The District of Columbia Bar

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MEMORANDUM

TO: Members of the Board of Governors

FROM: Kirk Smith
Legislation Committee Chair, Family Law Division

DATE: March 21, 1986

SUBJECT: EXPEDITED CONSIDERATION OF LETTER SUPPORTING CHANGES IN PROPOSED BILL ON PARENTAL KIDNAPPING

Pursuant to Division Guideline No. 13, Section a, the enclosed proposed public statement is being sent to you by Division 9, Family Law Division

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(a)(iii): "No later than 12:00 noon on the seventh (7th) day before the statement is to be submitted to the legislative or governmental body, the Division will forward (by mail or otherwise) a one-page summary of the comments (summary forms may be obtained through the Divisions Office), the full text of the comments, and the full text of the legislative or governmental proposal to the Manager for Divisions. The one-page summary will be sent to the Chairperson(s) of each Division steering committee and any other D.C. Bar committee that appear to have an interest in the subject matter of the comments. A copy of the full text and the one-page summary will be forwarded to the Executive Director of the Bar, the President and President-Elect of the Bar, the Division's Board of Governors liaison, and the chairperson of the Committee on Divisions. Copies of the full text will be provided upon request through the Divisions Office. Reproduction and postage expenses will be incurred by whomever requested the full text (i.e., Division, Bar committee or Board of Governors

account). The Manager for Divisions shall help with the distribution, if requested, and shall forward a copy of the one-page summary to each member of the Board of Governors. In addition, the Manager for Divisions shall draw up a list of all persons receiving the comment or statement, and he/she shall acertain that appropriate distribution has been made and will assist in collecting the views of the distributees. If no request is made to the Manager for Divisions within the seven-day period by at least three (3) members of the Board of Governors, or by majority vote of any steering committee or Committee of the Bar, that the proposed amendment be placed on the agenda of the Board of Governors, the Division may submit its comments to the appropriate federal or state legislative or governmental body at the end of the seven-day period."

a(vi): The Board of Governors may request that the proposed comments be placed on the agenda of the Board of Governors for the following two reasons only:

> (a) The matter is so closely and directly related to the administration of justice that a special meeting of the Bar's membership pursuant to Rule VI, Section 2, or a special referendum pursuant to Rule VII, Section 1, should be called, or (b) the matter does not relate closely and directly to the administration of justice, involves matters which are primarily political, or as to which evaluation by lawyers would not have particular relevance.

a(v): Another Division or Committee of the Bar may request that the proposed set of comments by a Division be placed on the Board's agenda only if such Division or Committee believes that it has greater or coextensive expertise in or jurisdiction over the subject matter, and only if (a) a short explanation of the basis for this belief and (b) an outline of proposed alternate comments of the Division or Committee are filed with both the Manager for Divisions and the commenting Division's Chairperson(s). The short explanation and outline of proposed alternate comments will be forwarded by the Manager for Divisions to the Board of Governors.

a(vi): Notice of the request that the statement be placed on the Board's agenda lodged with the Manager for Divisions by any Board member may initially be telephoned to the Manager for Divisions (who will then inform the commenting Division), but must be supplemented by a written objection lodged within seven days of the oral objection.

Please call me by 5:00 p.m. Tuesday, March 25, 1986 if you wish to have this matter placed on the Board of Governors' agenda for Tuesday, April 8, 1986.

Enclosures

Division 9
Family Law
Of The District of Columbia Bar

The Honorable David Clarke
Chairman, District of
Columbia Council,
The District Building
Washington, D.C. 20005

March 21, 1986

Re: Bill 6-311, "District of Columbia Parental Kidnapping Prevention Act of 1985"

Dear Mr. Chairman:

The Steering Committee of the District of Columbia Bar Family Law Division, the largest organization of attorneys in this community who work in the family law field, has reviewed Bill 6-311, the District of Columbia Parental Kidnapping Prevention Act of 1985 and the Council Report on this legislation. We commend the members of the Committee on the Judiciary and in particular it's Chairperson, Wilhelmina J. Rolark, as well as Councilmember Carol Schwartz, for having taken the legislative initiative on this vital area.

It is, however, our view that the bill in its present form does not do enough to protect children in this community from the serious harm caused by child snatching and concealment by one parent from another. While good legislation is needed in this area, we believe this bill needs some significant changes. The views we express herein are only the views of Division 9, the Family Law Division, and not those of the District of Columbia Bar or its Board of Governors. Our reservations about this bill are discussed below along with suggested changes.

