

**MEMO TO: CHILD ABDUCTION PREVENTION DRAFTING COMMITTEE**

**FROM: Linda Elrod, Reporter**

**MATERIALS FOR INTRODUCTORY MEETING OF DRAFTING COMMITTEE FOR  
“INTERNATIONAL ABDUCTION PREVENTION ACT”\***

- 1. Agenda for meeting**
- 2. Federal and uniform laws that deal with child abduction**
- 3. UCCJEA**
- 4. PKPA**
- 5. Hague Convention on Civil Aspects of International Child Abduction**
- 6. International Child Abduction Remedies Act, 42 U.S.C. 11601 et. seq.**
- 7. Bibliography**

**\* Title subject to change at drafting committee’s direction**

## **AGENDA FOR MEETING OF DRAFTING COMMITTEE**

- 1. Introductions - Lyle Hillyard  
NCCUSL Drafting Committee  
Reporter - Linda Elrod  
Advisors**
- 2. Statement of purpose**
- 3. Look at the Problem**  
  
Generally  
Domestic Violence Considerations
- 4. Look at Existing State and Federal Legislation**  
  
**Hague Convention on Civil Aspects of International Child Abduction**  
**Other Federal legislation**  
**State Legislation**  
    **California**  
    **Texas**
- 5. Other resources:**  
**Who else should be invited to meetings?**  
**Who should be asked specifically for comments on drafts?**  
  
    **State Department - Office of Citizen Consular Services**  
    **National Center for Missing and Exploited Children**  
    **Office of Juvenile Justice and Delinquency Prevention**  
    **Patricia Apy**  
    **Prof. Merle Weiner**  
    **Evidence expert ?**
- 6. The future**  
    **Timelines**  
    **Next meeting date**

## **BACKGROUND INFORMATION ON THE PROBLEM:\***

- **An estimated 203,900 children were victims of a family abduction in 1999. Among these, 117,200 were missing from their caretakers, and, of these, an estimated 56,500 were reported to authorities for assistance in locating the children.**
- **Forty-three percent of the children who were victims of family abduction were not considered missing by their caretakers because the caretakers knew the children's whereabouts or were not alarmed by the circumstances.**
- **Forty-four percent of family abducted children were younger than age 6.**
- **Fifty-three percent of family abducted children were abducted by their biological father, and 25 percent were abducted by their biological mother.**
- **Forty-six percent of family abducted children were gone less than 1 week, and 21 percent were gone 1 month or more.**
- **Only 6 percent of children abducted by a family member had not yet returned at the time of the survey interview.**

**This is a summary of the results of a survey done by the National Incidence Studies of Missing, Abducted, and Thrownaway Children (NISMART). The website for the full report is found at:**

**[www.ncjrs.org/html/ojjdp/nismart/02/index.html](http://www.ncjrs.org/html/ojjdp/nismart/02/index.html)**

**UNIFORM STATE AND FEDERAL LAWS ON CUSTODY, PARENTAL CHILD ABDUCTION, AND MISSING CHILDREN**

**UNIFORM CHILD CUSTODY JURISDICTION ACT (UCCJA) (9 ULA at 123)**

**UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT (UCCJEA), 9 ULA 115 (Part I)**

**MISSING CHILDREN ACT (28 U.S.C. 534).** Requires law enforcement to enter complete descriptions of missing children into the National Crime Information Center's (NCIC) Missing Person File, even if the abductor has not been charged with a crime.

**NATIONAL CHILD SEARCH ASSISTANCE ACT (42 U.S.C. 5779 & 5780).** Mandates elimination of waiting periods before law enforcement takes a missing child report, including family abduction cases; Requires immediate entry of information into the NCIC Missing Person file; Requires close liaison with the National Center for Missing and Exploited Children (NCMEC).

**INTERNATIONAL CHILD ABDUCTION REMEDIES ACT (42 U.S.C. 11601 et seq.)** Establishes procedures to implement the Hague Convention. Empowers state and federal courts to hear cases under the Convention and allows the Central Authority access to information in certain American records regarding the location of a child and abducting parent.

**PARENTAL KIDNAPPING PREVENTION ACT (PKPA)(28 U.S.C. 1738A):** Require authorities of every state to enforce and not modify orders made by the state court exercising proper jurisdiction. Authorizes the use of the Unlawful Flight to Avoid Prosecution (UFAP) warrant and the Federal Parent Locator Service (FPLS) in family abductions.

**INTERNATIONAL PARENTAL KIDNAPPING CRIME ACT (IPKCA)(18 U.S.C. 1204):** Makes it a federal felony to remove a child under 16 from the United States, or to retain a child outside the United States with the intent to obstruct the lawful exercise of parental rights.

