the court must focus on the child, not
34 the parents, and examine past experience, not future intentions. The determination is fact
35 specific. *See* *Mozes v. Mozes*, 239 F.3d 1067 (9th Cir. 2001); *Friedrich v. Friedrich*, 983 F.2d
36 1396 (6th Cir. 1993). There can be only one habitual residence. *Miller v. Miller*, 240 F.3d 392
37 (4th Cir. 2001).
38

39 **SECTION 4. JURISDICTION.** A request for relief under this [act] may be

1 commenced in any court that has jurisdiction to make a child-custody determination or has
2 jurisdiction over the respondent.

3 **Comment**
4

5 If the court has personal jurisdiction over the respondent, it is clear that the court can
6 impose any restriction, including the posting of a bond and turning in a passport to the court.
7 However, there is a question whether a court with only subject matter jurisdiction under the
8 UCCJEA can take a passport from the respondent. It may be necessary to obtain personal
9 jurisdiction over the respondent if the remedy selected is to force the person to give up
10 documents or post a bond.
11

12 **SECTION 5. PETITION.** An individual who is a lawful custodian of a child may file a
13 motion in a pending case or an independent petition alleging that there is a substantial risk that
14 another individual will abduct the child.

15 **Comment**

16 Usually the petition will be filed by a parent who fears that the other parent or family
17 members are preparing to abduct the child. There may be a question whether a state department
18 of social welfare could file an action under the Child in Need of Care provisions.
19

20 **SECTION 6. HEARING.** For the court to provide relief under this [act], the petitioner
21 must show by a preponderance of the evidence that, based on the factors set forth in Section 8,
22 there is a substantial risk that the respondent will abduct the child who is the subject of the
23 petition. If the court finds a substantial risk of abduction, it shall determine what measures,
24 including those described in Sections 10 and 11, will best protect the child from abduction.

25 **SECTION 7. EMERGENCY EX PARTE RELIEF.** If a petitioner alleges that an
26 emergency exists and abduction is imminent, and there is credible evidence to support the
27 allegation, the court immediately shall issue an ex-parte order granting temporary relief to the

1 extent necessary to prevent the abduction until a hearing can be held.

2 **Comment**

3 This section allows the court issue relief immediately to prevent an abduction. Both
4 UCCJA 3(a)(3)(ii) and UCCJEA 201 recognize that emergencies require prompt judicial action.
5 In both statutes the child must be present in the state for a court to exercise emergency
6 jurisdiction. *See People v. Beach*, 240 Cal. Rptr. 50 (Ct. App. 1987)(finding threatened abduction
7 presents an emergency sufficient for the exercise of jurisdiction under the UCCJA and the
8 issuance of an interim custody order prohibiting the removal of the child from the state). State
9 law determines the time for a full hearing on the merits.
10

11 **SECTION 8. GENERAL ABDUCTION RISK FACTORS.**

12 (a) To determine whether there is substantial risk of the abduction of a child, the
13 court may consider evidence that the respondent:

14 (1) has abducted the child;

15 (2) has threatened to abduct the child;

16 (3) lacks financial reason to stay in the jurisdiction; [including evidence
17 that the respondent is financially independent, or is able to work outside of the jurisdiction, or
18 has quit a job;]

19 (4) has recently engaged in a pattern of conduct that appears to include
20 planning activities that could facilitate removal of the child from the jurisdiction, including:

21 (A) abandonment of employment;

22 (B) relocation activities, such as selling a primary residence or
23 terminating a lease in the jurisdiction;

24 (C) extraordinary financial activities, such as closing bank
25 accounts, liquidating assets, or hiding or destroying documents;

1 (D) applying for a passport, visa, or other travel documents,
2 purchasing airplane or other travel tickets for the respondent or for the child; or seeking to obtain
3 the child's birth certificate or school or medical records;

4 (5) has a history of domestic violence or child abuse;

5 (6) has a history of lack of cooperation with the court or ignoring or
6 violating court orders;

7 (7) has engaged in any other conduct the court considers relevant to the
8 possibility of abduction.

