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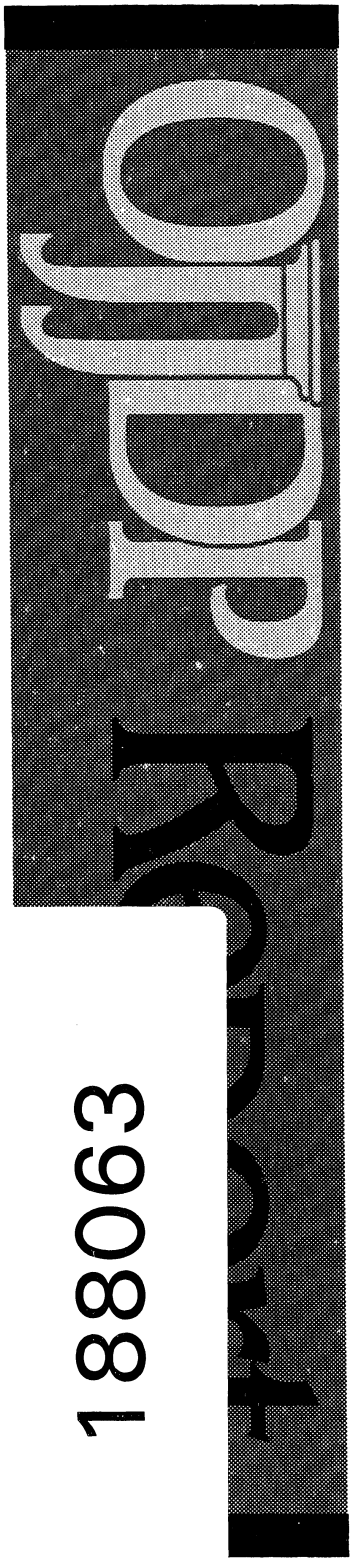

Obstacles to the Recovery and Return of Parentally Abducted Children

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Obstacles to the Recovery and Return of Parentally Abducted Children

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EXECUTIVE SUMMARY

Introduction

Parental Child Abduction

"Is my child custody decree worth the paper it is written on?" Many custodial parents ask these questions when faced with the knowledge that the other parent has taken the children and fled: "Who will help me find my children?" "How can my custody decree be enforced?" "When will I ever see them again?"

An estimated 354,100 children were abducted by parents or family members in the United States in 1988.[1] According to NISMART, the abductors of an estimated 163,200 children, or nearly one half of all of the abducted children, took the children across state lines, concealed them or prevented contact, and/or intended to keep the children indefinitely or have the custody changed.

The term "parental abduction" refers to the taking, retention, or concealment of a child or children by a parent, other family member, or their agent, in derogation of the custody rights, including visitation rights, of another parent or family member.

The parents of an abducted child may be separated, divorced, or unwed. Abductors may be sole custodial, joint custodial, or noncustodial parents, other family members, or persons acting on their behalf. Abductions can occur before or after an order regarding the custody of a child is issued by a court. Efforts to find children abducted by a parent often are based on the marital and custodial status of the left-behind parent.

Often people do not think of parental abductions as harmful. Yet many of these children already have lived through their parents' stormy relationship, failed marriage and difficult divorce. They are taken from the other parent and uprooted from their home, school, and community--possibly living on the run--changing names, schools, and homes. The lack of stability and continuity can have lasting detrimental effects on their development. They are children at risk.

The U.S. Congress, under 42 U.S.C. § 5778, directed the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, to conduct a two-year research study to identify the

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[1]National Incidence Studies, Missing, Abducted, Runaway, and Thrownaway Children in America, Washington, D.C.: U.S. Department of Justice, May 1990 (hereinafter referred to as NISMART).

legal, policy, procedural, and practical obstacles to the location, recovery, and return of parentally abducted children and to make recommendations to overcome or reduce these obstacles. An overview of the results of the research, which combined legal and social science approaches to the problem, are presented below. A description of the research components and a guide to the report can be found at the end of the executive summary.

Existing Solutions to Parental Abductions

The Civil Legal Response

The civil legal response to the problem of parental abduction was designed mainly to prevent a child custody proceeding from going forward in more than one state (i.e., simultaneous proceedings) and custody orders from being issued in more than one jurisdiction (i.e., conflicting orders). State and federal laws were enacted to prevent "forum-shopping," the act of parents seeking out a different jurisdiction for the purpose of obtaining a favorable custody determination, and to require every state to honor and enforce (i.e., give "full faith and credit" to) child custody orders properly issued by the court of another state. Three key laws were enacted to address interstate and international parental child abductions.

The Uniform Child Custody Jurisdiction Act (UCCJA)

- The UCCJA is a uniform act which was enacted with some variation in all states, the District of Columbia, and the Virgin Islands between 1969-1983.
- The UCCJA is primarily a jurisdictional statute, which addresses when a court has subject matter jurisdiction in a custody case, whether it should exercise jurisdiction, and whether it must enforce or can modify the decree of another state.
- There are four bases of jurisdiction pursuant to the UCCJA:
  - The state is the "home state" of the child,
  - The child has "significant connections" with the state,
  - The state has emergency jurisdiction, or
  - The state assumes jurisdiction when no other state has jurisdiction, or another state has declined jurisdiction because it is in the best interests of the child for the first court to assume jurisdiction.
- Other key aspects of the UCCJA which were designed to prevent simultaneous proceedings include:

- section 6, which requires a stay of proceedings and intercourt communications when there are simultaneous proceedings in different states;

- section 9, which requires that an affidavit be filed providing information about past and current custody proceedings and addresses of the parties and the child; and

- section 16, which requires that certified copies of custody orders be filed in the child custody registry of the court where the order is to be enforced.

The Parental Kidnapping Prevention Act (PKPA)

- The PKPA is a federal law, enacted in 1980 (28 U.S.C. § 1738A), giving priority to the home state basis for subject matter jurisdiction, with the purpose of resolving conflicts between two states when one claims jurisdiction based on significant connections and the other claims jurisdiction based on home state.

- Under the PKPA, courts are required to enforce and not modify custody orders of sister states which exercised jurisdiction consistently with the Act.

- The PKPA also specifies that the Federal Bureau of Investigation (FBI) can investigate interstate and international parental abduction cases in which a warrant for the Unlawful Flight to Avoid Prosecution (UFAP) has been issued.

- The PKPA allows for authorized persons to access the Federal Parent Locator Service to help locate a parentally abducted child.

The Hague Convention on the Civil Aspects of International Child Abduction (The Hague Convention)

- The Hague Convention is an international treaty signed by the U.S. in 1980 and ratified in 1988, which addresses the problem of international parental abduction.

- The procedures implementing the Hague Convention in the U.S. are set forth in the International Child Abduction Remedies Act (ICARA) 42 U.S.C. § 11601 et seq.

- The Hague Convention provides for the prompt return of wrongfully removed or retained children to the country of their "habitual residence."

- This treaty only governs cases involving countries which have become parties to it (24 as of April 1992).

The Criminal Justice System Response

Federal laws relating to missing children mandate a role for law enforcement in the reporting of missing children, including parentally abducted children. State laws and procedures relating to missing children and to the crime of parental kidnapping vary widely.

The Missing Children Act of 1982

- To promote the involvement of law enforcement in the location of missing children, the U.S. Congress passed the Missing Children Act of 1982, Public Law 97-292, 28 U.S.C. § 534(a).

- This law requires the FBI to enter missing children into the National Crime Information Center (NCIC).

    - The NCIC is a computer database under the authority of the FBI, which enables law enforcement across the country to gain access to descriptive information about a particular missing person or fugitive.

- According to this Act, local law enforcement could enter a missing child into NCIC dependent on state laws, but the FBI is required to do so if it is not done on the local level.

The National Child Search Assistance Act of 1990

- Many state statutes and local law enforcement procedures required a waiting period prior to declaring a child "missing" and commencing an investigation. Such delays made recovery of children more difficult.

- To address this problem, Congress passed the National Child Search Assistance Act of 1990, Public Law 101-647, 42 U.S.C. § 5780. This law:

    - Prohibits law enforcement agencies from maintaining policies requiring waiting periods and

    - Requires that missing children be entered immediately into NCIC and that NCIC entries be made available to the appropriate state missing children's clearinghouse.

State Criminal Laws relating to Parental Kidnapping

- All states have enacted criminal parental kidnapping statutes, most frequently termed "criminal custodial interference" laws.

- State laws vary as to whether parental kidnapping is a felony or a misdemeanor. In many states, parental abduction becomes a felony only after the child is transported across state lines.

- The criminal liability of unwed parents, joint custodial parents, and sole custodial parents, who abduct their children and prevent the other parent from having any access, varies from state to state. In addition, in some states there is no criminal violation if the abduction occurs prior to the issuance of a custody order.

The Creation of Clearinghouses

The Missing Children's Assistance Act

Pursuant to a mandate under Title IV of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. § 5778), the National Center for Missing and Exploited Children (NCMEC), a private nonprofit organization, was funded to serve as the national clearinghouse and resource center. NCMEC:

- Provides technical assistance in parental abduction cases, as well as other missing children cases,

- Maintains a toll-free hotline,

- Provides legal staff available to consult with civil attorneys and prosecutors in child abduction cases,

- Serves as a national resource center on missing children, and

- Works closely with state missing children clearinghouses.

State Missing Children Clearinghouses

Forty-two states and the District of Columbia have official state missing children clearinghouses, most of which were established by statute and exist within a state criminal justice agency. Clearinghouses vary as to their resources and the functions they are mandated to perform. Broadly described, these include:

- Public education and information;

- Communication and coordination with parents, attorneys, law enforcement and other agencies;
- Assistance in the location and recovery of parentally abducted children; and
- Service as state contact under the Hague Convention in international abduction cases.

Research Findings and Recommendations

Despite the laws described above, obstacles to the location, recovery and return of parentally abducted children still persist. The following summary includes the major obstacles identified in the research and the recommendations proposed to overcome them. Recommendations requiring Congressional action are identified. Those necessitating state legislative changes follow. Recommendations to law enforcement and prosecutors, to the civil bench and bar, and, finally, to the public and multiple groups are provided.

Recommendations for Congressional Action

1. Obstacle: Conflicting Custody Orders

Despite the UCCJA and the PKPA, parents still obtain conflicting custody orders from courts in different states. There is no guaranteed forum for resolving which state's order is valid.

Commentary:

Under these circumstances, each parent may believe she or he has a valid order and is entitled to have it enforced, while simultaneously being in violation of the other state's order. To seek review of the custody orders through each state's appellate process is expensive and time-consuming. It still may not lead to a resolution, unless the U.S. Supreme Court, in its discretion, agrees to grant review.

Prior to the U.S. Supreme Court decision in the case of Thompson v. Thompson 484 U.S. 174 (1988), some federal courts acted as tie-breakers between state courts in custody cases involving conflicting judicial claims. In Thompson the Supreme Court held that there is no implied right to go into federal court under the PKPA, but that Congress may wish to revisit the issue.

Recommendation:

Congress should amend the PKPA to include an express federal cause of action (i.e., the right to take the case to federal

court) in cases involving conflicting child custody decrees resulting from courts of two or more states regarding the same children.

2. Obstacle: Lack of Procedures for Identifying Other Custody Proceedings or Orders

Presently there are no consistent, specific, effective, and widespread procedures for determining whether a custody proceeding is pending in, or a custody order has been issued by, a court of another state. Consequently, simultaneous proceedings and conflicting orders result.

Commentary:

Although the UCCJA requires interstate judicial communication to prevent simultaneous proceedings, these procedures are not uniformly followed, as evidenced by recent case law and findings from a nationwide survey of judges and attorneys with experience in parental abduction cases. Under half of the judges in the survey reported that they routinely initiated communication in cases that came before them. Only one-quarter of the attorneys said that judges routinely granted their requests for intercourt communication.

The UCCJA also requires that courts establish registries for the filing of out-of-state child custody orders. Most courts have never established a child custody registry and procedures for filing remain unclear. As a result, courts and law enforcement are hampered in enforcing orders.

Recommendation:

Congress should pass legislation establishing a national computerized child custody registry so that all child custody determinations and information about child custody-related filings will be readily accessible to courts throughout the country. The registry could be combined with a national child support registry.

3. Obstacle: Confusion Regarding Continuing Modification Jurisdiction

The concept that the state which exercised jurisdiction in issuing the initial child custody decree may retain jurisdiction even after the custodial parent and child leave the state is a key provision of the PKPA, designed to prevent forum-shopping and conflicting orders. However, it appears that this aspect of the PKPA is most often misunderstood, overlooked or ignored.

Commentary:

Courts in various states have exhibited widely diverse views as to how long a state keeps jurisdiction over the custody of a child after the custodial parent and the child have moved out of that state. Furthermore, courts in other states have often modified a custody decree when the initial state still had continuing modification jurisdiction. Thus, despite the intent of this provision, conflicting orders have resulted.

Recommendation:

Congress should amend the PKPA to provide a time limitation on continuing modification jurisdiction after the custodial parent and the child have left the state, which would only apply if the state has not set a specific time limit of its own.

4. Obstacle: Confusion Regarding Emergency Jurisdiction

Lack of clarity and specificity in the emergency jurisdiction provision of the PKPA, and varied court interpretations of it, compound problems of simultaneous proceedings and the enforceability of child custody orders.

Commentary:

The PKPA does not specify whether emergency jurisdiction may only be exercised to protect a child on a temporary basis (until the court with jurisdiction to issue a long-term order can act). Court interpretations also vary on this matter. In addition, the PKPA does not specify whether emergency jurisdiction is an exception to the rule that one state cannot modify the custody order of another state when the state which issued the order still has continuing modification jurisidiction, as explained above. Some courts have ruled that it does create an exemption; other courts have ruled the opposite, making enforcement difficult. Finally, emergency proceedings are often held ex parte (i.e., without the other party receiving notice or having the opportunity to be heard). The PKPA is silent and courts have varied as to whether emergency ex parte orders should be enforceable in another state.

Recommendation:

Congress should amend the PKPA to clarify what constitutes the proper exercise of emergency jurisdiction, including:

- **Specifying that it can only be temporary;**

- **Clarifying that it can be used to modify custody, but only temporarily, even when another state has continuing jurisdiction;**

- **Exempting emergency orders from the prohibition against simultaneous proceedings; and**

- **Providing for a short-term exemption from the notice requirement in limited emergency circumstances.**

5. Obstacle: Ambiguity in and Inconsistency Regarding the PKPA

Definitional ambiguity in the PKPA and inconsistency in court interpretations of this federal statute contribute to the occurrence of simultaneous proceedings and issuance of conflicting custody orders. Under these circumstances, enforcement of custody orders can be complicated.

Commentary:

Due to lack of specificity in the PKPA, certain definitional problems have arisen. For example, recent case law reveals varying interpretations of "custody determination," resulting in the PKPA not being applied to cases as intended. In addition, the PKPA provides no clear guidance as to what constitutes the declination of jurisdiction, or whether Native American Tribes are considered "States" for PKPA purposes.

Recommendation:

Congress should amend the PKPA to clarify ambiguous and confusing language, including:

- **Specifying, to the greatest extent possible, the various types of custody determinations to which the PKPA should be applied;**

- **Defining what constitutes declination of jurisdiction; and**

- **Expanding the definition of State to include Native American Tribe.**

Recommendations for State Legislative Action

1. Obstacle: Lack of Effective Enforcement Procedures

No cost-effective, specific, speedy, and uniform enforcement procedures exist from state to state to assist left-behind parents who seek to have their child custody order enforced, with the exception of California, which mandates a role for

prosecutors to assist in the civil enforcement of custody orders.

Commentary:

There are a variety of enforcement procedures used in different states, including injunctions, writs of habeas corpus, contempt findings, and orders to enforce. The left-behind parent generally must have an attorney in the second state, and the abducting parent must receive notice of the enforcement proceeding and have the opportunity to be heard. Problems include some courts improperly modifying the orders they are supposed to be enforcing, and abductors fleeing with the children upon receiving notice of the proceeding.

Parents often find that enforcement efforts are too little, too late, and too costly. Often they resort instead to "self-help" recoveries, which are fraught with potential legal risks and possible trauma to the child. If efficient and effective enforcement procedures existed nationwide, they would aid the recovery and return of abducted children. They also would deter parental abductions.

Recommendation:

States should adopt speedy enforcement procedures which will provide for nationally consistent, cost-effective enforcement of custody orders. These procedures should mandate a role for law enforcement officers and prosecutors in the civil enforcement of child custody orders.

2. Obstacle: Lack of Uniformity and Specificity in State Variations of the Uniform Child Custody Jurisdiction Act

There is a lack of uniformity in state enactments of the UCCJA and in court opinions interpreting that statute.

Commentary:

Although developed and promulgated as a uniform law, the UCCJA took on considerable variations as it was enacted in each state's legislature. Although some of these variations are improvements, others undermine the intent of the UCCJA or create other obstacles. In addition, the lack of clarity of some UCCJA provisions results in varying interpretations by courts.

A variation which constitutes an improvement is one in which statutes allow temporary placement of the child in foster care when immediate return of an abducted child to the lawful custodian is not possible. An example of a statutory

variation which undermines the intent of the law is one which alters the continuing modification provision of the UCCJA in a way more likely to lead to conflicting orders. Court interpretations which have fundamentally altered the intent of UCCJA include those in which the courts have found that the UCCJA requirements establish personal (rather than subject matter) jurisdiction, thus making jurisdiction a matter which can be stipulated to or waived by contestants.

Legal problems and inconsistencies in state law were identified as the major obstacle to the recovery and return of parentally abducted children by left-behind parents and law enforcement officers in two separate components of the research. One examined parental abduction cases from three different community sites and another was based on cases drawn from the files of the National Center for Missing and Exploited Children (NCMEC).

Recommendations:

The National Conference of Commissioners on Uniform State Laws (NCCUSL) should review state enactments of the UCCJA and promulgate amendments to the uniform law.

State legislatures should amend current state enactments of the UCCJA to achieve greater uniformity and specificity. These include:

- **Adding provisions allowing temporary foster care placement of abducted children, pending return to the lawful custodian;**
- **Deleting any provisions which weaken the continuing modification jurisdiction mandate; and**
- **Adding "subject matter" to the UCCJA jurisdiction section, to clarify that the requirements are not personal jurisdiction requirements, and cannot be stipulated or waived.**

3. Obstacle: Conflicts and Absence of Coordination between Parental Abduction and Family Violence Policies

Laws relating to parental abduction often fail to properly address the situation of parents who flee to protect themselves or their children from abuse and, in some instances, the laws potentially increase the risks to those who have been abused.

Commentary:

Bodies of law and public policy relating to parental abduction and those relating to spouse abuse and child abuse have developed independently from one another. For example, custody orders included in orders of protection are generally not issued in conformity with the PKPA and UCCJA and, therefore, need not be enforced by another state. A parent who has fled to protect an abused child may be charged with a crime, and the child may be returned to an abusive parent who obtained custody after the abduction. Shelter workers who are mandated to maintain the confidentiality of their residents can find themselves sued for obstruction of justice in a parental kidnapping case.

Accusations of family violence are frequently raised in parental abduction cases. About half of the left-behind parents in the three site study and in the sample drawn from NCMEC files reported that they had been physically abused by the abductor. Forty percent and over sixty percent of left-behind parents in the two studies, respectively, reported that the child had been abused or neglected. Almost eighty percent of attorneys in the attorneys' survey reported that they have had cases involving domestic violence. However, only a quarter stated that they requested that the present address of the abused spouse not be given to the other spouse as part of the affidavit requirement. Only a third of the judges in the survey reported that they routinely granted requests to prevent the release of address information to the other party.

Recommendations:

State legislatures should review laws relating to parental abduction, spouse abuse, and child abuse to determine how battered spouses and abused children may be further victimized by existing laws and procedures in the event of a parental abduction. Consideration should be given to the need to protect victims, comply with the intent of parental abduction laws, and provide due process safeguards. Changes should include:

- **Mandating that disclosure to the other contestant of the present address of a contestant who has been abused be waived in relation to the affidavit requirement;**
- **Extending the emergency jurisdiction provision of the UCCJA to include abuse of a parent or sibling of an abducted child; and**
- **Adding child abuse and domestic violence as defenses against criminal charges of parental kidnapping.**

4. Obstacle: Lack of Other Useful State Civil Statutes and Rules

Many states have not yet adopted statutes and rules that would be useful in parental abduction situations, such as mechanisms flagging school and birth records to locate missing children, for permitting out-of-state counsel familiar with a case to appear without admission to that state's bar, and for preventing parental abductions.

Commentary:

Some state have enacted statutes providing for the flagging of school and/or birth records to locate missing children, but many have not. These useful provisions alert schools and/or vital statistics offices as to the names of missing children. When a person requests a copy of the record of a missing child, law enforcement is notified regarding the person's name and address.

Although many states have adopted court rules permitting out-of-state counsel to appear in a court proceeding without admission to that state's bar, some have not. Such helpful provisions allow an attorney who already knows the client, the facts of the case, and the history of the first state's proceedings to handle the second-state case.

A few states have enacted useful statutory mechanisms to help prevent abductions from occurring. Such mechanisms may include supervised visitations, requirements that a potential abductor post a bond prior to unsupervised contact with the child, and automatic orders prohibiting the child from being removed from the state.

Recommendations:

State legislatures should pass record-flagging statutes and statutes to prevent abductions. State court rules to permit out-of-state attorney appearances should also be adopted.

5. Obstacle: Insufficient Funding for Law Enforcement and State Missing Children's Clearinghouses

Many law enforcement and state missing children's clearinghouses lack sufficient resources to carry out necessary functions relating to location and recovery of parentally abducted children. The result in some cases is that no attempt is made to locate a missing child.

Commentary:

State missing children's clearinghouses have been established in 42 states and the District of Columbia, although several of them lack any funding to carry out their mandated tasks and others have insufficient funds. As a result, the involvement of many clearinghouses in assisting left-behind parents in parental abduction cases is severely restricted.

Beleaguered police departments are hard-pressed to pursue the investigation and recovery of parentally abducted children, when resources are insufficient to investigate other crimes determined to be of a more serious nature. Lack of financial resources is frequently given as the reason for not getting involved in a case which would involve extradition of a defendant from another state.

Recommendation:

State legislatures should fund state missing children's clearinghouses and departments of law enforcement at a level which allows them to carry out their functions related to the location, recovery, and return of parentally abducted children.

6. Obstacle: Liability Risk of Law Enforcement

Many law enforcement officers are hesitant to "pick-up" the child or to accompany a parent to recover a child without clear statutory authority or an order from a court of their state. These concerns stem from the difficulty of determining if the custody order is valid and the potential of civil liability if the order is later determined to be invalid.

Commentary:

A review of case law on the civil liability of law enforcement in parental abduction cases reveals a number of suits which have determined that law enforcement officers are liable if they have assisted a party who did not have a current valid order. Over a third of state missing children's clearinghouses responded in a survey that law enforcement practices concerning parentally abducted children were shaped with issues of liability in mind. The chilling effect of a civil liability suit is clearly a factor in law enforcement's lack of action in enforcing child custody orders.

Recommendation:

State legislatures should clearly define the statutory authority under which law enforcement officers can act to enforce a custody order from that state or another state. Procedures for ensuring the validity of the decree should be clearly identified.

7. Obstacle: Inadequacies and Inconsistencies in Criminal Parental Abduction Statutes

Criminal parental kidnapping statutes, also referred to as criminal custodial interference statutes, vary from state to state. Because the laws of most states do not sufficiently encompass the range of parental abduction situations and frequently provide that criminal custodial interference is only a misdemeanor, they often serve as obstacles to adequate law enforcement involvement in the location and recovery of children abducted by parents or other family members.

Commentary:

Enforcing criminal parental kidnapping statutes can involve investigating, apprehending, and prosecuting parental abductors. Law enforcement is more likely to enter the child into NCIC, to investigate the whereabouts of the child, and to recover and return the child in the context of a criminal investigation of the abductor than when no such investigation exists.

In some states an abduction is charged as a felony only when the child has been taken to another state. Left-behind parents, whose children have been concealed, are faced with the dilemma of not being able to get law enforcement assistance to find the child unless they already know that the child was taken across state lines. Thus, cases involving successful concealment of the child, which are the most serious and disruptive of parental abductions, are those least likely to receive law enforcement assistance in those states.

Felony status also means that search warrants and labor intensive investigative methods, such as tracing financial records, FBI assistance, and extradition are more likely to be used. Thus, whether the abduction constitutes a misdemeanor or a felony has a substantial effect on the ability to locate and recover the child.

Some states do not treat parental abduction as a criminal offense if the custody order being violated was issued by a

court of another state, even if the left-behind parent was a resident of the state at the time of the abduction.

Although several states have criminal laws prohibiting pre-custody decree abductions, the traditional rule has been that neither parent commits a crime if the child is abducted prior to the issuance of a custody order. Such a "loophole" encourages parents who anticipate an unfavorable custody order to run with the child.

Statutes are not sufficiently clear or uniform about the potential criminal status of joint custody abductors, unwed parents, and sole custodians who interfere with the visitation rights of the noncustodial parent.

Recommendation:

State legislatures should make parental abduction a felony when either the child: a) is being concealed; b) has been removed from the state; or c) is otherwise at risk of harm. These circumstances should apply to any case in which the abduction is in derogation of the custody rights of another parent or family member, whether or not a custody order has been issued by a court.

Recommendations to State Missing Children's Clearinghouses, Law Enforcement and Prosecutors

1. Obstacle: Lack of Compliance with Federal Laws

Law enforcement officers in many states are not routinely taking missing child reports and entering the child in NCIC, as is required by law, unless the left-behind parent has an order of sole custody from that state.

Commentary:

Survey responses from those state missing children clearinghouses located within the criminal justice system reveal that criteria unrelated to the federal law regarding missing children impact upon whether law enforcement officers make a missing child report or enter a missing child in NCIC.

Almost forty percent reported that law enforcement in their states required the violation of a state criminal statute before they would take a missing child report, which is contrary to the federal law. Less than half of the clearinghouses reported that law enforcement officers routinely take a missing child report and entered the child in NCIC when the custody order was from another state and still fewer did so when there was no court order.

Law enforcement officers in many states reportedly do not routinely take a report or enter the child in NCIC based on whether the parents are married, whether (and what type of) a custody order has been violated, and whether there is a criminal violation. If no missing child report is taken, no investigation is begun to find the child.

Recommendation:

Law enforcement officers should be better informed of their mandates under the Missing Children Act of 1982 and the National Child Search Assistance Act of 1990. These can be communicated through organizational newsletters, departmental directives, and training videotapes. A missing child report and an NCIC entry should be accomplished in every parental abduction case, regardless of the marital or custodial status of the parents or the criminal status of the abductor.

2. Obstacle: Lack of Involvement and Experience by Law Enforcement

In a significant number of states, law enforcement officers appear to allocate a low priority to investigations as to the whereabouts of a parentally abducted child and consider the custodial and marital status of the parents in determining whether to start looking for the child. Training and experience in the location and recovery of the parentally abducted children appear to be limited.

Commentary:

In the survey of missing children clearinghouses, about half of the respondents reported that law enforcement in their state conducted an investigation to find a child whose unwed mother had sole custody by operation of law, with fewer reporting that to be the case when the left-behind parents had joint custody, court-ordered visitation rights, or no order. Forty-five percent reported that an investigation to find the child was conducted by law enforcement in their state only when there was a criminal violation. A decision by law enforcement not to launch an investigation as to the whereabouts of a child creates a significant obstacle for the parent who may lack the knowledge or resources to pursue other avenues to locate the child.

Many clearinghouse respondents were unaware of policies and procedures of law enforcement in their state regarding parental abduction cases, despite their function to provide information and assist in these cases. Over eighty percent recommended specific training in parental abduction cases for clearinghouses, law enforcement, and prosecutors.

In a study drawn from the files of NCMEC, left-behind parents appeared differentially served by local law enforcement, as officers in the study either had considerable experience or very little. About one-third of left-behind parents in the study reported that they did not find law enforcement efforts to be helpful.

Recommendation:

State missing children clearinghouses, police departments, and sheriffs' offices should receive educational materials, training, and technical assistance relating to the location, recovery and return of parentally abducted children. They should take advantage of federal assistance in handling missing children's cases. For example, through NCMEC, clearinghouses can apply for funds for computer equipment and training to improve operations. Project ALERT, a recently established federal initiative, involves volunteer retired law enforcement investigators who can assist in parental abduction cases at the request of local law enforcement.

Barriers relating to the marital, custodial, and criminal status of the parents should be removed, so that the children of these parents can also benefit from law enforcement, state clearinghouse, and NCMEC efforts to find them.

3. Obstacle: Lack of Criminal Investigation and Prosecution

Criminal investigation and prosecution of parental abduction cases receive a low priority within the criminal justice system and, therefore, do not serve as a sufficient deterrent to parental abductors.

Commentary:

With only 155 appellate cases of criminal custodial interference reported from 37 states, it is likely that criminal custodial interference cases are encountering roadblocks. Whether these exist on the investigative level, at prosecutorial intake, or at trial remains unclear.

The research using 39 cases at three different sites and 52 cases drawn from NCMEC files indicate that arrest occurred in about 40-50% of the cases. Most of these were brought to trial. Although the number of cases were small, convictions occurred in 40-50% of those which went to trial. Sentencing included incarceration, regular reporting, and restricted travel.

Criminal investigation, prosecution and sentencing in parental kidnapping cases can serve as significant deterrents to parental kidnapping, but do not presently appear to do so.

Recommendation:

Support of technical assistance and training for law enforcement and prosecutors in the investigation and prosecution of criminal parental kidnapping cases should be increased. This could be accomplished through collaborative efforts among NCMEC, the American Prosecutors Research Institute, and the Missing and Exploited Children Comprehensive Action Program, with various professional and occupational associations. Model parental abduction charging and sentencing guidelines should be developed and disseminated.

Recommendations to the Civil Bench and Bar

1. Obstacle: Lack of Knowledge and Experience Relating to Parental Abduction and Child Custody Jurisdiction

Lack of knowledge of applicable law and lack of experience on the part of many attorneys and judges, emerged as major obstacles in the recovery and return of parentally abducted children.

Commentary:

Although a small cadre of judges and attorneys has expertise in this area of law, most are not familiar with it. Analysis of recent case law revealed many appellate judges were not aware or properly informed of the PKPA in cases in which it should have been controlling.

In a nationwide sample, half of the judges surveyed reported that counsel rarely or never informed them of the PKPA in cases in which it was applicable. Over forty percent of the responding attorneys said that judges were unfamiliar with the PKPA and about two-thirds said that opposing counsel was unfamiliar with the Act.

Familiarity with the Hague Convention on the Civil Aspects of International Child Abduction appeared to be lacking to an even greater degree according to both judges and attorneys.

Respondents reported that attorneys and, particularly, judges are more informed about the UCCJA. However, survey responses indicated that many of the judges and attorneys were not routinely utilizing procedures which are mandated

by the UCCJA to prevent simultaneous proceedings, such as affidavits and inter-court communications. Recent case law confirms that these and other aspects of the UCCJA are often overlooked.

A random sample of cases drawn from NCMEC files revealed that one-quarter of the attorneys had no prior experience in these cases and an additional third had been involved in only one or two prior cases.

Although noncompliance derives mainly from the lack of knowledge, parochialism appears as a factor as well. For example, a judge may favor a local party rather than comply with the PKPA and UCCJA by enforcing an order of another state.

Recommendation:

Continuing education and training should be provided to judges and attorneys in laws applicable to parental abduction cases. Collaborative efforts with the American Bar Association Family Law Section, the National Council of Juvenile and Family Court Judges, the Association of Family and Conciliation Courts and other similar organizations should be encouraged and supported through funding from the Office of Juvenile Justice and Delinquency Prevention.

Diverse methods of disseminating information should be used, including satellite teleconferencing, interactive computer learning modules, articles in scholarly and practical publications, bench books for judges, and practice tips manuals for attorneys. More experienced judges and attorneys should serve as mentors for those with less experience. In addition, a parental abduction curriculum should be developed for circulation to law schools.

Appellate judges should also have the opportunity for continuing education relating to the PKPA and UCCJA. If appellate judges are more informed, the desire of lower court judges not to be overturned will help deter noncompliance, resulting from favoritism toward local parties.

Recommendations Directed to the Public or to Multiple Groups

1. Obstacle: Finding Attorneys with Expertise in Parental Abduction

Parents have difficulty finding attorneys knowledgeable and experienced in parental abduction cases.

Commentary:

Presently there is no mechanism for identifying attorneys experienced in and knowledgeable about parental abduction issues and the enforcement of child custody orders. In the study of 52 NCMEC cases, about a third of the parents said they had to educate their attorneys as to child recovery procedures. When parents need to have attorneys in two states, the burden of finding an experienced attorney doubles.

Recommendation:

A national referral system for attorneys with knowledge of and experience in parental abduction cases should be established and maintained. The Office of Juvenile Justice and Delinquency Prevention should support the development of a referral system in collaboration with such organizations as the American Bar Association Section on Family Law and NCMEC.

2. Obstacle: Abductors Succeed with Help from Others

Most parents who abduct are assisted by third-parties in the abduction, in the concealment of the child, or with financial support.

Commentary:

It appears that parental abductions would be difficult to carry out and hiding would be harder to do, if it were not for the assistance of other people. Three-fourths of the 52 closed cases drawn from NCMEC files involved the assistance of others, usually the abductor's mother or friends. Family members, friends, and others who help abductors can be sued for damages in a tort action or charged with aiding in a crime, as evidenced by recent case law. Attorneys can be sued for malpractice or referred for disciplinary action for assisting clients to abduct their children.

Recommendation:

Educational efforts to prevent abductions need to reach the public through the various media. For example, public service announcement and pamphlets could inform friends, family members, and other support networks to potential abductors of the civil and criminally liability risks they face if they assist a parent in abducting or concealing a child. Civil attorneys and prosecutors should become more knowledgeable of third-party liability and seek appropriate remedies against wrongdoers.

Continuing legal education is needed for attorneys, so they can better understand their ethical responsibility and liability in these cases. Disciplinary action should be taken against attorneys, when appropriate.

3. Obstacle: Parents Cannot Afford the Expenses Required to Have Their Children Located, Recovered, and Returned

Parents often cannot afford the costs of the location, recovery and return of abducted children. Such expenses may involve costly court proceedings in two states, travel, and time off work.

Commentary:

Lack of funds for some parents means they cannot take action to get an initial custody order or to have an existing order enforced. It also can result in the child being concealed longer and a recovered child being placed in temporary foster care until the parent can afford travel costs. Parents sometimes must mortgage their home, borrow to their limit, and get loans from family and friends to pay for the costs of having their children returned.

The attorney respondents in the NCMEC sample as well as respondents in the attorneys' and judges' frequently cited the parent's lack of funds as a major obstacle in the recovery and return of the child. The parents in the NCMEC study, which was limited to cases in which the children were recovered, most frequently reported that they spent between $1,000-$5,000 on legal fees, with one-fourth reporting lost income within the same range. Results from the attorney's survey indicated legal fees, not including appeals, from $300 to $125,000, with an average of over $10,000. Although over half of the attorneys routinely petitioned the court for awards of costs and expenses, under ten percent report that judges routinely grant such requests.

Recommendation:

No child should remain missing or withheld from the left-behind parent due to the parent's lack of funds. National, state and local bar associations should encourage attorneys to take parental abduction cases pro bono or on a sliding scale.

Legal aid and legal services programs should accept, as high priority cases, parental abduction cases, so that more low-income parents could have their children returned to them.

State laws and regulations also should be clarified so that left-behind parents are clearly eligible for financial aid under victims' assistance and criminal restitution programs.

4. Obstacle: The Prevailing Belief that Parental Abduction is not a Serious Matter

Underlying many barriers to locating, recovering and returning parentally abducted children are a set of cultural beliefs, held by the public and many of the professionals involved in these cases, that parental abduction cases are not serious.

Commentary:

The belief system includes assumptions that: 1) being abducted by a parent is not harmful to children, 2) parental abduction cases are private family matters and not deserving of law enforcement attention or resources, and 3) vindictive motives are generally behind allegations of abuse or requests for measures to prevent abductions in custody cases, e.g., supervised visitations.

Research from other studies indicates that children who have been abducted by family members are often psychologically harmed and sometimes physically or sexually abused by their abductors. In addition, research on child sexual abuse allegations in contested child custody and visitation cases and on domestic violence indicate these allegations are rarely willfully fabricated and occur no more frequently than in nondivorcing families. Criminal codes establishing parental abduction as a crime and federal laws requiring the reporting of missing children demonstrate that this is not simply a private matter.

Recommendation:

Educational efforts which bring existing research to the attention of judges, attorneys, law enforcement, and the public should be developed to dispel current myths regarding parental abduction and to change behavior toward these cases. Professional groups and the public should learn of the deleterious effects of parental abductions on children, so as to heighten their awareness of the seriousness of these cases.

The Research Design

These findings and recommendations resulted from legal and social science research identified the legal, policy, procedural, and practical obstacles to the location, recovery, and return of parentally abducted children.

The research components undertaken by the American Bar Association Center on Children and the Law (ABA) project staff and legal consultants included:

- Comprehensive legal research on state and federal statutes, court rules and recent case law relating to parental abduction and custody determinations, modification, and enforcement, including a review of the legal literature.

- The development of papers on special legal topics, including suggested expedited procedures for custody enforcement, issues arising in criminal appellate decisions, and the role of law enforcement and prosecutors in the civil enforcement of child custody orders.

- Surveys of attorneys, judges, and state missing children clearinghouse personnel relating to their experiences with custody enforcement and family abduction, their perceptions of obstacles to location and return, and their recommendations for overcoming obstacles.

The Center for the Study of Trauma at the University of California, San Francisco (UCSF) conducted:

- A review of the behavioral science and social service literature.

- A multi-source national survey of family abduction cases based on a sample of 52 cases drawn from the files of the National Center for Missing and Exploited Children.

- An on-site systems evaluation designed to examine the interaction among civil, criminal, and social service systems at three different communities in responding to parental abductions.

A Guide to the Report

Volume I: The ABA Research

Part I: Introduction

Chapter 1: The Research Design describes the goals, objectives, and design of the legal and social science research components of the project and provides a brief overview of the literature.

Chapter 2: Key Laws Relating to Parental Abductions and Obstacles to their Effectiveness briefly describes the UCCJA, the PKPA, the Hague Convention on the Civil Aspects of International Child Abduction, the Missing Children's Act, and the National Child Search Assistance Act. Obstacles to the effectiveness of

these laws are summarized. Those new to the topic will find this chapter to be a useful overview.

Part II: The Civil Legal Response

Chapter 3: Parental Abduction: State and Federal Statutes, Court Rules, and Recent Case Law provides a detailed analysis of the PKPA, state variations of the UCCJA, and other parental abduction-related laws. The degree to which specific provisions ease or impede the recovery and return of parentally abducted children is examined and specific recommendations are suggested. Legislators, particularly, will find the specific recommendations and analysis provided in this chapter helpful in revising federal and state statutes.

Chapter 4: Legal and Judicial Practices in Parental Abduction Cases is in two parts. The first part presents the results of nationwide surveys of judges and attorneys with experience in parental abduction cases. The second part examines jurisdictional conflicts as a reflection of the lack of consistent and informed standards of practice, as viewed by an experienced family law attorney.

Chapter 5: When Friends, Relatives and Lawyers are Part of the Problem examines the role of third parties in helping parents abduct or conceal their children. An examination of tort cases indicates that relatives and friends can be held liable for damages for their role in aiding abductors. Recent case law relating to the attorney-client privilege in abduction cases helps distinguish the boundaries of ethical conduct.

Chapter 6: An Act to Expedite Enforcement of Child Custody Determinations provides a model act to create an efficient, responsive, and inexpensive system for child custody orders to be enforced. This chapter introduces a role for law enforcement and prosecutors in the civil enforcement process.

Part III: The Criminal Justice System Response in Location and Recovery

Chapter 7: The Role of Prosecutors in the Civil Enforcement of Custody Decrees describes California's unique mandated involvement of prosecutors' offices in the civil enforcement of custody orders, which can serve as a model for other states.

Chapter 8: Civil Liability of Law Enforcement Officials for their Actions in Parental Kidnapping Cases examines the cases involving civil suits against law enforcement officers who have accompanied parents or assisted them in "picking up" the child. These cases demonstrate the difficulties facing law enforcement officers asked to help recover a child.

Chapter 9: The View from State Missing Children Clearinghouses describes the results of a survey of state missing children clearinghouses. The survey elicited information about the role of clearinghouses in parental abduction cases as well as clearinghouse personnel's perceptions of law enforcement activities in reporting, locating, and parentally abducted children.

Chapter 10: Key Issues and Obstacles in the Criminal Prosecution of Parental Kidnapping describes the themes which emerge from an examination of state appellate court decisions relating to criminal custodial interference. The chapter appendix includes a digest of criminal appellate decisions, which should be of particular interest to prosecutors.

Part IV: Conclusions: Focus on Legal Obstacles

Chapter 11: Summary and Conclusions of the ABA Research consolidates the major findings and recommendations of the legal research and the surveys of attorneys, judges, and state missing children's clearinghouses. Directions for future research and action are provided.

Volume II: The UCSF Research

Part V: Individual Experiences and Community Response In Parental Abduction Cases

Chapter 12: Perspectives from Left-Behind Parents and Their Helpers in Specific Cases describes the findings of a social science survey of 52 closed parental abduction cases drawn from files of the National Center for Missing and Exploited Children. The left-behind custodial parent, the civil attorney, the law enforcement officer, and a socially supportive person identified by the parent were interviewed. Various obstacles and the interrelationship among obstacles, abduction events, and the level of stress of the left-behind parent are examined from this multi-source perspective.

Chapter 13: Community Responses to Parental Abduction Cases: An Examination of Three Sites describes how the process of investigating and resolving parental abduction cases operates in three communities by tracking the histories of several cases at each site.

Appendices

The appendices includes a paper detailing existing legal procedures for the enforcement of child custody determinations and obstacles to their effectiveness, sample forms to be used with existing legal procedures, and case summaries of criminal and civil appellate cases.

VOLUME ONE: ABA RESEARCH

PART I: INTRODUCTION

PART II: THE CIVIL LEGAL RESPONSE

PART I: INTRODUCTION

Chapter 1

INTRODUCTION

by Linda K. Girdner, Ph.D.

Table of Contents

Chapter 1

INTRODUCTION

by Linda K. Girdner, Ph.D.

This chapter describes the goals and objectives of the project, the distinct research components carried out to attain these objectives, and the terms and parameters used in the study.

Project Goals and Objectives

Section 408 of the 1988 Amendments to Title IV of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. § 5778) required the Office of Juvenile Justice and Delinquency Prevention (OJJDP) to conduct a special study and report to "determine the obstacles that prevent or impede individuals who have legal custody of children from recovering such children from parents who have removed such children from such individuals in violation of law."[1]

The Office of Juvenile Justice and Delinquency Prevention selected the American Bar Association Fund for Justice and Education as the grantee for the project, which commenced on May 15, 1990. The study, referred to herein as the Obstacles Project, was conducted by the American Bar Association Center on Children and the Law (ABA), in collaboration with special legal consultants, and the Center for the Study of Trauma at the University of California, San Francisco (UCSF).

The goals of the project are: 1) to identify the legal, policy, procedural, and practical obstacles to the recovery and return of parentally abducted children and 2) to make recommendations as to how these obstacles can be reduced or eliminated.

The specific objectives to reach these goals include to:

1) identify obstacles presented by existing state and federal laws and court decisions that result either in delays in obtaining civil custody orders, in conflicting court orders, or in difficulties in enforcing civil court decrees, and to propose methods for removing or reducing these obstacles;

2) identify those aspects of custody enforcement and parental abduction which are most problematic to lawyers, judges, and state missing children

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[1]The program announcement was published in the Federal Register Title 54 Fed. Reg. 29, 300 (1989).

clearinghouse personnel and suggest ways of addressing these problems;

3) identify the role currently played by law enforcement in assisting the custodial parent to recover the abducted child, and then clarify the steps law enforcement should take in parental abduction cases to assist in the civil recovery of the child;

4) develop and recommend simplified uniform custody enforcement procedures;

5) document the practical and financial obstacles faced by parents whose children have been abducted and recommend measures to assist them; and

6) create a model for interagency cooperation in parental kidnapping cases to ensure that prompt attention is given to locating and recovering parentally-abducted children in a coordinated and cost efficient manner.

Research Design

The project consists of several independent research components. An integration of the findings and general recommendations are provided in chapter 2. The specific results for each component are presented separately in subsequent chapters. Volume I of the Report constitutes the research, relating primarily to law and legal practices, conducted by the ABA Center on Children and the Law in conjunction with legal consultants. Volume II of the Report includes the social science research undertaken by the Center for the Study of Trauma at the University of California, San Francisco.

Reviews of the Literature

ABA Review of the Legal Literature

During the first phase of the project, a comprehensive examination of the legal literature, both scholarly and practical, relating to parental abduction was conducted. Topics include the Uniform Child Custody Jurisdiction Act (UCCJA)[2] and related state laws, the Parental Kidnapping Prevention Act (PKPA) and related federal law, international parental kidnapping and the Hague Convention, child snatching tort suits, military personnel, Native American families, abduction prevention, and ethics. The review resulted in the document entitled Parental

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[2]A brief overview of UCCJA and PKPA is provided in Chapter 2 and a detailed analysis in Chapter 3. The text of the PKPA is an Appendix to Chapter 3.

Child Abduction: An Annotated Legal Bibliography, which includes annotations of over 180 legal articles.[3]

The legal literature review identified a number of obstacles to the recovery and return of parentally abducted children, which were subsumed under four broad categories: 1) needed provisions not in current statutes, 2) court practices not authorized by current statutes; 3) court practices authorized but not utilized; and 4) other problems not arising from statutory law.

Needed provisions not in current statutes. Simultaneous proceedings and conflicting orders are problems that the UCCJA and PKPA were designed to prevent. Yet the literature clearly indicates that these problems continue. Contributing factors are the lack of clarity and uniformity in the length of time for which states retain continuing modification jurisdiction,[4] some courts not limiting emergency jurisdiction to temporary orders,[5] and the lack of a federal cause of action when two states have issued conflicting orders.[6] Other problems are the lack of efficient and uniform procedures for enforcing custody orders[7]

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[3]The bibliography is available as a separate document from the Parental Abduction Project, ABA Center on Children and the Law, 1800 M Street NW, Washington, D.C. 20036. Only a few of the sources are cited here.

[4]E.g., Baker, Does Florida Create Intractable Jurisdictional Deadlocks?, Fla. B.J., Vol. 62, No. 3, P. 43 (1988); Katz, Legal Remedies for Child Snatching, 15 Fam. L.Q. 103 (1981); Hennemann, Divorce -- Parent and Child - North Dakota's Interpretation of the Interplay Between the PKPA and the UCCJA, 62 N.D.L. Rev. 263 (1986).

[5]E.g., Coombs, Interstate Child Custody: Jurisdiction, Recognition, and Enforcement, 66 Minn. L. Rev. 711 (1982); Metzger, Jurisdictional Guidelines in Matters of Child Custody: Kansas Adopts the Uniform Child Custody Jurisdiction Act, 27 U. Kan. L. Rev. 469 (1979).

[6]E.g., Baron, The Good, the Bad, and the Ugly: A Supreme Look at the PKPA, 8 Prob. L.J. 339 (1988); Taylor, Family Law - Federal Courts - No Federal Jurisdiction Under the Parental Kidnapping Prevention Act, 11 U. Ark. Little Rock L.J. 97 (1988).

[7]E.g., Allen, Uniform Child Custody Jurisdiction Act in North Carolina, 4 Campbell L. Rev. 371 (1982).

and the lack of recourse for parents whose children are abducted and concealed prior to a custody order being granted.[8]

Court practices not authorized by current statutes. Some courts have stayed enforcement of another's state's custody order, despite the order being entitled to enforcement under the UCCJA and PKPA.[9] In addition, some courts have created a "punitive decree" exception to the UCCJA obligation to enforce another state's decree.[10]

Court practices authorized but not utilized. Despite the provisions in the UCCJA for intercourt communication and discovery procedures, courts are not utilizing these provisions.[11] As a result, conflicting orders are often issued.

Other problems. Two key problems emerge from the literature which do not relate to statutory law. International abductions present difficult and complex problems, particularly as few countries have ratified the Hague Convention on the Civil Aspects of International Child Abduction.[12] Finally, left-behind

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[8]E.g., Foster and Freed, A Legislative Beginning to Child-Snatching Prevention, 17 Trial 36 (1981); Hersha, Child Snatching: The Federal Response, 33 Syracuse L. Rev. 1103 (1982).

[9]E.g., Ames, McDonald v. McDonald: Michigan Applies the Uniform Child Custody Jurisdiction Act, 123 Det. C.L. Rev. (1978); Donigan, Child Custody Jurisdiction: New Legislation Reflects Public Policy Against Parental Abduction, 19 Gonz. L. Rev. 1 (1983).

[10]E.g., Allen, Uniform Child Custody Jurisdiction Act in North Carolina, 4 Campbell L. Rev. 371 (1982); Garrett, Jurisdiction of Tennessee Courts to Modify the Child Custody Decrees and Visitation Orders of Sister States, 16 Mem. St. U.L. Rev. 255 (1986); McGough and Hughes, Chartered Territory: The Louisiana Experience With the Uniform Child Custody Jurisdiction Act, 44 La. L. Rev. 19 (1983).

[11]E.g., Bodenheimer, Interstate Custody: Initial Jurisdiction and Continuing Jurisdiction under the UCCJA, 14 Fam. L.Q. 203 (1981); Donigan, Child Custody Jurisdiction: New Legislation Reflects Public Policy Against Parental Abduction, 19 Gonz. L. Rev. 1 (1983); Shapiro, Validity, Construction, and Application of Uniform Child Custody Jurisdiction Act, 96 A.L.R. 3d 968 (1980 & Supp. 1990).

[12]DeHart, Getting the Child Back, Fam. Advoc., Vol. 9, No. 4, P. 20 (1987); Frank, American and International Responses to International Child Abductions, 16 N.Y.U. J. Int'l L. & Pol. 415

parents frequently lack the resources needed to pursue the location, recovery, and return of their children[13] or the alternatives to resolve the dispute.[14]

UCSF Review of the Social Science Literature

Although the research on parental abduction is growing, it is still a relatively new field. Early articles on the subject were almost exclusively anecdotal data based on clinical experience with patients receiving mental health treatment for symptoms associated with trauma.[15] An early study by Agopian[16] was an exception to this trend, as it was research-based and provided descriptive information of this previously unidentified phenomenon. His work continued to contribute to a better understanding of the context in which parental abductions occurs and the impact of abductions on children.[17]

(1984); Helzick, Returning United States Children Abducted to Foreign Countries: The Need to Implement the Hague Convention on the Civil Aspects of International Child Abduction, 5 B.U. Int'l L.J. 119 (1987).

[13]Noelker, The Uniform Child Custody Jurisdiction Act: The Difficulties It Presents for Poor People, 11 Clearinghouse Rev. 222 (1977).

[14]S.T. Bentch, Court-sponsored Custody Mediation to Prevent Parental Kidnapping: A Disarmament Proposal, 18 St. Mary's Law Journal, 361-393, 1986. A cautionary note on the use of mediation as a means of abduction prevention is in order. Although it is likely that some parents, who would otherwise abduct, would benefit from this intervention, others may be ill-suited to it, such as in cases involving domestic violence. More research needs to be undertaken to determine what type of mediation, if any, is suitable for different families.

[15]D.N. Noble and C.E. Palmer, The Painful Phenomenon of Child Snatching, 65 (6) Social Casework, 330-336 (1984); D.H. Schetky and L.H. Haller, Child Psychiatry and the Law: Parental Kidnapping, 22 (3) Journal of the American Academy of Child Psychiatry, 279-285 (1983); N. Senior, T. Gladstone and B. Nurcombe, Child Snatching: A Case Report, 21 Journal of the American Academy of Child Psychiatry, 579-583 (1982).

[16]M. Agopian, Parental Child Stealing. Lexington Books (1981).

[17]M.W. Agopian and G.L. Anderson, Characteristics of Parental Child Stealing, 2(4) Journal of Family Issues, 471-483 (1981); M.W. Agopian, Parental Child Stealing: Participants and the Victimization Process, 5(2-4) Victimology, 263-273 (1982); M. Agopian, The Impact of Children of Abduction by Parents, 63(6)

More recent research on families which have experienced abductions includes an examination on the psychological consequences of parental abduction[18], and small scale surveys of left-behind parents[19]. A groundbreaking examination of the parental abductions based on a survey of 371 parents provides the first research-based information on gender differences in parental abduction and develops a topology of parental abductions.[20]

Another area of research in the field has been in developing operational definitions of parental abduction and estimating the incidence of parental abduction.[21]

Studies relating to the social, emotional, and legal nexus occasioned by divorce can shed light on the circumstances out of which parental abductions arise,[22] particularly as ongoing parental conflict in the post-divorce period appears as a factor associated with post-divorce family abduction. Research on parents who are engaged in continued high levels of conflict over their children subsequent to marital dissolution may provide helpful clues as to the dynamics of families who consider or fear abductions.[23]

Child Welfare, 511-519 (1984).

[18]C. Hatcher, C. Barton and L. Brooks, Families of Missing Children, (forthcoming).

[19]R. Janvier, K. McCormick and R. Donaldson, Parental Kidnapping: A Survey of Left-Behind Parents, 41 Juvenile and Family Court Journal, 1-8 (1990).

[20]G. Grief and R. Hegar, When Parents Kidnap, The Free Press (forthcoming); R. Hegar and G. Grief, Abduction of Children by Parents: A Survey of the Problem, 36 Social Work, 421-426 (1991).

[21]M. Gelles, Parental Child Snatching: A Preliminary Estimate of the National Incidence, 46(3) Journal of Marriage and the Family, 735-740 (1984); D. Finkelhor, G. Hotaling and A. Sedlack, Missing, Abducted, Runaway, and Thrownaway Children in America, (First Report: Numbers and Characteristics National Incidence Studies), Office of Juvenile Justice and Delinquency Prevention (1990), referred to as NISMART.

[22]The social science literature on divorce and child custody is too extensive to summarize here.

[23]J.R. Johnston and L.E. Campbell, Impasses of Divorce: The Dynamics and Resolution of Family Conflict (1988); J.R Johnston, L.E. Campbell and M.C. Tall, Impasses to the Resolution of

The social science and social service fields have rarely addressed the legal and policy aspects of parental abduction. Two exceptions are noteworthy. Agopian and Anderson describe legislative developments in California and in federal law (the PKPA) regarding child-stealing in the early 1980's.[24] They recommend that California's new statutes be considered models for other states.[25] Hegar provides an overview of parental abduction laws and discusses its implications for social work practice.[26]

Fifty State Legal Research

The fifty state legal research included an analysis of federal and state statutes, court rules, and case law relating to parental abduction and is described in detail in chapter 3.

Statutes and court rules were first examined in all fifty states, the District of Columbia, Puerto Rico, and the Virgin Islands. The objective was to identify those statutes and rules which either assist or impede left-behind parents in their efforts to recover their children who have been abducted by a parent or other family member. A significant portion of this work focused on the state enactments of the Uniform Child Custody Jurisdiction Act (UCCJA) and relevant provisions of the federal Parental Kidnapping Prevention Act (PKPA), 28 U.S.C. 1738(a), which govern child custody jurisdiction in the United States.

The analysis of statutes and court rules was followed by a review of recent case law. Case law from 1989-1991 from all fifty states and federal courts relating to the PKPA was

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Custody and Visitation Disputes, 55 American Journal of Orthopsychiatry, 112-129 (1985). Research is underway to compare families, in which parents are engaged in high conflict over the custody of their children with those which have experienced an abduction, to identify the characteristics which indicate that a family may be at high risk for an abduction. The research is carried out by the ABA Center on Children and the Law (Dr. Linda Girdner, Project Director) and the Center for the Family in Transition (Dr. Janet Johnston, Principal Investigator) under OJJPD Grant No. 92-MC-CX-0007.

