

D R A F T

FOR DISCUSSION ONLY

UNIFORM CHILD ABDUCTION PREVENTION ACT

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM LAWS

For November 2005 Drafting Committee Meeting

WITH PREFATORY NOTE AND COMMENTS

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM LAWS

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UNIFORM CHILD ABDUCTION PREVENTION ACT

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UNIFORM CHILD ABDUCTION PREVENTION ACT

Prefatory Note

In August, 2003, the National Conference of Commissioners on Uniform State Laws (NCCUSL) 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 per cent) were abducted by a family member. 1773 family abductions occur for every stranger abduction. Of the total number of abductions, approximately 1000 are international. *See* Second National Incidence Studies of Missing, Abducted, Runaway, and Thrownaway Children (NISMART-2) (Oct. 2002).

All states have laws to determine which state has jurisdiction to hear a child custody case. The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), 9 U.L.A. Part I 657 (1999), enacted in 44 states, places custody jurisdiction with the state in which the child has lived in the six months preceding the filing of the petition. The Parental Kidnapping Prevention Act of 1980 (PKPA), 28 U.S.C. § 1738A requires states to give full faith and credit to custody determinations made in conformity with the PKPA standards which are similar to the UCCJEA.

There are also laws which facilitate the return of an abducted child to the child's habitual residence. *See* The Hague Convention on the Civil Aspects of International Child Abduction, 51 Fed. Reg. 10494 et seq. (1986) and the International Child Abduction Remedies Act (ICARA), 42 U.S.C. §§ 11601-11610. There are also federal laws to help locate missing children: Missing Children Act, 28 U.S.C. § 534 (1982); Missing Children Search Assistance Act; and the National Child Search Assistance Act, 42 U.S.C. §§ 5779 & 5780 (1990).

Federal and state laws also make parental kidnapping a crime. *See* International Parental Kidnapping Crime Act (IPKCA), 18 U.S.C. § 1204; The Fugitive Felon Act, 18 U.S.C. § 1073; The Extradition Treaties Interpretation Act of 1998, 18 U.S.C. § 3181; and The Alien Exclusion Act, 8 U.S.C. § (a)(9)(C)(I). Currently, almost every state criminally forbids custodial interference by parents or relatives of the child. States differ as to whether a custody order must exist in order for such criminal laws to apply. The elements of the offenses and the punishments vary from state to state with little uniformity. In addition to criminal actions, there are tort actions for custodial interference after abduction and courts may find an abductor in contempt.

Many abductions occur before the court has entered an order or decree concerning the custody of the child. Current state and federal laws are inadequate to protect children before entry

of a court order or decree of custody. Families going through custody disputes and divorce proceedings are the highest risk group for potential abductions. AMERICA'S HIDDEN CRIME: WHEN THE KIDNAPPER IS KIN 10-11 (Polly Klaas Foundation 2004). In addition, many existing custody orders or decrees do not contain sufficient provisions to prevent an abduction because the orders are too vague or no restrictions are in place. There is a need to provide judges with information about abduction risk factors so that they can place appropriate restrictions to prevent abductions either pre or post decree. Dealing appropriately with the risk factors at the time of a custody dispute or family law proceeding may be the best way to protect children from abduction.

Two states have directly tackled the issue of preventing child abduction by enacting specific abduction statutes. *See* TEX. FAM. CODE §153.501- §153.503(risk factors for international abduction); CAL. FAM. CODE § 3408 (covering both international and domestic abduction). Both were passed with little opposition and set a framework to alert courts to the potential risks of, and means of preventing, child abduction. A few other states list abduction risk factors. FLA. STAT. § 61.45; OR. REV. STAT. § 109.035.

This Act will fill the void in the majority of states by identifying families at risk for abduction and providing methods to prevent the abduction of children. The goal is to prevent abduction by either parent or anyone acting in concert with them.

The initial mandate to the drafting 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 Foundation; Lawrence R. Whyte, parent, Houston, Texas.

The first meeting was held on April 9-11, 2004. The drafting committee asked to expand the scope of the Act to include domestic as well as international abductions because all abductions start as domestic abductions. International abductions comprise only a small fraction of the total abductions. The second meeting of the drafting committee was September 10-12, 2004, in Chicago; the third meeting was held April 8-10, 2005.

