The ideas and conclusions set forth in this draft, including the proposed statutory language and any comments or reporter’s notes, have not been passed upon by the National Conference of Commissioners on Uniform State Laws or the Drafting Committee. They do not necessarily reflect the views of the Conference and its Commissioners and the Drafting Committee and its Members and Reporters. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.
DRAFTING COMMITTEE ON STANDARDS FOR THE PROTECTION OF CHILDREN FROM INTERNATIONAL ABDUCTION

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing these Standards for the Protection of Children from International Abduction consists of the following individuals:

LYLE W. HILLYARD, 175 E. 1st N., Logan, Utah 84321, Chair
CYNTHIA BOSCO, California Department of Developmental Services, 1600 9th St. Rm 240 MS 2-14, Sacramento, CA 95814
VINCENT C. DELIBERATO, JR., Legislative Reference Bureau, Room 641, Main Capitol Building, Harrisburg, PA 17120-0033
W. MICHAEL DUNN, P.O. Box 3701, 1000 Elm St., Manchester, NH 03105
GORMAN HOUSTON, JR., 400 20th St. N., Birmingham, AL 35203, Enactment Plan Coordinator
PETER K. MUNSON, 123 South Travis St., Sherman, TX 75090
MARIAN P. OPALA, Supreme Court, State Capitol, Room 238, Oklahoma City, OK 73105
LINDA D. ELROD, Washburn University School of Law, 1700 SW College, Topeka, KS 66621, Reporter

EX OFFICIO

FRED H. MILLER, University of Oklahoma, College of Law, 300 Timberdell Rd., Room 3056, Norman, OK 73019, President
MARTHA T. STARKEY, 30 South Meridian St., Suite 850, Indianapolis, IN 46204, Division Chair

AMERICAN BAR ASSOCIATION ADVISOR

BRUCE A. BOYER, Loyola Child Law Clinic, 16 E. Pearson St., Chicago, IL 60611

EXECUTIVE DIRECTOR

WILLIAM H. HENNING, University of Alabama School of Law, Box 870382, Tuscaloosa, AL 35487-0382, Executive Director

Copies of this Act may be obtained from:
NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS
211 E. Ontario Street, Suite 1300
Chicago, Illinois 60611
312/915-0195
www.nccusl.org
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prefatory Note</td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>SECTION 1.  SHORT TITLE</td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>SECTION 2.  DEFINITIONS</td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>SECTION 3.  CONTENT OF ORDER FOR CUSTODY OF CHILD</td>
<td></td>
<td>5</td>
</tr>
<tr>
<td>SECTION 4.  PETITION</td>
<td></td>
<td>7</td>
</tr>
<tr>
<td>SECTION 5.  HEARING</td>
<td></td>
<td>8</td>
</tr>
<tr>
<td>SECTION 6.  EMERGENCY EX PARTE RELIEF</td>
<td></td>
<td>8</td>
</tr>
<tr>
<td>SECTION 7.  ABDUCTION RISK FACTORS</td>
<td></td>
<td>10</td>
</tr>
<tr>
<td>SECTION 8.  MEASURES TO PREVENT ABDUCTIONS</td>
<td></td>
<td>15</td>
</tr>
<tr>
<td>SECTION 9.  UNIFORMITY OF APPLICATION AND CONSTRUCTION</td>
<td></td>
<td>19</td>
</tr>
<tr>
<td>SECTION 10.  SEVERABILITY</td>
<td></td>
<td>19</td>
</tr>
<tr>
<td>SECTION 11.  ELECTRONIC SIGNATURES</td>
<td></td>
<td>20</td>
</tr>
<tr>
<td>SECTION 12.  EFFECTIVE DATE</td>
<td></td>
<td>20</td>
</tr>
</tbody>
</table>
STANDARDS FOR THE PROTECTION OF CHILDREN FROM INTERNATIONAL ABDUCTION

Prefatory Note

In August, 2003, the National Conference of Commissioners on Uniform State Laws appointed a study committee to explore the feasibility of a uniform law to prevent child abduction in international custody disputes. The possible scope of the project was discussed at a meeting of the Joint Editorial Board for Uniform Family Law Acts on October 18, 2003. The Joint Editorial Board urged the NCCUSL Committee on Scope and Program to recommend the rapid creation of a drafting committee in this area.

