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UNIFORM CHILD ABDUCTION PREVENTION ACT

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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.


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.
UNIFORM CHILD ABDUCTION PREVENTION ACT

SECTION 1. SHORT TITLE. This [act] may be cited as the Uniform Child Abduction

Prevention Act.

Comment

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

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

SECTION 2. DEFINITIONS. In this [act]:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Comment

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

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

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

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

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

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

[add prevention language]
SECTION 4. CONTENT OF ORDER FOR CUSTODY OF A CHILD.

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

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

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

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

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

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

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

Comment

This section tracks California law on ensuring that child custody orders are clear, specific and enforceable on its face nationally and internationally. Because subject matter jurisdiction is determined at the time of institution of the action, every child-custody order should contain a statement specifying the basis for the court’s exercise of jurisdiction. The Uniform Child Custody Jurisdiction and Enforcement Act and the Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A prefer home state jurisdiction for the initial determination of custody. Therefore, a custody order made by a court in the child’s home state is the most likely to be enforced. If the child has a home state, a custody order based on significant connection jurisdiction may not be enforceable. If a child is abducted, the left behind party can bring an action within six months to retain the home state status. The decree state which had initial jurisdiction properly retains continuing exclusive jurisdiction unless all parties have left the state, there is no basis under state law for jurisdiction, or the state declines to exercise its continuing jurisdiction. The more apparent on the face of the document that the court issuing the order had proper jurisdiction, the more likely courts in other states and countries are to recognize it as valid. The UCCJEA includes foreign countries in the definition of states.
Due process requires that notice be given to interested parties. The UCCJEA also requires notice to interested parties for a child custody order. See UCCJEA § 205. A statement showing that the parties were properly served and given adequate notice makes it apparent on the face of the order that due process was met. States do not require personal jurisdiction over both parents to make a child-custody order under the UCCJEA.

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

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

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

SECTION 5. MOTION OR PETITION.

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

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

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

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

(3) the risk factors for abduction as described in section 8;
(4) a copy of any existing order, if available;

(5) whether a prior motion or [petition] to prevent abductions, domestic violence, or to change custody has been filed by either parent; and

(6) the disposition of the motion or [petition]; and

(7) any other factors relevant to the risk of abduction of the child, other than those listed in Section 8.

Comment

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

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

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

SECTION 6. EMERGENCY EX PARTE RELIEF.

(a) If a movant or petitioner has filed a motion or petition under Section 5 and alleges that abduction is imminent, the court may issue an immediate ex parte order granting temporary relief if the court finds substantial credible evidence to support the allegation.

Substantial credible evidence may be based on the testimony of the movant or petitioner or other witnesses. The temporary relief is limited to the extent necessary to prevent the abduction and includes:
an order of emergency custody, granting sole custody to the movant or petitioner;

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

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

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

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

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

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

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

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

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

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

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

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

Comment

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

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

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

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

SECTION 7. HEARING. Unless a motion or petition has been filed for emergency ex parte relief as described in Section 6, the court must hold a hearing on the allegations. Before the
court may order relief under this [act], the movant or petitioner must show by a preponderance of the evidence that, after consideration of the factors set forth in Section 8, the court must find a substantial risk the respondent will abduct the child. If the court finds a substantial risk of abduction, it shall determine what measures, including those described in Section 9, will best protect the child from abduction considering the legal and other difficulties in returning the child to the jurisdiction and the potential harm to the child if abducted.

Comment

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

SECTION 8. ABDUCTION-RISK FACTORS.

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

(1) abducted the child;

(2) threatened to abduct the child;

(3) recently engaged in a pattern of conduct that appears to include planning activities that could facilitate removal of the child from the jurisdiction, including any of the following:

(A) abandonment of employment;

(B) conduction of relocation activities, including selling a primary residence or terminating a lease in the jurisdiction;
(C) participation in extraordinary financial activities, including closing bank accounts, liquidating assets, or hiding or destroying financial documents; or 

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

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

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

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

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

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

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

(A) is not a party to or 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;

(B) presents legal and other difficulties to returning the child to the jurisdiction;
(C) does not have legal mechanisms for immediately and
effectively enforcing an order issued by this state regarding the custody of the child;

