

UNIFORM CHILD ABDUCTION PREVENTION ACT

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

Alabama Comment

Alabama judges already have the authority, through equitable powers contained in Alabama law, to provide protections against child abduction. One of the purposes of this act is to clarify the right of petition, define procedures for consideration, enumerate factors for the court to consider, and describe measures that a court might choose to take when determining a request for child abduction prevention. Clarity with regard to procedures and remedies for child abduction prevention is in the interest of all parties who might be involved, including parents, courts, the State Department of Human Resources and other agencies and persons with interest in ensuring protection for children at risk of abduction.

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~~ 19 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. The term does not include an order relating to support or other monetary obligation of an individual.

(4) “Child-custody proceeding” means a court 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. The term does not include a court proceeding involving juvenile delinquency, contractual emancipation, guardianship proceeding, adoption, or enforcement under Article 3 of Chapter 3B of Title 30 (Uniform Child Custody Jurisdiction and Enforcement Act).

(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.

Alabama Comment

This Section follows the Uniform Child Abduction Prevention Act Section 2, except:

Subsection (2) was edited to indicate the age of majority in Alabama as 19 years of age. Ala. Code § 26-1-1.

Subsections (3) and (4) were edited to conform to the definitions as contained in the Uniform Child Custody Jurisdiction and Enforcement Act as passed in Alabama. Ala. Code §§ 30-3B-101 *et seq.*

Subsection (3) was edited to clarify that orders relating to support or other monetary obligation of an individual do not fall under the definition of “child-custody determination” for purposes of this act.

Proceedings for guardianship were removed from the definition of “child custody proceeding” in subsection (4) since it is not the intent of this act to provide for consideration of child abduction prevention petitions within the context of probate court-related guardianship proceedings.

Official 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 30-3B-
110, 111, and 112 (Uniform Child Custody Jurisdiction and
Enforcement Act), apply to cooperation and communications
among courts in proceedings under this act.

Alabama Comment

This section follows Section 3 of the Uniform Child
Abduction Prevention Act except:

Section 3 refers to Section 112 of the Uniform Child
Custody Jurisdiction and Enforcement Act as passed in
Alabama, in which the age of majority is 19, rather than 18, in
accordance with Alabama law. Ala. Code § 26-1-1. The
Uniform Child Custody Jurisdiction and Enforcement Act is
codified at Ala. Code §§ 30-3B-101 *et seq.*

Official 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. This act creates no new requirement to file a petition seeking abduction prevention measures on behalf of a child.

~~(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.~~

Alabama Comment

There is no intention under subsection (a) to alter or amend evidentiary standards with regard to child custody determinations or modifications.

In most respects, this section follows Section 4 of the Uniform Child Abduction Prevention Act except:

The last sentence in subsection (b) was added to clarify that entities such as the State Department of Human Resources are not required to file a child abduction prevention petition on behalf of a child for whom it has authority to seek a child-custody determination. However, an entity, such as the Alabama Department of Human Resources, *may* seek child abduction prevention measures for a child when the entity otherwise has authority to seek a child-custody determination for the child. No provision of this act is meant to supersede existing law with regard to mandatory reporting. *See* Ala. Code. § 26-14-3.

Subsection (c) of the UCAPA was struck. That section allowed a prosecutor or public authority designated under (UCCJEA) to seek a warrant to take physical custody of a child in accordance with Section 9 of UCAPA. Since the Alabama UCCJEA does not include Section 315, which specified the role of a prosecutor or public official with regard to child custody determinations, Section 4(c) of the UCAPA was struck in order to reconcile the UCAPA and the UCCJEA as adopted in Alabama. *See* Ala. Code. §§ 30-3B-101 *et seq.*

Official 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 the Uniform Child Custody Jurisdiction and Enforcement Act.

(Ala. Code §§ 30-3B-101 et seq.)

