Texas Law Review Online

Volume 100

Note

Lessons from UCAPA: Why Recent Domestic-Focused Anti-Abduction Legislation Has Largely Remained Unsuccessful

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Abstract

This Note discusses the history, constitutionality, and practical implementation of the Uniform Law Commission's proposed state legislation known as the Uniform Child Abduction Prevention Act, or UCAPA. One of UCAPA's main goals is to prevent domestic kidnappings by allowing judges to issue "abduction prevention orders," which limit parents or guardians from travelling intrastate or interstate with their children upon the showing of a credible threat of abduction. Since most domestic intrafamily abductions occur within families who are already court-involved, the rationale behind these mandatory travel restrictions is to detect and prevent intrafamily kidnappings before they begin.

Over the past fifteen years, several state legislatures, including Texas's, have either passed or attempted to pass UCAPA's domestic provisions to lower the extraordinarily high rate of intrafamily kidnappings within the United States. However, I argue that, while the proposed legislation would

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be helpful in theory, its domestic travel provisions are both unconstitutional and impractical. First, such provisions are unconstitutional because they interfere with the long-established constitutional right of ingress and egress within the United States. Second, such provisions are impractical for several reasons: (1) court-ordered deterrence is significantly less effective in familial situations, where abductors very often believe they are acting with honorable intentions; (2) the legislation is vulnerable to "spurned spouse abuse," where parents involved in contentious relationships can use the legislation as a sword rather than a shield; and (3) the law is rarely utilized by courts even after passage.

Ultimately, this Note argues against the passage of UCAPA's domestic provisions for constitutional and practical reasons, concluding that solutions outside the courtroom are the most effective way to lower intrafamily domestic abductions in the United States.

Introduction

If I were to ask you to express your gut reaction to AMBER Alerts, your initial response might be one of annoyance. The recollection of those pesky, unwanted dings on your phone late at night may bring back memories of a rude awakening or a restless night's sleep.[1] But, after further reflection, you would probably recognize that those often inconvenient notifications are quite necessary.[2] That is, the occasional irritating buzz is a small price to pay for the increased likelihood of safe return of a missing child.[3]

Unfortunately, if you live in Texas, you may have noticed that such alerts have been increasing in frequency over the past few years.[4] Indeed, that

1. *See* Lex Friedman, *Amber Alerts on Your iPhone: Invasive, Frustrating, Necessary*, MACWORLD (Aug. 6, 2013, 3:30 AM), https://www.macworld.com/article/2046031/amber-alerts-on-your-iphone-invasive-frustrating-necessary.html [https://perma.cc/Z664-GEBH] (noting that AMBER Alerts "are generally accompanied by a startling alert sound, and that they arrive at unpredictable times").

2. *See id.* (explaining that "Amber Alerts are issued when police organizations determine that a child abduction has occurred; the alerts include the name and description of the victim, a description of the suspected abductor, and information about the suspect's vehicle when possible").

3. *See Amber Alert Reports: A Visual Representation*, PROTECTION 1, https://www.protection1.com/amber-alerts/#:~:text=In%20nearly%207%20in%20every,over%205%20percent%20are%20hoaxes [https://perma.cc/FP5E-KM29] (noting that "[i]n nearly 7 in every 10 AMBER Alert cases, children are successfully reunited with their parents."); *see also* NAT'L CTR. FOR MISSING & EXPLOITED CHILDREN, 2018 AMBER ALERT REPORT 28 (2019) (explaining that, in 2018, when an AMBER Alert was successful, there was a greater than 50% likelihood it was because either: (1) the police recognized the vehicle as a result of the alert; or (2) the abductor became frightened by the alert and immediately released the child).

4. David Lippman, *Large Increase in AMBER Alerts Issued in Texas*, CBS19 (June 10, 2020, 10:08 PM), https://www.cbs19.tv/article/news/local/large-increase-in-amber-alerts-issued-in-texas

is the case, and though frustrations associated with the coronavirus may be partly to blame, some experts believe that the increase in missing children may have little to do with the pandemic and is simply the result of a natural increase in non-custodial-parent abductions.[5]

Interestingly, as alluded to above, some of the most common perpetrators of child abduction are family members. To be sure, parental abduction is "a pervasive and devastating problem that has received scant attention due to the socio-legal focus on stranger danger."[6] But, despite its lack of recognition, a number of experts over the years have helped illustrate the significance of intrafamily child abduction in the United States.[7] From 2008–2017, the National Center for Missing and Exploited Children received reports from 16,264 child abduction cases, 11,581 of which were perpetrated by a parent or other family member.[8]

Even prior to the twenty-first century, data suggested the same problem: intrafamily abductions constituted the vast majority of all kidnappings within the United States. Of the approximately 262,100 children abducted in 1999, for example, 203,900 were abducted by a parent or family member.[9] Somewhat surprisingly, only 1,000 of those abductions were international.[10] Such numbers suggest that intrafamily domestic kidnappings are the most crucial to address when attempting to lower child abduction rates across the country.[11] This immediately raises a number of questions, but one key question in particular: what methods should we implement as a country to reduce the number of intrafamily domestic abductions?

/501-2d415d0d-75a8-4157-ae27-7a2fa5a307bf [https://perma.cc/Q7GP-ZUXG] (indicating that there was a "sharp increase" in AMBER Alerts issued in Texas during 2020 as compared to previous years).

5. *Id.* (quoting a spokesperson for the National Center for Missing and Exploited Children as having said "we haven't seen, necessarily, anything where COVID-19 or anything having to do with the restrictions really contributed to the taking event").

6. Jane K. Stoever, *Parental Abduction and the State Intervention Paradox*, 92 WASH L. REV. 861, 861 (2017).

7. It is important for me to note here that the data found in subsequent footnotes only considers abductions, while AMBER Alert data focuses on both abducted children *and* runaways. See TEX. DEP'T PUB. SAFETY, *AMBER Alert*, https://www.dps.texas.gov/section/intelligence-counterterrorism/amber-alert [https://perma.cc/55XB-KB69], for more information about AMBER Alerts in Texas. Additionally, I will be using the term "intrafamily abduction" in this piece to refer to kidnappings perpetrated by someone who the victimized child subjectively perceives to be a relative (i.e., a non-stranger family member).

8. That is approximately 71%. NAT'L CTR. FOR MISSING & EXPLOITED CHILDREN, FAMILY ABDUCTIONS: WHAT WE'VE LEARNED 1 (2018).

9. That is approximately 78%. *See* UNIF. CHILD ABDUCTION PREVENTION ACT prefatory note at 1 (NAT'L CONF. OF COMM'RS ON UNIF. STATE L. 2006).

10. *Id.*

11. I use the term "domestic" kidnappings to refer to those abductions taking place within a state or across state borders within the United States rather than across international borders.

The National Conference of Commissioners on Uniform State Laws (NCCUSL) sought to address this problem by drafting legislation, known today as the Uniform Child Abduction Prevention Act (UCAPA).

