

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

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

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

55 (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.