1 **UNIFORM CHILD ABDUCTION PREVENTION ACT**

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

5 **Comment**

6
7 The purpose of this Act is to deter child abductions by parents, other family members, or
8 persons acting on behalf of the parent of family member, both within and outside of the United
9 States through identification of risk factors and imposition of preventive measures. The Act is
10 civil law. It is designed to ensure that courts are aware of and use as many preventive measures
11 as may be necessary to prevent the abduction of a child by parents or other family members.
12

13 This Act complements other existing legislation aimed at protecting children from
14 abduction. All states specify the jurisdictional requirements for making and enforcing a child
15 custody determination. The Uniform Child Custody Jurisdiction and Enforcement Act, 9 U.L.A.
16 Part I 657 (1999), enacted in forty-four states, and the Uniform Child Custody Jurisdiction Act, 9
17 U.L.A. Part I 115 (1988) require that the child have a sufficient relationship to the state issuing
18 the initial decree. The Parental Kidnapping Prevention Act of 1980 (“PKPA”), 28 U.S.C. §
19 1738A, requires that states give full faith and credit to sister state decrees made in accordance
20 with the principles of the PKPA, in an effort to avoid shopping for a friendly forum. If there is
21 an abduction, the Hague Convention on the Civil Aspects of Parental Child Abduction helps
22 return a child to the place of the child’s habitual residence.
23

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

25 (1) “Abduction” means the taking, keeping, or concealing of a child by a parent,
26 other family member, or person acting on behalf of the parent or family member which prevents
27 another person or entity from exercising lawful custody.

28 (2) “Access” includes custody, visitation, parenting time.

29 (3) “Child” means an unemancipated individual under 18 years of age.

30 (4) “Child-custody order” means an order of a court providing for the legal or
31 physical custody of, parenting time of, or visitation with a child. The term includes a permanent,

1 temporary, or initial order, and modification of an order.

2 (5) “Child-custody proceeding” means a proceeding in which legal or physical
3 custody of, parenting time, or visitation with a child is an issue. The term includes a proceeding
4 for divorce, dissolution of marriage, separation, neglect, abuse, dependency, guardianship,
5 paternity, termination of parental rights, and protection from domestic violence.

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

8 (7) “Family member” means a person defined under state law as having a legally
9 recognized relationship with the child.

10 (8) “International abduction” means abduction beyond the territorial limits of the
11 United States.

12 (9) “Jurisdiction” means, depending on the context, either

13 (a) a county, state, tribe or country, or

14 (b) the authority of a court to hear a case.

15 (10) “Lawful custody” means the right to provide physical care to and exercise
16 supervision over a child either by status or court order.

17 (11) “Order” includes a judgment or decree of a court.

18 (12) “Parenting time” means the residential and nonresidential time allocated by
19 court order or decree to each parent.

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

22 (14) “State” means a state of the United States, the District of Columbia, Puerto

1 Rico, the United States Virgin Islands, or any territory or insular possession subject to the
2 jurisdiction of the United States.

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

5 **Comment**

6
7 Lawful rights to custody of a child can arise by operation of law, court order, or by legally
8 binding agreement of the parties. A biological or legal parent has a natural right to the care and
9 custody of a child. A divorce or other legal proceeding may designate that a parent or another
10 person is entitled to legal or physical custody. If a child is removed from the care of the parents, a
11 state entity, such as a social welfare agency, may have lawful custody.
12

13 The definition of a child as a person under age 18 is basically the same as in the Uniform
14 Child Custody Jurisdiction and Enforcement Act and the Parental Kidnapping Prevention Act.
15 State law determines when a child becomes emancipated before age 18. The risk of abduction
16 may also impact a disabled adult who requires the appointment of an adult guardian, whose
17 rights resemble those of the lawful custodian of an unemancipated minor. This Act is limited to
18 abduction of minors.
19

20 The definition of “child-custody order” tracks both the UCCJEA Section 102(3)
21 definition of child-custody determination. Local terminology may use labels such as “custody,”
22 “visitation,” “managing conservatorship” or “parenting plan.” A child custody order
23 encompasses any judgment, decree or order.
24

25 “Lawful custody” means the right to physical custody. Both parents may retain legal
26 custody rights, but only one parent at a time may have the right to physical custody. Therefore,
27 abductions can occur against a parent who has parenting time, visitation or access rights.
28

29 The definition of “child-custody proceeding” follows the UCCJEA Section 102(4).
30

31 **SECTION 3. SCOPE.** This [act] does not enlarge or diminish the rights of persons to
32 bring an action on behalf of a child in this state.

