

D R A F T

FOR DISCUSSION ONLY

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

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

MEETING IN ITS ONE-HUNDRED-AND-FOURTEENTH YEAR
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**STANDARDS FOR THE PROTECTION OF CHILDREN
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WITH PREFATORY NOTE AND COMMENTS

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By

NATIONAL CONFERENCE OF COMMISSIONERS
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**STANDARDS FOR THE PROTECTION OF CHILDREN FROM INTERNATIONAL
ABDUCTION**

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STANDARDS FOR THE PROTECTION OF CHILDREN FROM INTERNATIONAL ABDUCTION

Prefatory Note

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

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

There are also laws which facilitate the return of an abducted child to his or her 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.

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.

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

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

6 **Comment**
7

8 The purpose of this Act is to deter child abductions by family members both within and
9 outside of the United States through identification of risk factors and imposition of preventive
10 measures. The Act is civil law. It is designed to ensure that courts are aware of and use as many
11 preventive measures as may be necessary to prevent the abduction of a child by parents or other
12 family members.
13

14 This Act complements other existing legislation aimed at protecting children from
15 abduction. All states specify the jurisdictional requirements for making and enforcing a child
16 custody determination. The Uniform Child Custody Jurisdiction and Enforcement Act, 9 U.L.A.
17 Part I 657 (1999), enacted in forty-four states, and the Uniform Child Custody Jurisdiction Act, 9
18 U.L.A. Part I 115 (1988) require that the child have a sufficient relationship to the state issuing
19 the initial decree. The Parental Kidnapping Prevention Act of 1980 (PKPA), 28 U.S.C. § 1738A,
20 requires that states give full faith and credit to sister state decrees made in accordance with the
21 principles of the PKPA, in an effort to avoid shopping for a friendly forum. If there is an
22 abduction, the Hague Convention on the Civil Aspects of Parental Child Abduction helps return
23 a child to the place of the child’s habitual residence.
24

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

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

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

30 (3) “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 (4) “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, separation, neglect, abuse, dependency, guardianship, paternity, termination of
5 parental rights, and protection from domestic violence.

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

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

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

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

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

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

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

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

22 **Comment**

1
2 Lawful rights to custody of a child can arise by operation of law, court order, or by legally
3 binding agreement of the parties. A biological or legal parent has a natural right to the care and
4 custody of a child. A divorce or other legal proceeding may designate that a parent or another
5 person is entitled to legal or physical custody. If a child is removed from the care of the parents, a
6 state entity, such as a social welfare agency, may have lawful custody.

7
8 The definition of a child as a person under age 18 is basically the same as in the Uniform
9 Child Custody Jurisdiction and Enforcement Act and the Parental Kidnapping Prevention Act.
10 State law determines when a child becomes emancipated before age 18. The risk of abduction
11 may also impact a disabled adult who requires the appointment of an adult guardian, whose
12 rights resemble those of the lawful custodian of an unemancipated minor. The focus of this Act is
13 limited to abduction of minors.

14
15 The definition of “child-custody order” tracks both the UCCJEA Section 102(3)
16 definition of child-custody determination. Local terminology may use labels such as “custody,”
17 “visitation,” “managing conservatorship” or “parenting plan.” A child custody order
18 encompasses any judgment, decree or order.

19
20 Both parents may retain legal custody rights, but only one parent at a time may have the
21 right to physical custody. Therefore, abductions can occur against a parent who has parenting
22 time, visitation or access rights.

23
24 The definition of “child-custody proceeding” follows the UCCJEA Section 102(4).
25

26 **SECTION 3. CONTENT OF ORDER FOR CUSTODY OF CHILD.**

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

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

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

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

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

1 [(5) identification of the habitual residence of the child.]

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

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

6 (1) the travel itinerary of the child;

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

9 (3) copies of tickets for transportation.

10 **Comment**

11
12 (1) One key to preventing abduction is to obtain a child-custody order that can be
13 enforced nationally and internationally. Because subject matter jurisdiction is determined at the
14 time of institution of the action, every child-custody order should contain a statement specifying
15 the basis for the court's exercise of jurisdiction. The Uniform Child Custody Jurisdiction and
16 Enforcement Act and the Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A prefer home
17 state jurisdiction for the initial determination of custody. Therefore, a custody order made by a
18 court in the child's home state is the most likely to be enforced. If the child has a home state, a
19 custody order based on significant connection jurisdiction may not be enforceable. If a child is
20 abducted, the left behind party can bring an action within six months to retain the home state
21 status. The decree state which had initial jurisdiction properly retains continuing exclusive
22 jurisdiction unless all parties have left the state, there is no basis under state law for jurisdiction,
23 or the state declines to exercise its continuing jurisdiction. The more apparent on the face of the
24 document that the court issuing the order had proper jurisdiction, the more likely courts in other
25 states and countries are to recognize it as valid. The UCCJEA includes foreign countries in the
26 definition of states.