(b) Notwithstanding subsection (a), a court of this state has temporary emergency jurisdiction to take action under this act ~~under [insert citation to the Uniform Child Custody Jurisdiction and Enforcement Act or Section 3(a)(3) of the Uniform Child Custody Jurisdiction Act]~~ if if a child is present in this state and the court finds there is a credible risk of abduction.

Alabama Comment

This Section is similar to Section 5 of the Uniform Child Abduction Prevention Act.

This act complements, but does not limit, The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) as passed in Alabama and is codified at Ala. Code §§ 30-3B -101 *et seq.*

For example, under this act, Alabama could acquire temporary emergency jurisdiction of a child who is present in Alabama and scheduled to fly from Alabama out of the country in violation of a custody order issued in the home state of the child.

Official 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. If a child-custody determination is not available then the petition must state the petitioner's right to make a petition, as described under Section 4(b) of this act, and provide the basis for that right to make a petition under this act. The petition also must specify the risk factors for abduction, including the relevant factors described in Section 7. Subject to the protections provided by 30-3B-209(e) (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~~ usual places of abode and current physical location of the child;

(3) the identity, ~~customary address~~ usual places of abode, and current physical location of the petitioner and respondent, and an explanation of the relationship between petitioner and the child at issue in the petition that states the authority of petitioner to make a petition under this act, in accordance with Section 4(b);

(4) a statement of whether a prior action to prevent abduction or domestic violence has been filed by or against a party or other individual ~~or entity having~~ who has custody of the child, and the date, location, and ~~disposition~~ status of the action; If the petitioner is the Alabama Department of Human Resources or any entity, that has custody of the child at issue under the petition, that entity need only provide a statement of whether a prior action to prevent abduction or domestic violence has been filed with regard to the child at issue in the petition being made, and need not make a statement of all such

filings made in other cases by such entity;

(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 Section 30-3B-209 (Uniform Child Custody Jurisdiction and Enforcement Act); and

(7) a statement of any action taken pursuant to Article 7A of Chapter 3 of Title 30 (Parent-Child Relationship Act).

Alabama Comment

This section is intended to be read consistent with other Alabama laws regarding the protection of names or identifying information in certain cases, including the Alabama Parent-Child Relationship Protection Act (Ala. Code §§ 30-3-160 *et seq.*) and Protection From Abuse Act (Ala. Code §§ 30-5-1 *et seq.*).

Examples of documentation that could establish a right to petition under this act if an existing child custody determination is not available include: birth certificate, hospital

acknowledgement form, an interlocutory adoption order, a legitimization proceeding determination, or a guardianship proceeding determination.

This Section is similar to Section 6 of the Uniform Child Abduction Prevention Act Section 6, except:

The second sentence of this section was added to require the petition to include the bases of the petitioner's right to petition the court if a copy of an existing child-custody determination is not included with the petition.

In subsections (2) and (3), the term "usual places of abode" was substituted for "customary address" in order to clarify the need to provide the address(es) where the child typically is or has been living, in addition to information regarding where the child currently is located.

In subsection (3) the "identity" of respondent includes the name, relationship, and other information connecting the respondent to the child at issue under the petition.

Subsection (4) is intended to alert the court if any prior actions to prevent abduction or domestic violence have been filed by or against any individuals who have custody of the child at issue in the petition. It is not the intent of this section to require the Alabama State Department of Human Resources, other social services agencies or entity that may have legal custody of a child at issue in an abduction prevention petition, to provide the court information regarding every prior action for abduction prevention or domestic violence in which that entity has been involved. Rather, such entities need only alert the court if any prior actions to prevent abduction or domestic violence have been filed with regard to the particular child at issue in the petition.

Subsection (6) requires petitioner to submit to the court any information required for a child-custody determination under Section 209 of the Uniform Child Custody Jurisdiction and Enforcement Act:

“§ 30-3B-209. Information to be submitted to court.

