



a custody order is in place. Abduction is defined as the wrongful removal or retention of a minor in breach of another person's rights of custody or visitation.<sup>7</sup>

## Under what circumstances can the UCAPA help a survivor protect her<sup>8</sup> children?

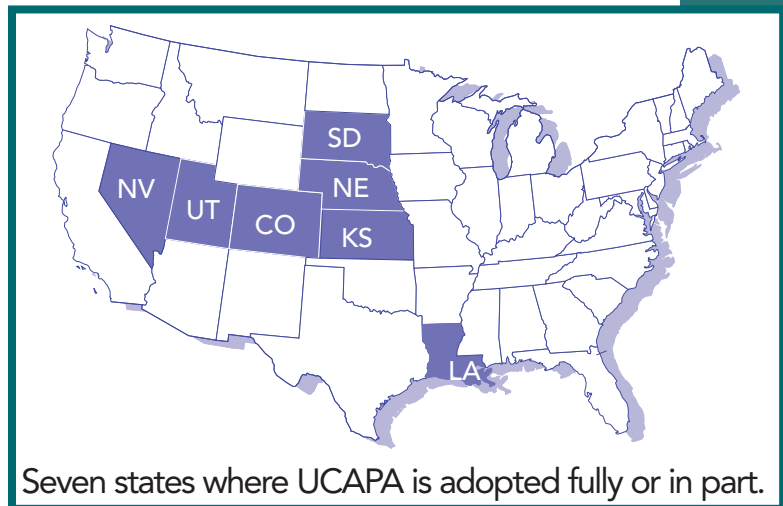
A parent<sup>9</sup> may invoke the abduction prevention provisions of the UCAPA to protect an unemancipated child under the age of 18 by filing a petition with a court in the appropriate state. A petition may be filed whether or not there is a custody order in place. If there is an existing custody order, a petition may be filed by either the custodial or the non-custodial parent. The Act is designed to be preventive; a petition may be filed any time there is a credible risk of abduction to stop it from happening. Thus, in the opening scenario, Lupe could seek a court order alleging that Nasir presents a credible risk of future abduction.

## In what court should a petition be filed?

If the two parents live in different states at the time an abduction prevention order is sought, it may be difficult to determine the correct state court in which to file the petition. UCAPA's jurisdictional analysis is identical to that required under the governing uniform child custody jurisdictional statute (either the Uniform Child Custody Jurisdiction Act (UCCJA) or the newer Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)). This analysis can be extremely complicated and may require help from an expert.<sup>10</sup>

## What information must be provided to get a child abduction prevention order?

A survivor must file a petition under the UCAPA specifying where the parties and children have lived for the previous five years to facilitate the court's jurisdictional analysis. The petition must include other relevant information regarding previous court proceedings and orders. Of particular importance to survivors, the Act notes that information in the petition is subject to state confidentiality laws that protect survivors from having to disclose information that could reveal their whereabouts. The UCAPA also requires the petitioner to state whether either parent has filed a prior action to prevent abduction or domestic violence, as well as whether either parent has been arrested for a crime related to domestic violence, stalking, or child abuse or neglect. The latter requirement is intended to alert the court that an abuser may



be misusing the Act against a survivor. The petition also must allege the specific risk factors for abduction.

## What does a survivor need to prove to get an order?

A person who seeks an abduction prevention order, like Lupe, needs to establish a "credible risk of abduction."<sup>11</sup> Many of the risk factors listed in The UCAPA exist in Lupe's situation. For example, Nasir has "recently engaged in activities that may indicate a planned abduction, including: ... applying for a passport or visa or obtaining travel documents for the respondent ... or the child."<sup>12</sup> In addition, his statement that "Ali would be much better off in Pakistan" is arguably an implicit threat to abduct the child.<sup>13</sup> Nasir's difficulty finding steady employment, his sentiment that he is "sick of the U.S." because of the crime rate, and his entire family presence in Pakistan suggests that he lacks "strong familial, financial, emotional or cultural ties" with the U.S., and instead has them with Pakistan.<sup>14</sup>

The fact that Nasir has engaged in domestic violence is very relevant to the risk of abduction, and is specifically listed as a risk factor. As the commentary advises, "Courts need to be sensitive to domestic violence issues. Batterers often abduct their children before as well as during and after custody litigation."<sup>15</sup> It also is significant that Nasir would likely take Ali to Pakistan, a country that is not a party to the Hague Convention on the Civil Aspects of International Child Abduction.<sup>16</sup>

Lupe has many risk factors in her favor and an abduction prevention order seems appropriate. However, one of the difficulties for survivors is that an abduction can occur in the absence of any of the risk factors in the Act.