**FUGITIVE FELON ACT (18 U.S.C. 1073):** Enhances the ability of states to pursue abductors beyond state and national borders; Permits the FBI to investigate cases that would otherwise be under state jurisdiction and authorizes use of UFAP warrants in parental kidnapping cases.

**EXTRADITION TREATIES INTERPRETATION ACT of 1998 (18 U.S.C. 3181):** Authorizes the United States to interpret extradition treaties listing "kidnapping" as encompassing the offense of parental kidnapping.

## **UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT**

### **Section 201. Initial Child-Custody Determination**

- (a) Except as otherwise provided in Section 204, a court of this State has jurisdiction to make an initial child-custody determination only if:**
- (1) this State is the home State of the child on the date of the commencement of the proceeding or was the home State of the child within six months before the date of the commencement of the proceeding and the child is absent from this State but a parent or person acting as parent continues to live in this State;**
  - (2) a court of another State does not have jurisdiction under paragraph (1) or a court of the home State of the child has declined to exercise jurisdiction on the ground that this State is the more appropriate forum under Section 207 or 208, and**
    - (i) the child and the child's parents, or the child and at least one parent or person acting as a parent, have a significant connection with this State, other than mere physical presence, and**
    - (ii) substantial evidence is available in this State concerning the child's care, protection, training, and personal relationships; or**
  - (3) all courts having jurisdiction and having jurisdiction under paragraphs (1) or (2) have declined to exercise jurisdiction on the ground that a court of this State is the more appropriate forum to determine the custody of the child under Section 207; or**
  - (4) no state would have jurisdiction under paragraph (1), (2), or (3).**
- (b) Section 201(a) is the exclusive jurisdictional basis for making a child-custody determination by a court of this State and**
- (A) physical presence of or personal jurisdiction over a party or a child is not a jurisdictional prerequisite for making a child-custody determination, and**
  - (B) physical presence of or personal jurisdiction over a party or a child does not, by itself, confer jurisdiction for making a child-custody determination.**

## **Section 202. Exclusive Continuing Jurisdiction**

- (a) Subject to Section 204, a tribunal of this State which has made a child-custody determination consistent with Section 201 has exclusive continuing jurisdiction over the determination until either:**
  - (1) a tribunal of this State determines that:**
    - (i) this State no longer has jurisdiction under Section 201(a)(1) or (2); or**
    - (ii) another State would be a more convenient forum under the factors of Section 206; or**
  - (2) at the time of the commencement of the proceeding to modify the child-custody determination the child, the parents and all persons acting as parents no longer continue to reside this State.**

## **Section 204. Temporary Emergency Jurisdiction**

- (a) A tribunal of this State that is competent to make a child-custody determination may make a temporary child-custody determination if the child is present in this State and the child has been abandoned or it is necessary in an emergency to protect the child because the child, the child's sibling, or the child's parent is subjected to or threatened with mistreatment or abuse.**
- (b) A tribunal of this State may not make a final child-custody determination under this section. The tribunal shall require the person seeking the order to commence a proceeding in the State having jurisdiction under Section 201 or 202.**
- (c) A temporary determination issued under this section remains in effect for the period of time necessary for person seeking the order to obtain an order from the State having jurisdiction under Section 201 or 202 but no longer than 90 days. The limited duration of the determination must be stated in the order.**

## **Section 301. Duty to Enforce**

- (a) A Tribunal of this State shall recognize and enforce a child-custody determination of a tribunal of another State if the latter tribunal exercised jurisdiction that was in substantial conformity with this [Act] or the determination was made under factual circumstances meeting the jurisdictional standards of this [Act] if the determination has not been modified in accordance with this [Act]. The determination may be enforced in the same manner as a child-custody determination of a tribunal of this State.**

- (b) This [article] applies to proceedings to enforce orders made under the Hague Convention on the Civil Aspects of International Child Abduction and the International Child Abductions Remedies Act, 42 U.S.C. §§11601 et seq.**
- (c) In this [article] 'respondent' means the person against whom an enforcement proceeding has been commenced.**
- (d) This [article] does not confer jurisdiction upon a tribunal of this State to modify a child-custody determination issued by a tribunal of another State. A tribunal of this State may issue a temporary order enforcing a visitation schedule that implements the terms of the original schedule. The order is not effective for more than [90] days. If necessary, the tribunal shall require the petitioner to file for a permanent modification of the visitation schedule in the State having exclusive continuing jurisdiction under Section 202.**