The penalties provisions are too weak. Section 5(a), for example, makes it only a misdemeanor for one parent without right to take a child from the other parent when the child is "within the District of Columbia," while other provisions make it a felony to take the child outside of the District. But the harm caused to the child is the same regardless of whether the taking of the child occurs inside or outside of the District. Furthermore, whether the concealment of a child is interstate or intrastate is a distinction that may often be determined only after the concealment has ended and the location of the child discovered. In the meantime, some police resources may not be available without showing that a felony may have been committed.

It is important to remember that the improper taking of a child to a house across the street in many sectors of this city may literally be to take the child across a state line, a felony versus a misdemeanor as this bill is now drafted. Prosecutors should have the ability to bring felony charges based on the seriousness of the offense, something that is related to the harm caused to the child and not necessarily based on where the harm was inflicted. Generally, we also believe the penalties provisions should be significantly strengthened by increasing the potential sanctions, including larger fines and longer prison terms.

Sections 4(b) and (c) provide that a parent may file a petition in the Superior Court of the District of Columbia that could seek to revise, amend, or clarify the custody orders established in other jurisdictions. But this would be in conflict with both the Uniform Child Custody Jurisdiction Act, adopted in the District of Columbia, and the federal Parental Kidnapping Prevention Act, which is binding on the District and all of the states, laws that have provisions that discourage forum shopping. If 6-311 is adopted in its present form, it will add to the cost of litigation and increase the already heavy case load in our courts encouraging relitigating previous custody proceedings in other jurisdictions. Since that would not be in the public interest, these sections of the bill should be deleted.

Self-defense and defense of others can be raised directly in the criminal courts to all crimes, including parental kidnapping, and sections 4(a) of this bill expressly states that these defenses can be imposed. But this bill also creates a separate cause of action in the civil courts to raise these defenses. We see no reason to require this burden on persons who already find it difficult to obtain legal assistance. Needlessly protracted proceedings can only add to the harm caused to children. The requirement that this defense must be raised in civil proceedings within five days is also burdensome since many if not most parents involved in this type of controversy require substantially more time to find able counsel. This problem could be cured by an amendment.

Sections 5(a) and (b), like several other provisions of the bill, are unclear as to whether they apply to violation of visitation rights, or just custody rights. The harm to a child by being kept improperly from a non-custodial parent who has visitation rights can be just as great as the other way around. Thus, the prohibited conduct described in those sections should be applied to visitation rights as well.

It is important to remember that the improper taking of a child to a house across the street in many sectors of this city may literally be to take the child across a state line, a felony versus a misdemeanor as this bill is now drafted. Prosecutors should have the ability to bring felony charges based on the seriousness of the offense, something that is related to the harm caused to the child and not necessarily based on where the harm was inflicted. Generally, we also believe the penalties provisions should be significantly strengthened by increasing the potential sanctions, including larger fines and longer prison terms.

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The penalty provisions also contain section 5(b) (1) and (2) providing that a person who releases the child without injury in a safe place prior to arrest is guilty of a misdemeanor, not a felony. In other words, one parent could, keep a child unlawfully from the other parent for a number of years and then, just prior to arrest, could release the child, and this offense would be punished only as a misdemeanor. This problem should also be corrected.

Section 3(b) provides that no crime has been committed until the taking or concealment has been for a period of 48-hours. Presumably, this two-day waiting period was added to avoid having to respond to situations involving a feuding or over-anxious parent who complains when a child has not been returned on time after the end of regularly scheduled visitation period and to otherwise having prosecute offenses that might not require prosecutorial attention. But sadly, in large numbers of child snatching cases, a 48-hour delay in being able to obtain police assistance means that a child may never located. We believe that this provision should be eliminated and leave the judgment about when a person should not be charge with an offense to prosecutorial discretion.

With this letter we have covered some of the major issues presented by bill 3-111 in its present form. We and are members are always available to assist you.

Sincerely.

Hugh O Stevenson /s/
Hugh O Stevenson
Chairman

Rita M. Bank /s/
Rita M. Bank
Member

Pamela Forbes /s/
Pamela Forbes
Member

John V. Long /s/
John V. Long
Member

Deborah Luxenberg /s/
Deborah Luxenberg
Member

James McConville /s/
James McConville
Member

bar.3ltr