

# International Parental Child Abduction



**NYS Division of Criminal Justice Services  
Missing and Exploited Children Clearinghouse  
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Albany, NY 12203**

**1-800-FIND-KID**

**[www.criminaljustice.state.ny.us](http://www.criminaljustice.state.ny.us)**

# INTERNATIONAL PARENTAL CHILD ABDUCTION

*Revised July 2001  
Department of State Publication 10862  
Bureau of Consular Affairs*

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## INTRODUCTION

Parental child abduction is a tragedy. When a child is abducted across international borders, the difficulties are compounded for everyone involved. This pamphlet is designed to assist the adult most directly affected by international child abduction, the left-behind parent.

The Department of State considers international parental child abduction, as well as the welfare and protection of U.S. citizen children taken overseas, to be important, serious matters. We place the highest priority on the welfare of children who have been victimized by international abductions.

The Department of State's Office of Children's Issues (CA/OCS/CI) is designated to provide assistance to the left-behind parents of international parental child abduction. Since the late 1970's, we have been contacted in the cases of approximately 16,000 children who were either abducted from the United States or prevented from returning to the United States by one of their parents. This booklet discusses what the Department of State can

and cannot do to help you. In addition, because we are only part of the network of resources available to you, we mention other avenues to pursue when your child has been abducted across international borders.

The Office of Children's Issues is prepared to assist you as you pursue recovery of your abducted child. Because it can be a bewildering experience, we have prepared both a questionnaire for the left-behind parents of children taken to countries not party to the Hague Abduction Convention ([See Appendix 1.](#)) and an application for left-behind parents of children taken to Hague Convention member countries ([See Appendix 2.](#)). To report an abduction case to CA/OCS/CI, call our office and follow-up with a copy of either the completed questionnaire or the completed application. Likewise, in order for us to provide the best service, we need to be informed of any developments in your case. Every child and every case is unique, and we will work with you to apply this information to your particular situation.

If you have any further questions, please call us at 202-736-7000. You may also fax us at 202-312-9743, or write to us at:

Office of Children's Issues  
U.S. Department of State  
SA-29, 4th Floor  
2201 C Street, NW  
Washington, D.C. 20520

You can receive [additional information on our web site.](#)

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## **PART I: PREVENTION: HOW TO GUARD AGAINST INTERNATIONAL CHILD ABDUCTION**

### **How Vulnerable is Your Child?**

You and your child are most vulnerable when your relationship with the other parent is troubled or broken, the other parent has close ties to another country, and/or the other country has traditions or laws that may be prejudicial against a parent of your gender or to non-citizens in general. However, anyone can be vulnerable.

### **Cross-cultural Marriages: Should You or Your Child Visit the Country of the Other Parent?**

Many cases of international parental child abduction are actually cases in which the child traveled to a foreign country with the approval of both parents, but was later prevented from returning to the United States. Sometimes the marriage is neither broken nor troubled, but the foreign parent, upon returning to his or her country of origin, decides not to return to the U.S. or to allow the child to do so. A person who has assimilated a second culture may find a return to his or her roots disturbing and may feel pulled to shift loyalties back to the original culture. Furthermore, a person's behavior may change when he or she returns to the culture where he or she grew up.

In some societies, children must have their father's permission and a woman must have her husband's permission to travel. If you are a woman, to prevent your own or your child's detention abroad, find out about the laws and traditions of the country you plan to visit or plan to allow your child to visit, and consider carefully the effect that a return to his traditional culture might have on your child's father; in other societies, children need the permission of both parents to travel and the refusal of one parent to give that permission may prevent the departure of a child from that country. For detailed advice in your specific case, you may wish to contact an attorney in your spouse's country of origin. [Many U.S. Embassies/Consulates list attorneys on their web-sites.](#)

### **Precautions That Any Parent Should Take**

In international parental child abduction, an ounce of prevention is worth a pound of cure. Be alert to the possibility and be prepared:

- Keep a list of the addresses and telephone numbers of the other parent's relatives, friends, and

business associates both here and abroad;

- Keep a record of important information about the other parent, including: physical description, passport, social security, bank account, and driver's license numbers, and vehicle description and plate number;
- Keep a written description of your child, including hair and eye color, height, weight, fingerprints, and any special physical characteristics; and
- Take full-face color photographs and/or videos of your child every six months - a recent photo of the other parent may also be useful.

If your child should be abducted, this information could be vital in locating your child.

In addition, the National Center for Missing and Exploited Children (NCMEC), [www.missingkids.org](http://www.missingkids.org), at telephone 1-800-843-5678, suggests that you teach your child to use the telephone, memorize your home phone number, practice making collect calls, and instruct him or her to call home immediately if anything unusual happens. Discuss possible plans of action with your child in the case of abduction. Most important, however, if you feel your child is vulnerable to abduction, seek legal advice. Do not merely tell a friend or relative about your fears.

### **The Importance of a Custody Decree**

Under the laws of the United States and many foreign countries, **if there is no decree of custody prior to an abduction, both parents may be considered to have equal legal custody of their child.** (IMPORTANT: Even though both parents may have custody of a child, it still may be a crime for one parent to remove the child from the United States against the other parent's wishes.) If you are contemplating divorce or separation, or are divorced or separated, or even if you were never legally married to the other parent, ask your attorney, as soon as possible, if you should obtain a decree of sole custody or a decree that prohibits the travel of your child without your permission or that of the court. If you have or would prefer to have a joint custody decree, you may want to make certain that it prohibits your child from traveling abroad without your permission or that of the court.

### **How to Draft or Modify a Custody Decree**

A well-written custody decree is an important line of defense against international parental child abduction. NCMEC, in its publication *Family Abduction: How to Prevent an Abduction and What to Do If Your Child is Abducted*, makes several recommendations to help prevent the abduction of your child if your spouse is a legal permanent resident alien or a U.S. citizen with ties to a foreign country. For instance, it may be advisable to include court-ordered supervised visitation and a statement prohibiting your child from traveling without your permission or that of the court. If the country to which your child might be taken is a member of the Hague Convention on the Civil Aspects of International Child Abduction (Hague Convention), your custody decree should state that the terms of the Hague Convention apply if there is an abduction or wrongful retention. The American Bar Association (ABA) also suggests having the court require the non-citizen parent or the parent with ties to a foreign country to post a bond. This may be useful both as a deterrent to abduction and, if forfeited because of an abduction, as a source of revenue for you in your efforts to locate and recover your child. For further prevention information, you should contact the NCMEC.

**Reminder: Obtain several certified copies of your custody decree from the court that issued it. Give a copy to your child's school and advise school personnel to whom your child may be released.**

### **U.S. Passports**

The Department of State's Passport Lookout Program can help you determine if your child has been issued a U.S. passport. You may also ask that your child's name be entered into the State Department's Children's Passport Issuance Alert Program. This will enable the Department to notify you or your attorney if an application for a U.S. passport for the child is received anywhere in the United States or at any U.S. embassy or consulate abroad. If you have a court order that either grants you sole custody, joint legal custody, or prohibits your child from traveling without your permission or the permission of the court, the Department may also refuse to issue a U.S. passport for your child. **The Department may not, however, revoke a passport that has already been issued to the child.** There is also no way to track the use of a passport once it has been issued, since there are no exit controls of people leaving the U.S.

To inquire about a U.S. passport or to have your child's name entered into the passport alert program, complete the request form in Appendix 3 and mail or fax it to:

Office of Children's Issues  
Children's Passport Issuance Alert Program (CPIAP)  
U.S. Department of State  
SA-29, 4th Floor  
2201 C Street, NW  
Washington, D.C. 20520  
Tel. 1-888-407-4747  
Fax (202) 312-9743

### **Change in Passport Regulations**

A new law, which took effect in July 2001, requires the signature of both parents prior to issuance of a U.S. passport to children under the age of 14.

#### **Requirements:**

Both parents, or the child's legal guardians, must execute the child's passport application and provide documentary evidence demonstrating that they are the parents or guardians; or the person executing the application must provide documentary evidence that such person has sole custody of the child; has the consent of the other parent to the issuance of the passport; or is acting in place of the parents and has the consent of both parents, of a parent with sole custody over the child, or of the child's legal guardian, to the issuance of the passport.

#### **Exceptions:**

The law does provide two exceptions to this requirement: (1) for exigent circumstances, such as those involving the health or welfare of the child, or (2) when the Secretary of State determines that issuance of a passport is warranted by special family circumstances. For additional information, see the Bureau of Consular Affairs home page on the Internet at <http://travel.state.gov>.