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

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

(F) has local laws or practices that would:

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

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

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

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

(H) is a country for which the United States Department of State
has issued a warning to United States citizens regarding travel to the country;
(I) does not have an embassy of the United States in the country;
(J) is engaged in active military action or war, including a civil war;
(3) is undergoing a change in immigration or citizenship status that would adversely affect the respondent’s ability to remain in the United States legally;
(4) has had an application for United States citizenship denied;
(5) has forged or presented misleading or false evidence to obtain or attempt to obtain a visa, passport, social security card, driver’s license, or other government-issued identification card or has made a misrepresentation to the United States government.
(6) has used multiple names to attempt to mislead or defraud.

(c) In weighing the factors under subsections (a) and (b), the court shall consider:
(1) evidence that the respondent believed in good faith that the conduct was necessary to avoid imminent harm to the child or parent [or the respondent has been a victim of domestic violence];
(2) the age of the child;
(3) the extent of physical and psychological harm to the child if the child is abducted;
(4) the legal and other difficulties of returning the child to the jurisdiction if the child is abducted; and
(5) the existence or nonexistence of a financial reason for the respondent to stay in the jurisdiction. [UCCJEA 207(b)(1)]

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

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

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

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

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

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

(c)(3) Determining the harm to the child requires a judicial analysis of the individual child. Some have characterized family abduction as a form of child abuse because of the harmful effects on the child. D.S. Huntington, Parental Kidnapping: A New Form of Child Abuse (1982); Patricia M. Hoff, Kidnapping: Prevention and Remedies (ABA Center for Children and the Law 1997). Some children abducted by family members suffer severe lifelong emotional and psychological damage; however, others do not. Where children are missing for a lengthy period, their lives are different than those missing only a few days. Some abducted children suffer depression; loss of community; loss of medical benefits; loss of stability, security and trust; excessive fearfulness; loneliness; anger; helplessness; disruption in identify formation; and fear of abandonment. Children abducted internationally often have even more difficulties due to language and cultural differences. Marilyn Freeman, The Effects and Consequences of International Child Abduction, 32 Fam. L.Q. 603 (1998)(reviewing literature).

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

SECTION 9. MEASURES TO PREVENT ABDUCTIONS.

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

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

(2) appoint an appropriate person other than the respondent as the sole legal and residential custodian of the child;
(3) establish a parenting plan if none has been established;

(4) require appointment of a parent coordinator;

(5) require supervised access for the respondent until the court finds that supervision is no longer necessary;

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

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

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

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

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

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

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

(A) the travel itinerary of the child;

(B) a list of physical addresses and telephone numbers where the
child can be reached at all times,

(C) copies of travel documents;

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

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

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

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

(B) require the respondent 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 respondent from applying on behalf of the child
for a new or replacement passport or international travel visa;

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

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

(13) Require the respondent to provide:

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

(i) a record of any court-ordered passport and travel
controls for the child; and

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

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

(14) authorize the assistance of law enforcement; [and
(15) if possible, require the respondent to obtain an order from another
jurisdiction containing terms identical to the custody and visitation order issued in the United
States.

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

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

Comment

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

(a) (1) The intent is not to change the law of the state as to representatives for children.
States differ as to whether to appoint an attorney for the child, best interest lawyer, or guardian ad
litem. This section recognizes that the child should have a voice and should be the focus, rather
than the “rights” of the parents. The ABA Standards for Lawyers Who Represent Children in Custody Cases provide that the court should appoint a Child’s Attorney or a Best Interests lawyer if there is threat of abduction. The appointment should be consistent with applicable state law. Different types of representation may be needed for different children within a family depending on their ages.

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

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

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

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

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

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

(15) It may be possible to obtain a “mirror” or reciprocal order. Prior to exercising rights,
the respondent would need to get a custody order from his or her native country that recognizes
the United States order and continuing jurisdiction in the United States. The foreign court would
need to agree to order return of the child if the child was taken in violation of the court order.
This potentially expensive and time consuming remedy should only be ordered when likely to be
of assistance. These orders may be modified or enforced pursuant to the laws of the other
country.
(b) Temporary or permanent orders are governed by state law.

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

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

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

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