Child abduction is a serious problem. The Office of Juvenile Justice and Delinquency Prevention estimated that 262,100 children were abducted in 1999; 203,900 of them (or 78%) were abducted by a family member. Estimates are that 1,773 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.


Many abductions are predecree. Current state and federal laws are inadequate to protect children prior to a court order 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 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 divorce proceeding may be the best way to protect children from abduction.

Only two states have directly tackled the issue of preventing child abduction. Texas has a statute specifically addressing the problem of international child abduction. See TEX. FAM. CODE §153.501- §153.503. A California statute covers both international and domestic abduction. CAL. FAM. CODE § 3408. Both were passed with little opposition and set a framework to alert courts to the potential risks of, and means of preventing, child abduction.

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.
STANDARDS FOR THE PROTECTION OF CHILDREN
FROM INTERNATIONAL ABDUCTION

SECTION 1. SHORT TITLE. This [act] may be cited as Standards for the Protection of Children from International Abduction.

Comment

The purpose of this Act is to deter child abductions by family members 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 the initial decree. The Parental Kidnapping Prevention Act of 1980 (PKPA), 28 U.S.C. § 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) “Child” means an unemancipated individual under 18 years of age.

(3) “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,
(4) “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, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence.

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

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

(7) “Jurisdiction” means either (a) a county, state, tribe or country, or (b) the authority of a court to hear a case, depending on the context.

(8) “Lawful custody” means the right to provide physical care to and exercise supervision over a child.

(9) “Order” includes a judgment or decree.

(10) “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.

(11) “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.

[(12) “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. The focus of 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.

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. CONTENT OF ORDER FOR CUSTODY OF 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;

   (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.]

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

(c) The court may require that a party traveling overnight with a child provide the person with lawful custody with any of the following:

(1) the travel itinerary of the child;

(2) a list of addresses and telephone numbers where the child can be reached at all times;

(3) copies of tickets for transportation.

Comment

(1) One key to preventing abduction is to obtain a child-custody order that can be enforced 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.

(2) 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/OR 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 4. PETITION. An individual or entity with lawful custody may file a motion in a pending case or an independent petition alleging that there is a substantial risk of abduction of the child. The motion or petition should be verified and specify:

(1) the risk factors for abduction;
(2) whether prior motions or petitions to prevent abductions have been filed by either parent;
(3) the disposition of any such motions or petitions; and
(4) any relevant factors other than those listed in Section 7.

Comment

Generally the court which has jurisdiction is either one that has personal jurisdiction over the respondent or jurisdiction under the UCCJEA to make a child custody order. 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 5. HEARING. Unless there is an emergency 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, based on the factors set forth in Section 7, there is 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 8, will best protect the child from abduction while reasonably accommodating access rights of others.

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 present enough evidence to establish a reasonable basis for the fear of abduction.

SECTION 6. EMERGENCY EX PARTE RELIEF.

(a) If a movant or petitioner alleges that abduction is imminent, and there is substantial credible evidence, including testimony of the petitioner or other witnesses, to support the allegation, the court may issue an immediate ex parte order granting temporary relief to the extent necessary to prevent the abduction, including an order of emergency sole custody and a warrant to take physical custody of the child.
(b) A warrant to take physical custody of a child must:

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

(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.

(c) The respondent must be served with the 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.

(d) 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.

(e) 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 expenses, costs, and attorney’s fees, in case the court finds subsequently, upon hearing, that emergency relief was not warranted.

Comment
Predecree abductions 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.

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 expense for the imposition of sanctions if emergency relief was not sought in good faith.

SECTION 7. ABDUCTION RISK FACTORS.

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

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:
   A. abandonment of employment;
   B. relocation activities, such as selling a primary residence or terminating a lease in the jurisdiction;
(C) extraordinary financial activities, such as closing bank accounts, liquidating assets, or hiding or destroying documents; or

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

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

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

(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:

(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, 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 obstacles to the recovery and return of a child who is abducted from the United States;

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

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

(E) poses a risk that the child’s physical 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, lack of freedom of religion, child labor, lack of child abuse laws, female genital mutilation, and any form of slavery.