9 (b) In weighing the factors under subsection (a), the court must consider:

10 (1) any evidence that the respondent believed in good faith that the
11 conduct was necessary to avoid imminent harm to the child; and

12 (2) the age and maturity of the child.

13 **Comment**

14
15 The list includes the risk factors found in both the California and Texas statutes. *See*
16 CAL. FAM. CODE § 3408(b)(1); Tex. Fam. Code § 153.502. The risk factors are adapted from a
17 study done by Dr. Janet Johnston and Dr. Linda Girdner which found the risk factors to include
18 parents who have threatened to abduct or abducted previously; are suspicious and distrustful due
19 to a belief abuse occurred; are paranoid-delusional; are sociopathic; have no strong ties to the
20 child's home state but do have strong ties to another country; have engaged in planning activities;
21 have a history of marital instability, domestic violence and lack of parental cooperation; and feel
22 disenfranchised by the system. *See* Janet Johnston & Linda Girdner, *Family Abductors:*
23 *Descriptive Profiles and Preventative Interventions* (U.S. Dep't of Justice, OJJDP 2001).

24
25 (b) One of the problems with the risk factors is that some of the same activities might be
26 undertaken by a victim of domestic violence. *See* Merle H. Weiner, *International Child*
27 *Abduction and the Escape from Domestic Violence*, 69 *FORDHAM L. REV.* 593 (2000); Claire
28 L'Heureaux-Dubé, *Cherishing our Children: The Role of the Hague Convention on the Civil*
29 *Aspects of International Child Abduction*, V *THE JUDGES' NEWSLETTER* 17, 19 (Spring 2003)
30 (stating "The Hague Convention . . . is not sensitive enough to the needs of mothers who abduct
31 their children in order to escape from abusive situations").

1 **SECTION 9. INTERNATIONAL ABDUCTION RISK FACTORS.**

2 (a) If the threat of international abduction is alleged or raised, the court, in
3 addition to the factors set forth in Section 8, shall also consider the following:

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

7 (2) whether the respondent lacks strong ties to the United States,
8 regardless of whether the respondent is a citizen or permanent resident of the United States.

9 (b) In addition to the factors set forth in subsection (a), the court may consider:

10 (1) whether the respondent is undergoing a change in status with the
11 United States [Homeland Security, INS] that would adversely affect the respondent’s ability to
12 remain in the United States legally;

13 (2) whether an application by the respondent for United States citizenship
14 has been denied;

15 (3) whether the respondent has forged or presented misleading or false
16 evidence to obtain a visa, passport, social security card, or other identification card or has made a
17 misrepresentation to the United States government; and

18 (4) whether the foreign country to which the respondent has ties:

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

21 (B) does not have any legal mechanisms for immediately and
22 effectively enforcing an order issued by this state regarding the possession of or access to the

1 child;

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

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

5 (ii) restrict the petitioner from freely traveling to or exiting
6 from the country because of the petitioner's gender, nationality, or religion; or

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

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

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

13 (F) does not have an embassy of the United States in the country;

14 (G) is engaged in active military action or war, including a civil
15 war;

16 (H) is not a party to or compliant with the Hague Convention on
17 the Civil Aspects of International Child Abduction according to the most recent report on
18 compliance issued by the United States Department of State;

19 (I) does not provide for the extradition of a parental abductor and
20 the return of the child to the United States; or

21 (J) poses a risk that the child's physical health or safety would be
22 endangered in the country because of specific circumstances relating to the child or because of

1 human rights violations committed against children, including arranged marriages, lack of
2 freedom of religion, child labor, lack of child abuse laws, female genital mutilation, and any form
3 of slavery.

