

To: Sarah Armstrong
HCCH
From: Nancy Hammer
ICMEC/NCMEC
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Re: Prevention Questionnaire

Responses

A. LEGISLATION AND COURT ORDERS

1. U.S. Federal Civil Legislation:

The federal Parental Kidnapping Prevention Act (28 USC 1738A) was enacted to alleviate differing interpretations of the Uniform Child Custody Jurisdiction Act (UCCJA), a law enacted separately by individual states to govern the rules of jurisdiction and enforcement of child custody orders from state to state. The PKPA provides primary jurisdiction to the courts in the child's "home state" (where the child has been living for at least 6 months) for custody orders. PKPA provides continuing, exclusive jurisdiction to the state that made the original order if the original jurisdiction complied with the PKPA, the parent or child still lives in the state and there is some basis for the court's jurisdiction under state law. This federal law compliments (and supercedes in the event of a conflict between the states) the state-based system for determining which state may make or modify orders regarding jurisdiction and how those orders will be enforced.

The Missing Children Act (28 USC 534) and the National Child Search Assistance Act (42 USC 5779 & 5780) both contain requirements that police take a report of a missing child and enter the missing child into the National Crime Information Center (NCIC) computer which is viewable by police nationwide. Entry of a missing child's information must be made even if the taking parent has not been charged with a crime. If the local police refuse to enter the child in NCIC, these federal laws require the FBI to do so. Close liaison with the National Center for Missing and Exploited Children (NCMEC) is also required.

U.S. State Legislation:

Each individual state in the United States has enacted either the Uniform Child Custody Jurisdiction Act (UCCJA) or the updated version, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). These state laws are based on a centrally-drafted law but may vary based on the version enacted in each state's legislature. Just as the PKPA, these laws govern determinations of which state has jurisdiction to make an order, prevent other states from improperly modifying those orders and, in the case of the UCCJEA, provide an expedited system for enforcing the order in another state. The uniform laws and the PKPA were enacted for the purpose of preventing abductions by parents seeking to find a more favorable forum for determining custody. By setting out clear rules, the laws are meant to prevent states from competing over which state can make these determinations. The basic rule is that the 'home state' where the child lives

retains jurisdiction unless a new 'home state' is obtained by the child residing there for 6 or more months.

Individual states are increasingly focusing their legislative efforts on the prevention of child abduction. For example, the state of California recently passed legislation requiring state court judges hearing divorce and custody cases to assess whether the facts of the case indicate a risk of abduction by one parent. If the court finds a risk of abduction, the court may require certain measures designed to deter the abduction, such as requiring that all passports be held by the court, including language requiring that the child not leave the state without prior court approval, requiring that any parent taking the child for a visitation period be required to post a monetary bond with the court such that if the child is not returned, the bond is forfeited and the money is released to the searching parent, or ordering that any visitation be supervised.

Similarly, some states (for example, Illinois and Oregon) have passed legislation requiring their state courts to determine whether there is a risk of abduction and if a risk is found, to consider requiring one or both parties to post a monetary bond with the court ensuring compliance with the order.

2. At the Federal level, the International Parental Kidnapping Crime Act (IPKCA, 18 USC 1204) makes parental kidnapping a federal felony. IPKCA is broadly written to cover situations in which the parent takes the child even when there is no court-ordered custody and even when the taking parent is the custodial parent violated the other parent's visitation rights. The penalty is a fine, up to 3 years prison, or both. The law contains three defenses if the abducting parent is

- * fleeing domestic violence;
- * acting within a valid custody or visitation order; or
- * failed to return due to circumstances beyond their control and made reasonable attempts to notify the other parent.

In addition, federal law allows a federal warrant (Unlawful Flight to Avoid Prosecution or UFAP) to attach to an underlying state felony warrant when there is probable cause that the abducting parent has left the state. A UFAP warrant allows for federal intervention in the case.