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**The UCAPA is designed to deter domestic and international child abductions by parents, persons acting on behalf of a parent or others.**

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# Uniform Child Abduction and Prevention Act (Cont.)

## What can an abduction prevention order contain?

The Act provides a range of possible provisions that an order may include. For example, Nasir might be prohibited from removing Ali from his day care facility and traveling with him outside the state and from applying for a Pakistani identification card for himself and a Pakistani registration certificate for Ali. As a prerequisite to visitation, Nasir might be ordered to give the Office of Children's Issues in the State Department and the Pakistani embassy a copy of the court's order detailing the passport and travel restrictions and submit an acknowledgement from the Pakistan embassy that no passport application has

### UCAPA Risk Factors for Potential Abduction:

- Previously abducted or has threatened to abduct child.
- Engaged in activities that indicate a planned abduction, such as quit job, closed bank account, applied for visa or obtained travel documents for self and/or child.
- Lacks strong familial, financial, emotional or cultural ties to a state or the United States.
- Has strong ties to another state or country.
- History of domestic violence, stalking, or child abuse/neglect.
- Has refused to follow a custody determination.
- Is likely to take a child to a country that does not provide for extradition to the United States.
- Has had an adverse decision with regard to immigration status in the United States.

Source: UCAPA, § 7.

been made or issued on behalf of Ali. The court might also require Nasir to post a bond before visitation, take a class on the harm children can experience from abduction, and complete a batterer's treatment program. Lupe could also ask the court to require Nasir to surrender his passport prior to visitation and to prohibit him from applying for a new or replacement passport for Ali. Finally, the court might order that Nasir's visitation be supervised.

If Lupe believed the abduction was "imminent," that Nasir was in the process of removing Ali, she could seek a warrant to take physical custody of the child. Nasir need not receive notice of the hearing, though he would be given an opportunity to be heard soon after the warrant is executed. Lupe also could request entry of Ali's name into the Children's Passport Issuance Alert Program (CPIAP).<sup>17</sup> The State Department would then notify Lupe if Nasir tried to get Ali a U.S. passport.

## Protecting Survivors Against Abusers' Misuse of the UCAPA

An abuser might try to misuse the Act in a variety of situations: to impose restrictions on a survivor after separation in order to control her or hamper her ability to flee violence (e.g., by suggesting that she should not travel with the child to see her family in another country); to poison a custody case against a survivor (by suggesting that she should only have supervised visitation); and to effect removal of a child from a survivor as she flees for safety with her child. The Act addresses these scenarios through its extensive commentary. For example, the commentary states: "This Act is not meant to prevent a legitimate relocation action filed in accordance with the law . . . nor to prevent a victim of domestic violence from escaping abuse."<sup>18</sup> In addition, the commentary states that batterers should not be allowed "to use this Act to gain temporary custody or additional visitation in an uncontested hearing."<sup>19</sup>

The Act's provisions were designed to help the court detect and thwart potential misuse. The petition must disclose prior domestic violence arrests and proceedings and the court should consider "the reasons for the potential abduction, including evidence of domestic violence, stalking, or child abuse or neglect." Specifically, the court must 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 . . ."<sup>20</sup> As the commentary states: "a victim fleeing domestic violence may be attempting to protect the victim and the child."<sup>21</sup>

Despite these protective provisions, an abuser might try to use the Act to remove a child from a survivor as she is fleeing for safety. "If required by exigent circumstances," the court may authorize the police to make a forcible entry at any hour and pick-up the child.<sup>22</sup> Such an order requires a "credible risk that the child is imminently likely to be wrongfully removed."<sup>23</sup> Because a court may issue such a warrant after a hearing at which the survivor is not pres-

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**"This Act is not meant to prevent a legitimate relocation action filed in accordance with the law . . . nor to prevent a victim of domestic violence from escaping abuse."**

UCAPA Commentary

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ent, an abuser may be able to convince the court to order law enforcement to remove a child from a survivor based upon the abuser's unopposed allegations. Even a parent who is a danger to the child and was awarded only supervised visitation is eligible to seek a pick-up order.

