

International Parental Child Abduction

ABDUCTION - CHECKLIST FOR 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 Child Abduction at the end of this booklet.

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.

Name of child: _____ (LAST, FIRST MIDDLE)

Child is currently located: _____ (NAME OF COUNTRY)

Date of child's birth: ____/____/____ (MONTH/DAY/YEAR)

Place of birth: _____

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

Child's U.S. passport number: _____

Your name: _____ (LAST, FIRST MIDDLE)

Address: _____

Telephone number: _____

Fax number: _____

Relationship to child: _____

Abductor's name: _____ (LAST, FIRST MIDDLE)

Last known U.S. address: _____

Telephone numbers (U.S. and foreign): _____

Fax number (U.S. and foreign): _____

Abductor's relationship to child: _____

Legal relationship between parents:

____ Married ____ Divorced ____ Never Married

____ Separated with custody order ____ Separated with no custody order

(Please submit marriage certificate and any divorce or custody orders.)

1. Emergency Action - What to do Right Away

____ Is your child missing? If yes, have you reported the abduction to the National Center for Missing and Exploited Children (NCMEC)?

Date you contacted NCMEC:

NCMEC case officer:

NCMEC case number:

Status of NCMEC efforts to locate your child? _____

If no, 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? ____ YES ____ NO

____ What are the probable airlines and flight numbers the abductor may use to depart the U.S.? _____

____ Have you filed a missing person report with your local police department?

Date police report filed: _____

Name of police officer: _____

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

Case file number: _____

____ 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: _____

Case file number: _____

____ Have you obtained a decree of sole custody or one that prohibits your child from traveling without your permission? In most states, you can obtain such a decree even after a child is abducted. A custody decree in your favor is necessary for any legal action (except in Hague cases). Please submit copies of all 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):

____ Have you requested a search of U.S. passport issuance files? Has your child's name been entered in the U.S. passport name check system?

Date U.S. passport lookout entered: _____

Passport case number: _____

____ If your child is a dual national, 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?

Country contacted: _____

Date foreign embassy contacted: _____

Name of official contacted: _____

____ If your child is only a U.S. citizen but the other parent has close ties to a particular country, 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?

Country contacted: _____

Date foreign embassy contacted: _____

Name of official contacted: _____

____ Have you asked the Department of State's Office of Children's Issues (CI) to initiate a welfare and whereabouts (W/W) search for your child overseas?

Country in which W/W requested: _____

Date written request submitted to CI: _____

____ Do you have a valid passport in case you need to travel overseas?

Your passport number: _____

Is this a U.S. passport: ____ YES ____ NO

If not U.S., 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.)

2. The Search

____ Have you obtained certified copies of your custody decree from the court that issued it? You may need to furnish proof of your custody rights at various

stages in your search and recovery effort. (Once you have received them, please submit copies to CI.)

____ Have you obtained a copy of the National Center for Missing and Exploited Children's publication, *Family Abduction: How to Prevent an Abduction and What to Do If Your Child Is Abducted?*

____ 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:

____ Have local law enforcement authorities asked the Federal Parent Locator Service (FPLS) to search for the abducting parent?

If yes, date FPLS search conducted: _____

Who conducted search (name, organization, address, telephone and fax numbers): _____

Results of search:

____ 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?

____ Have you contacted the registrar of official records to see if they can block the issuance of a birth certificate for your child?

____ Have you prepared a poster of your child?

If yes, date poster prepared: _____

Poster prepared by whom: _____

____ Have you asked local law enforcement authorities to ask the U.S. Postal Inspection Service to put a "mail cover" on addresses in the U.S. to which the abductor might write?

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? ____ YES ____ NO

If yes, please provide CI with details of who you contacted, and the assistance that were, or were, not able to provide:

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:

____ Have you read Part VI of this booklet, "Other Solutions"?

4. Legal Proceedings: Possible Criminal Remedies

____ Is parental child abduction a crime in the state where your child resides or was abducted? ____ YES ____ NO

____ Has a state warrant been issued for the arrest of the abductor?

If yes, date issued: _____

Exact name of criminal

offense: _____

(Please submit copy of warrant)

____ Has a Federal warrant been issued for the arrest of the abductor?

If yes, date issued: _____

Exact name of criminal offense (i.e., Unlawful Flight to Avoid Prosecution (UFAP) or International Parental Kidnapping Crime Act (IPKCA)):