### **Foreign Passports - the Problem of Dual Nationality**

Many United States citizen children who fall victim to international parental abduction possess, or may have a claim to dual nationality. While the Department of State will make every effort to avoid issuing a United States passport if the custodial parent has provided a custody decree, the Department cannot prevent embassies and consulates of other countries in the United States from issuing their passports to children who are also their nationals. You can, however, ask a foreign embassy or consulate not to issue a passport to your child. Send the embassy or consulate a written request, along with certified complete copies of any court orders you have which address custody or the overseas travel of your child. In your letter, inform them that you are sending a copy of this request to the United States Department of State. If your child is *only* a United States citizen, you can request that no visa for that country be issued in his or her United States passport. No international law requires compliance with such requests, but some countries may comply voluntarily.

The United States government does not have exit controls at the border. There is no way to stop someone with valid travel documents at the United States border. The U.S. government does not check the names or the documents of travelers leaving the United States. Many foreign countries do not require a passport for entry. A birth certificate is sufficient to enter some foreign countries. If your child has a valid passport from any country, he or she may be able to travel outside the United States without your consent.

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## **PART II:**

### **WHAT THE STATE DEPARTMENT CAN AND CANNOT DO**

## WHEN A CHILD IS ABDUCTED ABROAD

When a United States citizen child is abducted abroad, the State Department's Office of Children's Issues (CA/OCS/CI) works with United States embassies and consulates abroad to assist the child and left-behind parent in a number of ways. *Despite the fact that children are taken across international borders, child custody disputes remain fundamentally civil legal matters between the parents involved, over which the **Department of State has no jurisdiction**.* If a child custody dispute cannot be settled amicably between the parties, it often must be resolved by judicial proceedings in the country where the child is located.

### WHAT THE STATE DEPARTMENT CAN DO:

- Act as the primary point of contact for left-behind parents;
- Act as a liaison with federal and state agencies, including law enforcement officials;
- In cases where the Hague Convention on the Civil Aspects of International Child Abduction applies (see Part IV), assist parents in filing an application with foreign authorities for return of or access to the child;
- Attempt to locate, visit and report on the child's general welfare;
- Provide the left-behind parent with information on the country to which the child was abducted, including its legal system, custody laws, and a list of local attorneys willing to accept American clients;
- Inquire as to the status of judicial or administrative proceedings overseas;
- Assist parents in contacting local officials in foreign countries or contact them on the parent's behalf;
- Provide information concerning how federal warrants against an abducting parent, passport revocation, and extradition from a foreign country may affect return of a child to the United States;
- Alert foreign authorities to any evidence of child abuse or neglect; and
- If the child is in the Children's Passport Issuance Alert Program, contact the left-behind parent when application is made for a new U.S. passport for the child.

### WHAT THE STATE DEPARTMENT CANNOT DO:

- Intervene in civil legal matters between the parents;
- Enforce an American custody agreement overseas (United States custody decrees are not automatically enforceable outside of United States boundaries);
- Force another country to decide a custody case or enforce its laws in a particular way;
- Assist the left-behind parent in violating foreign laws or reabducting the child to the United States;
- Pay legal or other expenses;
- Act as a lawyer, give legal advice or represent parents in court;
- Take custody of the child; and

- Revoke the child's passport.
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## PART III: HOW TO SEARCH FOR A CHILD ABDUCTED ABROAD

### Where to Report Your Missing Child

1. If your child is missing or has been abducted, file a missing person report with your local police department and request that your child's name and description be entered into the "missing person" section of the National Crime Information Center (NCIC) computer. This is provided for under the National Child Search Act of 1990. The abductor does not have to be charged with a crime when you file a missing person report. It is not always a good idea to file criminal charges against the abducting parent at the same time you file a missing person report, although local law enforcement authorities may urge you to do so (*see cautionary note on page 17*). In addition, through INTERPOL, the international police organization, your local police can request that a search for your child be conducted by the police in the country where you believe your child may have been taken. If your local law enforcement is unaware of the legal requirements for immediate entry into NCIC please contact the Office of Children's Issues at 1-888-407-4747.

2. Contact the National Center for Missing and Exploited Children (NCMEC) at 1-800-THE LOST/1-800-843-5678. With the searching parent's permission, the child's photograph and description may be circulated to the media in the country to which you believe the child may have been taken.

3. Request information about a possible United States passport and have your child's name entered into the United States Children's Passport Issuance Alert Program. A United States passport for a child under 16 years expires after 5 years. If you do not know where your child is, but information about the child is in the name check system, it may be possible to locate him or her through the passport application process. All United States passport agencies and United States embassies and consulates are on-line with the name check system ([See the information in Part I on U.S. Passports.](#))

### After Your Child Is Located

A consular officer overseas, working with this information, will try to confirm the location of your child. If the consular officer is unable to find the child based on the information provided, he or she may also request information from local officials on your child's entry or residence in the country. Please note, however, that most countries do not maintain such records in a retrievable form, and some countries will not release such information.

We may also ask you for photographs of both your child and the abducting parent because these are often helpful to foreign authorities trying to find a missing child.

The Department of State, when requested to do so, may conduct visits to determine the welfare and whereabouts of American citizens abroad. The Office of Children's Issues communicates such requests to the United States embassy or consulate responsible for the area to which you believe your child has been abducted. A welfare and whereabouts visit cannot be conducted if the abducting parent refuses access. Your signed letter requesting such a visit and containing the following information can be faxed to us at 202-312-9743:

- Child's full name (and any aliases);
- Child's date and place of birth;
- Full name (and any aliases) of the abductor; and
- Information which may assist the embassy or consulate in locating the abductor, such as the names, addresses, and telephone numbers of friends, relatives, place of employment, or business connections there.

## **Further Steps to Take in Your Search**

It is possible that none of the institutions mentioned (the police, the NCMEC, or the Department of State) will succeed in locating your child right away and you will need to carry on the search on your own. As you search, you should, however, keep these institutions informed of your actions and progress.

- One of the best ways to find your child overseas is through establishing friendly contact with relatives and friends of the other parent, either here or abroad. You may have more influence with such persons than you suspect, and their interest in your child's welfare may lead them to cooperate with you.
- The United States Department of Health and Human Services, Office of Child Support Enforcement maintains the Federal Parent Locator Service (FPLS). The primary purpose of this service is to locate parents who are delinquent in child support payments, but the service will also search for parental abductors when requested to do so by an authorized person. Generally speaking, an authorized person is a state court judge, police officer, prosecutor, or other state official seeking to enforce a child custody order. Please ask your local law enforcement to request a search.

To learn how to access the services of the FPLS, contact your local or state Child Support Enforcement office. These offices are listed under government listings in your telephone directory.

- You can contact the principal of the school to obtain information on requests that may have been made by the abductor to your child's school for the transfer of your child's records.
- You can find out from the National Center for Missing and Exploited Children how to prepare a poster on your child. A poster may assist foreign authorities in attempting to locate your child.
- You can ask your district attorney to contact the United States Postal Inspection Service to see if a "mail cover" can be put on any address that you know of in the United States to which the abductor might write.
- It may be possible for local law enforcement authorities to obtain, by subpoena or search warrant, credit card records that may show where the abductor is making purchases. Check with state and local authorities if anything can be done. In the same manner, you can try to obtain copies of telephone bills of the abductor's friends or relatives who may have received collect calls from the abductor. Law enforcement may also be able to track usage of a cell phone or emails the abductor may be sending.

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## **PART IV: THE BEST SOLUTION: SETTLING OUT OF COURT**

### **Promoting Communication Between Parents and Children**

Legal procedures can be long and expensive. You may have greater success negotiating with the abducting parent. In some cases, friends or relatives of the abductor may be able to help you reach a compromise with the abductor. A decrease in tension might bring about the return of your child, but, even if it does not, it can increase your chances of being able to visit the child and participate in some way in the child's upbringing. In some cases compromise and some kind of reconciliation are the only realistic option.

### **Obtaining Information on Your Child's Welfare**

If you know your child's location and your child is a United States citizen you can request that a United States consular officer attempt to visit your child. If the consul obtains the other parent's permission to visit the child, he or she will do so and report back to you about your child. Sometimes consular officers are also able to send you letters or photos from your child. Contact the Office of Children's Issues (CA/OCS/CI) at 1-888-407-4747 to request such a visit.

## **Working With Foreign Authorities**

In child abduction cases, consular officers routinely maintain contact with local child welfare and law enforcement officers. If there is evidence of abuse or neglect of the child, the United States embassy or consulate may request that local authorities become involved.

## **The Question of Desperate Measures/Reabduction**

Consular officers cannot take possession of a child abducted by a parent or aid parents attempting to act in violation of the laws of a foreign country. Consular officers must act in accordance with the laws of the country to which they are accredited. The Department of State strongly discourages taking desperate and possibly illegal measures to return your child to the United States. Attempts to use self-help measures to bring an abducted child to the United States from a foreign country may endanger your child and others, prejudice any future judicial efforts you might wish to make in that country to stabilize the situation, and could result in your arrest and imprisonment in that country. In imposing a sentence, the foreign court will not necessarily give weight to the fact that the would-be abductor was the custodial parent in the United States or otherwise had a valid claim under a United States court order (e.g., failure of the foreign parent to honor the terms of a joint custody order). *Should you be arrested, the United States Embassy will not be able to secure your release.*

If you do succeed in leaving the foreign country with your child, you and anyone who assisted you may be the target of arrest warrants and extradition requests in the United States or any other country where you are found. Even if you are not ultimately extradited and prosecuted, an arrest followed by extradition proceedings can be very disruptive and disturbing for both you and your child.

