

**TESTIMONY OF THE
COMMISSION TO PROMOTE UNIFORM LEGISLATION
ON H.B. No. 2250
RELATING TO THE UNIFORM CHILD ABDUCTION PREVENTION ACT.
BEFORE THE HOUSE COMMITTEE ON HUMAN SERVICES**

DATE: Thursday, January 28, 2010, at 8:30 a.m.
Conference Room 329, State Capitol

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

E-MAIL to HUStestimony@capitol.hawaii.gov.

Hawaii's Uniform Law Commissioners support passage of H.B. No. 2250, 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, liquidating assets,

The 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 the 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 expediently as possible.

© Uniform Law Commission
111 N. Wabash Ave., Suite 1010
Chicago, Illinois 60602

tel: (312) 450-6600 | fax: (312) 450-6601

From: guy yatsushiro [gyats1@yahoo.com]
Sent: Tuesday, January 26, 2010 9:45 PM
To: HUS testimony
Subject: HB2250 to be heard on THURSDAY, January 28th at 8:30am in Room 329

TO: Representative John Mizuno, Chair
Representative Tom Brower, Vice Chair
Human Services Committee Members

FROM: Guy Yatsushiro, M.D.
1914 South King Street, #201
Honolulu, HI 96826
(808) 946-7159

RE: OPPOSITION to HB2250

Like everybody else, I heard all about the dad from NJ trying to get his kid back from Brazil and the guy who was apprehended after he scooped up his kids and ran to the American Embassy in Japan, but these wrongs don't make this bill right!

For almost 10 years I've watched my wife, who left an abusive marriage back in 2000 struggle *even now* to keep the kids and herself safe from her obsessed ex-husband. These guys are all the same and this "answer" to "the problem" is no answer.

I'll tell you *exactly* what's going to happen if you allow this to go through. You'll see a bunch of wife beaters and child abusers asking for this petition to "prevent abduction". They'll have sad and convincing stories and their wives will *all* be mentally ill, a danger to their children and a flight risk. This is just another way for the wife beaters to mess with their wives who left them for good reason. But the judges aren't going to look at that - they'll focus on the petitioner because "*he* has rights" and he'll be there filing this petition. Then they're going to *issue a warrant* to take physical custody of the child and be allowed to make *a forcible entry at any hour* to do this? Grabbing kids from their beds in the middle of the night isn't going to "adversely effect" them but a parent keeping the kids safe from abuse *is*?

The wife beaters *are going to love this* cause it's not about the kids, they don't care about the kids, all they care about is getting their ex-wife back for leaving them and this "abduction prevention petition" will help them do it.

I understand the intention of what's trying to be done here, but this is no solution for domestic violence cases like my wife's. If you pass this *guaranteed* my wife's ex will be first in line to say my wife's going to abduct the kids and then what, the police are going to come to our house and take the kids away just because *he* says so? I'm sorry, this is a mistake - a *BIG* mistake. I also thought this was 2010 *not* 1984.

Sincerely,

Guy Yatsushiro, M.D.



LATE
Testimony

OPPOSITION TO HB2250

January 27, 2010

Dear Legislators:

Thank you for your proposed legislation in HB 2250. In review of the document, AngelGroup issues the following comments:

- There is concern for those fleeing the abuses of domestic violence. As such, under SB2054, relocation cannot be held against the escaping parent.
- In Hawaii's Family Courts, where the rebuttable presumption (in cases of Domestic/Intimate Violence) is being predominantly disregarded, valid fears and statements of continuing abuse will not be considered as a "credible" defense, should the abusive parent or law enforcement "catch up" with the protective parent.
- In the case of a few renegade judges within the Family Court (Ex: Keith Tanaka and Calvin Murashige), who do not consider "evidence" or neutrally apply law in their courtrooms, the document's wording of "credible risk" may be a bit broad; subject to abuses of judicial discretion and false reason to remove parental rights/custody.
- Where abuses of judicial discretion and bias are duly noted (by attorneys, court clients and other "officials" re: aforementioned judges) but not yet subject to true accountability, there are multiple examples of a petitioner's "good word" being taken as a "fact" and cause for life-changing Court Orders.
- In these same courts, there are also numerous examples of "hearsay" being taken as "fact"; with no substantiation required for allegations made, and cause for life-changing Court Orders.
- In cases with the aforementioned judges, the judge finds justification under previous rulings. The protective parent would have no legal defense from ongoing harm unless **independent review** of the case file is **mandated** prior to hearing, as to whether "harassment" or "bad faith" was basis for allegations.
- "Independent review" should include specific definitions such as:
 - Persons/Agencies outside "officials" involved in the case
 - Persons/Agencies trained in issues of Domestic Violence
 - Depositions from Parties, and made available to Parties
 - Mandatory attorney for child(ren) if they request, or are of "sufficient age and reason" to have a voice in the matter. "Sufficient age and reason" should be determined by an independent trained professional. Often children in these matters are isolated, their opinions represented falsely, with no substantiation required by the Court.