[24]M. Agopian and G. Anderson, Legislative Reforms to Reduce Parental Abductions, 6(1) Journal of Juvenile Law, 1-26 (1982).

[25]See Chapter 7 for an explanation of California's mandated role for prosecutors in the civil enforcement of custody orders, which continues to serve as a model for other states today.

[26]R. Hegar, Parental Kidnapping and U.S. Social Policy, 64(15) Social Service Review, 407-421, (September 1990).

examined. Then appellate cases relating to the UCCJA from 1990-1991 were similarly reviewed. A synopsis of each case was developed and significant obstacles were identified through cross-case comparison.

Special Legal Topics

Several additional legal topics were identified as deserving specialized attention. Legal and judicial practices which contribute to jurisdictional conflicts over custody are examined through the lens of a highly experienced family attorney who specializes in these cases in the second part of Chapter 4. Most abductions involve assistance by third parties. The civil liability of family members and friends who aid abductors and the ethical boundaries of attorneys' behavior in these cases are examined in Chapter 5.

Three chapters focus on special topics relating to the interstate enforcement of child custody orders from both the civil and criminal justice systems. A suggested state statute providing for the cost-effective and expedited enforcement of child custody orders is presented with commentary in Chapter 6. It would mandate a role for prosecutors in civil enforcement. California is the only state in which prosecutors have such a role, which is described in Chapter 7. Chapter 8 provides an analysis of civil liability suits against law enforcement officers in enforcing custody orders.

Two special topics were added after they were identified as gaps in the field and in the analysis of obstacles. With the exception of a few states that have specific statutes relating to family violence and parental abduction, laws and policies of these two areas appear unrelated. Recent social science research[27] indicates that significant numbers of parental abduction cases involve allegations of family violence. Project staff consulted with experts from the domestic violence and parental abduction fields in developing recommendations regarding parental abduction cases in which parents flee to protect themselves or their children from abuse. These recommendations can be found in Section II.E. of Chapter 3.

Finally, criminal investigation and prosecution in parental abduction cases have not been systematically studied. Chapter 10 examines key issues and obstacles in criminal appellate cases relating to parental kidnapping.

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[27]G. Grief and R. Hegar, When Parents Kidnap, The Free Press (forthcoming).

Practitioner Surveys

Three social science surveys were conducted to identify the experience of practitioners who are involved with parental abduction cases. The three categories of respondents are judges, attorneys, and state missing children clearinghouses.

To elicit information about the activities engaged in and obstacles experienced by a nationwide sample of attorneys and judges, mail questionnaires were sent to 134 attorneys and 121 judges, who had been identified as having experience in these cases. Of these 58% of attorneys and 69% of judges completed the surveys.

Mail questionnaires were sent to state missing children clearinghouse personnel to elicit data on clearinghouse activities, their perceptions of the responsibilities and actions of law enforcement, and their assessment of key obstacles in parental abduction cases. Of 42 official clearinghouses, surveys were received from 36, which represents 86% of the entire population of official clearinghouses.

Left-Behind Parents and their Helpers: Case Experiences

In order to examine the experiences of individual left-behind parents and those to whom they turned for help in recovering their children, a multi-source survey was conducted. Fifty-two parental abduction cases comprised a random sample of closed cases drawn from the National Center for Missing and Exploited Children.

In just over half of the cases, interviews were conducted with the left-behind parent, the police contact, the private attorney, and a socially supportive individual identified by the parent. Other cases included interviews with one or two of these helpers in addition to the left-behind parent.

This component of the research examined the interplay between obstacles, abduction event, and the levels of stress of the left-behind parent. These findings are provided in Chapter 12.

Community Responses

The systems evaluation component was designed to examine the interaction among civil, criminal, and social service systems at three different sites in responding to parental abductions. The sites selected were Los Angeles, California; Waukegan, Illinois; and Tom's River, New Jersey.

Defining Terms and Parameters

How is Parental Abduction Defined?

The report of the National Incidence Studies of Missing, Abducted, Runaway and Thrownaway Children (NISMART) was released by the Office of Juvenile Justice and Delinquency Prevention just as the Obstacles Project was beginning. NISMART was a Congressionally-mandated study to identify the incidence of various types of missing children in the American population within a given year.

The NISMART study found that in 1988 there were an estimated 354,100 "Broad Scope" family abductions, which involved a family member taking a child or retaining a child in violation of a custody agreement or decree, with the child being away at least overnight. This is higher than most of the previous estimates of 25,000 to 100,000. Of these, an estimated 163,200 or 46% were considered to be "Policy Focal," that is, where the abductor either attempted to conceal the child or prevent contact with the child, transported the child out of state, or intended to keep the child indefinitely or to permanently change custody.

According to NISMART, 41% of parental abductions occurred prior to a divorce decree. Many of these are likely to be situations in which there had not yet been a determination of custody. Pre-decree abductions present particular obstacles for left-behind parents, since law enforcement generally is not mandated or authorized to search for an abductor-parent in the absence of a custody order (i.e., the majority of criminal parental kidnapping laws require a violation of a custody order as an element of offense). Due to the relatively high incidence of pre-decree abductions and the legal ambiguity involved, pre-decree abductions were included in the study.

Children also are taken or concealed by a custodial parent, constituting a violation of the court ordered-visitation rights of the noncustodial parent. These parents fear never seeing their children again as they learn that very few law enforcement agencies and missing children's organizations offer assistance to noncustodial parents in locating their children. Consequently, the project incorporated the examination of the obstacles faced by noncustodial parents into the research.

Parents are not the only family members to abduct children. For example, a grandparent can be involved as the abductor or as the legal guardian from whom the child was abducted. A former live-in boyfriend might abduct a child or an ex-husband's girlfriend might take the child at the behest of the ex-husband. In addition, unwed fathers, whose paternity may not have been established, can abduct children. Due to the range of relationships existing between those abducting and those left-

behind, the Obstacles Project chose to adopt the following definition of "family member" from NISMART:

> someone who is (1) related to the child by blood, or (2) currently or formerly related to the child by law, or (3) a current or former paramour of the child's parent/guardian, or (4) acting as the agent of or together with a person who qualifies as a family member under (1), (2), or (3).[28]

In sum, the Obstacles Project incorporates a broader range of custodial situations and a wider variety of relationships than originally contemplated by the Congressional mandate in order to more realistically reflect the kinds of parental child abduction cases that commonly arise.

With these parameters, **the term "parental abduction" is used to encompass the taking, retention, or concealment of a child or children by a parent or other family member in derogation of the custody rights, including visitation rights, of another parent or family member.** Thus, the term "abducting parent" refers to the "family member" who commits a wrongful act as described above.

Since the objective is to identify the obstacles to the recovery and return of the abducted child, and not the abductor, the emphasis is necessarily on the civil aspects of parental abduction, particularly the enforcement of custody orders. The criminal aspects are addressed primarily in terms of how criminal laws, policies, and procedures may function to impede or facilitate the recovery and return of the child. The investigation and prosecution of parentally abducted children is the focus of another OJJDP-funded project being conducted by the American Prosecutors Research Institute.

Differences across states in laws and their enforcement, court rules, law enforcement procedures, and available services for left-behind parents create tremendous obstacles for parents in interstate parental abductions above and beyond those faced by parents in intrastate abductions. As a result, the project has given greater emphasis to interstate cases.

International abduction is a diplomatically sensitive, culturally problematic, and legally complex issue.[29] Obstacles

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[28]From "NISMART Definitions" manuscript, p.8.

[29]For more information about international abduction, one should contact the U.S. Central Authority, Office of Citizen Consular Services, U.S. Department of State at (202) 647-3666. Materials from a panel on International Parental Abduction at the 1992 Spring meeting of the ABA Family Law Section is available from the American Bar Association's Order Fulfillment Section,

often appear insurmountable in international abduction cases, particularly when a child is abducted to a country which has not ratified the Hague Convention on the Civil Aspects of International Child Abduction (briefly described in the next chapter). The Obstacles Project merely touches upon some of the issues involved in international abductions.[30] The Obstacles Project strongly recommends that the U.S. Congress and the Office of Juvenile Justice and Delinquency Prevention consider the need for further research on this important topic.[31]

What is the Process From Pre-abduction to Return?

The focus of this project was obstacles to the location, recovery, and return of parentally abducted children in interstate parental abductions. Obstacles were defined as legal, policy, procedural, and practical hindrances encountered by the left behind-parent and others in attempting to locate, recover, and return a child after a parental abduction.

The Obstacles Project sought to develop operational definitions, which could be shared and refined across disciplines and projects. Each term refers to a different stage in a continuum and is punctuated by a specific critical event, as depicted in the following diagram:

Child is Abducted	Child is Located	Child is Picked up	Child is Returned
X	X	X	X
Pre-Abduction	Location	Recovery	Return

Pre-abduction refers to the circumstances prior to a family member taking the child or failing to return the child. This includes the legal circumstances, such as whether a custody order existed, the demographic characteristics of the parties and the child, and behavioral considerations existing pre-abduction, which could have an impact on the process of recovery and return

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750 North Lake Shore Drive, Chicago, IL 60611, (312) 988-5555.

[30]In Chapter 3 of this report state variations of Section 23 of the Uniform Child Custody Jurisdiction Act, regarding the enforcement of foreign orders, is briefly addressed. Further research is clearly needed to address these complex and difficult cases.

[31]Congressional concern on this topic has been evidenced in the past year by the inclusion of provisions in the omnibus crime bills making international parental abduction a federal felony. As of the date of this report, the legislation has not yet been enacted.

(e.g., whether threats were made that the nonabducting parent would never see the child again.)

Location refers to the process of seeking to determine the abducted child's whereabouts. Not all cases involve the whereabouts of the child being concealed. (For this reason, the term "left-behind parent" is used rather than "searching parent.") The child may not be truly missing, but the child is not where he or she is supposed to be.

Recovery refers to the actions taken to physically secure (i.e., "pick up") the child, which may be the responsibility of law enforcement or social services. "Self-help recovery" is used to refer to a parent unilaterally picking up his or her abducted child.

Return refers to the process from the recovery of the child to the child being reunited with the legally appropriate person, e.g., the child is returned to the custodial parent. In some cases, the parent may be present with law enforcement at the recovery, so that the return is immediate. In other cases, the parent or child may need to travel to another location after the recovery to be reunited. Recovered children also may be placed with an interim caretaker (e.g., foster parent or relative) pending the arrangement of travel or pending the resolution of the custody issue.

Left-behind parents, and those assisting them, face obstacles which hinder successful completion of each of the above stages. This report systematically documents these obstacles and suggests recommendations for overcoming them. Central to this discussion are the laws relating to child custody determination, modification, and enforcement and laws relating to missing children. These are described in the next chapter.

Chapter 2

KEY LAWS RELATING TO PARENTAL ABDUCTIONS AND OBSTACLES TO THEIR EFFECTIVENESS

by Linda K. Girdner, Ph.D.

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Chapter 2

KEY LAWS RELATING TO PARENTAL ABDUCTIONS AND OBSTACLES TO THEIR EFFECTIVENESS

by Linda K. Girdner, Ph.D.

This chapter briefly describes key aspects of the existing legal framework which governs interstate child custody disputes[1] and the roles of clearinghouses[2] and law enforcement in parental abductions.[3] Based on the integration of research findings, major obstacles to the effective functioning of these laws are described and recommendations are made to overcome these obstacles.

Introduction

Why is Parental Abduction an Interstate Problem?

The United States is a very mobile society. Families frequently move to seek better jobs, live in nicer homes, choose different lifestyles, or move closer or further from extended families. Freedom of movement is a key right of Americans. Children moving with their parents is viewed as normal and is not generally a matter for regulation or investigation.

When parents divorce, the state takes a greater interest in the welfare of children. It has a responsibility to make sure that the children's interests are met, by determining how parents will divide or share their time with their children and their responsibilities relating to the children's upbringing. When parents agree on these issues, the court generally approves that agreement. When parents with children are unable to reach agreement, several paths are available to them. They may attempt

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[1]A comprehensive examination of state statutes, court rules and recent case law relating to the UCCJA and the PKPA is provided in Chapter 3. Also see Hoff, Schulman, and Volenik, Interstate Child Custody Disputes and Parental Kidnapping: Policy Practice and Law (LSC/ABA 1982), referred to as ICCD (1982), and Hoff, Schulman, and Volenik, 1990 Supplement to Interstate Child Custody Disputes and Parental Kidnapping: Policy, Practice and Law (NCWFL 1990), referred to as ICCD (1990).

[2]State missing children clearinghouses were the subject of a survey presented in Chapter 9.

[3]A more complete examination of the role of prosecutors and law enforcement are provided in Chapters 7 and 8, respectively. In addition, the clearinghouse survey described in Chapter 9 provides information as to law enforcement practices in parental abduction cases and their compliance with federal law.

to negotiate an agreement with the assistance of attorneys, they may try to mediate the dispute, or they may take the matter before the court to have the decision made for them.

Some parents, however, fearing that these outcomes will not be in their favor, take matters into their own hands. Others are unwilling to abide by the order of the court and violate it. Some leave secretly to seek safety from abuse for themselves or their children. For a variety of motivations and in diverse situations, some separated, divorced, and unwed parents abduct their children and leave for another state, thereby cutting off the relationship between the children and the left-behind parent. A custodial parent, or the one who provides primary residence for the children, may take the children, thus interfering with the visitation rights of the other. A noncustodial parent may fail to return children following a visit. Often parents abduct their children before any custody decree has been issued. The parent taking the children may conceal their location from the other parent. Often parents who abduct their children seek to have the court in the new state award custody to them.

What happens when parties with custodial rights are in different states and one of the parties is deprived by the other of his or her custodial rights? To whom do parents turn to for help? What should be the role of the courts and law enforcement in the location, recovery, and return of these children? Attempts to improve the response of the civil courts in preventing abductions and conflicting custody orders, prompted the development of key federal and state legislation. The Parental Kidnapping Prevention Act (PKPA) and the Uniform Child Custody Jurisdiction Act (UCCJA) were devised to overcome the obstacles facing parents and the courts in cases involving custody determinations, custody modifications, and the enforcement of child custody orders when more than one state is involved. Clearinghouses were created on the federal and state level to assist parents and to coordinate efforts to find their missing children. The criminal justice system reponse is reflected in the federal Missing Children Act of 1982, the National Child Search Assistance Act of 1990, the PKPA provisions clarifying that federal Unlawful Flight to Avoid Prosecution (UFAP) warrants are available in interstate parental abduction cases, and state criminal laws.

Why is Jurisdiction a Critical Issue?

In child custody-related cases, the distinction between personal and subject matter jurisdiction is critical, because the court can only address custody issues if it has subject matter jurisdiction to do so. Even if the court has personal jurisdiction over the parties -- that is, both parties are properly before the court -- the court cannot issue valid orders affecting child custody unless it has subject matter

jurisdiction. Only after it has been determined that the court has subject matter jurisdiction in a particular case can the court hear evidence and make a decision relating to the best interests of the children.

When a parent moves with the children to another state in derogation of the rights of the other parent, the court in which a custody petition is filed needs to determine whether that state has subject matter jurisdiction to decide issues of custody and visitation. Only one state can properly exercise jurisdiction at a time. When courts in both states exercise subject matter jurisdiction, two conflicting decrees can result, with each custody contestant seeking to enforce the order favorable to him or her.

One might wonder why Full Faith and Credit under Article IV, Sec. 1 of the United States Constitution, which requires that states recognize and enforce the orders of sister states, is not applied in custody cases. Custody orders are not considered final judgments, as the court has the power to modify them until the child reaches the age of majority. Finality of a decree is a precondition in applying full faith and credit. The federal PKPA was enacted to enable the application of the full faith and credit concept to child custody cases.

The public policy issues involved are that state courts should respect the orders of courts in other states, trust that the issue was decided appropriately, and be willing to enforce other state's orders. To intervene and redecide the custody issue itself is to undermine the authority of the other court and to encourage "forum shopping," i.e., going to another state deemed to be more favorable for the purpose of obtaining a custody order or altering an existing custody order. Clarifying which state should decide custody is a critical step in preventing abductions and eliminating the possibility of conflicting custody orders.

What is the Role of the Criminal Justice System?

In parental abduction cases, law enforcement may serve three different functions. Local law enforcement may be involved in investigating a missing child case, i.e. engaging in efforts to locate the child. Law enforcement, police or prosecutors, may file criminal charges against the abductor, thus enabling them to search for the abductor and gather evidence for possible prosecution. Lastly, local law enforcement may be involved in the civil enforcement of the custody order.

Existing Solutions

The Civil Legal System Response

The Uniform Child Custody Jurisdiction Act (UCCJA)

Drafted by the National Conference of Commissioners on Uniform State Laws and approved by it in 1968, the Uniform Child Custody Jurisdiction Act (UCCJA) has now been adopted, with local variations, in every state, the District of Columbia, and the Virgin Islands. The UCCJA is, as its name implies, primarily a jurisdictional statute. It addresses the vital issues of when a court has subject matter jurisdiction to hear a custody case and enter a valid order (Section 3), whether it should exercise subject matter jurisdiction (Sections 6,7, and 8), and whether it must enforce or can modify the decree of another state (Sections 12, 13, 14, and 15).[4]

Section 3 of the UCCJA establishes the bases for a court's exercise of subject matter jurisdiction to either enter an initial custody decree or to modify an existing one. The UCCJA does not require personal jurisdiction over a party nor does the child have to be within the jurisdiction in order for a court to enter a valid decree (except in emergency cases, discussed below). For example, if a child is abducted and no custody order exists, the left-behind parent can ask the court to award him or her custody. The UCCJA includes notice provisions applicable if the whereabouts of the respondent and the child are unknown.

Under the UCCJA, there are four bases upon which a court can assume subject matter jurisdiction in a particular case. First, "home state" jurisdiction is where the child and a parent or person acting as parent have lived for the six months preceding the filing of a custody action, or, in the case of a child under the age of six months, where the child has lived from birth.

Second, jurisdiction can be based upon the existence of "significant connections" in that state. This means that the child and at least one parent have important and meaningful family and/or community ties in that jurisdiction and substantial evidence exists relating to the child's present or future care, protection, training, and personal relationships. Under these circumstances, the state with "significant connections" can exercise subject matter jurisdiction.

Third, "emergency" jurisdiction seeks to address the problem of parents fleeing to another state to protect their child from the other parent. When a child has been abandoned or has been

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[4]These and other provisions of the UCCJA and state variations of them are examined in Chapter 3.

subjected to or threatened with abuse or is otherwise neglected and the child is present within the jurisdiction, the court can assume subject matter jurisdiction, even though it does not have jurisdiction on the basis of home state or significant connections. This is the only basis for jurisdiction that requires the presence of the child for a court to exercise jurisdiction.

Lastly, when no other state has jurisdiction in accordance with the above stated bases or when a state has declined to exercise jurisdiction because another state would be a more appropriate forum **and** it would be in the child's best interest for the other state to assume jurisdiction, that state can exercise subject matter jurisdiction.

The court can only have subject matter jurisdiction if at least one of the above jurisdictional grounds is met. The UCCJA requires judicial communication in the event of simultaneous proceedings, so that judges can share information and decide which jurisdiction should proceed.

The Parental Kidnapping Prevention Act (PKPA)

The federal Parental Kidnapping Prevention Act of 1980 (PKPA), 28 U.S.C. § 1738(a), specifically requires the courts of individual states to enforce and not modify custody and visitation orders entered by a sister state court which exercised jurisdiction consistently with the standards set forth in the PKPA.[5]

The PKPA sets forth jurisdictional bases that must have been met by the state issuing the decree in order for that decree to be entitled to enforcement and non-modification as a matter of federal law, or in order for another state to be prohibited from exercising jurisdiction in the event proceedings are begun in two states.

The PKPA jurisdictional standards differ from the UCCJA in that the PKPA ranks the bases for jurisdiction, giving first priority to the "home state" jurisdiction. By establishing this preference, the PKPA has sought to eliminate conflict, still possible under the UCCJA, between states where one was the home state and another had significant connections to the child and at least one of the contestants. By doing so, the PKPA seeks to eliminate the forum shopping that was made possible before its adoption.

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[5]See Chapter 3, Appendix A, for a copy of PKPA.

The Hague Convention on the Civil Aspects of International Child Abduction (The Hague Convention)

Although the emphasis in the present report is on interstate abductions, it is important to identify abductions to and from other countries as a prevalent problem. The Hague Convention, an international treaty negotiated in 1980 and ratified by the U.S. in 1988, addresses the problem of international abductions. The International Child Abduction Remedies Act (ICARA), 42 U.S.C. § 11601 et seq., is the federal law establishing the procedures for using the Hague Convention in the U.S.

Similar to the UCCJA and the PKPA, the Hague Convention rests on the assumption that custody is more properly litigated in a child's home state, which in the treaty is referred to as the "country of habitual residence." The Hague Convention provides for the prompt return of parentally abducted or wrongfully retained children to the country of their habitual residence. Each ratifying country must establish a Central Authority to help parents in locating the child and securing the child's return. In the U.S., the Central Authority is situated in the Office of Citizen Consular Services of the U.S. Department of State.

The Hague Convention only applies to cases between countries which have ratified it.[6] The United States is not party to any other international child abduction treaties.

The Creation of Clearinghouses

The Missing Children's Assistance Act

Pursuant to amendments to Title IV of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. § 5778), the National Center for Missing and Exploited Children (NCMEC) was created. NCMEC provides technical assistance in parental abduction cases, as well as other missing children and sexual exploitation cases, and maintains a toll-free hotline. The legal staff is available to consult with civil attorneys, law enforcement officers, and prosecutors in child abduction cases. In addition, NCMEC serves as a national resource center on missing children. Finally, NCMEC works closely with state missing children clearinghouses.

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[6]As of April 1992, the following countries have ratified the Hague Convention: Australia, Canada, France, Hungary, Luxembourg, Portugal, Spain, Switzerland, United Kingdom, United States, Austria, Norway, Sweden, Belize, Netherlands, Germany, Argentina, Denmark, New Zealand, Mexico, Ireland, Israel, Yugoslavia, and Ecuador.

State Missing Children Clearinghouses

Forty-two states and the District of Columbia have official state missing children clearinghouses, most of which were established by statute and exist within a state criminal justice agency. An additional three states (Maine, Michigan, and New Mexico) have a person or persons in a particular agency who serves as a contact regarding missing children. Utah is authorized by statute to establish a clearinghouse, but has not yet done so. Other states without clearinghouses or contacts are Hawaii, Idaho, West Virginia, and Wisconsin.

Clearinghouses vary as to their resources and the functions they are mandated to perform. Broadly described, these include public education and information; communication and coordination with parents, attorneys, law enforcement and other agencies; and assistance in the location and recovery of parentally abducted children. Some state clearinghouses also serve as the state contacts under the Hague Convention in international abduction cases.

The Criminal Justice System Response

Pursuant to the PKPA, law enforcement officers can issue Unlawful Flight to Avoid Prosecution (UFAP) warrants in interstate parental abduction cases. Two other federal laws define law enforcement's responsibility in missing children cases, including parental abductions.

The Missing Children Act of 1982

To promote the involvement of law enforcement in the location of missing children, the U.S. Congress passed the Missing Children Act of 1982, Public Law 97-292, 28 U.S.C. § 534(a). This law requires the Federal Bureau of Investigation (FBI) to enter missing children into the National Crime Information Center (NCIC). The NCIC is a computer database under the authority of the FBI, which enables law enforcement across the country to gain access to descriptive information about a particular missing person or fugitive. According to this act, local law enforcement could enter a missing child into NCIC even if there was no criminal violation.

The National Child Search Assistance Act of 1990

Many state statutes and local law enforcement procedures required a waiting period prior to declaring a child "missing" and commencing an investigation. Such delays made recovery of children more difficult. To address this problem, Congress passed the National Child Search Assistance Act of 1990, Public Law 101-647, 42 U.S.C. § 5780. This law prohibits law enforcement agencies from maintaining policies requiring waiting

periods and requires that missing children be entered immediately into NCIC and made available to the appropriate state missing children's clearinghouse.

Present Obstacles

Factors Reducing the Effectiveness of these Laws

The application of the UCCJA and the PKPA should have resolved many of the existing problems of two jurisdictions assuming subject matter jurisdiction in a custody case or the lack of enforcement of custody orders between jurisdictions, just as the Hague Convention should have resolved the comparable problems between countries which have ratified it. Parents should receive sufficient information and assistance with access to state and national clearinghouses. The existence of the Missing Children Act of 1982 and the National Child Search Assistance Act of 1990 should have resulted in a better response by law enforcement in investigating the whereabouts of children abducted by parents. However, it is apparent from the findings of the survey of state missing children clearinghouses that many of the same problems continue to exist.

Synthesizing the results of the various legal and social science research components of this project has led to six broad explanations for the reduced effectiveness of these laws. Each is described below.

1. There is a lack of uniformity in state enactments of the UCCJA and in court opinions interpreting that statute.

The legal research on the state statutes relating to the UCCJA in all fifty states and the District of Columbia clearly documents that each legislature fashioned the UCCJA slightly differently, sometimes effecting critical provisions. The research on recent case law relating to the UCCJA documents that uniformity was further lost through differing appellate interpretations of statutes.

Open-ended responses from judges and attorneys in the practitioner surveys also confirm that inconsistencies in state laws is perceived as a continuing obstacle. In the multi-source survey, based on NCMEC cases, "legal obstacles and inconsistencies in state laws" was chosen as the greatest impediment to child recovery over other responses by left-behind parents, law enforcement, and socially supportive individuals.

2. Many courts are not applying the PKPA or utilizing practices authorized by the UCCJA.

If certain provisions of the PKPA and the UCCJA are properly applied or utilized, simultaneous proceedings would appear as an

infrequent problem susceptible to resolution. The legal research on the PKPA and recent case law relating to it strongly indicated that trial judges and appellate court judges often were either unaware of the existence of the PKPA, even when it should be controlling in the case, or they misapplied it.

The UCCJA includes specific provisions to resolve simultaneous provisions, such as requiring judicial communications, and to enforce custody orders, such as filing the order with the child custody registry. Review of the case law indicated that practices authorized by the UCCJA appeared to be routinely ignored in many courts -- a finding supported by the surveys of judges and attorneys.

3. There is a lack of uniformity and specificity in statutes and court rules across the country as to procedures for enforcing custody determinations.

There are a variety of enforcement procedures used in different states, including injunctions, writs of habeas corpus, contempt findings, and orders to enforce. The left-behind parent generally must have an attorney in the second state, and the abducting parent must receive notice of the enforcement proceeding and have the opportunity to be heard. Problems include some courts improperly modifying the orders they are supposed to be enforcing, and abductors fleeing with the children upon receiving notice of the proceeding.

4. There is a lack of uniformity and specificity in law enforcement procedures and practices across the country relating to their roles in the location, recovery, and return of parentally abducted children.

Survey responses from those state missing children clearinghouses located within the criminal justice system reveal that criteria unrelated to the federal law regarding missing children impact upon whether law enforcement officers make a missing child report or enter a missing child in NCIC. As a result, often a search for the child is never commenced.

Procedures and practices relating to the role of law enforcement in the civil enforcement of custody orders appear unclear, thus posing a risk of civil liability for law enforcement officers, who assist parents in recovering their abducted children. Furthermore, many clearinghouses are unfamiliar with the procedures used in their states.

5. Knowledgeable and affordable legal representation is not sufficiently accessible to left-behind parents.

The analyses of recent case law and survey responses reveal a portrait of the legal and judicial profession as not adequately

informed as to applicable law in parental abduction cases. Parents have difficulty finding attorneys, often in two states, who have sufficient knowledge and experience. The costs of legal representation relating to the location, recovery and return of an abducted child exceed the means of many of these parents.

What are the root causes for the above situations?

The above problems appear to result from four basic obstacles:

1) There is a prevalent lack of knowledge on the part of all practitioners involved in parental abduction cases. Many lawyers, judges, and law enforcement officers appear not to know the applicable law. Clearinghouse personnel in many states are unfamiliar with law enforcement practices and procedures relating to parental abduction cases.

2) There is a lack of compliance with applicable laws and procedures. Judges, lawyers, and law enforcement personnel appear to ignore, purposely or inadvertently, certain laws and procedures which should be applied in these cases.

3) Variations in statutes and case law across states and differences in court and law enforcement rules, practices, and procedures within and across states leads to an unpredictable and inefficient system nationwide for locating, recovering, and returning parentally abducted children.

4) Sufficient resources generally are not available for law enforcement and clearinghouses to carry their responsibilities. Furthermore, many parents have limited resources and are unable to afford the costs associated with the location, recovery and return of their children.

Why is there a Lack of Knowledge?

Lack of knowledge of the applicable laws seems to be a key factor behind the apparent problem of courts not utilizing practices which are authorized by statute or not complying with statutes in these cases. In regard to the PKPA:

> A review of the scores of interstate child custody and parental kidnapping cases decided since the PKPA was enacted reveals an extraordinary, and very disturbing fact: many of these cases do not even mention the PKPA! In many of them, the PKPA would have been dispositive and the outcome in the case different (ICCD (1990), p. SI-1).

This lack of awareness by a significant number of attorneys and judges exists at both the trial and appellate level, in which violations of the UCCJA and PKPA are readily apparent.[7]

There are a number of explanations for the lack of knowledge of relevant law. First, custody cases involving parental abductions are likely to be a small percentage of the caseload of judges and attorneys, even those specializing in domestic relations law. Thus, although they may be familiar with the law relating generally to child custody, they may be unaware of the specific applicable law in determining subject matter jurisdiction and of other remedies available in parental abduction cases.

Since child custody cases are traditionally state law matters, most attorneys and judges appear to assume that there is no federal legislation relevant to these cases. As a result, the PKPA often has been overlooked.

Third, since these are laws of relatively recent origin, many of today's judges and attorneys started their practices prior to the enactment of these laws nationwide. State by state from 1969 to 1983, the UCCJA was adopted in various forms; the PKPA was enacted in 1980; and the International Child Abduction Remedies Act (ICARA) was enacted as recently as 1988. Although some attorneys and judges have received continuing legal or judicial education on one or more of these laws, most probably have not, particularly since these are not highly visible or highly sought after issues in legal practice. Many states had continuing education programs immediately after their enactment of the UCCJA, but these efforts appear not to have been reinforced on a regular basis.

Why is there a Lack of Compliance?

Certainly lacking the information relevant to the case can lead to an unwitting violation of the UCCJA and the PKPA. But it appears that frequently lack of knowledge is not the only problem. Some courts hear a case knowing they have no basis for subject matter jurisdiction pursuant to the UCCJA and PKPA. Although the existence of this problem is quite apparent, the extent of it is not known.

Sometimes a judge in another state seems to believe that he or she is better able to make the decision relating to the child than a judge from the state with subject matter jurisdiction. Anecdotal data from law enforcement and missing children's organizations indicate that, where lack of knowledge is not an

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[7] Also see Coombs, R. M. "Progress under the PKPA," Journal of the American Academy of Matrimonial Lawyers, 6:59-102, 1990.

issue, this phenomenon sometimes may be influenced by parochialism (e.g., a court of one state not wanting to enforce an order of another state) or favoritism toward local parties.

Attorneys are not exempt from the problem of ignoring the UCCJA and PKPA, although it presents itself differently. Some attorneys will proceed with litigation in cases after they realize their case has no jurisdictional foundation, pursuant to UCCJA or PKPA. Instead of the existence of law being used to facilitate a resolution to the dispute, the attorney may consider it worth the risk to proceed with the case, since the judge hearing the case may be uninformed with the applicable provisions of the UCCJA or PKPA. Sadly, this expectation is too often met.

Why is there a Lack of Uniformity and Specificity?

The UCCJA began as a uniform law that then needed to be passed in every state legislature. That process resulted in innumerable changes and variations to the UCCJA. Key components have been affected by these legislative changes, including, for example, the types of actions covered and notice provisions.

State courts in fifty states have been interpreting these laws, resulting in an even greater lack of uniformity. This has led, for example, to varied interpretations of the modification provisions.

Lack of uniformity and specificity is a key procedural obstacle. The UCCJA and PKPA require that courts enforce and not modify orders entered by a court with subject matter jurisdiction, yet they do not provide specificity as to enforcement procedures. States vary as to which types of actions can be utilized.

The lack of specificity relating to procedures for inter-court communications and for the establishment of child custody registries are other procedural obstacles. Both are required by the UCCJA in interstate cases.

Overcoming Obstacles

How can Lack of Knowledge be Overcome?

Clearly, the solution to the problem of the lack of knowledge of judges and lawyers of the UCCJA and PKPA is to provide a number of avenues for them to be educated, for example, through continuing legal and judicial education and the development of useful manuals, digests, and other resources. To educate the upcoming generations of attorneys, law school curricula should be developed and disseminated.

Lack of knowledge has led to an increasing number of malpractice cases against attorneys. Fear of malpractice suits may be a strong motivator for attorneys to learn more about the laws applicable in these cases.

How can Lack of Compliance be Overcome?

More knowledgeable judges and attorneys will be the most important factor in overcoming the problem with compliance with the PKPA and the UCCJA. Appellate level judges also should be included in the training, so that the interpretations by these high courts of the PKPA and UCCJA do not exacerbate the problem of variation. In addition, a better informed appellate judiciary can help reduce the inclination of some trial court judges to favor local parties, as they will not wish to be overturned.

How can Lack of Uniformity and Specificity be Overcome?

The lack of uniformity in state statutes and case law is not likely to be overcome unless state legislatures revisit these issues and seek greater uniformity. The lack of specificity in relation to procedures can be addressed through the promulgation of uniform court rules and procedures relating to these cases.

Congress can play a critical role in overcoming the lack of uniformity and specificity in the PKPA by passing amendments which address the most critical areas. These are identified in detail at the end of Chapter 3.

PART II: THE CIVIL LEGAL RESPONSE

Chapter 3

PARENTAL ABDUCTION: RELEVANT STATE AND FEDERAL STATUTES, COURT RULES, AND RECENT CASE LAW

by Miriam A. Rollin, Esq.

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Chapter 3

PARENTAL ABDUCTION: RELEVANT STATE AND FEDERAL STATUTES, COURT RULES, AND RECENT CASE LAW

by Miriam A. Rollin, Esq.

Introduction

The Obstacles Project conducted legal research regarding state and federal statutes, court rules, and recent case law relevant to parental abduction in all fifty states, the District of Columbia, Puerto Rico, and the Virgin Islands. The analysis identified statutes, rules and recent case opinions which either assist or impede left-behind parents trying to recover parentally abducted children. This chapter provides a detailed discussion of those statutes, rules and recent cases. Commentary is also included regarding the advantages and disadvantages of those approaches in terms of reducing or eliminating obstacles to the recovery and return of parentally abducted children. The chapter concludes with section IX, which provides specific recommendations, including changes in relevant state and federal statutes.[1]

State enactments of the Uniform Child Custody Jurisdiction Act (UCCJA), which govern child custody jurisdiction and enforcement in the United States, are discussed at length in this chapter. In addition, the chapter discusses other state laws and rules which affect parental abduction cases. Relevant provisions of the federal Parental Kidnapping Prevention Act (PKPA), 28 U.S.C. 1738A, which governs the interstate effect to be given to custody determinations, are also covered. Finally, the chapter examines recent cases[2] interpreting and applying the UCCJA and the PKPA.

The discussion is organized around the time-line of an abduction -- from obtaining a custody order, to the return of the abducted child. This organization was selected because the most significant obstacles identified are the gaps in state and federal laws and procedures arising at particular stages of abduction cases. For example, many states provide for law enforcement assistance in locating a missing child, but do not provide for law enforcement assistance in the pick-up of that child once located. Further, states that provide for law enforcement assistance in the pick-up of a parentally abducted child do not all provide for temporary placement of the child,

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[1]Some additional recommendations relating to family violence are included in Section II.E. of this chapter.

[2]PKPA cases from 1989, 1990 and 1991, and UCCJA cases from 1991.

which is often necessary pending the child's return to the lawful custodian. Using a time-line also makes more visible the connection between state and federal law and the welfare of abducted children and their families.

To spotlight the impact of issues arising from statutes and court rules on lives of abducted children and their families, these issues are presented in a hypothetical case. This hypothetical involves an abducted Child, and his Father, Mother, and Grandmother, as they move through the legal system. Case law issues are illustrated using relevant facts of selected cases.

Hypothetical

Father and Mother fell in love, got married, and had a child. They did not "live happily ever after." That's why the story isn't ending there -- it's only beginning.

Father and Mother's relationship soured after only two years of marriage. Mother went to live with her mother, Grandmother, in an adjacent state, taking one-year-old Child with her. Over the next seven months of separation, it became clear reconciliation was unlikely. Mother got a lawyer to file for divorce and for custody of Child. Although Father had originally agreed to let Child stay with Mother, he changed his mind and decided to contest Mother's petition for custody of Child.

I. Do the UCCJA and the PKPA apply in this case?

Current Law -- Statutes

In 1968, the National Conference of Commissioners on Uniform State Laws promulgated the Uniform Child Custody Jurisdiction Act (UCCJA) to address interstate custody situations like the hypothetical case. The UCCJA (now adopted as law in somewhat modified forms in all 50 states, the District of Columbia and the Virgin Islands) provides an important tool for resolving interstate child custody disputes. The statute establishes specific bases for the exercise of custody jurisdiction, and specific guidance as to when a court should decline to exercise jurisdiction. It also contains specific obligations to enforce, and restrictions on modifying, custody orders of other states made consistently with the provisions of the Act.

The federal Parental Kidnapping Prevention Act (PKPA) was enacted in December, 1980 to address interstate custody problems that remained unresolved even after the passage of the UCCJA in many states. The PKPA mandated that state authorities give full faith and credit to other states' custody determinations, as long as those determinations were made in conformity with PKPA requirements. The PKPA provisions regarding bases for

jurisdiction, restrictions on modifications, preclusion of simultaneous proceedings, and notice requirements are similar to those in the UCCJA. The most significant difference is that the PKPA mandates enforcement of an initial custody determination by a significant connections state only if no home state exists (a concept referred to as "home state priority").

The UCCJA and the PKPA can effectively ensure proper custody jurisdiction determinations (thus enhancing enforceability of custody orders, preventing the issuance of conflicting custody orders and thus removing obstacles to recovery and return of parentally abducted children) only if these laws are properly argued by attorneys and applied by judges. In many cases, that has not occurred.

A. Are there cases in which the UCCJA and/or the PKPA should have been applied, but were not applied?

Given the ambiguities in, and the complexities of, the UCCJA and the PKPA, it is not surprising that those statutes are not always applied correctly. Worse yet is that one or both of those statutes were not applied at all in a significant number of recently reported custody cases.

1. No Mention of the PKPA

Current Law -- Cases

In case opinions from Florida and Delaware, two courts failed to even mention the PKPA, and reached erroneous decisions regarding custody jurisdiction.[3] In the Florida case,[4] the state Supreme Court held that, pursuant to the UCCJA simultaneous proceedings provision, the trial court should not have exercised UCCJA home state jurisdiction to make an initial custody determination, since a custody proceeding was already pending in a court of another state, which had UCCJA significant connections jurisdiction. Under the PKPA, however, the home state would have priority jurisdiction, and an initial order from the state would be enforceable, while an initial order from the significant connections state would not be enforceable.

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[3]Siegel v. Siegel, 575 So. 2d 1267 (Fla. 1991); and Earl G.A. v. Beverly A., Nos. CN91-6015, 91-1-141-CV and 91-1-142-CV, 1991 Del. Ch. LEXIS 65, 1991 WL 42629 (Del. Fam. Ct.).

[4]Siegel v. Siegel, 575 So. 2d 1267 (Fla. 1991).

The trial court in the Delaware case[5] denied a custody modification petition. The court directed the petitioner to seek relief in the state which had previously issued a custody decree as to the children, even though neither the contestants nor the children continued to reside in the decree state, as needed for continuing jurisdiction under the PKPA.

In the majority opinions in over a dozen appellate cases from over a dozen different states,[6] courts did not mention the PKPA, although all those cases addressed the continuing modification jurisdiction of the decree state when the children have been living in another state. In seven cases addressing the initial jurisdiction of a home state, the PKPA was never mentioned.[7] Further, in two cases from Florida and Ohio, relating to simultaneous proceedings,[8] and in another Florida case relating to notice,[9] no mention was made of the PKPA. In

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[5]Earl G.A. v. Beverly A., Nos. CN91-6015, 91-1-141-CV and 91-1-142-CV, 1991 Del. Ch. LEXIS 65, 1991 WL 42629 (Del. Fam. Ct.).

[6]In Re Custody of Cox, 536 N.E.2d 520 (Ind. Ct. App. 1989); Kemp v. Sharp, 409 S.E.2d 204 (Ga. 1991); Iabuchi v. Lingo, 588 So. 2d 795 (La. Ct. App. 1991); Cooley v. Cooley, 574 So. 2d 694 (Miss. 1991); In re Marriage of Ray, 820 S.W.2d 341 (Mo. Ct. App. 1991); Archambo v. Churchill, 576 N.Y.S.2d 730 (App. Div. 1991); Brown v. Brown, 448 N.W.2d 745 (Mich. Ct. App. 1989); State ex. rel. Adache v. Avellone, 70 Ohio App. 3d 521 (1991), 591 N.E.2d 420 (1991); G.S. v. Ewing, 786 P.2d 65 (Okla. 1990); Killam v. Heald, 818 P.2d 509 (Ore. Ct. App. 1991); Harris v. Young, 473 N.W.2d 141 (S.D. 1991); McArthur v. Superior Court of Santa Clara County, 235 Cal. App. 3d 1287 (1991); and Steward v. Steward 588 So. 2d 692 (Fla. Dist. Ct. App. 1991).

[7]Morrow v. Morrow, 591 So. 2d 829 (Miss. 1991); In re: Krystal S., 1991 WL 259005 (Conn. Super. Ct.); Fazio v. Fazio, 587 So. 2d 91 (La. Ct. App. 1991); Shingledecker v. Shingledecker, 407 S.E.2d 589 (N.C. Ct. App. 1991); In the Matter of Brown, No. 90-CA-92, 1991 Ohio App. LEXIS 1147, 1991 WL 38881 (Ohio App.); Stinebaugh v. Stinebaugh, No. 2-90-25, 1991 Ohio App. LEXIS 3954, 1991 WL 217705 (Ohio App.); Miles v. Young, 818 P.2d 1258 (Okla. Ct. App. 1991).

[8]Rosso v. Farnell, 581 So. 2d 989 (Fla. Dist. Ct. App. 1991); Mayor v. Mayor, No. 58281, 1991 Ohio App. LEXIS 1337, 1991 WL 330250 (Ohio App.).

[9]Rusher v. Rice, 573 So. 2d 182 (Fla. Dist. Ct. App. 1991).

other case opinions,[10] courts mentioned the PKPA only in a footnote, or very briefly in the text. In two of the latter cases,[11] the PKPA home state priority provision would have resolved the jurisdiction question.

Commentary

The courts should have applied the PKPA in each of the aforementioned cases, and the failure to apply the PKPA in certain of those cases resulted in an incorrect decision as to a court's jurisdiction. Such incorrect decisions preclude subsequent out-of-state enforcement of the resulting orders pursuant to the PKPA, thereby creating an obstacle to the recovery and return of any parentally abducted child who is the subject of such an order.

2. PKPA and/or UCCJA Held to be Inapplicable

Current Law -- Cases

In several case opinions (from several different states), the PKPA was mentioned, but only in the incorrect finding that the PKPA did not apply to such a case.[12] Various reasons were given for this erroneous finding. In an Indiana case, the court gave as its reason for holding the PKPA inapplicable that "the child was born in Indiana and has lived in Indiana her entire life"[13] (although the father had first filed for custody in Colorado, where he resided). The court's justification provides a basis for home state jurisdiction under the PKPA, not for disregarding the PKPA entirely.

In a case from Lousiana, the court reasoned that "the children's place of residence is Louisiana and was so well before the six months prior to when the suit at hand was instituted"[14]

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[10]E.g., In Re Marriage of Schmidt, 436 N.W.2d 99 (Minn. 1989), In Interest of Brandon L.E., 394 S.E.2d 515 (W. Va. 1990).

[11]Ibid.

[12]Larner v. Wyman, 568 N.E.2d 1059 (Ind. Ct. App. 1991); Fuge v. Uiterwyk, 576 So. 2d 557 (La. Ct. App. 1991); Kean v. Kean, 577 So. 2d 1152 (La. Ct. App. 1991); Pazder v. Pazder, 556 N.Y.S.2d 427 (App. Div. 1990); Anderson v. Anderson, 449 N.W.2d 799 (N.D. 1989); State in Interest of W.D. v. Drake, 770 P.2d 1011 (Utah App. 1989).

[13]Larner v. Wyman, 568 N.E.2d 1059, 1060 (Ind. Ct. App. 1991).

[14]Fuge v. Uiterwyk, 576 So. 2d 557, 559 (La. Ct. App. 1991).

(although a prior decree had been issued in Florida, where the father apparently remained). If the father did remain in Florida, the court should have addressed whether the children still had sufficient connections with Florida to support a finding of continuing jurisdiction, pursuant to the PKPA.

The court in another Louisiana case[15] refused to apply the PKPA because there had been no abduction or concealment,[16] and there was no prior custody decree or pending custody proceeding. The court concluded none of the situations which gave rise to the PKPA were present, so the PKPA should not be applied. The court failed to consider the effect of the PKPA on subsequent efforts to enforce the court's order.

Similarly, in a New York case, the court said the PKPA was inapplicable because the "PKPA applies either to the enforcement or modification of existing custody decrees or to situations where custody proceedings are already pending in another state," and that "no decree exists and no action is now pending in another state."[17] The court in this case noted correctly that the PKPA does not confer subject matter jurisdiction for a decree. However, unless PKPA requirements are met in issuing a custody order, the resulting order would not be enforceable in another state as a matter of federal law.

In another case, a North Dakota court found that "because the trial court refused jurisdiction it did not make a child-custody determination within the meaning of that term as defined by the Act," so that "the Act, therefore, does not apply."[18] If the court had applied the PKPA home state priority provision, that provision would have been dispositive of the case, and the trial court would not have had any jurisdiction to "refuse."

In a Pennsylvania case, a judge's dissenting opinion stated that the "PKPA does not apply in this case and its application in such a broad sweeping fashion as proposed by the majority is a dangerous precedent which will require its application in every interstate custody case in Pennsylvania, whether the facts

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[15]Kean v. Kean, 577 So. 2d 1152, 1157 (La. Ct. App. 1991).

[16]The absence of an abduction was also given as the reason for the court's refusal to apply both the UCCJA and the PKPA in Lucas v. Hunt, 577 N.Y.S.2d 150 (App. Div. 1991).

[17]Pazder v. Pazder, 556 N.Y.S.2d 427, 427-8 (App. Div. 1990).

[18]Anderson v. Anderson, 449 N.W.2d 799, 801 n.2 (N.D. 1989).

warrant it or not."[19] The majority opinion in that interstate custody case recognized that the PKPA did apply. The PKPA should be applied in any custody proceeding (whether or not it is interstate), because a contestant's subsequent move out of state may necessitate enforcement in a sister state.

One appellate court in Oregon held that, in a continuing custody modification jurisdiction case, "we need not resort to the UCCJA to determine jurisdiction unless there is actual or potential jurisdictional competition between two states."[20] Although the mother and child had been residing in another state for several months, the appellate court found no such competition in this case.

Commentary

None of the foregoing explanations is a reason for not applying the PKPA or the UCCJA to a child custody jurisdiction dispute. Such a failure to apply the PKPA or the UCCJA can result in orders that are unenforceable, and can create obstacles to the recovery and return of parentally abducted children.

B. Do UCCJA/PKPA principles apply in a non-divorce custody proceeding?

Hypothetical

Suppose the question of Child's custody has been raised in a non-divorce child custody proceeding. Such a proceeding may be brought by the state alleging Child was abused or neglected, or seeking termination of parental rights, or brought by Grandmother for adoption or guardianship.

Current Law -- Statutes

The PKPA does not have a definition of "custody proceeding." However, the PKPA definition of "custody determination" is broad, and includes any order providing for the custody or visitation of a child.[21]

The UCCJA may or may not apply, depending on which state is deciding the case. The Uniform Act has a definition of "custody proceeding"[22] which specifically includes child neglect and

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[19]Barndt v. Barndt, 580 A.2d 320, 332 (Pa. Super. Ct. 1990).

[20]Killam v. Heald, 818 P.2d 509 (Or. Ct. App. 1991).

[21]28 U.S.C. 1738A § (b)(3).

[22]UCCJA, 9 ULA § 2(3).

dependency cases, and which generally includes proceedings in which custody is one of the issues being decided. States' UCCJA definitions vary widely as to which proceedings are included or excluded, except that all states exclude actions for child support.

A few states' definitions explicitly include adoption[23] while New York[24] excludes adoption. New Hampshire and New York exclude neglect and dependency.[25] New Mexico's UCCJA omits the reference to neglect and dependency within the definition of "custody proceeding."[26] Massachusetts and Missouri[27] include guardianship proceedings, while such proceedings are excluded by New Hampshire and New York[28] (both of which also exclude actions to terminate parental rights).

Commentary

The lack of specificity of the UCCJA, 9 ULA § 2 provision about which proceedings are included in (and which excluded from) the scope of the Act causes uncertainty on whether the UCCJA governs in a variety of non-divorce child custody cases. The many state law variations further complicate the issue. Custody orders rendered in cases not covered by the UCCJA and the PKPA or in which the UCCJA and the PKPA were applicable but not followed may be unenforceable in sister states.

Unenforceable custody orders create obstacles to the recovery and return of parentally abducted children. In addition, the UCCJA and PKPA goals of easing interstate recognition and enforcement of sister state custody orders, and removing jurisdictional conflicts among state courts concerned with custody of the same child or children, may best be served by a broadly inclusive and uniformly adopted definition of "custody proceeding."

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[23]E.g., D.C. Code Ann. § 16-4502(3) (1981), Ga. Code Ann. § 19-9-42(3) (Michie 1991), and Mont. Code Ann. § 40-7-103(3) (1990).

[24]N.Y. Dom. Rel. Laws § 75-c3 (McKinney 1985).

[25]E.g., N.H. Rev. Stat. Ann. § 458-A:2 (1983), N.Y. Dom. Rel. Law § 75-c-3 (McKinney 1985).

[26]N.M. Stat. Ann. § 40-10-3 (Michie 1989).

[27]Mass. Gen. Laws Ann. ch 209B, § 1 (West 1986), Mo. Ann. Stat. § 452.445(2) (Vernon 1986).

[28]N.H. Rev. Stat. Ann. § 458-A:2 (1983), N.Y. Dom. Rel. Law § 75-c3 (McKinney 1985).

Current Law -- Cases

In a Utah case, the court failed to apply the PKPA because "the PKPA does not apply to child neglect and dependency proceedings,"[29] although the court did apply the UCCJA to the case. The court based its decision that the PKPA was inapplicable to dependency cases on the opinion in State ex rel. Department of Human Services v. Avinger, 720 P.2d 290 (N.M. 1986). The Avinger reasoning, however, was discussed and rejected by a court in another Utah case,[30] which found that the language and purposes of the PKPA mandate PKPA application to dependency proceedings.[31]

An Alabama court found that both the UCCJA and the PKPA were inapplicable to the jurisdictional determination regarding a civil child sexual abuse complaint,[32] even though a custody determination could result from such a complaint.

One appellate court in Florida reversed a trial court's dependency finding and award of custody to the agency for foster care placement.[33] The basis for the reversal was that the trial court had ignored UCCJA procedural requirements (including affidavit and notice requirements) in issuing its order, and had ignored the continuing modification jurisdiction of the decree state, which still satisfied the significant connections basis for jurisdiction under the UCCJA and the PKPA. The appellate court held that both UCCJA and PKPA provisions are applicable to such dependency cases.

Some appellate courts have stated that guardianship and termination of parental rights cases constitute "custody proceedings" for the purposes of the UCCJA.[34] One Ohio

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[29]State In Interest of W.D. v. Drake, 770 P.2d 1011, 1013 n.1 (Utah Ct. App. 1989).

[30]State in Interest of D.S.K., 792 P.2d 118 (Utah Ct. App. 1990).

[31]Further discussion of this obstacle and a recommendation to eliminate this obstacle are provided in Section IX. A. 5 of this chapter.

[32]E.H. v. S.H., 596 So. 2d 9 (Ala. 1991).

[33]Johnson v. Denton, 542 So. 2d 447 (Fla. Dist. Ct. App. 1989).

[34]In Interest of A.E.H., 468 N.W.2d 190 (Wis. 1991); Piedimonte v. Nissen, 817 S.W.2d 260 (Mo. Ct. App. 1991); In re Carter, No. 11-91-5, 1991 Ohio App. LEXIS 586, 1991 WL 261936

appellate court found that an adoption proceeding is not a "custody proceeding" to which the UCCJA applies.[35]

Commentary

To best achieve the statutes' purposes, both the UCCJA and the PKPA should apply to a wide range of proceedings addressing child custody. Broad application of these statutes enhances enforceability, and thus increases the chances of achieving the recovery and return of a parentally abducted child.

C. Do UCCJA/PKPA principles apply in a dispute over the custody of a Native American child?

Hypothetical

Suppose now Child was a Native American.

Current Law -- Statutes

Certain custody proceedings regarding Native American children (specifically those related to foster care placements, termination of parental rights, pre-adoptive placements, and adoption) are governed by the Indian Child Welfare Act (ICWA), 24 U.S.C. §§ 1901 - 1963 (1988), rather than the UCCJA or PKPA. Although the ICWA does not apply to private intrafamily custody disputes, there remains confusion within legal and judicial communities as to whether the UCCJA and the PKPA or the ICWA should control such cases. To settle this question, some states have added language to their UCCJA to clarify when the ICWA applies, and when the UCCJA applies. Wisconsin's[36] UCCJA explicitly states that, for those cases to which the ICWA applies, the ICWA controls over any conflicting provisions of the UCCJA. The UCCJA in Nebraska and Nevada includes several references to the ICWA superseding the UCCJA regarding children whose custody is the subject of the ICWA.[37]

(Ohio App.).

[35] In re Adoption of Fath, No. 2595, 1991 Ohio App. LEXIS 1998, 1991 WL 70813 (Ohio App.).

[36]Wisc. Stat. Ann. § 822.015 (West 1977).

[37]Neb. Rev. Stat. §§ 43-1203 (1), 43-1204, 43-1205 (1988) and Nev. Rev. Stat. §§ 125A.050.1, 125A.100, 125A.060, 125A.070, 125A.050.1 (1986).

Commentary

The UCCJA provisions regarding ICWA application ensure that the ICWA will be applied, when appropriate. However, courts must decide cases involving Native American children to which the ICWA does not apply in accordance with the UCCJA and the PKPA. Clarity as to applicable law helps courts make enforceable orders, which lessens a major obstacle to the recovery and return of a parentally abducted child.

Current Law -- Cases

One recent opinion from the 4th Circuit, interpreting the PKPA, held that a tribe is a "state" for PKPA purposes.[38] This holding clarifies that: (1) a tribal court order must be enforced if made consistently with the PKPA; and (2) tribal authorities have the obligation to enforce a custody order made consistently with the PKPA by the court of a state or of another tribe. Other recent opinions have held that Indian reservations and tribes are not "states" for UCCJA purposes.[39]

Commentary

The 4th Circuit holding helps contestants to enforce custody orders pursuant to the PKPA. The holding thus reduces obstacles to the recovery and return of parentally abducted children.[40] The UCCJA-related holdings, on the contrary, impede the ability of a contestant to enforce custody orders, and increase obstacles to the recovery and return of abducted children.

D. Do UCCJA principles apply in an international custody dispute?

Hypothetical

If Mother had moved to Canada, rather than to an adjacent state, the custody dispute between Father and Mother would have taken on an international dimension.

