

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:35 A.M. on January 16, 2007, in Room 123-S of the Capitol.

All members were present except:

Les Donovan- excused
David Haley- excused

Committee staff present:

Athena Anadaya, Kansas Legislative Research Department
Bruce Kinzie, Office of Revisor of Statutes
Nobuko Folmsbee, Office of Revisor of Statutes
Karen Clowers, Committee Assistant

Conferees appearing before the committee:

Eric Fish, National Conference of Commissioners on Uniform State Laws
Ronald W. Nelson, Attorney, Nelson & Booth
Linda Elrod, Righter Distinguished Professor of Law, Washburn University
Sandy Barnett, Executive Director, Kansas Coalition Against Sexual and Domestic Violence
Howard Shipley, Detective, Reno County Sheriff's Office
Janet England, Clerk of the District Court, Sixth Judicial District

Others attending:

See attached list.

Bill Introductions

Senator Schmidt introduced a bill regarding sentencing relating to burglary. Senator Schmidt moved, Senator Bruce seconded, to introduce the bill. Motion carried.

Senator Goodwin introduced a bill that enhance penalties for homicide of a pregnant woman. Senator Schmidt moved, Senator Betts seconded, to introduce the bill. Motion carried.

Senator Allen introduced a bill which would make it easier to reinstate a woman's maiden name following a divorce. Senator Allen moved, Senator Goodwin seconded, to introduce the bill. Motion carried.

Senator Vratil introduced two bills. The first bill would allow a one time change of judge upon request of either party. The second would extend the moratorium in the Kansas Offender Registration Act for one year. Senator Vratil moved, Senator Goodwin seconded, to introduce the bills. Motion carried.

The Chairman opened the hearing on **SB 18--Uniform child abduction prevention act.**

Eric Fish appeared as a proponent, indicating the Uniform Child Abduction Prevention Act (UCAPA) provides states with a tool to deter both pre-decree and post-decree domestic and international child abductions by parents, persons acting on behalf of a parent or others (Attachment 1). The act anticipates the need for cooperation and communication among the courts of different states as well as addressing the special problems involved with international child abductions. This act will provide the courts a means to identify risk factors for child abductions and a system for imposing appropriate abduction prevention measures.

Ronald W. Nelson spoke in favor of the bill, relating that society has become increasingly mobile (Attachment 2). Long distance travel and communications are easier; intermarriage between faiths, nationalities and social groups more common; and outcomes of child custody decisions less predictable the more often parent's have sought to use extra-judicial and non-judicial methods of gaining advantage in custody cases. Mr. Nelson indicated this bill would address the growing problem of parental abduction and protect children.

Linda D. Elrod spoke as a proponent, stressing the need for an uniform approach among states (Attachment 3). UCAPA would complement existing law, and aid in preventing wrongful abductions. In addition, it was recommended that the comments be included in the statutes to help practitioners. The comments clarify

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:35 A.M. on January 16, 2007 in Room 123-S of the Capitol.

many of the Act's provisions, including those relating to domestic violence and would help practitioners.

Sandy Barnett provided neutral testimony recognizing the importance of preventing wrongful abductions of children and requesting amendments that should reduce the possibility that UCAPA is misused by domestic abusers (Attachment 4). Ms. Barnett indicated that some of the best pieces of the act as it relates to these concerns are in the comments sections and requested the committee include the comments in the bill and that they be published in the statute books. A second request was made to amend the bill to re-vamp the Kansas crimes on interference with parental custody (K.S.A. 21-3422) and aggravated interference with parental custody (K.S.A. 21-3422a) which would provide protection for parents fleeing domestic violence and abuse. The Chairman indicated that rather than amend the bill Ms. Barnett should present the amendments in bill form to be introduced separately.

There being no further conferees, the hearing on **SB 18** was closed.

The Chairman opened the hearing on **SB 14--Offender registration; convictions for manufacture of controlled substance, possession of certain drugs with intent to manufacture controlled substance required to register.**

Howard Shipley appeared in support of the bill, specifically the addition of persons convicted of methamphetamine manufacturing related offenses to the offender registration act (Attachment 5). Detective Shipley indicated that due to the inherent dangers of producing methamphetamine, landlords should be able to easily check potential renters for drug related backgrounds in order to protect their property and the health and safety of other tenants.

Chairman Vratil announced due to time constraints the hearing on **SB 14** will be continued tomorrow. Written testimony in support of **SB 14** was submitted by:

- Randy L. Rogers, Kansas Sheriff's Association (Attachment 6)
- Richard W. Barta, Sheriff, Shawnee County (Attachment 7)

The hearing on **SB 51--Vital statistics, list of deceased residents, district court clerks was opened.**

Janet England spoke in favor of the bill, indicating that the list for potential jurors is obtained from the Division of Motor Vehicles (Attachment 8). Since licenses are valid for several years, the list contains names of persons who are deceased and therefore the deceased person is named as a potential juror. Enactment of this bill will prevent this from happening.

There being no further conferees, the hearing on **SB 51** was closed.

The meeting adjourned at 10:29 A.M. The next scheduled meeting is January 17, 2007.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 1-16-07

NAME	REPRESENTING
Emily Geric	Hein Law Firm
Tara Olsen	SSA
Kathy Porter	Judicial Branch
Janet Engler	" "
Ann Walsh	" "
Eric Fish	NCCUSL
Linda Elrod	Washburn Law School NCCUSL /ABA Family Law Section
Carolyn Middelborg	KS St No Assn
Kathleen Outlaw	KS St No Assn
Amy O'Leary	Sen. Haley
Kyle Smith	KBI
Charles Buxlett	SRS /HCP /MAPS
Scott Hollaway	Shawnee Co. Sheriff's Office
Joseph A. Hoffman	KDWE
Robert Mead	LGR
Erik Sartorius	City of Overland Park
Jeff Bolton	Polsinelli, et al
TK Shirley	KS Legal Services

UNIFORM CHILD ABDUCTION PREVENTION ACT

- A SUMMARY -

Child abduction is one of the most frightening and heartbreaking crimes faced by parents and families today. According to the Office of Juvenile Justice and Delinquency Prevention, an estimated 262,100 children were abducted in 1999 alone. Despite the familiar image in the news of children abducted by predatory strangers, the majority of child abductions are perpetrated by family members. Indeed, of the 262,100 children abducted in 1999, approximately 203,900 (78%) were abducted by a family member. While current State laws address initial child-custody determinations and the criminal repercussions of child abductions, they generally provide inadequate prevention mechanisms.

In 2006, the Uniform Law Commission (ULC) promulgated the **Uniform Child Abduction Prevention Act (UCAPA)**. The act provides States with a valuable tool for deterring both domestic and international child abductions by parents and any persons acting on behalf of the parents. Recognizing that most States have already developed substantial bodies of law regarding child custody determinations and enforcement, including specifically the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), the Uniform Law Commission drafted **UCAPA** to be compatible with and to augment existing state law.

The act anticipates the need for cooperation and communication among the courts of different states. Because abduction situations will likely involve more than one state, it is vital that courts have the ability to communicate effectively. The act accomplishes this goal by building on the interstate jurisdiction and enforcement mechanisms of the UCCJEA, including provisions on temporary emergency jurisdiction.

An action for abduction prevention measures may be brought either by a court on its own motion, by a party to a child-custody determination or an individual with a right to seek such a determination, or by a prosecutor or public attorney. The party seeking the abduction prevention measures must file a petition with the court specifying the risk factors for abduction as well as other biographical information including the name, age and gender of the child, the current address of the child and the person against whom the measures are sought, a statement regarding any prior actions related to abduction or domestic violence, a statement addressing any prior arrests for domestic violence or child abuse by either party, and finally any additional information required by existing State child custody law including the UCCJEA.

UCAPA sets out a wide variety of factors that should be considered in determining whether there is a credible risk that a child will be abducted. These factors include overt signs such as previous abductions, attempts to abduct the child, or threats of abduction, as well as signs of general abuse including domestic violence, negligence, or refusal to obey a child-custody determination. The act also includes a wide range of activities that may indicate a planned abduction including abandoning employment, liquidating assets, obtaining travel documents or travel tickets, or requesting the child's school or medical records.

The act also addresses the special problems involved with international child abduction by including several risk factors specifically related to international abduction. In particular, the act requires courts to consider whether the party in question is likely to take a child to a country that isn't a party to the Hague Convention on the Civil Aspects of International Child Abduction, or to a country that places the child at risk, has laws that would restrict access to the child, that is on the current list of state sponsors of terrorism, or is engaged in an active military action or war. In addition, a court will consider issues related to citizenship such as a recent change in citizenship status or a denial of United States Citizenship.

If a court determines that a credible risk exists that the child will be abducted, it may then enter an order containing provisions and measures meant to prevent abduction. The act lists a number of specific measures that a court may order. These include imposing travel restrictions, prohibiting the individual from removing the child from the State or other set geographic area, placing the child's name in the United States Department of State's Child Passport Issuance Alert Program, or requiring the individual to obtain an order from a foreign country containing identical terms to the child-custody determination. An abduction prevention order is effective until the earliest of the order's expiration, the child's emancipation, the child's 18th birthday, or until the order is modified, revoked, or vacated.

If abduction appears imminent, a court may issue a warrant to take physical custody of the child, direct law enforcement officers to take steps to locate and return the child, or exercise other appropriate powers under existing state laws. A warrant to take physical custody is enforceable in the enacting state even if issued by different state. The court may authorize law enforcement officers to enter private property, or even to make a forcible entry at any hour, if the circumstances so warrant. Nevertheless, the person on whom the warrant is being executed must be served with the warrant when or immediately after the child is taken into custody and the person must be afforded a hearing no later than the next judicial day or the next possible judicial day if the next day is impossible.

By giving courts a means to identify risk factors for child abduction and a system for imposing appropriate abduction prevention measures, the **Uniform Child Abduction Prevention Act** will provide States with a powerful tool to combat the threat of abduction that faces tens of thousands of children every year. The States should consider its enactment as expediently as possible.

WHY STATES SHOULD ADOPT THE UNIFORM CHILD ABDUCTION PREVENTION ACT (2006)

The National Conference of Commissioners on Uniform State Laws (“NCCUSL”) promulgated the Uniform Child Abduction Prevention Act (“UCAPA”) in 2006 to provide states with a valuable tool for deterring both domestic and international child abduction. Child abduction is a serious and growing problem. The U.S. Department of Justice reports over 200,000 instances yearly of a child being taken in violation of a custody agreement by a family member or failure of a family member to return or release a child at the end of a legal or agreed upon visit.¹ In addition, at least 1,000 children are abducted from the United States and taken to a foreign country.²

The UCAPA builds on and is consistent with the interstate jurisdiction and enforcement mechanisms of the Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”), now adopted in 46 U.S. jurisdictions, by providing tools and guidance for preventing abduction, even prior to the issuance of a final custody decree. Nearly half of all abductions are pre-decree abductions.

While the UCCJEA provides well-established tools for the return of children abducted within the United States, and the Hague Convention on the Civil Aspects of International Child Abduction facilitates the return of the children abducted internationally, these laws presume that a child can be located and (in the case of the Hague Convention) that the child is located in a country which is a signatory to the agreement. The uniform act is intended to provide courts and parties with tools to prevent an unlawful abduction for occurring in the first place, and thus is crucial to ensuring the well-being and safety of children.

There are a number of important reasons why every state should adopt the Uniform Child Abduction Prevention Act including:

- The Act will bring uniformity of law to child abduction prevention, particularly necessary due to the frequency with which child-custody determinations and child abductions take place across state and international lines.
- The Act provides clear guidance regarding the warning signs and risk factors of a potential child abduction, including a past history of abduction or abuse and activities in furtherance of abduction such as the abandonment of a job, the liquidation of assets, or obtaining travel documents.
- The Act addresses some of the unique problems raised by international child abduction, such as differentiating between nations that are signatories to international child abduction conventions and those that are not.
- The UCAPA gives parents access to effective measures for preventing child abduction, such as the imposition of travel restrictions or requiring a parent to obtain a child-custody determination in a foreign country identical to the original.
- Victims of domestic violence are protected from future harassment through confidentiality provisions designed to further the best interests of the victimized child and parent.