27
28 (2) Due process requires that notice be given to interested parties. The UCCJEA also
29 requires notice to interested parties for a child custody order. *See* UCCJEA § 205. A statement
30 showing that the parties were properly served and given adequate notice makes it apparent on the
31 face of the order that due process was met. States do not require personal jurisdiction over both
32 parents to make a child-custody order under the UCCJEA.

33
34 (3) Vague orders are difficult to enforce without additional litigation. Parenting time and

1 visitation should be defined as precisely as possible. The dates and times for each parent’s
2 parenting time should be specified, including holidays, birthdays, telephone or internet contact.
3 Vague language such as “reasonable visitation” can lead to conflicts between the parents and
4 make it difficult for law enforcement officers to know if the order is being violated.
5

6 (4) Judges need to impress upon both parties the importance of complying with the court
7 order. The order can state in bold language: VIOLATION OF THIS ORDER MAY SUBJECT
8 THE PARTY IN VIOLATION TO CIVIL AND/OR CRIMINAL PENALTIES.
9

10 (5) Because every case may be a potential international case, the order should identify the
11 country of habitual residence of a child at the time the order was made. Although the
12 determination of habitual residence under the Hague Convention on the Civil Aspects of
13 International Child Abduction will be made by the court in the country to which the child has
14 been abducted, a statement in the order may assist in the determination of the child’s state of
15 habitual residence.
16

17 **SECTION 4. PETITION.** An individual or entity with lawful custody may file a
18 motion in a pending case or an independent petition alleging that there is a substantial risk of
19 abduction of the child. The motion or petition should be verified and specify:

20 (1) the risk factors for abduction;

21 (2) whether prior motions or petitions to prevent abductions have been filed by
22 either parent;

23 (3) the disposition of any such motions or petitions; and

24 (4) any relevant factors other than those listed in Section 7.

25 **Comment**

26 Generally the court which has jurisdiction is either one that has personal jurisdiction over
27 the respondent or jurisdiction under the UCCJEA to make a child custody order. A court needs
28 subject matter jurisdiction over the child under the UCCJEA to make a custody order. A court,
29 however, must have personal jurisdiction over the respondent to impose a personal obligation or
30 restriction, such as the posting of a bond or turning in a passport to the court.
31

32 If a victim of domestic violence flees to another state and seeks to file for a child custody
33 determination, the relief available depends upon state law. Domestic violence can be considered

1 as a factor in one state being an inconvenient forum. UCCJEA § 207(b)(1). A court may decline
2 jurisdiction if the person seeking relief is guilty of “unjustifiable” conduct, such as abduction.
3 UCCJEA § 208.

4
5 Usually the petition will be filed by a parent who fears that the other parent or family
6 members are preparing to abduct the child. A state child welfare agency may have lawful
7 custody and could be the party alleging the risk of abduction.
8

9 **SECTION 5. HEARING.** Unless there is an emergency as described in Section 6, the
10 court must hold a hearing on the allegations. Before the court may order relief under this [act],
11 the movant or petitioner must show by a preponderance of the evidence that, based on the factors
12 set forth in Section 7, there is a substantial risk the respondent will abduct the child. If the court
13 finds a substantial risk of abduction, it shall determine what measures, including those described
14 in Section 8, will best protect the child from abduction while reasonably accommodating access
15 rights of others.