Finally, there is no guarantee that the chain of abductions would end with the one committed by you. A parent who has reabducted a child may have to go to extraordinary lengths to conceal his or her whereabouts, living in permanent fear that the child may be reabducted again. Please consider how this might affect the child.

If you are contemplating such desperate measures, you should read the information available from the National Center for Missing and Exploited Children (NCMEC) about the emotional trauma inflicted on a child who is a victim of abduction and reabduction. The NCMEC advises against reabduction not only because it is illegal, but also because of possible psychological harm to the child.

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## **PART V: ONE POSSIBLE SOLUTION: THE HAGUE CONVENTION**

One of the most difficult and frustrating elements for a parent of a child abducted abroad is that United States laws and court orders are not automatically recognized abroad and therefore are not directly enforceable abroad. Each country has jurisdiction within its own territory and over people present within its borders. No country can tell another country how to decide cases or enforce laws. Just as foreign court orders are not automatically enforceable in the United States, United States court orders are not automatically enforceable abroad.

At the Hague Conference on Private International Law in 1976, 23 nations agreed to draft a treaty to deter international child abduction. Between 1976 and 1980, the United States was a major force in preparing and negotiating the Hague Convention on the Civil Aspects of International Child Abduction (Hague Convention or the Convention). The Convention was incorporated into U.S. law and came into force for the United States on July 1, 1988. As of July 2001, the Convention is in force between the United States and 50 other countries. The Convention applies to wrongful removals or retentions that occurred on or after the date the treaty came into force between those two countries. The dates vary for each country and more countries are considering signing on to the Convention all the time. Check the most recent list prepared by the Office of Children's Issues to learn whether the Convention was in force in a particular county at the time of the wrongful removal or retention. [You can find the list on our web site.](#)

### **What Is Covered by the Convention**

The Hague Convention is a civil legal mechanism available to parents seeking the return of, or access to, their

child. As a civil law mechanism, the parents, not the governments, are parties to the legal action.

The countries that are party to the Convention have agreed that a child who is habitually resident in one party country, and who has been removed to or retained in another party country in violation of the left-behind parent's custodial rights, shall be promptly returned to the country of habitual residence. The Convention can also help parents exercise visitation rights abroad.

There is a treaty obligation to return an abducted child below the age of 16 if application is made **within one year** from the date of the wrongful removal or retention, unless one of the exceptions to return apply. If the application for return is made after one year, the court may use its discretion to decide that the child has become resettled in his or her new country and refuse return of the child. In any case, a court may refuse to order a child returned if there is:

1. A grave risk that the child would be exposed to physical or psychological harm or otherwise placed in an intolerable situation in his or her country of habitual residence;
2. If the child objects to being returned and has reached an age and degree of maturity at which the court can take account of the child's views (the treaty does not establish at what age children reach this level of maturity: that age and the degree of weight given to children's views varies from country to country); or

If the return would violate the fundamental principles of human rights and freedoms of the country where the child is being held.

***Note: Interpretation of these exceptions varies from country to country.***

### **How to Use the Hague Convention**

The Convention provides a legal mechanism for you to seek return of your child or exercise your visitation rights. **You do *not* need to have a custody decree to use the Convention.** However, to apply for the return of your child, you must have had and been actually exercising a "right of custody" at the time of the abduction, and you must not have given permission for the child to be removed or, in the case of a retention, to be retained beyond a specified, agreed-upon period of time. The Convention defines "rights of custody" as including "rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence." This right need not be sole custody. If there was no court order in effect at the date of the abduction, these "rights of custody" may be established by the law in the state in which your child was living before his or her removal. In some cases it may be advisable to get a determination (as per Article 15 of the Convention) in your local court that 1) you have a right of custody to your child, and 2) the removal or retention was wrongful. Use of the Convention is not restricted to U.S. citizens.

An application should be submitted as soon as possible after an abduction or wrongful retention has taken place. As stated above, there is a time factor of one year involved. Do not wait until you get a custody order. That order would be irrelevant anyway. [Copies of the application form can be found in Appendix 2.](#)

Each country that is party to the Convention has designated a Central Authority to carry out specialized duties under the Convention. The Central Authority for the United States is the Department of State's Office of Children's Issues (CA/OCS/CI). You may submit your application directly to the Central Authority or foreign court of the country where the child is believed to be held, but, in order to ensure that you receive all available assistance it is best to submit your application to the U.S. Central Authority.

### **The Role of the United States Central Authority**

The responsibilities of the Central Authority for the Hague Abduction Convention are set forth in Articles 7-12 and 21 of the Convention<sup>1</sup>. The United States Central Authority is prohibited from acting as an agent or attorney in legal proceedings arising under the Convention<sup>2</sup>. The United States Central Authority was not intended to be and has never been a party to such proceedings.

<sup>1</sup> Although article 7(f) of the Convention and 22 C.F.R. 94.6(d) and (h) refer to legal proceedings

under the Convention, they do not assign the U.S. Central Authority a direct role in such proceedings.

<sup>2</sup> 22 C.F.R. 94.4

The United States Central Authority's role in proceedings in the United States under the Convention is that of an active facilitator. We seek to promote cooperation among the relevant parties and institutions and act as a source of information about proper procedures under the Convention and the contents and status of applications for assistance. The Central Authority in the country where your child is located, however, has the primary responsibility for processing your application.

The Office of Children's Issues will review your application to ensure that it is complete and that your request complies with the requirements of the Convention. If it does, we will forward it to the foreign Central Authority and work with that authority until your case is resolved. If the abducting parent does not voluntarily agree to the return of your child, you may be required to retain an attorney abroad to present your case under the Hague Convention to the foreign court. If you need to retain an attorney abroad, see [Using the Civil Justice System - How to Proceed](#).

The Office of Children's Issues works with the applicant and the other Central Authority to facilitate communication between the parties involved and work toward resolving the case as quickly as possible. While specific operations and procedures under the Convention differ in each country party to the treaty, we stand ready to help applicants understand the process and monitor all cases in which assistance is sought.

### **Immigration and the Hague Convention**

The Hague Convention on the Civil Aspects of International Child Abduction focuses on issues of residency, not citizenship. It is important to note that the Convention does not confer any immigration benefit. Anyone seeking to enter the United States who is not a United States citizen must fulfill the appropriate entry requirements, even if that person was ordered by a court to return to the United States. This applies to children and parents involved in any child abduction case including a Hague Convention case.

When a taking parent in a Hague Abduction Convention case is ineligible to enter the United States under United States immigration laws, the parent **may** be paroled for a limited time into the United States through the use of a Significant Public Benefit Parole in order to participate in custody or other related proceedings in a United States court.

### **Good News for Applicants Under the Hague Convention**

The Hague Convention on International Child Abduction has improved the likelihood and speed of return of abducted or wrongfully retained children from countries that are party to the Convention. The Convention's success is encouraging more countries to become party to the Convention. As of July 2001, fifty-five countries have joined since the United States became the 10th country in July 1988. In addition, the reputation of the Hague Convention is such that, when an abducting or retaining parent learns that a Hague application has been or will be filed, he or she may return the child voluntarily and no further civil action will be taken. The majority of Hague cases still, however, require the left behind parent to retain an attorney in the country where the child is located and petition the court for return.

**A note of caution:** Criminal charges may have an unintended negative effect on the operation of the Hague Convention. With the Hague Convention, the emphasis is on the swift return of a child to his or her place of habitual residence where the custody dispute can then be resolved, if necessary, in the courts of that jurisdiction. Courts in some countries, including the United States, have denied return of children solely because the taking parent would be arrested if they accompanied the child home. Many of these courts, United States and foreign, have held that the arrest of the parent would expose the child to psychological harm under Article 13(b) of the Convention. This varies by country and the type of criminal charge. Please contact CI to discuss this matter further.

### **Children Abducted to the United States**

The Hague Convention applies to children abducted to and from countries party to the Convention. If a child is abducted to the United States from one of our Hague treaty partners the parent left behind in the country may apply for return under the Convention. Even if the child was born in the United States, if the child is now found to be "habitually resident" in another country the child may be ordered to return to that country under the Convention. the U.S., provided the case meets the requirements of the Hague and the child's country of habitual residence is a signatory to the Hague Convention.

