

**Response of the U.S. Central Authority  
Questionnaire on the Enforcement of Return Orders Under the 1980 Hague  
Convention and of Access/Contact orders  
October 2005**

***I. LEGAL BASES FOR THE ENFORCEMENT OF HAGUE RETURN ORDERS***

*1. Please give details of any specific legislative provisions which exist in your State concerning the enforcement of return orders under the 1980 Hague Convention. Please specify the title of the instrument, its legal nature (law, decree, administrative regulation or rules of court etc.) and short description of content.*

As a general matter, orders for return are immediately enforceable within the jurisdiction in which they are made, unless otherwise specified in the order.

U.S. implementing legislation for the Hague Abduction Convention, 4 U.S.C 11603 (g), requires any State or Federal court in the United States to recognize as enforceable a Hague return order issued by any other State or Federal court.

The language of this provision is below.

Full faith and credit shall be accorded by the courts of the States and the courts of the United States to the judgment of any other such court ordering or denying the return of a child, pursuant to the Convention, in an action brought under this chapter.

In addition, in 1997, the National Conference of Commissioners on Uniform State Laws developed the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), a model law for State courts. The UCCJEA included significant new enforcement provisions that had not been included in an earlier model law on child custody jurisdiction. The UCCJEA includes provisions directing State courts to enforce Hague return orders made by the courts of other States. The UCCJEA has now been adopted (with some modifications) by 42 States, the District of Columbia, and the U.S. Virgin Islands, and is pending in 5 other States.

The relevant UCCJEA provisions and a comment of the Commissioners are below.

**SECTION 302. ENFORCEMENT UNDER HAGUE CONVENTION.** Under this [article] a court of this State may enforce an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child-custody determination.

Comment

This section applies the enforcement remedies provided by this article to orders requiring the return of a child issued under the authority of the International Child Abduction Remedies Act (ICARA), 42 U.S.C. § 11601 et seq., implementing the Hague Convention on the Civil Aspects of International Child Abduction. Specific mention of ICARA proceedings is necessary because they often occur prior to any formal custody

determination. However, the need for a speedy enforcement remedy for an order to return the child is just as necessary.

### **SECTION 303. DUTY TO ENFORCE.**

(a) A court of this State shall recognize and enforce a child-custody determination of a court of another State if the latter court exercised jurisdiction in substantial conformity with this [Act] or the determination was made under factual circumstances meeting the jurisdictional standards of this [Act] and the determination has not been modified in accordance with this [Act].

(b) A court of this State may utilize any remedy available under other law of this State to enforce a child-custody determination made by a court of another State. The remedies provided in this [article] are cumulative and do not affect the availability of other remedies to enforce a child-custody determination.

*2. Please give details of any general legislative provisions which exist in your State concerning the enforcement of court orders in the area of family law and govern the enforcement of return orders under the 1980 Hague Convention (either in the absence of specific provisions under question I.1 or in addition to any such specific provisions). Please specify the title of the instrument, its legal nature (law, decree, administrative regulation or rules of court etc.) and the content of the relevant provisions.*

Orders for return are immediately enforceable within the jurisdiction in which they are made, unless otherwise specified in the order, as civil orders. Provisions related to enforcement of return orders by other State or Federal courts are discussed above.

As a general matter enforcement of civil orders is determined by applicable court rules of procedure. Courts may enforce orders through their contempt powers, which include fine or imprisonment. If the person found in contempt has the ability to comply with the court order but refuses to do so, the court may imprison the person until the person complies with the court order. Both Federal and state law enforcement authorities may assist with enforcement if necessary.

*3. Please give details of any judicial decisions, practice directives or guides concerning the enforcement of court orders in the area of family law that govern the enforcement of return orders under the 1980 Hague Convention (either in the absence of specific provisions under question I.1 or in addition to any such specific provisions).*

While there are reported cases ordering return under the Convention, we are unaware of any reported judicial decisions addressing enforcement measures in the U.S.

