



Melissa A. Kucinski
melissa@mkfamily.law
Admitted in DC, MD, NY, VA

February 6, 2023

Senate Committee on Judicial Proceedings
Honorable William C. Smith, Jr.
House Committee on Judiciary
Honorable Luke Clippinger

Re: Senate Bill 383, House Bill 267

Dear Chair Smith and Chair Clippinger:

My name is Melissa Kucinski. I am an attorney in private practice. I have been licensed to practice law in the State of Maryland since 2006. My entire practice focuses on working with international families, and most of my cases involve one parent's abducting their child into or out of the United States. I have qualified as an expert on international parental child abduction on numerous occasions in Maryland Circuit Courts, testifying on parental child abduction risk factors and prevention measures. Last year, I taught a course in the Maryland Judicial College on the topic of international custody, relocation, and abduction matters.

I support well-drafted, reasoned legislation that helps judges enact measures to prevent parental child abduction and provide stability for children while their parents resolve their underlying custody dispute, and beyond. Neither Senate Bill 383, introduced on February 1, 2023, nor the House Bill 267, introduced on January 25, 2023, will serve to prevent parental child abduction. Neither bill should proceed any further than these committees in their current forms. I hope that either this legislation will be amended or better drafted legislation, aimed at preventing parental child abduction, will be introduced at a future date.

In reviewing each bill, it is immediately evident that the number of cases that may be impacted by the language is small. In fact, neither bill addresses domestic parental child abduction. Neither bill gives judges the tools needed to adequately assess whether a parent may be a risk of abducting their child domestically or internationally. Neither bill gives judges the tools to put in place prevention

1717 K Street, NW, Suite 900, Washington, D.C. 20006
(202) 713-5165 Phone (202) 618-9638 Fax
www.mkfamily.law



MK FAMILY LAW

Melissa A. Kucinski

melissa@mkfamily.law

Admitted in DC, MD, NY, VA

measures tailored to the actual risk found for a particular family, if any. There are presumptions written into the law that are inaccurate and one-sided, that would lead judges to absurd results, and not account for each family's unique situation.

A proper assessment of whether a parent presents a risk of abducting their child involves looking at three separate spheres of risk factors and weighing those risk factors against the family's unique situation. These spheres include: (1) assessing what laws are in place, or not, between the two jurisdictions; what laws are in place in the other jurisdiction (not Maryland); how these laws operate and function, and whether, despite laws actually existing, they work as intended; (2) examining a parent's characteristics, such as their connections to another jurisdiction, their lack of connections to Maryland, their upbringing, their access to resources in another jurisdiction, and their familial connections outside of Maryland versus inside; and, (3) assessing, most importantly, a parent's behaviors and whether they indicate a plan for unilaterally removing their child from Maryland and taking them to another jurisdiction, such as having done so in the past, threatening to do so, closing bank accounts, buying one-way tickets, quitting jobs, selling property, refusing to adhere to court orders, refusing to accept Maryland's jurisdiction over the person, committing domestic violence, among a variety of other factors. These factors are best weighed by a judge to make a proper and complete assessment of whether a parent may be a risk of abducting their child. Furthermore, there are a wide range of prevention measures to consider, based on each family's circumstances. While preventing travel is one option, a blanket travel prohibition for the child's minority may be short-sighted for a particular family. For some families, it may simply be appropriate to register the Maryland court order in the other jurisdiction prior to traveling with the child. There may be need for certain restrictions on issuing or holding the child's passports, ensuring parentage and parental rights are guaranteed in the other jurisdiction, limited travel authorizations, posting of financial bonds, or even supervised or no access in the most severe circumstances. There is no one-size-fits-all for these families or their children.

These risk factors and prevention measures are not just anecdotal. They have been studied and put forth as proper considerations by the U.S. Department of Justice,



MK FAMILY LAW

Melissa A. Kucinski

melissa@mkfamily.law

Admitted in DC, MD, NY, VA

the National Center for Missing and Exploited Children, the American Bar Association, and the Uniform Law Commission.

Two neighboring jurisdictions, Pennsylvania, and the District of Columbia, have enacted the Uniform Law Commission's Uniform Child Abduction Prevention Act. This legislation includes a comprehensive list of risk factors that guide judges in using their discretion to assess whether a parent's behaviors and circumstances, as well as the country with which they have connections, and the laws that exist or are absent between or in the other country, could contribute to the abduction of a minor child. The legislation enacted in both neighboring jurisdictions also provides a comprehensive list of prevention measures, that judges may weigh, and choose from, if the judge concludes that a parent may be of a certain risk in abducting their child. By enacting legislation that falls far short of the comprehensive legislation adopted in our neighboring jurisdictions, Maryland is left prone to becoming a more sympathetic and attractive forum to abducting parents, not a venue for preventing abduction. In fact, a total of 15 jurisdictions in the United States have already enacted this same piece of legislation from the Uniform Law Commission, with several more proposing it this calendar year. In the few states that have enacted their own abduction prevention statutes (namely, California and Texas), each has included a much more comprehensive analysis for judges than exists in either the Senate or House bill presented in Maryland. Maryland should not be an outlier.

The existing pieces of legislation presented to the Senate and the House can be read to be xenophobic. They create a situation where any parent may, as a strategy in a custody case, use the fact that the other parent is foreign-born, to intrude on a variety of facets of their life, and ultimately, not serve any purpose but to prevent a child from potentially knowing their familial heritages. Other states, in adopting more comprehensive statutes, outlining many factors for courts to weigh in assessing the risk of an abduction, have refused to adopt bright-line rules or singular tests to impose abduction prevention measures, instead choosing more measured approaches. (See *e.g.*, *In re Marriage of Badawiyeh*, 2023 COA 4 (Colo. App. 2023), *Moshen v. Moshen*, 08-1703, (La.App. 1 Cir. 12/23/08), *In re Rix*, 20 A.3d 326 (N.H. 2011), *MacKinnon v. MacKinnon*, 922 A.2d 1252 (N.J. 2007), *Long v. Ardestani*, 624 NW 2d 405 (2001), *Davis v. Ewalefo*, 352 P.3d 1139 (Nev. 2015)). More risk factors and



MK FAMILY LAW

Melissa A. Kucinski

melissa@mkfamily.law

Admitted in DC, MD, NY, VA

more options for prevention measures can lead to more nuanced and properly tailored prevention orders for specific children and families. It gives judges more guidance. It will not allow parents to manipulate the process, on either side of the argument for or against international travel.

Thank you for exploring the important topic of preventing domestic and international parental child abduction. I also thank you for understanding the need for a more comprehensive piece of legislation that is better tailored to families, provides judges more guidance, and is more consistent with our sister-states.

Sincerely,

/s/ Melissa A. Kucinski

Melissa A. Kucinski