As of September 5, 1995, by agreement between the National Center for Missing and Exploited Children (NCMEC), the Department of State, and the Department of Justice, applications seeking return of or access to children in the United States are processed on behalf of the Office of Children's Issues by the NCMEC ([See References.](#))

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## PART VI: LEGAL SOLUTIONS WHEN THE HAGUE CONVENTION DOES NOT APPLY

If your child has been abducted to a country that is *not* a party to the Hague Convention, or if the Convention does not apply in your case, you can seek other legal remedies against the abductor, in the United States and abroad, from both the civil and criminal justice systems. The family court system from which you get a custody decree is part of the civil justice system. At the same time you are using that system, you can also use the criminal justice system consisting of the police, prosecutors, and the FBI.

### Using the Civil Justice System: How To Proceed

In addition to obtaining a custody decree in the United States, you may have to use the civil justice system in the country to which your child has been abducted. The Office of Children's Issues (CA/OCS/CI) can provide general information on the customs and legal practices for many countries around the world. We can also give you general information on legal service of process abroad or obtaining evidence, and on how to have documents authenticated for use in a foreign country. You may write or telephone CA/OCS/CI for information sheets, such as [Retaining a Foreign Attorney](#), and [Authentication \(or Legalization\) of Documents in the United States for Use Abroad](#).

To obtain authoritative advice on the laws of a foreign country or to take legal action in that country, you should retain an attorney there. United States consular and diplomatic officers are prohibited by law from performing legal services. (22 C.F.R. 92.81) We can, however, provide you with a list of attorneys in a foreign country. United States embassies and consulates abroad prepare these lists. The United States Department of State can neither guarantee attorney services nor pay attorney fees.

**Cautionary note: *Attorney fees can vary widely from country to country. The fee agreement that you make with your local attorney should be put into writing as soon as possible to avoid a potentially serious misunderstanding later.***

Although officers at United States embassies and consulates cannot take legal action on behalf of United States citizens, consular officers may be able to assist in communication problems with a foreign attorney. Consular officers can sometimes inquire about the status of proceedings in the foreign court, and they may be able to coordinate with your attorney to ensure that your rights as provided for by the laws of that foreign country are respected.

Your foreign attorney may ask for a certified copy of your custody decree and/or state and federal warrants regarding the abducting parent which have been authenticated for use abroad. It is also advisable to send copies of your state's laws on custody and parental kidnapping or custodial interference, the Federal Parental Kidnapping Prevention Act, and copies of reported cases of your state's enforcement of foreign custody decrees under Section 23 of the Uniform Child Custody Jurisdiction Act. Your U.S. attorney can help you gather this information.

### What Are Your Chances of Enforcing Your United States Custody Order Abroad?

Just as a foreign court order has no direct effect in the United States, a custody decree issued by a court in the United States has no binding legal force abroad, although it may have persuasive force in some countries. Courts decide child custody cases on the basis of their own domestic relations law and the decision whether to recognize a foreign order is at the court's discretion. This may give a "home court" advantage to a person who has abducted a child to the country of his or her origin. You could also be disadvantaged if the country has a cultural bias in favor of a mother or a father. A United States custody decree may, however, be considered by foreign courts and authorities as evidence and, in some cases, it may be recognized and enforced by them on the basis of comity (the voluntary recognition by courts of one jurisdiction of the laws and judicial decisions of another). Your chances of having your United States court order enforced depend, to a large degree, upon the tradition of comity that the legal system of the country in question has with the United States legal system. While CA/OCS/CI can give you some information on these traditions, you should consult with your attorney in that country on how to proceed.

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## **PART VII: USING THE CRIMINAL JUSTICE SYSTEM**

There are many factors to consider in determining whether or not to file criminal charges against the abductor. The child's safe return is the primary objective in any missing child case, and criminal charges may actually complicate child recovery efforts. While the threat of outstanding criminal charges may intimidate some abductors into returning the child, others may react by increasing their efforts to remain undetected.

### **The Pros of Using the Criminal Justice System**

In the event that a left-behind parent is both unaware of the whereabouts of the child and does not have access to the child, using the criminal justice system may be helpful as a tracking tool. There are a multitude of federal and state agencies that work in conjunction with local law enforcement to help locate a missing child and abductor in foreign countries. The FBI is the primary source of law enforcement assistance and can provide investigative support and coordinate the issuance of federal warrants. The United States Customs Service and the Bureau of Citizenship and Immigration Services in the Department of Homeland Security utilize the Interagency Border Inspection System (IBIS) to simultaneously access and query several federal databases for warrants, and entry or exit restrictions. INTERPOL coordinates activities with foreign law enforcement to trace and locate fugitives and abductors.

### **What Are the Risks?**

Formal resort to the criminal justice system (filing of charges, issuance of an arrest warrant, transmission of an extradition request to a foreign government under an applicable treaty, and criminal prosecution) should be considered carefully. This is especially true if the other country concerned is a party to the Hague Convention. You should be aware that, while you may have a degree of control over the ongoing civil procedures, you may not be able to affect the course of criminal actions once charges are filed. Check with the police and prosecutor to determine if your wishes would be considered in a criminal action. Furthermore, law enforcement authorities in the United States and some countries abroad may be valuable sources of information and assistance. However, they may be unfamiliar with international parental child abduction. If this is the case, please call the Office of Children's Issues (CA/OCS/CI) as soon as possible.

Your decision on whether or not to try to utilize the criminal justice system depends upon the circumstances of your case. You should also realize that **neither extradition nor prosecution of the abductor guarantees the return of your child** and may in some cases complicate, delay, or ultimately jeopardize return of your child.

Presumably, your primary interest is to obtain the return of your child. That is not the primary responsibility of the prosecutors. When the criminal justice system becomes involved in a case, there are several interests at stake, some of which may be in conflict:

- The interests of the child;
- The interests of each parent/guardian and other immediate family members;

- The interests of the civil justice system in a stable and workable custody arrangement; and
- The interests of the criminal justice system in apprehending, prosecuting, and punishing those who have violated the criminal laws of their jurisdiction in connection with a parental child abduction.

Another factor to consider is the possible reaction of the abductor to the filing of criminal charges and the threat of prosecution and punishment. Although some individuals may be intimidated enough to return the child (with or without an agreement by a prosecutor to the condition that the charges be dropped), others might go deeper into hiding, particularly if they are in a country where they have family or community support. If an abductor is ultimately brought to trial, how far are you willing to go in pursuing criminal prosecution? Unless you are prepared to testify in court against the abductor, you should not pursue criminal prosecution. A final factor to consider is the effect on the child of seeing the abducting parent prosecuted and perhaps incarcerated, with you playing an active role in that process.

### **Steps to Take in Case You Decide to Use the Criminal Justice System**

Once you have decided to pursue criminal remedies, you or your attorney may contact your local prosecutor or law enforcement authorities to request, if provided for by your state law, that the abducting parent be criminally prosecuted and an arrest warrant be issued. In some states, parental child abduction or custodial interference is a misdemeanor; however, under many state laws it may be a crime depending on the circumstances of the removal. If you are able to obtain a state warrant, the local prosecutor can contact the F.B.I. or the United States Attorney to request the issuance of a federal *Unlawful Flight to Avoid Prosecution* (UFAP) warrant for the arrest of the abductor. The federal Parental Kidnapping Prevention Act of 1980 provides for the issuance of this warrant.

Furthermore, the International Parental Kidnapping Crime Act (IPKCA) of 1993 (H.R. 3378) makes it a federal offense to remove a child from the United States or retain a child (who has been in the United States) outside the United States with intent to obstruct the exercise of parental rights (custody or visitation). An unlawful retention begun after 1993 could violate the statute, even though the actual removal of the child may have occurred before the date of enactment. The F.B.I. is responsible for investigating the abduction.

### **Prosecution of Agents or Accomplices of the Abductor**

Find out if your state, through consultation with a lawyer, has laws that allow legal action to be taken against agents or accomplices to an abduction. Consider whether such actions would be useful in learning your child's whereabouts or compelling the return of your child.

### **Implications of an Arrest Warrant for a United States Citizen**

If the abducting parent is a United States citizen and the subject of a federal arrest warrant, the F.B.I. or United States Attorney's office can ask the Department of State's Passport Office to revoke the person's United States passport. This may or may not be a burden to an abducting parent who is entitled to hold a foreign passport as well as a United States passport. However, an abducting parent who is only a United States citizen becomes an undocumented alien in a foreign country if his or her United States passport is revoked. Some countries may deport undocumented aliens or at least make it difficult for them to remain in the country.

For a United States passport to be revoked, the F.B.I. or United States Attorney must send a request for such action and a copy of the federal warrant to the Department of State's Office of Passport Policy and Advisory Services (telephone 202-663-2662). The regulatory basis for revocation of passports is found in the Code of Federal Regulations (22 C.F.R. 51.70, et seq.)

In certain circumstances, you may decide that revoking the abducting parent's passport will not achieve the desired result. For example, if you know the location of the other parent, there may be a possibility of negotiation and a settlement or, at least, the possibility of communication with your child. If the abducting parent is threatened with passport revocation, he or she might choose to flee with your child again.