For guides concerning enforcement of orders against abducted children, see the response on training below at VI.1.

*4. Do you have any other comments relating to the law governing enforcement of Hague return orders, including any comments on the effectiveness of these rules?*

No.

## II. ENFORCEABILITY AND LEGAL REMEDIES

1. a) *Is a Hague return order subject to appeal or other forms of challenge? Please give details (number and character of legal remedies, possible time-limit for them, possible time-limit for appellate court or court of appeals to decide etc.) b) Please specify whether any such challenge may only be made once, and which court or body has jurisdiction to hear the appeal.*

a) Yes. A Hague return order is subject to appeal. In the United States, both Federal courts and courts of the individual States have original jurisdiction to hear Hague cases, as specified in our implementing legislation at 42 USC 11603.

Many State courts have two levels of appeal from a trial court determination: an intermediate court of appeal and a final level of appeal. In the Federal court system, appeals from district court (court of first instance) decisions are made to Federal circuit courts of appeal. An appeal of a decision made by the Federal circuit court or the final State court of appeal may be made to the U.S. Supreme Court.

The U.S. Central Authority will contact courts handling Hague Convention matters after six weeks to inquire as to the status of the matter. In general, delay in trial courts is not a widespread problem. When cases are appealed, normal appellate procedures build in delays to allow for the preparation of a record of the proceedings below, and to give time for filing of appellate briefs and calendaring the case for argument. Recognizing that the Convention contemplates an expeditious decision, some courts will waive time limits given in which to file appellate briefs. Others have used expedited procedures to determine the appeal. Stays of return orders pending appeal may not be mandatory, in which case children may be returned to their habitual residence pending determination of the appeal.

b) Only one appeal of a return order is permitted at each court level.

2. a) *Please give details of any authorisation or other decision required for the actual enforcement of the Hague return order (e.g. registration for enforcement, declaration of enforceability, order of a specific enforcement measure or other). b) Which is the competent organ for these decisions?*

a) A final Hague return order is directly enforceable according to its terms, unless stayed pending appeal. No extra enforcement authorization or decision is necessary.

b) Not applicable.

3. *Does the Hague return order have to be final and no longer subject to ordinary appeal before any authorisation for enforcement or other measure specified under II.2 may be ordered?*

Orders may be stayed pending appeal. Court rules vary with regard to whether stays are mandatory or discretionary. If a return order is not stayed pending appeal, children may be returned to their habitual residence pending determination of the appeal.

4. a) *Are any of the decisions specified under II.2.a) (authorisation to enforce or other decision) subject to appeal independent of any appeal against the merits of the return order? Please give details (number and character of legal remedies, possible time limit to lodge them, possible time-limit for appellate court or court of appeals to decide etc.).*

*b) Please specify whether any such challenge may only be made once, whether it suspends the enforceability / enforcement of the order and which is the court or body to decide the appeal.*

Not applicable.

*5. If in your State both types of legal remedy as specified under II.1 and II.4 (i.e. against the order on the merits and against any decision taken at or required for the enforcement stage) exist, can they be lodged simultaneously? Is it the same court that deals with them if they are lodged (a) simultaneously, and (b) at different times?*

Not applicable.

*6. Do you have any other comments relating to legal remedies and the enforcement of Hague return orders?*

No.

### **III. ENFORCEMENT PROCEDURE**

#### **A. The order to be enforced and the aims of enforcement**

*1. If an application for return of a child under the 1980 Hague Convention is successful, what is normally ordered:*

- a) the surrender of the child to the applicant (if necessary, "for the purposes of returning the child to his / her State of habitual residence")*
- b) the return of the child to State X c) other?*

Return orders vary widely. No statistical information is available. Anecdotally, most orders are for return of a child to a particular country, not to the applicant.

*2. If such order has to be enforced, please specify which of the following is / are normally the aim of enforcing a return order: a) to remove the child from the abductor or any other person b) to hand the child over to the applicant or a person designated by him or her in the State where enforcement takes place c) to ensure the child's return to his or her State of habitual residence d) other.*

The normal aim of enforcement is to secure the safe return of the child to the State of habitual residence, following the specific terms of the court order.