This Note seeks to provide background material on UCAPA and analyze different states' approaches toward its passage. Rather than simply acknowledge that UCAPA has questionable constitutional standing and potential practical problems, this Note examines the historical context behind such issues and analyzes whether the reasoning used in each is in fact sound. Finally, this Note concludes with practical suggestions about how state legislatures can better focus their time and resources moving forward in the context of preventing intrafamily domestic abductions.

I. Background on the NCCUSL and UCAPA

The NCCUSL, currently known as the Uniform Law Commission, is a non-profit with the goal of providing clarity and stability to critical areas of statutory law across jurisdictions.[12] It is made up of "practicing lawyers, judges, legislators and legislative staff and law professors, who have been appointed by state governments . . . to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical."[13]

Child protection, specifically child-abduction prevention, was one of the areas where the NCCUSL felt that uniformity of laws across states was important. Before UCAPA was introduced by the organization in July 2006, it had already put forth two highly respected pieces of proposed legislation that were later enacted into law in many jurisdictions: the Uniform Child Custody Jurisdiction Act (UCCJA) in 1968 and the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) in 1997.[14] However, unlike the UCCJA and UCCJEA, which were designed to remove certain legal incentives that parents once had to abduct their children, UCAPA was specifically designed to help judges identify children at risk of abduction.[15]

Abduction is broadly defined under UCAPA as "the wrongful removal or wrongful retention of a child."[16] Many state statutes define abduction more narrowly, but for the purposes of this Note, the terms "abduction" and

12. *About Us*, UNIF. L. COMM'N, https://www.uniformlaws.org/aboutulc/overview [https://perma.cc/K8DC-EVK2].

13. *Id.*

14. Patricia M. Hoff, *"UU" UCAPA: Understanding and Using UCAPA to Prevent Child Abduction*, 41 FAM. L. Q. 1, 1 (2007).

15. *Id.* at 2 (highlighting that UCAPA "takes a new approach to preventing child abduction" by "help[ing] judges identify children at risk of abduction, and provid[ing] a cascade of alternative prevention measures from which to fashion an appropriate prevention order").

16. UNIF. CHILD ABDUCTION PREVENTION ACT § 2 (NAT'L CONF. OF COMM'RS ON UNIF. STATE L. 2006).

"kidnapping" will be used colloquially to refer to any wrongful taking of a child.[17]

The main ideas of UCAPA, as set forth by the NCCUSL, were that preventing an abduction is in the child's best interest, and because child custody decisions are made in the courtroom, judges are often in the best position to analyze a case's factual circumstance to determine if there is a credible risk of abduction by one of the family members implicated.[18] Indeed, "[a]pproximately half of reported parental abductions occur during a court-ordered visitation between the child and abducting parent, which means that these families are already court-involved."[19]

Some of UCAPA's most highly touted provisions included those surrounding "pre-decree" cases. That is, if there is sufficient evidence of a "credible risk of abduction," a court "on its own motion may order abduction prevention measures" even when no custodial decision has yet been made.[20] As background, "[i]n pre-decree situations, both parents have joint custody rights by operation of law."[21] UCAPA's goal in pre-decree cases was "to reduce the risk that one parent will unilaterally and without consent interfere with the other's custody rights" and to allow "a petitioner to seek an abduction prevention order under the Act to deter such conduct."[22]

To determine whether the credible-risk-of-abduction standard is met under UCAPA, the court must consider evidence of thirteen factors, which include whether the respondent:

> (1) has previously abducted or attempted to abduct the child; (2) has threatened to abduct the child; (3) has recently engaged in activities that may indicate a planned abduction, including: (A) abandoning employment; (B) selling a primary residence; (C) terminating a lease; (D) closing bank or other financial management accounts . . . ; (6) lacks strong familial, financial, emotional, or cultural ties to the state or the United States; [and] (7) has strong familial, financial, emotional, or cultural ties to another state or country . . . .[23]

It is unclear how many of these factors are required to be present for a judge to find sufficient evidence to suggest a credible risk of abduction. That

17. *See*, *e.g.*, *infra* notes 95–100 and accompanying text.

18. *See* UNIF. CHILD ABDUCTION PREVENTION ACT prefatory note at 1–2.

19. Stoever, *supra* note 6, at 913.

20. UNIF. CHILD ABDUCTION PREVENTION ACT § 4(a).

21. Hoff, *supra* note 14, at 7.

22. *Id.*

23. UNIF. CHILD ABDUCTION PREVENTION ACT § 7(a). As mentioned in the accompanying text, the above-referenced factors are not an exhaustive list. Other factors judges should consider include whether the relevant party has previously engaged in domestic violence, has refused to follow a child custody determination, or has had an application for U.S. citizenship denied. *Id.*

said, commentators have clarified that "[t]he more of these factors that are present, the more likely the chance of an abduction" and "the mere presence of one or more of these factors does not mean that an abduction will occur."[24] Petitioners may also offer relevant evidence that does not explicitly fall into UCAPA's predetermined categories, which the judge is allowed to consider.[25] Evidence offered in good faith by the respondent is likewise taken into account.[26] These suggestions, taken together, imply that a court should use a balancing test when determining if there is sufficient evidence to show a credible risk of abduction, weighting certain factors more than others, but also indicates that one factor alone, without more, is likely insufficient to support such a finding.

Under UCAPA, if the court ultimately decides that a sufficient number of the above-referenced factors have been met and that it is in the child's best interest to enter an abduction prevention order, it can impose travel restrictions on the respondent by limiting him or her to a specific geographic area.[27] This could be a domestic travel restriction, international travel restriction, or both.[28] It can also limit the respondent's visitation rights or require supervised visitation (assuming, of course, that a custody determination has already been entered), require the respondent to post a bond or other security sufficient to serve as a financial deterrent to abduction, and require the respondent to take an informative class discussing the harmful effects of abduction on children.[29] A number of jurisdictional provisions are included in the proposed legislation as well, which are consistent with the UCCJEA, but for this Note's purposes such requirements will not be discussed.[30]

A. Initial Nationwide Response to UCAPA

UCAPA was initially received very favorably by scholars and state legislatures alike. One legal scholar, specializing in interstate and international parental kidnapping law, explained that "UCAPA should receive favorable consideration in legislatures across the country" because it provides "a statutory rubric for considering parents' pleas for prevention orders and responding constructively."[31]

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24. *Id.* § 7, cmt.
25. *Id.* § 7(a).
26. *Id.* § 7(b).
27. *Id.* § 8.
28. *Id.*
29. *Id.* § 8(d). Again, this is not an exhaustive list but does discuss some of the key proposals provided by UCAPA's drafters.
30. *See id.* § 5.
31. Hoff, *supra* note 14, at 21.

Indeed, the American Bar Association House of Delegates endorsed UCAPA in February 2007.[32] Even state legislatures moved swiftly to enact the legislation. By the end of 2007 (the first year that state legislatures had the opportunity to pass the proposed bill), seven states had enacted at least some portion of UCAPA and many more had it pending on their legislative dockets.[33] It seemed that, by the end of 2007, UCAPA would be another powerful device that judges could add to their toolkits to help prevent child kidnappings.