33 **[add prevention language]**
34

1 **SECTION 4. CONTENT OF ORDER FOR CUSTODY OF A CHILD.**

2 (a) The court shall include all of the following in a child-custody order:

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

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

6 (3) a clear description of the parenting time, custody, visitation, or access
7 rights of each parent and of anyone else who has been granted rights of access; [and]

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

10 [(5) identification of the habitual residence of the child at the time of the
11 issuance of the order.]

12 (b) Failure to include the provisions specified in subsection (a) does not
13 invalidate a child-custody order or make the order unenforceable.

14 **Comment**

15
16 This section tracks California law on ensuring that child custody orders are clear, specific
17 and enforceable on its face nationally and internationally. Because subject matter jurisdiction is
18 determined at the time of institution of the action, every child-custody order should contain a
19 statement specifying the basis for the court’s exercise of jurisdiction. The Uniform Child
20 Custody Jurisdiction and Enforcement Act and the Parental Kidnapping Prevention Act, 28
21 U.S.C. § 1738A prefer home state jurisdiction for the initial determination of custody. Therefore,
22 a custody order made by a court in the child’s home state is the most likely to be enforced. If the
23 child has a home state, a custody order based on significant connection jurisdiction may not be
24 enforceable. If a child is abducted, the left behind party can bring an action within six months to
25 retain the home state status. The decree state which had initial jurisdiction properly retains
26 continuing exclusive jurisdiction unless all parties have left the state, there is no basis under state
27 law for jurisdiction, or the state declines to exercise its continuing jurisdiction. The more
28 apparent on the face of the document that the court issuing the order had proper jurisdiction, the
29 more likely courts in other states and countries are to recognize it as valid. The UCCJEA
30 includes foreign countries in the definition of states.

1 (2) Due process requires that notice be given to interested parties. The UCCJEA also
2 requires notice to interested parties for a child custody order. *See* UCCJEA § 205. A statement
3 showing that the parties were properly served and given adequate notice makes it apparent on the
4 face of the order that due process was met. States do not require personal jurisdiction over both
5 parents to make a child-custody order under the UCCJEA.
6

7 (3) Vague orders are difficult to enforce without additional litigation. Parenting time and
8 visitation should be defined as precisely as possible. The dates and times for each parent’s
9 parenting time should be specified, including holidays, birthdays, telephone or internet contact.
10 Vague language such as “reasonable visitation” can lead to conflicts between the parents and
11 make it difficult for law enforcement officers to know if the order is being violated.
12

13 (4) Judges need to impress upon both parties the importance of complying with the court
14 order. The order can state in bold language: **VIOLATION OF THIS ORDER MAY SUBJECT**
15 **THE PARTY IN VIOLATION TO CIVIL AND CRIMINAL PENALTIES.**
16

17 (5) Because every case may be a potential international case, the order should identify the
18 country of habitual residence of a child at the time the order was made. Although the
19 determination of habitual residence under the Hague Convention on the Civil Aspects of
20 International Child Abduction will be made by the court in the country to which the child has
21 been abducted, a statement in the order may assist in the determination of the child’s state of
22 habitual residence.
23

24 **SECTION 5. MOTION OR PETITION.**

25 (a) The court that has jurisdiction is either one that has jurisdiction under the
26 Uniform Child Custody Jurisdiction and Enforcement Act to make a child custody order or has
27 personal jurisdiction over the respondent.

28 (b) A person or entity with lawful custody may file a motion in a pending case or
29 an independent [petition] for protection from abduction alleging that there is a substantial risk of
30 abduction of the child. The motion or [petition] must be verified and specify:

31 (1) name, birthdate, and gender of child at risk for abduction;

32 (2) the present physical address of the child, if known;

33 (3) the risk factors for abduction as described in section 8;

- 1 (4) a copy of any existing order, if available;
- 2 (5) whether a prior motion or [petition] to prevent abductions, domestic
- 3 violence, or to change custody has been filed by either parent; and
- 4 (6) the disposition of the motion or [petition]; and
- 5 (7) any other factors relevant to the risk of abduction of the child, other
- 6 than those listed in Section 8.