The Uniform Child Abduction Prevention Act (2006) has wide stakeholder support and has been endorsed by the Family Law Section of the American Bar Association. The Act will allow states to more effectively combat the threat of child abduction, and it should be enacted in every jurisdiction as quickly as possible.

¹ Office of Juvenile Justice and Delinquency Prevention, NATIONAL INCIDENCE OF STUDIES OF MISSING, ABUSED, RUNAWAY AND THROWAWAY CHILDREN (NISMART), Oct. 2002 (abduction defined as the taking or keeping of a child by a family member in violation of a custody order, a decree, or other legitimate custodial rights, where the taking or keeping involved some element of concealment, flight, or intent to deprive a lawful custodian indefinitely of custodial privileges).

² H.R. Comm. On Intl. Rel., Federal Response to International Parental Child Abductions: Hearing before the House Comm. On International Relations, 106th Cong. (Oct. 14, 1999) (statement of Jess T. Ford, Associate Director, International Relations and Trade Issues, National Security and International Affairs Division, U.S. General Accounting Office)



Senator leads national effort to prevent child abductions

By BROCK VERGAKIS
Associated Press Writer
4 October 2006

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SALT LAKE CITY (AP) - A Utah state lawmaker is leading a national effort to give judges more authority to step in when parents are suspected of trying to abduct their own children.

Sen. Lyle Hillyard, R-Logan, said he will introduce a bill that sets guidelines for judges to determine when a child is at risk for being abducted. Courts would be allowed to restrict parental contact, revoke a passport or require a bond before a parent is granted visitation.

About 78 percent of the more than 260,000 children nationwide who were abducted in 1999 were taken by a family member, according to the National Center for Missing and Exploited Children, citing the most recent statistics.

Hillyard hopes his bill, which will be introduced when the Legislature returns Jan. 15, will be a model for other states.

The National Conference of Commissioners on Uniform State Laws recently approved the Uniform Child Abduction Prevention Act. Hillyard served as chairman of the committee that drafted the legislation.

No states have adopted it, but Hillyard predicts little resistance in the Utah Legislature. He said a uniform law would allow judges to work across state lines.

A federal law wouldn't give states flexibility and could trump states on issues such as child support, Hillyard said.

"There's a real concern that if we don't do anything on this we're afraid the federal government may pre-empt it and we may have to change Utah procedure," he said.

Under the proposal, if there is a likelihood of abduction, the court could issue an "abduction prevention order."

Some factors a judge could consider: past attempts to abduct a child; financial or cultural ties to another state or country; quitting a job; selling a home; applying for a passport.

Those factors would likely be determined during custody hearings or other court proceedings, according to the National Conference of Commissioners on Uniform State Laws.

Courts could place travel restrictions on a parent and child or even take custody of the minor.

**UNIFORM CHILD ABDUCTION
PREVENTION ACT**

drafted by the

**NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS**

and by it

**APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES**

at its

**ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-FIFTEENTH YEAR
HILTON HEAD, SOUTH CAROLINA**

July 7-14, 2006

WITH PREFATORY NOTE AND COMMENTS

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By

**NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS**

October 25, 2006

ABOUT NCCUSL

The **National Conference of Commissioners on Uniform State Laws (NCCUSL)**, now in its 115th year, provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.

Conference members must be lawyers, qualified to practice law. They are practicing lawyers, judges, legislators and legislative staff and law professors, who have been appointed by state governments as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical.

- NCCUSL strengthens the federal system by providing rules and procedures that are consistent from state to state but that also reflect the diverse experience of the states.
- NCCUSL statutes are representative of state experience, because the organization is made up of representatives from each state, appointed by state government.
- NCCUSL keeps state law up-to-date by addressing important and timely legal issues.
- NCCUSL's efforts reduce the need for individuals and businesses to deal with different laws as they move and do business in different states.
- NCCUSL's work facilitates economic development and provides a legal platform for foreign entities to deal with U.S. citizens and businesses.
- NCCUSL Commissioners donate thousands of hours of their time and legal and drafting expertise every year as a public service, and receive no salary or compensation for their work.
- NCCUSL's deliberative and uniquely open drafting process draws on the expertise of commissioners, but also utilizes input from legal experts, and advisors and observers representing the views of other legal organizations or interests that will be subject to the proposed laws.
- NCCUSL is a state-supported organization that represents true value for the states, providing services that most states could not otherwise afford or duplicate.

DRAFTING COMMITTEE ON UNIFORM CHILD ABDUCTION PREVENTION ACT

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in drafting this Act consists of the following individuals:

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UNIFORM CHILD ABDUCTION PREVENTION ACT

TABLE OF CONTENTS

Prefatory Note	1
SECTION 1. SHORT TITLE	4
SECTION 2. DEFINITIONS	4
SECTION 3. COOPERATION AND COMMUNICATION AMONG COURTS	6
SECTION 4. ACTIONS FOR ABDUCTION PREVENTION MEASURES	6
SECTION 5. JURISDICTION	7
SECTION 6. CONTENTS OF PETITION.	8
SECTION 7. FACTORS TO DETERMINE RISK OF ABDUCTION	10
SECTION 8. PROVISIONS AND MEASURES TO PREVENT ABDUCTION	14
SECTION 9. WARRANT TO TAKE PHYSICAL CUSTODY OF CHILD	20
SECTION 10. DURATION OF ABDUCTION PREVENTION ORDER	23
SECTION 11. UNIFORMITY OF APPLICATION AND CONSTRUCTION	24
SECTION 12. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT	24
SECTION 13. EFFECTIVE DATE	24

UNIFORM CHILD ABDUCTION PREVENTION ACT

Prefatory Note

Child abduction is a serious problem both in scope and effect. A study commissioned by the Office of Juvenile Justice and Delinquency Prevention estimated that 262,100 children were abducted in 1999; 203,900 (78 per cent) of them were abducted by a parent or family member; approximately 1000 of the abductions were international.¹ The purpose of the Uniform Child Abduction Prevention Act is to deter both predecree and postdecree domestic and international child abductions by parents, persons acting on behalf of a parent or others. Family abductions may be preventable through the identification of risk factors and the imposition of appropriate preventive measures.

The Uniform Child Abduction Prevention Act is premised on the general principle that preventing an abduction is in a child's best interests. Abducted children may suffer long-lasting harm. Federal law recognizes that parental abduction is harmful to children.² Child abductions can occur before or after entry of a child-custody determination. This Act allows the court to impose abduction prevention measures at any time.

Many abductions occur before a court has had the opportunity to enter a child-custody determination. Children at the center of custody disputes are at the highest risk for potential abductions.³ Jurisdictional laws help deter abductions by specifying the proper state to handle custody litigation. The Uniform Child Custody Jurisdiction Act⁴ sets out four concurrent bases for jurisdiction. Congress passed the Parental Kidnapping Prevention Act of 1980 to deter abductions, discourage interstate conflicts, and promote cooperation between states about

¹See DAVID FINKELHOR, HEATHER HAMMER & ANDREA J. SEDLAK, NATIONAL INCIDENCE STUDIES OF MISSING, ABDUCTED, RUNAWAY, AND THROWN AWAY CHILDREN, CHILDREN ABDUCTED BY FAMILY MEMBERS: NATIONAL ESTIMATE AND CHARACTERISTICS (Oct. 2002).

² International Child Abduction Remedies Act, 42 U.S.C. § 11601(a)(1) ("The Congress makes the following findings: (1) The international abduction or wrongful retention of children is harmful to their well-being . . ."). See also Dorothy S. Huntington, Parental Kidnapping: A New Form of Child Abuse, available at http://www.hiltonhouse.com/articles/child_abuse-huntington.txt (characterizing child abduction as abuse).

³ AMERICA'S HIDDEN CRIME: WHEN THE KIDNAPPER IS KIN 10-11 (Polly Klaas Foundation 2004). See also Janet R. Johnston et al., Early Identification of Risk Factors for Parental Abduction (OJJDP March 2001) (indicating that men are more likely to abduct before an order is entered while women are more likely to abduct after a child custody determination).

⁴ 9 UNIF. L. ANN. Part I 115 (1988).

custody matters by resolving jurisdictional conflicts.⁵ The Parental Kidnapping Prevention Act prioritizes the state in which the child has lived for six months preceding the filing of the petition (the home state) as the place for custody litigation⁶ and prohibits a second state from assuming jurisdiction if there is an action pending in the state that has proper jurisdiction.⁷ The Uniform Child Custody Jurisdiction and Enforcement Act,⁸ now in 45 jurisdictions, also prioritizes home state jurisdiction notwithstanding the child's absence. Jurisdictional laws do not provide prevention measures for abduction.

Post-decree abductions often occur because the existing child-custody determinations lack sufficient protective provisions to prevent an abduction. An award of joint physical custody without a designation of specific times; a vague order granting "reasonable visitation"; or the lack any restrictions on custody and visitation make orders hard to enforce. The awareness of abduction risk factors and preventive measures available can reduce the threat of abduction by giving the court the tools to make the initial child-custody determination clearer, more specific, and more easily enforceable.

If an abduction occurs after a child-custody determination, all states have enforcement remedies. Forty-six jurisdictions use the procedures in Article 3 of the Uniform Child Custody Jurisdiction and Enforcement Act. In addition, courts can punish abductors for contempt and allow tort actions for custodial interference. Several federal laws help locate missing children⁹ and criminalize international parental kidnapping.¹⁰ While there is no federal law criminalizing interstate parental kidnapping, there is a mechanism for apprehending persons who violate state parental kidnapping laws and travel across state lines.¹¹ While every state criminally forbids

⁵ Pub. L. No. 96-611, note 7 to 28 U.S.C. §1738A.

⁶ 28 U.S.C. Section 1738A(c).

⁷ 28 U.S.C.A. Section 1738A(g).

⁸ 9 UNIF. L. ANN. Part I 657 (1999).

⁹Missing 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); and the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act of 2003, Pub. L. 108-21, 117 Stat. 650 (AMBER Alert Program).

¹⁰ See International Parental Kidnapping Crime Act (IPKCA), 18 U.S.C. § 1204; The Fugitive Felon Act, 18 U.S.C. § 1073; and The Extradition Treaties Interpretation Act of 1998, 18 U.S.C. § 3181.

¹¹ Unlawful Flight to Avoid Prosecution, 18 U.S.C. § 1204; The Fugitive Felon Act, 18 U.S.C. § 1073. When enacting the Parental Kidnapping Prevention Act, Congress declared that the Unlawful Flight to Avoid Prosecution provision applies to cases involving parental

custodial interference by parents or relatives of the child, the laws differ as to the elements of the offenses, the punishments given, and whether a child-custody determination must exist for a violation to occur.¹²

If the abduction is international, the Hague Convention on the Civil Aspects of International Child Abduction, currently in effect between the United States and fifty-five countries, facilitates the return of an abducted child to the child's habitual residence.¹³ Many countries, however, have not ratified the Hague Convention on the Civil Aspects of International Child Abduction, the United States has not accepted all nations' accessions, and some countries that have ratified do not comply with the treaty obligations.

This Act is civil law and complements existing state law. This Act does not limit, contradict, or supercede the Uniform Child Custody Jurisdiction and Enforcement Act or the Uniform Child Custody Jurisdiction Act. This Act is not meant to prevent a legitimate relocation action filed in accordance with the law of the state having jurisdiction to make a child-custody determination nor to prevent a victim of domestic violence from escaping abuse.

