2025 SENATE JUDICIARY

SB 2126

2025 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2126
1/15/2025

A BILL for an Act to create and enact chapter 14-14.2 of the North Dakota Century Code, relating to the adoption of the Uniform Child Abduction Prevention Act.

10:49 a.m. Chair Larson opened the hearing.

Members Present: Chair Larson, Vice-Chair Paulson, Senators Braunberger, Castaneda, Cory, Luick, Myrdal.

Discussion Topics:

- Risks of Abduction
- Abduction Prevention

10:49 a.m. Gail Hagerty, Uniform Law Commissioner and Former State Court Judge, testified in favor and submitted testimony #29243.

10:59 a.m. Tony Weiler, ND Executive Director,State Bar Association, testified in favor.

11:01 a.m. Chairwoman Larson closed the hearing.

11:01 a.m. Senator Luick moved a Do Pass.

11:01 a.m. Senator Myrdal seconded the motion.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Ryan Braunberger	Y
Senator Jose L. Casteneda	Y
Senator Claire Cory	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion Carried 7-0-0.

Senator Cory will carry the bill.

Additional Written Testimony:

Libby Snyder, Special Counsel, Uniform Law Commission, submitted testimony in favor #29062.

11:02 a.m. Chair Larson closed the hearing.

Kendra McCann, Committee Clerk

REPORT OF STANDING COMMITTEE
SB 2126 (25.0256.01000)

Judiciary Committee (Sen. Larson, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2126 was placed on the Eleventh order on the calendar. This bill does not affect workforce development.

Uniform Law Commission
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Statement of Libby Snyder, Special Counsel at the Uniform Law Commission, to the Senate Judiciary Committee in Support of Senate Bill 2126 – Enacting the Uniform Child Abduction Prevention Act.

Public Hearing of January 15, 2025

Chair Larson and Members of the Committee:

Thank you for considering Senate Bill 2126 enacting the Uniform Child Abduction Prevention Act, promulgated by the Uniform Law Commission (ULC) in 2006. The ULC is a non-profit organization formed in 1892 to draft non-partisan model legislation in the areas of state law for which uniformity among the states is advisable.

North Dakota has a long history of enacting ULC acts, including the Uniform Child Custody Jurisdiction and Enforcement Act, the Uniform Commercial Code, the Uniform Anatomical Gifts Act, the Uniform Trade Secrets Act, and the Uniform Transfers to Minors Act, as well as others.

The Uniform Child Abduction Prevention Act (UCAPA) was drafted in the careful, lengthy manner typical of ULC acts. The drafting of UCAPA involved ULC commissioners as well as family law experts, child advocates, family court judges, and domestic violence victim advocates. UCAPA has been enacted in 17 states and the District of Columbia. North Dakota is one of several states pursuing enactment of UCAPA in 2025.[1]

The overarching viewpoint under which UCAPA was drafted is that preventing abduction is always going to be in a child's best interest. The act provides states with a valuable tool for deterring domestic and international child abduction—both serious and growing problems.

While the Uniform Child Custody Jurisdiction and Enforcement Act ("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 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. **UCAPA is intended to provide courts and parties with tools to prevent an unlawful abduction from occurring in the first place, and thus is crucial to ensuring the well-being and safety of children.**

UCAPA anticipates the need for cooperation and communication among the courts of different states. Because abduction situations often 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

[1] Bills to enact UCAPA have also been introduced in Missouri and Oklahoma.

temporary emergency jurisdiction.

Generally speaking, UCAPA does five important things aimed at preventing parental abductions:

1) **Under UCAPA, parties can seek abduction prevention measures at any time,** including before a custody order is in place. This provides an opportunity for parents who are fearful that their child might be wrongfully removed or retained a chance to seek preventative measures from the court.

2) **UCAPA provides clear guidance regarding the warning signs of and risk factors for a potential child abduction.** This evidence-based guidance helps judges identify children who are at risk for abduction. The warning signs and risk factors provided in UCAPA 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 more factors that are present, the higher the probability of abduction.