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[38]In re Larch, 872 F.2d 66 (4th Cir. 1989).

[39]Harris v. Young, 473 N.W.2d 141 (S.D.1991); In re Custody of Sengstoch, 477 N.W.2d 310 (Wis. Ct. App. 1991).

[40]Further discussion of this obstacle and recommendation to eliminate this obstacle are provided in Section IX. A. 6 of this chapter.

Current Law -- Statutes

UCCJA, 9 ULA § 23 provides that UCCJA principles should apply in international cases, as well as in interstate cases. All but four states[41] have adopted some version of UCCJA, 9 ULA § 23. Indiana, however, has added a section[42] which provides that the state has jurisdiction to modify a foreign decree if the child is a U.S. citizen, is present in that state and is likely to move out of the U.S. if the court gives effect to a prior foreign decree.

Commentary

The Indiana provision discussed above, as well as the absence of a Section 23 provision in the four states mentioned above, undermine UCCJA principles of recognition and enforcement of decrees issued by courts with proper jurisdiction. This creates an obstacle to recognition and enforcement of valid foreign custody decrees in the United States, and thus to the recovery and return of a parentally abducted child.

In addition, the enactment of UCCJA, 9 ULA § 23 increases the likelihood that foreign countries will offer reciprocity, i.e., will enforce the child custody orders of a state that enforces that country's custody orders.

UCCJA, 9 ULA § 23 remains important despite the availability of the Hague Convention on the Civil Aspects of International Child Abduction, which is in effect between the U.S. and a small number of other countries. Even where the Hague Convention is in effect, the UCCJA may offer a broader remedy, particularly in cases involving visitation rights, since the Convention's right of return does not apply to cases involving "access" (visitation) rights.

The five states mentioned above should adopt § 23 without amendment.

E. Can UCCJA principles apply in a case under the Interstate Compact on the Placement of Children (ICPC)?

Current Law -- Cases

A Pennsylvania court held that it was within the trial court's discretion to transfer the custody proceeding to the UCCJA home state of the child (and the state where all the contestants reside), even though the forum court retained

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[41]Missouri, New Mexico, Ohio, and South Dakota.

[42]Ind. Code Ann. § 31-1-11.6-25 (West 1979).

jurisdiction under the Interstate Compact on the Placement of Children (ICPC).[43] The ICPC is a state law which governs out-of-state placements of neglected or abused children. The ICPC provides for, inter alia, continuing jurisdiction of a court in a neglect or abuse proceeding, even though a child has been placed out of state. The Pennsylvania opinion noted that the ICPC establishes a basis for jurisdiction (apart from the UCCJA), but does not preclude the exercise of jurisdiction elsewhere under the UCCJA. The court also found the transfer of the custody proceeding to be consistent with the PKPA.

Commentary

By allowing the court with jurisdiction under the UCCJA and the PKPA to determine custody, the opinion facilitated the enforceability of the resulting order under both acts. The court eliminated a potential obstacle to the recovery and return of children pursuant to that order.

F. Do UCCJA principles apply in an intrastate custody dispute?

Hypothetical

If Mother had moved to a different county within the same state as Father, the custody dispute would have been intrastate.

Current Law -- Statutes

The UCCJA was intended to clarify which state has and should exercise jurisdiction over the custody of a child. The question of which county within a state should hear a particular custody case is beyond the UCCJA's current scope. Pennsylvania, however, has added a provision[44] to its UCCJA which applies the UCCJA principles of jurisdictional allocation to intrastate (i.e., intercounty) custody disputes.

Commentary

The Pennsylvania statute determines the proper venue for a custody proceeding brought in that state involving contestants living in that state. This provision promotes the UCCJA goal of allowing the jurisdiction with the most information regarding a child and family to decide custody.

A related intrastate issue is whether notice and affidavit requirements of the UCCJA and PKPA notice requirements apply when

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[43] In re Adoption of K.S., 581 A.2d 659 (Pa. Super. Ct. 1990).

[44] 42 Pa. Cons. Stat. Ann. § 5364 (1981).

all contestants reside in the same state. Many cases which begin as intrastate proceedings subsequently become interstate disputes when one or more of the contestants move out of state. If these provisions are not applied in an intrastate case, and a contestant then moves out of state, the lack of proper notice and affidavits could be an obstacle to enforcement of a prior decree under the UCCJA and/or the PKPA, and to the recovery and return of a parentally abducted child. It is therefore imperative that UCCJA and PKPA requirements be met in any custody proceeding, even if all contestants reside in the same state.

II. What requirements must be met before a court can make a custody determination that will be enforceable under the UCCJA and the PKPA?

Hypothetical

Having determined that the UCCJA does apply to a proceeding for custody of Child, Mother's attorney must now ascertain what is required to bring such an action.

A. Is there a basis for a court in that state to exercise jurisdiction?

1. Defining the "Home State"

Current Law -- Cases

Some courts have struggled with the concept of "home state," seeking to refine its meaning.[45] For example, an Indiana court was presented with the question of whether a

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[45]UCCJA, 9 ULA § 2(5):

> "home state" means the state in which the child immediately preceding the time involved lived with his parents, a parent, or a person acting as parent, for at least 6 consecutive months, and in the case of a child less than 6 months old the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the 6-month or other period;

PKPA, 28 U.S.C. § 1738A (b)(4):

> "home state" means the state in which, immediately preceding the time involved, the child lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old, the state in which the child lived from birth with any of such persons. Periods of temporary absence of any of such persons are counted as part of the six-month or other period.

partial month at the beginning or end of the relevant time period constitutes one of the six months required for home state jurisdiction.[46] The court found that six months meant six full months, and a partial month does not count as one of the six months needed for home state jurisdiction.

A few courts have issued perplexing interpretations of the UCCJA provision that temporary absences from the home state are counted as part of the six month home state period.[47] In those cases, the courts stretched the temporary absence provision by applying it when the child was in another state as much as, or more than, in the "home state."

One court from Wisconsin commented,[48] in apparent dicta, that "a child's 'home state' for the purposes of the Uniform Child Custody Jurisdiction Act, ch. 822, Stats., is not necessarily the child's 'home state' as that term is defined by the Parental Kidnapping Prevention Act of 1980, 28 U.S.C. § 1738A." This comment is incorrect, because the definitions of home state in the two statutes are functionally identical.

Commentary

Reasonable interpretations of "home state" enhance the enforceability of orders, decrease the chance of conflicting custody orders, and remove obstacles to the recovery and return of parentally abducted children. Interpreting the six months to mean six full months appears reasonable. However, stretching the temporary absence provision too far and distinguishing between the PKPA and UCCJA home state definitions appear to be unreasonable interpretations.

2. Defining the "Significant Connections" State

Current Law -- Cases

Courts in a number of cases have had the difficult task of determining what constitutes significant connections for UCCJA and PKPA jurisdictional purposes.[49] Some courts' opinions have provided, as guidance to practitioners, reviews of prior

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[46]Sixberry v. Sixberry, 540 N.E.2d 95 (Ind. Ct. App. 1989).

[47]Slusher v. Slusher,786 S.W.2d 843 (Ark. Ct. App. 1990); Perez v. Perez, 561 A.2d 907 (Conn. 1989); Plouffe v. Salas, 560 N.Y.S.2d 99 (N.Y. 1990); Shingledecker v. Shingledecker, 407 S.E.2d 589 (N.C. Ct. App. 1991).

[48]Michalik v. Michalik, 476 N.W.2d 586 (Wis. 1991).

[49]UCCJA, 9 ULA § 3(a)(2); PKPA, 28 U.S.C. § 1738A (c)(2)(B).

significant connections cases.[50] Other opinions have, without a foundation in case law or logic, interpreted meager contact (e.g., two visits in five years to a state where the child has never resided[51]) as satisfying requirements of the significant connections basis for jurisdiction.

Another issue that has arisen in the context of significant connections jurisdiction cases is the propriety of weighing the significance of connections to two states in determining which state has jurisdiction. In an Indiana case,[52] the court apparently weighed the relative connections of the child to two states in determining whether jurisdiction was present to make an initial custody determination. In a D.C. case,[53] however, the court explained (in a footnote) that it is inappropriate to weigh the significance of connections to competing states. This court recognized that if there is no home state, the significant connections state in which the proceeding for an initial custody decree was commenced first is the only state that can exercise jurisdiction, unless that state declines to exercise jurisdiction in favor of another state with greater connections to the child.

Commentary

As is true of home state definition questions, significant connections jurisdiction decisions that are reasonable promote enforceability and make conflicting custody orders less likely. In turn, such decisions facilitate the recovery and return of parentally abducted children.

It is reasonable to assume that connections should be greater than "minimum contacts" to qualify as significant connections. It is unreasonable to assume that relative connections to two states should be weighed to determine which state has jurisdiction. Either a state has significant connections or it does not. If it does, and there is no home state, and that state's action for initial custody started first, then a court of that state has (and can exercise) jurisdiction. Also, if a court of that state had previously issued an order consistent with UCCJA and PKPA requirements, and a contestant

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[50]E.g., Jesus A. v. Lizette A., 546 N.Y.S.2d 284 (Fam. Ct. 1989).

[51]E.g., Brookes v. Brookes, No. 88-C-55, 1990 Ohio App. LEXIS 4074, 1990 WL 136571 (Ohio App.).

[52]Sixberry v. Sixberry, 540 N.E.2d 95 (Ind. Ct. App. 1989).

[53]In the Matter of B.B.R., 566 A.2d 1032, f.n.23 (D.C. 1989).

remains in that state, then satisfying the significant connections threshold gives that state exclusive continuing modification jurisdiction. Therefore, weighing the relative significance of connections, when determining whether a jurisdictional basis exists, is inappropriate. Such a weighing of connections would be appropriate in a determination regarding declination of jurisdiction.

3. Home State and Significant Connections State

Hypothetical

The attorney for Mother must determine which state has jurisdiction over Child's custody: the state in which Mother and Child have lived for seven months, or the state in which Father lives and where Child's frequent visits with Father have occurred.

Current Law -- Statutes

UCCJA, 9 ULA § 3, which sets forth four alternate bases for custody jurisdiction, did not create a preference for jurisdiction of the home state over the significant connections state. However, the federal Parental Kidnapping Prevention Act (PKPA), 28 U.S.C. § 1738A (c)(2) (1988), enacted in 1980, did create such a preference. Three states[54] incorporated the preference for home state jurisdiction into their versions of the UCCJA. Alaska[55] eliminated the significant connections basis for jurisdiction. These changes affect both initial and continuing modification jurisdiction, since PKPA continuing modification jurisdiction requires a basis for jurisdiction under that state's law.

Commentary

Since the PKPA preempts the UCCJA whenever the two conflict, the states' adoption of home state priority provisions bring state law into harmony with federal law. This should remove the possibility of the state exercising jurisdiction in a manner inconsistent with the PKPA. It also ensures that custody orders issued by a state court will be entitled to full faith and credit in sister states. Codifying the federal provision as state law would remove the need for attorneys to determine whether federal law preempts any provision of state law. This would provide greater clarity as to applicable law and, by

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[54]Mass. Gen. Laws Ann. ch. 209B, §§ 2(a)(1), & (2) (West 1986), Tenn. Code Ann. §§ 36-6-203(a)(1) & (2) (1991), and Tex. Fam. Code Ann. §§ 11.53(a)(1) & (2) (Vernon 1986).

[55]Alaska Stat. § 25.30.020(a)(1) (1990).

improving custody order enforceability, it would remove an obstacle to the recovery and return of parentally abducted children.

However, certain state codifications of the home state priority may also eliminate the potential for continuing modification jurisdiction based on significant connections once a new home state has been established.[56] This limits continuing jurisdiction contrary to the UCCJA/PKPA intent: it prevents the court with the greatest contact and information about the child (e.g., where a child has lived for twelve years) from deciding that child's custody six months after the child has moved out of the decree state. Any state codifiction of home state priority should provide for an exception in continuing modifiction jurisdiction cases.

Current Law -- Cases

In several cases, the failure to apply PKPA home state priority has caused difficulties. An Ohio court,[57] based its finding that a state had continuing jurisdiction on, inter alia, the propriety of the state's initial exercise of jurisdiction. However, at the time the initial proceeding began (as well as throughout the proceeding) another state was the child's home state.

An appellate court in Alabama found that the state did not satisfy the requirements for any of the bases for initial jurisdiction under the UCCJA and the PKPA.[58] However, since another state was apparently the child's home state, that fact should have been dispositive under PKPA home state priority, even if the forum court had satisfied the significant connections jurisdiction requirements.

In one case from Minnesota, the court mentioned the PKPA only once, with regard to a peripheral issue, when home state priority (which was not discussed) would probably have resolved the case.[59]

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[56] E.g., Mass. Gen. Laws Ann. ch 209B, §§ 2(a)(1) and (2) (West 1986); Tenn. Code. Ann. §§ 36-6-203(a)(1) and (2) (1991); and Tex. Fam. Code Ann. §§ 11.53(a)(1) and (2) (Vernon 1986).

[57] Brookes v. Brookes, No. 88-C-55, 1990 Ohio App. LEXIS 4074, 1990 WL 136571 (Ohio App.).

[58] Ex parte Shepherd, 560 So. 2d 1089 (Ala. Civ. App. 1990).

[59] In Re Marriage of Schmidt, 436 N.W.2d 99 (Minn. 1989). See also, Siegel v. Siegel, 575 So. 2d 1267 (Fla. 1991), discussed supra.

Further, the PKPA says that no state can exercise initial jurisdiction based on significant connections, when another state is the home state. However, some courts have declined to exercise home state jurisdiction, supposedly to allow a custody action to proceed in a significant connections state.[60]

One final difficulty, evident in recent case law, affects the relationship between home state and significant connections jurisdiction: whether a court can or should consider the time to establish a new home state to be tolled while the child is concealed. Four recent cases indicate such a tolling is appropriate.[61]

Commentary

Attorneys and judges should endeavor to ensure that PKPA home state priority is applied whenever appropriate.

Declining to exercise home state jurisdiction, in deference to significant connections jurisdiction, is a technical violation of the PKPA. However, it would not result in an erroneous exercise of jurisdiction. The purported significant connections state could exercise jurisdiction as a last resort state, once the home state has declined to exercise jurisdiction.

The rules of statutory construction suggest that tolling of the time period necessary to establish a new home state is not appropriate. Statutes are to be interpreted so each provision has a meaning and an effect, but inferring a rule which tolls (during periods of abduction and concealment) the passage of the six months necessary to establish a new home state renders the clean hands provision (UCCJA § 8) meaningless.

4. Emergency Jurisdiction

Hypothetical

Suppose, now, Child reveals to Father, during a visit, that Mother's new boyfriend has sexually abused Child, and Child is afraid to return home. Assume there is no prior custody decree, and the state where Mother and Child now live has home state jurisdiction.

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[60]E.g., State in Interest of W.D. v. Drake, 770 P.2d 1011 (Utah Ct. App. 1989).

[61]In the Matter of B.B.R., 566 A.2d 1032 (D.C. 1989); Curtis v. Curtis, 574 So. 2d 24 (Miss. 1990); Piedimonte v. Nissen, 817 S.W.2d 260 (Mo. Ct. App. 1991); Sams v. Boston, 384 S.E.2d 151 (W. Va. 1989).

Current Law -- Statutes

If a child has been abused, neglected, or dependent, the state where the child is physically present may exercise emergency jurisdiction under UCCJA, 9 ULA § 3(a)(3) as well as PKPA, 28 U.S.C. § 1738A (c)(2)(C). This is true regardless of another state's jurisdiction to decide child custody matters under either the home state or significant connections provisions of the UCCJA and the PKPA.

In one state[62] UCCJA emergency jurisdiction applies only to a "child in need of aid" as defined in that state's abuse/neglect statute.

The emergency jurisdiction sections in Massachusetts and Tennessee provide that courts may issue only temporary orders based on emergency jurisdiction.[63]

Commentary

While the provision defining emergencies in terms of the state abuse/neglect statute promotes specificity, it may be too narrow considering the range of potential emergencies that may arise in a custody case.

Provisions limiting the duration of emergency custody orders are beneficial. The temporary custody order can protect the child from whatever immediate dangers may exist. Only the state that would otherwise have jurisdiction, i.e., a home state or significant connections state, may then make a more long-term custody decision.

Current Law -- Cases

One ambiguity regarding the emergency jurisdiction section is determining what constitutes an emergency. In a Tennessee case,[64] the court adopted an expansive view of the emergency basis for jurisdiction. It found that jurisdiction was present in another state even though there was "no specific threat to the welfare of the child." In some other cases, courts have given

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[62]Alaska Stat. § 25.30.020(a)(2) (1990).

[63]Mass. Gen. Laws Ann. ch. 209B, § 2(a)(3) (West 1983), and Tenn. Code Ann. § 36-6-204 (1991).

[64]Guyton v. Guyton, No. 01-A-01-9006PB-00198 1990, Tenn. App. LEXIS 861, 1990 WL 198936 (Tenn. App.).

emergency jurisdiction a more narrow interpretation.[65] For example, a Delaware court found that, although a specific threat to the children was alleged, the children were not so at risk that the state should assume emergency jurisdiction over a matter as to which another state had already begun to exercise jurisdiction.[66] A Minnesota court held that there was no condition in that state which satisfied the requirements for emergency jurisdiction. The court found that the only basis for emergency jurisdiction was conduct which allegedly occurred in another state (the child's home state). Thus, the home state was the proper forum to determine the truth of those allegations.[67] One New York court,[68] in determining whether there was a factual basis for emergency jurisdiction, provided a brief review of that state's case law regarding what constitutes an emergency for purposes of exercising UCCJA/PKPA emergency jurisdiction.

Another ambiguity of emergency jurisdiction[69] is whether the duration of such jurisdiction is temporary or long-term. Neither the PKPA nor the UCCJA include language addressing this issue. Some courts[70] have determined that emergency jurisdiction is only temporary, while other courts[71] have not limited emergency jurisdiction.

The final ambiguity of emergency jurisdiction is whether it can be a basis for exercise of jurisdiction when another state

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[65]Margaret A.T. v. James L.T., Nos. CN90-8865, 90-8-47-CV, 1991 Del. ch. LEXIS 53, 1991 WL 42629 (Del. Fam. Ct.); In Re Marriage of Nazar, 474 N.W.2d 206 (Minn. Ct. App. 1991); Piedimonte v. Nissen, 817 S.W.2d 260 (Mo. Ct. App. 1991); Michael P. v. Diane G., 553 N.Y.S.2d 689 (App. Div. 1990).

[66]Margaret A.T. v. James L.T., 1991 Del. Ch. LEXIS 53, 1991 WL 42629 (Del. Fam. Ct.).

[67]In Re Marriage of Nazar, 474 N.W.2d 206 (Minn. Ct. App. 1991).

[68]Michael P. v. Diane G., 553 N.Y.S.2d 689 (App. Div. 1990).

[69]Further discussion of these obstacles and recommendations to eliminate these obstacles are provided in Section IX. A. 3 of this chapter.

[70]Curtis v. Curtis, 574 So. 2d 24 (Miss. 1990); Piedimonte v. Nissen, 817 S.W.2d 260 (Mo. Ct. App. 1991); Curtis v. Curtis, 789 P.2d 717 (Utah Ct. App. 1990); State in Interest of D.S.K., 792 P.2d 118 (Utah Ct. App. 1990).

[71]E.g., Guyton v. Guyton, Appeal No. 01-A-01-9006PB-00198, 1990 Tenn. App. LEXIS 861, 1990 WL 198936 (Tenn. App.).

has retained "exclusive" continuing modification jurisdiction. Some courts have held that continuing modification jurisdiction is exclusive under the PKPA and the UCCJA, and that the exercise of jurisdiction by a court of any other state is improper, despite a serious emergency.[72] Other courts have held that a state may exercise emergency jurisdiction, on a temporary basis, even when another state has continuing modification jurisdiction.[73]

Commentary

Expansive judicial interpretations as to what constitutes an emergency for purposes of UCCJA/PKPA jurisdiction can result in the issuance of conflicting custody orders. This impedes the recovery and return of a parentally abducted child. Interpretations of emergency jurisdiction should allow for the immediate protection of the child in appropriate circumstances, while allowing the state with jurisdiction under the other UCCJA/PKPA provisions to determine custody in any other circumstances. It is reasonable for courts to consider, when deciding whether to exercise emergency jurisdiction, the pendency of a custody proceeding in another state regarding the child, or the fact that the conduct which gives rise to the emergency occurred in another state. Courts should also consider the definition of emergency as developed through prior case law in the state.[74]

The PKPA and the UCCJA do not explicitly say that emergency jurisdiction should only be temporary. However, both the name and the purpose of emergency jurisdiction make the inference of a duration limitation reasonable.

Finally, it appears unreasonable to interpret the UCCJA and the PKPA as precluding the exercise of emergency jurisdiction when another state has continuing modification jurisdiction. The existence of continuing jurisdiction in another state does not lessen the need for a court to protect the child from harm in an emergency situation.

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[72]E.g., Curtis v. Curtis 789 P.2d 717 (Utah Ct. App. 1990); Stanley v. Department of Human Resources, 567 So. 2d 310 (Ala. 1990); K.L.W. v. T.W.C., 586 So. 2d 4 (Ala. Civ. App. 1991).

[73]E.g., Curtis v. Curtis, 574 So. 2d 24 (Miss. 1990); State in Interest of D.S.K., 792 P.2d 118 (Utah Ct. App. 1990).

[74]Court considerations of other factors would also be reasonable (e.g., the fact that the parent and child were fleeing family violence in the other state), although this issue was not presented in the recent case law surveyed for this project.

5. Continuing/Modification Jurisdiction

Hypothetical

Assume that the state where Child was born had previously issued a custody decree concerning him, and Mother and Child have lived elsewhere for over six months.

Current Law -- Statutes

Under UCCJA, 9 ULA §§ 3, and 14, a decree state can retain modification jurisdiction even after another state has become the child's new home state, if one of the other bases of jurisdiction exists under state law. Under the Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A(d) (1988), modification jurisdiction can continue in the decree state as long as one of the four bases of state jurisdiction exists, and the child or a contestant still lives there.

Texas's custody jurisdiction law differs from the UCCJA, in that a new home state automatically acquires jurisdiction to modify a prior custody determination unless the parties agree in writing to the contrary, or unless an action to modify is filed within six months.[75] Alaska's[76] removal of the significant connections basis for jurisdiction has the same effect on continuing modification jurisdiction: once a new home state is created, jurisdiction shifts to that state.

A few states insert extra provisions regarding continuing/modification jurisdiction: (1) New Mexico's UCCJA, following the PKPA, says that modification jurisdiction continues until the child and all contestants reside elsewhere;[77] (2) Kansas's law[78] says that jurisdiction, once assumed, continues until another state assumes jurisdiction, notwithstanding UCCJA provisions to the contrary; and (3) The Illinois UCCJA includes a provision like New Mexico's (above), except that it also allows

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[75]Texas Fam. Code Ann. § 11.53(d) (Vernon 1988). Note that Texas case law has interpreted the statute to permit a court to retain modification jurisdiction over visitation issues, even after a new home state is established elsewhere. Hutchings v. Biery, 723 S.W.2d 347 (Tex. Ct. App. 1990).

[76]Alaska.

[77]N.M. Stat. Ann. §§ 40-10-4A, 40-10-15 (Michie 1989).

[78]Kan. Stat. Ann. § 38-1335 (1986).

the court with continuing jurisdiction to "concede" jurisdiction to another state.[79]

Illinois's UCCJA[80], by changing an "and" to an "or" in the continuing jurisdiction section, provides that as soon as Illinois has a basis for jurisdiction, the prohibition against that state's modification of another state's decree is removed.

Illinois's law[81] also requires that the court consult the registry of out-of-state decrees prior to modifying a decree involving an out-of-state party.

Commentary

The statutes allowing a new home state to automatically acquire modification jurisdiction mean greater certainty as to which state has jurisdiction. This reduces the potential for conflicting custody orders (a significant obstacle to recovering an abducted child). However, these provisions can also result in a state exercising modification jurisdiction when its connections to the child are minimal (i.e., the child has spent only six months in the new state, and still has close ties to the former state, where the child may have lived for years).

The addition of language consistent with the PKPA (such as one state's addition of a continuing jurisdiction provision consistent with the PKPA) helps make applicable law clearer. On the contrary, the section providing for continuing jurisdiction until another state assumes jurisdiction reverses the UCCJA presumption that the decree state has the power to determine whether it should decline to exercise continuing jurisdiction. If the purpose of the section is to limit the duration of continuing jurisdiction, it would have been clearer if the state had enacted a provision stating a time period during which modification jurisdiction continues after the child moves out of state.

The provision changing the "and" to an "or" nullifies the continuing jurisdiction principle of the UCCJA. As it is in conflict with the PKPA, it would be preempted by the PKPA.

The section providing for a simple check of the registry to avoid conflicting custody orders is desirable.

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[79]Ill. Ann. Stat. ch. 40, ¶ 2115 (Smith-Hurd 1980).

[80]Ill. Ann. Stat. ch. 40, ¶ 2115 (Smith-Hurd 1980).

[81]Ill. Ann. Stat. ch. 40, ¶ 2117 (Smith-Hurd 1980).

Current Law -- Cases

The obstacles which arose most frequently in recent cases involve courts' interpretations of the UCCJA and PKPA provisions on continuing modification jurisdiction.[82] Given the centrality of the continuing modification jurisdiction framework in the UCCJA/PKPA scheme, the importance of these obstacles can not be overstated.

The most prevalent continuing jurisdiction obstacle relates to the failure to address the PKPA requirement that there be a current state law basis for jurisdiction. That failure was identified in many cases from several states.[83] In a number of those opinions,[84] no facts were given that would have supported the significant connections (or any other) basis for continuing jurisdiction. Instead, such case opinions (and others[85]) relied

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[82]Further discussion of these obstacles and recommendations to eliminate these obstacles are provided in Section IX. A. 2 of this chapter.

[83]Several of the cases were from Alabama: Cole v. Cooley, 547 So. 2d 1187 (Ala. Civ. App. 1989); Hunter v. Hunter, 585 So. 2d 71 (Ala. Civ. App. 1991); K.L.W. v. T.W.C., 586 So. 2d 4 (Ala. Civ. App. 1991); Russo v. Myers, 588 So. 2d 887 (Ala. Civ. App. 1990); Sebeniecher v. Corl, 567 So. 2d 321 (Ala. Civ. App. 1990); and Stanley v. Department of Human Resources, 567 So. 2d 310 (Ala. Civ. App. 1990). Other cases were: McArthur v. Superior Court of Santa Clara County, 235 Cal. App. 3d 1287 (1991); Steward v. Steward, 588 So. 2d 692 (Fla. Dist. Ct. App. 1991); Yurgel v. Yurgel, 572 So. 2d 1327 (Fla. 1990); Curtis v. Curtis, 574 So. 2d 24 (Miss. 1990); Capobianco v. Willis, 567 N.Y.S.2d 770 (App. Div. 1991); Hashem v. Hashem, 558 N.Y.S.2d 370 (App. Div. 1990); G.S. v. Ewing, 786 P.2d 65 (Okla. 1990); Roderick v. Roderick, 776 S.W.2d 533 (Tenn. Ct. App. 1989); In Interest of S.A.V., 798 S.W.2d 293 (Tex. Ct. App. 1990); Crump v. Crump, 821 P.2d 1172 (Utah Ct. App. 1991); Curtis v. Curtis, 789 P.2d 717 (Utah Ct. App. 1990); State in Interest of D.S.K., 792 P.2d 118 (Utah Ct. App. 1990); Michalik v. Michalik, 476 N.W.2d 586 (Wis. Ct. App. 1991).

[84]E.g., Cole v. Cooley, 547 So. 2d 1187 (Ala. Civ. App. 1989); Sebeniecher v. Corl, 567 So. 2d 321 (Ala. Civ. App. 1990); Stanley v. Department of Human Resources, 567 So. 2d 310 (Ala. Civ. App. 1990); Roderick v. Roderick, 776 S.W.2d 533 (Tenn. Ct. App. 1989); and In Interest of S.A.V., 798 S.W.2d 293 (Tex. Ct. App. 1990).

[85]Hunter v. Hunter, 585 So. 2d 71 (Ala. Civ. App. 1991); K.L.W. v. T.W.C., 586 So. 2d 4 (Ala. Civ. App. 1991); Russo v. Myers, 588 So. 2d 887 (Ala. Civ. App. 1990); McArthur v. Superior

solely on the continuing residence of a custody contestant (in most cases, a noncustodial father) in the initial decree state to establish continuing modification jurisdiction. Other case opinions recognized the need for some ongoing connection between the child and the forum, but used due process/personal jurisdiction terminology such as "contact"[86] and "minimum contact"[87] to describe the necessary connections, rather than the UCCJA/PKPA "significant connections." In some of those cases, however, concurring or dissenting opinions correctly explained that one of the four state law bases of jurisdiction must be met for jurisdiction to continue.[88]

Two courts from Arkansas and California failed to use a continuing jurisdiction analysis (and erroneously used a home state priority analysis) to resolve the jurisdiction issue.[89]

In another case, an Alaska court improperly weighed connections to two states in determining whether continuing jurisdiction exists.[90] In that opinion, the court found that its state had the "most significant" connections with the child, so that the decree state no longer had continuing jurisdiction based on significant connections.

In a few cases, trial and/or appellate judges' overlooked, without any explanation, a state's continuing modification

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Court of Santa Clara County, 235 Cal. App. 3d 1287 (1991); Capobianco v. Willis, 567 N.Y.S.2d 770 (App. Div. 1991); Hashem v. Hashem, 558 N.Y.S.2d 370 (App. Div. 1990); Crump v. Crump, 821 P.2d 1172 (Utah Ct. App. 1991); and Michalik v. Michalik, 476 N.W.2d 586 (Wis. Ct. App. 1991).

[86]State in Interest of D.S.K., 792 P.2d 118 (Utah Ct. App. 1990); and G.S. v. Ewing, 786 P.2d 65 (Okla. 1990).

[87]Steward v. Steward, 588 So. 2d 692 (Fla. Dist. Ct. App. 1991); and Yurgel v. Yurgel, 572 So. 2d 1327 (Fla. 1990).

[88]Yurgel v. Yurgel, 572 So. 2d 1327 (Fla. 1990) (concurrence); and G.S. v. Ewing, 786 P.2d 65 (Okla. 1990) (dissent).

[89]Slusher v. Slusher, 786 S.W.2d 843 (Ark. Ct. App. 1990); and McArthur v. Superior Court of Santa County, 235 Cal. App. 3d 1287 (1991) [trial court decision].

[90]Wanamaker v. Scott, 788 P.2d 712 (Alaska 1990).

jurisdiction.[91] The majority opinion in one case from Michigan overlooked the continuing modification jurisdiction issue, while the dissent correctly analyzed the need for a trial court to defer to the continuing modification jurisdiction of another state.[92]

In two cases from Mississippi, the state supreme court found that there was a state law basis for continuing child custody jurisdiction (as required by the PKPA), apart from the UCCJA.[93] The existence of state law bases for custody jurisdiction outside of the UCCJA undermines that statute.

In another case, a Massachusetts court applied its own state law (pursuant to the UCCJA) to determine whether another state retained modification jurisdiction, rather than applying the other state's law (pursuant to the PKPA).[94]

Several courts reached the appropriate jurisdictional conclusion, but the opinions lacked judicial economy and clarity.[95] For example, if a case raises a continuing modification jurisdiction issue, the court should first determine

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[91]Sebeniecher v. Corl, 567 So. 2d 321 (Ala. Civ. App. 1990) [trial court]; Johnson v. Denton, 542 So. 2d 447 (Fla. Dist. Ct. App. 1989) [trial court]; In Re Marriage of Ross, 471 N.W.2d 889 (Iowa Ct. App. 1991) [dissent]; Brown v. Brown, 448 N.W.2d 745 (Mich. Ct. App. 1989); In re Marriage of Ray, 820 S.W.2d 341 (Mo. Ct. App. 1991); Archambo v. Churchill, 576 N.Y.S.2d 730 (App. Div. 1991); and In the Interest of A.E.H., 468 N.W.2d 190 (Wis. 1991).

[92]Brown v. Brown, 448 N.W.2d 745 (Mich. Ct. App. 1989).

[93]Jones v. Starr, 586 So. 2d 788 (Miss. 1991); Stowers v. Humphrey, 576 So. 2d 138 (Miss. 1991); see also, Harvey v. Bentley, No. 12798, 1991 Ohio App. LEXIS 2479, 1991 WL 96266 (Ohio App.); Patten v. Patten, No. CA-90-09-009, 1991 Ohio App. LEXIS 1367, 1991 WL 44347 (Ohio App.); and Killam v. Heald, 818 P.2d 509 (Ore. Ct. App. 1991).

[94]Custody of Brandon, 551 N.E.2d 506 (Mass. 1990).

[95]Johnson v. Denton, 542 So. 2d 447 (Fla. Dist. Ct. App. 1989); Steckel v. Blafas, 549 So. 2d 1211 (Fla. Dist. Ct. App. 1989); In Re Marriage of Cox, 536 N.E.2d 520 (Ind. Ct. App. 1989); In Re. Marriage of Ross, 471 N.W.2d 889 (Iowa Ct. App. 1991); In the Custody of Brandon, 551 N.E.2d 506 (Mass. 1990); Curtis v. Curtis, 574 So. 2d 24 (Miss. 1990); Barndt v. Barndt, 580 A.2d 320 (Pa. Super. Ct. 1990); Roderick v. Roderick, 776 S.W.2d 533 (Tenn. Ct. App. 1989); and Curtis v. Curtis, 789 P.2d 717 (Utah Ct. App. 1990).

whether the decree state has retained jurisdiction. If not, the court should then determine whether the non-decree state has a basis for jurisdiction. This order of decision making is more economical and clear because whether the non-decree state has a basis for jurisdiction is irrelevant if the decree state retains modification jurisdiction.

Further, a number of courts reached the proper jurisdictional conclusion, but raised judicial economy and clarity concerns by including extraneous findings in their jurisdictional determinations.[96] For example, one New York court found that "a 'significant connection' with this state cannot be established because a new 'home state' [...] has now been established in Maine." However, that information is irrelevant, because it was a continuing jurisdiction case, and also because neither the child nor any contestant continued to live in the state.[97] Therefore, continuing jurisdiction based on significant connections (or any other basis) is not possible. Additional examples of extraneous findings were identified in case opinions which evaluate the existence of other bases of jurisdiction in a state that has already been determined to be the home state,[98] or which evaluate which proceeding was pending first (for simultaneous proceedings purposes) when one of the states has no basis for jurisdiction.[99]

Another obstacle relating to continuing jurisdiction is the ambiguity regarding the effect on continuing jurisdiction of a time during which the child and/or one or more custody contestants have been living in another state. The PKPA continuing jurisdiction provision requires that the decree state "remain the residence" of the child or of any contestant. Nevertheless, an Alabama court found that a state retained continuing jurisdiction, even though the child and all contestants had lived elsewhere for nine months.[100]

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[96]Pauzner v. Pauzner, 540 N.Y.S.2d 648 (N.Y. 1989); Plouffe v. Salas, 560 N.Y.S.2d 99 (Fam. Ct. 1990); and In the Interest of Brandon L.E, 394 S.E.2d 1515 (W. Va. 1990).

[97]Beddow v. Beddow, 556 N.Y.S.2d 780 (App. Div 1990). See also Pauzner v. Pauzner, 540 N.Y.S.2d 648 (N.Y. 1989); and In the Interest of Brandon L.E., 394 S.E.2d 515 (W. Va. 1990).

[98]Eg. In the Interest of Brandon L.E., 394 S.E.2d 515 (W. Va. 1990).

[99]Eg. Plouffe v. Salas, 560 N.Y.S.2d 99 (Fam. Ct. 1990).

[100]Hunter v. Hunter, 585 So. 2d 71 (Ala. Civ. App. 1991).

Another ambuiguity regarding continuing modification jurisdiction is evident in courts' differing on how long a state retains modification jurisdiction after the child and custodial parent have moved to another state. This ambiguity is partly caused by the ambiguity as to what constitutes significant connections (see p.3-15, supra). This is true because the significant connections basis is usually the state law basis for continuing modification jurisdiction after the child and custodial parent have left the state. Courts have often determined that modification jurisdiction can continue for two or three years after the child and custodial parent have moved away from the decree state.[101] However, one court in Connecticut found that the child's connections to a decree state had become too tenuous after an absence of only five months.[102] A court from Florida found, to the contrary, that the decree state retained continuing modification jurisdiction after an eight year absence,[103] although the court declined to exercise jurisdiction.

Commentary

Ambiguities and erroneous interpretations regarding continuing jurisdiction can lead to conflicting custody orders, creating obstacles to the recovery and return of parentally abducted children.

6. Courts Should Specify Jurisdictional Basis

Current Law -- Cases

Courts do not always clearly state their legal and factual bases for jurisdiction. When a custody order fails to state the legal or factual basis for jurisdiction, other courts cannot fully evaluate the propriety of the court's decision and enforceability of the resulting custody order.

In one case, the trial court did not make adequate findings of jurisdictional facts to support a basis of jurisdiction, and

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[101]E.g., Cole v. Cooley, 547 So. 2d 1187 (Ala. Civ. App. 1989); G.S. v. Ewing, 786 P.2d 65 (Okla. 1990); and Hall v. Hall, No. 1401, 1991 Tenn. App. LEXIS 226, 1991 WL 46676 (Tenn. App.)

[102]Perez v. Perez, 561 A.2d 907 (Conn. 1989).

[103]Davenport v. Davenport, 588 So. 2d 697 (Fla. Dist. Ct. App. 1991).

the appellate court held the resulting custody order invalid for that (and other) reasons.[104]

Commentary

Courts' failure to clearly state their legal and factual bases for jurisdiction can create obstacles to custody enforcement, and thus to the recovery and return of parentally abducted children. All courts should state the basis for jurisdiction on the face of the order, as well as the jurisdictional facts that support the jurisdictional finding. Attorneys in a case can assist a court by drafting such an order.

7. Courts Can Raise, Sua Sponte, Jurisdictional Basis Questions

Current Law -- Cases

Courts have raised, sua sponte, questions regarding their bases for jurisdiction.[105]

Commentary

Such sua sponte action is laudable, since a court without a basis for subject matter jurisdiction cannot issue an order that is enforceable under the UCCJA and the PKPA. Any lack of enforceability creates an obstacle to the recovery and return of parentally abducted children.

8. Courts Should Avoid Creating Obstacles to Proper Application of UCCJA/PKPA Jurisdictional Bases

Current Law -- Cases

Two trial courts from Utah and North Dakota,[106] one Arizona appellate majority,[107] and one Utah appellate

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[104]In Re Marriage of Schmidt, 436 N.W.2d 99 (Minn. 1989); see also, Mayor v. Mayor, No. 58281, 1991 Ohio App. LEXIS 1337, 1991 WL 330250 (Ohio App.)

[105]E.g., Barndt v. Barndt, 580 A.2d 320 (Pa. Super. Ct. 1990).

[106]Curtis v. Curtis, 789 P.2d 717 (Utah Ct. App. 1990); and Larson v. Dunn, 474 N.W.2d 34 (N.D. 1991).

[107]Alegria v. Redcherries, 812 P.2d 1085 (Ariz. Ct. App. 1991).

dissent[108] found that contestants had waived any challenges to a court's lack of subject matter jurisdiction under the UCCJA and the PKPA. However, since courts lack the authority to issue valid orders without subject matter jurisdiction, such challenges can never be waived by contestants.[109]

One Florida trial court and one appellate dissent from Iowa found that parties could, by stipulation, establish continuing modification jurisdiction where none exists under the UCCJA and the PKPA. The appellate court majorities properly disagreed with that finding.[110]

One federal appellate court and two state appellate courts from Mississippi and North Carolina, held that an objection to lack of personal jurisdiction over a non-resident custody contestant may be valid, despite the presence of proper UCCJA/PKPA bases for jurisdiction.[111] Other state appellate courts, however, have held that compliance with the UCCJA allows a court "to make custody determinations even in the absence of personal jurisdiction over a non-resident parent."[112] This is the majority view.

Finally, one appellate dissent in Utah found that the UCCJA/PKPA requirements relate to personal jurisdiction, while

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[108]Crump v. Crump, 821 P.2d 1172 (Utah Ct. App. 1991) [dissent].

[109]Eg. Siegel v. Siegel, 575 So. 2d 1267 (Fla. 1991) [dissent]; Biscoe v. Biscoe, 443 N.W.2d 221 (Minn. Ct. App. 1989); Crump v. Crump, 821 P.2d 1172 (Utah Ct. App. 1991); and Curtis v. Curtis, 789 P.2d 717 (Utah Ct. App. 1990).

[110]Steckel v. Blaufas, 549 So. 2d 1211 (Fla. Dist. Ct. App. 1989); and In Re Marriage of Ross, 471 N.W.2d 889 (Iowa Ct. App. 1991). See also, Long v. Long, 439 N.W.2d 523 (N.D. 1989); and Crump v. Crump, supra. But c.f., Earl G.A. v. Beverly A., No. CN91-6015, 91-1-141-CV and 91-1-142-CV, 1991 Del. Ch. LEXIS 53, 1991 WL 42619 (Del. Fam. Ct.).

[111]DeMent v. Ogala Sioux Tribal Court, 874 F.2d 510 (8th Cir. 1989); Morrow v. Morrow, 591 So. 2d 829 (Miss. 1991); and Harris v. Harris, 410 S.E.2d 527 (N.C. Ct. App. 1991).

[112]Roderick v. Roderick, 776 S.W.2d 533 (Tenn. Ct. App. 1989); In re Marriage of Mobley, 569 N.E.2d 323 (Ill. App. Ct. 1991); Shingledecker v. Shingledecker, 407 S.E.2d 589 (N.C. Ct. App. 1991).

the majority properly noted that those requirements relate to subject matter jurisdiction.[113]

Commentary

Courts should uniformly interpret the UCCJA/PKPA requirements as relating to subject matter jurisdiction.[114] Therefore, objections based on failure to meet those requirements cannot be waived by contestants. Further, contestants cannot stipulate to jurisdiction when those requirements are not met. Finally, when those requirements are met, no further personal jurisdiction requirements are applicable. Such interpretations minimize the obstacles to proper application of UCCJA/PKPA jurisdiction rules, thereby enhancing enforceability and reducing obstacles to the recovery and return of parentally abducted children.

B. Should the court exercise or decline to exercise jurisdiction?

1. Declining to Exercise Jurisdiction Because of Simultaneous Proceedings Elsewhere

Hypothetical

Assume Father had filed a custody petition in his state within six months after Mother left, and that action was already pending when Mother filed a petition in her state.

Current Law -- Statutes

The court in one state must decline to exercise jurisdiction, under UCCJA, 9 ULA § 6, and the PKPA, 28 U.S.C. § 1738A(g) (1988), when there is a pending proceeding filed first in conformity with the UCCJA and the PKPA.

Three states,[115] Maryland, Massachusetts and Michigan, have created an exception to the ban on exercising simultaneous jurisdiction: emergency jurisdiction cases.

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[113]Crump v. Crump, 821 P.2d 1172 (Utah Ct. App. 1991); see also, Kemp v. Sharp, 409 S.E.2d 204 (Ga. 1991); and Harris v. Young, 473 N.W.2d 141 (S.D. 1991).

[114]A recommendation to eliminate this obstacle is provided in Section IX. B. of this chapter.

[115]Md. Fam. Law Code Ann. § 9-206 (1975), Mass. Gen. Laws Ann. ch. 209B, §§ 2(c) & (d) (West 1986), Mich. Comp. Laws Ann. 27A-656 (West 1984).

Missouri[116] omits the requirement that the court in the other state be exercising jurisdiction substantially in accordance with the UCCJA.

Two states have revised the UCCJA, 9 ULA § 6 provision calling for communication between courts of different jurisdictions. Oklahoma[117] added that the court shall inquire as to whether or not any proceedings alleging the child to be deprived, in need of supervision, or delinquent are pending or have been adjudicated. Wisconsin[118] provides that communication between courts may be conducted on the record by telephone conference in which the courts and all counsel participate.

Commentary

Given the nature of emergency jurisdiction, the exception to the prohibition against simultaneous proceedings would appear to be appropriate. However, orders based on emergency jurisdiction should only be temporary. (See Section II.A.4. of this chapter, supra.)

The omission of the requirement that the other state be acting in accordance with the UCCJA would further the UCCJA goal of avoiding conflicting custody orders. However, it undermines the UCCJA goal of ensuring that the state with the closest ties to a child and family will issue a custody decree. It also encourages a state without jurisdiction to issue an order that will then be unenforceable.

Communication between courts regarding other types of proceedings which could result or have resulted in custody orders is very important. Courts should put any such communications on the record, so that counsel may respond, if appropriate. Counsel should have the opportunity to be involved in judicial communication (e.g., through conference calls).

Current Law -- Cases

In one case, an Ohio court should have used the ban on simultaneous proceedings to resolve the jurisdiction issue, but failed to do so.[119] The court based its decision on its finding that there was no basis for jurisdiction in that state. However,

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[116]Missouri.

[117]Okla. Stat. Ann. tit. 43, § 1608 (West 1990).

[118]Wisc. Stat. Ann. § 822.06 (West 1977).

[119]Lacy v. Lacy, No. 89-T-4234 1991 Ohio App. LEXIS 3522, 1991 WL 139592 (Ohio App.).

even if the court had found such a basis, the simultaneous proceedings prohibition would have prevented any exercise of jurisdiction by that state.

Another obstacle that arises in simultaneous proceedings prohibition cases is the ambiguity as to when a proceeding is pending.[120] In some cases, the courts have ruled that a proceeding is not pending until service of process is accomplished in the case,[121] while other courts have considered the proceeding to be pending any time after it is filed.[122] Another issue has arisen regarding whether a case is still pending for simultaneous proceedings purposes. The concurrence in one West Virginia appellate case[123] concluded that an original petition was still pending for simultaneous proceedings purposes, because the trial court had never ruled on the custody petition that had been filed before the children's abduction, which occurred three and a half years prior to the current proceeding.

Commentary

Since the ban on simultaneous proceedings is mandatory in both the UCCJA and the PKPA, courts should apply that provision whenever appropriate. A case should be considered pending upon filing with the court; a rule that a case is not pending until service is accomplished rewards abductors who successfully conceal themselves and the abducted children for at least six months. To avoid the potential for simultaneous proceedings and conflicting custody orders, courts should liberally construe when a proceeding is still pending, even a few years after it was filed (although interstate judicial communication in such a case would be important).

2. Declining To Exercise Jurisdiction As An Inconvenient Forum

Hypothetical

Suppose that Child was six years old and had spent his first three years in the state where Father has continued to

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[120]Further discussion of this obstacle and a recommendation to eliminate this obstacle are provided in Section IX. A. 8 of this chapter.

[121]Anderson v. Anderson, 449 N.W.2d 799 (N.D. Ct. App. 1989); and In the Matter of B.B.R., 566 A.2d 1032, f.n. 25 (D.C. 1989).

[122]Eg., In the Matter of B.B.R., 566 A.2d 1032 (D.C. 1989).

[123]Sams v. Boston, 384 S.E.2d 151 (W. Va. 1989) [concurring opinion].

live, and the most recent three years in the state to which he moved with Mother. Assume that the original state still has a valid basis for exercising continuing jurisdiction -- the Father's continued residence plus frequent visits there by Child.

Current Law -- Statutes

A court can, within its discretion pursuant to UCCJA, 9 ULA § 7, decline to exercise jurisdiction on grounds that another state would be a more convenient forum to hear the case. UCCJA, 9 ULA § 7 lists of factors a court may take into account in making its determination as to whether or not it is an inconvenient forum. The D.C. code[124] includes an additional factor for the court to consider in making this determination: whether the exercise of jurisdiction would contravene any of the provisions of the PKPA. Minnesota's UCCJA[125] says the court "shall" (instead of "may") consider the enumerated factors in making its inconvenient forum decision. Missouri's UCCJA[126] deleted the section with the enumerated factors. New Mexico[127] inserted two additional factors to be considered: (1) a stipulation by the parties that the state shall retain jurisdiction of the custody matter; and (2) the out-of-state contestant's compliance with previous custody and visitation orders.

Nebraska[128] provides in its inconvenient forum section that courts must give to all parties the substance of any interstate communications, and afford them the chance to respond.

Commentary

Once convenience of the forum is placed in issue by any of the contestants, it should be mandatory that the judge consider the section 7 factors. The list of factors should embrace every item likely to be relevant, including compliance with the PKPA, and a stipulation of the parties (assuming that the state retains a basis for jurisdiction under the UCCJA and the PKPA).

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[124]D.C. Code Ann. § 16-4507 (1981).

[125]Minn. Stat. Ann. § 518A.07 (West 1990).

[126]Mo. Ann. Stat. § 452.470 (Vernon 1986).

[127]N.M. Stat. Ann. § 40-10-8 (Michie 1989).

[128]Neb. Rev. Stat. § 43-1207 (1988).

3. Declining to Exercise Jurisdiction Because of Petitioner's Conduct

Hypothetical

Suppose that a prior decree granting custody to Father had been issued. Assume further that Mother had improperly removed the child from Father's physical custody or improperly retained the child after court-ordered visitation.

Current Law -- Statutes

If petitioner has wrongfully removed or retained a child, the court may (if no prior decree exists and if just and proper under the circumstances) or shall (if a prior decree exists, and if consistent with the interest of the child) decline to exercise jurisdiction because of wrongful conduct, pursuant to the "clean hands" section, UCCJA, 9 ULA § 8. Alaska[129] has modified the provision by making the initial decree section mandatory (in the same manner as in the modification decree section). Massachusetts omits the distinction between initial and modification jurisdiction, and makes declining jurisdiction not mandatory in either situation.[130] Vermont[131] omits the clean hands section, but inserts, in the modification jurisdiction section, a ban on modification when the petitioner has wrongfully taken or retained the child.

Illinois's[132] law provides that the court, when declining to exercise jurisdiction pursuant to the "clean hands" provision, must promptly notify the person entitled to custody as to the child's location. Four states[133] adopted Illinois's "clean hands" language, and further provide that (1) the prosecutor in the other state shall also be notified, and (2) upon request from the other state, the court shall order the petitioner to appear with the child in the other state's proceeding (most states also provide for such orders to appear in UCCJA, 9 ULA §§ 19 and 20).

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[129]Alaska Stat. § 25.30.070 (1990).

[130]Mass. Gen. Laws Ann. ch. 209B, § 7 (West 1986).

[131]Vt. Stat. Ann. tit. 15, §§ 1032(a), 1033 (1989).

[132]Ill. Ann. Stat. ch. 40, ¶ 2109 (Smith-Hurd 1980).

[133]Cal. Civ. Code § 5157 (West 1984), Nev. Rev. Stat. § 125A.080 (1986), Utah Code Ann. § 78-45c-8 (1987) and Wash. Rev. Code Ann. § 26.27.080 (1986).

Commentary

In order to prevent abductions, a strong "clean hands" provision is essential. Therefore, the section making the court's declination of jurisdiction mandatory (if consistent with the interests of the child) for both initial and modification decrees is laudable. The provisions would have even greater effect in deterring abductions if the "consistent with the interests of the child" language were eliminated. In contrast, the section making neither provision mandatory, and the failure of the section to address initial jurisdiction at all, are inappropriate. While the statute addressing only modification jurisdiction is too narrow, its inclusion of "clean hands" language in the modification jurisdiction section is a useful reminder to courts hearing modification actions.

The sections which provide for interstate notifications and orders to appear are useful.

4. Ambiguities Regarding Declining Jurisdiction

Current Law -- Cases

In some cases,[134] it is unclear whether the trial court declined to exercise jurisdiction.[135] In other cases, the courts have tried to clarify how a court can and should decline to exercise jurisdiction.[136] The timing of decisions declining to exercise jurisdiction (not a concern with inconvenient forum and unclean hands declinations, but an important concern in simultaneous proceedings cases) also creates ambiguity. For example, in one Pennsylvania case,[137] the concurrence properly noted that a subsequent declination of continuing jurisdiction by the decree state court does not rectify the prior inappropriate exercise of jurisdiction by another state's court. Finally, ambiguity arises as to which court in the state can decline to

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[134]E.g., Bock v. Graves, 804 S.W.2d 6 (Ky. 1991); and Anderson v. Anderson, 449 N.W.2d 799, 801 n.2 (N.D. 1989).

[135]Further discussion of this obstacle and recommendations to eliminate this obstacle are provided in Section IX. A. 7. of this chapter.

[136]E.g., McArthur v. Superior Court of Santa Clara County, 235 Cal. App. 3d 1287 (1991) [through interstate judicial communication].

[137]Barndt v. Barndt, 580 A.2d 332 (Pa. Super. Ct. 1990), [concurrence]; but c.f., dissenting opinion.

exercise jurisdiction. For example, in a case from Wisconsin,[138] a juvenile court in one county declined to exercise jurisdiction, but the Superior Court in that county later filed an order to the contrary. Then, another county's Superior Court proceeded to exercise custody jurisdiction.

Commentary

Greater clarity is needed to guide courts' determinations as to whether declination has occurred, how and when a court can and should decline to exercise jurisdiction, and which courts can decline to exercise that state's jurisdiction (thereby precluding other courts within that state from exercising jurisdiction). Conflicting decisions regarding declination by courts in different counties within the same state, or by different courts within the same county, together with the other ambiguities, create risks of conflicting custody orders. This impedes the recovery and return of parentally abducted children.

5. Interstate Judicial Communication Regarding Declination of Jurisdiction

Current Law -- Cases

Most recent interstate custody cases reviewed did not mention whether any interstate judicial communication occurred before the trial court's decision, although such communication is provided for in UCCJA, 9 ULA §§ 6,7 (the sections relating to simultaneous proceedings and inconvenient forum decisions). Interstate judicial communication, like affidavits, can be a source of important information (as well as a problem-solving opportunity) for judges who are making jurisdiction decisions in custody cases.

Two cases noted that there had not been any interstate judicial communication prior to the trial court decision. A Connecticut case held that the failure to communicate, while unfortunate, was not error.[139] The other, from Indiana (a dissent), stressed the importance of such communication in "the interests of the parties, judicial economy and, most especially, the best interests of the children."[140]

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[138] In the Interest of A.E.H., 468 N.W.2d 190 (Wis. 1991).

[139] Perez v. Perez, 561 A.2d 907 (Conn. 1989).

[140] In Re Custody of Cox, 536 N.E.2d 520, 525 (Ind. Ct. App. 1989).

Several other cases noted that interstate judicial communication had occurred before the court determinations.[141] However, in at least two cases, from West Virginia and Wisconsin, both communicating courts exercised custody jurisdiction over the same child(ren) anyway.[142]

Commentary

It is important that interstate judicial communication occur, but even such communication does not remove the potential for conflicting custody orders. Moreover, while making such communication a jurisdictional requirement in simultaneous proceedings and inconvenient forum determinations (thereby rendering invalid any such determinations made without communication) might increase the number of cases in which communications occur, it would also invalidate custody orders made in conformity with all the other UCCJA/PKPA requirements. This would impede efforts to enforce those orders, as well as create obstacles to the recovery and return of parentally abducted children, and is not desirable.

C. Has proper notice been provided?

Hypothetical

Suppose Mother is filing a petition for custody of Child. Mother's attorney must consider applicable statutory standards in the UCCJA and the PKPA when determining the manner in which notice must be given to Father.

Current Law -- Statutes

The UCCJA includes two sections (UCCJA, 9 ULA §§ 4, 5) on notice requirements. The PKPA notice requirement is in 28 U.S.C. 1738A § (e). Since the enforceability of the resulting order is dependent upon compliance with notice provisions, such compliance, when filing an action for custody of a child, is crucial.