The Uniform Child Abduction Prevention Act applies to predecree and intrastate cases, to emergency situations, and to cases in which risk factors exist and the current child-custody determination lacks abduction prevention measures. Only three states have enacted comprehensive child abduction prevention statutes;¹⁴ two other states include provisions to reduce the risk of abduction.¹⁵ This Act will fill a void in the majority of states by identifying circumstances indicating a risk of abduction and providing measures to prevent the abduction of children, predecree or postdecree.

kidnapping and interstate or international flight to avoid prosecution. Pub. L. No. 96-611, 10(a).

¹² Appendix A. Citation List of State Parental Kidnapping Statutes, National Clearinghouse for the Defense of Battered Women, *The Impact of Parental Kidnapping Laws and Practice on Domestic Violence Survivors* 32 (2005).

¹³ See The Hague Convention on the Civil Aspects of International Child Abduction, 51 Fed. Reg. § 10494 et seq. (1986); the International Child Abduction Remedies Act (ICARA), 42 U.S.C. §§ 11601-11610. For a current list of United States treaty partners, visit www.travel.state.gov/family/abduction/hague_issues/hague_issues_1487.html.

¹⁴ See ARK. STAT. ANN. § 9-13-401-407 (2005); CAL. FAM. CODE § 3048 (2004); TEX. FAM. CODE § 153.501- § 153.503 (2003).

¹⁵ See FLA. STAT. § 61.45 (2005); OR. REV. STAT. § 109.035 (2005).

UNIFORM CHILD ABDUCTION PREVENTION ACT

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

SECTION 2. DEFINITIONS. In this [act]:

(1) "Abduction" means the wrongful removal or wrongful retention of a child.

(2) "Child" means an unemancipated individual who is less than 18 years of age.

(3) "Child-custody determination" means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order.

(4) "Child-custody proceeding" means a proceeding in which legal custody, physical custody, or visitation with respect to a child is at issue. The term includes a proceeding for divorce, dissolution of marriage, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, or protection from domestic violence.

(5) "Court" means an entity authorized under the law of a state to establish, enforce, or modify a child-custody determination.

(6) "Petition" includes a motion or its equivalent.

(7) "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.

(8) "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. The term includes a federally recognized Indian tribe or nation.

(9) “Travel document” means records relating to a travel itinerary, including travel tickets, passes, reservations for transportation, or accommodations. The term does not include a passport or visa.

(10) “Wrongful removal” means the taking of a child that breaches rights of custody or visitation given or recognized under the law of this state.

(11) “Wrongful retention” means the keeping or concealing of a child that breaches rights of custody or visitation given or recognized under the law of this state.

Comment

To the extent possible, the definitions track the Uniform Child Custody Jurisdiction and Enforcement Act. The definition of a child as a person under age 18 is the same as in Section 102(2) of the Uniform Child Custody Jurisdiction and Enforcement Act. State law determines when a child becomes emancipated before age 18. This Act is limited to the abduction of minors even though the risk of abduction may apply to a disabled adult who has an appointed adult guardian.

The definition of “child-custody determination” is the same as the definition in Section 102(3) of the Uniform Child Custody Jurisdiction and Enforcement Act. This Act uses the traditional terminology of “custody” and “visitation” because that is the language used in the Uniform Child Custody Jurisdiction and Enforcement Act although local terminology may differ. The definition of a child-custody proceeding differs insignificantly from Section 102(4) of the Uniform Child Custody Jurisdiction and Enforcement Act.

The definition of abduction covers wrongful removal or wrongful retention. The definition is broad enough to encompass not only an abduction committed by either parent or a person acting on behalf of the parent but also other abductions. Generally both parents have the right to companionship and access to their child unless a court states otherwise. Abductions can occur against an individual or other entity with custody rights, as well as against an individual with visitation or access rights. A parent with joint legal or physical custody rights, by operation of law, court order, or legally binding agreement, commits an abduction by wrongfully interfering with the other parent’s rights. A removal or retention of a child can be “wrongful” predecree or postdecree. An abduction is wrongful where it is in breach of an existing “child-custody determination” or, if predecree, in violation of rights attributed to a person by operation of law. The term “breaches rights of custody” tracks Article 3 of the Hague Convention on the Civil Aspects of International Child Abduction.

SECTION 3. COOPERATION AND COMMUNICATION AMONG COURTS.

Sections [110], [111], and [112] of [insert citation to the provisions of the Uniform Child Custody Jurisdiction and Enforcement Act or its equivalent in the state] apply to cooperation and communications among courts in proceedings under this [act].

Comment

It is possible, even likely, that abduction situations will involve more than one state. Thus, there is a need for mechanisms for communication among courts, for testimony to be obtained quickly by means other than physical presence, and for cooperation between courts in different states. Sections 110, 111, and 112 of the Uniform Child Custody Jurisdiction and Enforcement Act provide mechanisms to deal with these issues. States that do not have the Uniform Child Custody Jurisdiction and Enforcement Act may want to include these provisions or use some similar provision of existing state law.

SECTION 4. ACTIONS FOR ABDUCTION PREVENTION MEASURES.

(a) A court on its own motion may order abduction prevention measures in a child-custody proceeding if the court finds that the evidence establishes a credible risk of abduction of the child.

(b) A party to a child-custody determination or another individual or entity having a right under the law of this state or any other state to seek a child-custody determination for the child may file a petition seeking abduction prevention measures to protect the child under this [act].

(c) A prosecutor or public authority designated under [insert citation to Section 315 of the Uniform Child Custody Jurisdiction and Enforcement Act or applicable law of this state] may seek a warrant to take physical custody of a child under Section 9 or other appropriate prevention measures.

Comment

An abduction may occur before a child-custody proceeding has commenced, after the filing but before entry of a child-custody determination, or in violation of an existing child-custody determination. To obtain abduction prevention measures, either the court on its own may impose the measures or a party to a child custody proceeding or an individual or entity having the right to seek custody may file a petition seeking abduction prevention measures.

A court hearing a child custody case may determine that the evidence shows a credible risk of abduction. Therefore, even without a party filing a petition under this Act, the court on its own motion can impose appropriate abduction prevention measures. Usually, however, a parent who fears that the other parent or family members are preparing to abduct the child will file a petition in an existing custody dispute. An individual or other entity, such as the state child welfare agency, which has a right to lawful custody may file a petition alleging a risk of abduction and seeking prevention measures with respect to a child who is not yet the subject of a child-custody determination.

The Act allows a prosecutor or public authority designated in Section 315 of the Uniform Child Custody Jurisdiction and Enforcement Act to seek a warrant under Section 9 of this Act if there is an imminent risk of wrongful removal.

SECTION 5. JURISDICTION.

(a) A petition under this [act] may be filed only in a court that has jurisdiction to make a child-custody determination with respect to the child at issue under [insert citation to Uniform Child Custody Jurisdiction and Enforcement Act or the Uniform Child Custody Jurisdiction Act].

(b) A court of this state has temporary emergency jurisdiction under [insert citation to Section 204 of the Uniform Child Custody Jurisdiction and Enforcement Act or Section 3(a)(3) of the Uniform Child Custody Jurisdiction Act] if the court finds a credible risk of abduction.

Comment

This Act complements, but does not limit, contradict, or supercede the Uniform Child Custody Jurisdiction and Enforcement Act, 9 U.L.A. Part I 657 (1999), or the Uniform Child Custody Jurisdiction Act, 9 U.L.A. Part I 115 (1988). A court must have jurisdiction sufficient to make an initial child-custody determination, a modification, or temporary emergency jurisdiction to issue prevention measures under this Act.

The Parental Kidnapping Prevention Act prioritizes the child's home state as the primary

jurisdictional basis; prohibits a court in one state from exercising jurisdiction if a valid custody proceeding is already pending in another state; and requires that states give full faith and credit to sister state decrees made in accordance with its principles. The Uniform Child Custody Jurisdiction and Enforcement Act follows the Parental Kidnapping Prevention Act.

A court has temporary emergency jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act only if the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse. This Act equates a credible risk of abduction with threatened mistreatment or abuse for emergency jurisdiction purposes.

If a state would be able to exercise emergency jurisdiction under Section 204 the Uniform Child Custody Jurisdiction and Enforcement Act, it can do so even if another court has issued a child-custody determination and has continuing exclusive jurisdiction. The reference to Section 204 brings in all of its provisions that include communication, length of time of temporary orders, and the like.

Under Section 208 of the Uniform Child Custody Jurisdiction and Enforcement Act, if a court has jurisdiction because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction. However, as the comment to Section 208 explains, domestic violence victims should not be charged with unjustifiable conduct for conduct that occurred in the process of fleeing domestic violence. Domestic violence also shall be considered in a court's inconvenient forum analysis under Section 207(b)(1) of the Uniform Child Custody Jurisdiction and Enforcement Act.

SECTION 6. CONTENTS OF PETITION. A petition under this [act] must be verified and include a copy of any existing child-custody determination, if available. The petition must specify the risk factors for abduction, including the relevant factors described in Section 7. Subject to [insert citation to Section 209(e) of the Uniform Child Custody Jurisdiction and Enforcement Act or cite the law of this state providing for the confidentiality of procedures, addresses, and other identifying information], if reasonably ascertainable, the petition must contain:

- (1) the name, date of birth, and gender of the child;
- (2) the customary address and current physical location of the child;

- (3) the identity, customary address, and current physical location of the respondent;
- (4) a statement of whether a prior action to prevent abduction or domestic violence has been filed by a party or other individual or entity having custody of the child, and the date, location, and disposition of the action;
- (5) a statement of whether a party to the proceeding has been arrested for a crime related to domestic violence, stalking, or child abuse or neglect, and the date, location, and disposition of the case; and
- (6) any other information required to be submitted to the court for a child-custody determination under [insert citation to Section 209 of the Uniform Child Custody Jurisdiction and Enforcement Act or applicable law of this state].

Comment

The contents of the petition follow those for pleadings under Section 209 of the Uniform Child Custody Jurisdiction and Enforcement Act. The information is made subject to state law on the protection of names or identifying information in certain cases. A number of states have enacted laws relating to the protection of victims in domestic violence and child abuse cases by keeping confidential the victims' names, addresses, and other information. These procedures must be followed if the state law requires their applicability. If a state does not protect names and addresses, then a provision similar to Section 209(e) of the Uniform Child Custody Jurisdiction and Enforcement Act should be added. That provision reads:

If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.

The requirement for information on domestic violence or child abuse is to alert the court to the possibility that a batterer or abuser is attempting to use the Act. Domestic violence underlies large numbers of parental kidnapping. One study found that approximately one half of abductors had been violent toward the other parent during the marriage or relationship. Some

batterers abduct their children during or after custody litigation; others abduct before initiating legal proceedings. The court should not allow a batterer to use this Act to gain temporary custody or additional visitation in an uncontested hearing. A person who has committed domestic violence or child abuse poses a risk of harm to the child. Such a person, however, may still seek relief in a contested hearing where the issues can be fully examined by the court. In order to screen for domestic violence or child abuse, the petition requires disclosure of all relevant information and the court can inquire about domestic violence at any hearing.

Notice and opportunity to be heard should be given according to the law of the state and may be by publication if other means are not effective. See Section 108(a) of the Uniform Child Custody Jurisdiction and Enforcement Act.

SECTION 7. FACTORS TO DETERMINE RISK OF ABDUCTION.