(a) Except as otherwise provided in subsection (e), in a child custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

(1) Has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number, and the date of the child custody determination, if any;

(2) Knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions, and, if so, identify the court, the case number, and the nature of the proceeding; and

(3) Knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

(b) If the information required by subsection (a) is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

(c) If the declaration as to any of the items described in subsection (a) (1) through (3) is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

(d) Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

(e) 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 the present address or whereabouts of a party or child, 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 Alabama Uniform Child Custody Jurisdiction and Enforcement Act, Ala. Code § 30-3B-209.

Subsection (7) was added to ensure that the court is provided with information regarding any requests for relocation or other action sought or received by the petitioner or respondent under the Alabama Parent-Child Relationship Act, Ala. Code §§ 30-3-160 *et seq.*

Official 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~~ a child;

(2) has threatened to abduct ~~the~~ a child;

(3) has recently engaged in activities that may indicate a planned abduction, including:

(A) abandoning employment;

(B) preparing to move from,
abandoning or 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.

Alabama Comment

This Section follows the Uniform Child Abduction Prevention Act Section 7, except:

In section 7(a)(1) and (a)(2), "the child" was changed to "a child" to broaden the scope of evidence to be considered in the event of a prior abduction, attempted abduction, or threatened abduction to include any child, not just the child at issue in the petitioner's request.

Section 7(a)(3)(b) was expanded to include "preparing to move from" and "abandoning" a primary residence, in addition to selling a primary residence, as an activity that may indicate a planned abduction.

There is no intention in this act to impede permissible travel of parents and children, particularly between states and between the United States and countries that are partners in good standing under the 1980 Hague Convention on Civil

Aspects of International Child Abduction. A court reviewing a petition under this act should consider the delineated Factors to Determine Risk of Abduction, as well as consider a foreign country's participation under the Hague Convention on Civil Aspects of International Child Abduction. When evaluating a petition under this act, a court should consider the significant complications that might be encountered if a child is abducted to a non-participating country, or a country not in compliance with the terms of the Hague Convention on Civil Aspects of International Child Abduction. A current list of countries that are in compliance with the Hague Convention may be found on the U.S. State Department website: <http://travel.state.gov>

If a petitioner or respondent in an action under this act has given or received notice to relocate in accordance with the Alabama Parent-Child Relationship Act (Ala. Code §§ 30-3-160 *et seq.*), the court should consider that notice in balancing the abduction risk factors set forth by petitioner.

Alabama Rules of Evidence apply to any consideration of evidence presented to a court regarding a petition for protection from abduction under this act.

Official 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~~ EMERGENCY
MEASURES TO PREVENT ABDUCTION.**

(a) ~~If In response to a petition is filed under this act,~~
~~before a hearing on the matter,~~ the court may enter an *ex parte*
~~order that must~~ for emergency measures to prevent abduction,
including an *ex parte* order to take physical custody of the
child, or an order for any other emergency relief as necessary
to prevent abduction of a child, including imposing travel
restrictions with the child, on the petitioner, and/or on the
respondent.

(b) ~~An *ex parte* order for relief under this act shall~~
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, including a finding
by the court of compliance with Rule 65 of the Alabama
Rules of Civil Procedure, if applicable;

(3) a detailed description of each party's custody and visitation rights and residential arrangements for the child at the time the petition under this act was filed;

(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 county, state, and country of habitual residence at the time of the issuance of the order.

(c) If, a petition under this act contains allegations, and the court finds there is a credible risk of imminent child abduction the court may issue an *ex parte* warrant to take physical custody of the child. If the court finds that there is a credible risk of imminent child abduction and an *ex parte* warrant is issued:

(1) The respondent on a petition under subsection (c) must be afforded an opportunity to be

heard within 72 hours after the *ex parte* warrant is executed.

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

(A) recite the facts upon which a determination of a credible risk of imminent abduction of the child is based;

(B) direct law enforcement officers to take physical custody of the child immediately;

(C) state the date and time for the hearing on the petition; and

(D) provide for the safe interim placement of the child pending further order of the court.

(3) 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, or other criminal offenses relevant to the health and welfare of the child.

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

(5) 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.