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[141]Adams v. Adams, 820 P.2d 752 (Nev. 1991); Brookes v. Brookes, No. 88-C-55, 1990 Ohio App. LEXIS 4074, 1990 WL 136571 (Ohio App.); Burnette v. Burnette, C.A. No. 904, 1989 Tenn. App. LEXIS 745, 1989 WL 135337 (Tenn. App.); Guyton v. Guyton, Appeal No. 01-A-01-9006PB-00198, 1990 Tenn. App. LEXIS 861, 1990 WL 198936 (Tenn. App.); In the Matter of Bryan Del Muro, No. 89-244II, 1989 Tenn. App. Lexis 782, 1989 WL 144012 (Tenn. App.); Sams v. Boston, 384 S.E.2d 151 (W. Va. 1989); and In Interest of A.E.H., 468 N.W.2d 190 (Wis. 1991).

[142]Sams v. Boston, 384 S.E.2d 151 (w. Va. 1989); and In Interest of A.E.H., 468 N.W. 2d 190 (Wis. 1991).

The UCCJA notice provisions have been modified by many states in various ways. Several states have made specific or general references in UCCJA notice provisions to service of process statutes and/or court rules outside the UCCJA.[143] Massachusetts and South Carolina include an exception to the notice requirements in emergency circumstances.[144] Two other states, Arkansas and Illinois, omit the section which provides that notice is not required if the person submits to the jurisdiction of the court.[145]

Other state variations exist. In Alaska, UCCJA notice must take into account education and language differences which are known or reasonably ascertainable.[146] Arkansas requires that, whenever the other parent has not been personally served, the court must inquire of the Missing Children Information Center to see if the child has been reported missing.[147]

A provision added in Ohio requires that notice be provided to any public agency with physical custody of the child.[148] Finally, a few states have omitted parts of the UCCJA notice sections, including one or more of the specified methods of service set forth in UCCJA, 9 ULA § 5.[149].

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[143]Alaska Stat. § 25.30.040 (1990), Iowa Code Ann. § 598A.5 (West 1981), Md. Fam. Law Code Ann. § 9-205 (1990), which also omits UCCJA, 9 ULA § 5, Miss. Code Ann. § 93-23-9 (1973), Mo. Ann. Stat. § 452.460 (Vernon 1986), Neb. Rev. Stat. §§ 43-1204, 43-1205 (1988), N.H. Rev. Stat. Ann. §§ 458.A:4, 458.A:5 (1983), N.J. Stat. Ann. §§ 2A:34-32, 2A: 34-33 (West 1987), N.Y. Dom. Rel. Law §§ 75e, 75f (McKinney's 1985), N.C. Gen. Stat. § 50A-5 (1990), Ohio Rev. Code Ann. § 3109.23 (Anderson 1989), Tex. Fam. Code Ann. § 11.55 (Vernon 1986), Utah Code Ann. § 78-45c-5 (1987).

[144]Mass. Gen. Laws Ann. ch. 209B, §§ 5,6 (West 1986), S.C. Code Ann. §§ 20-7-790, 20-7-792 (Law. Co-op 1985).

[145]Ark. Code Ann. § 9-13-204, (Michie 1991), Ill. Ann. Stat. ch. 40, ¶ 2106 (Smith-Hurd 1980).

[146]Alaska Stat. §§ 25.30.030, 25.30.040 (1990).

[147]Ark. Code Ann. § 9-13-204 (1991).

[148]Ohio Rev. Code Ann. § 3109.23 (Anderson 1989).

[149]La. Rev. Stat. Ann. §§ 13:1703, 13:1704 (West 1978), Md. Fam. Law Code Ann. § 9-205 (1990), Miss. Code Ann. §§ 93-23-7, 93-23-9 (1973), Mo. Ann. Stat. §§ 452.455.2, 452.460 (Vernon 1973), Neb. Rev.Stat §§ 43-1204, 43-1205 (1986), N.J. Stat. Ann. §§ 2A:34-32, 2A:34-33 (West 1979), N.C. Gen. Stat. § 50A-5

Commentary

References in the UCCJA notice provisions of several states to other service of process statutes and/or court rules can help attorneys. These additions give an easy reference to provisions containing specific methods of service allowed in a given state. This enhances the likelihood that proper notice will be given, and that decrees will be valid and enforceable in other states under the UCCJA and the PKPA.

An emergency exception to UCCJA notice requirements may be a necessity, as a practical matter. However, it results in an inability to enforce that state's emergency custody orders under other states' versions of the UCCJA and under the PKPA.

The UCCJA says that notice is not required if the person submits to the jurisdiction of the court (e.g., participates in the proceeding). Some states have omitted this section. By omission, the change requires that lawful notice be provided, even if the person has appeared in the proceeding. This change may result in a more consistent application of the UCCJA notice requirements and more certain enforceability. However, the change requires that lawful notice be given, although the contestant already has actual notice. This requirement does not further the due process purpose of the notice provision.

The provision requiring that notice given under the UCCJA take into account education and language differences makes proper notice more difficult to achieve. However, it also makes the notice more likely to be effective. Such notice would defeat any challenge to the resulting order based on lack of meaningful notice to the contestant, and thus enhances both due process and the enforceability of that order.

There is an excellent mechanism for ensuring that the court does not permit an abductor to unilaterally obtain custody by falsely claiming that the other parent's location is unknown: the state law which says that, whenever the other parent has not been personally served, a court must check the state's missing children clearinghouse to see if the child has been reported missing.

Another provision of law in one state advances the purposes of the UCCJA notice requirements: the provision requiring notice to any public agency with physical custody of the child.

(1990), Ohio Rev. Code Ann. § 3109.23 (Anderson 1989), Vt. Stat. Ann. tit. 15, § 1034 (1989).

In those states which have omitted parts of the UCCJA notice sections, including one or more of the specified methods of service set forth in UCCJA, 9 ULA § 5, notice may be more difficult to accomplish.

Current Law -- Cases

Several appellate cases were based, in part, on the lack of proper notice to a custody contestant before issuance of a custody decree. In a few cases, the lack of proper notice prevented subsequent enforcement of resulting decrees, and/or negated the requirement for deference under the ban on simultaneous proceedings.[150] This occurred because an order issued without proper notice need not be accorded full faith and credit under the PKPA or enforced under the UCCJA. Further, a court need not defer to a proceeding in another state, under the simultaneous proceedings prohibitions of the UCCJA and the PKPA if proper notice was not given. In cases from Florida and Minnesota, custody determinations made by trial courts were reversed for, inter alia, lack of proper notice to a custody contestant.[151]

Commentary

While UCCJA and PKPA notice requirements primarily serve due process purposes, they also serve to ensure that maximum information (including information from all contestants) will be available to the court for its jurisdiction decision.

Since proper notice is (and should remain) mandatory under both the UCCJA and the PKPA, court decisions which refuse to recognize custody determinations made without proper notice are commendable.

D. Was the proper affidavit submitted?

Hypothetical

Assume again that Mother is filing a petition for custody.

Current Law -- Statutes

UCCJA, 9 ULA § 9 requires each contestant in a custody proceeding to give the court in his/her initial pleading under oath: (1) names and addresses of present and past custodians of

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[150]Ex parte Raywood, 549 So. 2d 103 (Ala. Civ. App. 1989); and Rusher v. Rice, 573 So. 2d 182 (Fla. Dist. Ct. App. 1991).

[151]Johnson v. Denton, 542 So. 2d 447 (Fla. Dist. Ct. App. 1989), and In Re Marriage of Schmidt, 436 N.W.2d 99 (Minn. 1989).

the child, (2) prior or current proceedings elsewhere concerning custody of the child, and (3) names of others with custody or visitation claims to the child. Each contestant also has a continuing duty to tell the court about custody proceedings brought elsewhere.

Three states, Arizona, Massachusetts and New York, have enacted additional provisions limiting the extent to which the address disclosure requirement applies to a parent fleeing violence in the home and/or living in a domestic violence shelter.[152] Massachusetts and New York provide for court waiver of address disclosure when necessary to protect either the child or the parent[153]. Arizona prohibits disclosure of address information in domestic violence situations, while requiring an alternative means of communicating with that person (e.g., a post office box or the person's attorney).[154] In contrast, Alaska requires that all affidavit information be made available to counsel for all parties.[155] (For further discussion of Family Violence Considerations, see section E., infra.)

New Mexico, Massachusetts and Missouri shorten the five-year period contained in the UCCJA for which prior addresses must be provided.[156]

The UCCJA in some states says that the affidavit requirement does not apply under certain circumstances (e.g., if both parties have appeared in the case and custody is uncontested,[157] or if all contestants reside within the state[158]). Other states' versions of the UCCJA say that the

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[152]Ariz. Rev. Stat. Ann. § 8-409 (1989), Mass. Gen. Laws Ann. ch. 209B, § 3 (West 1986), N.Y. Dom. Rel. Law § 75 (McKinney 1985).

[153]Mass. Gen. Laws. Ann. ch. 209B § 3(e) (West 1986), N.Y. Dom. Rel. Law § 75-j (McKinney 1985).

[154]Ariz. Rev. Stat. Ann. § 8-409 (1989).

[155]Alaska Stat. § 25.30.80(b) (1990).

[156]N.M. Stat. Ann. § 40-10-10 (Michie 1981) (3 years), Mass. Gen. Laws. Ann. ch. 209B, § 3(a) (West 1986) (2 years), Mo. Ann. Stat. § 452.480 (Vernon 1986) (6 months).

[157]N.H. Rev. Stat. Ann. § 458-A:9 (1983), N.Y. Dom. Rel. Law § 75-j (McKinney 1985). (Also, Va. Code Ann. § 20-132 (Michie 1990): no affidavit required unless custody is contested.)

[158]Tex. Fam. Code Ann. § 11.59 (Vernon 1986).

affidavit requirement is mandatory only if a party requests it or the court otherwise orders it.[159]

New Hampshire and New York insert "immediately" into the provision regarding parties' continuing duty to inform the court.[160] Missouri modifies that provision to require that parties inform the court regarding not only custody proceedings elsewhere, but also changes in any other aspect of the required affidavit information.[161]

Finally, Massachusetts provides that sanctions may be imposed on a party failing to comply with the affidavit requirement.[162] In contrast, Virginia provides that failure to comply with it does not make the resulting decree invalid.[163]

Commentary

The provisions limiting the extent to which address disclosure applies to a parent fleeing violence in the home and/or living in a domestic violence shelter help protect such a parent. The requirement that an alternate means of communicating with that person be specified is helpful because it strikes a balance between the needs of the allegedly abused person and the rights of the alleged perpetrator. (See also § II. E of this chapter - Family Violence Considerations, infra.)

The state law provisions which shorten the five-year UCCJA period for which prior addresses must be provided lessen the burden on custody contestants. The provisions also may reduce information available to the court in making its determinations, particularly those related to significant connections jurisdiction and inconvenient forum. Similarly, the provisions which dispense with the affidavit requirement under certain circumstances (e.g., if both parties have appeared and custody is uncontested, or if all contestants reside within the state, or if no party requests it and the court does not order it) lessen the burden on custody contestants while reducing information available to the court. Such information may be unneeded in most such cases, but could be crucial in rare cases (such as a case in

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[159]Minn. Stat. Ann. § 518A.09 (West 1990), S.D. Codified Laws Ann. § 26-5A-9 (1984).

[160]N.H. Rev. Stat. Ann. § 458-A:9 (1983), N.Y. Dom. Rel. Law § 75-j (McKinney 1985).

[161]Mo. Ann. Stat. § 452.480 (Vernon 1986).

[162]Mass. Gen. Laws. Ann. ch. 209B, § 3 (West 1986).

[163]Va. Code Ann. § 20-132 (Michie 1990).

which a request for third-party custody is pending or has been granted by another state, and the court has not been apprised of that proceeding, order, or contestant).

Certain state law provisions strengthen the part of the affidavit section that establishes the parties' continuing duty to inform the court about proceedings elsewhere: those which insert "immediately," and those which add (to the continuing duty to inform) any changes in another aspect of the required affidavit information.

The provision establishing sanctions for failure to comply with the affidavit requirement enhances the likelihood that parties will comply. Thus, it increases the information available to the court in determining whether the court has and should exercise jurisdiction. The state statute which says that failure to comply with this requirement does not make the resulting decree invalid removes a potential incentive for compliance (thereby enhancing the possibility of noncompliance, and resulting improper exercise of jurisdiction). However, that provision also removes a potential obstacle to enforcement, the argument that failure to file the affidavit is a jurisdictional defect which makes the decree unenforceable.

Current Law -- Cases

In two opinions from Connecticut, the courts found that the failure of a contestant to provide an affidavit which met the UCCJA requirements was harmless error.[164] However, in a few other opinions, that failure was held to be reversible error.[165] In a case from Florida, the failure to adhere to the UCCJA affidavit requirement was a contributing factor (along with failure to comply with other UCCJA strictures) to the court's reversal of a trial court's custody determination.[166]

Commentary

The UCCJA, 9 ULA § 9 affidavit requirement, when complied with by custody contestants, maximizes information available to the court in making its jurisdiction determinations, and lessens

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[164]In Re: Krystal S., 1991 WL 259005 (Conn. Super. Ct.); and Perez v. Perez, 561 A.2d 907 (Conn. 1989).

[165]Walt v. Walt, 574 So. 2d 205, 210 (Fla. Dist. Ct. App. 1991); Lacy v. Lacy, No. 89-T-4234, 1991 Ohio App. LEXIS 3522, 1991 WL 139592 (Ohio App.); and In re Carter, No. 11-91-5, 1991 Ohio App. LEXIS 586, 1991 WL 261936 (Ohio App.).

[166]Johnson v. Denton, 542 So. 2d 447 (Fla. Dist. Ct. App. 1989).

the chances of improper issuance of custody orders that will later be unenforceable.

However, as with interstate judicial communication requirements, it is not wise for courts to hold that the affidavit requirement is jurisdictional, since that could cause the invalidation of custody decrees which comply with all other UCCJA and PKPA requirements.

E. Family Violence Considerations with Regard to Parental Abduction Policies

During the course of the project's research, it became apparent that current parental abduction-related laws -- the Uniform Child Custody Jurisdiction Act (UCCJA), the Parental Kidnapping Prevention Act (PKPA), and state criminal parental kidnapping laws -- do not squarely address the dilemma faced by victims of family violence[167] fleeing their abusers. At the same time, it also became apparent that current family violence-related laws did not fully take into account the extent to which the enforcement of the child custody orders which result from application of those laws depends on parental abduction-related laws.

For example, assume a woman has been battered by her husband, and then flees with her two children to a battered women's shelter in the neighboring state in violation of the joint custody provision in the custody order. Will she be able to get an emergency custody order temporarily modifying the original order, in a court of the state to which she has fled, that will be enforceable pursuant to the PKPA? Will she have to divulge her and the children's whereabouts through the affidavit required to get a custody order? Can a court of the state to which she has fled decline to exercise jurisdiction because of her "unclean hands" (taking the children in violation of the joint custody order)? Can a court of the state from which she has fled decline to exercise jurisdiction over her husband's modification petition there because of his "reprehensible conduct" (battering his wife), or on "inconvenient forum" grounds (as the forum in which he had previously abused her)? Will she be charged criminally for her conduct in violation of the order? Will the shelter staff risk criminal and tort liability as accessories to custodial interference if they refuse to say whether she is living at the shelter with her children?

For example, assume a child is being sexually abused by the child's father during court-ordered visitations. If the mother

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[167]Victims of family violence include physically abused partners and their children, as well as physically or sexually abused children and their siblings.

does not intervene and report the abuse, will she be petitioned as neglectful for failure to protect the child? If she does report the abuse and the father retaliates by petitioning for modification of custody, does she risk losing custody to the abuser if the court is not convinced abuse has occurred? If she protects the child by leaving the area, does she risk being arrested for parental kidnapping (depending upon the state law) and having the child turned over to the abusive father?

To explore these problems and other aspects of the relationship between parental abduction laws and family violence laws, and to identify changes in parental abduction laws that would allow those laws to more appropriately address family violence flight situations, the project director convened a meeting of domestic violence experts and parental abduction experts at the ABA Center on Children and the Law, as well as a smaller follow-up meeting.[168] The goal was to reconcile the intent of parental abduction laws and due process safeguards with the need to protect victims of family violence. This section identifies several obstacles in parental abduction laws that relate to family violence situations, and recommendations to overcome those obstacles.

Current Law -- Statutes

Most states have statutes which provide that civil protection orders can be obtained ex parte to protect victims of domestic violence and their children. Most of those statutes also provide for the award of temporary custody through such a protection order.[169]

California provides that the only valid reasons for seeking an ex parte order granting or modifying custody is a risk of immediate harm to the child (which is defined to include acts of domestic violence) or a risk of immediate removal of the child from the state.[170]

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[168]The obstacles and recommendations provided here are the responsibility of the project staff and do not necessarily reflect the views of meeting participants.

[169]E.g., Alaska Stat. § 25.35.010(b)(5) (1983), Ark. Code Ann. § 9-15-205(a)(4) (Michie 1991), Cal. Civ. Code §§ 4359(a)(4), 7020(a)(4) (Deering 1984), Colo. Rev. Stat. § 14-4-102(2)(d) (1989), Conn. Gen. Stat. Ann. § 6b-15(b) (West 1989), D.C. Code Ann. § 16-1005(c)(6) (1989), Fla. Stat. Ann. § 741.30(4)(b) (West 1986).

[170]Cal. Civ. Code § 4600.1(e) (Deering 1984).

Pennsylvania has created a "harm to the child" exception to the UCCJA (9 ULA § 8) provision regarding declining jurisdiction if petitioner has violated a prior custody decree.[171]

Several states have enacted, as part of their custodial interference criminal statutes, defenses related to flight for protection of the child[172] and of the fleeing parent.[173]

Commentary

If temporary protection orders that include an award of custody are obtained after notice and an opportunity to be heard, they may be enforceable under the UCCJA and the PKPA (assuming a jurisdictional basis exists). Ex parte custody awards, however, made without proper notice, would be unenforceable in other states under the UCCJA and PKPA.

Ex parte custody awards, in cases of imminent harm to the child or imminent removal of the child from the jurisdiction, may be necessary avenues for obtaining custody in emergency situations, but are unenforceable in other states under the current UCCJA and PKPA. (Clearly, they may be enforceable within the decree state. This may be sufficient to protect the immediate interests of the party.)

The provision creating a "harm to the child" exception to the UCCJA, 9 ULA § 8 requirement that jurisdiction be declined if petitioner has violated a prior custody decree reduces the deterrent effect on abductions of UCCJA, 9 ULA § 8, but provides for greater protection of the child from violence.

A criminal custodial interference statute which addresses the appropriate defenses (such as family violence) clearly and concisely is desirable.

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[171]42 Pa. Cons. Stat. Ann. § 5349 (1977).

[172]Cal. Penal Code § 277 (Deering 1985), Colo. Rev. Stat. § 18-3-304(3) (1990), D.C. Code Ann. § 16-1023(a) (1989), Fla. Stat. Ann. § 787.03(4)(a) (West 1976), Fla. Stat. Ann. § 787.04(5) (West 1976), Idaho Code § 18-4506(2)(a), (1987), Mich. Comp. Laws Ann. § 28.582(1) (West 1990).

[173]D.C. Code Ann. § 16-1023(a) (1989), Fla. Stat. Ann. § 787.03(6) (West 1976), Idaho Code § 18-4506(2)(b) (1987), Ill. Ann. Stat. ch. 38, ¶ 105(c)(3) (Smith-Hurd 1980).

a. PKPA Amendments:

(1) Obstacle:

Custody contestants with orders made in proceedings which did not conform with the PKPA cannot benefit from PKPA nationwide enforcement.

Recommendation:[174]

Amend the PKPA definition of "custody determination" [28 U.S.C. § 1738A (b)(3)] to specify, to the greatest extent possible, the various types of custody determinations to which the PKPA should be applied, including protection from domestic violence proceedings.[175]

(2) Obstacle:

The current language of the PKPA does not specify that emergency jurisdiction may only be exercised to protect the child on a temporary basis until the court with jurisdiction to issue a long-term order can act.

In addition, the PKPA emergency jurisdiction provision does not explicitly protect children harmed by violence perpetrated by one parent against another parent, or against the child's sibling.[176]

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[174]Further discussion of this obstacle and the recommendation to eliminate this obstacle are provided in Section IX. A. 5 of this chapter.

[175]Expressly including domestic violence custody orders within the purview of the PKPA does not place any additional burden on such custody contestants. It merely provides for interstate enforceability of such orders if PKPA requirements are met when such orders are made.

[176]In a Louisiana decision, the court held that violence and/or threats by one parent against the other parent do not involve harm or risk of harm to the child, and thus do not constitute a basis for emergency jurisdiction. Hagedorn v. Hagedorn, 584 So. 2d 353 (La. Ct. App. 1991).

Recommendation:[177]

Amend the PKPA to eliminate the current section on emergency jurisdiction [28 U.S.C. § 1738A (c) (2) (C)], and to include a new section on emergency jurisdiction to issue temporary relief.

b. UCCJA Amendments:

(1) Obstacle:

The UCCJA § 9 affidavit provision, by requiring disclosure of address information, can endanger a parent and child who have fled family violence, and can result in the disclosure of the confidential address of a shelter for battered women and their dependent children.

Recommendation:

The National Conference of Commissioners on Uniform State Laws (NCCUSL) and individual states should consider amending § 9 of the UCCJA to: (a) mandate a waiver of disclosure by the court to the other contestant(s) of the present address of a child or of a contestant when such waiver is necessary to protect the child or the contestant from abuse; and (b) mandate waiver of disclosure by the court to the other contestant(s) of the present or prior address of a child or of a contestant if the address is a shelter for battered persons and their dependent children. [For a similar provision, see, e.g., Mass. Gen. Laws Ann. ch. 209B, § 3 (1986).] In addition, a UCCJA amendment should be considered to require that an alternative means of communicating with that contestant be specified (e.g., post office box or that person's attorney). [See, e.g., Ariz. Rev. Stat. Ann. § 8-409 (1989).] (See § D of this chapter regarding affidavits, supra.) While these proposals restrict disclosure of address information to the other contestant, the affidavit requirement is not waived: the party must file the affidavit with the court, which then has the benefit of the information for purposes of its jurisdictional determination.

(2) Obstacle:

The UCCJA § 9 affidavit provision requires (in most states) address information for the preceding five years, as well as the names and present addresses of all "persons with whom the child has lived." The law can be interpreted as requiring the names and addresses of all persons who have lived in the same household

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[177]Further discussion of this obstacle and the recommendation to eliminate this obstacle are provided in Section IX. A. 3 of this chapter.

as the child, including other minors. This requirement can be overly burdensome, particularly on pro se litigants (such as many family violence victims).

Recommendation:

NCCUSL and individual states should consider amending § 9 of the UCCJA to: (a) shorten the number of years for which information is required [e.g., to three years, as in N.M. Stat. Ann. § 40-10-10 (1981)]; and (b) decrease the amount of information required (e.g., rather than requiring the names and current addresses of any person with whom the child has lived for the period of time, require only the names and current addresses of any adults who have lived in the same household as the child).

(3) Obstacle:

UCCJA § 7(c) lists several factors to be considered by a court in making a determination as to whether it is appropriate for the court to decline jurisdiction as an inconvenient forum. None of the factors relate to family violence experienced by a contestant and/or a contestant's child in the forum, that caused the contestant to flee with the child to another state.

Recommendation:

NCCUSL and individual states should consider amending § 7(c) of the UCCJA to add, as another factor to be considered in an inconvenient forum determination, family violence experienced by a contestant and/or a contestant's child in the forum, that caused the contestant to flee with the child to another state.

(4) Obstacle:

UCCJA § 8 permits a court to decline jurisdiction because of an abduction or other "reprehensible conduct" by a petitioner for custody. However, § 8 does not define "reprehensible conduct" to include family violence by petitioner in that forum against another contestant and/or a child of another contestant, that caused the contestant to flee with the child to another state. Courts are, of course, free to interpret "reprehensible conduct" to include family violence.

Recommendation:

NCCUSL and individual states should consider amending § 8 of the UCCJA to clarify that "reprehensible conduct" includes family violence in the forum against another contestant or a child that caused the contestant to flee with the child to another state.

(5) Obstacle:

If a fleeing parent brings an emergency action for temporary custody in the refuge state, UCCJA § 8 could be used by the abusive parent to urge the court to decline to exercise jurisdiction. If § 8 is applied in that way, the protective purposes of the recommended PKPA (and UCCJA) emergency jurisdiction provision would be undermined.

Recommendation:

NCCUSL and the states should consider amending UCCJA § 8 to exclude applicability to proceedings based on emergency jurisdiction to issue a temporary custody order.[178]

c. Amendments to Other Laws:

(1) Obstacle:

A parent who takes a child out of state to flee family violence may be subject to criminal charges (felonies, in many states), even if such an action was necessary in an emergency situation to protect the child.

Recommendation:

Flight from family violence should constitute a defense to a criminal parental abduction charge. [See, e.g., D.C. Code Ann. § 16-1023(a) (1989).] However, the criminal statute should help ensure that appropriate civil action begins promptly to remedy the custody violation (e.g., by requiring the fleeing parent to file for a custody determination in the state with proper PKPA jurisdiction within a specified brief time period, in order to claim the family violence defense). Such an approach is being considered in at least one state.

(2) Obstacle:

Staff of shelters for battered women and other dependent children may risk criminal and tort liability as accessories to custodial interference if they refuse to divulge the identity of

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[178]Some family violence experts advocate amending UCCJA § 8 to provide that flight from family violence is not § 8 "reprehensible conduct" which could result in a court declining to exercise jurisdiction. [See, e.g., a harm to the child exception to the § 8 provision regarding declining jurisdiction if petitioner has violated a prior custody decree: 42 Pa. Cons. Stat. Ann. § 5349 (1977).] The countervailing concern is that such a provision could be misused by abductors who are not (and whose children are not) victims of family violence.

shelter residents. However, shelter staff also have an obligation of confidentiality to their residents.

Recommendation:

Absent a court order to the contrary regarding a particular case, shelters for battered women and their dependent children should be permitted to maintain confidentiality as to the identity of their residents without risk of criminal and/or tort liability for custodial interference.[179]

d. Other Obstacles Identified (No Recommendations):

(1) The role of the Federal Parent Locator Service (FPLS) and state parent locator services in discovering the addresses of abducting parents and children, without consideration of whether the abducting parents and children were fleeing family violence.

(2) The role of National Center for Missing and Exploited Children (NCMEC), as mandated by the Missing Children Assistance Act, in assisting custodial parents in achieving the return of parentally abducted children, without consideration of whether the abducting parents and children were fleeing family violence.

(3) The role of schools in providing address information to all parents, without consideration of whether certain parents and children have fled family violence.

(4) The absence of trained, independent expert witnesses and legal representatives for children in many contested custody cases, including those which involve allegations of family violence.

e. Preventing Abductions Related to Family Violence: Recommendations Regarding Custody Determinations

(1) Make visitation provisions in custody orders specific, include protections for parent and child (e.g., visitations supervised by neutral third-parties), and

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[179]The term "shelter for battered women and their dependent children" as used here includes any government-sanctioned shelter or safe house, and does not include any private home utilized as an illegal "safe house". A further question was raised as to the definition of "shelter" (i.e., whether it would apply to a shelter that was harboring a woman who was not alleging that she was a victim of abuse, but who was alleging that her child was a victim of abuse); no resolution to this question was reached.

encourage the establishment of supervised visitation centers.

(2) Because children are harmed by violence perpetrated by one parent against another, require that courts consider such violence in their custody determinations, and establish a presumption against awarding custody to perpetrators of such violence.

f. Conclusions:

Many obstacles experienced by parents in cases which involve both family violence and parental abduction (and many obstacles experienced by parents in other parental abduction cases) could be reduced or eliminated through training for attorneys and judges and through mechanisms for enhancing parental access to effective and affordable counsel. We therefore recommend the following:

(1) Develop training for attorneys and judges:

(a) regarding parental abduction (particularly UCCJA interstate evidence collection mechanisms);

(b) regarding family violence (particularly the adverse effect on children of violence perpetrated by one parent against the other); and

(c) regarding custody determinations, particularly

(i) to ensure that courts do not issue punitive decrees which modify custody to punish parents who allege family violence, and

(ii) to ensure that courts' custody determinations are based on the best interests of the children, not on the "property" rights of the parents; and

(2) Develop mechanisms for parental access to attorneys who are:

(a) knowledgeable and experienced in parental abduction and family violence cases;

(b) willing to accept parental abduction cases; and

(c) not charging more than the clients can pay.

III. What UCCJA mechanisms are available to assist the court in making its custody determination?

A. To Expedite the Case

Hypothetical

Assume that Mother's attorney knows that the resolution of matters through litigation often takes a long time. Hence, Mother's attorney should look to applicable laws for a tool to speed resolution of a custody jurisdiction dispute.

Current Law -- Statutes

UCCJA, 9 ULA § 24 provides for court calendar priority for custody cases which raise a question regarding the existence or exercise of the court's jurisdiction. A dozen states omit this section from their versions of the UCCJA.[180]

Commentary

Elimination of the UCCJA calendar priority provision is unfortunate. Prompt resolution of child custody jurisdiction disputes permits speedy resolution of child custody disputes, which is important to the welfare of the children.

B. To Accumulate Out-of-state Evidence

Hypothetical

Assume that Father is seeking to modify custody. Mother believes that Child (now 8 years old) is making better progress in his current school than he was in his former school (located in Father's state). Mother's attorney may seek to depose Child's former teacher in Father's state.

Current Law -- Statutes

UCCJA, 9 ULA §§ 17-22 provide for various types of interstate cooperation in gathering evidence, from sending certified copies of a custody decree[181] and ordering a party (with or without the child) to appear in the other state's proceeding,[182] to taking depositions,[183] holding hearings, and

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[180]Arizona, Florida, Kentucky, Massachusetts, Michigan, New Jersey, New Mexico, North Carolina, South Carolina, Vermont, Virginia, Washington.

[181]UCCJA, 9 ULA § 17

[182]UCCJA, 9 ULA § 20

having social studies made[184] for use in another state. All pleadings, decrees, and other court records relating to a child custody proceeding in a state must be preserved by the court of that state,[185] and transmitted to another state taking jurisdiction over the case upon request of that other state.[186]

Many states have amended these sections of the UCCJA regarding the designation of a party, the court, or another entity as the one responsible for bearing the costs. Some states have deleted the UCCJA, 9 ULA § 19 language providing that costs may be paid by the state/county;[187] some states have inserted a requirement that the requesting state pay for the services requested;[188] and some states have provided that, if a party is indigent, the costs will be paid by the court or by the state.[189]

New Hampshire and New York have added to their enactments of UCCJA, 9 ULA § 18, language providing that any depositions taken pursuant to that section should be taken in accordance with generally applicable statutes and court rules governing depositions.[190]

Three states omit certain aspects of the UCCJA, 9 ULA §§ 17-22 provisions: (1) Texas[191] deletes the mandatory nature of

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[183]UCCJA, 9 ULA § 18.

[184]UCCJA, 9 ULA § 17.

[185]UCCJA, 9 ULA § 21.

[186]UCCJA, 9 ULA § 22.

[187]D.C., Hawaii, Louisiana, Mississippi, Missouri, New Hampshire, new Mexico, New York, South Carolina, Utah.

[188]Alaska Stat. §§ 25.30.160, 25.30.208, 25.30.209, 25.30.210, (1990), Colo. Rev. Stat. §§ 14-13-119, 14-13-121, 14-13-123 (1989), Ill. Ann. Stat. ch. 40, ¶ 2118 et seq. (Smith-Hurd 1980), Mo. Ann. Stat. §§ 452.520, 452.544 (Vernon 1986), N.H. Rev. Stat. Ann. §§ 458-A:16 (1983), R.I. Gen. Laws § 15-14-18 (1988), Tex. Fam. Code Ann. §§ 11.67, 11.71 (Vernon 1986).

[189]Alaska Stat. § 25.30.162 (1990) [paid by court], Colo. Rev. Stat. §§ 14-13-120, 14-13-123 (1989) [paid by state].

[190]N.H. Rev. Stat. Ann. §§ 458-A:16 to 458-A:21 (1983) and N.Y. Dom. Rel. Law §§ 75-q to 75-v (McKinney 1985).

[191]Tex. Fam. Code Ann. § 11.72 (Vernon 1986).

the request for another state's court records, (2) Vermont[192] deletes the provisions allowing the court to direct that testimony be taken in another state and to direct that a person appear in the court of another state, and (3) Massachusetts[193] omits UCCJA, 9 ULA § 17 and § 22 altogether.

Commentary

Certain states' deletions of the UCCJA language providing that costs may be paid by the state/county may indicate that the state/county will refuse to pay costs, even if a party is indigent. That may impede the interstate collection of evidence, thereby limiting the information available to the court to make its determinations. Similarly, provisions requiring that the requesting state pay for services requested may result in less interstate evidence collection. Certain states' addition of a provision mandating that costs be paid by the court or by the state when a party is indigent make interstate collection of evidence more likely. Such evidence collection makes the court's resulting determinations better informed.

Those state law additions to the UCCJA which provide that any depositions taken under UCCJA, 9 ULA § 18 should be taken in accordance with general statutes and court rules governing depositions are useful for practitioners.

Those states which have omitted various aspects of UCCJA, 9 ULA §§ 17-22 have reduced the likelihood that such interstate evidence collection will occur. This results in less information on which a court may base its decisions.

Current Law -- Cases

In a case from West Virginia, the court discussed both the UCCJA requirement that a trial court in the decree state forward a certified copy of documents pertaining to its prior custody determination (upon request by the trial court in another state entertaining a modification proceeding), and the UCCJA requirement that the trial court receiving such information give due consideration to such documents of prior proceedings in making its custody determination.[194] In a California case, the appellate court emphasized the importance of utilizing UCCJA

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[192]Vt. Stat. Ann. tit. 15, §§ 1046, 1048 (1989).

[193]Massachusetts.

[194]In Interest of Brandon L.E., 394 S.E.2d 515 (W. Va. 1990).

interstate evidence collection mechanisms (e.g., out-of-state depositions and hearing transcripts).[195]

Commentary

The fact that there were so few cases in which the collection of interstate evidence was discussed does not necessarily demonstrate that the activities are not taking place at the trial court level. Nevertheless, it is reasonable to assume that these UCCJA mechanisms could be utilized more frequently.

C. To Ensure the Attendance of the Contestants and the Child

Hypothetical

Suppose that Father had filed a custody action in his state less than six months after Mother and Child had left the state, and prior to the filing of any custody proceeding in Mother's new state of residence. Father's attorney may need to take steps to ensure the attendance of Mother and Child at the proceedings in Father's state.

Current Law -- Statutes

UCCJA, 9 ULA § 11 and 9 ULA § 20 both authorize court orders for parties to appear, with or without the child. Some states have inserted in UCCJA, 9 ULA § 11[196] and UCCJA, 9 ULA § 20[197] provisions allowing the court to issue a warrant of arrest against a party who fails to appear as ordered. This can help to secure that party's (and, if appropriate, the child's) appearance.

Two states include additional provisions in their versions of the UCCJA. Massachusetts[198] inserts that the court shall not order a child to appear in a proceeding in another state if there is a risk of harm to the child. New Jersey[199] provides that a

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[195]Pierri v. Superior Court of Marin County, 1 Cal. App. 4th 114 (1991).

[196]Cal. Civ. Code § 5160 (Deering 1984), Nev. Rev. Stat. § 125A.140 (1986), Utah Code Ann. § 78.45c-11 (1987), Wash. Rev. Code Ann. § 26.27.110 (West 1986).

[197]Cal. Civ. Code § 5160 (Deering 1984), Utah Code Ann. § 78-45c-11 (1987), Wash. Rev. Code Ann. § 26.27.110 (West 1986).

[198]Mass. Gen. Laws Ann. ch. 209B, § 11 (West 1986).

[199]N.J. Stat. Ann. § 2A:34-47 (West 1979).

party appearing under that section does not waive the right to contest the court's jurisdiction.

Commentary

Provisions allowing the court to issue a warrant of arrest as to a party who has failed to appear as ordered (with or without the child) create a good mechanism for achieving return of the abductor and child, and for achieving lawful resolution of a custody dispute.

The provision that the court shall not order a child to appear in a proceeding in another state if there is risk of harm to the child protects the child. Lawyers and judges in such cases should use interstate evidence gathering to overcome the absence of the child from the forum.

A "special appearance" provision, which allows a party to appear pursuant to UCCJA, 9 ULA § 19 without waiving the right to contest the court's jurisdiction, may increase the willingness of parties to appear pursuant to that section. However, it has little legal effect, since no party can ever "waive" subject matter jurisdiction (which the UCCJA governs).

Current Law -- Cases

One trial court opinion from New York concludes by issuing an order for the contestant to appear in court with the child, or face a warrant for arrest.[200]

Commentary

As with intrastate evidence collection mechanisms, the UCCJA mechanisms to ensure the attendance of contestants and the child are probably not used often enough.

D. To Decide the Merits of the Custody Determination

Current Law -- Cases

Although the UCCJA has no provision that addresses the merits of the custody determination (deciding who gets custody), one Michigan appellate dissent[201] found that another court, by failing to consider the best interests of the children prior to making its custody order, had failed to exercise jurisdiction in conformity with the UCCJA and therefore could not have continuing modification jurisdiction pursuant to that statute.

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[200]Jesus A. v. Lizette A., 546 N.Y.S.2d 284 (Fam. Ct. 1989).

[201]Brown v. Brown, 448 N.W.2d 745 (Mich. Ct. App. 1989).

In a case from Minnisota,[202] an appellate court placed inappropriate emphasis on the best interests part of the significant connections jurisdiction provision.

Commentary

Nothing in the UCCJA or the PKPA has any bearing on the custody merits determination. Further, the merits considerations should have no impact on the jurisdictional determination pursuant to the UCCJA and the PKPA. The best interests language in the significant connections provision is explained in the Commissioner's comments to UCCJA, 9 ULA § 3: "the interest of the child is served when the forum has optimum access to relevant evidence about the child and family." Therefore, the significant connections provision specifies what constitutes the best interests of the child in the context of the jurisdictional determination. No further consideration of best interests is appropriate.[203]

IV. Ambiguous Custody Situations

A. Who has custody rights in ambiguous custody situations -- unmarried parents, pre-decree married parents, and parents with a joint custody decree?

Hypothetical

Suppose now that Father and Mother: have never been married; or had been married but have not yet sought a custody decree; or had obtained a decree of joint custody, but the decree did not specify the times during which each party had the right to physical custody of the child.

Current Law -- Statutes

- Unmarried Parents:

If the parents of a child are unmarried, and one or both parents are seeking a paternity adjudication, they also can seek a custody/visitation determination through the same proceeding in certain states.[204] Prior to a custody decree, however, the

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[202] In the Marriage of Schmidt, 436 N.W.2d 99 (Minn. 1989).

[203] Further discussion of this obstacle and a recommendation to eliminate this obtacle are provided in Section IX. A. 10 and 11 of this chapter.

[204] E.g., Ark. Code. Ann. § 9-10-113 (Michie 1991), Cal. Civ. Code § 7010(c) (Deering 1984), Ga. Code Ann. § 19-7-51 (Michie 1991).

custody rights of unmarried parents, when specified under state law, vary from one state to another. In some states, the mother has sole custody, at least until paternity is established.[205] In a few states, once paternity is established, the mother and father have equal rights to custody.[206] In other states, the mother is presumed to have custody (especially if the father was given support obligations and visitation rights through the paternity proceeding), unless the father has had physical custody of the child for six months or more.[207] In some states, the mother retains sole custody even after paternity is established, until a court order of custody is issued.[208]

- Pre-decree Parents:

In the case of married parents who are separated but have not yet obtained a custody decree, equal custody rights are generally presumed,[209] unless one spouse abandons the other spouse and children. The abandoned spouse would be entitled to custody in at least one state.[210] However, fleeing from domestic violence is explicitly excluded from that state's definition of "abandon," so an alleged abusive spouse does not automatically get custody.

- Parents with Joint Custody:

If a joint custody order is issued pursuant to a joint custody statute of the kind now in effect in most states, that order, in the event of a subsequent parental abduction, may not be readily enforceable by the left-behind parent. This is particularly true if the order does not detail the rights of each party to the child's physical custody. California has enacted a provision, in the joint custody statute, requiring that the court "specify the rights of each parent to physical control of the

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[205]E.g., Ark. Code Ann. § 9-10-113(a) (Michie 1991), Ga. Code Ann. § 19-7-25 (Michie 1991), Iowa Code Ann. § 675.40 (West 1987).

[206]E.g., Cal. Civ. Code § 197 (West 1990), Conn. Gen. Stat. § 46b - 172a(g) (1986), Del. Code Ann. tit. 13, § 701(a) (1981).

[207]E.g., Ill. Ann. Stat. ch. 40, ¶ 2514(a)(2) (Smith-Hurd 1963).

[208]E.g., Ark. Code Stat. § 9-10-113(a) (Michie 1991), Iowa Code Ann. § 675.40 (West 1987).

[209]E.g., Cal. Civ. Code § 197 (Deering 1990), Conn. Gen. Stat. § 45a-606 (1981), Del. Code Ann. tit. 3, § 701(a) (1985).

[210]E.g., Iowa Code Ann. § 597.15 (West 1981).

child in sufficient detail to enable a parent deprived of that control to implement laws for relief of child snatching."[211]

Commentary

- Unmarried Parents:

State statutes which specify the custody rights of unmarried parents prior to the issuance of a decree reduce the ambiguity of parents' rights in such situations. This enhances parents' capacity to pursue enforcement of, and criminal prosecution for violation of, these custody rights. Those statutes which give unmarried mothers sole custody until paternity is established, or even (in some states) until custody is otherwise ordered by a court, provide for the greatest specificity (and resulting ease of enforcement). A disadvantage, however, is that unwed fathers have no custody rights under such statutes until a court establishes paternity or awards custody.

- Pre-decree Parents:

The statute which provides an exception, in abandonment cases, to the presumption of equal custody rights for pre-decree married parents, fails to specify what constitutes abandonment. It may, thus, create ambiguous custody rights which are difficult to enforce.

- Parents with Joint Custody:

A provision, in the joint custody statute, requiring the court to specify the rights of each parent helps to eliminate a barrier to civil and criminal responses to parental child abduction in joint custody cases.

Current Law -- Cases

Even when no custody order is in effect, and no statute provides for custody by operation of law, courts may accord some physical custody rights to a parent, based on a "wrongful taking or retention" analysis, similar to a Hague Convention analysis. For example, in two different cases from New York,[212] the courts ordered the fathers in both cases return the children to the mothers, pending the issuance of custody determinations by courts with proper jurisdiction.

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[211]Cal. Civ. Code § 4600.5(f) (Deering 1984).

[212]Michael P. v. Diana G., 553 N.Y.S.2d 689 (App. Div. 1990) [unmarried parents]; and Valentin v. Valentin, 561 N.Y.S.2d 805 (App. Div. 1990) [pre-decree parents].

In cases involving joint custody orders, ambiguities about the child's residence[213] and about the specific custody rights of a particular contestant[214] may cause difficulties for a contestant seeking judicial custody-related remedies.

Commentary

Courts applying a Hague-type "wrongful taking or retention" analysis to a pre-decree situation, and ordering that abducted children be returned to their place of habitual residence prevent a contestant from benefitting from abduction of the child. This is consistent with the goal of preventing future child snatchings.

The best way for courts and contestants to create enforceable custody rights in joint custody cases would be to make joint decrees sufficiently specific with regard to the relative rights of contestants so as to make them more easily enforceable.

B. When is one criminally liable for interference with custody in ambiguous custody situations -- unmarried parents, pre-decree married parents, and parents with a joint custody decree?

Current Law -- Statutes

For purposes of criminal custodial interference, Arizona[215] considers an unmarried mother to have sole legal custody of a child until a custody order is issued by a court even if paternity has been established. Interference with that unmarried mother's custody could constitute a crime in that state, even in the absence of a custody order. Only after a custody order is issued awarding specific custody rights to the father could the mother be convicted of interference with the custodial rights of the father.

Idaho and Illinois have addressed criminal liability for custodial interference in cases of unmarried parents, pre-decree married parents, in cases of joint custody, and cases where

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[213]Eg., Slusher v, Slusher, 786 S.W.2d 843 (Ark. Ct. App. 1990) [continuing custody modification jurisdiction issue].

[214]Eg., Caldwell v. LeFaver, 928 F.2d 331 (9th Cir. 1991) [tort liability issue].

[215]Ariz. Rev. Stat. Ann. § 13-1302B (1989).

abductions occur while a proceeding is pending.[216] While the goal of both states must have been to address all ambiguous abduction situations in a clear manner, the approach of those two states differs considerably. The Illinois statute outlines every possible situation, and describes the applicable criminal standard for each situation, resulting in a rather long and complex litany of provisions.[217] The Idaho statute, however, uses more general but concise language, making the statute significantly easier to understand, while appearing to apply to an appropriately broad range of situations.[218] Some other states' custodial interference statutes also address the criminal liability of unmarried parents and/or pre-decree married parents,[219] as well as that of joint custodians,[220] using language which differs from that used by both of the states discussed above.

Commentary

A criminal custodial interference statute which clearly and concisely addresses all potentially ambiguous custody situations (unmarried parents, pre-decree married parents and parents with a joint custody decree) is preferable.

V. How can a parental abduction be prevented?

Hypothetical

Assume that Father has custody, but fears that Mother will abduct Child. The attorney for Father is seeking to use whatever mechanisms are available, under the appropriate state's laws, to prevent a parental abduction.

A. During the pendency of a custody action, how can a parental abduction be prevented?

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[216]Idaho Code § 18-4506 (1987), Ill. Ann. Stat. ch. 38, ¶ 10-5 (Smith-Hurd 1979).

[217]Ill. Ann. Stat. ch. 38 ¶ 10-5 (Smith-Hurd 1979).

[218]Idaho Code §18-4506 (1987).

[219]Cal. Penal Code § 277 (Deering 1985), Fla. Stat. Ann. § 787.03 (West 1976).

[220]Cal. Penal Code § 278.5 (Deering 1985), D.C. Code Ann. §16-1022(b) (1989), Kan. Stat. Ann. § 21-3422 (1986).

Current Law -- Statutes

Several states provide for orders temporarily restraining a party from removing the child from the state to be issued automatically upon the filing of a custody-related proceeding.[221] Other states permit such an injunctive order (or a writ ne exeat) to be issued, upon motion, when appropriate.[222]

Commentary

Any statutory or court rule-based mechanisms to prevent abduction during the pendency of the proceeding, by providing for the issuance of temporary orders restraining a party from removing the child from the state, are beneficial.

B. Once a contestant has been awarded custody of a child, is the contestant permitted to relocate with the child?

Hypothetical

After custody of Child has been awarded to Mother, assume that a new job opportunity or remarriage results in Mother's move with Child to another state.

Current Law -- Statutes

It appears to be a widely accepted principle that one who has been awarded primary custody of a child may move with the child, absent specific restrictions on moving imposed by court order. This concept has been embodied in statute by California.[223] Some states have statutes requiring the custodian to provide notice of an intent to relocate,[224] thereby affording other parties an opportunity to bring the issue before the court. Massachusetts requires that, under certain circumstances, both parents or the court must approve any relocation with the child to another state.[225] Colorado

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[221] E.g., Ariz. Rev. Stat. Ann. § 25-315.A.1.(c) (1991), Cal. Civ. Code § 4600.1(e) (Deering 1984), Cal. Civ. Proc. Code § 412.21(a)(1) (Deering 1991), Del. Code Ann. tit. 13, § 1509(a)(3) (1981).

[222] E.g., D.C. SCR Dom. Rel., Rule 406, La. Rev. Stat. Ann. § 3604 (B)(3) (West 1973), Or. Rev. Stat. § 107.159 (West 1987).

[223] Cal. Civ. Code § 213 (Deering 1990).

[224] Ind. Code Ann. §§ 31-1-11 (West 1979), 5-31-1-20 et seq. (West 1989), Tex. Fam. Code Ann. § 14.031 (Vernon 1986).

[225] Mass. Gen. Laws Ann. ch. 208, § 30 (West 1986).

provides that, when a party has been granted custody (through a child abuse/neglect proceeding), the party is prohibited from removing the child from the state for more than 30 days without court approval.[226]

Other statutory provisions to prevent parental abductions include: provisions regarding court-ordered requirements for a bond to ensure compliance with visitation orders,[227] and provisions regarding court-ordered supervised visitations.[228]

Commentary

The statute which embodies the principle that one who has been awarded primary custody of a child may move with the child, absent specific restrictions on moving imposed by court order, appears reasonable. Placing automatic restrictions on post-decree moving would appear to be an unreasonable restraint and could infringe upon the parent's constitutional right to travel. The provision requiring prior approval from the other party or the court would help deter the unilateral removal of a child in derogation of the left-behind parent's rights, as would the provision requiring notice to the other party of intent to relocate. The primary difference between these two provisions is which party bears the burden of going into court if there is disagreement regarding the move. The former provision would require the relocating party to seek court approval if the other parent disagrees (perhaps a fairer allocation of the burden). The latter provision would require the disagreeing party to challenge the proposed relocation.

A provision banning relocation without court approval may be appropriate in the context of an abuse or neglect case, but would be unduly burdensome in the context of a domestic relations custody proceeding (in which agreement among the parties as to the move should suffice).

Other provisions which deter abductions, such as bonds to ensure compliance with visitations, and court-ordered supervised visitations, are commendable.

Current Law -- Cases

A Tennessee appellate opinion addressed the burden of proof when a custodial parent wants to move with the child to another state. The court found that the burden is on the contestant who

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[226]Colo. Rev. Stat. § 19-1-115(3)(b) (1990).

[227]E.g., Ala. Code § 30-3-6(b) (1989).

[228]E.g., Cal. Civ. Code § 4601.5 (Deering 1984).

files the petition, either for permission to move with the child, or for a change in custody because of the impending move.[229]

Commentary

This approach appears to be a fair and logical allocation of the burden of proof.

C. What other orders may a court issue to prevent abductions?

Current Law -- Cases

In a case from New York,[230] the trial court issued an order not to conceal the child or move the child from the state during the exercise of visitation rights, and the appellate court issued an order to remain in the state pending resolution of the custody matter.

In a Florida case, the trial court required that a contestant post a visitation bond to deter unlawful retention of the children.[231]

In a Tennessee case, after the mother had fled the state with the children once before, the trial court ordered that any subsequent visitations with the mother were to be supervised, to prevent further flight.[232]

Commentary

Any such preventative measures can lessen the likelihood of parental abduction. Widespread availability of such measures is therefore advisable. The propriety of their use in a particular case depends upon the facts of that case.

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[229]Orr v. Orr, No. 01-A-01-9012-Ch-00464, 1991 Tenn. App. LEXIS 877, 1991 WL 226916 (Tenn. App.).

[230]Van Houten v. Van Houten, 549 N.Y.S.2d 452 (App. Div. 1989).

[231]Steward v. Steward, 558 So. 2d 692 (Fla. Dist. Ct. App. 1991). [Note: Anecdotal information from the National Center for the Missing and Exploited Children indicates that such bonds may not be available in all areas of the country.]

[232]Orr v. Orr, No. 01-A-01-9012-Ch-00464, 1991 Tenn. App. LEXIS 877, 1991 WL 226916 (Tenn. App.).

VI. What financial assistance is available to help the left-behind parent pay the expenses of search and litigation?

Hypothetical

Assume now that Mother had removed Child from Father and concealed Child's whereabouts. Father had to spend $12,000 to find Child, and to bring an enforcement action in the state where Child was found.

Current Law -- Cases

The financial burdens on any contestant in a parental abduction case can be very great. The concurring opinion in a D.C. appellate case includes compelling language regarding indigency, and the extent to which an adverse jurisdictional decision can be the equivalent of an adverse decision on the merits for an indigent party who cannot afford to litigate far from home.[233]

A. Are cost awards available in custody cases?

Current Law -- Statutes

Various sections of the UCCJA provide for court-awarded costs paid by one party to another party.[234] In addition to other provisions related to the costs of interstate evidence collection, discussed in section III.B. above, three states[235] have added to their versions of UCCJA, 9 ULA § 8 a provision allowing the court of one state to assess against a party the cost of returning the child to another state.[236]

Commentary

Such provisions appropriately shift the financial burden of search and enforcement from the left-behind parent to the abductor. The effectiveness of these provisions in assisting left-behind parents, however, is limited by: (1) the abductor's ability to pay; and (2) the reality that the costs will normally

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[233]In the Matter of B.B.R., 566 A.2d 1032 (D.C. 1989).

[234]UCCJA, 9 ULA §§ 7(g), 8(c), 11(c), 15(b), 19, 20(c).

[235]Cal. Civ. Code § 5157 (Deering 1984), Utah Code Ann. § 78-45c8 (1987), Wash. Rev. Code Ann. § 26.27.080 (West 1986).

[236]In addition, some states provide for court-awarded costs in domestic relations statutes or rules, or in general civil statutes or rules. These were beyond the scope of inquiry of this research.

be awarded only after the expenditures have been made by the left-behind parent. If the left-behind parent cannot afford the costs in the first place, the subsequent assistance will be useless.

B. Are criminal restitution and crime victim compensation available?

Current Law -- Statutes

Most states have statutory sections providing for financial restitution to the victim as one type of sentence that can be imposed by the court upon a defendant convicted of a crime.[237] In addition, most states have established state-sponsored financial assistance for victims of crime (often referred to as Crime Victim Compensation Programs).[238]

Most states do not explicitly provide crime victim assistance for victims of parental abductions.[239] However, a number of states[240] provide for defendant restitution to victims of parental abduction crimes for costs incurred in securing the return of the abducted child.

Commentary

These restitution provisions, like the cost award provisions, shift the ultimate financial burden of search and enforcement. However, they suffer the same limitations as those cost award provisions (see Commentary to VI.A., above). Crime victim assistance, however, comes from state funds, and does not suffer from those limitations.

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[237]E.g., Ala. Code §§ 15-18-65 et seq. (1982), Alaska Stat. § 12.55.045 (1990).

[238]E.g., Ala. Code §§ 15-23-1 et seq. (1982), Alaska Stat. §§ 18.67.010 et seq. (1991).

[239]But see Minn. Stat. Ann. § 609.06 (West 1987).

[240]Cal. Penal Code § 279(d) (Deering 1985), D.C. Code Ann. § 16-1023(g) (1989), Idaho Code § 18-4506(4) (1987), Ill. Rev. Stat. ch. 38, ¶ 10-5(e) (1969), La. Rev. Stat. Ann. § 14-45-1.B Mich. Comp. Laws Ann. § 750.350(a) (West 1984), Minn. Stat. Ann. § 609.26 (subd. 4) (West 1987), Mo. Ann. Stat. § 565.169 (Vernon 1979), Nev. Rev. Stat. § 200.359(2) (1986), Or. Rev. Stat. §§ 163.245(2), 257(2) (1987), Wash. Rev. Code Ann. § 9A.40.080(1) (West 1990), Wisc. Stat. Ann. § 948.31(6) (West 1982).

c. Is civil tort recovery available?

Current Law -- Statutes

Several states have enacted a separate cause of action for custodial interference. Different approaches have been taken. A few states have enacted a section generally providing that the rights of personal relations forbid, inter alia, the abduction or enticement of a child from a parent or other custodian.[241]

Other states have enacted explicit causes of action in their custodial interference tort statutes.[242] Some of those states specify the types of damages available,[243] including compensatory damages for expenses and mental suffering, and punitive damages.[244] Some also include damages for loss of service, society, and companionship.[245] Some of the states with an explicit right to civil damages for custodial interference[246] require a violation of a criminal custodial interference statute as a prerequisite to recovery of damages. Some states provide that there must have been a violation of a court order relating to custody for damages to be recovered.[247] It is important to note that Ohio[248] does not require that a court order be violated as a prerequisite to recovery of damages. Ironically,

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[241]E.g., Cal. Civ. Code § 49 (West 1990), Mont. Code Ann. § 27-1-515(2) (1990), Okla. Stat. Ann. tit. 76, § 8(2) (West 1987), S.D. Codified Laws Ann. § 20-9-7(2) (1987).