7 **Comment**

8 A court needs subject matter jurisdiction over the child under the UCCJEA to make a
9 custody order. A court, however, must have personal jurisdiction over the respondent to impose a
10 personal obligation or restriction, such as the posting of a bond or turning in a passport to the
11 court.

12
13 If a victim of domestic violence flees to another state and seeks to file for a child custody
14 determination, the relief available depends upon state law. Domestic violence can be considered
15 as a factor in one state being an inconvenient forum. UCCJEA § 207(b)(1). A court may decline
16 jurisdiction if the person seeking relief is guilty of “unjustifiable” conduct, such as abduction.
17 UCCJEA § 208.

18
19 Usually the petition will be filed by a parent who fears that the other parent or family
20 members are preparing to abduct the child. A state child welfare agency may have lawful
21 custody and could be the party alleging the risk of abduction.

22
23 **SECTION 6. EMERGENCY EX PARTE RELIEF.**

24 (a) If a movant or petitioner has filed a motion or petition under Section 5 and
25 alleges that abduction is imminent, the court may issue an immediate ex parte order granting
26 temporary relief if the court finds substantial credible evidence to support the allegation.
27 Substantial credible evidence may be based on the testimony of the movant or petitioner or other
28 witnesses. The temporary relief is limited to the extent necessary to prevent the abduction and
29 includes:

1 an order of emergency custody, granting sole custody to the movant or petitioner;

2 (1) an order to require that the passport of the child and the other party be
3 deposited with the court; and

4 (2) a warrant to take physical custody of the child.

5 (b) Unless giving of notice would defeat the application, notice must be given to
6 the respondent.

7 [(c) The procedure for the warrant to take physical custody should follow [Insert
8 Section 311 of the UCCJEA].

9 [(c) A warrant to take physical custody of a child must:

10 (1) recite the facts upon which a conclusion of imminent risk of abduction;

11 (2) direct law enforcement officers to take physical custody of the child
12 immediately; and

13 (3) provide for the placement of the child pending final relief.

14 (d) The respondent must be served with the motion or petition, warrant, and order
15 immediately after the child is taken into physical custody. If a warrant is executed, the petition
16 must be heard on the next judicial day after the warrant is executed, or if not possible, on the first
17 judicial day possible.

18 (e) A warrant to take physical custody of a child is enforceable throughout this
19 state. If the court finds on the basis of the testimony of the petitioner or other witness that a less
20 intrusive remedy is not effective, it may authorize law enforcement officers to enter private
21 property to take physical custody of the child. If required by exigent circumstances of the case,
22 the court may authorize law enforcement officers to make a forcible entry at any hour.

1 (f) In a warrant to take physical custody of a child, the court may:

2 (1) impose conditions upon placement of a child to ensure the appearance
3 of the child and the child's custodian;

4 (2) require a bond to defray the respondent's reasonable attorney's fees,
5 expenses and costs, and in case the court finds subsequently, upon hearing, that emergency relief
6 was not warranted.]

7 **Comment**

8 Abductions that occur before a court order or decree is made are a major problem. Section
9 6 allows the court to issue relief immediately to prevent an abduction. Both UCCJA § 3(a)(3)(ii)
10 and UCCJEA § 201 recognize that emergencies require prompt judicial action and allow for
11 temporary custody orders when a child, sibling or parent is subjected to or threatened with
12 mistreatment or abuse. In both statutes the child must be present in the state for a court to
13 exercise emergency jurisdiction. Local practice will determine if an action has to be filed of
14 record before the request for emergency relief is filed.

15
16 A victim of domestic violence may obtain a temporary emergency custody order in the
17 safe haven state that can ripen into a home state where there is no prior custody order and no
18 action is filed in the home state within six months of the child's departure.

