

Uniform Child Abduction Prevention Act (UCAPA)

The Uniform Child Abduction Prevention Act (UCAPA) provides states with a valuable tool for deterring both domestic and international child abductions by parents and people acting on behalf of the parents. The UCAPA complements and strengthens the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), which is law in 48 states, and the federal Parental Kidnapping Prevention Act (PKPA). The Act allows the court to impose measures designed to prevent child abduction both before and after a court has entered a custody decree.

Under the Act, an Action for abduction prevention measures may be brought either by a court on its own motion, by a party to a child-custody determination or an individual with a right to seek such a determination, or by a prosecutor or public attorney. The party seeking the abduction prevention measures must file a petition with the court specifying the risk factors for abduction as well as other relevant information. Courts will rule on the petition based on a variety of factors enumerated in the Act and impose appropriate mechanisms to prevent abduction. The Act also addresses the special problems involved with international child abduction by including several risk factors specifically related to international situations.

The Act was promulgated by the Uniform Law Commission in 2006. The model uniform Act with official commentary (which also serves as legislative history) can be found at: http://www.law.upenn.edu/bll/archives/ulc/ucapa/2006_finalAct.htm

Seven states enacted the UCAPA into law during its initial (2007) legislative year:

- Colorado: HB 1255; Colo. Rev. Stat. 14-13.5-101
- Kansas: SB 18
- Louisiana: SB 73 (Partial Enactment)
- Nebraska: LB 341; Nev. Rev. Stat. 43-1230
- Nevada: AB 15
- South Dakota: SB 88
- Utah: SB 35; Utah Code Ann. 78-62-101 (et al)

The version in this SSL volume is based on Kansas law.

Submitted as:

Kansas

SB18

Status: Enacted into law on April 5, 2007.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act may be cited as “The Uniform Child Abduction
2 Prevention Act.”

3
4 Section 2. In this Act:

5 (1) “Abduction” means the wrongful removal or wrongful retention of a child.

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

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

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

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

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

17 (7) "Record" means information that is inscribed on a tangible medium or that is
18 stored in an electronic or other medium and is retrievable in perceivable form.

19 (8) "State" means a state of the United States, the District of Columbia, Puerto
20 Rico, the United States Virgin Islands, or any territory or insular possession subject to the
21 jurisdiction of the United States. The term includes a federally recognized Indian tribe or nation.

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

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

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

29
30 Section 3. [Insert citation], applies to cooperation and communications among courts in
31 proceedings under this Act.

32 Section 4.

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

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

38 (c) A prosecutor or public authority designated under [insert citation] may seek a warrant
39 to take physical custody of a child under section 9, and amendments thereto, or other appropriate
40 prevention measures.

41 Section 5.

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

45 (b) A court of this state has temporary emergency jurisdiction under [insert citation] and
46 amendments thereto, if the court finds a credible risk of abduction.

47
48 Section 6. A petition under this Act must be verified and include a copy of any existing
49 child-custody determination, if available. The petition must specify the risk factors for abduction,
50 including the relevant factors described in section 7, and amendments thereto. Subject to [insert
51 citation], if reasonably ascertainable, the petition must contain:

52 (1) the name, date of birth, and gender of the child;

53 (2) the customary address and current physical location of the child;

54 (3) the identity, customary address, and current physical location of the respondent;

57 (4) a statement of whether a prior action to prevent abduction or domestic violence
58 has been filed by a party or other individual or entity having custody of the child, and the date,
59 location, and disposition of the action;

60 (5) a statement of whether a party to the proceeding has been arrested for a crime
61 related to domestic violence, stalking, or child abuse or neglect, and the date, location, and
62 disposition of the case; and

63 (6) any other information required to be submitted to the court for a child-custody
64 determination under [insert citation], and amendments thereto.

65
66 Section 7.

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

69 (1) has previously abducted or attempted to abduct the child;

70 (2) has threatened to abduct the child;

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

73 (A) abandoning employment;

74 (B) selling a primary residence;

75 (C) terminating a lease;

76 (D) closing bank or other financial management accounts, liquidating
77 assets, hiding or destroying financial documents, or conducting any unusual financial activities;

78 (E) applying for a passport or visa or obtaining travel documents for the
79 respondent, a family member, or the child; or

80 (F) seeking to obtain the child's birth certificate or school or medical
81 records;

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

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

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

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

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

89 (A) is not a party to the Hague Convention on the civil aspects of
90 international child abduction and does not provide for the extradition of an abducting parent or for
91 the return of an abducted child;

92 (B) is a party to the Hague Convention on the civil aspects of international
93 child abduction but:

94 (i) the Hague Convention on the civil aspects of international child
95 abduction is not in force between the United States and that country;

96 (ii) is noncompliant according to the most recent compliance report
97 issued by the United States department of state; or

98 (iii) lacks legal mechanisms for immediately and effectively
99 enforcing a return order under the Hague Convention on the civil aspects of international child
100 abduction;

101 (C) poses a risk that the child's physical or emotional health or safety would
102 be endangered in the country because of specific circumstances relating to the child or because of
103 human rights violations committed against children;

104 (D) has laws or practices that would:

105 (i) enable the respondent, without due cause, to prevent the
106 petitioner from contacting the child;
107 (ii) restrict the petitioner from freely traveling to or exiting from the
108 country because of the petitioner's gender, nationality, marital status, or religion; or
109 (iii) restrict the child's ability legally to leave the country after the
110 child reaches the age of majority because of a child's gender, nationality, or religion;
111 (E) is included by the United States Department of State on a current list of
112 state sponsors of terrorism;
113 (F) does not have an official United States diplomatic presence in the
114 country; or
115 (G) is engaged in active military action or war, including a civil war, to
116 which the child may be exposed;
117 (9) is undergoing a change in immigration or citizenship status that would
118 adversely affect the respondent's ability to remain in the United States legally;
119 (10) has had an application for United States citizenship denied;
120 (11) has forged or presented misleading or false evidence on government forms or
121 supporting documents to obtain or attempt to obtain a passport, a visa, travel documents, a Social
122 Security Card, a driver's license, or other government-issued identification card or has made a
123 misrepresentation to the United States government;
124 (12) has used multiple names to attempt to mislead or defraud; or
125 (13) has engaged in any other conduct the court considers relevant to the risk of
126 abduction.