At the state level, every state in the United States criminalizes abduction of a child by a family member, even a parent. In every state, under certain facts, the crime can be charged as a felony (meaning the crime carries a penalty of more than one year). In some states, for example, the crime can only be charged as a felony if the child is taken across states lines, or attempts are made to hide the child, etc. These state criminal custodial interference statutes apply whether the child is taken domestically or internationally. If the child is taken internationally, a federal statute called the Fugitive Felon Act (mentioned above) can attach to the underlying state felony charge allowing federal law enforcement to become involved in the search for the abducting parent and

child. The resulting prosecution will be conducted by the individual state on the underlying state felony, not the federal law violation.

The state of New Jersey's criminal custodial interference legislation includes an enhanced penalty if the child is taken internationally.

3. Judges in divorce or custody proceedings have fairly wide latitude in determining what types of restrictions should be included in an order regarding the child. Judges should spell out the rationale for such restrictions.

4. In urgent situations, such as when the child has been taken by a parent who is headed to the border, a court can issue a temporary custody order in favor of the left-behind parent, even if the parents are still legally married. This order serves as a basis for the left-behind parent to obtain assistance in having the child returned. These orders are temporary in nature until all parties are able to appear before the court for a full hearing and a final order. If the parent has fled the state, the court can utilize emergency jurisdiction under the UCCJEA and issue an order. Notice to all parties is required in order for temporary orders to be enforceable in other states, but the UCCJA and UCCJEA allow for notice by publication when personal notice is not possible. These orders typically are made when the court is in session although if the judge is able to be notified of the emergency during out-of-hours, some judges will make a ruling.

5. No comment regarding relocation orders.

6. While provisions within a court order and laws designed to set rules for parental behavior may not prevent a determined abductor, they are crucial in providing a basis for the involvement of professionals early in the abduction. Early intervention may result in stopping an abduction in progress or may help to resolve the situation before the abduction becomes a long-term issue. As with all laws, training law enforcement and other public officials as to their ability to act under the law is crucial to the law's success. Incorporating prevention measures into court custody orders is increasing due, in part, to public demand. The state prevention and bond legislation discussed above were, in each case, suggested by a parent living within that state whose child had been parentally abducted.

B. BORDER CONTROLS

1. The most significant development in this area is the requirement of the signatures of both parents before a passport can be issued for a child under age 14. This law was spearheaded by a parent in the state of Nevada whose child was abducted to a non-Hague country.
2. Do not have adequate knowledge of visa rules to comment.
3. No.

4. US travelers need not use a passport for travel to Canada or Mexico.
5. Canadian travelers need not use a passport for travel into the US. Although Canada has a system at its land border with the U.S. in which travelers are screened for possible parental abductions, US border authorities checking people traveling into the US from Canada are not using similar training and screening techniques.
6. The US does not have a system of exit controls. The ability to stop an abductor from leaving the US depends primarily upon knowledge of their exit point. If the parent can be stopped at the exit point, legal authority (i.e. a criminal warrant or child endangerment) must exist for law enforcement to prevent the parent from leaving. Recently, IPKCA was amended to also criminalize an *attempt* to violate IPKCA. Federal law enforcement authorities can detain a parent for questioning and, if further information is developed, may take further action.
7. Carriers have no legal duty to check the relationship between an adult and a minor traveling together. The carriers are private corporations and establish their own rules in this regard.
8. Without an exit system, it will be very difficult to successfully intercept a parent leaving the U.S. The crime of attempted international parental kidnapping is a very recent legal development (see answer #6) and is currently untested but may provide an access point for increased intervention to stop abductors before they leave the US.

C INFORMATION FOR PARENTS

1. National Center for Missing & Exploited Children provides publications that address prevention at www.missingkids.com, namely Family Abduction: Prevention and Response.

The Office of Juvenile Justice and Delinquency Prevention of the US Department of Justice provides publications that address prevention at <http://ojjdp.ncjrs.org>, namely Early Identification of Risk Factors for Parental Abduction and A Family Resource Guide on International Parental Kidnapping.

The Office of Children's Issues of the US Department of State provides many useful fliers and information on their website at www.travel.state.gov.