(Please submit copy of warrant)

____ Have the child and the abductor's names been entered in the NCIC computer?

If yes, date entered in NCIC: _____

NCIC case numbers: _____

Name and contact information for who entered them in NCIC:

____ Is it possible or useful to take legal action against agents or accomplices to the abduction?

Have accomplices been charged: ____ YES ____ NO

If yes, please provide the names of accomplices and the exact charge:

____ Have law enforcement officials contacted INTERPOL to have the abductor and child entered into their systems?

If yes, date contacted INTERPOL: _____

INTERPOL case number: _____

____ If the abductor is a U.S. citizen, have you considered asking U.S. law enforcement officials to have his or her U.S. passport revoked?

If this action was taken, date passport was revoked: _____

____ Would extradition of the abductor, if possible, be effective in your case?

Has the U.S. Department of Justice requested extradition of the abductor?

____ YES ____ NO

If yes, from what country was extradition requested: _____

Status of extradition request: _____

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 and the welfare and protection of U.S. citizen children taken overseas to be a very important, serious matter. 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 (CI) is designated to provide assistance to the victims of international parental child abduction.

Since the late 1970's, we have been contacted in the cases of approximately 11,000 American children who were either abducted from the United States or prevented from returning to the United States by one of their parents.

You, as the deprived parent, must direct the search and recovery operation yourself. Because it can be a bewildering experience, we have prepared a

checklist for you and put it at the front of this booklet. When you report an abduction case to CI you should include a copy of this completed checklist. In order for us to provide the best service, we need to be informed of any developments in the case. 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 a child or children have been abducted across international borders. Your case is unique, and we hope that you find the information here useful.

If you have any further questions, please call us at 202-736-7000. You may also fax us at 202-647-2835, or write to us at:

Office of Children's Issues

CA/OCS/CI, Room 4811

Department of State

Washington, D.C. 20520-4818.

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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 broken or troubled; the other parent has close ties to another country; and the other country has traditions or laws that may be prejudicial to a parent of your gender or to aliens in general.

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. While these cases are not abductions, but wrongful retentions, they are just as troubling to a child. 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 traumatic and may feel a pull to shift loyalties back to the original culture. A person's personality may change when he or she returns to the place where he or she grew up.

In some traditional 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 to allow your child to visit, and consider carefully the effect that a return to his roots might have on your husband. The Office of Children's Issues has several country flyers that provide some general information. For detailed advice in your specific case, you may wish to contact an attorney in that country. We can provide you with lists of attorneys in countries around the world.

Precautions That Any Vulnerable 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 on the other parent, including these numbers: passport, social security, bank account, driver's license, and auto license. In addition, keep a written description of your child, including hair and eye color, height, weight,

and any special physical characteristics. Take color photographs of your child every six months. If your child should be abducted, this information could be vital in locating your child.

The National Center for Missing and Exploited Children (NCMEC at telephone 1-800-843-5678), in addition, suggests that you teach your child to use the telephone; practice making collect calls; and instruct him or her to call home immediately if anything unusual happens. If you feel your child is vulnerable to abduction, get professional counseling. Do not merely tell a friend or relative about your fears.

The Importance of a Custody Decree

Under the laws of many American states and many foreign countries, **if there is no decree of custody prior to an abduction, both parents are considered to have equal legal custody of their child.** If you are contemplating divorce or separation, or are divorced or separated, or even if you were never legally married to the other parent, obtain a decree of sole custody or a decree that prohibits the travel of your child without your permission or that of the court as soon as possible. If you have or would prefer to have a joint custody decree, 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*, has 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 International Child Abduction, the custody decree should state that the parties agree that the terms of the Hague Convention apply should an abduction or wrongful retention occur. The American Bar Association (ABA) also suggests having the court require the alien 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.

How a Custody Decree Can Help

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

From the Department of State, you may learn whether 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 passport name check system. 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 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.**

To inquire about a U.S. passport or to have your child's name entered into the name check system, mail or fax your request to:

Office of Passport Policy and Advisory Services

Passport Services, Suite 260

1111 19th Street, N.W.

Washington, D.C. 20522-1705

Tel. (202) 955-0377

Fax (202) 955-0230

With your request, include your child's full name or names, date of birth, place of birth, and the address and telephone number(s) where you may be contacted. If there is a court order relating to the custody or travel of the child, include a complete copy.