[242]E.g., Ohio Rev. Code Ann. § 2307 (Anderson 1991), R.I. Gen. Laws § 9-1-43 (1985), S.C. Code Ann. § 21-21-45 (Law Co-op 1977), Tex. Fam. Code Ann. §§ 36.01 et seq. (Vernon 1986).

[243]E.g., Ohio Rev. Code Ann. § 2307 (Anderson 1991), R.I. Gen. Laws § 9-1-43 (1985), Tex. Fam. Code Ann. §§ 36.01 et. seq. (Vernon 1986).

[244]E.g., Ohio Rev. Code Ann. § 2307 (Anderson 1991), R.I. Gen. Laws § 9-1-43 (1985), Tex. Fam. Code Ann. §§ 36.01 et. seq. (Vernon 1986).

[245]E.g., Ohio Rev. Code Ann. § 2307 (Anderson 1991), R.I. Gen. Laws § 9-1-43 (1985).

[246]E.g., Ohio Rev. Code Ann. § 2307 (Anderson 1991), R.I. Gen. Laes § 9-1-43 (1985), Tex. Fam. Code Ann. §§ 36.01 et. seq. (Vernon 1986).

[247]E.g., R.I. Gen. Laws § 9-1-43 (1985), Tex. Fam. Code Ann. §§ 36.01 et. seq. (Vernon 1986).

[248]Ohio Rev. Code Ann. § 2307 (Anderson 1991).

however, Ohio also prohibits civil actions of this type by one parent of the child against the other parent.

At least one state, Alaska, has enacted a statutory section specifically providing for a tort action for damages against a child's custodian for failure to permit visitation.[249] That section sets a dollar amount of damages for each occasion of failure to permit visitation.[250]

Commentary

Tort statutes, like cost awards and restitution, shift the ultimate financial burden of search and enforcement from the left-behind parent to the abductor (subject to the limitations discussed in the Commentary to VI.A., above). The statutes most likely to facilitate a tort recovery by the left-behind parent are those which specify the cause of action and the types of damages, and which provide for the fullest recovery (by providing the greatest variety in the types of damages for which tort recovery is allowed). Those which may be less likely to facilitate such a tort recovery require a violation of a criminal custodial interference statute or a violation of a court order, or prohibit a civil action by one parent against the other. Statutory causes of action for visitation violations give a meaningful remedy to noncustodial parents whose rights are violated.

Current Law -- Cases

In a number of states, courts have recognized a common law tort of custodial interference, while in several other states, courts have refused to recognize it.[251]

Commentary

Tort recognition by courts can also shift the ultimate financial burden of search and enforcement from the left-behind parent to the abductor (subject to the limitations discussed in the Commentary to VI.A., above), and is thus desirable. Financial liability can be a powerful disincentive to abductors and their helpers. (See Chapter 5 for further discussion

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[249]E.g., Alaska Stat. § 25.24.300 (1983).

[250]Alaska Stat. § 25.24.300 (1983).

[251]Eg., Larson v. Dunn, 460 N.W.2d 39 (Minn. 1990). [States which have recognized the tort are listed in this opinion in footnote 3, and states which have rejected it are listed in footnote 4 of the opinion.]

regarding tort liability of abductors and those who assist abductors.)

VII. What can public agencies do to help the left-behind parent locate a parentally abducted child?

Hypothetical

Assume, again, that Mother has abducted Child and is concealing Child's whereabouts. Father and his attorney should seek every available form of search assistance.

A. School and Birth Record "Flagging"

Current Law -- Statutes

Numerous states have enacted statutes regarding "flagging" school and birth records of missing children.[252] (A few additional states require flagging school or birth records, but not both.[253]) Flagging statutes usually require the law enforcement agency which takes a missing children report to notify the school and/or the bureau of vital statistics that a child is missing. The school and/or bureau must then make a notation in the child's record to that effect. When a request is made for a copy of that record, the school and/or bureau of vital statistics must then notify the law enforcement agency as to the identity of (and any contact information regarding) the requesting party (who may be an abducting parent). When the missing child is found, the law enforcement agency must notify the school and/or bureau of vital statistics. At least one of these statutes also prohibits releasing a flagged record until directed to do so by law enforcement.[254]

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[252]E.g., Alaska Stat. §§ 14.30.700 (1990) & 18.50.315 (1986), Ariz. Rev. Stat. Ann. §§ 15-829 (1991), & 36-326.02 (1989), Ark. Code Ann. §§ 12-12-801 (2) & (3) (Michie 1991), Idaho Code §§ 18-4510, 18-4511 (1987), Ill. Ann. Stat. ch. 23, ¶ 2273 et seq. (Smith-Hurd 1988), Ind. Code Ann. §§ 31-6-13-6, (Burns 1979), 10-1-7-8 (Burns 1982), Ky. Rev. Stat. Ann. §§ 156.032, 213.06 (Baldwin 1990), Mich. Comp. Laws Ann. § 14.15 (2889) (West 1988), 15.41134 (West 1984), Neb. Rev. Stat. §§ 9-43-2005 et seq. (1987), 35 Pa. Cons. Stat. Ann. § 450.403A (1977), R.I. Gen. Laws §§ 42-28-8-7, 42-28-8-8 (1988), Utah Code Ann. §§ 53A-11-502, 26-2-27 (1989).

[253]E.g., Kan. Stat. Ann. § 72-53,106(d) (1985), Mass. Gen. Laws. Ann. ch. 22A, § 9 (West 1988).

[254]E.g., Alaska Stat. § 14.30.710 (1990).

Further, at least one state, Nebraska,[255] requires the person enrolling a student in a school of that state to provide, within a specified period of time, either (1) a certified copy of the student's birth certificate or (2) other reliable proof of the child's identity and age along with an affidavit explaining the inability to provide a copy of the birth certificate. Failure to comply with this requirement results in the school reporting the parent to the local law enforcement agency for investigation.

Some states without school record flagging statutes have enacted provisions for the distribution to schools of information regarding specific missing children.[256]

Commentary

Provisions directing that school and birth records of missing children be "flagged" establish effective mechanisms for locating missing children, including those who have been parentally abducted. A statute which also prohibits the release of a flagged record prior to law enforcement approval ensures that law enforcement will have an opportunity to follow-up on any leads resulting from the flagging, in advance of any further relocation by the abductor and child.

The requirement that the person enrolling a student in school provide a certified copy of the student's birth certificate, along with the school's reporting to law enforcement any violation of that requirement, further enhance inter-agency cooperation in the location of missing children.

The provisions for the distribution of names and other information regarding missing children to schools are useful. However, those provisions may be less likely to result in the location of missing children than are flagging statutes.

B. Missing Children/Persons Clearinghouses

Current Law -- Statutes

Most states have established missing children clearinghouses, but those clearinghouses differ from one state to the next. For example, while most state clearinghouses are

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[255]Neb. Rev. Stat. § 43-2007 (1988).

[256]E.g., Ala. Code §§26-19-9, 10 (1986), Cal. Educ. Code § 40048 (Deering 1989), Colo. Rev. Stat. §§ 24-33.5-415.1 (5), (6) (1986).

located in a law enforcement office,[257] Ohio's clearinghouse is located in the Education Department,[258] and Louisiana's is located in the Health and Human Resources Department.[259]

State missing children clearinghouses vary to an even greater extent with regard to their authorized functions: a number of states provide training and assistance to law enforcement agencies to promote effective use of the clearinghouses,[260] while a few are authorized to conduct their own investigations regarding missing children, in addition to cooperating with local, state, and federal agencies' missing children investigations.[261] The Georgia statute[262] illustrates the range of functions performed by clearinghouses around the country:

> (a) The center may:
>
> (1) Establish a system of intrastate communication of information relating to missing children;
>
> (2) Provide a centralized file for the exchange of information on missing children within the state;
>
> (3) Interface and connect with the National Crime Information Center for the exchange of information on missing children and children suspected of interstate travel;

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[257] E.g., Ala. Code §§ 26-19-2 et seq. (1986), Alaska Stat. §§ 18.65.600 et seq. (1990), Ark. Stat. Ann. § 12-12-205 (1991), Cal. Penal Code §§ 14201 et seq. (Deering 1980), Colo. Rev. Stat. § 24-33.5-415.1 (1990), Conn. Gen. Stat. § 29-1e (1990), Del. Code Ann. tit. 11, §§ 8541 et seq. (1987), Fla. Stat. Ann. § 937.022 (West 1985), Ga. Code Ann. §§ 35-3-81 et seq. (1987), Ill. Ann. Stat. ch. 23, ¶ 2253 et seq. (Smith-Hurd 1988), Ind. Code Ann. §§ 10-7-3 et seq. (West 1982), Iowa Code Ann. § 694.10 (1979).

[258] Ohio Rev. Code Ann. § 3301.25 (Anderson 1990).

[259] La. Rev. Stat. Ann. §§ 46:1431 et seq. (West 1982).

[260] E.g., Ala. Code §§ 26-19-2 et seq. (1986).

[261] E.g., Conn. Gen. Stat. § 29-1e (1990).

[262] Ga. Code Ann. § 35-3-82 (Michie 1987).

(4) Collect, process, maintain, and disseminate information on missing children and unidentified bodies and strive to maintain or disseminate only accurate and complete information;

(5) Cooperate with the State Board of Education in compiling lists of missing children in this state for distribution to local school districts;

(6) Compile annual statistics on the number of missing children;

(7) Develop recommendations for better reporting and use of computer systems;

(8) Provide assistance to local law enforcement agencies providing fingerprint programs for children;

(9) Circulate a monthly bulletin of missing children to all law enforcement agencies in the state;

(10) Assist local law enforcement agencies in establishing direct computer access to the Missing Children Information Center;

(11) Act as a liaison between private citizens and law enforcement agencies regarding appropriate procedures for handling and responding to missing children reports; and

(12) Establish a toll-free telephone number to assist individuals and agencies in the reporting of missing children and information relative to missing children.

(b) The center is authorized to join and participate in any network of state missing children centers or clearinghouses, specifically including but not limited to the National Center for Missing and Exploited Children.

Commentary

Because most clearinghouse functions are related to law enforcement, it seems most logical to make the clearinghouse part of a law enforcement agency. However, the question of which agency should serve as the clearinghouse is less important than the issues of what functions are authorized, and whether the clearinghouse is given sufficient resources to implement all authorized activities. (The latter issue is beyond the scope of this research, which is limited to statutes and court rules.) As

to the functions authorized, the broader the scope of clearinghouse assistance to locate missing children, the better.[263]

C. State and Federal Parent Locator Services (PLS)

Current Law -- Statutes

The state Parent Locator Services, along with their federal counterpart (the Federal Parent Locator Service), were established to help locate absent parents to enforce child support obligations. Their search assistance consists of performing data base reviews (public assistance files, division of motor vehicles files, tax files, etc.), using the name, social security number, and/or date of birth of the absent parent.

Some states' statutes explicitly limit the scope of the state Parent Locator Service to child support enforcement.[264] California's statute explicitly broadens the scope of PLS activities to include locating absent parents in parental abduction and custody determination proceedings.[265] The PKPA expanded the scope of the Federal PLS to include interstate custody and parental abduction cases.

Commentary

A statute that explicitly authorizes use of the state Parent Locator Service in parental abduction and child custody cases is advisable.

D. State and Local Law Enforcement Search Assistance

Current Law -- Statutes

Federal law now requires, pursuant to the National Child Search Assistance Act (enacted November 29, 1990 as part of P.L. 101-647), that law enforcement agencies immediately report missing child cases to the NCIC and to the relevant state Missing Children Information Clearinghouse(s).

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[263]The results of the project's survey of all state missing children's clearinghouses, which describe the functions being performed and the obstacles clearinghouse personnel encounter, are included in Chapter 9 of this report.

[264]E.g., Ala. Code § 38-2-6.1 (1987), Alaska Stat. § 25.25.150 (1983), Colo. Rev. Stat. § 26-13-107 (1990).

[265]Cal. Welf. & Inst. Code §§ 11478 & 11478.5 (Deering 1985).

Many states have enacted statutes detailing law enforcement assistance available in searches for missing children. Such assistance may include taking a missing child report immediately and promptly issuing a "Be On the Look-Out" bulletin,[266] as well as sending a copy of the missing child report (the contents of which are set forth in some state statutes[267]) to other law enforcement and search-related agencies (which are specified in some state statutes[268]). Other law enforcement duties made explicit by state statutes regarding missing children may include: (1) reporting relevant information about a missing child to the state missing children clearinghouse and to the National Crime Information Center computer system; (2) engaging in an investigation to locate that child;[269] and (3) notifying the bureau of vital statistics and the school district in which the missing child is or was last enrolled, so as to facilitate record-flagging[270] (see Section A, above).

Commentary

As with statutory descriptions of clearinghouse functions, statutory descriptions of law enforcement duties regarding missing children should provide as much specificity as possible. Law enforcement will be more inclined to help find parentally abducted children if authorized to do so by state statute. (See also Chapters 6 and 7, infra, regarding law enforcement roles in parental abduction cases.)

E. UFAP Warrant/FBI Assistance

Hypothetical

Assume now that Mother had taken Child out of state and concealed Child's whereabouts in violation of a prior custody order.

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[266] E.g., Cal. Penal Code § 14205(a) (Deering 1980).

[267] E.g., Del. Code Ann. tit. 11, § 8533 (1987).

[268] E.g., Del. Code Ann. tit. 11, § 853 (1987).

[269] E.g., Ala. Code §§ 26-19-5 et seq. (1986).

[270] E.g., Alaska Stat. § 47.10.141(d) (1983).

Current Law -- Statutes

Custodial interference and/or parental child abduction is a crime in every state and the District of Columbia.[271] The elements of the crime and the potential punishments vary among the states. If the child is wrongfully taken or retained out-of-state by a non-custodial parent, the crime is usually a felony.[272] Other variables which affect whether interference with custody is a felony in certain states include whether the child's safety was endangered,[273] and whether the defendant has been convicted previously of child abduction.[274] Visitation interference, however, is not criminally punishable in all states. In some states it is a felony,[275] but not in others.[276]

Commentary

Felony classification of a parental abduction crime results in the potential for: (1) the issuance of Unlawful Flight to Avoid Prosecution (UFAP) warrants, with resulting FBI assistance, and (2) greater likelihood of state and local law enforcement involvement (including extradition). Felony classification of a parental abduction crime is thus crucial in eliciting search assistance from law enforcement. The parental abduction crime statute should also cover substantial interference with visitation rights.

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[271]See chapter 7 for a discussion of issues relating to criminal prosecution in parental abduction cases.

[272]E.g., Alaska Stat. § 11.41.320 (1989), Ariz. Rev. Stat. Ann. § 13-1302 (1989), Ark. Code Ann. § 5-26-502 (Michie 1987), Conn. Gen. Stat. Ann. § 53a-97 (West 1985), Del. Code Ann. tit. 11, § 785 (1987), D.C. Code Ann. § 16-1022 (1989), Fla. Stat. Ann. § 787.03 (West 1976), Idaho Code § 18-4506 (1987).

[273]E.g., Conn. Gen. Stat. § 53a-97 (1985), Mass. Gen. Laws Ann. ch. 265, § 26A (West 1968).

[274]E.g., Ohio Rev. Code Ann. § 2905.4 (Anderson 1987).

[275]E.g., Ark. Code Ann. § 5-26-501 (Michie 1987).

[276]E.g., Alaska Stat. § 11.51.125 (1989), Ariz. Rev. Stat. Ann. § 13-1302 (1989).

VIII. Once a parentally abducted child is located, what court procedures and law enforcement actions are available to achieve the recovery and return of the child?

A. Court Procedures

1. Filing the Decree in a Registry

Hypothetical

Assume Father's attorney is seeking to enforce Father's custody decree in Mother's state of residence. The first step for Father, either directly or through his attorney, should be to file the decree in the child custody registry of Mother's state.

Current Law -- Statutes

UCCJA, 9 ULA § 16 provides that the clerks of court maintain a registry for filing of out-of-state decrees, as well as for filing related communications and documents.[277]

Three states omit this section entirely.[278] Washington provides that the registry is for court orders, and that communications and other documents will be maintained separately as miscellaneous filings.[279] California adds that custody agreements (as well as orders) are to be entered into the registry.[280] Illinois adds that communications regarding a child who may have been abducted should also be entered into the registry.[281]

Commentary

The registries discussed in UCCJA, 9 ULA § 16 can be helpful tools for preventing simultaneous custody proceedings and issuance of conflicting custody orders. The creation of such registries and the inclusion in such registries of as much relevant information as possible are important.

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[277]Chapter 6 also discusses a child custody registry, as part of the suggested custody enforcement statute.

[278]Massachusetts, New Hampshire, New York.

[279]Wash. Rev. Code Ann. § 26.27.160 (West 1979).

[280]Cal. Civ. Code § 5165 (Deering 1984).

[281]Ill. Ann. Stat. ch. 40, ¶ 2117 (Smith-Hurd 1980).

Current Law -- Cases

One case opinion from Tennessee mentioned that the mother had filed an out-of-state decree with the trial court.[282] The appellate court in that case found that the decree state retained continuing custody modification jurisdiction, and that the trial court in which the decree was filed had properly dismissed the modification petition.

An Ohio opinion reversed the trial court's enforcement of an out-of-state custody order because, inter alia, the decree had not been filed in that state's court.[283]

Commentary

Few case opinions have discussed the filing of out-of-state decrees.[284] This does not demonstrate that the activity is not taking place in the custody trial courts. Nevertheless, it is reasonable to assume that this UCCJA mechanism could be used more frequently.

2. Enforcement Proceedings

Hypothetical

Assume, again, that Father's attorney is seeking to enforce Father's custody order in Mother's state. Father's attorney needs to find out what custody enforcement mechanisms are available in Mother's state.

Current Law -- Statutes

Under UCCJA, 9 ULA § 15, once a custody decree has been filed, it is to be treated as if it were a local decree, and can be enforced in the same manner as a local order. PKPA, 28 U.S.C. § 1738A (a) also includes a mandate that appropriate authorities of every state shall enforce a child custody determination made consistently with the PKPA. The UCCJA and the PKPA do not specify enforcement procedures, however. When seeking to enforce a child custody order, attorneys can utilize either mechanisms enacted specifically to enforce child custody and visitation orders, or mechanisms designed for the enforcement of orders

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[282]Roderick v. Roderick, 776 S.W.2d 533 (Tenn Ct. App. 1989).

[283]In re Andrews, No. 90-L-15-148, 1991 Ohio App. LEXIS 4618, 1991 WL 206680.

[284]Further discussion of this obstacle and a recommendation to eliminate this obstacle are provided in Section IX. A. 4 of this chapter.

generally. If the custody order was obtained through a special procedure (e.g., as part of a domestic violence protection order or a paternity determination), attorneys may also be able to use enforcement procedures detailed in those particular statutes.[285]

Several states' statutes explicitly provide for habeas corpus as an enforcement mechanism in child custody disputes.[286] Indiana provides for statutory injunctive relief when a custodial parent has refused to permit court-ordered visitation, and for a finding of contempt, upon violation of the injunction.[287]

Two other states' remedies for disputes concerning failure to abide by visitation and custody orders include establishing court hearing processes. Those states, Colorado and Delaware, also impose various penalties upon the violator: assessment of costs and fees; imprisonment or fines for contempt of court; and make-up visitation, if appropriate.[288] Further, Delaware provides a surcharge of up to ten percent of the support payment by the one who failed to comply with a visitation order. Delaware also provides for a temporary transfer of custody for up to thirty days without regard to the best interests of the child standard.[289] Colorado provides for measures to prevent further violations, such as requirements for posting of a bond.[290]

Georgia has enacted a helpful child custody enforcement provision: it prohibits counter-claims for custody modification in habeas corpus or other custody enforcement proceedings. The provision also bars use of habeas corpus as a vehicle for seeking a custody modification.[291]

In addition, there are a number of general enforcement mechanisms available in most states which may be used in the custody enforcement context, including: (1) habeas corpus writs

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[285]E.g., Ariz. Rev. Stat. Ann. § 25-315(G) (1991).

[286]E.g., D.C. Code Ann. § 16-1908 (1989), Haw. Rev. Stat. § 577-7 (1985), Ind. Code Ann. § 34-1-57-25 (West 1979).

[287]Ind. Code Ann. § 31-1-11.5-26(b)(3) (West 1979).

[288]Colo. Rev. Stat. Ann. § 14-10-129.5 (West 1989), Del. Code Ann. tit. 13, § 728(b) (1981).

[289]Del. Code Ann. tit. 13, § 728(b) (1981).

[290]Colo. Rev. Stat. § 14-10-129.5 (1989).

[291]Ga. Code Ann. § 19-9-23(c) (Michie 1991).

(for individuals held in illegal custody);[292] (2) extraordinary writs of mandamus and prohibition (to order public officials, such as judges, to do or refrain from doing that which is their obligation to do or refrain from doing);[293] (3) injunctions and restraining orders (to order private individuals to do or refrain from doing a particular act);[294] (4) orders to show cause and civil and criminal contempt findings (for violations of court orders);[295] and (5) general motions to enforce.

Other enforcement mechanisms available in some states include: (1) a warrant in lieu of a writ of habeas corpus (to bring to court the person held in illegal custody if there is reason to believe that that the person may be carried out of the jurisdiction before a writ of habeas corpus can be implemented);[296] (2) an accompanying command for the arrest of the person holding another in illegal custody;[297] (3) a civil arrest warrant (for failure to appear in court, as ordered);[298] (4) a writ of attachment against a party (when that party has failed to perform an act required by court order);[299] (5) a capias ad respondendum (when a party either has failed to respond to a summons or there is reason to believe that the party is about to abscond and a summons will be ineffective);[300] and (6)

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[292]E.g., Ala. Code §§ 15-21-1 et seq. (1982), Alaska Stat. §§ 12.75.010 et seq. (1990).

[293]Eg. Ala. Code § 6-6-640 (1977), Ariz. Rev. Stat. Ann. § 12-2021 (1982).

[294]E.g., Alaska Stat. § 09.40.230 (1983), Ariz. Rev. Stat. Ann. § 12-1801 (1982).

[295]E.g., Ala. Code § 12-1-8 (1986), Alaska Stat. § 09.50.010 et seq. (1983).

[296]E.g., Alaska Stat. § 12.75.180 (1990) Cal. Penal Code § 1497 (Deering 1984), Idaho Code § 19-4225 (1983), Ind. Code Ann. § 34-1-57-19 (West 1979).

[297]E.g., Alaska Stat. § 12.75.190 (1990), Cal. Penal Code § 1498 (West 1990).

[298]E.g., Ariz. R. Civ. P. 64.1.

[299]E.g., D.C. Code Ann. § 15-320(a)(1) (1981), Fla. R. Civ. P, 1.570.

[300]E.g., Del. Code Ann. tit. 10, § 3108 (1989), Mo. Ann. Stat. § 211.121 (Vernon 1986).

a writ ne exeat (ordering that a person who is about to abscond from the jurisdiction refrain from doing so).[301]

Commentary

Mechanisms for enforcing custody, though not specified in the UCCJA, exist in every state with considerable variations. Further, most of the statutes and rules are not explicit as to whether particular enforcement provisions apply to custody cases. These variations among states' enforcement provisions, and this ambiguity as to the application of individual enforcement provisions to custody cases, can be confusing to attorneys in interstate parental abduction cases. This can impede prompt and effective interstate custody enforcement -- which is the key to recovery and return of a child parentally abducted to or wrongfully retained in another state.

Finally, it is important to note that those statutory provisions that are designed for (and explicitly applicable to) enforcement of custody and visitation rights can be particularly helpful to attorneys representing left-behind parents. (See also Chapter 6, infra.)

Current Law -- Cases

While jurisdiction under the UCCJA and the PKPA is necessary for a court to make a custody determination consistent with those laws, such jurisdiction is not necessary for a court to make a custody enforcement order pursuant to an enforcement proceeding (as described above).[302] Some courts, however, have considered UCCJA and PKPA jurisdictional requirements to be applicable in enforcement proceedings.[303] A related obstacle arises when enforcement proceedings are brought as a vehicle for determining custody. For example, a court in Florida, liberally quoting from a pre-UCCJA opinion, states that:

> When child custody is involved, however, a habeas corpus action takes on the nature of an equitable proceeding, and the trial judge has the duty and authority to enter orders which will best conserve the welfare of the child... An order of a court in a sister state granting temporary custody is not res judicata, and a Florida court has a duty on petition

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[301] E.g., D.C. S.C.R. Dom. Rel., Rule 406.

[302] Eg., Custody of Brandon, 551 N.E.2d 506 (Mass. 1990) [contempt proceeding].

[303] E.g., Plouffe v. Salas, 560 N.Y.S.2d 99 (Fam. Ct. 1990) [habeas corpus proceeding].

for writ of habeas corpus to determine the child's best interest...[304]

Commentary

Habeas corpus and other enforcement proceedings should be brought and pursued for custody enforcement only, and UCCJA/PKPA jurisdiction requirements need not be met before contestants can bring enforcement actions. Obviously, UCCJA/PKPA requirements would need to be satisfied before a court could take any action on a cross-petition for custody modification.

3. Out-of-state Counsel Appearance

Hypothetical

Assume Father has obtained an enforceable custody order in his state. Father's attorney, who is already familiar with Father's case, may want to pursue enforcement of the decree in Mother's state, where Child now resides. However, Father's attorney may not be licensed to practice law in Mother's state.

Current Law -- Court Rules

Many states permit a judge to allow counsel from out-of-state to enter an appearance in a particular proceeding in that state, even though the attorney is not admitted to practice in that state, as long as certain requirements are met. Generally, the attorney must be a member in good standing of the bar of another state; the attorney must file a written motion or application; and the attorney must associate with in-state counsel (some states require in-state counsel to receive all notices, sign all pleadings, and participate in all proceedings). In addition, some states require the attorney to show "good cause" for this "special admission" or "admission pro hac vice."[305]

Commentary

Provisions which permit a judge to allow counsel from out-of-state to enter an appearance in a particular proceeding are useful in interstate child custody disputes. These allow an out-

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[304]Walt v. Walt, 574 So. 2d 205, 210 (Fla. Dist Ct. App. 1991).

[305]E.g., Alaska S.C.R., R. 81 (a)(2), Ariz. R. Sup. Ct. 33(c), Ark. Ct. R. XIV, Colo. Rules Civ. Pro. Rule 221, Conn. R. Rules Ct. Civ. Rule § 24, Del. Super. Ct. Civ. R. 90.1, D.C. S.C.R. Dom. Rel., Rule 101, Ga. R. Sup. Ct. Rule 4.4, Ind. R & Adm. Disc. Rule 3.

of-state party to be represented by an attorney familiar with the matter, although not necessarily familiar with the laws of the forum state. For that reason, the sections mandating that the out-of-state attorney associate with an in-state attorney (who actually participates in the proceeding) are advisable, although more costly for the client.

4. Court-established Obstacles to the Enforcement of Valid Decrees

Current Law -- Cases

One obstacle to the enforcement of valid decrees is that courts have issued orders which stay enforcement of valid custody determinations for a specified period of time,[306] to allow contestants to seek custody modification in another state. Neither the UCCJA nor the PKPA provide for such stays of enforcement, although the Comment to UCCJA, 9 ULA § 15 indicates that a court could "in an emergency stay enforcement if there is danger of serious mistreatment of the child."

Another obstacle to the enforcement of valid decrees has resulted from the decision of the U.S. Supreme Court in the Thompson[307] case, which held that contestants could not seek a federal district court determination as to which of two conflicting state court custody orders is valid (and, thus, enforceable) under the PKPA. In a number of cases,[308] federal district court relief would have facilitated a resolution of the custody jurisdiction conflict.

Commentary

Stays of enforcement can undermine the purposes of both the UCCJA and the PKPA. Further, in situations of potential harm to children, emergency jurisdiction to temporarily modify custody should be invoked.

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[306]Earl G.A. v. Beverly A., Nos. CN91-6015, 91-1-141-CV and 91-1-142-CV, 1991 Del. Ch. LEXIS 65, 1991 WL 42629 (Del. Fam. Ct.); In re Custody of Cox, 536 N.E.2d 520 (Ind. Ct. App. 1989); and In Re Marriage of Ross, 471 N.W.2d 889 (Iowa Ct. App. 1991).

[307]Thompson v. Thompson, 484 U.S. 174, 108 S. Ct. 513, 98 L. Ed. 2d 512 (1988).

[308]In re Larch, 872 F.2d 66 (4th Cir. 1989); Sipka v. Soet, 761 F. Supp. 761 (D. Kan. 1991); and DeMent v. Oglala Sioux Tribal Court, 874 F.2d 510 (8th Cir. 1989).

Lack of federal district court relief impedes final resolution of custody jurisdiction disputes.[309]

B. Law Enforcement Actions

1. Picking up the Child and Other Civil Custody Enforcement Activities

Hypothetical

If Father is seeking enforcement of his custody order in Mother's state of residence, he should learn whether the District Attorney or other law enforcement officers are available to assist him there.

Current Law -- Statutes

Only one state in the country, California, has established by statute a civil role for district attorneys' offices in custody enforcement.[310] That state requires that district attorneys "take all actions necessary to locate" a parent who has absconded prior to an adjudication of a custody, and "to procure compliance with the order to appear with the child." Further, when the terms of a court order for custody or visitation have been violated, the district attorney must "take all actions necessary to locate and return the child and the person who violated the decree," and "to assist in the enforcement of the custody or visitation decree" through "any appropriate civil or criminal proceeding."[311]

Several states provide that law enforcement officers may take into custody, i.e., "pick-up," without prior authorization by court order, an abducted child found during the course of a parental abduction investigation.[312]

Commentary

If each state were to commit its enforcement resources, including those of district attorneys' and law enforcement

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[309]Further discussion of this obstacle and a recommendation to eliminate this obstacle are provided in Section IX. A. 1 of this chapter.

[310]Cal. Civ. Code § 4604 (Deering 1984).

[311]Ibid.

[312]Cal. Penal Code § 279(a) (Deering 1984), Colo. Rev. Stat. § 19-3-40(1)(c)(1989), Ill. Ann. Stat. ch. 38, ¶ 10-5(i) (Smith-Hurd 1980), Mo. Ann. Stat. § 565.167 (Vernon 1990).

offices, to the civil enforcement of child custody to the same extent that California has, left-behind parents could achieve the recovery and return of parentally abducted children far more easily and expeditiously.[313]

Further, statutory and rule-based provisions for law enforcement assistance in the pick-up of abducted children can be helpful and are recommended.

Current Law -- Cases

A North Carolina appellate court held that, in the absence of explicit statutory authorization, the trial court was without authority to issue (and the appellate court was without authority to uphold) an order for law enforcement officers to pick up parentally abducted children, and to deliver them to the lawful custodian.[314]

Commentary

Such court "pick-up" orders are often essential to the recovery and return of parentally abducted children, and court opinions precluding courts from issuing such orders constitute considerable obstacles to such recovery and return.

2. Placing the Child

Hypothetical

Assume, now, that Father has successfully enlisted the assistance of local law enforcement officers in Mother's state of residence to pick up Child, but Father is unable to accompany them because of the immediacy of the pick-up.

Current Law -- Statutes

Those few states with statutes relevant to post-pick-up placement of an abducted child generally provide that the child may be placed with the lawful custodian.[315] A particular child may not be placed immediately with the lawful custodian, however,

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[313]Analysis of and recommendations regarding the role of law enforcement in the civil enforcement of custody orders are included in Chapters 6 and 7.

[314]Matter of Custody of Bhatti, 391 S.E.2d 201 (N.C. Ct. App. 1990).

[315]E.g., D.C. Code Ann. § 16-1023 (1981).

because of risk of harm to the child,[316] conflicting custody orders,[317] or questionable validity of a court order.[318] In those situations, a court hearing may be needed to resolve the situation.

Four states have amended the UCCJA to provide for temporary placement in foster care pending return of an abducted child to the lawful custodian.[319] Connecticut provides for such temporary placement in a different statute.[320]

Finally, Arkansas provides for unparalleled advance planning: prior to serving a warrant for arrest for custodial interference, the law enforcement officer must inform the department of Human Services. Then, a representative of that Department can be present with the arresting officer at the time of the arrest, to facilitate temporary foster care placement of the child, pending return home.[321]

Commentary

Many states have no statutory or rule-based provisions relating to placement of abducted children after pick-up of the children by law enforcement. Such provisions are important, since law enforcement officers often discover the whereabouts of the children in the course of investigating an abduction and/or arresting the abductor. Officers require explicit authorization for appropriate actions to take regarding placement of a child, just as they require explicit authorization for picking up the child.

Certain provisions are quite helpful: those which provide for placement with the lawful custodian (and which provide for an expedited hearing to determine who is the lawful custodian), and those which authorize temporary placement in foster care pending return to the lawful custodian.

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[316] E.g., Ill. Ann. Stat. ch. 38, ¶ 10-5(i) (Smith-Hurd 1980).

[317] E.g., Cal. Penal Code § 279(b) (Deering 1984).

[318] E.g., R.I. Gen. Laws § 15-14-16 (1988).

[319] Cal. Civ. Code § 5157 (Deering 1984) (for "a few days"), Nev. Rev. Stat. § 125A.080 (1986) (for "up to 40 days"), Utah Code Ann. § 78-45c-8 (1987) (for "a few days"), La. Rev. Stat. Ann. § 1715 (West 1982) (for "up to 15 days", with extensions "up to 60 days, for good cause shown").

[320] Conn. Gen. Stat. § 47b-16 (1986).

[321] Ark. Code Ann. § 5-26-502 (Michie 1991).

The provision which involves the social services agency in the process of arrest of the abductor and resulting pick-up of the child can both lessen the trauma to the child and increase efficiency when placing the child.

IX. Recommendations[322]

The legal obstacles to the recovery and return of parentally abducted children are many and varied. Some obstacles result from inadequacies in state and federal statutes that affect parental abduction cases (lack of clarity in the laws, lack of uniformity among the laws, as well as bad provisions in the law, and the absence of helpful provisions in the law). Some obstacles are the result of the inability of left-behind parents to avail themselves of legal remedies, because they cannot find representation that is knowledgeable and/or affordable.

Certain obstacles result from the failure of lawyers and judges to properly interpret and apply child custody jurisdiction laws (the UCCJA and the PKPA). This failure may be the result of:

- the lack of awareness, on the part of some lawyers and judges, that the UCCJA and/or PKPA exist; and/or
- the lack of complete understanding, on the part of some lawyers and judges, as to how the UCCJA/PKPA jurisdictional structure should operate; and/or
- the lack of willingness, on the part of some judges, to defer to another jurisdiction for resolution of a child custody matter.

Since enactment of the PKPA and nationwide adoption of the UCCJA, the latter "lack of willingness" factor has rarely been expressed openly in court opinions. There are exceptions, however: a Florida court, in dicta, stated that "Florida courts have never restrained themselves from exercising subject matter jurisdiction to modify a foreign custody decree as to children living in the State of Florida,"[323] citing two pre-UCCJA cases as authority for the assertion.

Other courts have exhibited reasoning more consistent with the purposes and provisions of the UCCJA and PKPA. A D.C. court explained that it was making a jurisdictional determination as to

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[322]All recommendations relating to family violence issues are set forth in Section II. E. of this chapter.

[323]Tonkin v. Sonnenberg, 539 So. 2d 1143, 1144 (Fla. Dist. Ct. 1989).

which state's court should decide the matter, not a decision on the merits as to which contestant should have custody of the child.[324] A Massachusetts court explained that it had "no reason to believe that [the other state's] courts are any less concerned than courts of the Commonwealth with the welfare of children who are the subjects of custody disputes. Nor do we perceive any less ability on the part of [the other state] to protect adequately children under its jurisdiction than is available in the Commonwealth."[325] Both of these courts were mindful of the importance of being willing to defer to another jurisdiction when appropriate under the UCCJA and the PKPA.

A. Obstacles and Recommended PKPA Amendments[326]

1. Obstacle: Conflicting Custody Orders[327]

Despite PKPA and UCCJA provisions to deter simultaneous and competitive proceedings in sister state courts over custody of the same children, case law reveals that parents engaged in struggles over child custody can still get conflicting custody orders in courts of different states.[328]

When conflicting custody orders have been issued, the existing system for resolving the jurisdictional conflict stands as a significant block to the recovery of the abducted child. The appellate process for seeking review of custody orders is time-consuming and expensive. Even if litigation proceeds through the highest courts of the two competing states, there may still be no resolution unless and until the United States Supreme Court agrees to grant review of the case. This review is discretionary, and predictably will not be granted in every custody case.

This bleak picture stems in part from a recent decision of the United States Supreme Court in the case of Thompson v. Thompson, 484 U.S. 174 (1988). That court opinion held that there is no right under the PKPA to go into federal

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[324] In the Matter of B.B.R., 566 A.2d 1032, 1041 (D.C. 1989).

[325] Archambault v. Archambault, 555 N.E.2d 201, 207-8 (Mass. 1990).

[326] Recommended UCCJA amendments are provided in Section IX. B. 1. of this chapter.

[327] This discussion was prepared by Patricia M. Hoff, Esq.

[328] See Chapter 4, Part II for a discussion of simultaneous proceedings and relief from conflicting custody determinations.

court for a determination as to which of two states that have issued custody orders has done so pursuant to the federal law. By eliminating federal courts as tie-breakers in interstate child custody jurisdictional impasses, the Supreme Court removed a remedy that had been made available by numerous federal courts prior to the Thompson decision in 1988. A line of cases beginning with Flood v. Braaten, 727 F.2d 303 (3rd Cir. 1984), had held that federal court action to break jurisdictional deadlocks was appropriate.

In reaching its decision, the Court in Thompson noted that "...ultimate review remains in this Court for truly intractable jurisdictional deadlocks" (Id. at 192). However, its denial of certiorari in the hopelessly deadlocked case of C.C. v. P.C., No. 91-353, U.S.S.C. cert. denied, 10/21/91 (see also In re A.E.H., 468 N.W.2d 190 (Wisc. 1991), wherein the highest courts of California and Wisconsin had reached a jurisdictional impasse, underscores a very different reality: Supreme Court review is rarely available and custody contestants are left without a legal remedy once the highest courts in two states have entered conflicting orders.

Importantly, the Thompson case did not turn on constitutional issues. Indeed, the court noted that Congress might choose to revisit the issue should state courts prove to be either unable or unwilling to enforce the provisions of the Act. Id. at p. 192.

Recommendation:

Congress should enact legislation creating a federal court role in resolving which of two states has complied with the PKPA. This would remove a major obstacle to determining which of two custody orders is enforceable, which in turn would result in the prompt enforcement of the valid custody order.

Quick resolution of the jurisdictional issue by a federal forum is necessary for children whose custody remains in limbo until a decision is reached about which court has jurisdiction to make a custody determination. Hence the proposed legislation provides for calendar priority and expeditious handling of a case brought in federal court to resolve jurisdictional questions.

In the suggested legislation set forth below, the aggrieved party may decide to pursue appeal of the jurisdictional issue within the state court system in lieu of, or concurrently with filing an action in a federal court. The pendency of state court appeals relating to the

jurisdictional dispute would not require the federal court to abstain from its consideration of the issue.

Providing access to federal courts in child custody-related matters is not without precedent. The International Child Abduction Remedies Act expressly authorizes federal courts to hear actions for the return of children brought pursuant to the Hague Convention on the Civil Aspects of International Child Abduction. 42 U.S.C. 11603.

Suggested language:

Amend the Parental Kidnapping Prevention Act, 28 U.S.C. 1738A, by adding a new section (h) as follows:

Cause of Action

When the trial courts of two or more states have made conflicting custody determinations, a cause of action shall lie in federal district court founded on federal question jurisdiction, 28 U.S.C. 1331, for a declaration [decision] [determination] as to which of the custody determinations was granted in conformity with the Parental Kidnapping Prevention Act, 28 U.S.C. 1738A.

Parties

A civil action under this section may be brought by any custody contestant claiming that a court of a state has issued a custody order in violation of 28 U.S.C. 1738A.

Notice

The action shall be served upon all adverse parties [custody contestants to the conflicting state custody proceedings] in accordance with the Federal Rules of Civil Procedure.

Venue

A civil action under this section may be brought in any judicial district in which a state court has issued a custody determination in conflict with another state's custody determination concerning the same child(ren). If actions are brought in more than one judicial district, the actions shall be consolidated for hearing in the judicial district in which the first action was filed.

Hearings and evidence

(a) There shall be no right to trial by jury.
(b) All evidence shall be submitted to the district court by affidavits and declarations unless the court orders otherwise.
(c) The court shall limit its review to jurisdictional facts.

Priority

Any action filed pursuant to this section shall be given calendar priority and handled expeditiously.

Relief

(a) The court shall issue declaratory relief [in accordance with 28 U.S.C. 2201] as to which custody order was granted in conformity with 28 U.S.C. 1738A. Notwithstanding any provision of law to the contrary, the court may issue injunctive relief as necessary to compel compliance with 28 U.S.C. 1738A.
(b) A decision of the court regarding which custody determination was granted in conformity with 28 U.S.C. 1738A is not a determination on the merits of any custody issue.

Fees and costs

The court shall require the losing party to pay the costs of the federal court proceedings, attorneys fees and any related travel expenses incurred by the prevailing party in this action unless the losing party establishes that such order would be clearly inappropriate.

Remedies not exclusive

(a) The remedies established by this Act shall be in addition to remedies available under state law for resolving jurisdictional disputes between states.
(b) The filing of a federal court action pursuant to this section shall not automatically preclude state courts from addressing the underlying jurisdictional issues.

Alternative Approach

An alternative approach would simply add a new section (h), as follows:

"The district courts shall have jurisdiction of any action to determine, in the case of a dispute involving custody determinations of different states, whether

such custody determinations were made consistently with the provisions of this section."

2. Obstacle: Confusion Regarding Continuing Modification Jurisdiction[329]

The concept of exclusive continuing custody modification jurisdiction of the decree state is probably the single most important concept embodied in the PKPA. This concept is central to preventing the issuance of conflicting custody orders by courts of different states, and discouraging parental abductions undertaken for the purpose of forum-shopping. However, this concept is also probably the aspect of the PKPA that is most often misunderstood, overlooked, or ignored.

Courts in various states have exhibited widely diverse views on how long custody jurisdiction continues after a child has moved out of the decree state. Some courts have held that modification jurisdiction continues until the last contestant leaves the state, regardless of how many years the child has lived outside the state or how tenuous the child's connections to the state have become. Other courts have held that continuing modification jurisdiction ends as soon as the child's new home state is established elsewhere, regardless of how significant the child's connections to the decree state (and to the noncustodial parent in the decree state) remain. Still other courts have held that modification jurisdiction lasts as long as the child retains significant connections with the decree state, which depends upon the facts of each case. Unless a court in another state can readily ascertain how long jurisdiction continues in the first state, there is a danger that the court in the other state will exercise jurisdiction to modify the decree while the first state still has continuing jurisdiction. Hence, the divergence of views can result in simultaneous proceedings and conflicting custody orders.

Courts have also exhibited a lack of understanding of the importance of refusing to act when a court of another state has, and has not declined to exercise, continuing modification jurisdiction. Other courts have found that continuing modification jurisdiction exists, while ignoring the important issue of whether there is still a state law basis for jurisdiction (e.g., the UCCJA significant connections basis). Even when a court exhibits a clear understanding of those concepts, the court often fails to

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[329]Further discussion of these obstacles is provided in Section II.A.5. of this chapter.

recognize that if a case raises the possibility of another state (the decree state) still having continuing modification jurisdiction, the court should first determine whether the decree state does still have continuing modification jurisdiction, and, if not, then determine whether the forum state has any basis for jurisdiction. To do the reverse risks wasting judicial time and effort determining whether the forum state has any basis for jurisdiction, since that determination becomes irrelevant if another state has (and has not declined to exercise) continuing modification jurisdiction.

Recommendation:

Several alternatives to simplify current law regarding continuing modification jurisdiction have been considered.

One option is to delete the PKPA requirement that a current state basis for jurisdiction must exist (an option favored by one Senator who has introduced a bill in Congress to that effect). Under that system, a decree state would retain continuing modification jurisdiction as long as a contestant or the child continues to live in that state.

Another option would be to provide that custody modification jurisdiction lapses as soon as a new home state is established elsewhere (similar to the Texas approach).

Another would be to establish by federal law a time limit on continuing jurisdiction (e.g., three years) that runs from the time the child leaves the state.

The preferred option would be to establish by federal law a time limit on continuing jurisdiction after the custodial parent and the child have left the state, that would only apply if the state has not set a specific time limit of its own. The federal time limit would thus be a "default" provision, only effective in the absence of state legislation specifying how long jurisdiction shall continue in that state.

Suggested language:

Amend PKPA [28 U.S.C. 1738A (d)] to read:

The jurisdiction of a court of a state which has made a child custody determination consistently with the provisions of this section continues as long as the requirement of subsection (c) (1) of this section continues to be met and such state remains the residence of the child

or of any contestant, provided that, if the statutes of such state do not establish a time limit on continuing jurisdiction when a child is absent from such state, the jurisdiction of a court of such state shall not continue if the child has been absent from such state for more than three years.

3. Obstacle: Confusion Regarding Emergency Jurisdiction[330]

The current language of the PKPA does not specify that emergency jurisdiction may only be exercised to protect the child on a temporary basis until the court with jurisdiction to issue a long-term order can act. Some courts have interpreted it in that manner. Other courts, however, have held that there is no time limit on the relief that can be granted pursuant to the exercise of emergency jurisdiction. Again, simultaneous proceedings and conflicting custody orders can result from these differing court interpretations of the PKPA. In a number of the cases which held that emergency jurisdiction only provides a basis for temporary orders, the courts have issued orders which last until the state with PKPA jurisdiction to issue a long-term order does so, provided that a custody proceeding in that state is commenced within a specified brief period of time (e.g., 60 days). [In cases initiated by the state rather than by a contestant (e.g., abuse and neglect cases), the court would have to transfer the case to the proper jurisdiction within 60 days.] The purposes of the PKPA (see, e.g., the text accompanying footnote 340 of this chapter) are better served by such a limit on the duration of emergency relief that can be granted.

In addition, the PKPA emergency jurisdiction provision does not explicitly protect children harmed by violence perpetrated by one parent against another parent, or against the child's sibling.

Finally, the PKPA provides no exception to the notice requirement [28 U.S.C. § 1738A (e)] or to the simultaneous proceedings ban [28 U.S.C. § 1738A (g)] in emergency cases. Therefore, custody orders issued on a temporary emergency basis (e.g., child abuse orders or domestic violence orders of protection), prior to notice being given to all contestants or during the pendency of another custody proceeding in another state, would not currently be enforceable in any other state pursuant to the PKPA.

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[330]Further discussion of these obstacles is provided in Section II.A.4. of this chapter.

Recommendation:

Amend the PKPA to eliminate the current section on emergency jurisdiction [28 U.S.C. § 1738A (c) (2) (C)], and to include a new section on emergency jurisdiction to issue temporary relief (as described in the Obstacle #3 discussion, above); and amend the PKPA sections on notice [28 U.S.C. § 1738A (e)] and on simultaneous proceedings [28 U.S.C. § 1738A (g)] to provide for an exception in emergency cases.

Suggested language:

(h) (1) Notwithstanding any provision of subsections (c), (f) and (g), a court of a State may exercise temporary emergency jurisdiction to make a child custody determination only if, as of the date of the commencement of the proceeding:

(a) the child is physically present in such State; and

(b) (i) the child has been abandoned, or (ii) it is necessary in an emergency to protect the child because the child, the child's sibling, or the child's parent has been subjected to or threatened with mistreatment or abuse, or because the child is otherwise neglected.

(2) The appropriate authorities of every state shall enforce any emergency custody determination made pursuant to subsection (h)(1):

(a) until 60 days after the issuance of the custody determination pursuant to subsection (h)(1), if no custody proceeding was commenced during that period in a court of the State which may exercise jurisdiction pursuant to subsection (c); or

(b) until a subsequent custody determination is made by a court of the State which may exercise jurisdiction pursuant to subsection (c) or (h).

Also: amend the PKPA simultaneous proceedings section [28 U.S.C. § 1738A (g)] to add, at the beginning: "Except in emergency cases as provided for in subsection (h),".

Also: amend the PKPA notice section [28 U.S.C. § 1738A(e)] to add, at the beginning: "(1) Except in certain emergency situations as provided for in subsection (e)(2),"; and add: "(2) If there is an imminent risk of substantial harm to the child, a court may temporarily waive the notice required pursuant to (e)(1) to make an ex parte emergency child custody determination, pursuant to subsection (h), of a duration not exceeding twenty days."

4. Obstacle: Lack of Procedures for Identifying Other Custody Proceedings or Orders[331]

In order to determine whether it can exercise jurisdiction in a custody case consistently with the PKPA, a judge needs to know whether another court has previously decided custody, as well as whether proceedings about the child's custody are pending before any other court. The other court could be a court in a sister state or a different court in the same state.

If there is a prior order from a sister state, the court might be required to refrain from hearing the case and to defer to the continuing jurisdiction of the sister state. If there is a proceeding already pending in another state, the court might be barred from exercising jurisdiction if the other proceeding was brought in conformity with the PKPA.

Courts need to know the past and present history of a case to make an informed decision about whether child custody jurisdiction can and should be exercised. They also need speedy access to this information because any decision on the merits of custody must be delayed until after the threshold issue of child custody jurisdiction is determined.

The UCCJA recognized the need to inform courts of sister state proceedings in Section 6 (simultaneous proceedings in other states/ judicial communication); Section 9 (information under oath to be submitted to the court); and Section 16.

Section 16 of the UCCJA calls upon courts to maintain registries for filing documents related to out-of-state custody proceedings. This provision has been honored primarily in the breach: formal registries do not exist in most courts. The resulting lack of access to jurisdictional information is an obstacle courts face in making informed jurisdictional decisions, which in turn affects whether resulting custody determinations are valid and enforceable nationwide.

Recommendation:

Because avoiding duplicative child custody proceedings is based on access to information about prior and simultaneous proceedings pending in other courts, it is recommended that a national child custody registry ("NR")

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[331]This discussion was prepared by Patricia M. Hoff, Esq.

be established to make all child custody determinations and information about child custody-related filings readily accessible to courts, law enforcement and lawyers throughout the country. This would conserve judicial resources and speed resolution of custody cases.

Law enforcement, and parents in turn, would also benefit from creation of a child custody registry. There currently is widespread reluctance on the part of law enforcement officers to assist in the enforcement of custody orders. This is largely because of difficulty in verifying custody orders. Once it is implemented, a national child custody registry would help police verify custody before intervening in the recovery of abducted children.

a) Implementation

A national child custody registry could be established either at the federal or the state level. This could be accomplished by creating a new computer data base, to be maintained by an appropriate agency, accessible by courts, lawyers, and law enforcement officers nationwide.

A crucial consideration in deciding where the registry is established should be ease of access by the greatest number of users. The widespread use and availability of fax machines (and increasing availability of computers and modems and other technological advances) will make it possible for judges and lawyers to transmit information to, and access information from, a national registry in a timely manner.

There are a number of possible agencies which might house the registry: the National Center on Missing and Exploited Children, the National Center for State Courts, the State Justice Institute, the F.B.I. and the Federal Parent Locator Service (FPLS).

The F.B.I.'s National Crime Information Center (NCIC) computer system contains files which could conceivably be expanded to encompass custody determinations and related filings. Alternatively, a new file could be added. The advantage of using NCIC is that it is on line and accessible by law enforcement nationwide. The drawback to this approach is that historically only law enforcement officials have had access to NCIC files.

The FPLS is located within the Department of Health and Human Services. It is primarily used in connection with child support enforcement, although the PKPA expanded use of FPLS files to include locating parents in connection

with child custody and parental kidnapping cases. Given the interrelationship between child custody and support, and the fact that most custody orders provide for both custody and support, the combination of a child support and child custody registry has a logical appeal.

A combined support and custody registry could be implemented either at the level of the FPLS, or possibly at the state level. Every state has a child support enforcement system which has as a component a state locator service. It might be feasible to expand the existing computerized state IV-D child support enforcement system to include child custody orders and related filings. Implementation of recommendations of the Federal Child Support Commission regarding child support registries should be monitored to pursue the possible consolidation of a custody registry and a child support registry.

Alternatively, an entirely new central registry in each state could be established, linked by computer network to all courts within that state as well as to sister states. The obvious disadvantage of this approach is its dependency upon computers in all courts, which may not happen for years to come.

b) Documents to be filed with registry

All courts would be required to transmit certified copies of all "custody determinations" that have issued as a result of "custody proceedings" (as defined in the Project's proposed amendments to the PKPA), including, inter alia, ex parte orders, temporary and permanent orders, and civil protection orders. Child custody contestants would be required to complete a standardized form, to be submitted to the Child Custody Registry either by the party or the Clerk of Court, upon filing any action for a custody determination. A sample standardized form with accompanying notes, prepared by William Hilton, Esq., is included as an appendix.

Following receipt of the filing, the NR would immediately acknowledge of receipt, including the date on which entry into the registry was made, as well as any information found in the registry regarding custody of the same child or custody actions involving the same parties. Depending upon technology available, this could be done by computer network, by fax, by express mail, etc.

The cost of filing would be charged to the parties.

c) Operative date/mandatory filing

Once the NR is established, it would be mandatory to file all custody determinations and filings from that date forward. Information about proceedings already pending on that date, as well as custody determinations issued prior to that date, could be filed as well at the discretion of the court and/or the custody contestant.

d) Funding

The cost of maintaining a registry will depend on where it is established. Coordination with a national child support registry would certainly contain costs. Another offset to costs would be the savings of court time because the NR should substantially reduce the number of conflicting court cases. The NR might also have a deterrent effect on abductions. In a related vein, while the NR would not eliminate the need for federal courts as tie-breakers in cases of jurisdictional conflict, it probably would reduce the number of cases filed in federal courts. Many courts simply do not know that there are other actions pending. Once they are advised, they will properly resolve the issue. However, there will always be cases in which the judge proceeds despite information about other actions.

Suggested language:

Amend title 28, U.S. Code: Creation of a National Registry of Child Custody Determinations.

There shall be created a national registry in which shall be entered information identifying every action for a child custody determination and every action relating to child custody jurisdiction filed before any court of any State or of the United States of any of its territories, possessions or the District of Columbia as well as a certified copy of every child custody determination that is issued. Custody determinations from other countries will also be accepted.

5. Obstacle: Ambiguity and Inconsistency Regarding Which Proceedings are Covered[332]

In spite of Congressional intent that the PKPA apply to any order that relates to child custody and/or visitation, several recent cases include judicial findings that the

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[332]Further discussion of this obstacle is provided in Section I.B. of this chapter.

PKPA does not apply to certain types of cases, including dependency, abuse, and neglect cases. Custody contestants with orders made in proceedings which are not in conformity with the PKPA cannot benefit from the PKPA's mandate of nationwide enforcement.

Recommendation:

Amend the PKPA definition of "custody determination" [28 U.S.C. § 1738A (b)(3)] to specify, to the greatest extent possible, the various types of custody determinations to which the PKPA should be applied.

Suggested language:

"custody determination" means any judgment, decree or other order of a court, whether permanent or temporary, or an initial or a modification order, providing for the custody of, or visitation with, a child, or in any way affecting the custody of a child, issued in the context of a custody proceeding. Custody proceedings include proceedings in which a custody determination is one of several issues, such as an action for divorce or separation, as well as neglect, abuse, dependency, wardship, guardianship, termination of parental rights, adoption, and protection from domestic violence proceedings. A custody determination does not include a judgment, decree or other order of a court regarding paternity or relating to child support or any other monetary obligation of any person, or a decision made in a juvenile delinquency, status offender or emancipation proceeding.