(a) In determining whether there is a credible risk of abduction of a child, the court shall consider any evidence that the petitioner or respondent:

- (1) has previously abducted or attempted to abduct the child;
- (2) has threatened to abduct the child;
- (3) has recently engaged in activities that may indicate a planned abduction,

including:

- (A) abandoning employment;
- (B) selling a primary residence;
- (C) terminating a lease;
- (D) closing bank or other financial management accounts, liquidating assets, hiding or destroying financial documents, or conducting any unusual financial activities;
- (E) applying for a passport or visa or obtaining travel documents for the respondent, a family member, or the child; or
- (F) seeking to obtain the child's birth certificate or school or medical

records;

(4) has engaged in domestic violence, stalking, or child abuse or neglect;

(5) has refused to follow a child-custody determination;

(6) lacks strong familial, financial, emotional, or cultural ties to the state or the United States;

(7) has strong familial, financial, emotional, or cultural ties to another state or country;

(8) is likely to take the child to a country that:

(A) is not a party to the Hague Convention on the Civil Aspects of International Child Abduction and does not provide for the extradition of an abducting parent or for the return of an abducted child;

(B) is a party to the Hague Convention on the Civil Aspects of International Child Abduction but:

(i) the Hague Convention on the Civil Aspects of International Child Abduction is not in force between the United States and that country;

(ii) is noncompliant according to the most recent compliance report issued by the United States Department of State; or

(iii) lacks legal mechanisms for immediately and effectively enforcing a return order under the Hague Convention on the Civil Aspects of International Child Abduction;

(C) poses a risk that the child's physical or emotional health or safety would be endangered in the country because of specific circumstances relating to the child or

because of human rights violations committed against children;

(D) has 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 country because of the petitioner's gender, nationality, marital status, or religion; or

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

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

(F) does not have an official United States diplomatic presence in the country; or

(G) is engaged in active military action or war, including a civil war, to which the child may be exposed;

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

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

(11) has forged or presented misleading or false evidence on government forms or supporting documents to obtain or attempt to obtain a passport, a visa, travel documents, a Social Security card, a driver's license, or other government-issued identification card or has made a misrepresentation to the United States government;

(12) has used multiple names to attempt to mislead or defraud; or

(13) has engaged in any other conduct the court considers relevant to the risk of abduction.

(b) In the hearing on a petition under this [act], the court shall consider any evidence that the respondent believed in good faith that the respondent's conduct was necessary to avoid imminent harm to the child or respondent and any other evidence that may be relevant to whether the respondent may be permitted to remove or retain the child.

Comment

The list of risk factors constitutes a summary of the wide variety of types of behaviors and characteristics that researchers have found to be present. The risk factors are based on research that has been done during the last twelve years. Research also shows that abducting parents dismiss the value of the other parent in the child's life; have young children or children vulnerable to influence; and often have the support of their family and others. Parents who have made credible threats to abduct a child or have a history are particularly high risk especially when accompanied by other factors, such as quitting a job, selling a home, and moving assets. See Janet Johnston & Linda Girdner, *Family Abductors: Descriptive Profiles and Preventative Interventions* (U.S. Dep't of Justice, OJJDP 2001 NCJ 182788); ABA, EARLY IDENTIFICATION OF RISK FACTORS FOR PARENTAL ABDUCTION (NCJ185026). The more of these factors that are present, the more likely the chance of an abduction. However, the mere presence of one or more of these factors does not mean that an abduction will occur just as the absence of these factors does not guarantee that no abduction will occur. Some conduct described in the factors can be done in conjunction with a relocation petition, which would negate an inference that the parent is planning to abduct the child.

International abductions pose more obstacles to return of a child than do abductions within the United States. Courts should consider evidence that the respondent was raised in another country and has family support there, has a legal right to work in a foreign country and has the ability to speak that foreign language. There are difficulties associated with securing return of children from countries that are not treaty partners under the Hague Convention on the Civil Aspects of Child Abduction or are not compliant with the Convention. Compliance Reports are available at the United States Department of State website or may be obtained by contacting the Office of Children's Issues in Department of State.

Courts should be particularly sensitive to the importance of preventive measures where there is an identified risk of a child being removed to countries that are guilty of human rights violations, including arranged marriages of children, child labor, lack of child abuse laws, female genital mutilation, sexual exploitation, any form of child slavery, torture, and the deprivation of

liberty. These countries pose potentially serious obstacles to return of a child and pose the possibility of harm.

Courts need to be sensitive to domestic violence issues. Batterers often abduct their children before as well as during and after custody litigation. However, courts also need to be aware of the dynamics of domestic violence. Rather than a vindictive reason for taking the child, a victim fleeing domestic violence may be attempting to protect the victim and the child. Almost half of the parents in one parental kidnapping study were victims of domestic violence and half of the parents who were contemplating abducting their children were motivated by the perceived need to protect their child from physical, sexual, and emotional abuse. GEOFFREY L. GREIF & REBECCA L. HEGAR, *WHEN PARENTS KIDNAP: THE FAMILIES BEHIND THE HEADLINES* 8 (1993). Some of the risk factors involve the same activities that might be undertaken by a victim of domestic violence who is trying to relocate or flee to escape violence. If the evidence shows that the parent preparing to leave is fleeing domestic violence, the court must consider that any order restricting departure or transferring custody may pose safety issues for the respondent and the child, and therefore, should be imposed only when the risk of abduction, the likely harm from the abduction, and the chances of recovery outweigh the risk of harm to the respondent and the child.

The Uniform Child Custody Jurisdiction and Enforcement Act recognizes that domestic violence victims should be considered. The Comment to Section 208 of the Uniform Child Custody Jurisdiction and Enforcement Act (Jurisdiction Declined by Reason of Conduct) states that "Domestic violence victims should not be charged with unjustifiable conduct for conduct that occurred in the process of fleeing domestic violence, even if their conduct is technically illegal. An inquiry must be made whether the flight was justified under the circumstances of the case."

SECTION 8. PROVISIONS AND MEASURES TO PREVENT ABDUCTION.

(a) If a petition is filed under this [act], the court may enter an order that must include:

- (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 detailed description of each party's custody and visitation rights and residential arrangements for the child;
- (4) a provision stating that a violation of the order may subject the party in

violation to civil and criminal penalties; and

(5) identification of the child's country of habitual residence at the time of the issuance of the order.

(b) If, at a hearing on a petition under this [act] or on the court's own motion, the court after reviewing the evidence finds a credible risk of abduction of the child, the court shall enter an abduction prevention order. The order must include the provisions required by subsection (a) and measures and conditions, including those in subsections (c), (d), and (e), that are reasonably calculated to prevent abduction of the child, giving due consideration to the custody and visitation rights of the parties. The court shall consider the age of the child, the potential harm to the child from an abduction, the legal and practical difficulties of returning the child to the jurisdiction if abducted, and the reasons for the potential abduction, including evidence of domestic violence, stalking, or child abuse or neglect.

(c) An abduction prevention order may include one or more of the following:

(1) an imposition of travel restrictions that require that a party traveling with the child outside a designated geographical area provide the other party with the following:

(A) the travel itinerary of the child;

(B) a list of physical addresses and telephone numbers at which the child can be reached at specified times; and

(C) copies of all travel documents;

(2) a prohibition of the respondent directly or indirectly:

(A) removing the child from this state, the United States, or another geographic area without permission of the court or the petitioner's written consent;

(B) removing or retaining the child in violation of a child-custody determination;

(C) removing the child from school or a child-care or similar facility; or

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

(3) a requirement that a party to register the order in another state as a prerequisite to allowing the child to travel to that state;

(4) with regard to the child's passport:

(A) a direction that the petitioner to place the child's name in the United States Department of State's Child Passport Issuance Alert Program;

(B) a requirement that the respondent surrender to the court or the petitioner's attorney any United States or foreign passport issued in the child's name, including a passport issued in the name of both the parent and the child; and

(C) a prohibition upon the respondent from applying on behalf of the child for a new or replacement passport or visa;

(5) as a prerequisite to exercising custody or visitation, a requirement that the respondent provide:

(A) to the United States Department of State Office of Children's Issues and the relevant foreign consulate or embassy, an authenticated copy of the order detailing passport and travel restrictions for the child;

(B) to the court:

(I) proof that the respondent has provided the information in

subparagraph (A); and

(ii) an acknowledgment in a record from the relevant foreign consulate or embassy that no passport application has been made, or passport issued, on behalf of the child;

(C) to the petitioner, proof of registration with the United States Embassy or other United States diplomatic presence in the destination country and with the Central Authority for the Hague Convention on the Civil Aspects of International Child Abduction, if that Convention is in effect between the United States and the destination country, unless one of the parties objects; and

(D) a written waiver under the Privacy Act, 5 U.S.C. Section 552a [as amended], with respect to any document, application, or other information pertaining to the child authorizing its disclosure to the court and the petitioner; and

(6) upon the petitioner's request, a requirement that the respondent obtain an order from the relevant foreign country containing terms identical to the child-custody determination issued in the United States.

(d) In an abduction prevention order, the court may impose conditions on the exercise of custody or visitation that:

(1) limit visitation or require that visitation with the child by the respondent be supervised until the court finds that supervision is no longer necessary and order the respondent to pay the costs of supervision;

(2) 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 pay

for the reasonable expenses of recovery of the child, including reasonable attorneys fees and costs if there is an abduction; and

(3) require the respondent to obtain education on the potentially harmful effects to the child from abduction.

(e) To prevent imminent abduction of a child, a court may:

(1) issue a warrant to take physical custody of the child under Section 9 or the law of this state other than this [act];

(2) direct the use of law enforcement to take any action reasonably necessary to locate the child, obtain return of the child, or enforce a custody determination under this [act] or the law of this state other than this [act]; or

(3) grant any other relief allowed under the law of this state other than this [act].

(f) The remedies provided in this [act] are cumulative and do not affect the availability of other remedies to prevent abduction.

Comment

This act provides courts with a choice of remedies. Ideally the court will choose the least restrictive measures and conditions to maximize opportunities for continued parental contact while minimizing the opportunities for abduction. The most restrictive measures should be used when there have been prior custody violations and overt threats to take the child; when the child faces substantial potential harm from an abducting parent who may have serious mental or personality disorder, history of abuse or violence or no prior relationship with the child; or when the obstacles to recovering the child are formidable due to countries not cooperating and enforcing orders from the United States, not being signatories to the Hague Convention on the Civil Aspects of International Child Abduction or non-compliant. Section 8 lists the possible prevention measures categorized as travel restrictions, conditions on the exercise of custody and visitation, and urgent measures when abduction is imminent or in progress.

If a person files a petition under this Act, even if the court decides not to order restrictive measures or impose conditions, the court may clarify and make more specific the existing child-custody determination. To enter an abduction prevention order, the court must have jurisdiction

to make a child-custody determination even if it is emergency jurisdiction. The court should set out the basis for the court's exercise of 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 court should also include a statement showing that the parties were properly served and given adequate notice. This makes it apparent on the face of the order that due process was met. *See* Sections 108 and 205 of the Uniform Child Custody Jurisdiction and Enforcement Act. States do not require personal jurisdiction to make a child-custody determination.

The court may make an existing child-custody order clearer and more specific. Vague orders are difficult to enforce without additional litigation. The term "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. The court may specify the dates and times for each party's custody and visitation, including holidays, birthdays, and telephone or Internet contact. Because joint custody arrangements create special enforcement problems, the court should ensure that the order specifies the child's residential placement at all times. Whenever possible, the residential arrangements should represent the parents' agreement. However, to prevent abductions, it is important for the court order to be specific as to the residential arrangements for the child. If there is a threat of abduction, awarding sole custody to one parent makes enforcement easier.

The court may also include language in the prevention order to highlight the importance of both parties complying with the court order by including in bold language: "VIOLATION OF THIS ORDER MAY SUBJECT THE PARTY IN VIOLATION TO CIVIL AND CRIMINAL PENALTIES."