19
20 State law determines the duration of the ex parte order and the time for a full hearing on
21 the merits. This section tracks UCCJEA § 311 which allows for a petitioner to file a verified
22 application for the issuance of a warrant to take physical custody of the child if the child is
23 immediately likely to be removed from this State. The judge has discretion and can weigh
24 whether an emergency actually exists, whether the petitioner sought relief because of fear the
25 respondent would run if notice were given, whether a prompt hearing with notice would meet the
26 needs of the case, and the type of relief that needs to be given on an emergency basis.

27
28 (b) To alleviate concern about the unwarranted expenses being imposed on the
29 respondent, this section allows expenses for the imposition of sanctions if emergency relief was
30 not sought in good faith.

31
32 **SECTION 7. HEARING.** Unless a motion or petition has been filed for emergency ex
33 parte relief as described in Section 6, the court must hold a hearing on the allegations. Before the

1 court may order relief under this [act], the movant or petitioner must show by a preponderance of
2 the evidence that, after consideration of the factors set forth in Section 8, the court must find a
3 substantial risk the respondent will abduct the child. If the court finds a substantial risk of
4 abduction, it shall determine what measures, including those described in Section 9, will best
5 protect the child from abduction considering the legal and other difficulties in returning the child
6 to the jurisdiction and the potential harm to the child if abducted.

7 **Comment**

8 This section requires a hearing before imposing any restrictions on a party's rights to
9 access. It seeks to balance the rights of both parents or others with court ordered visitation or
10 access and the potential for denial of one party's rights to lawful custody. The preponderance of
11 the evidence standard allows for a balancing of the interests by requiring the petitioner to show
12 the risk of abduction which is an element of proof to show reasonable basis for the fear.
13

14 **SECTION 8. ABDUCTION-RISK FACTORS.**

15 (a) To determine whether there is substantial risk of the abduction of the child,
16 the court shall consider evidence that the respondent has done any of the following factors:

17 (1) abducted the child;

18 (2) threatened to abduct the child;

19 (3) 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 any
21 of the following:

22 (A) abandonment of employment;

23 (B) conduction of relocation activities, including selling a primary
24 residence or terminating a lease in the jurisdiction;

1 (C) participation in extraordinary financial activities, including
2 closing bank accounts, liquidating assets, or hiding or destroying financial documents; or

3 (D) application for a passport, visa, or other travel documents,
4 purchase of travel tickets for the respondent or the child; or an attempt to obtain the child's birth
5 certificate or school or medical records;

6 (4) a history of perpetrating domestic violence, stalking, or child abuse or
7 neglect;

8 (5) a history of lack of cooperation with the other parent or the court or
9 ignoring or violating court orders;

10 (6) engaged in any other conduct the court considers relevant to the
11 possibility of abduction.

12 (b) If the court finds that any of the factors in subsection (a) exist, the court may
13 also consider evidence that the respondent has any of the following factors:

14 (1) lacks strong ties to the United States, whether or not the respondent is a
15 citizen or permanent resident of the United States;

16 (2) has strong familial, financial, emotional, or cultural ties to another
17 jurisdiction that

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

21 (B) presents legal and other difficulties to returning the child to the
22 jurisdiction;

1 (C) does not have legal mechanisms for immediately and
2 effectively enforcing an order issued by this state regarding the custody of the child;

3 (D) does not provide for the extradition of a parent who abducts
4 the child and for the return of the child to the jurisdiction;

5 (E) poses a risk that the child's physical or emotional health or
6 safety would be endangered in the jurisdiction because of specific circumstances relating to the
7 child or because of human rights violations committed against children, [including arranged
8 marriages, child labor, lack of child abuse laws, female genital mutilation, prostitution, and any
9 form of child slavery.]

10 (F) has local laws or practices that would:

11 (i) enable the respondent, without due cause, to prevent the
12 movant or petitioner from contacting the child;

13 (ii) restrict the movant or petitioner from freely traveling to
14 or exiting from the jurisdiction because of the petitioner's gender, nationality, marital status, or
15 religion; or

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

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

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

1 (I) does not have an embassy of the United States in the country;

2 (J) is engaged in active military action or war, including a civil
3 war;

4 (3) is undergoing a change in immigration or citizenship status that would
5 adversely affect the respondent's ability to remain in the United States legally;

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

7 (5) has forged or presented misleading or false evidence to obtain or
8 attempt to obtain a visa, passport, social security card, driver's license, or other government-
9 issued identification card or has made a misrepresentation to the United States government.

