

TESTIMONY OF RONALD W. NELSON
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Members of the Committee: Good morning. I am Ronald W. Nelson. I am a Johnson County lawyer who practices exclusively in the area of domestic relations. I've been involved in domestic relations issues for a number of years and had the pleasure of being involved in working on the re-write of the Kansas Child Custody statutes in 2000. I've written extensively in local, state and national publications, and presented numerous seminars to lawyers on various domestic relations issues. My clientele is fairly evenly split between representation of men and women and I have handled a significant number of matters, both in the trial and appellate courts regarding those issues. I have especially focused my practice on high conflict child custody cases, which involve interstate and international child custody and support issues and I've handled a significant number of international and interstate cases in which child abduction has occurred. I'm a Fellow in both the American Academy of Matrimonial Lawyers and the International Academy of Matrimonial Lawyers.

Today I am testifying in opposition to the changes included in SB 182, which deals with criminal interference with child custody.

As I indicated in my testimony to this Committee on SB 18, the Uniform Child Abduction Prevention Act (UCAPA), interstate and international abduction (and, indeed, intrastate abduction) of children is a growing problem. Although “stranger” abductions and kidnappings are most publicized – and the most feared – by far the most common child abduction is parental child abduction, which often occurs when parents separate or begin divorce proceedings, but which also may occur in other periods of turmoil. A parent may remove or retain the child from the other seeking to gain an advantage in expected or pending child-custody proceedings or because that parent fears losing the child in those expected or pending child-custody proceedings or a parent may refuse to return a child at the end of an access visit or may flee with the child to prevent an access visit because that parent thinks (rightly or wrongly) that the other parent is going to harm that parent or the child. Parental child abductions may be within the same city, within the state region or within the same country, or may be international. Studies performed for the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention reported that in 1999, 53% percent of family abducted children were gone less than one week, and 21% were gone one month or more.¹

The problem of interstate and international child abduction by parents and others often occurs when one parent seeks to use the child as a pawn in disputes with the other parent. The excuse used by the abducting parent in a majority of cases – whether it is true or not – is that the other parent has either abused that parent, abused the child, or has threatened to abuse one or the other. In virtually every case I have handled seeking return of an abducted child, the abducting parent asserts that the “left behind” parent abused or threatened to abuse the child – and in virtually every one of those cases, the court before which the case was tried found there was no factual basis for that allegation. Often times, the allegation was made by a person who had previously been found to have abused the person now accused of abuse; often times, the allegation rested on such flimsy and fallacious grounds that the judge hearing the allegations

¹ , NISMART National Family Abduction Report, October 2002.

dismissed the allegations out-of-hand. Simply stated, the allegations were used to further the abuse that was already carried out, including the abusive action in abducting the child.

I have no doubt that there are persons who keep their children from the other parent truly believing that they are protecting that child from horrible abuse by the other parent and that secreting the child is the only way they have to protect the child from further abuse. The question is, however, who decides who is right and who is wrong and do we encourage people in our ordered society to ignore the mandates of a court order merely because they believe in their own mind that they are right to take unilateral actions affecting the other parent.

The proposition advanced in this bill is the state of the law before passage of the Uniform Child Custody Jurisdiction Act in 1978 – a situation in which parents commonly traveled from state-to-state-to-state seeking a favorable state in which to plead their claims that the other parent wasn't entitled to contact with the child.

Even though strides have been made by limiting the State where child custody actions can be filed by passage of the Uniform Child Custody Jurisdiction Act and federal Parental Kidnapping Prevention Act and, more recently, by procedures for enforcement of temporary and final child custody orders by the Uniform Child Custody Jurisdiction and Enforcement Act, more efficient – not less – and rapid – rather than extended – remedies need to be instituted to protect children against being used as pawns in tragic interstate and international games of “custody-chess.” As society has become increasingly mobile, as long distance travel and communication has become easier and less expensive, as intermarriage between faiths, nationalities and social groups has become more common, as society has become more complex, and as the decision of how parent's should divide their time with their children has become less based on old ideas that mothers should automatically be granted primary residency of their children (the tender-years doctrine and other gender based rules), and as the outcomes of child custody decisions have become less predictable, the more often parent's have sought to use extra-judicial and non-judicial methods of gaining advantage in those situations.

As previously stated, a significant portion of my practice involves cases in which interstate or international jurisdictional issues are present and, as a result, I've handled a large number of cases in which threatened or actual parental child abduction is a concern. In those cases, rapid and effective action is critical. Child abduction is child abuse. A parent's attempt to “take the law into their own hands” by spiriting their child away from the other parent – without any authority from anyone other than their own sense of what is “right” harms their child and expresses contempt for ordered society. They seek not what is best for their child, but to impose what they want without regard to any independent or objective assessment of that situation. Numerous psychological studies show the harm visited upon the children by these unilateral acts.²

There are much better ways to address abuse than “protecting” a child by hiding that child in violation of court orders and without any independent assessment of the risk as these amendments seek. Kansas has protection from abuse and stalking laws that an abuse victim can

² See e.g. Forehand, et al., CHILD ABDUCTION: PARENT AND CHILD FUNCTIONING AFTER RETURN, *Clinical Pediatrics* 28(7):311-316; The Impact of Parental Abduction on Children: A Review of the Literature, *AMERICAN JOURNAL OF ORTHOPSYCHIATRY* 62(4):599-206.

use if they truly believe there is abuse. Those laws provide protections against abuse and allow a court to temporarily modify court ordered child custody and parenting time provisions *ex parte* if the judge believes that there is a credible risk based on the information provided that judge. This procedure was used thousands of times just this past year by people alleging abuse and, no doubt, hundreds of times by people alleging that a child was at risk. Is this procedure so cumbersome and so unknown by the general population that we must provide an expansive defense to people who abduct children? I suggest “no.” Such a broad-based defense would eviscerate the law protecting children from parental abduction. Such a broad-based defense would give license to abusers to claim that the abused put their children at risk. Such a broad-based defense would create an “open season” on the use of children as pawns in domestic disputes and would encourage disrespect for the law, disrespect for the other parent’s rights and disrespect for the child’s connections with both parents.

I strongly urge the Committee to reject these amendments. This law does not need weakening; it needs strengthening. We need to protect children from becoming embroiled in an already tense situation that threatens to cause irreparable and unfathomable harm on the family and the subject children – not to encourage it.

Thank you.

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