### **Section 303. Limited Immunity of Petitioner**

- (a) Participation by a petitioner in a proceeding to enforce a child-custody determination in this State, whether in person or by an attorney, does not confer personal jurisdiction over the petitioner for purposes of other proceedings.**
- (b) An individual is not amenable to service of process solely by being physically present in this State for the purpose of participating in a proceeding under this [article], but service of process may be made on the individual on a basis other than physical presence in this State.**
- (c) The immunity granted by this section does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this [Act] committed by an individual while present in this State.**

### **Section 304. Simultaneous Proceedings**

**If an enforcement proceeding under this [Article] has been commenced in this State and a tribunal of this State determines that a proceeding to modify the determination has been commenced in another State, the tribunal shall immediately communicate with the tribunal in which the proceeding was commenced. The enforcement proceeding shall continue until it is stayed by a tribunal with jurisdiction to do so under [Article 2].**

### **Section 305. Petition**

- (a) A petition under this [article] must be verified and certified copies of all orders sought to be enforced must be attached to the petition.**

- (b) A petition for enforcement of a child-custody determination must state:**
- (1) whether the tribunal that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction, and, if so, what it was;**
  - (2) whether the determination for which enforcement is sought has been stayed, vacated, or modified by a tribunal having jurisdiction to do so under [Article 2];**
  - (3) whether any proceeding is pending that could affect the current proceeding, including proceedings relating to domestic violence and protective orders;**
  - (4) subject to Section 208(d), the present address of the child and the respondent, if known; and**
  - (5) whether relief in addition to the delivery of the child is sought.**
- (c) The petitioner shall attach to the petition an order to show cause. The order must direct the respondent to appear with the child at a hearing at a specific time within twenty-four hours after the petition is filed and inform the respondent that the tribunal will order the delivery of the child and set a hearing to determine whether further relief is necessary, unless the respondent can demonstrate that:**
- (1) the issuing tribunal did not have jurisdiction under [Article 2];**
  - (2) the child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a State having jurisdiction to do so under [Article 2];**
  - (3) the respondent was entitled to, but did not receive, notice and opportunity to be heard in the proceedings before the tribunal that issued the order for which enforcement is sought.**
- (d) The tribunal may extend or shorten the time requirements of this Section upon a showing of good cause.**

#### **Section 306. Service of the Show Cause Order**

**Subject to Section 308, the petitioner shall serve the show cause order upon respondent and any person who has physical custody of the child by any method authorized [by the law of this State.]**

#### **Section 307. Show Cause Hearing**

- (a) The petitioner's case shall consist of a certified copy of the child-custody determination which entitles the petitioner to the immediate physical custody of the child.**
- (b) Subject to Section 204, the tribunal shall order the child be delivered to the petitioner unless the respondent proves:
  - (1) the issuing tribunal did not have jurisdiction under [Article 2];**
  - (2) the determination has been vacated, modified, or stayed by the issuing tribunal or by a tribunal whose decision must be enforced under [Article 2] or the Parental Kidnaping Prevention Act, 28 U.S.C., Section 1738A.**
  - (3) the respondent was entitled to, but did not receive, notice and opportunity to be heard in the proceedings before the tribunal that issued the order for which enforcement is sought.****
- (c) The tribunal shall award the fees authorized under Section 309 and may set another hearing to determine if additional relief is appropriate.**
- (d) If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the tribunal may draw an adverse inference from the refusal.**
- (e) A privilege against disclosure of communications between spouses does not apply in a proceeding under this [article].**
- (f) The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this [article].**

#### **Section 308. Warrant to take Physical Possession of Child**

- (a) Upon the filing of a petition, the petitioner may file a verified application for the issuance of a warrant to take physical possession of the child if the petitioner reasonably believes the child is likely to suffer immediate physical harm or be removed from this State.**
- (b) If the tribunal, upon the testimony of the petitioner or other witness, finds that the child is likely to suffer serious immediate physical harm or be removed from this State, it may issue a warrant to take physical possession of the child.**
- (c) A warrant to take physical possession of a child must:**

- (1) recite the facts upon which a conclusion of serious immediate physical harm or a removal from the jurisdiction is based;**
  - (2) direct law enforcement officers to take immediate physical possession of the child; and**
  - (3) provide for the placement of the child pending final relief.**
- (d) The respondent must be served with the petition and order to show cause immediately after the child is taken into physical custody. A hearing on the order to show cause must be held within twenty-four hours of service.**
- (e) A warrant to take physical possession of a child is enforceable throughout the State. The tribunal may authorize law enforcement officers to enter private property to take physical custody of the child. In extraordinary cases the tribunal may authorize law enforcement officers to make a forcible entry at any hour.**
- (f) The tribunal may impose conditions upon placement of the child to ensure the appearance of the child and the child's custodian at a hearing on the order to show cause.**