2. The major publications were all published or updated within the last 2 years.
3. NCMEC/ICMEC believe that publications designed to lay out step-by-step information for parents is very helpful. NCMEC has tried to do this with our "Family Abduction: Prevention and Response" book which also covers international abduction. The book was written for both parents and their lawyers. When providing the book to parents we encourage them to take it to their lawyers

for information on how to handle prevention cases. The reality is that parents often need to be their own advocates and by arming parents with professional-grade information, they can inform those from whom they need help.

D TRAINING AND EDUCATION FOR PROFESSIONALS

1. There is no systematic training for lawyers, police, airport or social workers. NCMEC and Department of State provide on-going technical assistance to all professionals who call seeking information. In addition, NCMEC provides limited information to police attending training on missing child issues generally. NCMEC and Department of State train their own staffs on issues of prevention enabling them to better assist parents and professionals seeking guidance.
2. US Department of Justice funds training provided through NCMEC and occasionally helps fund training provided by other outside parties such as a recent judicial training on Hague Convention cases. In this judicial training, prevention measures were covered in one segment of a larger course.
3. As indicated in #1, training on prevention is not formalized although NCMEC introduces the subject as part of its missing children course for police held monthly.
4. Training is the key to ensuring that police, lawyers and other professionals are aware of and using the legal and other tools available to them. In large part, the jurisdiction and legal basis for professional intervention to help prevent abductions exist in many different laws. Training is needed to show professionals in the field how to use their existing authority to help address the particular issue of the prevention of parental abduction.

It is very difficult to train professionals because there are so many and are spread across the United States. Yet training is the most important aspect to creating a pool of experts who can help parents facing a potential abduction. NCMEC attempts to publicize its toll-free hotline number so parents and professionals know to call for assistance. In addition, NCMEC altered its website specifically providing identified entry points for parents, attorneys, and law enforcement. NCMEC also recently trained professors at 4 law schools on how to utilize the help of student-lawyers to assist people with Hague Convention cases. As part of this training, they were introduced to tools for prevention. By focusing on law schools, NCMEC hopes to increase, over time, the number of practicing lawyers who understand the issues surrounding international parental abduction.

E. PUBLICITY

1. Websites are the primary publicity tool. In addition, both US Central Authority and NCMEC/ICMEC staff use every speaking opportunity available to address the public, parents and professionals on the subject. Department of State recently

- held two successful meetings of left-behind parents with international child abduction cases and used that opportunity to impart information to the parents and solicited their input on how to improve the response to international child abduction. NCMEC, Department of Justice agencies and others were invited, and did, participate in these meetings.
2. NCMEC is posting specifics of the individual state legislative initiatives regarding parental abduction and prevention on its website and also distributes this information to missing child clearinghouses in every state.
 3. It is difficult to publicize any aspect of this issue to the general public. People typically become interested only when they are experiencing a child-abduction situation within their family or circle of close friends. NCMEC often receives requests for television, radio and print interviews or requests for families to appear on television or provide comment for printed stories on the subject. Our experience with these requests is that the particular show, newspaper, or magazine may have a certain angle they want to cover and it can be very difficult to have them publish more basic and helpful information. NCMEC sends an information packet to all media that contact us and try to encourage them to include broader information such as prevention tips as part of their stories and programs.

F. CO-OPERATION

1. NCMEC/ICMEC are not aware of formal or informal agency agreements specific to prevention. In general, communication is typical between Department of State, FBI, INTERPOL, state law enforcement, and NCMEC on emergent abduction cases. In addition, federal law mandates that police both enter missing children into NCIC (electronic information system viewable by law enforcement nationwide) and communicate with NCMEC on all missing child cases.
2. NCMEC/ICMEC are not aware of cooperative agreement between states or Central Authorities.
3. Please see Federal Resources on Missing and Exploited Children and for Law Enforcement and Other Public and Private Agencies at <http://ojjdp.ncjrs.org>.
4. Cooperation among agencies and states is key to effective prevention. Although cooperation may exist on a case-by-case basis, it is helpful to commit as many agreements as possible to writing so that the agreement and cooperation has a chance of continuing even when personnel changes.