Testimony for January 28, 2010 (HB2250)
Page 2/2

- Additionally, in cases of divorce, child custody (disputes and resolution), large life changes are imminent and fated. This would include:
 - Selling primary residence or lease termination
 - Changing bank accounts,
 - Requesting documents for child(ren),
 - Passport reissue in new name(s)
 - Asset liquidation
 - Reissue of legal documents (birth certificate, medical records)

These components could be used for Compounding and Fraud; presenting a picture resembling "abduction" though realistically unrelated. Despite the fact that correction is offered at great expense and huge investments of time, prudent and preventative measures would be in "best interest" of child where protective parent has been falsely accused by opposing party or the court itself.

Bottom line, AngelGroup believes aspects of this document leave room for factions of the judiciary to continue abuses of discretion in cases where laws are already being ignored and bias is allowed to continue unchecked. Safeguards need to be included; wherein, checks and balances apply to affect Redress of Grievances in a neutral, educated setting.

While we realize that the issues addressed herein are part of a larger concern, we hope the Legislature applies preemptive protective powers on behalf of "survivor" constituents, while in possession of the whole truth.

The prevention of Child Abduction is a concern worth addressing; however, we must strive to close loopholes in advance of misconduct; thereby, halting the systemic vilification of Domestic Violence victims.

Standing with you,



AngelGroup

~~CONFIDENTIAL~~

From: Dara Carlin, M.A. [breaking-the-silence@hotmail.com]
Sent: Wednesday, January 27, 2010 8:25 PM
To: HUSTestimony
Subject: HB2250: To be heard on Thursday, January 28, 2010 at 8:30am in Room 329 by the House Human Services Committee

Importance: High

TO: Representative John Mizuno, Chair
Representative Tom Brower, Vice Chair
Members of the Committee on Human Services

FROM: Oahu Survivor Mom #3 (by proxy through Dara Carlin, M.A.)
881 Akiu Place
Kailua, HI 96734

DATE: January 19, 2010

**LATE
Testimony**

STRONG OPPOSITION TO HB2250

I'll be coming in to testify on this because this bill would be terrible for domestic violence survivors.

Because my abuser is essentially unstoppable, I went through a government approved and sanctioned Identity Change program for domestic violence victims that has some very specific terms and conditions when you're going from one identity to another. Some of those are named as potential child abduction "flags" in this act that would make a survivor with children whose gone through this Identity Change program "guilty" of abduction. In this program we are given new names and new Social Security Numbers, but no instruction manual or case manager. Once our identity has been changed, we're basically on our own especially if something goes wrong.

In my case, my "multiple names" were used as evidence against me. CPS accused me of fraud and in misleading them when I was telling them the truth and as much as I could talk about my situation. In other program registrant's cases, they've also been accused of fraud and making misrepresentations to the US government. Like I said, there is no instruction manual provided and you can call to ask about how to go about something, but that's not in writing and if you're challenged on it they won't back you up so it looks like you have forged or presented misleading information on government forms.

The point in fleeing your abuser is to leave him because they won't let you go. You can't flee an abusive situation and leave your child behind with the abuser! In this act, they're saying you'd have to list physical addresses and telephone numbers of where the child can be reached and provide copies of all travel documents - what happens if your child is with you in a domestic violence shelter? You can't give out the number and address! And how do you flee to begin with if you want to avoid being named as a "child abductor"? If you provide your abuser with your travel documents you won't make it out alive and if you do, then you'll be considered a "child abductor" for leaving and then the police can take our children away from us? This will not help survivors survive, it's only going to make things worse (and believe me, it's bad enough as it is!) Please don't pass this!

Thank you.

Your E-mail and More On-the-Go. Get Windows Live Hotmail Free. [Sign up now.](#)

~~SYNOPSIS~~

From: Dara Carlin, M.A. [breaking-the-silence@hotmail.com]
Sent: Wednesday, January 27, 2010 8:25 PM
To: HUSTestimony
Subject: THURSDAY, 01/28/10 Human Services Hearing at 8:30am in Room 329 re: HB2250

Importance: High

TO: Representative John Mizuno, Chair
Representative Tom Brower, Vice Chair
Members of the Committee on Human Services

**LATE
Testimony**

FROM: Jonea Schillachi-Lavernge (by proxy through Dara Carlin, M.A.)
6737 Puu Pilo Place
Kapaa, HI 96746

DATE: January 28, 2010

I vehemently oppose this "Uniform Child Abduction Prevention Act" because it will turn protective parents into felons just on an abuser's say so! At the risk of repetition, I'll reiterate what has happened to my daughter and me:

I was married to my ex for only 2 MONTHS before I left while pregnant with our daughter. The night he got up in my face yelling and threatening, he scared me so badly that I immediately left (which is what I thought everyone wants you to do right? If you're being abused leave? I DIDN'T stick around for Round 2 or 3, once was enough for me.)