### **Implications of a Warrant for a Non-United States Citizen**

Even if the abductor is not a United States citizen, the existence of a federal warrant is important. Such a warrant may encourage the abducting parent to return the child voluntarily, especially if he or she has business or other reasons to travel to the United States. The warrant also serves to inform the foreign government that the abduction of the child is a violation of United States law and that the abductor is a federal fugitive. An arrest warrant is also necessary if you wish to have authorities seek extradition of the abductor. Note that the United States does not have an extradition treaty with every country, and even if a treaty exists extradition may not always be possible.

### **The Possibility of Extradition**

The United States Department of Justice, not the United States Department of State, is responsible for pursuing extradition of wanted persons. Through INTERPOL and other international links, national law enforcement authorities in many countries regularly cooperate in the location and apprehension of international fugitives. Extradition, the surrender of a fugitive or prisoner by one jurisdiction for criminal prosecution or service of a sentence in another jurisdiction, is rarely a viable approach in international child abduction cases. Extradition is utilized only for criminal justice purposes in cases that prosecutors believe can be successfully prosecuted due to the sufficiency of the evidence. Prosecutors may decide not to proceed with a request for extradition for a number of different reasons. Moreover, it must be remembered that extradition does not apply to the abducted or wrongfully retained child, but only to the abductor. There is no guarantee that the child will be returned by foreign authorities in connection with extradition of the alleged wrongdoer. Threatened with impending extradition, abducting parents may hide the child or children with a friend or relative in the foreign country.

Another reason that extradition may not be useful in a given case is that the offenses of parental child abduction or custodial interference are sometimes not included in the U.S. Government's extradition relationships with some foreign countries. The United States now has extradition treaties now in force at this point with over 120 more than 100 foreign countries. Some of these are "dual criminality" treaties while others are "list" treaties. In each case, in order for conduct to be an extraditable offense under a particular treaty, the conduct in question must be (1) be extraditable under a given treaty, the conduct in question must be considered a crime in both countries, and (2) and also included as an extraditable offense under the treaty. In this respect, the United States Government has two kinds of extradition treaties, "dual criminality" and "list" treaties

**Dual Criminality Treaties:** U.S. Government's Most modern extradition treaties (i.e., generally those concluded after 1980) usually include a "dual criminality" provision. This means that a persons generally may be extradited under the treaty if their conduct is a crime punishable by more than one year imprisonment in both countries. Accordingly As a result, if the illegal conduct involved in a particular parental child abduction or custodial interference case is a crime punishable by more than one year imprisonment in both the United States and the foreign jurisdiction country concerned, then that conduct would be considered an extraditable offense under most extradition treaties that are based on "dual criminality" extradition treaties. (A small number of the U.S. Government's dual criminality treaties use periods other than one year as the measure for extraditable offenses.) If the conduct is not criminalized a crime in either the United States or the foreign country, then it will not be an extraditable offense. even if our treaty with that country is a modern "dual criminality" treaty.

**List Treaties:** The U.S. Government's older extradition treaties (generally those concluded before 1980) typically contain a list of covered offenses that are extraditable under the treaty. In this respect, nNearly all of these older treaties include the word "kidnapping" in their list of covered extraditable offenses. The Extradition Treaties Interpretation Act of 1998 (Pub. L. 105-323) makes clear that the word "kidnapping" as used in these older treaties can encompass parental kidnapping. If, however, the conduct is not a crime criminalized in the United States or the foreign country, then it will not be an extraditable offense even if the word "kidnapping" is included in the relevant list treaty.

Despite the fact that parental child abduction may be covered by certain extradition treaties, you should be aware of potential difficulties in utilizing them. Apart from the possible counterproductive effects already discussed, specifically, most all civil law countries (in contrast with common law countries like the United States, United Kingdom, Canada, and Australia) refuse to extradite their own nationals. Nearly all the nations of Latin America and Europe are civil law countries. Whatever the terms of any applicable extradition treaty, experience has also shown that foreign governments are generally reluctant (and often simply unwilling) to extradite anyone (their own citizens, United States citizens, or third country nationals) for parental child abduction. For extradition to be possible, therefore:

- The local and/or federal prosecutor must decide to file charges and pursue the case, and you should be prepared to testify in any criminal trial;
- There must be an extradition treaty in force between the United States and the country in question;
- The treaty must cover parental child abduction or custodial interference;
- If the person sought is a national of the country in question, that country must be willing to extradite its own nationals; and,
- The country in question must be willing to extradite persons for parental child abduction/custodial interference (i.e., not refuse to do so for "humanitarian" or other policy reasons).

### **The Possibility of Prosecution of an Abductor in a Foreign Country**

A final possibility in the area of criminal justice is prosecution of the abductor by the authorities of the foreign country where he or she is found. In many countries (but not the United States), nationals of the country can be prosecuted for acts committed abroad if the same conduct would constitute a criminal offense under local law. United States law enforcement authorities can request such prosecution by forwarding to the foreign country the evidence that would have been used in a United States prosecution. United States witnesses may, of course, have to appear and testify in the foreign proceeding. Like the courses of action discussed above, this approach also risks being counterproductive and will not necessarily result in the return of the child.

## **PART VIII : REFERENCES**

### **Directory - Where to Go for Assistance**

#### **Consular Assistance**

United States Department of State  
[The Office of Children's Issues](#)  
 SA-29, 4th Floor  
 2201 C Street, NW  
 Washington, D.C. 20520

Phone: 202 736-7000  
 Fax: 202 312-9743  
 After hours: 202 647-5225  
 Web Site: [http://travel.state.gov/children's\\_issues.html](http://travel.state.gov/children's_issues.html)

#### **Children's Passport Issuance Alert Program**

United States Department of State  
[The Office of Children's Issues](#)  
 SA-29, 4th Floor  
 2201 C Street, NW  
 Washington, D.C. 20520

Phone: 202 736-7000  
 Fax: 202 312-9743  
 Web Site: [http://travel.state.gov/children's\\_issues.html](http://travel.state.gov/children's_issues.html)

#### **[National Center for Missing and Exploited Children \(NCMEC\)](#)**

699 Prince Street  
 Alexandria, VA 22314-3175

Phone: 703 522-9320  
Fax: 703 235-4067  
Web Site: <http://www.missingkids.org>

24-hour hot line for emergencies: 1-800-THE-LOST  
TTD: 1-800-826-7653

### **For American Bar Association Publications**

American Bar Association (ABA)  
750 North Lake Shore Drive  
Chicago, IL 60611

Phone: 312 988-5555  
Web Site: <http://www.abanet.org/store/catalog.html>

### **Federal Parent Locator Service (FPLS)**

Note: The FPLS can be accessed through local and state Child Support Enforcement offices. The names of those offices are available in telephone books and from the address below.

### **Department of Health and Human Services**

[Office of Child Support Enforcement](#)  
Federal Parent Locator Service (FPLS)  
370 L'Enfant Promenade, S.W.  
Washington, D.C. 20447

Phone: 202 401-9267  
Web Site: <http://www.acf.dhhs.gov/programs/cse/>

### **[Office of Victims of Crime \(OVC\)](#)**

United States Department of Justice  
633 Indiana Ave., N.W.  
Washington, D.C. 20531

Phone: 1-800-627-6872  
Web Site: <http://www.ojp.usdoj.gov/ovc/>

### **[International Social Services/American Branch](#)**

700 Light Street  
Baltimore, MD 21230

Phone: 410 230-2734  
Web Site: <http://www.iss-usa.org>

## **UNIFORM STATE AND FEDERAL LAWS ON CUSTODY, PARENTAL CHILD ABDUCTION, AND MISSING CHILDREN**

**Uniform Child Custody Jurisdiction Act (UCCJA) (9 ULA at 123):** Determines when a state has jurisdiction to make a custody order and provides procedures for interstate enforcement of orders in custody conflicts.

## **Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)**

**(9 ULA at 115 (Part 1)):** Enhances the UCCJA by awarding priority to the child's home state, clarifies the limits of emergency jurisdiction, and grants exclusive jurisdiction to the state making the original custody determination.

**MISSING CHILDREN ACT (28 USC 534):** Requires law enforcement to enter complete descriptions of missing children into the National Crime Information Center's (NCIC) Missing Person File, even if the abductor has not been charged with a crime.

**NATIONAL CHILD SEARCH ASSISTANCE ACT (42 USC 5779 & 5780):** Mandates elimination of waiting periods before law enforcement takes a missing child report, including family abduction cases; Requires immediate entry of information into the NCIC Missing Person file; Requires close liaison with the National Center for Missing and Exploited Children (NCMEC).

**INTERNATIONAL CHILD ABDUCTION REMEDIES ACT (42 USC 11601 et seq.):** Establishes procedures to implement the Hague Convention. Empowers state and federal courts to hear cases under the Convention and allows the Central Authority access to information in certain American records regarding the location of a child and abducting parent.