(F) has local laws or practices that would:

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

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

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

(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 a visa, passport, social security card, or other identification card or has made a misrepresentation to the United States government.

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

(1) any 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; and

(4) the existence or nonexistence of a financial reason for the respondent to stay in the jurisdiction.

Comment

The list includes the risk factors found in both the California and Texas statutes. See CAL. FAM. CODE § 3408(b)(1); TEX. FAM. CODE § 153.502. The risk factors are based on research that has been done during the last twelve years. Researchers have identified three important characteristics of abducting parents: 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 AND REBECCA HEGAR, WHEN PARENTS KIDNAP (1993). An abducting parent views the child’s needs as secondary to the parental agenda, which is to provoke, agitate, control, attack or psychologically torture the other parent. D.C. Rand, The Spectrum of the Parental Alienation Syndrome, 15 AMER. J. FORENSICS
While in a few instances a parent is protecting a child from real or imagined abuse, in most cases, the primary motives are to force a reconciliation with the other parent; to blame or punish the other parent; and to reduce the fear of losing custody or visitation. Janet Chiancone, *Parental Abduction: A Review of the Literature* (U.S. Dep’t of Justice, OJJDP 2002). Studies have demonstrated that preceding an abduction, there are warning signs, or common red flags, such as: (a) a parent has previously abducted the child or threatened to do so; (b) a parent has no strong ties to the child’s home state; (c) a parent has citizenship in another country 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).

The more of these factors that are present, the more likely an abduction. However, the mere presence 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.

(b)(1) Because of the difficulties associated with securing return of children from countries which 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)(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.
Family abduction has been characterized as a form of child abuse because of the harmful effects on the child. Children abducted by family members often suffer severe life-long emotional and psychological damage. Where children are missing for a lengthy period, their lives are different than those missing only a few days. In a 1983 study, 89 percent of sampled children who suffered or were threatened with family abduction showed symptoms of grief and rage toward the left-behind parent, as well as “mental indoctrination” perpetrated by the abductor. D.H. Schetky & L.H. Haller, Parental Kidnapping, 22 AM. ACAD. CHILD PSYCHIATRY 279, 284 (1983); Geoffrey L. Greif & Rebecca Hegar, When Parents Kidnap (1993); Rebecca L. Hegar & Geoffrey L. Grief, Impact on Children of Abduction by a Parent, A Review of the Literature, 62 AM. J. ORTHOPSYCHIATRY 599 (1992). Studies have documented the emotional, and often physical, harm to abducted children. Abducted children suffer depression; loss of community; loss of medical benefits; loss of stability, security and trust; excessive fearfulness; loneliness; anger; helplessness; disruption in identity formation; and fear of abandonment. D.S. Huntington, Parental Kidnapping: A New Form of Child Abuse (1982); Patricia M. Hoff, Kidnapping: Prevention and Remedies (ABA Center for Children and the Law 1997). 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 8. MEASURES TO PREVENT ABDUCTIONS.

(a) After considering the risk factors in Section 7, if the court finds a substantial risk of abduction, the court may take any or all of the following actions to protect a child from 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 custodian of the child;

(3) require supervised visitation or parenting time for the respondent until the court finds that supervised visitation is no longer necessary;
(4) enjoin the respondent from directly or indirectly from:

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

   (B) 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;

(5) 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;

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

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

(8) 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;

(9) 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 left-behind parent in case the child is not returned; and]
[(E) seek to place respondent’s name on the exit control watch list.]
(10) 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 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 to the United States Department of State’s Office of Children’s Issues and to the relevant foreign consulate or embassy of passport restrictions;
(11) authorize the assistance of law enforcement; [and]
(12) 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 subsection (a)(4) is enforceable under applicable
(c) If the court imposes any or all of the restrictions in subsection (a), those restrictions must be specifically noted on the record of the court proceedings.

(d) Nothing in this section affects the applicability of the [state’s Penal Code.]

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.

(b)(5) 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.

(b)(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) 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.

(9) If there is a potential for 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.

(11) 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.

(12) 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.

SECTION 9. 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 10. 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 11. 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 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 12. EFFECTIVE DATE. This [act] takes effect on . . . .