6. Obstacle: Ambiguity and Inconsistency Regarding Applicability in Cases Involving Native Americans[333]

"State" is now defined in the PKPA as "a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States." It is unclear whether Native American tribes were intended to be included in the term "State," and courts have divergent views on this issue. This ambiguity creates uncertainty as to whether child custody determinations made by Native American tribal courts are ever entitled to enforcement under the PKPA, and whether Native American

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[333]Further discussion of this obstacle is provided in Section I.C. of this chapter.

tribal authorities are obliged to enforce state court custody determinations.[334]

Recommendation:

Amend the PKPA definition of "State" [28 U.S.C. § 1738A (b)(8)] to add "Native American tribe".

Suggested language:

- Delete from (b)(8): "or"
- Insert after "United States": "or a Native American tribe"

7. Obstacle: Ambiguity Regarding Whether Courts Have Declined to Exercise Jurisdiction[335]

The intent of the PKPA was that continuing modification jurisdiction would have priority over any other basis of jurisdiction, unless and until a court in the state with continuing jurisdiction has declined to exercise jurisdiction over the custody matter. However, the federal statute provides no guidance as to what constitutes a declination of jurisdiction. Ambiguity as to whether a court has declined jurisdiction can result in one court improperly exercising jurisdiction because it believes, erroneously, that the other court has declined jurisdiction. This can cause simultaneous proceedings and conflicting custody orders. In addition, some courts have declined jurisdiction after only informal contact between courts, with no notice to contestants and no opportunity for them to be heard. This raises serious due process questions.

Recommendation:

Amend the PKPA to include a definition [28 U.S.C. § 1738A (b)] of "a court has declined to exercise

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[334]Similar to the difficulty in achieving tribal enforcement of a state court custody order is the difficulty in achieving enforcement of a custody order by military authorities. [See, e.g., Dare v. Secretary of Air Force, 608 F.Supp. 1077 (D.C. Del. 1985).] While the U.S. military regulations governing these matters were improved after that case was decided, difficulties may remain. We suggest that Congress perform oversight hearings on these military regulations to assess their effectiveness and to determine whether further changes would be appropriate.

[335]Further discussion of this obstacle is provided in Section II.B.4. of this chapter.

jurisdiction". Also, include in the legislative history, and in any training of attorneys and judges, the intent that such an opportunity to be heard can occur through telephone conference calls and/or written correspondence.

Suggested language:

"a court has declined to exercise jurisdiction" means that a court has declined to exercise jurisdiction, on the record, upon notice to and opportunity to be heard on the part of all contestants.

8. Obstacle: Ambiguity Regarding Whether Other Proceedings are Pending[336]

State case law opinions interpreting the PKPA, as well as state statutes and rules, have exhibited varying views as to what constitutes the "commencement" and "pendency" of a proceeding, concepts that are essential to determinations regarding jurisdiction (see Obstacle #9, below) as well as determinations regarding declining jurisdiction because of simultaneous proceedings. In some states, a custody proceeding is "commenced" upon filing, while in others, a proceeding is not "commenced" until service is accomplished. In those states which do not consider a proceeding to be "pending" until service is accomplished, an abductor may be rewarded for successfully evading service for six months and then filing a custody action in the new home state.

Recommendation:

Amend the PKPA to include definitions [28 U.S.C. § 1738A (b)] of "commencement" and "pending" which provide, inter alia, that an action is commenced when it is filed,[337] for the purposes of PKPA enforcement.

Suggested language:

"the date of the commencement of the proceeding" means the date on which a proceeding that is consistent with the other provisions of this section is filed with the court, whether or not any other contestants have been served; "the pendency of a proceeding" means the time after a proceeding that is consistent with the other provisions of this section has been filed with the court and before its final

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[336]Further discussion of this obstacle is provided in Section II.B.1. of this chapter.

[337]This approach is consistent with Fed. R. Civ. Pro. 3.

determination on appeal or before the time for filing an appeal has expired.

9. Obstacle: Ambiguity as to When, in the Course of a Custody Proceeding, Basis for Jurisdiction Must Exist

For a custody determination to be entitled to enforcement under the PKPA, the state court must have exercised jurisdiction in conformity with the PKPA. Courts seem confused about when the PKPA jurisdictional rules should be applied to determine whether there was proper jurisdiction in a particular case (e.g., at the commencement of the proceeding, at the time of the hearing, or at the time the decision is made).[338] The PKPA promotes such confusion by specifying "the date of the commencement of the proceeding" as the appropriate time to determine whether a state can exercise home state jurisdiction, but omitting any such time reference as to the other bases for jurisdiction. Such confusion can contribute to the occurrence of simultaneous proceedings and conflicting custody orders.

For example, assume that no prior decree has been issued regarding the custody of a child. Assume, further, that the child has no home state yet, because the child has spent only four months in each of his last three states of residence. The noncustodial parent files for custody in his state of residence, although that state has no basis for jurisdiction. Two months later, the parent with physical custody of the child files for custody in her state (which is a significant connections state, but is one week short of being the home state). The next day, the court in the first state (where the child has been visiting twice a week since the filing of the action, and where there is now a significant connections basis for jurisdiction) issues a custody decree regarding the child. The second state may view the first state's exercise of jurisdiction as improper, since there was no basis for jurisdiction at the time of filing. The second state may thus proceed to issue an order which conflicts with the order issued by the first state. Interstate judicial communication could help to resolve the situation, but is often not utilized.

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[338]Information provided by William M. Hilton, Esq., a nationally recognized expert in parental abduction law and a consultant to this project.

Recommendation:

Amend the PKPA jurisdiction bases [28 U.S.C. § 1738A (c)] to clarify that the required elements of any basis for jurisdiction must be present at the time of the commencement of the proceeding.
Suggested language:

- Delete from (c)(2)(A)(i): "on the date of the commencement of the proceeding"
- Insert into (c)(2), after "one of the following conditions is met": "on the date of the commencement of the proceeding"

10. Obstacle: Confusion Regarding the Role of "Best Interests" in a Jurisdictional Determination[339]

The jurisdictional scheme of the PKPA was designed to promote the best interests of the children whose custody was in question by, inter alia, discouraging parental abduction and providing that, in general, the state with the closest connections to and the most evidence regarding a child should decide that child's custody.[340] The "best interests" language in the jurisdictional sections of the PKPA was not intended to be an invitation to include discussion of the merits of the custody dispute in the jurisdictional determination, or to otherwise provide that "best interests" considerations should override the other provisions as to jurisdictional bases. In some cases, however, courts have placed inappropriate emphasis on the "best interests" language in the jurisdictional basis section. This can cause courts to make jurisdictional determinations that are not in conformity with the PKPA, thereby rendering any resulting custody order unenforceable.

Recommendation:

Amend the PKPA jurisdictional bases provisions [28 U.S.C. § 1738A (c)] to delete "best interests" language.

Suggested language:

- Delete from current (c)(2)(B)(ii): "it is in the best interest of the child that" and add, after "a court of such State": "should"
- Delete from current (c)(2)(D):

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[339]Further discussion of this obstacle is provided in Section III.D. of this chapter.

[340]See P.L. 96-611, Section 7(c)(1) and (6).

"(i)" and ", and (ii) it is in the best interest of the child that such court assume jurisdiction"

11. Obstacle: Ambiguity as to What Constitutes Significant Connections[341]

As discussed above (see #7), PKPA jurisdictional determinations are threshold decisions and should not involve any inquiry into the merits of the custody dispute. However, the significant connections basis for jurisdiction, as currently drafted, includes, inter alia, the consideration of which state would have substantial evidence concerning the child's "future care, protection, training, and personal relationships." The use of the term "future" may inappropriately result in a custody-merits discussion. This happens because only the state of residence of a contestant who will be granted substantial custody rights (under a future decree for the issuance of which the court is now assessing its jurisdiction) can have substantial evidence concerning the child's future care. As a practical matter, in making determinations as to significant connections jurisdiction, courts usually consider whether there is substantial evidence in the state about the child's care and protection in the recent past.

Recommendation:

Amend the PKPA significant connections basis for jurisdiction [28 U.S.C. § 1738A (c)(2)(B)] by deleting the "future" language, and inserting "recent past" language.

Suggested language:

- Delete from current (c)(2)(B)(ii)(II): "or future";
- Add to that subsection, after "the child's": "recent past or"

B. State Law Obstacles and Recommendations:

1. UCCJA Obstacles and Recommendations

This project also recommends that the National Conference of Commissioners on Uniform State Laws (NCCUSL) consider promulgating amendments to the UCCJA that would conform to the PKPA amendments in Obstacles #2, 3, 5-11, above.

Further, because some courts have viewed the UCCJA provisions as "personal jurisdiction" rules (which may therefore

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[341]Further discussion of this obstacle is provided in Section III.D. of this chapter.

be waived and stipulated to),[342] this project recommends that NCCUSL consider adding the words "subject matter" before "jurisdiction" in Sections 3 and 12 of the UCCJA.

In addition, because the recommended amendments to the PKPA would result in the application of its jurisdictional rules at the time of the commencement of a custody proceeding,[343] this project recommends that NCCUSL consider adding to the UCCJA a basis for declining jurisdiction as an inconvenient forum pursuant to Section 7(c) as follows: "if neither the child nor any contestant continues to live in this state".

Additional obstacles and recommendations arising from the state UCCJA variations are described throughout this chapter. Some variations weaken the UCCJA, such as changes which reduce the effectiveness of the continuing modification jurisdiction provision, and others which provide that the affidavit is mandatory only if a party requests it or the court orders it.

Some variations are the result of omissions of certain UCCJA provisions, including those regarding international applicability, interstate collection of evidence, and expediting custody jurisdiction determination proceedings.

State legislatures should amend their state UCCJA enactments to fill the gaps and conform to the uniform language of the Act.

Other state UCCJA variations described in the chapter are helpful, but have been adopted by only a few state legislatures, such as:

- references to other relevant laws, such as the Indian Child Welfare Act, and state service of process statutes and rules;
- incorporation into state law of the home state preference (drafted so as to exempt continuing modification jurisdiction from the preference);
- a provision which makes consideration of the inconvenient forum factors mandatory, rather than discretionary;

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[342]Further discussion of this obstacle is provided in Section II. A. 8. of this chapter.

[343]As provided in the recommendation accompanying the discussion in Section IX. A. 9 of this chapter.

- an addition to the notice section which provides that, when the other parent has not been personally served, the court must inquire of the state's missing children clearinghouse (or another agency with access to missing children listings, such as NCIC) to determine whether the child has been reported missing;

- an addition to the section on orders to appear which provides that the court may issue a warrant of arrest for violation of such an order. Other states should consider enactment of similar provisions.

2. Other State Law Obstacles and Recommendations

Some state legislatures have adopted a number of statutes and court rules described throughout this chapter that are helpful to left-behind parents seeking the location, recovery and return of parentally abducted children, such as statutes which provide for:

- clear and enforceable custody rights for unmarried, pre-decree married and joint custodial parents, thus enabling full utilization of civil remedies and criminal penalties for violation of those rights;

- mechanisms to prevent abductions, including restraining orders and visitation bonds;

- financial assistance to left-behind parents, including cost awards, criminal restitution, crime victim compensation and tort recovery;

- missing child location assistance by public agencies, including school and birth record flagging, missing children clearinghouses, federal and state parent locator services, state and local law enforcement, and F.B.I. assistance (by making abductions a felony, so that UFAP warrants can be issued);

- custody enforcement mechanisms that are specifically designed for custody, and are fast and inexpensive;

- out-of-state counsel appearance (these may be in court rules, rather than statutes); and

- law enforcement pick-up of abducted children and, where necessary, temporary placement of children in foster care.

Such provisions should be uniformly adopted by every state in the nation, in order to eliminate many obstacles to the location, recovery, and return of parentally abducted children.

Public Law 96-611
96th Congress

An Act

To amend title XVIII of the Social Security Act to provide for medicare coverage of pneumococcal vaccine and its administration.

Dec. 28, 1980
[H.R. 8406]

SEC. 2. The amendments made by this Act shall take effect on, and apply to services furnished on or after, July 1, 1981. 94 STAT. 3567

Effective date.
42 USC 1395l note.

SHORT TITLE

SEC. 6. Sections 6 to 10 of this Act may be cited as the "Parental Kidnaping Prevention Act of 1980". 94 STAT. 3568

FINDINGS AND PURPOSES

42 USC 1305 note.

SEC. 7. (a) The Congress finds that—

(1) there is a large and growing number of cases annually involving disputes between persons claiming rights of custody and visitation of children under the laws, and in the courts, of different States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States;

(2) the laws and practices by which the courts of those jurisdictions determine their jurisdiction to decide such disputes, and the effect to be given the decisions of such disputes by the courts of other jurisdictions, are often inconsistent and conflicting;

(3) those characteristics of the law and practice in such cases, along with the limits imposed by a Federal system on the authority of each such jurisdiction to conduct investigations and take other actions outside its own boundaries, contribute to a 94 STAT. 3569 tendency of parties involved in such disputes to frequently resort to the seizure, restraint, concealment, and interstate transportation of children, the disregard of court orders, excessive relitigation of cases, obtaining of conflicting orders by the courts of various jurisdictions, and interstate travel and communication that is so expensive and time consuming as to disrupt their occupations and commercial activities; and

(4) among the results of those conditions and activities are the failure of the courts of such jurisdictions to give full faith and credit to the judicial proceedings of the other jurisdictions, the deprivation of rights of liberty and property without due process of law, burdens on commerce among such jurisdictions and with foreign nations, and harm to the welfare of children and their parents and other custodians.

(b) For those reasons it is necessary to establish a national system for locating parents and children who travel from one such jurisdiction to another and are concealed in connection with such disputes, and to establish national standards under which the courts of such jurisdictions will determine their jurisdiction to decide such disputes and the effect to be given by each such jurisdiction to such decisions by the courts of other such jurisdictions. National system of locating parents, establishment.

(c) The general purposes of sections 6 to 10 of this Act are to—

(1) promote cooperation between State courts to the end that a determination of custody and visitation is rendered in the State which can best decide the case in the interest of the child;

(2) promote and expand the exchange of information and other forms of mutual assistance between States which are concerned with the same child;

(3) facilitate the enforcement of custody and visitation decrees of sister States;

(4) discourage continuing interstate controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;

(5) avoid jurisdictional competition and conflict between State courts in matters of child custody and visitation which have in the past resulted in the shifting of children from State to State with harmful effects on their well-being; and

(6) deter interstate abductions and other unilateral removals of children undertaken to obtain custody and visitation awards.

FULL FAITH AND CREDIT GIVEN TO CHILD CUSTODY DETERMINATIONS

SEC. 8. (a) Chapter 115 of title 28, United States Code, is amended by adding immediately after section 1738 the following new section: 28 USC 1731 *et seq.*

"§1738A. Full faith and credit given to child custody determinations 28 USC 1738A.

"(a) The appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in subsection (f) of this section, any child custody determination made consistently with the provisions of this section by a court of another State.

"(b) As used in this section, the term— Definitions.

"(1) 'child' means a person under the age of eighteen;

"(2) 'contestant' means a person, including a parent, who claims a right to custody or visitation of a child;

"(3) 'custody determination' means a judgment, decree, or other order of a court providing for the custody or visitation of a child, and includes permanent and temporary orders, and initial orders and modifications; 94 STAT. 3570

"(4) 'home State' means the State in which, immediately preceding the time involved, the child lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old, the State in which the child lived from birth with any of such persons. Periods of temporary absence of any of such persons are counted as part of the six-month or other period;

"(5) 'modification' and 'modify' refer to a custody determination which modifies, replaces, supersedes, or otherwise is made

subsequent to, a prior custody determination concerning the same child, whether made by the same court or not;

"(6) 'person acting as a parent' means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody;

"(7) 'physical custody' means actual possession and control of a child; and

"(8) 'State' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

"(c) A child custody determination made by a court of a State is consistent with the provisions of this section only if—

"(1) such court has jurisdiction under the law of such State; and

"(2) one of the following conditions is met:-

"(A) such State (i) is the home State of the child on the date of the commencement of the proceeding, or (ii) had been the child's home State within six months before the date of the commencement of the proceeding and the child is absent from such State because of his removal or retention by a contestant or for other reasons, and a contestant continues to live in such State;

"(B)(i) it appears that no other State would have jurisdiction under subparagraph (A), and (ii) it is in the best interest of the child that a court of such State assume jurisdiction because (I) the child and his parents, or the child and at least one contestant, have a significant connection with such State other than mere physical presence in such State, and (II) there is available in such State substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

"(C) the child is physically present in such State and (i) the child has been abandoned, or (ii) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse;

"(D)(i) it appears that no other State would have jurisdiction under subparagraph (A), (B), (C), or (E), or another State has declined to exercise jurisdiction on the ground that the State whose jurisdiction is in issue is the more appropriate forum to determine the custody of the child, and (ii) it is in the best interest of the child that such court assume jurisdiction; or

"(E) the court has continuing jurisdiction pursuant to subsection (d) of this section.

"(d) The jurisdiction of a court of a State which has made a child custody determination consistently with the provisions of this section continues as long as the requirement of subsection (c)(1) of this section continues to be met and such State remains the residence of the child or of any contestant. 94 STAT. 3571

"(e) Before a child custody determination is made, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated and any person who has physical custody of a child.

"(f) A court of a State may modify a determination of the custody of the same child made by a court of another State, if—

"(1) it has jurisdiction to make such a child custody determination; and

"(2) the court of the other State no longer has jurisdiction, or it has declined to exercise such jurisdiction to modify such determination.

"(g) A court of a State shall not exercise jurisdiction in any proceeding for a custody determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody determination.".

(b) The table of sections at the beginning of chapter 115 of title 28, United States Code, is amended by inserting after the item relating to section 1738 the following new item: 28 USC 1738A note. *Ante*, p. 3569.

"1738A. Full faith and credit given to child custody determinations.".

(c) In furtherance of the purposes of section 1738A of title 28, United States Code, as added by subsection (a) of this section, State courts are encouraged to—

(1) afford priority to proceedings for custody determinations; and

(2) award to the person entitled to custody or visitation pursuant to a custody determination which is consistent with the provisions of such section 1738A, necessary travel expenses, attorneys' fees, costs of private investigations, witness fees or expenses, and other expenses incurred in connection with such custody determination in any case in which— *Ante*, p. 3569.

(A) a contestant has, without the consent of the person entitled to custody or visitation pursuant to a custody determination which is consistent with the provisions of such section 1738A, (i) wrongfully removed the child from the physical custody of such person, or (ii) wrongfully retained the child after a visit or other temporary relinquishment of physical custody; or

(B) the court determines it is appropriate.

USE OF FEDERAL PARENT LOCATOR SERVICE IN CONNECTION WITH THE ENFORCEMENT OR DETERMINATION OF CHILD CUSTODY AND IN CASES OF PARENTAL KIDNAPING OF A CHILD

SEC. 9. (a) Section 454 of the Social Security Act is amended— 42 USC 654.

(1) by striking out "and" at the end of paragraph (15);

(2) by striking out the period at the end of paragraph (16) and inserting in lieu thereof "; and"; and

(3) by inserting after paragraph (16) the following new paragraph:

"(17) in the case of a State which has in effect an agreement with the Secretary entered into pursuant to section 463 for the use of the Parent Locator Service established under section 453, to accept and transmit to the Secretary requests for information authorized under the provisions of the agreement to be furnished by such Service to authorized persons, and to impose and collect (in accordance with regulations of the Secretary) a fee sufficient to cover the costs to the State and to the Secretary incurred by reason of such requests, to transmit to the Secretary from time to time (in accordance with such *Post*, p. 3572. 42 USC 653.

regulations) so much of the fees collected as are attributable to such costs to the Secretary so incurred, and during the period that such agreement is in effect, otherwise to comply with such agreement and regulations of the Secretary with respect thereto.".

(b) Part D of title IV of the Social Security Act is amended by adding at the end thereof the following new section: 42 USC 651.

"USE OF FEDERAL PARENT LOCATOR SERVICE IN CONNECTION WITH THE ENFORCEMENT OR DETERMINATION OF CHILD CUSTODY AND IN CASES OF PARENTAL KIDNAPING OF A CHILD

"SEC. 463. (a) The Secretary shall enter into an agreement with any State which is able and willing to do so, under which the services of the Parent Locator Service established under section 453 shall be made available to such State for the purpose of determining the whereabouts of any absent parent or child when such information is to be used to locate such parent or child for the purpose of— 42 USC 663.

"(1) enforcing any State or Federal law with respect to the unlawful taking or restraint of a child; or

"(2) making or enforcing a child custody determination.

"(b) An agreement entered into under this section shall provide that the State agency described in section 454 will, under procedures prescribed by the Secretary in regulations, receive and transmit to the Secretary requests from authorized persons for information as to (or useful in determining) the whereabouts of any absent parent or child when such information is to be used to locate such parent or child for the purpose of— 42 USC 654.

"(1) enforcing any State or Federal law with respect to the unlawful taking or restraint of a child; or

"(2) making or enforcing a child custody determination.

"(c) Information authorized to be provided by the Secretary under this section shall be subject to the same conditions with respect to disclosure as information authorized to be provided under section 453, and a request for information by the Secretary under this section shall be considered to be a request for information under section 453 which is authorized to be provided under such section. Only information as to the most recent address and place of employment of any absent parent or child shall be provided under this section. 42 USC 653.

"(d) For purposes of this section— Definitions.

"(1) the term 'custody determination' means a judgment, decree, or other order of a court providing for the custody or visitation of a child, and includes permanent and temporary orders, and initial orders and modification;

"(2) the term 'authorized person' means—

"(A) any agent or attorney of any State having an agreement under this section, who has the duty or authority under the law of such State to enforce a child custody determination;

"(B) any court having jurisdiction to make or enforce such a child custody determination, or any agent of such court; and

"(C) any agent or attorney of the United States, or of a State having an agreement under this section, who has the duty or authority to investigate, enforce, or bring a prosecu-

tion with respect to the unlawful taking or restraint of a child.".

(c) Section 455(a) of such Act is amended by adding after paragraph (3) the following: "except that no amount shall be paid to any State on account of amounts expended to carry out an agreement which it has entered into pursuant to section 463.". 42 USC 655.

(d) No agreement entered into under section 463 of the Social Security Act shall become effective before the date on which section 1738A of title 28, United States Code (as added by this title) becomes effective. *Ante*, p. 3572. Effective date. 42 USC 663 note. *Ante*, p. 3569.

PARENTAL KIDNAPING

SEC. 10. (a) In view of the findings of the Congress and the purposes of sections 6 to 10 of this Act set forth in section 302, the Congress hereby expressly declares its intent that section 1073 of title 18, United States Code, apply to cases involving parental kidnaping and interstate or international flight to avoid prosecution under applicable State felony statutes. 18 USC 1073 note. 42 USC 502.

(b) The Attorney General of the United States, not later than 120 days after the date of the enactment of this section (and once every 6 months during the 3-year period following such 120-day period), shall submit a report to the Congress with respect to steps taken to comply with the intent of the Congress set forth in subsection (a). Each such report shall include—

(1) data relating to the number of applications for complaints under section 1073 of title 18, United States Code, in cases involving parental kidnaping;

(2) data relating to the number of complaints issued in such cases; and

(3) such other information as may assist in describing the activities of the Department of Justice in conformance with such intent.

Approved December 28, 1980.

LEGISLATIVE HISTORY:

CONGRESSIONAL RECORD, Vol. 126 (1980):
Dec. 5, considered and passed House.
Dec. 13, considered and passed Senate, amended; House agreed to Senate amendments.

Appendix B

UNITED STATES OF AMERICA
NATIONAL CUSTODY AND SUPPORT ORDER REGISTRATION

Prepared by William M. Hilton, Esq.

Registry Number: _____

Cross Reference Number: _____

Date of Registration: _____

Purge Date: _____

Instructions: Attach this cover sheet to a certified or exemplied copy of the Custody and Support Order to be registred. Provide the information requested below.

Mother

Name: _____
Last, First Middle Initial

Date of Birth: _____

Social Security Number: _____

Father

Name: _____
Last, First Middle Initial

Date of Birth: _____

Social Security Number: _____

Other

For every person not a parent who is named in the order and who is given either custody or visitation rights, provide the following information:

Name: _____
Last, First Middle Initial

Date of Birth: _____

Social Security Number: _____

Children

For each child, provide the following information:

Name: _____
Last, First Middle Initial

Date of Birth: _____

Social Security Number: _____

Court

Provide the following information about the court which has made the order being registered:

Name of the Court: _____

_____

Case Number: _____

Date order was issued: _____

Date order was filed: _____

Address of the court:

Street: _____

City and State: _____

Country: _____

Telephone Number: _____

NOTES

1. Purge Date. This document and its underlying order shall be purged from the National Registry on or after one calendar month following the 21st birthdate of the youngest child named in the registration document, eg, if the birth date of the younest child is 05 Mar 1988, then this document shall be purged on or after 05 Apr 2009.

2. Superseding Documents. This document may have been superseded by subsequent orders, which may or may not be registered in the National Registry. It is the obligation of any party requesting a copy of registered documents to check with the appropriate state court to determine if it has been superseded.

3. Certified Copies. Only certified or exemplified copies of custody and/or support orders shall be placed in the National Registry.

4. A facsimilie copy of the cover sheet and its underlying order shall be admissible in any state or federal court pending receipt of a certified copy of the registered order from the National Regisitry.

5. The same registry number shall be used for all documents registered when the same parties are involved, subject to the following terms:

5.1 Same parties as the original registration, a new party is added.

5.2 Same parties as the original registrtation, a new court has been designated.

5.3 Same parties as the original registration, number of children differ.

5.4 The suffix -001 shall be used for the first registration and each subsequent registration shall change this suffix by one, eg, first registration is -001, second registration is -002, etc.

5.5 When registration of a document is sought where one of the parties or children is a party or child named in a previous registration, but the document that is sought to be registered is unrelated to the prior document, a new registration number shall be assigned with the prior number cross referenced on this registration. The new number shall be placed in the Cross Reference box on the prior document.

Chapter 4

LEGAL AND JUDICIAL PRACTICES IN PARENTAL ABDUCTION CASES

Part A by Linda K. Girdner, Ph.D.
Part B by William M. Hilton, Esq.

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Chapter 4

LEGAL AND JUDICIAL PRACTICES IN PARENTAL ABDUCTION CASES

Part A by Linda K. Girdner, Ph.D.
Part B by William M. Hilton, Esq.

Introduction

From the legal research on statutes and recent case law, one learns of the laws governing parental abduction cases. To understand how these laws are effectively utilized and applied, and the obstacles that exist to prevent them from being so, one must examine existing practices. In Part A, Dr. Linda Girdner describes practices in parental abduction cases based on surveys of nationwide samples of judges and attorneys. In Part B, Mr. William Hilton, describes jurisdictional conflicts in interstate custody cases based both on case law and on his extensive experience as an attorney specializing in parental abduction and child custody jurisdiction issues.

Part A: Practices of Judges and Lawyers: Survey Results

by Linda K. Girdner, Ph.D.

Characteristics of the Sample

The samples were designed to include only attorneys and judges who have had direct experience with parental abduction cases. As a result, the findings should not be considered representative of lawyers or judges generally, or of family lawyers or domestic relations judges in particular. This is particularly true in relation to the attorneys, as the questionnaires were sent out to a number who are known to be quite knowledgeable on this topic. Thus, it is likely that the choice of respondents leads to a depiction of practice which may be better than the norm.

The samples were identified through a number of sources. First, requests were made to the state Supreme Court Justices and the ABA Family Law Section state representatives to identify attorneys and judges in their states. Then these lists were supplemented by individuals identified through the National Conference of Juvenile and Family Court Judges and the Association of Family and Conciliation Courts memberships. A snowball technique was used to identify additional respondents.

Questionnaires were sent to 121 judges, with at least two in each state and the District of Columbia. Ninety-seven judges (80.2%) responded, with 14 stating that they lacked the experience to answer the questionnaire and 83 returning completed questionnaires. This is a completed response rate of 68.6% with 48 states represented.

Questionnaires were sent to 134 attorneys, including at least two from every state and the District of Columbia. Ninety-five attorneys (70.9%) responded, 17 of whom stated that they had insufficient experience to answer the questions and 78 of whom returned completed questionnaires. This is a completed response rate of 58.2%. Completed responses included attorneys from 44 states. About ten percent of respondents worked in a legal services agency.

The difficulty in identifying respondents who had experience in parental abduction cases and the modest response rates,[1] despite the use of methods[2] designed to increase response rates, may be indicative of the problems many clients face--both in terms of finding experienced counsel and appearing before an informed judge.

Knowledge and Experience

Experience

About half of the judges had been involved in ten or fewer intrastate parental abduction cases. About three-fourths of the judges were involved in ten or fewer interstate cases. In terms of international experience, three-fifths of the judges had zero or one case and about a quarter had two to five international cases.

Two-thirds of the attorneys had been involved in ten or fewer intrastate cases and three-fourths had experience in ten or fewer interstate cases. About one-third had represented a party in an international case, with almost a quarter having been involved in two to five cases.

It appears that the cases do not occur frequently enough for most of the attorneys and judges in this sample to have more than an occasional case. The exceptions are perhaps a small number of attorneys nationwide who specialize in this area of child custody jurisdiction and parental abduction.

However, when compared to the attorneys interviewed by UCSF in connection with cases randomly selected from the files of the

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[1]It is likely that a significant number of those who did not return the surveys felt they had insufficient experience to answer it. The findings presented in this chapter are based on those who returned completed questionnaires.

[2]Dillman, Don A. 1978 Mail and Telephone Surveys: The Total Design Method, New York: John Wiley.

National Center for Missing and Exploited Children (NCMEC),[3] the difference in experience is striking. Table 1 indicates that almost two-fifths of the NCMEC sample of attorneys had no experience with interstate cases and over three-quarters had not handled an international case.

Table 1

Comparison of Attorney Experience

	Attorney Survey Sample (ABA)	NCMEC Random Sample (UCSF)
Interstate Cases	n=78	n=39
none	0	38.5
1-5	53.8%	48.7%
6-10	21.9%	2.6%
over 10	17.9%	5.1%
don't know/missing	6.4%	5.1%
International Cases	n=78	n=39
none	14.1%	76.9%
1-5	59.0%	23.1%
6-10	5.2%	0
over 10	1.3%	0
don't know/missing	20.4%	0

Consequently, it appears that the sample of attorneys used in the study of legal and judicial practices represents practitioners who are more experienced in parental abduction cases than the randomly selected family attorney. Even so, with a few exceptions, child custody jurisdiction and parental abduction cases are not a significant portion of their practices.

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[3]See Chapter 12 in Volume Two of this Report for the results of the research using the NCMEC sample. It should be noted that although the attorneys in the NCMEC sample had not had substantial experience in these cases, they may have sought advice from NCMEC's legal counsel, Judith Schretter, who is very experienced in these cases.

Familiarity with Applicable Law

Questions relating to familiarity with laws reveal that lack of knowledge is a critical problem. Table 2 summarizes the responses from the samples of judges and attorneys. Half of the judges surveyed said that counsel rarely or never adequately informed the court regarding the applicable provisions of the PKPA. Two-thirds of the attorneys said that opposing counsel had not been familiar with the PKPA and over forty percent said that judges were not familiar with it.

Lack of knowledge of the Hague Convention on the Civil Aspects of International Child Abduction appeared as a greater problem. Three-fifths of judges said they were rarely or never adequately informed about the Hague Convention by counsel, whereas essentially the same percentage of attorneys said that judges were not familiar with the Hague Convention. Even more attorneys (69.2%) responded that, in their experience, opposing counsel was not familiar with the Hague Convention.

Thus, lack of knowledge of applicable federal law and an international treaty is clearly a major problem confronting half to two-thirds of the attorneys and judges faced with child custody jurisdiction and parental abduction cases, according to these respondents.

Knowledge of the UCCJA, as it exists within one's own state laws, appears to be less of a problem, but not an insignificant one. Over a third of the judges reported that counsel routinely informed the court of the UCCJA when applicable. About a sixth said that the UCCJA was rarely or never brought to their attention by counsel. Similarly, just under one fifth of the attorneys said that opposing counsel was not familiar with the UCCJA. Judges appear more knowledgeable than attorneys, as only a few attorneys said that judges were not familiar with the UCCJA.[4]

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[4]Lack of sufficient understanding of the UCCJA and the PKPA was evident in numerous recent case opinions discussed throughout Chapter 3.

Table 2

Familiarity with Applicable Laws

Respondent: JUDGES

How often have counsel adequately informed the court regarding applicable provisions of:

	UCCJA	PKPA	Hague
Routinely	37.3%	9.6%	4.8%
Sometimes	43.4%	32.5%	13.3%
Rarely	15.7%	30.1%	25.3%
Never	1.2%	20.5%	34.9%
Not Applicable	1.2%	6.0%	18.1%

Respondents: ATTORNEYS

On average, what has been the familiarity of opposing counsel with:

	UCCJA	PKPA	Hague
Not Familiar	19.2%	65.4%	69.2%
Familiar	64.1%	29.5%	11.5%
Very Familiar	14.1%	2.6%	0
Not Applicable	0	0	15.4%

On average, what has been the familiarity of judges with:

	UCCJA	PKPA	Hague
Not Familiar	6.4%	42.3%	60.3%
Familiar	60.3%	48.7%	15.4%
Very Familiar	30.8%	3.8%	1.3%
Not Applicable	0	2.6%	19.2%

Perceived Motivation to Abduct

Respondents were asked their opinion as to the three most common reasons for a parent to abduct his or her child in the cases they had handled. The three most commonly selected reasons by judges and attorneys were the same, indicating substantial similarity in their perceptions of the motivation to abduct, despite the possible differences in the cases they handled. The most frequent response was a "recent or anticipated adverse custody or visitation order." The second most frequent response was "revenge against or punishment of the other contestant(s)," and the third was "protection of the child from alleged abuse or neglect." An equal number of attorneys selected "frustration with legal process" as the third response. Table 3 shows the top seven reasons chosen out of fifteen.

Table 3

Most Frequently Cited Reasons to Abduct
As Perceived by Judges and Attorneys

	Respondents	
Reason	Judges	Attorneys
Recent or anticipated adverse custody or visitation order	50.6%	69.2%
Revenge against or punishment of the other contestant(s)	42.2%	51.3%
Protection of the child from alleged abuse or neglect	37.3%	30.8%
Frustration with the legal process	25.3%	30.8%
Perception of left-behind parent as bad or unworthy	25.3%	25.6%
Recent or anticipated relocation of either contestant	27.7%	14.1%
Inability to accept the end of marital relationship	19.3%	14.1%

Prevention

Circumstances which led attorneys to request safeguards to prevent an abduction and judges to order them included a parent threatening to abduct the child (73.1% of attorneys and 84.3% of judges), a prior abduction (51.3% and 80.7%),and a foreign national with ties to another country (53.8% and 67.5%).

The attorneys in the sample reported that they had requested a variety of safeguards to prevent an abduction. Table 4 indicates the types of requests made and granted.[5] The figures provided for each item in Table 4 combine the percentages of respondents who answered "routinely," "sometimes," and "rarely" to the questions about safeguards.

Table 4

Requests for Safeguards to Prevent an Abduction

	Respondents		
	Attorneys		Judges
Type of Safeguard	Order Requested	Request Granted	Request Granted
Order prohibiting removal of child from jurisdiction	87.2%	84.6%	92.8%
Order requiring posting of bond	69.2%	48.7%	55.4%
Order giving warning that breach of custody or visitation provisions may subject the violation to civil and/or criminal penalties	58.9%	59.0%	81.9%
Specifying visitation	89.7%	89.75	92.5%
Supervised visitations	88.5%	91.0%	92.7%
Suspension or termination of visitations	80.8%	68.0%	84.4%
Restrictions on passports	55.2%	51.4%	67.4%

More judges routinely granted requests to prohibit the child from being removed from the jurisdiction and to include warnings to the parties of civil or criminal sanctions. Other deterrents to abduction, such as requiring the posting of bond and suspending or terminating visitation rights, which may serve as greater deterrents, are ordered less often.

Table 5 depicts how most attorneys and judges reported that these two safeguards were rarely or never granted. Courts may see these as punishing a parent, who has not yet violated a

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[5]Preventive measures are also addressed in Section V of Chapter 3.

custody order. Consequently, courts are less likely to impose these restrictions unless strong evidence exists that the child otherwise will be abducted. If courts were better able to assess which children were at high risk for an abduction,[6] perhaps judges would be better able to weigh that risk against the infringements on the parent that preventive measures may produce.

Over seventy percent of judges (71.1%) answered that they had denied petitions for safeguards to prevent abductions. The reasons for denying requests for safeguards included insufficient evidence (63.3%), belief that the plaintiff's fear was unfounded (60.2%), perceived vindictive motives of the plaintiff[7] (38.6%), and lack of jurisdiction (22%).

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[6]Research to identify risk factors for parental abduction is being undertaken by the American Bar Association Center on Children and the Law in collaboration with the Center for the Family in Transition and funded by a grant from the Office of Juvenile Justice and Delinquency Prevention (OJJDP 92-MC-CX-0007).

[7]The use of a guardian ad litem in proceedings involving the request for safeguards could help the court differentiate between the potential risk for abduction and possible vengeful motives of the other parent.

Table 5

Frequency of Requests for Safeguards

	Respondents		
	Attorneys		Judges
Type of Safeguard	Order Requested	Request Granted	Request Granted
Order requiring posting of bond			
Routinely	3.8%	6.4%	4.8%
Sometimes	33.3%	20.5%	15.7%
Rarely	32.1%	21.8%	34.9%
Never	21.8%	17.9%	37.3%
Suspension or termination of visitations			
Routinely	3.38%	1.3%	4.8%
Sometimes	24.4%	15.4%	38.6%
Rarely	52.6%	51.3%	41.0%
Never	9.0%	16.7%	8.4%

Jurisdiction and Pleadings

Pleadings and Service

A third of the attorneys stated that they routinely sought an initial custody determination in their state after the child was abducted from that state. Slightly less than a third (32.1%) stated they did this sometimes, and about one fifth (19.2%) rarely have.

When a parent abducts and the left-behind parent seeks court action relating to the issuance of a custody order or a modification, the other party needs to be served. Clearly when abductors conceal their whereabouts service can be difficult, if not impossible. Almost 60% of the attorneys stated that they have requested service by publication when the whereabouts of the contestant was unknown, with about a quarter of these saying they do this rarely. Although almost three-quarters of the judges reported that they have granted requests for service by publication, only 19.3% indicated that they routinely did so.

Under the UCCJA, calendar priority can be requested on the jurisdictional issues in interstate parental abduction or child custody cases in order for them to be handled expeditiously. In the sample of respondents, judges and attorneys were similar in their responses as to how frequently attorneys requested expedited hearings. Over 40% of both attorneys (46.2%) and judges (43.4%) reported that they, or the attorneys before them, routinely requested expedited hearings in these matters. Over 30% of attorneys (32.1%) and judges (34.9%) said they, or the attorneys before them, sometimes requested calendar priority with about 12% of attorneys and judges saying rarely.

A difference emerges in the experience of the attorneys and judges as to how often the attorneys' requests were granted. Whereas over half of the judges (56.6%) reported that they routinely granted such requests, only 37.2% of the attorneys reported that the judges from whom they made such requests routinely granted them. It is unclear as to why a significant percentage of judges do not more frequently grant calendar priority. Delays in court hearings are to the abductor's advantage.

Jurisdiction

Judges should set forth in their custody determinations the basis for their exercise of jurisdiction, so that the propriety of their exercise of jurisdiction will be evident for purposes of enforcement. This is particularly critical in the event that conflicting decrees are issued. Determining child custody subject matter jurisdiction is not a matter relevant solely for parental abduction cases. Every child custody determination made by a court should include the basis of jurisdiction which enables the court to act.

Although 84.6% of the attorneys reported that they requested that the judge set forth the basis of jurisdiction, only two-fifths (41.0%) of the attorneys did so routinely. Similarly 86.7% of the judges reported that they have expressly set out the basis for jurisdiction. However, just over half claimed to do so routinely. The failure to set forth the basis of jurisdiction can lead to conflicting decrees and difficulties in enforcement.

There are a number of bases for a court to decline jurisdiction, even when the court has a basis for exercising jurisdiction. Both judges (92.8%) and attorneys (87.2%) most frequently cited not being the "home state" as the reason for declining jurisdiction. Other frequent responses were proceeding pending in another state (89.2% and 79.5%), and the original decree state having continuing jurisdiction (88% and 80.8%). Less frequent bases for declination of jurisdiction were forum non conviens (63.9% and 71.8%) and reprehensible conduct (56.6% and 73.1%).

Judges in the survey were asked to explain how long they retained continuing jurisdiction after the custodial parent and child have moved to another state when the noncustodial parent have remained in their state. Almost two-fifths (39.8%) stated that continuing jurisdiction extended more than one year. About one-fifth (21.7%) said 6-12 months and somewhat fewer (16.9%) stated up to six months. About fifteen percent said that the time was set by statute. This lack of uniformity and specificity in the time frame for continuing modification jurisdiction was identified as a problem in Section II A.5. chapter 3.

About three-fourths of the attorneys (76.9%) have sought a custody determination in a parental abduction based on emergency jurisdiction. The experience of 70.5% of the attorneys was that the courts have issued temporary custody in the exercise of emergency jurisdiction at some point, requiring the client to seek relief in the state with proper non-emergency jurisdiction. Over two-thirds of the judges (68.7%) reported that they have issued temporary custody orders when exercising emergency jurisdiction, although only a fifth (19.3%) reported doing so routinely. This lack of uniformity and specificity as to the duration of orders based on emergency jurisdiction was identified as a problem in Section II.A.4. of Chapter 3.

Preventing Simultaneous Proceedings

Affidavits

UCCJA § 9 requires that parties provide the court in their first pleadings, or by affidavit under oath attached to that pleading, information as to where the child has lived for the past five years, with whom the child has lived and if there have been any court proceedings concerning the child. From this document, the court would know who all the potential contestants are, whether the court has a basis for jurisdiction, and whether contact would need to be made with a court in a sister state.

In the survey of attorneys, 82.1% responded that they have filed affidavits as to the past and present home addresses of the abducted children, with only 59% stating they did so routinely. When asked about the actions of opposing counsel with regards to filing affidavits, three-quarters (74.4%) of the attorneys stated that other attorneys did so, but only a fifth (20.5%) claimed that opposing counsel did so on a routine basis.

These findings indicate that a substantial portion of attorneys fall short of the required practice in relation to the affidavit requirement. The reasons for this are not known.

Almost eighty percent (78.2%) of the attorneys have had cases involving domestic violence. The address information provided in the affidavit can put abused women at risk if

released to the abuser. Consequently, attorneys can request that the address information in the affidavit not be released to the other party. Table 6 indicates the frequency with which the requests are made and granted.

Table 6

Request to Prevent Release of Address Information in Affidavit due to Domestic Violence

Frequency	Attorneys		Judges
	Order Requested	Request Granted	Request Granted
Routinely	24.4%	16.7%	32.5%
Sometimes	25.65%	30.8%	25.3%
Rarely	11.5%	11.5%	6.0%
Never	16.7%	14.1%	12.0%

It is apparent from Table 6 that the majority of attorneys and judges have, at one time or another, prevented the release of the address information. However, under a quarter of the attorneys made such a request in cases involving domestic violence on a routine basis. Furthermore, not all requests are granted by the court. Since the request can help ensure safety and does not deprive the court of the information, it is unclear as to why the requests are not more frequently sought and granted in cases involving domestic violence.

Stay Proceedings

When custody determination proceedings concerning children are pending in a sister state, Section 6 of the UCCJA provides for a stay of proceedings to allow courts to communicate, with the objective of one court ultimately proceeding to exercise jurisdiction. (The PKPA, 28 U.S.C. 1738A (g), has a similar provision.) Most of the judges (85.5%) have stayed proceedings under these circumstances, but only over a third (36.1%) have done so routinely. Similarly three-fourths of the attorneys have requested a stay when proceedings were pending simultaneously in another court, with over half of them (59%) doing so routinely.

Inter-court Communications

The UCCJA, 9 ULA § 6 (c), requires judicial communications when there are actions pending in two forums. Attorneys have the responsibility to bring the necessity for judicial communication to the judges' attention, although judges can initiate the

contact on their own. Most of the attorneys (84.6%) have done so, with only a third (34.6%) routinely requesting inter-court communication. According to the attorneys, judges do not always grant the request, despite the mandate of the UCCJA. Just over three-fourths of the attorneys said that judges granted their request, with only 28.6% stating that it was routinely granted.

More of the judges surveyed (91.6%) stated that in their cases they had initiated inter-court communication, with 44.6% stating that they did so routinely in interstate parental abduction cases. Three-fifths stated that the court in the other jurisdiction routinely responded in sufficient time for their views to be considered. Three-quarters stated that they had been contacted by judges in other states on interstate custody matters.

Respondents in the judges' and attorneys' surveys were asked about methods of interstate communication. Over 80% of the judges (84.3%) have used a telephone call between judges in the two jurisdictions; 38.6% have used a conference call with counsel present; almost a fifth (19.3%) have used a fax machine, and over a half (51.8%) used the mail. Three-quarters believe that the telephone call between judges is the most effective method, with under ten percent describing the conference call with counsel as most effective.

Over half (57.8%) of the judges in the survey routinely summarized the inter-court communication for the record. In the attorney survey, only 37.2% of the respondents stated that the judges in their cases routinely summarized the communication from another court for the record.

Evidence

Prior Proceedings

Pursuant to the UCCJA, 9 ULA § 18-20, courts are required to request certified copies of the transcripts of prior custody proceedings regarding a child, along with any relevant documents, such as prior custody orders, pleadings, social studies. When asked how often they had made such a request, only 5.5% of those responding stated they always did so, 45.2% said they sometimes did, 27.4% said they rarely did, and 21.9% said they never did.

About twelve percent of attorneys reported that the judges handling their cases always obtained certified copies of transcripts. Less than a third said that the judges sometimes did and about a quarter said they rarely did. Almost a third (31.8%) stated that the court never obtained certified copies of transcriptions of prior court proceedings in the cases they handled.

Requesting Evidence from Another State[8]

Over three-fifths (61.5%) of the attorneys have requested the court to obtain evidence from other states in interstate parental abduction cases. Although over half (55.1%) stated that requests were granted at varying levels of frequency, about half of those stated that requests were rarely granted. The experiences of the judges were similar, with 62.7% having granted such requests but half of these doing so only rarely. Of judges who made such requests, almost all stated that sister states were responsive to them. About half of the judges indicated that they had never received a request from a sister state to provide evidence, with more than a quarter stating that they rarely did.

Both attorneys (47.4%) and judges (56.6%) most frequently stated that a request for the court in the other state to order social studies of the child and/or family members was used as a method of obtaining evidence from another state. One third of the attorneys and 16.9% of the judges have requested or directed that depositions, interrogatories, and other discovery with regard to person in another state be conducted. About a quarter of the attorneys (24.4%) and 18.1% of the judges in the survey have requested the court in another state to order a contestant to appear in the proceeding. About a fifth of the attorneys (21.8%) and 19.3% of the judges in the survey have requested the court in another state to hold a hearing and provide a transcript.

Both attorneys and judges chose social studies of the child and/or family member as the most effective method of obtaining interstate evidence. Of those answering this question, over three-quarters (76.6%) of the judges and almost half (46.3%) of the attorneys selected social studies, whereas only 4.2% of judges compared to 34.1% of attorneys selected depositions, interrogatories, and other discovery with regard to persons in another state.

It appears from the data on methods of obtaining evidence from other states that, aside from social studies, other means of obtaining evidence from other states are underutilized. The clear preference of judges for social studies may explain the less frequent use of other methods. Only 13% of the attorney reported that their requests regarding evidentiary methods were routinely granted.

A possible conclusion is that judges should more routinely direct that depositions, interrogatories, and other discovery with regard to persons in another state be conducted, since

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[8]Further discussion of interstate evidence collection is provided in Section III.B. of Chapter 3.

attorneys find them to be effective discovery tools. One possible explanation for the difference between attorneys and judges responding to discovery methods is that attorneys are likely to see discovery methods as sometimes effective in settling a case out of court, whereas the judge may be examining effectiveness solely in light of the case before the court.

Pursuant to the PKPA, the court can request that the state Parent Locator Service contact the Federal Parent Locator Service to locate alleged abductors. About a quarter of the judges have ever made such a request.

Searching for the Child[9]

When attorneys are representing a left-behind parent and the whereabouts of the child are unknown, the attorney needs to assist the client in determining the whereabouts of the child. Attorneys were asked to identify those persons, organizations, and governmental entities from whom they or their clients sought assistance in locating parentally abducted children. Table 7 depicts their responses.

The most heavily utilized sources of assistance in locating the children were police or sheriff departments; the courts, for the purpose of obtaining subpoenas; private investigators; and schools. It is interesting to note that attorneys are much more likely to use schools as a location source than are state missing children's clearinghouses. The high use of private investigators reflects that many of the attorneys are representing clients who can afford the costs of private investigators over and above the legal fees, court costs, and location expenses.

The next most frequently used set of resources include those available when a child has been removed from the state. These include the FBI; the courts, for access to the Federal Parent Locator Service; and prosecutors. Prosecutors are generally available in intrastate cases only in the few states in which the intrastate abduction is a felony.

The third level of sources used by 20-25% of attorneys and their clients in locating parentally abducted children include the state Parental Locator Service (PLS), missing children's non-profit organizations, and the National Center for Missing and Exploited Children (NCMEC). PLS, NCMEC, and most missing

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[9]Further discussion of location assistance is provided in Section VII of Chapter 3.

children's non-profit organizations[10] assist in location only when the left-behind parent has a court order of sole custody. Consequently, attorneys representing parents who are pre-decree, unwed, noncustodial, or joint custodial would not be able to use them as sources of location assistance. Thus, the low level of use may reflect the type of case.

Table 7

Location Assistance

Respondent: ATTORNEYS

Persons, organizations, or government entities from whom attorneys and their clients have sought location assistance.

	#	%
Courts, for subpoenas	45	57.6%
Courts, for access to FPLS	23	29.5%
Police/Sheriff	54	69.2%
Prosecutor	27	34.6%
FBI	25	32.1%
NCIC	11	14.1%
NCMEC	16	20.5%
State Clearinghouses	4	5.1%
State Parent Locator Service	18	23.1%
Missing Children npos	17	21.8%
School (prevention, flagging)	33	42.3%
Bureau of Vital Statistics (flagging of birth records)	8	10.3%
Private Investigators	44	56.4%
Other	8	10.3%

Those sources used least frequently are the National Crime Information Center (NCIC), the Bureau of Vital Statistics (for flagging birth records), and the state missing children's

[10]Child Find of America, Inc. is an exception, as it will assist noncustodial parents in the search for their children, if their court-ordered visitation rights have been violated.

clearinghouse. Civil attorneys do not have direct access to NCIC and most likely direct their interest to police, sheriff or prosecutors in this regard. State missing children's clearinghouses were the least utilized of all sources for assistance in locating parentally abducted children. This indicates the need to educate attorneys about their state missing children's clearinghouse and to educate clearinghouses on the need to bring civil attorneys into their network of communication and coordination.

Of the 82% of attorney-respondents who have had cases where the whereabouts of the parentally abducted children were unknown, over half (53.1%) stated that the children were always located. About two-fifths (39.1%) said that the children were sometimes located; and a few said that they were rarely (6.3%) or never (1.6%) located.

Enforcement

The Child Custody Registry

Under 9 ULA § 6(b) the court is required to examine the pleadings supplied by the petitioner under 9 ULA § 9 and is also required to examine the Child Custody Registry established under 9 ULA § 16.

Over half (55.4%) of the judges stated that the clerk of their court maintains a registry for filing out-of-state custody orders. About a sixth (14.5%) said the clerk did not and about a quarter (25.3%) of the judges did not know if the clerk maintained a registry. Less than half (45.8%) stated that a fee is charged to file out-of-state custody papers.

Procedures for Enforcing Child Custody Orders

There are a variety of means of enforcing child custody orders; not all of them are permissible by statute or recognized by the court in all jurisdictions. Table 8 and Table 9 indicate the types of actions taken by attorneys and recognized by judges in the surveys when enforcing the rights of a custodial and a noncustodial parent.

Over half (56.6%) of the judges noted that they have had cross-actions for modification filed in their courts in response to enforcement actions when the original decree state had continuing modification jurisdiction. Of these judges, 60.2% have stayed enforcement pending the outcomes of modification actions, 55.4% have enforced original decrees and dismissed modification suits, and 51.8% have modified decrees. That the majority of the judges have either stayed enforcement of valid decrees or modified decrees when the original decree state had continuing modification jurisdiction

may indicate widespread misinterpretation or noncompliance with this important requirement of the law.

Table 8

Actions Taken by Attorneys
To Enforce Rights

	Of Custodial Parents	Of Noncustodial Parents
Decree filed in out-of-state court	88.3%	79.9%
Petition to enforce order	95.8%	87.2%
Petition to "pick-up" order	84.4%	52.6%
Petition for order to show cause why child should not be delivered	79.0%	79.6%
Petition for order to show cause why other contestant not to be held in contempt	86.1%	82.8%
Petition for writ of habeas corpus	70.7%	53.3%
Petition for declaratory/injunctive relief	55.7%	41.5%
Petition for writ of mandamus/prohibition with respect to court's action	27.7%	47.6%

Table 9

Actions Recognized by Judges
To Enforce Rights

	Of Custodial Parents	Of Noncustodial Parents
Decree filed in out-of-state court	80.7%	75.9%
Petition to enforce order	86.7%	81.9%
Petition to "pick-up" order	49.4%	43.4%
Petition for order to show cause why child should not be delivered	73.5%	74.7%
Petition for order to show cause why other contestant not to be held in contempt	73.5%	75.9%
Petition for writ of habeas corpus	67.5%	48.2%
Petition for declaratory/injunctive relief	26.5%	26.5%
Petition for writ of mandamus/prohibition with respect to court's action	14.5%	13.3%

Child Placement

The recovered child is not necessarily returned immediately to the left-behind parent, but instead may enter a temporary placement. About four-fifths (79.5%) of the judges stated that state law authorizes them to place a child with social services. Similarly, 71.8% of the attorneys reported that law enforcement had placed children temporarily in the care of social services, although more than half of those stated that this was a rare occurrence. Table 10 indicates the circumstances leading to interim placement and Table 11 shows the type of placement.

Table 10

Circumstances Leading to Interim Placement of Abducted Child In Caseloads of Respondent Judges and Attorneys

	Respondents	
Types of Circumstances	Judges	Attorneys
Left-behind parent not present	20.55	29.5%
Conflicting custody orders	26.5%	15.4%
Court believes too traumatic to return after extended absence	31.3%	15.4%
Allegations of child abuse	63.9%	42.3%
Prevent abducting custodial parent from fleeing with child	43.4%	26.9%

Table 11

	Respondents	
Type of Placement	Judges	Attorneys
Placed with social services	57.8%	55.1%
Placed with relatives	57.8%	24.4%
Allowed to stay with abductor pending final disposition	39.8%	29.5%

Guardian ad litem

The role of a guardian ad litem in parental abduction cases is difficult to evaluate.[11] Judges in the survey were asked to identify the situations in which they had used guardians ad litem. These included in preventing abductions (25.3%), in locating abducted children (16.9%), in recovering abducted children (19.3%), and in the return of abducted children (24.1%). Far more frequently (51.8%), judges reported that they have used guardians ad litem in determining the custody of the abducted

[11]The review of statutes and recent case law reported in chapter 3 did not identify any statutes relating to guardians ad litem in parental abduction cases nor any case law which was instructive to the role they might play in parental abduction cases.

children. Judges who have used guardians ad litem, find them more of a help than a hindrance.

Costs[12]

The cost of legal fees charged clients in parental abduction cases ranged from $300 to $125,000 with an average cost of $11,447.[13] Due to the differences among cases in complexity and legal actions taken, averages are not particularly meaningful. Eleven attorneys reported that they have had a total of fifty-seven occasions in which they believed that potential clients were unable to retain them, after initially consulting them, because of their inability to pay legal fees.