B. Texas's Response to UCAPA and Other State Legislature Disinterest

Interestingly, the NCCUSL based UCAPA on a statute that Texas already had on its books.[34] In fact, UCAPA's drafters characterized Texas's already-enacted legislation as a "comprehensive child abduction prevention statute[]."[35]

Contrary to NCCUSL's statement, however, this statute is not fully comprehensive but was quite novel when it was enacted in 2003. Rather than focus on both international and domestic abduction prevention, the statute only covered (and today still only covers) international abductions.[36] This is made quite clear given that the title of the statute is "Necessity of Measures to Prevent *International* Parental Child Abduction."[37] Indeed, the chapeau of each statutory section drives this point home. Section 153.501 only concerns international abduction issues, highlighting that credible evidence must be presented to the court "indicating a potential risk of the *international* abduction of a child by a parent of the child."[38] Sections 153.502 and 153.503 are similar, noting that the court should only consider evidence if "there is a risk of the *international* abduction of a child by a parent of the child" and the

32. *Id.* at 1.

33. The seven states that enacted some version of UCAPA into law by the end of 2007 were Nevada, Colorado, Nebraska, Kansas, Utah, Louisiana, and South Dakota. *Child Abduction Prevention Act*, UNIFORM LAW COMMISSION, https://www.uniformlaws.org/committees/community-home?communitykey=c8a53ebd-d5aa-4805-95b2-5d6f2a648b2a&tab=groupdetails [https://perma.cc/NLW4-B8DR].

34. *See* UNIF. CHILD ABDUCTION PREVENTION ACT prefatory note at 3 & n.14 (indicating that, at the time UCAPA was drafted, Arkansas, California, and Texas were the only three states with similar child abduction prevention statutes that had previously passed); *see also* Hoff, *supra* note 14, at 3 & n.8 (suggesting that Texas's child abduction prevention statute "inspired" the NCCUSL to begin drafting a similar statute).

35. UNIF. CHILD ABDUCTION PREVENTION ACT prefatory note at 3 & n.14.

36. TEX. FAM. CODE ANN. §§ 153.501–.503.

37. *Id.* § 153.501 (emphasis added).

38. *Id.* § 153.501(a) (emphasis added).

court may take relevant action if it "protect[s] a child from *international* abduction by a parent of the child," respectively.[39]

As previously mentioned, it is domestic intrafamily kidnappings, not international intrafamily kidnappings, that are substantially more common in the United States.[40] Recognizing that fact, though UCAPA was originally designed only to supplement international kidnapping regulations, the NCCUSL revised the proposed legislation before sending it to legislatures in July 2006 to include the domestic intrafamily kidnapping provisions discussed above.[41] Thus, Texas Family Code sections 153.501–.503, while important, do not directly cover the thousands of children each year who are abducted by parents and then driven across state lines. This left (and currently leaves) a huge gap in the law for Texas state judges: though they have the ability to issue a preventative order for children at risk of international abduction, they do not have the statutory ability to do so for potential child victims of domestic intrafamily abduction.

Recognizing this, Texas's legislature sought to amend the Texas Family Code provisions already in place with the language found in the final draft of UCAPA. In other words, it sought to supplement the international provisions by imparting its judges with the added tools necessary to prevent domestic intrafamily abductions. To do this, it acted swiftly, and referred UCAPA to the House Committee on Juvenile Justice & Family Issues in 2007.[42]

A number of witnesses testified in support of the bill.[43] Harry Tindall, a member of the Texas Commission on Uniform State Laws, noted "that 95% of abductions are not international, but are domestic" and "this [UCAPA] is trying to *prevent* the abduction of children by certain markers that would indicate that there's a high probability of risk and giving the courts a remedy to prevent such abduction."[44] Additionally, family-law attorney Pamela Brown testified that there were "some deficiencies" with the way that the relevant Texas Family Code provisions were currently drafted, suggesting that improvements were needed to address pre-abduction activities.[45] She

39. *Id*. § 153.502(a) (emphasis added); *id*. § 153.503 (emphasis added).

40. *See supra* notes 5–11 and accompanying text.

41. UNIF. CHILD ABDUCTION PREVENTION ACT prefatory note at 1–3 *(*NAT'L CONF. OF COMM'RS ON UNIF. STATE L. 2006).

42. *See* Bill Stages, H.B. 2770, 80th Leg., R.S., (Tex. 2007), https://capitol.texas.gov/BillLookup/BillStages.aspx?LegSess=80R&Bill=HB2770 [https://perma.cc/Z7A4-JBPU] (noting that the relevant bill was first filed in early March 2007 and considered in committee approximately one month later).

43. *See Hearing on H.B. 2770 Before the H. Comm. On Juv. Just. & Fam. Issues*, 2007 Leg., 80th Sess. (Tex. 2007) at 2:26:55, https://tlchouse.granicus.com/MediaPlayer.php?view_id=24&clip_id=2427 [https://perma.cc/V9UV-Q2SZ] [hereinafter *Hearing on H.B. 2770*].

44. *Id.* at 2:27:55.

45. *Id.* at 2:31:00.

stated that it is "not just international abductions, but the threats to abduct in general," which are "extremely debilitating to parents."[46]

Finally, Kenneth Connelly, a former law enforcement officer and victim of domestic intrafamily kidnapping, informed the committee of the important domestic-focused provisions that UCAPA provides.[47] He explained that "when parents feel that they can take a child to and from states and . . . they can hide them, the damage that's done to the child is very extreme" and children need protection by the courts in advance of that abduction to prevent such harm from occurring.[48] In Mr. Connelly's case, his father abducted him across state lines.[49] His father had a mental illness and had previously threatened abduction, which the courts knew about.[50] Unfortunately, given the lack of preventative remedies available, Texas courts did not act, and Mr. Connelly was abducted at gunpoint and hidden away for over three years.[51]

Given the moving testimony provided by Mr. Connelly, the information provided by Mr. Tindall and Ms. Brown, and UCAPA's favorable consideration by other jurisdictions, the proposed legislation, labeled HB 2770, passed the Committee in 2007 with a 5–0 vote.[52] It then passed the Texas House of Representatives unanimously with a vote of 138–0 that same year.[53] However, UCAPA never made it to the Texas Senate floor after passing the Texas Senate Committee of Jurisprudence without issue.[54] As such, UCAPA was not signed into law in Texas.

Recognizing the importance of enacting domestic intrafamily kidnapping provisions, UCAPA was put to a vote again by the Texas legislature in 2011, this time labeled as HB 1207.[55] It passed the House Committee on Judiciary and Civil Jurisprudence with a vote of 10–0 and once again passed through the Texas House of Representatives unscathed.[56] However, HB 1270 died in committee and so, like HB 2770, never reached the Texas Senate Floor.[57]

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46. *Id.*

47. *Id.* at 2:34:02.

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. HOUSE RSCH. ORG., BILL DIGEST: HOUSE BILL 2770 (Apr. 25, 2007), https://hro.house.texas.gov/pdf/ba80r/hb2770.pdf#navpanes=0 [https://perma.cc/4SZ5-GELX].