3) **UCAPA addresses problems involved with international child abduction.** The Act includes several risk factors specifically related to international abduction. In particular, UCAPA 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, courts are directed to consider issues related to citizenship as potential risk factors for abduction, such as a recent change in citizenship status or a denial of United States Citizenship.

4) **UCAPA provides a catalogue of possible remedies and guidance for issuing those preventative measures.** 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 designed to prevent abduction. UCAPA 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. The remedies listed in UCAPA are not exclusive.

5) **UCAPA includes provisions for emergency relief.** When there is a credible risk of imminent wrongful removal, the court can issue an ex parte warrant to take physical custody of the child, direct law enforcement to take any action reasonably necessary to locate and return the child or exercise other appropriate powers under existing state laws. This provision of UCAPA authorizes the 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.[2]

If passed, Senate Bill 2126 will provide North Dakota with a powerful tool to combat the threat of child abduction. I ask for your support to advance this important legislation. Thank you for your time and consideration.

Libby Snyder
Special Counsel
Uniform Law Commission

[2] ND St § 14-14.1-31.

Testimony on SB2126
January 15, 2025
Gail Hagerty

Chair Larson and Members of the Senate Judiciary Committee:

I'm Gail Hagerty – a former district court judge and current uniform law commissioner. I'm testifying today in support of SB 2126, the Uniform Child Abduction Prevention Act. This Act has been around a while – it was promulgated in 2006. It has been enacted in 18 states, and I've included a map showing those states in the materials accompanying my testimony.

Child abduction is one of the most frightening and heartbreaking crimes faced by parents and families. The majority of child abductions are perpetrated by family members. While there are laws to address parenting determinations and the criminal repercussions of child abductions, they provide inadequate prevention mechanisms.

This act gives the state a valuable tool for deterring both domestic and international child abductions by parents or others acting on behalf of parents.

This act anticipates the need for cooperation and communication between courts of different states. Because abduction situations are likely to involve more than one state, it is vital that courts have the ability to communicate effectively.

Section 1 includes definitions of terms used in this particular act. Those definitions apply only to this act.

Section 2 directs parties to the provisions concerning cooperation and communication between courts. Those provisions are included in the Uniform Child Custody Jurisdiction and Enforcement Act, which North Dakota has enacted.

Section 3 describes the actions to be brought in an effort to prevent abduction. It allows the court on its own motion and a party to a child-custody determination (or a party having a right to bring such an action) to request abduction prevention measures be implemented and allows prosecutors of public authorities to seek a warrant to take custody of a child if appropriate under the act.

Section 4 is the jurisdiction section – it allows the district courts to hear actions under the act.

Section 5 specifies what information a petition brought under the act is to include.

Section 6 lays out the factors to be considered to determine if there is a risk of abduction – those factors are probably what you'd expect. . . previous abduction or attempted abduction, threats to abduct a child, recent activities that may indicate a planned abduction, a history of domestic violence, stalking, or child abuse or neglect, prior refusal to follow a court order dealing with child custody.

Courts would also consider whether there is a lack of ties to the state or the United States and strong ties to another culture or state or country.