Over half (59%) of the attorneys routinely have petitioned the court for an award of costs and expenses, with 87.2% having done this with varying regularity. Only 7.7% of the attorneys reported that these requests were routinely granted, although three-quarters stated that the requests were granted sometimes (25.6%) or rarely (41%).

The amounts of the awards varied. Eleven were $500 or less; four were between $501 -$1,000, and five were between $1,001-$5,000. Middle range awards included one of $10,000, two between that and $20,000, and one at $40,000. Only two high awards were noted: One for $125,000 and one for $450,000. It appears that costs and expenses are not routinely awarded, and when they are, they are frequently quite modest.

Over a third (35.9%) of the attorneys in the survey stated that they have filed an appeal in a parental abduction case. Estimated costs of the appeal were provided regarding thirteen cases, with an average cost of $8,169 per appeal. The range of costs were from $2,000 to $25,000. Over a quarter (29.5%) of the attorneys explained that they have had clients who decided not to appeal adverse rulings for financial reasons. Particularly when the amount needed to appeal is not easy to accurately forecast in advance and is added to already existing legal fees, the cost clearly presents a financial obstacle.

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[12]Further discussion of financial assistance is provided in Section VI of Chapter 3.

[13]Attorneys were asked to give their range of fees for custody enforcement or parental abduction cases. The figure $ 11,447 represents the midpoint of the ranges averaged across respondents.

Thirteen attorneys (16.7%) reported that they had filed tort actions for damages stemming from a parental abduction case. However, only three attorneys (24% of those who filed) reported that damages were awarded in their cases. Two of these stated that damages were actually collected. Because tort actions are normally outside the scope of practice of many family law attorneys, it is possible that some respondents referred tort cases to other attorneys.

Five attorneys (38.5% of those who filed tort suits) reported that the tort suit aided in the location of the children. Consequently, the "success" of the tort suit needs to be measured not simply on how it alleviates the financial burdens of the left-behind parent, but also how it can serve secondarily as a strategy for locating the child.

Criminal proceedings

The role of the civil attorney in the criminal aspects of parental abduction has received little attention. Before the attorney can file the custody order in the appropriate state or request the court direct law enforcement to pick-up the child, the whereabouts of the child must be known. As will be seen in Chapters 8 and 10, the criminal status of the case has a great impact on the resources available to assist in the location of the child.

About two-thirds (67%) of the attorneys have advised their clients to seek criminal charges against alleged abductors, with over a third (37.3%) of these attorneys doing so routinely. Two-thirds of attorneys in the sample had at least one case in which the prosecutor filed criminal charges, with 11.5% having four or more cases in which criminal charges were brought.

Summary and Recommendations

The surveys of attorneys and judges were designed to determine existing practices of attorneys across the country who represent parents in child custody jurisdiction and parental abduction cases and judges who hear these cases. The experience levels of attorneys and judges sought out as respondents indicate that parental abduction cases generally comprise a very small part of their caseloads. Most respondents reported that, in their experience, attorneys and judges were not adequately informed of the PKPA and the Hague.

When asked about practices specifically required or permitted under the UCCJA, a significant number of respondents reported that they did not routinely follow these practices.

Recommendations:

Continuing education and training should be provided to judges and attorneys in laws applicable to parental abduction cases. Collaborative efforts with the American Bar Association Family Law Section, the National Council of Juvenile and Family Court Judges, the Association of Family and Conciliation Courts and other similar organizations should be encouraged and supported through funding from the Office of Juvenile Justice and Delinquency Prevention.

Diverse methods of disseminating information should be used, including satellite teleconferencing, interactive computer learning modules, articles in scholarly and practical publications, bench books for judges, and practice tips manuals for attorneys. More experienced judges and attorneys should serve as mentors for those with less experience. In addition, a parental abduction curriculum should be developed for circulation to law schools.

Part B: Jurisdictional Conflicts in Interstate Child Custody and Parental Abduction Cases

by William M. Hilton, CFLS[1]

This section examines the concurrent exercise of child custody jurisdiction by sister state court that results in contradictory child custody orders, identifies legal impediments to resolving such jurisdictional disputes, and offers general recommendations for removing these obstacles.

Statement of the Problem

We start with two pieces of seemingly unrelated data:

1. The United States has a population of over 226,000,000. The Official Airlines Guide for August 1991 shows six flights a day leaving San Francisco for New York with one way fares ranging from $424 to $605.[2] Flight data for Los Angeles is similar. In 1989 the number of passengers arriving and departing from San Francisco was over 39,000,000. Figures for other major airports are similar.

2. In any given year the number of children involved in a divorce action is slightly over 1,000,000.[3]

Coupled with the fact that the only restriction on travel within the United States is an economic one, the two figures show that the potential exists for the removal of children from their settled place of residence to some other forum.

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[2]$605 is roughly the monthly net income of a person who earns $5.00 per hour and works a 40 hour week.

[3]1987 figure. The World Almanac and Book of Facts 1991 (World Almanac New York).

Prior to July 1, 1969[4] the overwhelming basis for child custody jurisdiction was the mere presence of the child in the forum. Because this encouraged a "flee and plea"[5] syndrome, the National Conference of Commissioners on Uniform State Laws eventually drafted the Uniform Child Custody Jurisdiction Act (UCCJA). The UCCJA provided for jurisdictional rules which, if followed, were supposed to ensure that a custody decree rendered in one jurisdiction in conformity with the UCCJA would be enforced, and not modified, in another jurisdiction. The UCCJA was intended to limit exercise of jurisdiction by, inter alia, eliminating as a basis of jurisdiction the mere physical presence of the child (except in emergencies). This deprived the abducting parent of any legal advantage in a new state based solely on the child's presence there.

The stated goal of limiting the exercise of jurisdiction was not uniformly achieved for a variety of reasons, a principal one being the seeming conflict between, on the one hand, many courts' views of what was in the best interests of the child before the court and, on the other hand, the direct, specific jurisdictional language of the UCCJA. Trial courts should not even consider the merits of the underlying custody dispute until after a decision has been made as to whether the court has and should exercise jurisdiction pursuant to the UCCJA (and consistent with the PKPA). Yet, trial courts often ignore the threshold jurisdictional issue, and instead weigh the UCCJA's jurisdictional rules against the best interests of the child who is before the court. In doing so, these courts often unintentionally neglect to consider the best interests factor that underlies the UCCJA:

> The harm done to children by these experiences can hardly be overestimated. It does not require an expert in the behavioral sciences to know that a child, especially during his early years and the years of growth, needs security and stability of environment and a continuity of affection. A child who has never been given the chance to develop sense of belonging and whose personal attachments when beginning to form are cruelly disrupted, may well be crippled for life, to his own lasting detriment and the detriment of society.[6]

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[4]This is the day that North Dakota enacted the Uniform Child Custody Jurisdiction Act, the first state to do so.

[5]Fleck, Child Snatching by Parents: What Legal Remedies for "Flee and Plea", 55 Chi. Kent L. Rev. 303 (1979).

[6]Prefatory Note to the UCCJA, Master Edition, August 7, 1988.

It is to be understood that, despite the frequent application of the UCCJA and the frequent review of its Prefatory Note and Comments, cases involving the jurisdictional rules of the UCCJA are but a small minority of all of the cases that a family court will hear in any given period of time. It is not that the court is unfamiliar with the UCCJA, it is that this familiarity is literally "swamped out" by the myriad other cases involving children that do not require application of the UCCJA. The court is predisposed to rule on the perceived best interests of the child even where the court knows, or should know, that this is contrary to the express jurisdictional provisions of the UCCJA.

Further, many trial courts feel that an action to determine the proper jurisdiction to hear a custody determination merely adds another layer of litigation to the baseline dispute and consequently prolongs the litigation. What the courts have failed to grasp is that if there was a prompt and certain determination of custody jurisdiction, as is the mandate of both the UCCJA and the later enacted Parental Kidnapping Prevention Act, there would be substantially and significantly fewer parental kidnappings.

While the UCCJA was of considerable help, decisions from the various appellate courts carved vast exceptions into the enforcement and non-modification provisions of the UCCJA. Thus there remained some legal incentive to seize the child and run to a sister state in hopes of obtaining a modification of an adverse order, or possibly defeating an enforcement action. Because of this and other factors, Congress enacted the Parental Kidnapping Prevention Act (PKPA), 28 U.S.C. § 1738A, which went into effect on Dec. 28, 1980.[7] The U.S. Supreme Court, in dicta, described the PKPA in Thompson v. Thompson, 484 U.S. 174 (1988):

> The Parental Kidnaping Prevention Act (PKPA or Act) imposes a duty on the States to enforce a child custody determination entered by a court of a sister State if the determination is consistent with the provisions of the Act. In order for a state court's custody decree to be consistent with the provisions of the Act, the State must have jurisdiction under its own local law and one of five conditions set out in Sec. 1738A(c)(2) must be met. Briefly put, these conditions authorize the state court to enter a custody decree if the child's home is or recently has been in the State, if the child has no home State and it would be in the child's best interest for the State to assume jurisdiction, or if the child is present in the State and has been abandoned or abused. Once a State exercises jurisdiction consistently with the provisions of the Act, no

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[7]Pub. L. No. 96-611 § 7(b), 94 Stat. 3566 (1980).

other State may exercise concurrent jurisdiction over the custody dispute, § 1738A(g), even if it would have been empowered to take jurisdiction in the first instance, and all States must accord full faith and credit to the first State's ensuing custody decree.

In sum, the PKPA had the purpose of ending the plague of parental kidnapping by providing non-ambiguous rules for forum selection which in turn would lead to the prompt resolution of custody disputes.

Preventing Simultaneous Proceedings

A. Relevant UCCJA and PKPA Sections

Both the PKPA and the UCCJA have strict rules against simultaneous proceedings:

9 Uniform Laws Annotated (ULA) § 6 [Simultaneous Proceedings in Other States]

> (a) A court of this State shall not exercise its jurisdiction under this Act if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this Act, unless the proceeding is stayed by the court of the other state because this State is a more appropriate forum or for other reasons.
>
> (b) Before hearing the petition in a custody proceeding the court shall examine the pleadings and other information supplied by the parties under section 9 and shall consult the child custody registry established under section 16 concerning the pendency of proceedings with respect to the child in other states. If the court has reason to believe that proceedings may be pending in another state it shall direct an inquiry to the state court administrator or other appropriate official of the other state.
>
> (c) If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the court assumed jurisdiction it shall stay the proceeding and communicate with the court in which the other proceeding is pending to the end that the issue may be litigated in the more appropriate forum and that information be exchanged in accordance with sections 19 through 22. If a court of this state has made a custody decree before being informed of a pending proceeding in a court of another state it shall immediately inform that court of the fact. If the court is informed that a proceeding was commenced in another state

after it assumed jurisdiction, it shall likewise inform the other court to the end that the issues may be litigated in the more appropriate forum.

28 U.S.C. § 1738A(g):

A court of a State shall not exercise jurisdiction in a proceeding for a custody determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody determination.

It is fairly common for a court in the second state, F2, to learn of an action in the first state, F1, when an objection to the action in F2 is made.[8] The action in F2 often proceeds despite the language of 9 ULA § 6, which states that F2 shall not exercise jurisdiction if there is an action pending in a court of another state exercising jurisdiction substantially in conformity with the UCCJA, and despite the similar but stronger prohibition in 28 U.S.C. § 1738A(g) (discussed infra at p. 12). Rulings on the objection to F2's exercise of jurisdiction vary, however, according to the type of case. These rulings are described below from most to least successful.

Case One.

Facts: The parents and children are long term residents of F1. An action was filed and served in F1 and then a parent and the children left for F2. The court in F2 almost never has a problem understanding that F2 is prohibited from any form of action.[9]

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[8]While there are some states that may permit a special appearance to contest Child Custody Subject Matter Jurisdiction, in other states this may be treated as a general appearance. This is usually, though not always, done in the form of an action to quash in F2 by the party left behind in F1. An anomaly of this process is that, while a party can often bring an action to quash service on the basis of lack of minimum contacts per Kulko v. Superior Court (Horn), 436 U.S. 84 (1978), an attempt to resist the custody action by pointing out that F2 does not have CCSMJ is often treated as a general appearance in F2. California is an exception under Goodwine v. Superior Court of Los Angeles, 63 Cal. 2d 481, 484-485, 47 Cal. Rptr. 201, 203-204 (Cal. 1965).

[9]An exception is Emergency Jurisdiction, 9 ULA §3(a)(3) and/or 28 U.S.C. § 1738A(c)(2)(C).

Case Two.

Facts: The parents and children are long term residents of F1. A parent and the child leave for F2 before an action is filed in F1. At some period after arrival in F2 an action is filed there and F2's papers are served upon the left-behind parent in F1 who then immediately files an action in F1 and serves the parent in F2.[10]

Prior to the PKPA's coming into effect on December 28, 1980 this fact pattern was the most troublesome, owing to the UCCJA's alternative bases of jurisdiction which created the possibility of both the "home state" and a "significant connection" state exercising jurisdiction. Some courts took the view that any form of contact with their forum gave them Child Custody Subject Matter Jurisdiction (CCSMJ) under 9 ULA § 3(a)(2), "Significant Connections," varying from as little as four weeks up to six months, the "magic" "Home State"[11] status.[12] This effect was mitigated by a significant number of courts holding that Home State was the preferred forum for jurisdiction and that a very

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[10]Under the terms of the UCCJA, a forum can have either "Home State" or "Significant Connections" CCSMJ as they are alternative forms of jurisdiction. One of the purposes of the PKPA was to eliminate this ambiguity by stating a preference for "Home State" jurisdiction. See 9 ULA § 3 and 28 U.S.C. § 1738A(c).

[11]Prior to the enactment of the UCCJA and the PKPA a state could and would take CCSMJ under what is known as "parens patriae", literally "parent of the country", the traditional role of the state as guardian of persons under legal disability. Under parens patriae jurisdiction the only requirement is the presence of the child in the forum. This has been limited under the UCCJA and the PKPA to temporary emergency jurisdiction. Most courts and attorneys are now aware that CCSMJ cannot be exercised under parens patriae but have instead shifted their focus to the finding of a "Home State" under the UCCJA and the PKPA, that is, the place where the child has lived for the last six months. Regardless of any other factor, e.g., actions pending in another state, existing court orders from another state, it is the accepted belief that if a child is in the forum for six or more months, that forum is the "Home State" and can then proceed to make custody orders. This is not the law. See Thompson v. Thompson, 484 U.S. 174 (1988), for a discussion on this issue.

[12]Farrell v. Farrell, 351 N.W.2d 219, 222 (Mich.App.1984) (Four Weeks); Etter v. Etter, 405 A.2d 760, 762-765 (Md.App. 1979) (Two Months); Green v. Green, 276 N.W.2d 472 (Mich.App. 1978). (Six Months).

strong showing would be required if Significant Connections would be used in lieu of Home State.[13]

This issue of Home State versus Significant Connections was resolved, as far as initial jurisdiction is concerned,[14] at least in theory, by the application of the PKPA. Both by the explicit terms of 28 U.S.C. § 1738A(c)(2)(A) and 28 U.S.C. § 1738A(c)(2)(B) and case law, if a forum qualifies as a Home State, it then has the exclusive right to have its custody determinations given full faith and credit under the PKPA.[15] Although this seems clear enough from the PKPA and the case law, in practice it is difficult to persuade a judge of this requirement of the PKPA.

Even when there is clarification and understanding of the differences between Home State and Significant Connections CCSMJ, there remains a collateral issue of when an action is considered pending. Under both the UCCJA and the PKPA, if an action is pending and the court in which the action is pending is exercising CCSMJ in conformity with the UCCJA and the PKPA, then all other courts are prohibited from making any child custody determinations. If this rule were in fact strictly followed then nearly all issues of conflicting custody orders would be resolved. Note, however, that key to this is the requirement that the exercise of subject matter jurisdiction must be consistent with the requirements of the UCCJA and/or the PKPA.

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[13]Matter of Guardianship of Mayes, 523 N.E.2d 249, 251 (Ind. Ct. App. 2 Dist. 1988); Crews v. Crews, 769 P.2d 433, 435 (Alaska 1989); Valentine v. Valentine, 561 N.Y.S.2d 805 (N.Y. App. Div. 1990); Goodman v. Goodman, 556 A.2d 1379, 1386 (Pa. Super. 1989); Hafer v. Superior Court, 126 Cal. App. 3d 856, 866, 179 Cal. Rptr. 132, 138 (1981); McCarron v. Dist. Ct. Jefferson City, 671 P.2d 953, 957 (Colo. 1983). Hegler v. Hegler, 383 So. 2d 1134, 1136 (Fla. Dist. Ct. App. 1980; Carlson v. Brown, 576 P.2d 1387, 1391 (Ariz. App. 1978); Finney v. Finney, 619 S.W.2d 130, 133 (Tenn. Ct. App. 1981); Bills v. Mardock, 654 P.2d 406, 411 (Kan. 1982); Mace v. Mace, 341 N.W.2d 307, 312-313 (Neb. 1983); McAtee v. McAtee, 323 S.W.2d 611, 615 (W.Va. 1984); Schroth v. Schroth, 449 So.2d 640, 642 (La. Ct. App. 1984).

[14]A different rule applies when there is a modification proceeding, to be discussed elsewhere in this document.

[15]Olmo v. Olmo, 646 F. Supp. 233, 235 (E.D.N.Y. 1986); Martinez v. Reed, 623 F. Supp. 1050, 1056, (E.D. La. 1985); Ex Parte Lee, 445 So. 2d 287, 290 (Ala. Ct. App. 1983); Garrett v. Garrett, 732 S.W.2d 127 (Ark. 1987); Mancusi v. Mancusi, 519 N.Y.S.2d 476, 478 (Fam. Ct. 1987); Bolger. v Bolger, 678 S.W.2d 194, 196 (Tex. Ct. App. 1984).

Consider the case where the family has only resided in F1. There is a separation and mother takes the children to F2 and conceals them there. Father files in F1 ten (10) days after mother has left with the children. Eight months later mother files an action in F2 and a week later father is personally served in F1. A week after father is served, mother is personally served in F2 with the action from F1. It is further assumed that, during the period of absence, father has taken all reasonable steps to locate mother.

Both the PKPA[16] and the UCCJA[17] measure Home State CCSMJ at the "commencement of the proceeding". But is an action commenced when it is filed, or when service is accomplished? Priority in time of commencement of proceeding is critical when proceedings are pending in two states, since UCCJA § 6 and PKPA, (28 U.S.C. § 1738A(g), bar the exercise of jurisdiction by one of these states. If a proceeding is commenced upon the filing of the action, then F1 is first in time. If a proceeding is commenced upon service of relevant papers, then F2 is first in time. This latter rule would frustrate a key purpose of the UCCJA[18] and the PKPA [19] which is to deter interstate abductions.

A significant number of courts have held that a proceeding is commenced with the filing of the action,[20] otherwise the policies of the UCCJA and PKPA would be frustrated. Other

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[16]28 U.S.C. § 1738A(c)(2)(A).

[17]9 ULA § 3(a)(1).

[18]9 ULA § 1.

[19]Public Law No. 96-611, § 7(c).

[20]In re Janette H., 196 Cal. App. 3d 1421, 1429, 242 Cal. Rptr. 567, 571 (Cal. Ct. App. 1987); Lynch v. Lynch, 770 P.2d 1383, 1385 (Colo. Ct. App. 1989); Siegel v. Siegel, 575 So. 2d 1267, 1271 (Fla. 1991); In re Marriage of Weinstein, 408 N.E.2d 952, 957 (Ill. App. Ct. 1980); Umina v. Malbica, 538 N.E.2d 53, 57 (Mass. App. Ct. 1989); Timmings v. Timmings (Van Elsen), 628 S.W.2d 724 (Mo. Ct. App. 1982); Loper v. Superior Court, 612 P.2d 65, 67 (Ariz. Ct. App. 1980); Lopez v. District Court, 606 P.2d 853, 855-856 (Colo. 1980); In re Marriage of Brown, 706 P.2d 116, 119 (Mont. 1985); Scheafnocker v. Scheafnocker, 514 A.2d 172, 176 (Pa. Super. Ct. 1986); St. Andrie v. St. Andrie, 473 So. 2d 140, 144 (La. Ct. App. 1985); Bak v. Bak, 511 N.E.2d 625 (Mass. App.Ct. 1987); Meyer v. Meyer, (Vt. 1987) 528 A.2d 749 (Vt. 1987).

jurisdictions have held that an action is only pending from the time of the first hearing or of service of relevant documents.[21]

If an action is not pending in conformity with the PKPA, 28 U.S.C. § 1738A(g)[22] or the UCCJA (§ 6)[23] then it does not cause implementation of these two sections and a sister state is not required to stay or dismiss its action. Only when an action is pending within the meaning of the PKPA and/or the UCCJA must a sister state defer to the state where that action is pending.

The concept of pendency and simultaneous proceedings is best illustrated by the following hypotheticals:

a) A proceeding is commenced in F2. Thereafter the F2 court learns that a proceeding was already pending in F1, which was commenced before F2's. F2 is mandated to stay its proceeding while it contacts F1. F1 and F2 then decide which forum will go forward.

b) F2 makes an order and then learns that a proceeding is pending in F1 which, presumably, was pending before the commencement of the F2 action. F2 is to contact F1 and tell the court about this order. No stay appears to be required.

c) A proceeding is commenced in F1. The F1 court then learns that a was commenced in F2 after it assumed jurisdiction. F1 must contact F2 so that the two courts can decide which forum will go forward. No stay is required, presumably because F1 is first in time.

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[21]Peterson v. Peterson, 464 A.2d 202, 205 (Me. 1983) (Hearing); Etter v. Etter, 405 A.2d 760, 762-765 (Md. Ct. App. 1979) (Service); Potter v. Potter, 430 N.Y.S.2d 201, 204 (Fam. Ct. 1980) (Service). This appears to be a particularity of New York law.

[22]Rogers v. Platt, 814 F.2d 683, 686 (D.C. Cir. 1987); Shores v. Shores, 670 F. Supp. 774, 777 (E.D. Tenn. 1987); Ex Parte Shepherd, 560 So. 2d 1089, 1090 (Ala. Civ. App. 1990); Matter of B.B.R., 556 A.2d 1032, 1037 (D.C. 1989) [FN 13 in part]; Bolger v. Bolger, 678 S.W.2d 194, 196 (Tex. Ct. App.1984); Martinez v. Reed, 623 F. Supp. 1050, 1056 (E.D. La. 1985); Elder v. Park, 717 P.2d 1132, 1135 (N.M. Ct. App. 1986).

[23]Allison v. Superior Court of Los Angeles Cty., 99 Cal. App. 3d 993, 1000, 160 Cal. Rptr. 309, 313 (Cal. Ct. App., 1979); Rexford v. Rexford, 631 P.2d 475, 477-479 (Alaska 1980); Lynch v. Lynch, 770 P.2d 1383, 1385 (Colo. Ct. App. 1989); Vanneck v. Vanneck, 404 N.E.2d 1278 (N.Y., 1980); Schrock v. Schrock, 365 S.E.2d 657, 659 (N.C. Ct. App. 1988); Goodman v. Goodman, 556 A.2d 1379, 1389 (Pa. Super. Ct. 1989).

A rule of law that has been developed by a significant number of states under 9 ULA § 6(c) holds that this section is only applicable if F1 is exercising jurisdiction consistently with the UCCJA[24] and that F2 may hold a hearing to determine if F1 is in fact exercising jurisdiction consistently with the UCCJA.[25] However, the vast majority of the cases hold that the stay is mandatory if there are two actions pending.[26]

One can question the continued usefulness of the stay provisions of 9 ULA § 6 in light of 28 U.S.C. § 1738A(g), which provides:

> "A court of a State shall not exercise jurisdiction in any proceeding for a custody determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody determination."

There is no ambiguity here: Only one forum can exercise jurisdiction in conformity with the PKPA. All other courts are absolutely prohibited from doing anything.[27] Now recall in 9

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[24]Bull v. Bull, 311 N.W.2d 768, 775 (Mich. Ct. App.1981); Swire v. Swire, 494 A.2d 1035, 1039 (N.J. Super. Ct. 1985); Kilcullen v. Bubanj, 496 N.Y.S.2d 740, 742 (N.Y. App. Div. 1986).

[25]Lynch v. Lynch, 770 P.2d 1383, 1385-1386 (Colo. Ct. App. 1989); Siegel v. Siegel, 575 So. 2d 1267, 1271 (Fla. 1991).

[26]Glassman v. Maccione, 419 553 A.2d 195, 196 (Conn. Ct. App. 1989); Siegel v. Siegel, 548 So. 2d 266, 268 (Fla. Dist. Ct. App. 1989) [Affirmed on this point: 575 So. 2d 1267, 1269-1271]; Hepner v. Hepner, 469 N.E.2d 780, 784 (Ind. Ct. App. 1984); Bowden v. Bowden, 440 A.2d 1160, 1164 (N.J. Super. Ct. 1982); Squires v. Squires, 468 N.E.2d 73, 79 (Ohio Ct. App. 1983); Goodman v. Goodman, 556 A.2d 1379, 1387 (Pa. Super. Ct. 1989); Coppedge v. Harding, 714 P.2d 1121, 1122 (Utah 1985); Klont v. Klont, 342 N.W.2d 549, 550 (Mich. Ct. App. 1983) (Foreign court); In re McDonald, 253 N.W.2d 678, 682 (Mich. Ct. App. 1977); Owens, by & through, Mosely v. Huffman, 481 So. 2d 231, 242 (Miss. 1985); Jennings v. Jennings, 479 N.E.2d 419, 421 (Ill. App. Ct. 1985); Porter v. Johnson, 712 S.W.2d 598, 599 (Tex. Ct. App. 1986); People v. Beach, 194 Cal. App. 3d 955, 240 Cal.Rptr. 50, 55 (Cal. App. Ct. 1987); Morgan v. Morgan, 666 P.2d 1026, 1030 (Alaska 1983).

[27]Rogers v. Platts, 814 F.2d 683, 686 (D.C. Cir. 1987); Shores v. Shores, 670 F. Supp. 774, 777 (E.D. Tenn. 1987); Martinez v. Reed, 623 F. Supp. 1050, 1056 (E.D. La. 1985); Ex Parte Shepherd, 560 So. 2d 1089, 1090 (Ala. Civ. App. 1990);

ULA § 6(c) there is language to the effect that if a state has made an order and then learns that there is a prior action pending, all it has to do is advise the other court. Under the terms of 28 U.S.C. § 1738A(a) this order would not be entitled to full faith and credit if it was not made in conformity with the PKPA. Similarly, under 28 U.S.C. § 1738A(g), if one state exercises jurisdiction in conformity with the PKPA then all others are ousted.

The objectives of 28 U.S.C. § 1738(g) would best be promoted by using the communication section of 9 ULA § 6 (See, infra, at p. 18) in combination with the prohibition section of 28 U.S.C. § 1738A(g). This assumes, of course, that the PKPA is plead in the trial court and, if plead, the trial court believes that it is required to follow the mandate of 28 U.S.C. § 1738A. Indeed, some courts had gone so far as to state that the PKPA does not apply unless there has been a kidnapping and it has taken the intervention of a federal or appellate court to correct that error.[28]

When there are matters before the courts of two states, and the courts of the two states do not resolve the issue, then there are at least two paths that one may follow, which are not mutually exclusive: 1) move to dismiss the action in the forum that does not meet the requirements of the PKPA rather than the UCCJA,[29] or (2) if the state does have CCSMJ consistently with the PKPA, then move to find that it is an Inconvenient Forum pursuant to 9 ULA § 7.[30]

Matter of B.B.R., 556 A.2d 1032, 1037 (D.C. 1989) [FN 13 in part]; Hashem v. Hashem, 558 N.Y.S.2d 370, 370 (N.Y. App. Div. 1990); Salisbury v. Salisbury, 657 S.W.2d 761, 768 (Tenn. Ct. App. 1983); Wachter v. Wachter, 439 So. 2d 1260, 1264-1265 (La. Ct. App. 1983); Bolger v. Bolger, 678 S.W.2d 194, 196 (Tex. Ct. App. 1984); Green v. Bruenning, 690 S.W.2d 770, 771 (Ky. Ct. App. 1985); Owens, by & through, Mosely v. Huffman, 481 So. 2d 231, 242 (Miss. 1985); Elder v. Park, 717 P.2d 1132, 1135 (N.M. Ct. App. 1986).

[28]Martinez v. Reed, 623 F. Supp.1050, 1054 (E.D. La. 1985); Rogers v. Platt, 199 Cal. App. 3d 1204, 1215 245 Cal. Rptr. 532, 539 (Cal. App. 3 Ct. 1988); Olivia H. v. John H., 497 N.Y.S.2d 838, 841 (Fam. Ct. 1986); Barndt v. Barndt, 580 A.2d 320, 325 (Pa. Super Ct. 1990).

[29]Under 9 ULA § 3 more than one state can have CCSMJ. This is not the case with the PKPA.

[30]Although 28 U.S.C. § 1738A(c)(2)(D) speaks of a more appropriate forum, it does not appear that the PKPA has a specific mechanism for hearing Inconvenient Forum arguments,

The difficulties here are that if the court that has wrongly assumed jurisdiction will not dismiss sua sponte,[31] (i.e., on its own) then there is a mind set for a finding of CCSMJ in the wrong forum, resulting in inconsistent orders. In these cases an action to dismiss for lack of CCSMJ rarely is successful.

One encounters similar difficulties in a motion to find that the chosen state is an Inconvenient Forum under 9 ULA § 7. Firstly, the court has wide discretion in these cases[32] and almost any ruling will be upheld by a court of appeal.[33]

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whereas the UCCJA does set forth a procedure to do this in 9 ULA § 7.

[31]A court has a duty to determine CCSMJ sua sponte. Bengali v. Haveliwala, 484 A.2d 41, 43 (N.J. Super. Ct. 1984); Greene v. Greene, 432 So. 2d 62, 65 (Fla. Dist. Ct. App. 1983); Campbell v. Campbell, 388 N.E.2d 607 (Ind. Ct. App. 1979); Umina v. Malbica, 538 N.E.2d 53 (Mass. App. Ct. 1989); Biscoe v. Biscoe, 443 N.W.2d 221 (Minn. Ct. App. 1989); Swan v. Swan, 796 P.2d 221 (Nev. 1990); Barndt v. Barndt, 580 P.2d 320, 322 (Pa. Super. Ct. 1990). (This rarely happens.)

[32]Tiscornia v. Tiscornia, 742 P.2d 1362, 1363 (Ariz. Ct. App. 1987); Larsen v. Larsen, 615 P.2d 806 (Kan. Ct. App. 1980); Breneman v. Breneman (Wilcok), 284 N.W.2d 804 (Mich. Ct. App. 1979); Pierce v. Pierce, 640 P.2d 899, 903 (Mont. 1982); Szmyd v. Szmyd, 641 P.2d 14 (Alaska 1982); Bullard v. Bullard, 647 P.2d 294 (Haw. Ct. App. 1982); Gooch v. Gooch, 321 N.W.2d 354 (Wis. Ct. App. 1982); Meier v. Davignon, 734 P.2d 807, 810 (N.M. Ct. App. 1987); Farrell v. Farrell, 351 N.W.2d 219, 223 (Mich. Ct. App. 1984); Brown v. Brown, 486 A.2d 1116, 1123 (Conn. 1985); In re Marriage of Fox, 180 Cal. App. 3d 862, 870 225 Cal. Rptr. 823, 827 (Cal. Ct. App. 1986); Dennis v. Dennis, 387 N.W.2d 234, 235 (N.D. 1986); Bak v. Bak, 511 N.E.2d 625, 630 (Mass. App. Ct. 1987); Holloway v. Holloway, 519 So. 2d 531, 532 (Ala. Civ. App. 1987); In re Adoption of K.S., 581 A.2d 659, 663 (Pa. Super. Ct. 1990).

[33]Abuse of discretion found: In re Gloria F., 212 Cal. App. 3d 576, 588, 260 Cal. Rptr. 706, 713 (Cal. Ct. App. 1989); Plas v Superior Court, 155 Cal. App. 3d 1008, 1019 202 Cal. Rptr.490, 496-497 (Cal. Ct. App 1984); Joselit v. Joselit, 544 A.2d 59, 63 (Pa. Super. Ct. 1988). No abuse of discretion found: Stevenson v. Stevenson, 452 So. 2d 869, 871 (Ala. Civ. App. 1984); Interest of Wicks, 693 P.2d 481, 485 (Kan. Ct. App. 1985); In re Marriage of Bolton, 690 P.2d 401, 405 (Mont. 1984); Brown v. Brown, 486 A.2d 1116, 1123-1125 (Conn. 1985); In re Marriage of Brown, 706 P.2d 116, 119 (Mont. 1985); Kelly v. Kelly, 335 S.E.2d 780, 783 (N.C. Ct. App. 1985); In re Marriage of Kehres, 517 N.E.2d 617, 621 (Ill. App. Ct. 1987).

Secondly, if the court is not convinced by the original argument that they never had CCSMJ in the first place, an issue of law, then it is hardly likely that they will now believe they are an inconvenient forum, notwithstanding the language of 9 ULA § 7 (c)(1) through 9 ULA § 7 (c)(5) and the purposes set forth in 9 ULA § 1.

UCCJA § 9 requires that parties provide the court in their first pleadings or by affidavit under oath attached to that pleading information as to where the child has lived for the past five years, who the child has lived with and if there have been any court proceedings concerning the child. This document should be the first document the court reviews upon receiving custody petition. From this document the court can determine if further inquiry should be made, e.g., to a sister state.

B. Procedural Devices for Preventing Simultaneous Proceedings.

As noted, under the PKPA only one court can properly exercise CCSMJ at a time. An issue is how do courts become aware of the existence of proceedings in other state courts? There are three sections of the UCCJA that apply: UCCJA § 6(c) (judicial communications), § 9 (affidavits) and § 16 (registry). The intent of these three sections is to provide a means whereby a court in F2 can determine if there is a pre-existing action on the same issue in F1 so that the issue of simultaneous proceedings can be addressed at once and issuance of conflicting custody determinations avoided. The successful application of these provisions would have a great impact in reducing simultaneous proceedings.

1. Affidavits.

9 ULA § 9 [Affidavits Under Oath to be Submitted to the Court] provides:

> (a) Every party in a custody proceeding in his first pleading or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the place where the child has lived within the last 5 years, and the names and present addresses of the persons with whom the child has lived during that period. In his pleading or affidavit every party shall further declare under oath whether:
>
> (1) he has participated (as a party, witness, or in any other capacity) in any other litigation concerning the custody of the same child in this or any other state;
>
> (2) he has information of any custody proceeding concerning the child pending in a court of this or any other state; and

(3) he knows of any person not a party to the proceeding who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

(b) If the declaration as to any of the above items is in the affirmative the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the court's jurisdiction and the disposition of the case.

(c) Each party has a continuing duty to inform the court of any custody proceeding concerning the child in this or any other state of which he obtained information during this proceeding.

UCCJA § 9 requires that parties provide the court in their first pleadings, or by affidavit under oath attached to that pleading, information as to where the child has lived for the past five years, with whom the child has lived and if there have been any court proceedings concerning the child. This document should be the first document the court reviews upon receiving the custody petition. From this document the court can determine if further inquiry should be made, e.g., to as sister state.

There are more than 20 reported cases involving 9 ULA § 9 Information Under Oath. Some decisions hold that the failure to provide this information was jurisdictional[34] while others hold that it was not.[35]

The implementation of this section has been frustrated by lawyers and judges alike. The affidavit information is frequently absent in entirety. When it is provided, the

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[34]Pasqualone v. Pasqualone, 406 N.E.2d 1121, 1124 (Ohio 1980); Overturf v. Lauzon, 663 P.2d 46, 46 (Ore. Ct. App. 1983); Henry and Henry, 725 P.2d 943, 945-946 (Or. Ct. App. 1986); Peery v. Peery, 453 So. 2d 635, 639 (La. Ct. App. 1984); In re Custody of Nelsen, 681 P.2d 1302, 1304-1305 (Wash. Ct. App.1984).

[35]Barbourder v. Abdennur, 566 A.2d 457, 458-459 (Conn. Super. Ct. 1989); Dunne v. Dunne, 560 N.Y.S.2d 77, 80 (Fam. Ct. 1990); TL v. Dept. of Health & Rehab, 392 So. 2d 288 (Fla. Dist. Ct. App. 1980); Gambrell v. Gambrell, 246 Ga. 516, 272 S.E.2d 70, 72 (Ga. 1980); Breaux v. Mays, 746 P.2d 708, 709 (Okla. Ct. App. 1987); In re Marriage of Gohn, 639 S.W.2d 413, 414 (Mo. Ct. App. 1982); In re Marriage of Olive, 340 N.W.2d 792, 794 (Iowa Ct. App. 1983).

affidavit often is incomplete, wholly inaccurate,[36] or not updated as to changes in where the children live or other court actions, thereby frustrating the intent of the UCCJA.

The problem seems to be compounded by failure of the trial courts to know that such information is required under law and its consequent lack of demand for such information from the parties.

2. Registry.

9 ULA § 16 [Registry of Out-of-State Custody Decrees and Proceedings] provides:

> The clerk of each [District Court, Family Court] shall maintain a registry in which he shall enter the following:
>
> (1) certified copies of custody decrees of other states received for filing;
>
> (2) communications as to the pendency of custody proceedings in other states;
>
> (3) communications concerning a finding of inconvenient forum by a court of another state; and
>
> (4) other communications or documents concerning custody proceedings in another state which may affect the jurisdiction of a court of this State or the disposition to be made by it in a custody proceeding.

Under 9 ULA § 6(b) the court is required to examine the pleadings supplied by the petitioner under 9 ULA § 9 and is also required to examine the Child Custody Registry established under 9 ULA § 16. It is quite probable that neither of these functions are done by a court. Formal out-of-state registries have not been implemented by the states. A party seeking to fill an out-of-state order must frequently persuade the clerk of court that this is required by law.

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[36]In California, for example, the PETITION FOR DISSOLUTION OF MARRIAGE has a block, when checked, that states under penalty of perjury the children have lived in California with the parents for the last five years. This block is routinely checked even in those cases where the Petitioner is requesting a Legal Separation in California because they do not meet the six month residency requirement for a Dissolution. Many of these PETITIONS are filed by competent family law attorneys.

It is noteworthy that in all of the appellate cases that have been decided in all states since the first implementation of the UCCJA in 1969, there has been only one reported case that even mentions the Child Custody Registry.[37]

Making information about custody proceedings readily accessible to sister state courts considering the custody of the same children is central to avoiding duplicative custody litigation which in turn would promote conservation of scarce judicial resources, and would expedite resolution of custody disputes. Congress should consider mechanisms by which this can be accomplished. See pp. 3-96 - 3-100 for the Obstacles Project recommendation for establishing a national child custody registry.

3. Inter-Court Communications.

9 ULA § 6 (c)[38] requires judicial communications when there are actions pending in two forums.

The language of 9 ULA § 6 is not precatory: If there is more than one action pending, then inter-court communication is mandated and, indeed, it is reversible error not to communicate.[39]

Unfortunately, courts do not routinely follow the stay and communications requirements of the Act. How often this section is ignored is not known, probably at least as often as the UCCJA is ignored in its entirety. Even when there is communication, strict application of the UCCJA's jurisdictional rules does not always follow. As one judge commented, it is a very difficult thing to tell another judge that they are dead wrong and that

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[37]Ehsani v. Ehsani, 519 So. 2d 288, 290 (La. Ct. App. 1988).

[38]The full text of this section is set forth supra, at p. 5.

[39]In re Aisha B., 206 Cal. App. 3d 1030, 1033-1034, 254 Cal. Rptr. 116, 118 (Cal. Ct. App. 1988); Matter of Pima County Juvenile Action, 711 P.2d 1200, 1207 (Ariz. Ct. App. 1985); Melligner v. Melligner, 764 S.W.2d 52, 54 (Ark. Ct. App. 1989); Bowden v. Bowden, 440 A.2d 1160, 1163 (N.J. Super. Ct. 1982); Morgan v. Morgan, 666 P.2d 1026, 1029 (Alaska 1983); In re Marriage of Olmo, 701 P.2d 866, 867 (Colo. Ct. App. 1984); Potter v. Potter, 430 N.Y.S.2d 201, 203 (Fam. Ct. 1980); Squires v. Squires, 12 Ohio 468 N.E.2d 73, 79 (Ohio Ct. App. 1983); Coppedge v. Harding, 714 P.2d 1121, 1122 (Utah 1985).

they do not have CCSMJ. Significant amounts of tact are required.[40]

Judicial communication, when done at all, is often done outside of the presence of counsel for the parties and few, if any, notes are kept of such conversations.[41] In one case, Yost v. Johnson, 591 A.2d 178 (Del. Super. Ct. 1991), it was held to be violative of due process for the courts to engage in ex parte communications. The court held that the trial court had a duty to advise counsel for both sides and to invite counsel to participate in such communications.

There is some indication that a record should be kept from the language of 9 ULA § 16 and from decisions involving a similar (but not mandatory) section of 9 ULA § 7, the Inconvenient Forum section of the UCCJA.[42] Any such communications should be well documented: Names and telephone numbers of the participants, what issues were discussed, what findings (if any) were made, what orders were requested and what orders were made should be noted.

The communication requirement of the UCCJA would be best served by giving notice to counsel that such a call will take place, what the agenda of the call will be and what the expectation of the court is. When counsel are present and are interactive with the court in these calls, information and legal issues may be presented that the court itself does not present. In fact it may be violative of due process[43] to not have counsel present during these calls, as they often improperly shift jurisdiction from one court to another because of the failure of the court to understand the PKPA and/or the UCCJA.

The UCCJA does not specify how communications between judges is to occur, and case law is sparse. Most courts are simply not

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[40]See, Hilton, William, "The UCCJA/PKPA and Judicial Communications", presented at the California Superior Court Institute, Monterey, California, March 27-29, 1984.

[41]See, e.g., 9 ULA § 16(2): The clerk of each Court shall maintain a registry in which he shall enter the following: Communications as to the pendency of custody proceedings in other states.

[42]Allen v. Allen, 634 P.2d 609 (Haw. Ct. App. 1981) [Overruled on other grounds, 645 P.2d 300 (Haw. 1982)]; Redding v. Redding, 495 N.E.2d 297, 299 (Mass. 1986); Mancusi v. Mancusi, 519 N.Y.S.2d 476, (Fam. Ct. 1987).

[43]See, e.g., 28 U.S.C. § 1738A(e) and 9 ULA §§ 4 and 5.

equipped to handle inter-court communication other than by a one-on-one telephone call to the other court. Some courts have speaker-phones which do help, but these are few and far between. Even with speaker-phones the process is awkward as one frequently cannot understand what is being said.

A method that has proved practical is to use a conference call through the local telephone system. It seems that teleconferencing is now done through teleconferencing agencies, including A.T.& T. As of June 8, 1991, A.T.& T. states that they can handle up to 59 persons on one call, which seems more than adequate, and can handle overseas calls as well.

In a typical application this office set up a conference call between the Judge of the Superior Court of California in Martinez, California, opposing counsel in Walnut Creek, California, this office in Santa Clara, California and a judge of the District Court in County Clare, Ireland. This office tape-recorded the call as the official record of the proceedings. Duplicates of the tapes were made available to all parties and the court. This approach to inter-court communication has several advantages. Both courts and counsel for all parties participated and a record was made. A further advantage was the timing: No single participant had to be inconvenienced as to where the call would be, e.g., in a court or a law office. Since some of the participants would have to appear by telephone, it was appropriate and logical to have all participants appear by telephone at a considerable savings of time and money: there was no travel to court or waiting at the court for the conference.

Resolving Jurisdictional Disputes When Prevention Fails

A. State Court Appeals

The only recourse a party has at present if a trial court denies a request to dismiss a proceeding pending in a court which is prohibited from exercising jurisdiction because of simultaneous proceedings pending in a sister state is to take the matter to the court of appeal in that state. As noted an appeal on the issue of inconvenient forum will generally not succeed due to the discretionary nature of the action. A request to have the court of appeal look at the CCSMJ jurisdiction issue may have more success as it is, for the most part, a purely legal issue as rarely are the facts in dispute.[44] While there are some

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[44]One can argue what the facts mean, e.g., is the absence from one state a "Temporary Absence" within the meaning of 28 U.S.C. § 1738A(b)(4) and thus "Home State" status remains that much longer, or was this absence meant to be a permanent move.

successes to be had, the process is time consuming[45] and expensive.[46]

To speed the process one may ask for an extraordinary writ,[47] but these are routinely denied without any reason given.[48] In fact in one case[49] the court of appeal denied the writ, but stated that an appeal should be taken using 9 ULA § 24: Priority.[50] At least two states have ruled the same.[51]

Moreover, appeals on CCSMJ in both or all of the states where litigation is pending may be required. This further delays resolution of the conflict. If the highest courts in the two competing states reach opposite results, appeals may then be taken by a Petition for a Writ of Certiorari to the United States Supreme Court (USSC). This level of review is available only on a discretionary basis and predictably adds time and expense to

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[45]The usual time to appeal in California is eighteen (18) to twenty four (24) months. These were the times given during a CLE course given by the California Court of Appeal, 6th District, about 1989.

[46]On the average about sixty (60) hours of attorney time is required for an appeal. These figures are taken from the records kept by this office for the six successful appeals taken. Exchanging information with other counsel results in similar figures, unless there are multiple and/or complex issues to appeal.

[47]Writ of Mandamus, Prohibition or similar, filed in the Court of Appeal.

[48]In California the custom at one time was that a post card would be sent with the words "Writ Denied" and nothing more. The court is currently somewhat more formal in that a one page order is sent stating the same thing.

[49]Fishman v. Superior Court of California, no decision, post card denial of writ.

[50]9 ULA § 24 provides: "Upon the request of a party to a custody proceeding which raises a question of existence or exercise of jurisdiction under this title the case shall be given calendar priority and handled expeditiously."

[51]Peterson v. Peterson, 464 A.2d 202, 206 (Me. 1983); Stuart v. Stuart, 516 So. 2d 1277, 1283 (La. Ct. App. 1987).

the process of resolving the jurisdictional deadlock between sister states.[52]

Even assuming that an appeal will succeed, there is the problem of time. When a child has been with a parent for a substantial period of time, and the reason that the child has been with the parent is not against public policy, then the proclivity of the court is to leave the child with that parent.[53]

Appellate Cases Involving UCCJA and PKPA

A survey of all of the appellate cases involving both the UCCJA and the PKPA decided between January 1, 1981 and June 1, 1991 provides an interesting and revealing picture of how these laws are applied across the country.[54]

There were a total of 777[55] cases decided during this period of time. Of those, 625 mentioned only the UCCJA and were decided based on the particular state court's interpretation of the UCCJA. Another 152 cases at least mentioned the PKPA, although in some cases it was merely in passing, e.g., a statement to the effect that the case would have been decided the same way if the PKPA had been applied or, as in one case, a footnote questioning the fact that neither party had made reference to the PKPA. Decisions in twenty states have never mentioned the PKPA at any time. In those states, all decisions are based on the UCCJA.

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[52]In a recent case involving such a writ, the printing costs alone are estimated to be $8500. All counsel are pro bono.

[53]Burchard v. Garay, 724 P.2d 486, (Cal. 1986). Even where the reason the child is with a parent for a long period of time is against public policy, e.g., kidnapping, courts have been known to leave the child with that parent, because it is in the "best interests" of that child. The courts do say that it was a bad thing for this to have happened, but that does not change the result. See Speights v. Rockwood, 451 So. 2d 1275, 1278 (La. Ct. App. 1984); Van Houten v. Van Houten, 549 N.Y.S.2d 452, 454 (N.Y. App. Div. 1989); Marriage of Settle, 556 P.2d 962, 969 (Or. 1976).

[54]See Appendix D for the Appellate Activity Chart for an overall view of these actions.

[55]If one assumes an average of 50 hours per case per side and an average hourly rate of $100.00 per hour, then the total amount spent on these appeals is $7,770,000.00.

Two states, Alabama with 35 PKPA cases,[56] and New York with 37 PKPA cases,[57] make up about 50% of all PKPA cases decided. Florida decided 69 cases under the UCCJA. In four other cases, the Florida courts, while issuing rulings based on the UCCJA, made mention of the existence of the PKPA, stating that the decision would be the same if it were applied.[58]

Where the PKPA has been conscientiously applied, as in Alabama and later in New York, there have been virtually no cases decided that are contrary to the continuing jurisdiction mandate of the PKPA. The problem is that the PKPA is simply not applied.[59]

A recent example of the failure to apply the PKPA in a state court proceeding is Siegel v. Siegel, 575 So. 2d 1267 (Fla. 1991). Note that this was decided after Yurgel v. Yurgel, 572 So. 2d 1327 (Fla. 1990) in which the Florida Supreme Court applied the PKPA and found that it preempted the UCCJA.

In Siegel, an initial jurisdiction case, the facts at the trial court, court of appeal and Florida Supreme Court were that Florida was the home state of a child. This finding was specifically made in the Florida decisions. Yet the Florida appellate and Supreme Courts both found that New York, which was not the home state but had started its action before the Florida action, had jurisdiction because it was first in time. Nowhere in either decision was the PKPA mentioned, nor was any reference made to the fact that, for purposes of interstate enforcement

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[56]It should also be noted that only 5 cases were decided without reference to the PKPA and most of those dealt with foreign custody matters.

[57]At the same time New York decided 50 cases without mentioning the PKPA.

[58]Until the Florida Supreme Court's decision in Yurgel v. Yurgel, (Fla. 1990) 572 So. 2d 1327, the various appellate districts of Florida were split on the issue of continuing jurisdiction. Yurgel, using both the UCCJA and the PKPA, held that until a court in Florida affirmatively gives up jurisdiction, that court will retain ongoing jurisdiction, following, inter alia, Kumar v. Superior Court of Santa Clara Cty., 652 P.2d 1003 (Cal. 1982). It remains to be seen if the trial and appellate courts in Florida will follow this decision.

[59]Judicial and attorney education about the PKPA would ameliorate a situation in which it seems that each decision is reached as if the trial court had never heard of the PKPA and had never read any of the decisions from the appellate court.

under the PKPA, the home state (in initial custody determinations) has exclusive jurisdiction.[60]

Perhaps the best example of the frustrations of the appellate system in applying the UCCJA and/or the PKPA are the Peery cases: Peery v. Peery, 453 So. 2d 635 (La. Ct. App. 1984) and Peery v. Superior Court (Peery), 174 Cal. App. 3d 1085, 219 Cal. Rptr. 882 (Cal. Ct. App. 1985). These two cases involve exactly the same parties, exactly the same fact patterns and exactly the same application of law. These two decisions both hold that each state has Child Custody Subject Matter Jurisdiction, because that state is the home state of the child. Under the PKPA only one state can exercise jurisdiction at a time, thus either California or Louisiana had CCSMJ, but not both.

With the exception of a few minor points, the Louisiana and California courts of appeal agreed on most of the basic facts of the case with the critical exception of when the child came to California: Louisiana found that the child came to California on July 5, 1982 and the California action was filed on December 22, 1982, or less than six months after the child's arrival; California found that the child came to California on March 1, 1982 and the California action was filed on December 22, 1982, or more than six months after the child's arrival. A reading of the two cases shows that the California trial court action went to default by agreement of the parties, including information which, if believed, would establish California as the Home State. The Court of Appeal in California held that the evidence submitted to the trial court established that the absence from California was a temporary absence. Since this was never challenged by the parent living in Louisiana, it became res judicata, according to the California Court of Appeal, and Louisiana was bound by this finding. Louisiana did not agree holding, well after the California trial court matter had become final, that the period of temporary absence was, in reality, time that the child lived in Louisiana and was not a temporary absence from California.

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[60]This was so puzzling that this writer telephoned the attorney for the losing party and discussed the case at length on May 20, 1991. The Florida attorney, Dominick J. Salfi, had been in the case from its inception. He is a member of the American Association of Matrimonial Lawyers. He had been a judge in Florida for a number of years before returning to private practice. He is familiar with the PKPA and in fact stated that he plead and argued the PKPA at every stage of the proceedings. This attorney stated that, in general, the PKPA is unknown in his area of practice, both by the bench and bar. Despite his efforts the PKPA was neither applied nor mentioned in either of the Siegel decisions.

Of interest is that nowhere is the PKPA referred to by either court. Of further interest is that neither court cited 9 ULA § 12: Binding Force and Res Judicata Effect of Custody Decrees, which is as follows:

> A custody decree rendered by a court of this State which had jurisdiction under section 3 binds all parties who have been served in this State or notified in accordance with section or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to these parties the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law, including the provisions of this Act.

The California action was filed, heard and completed before the Louisiana action was ever filed. The facts from both decisions agree that there was a default entered on February 14, 1983. The California decision states that when the action was filed in California, the mother submitted the information required under 9 ULA § 9, including a statement that the child had come to California on March 1, 1982. This seemingly was not contested by the father and accordingly, pursuant to 9 ULA § 12, this point was res judicata: ". . . conclusive as to all issues of law and fact decided . . ."

This point was not discussed in the Louisiana decision, the court ruling there that the statement of the father that the child had remained in Louisiana until July 5, 1982 was the basis for finding that California was not the home state at the time the action was commenced. Had the federal court been available for resolution, a determination that the evidence in the California proceeding was res judicata as to the Louisiana court under 9 ULA § 12 would have ended this conflict. Note that there would be no requirement to reweigh the evidence, only to apply a legal principle from a Uniform Act.

The next step in both states would have been to petition their respective highest courts for review. The available information indicates that this was not done in either state.[61] If this were, in fact, the case, then the Supreme Court of the United States (USSC) would not review these decisions as there

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[61]The California decision shows that the mother brought an action to enforce the California order when the child came to California for visitation on July 30, 1985. The California courts enforced the original California decision and the court of appeal affirmed.

had been no appeal to the highest court in which the decision could be had.[62]

Presumably only one of the decisions would have to be taken to the highest state court in which the decision could be had. The matter then could only go to the USSC on a writ of certiorari,the granting of which is discretionary. A further barrier is the "substantial federal question" requirement in which the writ can be denied even if it meets all of the other requirements. Some hope for review is held out in the Thompson decision, wherein the court states: "We note, as a preliminary response, that ultimate review remains available in this Court for truly intractable jurisdictional deadlocks."[63]

B. The Federal Court Option

Because of the long, arduous, expensive and problematical process required to get a case before the United States Supreme Court and because the state courts continue to ignore the PKPA,[64] the use of the federal courts to break a tie should be considered. This would require federal legislation after the United States Supreme Court in Thompson v. Thompson.

In Thompson, the Supreme Court held that there is no implied cause of action under the PKPA for a federal court to determine which of two conflicting custody decrees is valid.

The Thompson case arose out of jurisdictional dispute between courts in California and Louisiana which resulted in conflicting orders. The original California order had awarded the mother temporary custody pending submission of a court investigator's report, based upon which the father was awarded custody in June 1981. In the interim, the mother had moved with the child to Louisiana, where she successfully sought modification of father's visitation rights and an award of sole custody in April 1981.

The father sought relief in federal district court for the Central District of California in the form of an order declaring

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[62]For this point and those following see 12 Moore, Federal Practice, Section 501.01 et seq., and Wright, Law of Federal Courts (3rd edition, West 1976).

[63]Thompson v. Thompson, 798 F.2d 1547 (9th Cir. 1986), aff'd, 484 U.S. 174 (1988).

[64]As noted above, as of June 1, 1991, courts in 20 states had never made any reference to the PKPA, and other states have basically ignored it.

the Louisiana decree invalid and the California decree valid, and enjoining enforcement of the Louisiana decree. The Ninth Circuit Court of Appeals affirmed the district court's dismissal of the complaint on the ground that petitioner had failed to state a claim upon which relief could be granted. 798 F.2d 1547 (9th Cir. 1986). The Court of Appeals held that the PKPA, 28 U.S.C. § 1738A, did not create a private right of action in federal court to determine which of two conflicting custody decrees is valid. The U.S. Supreme Court granted certiorari and affirmed.