10 (6) has used multiple names to attempt to mislead or defraud..

11 (c) In weighing the factors under subsections (a) and (b), the court shall consider:

12 (1) evidence that the respondent believed in good faith that the conduct
13 was necessary to avoid imminent harm to the child or parent [or the respondent has been a victim
14 of domestic violence];

15 (2) the age of the child;

16 (3) the extent of physical and psychological harm to the child if the child is
17 abducted;

18 (4) the legal and other difficulties of returning the child to the jurisdiction
19 if the child is abducted; and

20 (5) the existence or nonexistence of a financial reason for the respondent
21 to stay in the jurisdiction. [UCCJEA 207(b)(1)]?

22 **Comment**

1 (a) The risk factors are based on research that has been done during the last twelve years.
2 The more of these factors that are present, the more likely an abduction. However, the mere
3 presence of one or more of these factors does not mean that an abduction is imminent just as the
4 absence of these factors does not guarantee that no abduction will occur. “Knowing when to ask
5 for prevention measures, and which ones to request, is facilitated by an evaluation of three
6 factors - the risk of abduction, obstacles to recovery, and the potential harm to the child if
7 abducted.” OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, FAMILY ABDUCTION:
8 PREVENTION AND RESPONSE 7 (Patricia Hoff, ed. 5th ed. March 2002).

9
10 Studies have demonstrated that preceding an abduction, there are warning signs, or
11 common red flags, such as: (a) a parent has previously abducted the child or threatened to do so;
12 (b) a parent has no strong ties to the child’s home state; (c) a parent has citizenship in another
13 country or strong emotional ties to the country of origin; (d) a parent has friends or family living
14 abroad; (e) a parent has a strong support network; (f) a parent has no financial reasons to stay in
15 the area; (g) a parent is engaged in planning activities which indicate an attempt to move; (h) a
16 parent shows a history of marital instability, violence or child abuse, or a prior criminal record. In
17 addition, a parent may be distrustful or suspicious due to a belief that abuse has occurred and
18 have a social support for the belief. *See* Janet Johnston & Linda Girdner, *Family Abductors:*
19 *Descriptive Profiles and Preventative Interventions* (U.S. Dep’t of Justice, OJJDP 2001); ABA,
20 EARLY IDENTIFICATION OF RISK FACTORS FOR PARENTAL ABDUCTION (NCJ185026).
21 Both the California and Texas statutes include these factors. *See* CAL. FAM. CODE § 3408(b)(1);
22 TEX. FAM. CODE § 153.502.

23
24 Researchers have identified three important characteristics of abducting parents or family
25 members: they (1) dismiss the value of the other parent in the child’s lives; (2) have young
26 children or children vulnerable to influence; and (3) often have the support of their family and
27 others. GEOFFREY L. GREIF & REBECCA HEGAR, WHEN PARENTS KIDNAP (1993).

28
29 (b)(1) Because of the difficulties associated with securing return of children from
30 countries that have not ratified or acceded to the Hague Convention, judges should be
31 particularly sensitive to the importance of preventative means where there is an identified risk of
32 a child being removed to such countries. The court may also take into consideration the
33 difficulties a petitioner may face in trying to retrieve the child from a country that has ratified the
34 Hague Convention but is not compliant. Compliance Reports are available at
35 <http://www.travel.state.gov>

36
37 (c) (1) One of the problems with the risk factors is that some of the same activities might
38 be undertaken by a victim of domestic violence. “The motivation to abduct may also be an
39 attempt to protect the child from a parent who is perceived to molest, abuse, or neglect the child,
40 and in some cases, this may be a legitimate concern. . . Overall, thirty percent of the cases
41 involved allegations of both child abuse and domestic violence.” *See* Chiancone, *supra*. Merle H.
42 Weiner, *International Child Abduction and the Escape from Domestic Violence*, 69 FORDHAM L.
43 REV. 593 (2000); Claire L’Heureaux-Dubé, *Cherishing our Children: The Role of the Hague*

1 *Convention on the Civil Aspects of International Child Abduction*, V THE JUDGES' NEWSLETTER
2 17, 19 (Spring 2003) (stating "The Hague Convention . . . is not sensitive enough to the needs of
3 mothers who abduct their children in order to escape from abusive situations"). Children suffer
4 from seeing abuse of parent as well as by being abused themselves. Howard Davidson, *Child*
5 *Abuse and Domestic Violence: Legal Connections and Controversies* 29 FAM. L.Q. 357, 369-371
6 (1995).