Because every abduction case may be a potential international abduction case, the prevention order should identify the place of habitual residence of a child. Although the Hague Convention on the Civil Aspects of International Child Abduction does not define "habitual residence" and the determination is made by the court in the country hearing a petition for return of a child, a statement in the child-custody determination or prevention order may help. A typical statement reads:

The State of _____, United States of America, is the habitual residence of the minor children within the meaning of the Hague Convention on the Civil Aspects of International Child Abduction.

If the court finds a credible risk of abduction, this Act provides numerous measures to prevent an abduction. Courts can require a party traveling outside a specified geographical area to provide the other party with all relevant information about where the child will be and how to contact the child. The court can impose travel restrictions prohibiting the respondent from leaving the United States or a specific geographical area; from removing the child from school, day care or other facilities, and can restrict contact other than as specified in the order. The court may also impose passport restrictions and require the respondent to provide assurances and

safeguards as a condition of traveling with the child.

The court may also choose to impose restrictions on custody or visitation. The most common, and one of the most effective, restrictions is supervised visitation. Visitation should remain supervised until the court decides the threat of abduction has passed. In addition, the court may require the posting of a bond sufficient to serve both as a deterrent and as a source of funds for the cost of the return of the child. If domestic violence is present, the court may want to order the abusive person to obtain education, counseling or attend a batterers' intervention and prevention program.

Because of international abduction cases are the most complex and difficult, reasonable restrictions to prevent such abductions are necessary. If a credible risk of international abduction of the child exists, passport controls and travel restrictions may be indispensable. It may be advantageous in some cases to obtain a "mirror" or reciprocal order. Before exercising rights, the respondent would need to get a custody order from the country to which the respondent will travel that recognizes both the United States order and the court's continuing jurisdiction. 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. Because the foreign court may subsequently modify its order, problems can arise.

The court may do whatever is necessary to prevent an abduction, including using the warrant procedure under this act or under the law of the state. Many law enforcement officers are unclear about their role in responding to parental kidnapping cases. One study showed that 70 percent of law enforcement agencies reported that they did not have written policies and procedures governing child abduction 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 but is not included in this Act. The language tracks Section 316 of the Uniform Child Custody Jurisdiction and Enforcement Act that authorizes law enforcement to take any lawful action reasonably necessary to locate a child or a party and assist a prosecutor or appropriate public official in obtaining return of a child or enforcing a child-custody determination.

The remedies provided in this Act are intended to supplement and complement existing law.

SECTION 9. WARRANT TO TAKE PHYSICAL CUSTODY OF CHILD.

(a) If a petition under this [act] contains allegations, and the court finds that there is a credible risk that the child is imminently likely to be wrongfully removed, the court may issue an ex parte warrant to take physical custody of the child.

(b) The respondent on a petition under subsection (a) must be afforded an opportunity to be heard at the earliest possible time after the ex parte warrant is executed, but not later than the next judicial day unless a hearing on that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible.

(c) An ex parte warrant under subsection (a) to take physical custody of a child must:

- (1) recite the facts upon which a determination of a credible risk of imminent wrongful removal of the child is based;
- (2) direct law enforcement officers to take physical custody of the child immediately;
- (3) state the date and time for the hearing on the petition; and
- (4) provide for the safe interim placement of the child pending further order of the court.

(d) If feasible, before issuing a warrant and before determining the placement of the child after the warrant is executed, the court may order a search of the relevant databases of the National Crime Information Center system and similar state databases to determine if either the petitioner or respondent has a history of domestic violence, stalking, or child abuse or neglect.

(e) The petition and warrant must be served on the respondent when or immediately after the child is taken into physical custody.

(f) A warrant to take physical custody of a child, issued by this state or another state, is enforceable throughout this state. If the court finds that a less intrusive remedy will not be effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances, the court may authorize law

enforcement officers to make a forcible entry at any hour.

(g) If the court finds, after a hearing, that a petitioner sought an ex parte warrant under subsection (a) for the purpose of harassment or in bad faith, the court may award the respondent reasonable attorney's fees, costs, and expenses.

(h) This [act] does not affect the availability of relief allowed under the law of this state other than this [act].

Comment

This section authorizes issuance of a warrant in an emergency situation, such as an allegation that the respondent is preparing to abduct the child to a foreign country and is on the way to the airport. The harm is the credible risk of imminent removal. If the court finds such a risk, the court should temporarily waive the notice requirements and issue a warrant to take physical custody of the child. Immediately after the warrant is executed, the respondent is to receive notice of the proceedings. This section mirrors Section 311 of the Uniform Child Custody Jurisdiction and Enforcement Act on warrants to pick up a child which are available when there is an existing child-custody determination. In many states, the term used in civil cases is "writ of attachment."

The court should hear the testimony of the petitioner or another witness before issuing the warrant. The testimony may be heard in person, by telephone, or by any other means acceptable under local law, which may include video conferencing or use of other technology.

Domestic violence includes "family" violence. Because some batterers may try to use the warrant procedure to prevent victims and the children from escaping domestic violence or child abuse, the court should check relevant state and national databases to see if either the petitioner or respondent's name is listed or if relevant information exists that has not been disclosed before issuing the warrant and ordering placement. LUNDY BANCROFT & JAY G. SILVERMAN, *THE BATTERER AS PARENT: ADDRESSING THE IMPACT OF DOMESTIC VIOLENCE ON FAMILY DYNAMICS* 73, 75 (2002)(indicating that most parental abductions take place in the context of a history of domestic violence because threatening to take the child from the mother is a form of control).

Some courts have computer terminals on the bench and a database search takes seconds. Courts without computer access can seek the assistance of law enforcement. Unless impracticable, the court should conduct a search of all person databases of the National Crime Information Center system, including the protection order file, the historical protection order file, the warrants file, the sex offender registry, and the persons on supervised release file. In addition, it is recommended that courts run searches in the National Law Enforcement Telecommunication

System in the petitioner's state of birth, current state of residence, and other recent states of residence. Civil courts are authorized by statute and National Crime Information Center policy to have access to information in several files for domestic violence and stalking cases. Because child abduction involves family members and can harm children, and violence between the parents is often a factor leading to child abduction, cases in which a parent alleges a risk of wrongful removal should permit access to the relevant databases.

The court should also view comparable state databases, such as the state department of social service registry of persons found to have abused or neglected children. If the petitioner or respondent are listed for a reason related to a crime of domestic or family violence, the court may refuse to issue a warrant or order any appropriate placement authorized under the laws of the state. The warrant must provide for the placement of a child pending the hearing. Temporary placement will most often be with the petitioner unless the database check reveals the petitioner is a likely or known abuser.

The court must state the reasons for issuance of the warrant. The warrant can be enforced by law enforcement officers wherever the child is found in the state. The warrant may authorize entry upon private property to pick up the child if no less intrusive means are possible. In extraordinary cases, the warrant may authorize law enforcement to make a forcible entry at any hour. This section also authorizes law enforcement officers to enforce out of state warrants.

Section 9 applies only to wrongful removals, not wrongful retentions. It does not hinder a court from issuing any other immediate ex parte relief to prevent a wrongful removal or retention as may be allowed under law other than this act.

SECTION 10. DURATION OF ABDUCTION PREVENTION ORDER. An

abduction prevention order remains in effect until the earliest of:

- (1) the time stated in the order;
- (2) the emancipation of the child;
- (3) the child's attaining 18 years of age; or

(4) the time the order is modified, revoked, vacated, or superseded by a court with jurisdiction under [insert citation to Sections 201 through 203 of the Uniform Child Custody Jurisdiction and Enforcement Act or Section 3 of the Uniform Child Custody Jurisdiction Act and applicable law of this state].

SECTION 11. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform 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 12. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. 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) of the act, 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

TESTIMONY OF RONALD W. NELSON
Nelson & Booth, Overland Park, Kansas

Members of the Committee: Good morning. I am Ronald W. Nelson. I am an Johnson County lawyer who practices exclusively in the area of domestic relations. I've been involved in domestic relations issues for a number of years and had the pleasure of being involved in working on the re-write of the Kansas Child Custody statutes in 2000. I've written extensively in local, state and national publications, and presented numerous seminars to lawyers on various domestic relations issues. My clientele is fairly evenly split between representation of men and women and I have handled a significant number of matters, both in the trial and appellate courts regarding those issues. I have especially focused my practice on high conflict child custody cases, which involve interstate and international child custody and support issues and I've handled a significant number of international and interstate cases in which child abduction has occurred. I'm a Fellow in both the American Academy of Matrimonial Lawyers and the International Academy of Matrimonial Lawyers.

Today I am testifying in favor of passage of the Uniform Child Abduction Prevention Act (UCAPA), which is the subject of Senate Bill 18. This is an important bill that addresses remedies for a growing problem – the problem of interstate and international child abduction by parents and others who seek to use the child as a pawn in disputes with another person. Although addressing these issues has not been nearly so chaotic as before passage of the Uniform Child Custody Jurisdiction Act in 1978 and the Uniform Child Custody Jurisdiction and Enforcement Act in 2000 (when parents had to travel from state-to-state-to-state filing one action after another to re-establish custody rights already established in one or more other jurisdictions), problems continue and the UCAPA seeks to address those problems.

Although “stranger” abductions and kidnappings are most publicized – and feared – by far the most common child abduction is parental child abduction, which often occurs when the parents separate or begin divorce proceedings but also which may occur in other periods of turmoil. A parent may remove or retain the child from the other seeking to gain an advantage in expected or pending child-custody proceedings or because that parent fears losing the child in those expected or pending child-custody proceedings; a parent may refuse to return a child at the end of an access visit or may flee with the child to prevent an access visit. Parental child abductions may be within the same city, within the state region or within the same country, or may be international. Studies performed for the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention reported that in 1999, 53% percent of family abducted children were gone less than one week, and 21% were gone one month or more.¹

Historically, Kansas law has provided that a parent cannot “kidnap” that parent's own child. In the absence of temporary or final child custody orders both parents have equal rights to the “custody” of their child and either one of them can take their child wherever they want – with or without the other parents consent. The fact is, however, that as society has become increasingly mobile, as long distance travel and communication has become easier and less expensive, as intermarriage between faiths, nationalities and social groups has become more common, as society has become more complex, and as the decision of how parent's should divide their time with their children has become less based on old ideas that mothers should

¹ , NISMART National Family Abduction Report, October 2002.

automatically be granted primary residency of their children (the tender-years doctrine and other gender based rules), and as the outcomes of child custody decisions have become less predictable, the more often parent's have sought to use extra-judicial and non-judicial methods of gaining advantage in those situations.

Even though strides have been made by limiting the State where child custody actions can be filed by passage of the Uniform Child Custody Jurisdiction Act and federal Parental Kidnapping Prevention Act and, more recently, by procedures for enforcement of temporary and final child custody orders by the Uniform Child Custody Jurisdiction and Enforcement Act, more efficient and rapid remedies need to be instituted to protect children against being used as pawns in tragic interstate and international games of "custody-chess."

The Uniform Child Abduction Prevention Act (UCAPA) is an important step to address the growing problem of parental abduction and protect the child from credible threats to do so. The UCAPA is modeled on effective measures already in effect in other arenas to address this issue: the Convention on the Civil Aspects of International Child Abduction, which was adopted by the Hague Convention on Private International Law², and Child Abduction Prevention Acts from other States in the United States.³ This new Act does not supersede any law, but provides additional resources and methods to prevent and address potential, threatened and actual family child abductions.

The UCAPA closely follows the Hague Convention on the Civil Aspects of International Child Abduction and the Uniform Child Custody Jurisdiction and Enforcement Act in its language.

- The UCAPA specifically states that only a state that has jurisdiction under the UCCJEA may enter an order implementing remedies. It prohibits a court in one state from exercising jurisdiction if a valid custody proceeding is already pending in another state and requires that states give full faith and credit to sister state decrees made in accordance with its principles – all as is required by the federal Parental Kidnapping Prevention Act. While a State may enter a prevention order if the petitioning party alleges an "emergency," that matter must immediately be referred to the State having appropriate jurisdiction under the UCCJEA as the "home state" or other significant connections if the child hasn't resided in the State for six months. This Act equates a credible risk of abduction with threatened mistreatment or abuse for emergency jurisdiction purposes, but sets forth those allegations that must be made.