16 **Comment**

17 This section requires a hearing before imposing any restrictions on a party’s rights to
18 access. It seeks to balance the rights of both parents or others with court ordered visitation or
19 access and the potential for denial of one party’s rights to lawful custody. The preponderance of
20 the evidence standard allows for a balancing of the interests by requiring the petitioner to present
21 enough evidence to establish a reasonable basis for the fear of abduction.
22

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

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

1 (b) A warrant to take physical custody of a child must:

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

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

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

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

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

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

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

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

22 **Comment**

1 Predecree abductions are a major problem. Section 6 allows the court to issue relief
2 immediately to prevent an abduction. Both UCCJA § 3(a)(3)(ii) and UCCJEA § 201 recognize
3 that emergencies require prompt judicial action and allow for temporary custody orders when a
4 child, sibling or parent is subjected to or threatened with mistreatment or abuse. In both statutes
5 the child must be present in the state for a court to exercise emergency jurisdiction.
6

7 A victim of domestic violence may obtain a temporary emergency custody order in the
8 safe haven state that can ripen into a home state where there is no prior custody order and no
9 action is filed in the home state within six months of the child's departure.
10

11 State law determines the duration of the ex parte order and the time for a full hearing on
12 the merits. This section tracks UCCJEA § 311 which allows for a petitioner to file a verified
13 application for the issuance of a warrant to take physical custody of the child if the child is
14 immediately likely to be removed from this State. The judge has discretion and can weigh
15 whether an emergency actually exists, whether the petitioner sought relief because of fear the
16 respondent would run if notice were given, whether a prompt hearing with notice would meet the
17 needs of the case, and the type of relief that needs to be given on an emergency basis.
18

19 (b) To alleviate concern about the unwarranted expenses being imposed on the
20 respondent, this section allows expense for the imposition of sanctions if emergency relief was
21 not sought in good faith.
22

23 **SECTION 7. ABDUCTION RISK FACTORS.**

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

26 (1) abducted the child;

27 (2) threatened to abduct the child;

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

30 (A) abandonment of employment;

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

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

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

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

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

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

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

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

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

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

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

22 (C) does not have legal mechanisms for immediately and

1 effectively enforcing an order issued by this state regarding the custody of or access to a child;

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

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

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

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

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

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

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

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

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

22 (J) is engaged in active military action or war, including a civil

1 war;

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

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

5 (5) has forged or presented misleading or false evidence to obtain a visa,
6 passport, social security card, or other identification card or has made a misrepresentation to the
7 United States government.

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

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

12 (2) the age of the child;

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

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

17 **Comment**

18
19 The list includes the risk factors found in both the California and Texas statutes. *See*
20 CAL. FAM. CODE § 3408(b)(1); TEX. FAM. CODE § 153.502. The risk factors are based on
21 research that has been done during the last twelve years. Researchers have identified three
22 important characteristics of abducting parents: they (1) dismiss the value of the other parent in
23 the child's lives; (2) have young children or children vulnerable to influence; and (3) often have
24 the support of their family and others. GEOFFREY L. GREIF AND REBECCA HEGAR, *WHEN*
25 *PARENTS KIDNAP* (1993). An abducting parent views the child's needs as secondary to the
26 parental agenda, which is to provoke, agitate, control, attack or psychologically torture the other
27 parent. D.C. Rand, *The Spectrum of the Parental Alienation Syndrome*, 15 AMER. J. FORENSICS

1 PSYCHOLOGY 3 (1997).

2
3 While in a few instances a parent is protecting a child from real or imagined abuse, in
4 most cases, the primary motives are to force a reconciliation with the other parent; to blame or
5 punish the other parent; and to reduce the fear of losing custody or visitation. Janet Chiancone,
6 *Parental Abduction: A Review of the Literature* (U.S. Dep't of Justice, OJJDP 2002). Studies
7 have demonstrated that preceding an abduction, there are warning signs, or common red flags,
8 such as: (a) a parent has previously abducted the child or threatened to do so; (b) a parent has no
9 strong ties to the child's home state; (c) a parent has citizenship in another country or strong
10 emotional ties to the country of origin; (d) a parent has friends or family living abroad; (e) a
11 parent has a strong support network; (f) a parent has no financial reasons to stay in the area; (g) a
12 parent is engaged in planning activities which indicate an attempt to move; (h) a parent shows a
13 history of marital instability, violence or child abuse, or a prior criminal record. In addition, a
14 parent may be distrustful or suspicious due to a belief that abuse has occurred and have a social
15 support for the belief. See Janet Johnston & Linda Girdner, *Family Abductors: Descriptive*
16 *Profiles and Preventative Interventions* (U.S. Dep't of Justice, OJJDP 2001); ABA, EARLY
17 IDENTIFICATION OF RISK FACTORS FOR PARENTAL ABDUCTION (NCJ185026).

18
19 The more of these factors that are present, the more likely an abduction. However, the
20 mere presence one or more of these factors does not mean that an abduction is imminent just as
21 the absence of these factors does not guarantee that no abduction will occur.