Beginning at 6 months of age, my daughter began showing signs of abuse but I didn't recognize it as that - it just never occurred to me that he would hurt his own daughter. By the time she was 20 MONTHS-OLD she was showing signs of sexual abuse that were medically documented but again, I couldn't fathom something of that nature happening to my daughter, let alone by her father and her grandfather, who never leaves my ex's side. To this day, they still live together on Kauai.

By the time my daughter was 26 months-old, there was no mistaking the physical and sexual abuse so I reported it to CPS where we lived on the mainland. The police become involved and when my ex and his father deny everything and my daughter does not disclose being abused in a 20-minute "interview" (remember, she's only 2 years-old!) the sheriff simply believed them. My ex then asks the court for an evaluation of me for reporting the abuse! The more the witnesses and documentation of my daughter's sexual abuse increased, the less authorities and the court were willing to do ANYTHING about it. Seeing no other choice, I took my daughter and fled the country to keep her safe from further harm and sexual abuse.

In 2004, when my daughter was 7 years-old, I was found by authorities and put in jail for a little over 5 months while my daughter was returned to her father and grandfather's care by the DA. Considering the allegations you'd think she'd be placed in foster care for safety's sake, but no, she was returned to the two men who were abusing her!

At my criminal trial in 2006, **I WON A HISTORICAL ACQUITTAL** and was completely cleared of any wrongdoing in taking my daughter and hiding her based upon the evidence of my daughter's abuse presented to the jury. A custody trial was pending the outcome of the criminal trial, but I have YET to get my day in court on that matter.

In this "Child Abduction Prevention Act" the consequences for falsely using this in bad faith would be an award of attorney's fees, costs and expenses? I've spent approximately **\$1,600,000.00** cumulatively on court-related costs and fees and I was found INNOCENT of child abduction in a jury trial so does that mean I'll be reimbursed for the past 13 years or will the court make my ex pay me for protecting our daughter from his sexual abuse?

This Act even says something about "human rights violations committed against children" which I thought "Oh good, they recognize what's happening here" until I realized the concern was in reference to human rights violations in the OTHER country! My daughter's human rights were and are being violated in THIS country, but this act is concerned about another country's potential human rights violations?

This "Child Abduction Prevention Act" will only bring further harm to children who are already being harmed and will provide abusers with yet another legality to hide behind as they continue to abuse, molest and rape their own children.

Hotmail: Powerful Free email with security by Microsoft. [Get it now.](#)

~~CONFIDENTIAL~~

From: Dara Carlin, M.A. [breaking-the-silence@hotmail.com]
Sent: Wednesday, January 27, 2010 8:26 PM
To: HUS testimony
Subject: Testimony for HB2250 to be heard at 8:30AM on Thursday, JAN 28 in Room 329

Importance: High

TO: Representative John Mizuno, Chair
Representative Tom Brower, Vice Chair
Members of the Committee on Human Services

**LATE
Testimony**

FROM: Oahu Survivor Mom #1 (by proxy through Dara Carlin, M.A.)
881 Akiu Place
Kailua, HI 96734

DATE: January 28, 2010

RE: Opposition to The Uniform Child Abduction Prevent Act

I am a Domestic Violence (DV) survivor. I was married to my abusive husband for 2 and a half years. When I realized what was happening to me and my then 2 year-old son was abuse, I contacted 3 lawyers about leaving my husband they told me to go to a safe place or leave the state with my child. I asked "Can I do that legally?" and ALL 3 lawyers said YES. So in March 2009 I took my son and fled out-of-state.

When I got back home (where my family is) I filed for a Temporary Restraining Order (TRO) and an emergency custody order for my son as advised to do by ALL 3 lawyers. I was assured that what I was doing were the correct steps to be SAFE with my child, so I did everything on good faith. I never reported the abuse because in doing that, I felt embarrassed - like who is going to protect me or beleive me? He has all the power and I was embarrassed and scared - what if he killed me? He HAD THREATEND with his guns before (he owns SIX guns and makes his own bullets) and can be REALLY scary. I never turned to anyone for help. I knew people and agencies were out there, but I was too scared to draw any attention - what if he found out?