4 **SECTION 10. GENERAL MEASURES TO PREVENT ABDUCTIONS.**

5 (a) In determining which protective measures to take in the best interests of the
6 child, the court shall consider:

7 (1) the state's policy of providing both parents with meaningful access to
8 their child;

9 (2) the risk of abduction of the child by a parent, family member, or
10 someone acting in concert with a family member based on the court's evaluation of the risk
11 factors;

12 (3) any obstacle to locating, recovering, and returning the child if the child
13 is abducted; and

14 (4) the extent of physical and psychological harm to the child if the child
15 is abducted.

16 (b) After considering the risk factors, if the court finds a substantial risk of
17 abduction, the court may take any or all of the following measures to protect a child from
18 abduction:

19 (1) appoint an attorney for the child;

20 (2) appoint an appropriate person other than the respondent as the [sole]
21 custodian of the child;

22 (3) adjust the existing custodial relationship in such a way as to avoid the

1 risk of abduction;

2 (4) require supervised visitation or parenting time for the respondent by a
3 visitation center or independent organization until the court finds that supervised visitation is no
4 longer necessary;

5 (5) enjoin the respondent or any person acting on the respondent's behalf
6 from:

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

9 (B) approaching the child at any location other than a site
10 designated for supervised visitation;

11 (6) require the respondent to post a bond or provide other security in an
12 amount sufficient to serve as a financial deterrent to abduction, the proceeds of which may be
13 used to offset the cost of recovery of the child in the event there is an abduction;

14 (7) restrict the right of the respondent, petitioner, or other person subject
15 to the proceeding to remove the child from the jurisdiction without permission of the other parent
16 or the court;

17 (8) require the respondent to receive counseling on the harmful effects to
18 the child and the criminal consequences of abduction of a child;

19 (9) require a party who has moved to another state to register the custody
20 order in the other state, if there is a mechanism for registration, as a prerequisite to allowing the
21 child to travel to that state for visits; and

22 (10) authorize the assistance of law enforcement.

1 (c) Nothing in this section affects the applicability of the State’s Penal Code.

2 **Comment**

3 To quell the fear that a parent may use the “risk of abduction” to alienate or deprive the
4 other parent of access as a vindictive move, section (a) sets the framework for the court to
5 consider the least restrictive measures to maximize opportunities for continued parental contact
6 while minimizing the opportunities for abduction. For example, different protective measures
7 may be warranted if the parent is contemplating an abduction to a neighboring state than to a
8 foreign country which has a different culture and legal system which does not recognize the legal
9 rights of women.

10
11 (a)(2) A judge finding that any of the risk factors have been proved by a preponderance
12 of the evidence should not award joint custody. The finding of a risk factor is sufficient to
13 overcome the presumption in favor of joint custody. The American Bar Association Family Law
14 Section adopted a Model Joint Custody statute in August, 1989. The Model Statute Section 1
15 expressly states, “Joint custody is inappropriate in cases in which spouse abuse, child abuse or
16 parental kidnapping is likely to occur.” The Model Statute also requires the court to consider
17 “any history of or potential for child abuse, spouse abuse, or parental kidnapping”and “the
18 geographic proximity of the parents to each other as this relates to the practical considerations of
19 joint physical custody” when determining whether joint custody is in the best interests of the
20 child.

21
22 (a)(4) Children abducted by family members often suffer severe lifelong emotional and
23 psychological damage. Where children are missing for a lengthy period, their lives are different
24 than those missing only a few days. In a 1983 study, 89 percent of sampled children who
25 suffered or were threatened with family abduction showed symptoms of grief and rage toward the
26 left-behind parent, as well as “mental indoctrination” perpetrated by the abductor. D.H. Schetky
27 & L.H. Haller, *Parental Kidnapping*, 22 AM. ACAD. CHILD PSYCHIATRY 279, 284 (1983);
28 GEOFFREY L. GREIF & REBECCA HEGAR, WHEN PARENTS KIDNAP (1993); Rebecca L. Hegar &
29 Geoffrey L. Grief, *Impact on Children of Abduction by a Parent, A Review of the Literature*, 62
30 AM. J. ORTHOPSYCHIATRY 599 (1992).