(6) A warrant to take physical custody of a child, issued by another state, is enforceable throughout this state, provided however, that nothing contained

herein shall alter or delete any rights, substantive or procedural in nature.

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

~~(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 a credible risk of child abduction; and~~

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

~~(e) — To prevent imminent abduction of a child, a the 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.~~

Alabama Comment

This section incorporates part of Section 8 of the Uniform Child Abduction Prevention Act, however, that it incorporates the provisions contained in UCAPA Section 9 (Warrant to Take Physical Custody of a Child) with regard to

a court order for law enforcement to take physical custody of a child under this act.

Alabama has historically had a broad view of the court's equity powers to protect minor children. *Ex parte Buck*, 291 Ala. 689, 287 So. 2d 441 (Ala. 1973). (Equity courts in this state are always open for the protection of minors, and any pleading which shows on its face that the welfare of a child requires an order with respect to its custody or support is sufficient to invoke this jurisdiction).

Upon a proper showing of possible irreparable injury, the court may issue a temporary restraining order to prevent someone from removing a child from the jurisdiction. Moreover, the restraining order may remain in effect "until further order" under Rule 65(b) of the Rules of Civil Procedure since there is a domestic relations exception to the statutory ten-day limitation. Rules of Civil Procedure, Rule 65(b). *Falk v. Falk*, 355 So. 2d 722 (Ala. Civ. App. 1978) ("Furthermore, the wife had later threatened to take the children out of Tuscaloosa County before the summer vacation expired. For the wife to have removed the children from Tuscaloosa County would have been in clear violation of the Cook County decree and, in view of the above, would constitute irreparable injury to the children." *Id.* at 724).

Subsection (b)(2), with regard to notice and hearing, requires a finding by the court of compliance with Alabama Rule of Civil Procedure 65, with regard to due process requirements in the case of injunctive orders.

Subsection (b)(3) clarifies that the court's order should include an explanation of the custodial circumstances prior to an order being issued under this act.

Under subsection (b)(5), a court's order must include the

county and state, as well as country, of habitual residence of the child at the time of the order.

Subsection (c) is derived from subsections 8(b) and (e) and Section 9 of the Uniform Act. Subsection (c) makes clear that an order to take physical custody of a child under this act is one of the measures that judges may take in response to a petition filed under this act, among other measures that a court may order.

Subsection (c)(1) specifies that a respondent should be afforded an opportunity to be heard within 72 hours after an *ex parte* order is issued.

Subsection (c)(3) clarifies that a court may order a search of relevant databases in order to determine whether any criminal offense has been committed by the petitioner or respondent that may be relevant to the court's consideration of the welfare of the child.

As indicated in subsection (c)(5), it is intended that when ordering measures to be taken under this act, judges should favor remedies that provide the least restrictive means of ensuring child safety.

Subsection (c)(6) was added to clarify that the court should consider an *ex parte* order from another state as it would any other such petition, affording full faith and credit unless the court finds a violation of due process.

Subsection (d) is derived from Section 9(h) of the Uniform Act.

This section is intended to be read consistent with other Alabama laws regarding the protection of names or identifying information in certain cases, including the Alabama Parent-

Child Relationship Protection Act (Ala. Code §§ 30-3-160 *et seq.*) and Protection From Abuse Act (Ala. Code §§ 30-5-1 *et seq.*).

[NOTE: THE OFFICIAL COMMENTS TO SECTIONS 8 AND 9 FOLLOW. THEY HAVE BOTH BEEN PLACED HERE BECAUSE ALABAMA CHOSE TO INCORPORATE THE PROVISIONS FROM SECTION 9 OF THE UNIFORM ACT INTO SECTION 8 OF THE UNIFORM ACT.]

Official Comment to UCAPA Section 8

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.

