



STATEMENT OF
CASEY GILLECE
LEGISLATIVE COUNSEL
UNIFORM LAW COMMISSION

Senate Bill 325

THE UNIFORM CHILD ABDUCTION PREVENTION ACT
BEFORE THE HOUSE CRIMINAL JUSTICE COMMITTEE
STATE OF MICHIGAN

March 26, 2014

Mr. Chairman and members of the Committee:

I am Casey Gillece, Legislative Counsel for the Uniform Law Commission (ULC), testifying in support of Senate Bill 325, the Uniform Child Abduction Prevention Act (UCAPA). Thank you for allowing me to testify today.

The ULC, now 122 years old, provides states with well-drafted legislation that brings clarity and stability to critical areas of state statutory law. Approved by the ULC in 2006 and first introduced for consideration in state legislatures in 2007, UCAPA has been enacted in 14 states so far—Alabama, Colorado, the District of Columbia, Florida, Kansas, Louisiana, Mississippi, Nebraska, Nevada, New Mexico, Pennsylvania, South Dakota, Tennessee, and Utah. The Act has been endorsed by the American Bar Association and the Family Law Section of the State Bar of Michigan supports it.

This bill addresses the growing problem of interstate and international child abduction by parents or another family member, specifically by providing tools for judges to identify children who are at risk for abduction. “Abduction” under the Act means the wrongful removal or wrongful retention of a child. Although many high profile abductions are perpetrated by strangers, an alarming number of abductions are actually carried out by family members. Family member

abductions frequently occur when parents separate or begin divorce proceedings, but also occur during periods of domestic turmoil.

UCAPA is premised on the general principle that preventing abduction is in a child's best interests. The operative term is *prevention*; UCAPA seeks to complement and supplement existing laws that criminalize the parental abduction of a child by providing tools and a legal framework by which to help *prevent* abductions from occurring.

Importantly, UCAPA enables a court to issue an abduction prevention order *any time* there is a credible risk of abduction: before child custody proceedings have commenced, while proceedings are underway but before a custody order has been entered, or after a child custody order is in place. The court also has the ability, on its own motion, to enter an abduction prevention order.

The typical petitioner under UCAPA will be a parent who fears that the other parent will "wrongfully remove" or "wrongfully retain" the child, and wants to act preemptively to prevent that from occurring. Under the Act, the petitioner must file a request for a prevention order in a court with jurisdiction pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (Mich. Comp. Laws § 722.1101 et seq.).

Once a petition is filed, UCAPA directs courts to consider a variety of risk factors and types of behavior that research has demonstrated may indicate that a child is at risk of being abducted. A few examples of risk factors include threats to abduct, refusal to obey a child custody determination, a history of domestic violence, stalking, child abuse or neglect, or other activities that may indicate a planned abduction like abandoning employment or liquidating assets. The factors listed in the Act are not exclusive or exhaustive, but serve as helpful guidance for judges reviewing abduction prevention petitions. The more factors that are present, the higher the probability of abduction. Judges should use their discretion in reviewing the petition and analyzing the factors present.

After reviewing the risk factors that are present, if the court finds that there is a credible risk of

abduction, the judge must issue an abduction prevention order. The court can invoke many remedies in the order to prevent abduction. By way of example only, these remedies may include requiring a party traveling with a child to provide the other party with certain information, requiring a party to register the order in the state to which the child will travel, or requiring that visitation with the child be supervised. In exigent circumstances, when there is a credible risk of *imminent* child abduction, the court can issue a warrant to take physical custody of the child or direct law enforcement to take any action reasonably necessary to locate and return the child. In that situation the court must give the other party an opportunity to be heard almost immediately after the warrant is executed (the next possible judicial day).

Ideally, in fashioning remedies the court will choose the least restrictive measures, and those that provide opportunities for continued parental contact—but should also choose measures that maximize the protection of the child’s best interests and minimize the risk of abduction. While the Act provides a number of preventative measures to choose from, the court is not limited to those remedies listed in the statute.

In closing, I want to emphasize that the purpose of UCAPA is to prevent the *wrongful* removal or retention of a child. It was carefully drafted to allow for parents and children to legitimately relocate, and includes safeguards against misuse of the Act. It also requires the court to consider evidence in respect to both parties.

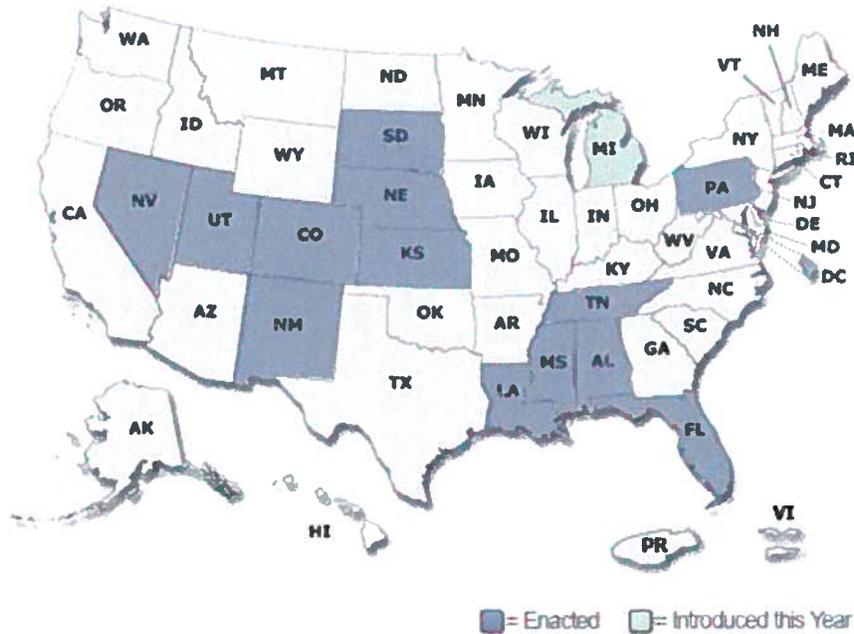
I urge the Committee to vote in favor of UCAPA. The Act represents an important step in protecting children from interstate and international abduction.

Thank you for your consideration. I would be happy to answer any questions.



A Few Facts about
THE UNIFORM CHILD ABDUCTION PREVENTION ACT

- PURPOSE:** The Uniform Child Abduction Prevention Act provides parties and courts with tools to use and guidelines to follow to prevent the abduction of children.
- ORIGIN:** Completed by the Uniform Law Commission in 2006.
- ENDORSEMENTS:** Approved by the American Bar Association.
- ENACTED BY:** 14 states: Alabama, Colorado, District of Columbia, Florida, Kansas, Louisiana, Mississippi, Nebraska, Nevada, New Mexico, Pennsylvania, South Dakota, Tennessee, and Utah.



For further information about UCAPA, please contact Legislative Counsel Casey Gillece at cgillece@uniformlaws.org.



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.**

UCAPA is intended to provide courts and parties with tools to prevent an unlawful abduction from occurring—either before a child custody order has been entered or after—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 Uniform Child Custody Jurisdiction and Enforcement Act (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.
- **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.
- **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 a confidentiality provision designed to protect domestic violence victims from future harassment and additional protective provisions to further the best interests of the victimized child and parent.
- **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.
- **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 important.

This Act will allow states to more effectively combat the threat of child abduction. It has been approved by the American Bar Association, and so far has been enacted in fourteen jurisdictions.

*Office of Juvenile Justice and Delinquency Prevention, National Incidence of Studies of Missing, Abused, Runaway and Throwaway Children (NISMAART), 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)