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A Few Facts about

THE UNIFORM CHILD ABDUCTION PREVENTION ACT

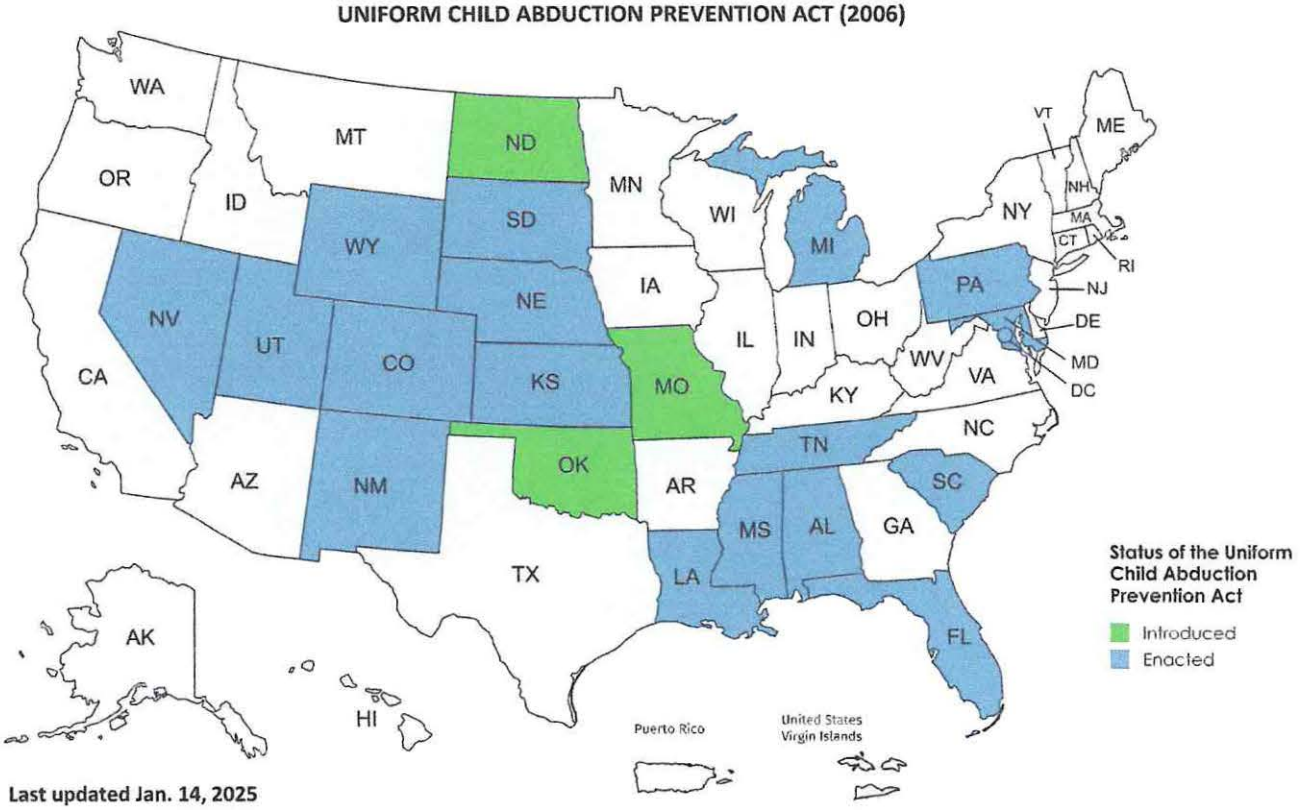
PURPOSE: The Uniform Child Abduction Prevention Act provides courts with guidelines to follow during custody disputes and divorce proceedings in order to help them identify families at risk for abduction and prevent the abduction of children.

ORIGIN: Completed by the Uniform Law Commission in 2006

ENDORSED BY: Approved by the American Bar Association; Included as Shared State Legislation by the Council of State Governments (CSG)

ENACTED BY: Alabama, Colorado, District of Columbia, Florida, Kansas, Louisiana, Maryland, Michigan, Mississippi, Nebraska, Nevada, New Mexico, Pennsylvania, South Carolina, South Dakota, Tennessee, Utah, and Wyoming

UNIFORM CHILD ABDUCTION PREVENTION ACT (2006)



Last updated Jan. 14, 2025

For further information about the UCAPA, please contact Special Counsel Libby Snyder at lsnyder@uniformlaws.org.

The ULC is a nonprofit formed in 1892 to create nonpartisan state legislation. Over 350 volunteer commissioners—lawyers, judges, law professors, legislative staff, and others—work together to draft laws ranging from the Uniform Commercial Code to acts on property, trusts and estates, family law, criminal law and other areas where uniformity of state law is desirable.