#### **Section 310. Recognition and Enforcement**

**A tribunal of this State shall accord full faith and credit to an order enforcing a child-custody determination made consistently with this [Act] by a tribunal of another State unless the order has been stayed, vacated, or modified by a tribunal authorized to do so under [Article 2].**

#### **Section 311. Appeals**

**An appeal may be taken from a final order in a proceeding under this [article] in accordance with expedited appellate procedures in other civil cases. Subject to the provisions of Section 204, the tribunal may not stay an order enforcing a child-custody determination pending appeal.**

## PARENTAL KIDNAPPING PREVENTION ACT

### 1738A. Full faith and credit given to child custody determinations

- (a) The appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in subsections (f), (g), and (h) of this section, any custody determination or visitation determination made consistently with the provisions of this section by a court of another State.
- (b) As used in this section, the term—
- (1) "child" means a person under the age of eighteen;
  - (2) "contestant" means a person, including a parent or grandparent, who claims a right to custody or visitation of a child;
  - (3) "custody determination" means a judgment, decree, or other order of a court providing for the custody of a child, and includes permanent and temporary orders, and initial orders and modifications;
  - (4) "home State" means the State in which, immediately preceding the time involved, the child lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old, the State in which the child lived from birth with any of such persons. Periods of temporary absence of any of such persons are counted as part of the six-month or other period;
  - (5) "modification" and "modify" refer to a custody or visitation determination which modifies, replaces, supersedes, or otherwise is made subsequent to, a prior custody or visitation determination concerning the same child, whether made by the same court or not;
  - (6) "person acting as a parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody;
  - (7) "physical custody" means actual possession and control of a child;
  - (8) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States; and
  - (9) "visitation determination" means a judgment, decree, or other order of a court providing for the visitation of a child and includes permanent and temporary orders and initial orders and modifications.
- (c) A child custody or visitation determination made by a court of a State is consistent with the provisions of this section only if--
- (1) such court has jurisdiction under the law of such State; and
  - (2) one of the following conditions is met:
    - (A) such State (i) is the home State of the child on the date of the commencement of the proceeding, or (ii) had been the child's home State within six months before the date of the commencement of the proceeding and the child is absent from such

State because of his removal or retention by a contestant or for other reasons, and contestant continues to live in such State;

(B) (i) it appears that no other State would have jurisdiction under subparagraph (A), and (ii) it is in the best interest of the child that a court of such State assume jurisdiction because (I) the child and his parents, or the child and at least one contestant, have a significant connection with such State other than mere physical presence in such State, and (II) there is available in such State substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

(C) the child is physically present in such State and (i) the child has been abandoned, or (ii) it is necessary in an emergency to protect the child because the child, a sibling, or parent of the child has been subjected to or threatened with mistreatment or abuse;

(D) (i) it appears that no other State would have jurisdiction under subparagraph (A), (B), (C), or (E), or another State has declined to exercise jurisdiction on the ground that the State whose jurisdiction is in issue is the more appropriate forum to determine the custody or visitation of the child, and (ii) it is in the best interest of the child that such court assume jurisdiction; or

(E) the court has continuing jurisdiction pursuant to subsection (d) of this section.

- (d) The jurisdiction of a court of a State which has made a child custody or visitation determination consistently with the provisions of this section continues as long as the requirement of subsection (c)(1) of this section continues to be met and such State remains the residence of the child or of any contestant.
- (e) Before a child custody or visitation determination is made, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated and any person who has physical custody of a child.
- (f) A court of a State may modify a determination of the custody of the same child made by a court of another State, if--
  - (1) it has jurisdiction to make such a child custody determination; and
  - (2) the court of the other State no longer has jurisdiction, or it has declined to exercise such jurisdiction to modify such determination.
- (g) A court of a State shall not exercise jurisdiction in any proceeding for a custody or visitation determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody or visitation determination.
- (h) A court of a State may not modify a visitation determination made by a court of another State unless the court of the other State no longer has jurisdiction to modify such determination or has declined to exercise jurisdiction to modify such determination.



# HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

(Concluded October 25, 1980)

The States signatory to the present Convention,  
Firmly convinced that the interests of children are of paramount importance in matters relating to their custody,  
Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access,  
Have resolved to conclude a Convention to this effect, and have agreed upon the following provisions –

## CHAPTER I – SCOPE OF THE CONVENTION

### *Article 1*

The objects of the present Convention are –

- a)* to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and
- b)* to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

### *Article 2*

Contracting States shall take all appropriate measures to secure within their territories the implementation of the objects of the Convention. For this purpose they shall use the most expeditious procedures available.