The Act tries to protect against this sort of misuse of a pick-up order. To obtain such an order, a petition must be filed and served on the alleged abductor immediately at the time of or after the child is taken into custody, with a hearing to be held the next judicial day, or if that is impossible, the first judicial day thereafter.<sup>24</sup> The order must provide "for the safe interim placement of the child pending further order of the court."<sup>25</sup> The commentary notes that interim placement with a domestic violence perpetrator is not a safe option. The court is permitted, but not required, to search relevant databases "to determine if either the petitioner or respondent has a history of domestic violence, stalking, or child abuse, or neglect."<sup>26</sup> The commentary warns that batterers may try to use the pick-up procedure to prevent victims and children from escaping harm and that "the court should check relevant state and national databases."<sup>27</sup>

## How survivors can minimize chances the Act will be used against them

Despite the aforementioned protections, misuse of the Act remains a real danger for survivors. Some possible strategies to minimize the threat include securing the court's permission for a survivor to relocate prior to relocating or even taking steps to relocate. A relocation petition "negate[s] an inference that the parent is planning to abduct the child."<sup>28</sup> A survivor may reduce the chance that she will be subject to a pick-up order by obtaining a protection order and ensuring that it is entered into all the relevant databases, though there is no guarantee that a judge will search for the order. Finally, while a sole custody order in a survivor's favor will not preclude entry of a prevention abduction order, it could minimize the likelihood of prevention order restrictions. Among other things, the harm to the child is arguably less severe when the abduction is perpetrated by a primary caretaker rather than a non-custodial parent.

## Conclusion

A copy of the UCAPA, including commentary, is available 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). For more information, we recommend an article by Patricia Hoff, "UU" UCAPA: Understanding and Using UCAPA to Prevent Child Abduction, 41 Fam. L. Q. 1 (2007). For technical assistance, call the Legal Resource Center on Violence Against Women at (301) 270-1550. If you fear an abduction, contact the National Center for Missing and Exploited Children, (800) 843-5678, [www.missingkids.com](http://www.missingkids.com). For international abductions, contact the Department of State, Office of Children's Issues, (202) 736-7000.

## Despite its protective language, misuse of the UCAPA remains a real danger to survivors.

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2. See Janet Chiancone, *Parental Abduction: A Review of the Literature* (U.S. Dep't of Justice, Office of Juvenile Justice and Delinquency Prevention 2002), available at <http://www.ncjrs.gov/pdffiles1/ojjdp/190074.pdf>.

Regarding the overall incidence of parental abduction in the U.S., the most recent federal study found that 203,900 children were abducted by a parent or family member in 1999. See Heather Hammer, David Finkelhor, and Andrea Sedlak, *Missing, Abducted, Runaway, and Thrownaway Children in America; Children Abducted by Family Members: National Estimates and Characteristics* (Oct. 2002), available at <http://www.ncjrs.gov/pdffiles1/ojjdp/196469.pdf>.

3. NCCUSL is a non-profit association of state commissions on uniform laws from each state that drafts and proposes specific laws in areas of the law where it deems uniformity between the states to be desirable. More information about the NCCUSL is available at <http://www.nccusl.org>.

4. The nine states are: the District of Columbia, Florida, Minnesota, Mississippi, New Hampshire, New Mexico, Pennsylvania, South Carolina, and Washington.

5. The New Jersey Law Reform Commission's Final Report on UCAPA is available at <http://www.lawrev.state.nj.us/ucapa/ucapaFR122208.doc>.

6. See UCAPA, Prefatory Note.

7. See UCAPA § 2(1).

8. In this article, female pronouns are used to refer to survivors of domestic violence, reflecting the fact that the vast majority of survivors are women. See Matthew R. Durose et al., U.S. Dept. of Justice, Bureau of Justice Statistics, *Family Violence Statistics* (June 2005), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/fvs02.pdf>.

9. Under certain circumstances, grandparents, child protective services, or others may petition the court for an abduction prevention order, and the court may enter an order on its own motion. See UCAPA§ 4(b).

10. For an in-depth discussion of the interplay of jurisdictional law and domestic violence, see Deborah M. Goelman, *Shelter from the Storm: Using Jurisdictional Statutes to Protect Victims of Domestic Violence After the Violence Against Women Act of 2000*, 13 Colum. J. Gender & L. 101 (2004). Technical assistance on jurisdictional issues is available by calling the Legal Resource Center on Violence Against Women at (301) 270-1550.

11. UCAPA § 4(a).

12. UCAPA § 7(a)(3)(E).

13. UCAPA § 7(a)(2).

14. See UCAPA § 7(a)(6),(7).

15. UCAPA § 7 cmt.

16. For additional information on international child abductions, see The Hague Domestic Violence Project at <http://www.hagueadv.org>.

17. For further information on the CPIAP, see [http://travel.state.gov/family/abduction/resources/resources\\_554.html](http://travel.state.gov/family/abduction/resources/resources_554.html).

18. UCAPA Prefatory Note.

19. UCAPA § 6 cmt.

20. UCAPA § 7(b).

21. UCAPA § 7 cmt.

22. UCAPA § 9(f).

23. UCAPA § 9(a).

24. UCAPA § 9(b), (e).

25. UCAPA § 9(c).

26. UCAPA § 9(d).

27. UCAPA § 9 cmt. (emphasis added).

28. UCAPA § 7 cmt.