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WHY STATES SHOULD ADOPT THE UNIFORM CHILD ABDUCTION PREVENTION ACT

The Uniform Law Commission, formerly 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 domestic and international child abduction—both serious and growing problems. The U.S. Department of Justice reports over 200,000 instances yearly of either a child being taken by a family member in violation of a custody agreement or a family member failing to return or release a child at the end of a legal or agreed upon visit.* In addition, about 1,000 children are abducted annually from the United States and taken to a foreign country.**

While the Uniform Child Custody Jurisdiction and Enforcement Act ("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 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. UCAPA is intended to provide courts and parties with tools to prevent an unlawful abduction from occurring in the first place, and thus is crucial to ensuring the well-being and safety of children.

UCAPA should be adopted in every state for the following reasons:

- **Consistent With UCCJEA** – UCAPA builds on and is consistent with the interstate jurisdiction and enforcement mechanisms in the UCCJEA (the law in 51 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 occur before the final custody decree.

- **Uniformity to Child Abduction Laws** – Child custody determinations and child abductions frequently take place across state and international lines, making uniformity across the states particularly necessary.

- **Guidance** – The Act provides clear guidance regarding the warning signs of and risk factors for a potential child abduction, including a past history of abduction or abuse and activities in furtherance of abduction, such as abandoning a job, liquidating assets, or obtaining travel documents.

- **International Issues** – 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 ULC is a nonprofit formed in 1892 to create nonpartisan state legislation. Over 350 volunteer commissioners—lawyers, judges, law professors, legislative staff, and others—work together to draft laws ranging from the Uniform Commercial Code to acts on property, trusts and estates, family law, criminal law and other areas where uniformity of state law is desirable.

2025 HOUSE JUDICIARY

SB 2126

2025 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

SB 2126
3/10/2025

A BILL for an Act to create and enact chapter 14-14.2 of the North Dakota Century Code, relating to the adoption of the Uniform Child Abduction Prevention Act.

10:15 a.m. Vice-Chairman Vetter opened the hearing.

Members Present: Vice-Chairman Karls, Vice-Chairman Vetter, Representatives Christianson, Henderson, Hoverson, S. Olson, Satrom, Tveit, VanWinkle, Wolff, Schneider

Members Absent: Chairman Klemin, Representatives Johnston, McLeod

Discussion Topics:

- False allegations of harm
- Domestic and international child abductions
- Communication with other state courts

10:15 a.m. Gail Hagerty, North Dakota Court System, testified in favor and provided testimony #39561, #39566, #39601.

Additional written testimony:
Representative Lawrence Klemin, North Dakota Representative for District 47, submitted testimony in favor #39734.

10:25 a.m. Vice-Chairman Vetter closed the hearing.

Wyatt Armstrong, Committee Clerk

Testimony on SB2126
March 10, 2025
Gail Hagerty

Chair Klemin and Members of the House Judiciary Committee:

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Child abduction is one of the most frightening and heartbreaking crimes faced by parents and families. The majority of child abductions are perpetrated by family members. While there are laws to address parenting determinations and the criminal repercussions of child abductions, they provide inadequate prevention mechanisms.

This act gives the state a valuable tool for deterring both domestic and international child abductions by parents or others acting on behalf of parents.

This act anticipates the need for cooperation and communication between courts of different states. Because abduction situations are likely to involve more than one state, it is vital that courts have the ability to communicate effectively.

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Courts would also consider whether there is a lack of ties to the state or the United States and strong ties to another culture or state or country.

Another key issue to be considered is whether it is likely the individual against whom protective measures are taken is likely to take a child to a country that is not a party to the Hague convention on civil aspects of international child abduction; or a country that poses a risk to the child's physical or emotional health or safety; or has laws that would restrict the person seeking preventative measures from maintaining contact with the child.

The court is to consider whether the respondent is undergoing a change in immigration or citizenship status or has used misleading or false evidence to obtain travel documents.

When considering all the factors, the court must also consider evidence that the respondent believed in good faith the conduct was necessary to prevent harm to the child.

Section 7 lists the measures a court may impose to prevent abduction including travel restrictions; a prohibition against removing the child from the state or the United States without permission; restrictions on the respondent's contact with the child; a requirement to surrender the child's travel documents; and a prohibition from applying for new documents.