### *Article 3*

The removal or the retention of a child is to be considered wrongful where –

- a)* it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and
- b)* at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph *a)* above, may arise in particular by

operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

*Article 4*

The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years.

*Article 5*

For the purposes of this Convention –

- a) "rights of custody" shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence;
- b) "rights of access" shall include the right to take a child for a limited period of time to a place other than the child's habitual residence.

**CHAPTER II – CENTRAL AUTHORITIES**

*Article 6*

A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.

Federal States, States with more than one system of law or States having autonomous territorial organizations shall be free to appoint more than one Central Authority and to specify the territorial extent of their powers. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which applications may be addressed for transmission to the appropriate Central Authority within that State.

*Article 7*

Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective State to secure the prompt return of children and to achieve the other objects of this Convention. In particular, either directly or through any intermediary, they shall take all appropriate measures –

- a) to discover the whereabouts of a child who has been wrongfully removed or retained;
- b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;
- c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues;
- d) to exchange, where desirable, information relating to the social background of the child;
- e) to provide information of a general character as to the law of their State in connection

with the application of the Convention;

- f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organizing or securing the effective exercise of rights of access;**
- g) where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;**
- h) to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;**
- i) to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.**

### **CHAPTER III – RETURN OF CHILDREN**

#### *Article 8*

**Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child.**

**The application shall contain –**

- a) information concerning the identity of the applicant, of the child and of the person alleged to have removed or retained the child;**
- b) where available, the date of birth of the child;**
- c) the grounds on which the applicant's claim for return of the child is based;**
- d) all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.**

**The application may be accompanied or supplemented by –**

- e) an authenticated copy of any relevant decision or agreement;**
- f) a certificate or an affidavit emanating from a Central Authority, or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State;**
- g) any other relevant document.**

#### *Article 9*

**If the Central Authority which receives an application referred to in Article 8 has reason to believe that the child is in another Contracting State, it shall directly and without delay transmit the application to the Central Authority of that Contracting State and inform the requesting Central Authority, or the applicant, as the case may be.**

#### *Article 10*

**The Central Authority of the State where the child is shall take or cause to be taken all appropriate measures in order to obtain the voluntary return of the child.**

*Article 11*

**The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children. If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay. If a reply is received by the Central Authority of the requested State, that Authority shall transmit the reply to the Central Authority of the requesting State, or to the applicant, as the case may be.**

*Article 12*

**Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.**

**The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.**

**Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.**

*Article 13*

**Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that –**

- a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or**
- b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.**

**The judicial or administrative authority may also refuse to order the return of the child if it**

**finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.**

**In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.**

*Article 14*

**In ascertaining whether there has been a wrongful removal or retention within the meaning of Article 3, the judicial or administrative authorities of the requested State may take notice directly of the law of, and of judicial or administrative decisions, formally recognized or not in the State of the habitual residence of the child, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable.**

*Article 15*

**The judicial or administrative authorities of a Contracting State may, prior to the making of an order for the return of the child, request that the applicant obtain from the authorities of the State of the habitual residence of the child a decision or other determination that the removal or retention was wrongful within the meaning of Article 3 of the Convention, where such a decision or determination may be obtained in that State. The Central Authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination.**

*Article 16*

**After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice.**

*Article 17*

**The sole fact that a decision relating to custody has been given in or is entitled to recognition in the requested State shall not be a ground for refusing to return a child under this Convention, but the judicial or administrative authorities of the requested State may take account of the reasons for that decision in applying this Convention.**

*Article 18*

**The provisions of this Chapter do not limit the power of a judicial or administrative authority to order the return of the child at any time.**

*Article 19*

**A decision under this Convention concerning the return of the child shall not be taken to be a determination on the merits of any custody issue.**

*Article 20*

**The return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.**

**CHAPTER IV – RIGHTS OF ACCESS**

*Article 21*

**An application to make arrangements for organizing or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child.**

**The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfilment of any conditions to which the exercise of those rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights.**

**The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organizing or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.**

*Article 22*

**No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the judicial or administrative proceedings falling within the scope of this Convention.**

## State Legislation

### CALIFORNIA STATUTE ON PREVENTING ABDUCTION

#### Chapter 2. Matters to Be Considered in Granting Custody

**CAL. FAM. CODE § 3048. Required contents for custody or visitation orders; risk of child abduction; risk factors and preventative measures; notation of preventative conditions on minute order of court proceedings; Child Abduction Unit; child custody order forms**

**(a) Notwithstanding any other provision of law, in any proceeding to determine child custody or visitation with a child, every custody or visitation order shall contain all of the following:**