Foreign Passports - the Problem of Dual Nationality

Many U.S. citizen children who fall victim to international parental abduction possess dual nationality. While the Department of State will make every effort to avoid issuing a U.S. 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 addressing custody or the overseas travel of your child that you have. In your letter, inform them that you are sending a copy of this request to the U.S. Department of State. If your child is *only* a U.S. citizen, you can request that no visa for that country be issued in his or her U.S. passport. No international law requires compliance with such requests, but some countries may comply voluntarily.

PART II WHAT THE STATE DEPARTMENT CAN AND CANNOT DO WHEN A CHILD IS ABDUCTED ABROAD

When a U.S. citizen child is abducted abroad, the State Department's Office of Children's Issues (CI) works with U.S. 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 private 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:

- **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 the child;
- **In other cases**, 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, family laws, and a list of attorneys there willing to accept American clients;

- **In all cases**, provide a point of contact for the left-behind parent at a difficult time;
- Monitor 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 the need for use of federal warrants against an abducting parent, passport revocation, and extradition from a foreign country to effect return of a child to the U.S.;
- Alert foreign authorities to any evidence of child abuse or neglect.

WHAT THE STATE DEPARTMENT CANNOT DO:

- Intervene in private legal matters between the parents;
- Enforce an American custody agreement overseas (U.S. custody decrees are not automatically enforceable outside of U.S. 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 reabduction of a child to the United States;
- Pay legal or other expenses;
- Act as a lawyer or represent parents in court;
- Translate documents

PART III

HOW TO SEARCH FOR A CHILD ABDUCTED ABROAD

Where to Report Your Missing Child

1. If your child 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 Missing Children's Act of 1982. The abductor does not have to be charged with a crime when you file a missing person report. In addition, through INTERPOL, the international criminal 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. You may be able to achieve all of the above even if you do not have a custody decree.

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 you believe the child may have been taken. At the same time that you report your child missing, you should contact a lawyer to obtain a custody decree if you do not already have one. In many states, a parent can obtain a temporary custody decree if the other parent has taken their child.

3. Request information about a possible U.S. passport and have your child's name entered into the U.S. passport name check system. A U.S. passport for a child under 18 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 U.S. passport agencies and almost all U.S. embassies and consulates are on-line with the name check system.

4. The Department of State, when requested to do so, may conduct welfare and whereabouts visits for American citizens abroad. The Office of Children's Issues communicates such requests to the U.S. embassy or consulate responsible for the area to which you believe your child has been abducted. Your signed letter containing the following information can be faxed to us at 202-647-2835:

- child's full name (and any aliases),
- child's date and place of birth,
- child's passport number, date, and place of issuance,
- copies of any court orders or police reports;

and on the abductor:

- full name (and any aliases),
- date and place of birth,
- passport number, date, and place of issuance,
- occupation,
- probable date of departure,
- flight information,
- details of ties to a foreign country, such as the names, addresses, and

telephone numbers of friends, relatives, place of employment, or business connections there.

Note: Please enclose a **completed** copy of the checklist, located at the front of this booklet, **with** your letter.

A consular officer overseas, working with this information, will try to confirm the location of your child. The consular officer may also request information from local officials on your child's entry or residence in the country.

Unfortunately, not every country maintains such records in a retrievable form, and some countries may 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 Search and Recovery - a Basic Guide

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 out the search on your own. As you search, you should, however, keep these institutions informed of your actions and progress.

This booklet attempts to cover the international aspects of your search and recovery effort, but for other information, you should have a more basic guide.

The National Center for Missing and Exploited Children publishes *Family Abduction: How to Prevent an Abduction and What to Do If Your Child Is Abducted*. For a copy, call 1-800-843-5678 (or 703-235-3900), or write the NCMEC at: 2101 Wilson Boulevard, Suite 550; Arlington, VA 22201. This publication guides you through the U.S. legal system, helps you organize your search, and supplies a list of local support groups. We have relied heavily on the NCMEC guide for the following list of suggestions.

Further Steps to Take in Your Search

- 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.
- Under the U.S. Department of Health and Human Services, the 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. Using the abductor's social security number, the FPLS searches the records maintained by such federal agencies as the Internal Revenue Service, Veterans Administration, Social Security Administration, Department of Defense, and the National Personnel Records Center and Department of Labor records. An abductor who has had a connection with any of the above might, even from abroad, renew a connection with one of them. 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.