*3. Whose responsibility is it to organise the repatriation of the child?*

The responsibility to repatriate the child lies primarily upon the respondent parent and his /her attorney, under supervision of the court. Courts may specify arrangements for return, and the U.S. Central Authority may assist if necessary. Undertakings or pre-conditions on return involving actions to be taken in the requesting state are rarely issued in the United States. Costs for return may be charged to the respondent, per 22 USC 11607.

## **B. Actors involved in enforcement**

1. *Once a return order is made, is a specific request for enforcement necessary?*

No. Orders are directly enforceable. Law enforcement officers are expected to assist if necessary (Federal Marshals for Federal court orders, State and local law enforcement agencies for State court orders).

2. *Please specify who initiates enforcement of the court's return order:*

a) *the applicant (in person or through his or her lawyer)*

b) *the Central Authority*

c) *the court*

d) *the enforcement organ itself*

e) *other.*

*Where the law leaves choices or discretion, please give details concerning actual practice.*

The applicant initiates the enforcement of the return order, generally through his or her attorney unless the applicant is acting *pro se* (on his or her own behalf).

3. a) *Please give details of the persons, organs and institutions (e.g. enforcement organs, court, parties, psychologists, social workers, Central Authorities, other) involved in the enforcement of return orders under the 1980 Hague Convention*

i) *according to the law*

ii) *in practice.*

*Please describe their respective roles and functions in enforcement, and whether their participation is mandatory. If this is not the case for some or all of the actors mentioned, please specify who decides about their respective participation and to what extent they are normally involved in Hague return cases (regularly or exceptionally and, in the latter case, depending on which conditions).*

b) *In particular, are any social or psychological services available in order to prepare the child and / or the defendant for the return in order to de-escalate or even avoid enforcement by coercive measures? c) Please specify also whether presence of the applicant (or a person designated by him or her) is required and, if this is the case, at which stage of the enforcement proceedings and for what purpose.*

3. a) In the absence of cooperation by the parties, a court may order a range of civil remedies, including fines and incarceration for contempt of court, to gain compliance with an order. Law enforcement officers may be asked to enforce these contempt orders. Courts also have the discretion to order particular measures, including the involvement of specialists, in the best interests of the child. If a court has appointed counsel for the child, or any other representative of the child's interests, that person would have to be notified of the enforcement efforts.

b) Practice varies. There is no formal role for psychologists or social workers, though a court has the discretion to order their involvement. The U.S. Central Authority has no statutory role in enforcing orders for return, but may be called upon to facilitate actions such as visa or passport issuance.

4. a) *Is there any supervision / control of the enforcement procedure by a court, the Central Authority or any other State authority? If a court is supervising / controlling the enforcement procedure, which court is it? The court that made the order or other (e.g. a specific enforcement court)? b) What if the court of first instance refused return, and the*

*appellate court or court of appeals ordered return? Would the court of first instance, the appellate court or court of appeals which ordered return, or any other court be the court supervising / controlling enforcement in such a case?*

Enforcement of orders is supervised by the court issuing the order.

### **C. The enforcement procedure proper**

#### *1. Is there a timeline for enforcement?*

There is no general timeline for enforcement of orders outside of specific provisions of the order itself.

#### *2. Is it normal to allow a period of time for voluntary compliance with a return order or to allow appropriate practical arrangements for the return of the child to be made?*

This is a matter of court discretion.

#### *3. Are any measures available in order to prevent the abductor from taking the child into hiding after the return order is made and before it can be enforced? In the affirmative, please give details.*

A number of measures may be imposed by the court, including holding the child's passport and placing the child in the care of local social services.