A purpose of the UCAPA is to preserve whatever status quo custody arrangement existed for the child prior to the time of the alleged wrongful removal or retention and to deter a parent from crossing boundaries in search of a more sympathetic court – which is the same purpose as the Hague International Convention. An additional purpose is to preserve jurisdiction in that

² The Hague Convention on the Civil Aspects of International Child Abduction is a multilateral treaty developed by the Hague Conference on Private International Law that provides an expeditious method to return a child taken from one member nation to another. Proceedings on the Convention concluded October 25, 1980 and the Convention entered into force between the signatory nations on December 1, 1983. The Convention is now in force between the United States and 55 other Nation-States.

³ See Ark. Stat. Ann. § 9-13-401-407 (2005); Cal. Fam. Code § 3048 (2004); Tex.Fam. Code §153.501- §153.503 (2003).

place which has the closest connection with the family and child. As stated by one court regarding Hague proceedings:

Every family dispute has its own unique set of facts, and the case before us certainly is no different. However, there is a central core of matters at which The Hague Convention was aimed: situations where one parent attempts to settle a difficult family situation, and obtain an advantage in any possible future custody struggle, by returning to the parent's native country, or country of preferred residence. That is exactly what happened here.⁴

The UCAPA defines "abduction" in the same way it is used in the Hague Convention on the Civil Aspects of International Child Abduction; that is, as "the wrongful removal or wrongful retention of a child." Case law under the Hague Convention has indicated the term does not require that the removal was "intentionally" wrongful in order to qualify as a "wrongful retention or removal" – it is sufficient that the removal or retention deprive another joint holder of rights of the continued exercise of that right. "The conduct made actionable by the Convention – the wrongful removal or retention of children – is wrongful not in a criminal sense but in a civil sense."⁵ Thus, for the removal or retention to be wrongful, it is enough to show that the rights of custody were either being exercised or that they would have been exercised if not for the actions of the person alleged to have wrongfully removed or retained the children.⁶ "Generally speaking, 'wrongful removal' refers to the act of keeping the child without the consent of the person who was actually exercising custody of the child. 'Wrongful retention' refers to the act of keeping the child without the consent of the person who was actually exercising custody. The archetype of this conduct is the refusal by the noncustodial parent to return a child at the end of an authorized visitation period."⁷ A "wrongful removal or retention" of a child occurs within the meaning of the Convention when an action is taken by one parent in contravention to the rights of a person or institution under the law of the State of the child's habitual residence.⁸ The Hague Convention Explanatory Note makes clear that

. . . the removal of a child by one of the joint holders without the consent of the other, is . . . wrongful, and this wrongfulness derives in this particular case, not from some action in breach of a particular law, but from the fact that such action has disregarded the rights of the other parent which are also protected by law, and has interfered with their normal exercise. The Convention's true nature is revealed most clearly in these situations: it is not concerned with establishing the person to whom custody of the child will belong at some point in the future, nor with the situations in which it may prove necessary to modify a decision awarding joint custody on the basis of facts which have subsequently changed. It seeks, more simply, to prevent a later decision on the matter being influenced by a change of circumstances brought about through unilateral action by one of the parties.⁹

⁴ *Friedrich v. Friedrich*, 983 F.2d 1396, 1402 (6th Cir. 1993);

⁵ *Legal Analysis of the Hague Convention*, 51 Fed.Reg. 10494, 10505 (1986).

⁶ Hague Convention, Article 3.

⁷ *Legal Analysis of the Hague Convention*, 51 Fed.Reg. 10494, 10503 (1986).

⁸ Hague Convention, Article 3.

⁹ Elisa Perez-Vera, *Explanatory Report: Hague Conference on Private International Law*, in 3 Acts and Documents of the Fourteenth Session ("Explanatory Report"), ¶ 71, at 447-48.

- The UCAPA spells out many remedies that are already available, although they are not widely known by lawyers or judges, to deal with domestic or international parental abductions, all of which are cumulative, including:

- imposition of travel restrictions that require that a party traveling with the child outside designated geographical area provide the other party with specific designated information;

- prohibitions against the removal of the child from the State, the United States, or another geographic area without the court's permission or that of the petitioner;

- prohibitions against removing the child from school or a child-care facility or from approaching the child at any location other than a site designated for supervised parenting time;

- require registration of the child-custody order in another state to which the child will travel before that travel is allowed;

- require surrender of or placement of restrictions upon the child's passport or obtaining a new or replacement passport or visa;

- require that the respondent obtain an order from the relevant foreign country containing identical child-custody provisions as those contained in the child-custody order issued in the United States.

- imposition of conditions, restrictions, or supervision on the exercise of custody or visitation rights.

- require that the respondent post a bond or other security to serve as a financial deterrent to abduction, with the proceeds used to pay for the reasonable expenses of recovery of the child, including reasonable attorneys fees and costs if there is an abduction; and

- issue a warrant to take physical custody of the child;

- direct law enforcement to take any action reasonably necessary to locate the child, obtain return of the child, or enforce a custody determination.

These remedies are already, for the most part, available under existing law. However, it is important that statute set for those remedies available because of the chaotic situations under which these actions will most likely arise.

As previously stated, a significant portion of my practice involves cases in which interstate or international jurisdictional issues are present and, as a result, I've handled a large number of cases in which threatened or actual parental child abduction is a concern. In those cases, rapid and effective action is critical. Child abduction is child abuse. A parent's attempt to "take the law into their own hands" by spiriting their child away from the other parent – without any authority from anyone other than their own sense of what is "right" harms their child and expresses contempt for ordered society. They seek not what is best for their child, but to impose what they want without regard to any independent or objective assessment of that situation.

Numerous psychological studies show the harm visited upon the children by these unilateral acts.¹⁰

I strongly urge the Committee pass out the Uniform Child Abduction Prevention Act. It is an important act to protect children from becoming embroiled in an already tense situation that threatens to cause irreparable and unfathomable harm on the family and the subject children.

Thank you.

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¹⁰ See e.g. Forehand, et al., CHILD ABDUCTION: PARENT AND CHILD FUNCTIONING AFTER RETURN. *Clinical Pediatrics* 28(7):311-316; The Impact of Parental Abduction on Children: A Review of the Literature, *AMERICAN JOURNAL OF ORTHOPSYCHIATRY* 62(4):599-206.

PREVENTING CHILD ABDUCTION: UNIFORM CHILD ABDUCTION PREVENTION ACT

Testimony of
Linda D. Elrod
Righter Distinguished Professor of Law
Director, Children and Family Law Center
Jan. 16, 2007

Thank you for the opportunity to appear here today. I am a law professor at Washburn University School of Law who also happens to have been the Reporter for the Uniform Child Abduction Prevention Act (UCAPA) promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in July of 2006. I am speaking in support of passage of UCAPA. My prior written testimony before the Interim Committee, the Interim Committee Report and the current written testimony from the NCCUSL representatives provide a summary of the problem and of the main provisions of the proposed law. In order not to duplicate, I would like to highlight a few important items.

I. High Number of Family Abductions - Need for Uniform Approach

When one thinks of child abduction, most think of the high profile media cases involving children such as Elizabeth Smart or Adam Walsh. However, the majority of abduction cases are by family members. The Office of Juvenile Justice and Delinquency Prevention estimated that 262,100 children were abducted in 1999; 203,900 (78 per cent) of them were abducted by a parent or family member. *See* DAVID FINKELHOR, HEATHER HAMMER & ANDREA J. SEDLAK, NATIONAL INCIDENCE STUDIES OF MISSING, ABDUCTED, RUNAWAY, AND THROWN AWAY CHILDREN, CHILDREN ABDUCTED BY FAMILY MEMBERS: NATIONAL ESTIMATE AND CHARACTERISTICS (Oct. 2002).

Child abductions can, and do, occur before entry of a child-custody determination as well as after. Disgruntled parents, not trusting the system to give them the relief they want, may try to take the child and run. The Uniform Child Abduction Prevention Act allows the court to impose abduction prevention measures at any time in the process. Three states have already enacted statutes to deal with the risk of child abduction: Arkansas, California and Texas. Two other states, Florida and Oregon include some of the risk factors in their custody statutes. Some states limit their relief to international abductions; others include any abduction. UCAPA provides a uniform approach which would help all states.

II. Cumulative remedy

The Uniform Child Abduction Prevention Act (UCAPA) does *not replace* existing law; rather it supplements, supports, and complements existing law. UCAPA will fill gaps in the Uniform Child Custody Jurisdiction and Enforcement Act and the Parental Kidnapping Prevention Act of 1980 to deter abductions, discourage interstate conflicts, and promote cooperation between states about custody matters.

- A. Definitions, jurisdictional, and warrant provisions tie into the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) which 46 states now use, including Kansas.

- B. UCAPA adds the threat of a potential abduction as a basis for using emergency jurisdiction under the UCCJEA.
- C. Many of the definitions are identical to the UCCJEA. Where definitions differ, most are patterned after federal statutes or the Hague Convention on the Civil Aspects of International Child Abduction.
- D. While judges currently have the authority to make most of the orders spelled out in UCAPA, few judges are aware of “abduction activities,” the severity of the problem, or the wide variety of remedies that may be effective in stopping abductions. UCAPA puts them all in one place.
- E. UCCJEA says nothing about the content of custody orders. To enforce a custody order, law enforcement, courts (and the State Department) want specific information easily identifiable on the face of the order that includes the following:
 - 1. Basis for court’s 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 detailed description of each party’s custody and visitation rights and residential arrangements for the child;
 - 4. A provision stating that a violation of the order may subject the party in violation to civil and criminal penalties; and
 - 5. Identification of the child’s country of habitual residence at the time of the issuance of the order.

See the attached order used in every California custody case to see how easily this can be done.
- F. The goal is to identify parents who are engaging in abduction activities which indicate an intent to abduct the child. *See Janet R. Johnson & Linda K. Girdner, Early Identification of Parents at Risk for Custody Violations and Prevention of Child Abductions*, 36 FAM. & CONCILIATION CTS. REV. 392 (1998).

III. Wrongful abduction.

The Uniform Child Abduction Prevention Act is aimed at preventing *wrongful* abductions. The language is patterned after the Hague Convention on the Civil Aspects of International Child Abduction which sets out a framework for returning wrongfully abducted children. The International Child Abduction Remedies Act (ICARA), 42 U.S.C. § 11601 et seq. (1988) recognizes that parental abduction is harmful to children. There are two areas that I want to clarify on “wrongful” abduction.