- (1) The basis for the court's exercise of jurisdiction.**
  - (2) The manner in which notice and opportunity to be heard were given.**
  - (3) A clear description of the custody and visitation rights of each party.**
  - (4) A provision stating that a violation of the order may subject the party in violation to civil or criminal penalties, or both.**
  - (5) Identification of the country of habitual residence of the child or children.**
- (b) (1) In cases in which the court becomes aware of facts which may indicate that there is a risk of abduction of a child, the court shall, either on its own motion or at the request of a party, determine whether measures are needed to prevent the abduction of the child by one parent. To make that determination, the court shall consider the risk of abduction of the child, obstacles to location, recovery, and return if the child is abducted, and potential harm to the child if he or she is abducted. To determine whether there is a risk of abduction, the court shall consider the following factors:**
- (A) Whether a party has previously taken, enticed away, kept, withheld, or concealed a child in violation of the right of custody or of visitation of a person.**
  - (B) Whether a party has previously threatened to take, entice away, keep, withhold, or conceal a child in violation of the right of custody or of visitation of a person.**
  - (C) Whether a party lacks strong ties to this state.**
  - (D) Whether a party has strong familial, emotional, or cultural ties to another state or country, including foreign citizenship. This factor shall be considered only if evidence exists in support of another factor specified in this section.**
  - (E) Whether a party has no financial reason to stay in this state, including whether the party is unemployed, is able to work anywhere, or is financially independent.**
  - (F) Whether a party has engaged in planning activities that would facilitate the removal of a child from the state, including quitting a job, selling his or her primary residence, terminating a lease, closing a bank account,**

liquidating other assets, hiding or destroying documents, applying for a passport, applying to obtain a birth certificate or school or medical records, or purchasing airplane or other travel tickets, with consideration given to whether a party is carrying out a safety plan to flee from domestic violence.

(G) Whether a party has a history of a lack of parental cooperation or child abuse, or there is substantiated evidence that a party has perpetrated domestic violence.

(H) Whether a party has a criminal record.

(2) If the court makes a finding that there is a need for preventative measures after considering the factors listed in paragraph (1), the court shall consider taking one or more of the following measures to prevent the abduction of the child:

(A) Ordering supervised visitation.

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

(C) Restricting the right of the custodial or noncustodial parent to remove the child from the county, the state, or the country.

(D) Restricting the right of the custodial parent to relocate with the child, unless the custodial parent provides advance notice to, and obtains the written agreement of, the noncustodial parent, or obtains the approval of the court, before relocating with the child.

(E) Requiring the surrender of passports and other travel documents.

(F) Prohibiting a parent from applying for a new or replacement passport for the child.

(G) Requiring a parent to notify a relevant foreign consulate or embassy of passport restrictions and to provide the court with proof of that notification.

(H) Requiring a party to register a California order in another state as a prerequisite to allowing a child to travel to that state for visits, or to obtain an order from another country containing terms identical to the custody and visitation order issued in the United States (recognizing that these orders may be modified or enforced pursuant to the laws of the other country), as a prerequisite to allowing a child to travel to that county for visits.

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

(i) The travel itinerary of the child.

(ii) Copies of round trip airline tickets.

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

(iv) An open airline ticket for the left-behind parent in case the child is not returned.

(J) Including provisions in the custody order to facilitate use of the Uniform Child Custody Jurisdiction and Enforcement Act (Part 3 (commencing with

**Section 3400)) and the Hague Convention on the Civil Aspects of International Child Abduction (implemented pursuant to 42 U.S.C. Sec. 11601 et seq.), such as identifying California as the home state of the child or otherwise defining the basis for the California court's exercise of jurisdiction under Part 3 (commencing with Section 3400), identifying the United States as the country of habitual residence of the child pursuant to the Hague Convention, defining custody rights pursuant to the Hague Convention, obtaining the express agreement of the parents that the United States is the country of habitual residence of the child, or that California or the United States is the most appropriate forum for addressing custody and visitation orders.**

**(K) Authorizing the assistance of law enforcement.**

**(3) If the court imposes any or all of the conditions listed in paragraph (2), those conditions shall be specifically noted on the minute order of the court proceedings.**

**(4) If the court determines there is a risk of abduction that is sufficient to warrant the application of one or more of the prevention measures authorized by this section, the court shall inform the parties of the telephone number and address of the Child Abduction Unit in the office of the district attorney in the county where the custody or visitation order is being entered.**

**(c) The Judicial Council shall make the changes to its child custody order forms that are necessary for the implementation of subdivision (b). This subdivision shall become operative on July 1, 2003.**

