

Child Custody Bonds
Securing the ties that bind
By L. Samir Jallad

The National Incidence Studies of Missing, Abducted, Runaway, and Thrownaway Children (NISMART 2) reported that in 1999 an estimated 58,200 children were victims of nonfamily abduction, while an estimated 203,900 children were victims of family abduction. Many private, state and governmental agencies, and law enforcement departments work diligently to improve public awareness of the problem and to find ways to prevent abductions. The child custody bond was created for this purpose.

A child custody bond is an insurance vehicle designed to offer a financial deterrent to violating a custody decree and to provide financial resources to the searching parent for much-needed legal counsel and investigative support. Any party may ask the court (via proper pleadings) to require that a child custody bond be posted during or after divorce proceedings when there is a presumed risk that the terms of the child custody or visitation decree will be violated.

For example, a nonrelocating parent may request that the relocating parent post such a bond to ensure that visitation orders will be complied with or a relocating parent may ask that the noncustodial parent post such a bond if the child's safe return from visitation is in question. When written for international custody situations, the bond guarantees the child will be produced for or returned from a parent who has chosen to visit or relocate to a foreign country during the life of the custody decree. For short-term visitation within the United States or abroad, the bond guarantees the return of the child accompanied by a parent on a short-term visit to a jurisdiction other than the habitual residence.

The court's authority

State statutes give family court judges the authority to require security in child custody cases. For example, Florida Statute Chapter 2002-65 § 61.13 and other provisions of ch. 61 give family court judges the authority to require security in the form of a bond when there is competent, substantial evidence that one parent may violate a custody order by fleeing the jurisdiction with a child. Other states have similar provisions.

In all cases, a court with jurisdiction over the child custody and visitation decree has the authority to order forfeiture of the bond based on an assessment of the violation. If the court orders the bond forfeited, the proceeds are then paid to the injured parent. For example, a parent who consistently returns a child late to the custodial parent may not warrant an immediate forfeiture; instead, the court may resort to supervised visitation for a time. An actual child abduction, however, may result in bond forfeiture.

Inquire with insurance carriers in your area to find out which companies underwrite such bonds. Underwriting requirements may differ among companies. The following are Accredited Surety & Casualty underwriting guidelines for a child custody bond. They include a review of:

- court documents and circumstances requiring the bond to assess the risk;
- whether visitation is in the United States or international;
- financial circumstances of the applicant;
- the ability of the applicant to pay the bond premium and post acceptable collateral, such as cash, letter of credit, securities, and real estate directly or with the help of family members; and
- the availability of additional indemnitors to co-sign on the obligation, such as family members and friends.

The potential risk for these types of bonds is quite high. For the bond to be a preventative tool, any person who is required to purchase this bond and fails to perform must be held financially accountable. Therefore, the child custody bond will be written only by accredited insurers. The above are our company guidelines, those of other companies may vary. Applicants who do not qualify for a child custody bond may return to the court for further consideration.

Assessing the risk

The court may assess and consider the following circumstances in evaluating the need for the child custody bond and require reasonable evidence to support such a claim.

- To assure the well-being of the child;
- To ensure compliance with the custody order or visitation terms where there is a history of or likelihood of future violations;
- To assess the potential risk of nonreturn of the child to the habitual residence after a domestic or international trip.

Once the bond is requested, the judge hearing the custody case is responsible for setting the amount. The amount should be relative to the potential risk and may be calculated in light of the following circumstances.

- Large enough to discourage abduction and ensure compliance with visitation orders. The amount should be sufficient to fund expenses for the search, legal representation, and court expenses in the event of abduction or enforcement of custody violations.
- Appropriate to the financial condition of the parent posting the bond.
- Guarantee conformance with custody and visitation within the United States or travel to a foreign country. For example, a case in Arizona involving a child traveling with a parent to England resulted in the court ordering a \$50,000 child custody bond. The bond was written for two years, after which it was discharged by the court with no loss to surety.

Premiums

A child custody bond may be written for one or as many years as the court deems necessary. The annual premium cost, a percentage of the bond amount, is based on an annual sliding scale over the life of the bond. Premiums vary by company. Our company premium for the first year is 10 percent, the second year is 8 percent, the third year is 6 percent, the fourth year is 4 percent, and each year thereafter is 2 percent. The first-year premium is fully earned, however, if the bond is ordered discharged by the court on any subsequent renewal, the prorated unearned premium will be returned to the principal. Once the bond liability is discharged by the court of jurisdiction without loss to the surety, the unearned premium and collateral will be released back to the indemnitor.

If the child is voluntarily returned after payment has been made to the searching parent, the bond may be reinstated upon dismissal of the forfeiture and the liability to the insurance company. If the insurance company has paid the forfeiture, the principal and/or indemnitor must make the company whole again and replace the collateral in full prior to reinstatement of the bond.

Child abduction is a serious issue in this country; its effect on children both physically and emotionally is beyond imagination. As the number of divorced parents continues to rise, the potential number of children subjected to abduction by a parent will continue to increase. Child custody bonds provide courts with a tool to deter custody violations and provide financial

resources to searching parents.

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