53. H.J. of Tex., 80th Leg., R.S. 2510 (2007).

54. *See* Bill Stages, H.B. 2770, *supra* note 42.

55. History, H.B. 1207, 82nd Leg., Reg. Sess., (Tex. 2011), https://capitol.texas.gov/billlookup/History.aspx?LegSess=82R&Bill=HB1207 [https://perma.cc/6FC6-2S7K].

56. Bill Stages, H.B. 1207, 82nd Leg., Reg. Sess., (Tex. 2011), https://capitol.texas.gov/billlookup/BillStages.aspx?LegSess=82R&Bill=HB1207 [https://perma.cc/97NA-WWJ5].

57. *Id.*

To this day, UCAPA has not been reintroduced by the Texas legislature and its domestic-focused provisions have yet to be adopted. Despite this, the Tenth Court of Appeals of Texas, recognizing that the Texas Family Code does not include domestic-focused provisions, nevertheless favorably discussed such UCAPA provisions in a 2008 court decision.[58] That said, it characterized UCAPA as mere "persuasive authority,"[59] which, of course, is substantially less influential than the binding or mandatory authority of a would-be UCAPA statute.[60]

Oddly enough, though UCAPA received favorable reactions by scholars and state legislators alike in 2007, only seven more states and the District of Columbia have passed versions of UCAPA since that time.[61] Indeed, no states have enacted the proposed legislation since 2015.[62] The question that must be asked is: why did Texas and other state legislatures abandon UCAPA, a piece of proposed legislation that was once seen as a revolutionary way to help prevent child abduction?

II. The Unforeseen Problems with UCAPA

One of the likely reasons that Texas and other states stopped pursuing the passage of UCAPA and its domestic provisions was that the Louisiana and New Jersey state legislatures pointed to some potential problems with the proposed legislation.[63] Indeed, even in 2007 when Texas's House

58. *See In re* Sigmar, 270 S.W.3d 289, 296–97 (Tex. App.—Waco 2008) (describing the uniform nature of UCAPA and its drafters' intent).

59. *Id.* at 297.

60. *See e.g.*, Amy Coney Barrett, *Stare Decisis and Due Process*, 74 U. COLO. L. REV. 1011, 1027 (2003) (noting that in the Seventh Circuit's analysis of a particular due process case, the district court was reversed for "treating persuasive authority as authoritative"). This of course suggests that, had the *Sigmar* view of UCAPA been seen as unfavorable by the Texas Supreme Court, it could have admonished the Tenth Court of Appeals of Texas for suggesting that the current Texas Family Code provisions should extend beyond its current international provisions to cover intra-family domestic abduction issues. Indeed, the fact that the current provisions only cover international-focused abductions and the legislature has twice refused to pass UCAPA's domestic-focused provisions into law would likely suggest to a textualist court that the domestic-focused provisions should be ignored in order to adhere to both the meaning of the statutory text and its implied legislative history.

61. UNIFORM LAW COMMISSION, *supra* note 33. These states include Mississippi, Florida, Tennessee, Alabama, New Mexico, Pennsylvania, and Michigan, bringing the total number of states that enacted some form of UCAPA to fourteen plus the District of Columbia.

62. *Id.* Notably, as this Note goes to press, three more states (Idaho, Missouri, and South Carolina) have introduced UCAPA's provisions, both international and domestic, to their respective state legislatures. *Id.* It is unclear at this time whether these states will fail to enact UCAPA, enact UCAPA in its entirety, or limit UCAPA's scope to its international provisions.

63. *See* Blake Sherer, *The Maturation of International Child Abduction Law: From the Hague Convention to the Uniform Child Abduction Prevention Act*, 26 J. AM. ACAD. MATRIM. LAW. 137, 156–57 (2013) (noting that "[c]ontroversy surrounding the application of the UCAPA soon became

Committee on Juvenile Justice & Family Issues voted in favor of the bill, its members seemed concerned about what other states thought about UCAPA. In fact, one member of the committee asked a testifying witness, "Are there other states that do this?"[64]

Because, at that time, several states had already enacted some form of UCAPA, the committee seemed satisfied with passing the proposed legislation onto the House.[65] But, like Texas, though Louisiana ultimately ended up passing a version of UCAPA, it only included the international provisions of the bill and actively excluded the domestic provisions (analogous to current Texas Family Code §§ 153.501–.503).[66] New Jersey advocated against UCAPA as a whole and has yet to pass any form of the bill.[67] The reasons underlying such reluctance are of both a constitutional and practical nature, which will be discussed in detail below.

A. Constitutional Concerns with UCAPA

As one scholar points out, some of the most important arguments set forth by opponents of UCAPA's domestic provisions are that it "would alter the presumption of innocence and other rights, i.e.[,] the right to freely travel. A court could curtail basic freedoms of both the child and parent based on little more than an allegation."[68] Indeed, the New Jersey Law Revision Commission (NJLRC) stated that taking away "the right to travel" and "eliminating the presumption of innocence that even alleged criminal offenders now enjoy" is seen by some "as taking away fundamental liberties."[69]

What this particular scholar and the NJLRC are referring to is Section 8 of the proposed UCAPA legislation as drafted by the NCCUSL. That is, if enough of the above-referenced factors are met and a court decides to enter an abduction prevention order, such an order may include "an imposition of

apparent when a bill was submitted in the Louisiana legislature in 2007" and the New Jersey Law Revision Commission "reported that the UCAPA ought not to be adopted basing this conclusion on several grounds").

64. *Hearing on H.B. 2770*, *supra* note 43, at 2:30:22.

65. *See supra* note 52 and accompanying text.

66. *See* Sherer, *supra* note 63, at 156 (explaining that "[t]he term 'international' was added into the language, therefore granting judicial authority only to those cases where potential/pending abductions would occur outside American sovereignty").

67. *Id.* at 158 (noting that, ultimately, "the New Jersey General Assembly failed to pass the UCAPA").

68. *Id.*

69. N.J. L. REVISION COMM'N, FINAL REPORT RELATING TO THE UNIFORM CHILD ABDUCTION PREVENTION ACT 3 (2008).

travel restrictions" and "a prohibition of the respondent directly or indirectly [from] removing the child from [the] state," among other things.[70]

Effectively, opponents of UCAPA argue that an order issued under these circumstances violates a person's right to freely travel, which is historically found under the Privileges and Immunities Clause in Article IV of the United States Constitution.[71] The Privileges and Immunities Clause does not directly discuss the right to freely travel, but instead notes that "the Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."[72] Combined with the Due Process Clauses of the Constitution, it is presumed that the right to interstate travel exists. Such a right consists of three elements: (1) the right to enter and leave a state; (2) the right to be treated as a welcome visitor rather than an unfriendly alien when visiting a state; and (3) the right to become a citizen of any state.[73]

Indeed, the right to travel "has been firmly established and repeatedly recognized" by the Supreme Court.[74] In fact, some believe that the right to freely travel is so fundamental that the Constitution's drafters did not even see a need to explicitly include the right in the document itself.[75] And this principle has been reaffirmed ever since the Supreme Court found that the Privileges and Immunities Clause, at least for citizens, contains "the right of free ingress into other States, and egress from them" in 1868.[76]