- 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 contact the principal of the school. You will need to give the school a certified copy of your custody decree.
- 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 local prosecutor to contact the U.S. 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 to see what can be done. In the same manner, you can try to obtain copies of telephone company bills of the abductor's friends or relatives who may have received collect calls from the abductor.

PART IV

ONE POSSIBLE SOLUTION: THE HAGUE CONVENTION

The most difficult and frustrating element for most parents whose child has been abducted abroad is that U.S. laws and court orders are not usually recognized in the foreign country and therefore are not directly enforceable abroad. Each sovereign country has jurisdiction within its own territory and over persons present within its borders, and no country can force another to decide cases or enforce laws within its confines in a particular way.

The increase in international marriages since World War II increased international child custody cases to the point where 23 nations, meeting at the Hague Conference on Private International Law in 1976, agreed to seek 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. The Convention came into force for the United States on July 1, 1988, and applies to abductions or wrongful retentions between party countries that occurred on or after that date. In the United States, federal legislation, the International Child Abduction Remedies Act (P.L. 100-300), was enacted to implement the Convention in this country.

The United States actively encourages other countries to become party to the Hague Abduction Convention. As of January 1, 1997, the Convention is also in effect between the United States and:

Argentina

Australia

Austria

Bahamas

Belize

Bosnia-Herzegovina

Burkina Faso

Canada

Chile

Colombia

Croatia

Cyprus

Czech Republic

Denmark
Ecuador
Finland
Former Yugoslav Republic of Macedonia
France
Germany
Greece
Honduras
Hungary
Iceland
Ireland
Israel
Italy
Luxembourg
Mauritius
Mexico
Monaco
Netherlands
New Zealand
Norway
Panama
Poland
Portugal
Romania
St. Kitts & Nevis
Slovenia
Spain
Sweden
Switzerland
United Kingdom
Venezuela
Zimbabwe

Other countries are working toward ratification. Contact the Office of Children's Issues to learn if additional countries have joined.

If your child has been abducted to a country that is *not* party to the Convention, see *Legal Solutions in Countries Not Party to the Hague Convention*.

What Is Covered by the Convention

The Hague Convention is a private civil legal mechanism available to parents seeking the return of, or access to, their child. As a private civil law mechanism, the parents, not the governments, are parties to the legal action. The countries that are parties to the Convention have agreed that, subject to certain limited exceptions and conditions outlined below, a child who is habitually resident in one country that is a party to the Convention and who is removed to or retained in another country that is party to the Convention in breach of the left-behind parent's custody rights shall be promptly returned to the country of habitual residence. The Convention also provides a means for helping parents to 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. After one year, the court may still be obligated to order the child returned unless the person resisting return demonstrates that the child is settled in the new environment. A court may refuse to order a child returned if there is 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. A court may also decline to return the child 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. Finally, the return of the child may be refused if the return would violate the fundamental principles of human rights and freedoms of the country where the child is being held. These exceptions have been interpreted narrowly by courts in the United States and by some other countries party to the Convention.

How to Invoke the Hague Convention

You do *not* need to have a custody decree to invoke the Convention. However, to apply for the return of your child, you must have 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 of custody" may arise from operation of law as well as an order of custody. If there was no court order in effect at the date of the abduction, custodial rights are provided in the statutes of most states. You may apply for the return of your child or the ability to exercise your visitation rights. You can also ask for assistance in locating your child and for information on your child's welfare.

Each country that is a party to the Convention has designated a Central Authority to carry out specialized duties under the Convention. You may submit an application to the U.S. Central Authority, directly to the Central Authority of the country where the child is believed to be held, or you may file directly with the foreign court. The Central Authority for the United States is the Department of State's Office of Children's Issues (CI).

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. If no custody decree exists for the left-behind parent, submit the application anyway. Detailed instructions to invoke the Hague Convention are found in Part VIII. Copies of the application form are at the end of this booklet.

The Role of the U.S. Central Authority

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 Department of State cannot act as an agent or attorney in your case.

-- We can, however, help in many other ways. We can give you information on the operating procedures of the Central Authority in the country where your child is believed to be located.

-- We can help you obtain information concerning the wrongfulness of the abduction under the laws of the state in which the child resided prior to the abduction.

-- At your request, we can ask for a status report six weeks after court action commences in the other country.