**Official Comment to UCAPA Section 9 (WARRANT TO
TAKE PHYSICAL CUSTODY OF CHILD)**

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 9. WARRANT TO TAKE PHYSICAL CUSTODY OF CHILD HEARING ON PETITION TO PREVENT ABDUCTION.~~

(a) If a petition is filed under this act, the court may set a hearing as necessary, including a hearing to determine whether a court order should be entered pending a final hearing on the petition, and shall cause to be issued all summons and notices as required by law and otherwise deemed necessary and appropriate. Should the court determine from the pleadings, or on evidence presented at a preliminary hearing, that no emergency or temporary orders

are appropriate, then the court shall set the petition for a final hearing at such time as the court deems appropriate and as the best interests of the child require.

(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 (c), specifying measures that are reasonably calculated to prevent abduction of the child and 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 risks for the potential abduction, including but not limited to evidence of domestic violence, stalking, or child abuse or neglect, or history thereof.

(c) An order for relief under this act shall 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 at the time the petition under this act was filed;

(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 county, state, and country of habitual residence at the time of the issuance of the order.

(d) 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 of an authenticated copy of the order detailing passport and travel restrictions for the

child 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; 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 consistent with the child-custody determination issued in the United States.

(e) 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 may order the parties to pay the costs of supervision;
and

(2) require the posting of a bond or provide other security in an amount sufficient to serve as a financial deterrent to abduction.

(f) To prevent abduction of a child, a court may grant any other relief allowed under the law of this state other than this act.

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

~~(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].~~

Alabama Comment

Section 9 of the Uniform Child Abduction Prevention Act, relating to warrants to take physical custody of a child under this act, was incorporated into subsection 8 (c). This section has been revised to specify provisions relating to hearings and orders of the court on petitions filed under this act.

Subsection (a) clarifies that a petition filed under this act should not languish in the court, but be set for hearing as early as practicable. Under Section 8 of this act a court may issue an *ex parte* order, and also may set the case for hearing under Section 9, even if for the limited purpose of determining whether a temporary order should be issued prior to a final hearing. A final hearing is required, but a court may dismiss an action on proper motion.

Subsection (b) is derived from subsection 8(b) of the Uniform Act. Subsection (c) is derived from subsection 8(a) of the Uniform Act.

Subsection (d) is derived from subsection 8(c) of the Uniform Act. Subsection (d)(3) requires a party, if ordered by the court's abduction prevention order, to register the court's order in another state as a prerequisite to allowing the child to

travel to that state. The party should register the order with the court having jurisdiction in the state to which the child is traveling.

Subsection (e) is derived from subsection 8(d) of the Uniform Act. Subsections (e)(1) and (2) are modified to allow a court to impose costs on, or require a posting of a bond from, either party in an action under this act.

The requirement to post a bond to insure compliance with a court order is consistent with current Alabama law. *Rayford v. Rayford*, 456 So. 2d 833 (Ala. Civ. App. 1984)(father required to post bond to insure future compliance with court order in child custody case). However, note that Alabama state agencies are exempted from posting of bonds in civil cases. See Ala. Code. §6-5-1(a), which states, “[t]he state may commence an action in its own name and is entitled to all remedies provided for the enforcement of rights between individuals without giving bond or security or causing an affidavit to be made, though the same may be required as if the action were between private citizens.”

Historically, Alabama has taken the position that the court stands in the position of *parens patriae* of children and as such has broad equity power to act in the best interest of the children. This includes the authority of the court to place limitations on the residence of children and to require supervised visitation. *McDaniel v. McDaniel*, 621 So. 2d 1328 (Ala. Civ. App. 1993)(“There is no wider area for the exercise of judicial discretion than that of providing for and protecting the best interests of children. “ *Ex parte Handley*, 460 So. 2d 167 (Ala. 1984). The court stands in the position of *parens patriae* of children. *Ayers v. Kelley*, 284 Ala. 321, 224 So. 2d 673 (1969). Its power is without limit so long as it serves the best interests of the children”. *Id.* at 1329)(residential restriction). See, e.g., *Y.A.M. v. M.R.M.*, 600 So. 2d 1035 (Ala.