**PARENTAL KIDNAPPING PREVENTION ACT (PKPA)(28 USC 1738A):** Requires authorities of every state to enforce and not modify orders made by the state court exercising proper jurisdiction. Authorizes the use of the Unlawful Flight to Avoid Prosecution (UFAP) warrant and the Federal Parent Locator Service (FPLS) in family abductions.

**INTERNATIONAL PARENTAL KIDNAPPING CRIME ACT (IPKCA)(18 USC 1204):** Makes it a federal felony to remove a child under 16 from the United States, or to retain a child outside the United States with the intent to obstruct the lawful exercise of parental rights.

**FUGITIVE FELON ACT (18 USC 1073):** Enhances the ability of states to pursue abductors beyond state and national borders; Permits the FBI to investigate cases that would otherwise be under state jurisdiction and authorizes use of UFAP warrants in parental kidnapping cases.

**EXTRADITION TREATIES INTERPRETATION ACT of 1998 (Note 18 USC 3181):** Authorizes the United States to interpret extradition treaties listing "kidnapping" as encompassing the offense of parental kidnapping.

## **READING LIST**

*This list is intended to give some idea of the relevant literature, but should not be regarded as complete or authoritative.*

Atwood, "Child Custody Jurisdiction and Territoriality," 52 *Ohio St. L.J.* 369 (1991)

Charlow, "Jurisdictional Gerrymandering and the Parental Kidnapping Prevention Act," 25 *Fam. L.Q.* 299 (1991)

Coburn, *Runaway Father: One Man's Odyssey from Revenge to Love*. Red Fox Publishing. Bellevue, WA. (1998)

Copertino, "Hague Convention on the Civil Aspects of International Child Abduction: An Analysis of its Efficacy," 6 *Conn. J. Int'l L.* 715 (1991)

Crawford, "Habitual Residence of the Child as the Connecting Factor in Child Abduction Cases: A Consideration of Recent Cases," *Jurid. Rev.* 177 (1992)

Crouch, "Use, Abuse, and Misuse of the UCCJA and PKPA," 6 *Am. J. Fam. L.* 147 (1992)

Davis, "The New Rules on International Child Abduction: Looking Forward to the Past," 3 *Aust'l J. Fam. L.* 31 (1990)

De Hart, *International Child Abduction: A Guide to Applying the 1988 Hague Convention, with Forms* (A publication of the Section of Family Law, American Bar Association) (1993)

Edwards, "The Child Abduction Agony," 140 *New L.J.* 59 (1990)

Evans, "International Child Abduction," 142 *New L.J.* 232 (1992)

Frank, "American and International Responses to International Child Abductions," 16 *N.Y.U. J. Int'l L. & Pol.* 415 (1984)

Girdner, "Obstacles to the Recovery and Return of Parentally Abducted Children," 13 *Children's Legal Rts J.* 2 (1992)

Hilton, "Handling a Hague Trial," 6 *Am. J. Fam. L.* 211 (1992)

Hoff, *Parental Kidnapping: How to Prevent an Abduction and What to Do If your Child Is Abducted* (A publication of the National Center for Missing and Exploited Children. No charge.)

Kindall, "Treaties - Hague Convention on Child Abduction - Wrongful Removal - Grave Risk or Harm to Child" 83 *Am. J. Int'l L.* 586 (1989)

Marks, "Fighting Back: The Attorney's Role in a Parental Kidnapping Case," 64 *Fla. B.J.* 23 (1990)

Murray, "One Child's Odyssey Through the Uniform Child Custody Jurisdiction and Parental Kidnapping Prevention Acts," 1993 *Wis. L. Rev.* 589

Oberdorfer, "Toward a Reasoned Response to Parental Kidnapping," 75 *Minn. L. Rev.* 1701 (1991)

Pfund, "The Hague Convention on International Child Abduction, the International Child Abduction Remedies Act, and the Need for Availability of Counsel for All Petitioners," 24 *Fam. L.Q.* 35 (1990)

Rutherford, "Removing the Tactical Advantages of International Parental Child Abductions under the 1980 Hague Convention on the Civil Aspects of International Child Abductions," 8 *Ariz. J. Int'l & Comp. L.* 149 (1991)

Sagatun, "Parental Child Abduction: The Law, Family Dynamics, and Legal System Responses," 18 *Journal of Crim. Just.* (1990)

Sharpless, "The Parental Kidnapping Prevention Act: Jurisdictional Considerations Where There are Competing Child Custody Orders," 13 *J. Juv. L.* 54 (1992)

Shirman, "International Treatment of Child Abduction and the 1980 Hague Convention," 15 *Suffolk Transnat'l L.J.* 222 (1991)

Stotter, "The Light at the End of the Tunnel: The Hague Convention on International Child Abduction Has Reached Capitol Hill," 9 *Hastings Int'l and Comp. L. Rev.* 285 (1986)

Stranko, "International Child Abduction Remedies," *The Army Lawyer* 28 (Department of the Army pamphlet 27-50-248, July 1993)

*Family Advocate, A Practical Journal of the American Bar Association Family Law Section*, Spring 1987. (Special issue on divorce law around the world and international parental child abduction.)

*Family Advocate, A Practical Journal of the American Bar Association Family Law Section*, Spring 1993. (Special issue on international family law.)

*Family Law Quarterly*, Spring 1994. (Special issue on international family law.)

"The Hague International Child Abduction Convention and the International Child Abduction Remedies Act: Closing Doors to the Parent Abductor," 2 *Transnat'l Law* 589 (1989)

"The Hague Convention on International Child Abduction: A Practical Application," 10 *Loy. L.A. Int'l & Comp. L.J.* 163 (1988)

"International Child Abduction and the Hague Convention: Emerging Practice and Interpretation of the Discretionary Exception," 25 *Tex. Int'l L.J.* 287 (1990)

"International Parental Child Abduction: The Need for Recognition and Enforcement of Foreign Custody Decrees," 3 *Emory J. Int'l Dispute Resolution* 205 (1989)

"More Than Mere Child's Play: International Parental Abduction of Children," 6 *Dick. L. Rev.* 283 (1988)

"You Must Go Home Again: Friedrich v. Friedrich, The Hague Convention and the International Child Abduction Remedies Act," 18 *N.C. J. Int'l L. & Com. Reg.* 743 (1993)

### **United States Government Documents on the Hague Convention**

Department of State notice in the *Federal Register* of March 26, 1986, pp. 10494-10516.

Senate Treaty Doc. 99-11, 99th Congress, 1st Session.

For the legislative history of the International Child Abduction Remedies Act, Public Law 100-300, see S.1347 and H.R. 2673, and H.R. 3971- 3972, 100th Congress, and related hearing reports.

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## **Appendix 1**

### **Questionnaire for Non-Hague Convention Parents**

Your situation is difficult, but there are things that you can do. This list assumes that you know, or strongly suspect, that your child has been abducted abroad to a country that is *not* a party to the Hague Convention on International Child Abduction. If the country *is* a party to the Hague Convention, read this booklet to determine if your situation meets the requirements of the Convention. If you have a Hague case, please submit the [Application for Assistance Under The Hague Convention on International Child Abduction](#).

If you do not have a Hague case, then please complete this checklist/report in detail and forward a **copy** to the Office of Children's Issues when you report the abduction of your child. It is critically important that you also continue to update our office on the status of any developments in your case. You should send us **updated** copies of this checklist when developments occur.

Please fill out a separate checklist for each child.

**Name of child (last, first, middle):**

**Child is currently located (name of country):**

**Dates of child's birth (month/day/year):**

**Place of birth:**

**Is the child a United States citizen? YES NO**

**Child's United States passport number:**

**Your name (last, first, middle):**

**Your nationality:**

**Address:**

**Home Phone Number:**

**Work Phone Number:**

**Cell Phone Number:**

**Pager Number:**

**Home Fax Number:**

**Work Fax Number:**

**E-mail Adresse(s):**

**Your relationship to child:**

**Abductor's Name (last, first, middle):**

**Last known United States address:**

**Telephone numbers (United States and foreign):**

**Fax number (United States and foreign):**

**Abductor's relationship to child:**

**Legal relationship between parents:**

- Married
- Divorced
- Never Married
- Separated with custody order
- Separated with no custody order
- Paternity established
- Paternity not established

## **1. Emergency Action - What to do Right Away**

- Has your child been taken abroad?

If yes, please contact the Office of Children's Issues at 202 736-7000.

If no, please contact the National Center for Missing and Exploited Children at  
1-800-THE-LOST.

- If known, please give exact location of child.

Country:

Address:

Telephone, fax numbers and e-mail:

- What is the license plate number of a vehicle the abductor may use to transport the child?
- Have local law enforcement authorities entered that number into the National Crime Information Center (NCIC) computer? q YES q NO
- What are the probable airlines and flight numbers the abductor may use to depart the United States?
- Have you filed a missing person report with your local police department? YES NO

Date police report filed:

Name of police officer:

Address, e-mail, phone and fax numbers of police officer:

- Have you reported the abduction to the F.B.I.? YES NO

Date of report to F.B.I.:

Name of F.B.I. agent:

Address, e-mail, phone and fax numbers of agent:

- Have you obtained a decree of sole custody or one that prohibits your child from traveling without your permission? In most states, you may be able to obtain such a decree even after a child is abducted. Please submit copies of all court orders.