The responsibilities of the Central Authority for the Hague Abduction Convention are set forth in Articles 7-12 and 21 of the Convention. 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. Indeed, under 22 C.F.R. 94.4, the U.S. Central Authority is prohibited from acting as an agent or attorney in legal proceedings arising under the Convention. The U.S. Central Authority was not intended to be and has never been a party to such proceedings.

The U.S. Central Authority's role in proceedings in the U.S. 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 of responding to your application.

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 an expeditious resolution of the matter. While the specific operation and procedures under the Convention differ in each country party to the treaty, we stand ready to monitor all cases in which assistance is sought and help applicants understand the process.

Good News Plus a Note of Caution for Applicants Under the Hague Convention

The Hague Convention on International Child Abduction is a success story. It 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 increasing success is encouraging more countries to become party to the Convention. Thirty-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 filed, he or she may be more likely to return the child voluntarily. The majority of Hague cases still, however, require the applying parent to retain an attorney in the country where the child is located to petition that judiciary for return.

A note of caution: Criminal charges may have a distorting effect on the operation of the Hague Convention and may even prove counterproductive. 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. As a rule, therefore, it is advisable to await the outcome of return proceedings under the Convention before deciding whether to initiate criminal proceedings against the other parent. Some courts have denied return of children solely because the taking parent would be arrested if they accompanied the child home. Many of these courts, U.S. and foreign, have held that the arrest of the parent would expose the child to psychological harm (Article 13(b)).

Children Abducted to the United States

The Hague Convention also applies to children abducted to 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 by the NCMEC.

PART V

LEGAL SOLUTIONS IN COUNTRIES *NOT* PARTY TO THE HAGUE CONVENTION

If your child has been abducted to a country that is *not* a party to the Hague Convention, you can seek 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 your 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. We will discuss each system in turn.

Application for assistance under the Hague Convention should only be submitted when the Convention applies.

Using the Civil Justice System

How To Proceed

In addition to obtaining a custody decree in the United States, you must use the civil justice system in the country to which your child has been abducted. The Office of Children's Issues (CI) can provide information on the customs and the legal practices in the country where your child is. We can also give you general information on how to serve process abroad or obtain evidence from abroad, and on how to have documents authenticated for use in a foreign country. You may write or telephone 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. U.S. 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 who speak English, who may be experienced in parental child abduction or family law, and who have expressed a willingness to represent Americans abroad. U.S. embassies and consulates abroad prepare these lists. **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 U.S. embassies and consulates cannot take legal action on behalf of U.S. 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 will coordinate with your attorney to ensure that your rights as provided for by the laws of that foreign country are respected.

Once you retain a foreign attorney, send him or her a certified copy of your custody decree and/or state and federal warrants regarding the abducting parent which have been authenticated for use abroad. (See our authentication flyer.) Also send copies of your state's laws on custody and parental kidnapping and 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.

What Are Your Chances of Enforcing Your U.S. Custody Order Abroad?

Just as a foreign court order has no direct effect in the U.S., 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. 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 U.S. 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 U.S. 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 U.S. legal system. CI can give you some information on these traditions.

Using the Criminal Justice System: What Are the Risks?

Law enforcement authorities in the United States and abroad may be valuable sources of information and assistance. However, 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. As noted, 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 effect the pursuit of criminal actions once charges are filed. Check with the police and prosecutor to determine if your wishes would be considered in the criminal action.

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 overriding 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 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 ultimate prosecution and punishment. Although some individuals might be intimidated enough to return the child (with or without agreement by the prosecutors 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.

The Steps To Take in Case You Decide to Use the Criminal Justice System

Once have decided to pursue criminal remedies, you or your attorney may contact your local prosecutor or law enforcement authorities to request that the abducting parent be criminally prosecuted and that an arrest warrant be issued, if provided for by your state law. In some states, parental child abduction or custodial interference is a misdemeanor; however, in most states it is a felony. If you are able to obtain a state warrant, the local prosecutor can contact the F.B.I. or your the U.S. 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 after the date of enactment could violate the statute, even though the actual removal of the child occurred before the date of enactment. The F.B.I. is responsible for investigating the IPKCA. Once a warrant has been issued for the abductor's arrest, ask local law enforcement authorities or the F.B.I. to enter the abductor's name in the "wanted persons" section of the National Crime Information Center (NCIC) computer and the INTERPOL system.