In May of 2009 there was a trial where my abuser got TEMPORARY CUSTODY because I had left the state of Hawaii - even though I had been instructed and given permission to do so! My abuser had a prior TRO from his first ex-wife which involved DV too. The Judge then ordered a Custody Evaluator, whose report was in total support of my abuser and so very biased, he didn't even try to hide it. In November 2009, my leaving the abusive marriage with my son cost me my son: the abuser has now been granted SOLE PHYSICAL AND LEGAL CUSTODY of my son with "daytime only" visitations to me: Mon, Wed, Fri from 2:30 to 3:30pm at his daycare, on Tuesdays I'm allowed a Pact visit from 4:45 to 6:15pm then on Sundays, I'm allowed to see him from 12noon - 7:00pm. I am not allowed ANY holidays or overnights and my baby's only 2 1/2 years-old!

How I was treated is no different then how all the other victims of domestic violence are being treated in Hawaii. We're hunted down when we leave and having our children taken away from us for trying to escape the abuse and then the court puts our children with the person we were trying to keep our children safe from! This Uniform Child Abduction Prevention Act is only going to make things worse for women who are trying to get away from their abusers.

~~CONFIDENTIAL~~

From: Dara Carlin, M.A. [breaking-the-silence@hotmail.com]
Sent: Wednesday, January 27, 2010 9:34 PM
To: HUSTestimony
Subject: HB2250 to be heard at 8:30am on Thursday, January 28, 2010 by the Human Services Committee in Room 329

Importance: High

TO: Representative John Mizuno, Chair
Representative Tom Brower, Vice Chair
Members of the Committee on Human Services

LATE
Testimony

FROM: Dara Carlin, M.A.
Domestic Violence Survivor Advocate
881 Akiu Place
Kailua, HI 96734

DATE: Thursday; January 28, 2010

RE: **STRONG OPPOSITION** to HB2250, The Uniform Child Abduction Prevention Act

Good morning and thank you for allowing me this opportunity to provide testimony on this matter.

As much as I hate to do this (because I can see what the intent of this bill is) this act is riddled with many problematic, safety-compromising and dangerous consequences for victim-survivors of domestic violence (DV) and their children. I can explain further in my verbal testimony, but for brevity's sake, I'm just going to list the problems I see in this act as it would pertain to domestic violence cases:

The UCCJEA and Hague Convention already cover this issue at the national and international level as-is and are clear; additional measures at the state level are unnecessary.

"A party to a child-custody determination or another individual... may file a petition"

"A credible risk of abduction"

"A statement of whether a prior action to prevent abduction or DV has been filed by a party"

"A statement of whether a party to the proceeding has been arrested for a crime related to DV, stalking, child abuse or neglect"

"Factors to determine risk of abduction" are all relevant to the immediate and long-term experience of DV survivors

"Has previously abducted or attempted to abduct the child"

"Has threatened to abduct the child"

"Abandoned employment"

"Selling primary residence"

"Terminating a lease"

"Closing bank or other financial accounts"

"Destroying financial documents"

"Applying for a passport, travel documents"

"Seeking to obtain the child's birth certificate or medical records"

"Has engaged in DV, stalking, child abuse or neglect"

"Has refused to follow a child custody determination"

"Lacks strong familial, financial, emotional or cultural ties to the state, US or country"

"Human rights violations committed against children"

"Forged or presented misleading or false evidence on government forms"

"Has multiple names to attempt to mislead or defraud"

"The court shall consider... the potential harm to the child from an abduction..."

"... the legal and practical difficulties of returning the child to the jurisdiction if abducted"

"A list of physical addresses and telephone numbers at which the child can be reached at specified times"

"Copies of all travel documents"

"Removing the child... without permission of the court or the petitioner's written consent"

"Require the respondent to post a bond... to serve as a financial deterrent to abduction"

"The court may issue an ex parte warrant to take physical custody of the child"

"Recite the facts upon which a determination of a credible risk of imminent wrongful removal of the child is based"

"Direct law enforcement officers to take physical custody of the child immediately"

"Provide for the safe interim placement of the child pending further order of the court"

"... authorize law enforcement officers to enter private property to take physical custody of the child"

"... make a forcible entry at any hour"

"If the court finds... that a petitioner sought an ex parte warrant ... for the purpose of harassment or in bad faith, the court may award the respondent reasonable attorney's fees, costs and expenses"

As you can see from just the problems I identified with this act, providing written testimony would be overwhelming, but i'll be happy to address any and/or all of them at the hearing.

Thank you once again for this opportunity to provide testimony.

Dara Carlin, M.A.

Domestic Violence Survivor Advocate