Dates of all custody orders:

Names of courts in which orders were issued:

Address, e-mail, phone and fax numbers for court (if known)

- Has your child ever been issued a United States passport? YES NO
- Has your child's name been entered in the United States Children's Passport Issuance Alert Program?  
YES NO

Date United States passport lookout entered:

Passport case number:

- Does the taking parent have ties to another country? YES NO
- May your child have a claim to citizenship of another country? YES NO
- If yes, have you informed the embassy and consulates of the foreign country of your custody decree and asked them not to issue a foreign passport to your child? YES NO

Country contacted:

Date foreign embassy contacted:

Name of official contacted:

- Has your child ever been issued a passport for another country? YES NO
- Might the taking parent transit any other country en route to the country to which he or she has ties? YES

NO

- If yes, have you informed the embassy and consulates of that country of your custody decree and asked them not to issue a visa to your child? YES NO

Country contacted:

Date foreign embassy contacted:

Name of official contacted:

- Do you have a valid passport in case you need to travel overseas? YES NO

Your passport number:

- Is this a United States passport? YES NO

If not United States, what country?

Date passport issued:

Date passport expires:

Place passport issued:

(Make a copy of your passport information page, in case you need to submit it.)

## 1. The Search

- Have you tried to establish contact with relatives or friends of the abducting parent? If so, please list their names, addresses, telephone and fax numbers and the dates contacted (Continue on a separate sheet if necessary.)

- Have you contacted the principal of your child's school and asked to be informed of requests for transfer of your child's school records? YES NO
- Have you contacted the registrar of official records to see if they can block the issuance of a duplicate birth certificate for your child? YES NO
- Have you asked local law enforcement authorities to ask the United States Postal Inspection Service to put a "mail cover" on addresses in the United States to which the abductor might write? YES NO

Date of "mail cover":

Name, address, telephone and fax numbers of investigator doing cover:

- Have you asked local law enforcement authorities to help you obtain information from telephone and credit card companies on the whereabouts of the abductor? YES NO

If yes, please give the date this was done, the contact information for the person who did it, and the results of the search:

- Have you contacted the Office of Victims Assistance in the U.S. Department of Justice ([See References.](#))? YES NO

If yes, please provide CA/OCS/CI with details of whom you contacted, and the assistance they were or were not able to provide

- Have you contacted the NCMEC to have search posters created ([See References.](#))? YES NO

### **3. After Your Child Has Been Located Abroad**

- Have you retained the services of a foreign attorney?

Date attorney retained:

Name of attorney:

Address, e-mail, telephone and fax numbers for attorney:

Date of court hearing abroad:

- Have you sent certified authorized copies of the custody decree, court orders, state and federal warrants, as well as copies of state custody and parental child abduction laws and the Federal Parental Kidnapping Prevention Act to the foreign attorney?

Date sent:

Please list the specific documents sent:

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## Appendix 2

### Instructions for Completing the Hague Convention Application

To invoke the Hague Convention, submit **two** completed applications for each child. The application form may be photocopied. Type or print all information in black or blue ink. Furnish as much of the information called for as possible, using an additional sheet of paper if you need more space. [If you have further questions about the form, you may wish to refer to the text of the Convention.](#) You may also call CA/OCS/CI at 202-736-7000.

Translation of the supporting documents into the official language of the requested country may be necessary. Translations can speed up the overall process. Foreign attorneys and judges tend to respond more favorably with such documents. Ask CA/OCS/CI for more information about supporting documents.

You may fax your Hague application to CA/OCS/CI, fax number 202-312-9743. Send originals and supporting documents by mail, express mail, or courier service to:

Department of State  
SA-29, 4th Floor  
2201 C Street, NW  
Washington, D.C. 20520

***Be sure to sign and date the application.***

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**Checklist and Instructions for Completing the Hague Application**

## ***Information Block and Details Needed***

### **Identity of Child and Parents**

**Child's Name** - The child's full name: last name, first, middle

**Date of Birth** - Month/Day/Year

**Place of Birth** - City/State/Country

**Address** - Child's address in the country of habitual residence **at the time of** the abduction or removal.

**United States Social Security Number** - A nine-digit number: 000-00-0000 (if known)

**Passport/Identity Card** - Issuing country and passport or I.D. number (if known)

**Nationality** - Include all nationalities of the child, (eg. U.S., Canadian)

**Height** - Feet and inches

**Weight** - Pounds

**Sex** - Male or female

**Color of Hair** - Child's hair color

**Color of Eyes** - Child's eye color (Include color photo, if available.)

### ***Father***

**Name** - Full name of father: last name, first, middle

**Date of Birth** - Month/Day/Year

**Place of Birth** - City/State/Country

**Nationalities** - Include all nationalities

**Occupation** - Usual or last known

**Passport/Identity Card** - Issuing country and number (if known)

**Current Address and Tel.** - Include zip code as well as telephone and fax numbers for work and home.

**United States Social Security Number** - A nine-digit number: 000-00-0000 (if known)

**Country of Habitual Residence** - Of the father **before** the abduction or retention, particularly if different from that of the child.

**Date & Place of Marriage and Divorce, if applicable** - Indicate dates and location of marriage and divorce or the parent of the child. It is important to clearly state the marital status at the time of the abduction or retention.

### ***Mother***

**Name** - Full name of mother of child: last name, first, middle (Include maiden name.)

**Date of Birth** - Month/Day/Year

**Place of Birth** - City/State/Country

**Nationality** - Include all nationalities

**Passport/Identity Card** - Issuing country and number (if known)

**Current Address and Tel.** - Include zip code as well as telephone and fax numbers for work and home.

**Occupation** - Usual or last known

**United States Social Security Number** - A nine-digit number: 000-00-0000 (if known)

**Country of Habitual Residence** - Of the mother **before** the abduction or retention, particularly if different from that of the child.

**Date & Place of Marriage And Divorce, if applicable** - Indicate date and location of marriage and divorce, as applicable, of the parents of the child. It is important to clearly indicate the parents' marital status at the time of the abduction or retention.

## **II. Person Seeking Return of/Access to Child**

This section is for information concerning the person or institution applying for the return of the child to the United States.

**Name** - Provide the full name of the person or institution asking for the child to be returned.

**Nationalities** - Of the requester

**Relationship to Child** - Relationship of the requester to the child (eg, mother, father)

**Current Address and Telephone Number** - Include home, work and fax number.

**Occupation** - Of the requester (if a person).

**Name, Address and Telephone Number of Legal Adviser, if any** - Include zip code as well as telephone and fax numbers. *Some of this information may be the same as that already given.*

### III. Information Concerning the Person Alleged to Have Wrongfully Removed or Retained Child

The information about the abducting parent is needed to assist in locating the child. Please provide all requested information and any additional facts that may help authorities locate the child.

**Name** - Full name of parent who has abducted or wrongfully retained the child.

**Relationship to Child** - Relationship of the abductor to the child (eg, mother, father)

**Known Aliases** - Any other names the abductor may use.

**Date of Birth** - Month/Day/Year

**Place of Birth** - City/State/Country

**Nationalities** - Include all nationalities.

**Occupation, Name and Address of Employer** - Provide any employment information that may be helpful in locating the abductor, such as usual type of work, potential employers or employment agencies.

**Passport/Identity Card** - Country and number.

**United States Social Security Number** - A nine-digit number: 000-00-0000 (if known)

**Current Location** - Of the abductor in the country where the child was taken.

**Height** - Feet and inches

**Weight** - Pounds

**Color of Hair** - Abductor's hair color

**Color of Eyes** - Abductor's eye color

**Other Persons with Possible Additional Information** - Provide names, addresses and telephone numbers of anyone in the Information Relating to the Whereabouts of country to which the child was taken who could give the Central the Child Authority in that country information on the child's location.

### IV. Time, Place, Date, and Circumstances of the Wrongful Removal or Retention

Provide the date, to the best of your knowledge, that the child left the United States or when the wrongful retention began. Include the place from which the child was taken. Describe the legal relationship existing between you and the abducting parent when the child was removed. What were the circumstances leading up to the removal or retention? How did you learn of the removal/retention? Did the other parent take the child during a scheduled visitation? Did the other parent take the child for what you believed would be a short visit and then inform you that they were staying? Did they purchase round-trip air tickets to show that they intended to return? Had you and your family moved to the other country, and then you decided to return to the United States?

Take this opportunity to tell your story. Try to anticipate what claims the other parent may make and provide your explanation.