**(d) Nothing in this section affects the applicability of Section 278.7 of the Penal Code.**

**"This act shall be known and may be cited as the Synclair-Cannon Child Abduction Prevention Act of 2002."**

**TEXAS STATUTE ON PREVENTION OF CHILD ABDUCTION**

**SUBCHAPTER I. PREVENTION OF INTERNATIONAL PARENTAL CHILD ABDUCTION**

**Sec. 153.501. NECESSITY OF MEASURES TO PREVENT INTERNATIONAL PARENTAL CHILD ABDUCTION.**

- (a) In a suit, if credible evidence is presented to the court indicating a potential risk of the international abduction of a child by a parent of the child, the court, on its own motion or at the request of a party to the suit, shall determine under this section whether it is necessary for the court to take one or more of the measures described by Section 153.503 to protect the child from the risk of abduction by the parent.
- (b) In determining whether to take any of the measures described by Section 153.503, the court shall consider:
- (1) the public policies of this state described by Section 153.001(a) and the consideration of the best interest of the child under Section 153.002;
  - (2) the risk of international abduction of the child by a parent of the child based on the court's evaluation of the risk factors described by Section 153.502;
  - (3) any obstacles to locating, recovering, and returning the child if the child is abducted to a foreign country; and
  - (4) the potential physical or psychological harm to the child if the child is abducted to a foreign country.

**Sec. 153.502. ABDUCTION RISK FACTORS.**

- (a) To determine whether there is a risk of the international abduction of a child by a parent of the child, the court shall consider evidence that the parent:
- (1) has taken, enticed away, kept, withheld, or concealed a child in violation of another person's right of possession of or access to the child, unless the parent presents evidence that the parent believed in good faith that the parent's conduct was necessary to avoid imminent harm to the child;
  - (2) has previously threatened to take, entice away, keep, withhold, or conceal a child in violation of another person's right of possession of or access to the child;
  - (3) lacks financial reason to stay in the United States, including evidence that the parent is financially independent, is able to work outside of the United States, or is unemployed;
  - (4) has recently engaged in planning activities that could facilitate the removal of the child from the United States by the parent, including:
    - (A) quitting a job;
    - (B) selling a primary residence;
    - (C) terminating a lease;

- (D) closing bank accounts;**
- (E) liquidating other assets;**
- (F) hiding or destroying documents;**
- (G) applying for a passport or visa for the parent or the child; or**
- (H) applying to obtain the child's birth certificate or school or medical records;**
- (5) has a history of domestic violence that the court is required to consider under Section 153.004; or**
- (6) has a criminal history or a history of violating court orders.**

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

- (1) whether the parent has strong familial, emotional, or cultural ties to another country, particularly a country that is not a signatory to or compliant with the Hague Convention on the Civil Aspects of International Child Abduction; and**
- (2) whether the parent lacks strong ties to the United States, regardless of whether the parent is a citizen or permanent resident of the United States.**

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

- (1) whether the parent is undergoing a change in status with the United States Immigration and Naturalization Service that would adversely affect that parent's ability to legally remain in the United States;**
- (2) whether the parent's application for United States citizenship has been denied by the United States Immigration and Naturalization Service;**
- (3) whether the parent has forged or presented misleading or false evidence to obtain a visa, a passport, a social security card, or any other identification card or has made any misrepresentation to the United States government; or**
- (4) whether the foreign country to which the parent has ties:**
  - (A) presents obstacles to the recovery and return of a child who is abducted to the country from the United States;**
  - (B) has any legal mechanisms for immediately and effectively enforcing an order regarding the possession of or access to the child issued by this state;**
  - (C) has local laws or practices that would:**
    - (i) enable the parent to prevent the child's other parent from contacting the child without due cause;**
    - (ii) restrict the child's other parent from freely traveling to or**

exiting from the country because of that parent's gender, nationality, or religion; or

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

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

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

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

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

war;

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

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

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

#### **Sec. 153.503. ABDUCTION PREVENTION MEASURES.**

If the court finds that it is necessary under Section 153.501 to take measures to protect a child from international abduction by a parent of the child, the court may take any of the following actions:

(1) appoint a person other than the parent of the child who presents a risk of abducting the child as the sole managing conservator of the child;

(2) require supervised visitation of the parent by a visitation center or independent organization until the court finds under Section 153.501 that supervised visitation is no longer necessary;

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

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

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

(4) order passport and travel controls, including controls that:

- (A) prohibit the parent and any person acting on the parent's behalf from removing the child from this state or the United States;
  - (B) require the parent to surrender any passport issued in the child's name, including any passport issued in the name of both the parent and the child; and
  - (C) prohibit the parent from applying on behalf of the child for a new or replacement passport or international travel visa;
- (5) require the parent to provide:
  - (A) to the United States Department of State's Office of Children's Issues and the relevant foreign consulate or embassy:
    - (i) written notice of the court-ordered passport and travel restrictions for the child; and
    - (ii) a properly authenticated copy of the court order detailing the restrictions and documentation of the parent's agreement to the restrictions; and
  - (B) to the court proof of receipt of the written notice required by Paragraph (A)(i) by the United States Department of State's Office of Children's Issues and the relevant foreign consulate or embassy;
- (6) order the parent to execute a bond or deposit security in an amount sufficient to offset the cost of recovering the child if the child is abducted by the parent to a foreign country;
- (7) authorize the appropriate law enforcement agencies to take measures to prevent the abduction of the child by the parent; or
- (8) include in the court's order provisions:
  - (A) identifying the United States as the country of habitual residence of the child;
  - (B) defining the basis for the court's exercise of jurisdiction; and
  - (C) stating that a party's violation of the order may subject the party to a civil penalty or criminal penalty or to both civil and criminal penalties.

## BIBLIOGRAPHY

Patricia Apy, *Managing Child Custody Cases Involving Non-Hague Contracting Countries*, 14 JAAML 77 (1997).

Carol Bruch, *International Family Law as the Century Turns*, 33 FAM. L. Q. 607 (1999).

J. Chiancone, *Parental Abduction: A Review of the Literature*, OJJDP Juvenile Justice Bulletin,

<http://www.ncjrs.org/pdffiles1/ojjdp/190074.pdf>

J. Chiancone, *Issues in Resolving Case of International Child Abduction by Parents*, OJDP Juvenile Justice Bulletin, December 2001

<http://www.ncjrs.org/pdffiles1/ojjdp/190105.pdf>

GLORIA DEHART, *INTERNATIONAL CHILD ABDUCTIONS: A GUIDE TO APPLYING THE HAGUE CONVENTION, WITH FORMS* (2<sup>nd</sup> ed. ABA 1993).

Marilyn Freeman, *The Effects and Consequences of International Child Abduction*, 32 FAM. L. Q. 603 (1998).

Grasso, K, et al., *The Criminal Justice System's Response to Parental Abduction*, OJDP Juvenile Justice Bulletin, December 2001 <http://www.ncjrs.org/pdffiles1/ojjdp/186160.pdf>

Rebecca L. Hegar & Geoffrey L. Grief, *Impact on Children of Abduction by a Parent: A Review of the Literature*, 62(4) AM. J. ORTHOPSYCHIATRY 599 (1992).

Rebecca L. Hegar & Geoffrey L. Grief, *International Paental Abduction and Its Implications for SocialWork Practice; Great Britain to the United States*, 3 CHILDREN & SOCIETY 269 (1993).

Patricia Hoff, *Family Abduction: Prevention and Response* (5<sup>th</sup> Ed., OJJDP, 2002).

Janet Johnston, et al., *Early Identification of Risk Factors for Parental Abduction*, OJJDP Juvenile Justice Bulletin, March 2001

<http://www.ncjrs.org/pdffiles1/ojjdp/185026.pdf>

Janet Johnston & Linda K. Girdner, *Early Identification of Parents at Risk for Custody Violations and Prevention of Child Abductions* 36 FAM. & CONCILIATION CTS. REV. 392 (1998).

J. McMillan, *Getting them Back: The Disappointing Reality of Return Orders Under the Hague*

*Convention on the Civil Aspects of International Child Abduction*, 14 JAAML 99 (1997).

Philip Schwartz, *Advance Tips on Preventing a Child from Being Abducted Abroad in 101+ PRACTICAL SOLUTIONS FOR THE FAMILY LAWYER* 127 (Gregg Herman, ed. 2002).

Linda Silberman, *Hague Convention on International Child Abduction: A Brief Overview and Case Law Analysis*, 28 FAM. L. Q. 9 (1994).

Merle H. Weiner, *International Child Abduction and the Escape from Domestic Violence*, 69 FORDHAM L. REV. 593 (2000).

U.S. Department of State, Bureau Of Consular Services, *Fact Sheet on Passports for Family Law*

*Judges and Lawyers*, <<http://travel.state.gov/pptfacetsheet.html>>

U.S. Department of State, Bureau Of Consular Services, *Children's Passport Issuance Alert Program Brochure*, <[http://travel.state.gov/pia\\_program.html](http://travel.state.gov/pia_program.html)>

*See also* International Child Abduction, <http://travel.state.gov/int'lchildabduction.html>

**BONDS:**

**Accredited Insurance, Child Custody Bonds**, <<http://www.accredited-inc.com/childbonds.html>>