But the right to freely travel is not without restriction. As codified under federal law, it is "unlawful for any citizen of the United States to depart from or enter, or attempt to depart from or enter, the United States unless he bears a valid United States passport."[77] Additionally, in the Supreme Court's decision *Haig v. Agee*,[78] the majority upheld the then-Secretary of State's action of revoking a former CIA officer's passport for threatening to "'expose CIA officers and agents and to take the measures necessary to drive them out of the countries where they [were] operating.'"[79] The Court held that "[t]he

70. UNIF. CHILD ABDUCTION PREVENTION ACT § 8 (NAT'L CONF. OF COMM'RS ON UNIF. STATE L. 2006).

71. *See Privileges and Immunities Clause*, CORNELL L. SCH. LEGAL INFO. INST., https://www.law.cornell.edu/wex/privileges_and_immunities_clause [https://perma.cc/HYP3-MBTX] (indicating that the Privileges and Immunities Clause implicitly encompasses the right to travel).

72. U.S. CONST. art. IV, § 2.

73. David M. Studdert, Mark A. Hall & Michelle M. Mello, *Partitioning the Curve — Interstate Travel Restrictions During the Covid-19 Pandemic*, 383 NEW ENG. J. MED. e83(1), e83(2) (2020).

74. United States v. Guest, 383 U.S. 745, 757 (1966).

75. Saenz v. Roe, 526 U.S. 489, 501 (1999) (quoting *Guest*, 383 U.S. at 758) (explaining "[t]he right of 'free ingress and regress to and from' neighboring States, which was expressly mentioned in the text of the Articles of Confederation, may simply have been 'conceived from the beginning to be a necessary concomitant of the stronger Union the Constitution created'").

76. Paul v. Virginia, 75 U.S. 168, 180 (1868).

77. 8 U.S.C. § 1185(b) (2020).

78. 453 U.S. 280 (1981).

79. *Id.* at 280.

right to hold a passport is subordinate to national security and foreign policy considerations, and is subject to reasonable governmental regulation."[80] Nevertheless, it is understood that the federal government may not restrict the right to travel without due process.[81]

Given that regulations on travel do exist in a general sense, the narrower question then becomes: in a family law context, under what circumstances may a state restrict an individual's right to travel?

Perhaps the most important circumstance for this Note's purposes, and one of the most controversial decisions in this area of the law, can be found in the *Weinstein v. Albright*[82] decision out of the Second Circuit. There, the plaintiff argued that certain federal laws allowing the Secretary of State to revoke the passport of an individual who was delinquent in the amount of more than $5,000 in child support payments were unconstitutional because they violated his right to travel.[83] The court found the plaintiff's arguments unpersuasive because he had "an opportunity to contest the relevant determination 'at a meaningful time and in a meaningful manner'" at the relevant state agency.[84]

Given these facts, one might initially believe that the domestic provisions of UCAPA would pass muster under the Privileges and Immunities and Due Process Clauses of the Constitution. Indeed, UCAPA, as previously mentioned, provides respondents with the opportunity to present evidence as to why they "may be permitted to remove or retain the child" at a court hearing under Section 7 of the proposed act.[85] But, importantly, as noted by the Second Circuit in *Weinstein*, a person's "right to a passport and to travel internationally, while a liberty interest protected by the Due Process Clause of the Fifth Amendment, is *not a fundamental right equivalent to the right to interstate travel*."[86] Thus, certain state legislatures have seemingly made the calculation that the international travel restrictions of UCAPA are constitutionally allowed, while the domestic interstate and intrastate restrictions are not.

This is quite likely the proper calculation to make under current law. "The constitutional right of interstate travel is virtually unqualified."[87] But,

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80. *Id.* at 282.

81. *See* Kent v. Dulles, 357 U.S. 116, 125 (1958) (authoritatively describing how "[t]he right to travel is a part of the 'liberty' of which the citizen cannot be deprived without the due process of law under the Fifth Amendment").

82. 261 F.3d 127 (2d Cir. 2001).

83. *Id.* at 130–31.

84. *Id.* at 134–36 (quoting Armstrong v. Manzo, 380 U.S. 545, 552 (1965)).

85. UNIF. CHILD ABDUCTION PREVENTION ACT § 7 (NAT'L CONF. OF COMM'RS ON UNIF. STATE L. 2006).

86. *See Weinstein*, 261 F.3d at 140 (emphasis added).

87. *See* Haig v. Agee, 453 U.S. 280, 306–07 (1981) (quoting Califano v. Aznavorian, 439 U.S. 170, 176 (1978)).

by contrast, as we have already seen above, "the 'right' of international travel has been considered to be no more than an aspect of the 'liberty' protected by the Due Process Clause of the Fifth Amendment. As such this 'right,' the Court has held, can be regulated within the bounds of due process."[88] Put another way, there is no fundamental right to international travel under the Constitution, but there is a fundamental right to domestic travel.[89] Indeed, the government's action must be totally arbitrary or endanger a specific constitutional right before courts will strike down a law limiting international travel.[90]

The strong freedoms afforded to United States citizens regarding domestic travel are perhaps best exemplified by the coronavirus pandemic. Current constitutional challenges during this pandemic concern state-government-required quarantines after a potentially exposed individual enters that state.[91] Notably, they do not concern complete exclusions of out-of-state travelers.[92] Indeed, if state governments were to close their borders, it would seem that a public health emergency would be the time to do so. That said, no such restrictions have been put in place, even during a national state of emergency. Thus, if complete exclusions of individuals from certain states cannot and do not occur during national emergencies, it would certainly seem unlikely that states would choose to implement similar restrictions upon those who are merely accused of, but have not yet committed, a crime.

However, the higher standard afforded free domestic travel has little clear justification outside of vague allusions to historical principles. As one scholar points out, despite the right's historical tradition, "the Court has struggled to identify a doctrinal justification for the right or provide clear guidance as to what the right protects."[93]

That said, given the important principle of stare decisis and the fact that domestic travel restrictions are reviewed by the Court at a much higher standard than international restrictions, it is practically unlikely that the Court would uphold UCAPA's domestic provisions despite sound reasoning suggesting its favorable passage by state legislatures.

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88. *Id.*

89. 4 RONALD D. ROTUNDA & JOHN E. NOWAK, TREATISE ON CONST. L. § 18.37, (5th ed. 2013).

90. *Id.*

91. *See* Studdert, *supra* note 73 (noting that lawsuits in Kentucky, Maine, and Hawaii have challenged the constitutionality of mandatory self-quarantine provisions).

92. *Id.*

93. Gregory B. Hartch, *Wrong Turns: A Critique of the Supreme Court's Right to Travel Cases*, 21 WM. MITCHELL L. REV. 457, 459 (1995).

B. Practical Concerns with UCAPA

Even if it were possible for UCAPA to be upheld as constitutional, a number of additional practical considerations concerning the bill's effectiveness must be taken into account as well.