Prosecution of Agents or Accomplices of the Abductor

Find out if your state 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 U.S. Citizen

If the abducting parent is a U.S. citizen and the subject of a federal arrest warrant, the F.B.I. or U.S. Attorney's office can ask the Department of State, Passport Services, to revoke the person's U.S. passport. This may or may not be a burden to an abducting parent who, as a dual national, may also carry a foreign passport. However, an abducting parent who is only a U.S. citizen becomes an undocumented alien in a foreign country if his or her U.S.

passport is revoked. Some countries may deport undocumented aliens or at least make it difficult for them to remain in the country.

For a U.S. passport to be revoked, the F.B.I. or U.S. 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 202-955-0377). 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. Also, 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-U.S. Citizen

Even if the abductor is not a U.S. 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 U.S. 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.

The Possibility of Extradition

The U.S. Department of Justice 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, which would presumably include your testimony. 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 in other countries have hidden the child or children with a friend or relative in the foreign country.

Another reason that extradition may not be useful is that the offenses of parental child abduction or custodial interference are covered by only a few of the extradition treaties now in force between the United States and more than 100 foreign countries. Most of these treaties contain a list of covered offenses and were negotiated before international parental child abduction became a widely recognized phenomenon. With respect to these older treaties, there was thus no intent on the part of the negotiators to cover such conduct, and it cannot therefore be validly argued that parental child abduction is a covered extraditable offense, even if the language used in the list of offenses covered by a given treaty appears somewhat broad (e.g., "abduction" or "kidnapping" or "abduction/kidnapping of minors").

In negotiating more modern extradition treaties, the United States has tried to substitute a "dual criminality" approach for a rigid list of extraditable offenses, or at least has tried to combine the two. Under an extradition treaty with a dual criminality provision, an offense is covered if it is a felony in both countries. Accordingly, if the *underlying conduct* involved in parental child abduction or custodial interference is a felony in both the U.S. and foreign jurisdictions involved, then that conduct is an extraditable offense under an extradition treaty based on dual criminality.

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, nearly all civil law countries (in contrast with common law countries like the United States, United Kingdom, Canada, Australia) will not 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 at best (and often simply unwilling) to extradite anyone

(their own citizens, U.S. 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 probably must 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 the conduct entailed in 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 otherwise 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 (not the United States), nationals of the country can be prosecuted for acts committed abroad under the "nationality" basis for criminal jurisdiction, if the same conduct would constitute a criminal offense under local law. U.S. law enforcement authorities can request such a prosecution and forward the evidence that would have been used in a U.S. prosecution. U.S. witnesses may, of course, have to appear and testify in the foreign proceeding. Like the courses of action discussed above, this approach may be counterproductive and will not necessarily result in the return of the child.

PART VI

OTHER SOLUTIONS: SETTLING OUT OF COURT

Promoting Communication Between Parents and Children

Legal procedures can be long and expensive. You may have greater success working in the area of negotiation with the abducting parent. In some cases, friends or relatives of the abductor may be able to help you establish amicable relations with the abductor and may be willing to help mediate a compromise. 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. Sometimes compromise and some kind of reconciliation are the only solution.

Obtaining Information on Your Child's Welfare

If your child has been found you can request that a U.S. consular officer visit the child. If the consul succeeds in seeing your child, he or she will send you a report on your child's health, living conditions, schooling, and other information. Sometimes consular officers are also able to send you letters or photos from your child. If the abducting parent will not permit the consular officer to see your child, the U.S. embassy or consulate will request the assistance of local authorities, either to arrange for such a visit or to have the appropriate local official make a visit and provide a report on your child's health and welfare. Contact the Office of Children's Issues (CI) 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 U.S. embassy or consulate will request that local authorities become involved to ensure the child is protected. This may mean removal of your child from the home for placement in local foster care.

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 possible illegal measures to return your child to the United States. 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.

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 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 U.S. court order (e.g., failure of the foreign parent to honor the terms of a joint custody order).

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.

PART VII

REFERENCE

Directory - Where to Go for Assistance

Consular Assistance:

Office of Children's Issues (CI)

Overseas Citizens Services

Department of State

2201 C Street, N.W., Room 4817

Washington, D.C. 20520-4818

202-736-7000

fax 202-647-2835

fax-on-demand 202-647-3000

Internet address: <http://travel.state.gov>

Effective May 1, 2000

U.S. Department of State

The Office of Children's Issues

2401 E Street, N.W., Room H127

Washington, D.C. 20037

Phone: (202) 736-7000

Fax: (202) 663-2674

U.S. Passport Restrictions:

Office of Passport Policy and Advisory Services

Passport Services, Suite 260

Department of State

1111 19th Street, N.W.