***Do not limit yourself to the space provided on the form.  
Additional pages may be attached to fully narrate the circumstances.  
However, please be concise.***

### V. Factual or Legal Grounds Justifying Request

Provide information and documentation establishing that you had, and were exercising, a right of custody at the time of the child's removal. Generally, a right of custody is created by a custody order when parents are divorced, or by operation of state law when parents are still married or were never married when the child was taken. As stated, the Convention defines "rights of custody" as including "rights relating to the care of the child and, in particular, the right to determine the child's place of residence." Thus, you may have a "right of custody" as defined by the Convention even if you do not have court-ordered joint or sole custody of the child.

### IMPORTANT

If there is no applicable court order, please provide a copy of the state statute, case law or an affidavit of law prepared by an attorney that establishes your right of custody at the time of the child's removal. This provision of the law may sometimes be found in the estate and wills section of the state code. Remember, you are not

attempting to show that you would have an equal right to obtain custody in a subsequent custody proceeding, but that you **had** and were exercising a right of custody when the child was taken.

**SEND IN YOUR HAGUE APPLICATION IMMEDIATELY**

**Do NOT wait to get an order of custody. Orders issued after removal/retention are irrelevant in a Hague hearing.**

**VI. Civil Proceeding in Progress, If Any**

Indicate any civil action (in the United States or abroad) that may be pending (e.g.. custody, divorce). Name court and hearing dates.

**VII. Child Is to Be Returned To:**

**Name** - of person to whom child will be returned.

**Date of Birth** - of person to whom child will be returned.

**Place of Birth** - of person to whom child will be returned.

**Address** - of person to whom child will be returned.

**Telephone Number** - of person to whom child will be returned.

**Proposed Arrangements for Return** - Provide means by which you propose the child Return Travel of Child will return to the United States if this is ordered. For example, would you travel to pick up the child, or would someone go in your place? Is the child old enough to travel by him or herself? Is there someone in the foreign country who could return with the child? Would the child travel by car, train, airplane? Be specific.

**VIII. Other Remarks**

State here whether you are applying for return or access under the Convention. You should include here any additional information that you believe may be pertinent to the Hague application.

***Sign and date the application in black or blue ink.***

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**HAGUE APPLICATION CHECKLIST**

(Check with country officer for specific requirements.)

\_\_\_\_\_ **Application form - signed original, one for each child.** Note: Country may require use of special application form.

\_\_\_\_\_ **Marriage Certificate** (if applicable) May need to be certified copy.

\_\_\_\_\_ **Birth Certificate of child** May need to be certified copy.

\_\_\_\_\_ **Divorce Decree** (if applicable) May need to be certified copy.

\_\_\_\_\_ **Evidence of custodial right**

- Custody order, or
- Copy of state statute, or
- Affidavit of law regarding presumption of custody under state law, or
- Article 15 determination by state court.

\_\_\_ **Other pertinent court documents**

\_\_\_ **Photographs of taking parent and child**

\_\_\_ **Statement regarding circumstances of removal or retention**

\_\_\_ **Other documents specifically required by receiving country.** (e.g. - Article 28 Statement - power of attorney to foreign Central Authority)

\_\_\_ **Translations** (if applicable)

\_\_\_ **Application for legal assistance** (if applicable)

### **Appendix 3**

#### **Children's Passport Issuance Alert Program**

The Children's Passport Issuance Alert Program is a service for the parents and legal guardians of minor children. It enables the Department of State's Office of Children's Issues to notify a parent or court ordered legal guardian, when requested, before issuing a United States passport for his or her child. The parent, legal guardian, legal representatives, or the court of competent jurisdiction must submit a written request for entry of a child's name into the program to the Office of Children's Issues.

#### **Passport Issuance to Children under Age 18**

On July 2, 2001, the Department of State began implementation of a new law regarding the passport applications of minor U.S. citizens under the age of 14. A person now applying for a passport for a child under 14 must show that both parents consent to the issuance or that the applying parent has sole authority to obtain the passport. Passport applications made in the U.S. and at consular offices abroad will both be covered by the new law. Exceptions to this requirement may be made in special family circumstances or exigent circumstances necessitating the immediate travel of the child.

Once a passport is issued, its use is not tracked or controlled by the Department of State. There are no exit controls for American citizens leaving the United States. If you believe that your child may be abducted internationally, immediately contact the Office of Children's Issues *and* inform appropriate law enforcement officials.

Information regarding the issuance of a passport to a minor is available to either parent, regardless of custody rights, as long as the requesting parents' rights have not been terminated. The Department of State's Children's Passport Issuance Alert Program is a program to alert us when an application for a United States passport is made. This is not a program for tracking the use of a passport. This program can be used to inform a parent or a court when an application for a United States passport is executed on behalf of a child. The alert program generally remains in effect until each child turns 18. It is very important that parents keep us informed in writing of any changes to contact information and legal representation. Failure to notify CA/OCS/CI of a current address may result in a passport issuance for your child without your consent.

#### **Passports - General Information**

A passport is a travel document issued by competent authority showing the bearer's origin, identity, and nationality, which is valid for the entry of the bearer into a foreign country (8 United States C 1101(3)).

Under United States law, United States citizens must enter and depart the United States with valid United States passports (8 United States C 1185(b)). This requirement is waived, however, for travel from countries within the Western Hemisphere, with the exception of Cuba (22 CFR 53.2). However, each foreign country has its own entry requirements concerning citizenship, passports and visas. Information regarding those requirements may be obtained from the appropriate foreign embassy or consulate. The addresses and telephone numbers for the foreign embassy or consulate near you are found in our [Foreign Entry Requirements](#) booklet.

### **The Privacy Act and Passports**

Passport information is protected by the provisions of the Privacy Act (PL 93-579) passed by Congress in 1974. Information regarding a minor's passport is available to either parent. Information regarding adults may be available to law enforcement officials or pursuant to a court order issued by the court of competent jurisdiction in accordance with (22 CFR 51.27). If you want us to forward to the Foreign Embassy the information contained in your request to the Office of Children's Issues, please complete and sign the Foreign Embassy Contact Form. That form contains a waiver of your Privacy Act Rights and the rights of your minor children. For further information regarding the issuance or denial of United States passports to minors involved in custody disputes, or about international child abduction, please contact us at 202-736-7000 (this is a recorded message which provides access to country officers). [General passport information is available on our home page.](#) While we make every effort to be of assistance, the Office of Children's Issues can assume no legal responsibility for the services provided.

### **Dual Nationality for Children**

Many children, whether born in the United States or born abroad to a United States citizen parent, are citizens of both the United States and another country. This may occur through the child's birth abroad, through a parent who was born outside the United States, or a parent who has acquired a second nationality through naturalization in another country. There is no requirement that a United States citizen parent consent to the acquisition of another nationality.

The inability to obtain a United States passport through the Children's Passport Issuance Alert Program does not automatically prevent a dual national child from obtaining and traveling on a foreign passport. There is no requirement that foreign embassies adhere to United States regulations regarding issuance and denial of their passports to United States citizen minors who have dual nationality. If there is a possibility that the child has another nationality, you may contact the country's embassy or consulate directly to inquire about denial of that country's passport. The addresses and telephone numbers for the foreign embassy or consulate near you are found in our [Foreign Entry Requirements](#) booklet.

More information about the child-related services available to parents through the Bureau of Consular Affairs is available by calling the Office of Children's Issues at 202-736-7000 and speaking to an officer who deals with a specific country. You may prefer using the Fax-on Demand System by calling 202-647-3000 from the fax machine telephone. [There is additional information about the prevention of International Parental Child Abduction on our web page.](#)

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## **ENTRY INTO THE CHILDREN'S PASSPORT ISSUANCE ALERT PROGRAM**

**REQUEST FORM. Complete one form for EACH child, and submit the completed and SIGNED request to the Office of Children's Issues by mail or fax.**

- 1. Please provide information about each child in order to make the alert system effective. Please PRINT CLEARLY OR TYPE the information.**

Child's Full Name:

Date of Birth:

Place of Birth:

Sex:

Social Security Number:

US Passport Number(s):

Foreign Passport Number(s), List any other country involved:

- 2. Please provide the following information about yourself so that we can acknowledge your request, and alert you in the future.**

Your Name:

Relationship to the child shown above:

Mailing Address:

Telephone Numbers/Fax Numbers

- 3. I request that my child's name, as shown above, be entered into the Children's Passport Issuance Alert Program. Please notify me of any pending United States passport applications, and any United States passports still valid for travel.**

**Signed:** \_\_\_\_\_ **Dated:** \_\_\_\_\_

**(Customary legal signature of parent or guardian)**

*Please read the [Dual Nationality for Children information if your child has a claim to nationality from another country, in addition to United States citizenship](#). Please mail or fax the completed, signed form(s) to the Office of Children's Issues, SA-29, 4th Floor, SA-1, 2201 C Street, NW, Washington, DC 20037; FAX: 202-312-9743. You will receive written acknowledgement and information.*

[Return to International Parental Child Abduction Page](#)