1. The Abduction Prevention Order and Deterrence

The first issue to consider is: would a judge's order in a civil custody matter truly deter a family abductor from taking a child across state lines? The answer to this question is likely no. Allowing a judge to impose a travel restriction on the potential abductor is imperative to the success of the bill's domestic-focused provisions. Without such a provision, the court is simply left with the tools to which it already has access: limiting visitation, mandating supervised visitation, and requiring the respondent to attend a child abduction prevention class.[94] In other words, if there is no travel restriction provision in place, UCAPA effectively becomes duplicative of other court-advised remedies, and thus, would be considered an unnecessary addition to currently enacted state laws dealing with domestic abduction.

As pointed out by UCAPA's drafters, "every state [already] criminally forbids custodial interference by parents or relatives of the child."[95] For example, under Texas law, persons who unlawfully restrain or kidnap children can be held criminally responsible for their actions.[96] Different penalties are assessed depending upon the severity of the restraint, which is typically determined by whether the threat of deadly force or deadly force itself was used, among other things.[97] These penalties could be as light as a Class A misdemeanor for unlawful restraint, to as severe as a first degree felony for aggravated kidnapping.[98] The former could mean that the perpetrator receives up to one year in jail and/or a $4,000 fine.[99] The latter could mean that the perpetrator receives anywhere from five years of incarceration to lifelong imprisonment and/or a $10,000 fine.[100]

It is not surprising then, since the least restrictive punishments for these crimes still provide the judge with an option to incarcerate the perpetrator,

94. UNIF. CHILD ABDUCTION PREVENTION ACT § 8 (NAT'L CONF. OF COMM'RS ON UNIF. STATE L. 2006).

95. *Id.* prefatory note at 2.

96. TEX. PENAL CODE §§ 20.01–.04.

97. *See id.* (creating a distinction between "unlawful restraint," which invokes a lighter punishment and only requires that the perpetrator use "force" or "acquiescence of the victim," and "kidnapping" or "abduction," which invokes a heavier punishment and may involve the perpetrator using or threatening to use "deadly force").

98. *Id.* §§ 20.02–.04.

99. *Id.* § 12.21.

100. *Id.* § 12.32.

that such criminal abduction statutes are used, at least in part, as a means of deterrence.[101] Indeed, as is perhaps already obvious, an intrafamily abduction "disrupts the judicial resolution of custody disputes and, more important, threatens the destruction or impairment of the child's sense of security."[102] Thus, to avoid such disruptions and possible harm to the abductee, legislators make punishments for these crimes particularly harsh.

But harsh punishments via the deterrence rationale do not necessarily work in the familial abduction context. As one scholar explains, "[m]any offenders, particularly those who are themselves adolescents, *and those who act with honorable intentions*, may be oblivious to threats of punishment and, consequently, [are] non-deterrable."[103] Indeed, as pointed out in a study commissioned by the United States Department of Justice, "[T]he use of threats, physical force, or weapons was relatively uncommon in family abductions."[104] This suggests that such abductions are less about perpetuating physical violence against the child and more about preventing or limiting the child's contact with the custodial parent or guardian.[105] The fact that the vast majority of these children are returned physically unharmed would seem to suggest that the abducting family member has more subjectively honorable than dishonorable intentions, no matter how morally and legally wrong such intentions may actually be when viewed from an objective lens.[106]

Even with the possibility of criminal sanctions, as we have previously seen, thousands of intrafamily abductions still occur every year.[107] Indeed, these numbers are increasing in Texas.[108] Creating a civil deterrent for such conduct would hardly stop family members, who seem to already be

101. *See* NAT'L RESEARCH COUNCIL, THE GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING CAUSES AND CONSEQUENCES 78 (Jeremy Travis, Bruce Western, & Steve Redburn eds., 2014) (finding that, starting in the mid-1980s, "modern sentencing law typically targeted making sentences harsher and more certain and preventing crime through deterrence and incapacitation").

102. Note, *A Rationale of the Law of Kidnapping*, 53 COLUM. L. REV. 540, 554 (1953).

103. *Id.* at 555 (emphasis added).

104. HEATHER HAMMER, DAVID FINKELHOR & ANDREA J. SEDLAK, CHILDREN ABDUCTED BY FAMILY MEMBERS: NATIONAL ESTIMATES AND CHARACTERISTICS 6 (2002).

105. *See id.* (noting that "[t]he most common serious elements [in family abduction episodes] were attempts to prevent contact (76 percent) and intent to affect custodial privileges permanently (82 percent)"); *see also* U.S. DEP'T OF JUST., THE CRIME OF FAMILY ABDUCTION 1 (2010) (explaining that "three characteristics distinguish family abduction from a typical custody battle between parents: concealment, intent to prevent contact, and flight").

106. *See* U.S. DEP'T OF JUST., *supra* note 105, at 17 (explaining that parents abduct for a number of reasons including: that the custodial parent is perceived as "bad" for the child; that the custodial parent is perceived to be or is actually abusive toward the child; that the custodial parent has improper values, influences, or behaviors (in other words, the abductor can raise the child better than the custodial parent); and that the abductor is trying to force a reconciliation with the custodial parent). Indeed, such rationales in the above parenthetical, while often misguided, are at least subjectively well-intentioned in the eyes of the abducting parent or family member.

107. *See supra* notes 5–11 and accompanying text.

108. *See supra* note 4 and accompanying text.

undeterred by what can be very significant criminal sanctions, from abducting a child.

UCAPA's court-mandated domestic travel restriction can be analogized to the economic law of diminishing marginal utility.[109] As compared to criminal punishment, this civil domestic travel restriction would, at best, only deter additional intrafamily abductions by a very small amount. By contrast, the costs of implementing such legislation, including training judges on how to use and properly apply the new law, potential legal battles waged in state and federal courts over the travel restriction's constitutionality, and the creation of burdens on family members by restricting their travel before even committing a crime, would seem to outweigh the marginal benefits of such limited deterrence.

2. The Abduction Prevention Order and Spurned Spouse Abuse

But the implicit deterrence policy hidden behind UCAPA's domestic travel restriction is not the only practical issue to be considered. Indeed, the implementation of the law itself may be problematic. For instance, the proposed legislation is ripe for abuse by "spurned spouses."

Imagine, for example, that a couple with two biological children is seeking a divorce and custody is contested. No custody determination has yet been made by the court. In other words, both parents are currently presumed to have equal custody of the children. The father has heard through the grapevine that the mother has been insulting his intellect with her coworkers. As a result, the insecure father becomes enraged at the mother. For revenge, the father decides to lie in court and claim that the mother threatened to abduct the children, despite the mother having never made such a threat. It turns out that the mother has deep connections to the neighboring state where her parents live. The court examines evidence from both parents on the issue. Having little more than weak evidence and fearing blame if an abduction were in fact to occur, the court rules in favor of the father out of an abundance of caution, placing a temporary geographical restriction on the mother's movements with the children. Now, the mother cannot see her parents with the children because they live a state away. The children also cannot see their maternal grandparents. The father has successfully gotten his revenge with a court ruling in his favor.