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

131
132 Section 8.

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

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

135 (2) the manner in which notice and opportunity to be heard were given to the
136 people entitled to notice of the proceeding;

137 (3) a detailed description of each party's custody and visitation rights and
138 residential arrangements for the child;

139 (4) a provision stating that a violation of the order may subject the party in
140 violation to civil and criminal penalties; and

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

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

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

153 (1) an imposition of travel restrictions that require that a party traveling with the
154 child outside a designated geographical area provide the other party with the following:
155 (A) the travel itinerary of the child;
156 (B) a list of physical addresses and telephone numbers at which the child
157 can be reached at specified times; and
158 (C) copies of all travel documents;

159 (2) a prohibition of the respondent directly or indirectly:
160 (A) removing the child from this state, the United States, or another
161 geographic area without permission of the court or the petitioner's written consent;
162 (B) removing or retaining the child in violation of a child-custody
163 determination;
164 (C) removing the child from school or a child-care or similar facility; or
165 (D) approaching the child at any location other than a site designated for
166 supervised visitation;

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

169 (4) with regard to the child's passport:
170 (A) a direction that the petitioner to place the child's name in the United
171 States Department Of State's child passport issuance alert program;
172 (B) a requirement that the respondent surrender to the court or the
173 petitioner's attorney any United States or foreign passport issued in the child's name, including a
174 passport issued in the name of both the parent and the child; and
175 (C) a prohibition upon the respondent from applying on behalf of the child
176 for a new or replacement passport or visa;

177 (5) as a prerequisite to exercising custody or visitation, a requirement that the
178 respondent provide:
179 (A) to the United States Department of State Office of Children's Issues and
180 the relevant foreign consulate or embassy, an authenticated copy of the order detailing passport
181 and travel restrictions for the child;
182 (B) to the court:
183 (i) proof that the respondent has provided the information in
184 subparagraph (A); and
185 (ii) an acknowledgment in a record from the relevant foreign
186 consulate or embassy that no passport application has been made, or passport issued, on behalf of
187 the child;
188 (C) to the petitioner, proof of registration with the United States embassy or
189 other United States diplomatic presence in the destination country and with the central authority
190 for the Hague Convention on the civil aspects of international child abduction, if that Convention
191 is in effect between the United States and the destination country, unless one of the parties objects;
192 and
193 (D) a written waiver under the Privacy Act, 5 U.S.C. Section 552a, as
194 amended, with respect to any document, application, or other information pertaining to the child
195 authorizing its disclosure to the court and the petitioner; and
196 (6) upon the petitioner's request, a requirement that the respondent obtain an order
197 from the relevant foreign country containing terms identical to the child-custody determination
198 issued in the United States.

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

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

204 (2) require the respondent to post a bond or provide other security in an amount
205 sufficient to serve as a financial deterrent to abduction, the proceeds of which may be used to pay
206 for the reasonable expenses of recovery of the child, including reasonable attorney's fees and costs
207 if there is an abduction; and

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

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

211 (1) issue a warrant to take physical custody of the child under section 9, and
212 amendments thereto, or the law of this state other than this Act;

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

216 (3) grant any other relief allowed under the law of this state other than this Act.

217 (f) The remedies provided in this Act are cumulative and do not affect the availability of
218 other remedies to prevent abduction.

219
220 Section 9.

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

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

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

229 (1) recite the facts upon which a determination of a credible risk of imminent
230 wrongful removal of the child is based;

231 (2) direct law enforcement officers to take physical custody of the child
232 immediately;

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

234 (4) provide for the safe interim placement of the child pending further order of the
235 court.

236 (d) If feasible, before issuing a warrant and before determining the placement of the child
237 after the warrant is executed, the court may order a search of the relevant databases of the national
238 crime information center system and similar state databases to determine if either the petitioner or
239 respondent has a history of domestic violence, stalking, or child abuse or neglect.

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

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

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

250 (h) This Act does not affect the availability of relief allowed under the law of this state
251 other than this Act.

252
253 Section 10. An abduction prevention order remains in effect until the earliest of:

- 254 (1) the time stated in the order;
255 (2) the emancipation of the child;
256 (3) the child's attaining 18 years of age; or
257 (4) the time the order is modified, revoked, vacated, or superseded by a court with
258 jurisdiction under [insert citation], and amendments thereto.

259
260 Section 11. In applying and construing this Uniform Act, consideration must be given to
261 the need to promote uniformity of the law with respect to its subject matter among states that enact
262 it.

263
264 Section 12. This Act modifies, limits, and supersedes the federal Electronic Signatures in
265 Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit,
266 or supersede Section 101(c) of the Act, 15 U.S.C. Section 7001(c), of that Act or authorize
267 electronic delivery of any of the notices described in Section 103(b) of that Act, 15 U.S.C. Section
268 7003(b).

269
270 Section 13. This Act shall take effect and be in force from and after its publication in the
271 statute book.