Civ. Appl 1992)(supervised visitation); Caldwell v. Fisk, 523 So. 2d 464 (Ala. Civ. App. 1988)(supervised visitation). But see, Mann v. Mann, 725 So. 2d 989 (Ala. Civ. App. 1998)(insufficient proof of flight risk to warrant supervised visitation).

Subsection (f) is derived from subsection 8(e)(3) of the Uniform Act.

Subsection (g) is derived from and is identical to subsection 8(f) of the Uniform Act.

[NOTE: THE OFFICIAL COMMENT TO UCAPA SECTION 9 HAS BEEN MOVED TO SECTION 8 OF 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~~ 19 years of age; or
- (4) the time the order is modified, revoked, vacated,

or superseded by a court with jurisdiction under Sections 30-3B-201 through 203 (Uniform Child Custody Jurisdiction and Enforcement Act).

Alabama Comment

This section follows Section 10 of the Uniform Child Abduction Prevention, except that subsection (3) changes the age of majority from 18 to 19, in accordance with Alabama law. Ala. Code § 26-1-1.

SECTION 11. COSTS, FEES AND EXPENSES.

(a) The court may award or assess against any party, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney's fees, state agency expenses, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings.

(b) The court may not assess fees, costs, or expenses against a state unless authorized by law other than this act.

Alabama Comment

This Section, which reflects current law, was added to the Alabama Uniform Child Abduction and Prevention Act. No comparable section is contained in the Uniform Child Abduction Prevention Act.

Generally, under Alabama law, in the absence of contractual or statutory provisions, attorneys' fees are not recoverable either as costs of litigation or as an element of damages. *State v. Alabama Public Service Commission*, 293 Ala. 553, 307 So. 2d 521 (1975); *Hartford Accident & Indemnity*

Co. v. Cosby, 277 Ala. 596, 173 So. 2d 585 (1965); and Taylor v. White, 237 Ala. 630, 188 So. 232 (1939). One exception is, that in proper circumstances, a reasonable attorney's fee may be allowed the prevailing prosecuting party in a civil contempt proceeding. This award, though not mandatory, is allowed within the sound discretion of the trial court. The purpose of this rule is to afford an injured party remedial relief for injuries sustained by him or her from the contemnor's contemptuous acts. Thus, although attorneys' fees are not recoverable in criminal contempt proceedings, they are recoverable as an element of damages in civil contempt proceedings. Moody v. State ex rel. Payne, 355 So. 2d 1116 (Ala. 1978).

Historically, Alabama has taken a broad view of its equity powers in child custody issues. For example, Alabama allowed a parent to recover cost incurred by the custodial parent for finding and recovering the children after the non-custodial parent failed to return them during visitation. The award included an allowance for expenses of a private investigator who was retained by a custodial parent to track down the non-custodial parent who had absconded with the parties' children and attorney fees. The court based its decision on the "broad equity powers of the court in child custody matters to adjust the equities between the parties". Rayford v. Rayford, 456 So. 2d 833, 835 (Ala.Civ.App.,1984) ("We further note, however, that similar awards or assessments have been approved by this court in the case of Lewis v. Douglass, 440 So. 2d 1073 (Ala.Civ.App.1983). In that case, probably in response to issue presented and argued on appeal, this court approved the award using the term damages. However, the sum requested, as in this case, represented "costs, expenses and attorney fees" incurred in recovering a child by those with legal custody. In each case there was involved a contempt proceeding. We are of the opinion that such an award in a similar case could be made as costs without requirement of a finding of contempt. This may be done under the broad equity

powers of the court in child custody matters to adjust the equities between the parties. *Ex parte Handley*, [Ms. July 20, 1984] --- So.2d ---- (Ala.1984)". *Id.* at 835).

**SECTION 12. 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.

Alabama Comment

This Section follows the Uniform Child Abduction Prevention Act Section 11.

**SECTION ~~12~~ 13. 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).

Alabama Comment

This Section follows the Uniform Child Abduction Prevention Act Section 12.

SECTION ~~13~~ 14. EFFECTIVE DATE. This act takes effect on January 1, 2011.