22
23 (b)(1) Because of the difficulties associated with securing return of children from
24 countries which have not ratified or acceded to the Hague Convention, judges should be
25 particularly sensitive to the importance of preventative means where there is an identified risk of
26 a child being removed to such countries. The court may also take into consideration the
27 difficulties a petitioner may face in trying to retrieve the child from a country that has ratified the
28 Hague Convention but is not compliant. Compliance Reports are available at
29 <http://www.travel.state.gov>

30
31 (c)(1) One of the problems with the risk factors is that some of the same activities might
32 be undertaken by a victim of domestic violence. See Merle H. Weiner, *International Child*
33 *Abduction and the Escape from Domestic Violence*, 69 FORDHAM L. REV. 593 (2000); Claire
34 L'Heureaux-Dubé, *Cherishing our Children: The Role of the Hague Convention on the Civil*
35 *Aspects of International Child Abduction*, V THE JUDGES' NEWSLETTER 17, 19 (Spring 2003)
36 (stating "The Hague Convention . . . is not sensitive enough to the needs of mothers who abduct
37 their children in order to escape from abusive situations"). Children suffer from seeing abuse of
38 parent as well as by being abused themselves. Howard Davidson, *Child Abuse and Domestic*
39 *Violence: Legal Connections and Controversies* 29 FAM. L.Q. 357, 369-371 (1995).

40
41 (c)(2) The younger the child the more likely they are to be abducted. Younger children
42 may be more likely to be victimized and more likely to be in need of supervised visitation.

1 (c)(3) Family abduction has been characterized as a form of child abuse because of the
2 harmful effects on the child. Children abducted by family members often suffer severe life-long
3 emotional and psychological damage. Where children are missing for a lengthy period, their lives
4 are different than those missing only a few days. In a 1983 study, 89 percent of sampled children
5 who suffered or were threatened with family abduction showed symptoms of grief and rage
6 toward the left-behind parent, as well as “mental indoctrination” perpetrated by the abductor.
7 D.H. Schetky & L.H. Haller, *Parental Kidnapping*, 22 AM. ACAD. CHILD PSYCHIATRY 279, 284
8 (1983); GEOFFREY L. GREIF & REBECCA HEGAR, *WHEN PARENTS KIDNAP* (1993); Rebecca L.
9 Hegar & Geoffrey L. Grief, *Impact on Children of Abduction by a Parent, A Review of the*
10 *Literature*, 62 AM. J. ORTHOPSYCHIATRY 599 (1992). Studies have documented the emotional,
11 and often physical, harm to abducted children. Abducted children suffer depression; loss of
12 community; loss of medical benefits; loss of stability, security and trust; excessive fearfulness;
13 loneliness; anger; helplessness; disruption in identify formation; and fear of abandonment. D.S.
14 HUNTINGTON, *PARENTAL KIDNAPPING: A NEW FORM OF CHILD ABUSE* (1982); PATRICIA M.
15 HOFF, *KIDNAPPING: PREVENTION AND REMEDIES* (ABA CENTER FOR CHILDREN AND THE LAW
16 1997). Children abducted internationally often have even more difficulties due to language and
17 cultural differences. Marilyn Freeman, *The Effects and Consequences of International Child*
18 *Abduction*, 32 FAM. L. Q. 603 (1998)(reviewing literature).
19

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

24 SECTION 8. MEASURES TO PREVENT ABDUCTIONS.

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

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

30 (2) appoint an appropriate person other than the respondent as the sole
31 custodian of the child;

32 (3) require supervised visitation or parenting time for the respondent until
33 the court finds that supervised visitation is no longer necessary;

1 (4) enjoin the respondent from directly or indirectly from:

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

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

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

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

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

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

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

19 (9) order passport and travel controls, including controls that:

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

22 (B) require the respondent to surrender any passport issued in the

1 child's name, including any passport issued in the name of both the parent and the child; [and]

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

4 [(D) require respondent to purchase an open airline ticket for the
5 left-behind parent in case the child is not returned; and]

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

8 (10) Require the respondent to provide:

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

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

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

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

18 (11) authorize the assistance of law enforcement; [and

19 (12) if possible, require the respondent to obtain an order from another
20 jurisdiction containing terms identical to the custody and visitation order issued in the United
21 States.]

22 (b) An injunction issued under subsection (a)(4) is enforceable under applicable

1 state law.