If there is imminent danger of abduction, a court may issue a warrant to take physical custody of the child or direct law enforcement to locate the child and obtain return of the child.

Section 8 deals with issuance of a warrant to take physical custody of a child in extraordinary circumstances and provides for speedy review of such action.

Section 9 deals with the duration of an abduction prevention order.

The remaining sections are boilerplate.

I don't know that this is an act which will be used with any frequency but having it available as a tool will serve North Dakota children and families well.

I urge you to recommend "do pass."

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The ULC is a nonprofit formed in 1892 to create nonpartisan state legislation. Over 350 volunteer commissioners—lawyers, judges, law professors, legislative staff, and others—work together to draft laws ranging from the Uniform Commercial Code to acts on property, trusts and estates, family law, criminal law and other areas where uniformity of state law is desirable.

- **Preventive Measures** – Under UCAPA, parents have access to effective measures for preventing child abduction, such as imposing travel restrictions or requiring a parent to obtain a child custody determination in a foreign country that is identical to the original.

- **Protection for Domestic Violence Victims** – The Act includes confidentiality provisions designed to protect domestic violence victims from future harassment and further the best interests of the victimized child and parent.

UCAPA 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 should be enacted in every jurisdiction as quickly as possible.

*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).

**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)

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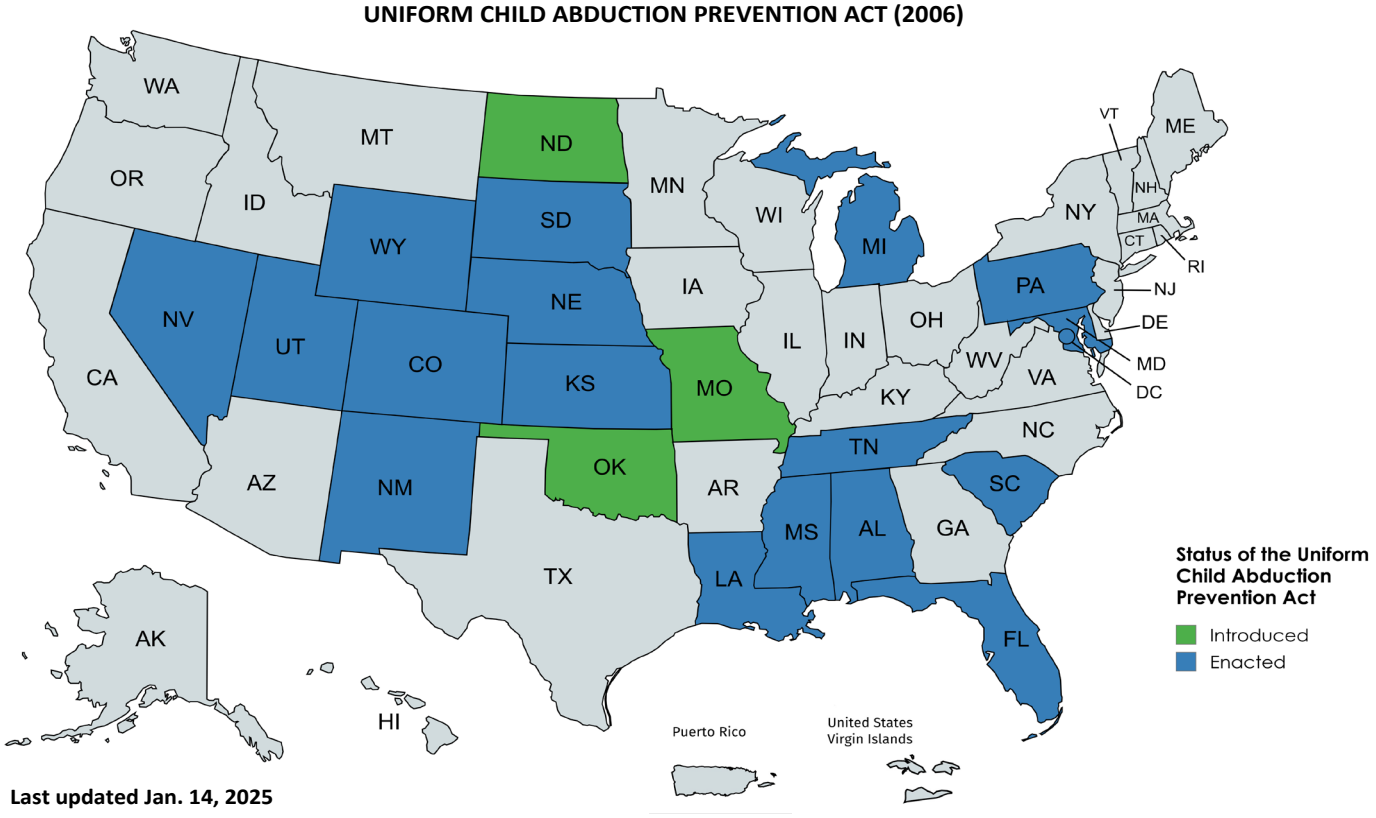
ENACTED BY: Alabama, Colorado, District of Columbia, Florida, Kansas, Louisiana, Maryland, Michigan, Mississippi, Nebraska, Nevada, New Mexico, Pennsylvania, South Carolina, South Dakota, Tennessee, Utah, and Wyoming



