



Via the web: www.capitol.hawaii.gov/emailtestimony
Hearing on: February 25, 2010 @ 11:00 a.m.
Conference Room 308

DATE: February 23, 2010

TO: House Committee on Finance
Representative Marcus Oshiro, Finance Chair
Representative Marilyn Lee, Finance Vice-Chair

FROM: Dennis Arakaki, Executive Director

RE: Support intent but with Serious reservations for HB 2250, HD1 RELATING TO THE UNIFORM CHILD ABDUCTION PREVENTION ACT

Honorable Chair Oshiro, Vice Chair Lee and members of the House Finance Committee, I am Dennis Arakaki, **representing both the Hawaii Family Forum and the Roman Catholic Church in the State of Hawaii.**

Hawaii Family Forum is a non-profit, pro-family education organization committed to preserving and strengthening families in Hawaii, representing a network of over 250 Christian churches. The Hawaii Catholic Conference is the public policy voice for the Roman Catholic Church in Hawaii, which under the leadership of Bishop Larry Silva, represents over 220,000 Catholics in Hawaii, as well as the Catholic School in Hawaii. We are in support of the intent of HB 2250, HD1, which would establish a comprehensive child abduction prevention law.

When it comes to children, it is always more prudent to do whatever possible to prevent tragedies that will scar their lives for a long time. We see many of these cases highlighted in the news media and we know it is the child who is the ultimate victims in these abductions. There are probably countless other cases that we do not hear about but result in similar tragic circumstances. When it comes to custody issues, we at Hawaii Family Forum and Hawaii Catholic Conference believe that the best interest of the child should be first and foremost. Herewith are some concerns:

1) This law should only address international abductions.

The NCCUSL committees scope was to address potential international abductions to non-Hague countries. However, partway through, they modified their scope to cover 'all' potential abductions. The modification to do this was poorly thought out and implemented. As such, measures that are only appropriate for an international abduction case can be applied on a purely domestic case. In Louisiana, we revised the law to limit it to only international countries that do not comply with the Hague treaty.

1. Existing Hawaiian law and family court practices already adequately cover instate abductions.
2. The Uniform Child Custody Jurisdiction Enforcement Act already adequately covers interstate abductions.
3. The Hague treaty already adequately covers international abductions between countries that are signatories. This law is only needed to cover the cases of potential abductions in international cases to countries that are not signatories to the Hague treaty or who do not enforce the Hague treaty.

2) Serious problems with the 'risk factors'

Some of the risk factors are acceptable, but some of them are absurd. Unfortunately, the way they wrote this law, only a single factor needs to be met to label a parent as a 'potential felon'.

For example, ordinary parenting acts can get a parent in trouble with this law.

1. If a parent picks up their child(rens) school records, they are a potential abductor.
2. If a parent picks up their child(rens) medical records, they are a potential abductor.
3. If a parent picks up their child(rens) birth certificate, they are a potential abductor.

All 220,000 Catholics in Hawaii perform these mandatory parenting acts. Not one of them is likely to abduct their children.

For example, ordinary living acts can also get a parent in trouble with this law.

1. Selling a house can get a parent labeled as a potential felon.
2. Terminating a lease can also get a parent labeled as a potential felon,
3. As can quitting or being fired from a job.
4. As can closing a bank account.

While in a few cases these acts could indicate a planned flight, in most cases they are the simple acts of people living their lives. Or in the case of South Louisiana where I am from - fleeing from or recovering from a massive hurricane (aka Katrina and Rita).

For example, simple facts of life, for want of a better word, can get you in trouble with this law.

1. Strong financial ties to another state (Louisiana, Maine, etc.)
2. Strong emotional ties to another state (Louisiana, Maine, etc.)
3. Strong cultural ties to another state (Louisiana, Maine, etc.)
4. Strong family ties to another state (Louisiana, Maine, etc.)
5. Lack of strong financial ties to Hawaii
6. Lack of strong emotional ties to Hawaii
7. Lack of strong cultural ties to Hawaii
8. Lack of strong family ties to Hawaii.

There are two lines that establish the eight risk factors above. These factors cover every single Hawaiian.

1. How many family members do you have to have living in Hawaii to have 'strong family ties to the state? This clause covers those without family.
2. How many family members do you have to have living in Louisiana to have 'strong family ties to another state? This clause covers everyone with a relative in another state.
3. How much property do you have to have or own in the state of Hawaii to have 'strong financial ties to the state? This clause covers all of the poor.
4. How much property do you have to have or own in another state to have 'strong financial ties to that state? This clause covers the wealthy.
5. As for emotional and/or cultural ties - who knows what you will have to do to meet those criteria.

As written, these 'risk factors' cover every single Hawaiian and allow them to be accused of being 'potential felons'. This law is seriously flawed.

3) Excessive punishment

Section 8 allows the courts to take away a parents fundamental liberties.

The law eliminates the presumption of innocence that even alleged criminal offenders are granted. Under this act, a parent is guilty simply for meeting the listed risk factors.

The law eliminates the parents right to travel. Not just their right to travel to foreign countries (which would be understandable to prevent international abductions) but even their right to travel between the states, or even within the state.

4) Warrant to Take Physical Custody of Child

Section 9 allows the courts to issue ex-parte warrants to take physical custody of the children.

Why do we want to arrest children because their parents MIGHT be planning to abduct them?

The court is even authorized to allow the police to enter the parents home at any hour of the day or night.

So the first hint that a parent may have that the courts have decided they are a 'potential abductor' is when they their door is kicked in and armed police haul their children away.

This clause is certain to cause many tragedies if enacted.

We ask that this measure be set aside for more work during the interim.

Mahalo for the opportunity to testify.

**TESTIMONY OF THE
COMMISSION TO PROMOTE UNIFORM LEGISLATION**

**ON H.B. No. 2250, H.D. 1
RELATING TO THE UNIFORM CHILD ABDUCTION PREVENTION ACT.**

BEFORE THE HOUSE COMMITTEE ON FINANCE

DATE: Thursday, February 25, 2010, at 11:00 a.m.
Conference Room 308, State Capitol

PERSON(S) TESTIFYING: PETER HAMASAKI
Commission to Promote Uniform Legislation

WEB Address: <http://www.capitol.hawaii.gov/emailtestimony>

Chair Oshiro and Members of the Committee:

Hawaii's Uniform Law Commissioners support passage of H.B. No. 2250, H.D. 1, the Uniform Child Abduction Prevention Act (UCAPA). The act provides a valuable tool for deterring both domestic and international child abductions by parents and any persons acting on behalf of the parents. The act anticipates the need for cooperation and communication among the courts of different states. Because abduction situations will likely involve more than one state, it is vital that courts have the ability to communicate effectively. The act accomplishes this goal by building on the interstate jurisdiction and enforcement mechanisms of the UCCJEA, including provisions on temporary emergency jurisdiction.

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

We note that section 7 of UCAPA is intended to cover the domestic violence situation, as provided in the comment to section 7 of UCAPA:

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 7(b) specifically requires that 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."

UCAPA is endorsed by the Family Law Section of the American Bar Association. It has been adopted by eight states and the District of Columbia. Thank you for the opportunity to testify in support of UCAPA. A summary sheet is attached for further information.



Uniform Law Commissioners

The National Conference of Commissioners on Uniform State Laws

SUMMARY

Uniform Child Abduction Prevention Act

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

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

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

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

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

The act also addresses the special problems involved with international child abduction by

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

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

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

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

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