A. Domestic Violence

The Uniform Child Abduction Prevention Act is not designed to prevent a victim of domestic violence, the protective parent, from fleeing to a shelter, to a relative’s house, or even out of state, if that is necessary to protect herself and her children. An abuser should not be able to use UCAPA to maintain control over a victim. Fleeing to escape domestic violence is not “wrongful under UCAPA. While some of the actions taken by a domestic violence victim in preparing a safety plan may look like “abduction” activities, UCAPA Section 7(b) clearly

PETITIONER: RESPONDENT:	CASE NUMBER:
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CHILD ABDUCTION PREVENTION ORDER ATTACHMENT

TO **Child Custody and Visitation Order Attachment (form FL-341(A))** **Other (specify):**

1. **The court finds there is a risk that** *(specify name of parent):* _____ **will take the child without permission because that parent** *(check all that apply):*
- a. has violated—or threatened to violate—a custody or visitation order in the past.
 - b. does not have strong ties to California.
 - c. has done things that make it easy for him or her to take the children away without any permission, such as *(check all that apply):*
 - quit a job. sold his or her home.
 - closed a bank account. ended a lease.
 - sold or gotten rid of assets. hidden or destroyed documents.
 - applied for a passport, birth certificate, or school or medical records.
 - Other *(specify):* _____
 - d. has a history of *(check all that apply):*
 - domestic violence.
 - child abuse.
 - not cooperating with the other parent in parenting.
 - e. has a criminal record.
 - f. has family or emotional ties to another country, state, or foreign country.
- (NOTE: If item "f" is checked, at least one other factor must be checked, too.)**

THE COURT ORDERS, to prevent the parent in item 1 from taking the children without permission:

- 2. **Supervised visitation.** Terms of visitation are *(check one):*
 as specified on attached form FL-341(A) as follows: _____

- 3. **The parent in item 1 must post a bond for \$** _____ **.** The terms of the bond are *(specify):* _____

- 4. **The parent in item 1 must not move from the following locations with the children** without permission in writing from the other parent or a court order:
 Current residence Current school district *(specify):* _____
 This county Other *(specify):* _____

- 5. **The parent in item 1 must not travel with the children** out of *(check all that apply):*
 this county. the United States.
 California. other *(specify):* _____

- 6. **The parent in item 1 must register this order** in the state of *(specify):* _____ before the children can travel to that state for visits.

- 7. **The parent in item 1 must not apply for a passport or any other document,** such as a visa or birth certificate, that can be used for travel, and must turn in the following documents *(specify):* _____

3-4

634 SW Harrison Topeka, Kansas 66603
785-232-9784 • FAX 785-266-1874 • coalition@kcsdv.org • www.kcsdv.org

Senate Judiciary Committee
Senate Bill 18: Uniform Child Abduction Act
January 16, 2007

Chairman Vratil and Members of the Committee:

KCSDV is a statewide association of programs providing direct services to victims of sexual and domestic violence. These 30 member programs provide services in all areas of the state to both adult and child victims of abuse. These programs are refuges of safety for both women and children. KCSDV has taken a neutral position on UCAPA because we recognize as important its intent to prevent wrongful abductions of children. We are testifying today to request amendments that will reduce the possibility that UCAPA will be misused by domestic abusers.

The impact of domestic violence is not just limited to the violence perpetrated against the spouse or intimate partner; it also reaches deeply into the family and the family relationships. The manipulation and abuse of children is one of the tactics used by domestic violence perpetrators to maintain or gain control over the intimate partner. Men who batter their spouses or partners physically abuse their children at a seven times higher rate than non-battering men and they sexually abuse their children at a six times higher rate than non-battering men.¹ The risk of physical abuse of children by a batterer rises with the severity and the frequency of his violence toward his partner.²

Battered women who are attempting to protect themselves and their children from both sexual and physical abuse are often put in a catch-22 situation. If they flee with the children, they may be accused of child abduction or charged with the crime of interference with parental custody. These accusations can result in battered women being sought after as fugitives of the law, may result in their arrest, and may ultimately end up with the children being placed either in foster care or in the custody of the abuser. If battered mothers stay with the abuser, they may be held criminally responsible if the abuser injures or, worse, kills the child. Our laws do not help and we know that domestic and sexual violence perpetrators are becoming more and more savvy at using these laws against the protective parent.

¹ Bancroft, L., Silverman, J. (2003). The Batterer as Parent. Thousand Oaks, CA: Sage. Pp 42-47.

² Id. at 43.

We have met with Professor Linda Elrod, reporter for NCCUSL, about our concerns and she has agreed that the following requests are reasonable and prudent.

Our first concern with Uniform Child Abduction Prevention Act is whether it will be used by perpetrators of domestic violence to keep the protective parent from fleeing to a shelter, to a relative, or even out of state if necessary in order to protect her and the children. In our conversations with Professor Elrod, she has assured us that the UCAPA is not designed to prevent the protective parent from fleeing to safety with her children. We have been assured that fleeing to escape domestic violence is not “wrongful” under UCAPA. Thus, as this bill moves forward, we must eventually rely on “legislative history” to protect these mothers and kids. So, the following suggestions are made in the spirit of making that intention very clear.

We believe that some of the best pieces of the act as it relates to these concerns are in the comments sections. Unfortunately, most practitioners do not have ready access to these comments. We are asking that this Committee include those comments in the Bill and that they be published in the statute books. We know that some states do publish the comments of uniform acts and we believe this is a particularly important time to do so.

Our second request, again in agreement with Professor Elrod, is that the committee amend into the Bill a long overdue re-vamping of the Kansas crimes of interference with parental custody (K.S.A. 21-3422) and aggravated interference with parental custody (K.S.A. 21-3422a). Across the nation, states have begun to recognize this catch-22 for protective parents and now provide exceptions and defenses for parents fleeing domestic violence and abuse. We ask that Kansas do so now. By including amendments to 21-3422 and 21-3422a in the Bill that seeks to implement the Uniform Child Abduction Prevention Act, the Legislature will again speak loudly and clearly that it does not intend to punish mothers who flee domestic and sexual violence and take their children with them.

Children should be protected from both abduction and from abuse and we think by adding the requested amendments that both can be accomplished. KCSDV urges the committee to look favorably on these suggestions and amend the Bill as requested.

Respectfully submitted:

Sandy Barnett
Executive Director

21-3422

Chapter 21.--CRIMES AND PUNISHMENTS

PART II.--PROHIBITED CONDUCT

Article 34.--CRIMES AGAINST PERSONS

21-3422. Interference with parental custody. (a) Interference with parental custody is leading, taking, carrying away, decoying or enticing away any child under the age of 16 years with the intent to detain or conceal such child from its parent, guardian, or other person having the lawful charge of such child.

(b) this section does not apply to a person who detains, conceals or removes a child on a good faith and reasonable belief that such action was necessary to protect the child from imminent danger of abuse or neglect or to protect herself/himself from imminent physical harm and who reported the removal to a law enforcement agency or an agency which provides child welfare services within 96 hours or as soon as the circumstances allowed. The address and identity of the person filing the report shall remain confidential unless released pursuant to a court order.

(b c) It is not a defense to a prosecution under this section that the defendant is a parent entitled to joint custody of the child either on the basis of a court order or by virtue of the absence of a court order except if the defendant is a parent who reasonably believed that the action was necessary to protect the defendant and/or the minor child(ren) from imminent danger of abuse or neglect.

(c) (1) Interference with parental custody is a class A person misdemeanor if the perpetrator is a parent entitled to joint custody of the child ~~either on the basis of a court order or by virtue of the absence of a court order.~~

(2) Interference with parental custody is a severity level 10, person felony in all other cases.

History: L. 1969, ch. 180, § 21-3422; L. 1986, ch. 119, § 1; L. 1992, ch. 239, § 60; L. 1993, ch. 291, § 35; L. 1994, ch. 291, § 24; July 1.

21-3422a

Chapter 21.--CRIMES AND PUNISHMENTS

PART II.--PROHIBITED CONDUCT

Article 34.--CRIMES AGAINST PERSONS

21-3422a. Aggravated interference with parental custody. (a) Aggravated interference with parental custody is:

- (1) Hiring someone to commit the crime of interference with parental custody, as defined by K.S.A. 21-3422 and amendments thereto; or
- (2) the commission of interference with parental custody, as defined by K.S.A. 21-3422 and amendments thereto, by a person who:
 - (A) Has previously been convicted of the crime;
 - (B) commits the crime for hire;
 - (C) takes the child outside the state without the consent of either the person having custody or the court;
 - (D) after lawfully taking the child outside the state while exercising visitation rights or parenting time, refuses to return the child at the expiration of that time;
 - (E) at the expiration of the exercise of any visitation rights or parenting time outside the state, refuses to return or impedes the return of the child; or
 - (F) detains or conceals the child in an unknown place, whether inside or outside the state.

(G) This section shall not apply to a person who detains, conceals or removes a child on a good faith and reasonable belief that such action was necessary to protect the child from imminent physical harm and reported the removal to a law enforcement agency or an agency which provides child welfare services within 96 hours or as soon as the circumstances allowed. The address and identity of the person filing the report shall remain confidential unless released pursuant to a court order.

(b) Aggravated interference with parental custody is a severity level 7, person felony.

(c) *It shall be an affirmative defense to a prosecution under this section that the defendant is a parent who reasonably believed that the action was necessary to protect the defendant and/or the minor child(ren) from imminent danger of abuse or neglect.*

(e-d) This section shall be a part of and supplemental to the Kansas criminal code.

History: L. 1978, ch. 121, § 1; L. 1984, ch. 117, § 1; L. 1986, ch. 119, § 2; L. 1992, ch. 239, § 61; L. 1993, ch. 291, § 36; L. 2000, ch. 171, § 4; July 1.

State v. Al-Turck, Kan. 1976.
Supreme Court of Kansas.
STATE of Kansas, Appellee,
v.
Ahmad AL-TURCK, Appellant.
No. 48201.

July 23, 1976.

Defendant was convicted before the Wyandotte District Court, Division No. 4, Joe H. Swinehart, J., of interference with parental custody, and he appealed. The Supreme Court, Foth, C., held that in absence of court order giving exclusive custody to mother, father's exercise of his right of custody, in picking up child two days before scheduled divorce hearing and flying with child to father's family home in foreign country, could not be basis of charge of interference with parental custody.

Reversed.
West Headnotes

[1] Guardian and Ward 196 4

196 Guardian and Ward
196I Guardianship in General
196k4 k. Guardians by Nature. Most Cited Cases
Under Constitution and laws of state, father and mother are natural guardians of persons of their minor children, and each parent equally so with the other. K.S.A. 59-3002(3), 59-3003; K.S.A. Const. art. 15, § 6.

[2] Child Custody 76D 48

76D Child Custody
76DII Grounds and Factors in General
76DII(B) Factors Relating to Parties Seeking Custody
76Dk48 k. Behavior of Parties in General.
Most Cited Cases
(Formerly 134k298(1))
Mere filing of petition for divorce requesting

permanent custody of minor child does not in itself give either parent the right to exclusive custody of child.

[3] Child Custody 76D 971

76D Child Custody
76DXV Custodial Interference
76DXV(A) In General
76Dk969 Elements, Grounds, and Defenses
76Dk971 k. Right to Custody. Most Cited Cases
(Formerly 285k2(2))

In absence of court order giving exclusive custody to mother, father's exercise of his right of custody, in picking up child two days before scheduled divorce hearing and flying with child to father's family home in foreign country, could not be basis of charge of interference with parental custody. K.S.A. 21-3422.

*557 **1375 Syllabus by the Court

1. Under the constitution and laws of this state, the father and mother are the natural guardians of the persons of their minor children, and each parent equally so with the other. (Following, State v. Angel, 42 Kan. 216, 21 P. 1075, Syl. Para. 1.)
2. The mere filing of a petition for divorce requesting permanent custody of a minor child does not itself give either parent the right to exclusive custody of the child.
3. In the absence of a court order giving exclusive custody to one parent, the exercise by the other of his or her right of custody cannot be the basis of a charge of interference with parental custody under K.S.A. 21-3422.

Barry Albin, Kansas City, argued the cause and was on the brief for the appellant.
Thomas L. Boeding, Asst. Dist. Atty., argued the cause, and Curt T. Schneider, Atty Gen., and Nick A. Tomasic, Dist. **1376 Atty., were with him on the brief for the appellee.

FOTH, Commissioner:

Ahmad Al-Turck, a citizen of Iraq here as a student, was convicted of interference with parental custody and has appealed. He makes five contentions, four of which are without merit but one of which requires a reversal. That one is that under the undisputed facts, a disclosed by the state's evidence, he could not be found guilty of the offense charged.