31
32 Abducted children suffer emotionally and sometimes physically at the hands of abductor -
33 parents. In addition to losing medical care and education, abducted children suffer depression,
34 loss of community, loss of stability, security and trust; excessive fearfulness; loneliness; anger;
35 helplessness; disruption in identify formation; and fear of abandonment. D.S. HUNTINGTON,
36 PARENTAL KIDNAPPING: A NEW FORM OF CHILD ABUSE (1982). PATRICIA M. HOFF,
37 KIDNAPPING: PREVENTION AND REMEDIES (ABA Center for Children and the Law 1997).

38
39 Psychologists have now classified family abduction as child abuse because of the intense
40 secrecy, isolation and separation of the child from their loved ones and long term emotional
41 trauma. POLLY KLAAS FOUNDATION, AMERICA’S HIDDEN CRIME: WHEN THE KIDNAPPER IS KIN

1 8 (MARCH 2004). *See also* J. CHIANCONE, PARENTAL ABDUCTION: A REVIEW OF THE LITERATURE
2 (OJJDP 2002).

3
4 (b) (6) Bonds can be a deterrent. Judges in several states have required parents to post a
5 bond to ensure compliance with court orders. *See* Rayford v. Rayford, 456 So. 2d 833 (Ala. Civ.
6 App. 1984)(\$5000 bond required where father had violated previous order and concealed
7 children for three years).

8
9 (10) Many law enforcement officers are unclear about their role in responding to parental
10 kidnapping cases. A provision in the custody order directing law enforcement officer to
11 “accompany and assist” a parent to recover an abducted child may be useful. One study showed
12 that 70 % of law enforcement agencies reported that they did not have written policies and
13 procedures governing family abduction cases. The United States Supreme Court is hearing a
14 case against a police department in Colorado that failed to enforce a restraining order against the
15 father who ultimately took and killed his three children. *See* Gonzales v. City of Castle Rock,
16 366 F.3d 1093 (10th Cir. 2004). The mother obtained a restraining order against the violent
17 father; the father snatched the children from the street. The mother told police where the children
18 were because the father called from an amusement park. The police failed to act. A few hours
19 later the father was killed in a police shootout and the children were found in the car.
20

21 **SECTION 11. MEASURES TO PREVENT INTERNATIONAL ABDUCTIONS.** If

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

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

25 (A) prohibit the respondent and any person acting on that person's behalf
26 from removing the child from this state or the United States;

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

29 (C) prohibit the respondent from applying on behalf of the child for a new
30 or replacement passport or international travel visa;

31 (2) If the court believes the risk of abduction is minimal and allows the child to

1 travel, the court may require the traveling person to provide the court or the lawful custodian
2 with any of the following:

3 (A) the travel itinerary of the child;

4 (B) copies of round trip airline tickets;

5 (C) a list of addresses and telephone numbers where the child can be
6 reached at all times[; and]

7 [(D) an open airline ticket for the left-behind parent in case the child is
8 not returned.]

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

13 (4) Require the respondent to provide:

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

16 (i) notice in record form of the court-ordered passport and travel
17 restrictions for the child; and

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

20 (B) to the court proof of receipt of the written notice to the United States
21 Department of State's Office of Children's Issues and to the relevant foreign consulate or
22 embassy of passport restrictions.

1 **SECTION 12. RESTRICTIONS NOTED.**

2 (a) If the court imposes any or all of the conditions listed in either Section 10 or
3 11, those conditions must be specifically noted on the [minute order] of the court proceedings.

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

9 **Comment**

10
11 **SECTION 13. UNIFORMITY AND APPLICATION AND CONSTRUCTION.**

12 This [act] shall be applied and construed to effectuate its general purpose to make uniform the
13 law with respect to the subject of [act] among the states enacting it.

14 **SECTION 14. SEVERABILITY CLAUSE.** If any provision of this [act] or is

15 application to any person or circumstance is held invalid, the invalidity does not affect other
16 provisions or applications of this [act] which can be given effect without the invalid provision or
17 application, and to this end the provisions of this [act] are severable.

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