For further information about the UCAPA, please contact Special Counsel Libby Snyder at lsnyder@uniformlaws.org.

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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

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

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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 Act[4] 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 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 litigation[6] and prohibits a second state from assuming jurisdiction if there is an action pending in the state that has

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[1] See DAVID FINKELHOR, HEATHER HAMMER & ANDREA J. SEDLAK, NATIONAL INCIDENCE STUDIES OF MISSING, ABDUCTED, RUNAWAY, AND THROWNAWAY 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).

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

[6] 28 U.S.C. Section 1738A(c).

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 children[9] 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 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

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[7] 28 U.S.C.A. Section 1738A(g).

[8] 9 UNIF. L. ANN. Part I 657 (1999).

[9] Missing Children Act, 28 U.S.C. § 534 (1982); Missing Children Search Assistance Act and the National Child Search Assistance Act, 42 U.S.C. § 5779 & § 5780 (1990); 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 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

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.

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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 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 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), 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 . . . .

2025 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

SB 2126
3/10/2025

A BILL for an Act to create and enact chapter 14-14.2 of the North Dakota Century Code, relating to the adoption of the Uniform Child Abduction Prevention Act.

2:50 p.m. Chairman Klemin opened the hearing.

Members Present: Chairman Klemin, Vice-Chairman Vetter, Representatives Christianson, Henderson, Hoverson, Johnston, McLeod, S. Olson, Tveit, VanWinkle, Wolff, Schneider

Members Absent: Vice-Chairman Karls, Representative Satrom

Discussion Topics:

- Committee action

2:51 p.m. Representative Vetter moved a Do Pass.

2:51 p.m. Representative Schneider seconded the motion.

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	A
Representative Steve Vetter	Y
Representative Nels Christianson	Y
Representative Donna Henderson	Y
Representative Jeff Hoverson	Y
Representative Daniel Johnston	Y
Representative Carrie McLeod	Y
Representative SuAnn Olson	Y
Representative Bernie Satrom	A
Representative Mary Schneider	Y
Representative Bill Tveit	Y
Representative Lori VanWinkle	Y
Representative Christina Wolff	Y

2:51 p.m. Motion passed 12-0-2.

2:52 p.m. Representative Schneider will carry the bill.

2:52 p.m. Chairman Klemin closed the hearing.

Wyatt Armstrong, Committee Clerk

REPORT OF STANDING COMMITTEE
SB 2126 (25.0256.01000)

Judiciary Committee (Rep. Klemin, Chairman) recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT OR EXCUSED AND NOT VOTING). SB 2126 was placed on the Fourteenth order on the calendar.