#### *4. What happens if the child is taken into hiding after the order was made and before it can be enforced? Which actors would be involved (e.g. Central Authority, police, public prosecutor, other) and which measures can they take to locate the child? What is the effect of the hiding on a possible timeline for enforcement?*

If the child is taken into hiding, the Central Authority will ask the National Center for Missing and Exploited Children (NCMEC) to undertake all appropriate measures to locate the child. NCMEC works with law enforcement authorities (FBI, State and local authorities, US Marshals) to locate children, and has available many other tools for locating missing children. In addition, the missing children clearinghouse in every State will assist in locating children when information arises that a child may be in that State.

A Hague return order remains effective regardless of the passage of time. Return orders will not normally be reconsidered.

#### *5. When enforcement is initiated, what are the required steps (e.g. measures by the applicant, the court or any other supervisory authority, and the enforcement organs)?*

Respondents are expected to comply immediately with the terms of the order. If compliance is not forthcoming, petitioner's attorney may seek the assistance of law enforcement and/or petition the court for additional measures, such as contempt orders.

#### *6. Which coercive measures are available and under what conditions (e.g. pecuniary fines, physical force [against whom? the child? the defendant? others?], detention)? Which of these are normally used in practice?*

Courts may enforce court orders through their contempt powers, which include fine or imprisonment. If the person found in contempt has the ability to comply with the court order but refuses to do so, the court may imprison the person until the person complies with the court order.

*7. a) Do they have to be ordered specifically (i.e. either "fine", "physical force", "detention")? If so, when and by whom? b) If problems occur during enforcement, may the enforcement organs unilaterally "upgrade" the intensity of coercive measures, or do they have to obtain authorization from any particular higher authority (e.g. an enforcement court or other)? Please specify.*

The court will determine what specific measures are appropriate to order under its contempt powers to gain compliance with the return order, which appropriate law enforcement authorities will then take steps to enforce. The US Constitution, Article 4, proscribes the use of excessive force. Some law enforcement officers receive special training to assist in reunification with the left-behind parent. See VI.1.

Petitioner's attorney may petition the court to take additional coercive measures. In addition, the UCCJEA includes provisions on the role of State public authorities and State law enforcement in enforcement of custody determinations and Hague return orders, set forth below.

#### **SECTION 315. ROLE OF [PROSECUTOR OR PUBLIC OFFICIAL].**

(a) In a case arising under this [Act] or involving the Hague Convention on the Civil Aspects of International Child Abduction, the [prosecutor or other appropriate public official] may take any lawful action, including resort to a proceeding under this [article] or any other available civil proceeding to locate a child, obtain the return of a child, or enforce a child-custody determination if there is:

- (1) an existing child-custody determination;
- (2) a request to do so from a court in a pending child-custody proceeding;
- (3) a reasonable belief that a criminal statute has been violated; or
- (4) a reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.

(b) A [prosecutor or appropriate public official] acting under this section acts on behalf of the court and may not represent any party.

**SECTION 316. ROLE OF [LAW ENFORCEMENT].** At the request of a [prosecutor or other appropriate public official] acting under Section 315, a [law enforcement officer] may take any lawful action reasonably necessary to locate a child or a party and assist [a prosecutor or appropriate public official] with responsibilities under Section 315.

8. Please give details of any court orders that can be obtained in emergency situations. Can these orders be obtained after hours and ex parte?

Courts may issue emergency orders on an ex parte basis. In many instances emergency orders can be obtained after hours.

#### **D. Costs**

*Are costs incurred for the enforcement? If so, are they part of the costs of the court proceedings as a whole? How are they calculated? For which services are they charged?*

1. *Who has to pay the costs for enforcement? To whom? Is a reduction or exemption possible, e.g. under a Legal Aid Scheme? Under which conditions? In particular, is advance payment required in order for the enforcement organs to act? If legal aid was granted for the proceedings leading to the return order, would it cover the enforcement stage or would the application for legal aid have to be renewed?*

2. *Are the costs of the actual repatriation of the child (e.g. airfare for child and possible accompanying person) considered as part of the enforcement costs? Who has to pay for the repatriation? Is advance payment a condition for enforcement?*

US implementing legislation for the Hague Abduction Convention, 42 U.S.C. 11607(3) provides for all costs to be assessed to the taking parent, unless doing so would be clearly inappropriate. This includes costs of repatriation.