Washington, D.C. 20522-1705

202-955-0377

fax 202-955-0230

For General Technical Assistance:

National Center for Missing and Exploited Children (NCMEC)

2101 Wilson Boulevard, Suite 500

Arlington, VA 22201

703-522-9320

fax 703-235-4067

Internet address: <http://www.missingkids.org>

24-hour hot line for emergencies 1-800-THE-LOST

TTD 1-800-826-7653

For ABA Publications:

American Bar Association (ABA)

750 North Lake Shore Drive

Chicago, IL 60611

312-988-5555

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

202-401-9267

Office of Victims of Crime (OVC):

U.S. Department of Justice

633 Indiana Ave., N.W.

Washington, D.C. 20531

1-800-627-6872

Internet address: <http://ncjrs.aspensys.org/ovchome.htm>

Uniform State and Federal Laws on Custody, Parental Child Abduction, and Missing Children

The *Uniform Child Custody Jurisdiction Act* of 1968 (UCCJA) is now the law, with some variations, in every state and the District of Columbia. The Act is intended to eliminate nationwide the legal incentives for interstate forum-shopping and child-snatching by parents, and to encourage communication, cooperation and assistance between state courts in the resolution of interstate child custody conflicts.

Section 23 of the UCCJA expressly provides that the general policies of the Act extend to the international arena. It further provides that custody decrees made in other countries by appropriate judicial or administrative authorities will be recognized and enforced in this country provided reasonable notice and opportunity to be heard were given to the affected persons.

The *Parental Kidnapping Prevention Act* of 1980 (PKPA) (P.L. 96-611; 28 U.S.C. 1738A, 1738A Note; 18 U.S.C. 1073 Note; 42 U.S.C. 653-55, 663) requires the appropriate authorities of every state to enforce and not modify custody and visitation orders made by courts exercising jurisdiction consistent with standards set by the Act; authorizes the Federal Parental Locator Service to act on requests from authorized persons to locate the absconding parent and children who have been abducted or wrongfully retained; and expressly declares the intent of Congress that the Fugitive Felon Act applies to state felony cases involving parental kidnapping and interstate or international flight to avoid prosecutions. The state prosecutor may formally present a request to the local U.S. Attorney for a Federal Unlawful Flight to Avoid Prosecution (UFAP) warrant.

The ***Missing Children's Act of 1982*** (P.L. 97-292; 28 U.S.C. 534) provides for the entry of the names of missing children in the National Crime Information Center (NCIC). Since the enactment of P.L. 97-292, parents can ask their local police to enter their children's names into the NCIC computer and they can verify from the police or, if necessary, from the FBI that the names of their children are in the system.

The ***Missing Children's Assistance Act of 1984*** (P.L. 98-473; 42 U.S.C. 5771 et. seq.) authorized the establishment of a national clearinghouse (now the National Center for Missing and Exploited Children) to:

- Provide technical assistance to local and state governments, public and private nonprofit agencies, and individuals in locating and recovering missing children;
- Coordinate public and private efforts to locate, recover, or reunite missing children with their legal custodians;
- Operate a national toll-free hotline through which individuals can report information on the location of missing children or request information on procedures for reuniting children with their legal custodians;
- Disseminate information on innovative and model missing children's programs, services, and legislation;
- Provide technical assistance to law enforcement agencies, state and local governments, elements of the criminal justice system, public and private nonprofit agencies, and individuals in the prevention, investigation, prosecution, and treatment of missing and exploited children's cases.

National Child Search Assistance Act (P.L. 101-647; 42 U.S.C. 5779, 5780) passed as part of the Crime Control Act of 1990, requires federal, state, and local law enforcement to enter reports of a missing child less than 18 and unidentified persons in the National Crime Information Center (NCIC). It provides for update of records with additional information within 60 days of the original entry, and it provides for close liaison between law enforcement and the National Center for Missing and Exploited Children for the exchange of information and technical assistance in missing children cases.