7
8 (c)(2) The younger the child the more likely they are to be abducted. Younger children
9 may be more likely to be victimized and more likely to be in need of supervised visitation.

10
11 (c)(3) Determining the harm to the child requires a judicial analysis of the individual
12 child. Some have characterized family abduction as a form of child abuse because of the harmful
13 effects on the child. D.S. HUNTINGTON, PARENTAL KIDNAPPING: A NEW FORM OF CHILD ABUSE
14 (1982); PATRICIA M. HOFF, KIDNAPPING: PREVENTION AND REMEDIES (ABA CENTER FOR
15 CHILDREN AND THE LAW 1997). Some children abducted by family members suffer severe life-
16 long emotional and psychological damage; however, others do not. Where children are missing
17 for a lengthy period, their lives are different than those missing only a few days. Some abducted
18 children suffer depression; loss of community; loss of medical benefits; loss of stability, security
19 and trust; excessive fearfulness; loneliness; anger; helplessness; disruption in identify formation;
20 and fear of abandonment. Children abducted internationally often have even more difficulties due
21 to language and cultural differences. Marilyn Freeman, *The Effects and Consequences of*
22 *International Child Abduction*, 32 FAM. L. Q. 603 (1998)(reviewing literature).

23
24 (c)(4) Evidence that the respondent is financially independent, or is able to work outside
25 of the jurisdiction, or has quit a job may be an indication that the respondent intends to leave the
26 jurisdiction.

27 28 **SECTION 9. MEASURES TO PREVENT ABDUCTIONS.**

29 (a) After considering the risk of abduction factors described in Section 8, the
30 court may take any or all of the following actions to protect a child from abduction if the court
31 finds a substantial risk of abduction:

32 (1) appoint an attorney for the child or a person to represent the child's
33 best interests under law of this state other than this [act];

34 (2) appoint an appropriate person other than the respondent as the sole
35 legal and residential custodian of the child;

1 (3) establish a parenting plan if none has been established;
2 (4) require appointment of a parent coordinator;
3 (5) require supervised access for the respondent until the court finds that
4 supervision is no longer necessary;

5 (6) enjoin the respondent from directly or indirectly from:

6 (A) removing the child from the care of the person with lawful
7 custody;

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

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

12 (7) require the respondent to post a bond or provide other security in an
13 amount sufficient to serve as a financial deterrent to abduction, the proceeds of which may be
14 used to offset the expenses of recovery of the child, including court costs and attorneys fees, in
15 the event there is an abduction;

16 (8) restrict the right of a party to remove the child from the jurisdiction
17 without permission of the court or person designated by the court;

18 (9) require that the respondent or person acting on behalf of the
19 respondent traveling overnight with the child provide the person with lawful custody with any of
20 the following:

21 (A) the travel itinerary of the child;

22 (B) a list of physical addresses and telephone numbers where the

1 child can be reached at all times,

2 (C) copies of travel documents;

3 (10) require the respondent to receive counseling on the harmful effects to
4 the child and the criminal and civil consequences of abduction;

5 (11) require a party who has moved to another state to register the custody
6 order in the other state, if there is a mechanism for registration, as a prerequisite to allowing the
7 child to travel to that state for visits;

8 (12) order passport and travel controls, including controls that:

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

11 (B) require the respondent to surrender any passport issued in the
12 child's name, including any passport issued in the name of both the parent and the child; [and]

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

15 [(D) require respondent to purchase an open airline ticket for the
16 parent remaining in the jurisdiction in case the child is not returned; and]

17 [(E) seek to place respondent's name on the exit control watch
18 list.]

19 (13) Require the respondent to provide:

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

22 (i) a record of any court-ordered passport and travel

1 controls for the child; and

2 (ii) a properly authenticated copy of the court order
3 detailing the restrictions and documentation of the respondent's agreement to the restrictions; and

4 (B) to the court, proof of receipt of the written notice to the United
5 States Department of State's Office of Children's Issues and to the relevant foreign consulate or
6 embassy of passport restrictions;

7 (14) authorize the assistance of law enforcement; [and

8 (15) if possible, require the respondent to obtain an order from another
9 jurisdiction containing terms identical to the custody and visitation order issued in the United
10 States.