The above scenario is undoubtedly problematic and at least somewhat likely. Indeed, one can imagine similar scenarios to the above were

109. *Cf.* David Pimentel, *The Widening Maturity Gap: Trying and Punishing Juveniles as Adults in an Era of Extended Adolescence*, 46 TEX. TECH L. REV. 71, 94 (2013) (indicating that, in a juvenile-offender context, "retribution is expensive" and "[t]he law of diminishing marginal returns suggests . . . that the deterrent effect of increasing punishment from ten years to twenty years is minimal, while the cost of administering the more severe penalty is very high indeed").

convincingly provided to the Louisiana legislature, causing it to limit UCAPA's reach as a result.[110]

That said, some legal scholars have pointed out that "there appears to be scant empirical evidence that where the UCAPA has become codified abuse of the act has taken place by spouses in interstate actions."[111] But, as has already been discussed, only fourteen states and the District of Columbia have enacted UCAPA into law, at least some of which did not pass the domestic provisions of the Act.[112] As such, there is little evidence available to show whether or not such provisions are or are not being abused.

More importantly though, as the above hypothetical demonstrates, it would be next to impossible to show that spurned-spouse abuse of UCAPA has actually taken place without knowing the subjective intent of either parental party. It is best to think of this argument through the lens of the above-referenced example, discussed for a second time below.

Imagine a judge is approached by a petitioner-parent with evidence showing that the respondent-parent has significant contacts with another state (as many people do) and has allegedly threatened to abduct the child (which creates a he-said-she-said scenario between the parties). The judge, acting rationally and out of an abundance of caution for the child's safety, will issue an abduction prevention order. This creates a travel restriction, negatively impacting the respondent-parent.

If the respondent-parent abducts the child despite the order, then hindsight bias would reveal that the petitioner-parent was correct in being concerned about the child's well-being, even if the petitioner-parent had amoral intentions when originally asking for the order. As such, no evidence of abuse would ever be exposed, because it would look like, to the outside world, that the petitioner-parent had legitimate concerns about the child's abduction.

On the other hand, if the child is not abducted by the respondent-parent, then the UCAPA domestic travel restriction has "worked." This could be for one of two reasons: either (1) the respondent-parent had the intention of abducting the child but was successfully deterred by the travel restriction; or (2) the respondent-parent had no intention of ever abducting the child, and the abduction prevention order was unnecessary.

If it is the former, then per the rationale of UCAPA's drafters, the travel restriction was a successful deterrent. But, this time, if asked, the respondent-parent would of course deny ever having the intention of abducting the child and claim that the petitioner-parent abused UCAPA in asking for the order. For reputational and legal reasons, almost no person would readily admit that

110. *See* Sherer, *supra* note 63, at 156 (explaining that "[f]ear of domestic action appeared to be rooted in potential abuse by spurned spouses using *ex parte* warrants").

111. *Id.*

112. *See supra* notes 61–62 and accompanying text.

they intended to abduct a child. On the other hand, if it is the latter, the respondent-parent would be right to claim that the petitioner-parent abused UCAPA's travel restriction provisions. However, it would be impossible to know, from the point of view of an outside observer, whether the respondent-parent actually falls within the first or second category (i.e., whether the respondent-parent's original intentions were to abduct or not to abduct).

Of course, in both scenarios, the petitioner-parent would contest any accusation suggesting an unethical use of the abduction prevention order, claiming he was simply looking out for the children. Additionally, since an order was in fact issued by the judge, the petitioner-parent has already met the requisite standard of review showing sufficient evidence of a possible abduction, supporting his assertion that his concerns were warranted. Combining these logical inferences shows that, in a UCAPA-context, there is no truly reliable method of finding out whether an abduction prevention order was sought with or without malice.

Thus, because little evidence is available on the topic and the evidence that is available is ripe for bias, it is quite difficult to ever accurately show whether spurned-spouse abuse of UCAPA's abduction prevention order requests have taken place. But, given that custody battles are often heated, without more, it is not unreasonable to assume that spurned-spouse abuse is a probable consequence of this legislation.[113]

Some legal scholars have also noted that "[w]hile theoretically a concern exists that the UCAPA may be utilized in a negative fashion (i.e., to punish the other parent), this is true of all laws."[114] But, this is not in fact true of "all laws." If a spurned spouse ends up abducting a child, criminal law provisions will allow for the punishment of that person, with no punitive impacts upon the law-abiding spouse.

In terms of prevention measures, it is true that there will always be questions of party bias and the reliability of evidence of which parties can take advantage. But as the above example demonstrates, this is particularly problematic when the stakes are high (i.e., a possible abduction threatening a child's safety) and the amount of time for fact gathering is low (i.e., emergency circumstances of an abduction threat require immediate action by the judge). As previously discussed, in spurned-spouse abduction prevention order cases, judges will be forced to act in the best interest of the children (which coincides with the judge's own interests) and will most likely issue an abduction prevention order as a precaution, even with minimal evidence and conflicting testimony, which is likely to be of limited probative value.

113. *See, e.g.*, Kimberly M. Naylor, Gary L. Nickelson & Hon. Dean Rucker, *Temporary Orders: Trial Tips*, *in* 2016 TEX. CONTINUING LEGAL EDUC. ADVANCED FAM. L. 30. VII (indicating that temporary hearings and mediation in custody battles get "a lot of emotions in play and it is very hard for the parties to work with one another in an on-going custody battle once everybody has drawn battle lines and once everyone has told all of the bad facts about the other party in public").

114. Sherer, *supra* note 63, at 156.

Therefore, in situations like these, it is hard to know if the risk of abduction was ever, in fact, "credible."

Indeed, the major consequences of spurned-spouse abuse are intuitive and would exacerbate problems already found within UCAPA's abduction prevention order provisions. Spurned-spouse abuse would likely (1) increase time and informational burdens on already-overworked judges, who would now be tasked with making critical decisions concerning a child's safety based on minimal and biased evidence, and (2) create financial, emotional, and reputational burdens on law-abiding respondent-parents who would be limited in traveling with their children. Thus, it is important to recognize that while such abduction prevention orders may be useful in a world with perfect information, in an imperfect world, the costs outweigh the benefits.

3. The Implementation of UCAPA's Domestic-Focused Provisions

As previously discussed, fourteen states and the District of Columbia are the only jurisdictions to have enacted some form of UCAPA.[115] But, this does not necessarily mean that UCAPA's domestic provisions are inherently ineffective. If UCAPA's domestic provisions are actively used by judges in these jurisdictions to prevent abductions, then this may be a reason to advocate for UCAPA's continued passage throughout the United States, even despite its pitfalls.

Unfortunately, however, even in jurisdictions where the domestic provisions of UCAPA were enacted, the law is rarely invoked. In Mississippi for instance,[116] no appellate case history for the law is available on Westlaw, despite the law having been enacted for over ten years.[117] One Mississippi judge has said that the state's UCAPA provisions have been applicable in certain cases he has had on his docket, but the instances provided only concerned the threat of international abduction.[118] As has already been

115. *See supra* notes 61–62, 110–12, and accompanying text.