42 U.S.C. 11607. Costs and fees:

...  
**(3)** Any court ordering the return of a child pursuant to an action brought under section 11603 of this title shall order the respondent to pay necessary expenses incurred by or on behalf of the petitioner, including court costs, legal fees, foster home or other care during the course of proceedings in the action, and transportation costs related to the return of the child, unless the respondent establishes that such order would be clearly inappropriate.

In addition, the UCCJEA at section 317 permits costs of enforcement under section 315 or 316 (see C.7 above) to be charged to respondent when appropriate.

**SECTION 317. COSTS AND EXPENSES.** If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the [prosecutor or other appropriate public official] and [law enforcement officers] under Section 315 or 316.

3. *Please specify how foreign applicants are provided with information about enforcement costs to be borne by them.*

Not applicable.

4. *Please provide details regarding the enforcement organs' specific duties as they relate to the enforcement of Hague return orders concerning children.*

See answer to III.C.7.a. above.

5. Do you have any other comments relating to the enforcement procedure?

No.

#### **IV. STATISTICAL INFORMATION**

1. How many Hague return orders that you are aware of were made per year in your country in 2001, 2002 and 2003? How many of them had to be enforced in each of these years because the abductor did not comply voluntarily with the order? Please give the figures for each year separately.

A. The number of court ordered returns are as follows:

2001 – 116

2002 – 104

2003 – 105

We do not have national statistics on enforcement proceedings in Hague cases. Anecdotally, a survey of 17 attorneys who had cumulatively handled 400 return cases reported enforcement issues in only 7 cases.

2. How many Hague return proceedings were pending in your country that you are aware of for 2001, 2002 and 2003? Please give figures per year. In how many of these cases was a legal challenge made in order to avoid enforcement (by challenging either the order on the merits, the declaration of enforceability, a particular enforcement measure or other)?

*If possible, please specify the type of challenge (on the merits or against an enforcement measure).*

A. The number of Hague cases adjudicated (return ordered or denied) in a US court: 2001 – 116 children ordered returned; 25 return denied.

2002 – 104 children ordered returned; 14 return denied.

2003 – 105 children ordered returned; 20 return denied.

All children ordered returned were actually returned. We have no information on legal challenges to return orders.

3. How many of the legal challenges at the enforcement level (i.e. not on the merits) were ultimately successful (i.e. the order was not enforced)?

Not applicable.

4. What is the average length of enforcement proceedings from the moment the order is made until the moment the child is (a) removed from the abductor and (b) repatriated?

Information is not available. Enforcement may be immediate (i.e. children are handed over to applicant parent at the conclusion of the hearing) or more lengthy, depending on the details of the order or if the order is stayed pending appeal.

## V. CO-OPERATION

*1. Please give details of any co-operative agreements existing between different agencies within your State, either formally or informally, with regard to the enforcement of Hague return orders. How did this co-operation develop?*

Occasional informal cooperation is provided through Missing Children Clearinghouses, which are arms of local law enforcement who specialize in missing children issues. Clearinghouses were established in cooperation with NCMEC and exist in every state.

*2. Please give details of any co-operative agreements with other States, either formal or informal between different Central Authorities or agencies, or at the judicial level, with regard to the enforcement of Hague return orders. How did this co-operation develop?*

Not applicable.

*3. Please provide details (including contact details, websites etc.) of all agencies in your State which have a role to play in the enforcement of Hague return orders.*

Federal marshals

State and local law enforcement (thousands of offices)

National Center for Missing and Exploited Children: [www.missingkids.org](http://www.missingkids.org)

51 State Missing Children Clearinghouses

*4. Do you have any other comments relating to co-operation, including any comments on the effectiveness of co-operative agreements?*

No.