That offense was a violation of K.S.A. 21-3422:

'Interference with parental custody is leading, taking, carrying away, decoying or enticing away any child under the age of fourteen (14) years, with the intent to detain or conceal such child from its parent, guardian, or other person having the lawful charge of such child.'

The state's evidence disclosed that during the summer of 1974, the defendant and his wife Diana were involved in a divorce proceeding in Wyandotte county. Her petition requested permanent custody of their daughter Amalede, but no temporary custody *558 order was ever entered. Pending hearing the child remained with her mother, but defendant by oral agreement had unlimited visitation rights. On August 3, 1974, two days before the scheduled divorce hearing, defendant picked up the child on the pretense of taking her on a picnic, but instead boarded a plane and flew with her to his family home in Iraq. Based on this action defendant was charged with 'carrying away' the child with intent to conceal her from her mother, who was alleged to be a parent having 'lawful charge' of the child.

On August 6, 1974, a final divorce decree was entered giving Diana custody. Two to three weeks later defendant informed Diana of their whereabouts. Defendant later returned to this country and was arrested. Later still the child was returned to the custody of her mother.

The determinative issue is whether the mother had such 'lawful charge' of the child as to make the father's exercise of custody a violation of the statute. We hold she did not.

[1] It is the established law of this state that in the absence of a court order both parents have an equal right to the custody of their minor children. Kan. Const. Art. 15, s 6; K.S.A.1975 Supp. 59-3002(3) and 59-3003; Allison v. Allison, 188 Kan. 593, 597, 363 P.2d 795.

[2] A temporary custody order under K.S.A. 60-

1607(c), can cut off the right of a parent (In re Peck, 66 Kan. 693, 72 P. 265) but, as previously noted, no order was issued here. The mere filing of the divorce petition requesting custody was not in itself sufficient to extinguish the father's rights. See cases collected at 77 A.L.R. 317 et seq., and especially State v. Dewey, 155 Ia. 469, 136 N.W. 533, where it was held that neither the father nor his assistant could be guilty of kidnapping a child from its mother, who had begun divorce proceedings, even though they obtained custody from her by falsely representing that the assistant was an officer of the court having a court order for such custody.

[3] The issue presented here was squarely decided by this court in a case not cited by either party, State v. Angel, 42 Kan. 216, 21 P. 1075. There the defendant was convicted of kidnapping for aiding a mother in taking her daughter away from her husband, the child's father, in violation of G.S.1868, ch. 31, s 47: 'Every person who shall maliciously, forcibly or fraudulently lead, take or carry away, or decoy or entice away, any child under the age of twelve years, with intent to detain or conceal such child from its parent, guardian or other *559 person having the lawful charge of such child, shall upon conviction, be punished by confinement and hard labor not exceeding five years, or imprisonment in the county jail not less than six months.'

**1377 The statute, it will be seen, contains elements substantially identical to those in our present 21-3422, i. e., a taking of the child with 'intent to detain or conceal such child from its parent, guardian, or other person having the lawful charge of such child.' In reversing the conviction this court held:

'... She took with her to the Indian Territory her child, and the child has continued to be in her custody and under her control. She is its mother. The father and mother are the natural guardians of the persons of their minor children, and each parent equally so with the other. (Const., art. 15, s 6; The State v. Jones, 16 Kan. 608.)

'As Mrs. Willis, the mother of the child, had the equal right with her husband, the father, to the actual care and control of the child, it is clear that she could not be punished under the provisions of said section 47, for taking and carrying the child away from the father. If it be true that James Angel, the defendant, assisted her to leave her husband and in so doing assisted her in taking her child, he cannot be convicted under section 47, because he only assisted the mother of the child, who had the same right to the care and control of the child as the father. The

52 P.2d 1375
220 Kan. 557, 552 P.2d 1375
(Cite as: 220 Kan. 557, 552 P.2d 1375)

mother had the lawful charge of the child all of the time, and neither the mother nor Angel is guilty of any criminal violation of said section 47.' (Id., 42 Kan. at 222-3, 21 P. at 1077.)

So here, there being no court order the defendant had a right to the custody of his child equal to the of the mother, and the exercise of that right could not make him subject to a criminal charge. The conviction is reversed, and since 'it appears that no crime has been committed' (K.S.A. 22-3607), the defendant is discharged.

APPROVED BY THE COURT.

Kan. 1976.
State v. Al-Turck
220 Kan. 557, 552 P.2d 1375

END OF DOCUMENT

Reno County Sheriff's Office

Detective Howard Shipley
Regarding SB 14
January 16, 2006

Mr. Chairman, members of the Senate Judiciary committee:

Thank you for allowing me to address you this morning to share my views regarding Senate Bill 14.

My name is Howard Shipley. I am a Detective with the Reno County Sheriff's Department in charge of the Hutchinson/Reno County Drug Enforcement Unit, a joint task force comprised of members of the Reno County Sheriff's Department and the Hutchinson Police Department. I have been employed with the Reno County Sheriff's Department for 22 years and assigned to the Drug Enforcement Unit for almost 19 years. I have served as the Supervisor of this Unit for the past 5 years. I have experience in a vast array of drug related crimes.

I have conferred with Reno County Sheriff, Randy Henderson and Hutchinson Police Chief, Dick Heitschmidt and we wish to express our support of SB 14, specifically the addition of persons convicted of methamphetamine manufacturing related offenses to the offender registration act. We support this addition for the following reasons:

The illegal manufacturing of methamphetamine is inherently dangerous. The components used and processes that occur during the manufacturing create a volatile situation with potentially disastrous consequences. During the past several years, there have been a number of incidents in our jurisdiction involving the illegal manufacturing of methamphetamine which clearly show these dangers. Although these incidents resulted in some property damage and human injuries, they could have been much worse. There have been structure fires with complete destruction of the property.

There was a case where a 40-pound propane tank, which was filled with anhydrous ammonia, exploded inside of an apartment. This occurred inside of an apartment house with several other occupied apartments. There have been numerous instances of high concentrations of ether vapors in houses and apartments. One of these took place in an apartment which was part of a multi-apartment complex. The vapor levels in this apartment were as high, or higher than, any methamphetamine lab location where I have been. I feel very fortunate that these vapors did not ignite. The significant property damage that would have occurred, as well as serious injury or death to other apartment occupants, was a very real possibility in this instance.

Due to these dangers, Sheriff Henderson, Chief Heitschmidt and I believe that citizens and landlords should be able to easily obtain the names of individuals who have been convicted of methamphetamine manufacturing related offenses.

I have had the opportunity to speak with the local landlord association about their concerns of renting to abusers of illegal controlled substances. Some have expressed to me that they would like to have some way of quickly checking potential renters to find out if that individual has a drug related background. Landlords not only have a concern for the value of their rental property, the repair and cleanup of said property, but also the health and safety of other tenants.

The only negative that I see with this proposal is that it does not go far enough. I believe that it should also include persons that have been convicted of illegal drug distribution offenses such as the sale or possession of controlled substances with intent to sell.

No one can deny the impact of the criminal element present at a location where illegal drugs are being sold. The irrational and sometimes violent behavior of individuals using and distributing controlled substances is also well known.

During the past year, there have been two homicides in Reno County involving individuals that were associated with drug distribution and/or usage. One can only speculate about what might have occurred if a person, whether an adult or child, would have been present when these acts occurred. Although these dangers are different from those that are present with the manufacturing of methamphetamine, they are dangers, none-the-less.

With the sentencing guidelines currently in place in the State of Kansas, which in the near-term is more likely, that somebody convicted of methamphetamine manufacturing related offenses will be your neighbor or that somebody convicted of a drug distribution offense will be? Until the State of Kansas implements weight based sentencing guidelines similar to what the Federal system has, it is far more likely that a person convicted of drug distribution offenses will be your neighbor or tenant; rather than somebody convicted of methamphetamine manufacturing related offenses.

As is the case with persons that are involved with the manufacturing of methamphetamine, I know that a large percentage of those involved with the distribution of controlled substances continue their involvement, even after conviction.

If it is not possible to address these other issues at the present time, I would ask that they be considered in the future. If there is a committee member that would like to speak with me further on these additional issues, either today or in the future, I would be honored to express my views.

Again, I thank you for this opportunity to speak before this committee today.

Kansas Sheriff's Association

To: Senate Judiciary Committee
Date: January 16, 2007
Re: Support of SB14

Chairman Vratil and Members of the Committee,

The Kansas Sheriff's Association comes before you today in support of SB14. As we are all aware Methamphetamine has been a tremendous problem in Kansas for quite sometime. Over time we have enacted laws in an effort to reduce the production of Meth. This bill only strengthens our efforts and gives law enforcement the ability to track these offenders and will enable us to know who is living in our communities. While this will add additional work to Sheriff's Offices throughout the State of Kansas we believe that this bill is beneficial to our communities in our effort to reduce the manufacturing of Meth and to make our communities safe.

Thank you for your time, consideration and interest.

Randy L. Rogers
Legislative Chair
Kansas Sheriff's Association

Senate Judiciary

1-16-07

Attachment 6



**Shawnee County
Sheriff's Office
Sheriff Richard W. Barta
Law Enforcement Center**

320 S. KANSAS, SUITE 200
TOPEKA, KANSAS 66603-3641
785-368-2200

January 12, 2007

Members of the Senate Judiciary Committee
Kansas Statehouse
Topeka, Ks.

Honorable Members of the Committee,

This letter is to voice the support of the Shawnee County Sheriff's Office for the proposed changes to the Kansas Offender Registration Act to include a requirement for the registration of persons convicted of crimes associated with the production of methamphetamine.

This agency has found methamphetamine continues to be a major problem to society not only for those persons who become involved in its use but to others who become victims of crime due to methamphetamine use fueling the commission of other crimes. The addition of methamphetamine producers to the requirement for registration will assist law enforcement in tracking those persons who choose to involve themselves in this harmful trade.

One concern of this agency, and I am sure to other Sheriffs in the State, is the unfunded workload this adds to the agencies required to register these offenders. The Shawnee County Sheriff's Office already has one Deputy assigned full time to register and monitor over 310 offenders in Shawnee County. The addition of methamphetamine offenders to the registry could by some estimates, add up to thirty percent to the number of persons registered by this agency.

To that end, we would ask the legislature to amend the Offender Registration Act to provide for the twenty dollar biannual registration fee offenders are required to pay to be returned to the Sheriff's Office trust funds in a fashion similar to language in the Concealed Handgun Licensing Act. While this revenue would not totally offset the costs incurred by the Office of the Sheriff it would help defray it.

Again, we offer our support to this legislation and will do our part through its implementation to make Kansas a safer place from those who produce methamphetamine.

Sheriff Richard W. Barta

Senate Judiciary

1-16-07
Attachment 7

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Rice County
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620-257-2383



Donna Oswald, President-Elect
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TESTIMONY

By: Janet England, Clerk of the District Court
Sixth Judicial District

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today to speak on behalf of the Kansas Association of District Court Clerks and Administrators regarding Senate Bill 51. This bill proposes that the state registrar shall furnish to the Clerk of the District Court, without charge, a list of deceased residents of the county who were at least 18 years of age and for whom death certificates have been filed in the office of the state registrar during the preceding calendar month. The list shall be used solely by the Clerk of the District Court for the purposes of updating jury records.

We currently send out jury questionnaires to potential jurors from a driver's license list that is obtained from the Division of Motor Vehicles by the Office of Judicial Administration. Since driver's licenses are valid for several years, there are a lot of names on the list of persons who are deceased.

It is our hope that obtaining a list of deceased residents from the state registrar would prevent our office from sending out questionnaires to deceased residents. This would save postage for our office and prevent individuals from having to call our office to tell us that this person is deceased. This can be very upsetting to families who have suffered a loss.

Again, thank you for your time and attention regarding this testimony on Senate Bill 51. I would be happy to answer any questions you may have.

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Senate Judiciary
1-16-07
Attachment 8