116. Mississippi acts as a good case study to determine whether the domestic provisions of UCAPA are being actively utilized. This is because its state legislature passed the UCAPA bill in its entirety even after Louisiana and New Jersey presented constitutional and practical concerns about the effectiveness of the bill's domestic provisions. *See* Sherer, *supra* note 63, at 156–57. Thus, Mississippi was very likely aware of such concerns and passed the domestic portions of the legislation anyway, suggesting that, even despite these concerns, it felt the benefits of the legislation's passage outweighed the costs.

117. *See* MISS. CODE ANN. § 93-29-15 (West 2009) (allowing an abduction prevention order to include the imposition of a travel restriction upon a respondent outside a certain geographical area but showing no notes of decision or citing references, suggesting that the provision has rarely, if ever, been implemented).

118. *See* The Hon. Larry Primeaux, *UCAPA: A Valuable Custody Tool*, THE BETTER CHANCERY PRAC. BLOG (Nov. 23, 2010), https://betterchancery.com/2010/11/23/ucapa-a-valuable-custody-tool/ [https://perma.cc/TLY7-88PL] (explaining that in 2010, two cases arose on his docket that raised a UCAPA issue, but both concerned threats to take the children to jurisdictions

discussed, though significantly less frequent in nature, international abduction prevention via travel restrictions are more frequently constitutionally upheld[119] and are more severe in the sense that, if the children leave the country's borders, it is much harder for U.S. courts and law enforcement to retrieve them.[120] Thus, it makes logical sense that UCAPA's international abduction prevention provisions have been invoked on a more frequent (albeit still infrequent) basis as compared to its domestic abduction prevention provisions, even in states where such domestic abduction prevention provisions have been passed.

Mississippi is not alone in its limited usage of UCAPA's domestic travel restrictions. In the District of Columbia, only one case at the appellate level cites the relevant statute concerning abduction prevention order remedies, but it is once again in relation to international abduction prevention.[121] Westlaw also includes no notes of decision at the appellate level for Michigan's UCAPA-focused abduction prevention order provisions.[122]

Conclusion

In an ideal world, UCAPA's domestic provisions would help prevent intrafamily abductions within the United States. It sets out a comprehensive list of warning signs that judges should look for when custody concerns are presented in the courtroom, gives judges the tools to restrict a potential abductor's travel with the child, and as a result, reduces encumbrances on law enforcement. But, given that constitutional burdens on travel restrictions are enormously high, the deterrence rationale for intrafamily abductions is weak, the law is at risk for spurned-spouse abuse, and the domestic provisions are rarely used by courts, UCAPA is not the powerful judicial tool scholars, drafters, and legislators initially imagined.

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where the court's custody order would not apply (i.e., outside of the United States in the Middle East and Canada, respectively)).

119. *See supra* notes 86–92 and accompanying text.

120. Once a child leaves United States territory, parties must resort to international treaties and agreements to effectuate a retrieval of an abducted child. *See, e.g.*, 1 ANN M. HARALAMBIE, HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES § 2.25 (2021) (describing retrieval under the Hague Convention on the Civil Aspects of International Child Abduction but noting that such procedures only apply to countries that have adopted it).

121. Kenda v. Pleskovic, 39 A.3d 1249, 1252, 1255 (D.C. 2012) (discussing UCAPA in a limited context but noting that the primary concern was a jurisdictional issue as a result of the couple's ties to Slovenia, England, and Indiana). Like Mississippi, the District of Columbia's state legislature passed the UCAPA bill in its entirety even after Louisiana and New Jersey discussed constitutional and practical concerns about the effectiveness of the bill's domestic provisions. *See* D.C. CODE ANN. § 16-4604.08 (West 2009).

122. *See* MICH. COMP. LAWS. ANN. § 722.1528 (West 2015) (lacking any citing references to cases at the appellate level).

But if UCAPA is not an adequate long-term solution, the United States is left with a huge, unresolved problem: hundreds of thousands of children are still being abducted by family members every year, and those numbers are increasing. Even though most of these children are returned to their rightful guardians safely, these abductions can lead to severe emotional trauma for the children. During an intrafamily abduction, children may be forced to go into hiding, made to fear those who are often considered trustworthy role models, given a new identity, not encouraged or allowed to grieve their losses, told to lie about their past, told lies about the searching parent or guardian, coerced or emotionally blackmailed by the abductor, or kept out of school.[123] Even after a child is successfully returned, "[t]o many parents, the recovery might seem like a moment of celebration, but to the child, it may feel like another abduction."[124] Indeed, a poorly handled recovery can mimic the original abduction, and reintegration of a child into the family can take substantial time and effort, particularly for those children who have been missing for years.[125]

These issues do not even consider the trauma on the family as a result of the abduction and the strained resources of local law enforcement required to assist in finding and reuniting the child with the proper family member or guardian.[126] This raises the question then: if UCAPA cannot remedy the steadily increasing and already high number of intrafamily domestic abductions every year, what can? Perhaps the answer lies outside of the courtroom.

Simplistically, there are six main risk factors for intrafamily abduction: (1) the abductor-parent has previously abducted or threatened to abduct the child; (2) the abductor-parent legitimately believes that the custodial parent is abusive and, since the authorities have not taken them seriously, there is no legal recourse; (3) the abductor-parent is paranoid delusional; (4) the abductor-parent is severely sociopathic; (5) the abductor-parent is part of a failed mixed-culture marriage; or (6) the abductor-parent feels alienated from the legal system but closely connected to another community.[127]

123. *See* U.S. DEP'T OF JUST., *supra* note 105, at 10–13.

124. *Id.* at 37.

125. *Id.* at 39.

126. *See id.* at 33 (highlighting that nearly 80% of all law enforcement agencies in the United States employ fewer than twenty-five officers at a time and have constrained resources, making it difficult for them to be adequately trained on how to handle the complexities of parental abduction cases).

127. JANET R. JOHNSTON, INGER SAGATUN-EDWARDS, MARTHA-ELIN BLOMQUIST & LINDA K. GIRDNER, EARLY IDENTIFICATION OF RISK FACTORS FOR PARENTAL ABDUCTION 2–3 (U.S. Dep't of Just., 2001).

Five of these six factors are directly linked to parental mental health disorders or parental distrust in the legal system.[128] Increasing government funding for family counseling and mental health services would greatly alleviate the burdens that these parents face and would go a long way toward preventing future abductions. Additionally, promoting trust between law enforcement and the communities in which they work, along with increasing law enforcement training and education on intrafamily abduction issues, would help lower the staggeringly high domestic abduction rates that this country sees every year.

For now, though, it is important to recognize that courtroom-focused solutions for domestic abduction prevention, while desirable, are quite likely not feasible. UCAPA was a valiant effort, but unfortunately, an unsuccessful one. It is time to turn legislative efforts elsewhere. Recognizing this fact is the key to creating a comprehensive domestic-abduction-prevention solution once and for all.

128. The sixth and least relevant factor for this paper's purposes is having a failed mixed-culture marriage. However, that factor is extremely relevant when dealing with UCAPA's international provisions. *See id.* at 3.