## VI. TRAINING AND EDUCATION FOR PROFESSIONALS

*1. Please give details of any training or education that is available in your State for professionals (including, judges, Central Authority personnel, lawyers, mediators, enforcement organs [e.g. bailiffs], police officers, and social workers) as a means of preparing them to enforce Hague return orders or decisions in family law matters in general.*

Training for judges on Hague matters is given at the National Judicial College and through bar associations.

The National Center for Missing and Exploited Children (NCMEC), along with the State Department, provides training to U.S. law enforcement officials on missing children matters, including training on handling recovery and reunification of children with left behind parents.

In addition, the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (OJJDP), has published a "Law Enforcement Guide on International Parental Kidnapping," which contains information and guidance for law enforcement on recovery of children and reunification of children with left-behind parents. This publication can be ordered through the OJJDP website, at

<http://ojjdp.ncjrs.org/publications/PubAbstract.asp?pubi=194639&ti=&si=&sei=&kw=parental+kidnapping&PreviousPage=PubResults&strSortby=&p=&strPubSearch=Y>

NCMEC and OJJDP have also published a guide entitled "Recovery and Reunification of Missing Children: A Team Approach," which provides guidance on the use of mental health and child protection specialist along with law enforcement in recovery of an abducted child. This publication can be downloaded at [http://www.missingkids.com/en\\_US/publications/NC64.pdf](http://www.missingkids.com/en_US/publications/NC64.pdf).

2. *Who provides this training and education?*

See answer to VI.1 above.

3. *What form does this training take and how regularly does it occur? Does joint training of different professional groups which have to co-operate in the enforcement of Hague return orders (e.g. judges, bailiffs, police officers, social workers) also occur?*

Training at NCMEC for law enforcement occurs regularly, although it is not specifically geared to enforcement of Hague orders. Training for judges on Hague matters is given at the National Judicial College and through bar association.

We are not aware of training on this subject for social workers or other professionals.

4. *Do you have any other comments relating to training and education of professionals, including any comments on the effectiveness of this training and education as a means of facilitating the enforcement of Hague return orders?*

No.

## **VII. OTHER INFORMATION**

1. *Please give details of any web pages, and provide copies of any brochures, or information packs or similar materials which contain information or advice on the enforcement of Hague return orders in your State and which are available to parents, including applicants from abroad.*

See VI.1 above.

2. *Who provides this information? When was it compiled? When was it last updated? How is the information made available and in which language(s)?*

See above.

3. *Do you have any other comments relating to information for parents, including any comments on whether such information is effective in assisting the left-behind parent in having his or her return order enforced?*

No.

4. *Please provide any other information which may be relevant to the issue of the enforcement of Hague return orders.*

5. *Please provide details of any other bodies or authorities in your State who may have information useful to the research covered by this questionnaire.*

6. *Have you any general comments to make regarding the enforcement of Hague return orders?*

No.

7. *Are there any changes envisaged in your legislation and / or practice? If this is the case, please give details in the answer to the respective question and indicate as of when such changes will take effect.*

No.

### **VIII. ORDERS GRANTING RIGHTS OF CONTACT / ACCESS / VISITATION**

*For each reply, please indicate whether the same applies to the enforcement of contact orders. If this is not the case, please give details concerning the latter.*

*Where the contact order refers to a specific period of time (e.g. where the child is to spend "the first part of the 2004 summer holidays from 1 to 20 July 2004" with the applicant) and is not complied with, please explain also whether coercive measures can be applied only as long as the period mentioned in the order contact has not yet expired (i.e. in order to implement the order), or also afterwards (i.e. as a sort of punishment although contact during this particular period can no longer be implemented). Please indicate also whether the same rules apply to the enforcement of domestic and foreign contact orders. If this is not the case, please specify the differences.*

The same principles apply for enforcement of contact orders as apply for enforcement of Hague return orders. Courts may use their contempt powers to punish failure to comply with contact orders. In addition, in each state there are laws that make "interference with custody" a felony punishable by a fine and/or at least one year in jail.