11 (b) An injunction issued under paragraph (6) of subsection (a) is enforceable
12 under applicable state law.

13 (c) If the court imposes any or all of the actions in subsection (a), those actions
14 must be specifically noted on the record of the court proceedings and in the order issued by the
15 court.

16 **Comment**

17 The court should have many choices of remedies. Ideally the judge would choose the
18 least restrictive measures to maximize opportunities for continued parental contact while
19 minimizing the opportunities for abduction. The higher the risk of abduction, the more
20 restrictions should be used. In addition, the most restrictive measures are likely to be imposed
21 when the threat is that the child will be taken out of the United States to a foreign jurisdiction
22 with a different culture and legal system which does not recognize the legal rights of women and
23 will not enforce custody orders from the United States.

24
25 (a) (1) The intent is not to change the law of the state as to representatives for children.
26 States differ as to whether to appoint an attorney for the child, best interest lawyer, or guardian ad
27 litem. This section recognizes that the child should have a voice and should be the focus, rather

1 than the “rights” of the parents. The ABA Standards for Lawyers Who Represent Children in
2 Custody Cases provide that the court should appoint a Child’s Attorney or a Best Interests lawyer
3 if there is threat of abduction. The appointment should be consistent with applicable state law.
4 Different types of representation may be needed for different children within a family depending
5 on their ages.
6

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

18 (6) While some states do not like to impose on a parent’s constitutional right to travel, a
19 substantial risk of abduction is sufficient to restrict a parent’s mobility. The court may want to
20 require the written permission of other parent or court order before the child is removed from the
21 jurisdiction.
22

23 (7) A high enough bond can be a deterrent and serve as a source of funds to help retrieve
24 the child if an abduction occurs. Judges in several states have required parents to post a bond to
25 ensure compliance with court orders.
26

27 (10) If domestic violence is present, the court may also want to order a person to obtain
28 counseling or attendance at a batterers intervention and prevention program (BIPP). Some
29 research suggests that anger management programs do not seem to work as well as batterers
30 intervention programs.
31

32 (12) If there is even a hint of international abduction, passport controls are a must.
33 International abductions are among the most complex and frustrating and all reasonable
34 restrictions to prevent such abductions are necessary.
35

36 (14) Many law enforcement officers are unclear about their role in responding to parental
37 kidnapping cases. A provision in the custody order directing law enforcement officer to
38 “accompany and assist” a parent to recover an abducted child may be useful. One study showed
39 that 70 % of law enforcement agencies reported that they did not have written policies and
40 procedures governing family abduction cases. The UCCJEA Sections 315 and 316 authorize law
41 enforcement to enforce a child-custody determination.
42

43 (15) It may be possible to obtain a “mirror” or reciprocal order. Prior to exercising rights,

1 the respondent would need to get a custody order from his or her native country that recognizes
2 the United States order and continuing jurisdiction in the United States. The foreign court would
3 need to agree to order return of the child if the child was taken in violation of the court order.
4 This potentially expensive and time consuming remedy should only be ordered when likely to be
5 of assistance. These orders may be modified or enforced pursuant to the laws of the other
6 country.

7 (b) Temporary or permanent orders are governed by state law.
8

9 **SECTION 10. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
10 applying and construing this [act], consideration must be given to the need to promote uniformity
11 of the law with respect to its subject matter among States that enact it.

12 **SECTION 11. SEVERABILITY.** If any provision of this [act] or its application to any
13 person or circumstance is held invalid, the invalidity does not affect other provisions or
14 applications of this [Act] which can be given effect without the invalid provision or application,
15 and to this end the provisions of this [Act] are severable.

16 **SECTION 12. ELECTRONIC SIGNATURES.** This [act] modifies, limits and
17 supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C.
18 Section 7001 et seq., but this [act] does not modify, limit, or supersede Section 101(c)(15 U.S.C.
19 Section 7001(c)) of that act or authorize electronic delivery of any of the notices described in
20 Section 103(b) of that act (15 U.S.C. Section 7003(b)).

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