2 (c) If the court imposes any or all of the restrictions in subsection (a), those
3 restrictions must be specifically noted on the record of the court proceedings.

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

5 **Comment**

6
7 The court should have many choices of remedies. Ideally the judge would choose the
8 least restrictive measures to maximize opportunities for continued parental contact while
9 minimizing the opportunities for abduction. The higher the risk of abduction, the more
10 restrictions should be used. In addition, the most restrictive measures are likely to be imposed
11 when the threat is that the child will be taken out of the United States to a foreign jurisdiction
12 with a different culture and legal system which does not recognize the legal rights of women and
13 will not enforce custody orders from the United States.

14
15 (a)(1) The intent is not to change the law of the state as to representatives for children.
16 States differ as to whether to appoint an attorney for the child, best interest lawyer, or guardian ad
17 litem. This section recognizes that the child should have a voice and should be the focus, rather
18 than the “rights” of the parents. The ABA Standards for Lawyers Who Represent Children in
19 Custody Cases provide that the court should appoint a Child’s Attorney or a Best Interests lawyer
20 if there is threat of abduction. The appointment should be consistent with applicable state law.
21 Different types of representation may be needed for different children within a family depending
22 on their ages.

23
24 (2) A court finding that any of the risk factors have been proved by a preponderance of
25 the evidence should not award joint custody. The finding of a risk factor is sufficient to
26 overcome a presumption in favor of joint custody. The American Bar Association Family Law
27 Section adopted a Model Joint Custody statute in August, 1989. The Model Statute Section 1
28 expressly states, “Joint custody is inappropriate in cases in which spouse abuse, child abuse or
29 parental kidnapping is likely to occur.” The Model Statute also requires the court to consider
30 “any history of or potential for child abuse, spouse abuse, or parental kidnapping”and “the
31 geographic proximity of the parents to each other as this relates to the practical considerations of
32 joint physical custody” when determining whether joint custody is in the best interests of the
33 child.

34
35 (b)(5) A high enough bond can be a deterrent and serve as a source of funds to help
36 retrieve the child if an abduction occurs. Judges in several states have required parents to post a
37 bond to ensure compliance with court orders.

38
39 (b)(6) While some states do not like to impose on a parent’s constitutional right to travel,

1 a substantial risk of abduction is sufficient to restrict a parent’s mobility. The court may want to
2 require the written permission of other parent or court order before the child is removed from the
3 jurisdiction.
4

5 (7) If domestic violence is present, the court may also want to order a person to obtain
6 counseling or attendance at a batterers intervention and prevention program (BIPP). Some
7 research suggests that anger management programs do not seem to work as well as batterers
8 intervention programs.
9

10 (9) If there is a potential for international abduction, passport controls are a must.
11 International abductions are among the most complex and frustrating and all reasonable
12 restrictions to prevent such abductions are necessary.
13

14 (11) Many law enforcement officers are unclear about their role in responding to parental
15 kidnapping cases. A provision in the custody order directing law enforcement officer to
16 “accompany and assist” a parent to recover an abducted child may be useful. One study showed
17 that 70 % of law enforcement agencies reported that they did not have written policies and
18 procedures governing family abduction cases. The UCCJEA Sections 315 and 316 authorize law
19 enforcement to enforce a child-custody determination.
20

21 (12) It may be possible to obtain a “mirror” or reciprocal order. Prior to exercising rights,
22 the respondent would need to get a custody order from his or her native country that recognizes
23 the United States order and continuing jurisdiction in the United States. The foreign court would
24 need to agree to order return of the child if the child was taken in violation of the court order.
25 This potentially expensive and time consuming remedy should only be ordered when likely to be
26 of assistance. These orders may be modified or enforced pursuant to the laws of the other
27 country.
28

29 **SECTION 9. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In

30 applying and construing this [act], consideration must be given to the need to promote uniformity
31 of the law with respect to its subject matter among States that enact it.

32 **SECTION 10. SEVERABILITY.** If any provision of this [act] or its application to any

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

1 **SECTION 11. ELECTRONIC SIGNATURES.** This [act] modifies, limits and
2 supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C.
3 Section 7001 et seq., but does not modify, limit, or supersede Section 101(c)(15 U.S.C. Section
4 7001(c)) of that act or authorize electronic delivery of any of the notices described in Section
5 103(b) of that act (15 U.S.C. Section 7003(b)).

6 **SECTION 12. EFFECTIVE DATE.** This [act] takes effect on