International Parental Kidnapping Crime Act of 1993

(P.L.103-173; 18 U.S.C. 1201)

Reading List

This list is intended to give some idea of the relevant literature, but you should not regard it 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)

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," 1992 *Jurid. Rev.* 177

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)

Greif, *When Parents Kidnap, The Families Behind the Headlines*

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)

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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)

U.S. 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.

PART VIII

INSTRUCTIONS FOR COMPLETING HAGUE CONVENTION APPLICATION

To invoke the Hague Convention, submit two completed forms (one original and one copy), plus two copies of your supporting documents. The application form may be photocopied. Type or print all information. 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 the Office of Children's Issues (CI) at 202-736-7000.

It is advisable to have some of the supporting documents translated into the official language of the requested country. Translations speed up the overall

process. Foreign attorneys and judges act more favorably with such documents. Ask CI for more information about supporting documents. You may fax your Hague application to CI, fax number 202-647-2835. Send originals and supporting documents by mail, express mail, or courier service to: CA/OCS/CI, Room 4811, Department of State, Washington, D.C. 20520-4818.

Be sure to sign and date the application.

Checklist and Instructions for Completing the Hague Application

I. Identity of Child and Parents

Information Block Details Needed

- 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 **before** the abduction or removal.
- U.S. Social Security No. - If known. A nine-digit number: 000-00-0000.
- Passport/Identity Card - Issuing country and passport or I.D. number.
- Nationality - Include all nationalities of the child.
- Height - Feet and inches.
- Weight (and Sex) - Pounds. Please also include sex of child in this block.
- Color of Hair - Child's hair color.
- Color of Eyes - Include color photo, if available.

Father

- Name - Full name of father, including alternative spellings of family names.
- Date of Birth - of father.
- Place of Birth - of father.
- Nationality - of father. Include all nationalities.
- Occupation - of father.
- Passport/Identity Card - of father. Issuing country and

number.

Current Address and Tel. - of father. Include zipcode as well as
telephone and fax numbers for work and
home.

U.S. Social Security No. - of father.

Country of Habitual - of the father before the abduction or
Residence retention.

Mother

Name - Full name of mother of child, including
maiden name.

Date of Birth - of mother.

Place of Birth - of mother.

Nationality - of mother. Include all nationalities.

Passport/Identity Card - of mother. Issuing country and number.

Current Address and Tel. - of mother. Include zipcode as well as
telephone and fax numbers for work and
home.

Occupation - of mother.

U.S. Social Security No. - of mother.

Country of Habitual - of the mother before the abduction or
Residence retention.

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

II. Requesting Individual or Institution

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.

Nationality - of the requester.

Occupation - of the requester (if a person).

Current Address and Tel. - of requester. Include home, work and

fax number.

Passport/Identity Card - of requester (if a person).

Country of Habitual Residence - of requester (if a person).

Relationship to Child - of requester.

Name, Address and Tel. - Include zipcode as well as telephone

Of Legal Adviser, if Any and fax numbers.

II. 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 find the child.

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

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

Date of Birth - of the abductor.

Place of Birth - of the abductor.

Nationality - of the abductor. Include all nationalities.

Occupation, Name and - of the abductor since the removal.

Address of Employer Provide any employment information that may be helpful in locating the abductor, such as names, addresses, And telephone numbers of relatives and/or friends of the abducting parent who could help locate child(ren).

Passport/Identity Card - of the abductor. Country and number.

U.S. Social Security No. - of the abductor.

Current Address or Last - of the abductor in the country where the Known Address child was taken.

Height - of the abductor.

Weight - of the abductor.

Color of Hair - of the abductor.

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

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

Provide the date, to the best of your knowledge, that the child left the U.S. 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 when the removal or retention occurred?

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 under the Hague Convention 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 when the child is 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" under 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 or case law that establishes your right of custody at the time of the child's removal. This provision is sometimes 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.

Do not wait to get a custody order before filing a Hague application.

VI. Civil Proceeding in Progress, If Any

Indicate any civil action (in the U.S. or abroad) that may be pending (i.e., 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(s) - of person to whom child will be returned.
Proposed Arrangements - Provide exact means by which for
Return Travel of Child you propose that the child return to the
 U.S., if this is ordered. Would you
 travel to pick up the child? Is the child
 old enough to travel by him or herself?
 Do you have someone who could return with
 the child? 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.

IX. Documents Attached

Check boxes of items enclosed.

Sign and date the application.