The Supreme Court examined congressional intent in enacting the PKPA to determine whether to infer a private cause of action from the PKPA. The Court reasoned that since Congress' chief aim was to extend application of the full faith and credit to custody determinations, and since the Full Faith and Credit clause does not give rise to an implied federal cause of action, then the PKPA was not intended to create a new cause of action, but rather to furnish a rule of decision for courts to use in adjudicating custody disputes. The Court found that the language and placement of the statute as well as the legislative history reinforced it conclusion.

While the Supreme Court would not infer a remedy in the PKPA, it expressly noted that "Congress may choose to revisit the issue."

Pre-Thompson Case Law

Prior to the decision in Thompson there were twenty-seven federal cases involving the PKPA. Eighteen of these cases[65] permitted a cause of action, nine did not.[66]

The nine cases that did not permit a hearing did so largely on grounds that there was no federal cause of action. There was the occasional passing remark about the application of the domestic relations exception and one or two comments about the inability of federal courts to handle custody matters.[67]

1. Merits of the Custody Dispute

A review of the twenty-seven federal cases reveals a concern of the federal courts that they would become embroiled in the merits of custody disputes and that they felt incompetent to do so. These appear, at least on the surface, to be the primary reasons given for why the federal courts should not become involved in enforcing a federal law.

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[65]Meade v. Meade, 812 F.2d 1473 (4th Cir. 1987); Hickey v. Baxter, 800 F.2d 430 (4th Cir. 1986); McDougald v. Jenson, 786 F.2d 1465 (11th Cir. 1986); Heartfield v. Heartfield, 749 F.2d 1138 (5th Cir. 1985); DiRuggiero v. Rodgers, 743 F.2d 1009 (3d Cir. 1984); Flood v. Braaten, 727 F.2d 303 (3d Cir. 1984); Shores v. Shores, 670 F. Supp. 774 (E.D. Tenn. 1987); Evans v. Evans, 668 F. Supp. 639 (M.D. Tenn. 1987); Meade v. Meade, 650 F. Supp. 205 (M.D. N.C. 1986); Maxie v. Fernandez, 649 F. Supp. 627 (E.D. Va. 1986); Alexander v. Ferguson, 648 F. Supp. 282 (D. Md. 1986); Olmo v. Olmo, 646 F. Supp. 233 (E.D. N.Y. 1986); Rogers v. Platt, 641 F. Supp. 381 (D. D.C. 1986); Davis v. Davis, 638 F. Supp. 862 (N.D. Ill. 1986); Wyman v. Larner, 624 F. Supp (S.D. Ind. 1985). 240, Vacated with no opinion: 848 F.2d 196 (7th Cir. 1988); Martinez v. Reed, 623 F. Supp. 1050 (E.D. La. 1985). Affirmed with no opinion: 783 F.2d 1061 (5th Cir. 1986); McDouglad v. Jenson, 596 F. Supp. 680 (N.D. Fla. 1984); Templeton v. Witham, 595 F. Supp. 770 (S.D. Cal. 1984).

[66]Rogers v. Platt, 814 F.2d 683 (D.C. Cir. 1987); Eberhardt v. Eberhardt, 672 F. Supp. 464 (D. Colo. 1987); Evans v. Evans, 668 F.Supp. 639 (M.D. Tenn. 1987); Crouse v. Creanza, 658 F. Supp. 1522 (W.D. Wis. 1987); Leyda v. Roach, 650 F.Supp. 951 (S.D. Iowa 1987); Thompson v. Thompson, 798 F.2d 1547 (9th Cir. 1986); Yelverton v. Yelverton, 614 F.Supp. 528 (N.D.Ind. 1985); Siler v. Storey, 587 F. Supp. 986 (N.D. Tex. 1984).

[67]This point was also raised by Russell M. Coombs in "Progress Under the Parental Kidnapping Prevention Act," 6 Journal of the American Academy of Matrimonial Lawyers, 59 (1990).

This reluctance to hear domestic relations matters is not without some history. There is a long standing judicially created doctrine known as the "Domestic Relations Exception." Under this doctrine the federal courts will not grant a hearing in what is considered a true domestic relations matter, based upon the rationale that the federal courts do not have the experience and training required of a domestic relations court. The federal courts do not wish to become involved in the merits of a domestic relations matter.

It is interesting to note that in none of the eighteen federal cases that found a federal cause of action under the PKPA were the merits of the custody case even mentioned in passing. In most cases the federal court accepted the facts as were found in the state court decisions. In a few there were brief discussions but no reweighing of the facts. In one case a state court had found an emergency as a basis for jurisdiction while another state court had found that it had jurisdiction as the home state. The federal court made no independent finding but instead applied federal law to the state court facts in arriving at its decision.[68] Similarly, the federal courts routinely would apply the UCCJA in effect in the states involved in these proceedings.

One is struck by the near total resolution of the conflicting orders by a straight legal analysis. The cases were decided on legal and not evidentiary issues.

Contrast the experience reflected in these cases with the Supreme Court's stated concern in Thompson about federal courts becoming entangled in the merits of custody disputes.[69] Nothing

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[68]Shores v. Shores, 670 F. Supp. 774 (E.D. Tenn. 1987). The issue of "Emergency Jurisdiction" was discussed in footnote 4 of the Thompson decision (see fn. 69, supra), where the Supreme Court felt that because a federal court may have to determine if there is an "Emergency", this was close enough to the fear that they would have to look at the merits, which the federal courts seem to believe they are not capable of. Of course they could just adopt the method of Shores (and all the similarly-decided cases) and accept the facts as they come from the state courts and then apply federal and/or state law as required.

[69]Footnote 4: "We cannot agree with petitioner that making a jurisdictional determination under the PKPA would not involve the federal courts in substantive domestic-relations determinations. Under the Act, jurisdiction can turn on the child's "best interest" or on proof that the child has been abandoned or abused. See §§ 1738A (c)(2)(B), (C) and (D). In fact, it would seem that the jurisdictional disputes that are sufficiently complicated as to have provoked conflicting state-

in Thompson supported this contention and it is argued that this is mere speculation.

Contrary to the expressed statements in Thompson and the nine cases that did not find a cause of action, at no time were the merits of the underlying custody case even discussed (except to state in a pro forma manner that the merits are not before the court) in any of the eighteen federal cases that did find a federal cause of action. It would seem that the concern that the courts would become entangled with the merits of the underlying case are groundless.

As part of the briefing[70] in the Thompson case, the court was advised of the factual and legal circumstances of Peery v. Peery, 453 So. 2d 635 (La. App. 1984), reh'g denied July 6, 1984 and Peery v. Superior Court (Peery), 174 Cal. App. 3d 1085, 219 Cal. Rptr. 882 (Cal. Ct. App. 1985). As noted above, these two cases involved identical parties in two different states, with conflicting decisions. The court, with evidence that the states did not in fact follow the law, claimed that the state courts will be vigilant in their application of federal law. Contrast this with the court's speculation that the federal courts would become bogged down with best interest hearings and similar, which did not happen in the slightest degree in any of the nineteen cases where the PKPA was applied.

2. Exhaustion of State Court Remedies

If federal courts were available to resolve interstate juridical deadlocks involving the PKPA, an issue would present itself as to whether the parties are required to exhaust all of their state court remedies before they seek relief from the federal courts. This requirement, if imposed, would be contrary to both the PKPA[71] and the UCCJA,[72] both of which require that the matter be heard expeditiously. Going through at least two

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court holdings are the most likely to require resolution of these traditional domestic-relations inquiries. See Rogers v. Platt, 814 F.2d 683, 691 (1987). Cf. Cort v. Ash, 422 U.S. 66, 84 (1975) (possibility that implied federal cause of action may in certain instances turn on state-law issues counsels against inferring such an action."

[70]William Hilton was associated with and was amicus in the brief from Sacramento, California.

[71]Pub. L. No. 96-611, Section 8(c)(1).

[72]9 ULA §24.

layers of state court and then the U.S.S.C. is not an expeditious proceeding.[73]

In the eighteen cases that did find a cause of action, the issue of exhaustion was raised in seven of them and in all cases was rejected as a requirement, stating that all that was needed for declaratory relief was two conflicting state custody determinations.

3. Conflicting Orders

The only consistent requirement was that there must be conflicting decrees. Injunctive relief to prevent a state court from bringing an action was not allowed.[74] The role of the federal courts was kept very restrictive and basically was that of declaratory relief. The federal courts were most comfortable with this and did not see this as being inconsistent with the domestic relations exception. While this may seem restrictive, even this limited role of tie-breaker was extremely meaningful.

4. Efficacy of federal court option in promoting settlement of jurisdictional issue

After Flood v. Braaten, the first case to allow federal court relief in PKPA disputes, 727 F.2d 303 (3d Cir. 1984) and before Thompson v. Thompson 484 U.S. 174 (1988),[75] the federal court system was generally available as a tie-breaker, or at least the potential was there, and such availability would often result in settlement. This fact could be shown to attorneys, who as a whole are not aware of the PKPA, and would then lend some credible support to the position that, notwithstanding the "Home State" status of the child in their forum, their state could not modify the decree from your state.

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[73]The original matter in Thompson was filed on August 12, 1983. The Supreme Court decision was announced on January 12, 1988, nearly five years later. Add into this the state court delay for about two years per appellate level and it can take up to nine years before the issue gets decided. By that time the children are likely to be over eighteen and the issue becomes moot.

[74]Heartfield v. Heartfield, 749 F.2d 1138 (5th Cir. 1985).

[75]One puzzling thing about Thompson: Clay, the former Mrs. Thompson, was living in Louisiana, which is in the 5th circuit where Heartfield v. Heartfield, 749 F.2d 1138 (5th Cir. 1985) had been decided. Why didn't Mr. Thompson bring his action in the 5th circuit rather than the 9th?

In one case,[76] for example, in which Oregon counsel had filed in Oregon to modify a California decree where the noncustodial parent had continuously remained in California, an action was filed in the federal district court in San Jose, California. Prior to this filing counsel in Oregon steadfastly refused to dismiss his action in Oregon, even after he had been supplied with a copy of the PKPA and relevant case law. As was usual in these cases, the noncustodial parent did not have the resources to hire counsel in Oregon to appear and object to the matter and certainly did not have the funds to afford appellate counsel.

Once the federal action was filed in California and his client was served with a petition for declaratory relief and a request for injunctive orders, Oregon counsel did settle the matter and did, as part of the settlement, dismiss the Oregon action. The federal action was then dismissed as part of the agreement.

It was clear that Oregon counsel was not going to follow the PKPA and it was also clear that Oregon counsel was aware that, as a matter of law, his action in Oregon was barred. The problem was that the local court either did not understand or would not follow the PKPA. There would have been no settlement in this case without the availability of the federal courts.

In another example[77] the jurisdictional dispute was between California and Pennsylvania. The order from California was clear and unambiguous: The mother had sole legal and physical custody and it had been entered fully in compliance with the PKPA. The child, who had always lived in California, was sent to Pennsylvania one January due to surgery on the mother. There was, as would be expected, a difference of opinion as to what the oral agreement was: The mother stated that the arrangement was for a few weeks, while the father stated that the mother told him to take the child forever.

The father commenced an action in Pennsylvania about seven months[78] after the child had been in Pennsylvania. The mother

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[76]The writer was attorney for the mother in the reported case.

[77]The writer was attorney for ther mother in this case as well.

[78]There is something fatally attractive about "Six Months." It appears in almost every conversation with out-of-state opposing counsel as if it were an incantation: "We have jurisdiction because the child has been here six months." It is very frequently the case that opposing counsel have never read

then contacted this office and related the circumstances. Her attorney was able to verify that the original order was made in compliance with the UCCJA and the PKPA, albeit by default.[79] In this case counsel in Pennsylvania was presented with the following scenario: He moves in Pennsylvania and, over objection, gets an order for custody. Her attorney moves in California and, over objection, confirms the California order and jurisdiction of the California court. At this point it was a draw. When the mother's attorney informed father's counsel that the next step would be to file an action for declaratory relief in the Northern District of California in San Jose, citing the Flood case and the PKPA, the father's attorney hung up and surfaced about a week later. At that time he agreed that he was in the much tougher position and that his potential for losing the case was very high. Settlement became much easier in this case. Ultimately an agreement was reached which was filed in the California action, and counsel then registered the resulting California order in the Pennsylvania action.[80]

The effect of the availability of the federal courts as a tie-breaker cannot be underestimated. The mere availability of the federal court is likely to cause settlement in a substantial majority of all cases. The single act of filing the federal cause of action would probably settle all but a very few. No attorney wants to "lose" a case. When the probability of "losing" approaches 100%, then counsel are much more willing to settle. It is to be noted that the concept of "losing" must be immediate. If counsel will lose only after the Supreme Court takes the case and nine years have passed and many thousands of dollars have been spent, then the possibility of "losing" does not have as significant an effect. The immediacy of the loss is what matters.

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any other section of the UCCJA, particularly 9 ULA § 14.

[79]Another interesting factor is that out-of-state counsel often believe that a default order is not as good as a contested order.

[80]As a corollary to this discussion, the effect of the United States becoming a contracting state to the Hague Convention on the Civil Aspects of International Child Abduction, done at the Hague on October 25, 1980, is noted. In the summer of 1988, within a few weeks after the July 1 effective date, four cases were settled between California and Canada due to the mere fact that the Convention existed. In one case litigated by this author, counsel on Vancouver Island, British Columbia was given a cite to the British Columbia Family Relations Act wherein the Convention was found. A few days later my client advised me that the child was on a flight back to California. Not all of them were that simple but it was dramatic to say the least.

It is clear then, that prior to Thompson the presence of the federal court as an immediate tie-breaker had a salutary effect. The availability of a federal cause of action would be desirable and should be considered by Congress.

Chapter 5

WHEN FRIENDS, RELATIVES AND LAWYERS ARE PART OF THE PROBLEM

by Patricia M. Hoff, Esq.

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Chapter 5

WHEN FRIENDS, RELATIVES AND LAWYERS ARE PART OF THE PROBLEM

by Patricia M. Hoff, Esq.

I. Introduction

Conduct of third parties, be they friends, relatives or lawyers, can frustrate a parent's best efforts to locate and recover an abducted child.

The discussion will focus first on egregious lawyer conduct that has resulted in parental kidnapping, or impeded legitimate location and recovery efforts, prompting malpractice suits and/or professional disciplinary actions against errant attorneys.

The discussion will then turn to an overview of conduct on the part of "socially supportive individuals" who have helped parents abduct and/or conceal their children, for which they have been held financially liable in successful tort actions brought against them.

II. Lawyer misconduct as an obstacle to the recovery and return of abducted children

A. Generally

Lawyer misconduct has taken a variety of forms, as have the consequences for such conduct. In one case, a lawyer was suspended from practicing law for two years for actively counseling his client, a non-custodial father, to abduct his child from the custodial mother. Attorney Grievance Commission of Maryland v. Leonard J. Kerpelman, 420 A.2d 940 (Md. 1980). In a remarkable case, two judges, one private attorney and a county prosecuting attorney were held in indirect criminal contempt and fined for their parts in wilfully and intentionally disobeying and seeking to circumvent an order to enforce a custody decree. In re Michelle Lemond, 413 N.E.2d 228 (Ind. 1980). In an Illinois case, the court allowed a custodial mother's malpractice suit against her attorney for his alleged failure to seek an order barring unsupervised visitation by a noncustodial Jordanian father, despite her repeated requests to do so. Shehade v. Gerson, 500 N.E.2d 510 (Ill. Ct. App. 1987).

In another case, a lawyer faced a malpractice action for violating a stipulation in a court order by prematurely returning passports to a Swiss client, which predictably allowed that noncustodial parent to take the child to Switzerland. McEnvoy v. Helikson, 562 P.2d 540 (Or. 1988). Compare Finn v. Lipman, 526 A.2d 1380 (Me. 1987), in which defendant-attorney won a summary judgment in an action brought against him by his client's former husband for alleged intentional interference with parental custody rights and intentional infliction of emotional distress,

the court having found no evidence of direct contact between the defendant-attorney and the children, or a violation by him of the court order. (Defendant's affidavits asserted that he never met with the children nor counseled any activity to violate the provisions of the joint custody order, and that he had no contact with the father outside the divorce action. Father had not alleged that defendant abducted the children or otherwise compelled them to leave him.)

For a comprehensive discussion of cases involving attorney wrongdoing in interstate child custody and parental kidnapping cases, see Hoff, Schulman and Volenik, Interstate Child Custody Disputes and Parental Kidnapping: Policy, Practice and Law, ABA-LSC (1982), Chapters 14 and 16, and 1990 Supplement, NCOWFL, hereinafter "ICCD (1982)" and "ICCD (1990)," respectively).

B. Recent Cases

A more detailed look at two recent lawyer misconduct cases follows.

Attorney Cameron K. Wehringer was disbarred from practicing law in New York (In the Matter of Wehringer, 525 N.Y.S.2d 604 (1988)) and in New Hampshire (In re Wehringer's Case, 547 A.2d 252 (N.H. 1988)) for knowingly aiding his client's efforts to extract from the custodial parent a favorable property settlement in exchange for the return of the child.

Mr. Wehringer knew that his client had forcibly abducted his child from the custodial-mother, just as he knew that mother was represented by counsel. Yet attorney Wehringer proceeded to negotiate on his client's behalf directly with mother, exploiting the unconscionable advantage his client had obtained by the kidnapping. He communicated his client's threat to take the child out of the country in the event she refused to sign the agreement, and he himself threatened mother that she would not see her child again if she failed to sign.

Would noble motives -- namely, to end the divorce warfare and achieve the well-being of the child-- protect the lawyer against disciplinary proceedings for his conduct in this case? The New Hampshire court properly rejected this defense.

In the case of Soderlund v. Alton, 467 N.W.2d. 144 (Wisc. Ct. App. 1991), attorney delay in communicating with an out-of-state court about pending custody proceedings contributed to conflicting custody and child support orders being issued, and ultimately to a successful malpractice suit against the lawyer. Although the plaintiff-mother in Soderlund retrieved her children through self-help, the case serves to alert lawyers to the hazards of not communicating promptly with sister state courts about pending proceedings in their states.

Attorney Alton filed for custody on behalf of plaintiff-mother in Wisconsin. However, when father served mother with the action he had filed in Florida, Mr. Alton waited almost two months -- until two days before the final hearing in Florida -- to communicate with the Florida court about the Wisconsin proceeding. At no time did he file in the custody registry any information about the Wisconsin proceeding. The Florida court ruled that attorney Alton's call was "untimely in the extreme, and therefore...without merit."

Mother brought a legal malpractice action against her lawyer because of the irreconcilable conflict between the custody and child support awards entered by the Florida and Wisconsin courts, and her inability to collect child support payments resulting therefrom. Mother contended at trial that her attorney's late response to the Florida divorce proceeding allowed that action to continue, resulting in a custody decree in favor of her husband, which prevented her from enforcing her Wisconsin child support order. Attorney Alton unsuccessfully contended that his alleged negligence did not cause mother's damage; rather, any damage she suffered was caused by the Florida court's failure to follow the UCCJA, or by the advice rendered by his client's Florida counsel.

A jury verdict in favor of mother was upheld on appeal, although a retrial was ordered on the issue of future damages. The damages award reflected problems collecting child support and attorneys fees incurred in defending the Florida action and in bringing an unsuccessful federal court action to resolve the conflicting judgments. They do not reflect loss of custody, as mother had traveled to Florida to pick up children, whereupon she returned with them to Wisconsin.

Two practice pointers in interstate custody cases can be readily gleaned from this case in addition to the need to timely notify sister state courts of pending proceedings. Mother alleged, and attorney Alton disputed, that he never advised her to obtain a Florida attorney. Attorneys can anticipate such an allegation by discussing with clients the relative merits of retaining out-of-state counsel as soon as an action is filed in another state. Mother's undisputed allegation that attorney never made use of the registry provided for under the UCCJA should also trigger regular use of the registry.

III. The Attorney - Client Privilege: Does it prevent release of the abductor's address?

A. Generally

Not all attorney conduct that impedes location efforts is actionable. In fact, a refusal to reveal the present address of an abductor-client is generally justified by the attorney-client privilege pursuant to which an attorney is obliged to protect

client confidences, as well as by disciplinary rules governing nondisclosure of confidential communications between attorneys and clients.

However, a client's address is not protected absolutely against disclosure. The state rules governing lawyer ethics may require disclosure of confidential information in specified circumstances. State professional conduct rules typically are based upon the American Bar Association's (ABA) rules of conduct. Rule 1.6(b)(1) of the ABA Model Rules of Professional Conduct provides that a lawyer may reveal confidential information to the extent the lawyer believes necessary to prevent the client from committing a criminal act that is likely to result in imminent death or substantial bodily harm. Its predecessor, DR 4-101(C)(3) of the Model Code of Professional Responsibility provided that a lawyer may reveal the intention of his client to commit a crime and the information necessary to prevent the crime. The option exists regardless of the seriousness of the proposed crime.

In addition, courts in a number of states have ordered lawyers to disclose the location of a client, or of an abducted child, in custody disputes involving concealment of a child. See, e.g., Jafarian-Kerman v. Jafarian-Kerman, 424 S.W.2d 333 (Mo. Ct. App. 1968) (Father's attorney required to disclose client's address after father abducted child to Germany in violation of a temporary court order, the court labeling his action a "malicious and wanton infraction of the court's orders and a brazen obstruction of the administration of justice"); Matter of Jacqueline F., 391 N.E.2d 967 (N.Y. 1979) (Attorney ordered to disclose whereabouts of his client after she took child to Puerto Rico in violation of court order, the court finding that the client kept her address secret for one purpose -- "to thwart the mandate of the court's judgment awarding custody of Jacqueline"); Waldmann v. Waldmann, 358 N.E.2d 521 (Ohio 1976) (Attorney required to divulge child's address, as not a privileged communication); Dike v. Dike, 448 P.2d 490 (Wash. 1968) (Address of mother who forcibly abducted child in violation of temporary custody order held not protected by attorney-client privilege, the court opining that "the primary purpose of disclosure is to protect a minor child's welfare which is, at least, potentially being harmed by the client's continuing wrongful actions").

For a more complete discussion of the conflict between a lawyer's obligation to protect client confidences from disclosure and the searching parent's interest in having that lawyer divulge the abductor-parent's address, and cases in which searching parent's have successfully sought court-ordered attorney disclosure of the abductor's whereabouts, see ICCD (1982), p. 16-6 - 16-12 and ICCD (1990), p.16-5 - 16-9.

B. Recent Cases

As the foregoing cases illustrate, when a parent who abducts or conceals a child communicates his or her whereabouts to counsel, the attorney may be compelled to reveal this vital information. This is precisely what happened in the recent case of Bersani v. Bersani, 565 A.2d 1368 (Conn. Super. Ct. 1989). Neither the attorney-client privilege nor the lawyer's ethical obligation to protect against disclosure of client confidences could shield mother's attorney in that case against disclosure of her whereabouts.

The facts of the Bersani case present a familiar pattern in parental kidnapping cases. Following an adverse ruling on her request for permission to take the couple's children to Spain pending a final hearing, mother moved out of her home with the children. When father learned she had gone, he sought information on her whereabouts from her lawyer. Mother's attorney acknowledged knowing mother's location, but declined to disclose it on grounds that doing so would violate her obligation to maintain the confidentiality of information communicated to her by her client.

Father then successfully sought a court order to compel mother's attorney to reveal the whereabouts of her client and the children. The court found that the mother's willful contempt in leaving the country in violation of the court's order constituted a fraud on the court, and that the attorney-client privilege would not apply to information imparted to an attorney by a client in the course of perpetrating a fraud on the court. While finding that mother's attorney did not assist or advise mother to violate the court's order, the court found that the attorney's refusal to disclose her client's whereabouts served to assist the mother in her ongoing contempt of the court's order. The court's ability to enforce its custody orders was also thwarted. The court specifically stated that "...any claim of privilege must yield in these circumstances to the best interests of the children." Id. at 1371.

The opinion cited another recent case, Fellerman v. Bradley, 493 A.2d 1239 (N.J. 1985), which presents an excellent discussion of the extent to which a client's address is protected against compelled disclosure under the attorney-client privilege and disciplinary rules governing confidential and secret communications. While the underlying matrimonial cases did not involve parental kidnapping or child concealment, the analysis is clearly relevant and should be reviewed.

In Fellerman, father was obligated by a final judgment of divorce to pay an accountant's fee. When the court requested payment of the fee, father's counsel apprised the court that father no longer lived in New Jersey. While acknowledging that

he had father's address, he would not disclose it because of the attorney-client privilege. The court ordered father's attorney to show cause why he should not be held in contempt for refusing to disclose father's address. Ultimately, the Supreme Court affirmed the lower court's order compelling disclosure of the client's address. The highest court held that the client's address is not protected under the attorney-client privilege because "the client, through his attorney, attempted to perpetrate a fraud on the court -- to "mock justice" -- by consenting to and then flouting a judgment that obligated him to bear the costs of the accountant." Id. at 1246. The court stated that "enforcement of the privilege would result in a direct and clear impairment of the administration of justice. The nondisclosure of the client's address would totally frustrate the orderly processes of the judicial system." Id. at 1247. Because the fraud exception to the privilege was held to apply to the client's address, the court further reasoned that the address could not be considered a confidence protected from disclosure under the disciplinary rules either.

IV. Conduct of "socially supportive others" as an obstacle to location, recovery and return

A. Generally

Rarely can a parent abduct and conceal his/her children without assistance from some other person or persons. Typically, an abductor will turn to girl or boyfriends, new spouses, and/or their own parents for support. Sometimes sympathetic employers are willing to cooperate. As discussed above, abductors may also enlist the help of their attorneys.

The third party may provide financial support, a place to stay, the use of a car, or may serve as a mail drop or go-between for the abductor. The degree to which third parties help can vary from minor (e.g., cashing a single check for the abductor) to major (e.g., actually participating in planning and executing the abduction). As evidenced by a growing body of case law, whatever contributions these individuals make to the abduction or concealment of the child may potentially result in an award of damages against them in a legal action brought by the searching parent and/or the child for custodial interference, intentional infliction of emotional harm, and a variety of related tort claims.

The case of Lloyd v. Loeffler, 539 F. Supp. 988 (E.D. Wisc. 1982), aff'd, 694 F.2d 489 (7th Cir. 1982), illustrates how little third parties need do to be held liable. In that case the maternal grandparents were sued by the custodial father for wrongful interference with custody for helping mother and her new husband conceal the child. They served as a mail-drop by allowing their daughter to use their address to receive a

government refund check, which they then forwarded to her. The grandparents in Pankratz v. Willis, 744 P.2d 1182 (Ariz. Ct. App. 1987), provided extensive assistance to their daughter which resulted in liability. The plaintiff in Pankratz was a noncustodial father with court-ordered visitation rights. He successfully sued his former in-laws for their role in helping the custodial mother "disappear" with the couple's child. They drove the mother to California, had a power of attorney which they used to pay all of her obligations, sell her house, file income taxes, cash refund checks, etc. Evidence revealed telephone calls from the mother to grandparents after her disappearance.

A comprehensive review of the growing body of case law from around the country is found in Chapter 14 of ICCD (1982) and in the corresponding pages of ICCD (1990).

B. Recent Cases

Two recent cases addressed the question of whether nonresident grandparents were subject to the personal jurisdiction of the court for purposes of a child snatching tort action.

In the case of Fuller CATV Construction, Inc. v. Pace, 780 P.2d 520 (Colo. 1989), the Colorado Supreme Court held that the trial court had personal jurisdiction over grandparents and their corporation based on acts allegedly taken by them in North Carolina which were intended to cause injury in Colorado. The merits of the underlying complaint were not reached in the reported opinion; the case was remanded for further proceedings by the trial court.

The Colorado lawsuit was brought by mother against the abductor-father's parents and their North Carolina corporation (and others) for tortious interference with the parent-child relationship and outrageous conduct based on allegations that they aided and abetted the father in abducting and concealing her son in violation of a Colorado restraining order.

The nonresident grandparents objected to the exercise of personal jurisdiction over them and their company on grounds that there were insufficient contacts between them and Colorado to warrant application of the state long-arm statute to them.

Before addressing the jurisdictional issue, the court first considered whether causing a minor child to leave a parent who is legally entitled to custody without consent of that parent, or preventing a child's return to his custodial parent constitutes a tortious act in Colorado. "Based on the fact that is a crime in this state to take a child from his or her lawful custodian and to deprive the lawful custodial of custody of a child," the court

recognized the tort of interference with the parent-child relationship set forth in Restatement (Second) of Torts § 700 (1977). Id. at 523.

The court next examined whether the tort occurred in Colorado. For purposes of the long-arm statute, tortious conduct in another state which causes injury in Colorado may be deemed to be an act committed in Colorado so as to satisfy the long-arm statute. The state supreme court found that the acts allegedly committed by grandparents individually and as agents of their company were directed at interfering with the child's relationship with his mother, avoiding the Colorado custody order, aiding in concealing the boy from his mother and preventing his return to Colorado. Thus the court concluded that Colorado was the focal point of their actions and the effects of those actions and exercise of jurisdiction over defendants was proper.

The facts alleged by mother revealed an extremely active role on the part of grandparents and their company in harboring and concealing their son and grandson following the abduction. Mother alleged that grandparents had actual physical custody of her son with knowledge that he had been kidnapped by his father and kept him in violation of court orders; that they provided housing for their son and helped him remain at large; that they refused to divulge the whereabouts of their son and the child to the sheriff and helped their son flee to avoid apprehension by the sheriff.

The complaint also alleged that grandparents acted as agents of their corporation when they negotiated checks from the father's Colorado employer and forwarded documents from his employer to help their son evade the Colorado custody orders. The checks were sent to the corporation's post office box. The corporation also employed father, and failed to make tax deductions from his paychecks in order to avoid detection of his whereabouts through the federal Parent Locator Service. When the child received medical treatment in North Carolina, the corporation post office box was listed as his address.

It is clear from the opinion that mother and her counsel were extremely effective in discovering and documenting tortious conduct by defendants. The information they discovered permitted suit against grandparents' corporation, an additional potential source of recovery.

In recognizing the tort of interference with the parent-child relationship, the Colorado Supreme Court in Fuller CATV Construction, Inc. expressed the view that ..."recognition of such conduct as tortious will help effect a speedy return of the child and result in better cooperation by potential third-party defendants seeking to avoid the suit." Id. at 523. While the

trend is clearly in the direction of recognizing child snatching tort actions as the Colorado court did, not all courts have adopted this view.

The Minnesota Supreme Court recently bucked the trend when it decided a tort case involving nonresident grandparents who allegedly provided substantial assistance to their daughter in her efforts to conceal their grandchild from her custodial father. The two issues in Larson v. Dunn, 460 N.W.2d 39 (Minn. 1990), mirror those presented in Fuller CATV Construction, Inc., namely, whether the trial court has personal jurisdiction over nonresident grandparents, and if so, whether Minnesota would recognize a tort of intentional interference with custody rights.

Suit was brought by a custodial father against his former wife, her parents and several other relatives for alleged intentional interference with his custody rights to his daughter. Mother abducted their daughter in violation of a court order awarding custody to father, and was not located for seven years, when the F.B.I. found her in the state of Washington. Grandparents allegedly denied father access to his daughter immediately prior to her abduction, and then aided in her abduction and concealment during the two years they remained residents of Minnesota. After moving to California, they allegedly established a post office box to act as a go between for father and the child. Other relatives are alleged to have had contact with mother, and to have denied having information about her whereabouts to local law enforcement authorities and the F.B.I., thus delaying the child's recovery and aggravating father's emotional and financial injuries.

On the jurisdictional issue, the high court decided that the nonresident grandparents had sufficient contacts with Minnesota such that exercise of personal jurisdiction over them did not offend constitutional due process or statutory requirements.

Notwithstanding its finding that grandparents were subject to the personal jurisdiction of the court based on their alleged conduct both inside and outside the state which caused injury in the state, the Minnesota Supreme Court refused to create a tort of intentional interference with custodial rights. The majority based its decision on the rationale that expanding the adversarial process to include this new tort would be contrary to the best interests of children and would intensify intrafamily conflict growing out of marriage dissolution without deterring parental abduction. Id. at 47.

A persuasive dissent, written by Chief Justice Popovich and joined by two other justices, articulated precisely the opposite rationale in support of recognizing the tort: "Permitting a cause of action for interference with custody does serve the best

interests of children by encouraging the return of absent children by imposing a civil damages remedy." Id. at 52.

The split of opinion reflected in the majority and dissenting opinions in Larson can best be resolved by enactment of legislation authorizing a cause of action for intentional interference with custody rights. This would reflect a determination by the state legislature that Minnesota should adopt the prevailing view in favor of such cause of action.

V. Conclusion

Third-party interventions of the kind described in this section are obstacles to the recovery and return of abducted children. To the extent that the "help" provided by these people is given out of ignorance of the potential consequences (and not in willful disregard thereof), an education effort focused on third-party liability in parental kidnapping cases would be beneficial. Lawyers could best be reached through continuing legal education programs, particularly in states that require mandatory ethics education. Relatives and friends of actual and would-be abductors could be reached by public service announcements, or by a pamphlet that could be disseminated by the National Center for Missing and Exploited Children.

Legislatures across the country should enact explicit causes of action clearly defining what conduct by parents and third parties constitutes tortious interference with child custody and visitation. Such legislation would serve three principle functions: compensation to the injured parent, deterrence to those people who might otherwise play a part in the abduction, retention or concealment of a child, and as Chief Justice Popovich articulated in his dissent in Larson v. Dunn, 460 N.W. 2d 39, 52 (Minn. 1990), imposing a civil damages remedy would also serve the best interests of children by encouraging the return of absent children.

Chapter 6

AN ACT TO EXPEDITE ENFORCEMENT OF CHILD CUSTODY DETERMINATIONS

by Adrienne Volenik, Esq.
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Chapter 6

AN ACT TO EXPEDITE ENFORCEMENT OF CHILD CUSTODY DETERMINATIONS

by Adrienne Volenik, Esq.[1]
and Janet Kosid Uthe, Esq.[2]

I. Introduction

The UCCJA and the PKPA were designed to address the most egregious of the abuses arising from forum shopping in child custody cases. Prior to the existence of these statutes, the law encouraged a parent dissatisfied with a custody determination to take the child to a different jurisdiction and try again. While the UCCJA and the PKPA have proven to be increasingly effective as vehicles for halting forum shopping, they have provided no guarantees that custody litigants will abide by the terms of a particular custody determination once it has issued. Despite the fact that both Acts direct the enforcement of custody decrees entered in accordance with mandated jurisdictional prerequisites and due process, neither deals with mechanisms for enforcement.

This lack of specificity in enforcement procedures has resulted in the law of enforcement evolving differently in different jurisdictions. For example, in one state, it might be common practice to file a Motion to Enforce or a Motion to Grant Full Faith and Credit to initiate an enforcement action. In another, a writ of habeas corpus might be a commonly used vehicle. Contempt might be still another action used to enforce the existing decree.

In addition to differences in procedures that may be followed to enforce a decree, different jurisdictions have adopted varying standards for enforcement. While many tend to limit consideration in enforcement proceedings to whether the court which issued the decree had jurisdiction to make the custody determination, some broaden consideration to a scrutiny of whether enforcement would be in the best interests of the child.

Lack of uniformity complicates the enforcement process in several ways: (1) it increases the costs of the enforcement action in part because the expertise of more than one lawyer may be required, one in the original forum and one in the state where enforcement is to be sought; (2) it decreases the lack of certainty of outcome - while the legal process never assures a

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[1]Adrienne Volenik authored the Introduction, Title I and corresponding commentary to the Act.

[2]Janet Kosid Uthe authored Title II and corresponding commentary to the Act.

particular outcome, when a court has issued a determination, the parties should feel that they must abide by it or seek appellate review or modification in the appropriate forum.

Finally, enforcement can be a long and drawn out procedure. Fighting vigorously, a parent opposed to the provisions of a custody determination may be able to delay implementation for many months, possibly even years, thereby frustrating not only the other parent, but also the process that led to the issuance of the original court decree.

Title I of this Act addresses these concerns. First, it establishes standard procedures to be followed in every jurisdiction. These procedures can be followed to enforce visitation rights as well as custodial rights. Secondly, the Act establishes a brief time frame within which all decisions must be made. This is important in all instances and particularly so where visitation rights are at issue. If visitation rights cannot be enforced quickly, they may be impossible to enforce effectively at all. This is particularly true if there is a limited time within which visitation can be exercised such as may be the case when one parent has been granted visitation during the winter holiday break. Without speedy consideration and resolution of the enforcement of such visitation rights, the ability to visit during that period may be lost entirely.

Third, the Act limits a court's inquiry to whether the court which entered the determination had subject matter jurisdiction consistent with federal law to do so and to whether the due process rights of the parties were observed. If these questions are answered in the affirmative, and the determination has not been modified, it is to be enforced.

In addition, the Act attempts to create an environment in which costs can be kept to a minimum. The procedures and pleadings are purposely kept simple so that parties can elect to proceed without counsel. When appropriate, hearings can be held telephonically or via other technology that would permit a party, or counsel, to participate without being physically present. Finally, costs and fees are to be awarded unless the court determines that such an award would be clearly inappropriate. This could include situations where payment of the award would make it difficult or impossible to adequately provide for the child.

This Act was developed with an awareness of the existence and operation of the Uniform Enforcement of Foreign Judgments Act (UEFJA). It is, however, designed to operate quickly with provisions to take into account the all important "non-party" to the proceedings - the child.

Title II of the Act takes a relatively new approach to the question of what role the prosecutor and law enforcement should play in the civil aspects of child custody and parental abduction disputes. Section 1 is modeled upon existing California law which authorizes increased activity on the part of prosecutors in custody disputes.

The involvement of the prosecutor is seen as crucial to the efficient enforcement of custody determinations. Because civil enforcement of custody orders is not within the usual scope of the prosecutor's authority, creating statutory authority for such involvement is necessary. The Act clearly delineates the scope and nature of the assistance that can be provided. A clear mandate of prosecutorial assistance in civil enforcement of custody decrees will also minimize the possibility that the prosecutor will incur liability for such actions. See Chapter 7, The Role of Prosecutors in the Civil Enforcement of Child Custody Determinations: The California Model. Further, the involvement of the prosecutor is likely to enhance the location and recovery of missing children and encourage the peaceful transition of custody from one parent or guardian to another.

The same rationale supports increased involvement by law enforcement officers in locating parents and missing children and in enforcing custody determinations. Section 2 authorizes law enforcement officers to take all actions reasonably necessary to locate the child and to procure compliance with all existing court orders in any case where a valid custody determination has already been entered, an enforcement action under this Act has been filed, or a temporary order has been issued. Law enforcement is also authorized to help locate a parentally abducted child when a custody action has been filed.

Title I: Procedural Act to Expedite Enforcement of Child Custody Determinations

Section 1 - Definitions

For the purposes of this Act:

A. "Custody determination" means any judgment, decree or other order of a court, whether permanent or temporary, or an initial or a modification order, providing for the custody of, or visitation with, a child, or which in any way affects the custody of a child, issued in the context of a custody proceeding. "Custody proceeding" includes proceedings in which a custody determination is one of several issues, such as an action for divorce or separation, as well as neglect, abuse, dependency, wardship, guardianship, termination of parental rights, adoption, and protection from domestic violence proceedings. A custody determination does not

include a judgment, decree or other order of a court regarding paternity or relating to child support or any other monetary obligation of any person, or a decision made in a juvenile delinquency, status offender or emancipation proceeding.

B. "Petitioner" means any party to a custody determination, or a prosecutor, who, in accordance with Title II of this Act, files a petition seeking enforcement of the provisions of a custody determination, including those governing visitation rights.

C. "Respondent" means any party to a custody determination against whose interests a petition to enforce the custody determination is filed in accordance with this Act.

Section 2 - Subject Matter Jurisdiction to Enforce

A. An action to enforce a custody determination may be brought in any court of this State which is competent to decide child custody matters.

B. Jurisdiction to enforce does not confer subject matter jurisdiction to modify or to make a custody determination.

C. A petitioner who files an action pursuant to this Act does not thereby submit to the jurisdiction of the court for any other purpose.

Section 3 - Stay of Modification Proceedings

A. Stay of Modification Action - Whenever a court of this jurisdiction which has before it an action to modify a custody determination learns of the pendency of an action to enforce the same custody determination brought in any state pursuant to this Act or any Act substantially similar to it, the court shall stay the modification order pending the entry of an order to enforce the determination, or one denying or dismissing the enforcement action.

B. Communication Between Courts - Whenever a court of this jurisdiction which has before it a petition to enforce a custody determination learns of the pendency of a proceeding to modify the same custody determination, it shall immediately communicate with the court in which the modification action is pending. Both parties and the prosecutor, where appropriate, shall be given the opportunity to participate in this communication which shall be on the record.

Section 4 - Procedure

A. Petition - Any party to a custody determination, or a prosecutor acting pursuant to Title II of this Act, seeking to enforce a custody determination may do so by filing a Petition to Enforce in any court which has jurisdiction to enforce such actions pursuant to Section 2.

B. Information to be submitted - The petitioner in an action to enforce a custody determination shall in his or her first pleading or in an affidavit attached to that pleading declare under oath:

(1) whether a certified copy of the custody determination has been appended to the petition;
(2) whether, if known, the court which issued the determination identified the jurisdictional basis it relied upon in exercising subject matter jurisdiction and, if so, what it was;
(3) whether, to the petitioner's knowledge, the determination has subsequently been modified;
(4) whether the respondent was notified of and given an opportunity to be heard in the proceedings which resulted in the custody determination and, if so, the nature of the notification and the extent of the respondent's participation;
(5) whether there is litigation currently pending between the parties concerning the custody determination other than the enforcement action;
(6) the location of the child and/or the respondent if known;
(7) that the respondent will be served with notice of the enforcement action pursuant to the provisions of this Act, or that the petitioner is seeking a waiver of notice pursuant to Section 9 of this Act and is requesting that the court issue a warrant directing law enforcement officials to take physical custody of the child for delivery to the court pursuant to Section 9.

C. Notice and Service - Notice of an action filed pursuant to this Act shall be given in accordance with the provisions of the UCCJA and the PKPA unless a waiver of notice is sought pursuant to Section 9.

ALTERNATIVE - Notice of an action filed pursuant to this Act, unless waived pursuant to Section 9, shall be by:

(1) personal service - by delivering copies of the petition to the respondent by (a) a sheriff, marshal, or constable; (b) a registered process server; (c) a person at least 18 years of age not a party to the action;

(2) substituted service - by leaving copies of the petition at the dwelling, usual place of abode, or usual place of business of the person served in the presence of a competent member of the household or a person apparently in charge of the office or place of business, at least 18 years of age, who was informed of the general nature of the papers, and thereafter mailing copies to the person served at the place where the copies were left;

(3) certified or registered mail - by mailing a copy of the petition by first class mail requiring a return receipt; or

(4) publication - by publication, in accordance with the laws of the state and with the approval of the court when no other method of service is available.

D. Action by the Court - Within (5) days of the filing of proof of service of the petition, the court shall review the petition and either issue its Order to Show Cause Why the Custody Determination Should Not Be Enforced or dismiss the Petition.

Whenever the petitioner requests a waiver of notice pursuant to Section 9 of this Act, the court shall either grant or deny the request within (2) two days of its filing. In the event the request is granted, the court shall issue simultaneously its Order to Show Cause Why the Custody Determination Should Not Be Enforced.

E. Answer to the Petition - The respondent shall have (5) days following receipt of an Order to Show Cause Why the Custody Determination Should Not Be Enforced to answer the petition and deliver copies to the petitioner and prosecutor, if participating pursuant to Title II, unless the Court shall order the time shortened for good cause shown. The Answer shall address the following:

(1) whether, if known, the court which issued the determination identified the jurisdictional basis it relied upon in exercising subject matter jurisdiction and, if so, what it was;

(2) whether the respondent was notified of and given an opportunity to be heard in the proceedings which resulted in the determination and the nature of the notice and the extent to which the respondent participated in the proceedings;

(3) whether the decree has been modified and, if so, a certified copy of the modified decree shall be attached;

(4) whether there is currently pending any other proceeding between the parties to determine or modify custody;

The answer shall not be a vehicle for modification of the existing determination nor for seeking relief other than the dismissal of the Petition.

F. Relief Granted upon Review of the Pleadings - Within (3) three days of the receipt of the Answer, the court shall review the pleadings. If, based on its review of the pleadings, it concludes that there is no genuine issue between the parties as to any law or material fact, it shall issue its order either enforcing the custody determination and granting such other relief as it deems appropriate pursuant to Section 10 or dismissing the petition.

G. Scheduling a Hearing - If, after review of the Petition and Answer, the court concludes that a genuine issue of law or material fact exists between the parties, it shall schedule the matter for hearing within (3) days, limiting inquiry to the disputed issues of law or material fact and directing the respondent to appear at the hearing with or without the child as is appropriate in the circumstances.

H. Presence of a Party at the Hearing - Upon application by a party or by the prosecutor, acting pursuant to Title II of this Act, the court may order that the hearing, which shall be on the record, be conducted by conference call or other available technology.

I. Communication Between Courts - The court may communicate at any time with the court of the state which issued the custody determination and shall do so if requested by a party. Such communication shall be on the record and in a manner designed to permit the parties and, when appropriate, the prosecutor to participate.

J. Computation of Time - In computing any period of time set forth in this Act, the day of the event from which the designated period of time is to run shall not be included. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

Section 5 - Scope of Inquiry of Court

A court shall issue an order enforcing a custody determination if:

(a) the court which issued the determination exercised subject matter jurisdiction in compliance with the jurisdictional

prerequisites of the PKPA as determined from the pleadings or other competent evidence;

(b) the respondent was given reasonable notice and opportunity to be heard consistent with the requirements of the UCCJA and the PKPA; and

(c) the determination has not been modified by a court in compliance with the PKPA.

Section 6 - Standard of Proof

The standard of proof to be applied in an enforcement action brought pursuant to this Act is preponderance of the evidence.

Section 7 - Burden of Proof

The petitioner in the action has the burden of proving that the custody determination is entitled to enforcement. It will be presumed that the burden has been met:

A. if the information required to be submitted in Section 4 demonstrates:

(1) that the court which issued the determination exercised subject matter jurisdiction in compliance with the jurisdictional prerequisites of the PKPA;

(2) that the respondent was given reasonable notice and opportunity to be heard consistent with the requirements of the PKPA and the UCCJA; and

(3) that the custody determination has not been modified by a court in compliance with the PKPA; and

B. the petitioner has filed a certified copy of the custody determination by appending it to the petition.

Section 8 - Defenses to a Petition to Enforce

The only defenses to a petition to enforce that can be considered by the court are:

(a) that the court that issued the determination lacked subject matter jurisdiction in accordance with the provisions of the PKPA;

(b) that the respondent was not given reasonable notice of or an opportunity to be heard, consistent with the requirements of the PKPA and the UCCJA, in the proceeding that resulted in the determination. This defense shall not be available if the respondent purposefully concealed his or her location from the

petitioner, took deliberate steps to avoid service of process, or elected not to participate in the custody proceeding when he or she had been properly served or had actual knowledge of the proceedings; or

(c) that the custody decree has subsequently been modified by a court exercising jurisdiction in compliance with the provisions of the PKPA.

Section 9 - Preliminary Relief: Waiver of Notice and Warrant to Take Physical Custody of the Child

A. Waiver of Notice and Warrant to Take Physical Custody of the Child - When it appears to any court with jurisdiction to enforce a custody determination that there is reason to believe that the child will suffer immediate harm or be removed from the jurisdiction if the respondent is notified of the enforcement proceedings, the Court shall waive notice requirements and issue a warrant to take physical custody of the child. The warrant shall recite the facts supporting the issuance of the warrant and shall direct law enforcement officials to take physical custody of the child for immediate delivery to the court. The warrant may authorize law enforcement officials to enter private property to take physical custody of the child.

When the child is taken into physical custody pursuant to a warrant or as soon thereafter as is reasonably possible, the respondent shall be served with notice of the proceedings and the court's Order to Show Cause Why the Custody Determination Should Not Be Enforced.

When the child has been recovered or the warrant is otherwise no longer required, the court shall dismiss such warrant without further court proceedings and direct that any entry into the NCIC concerning said warrant be deleted.

B. Presumption of Immediate Harm - Immediate harm is presumed to exist where the respondent is currently the subject of criminal charges relating to the wrongful removal, retention or concealment of the child or is currently hiding the child from the petitioner. For purposes of this section, a respondent may be "currently hiding" the child from the petitioner even though the petitioner, despite the respondent's effort to conceal, has located the child.

C. Disposition of the Child Who is Taken into Physical Custody Pursuant to a Warrant - If a warrant to take physical custody of the child is issued, the Court shall, pending resolution of the enforcement action, authorize placement of the child with the petitioner, unless such a placement would be contrary to the best interests of the child, would be

impractical, or there is good cause to believe that petitioner would flee the jurisdiction with the child. In the event the child is not placed with the petitioner, the court shall make such other placement as may be in the child's best interests including placement with another responsible adult or with a child protection agency. When the child is placed with the petitioner pursuant to a warrant to take physical custody of the child, the court may impose conditions on the petitioner to insure the presence of the petitioner and/or the child, if so required by the Court, at any future hearing. Conditions may include requiring the petitioner to (1) state under oath that he or she will produce the child, (2) post a bond, (3) surrender passports, or (4) any other condition that the court sees fit to impose.

Section 10 - Final Relief

A. Order Entered at Conclusion of Hearing - At the conclusion of the hearing on the enforcement action brought pursuant to this Act, the court shall issue its order either granting the petition to enforce or dismissing it. In no event shall the court take the matter under advisement for more than one (1) day.

B. Judgment to be Granted Full Faith and Credit - Full faith and credit shall be accorded by the courts of every State and the United States to the judgment ordering the enforcement of the custody determination.

C. Order Enforcing the Custody Determination - In the event that the court grants the petition to enforce, it may include in its Final Order a direction to law enforcement officials to assist the petitioner in effectuating the Order. The Order may include an authorization to enter into private property to secure the child.

D. Costs and Fees - The prevailing party in an action brought pursuant to this Act shall be awarded necessary travel and other costs including those incurred by witnesses, private investigation fees, and attorneys' fees to be assessed against the losing party unless the losing party establishes by clear and convincing evidence that such an order would be clearly inappropriate.

E. Court costs - Court costs shall be assessed against the losing party unless that party establishes by clear and convincing evidence that this would be clearly inappropriate. In that case, the prevailing party shall pay court costs unless such an order would be clearly inappropriate or such costs have been covered by payments

from Federal, State or local legal assistance or other programs.

F. Financial Sanctions

(1) Financial sanctions shall be assessed against any:

(a) petitioner who:
(i) seeks enforcement of a custody determination that he or she knows has been modified, intentionally concealing from the court, the prosecutor or law enforcement officers information about the modification; or
(ii) alters the terms of the custody determination in order to mislead the court, the prosecutor or law enforcement officers.

(b) respondent who:
(i) interposes as a defense to an enforcement action a custody determination that he or she knows has been modified, intentionally concealing from the court, the prosecutor or law enforcement officers information about the modification; or
(ii) alters the terms of a custody determination in order to mislead the court, the prosecutor or law enforcement officers.

(2) Intent to conceal will be presumed to exist if the party fails to inform the court of the modification of which he or she is aware in either the petition to enforce or the affidavit attached thereto or the answer filed in accordance with Section 4 of this Act.

(3) Financial sanctions shall be awarded to the prevailing party in an amount not less than three (3) times the actual costs including attorney's fees incurred by that party. When appropriate, sanctions may also be awarded to the prosecutor, if participating in the enforcement action, in such amount as the court deems just under the circumstances. Sanctions awarded to the prosecutor shall include law enforcement costs incurred pursuant to Section 2 of Title II. Any costs that are actually recovered on behalf of law enforcement shall be paid by the prosecutor to law enforcement.

G. Any award made pursuant to this Section shall constitute a judgment and shall be enforceable as such.

Section 11 - Judicial Review

A. Dismissal or denial of a petition to enforce - dismissal or denial of a petition to enforce shall be considered de novo

upon original application to a higher court of this state in accordance with the provisions of this Act.

B. Appeal from an order enforcing a custody determination - appeal from an order enforcing a custody determination entered pursuant to this Act shall be in accordance with established procedures in a civil action. An order to enforce shall not be stayed pending appeal.

Section 12 - Non-Exclusive Remedy

The remedies established by this Act shall be in addition to remedies already available under the laws of this state.

Title II: The Role of Prosecutor and Law Enforcement in the Civil Enforcement of Child Custody Determinations

Section 1 - Assistance of Prosecutor

A. In any case where a petition to determine the custody or visitation of a child has been filed in a court of competent jurisdiction of any state or where a temporary order pending issuance of a custody determination has been entered in accordance with the applicable family law of any state, and (1) the location of a party in possession of the minor child is not known, or (2) there is reason to believe that such party may not appear in the proceedings although ordered to appear personally with the child, or (3) there is reason to believe that such party will flee the jurisdiction with the child or otherwise attempt to hide the child from the court, the prosecutor shall take all reasonable actions necessary, whether civil or criminal, to locate such party and the child and to procure compliance with an order to appear with the child for the purpose of adjudication of custody.

[Optional Provision: The petition to determine custody may be filed by the prosecutor.]

B. In any case where a custody determination has been entered by a court of any state exercising jurisdiction in accordance with the provisions of the PKPA and the child is taken or detained by another person in violation of the determination, upon request of the prosecutor of another state or a party to the determination whether or not a resident of this state, the prosecutor shall take all actions reasonably necessary to locate and return the child and to otherwise assist in the enforcement of the custody or visitation determination or other order of the court by use of any appropriate civil or criminal proceeding including, but not limited to, an action to enforce brought pursuant to this Act.

C. In cases submitted to this state for assistance pursuant to the Hague Convention on the Civil Aspects of International Child Abduction, the state attorney general and the prosecutor will perform the activities described in subdivisions A, B, and E, and otherwise take all appropriate actions to effectuate this treaty.

D. In performing the functions described in subdivisions A, B, C, and E, the prosecutor shall act on behalf of the court and shall not represent any party to the custody determination.

E. If the prosecutor represents to the court, by written declaration under penalty of perjury, that a warrant to take physical custody of the child is needed, the court may issue such warrant in accordance with Section 9 of this Act and may order the child placed with a parent, person, or agency recommended by the prosecutor or make such other placement as is appropriate in accordance with Section 9(C).

Upon a written declaration of the prosecutor that the child has been recovered or that the warrant is otherwise no longer required, the court shall dismiss such warrant without further court proceedings and direct that any entry into the NCIC concerning said warrant be deleted.

F. (1) Such sums as may be necessary to implement the civil provisions of this Act shall be appropriated.

(2) When the prosecutor incurs expenses implementing the civil provisions of this Act, including expenses incurred in another state, such expenses shall be reimbursed from state appropriations subject to an offset for any awards in favor of of the prosecutor's office entered and paid by a party pursuant to this Act.

(3) When the prosecutor incurs expenses implementing the civil provisions of this Act, including expenses incurred in another state, the court shall assess against the losing party such expenses unless the losing party establishes by clear and convincing evidence that such an order would be clearly inappropriate. Such an assessment of costs shall constitute a judgment and shall be enforceable as such.

[Alternative provision] When the prosecutor incurs expenses implementing the civil provisions of this Act, including expenses incurred in another state, the courts shall assess such costs against the losing party unless the losing party establishes by clear and convincing evidence that such an order would be clearly inappropriate. In the event that such expenses are not assessed against the losing party, the court shall, if appropriate, assess some or all of such expenses against the prevailing party. An

award of expenses made pursuant to this Act shall constitute a judgment and shall be enforceable as such.

G. In any action to enforce a custody decree brought pursuant to this Act, or any substantially similar act, where the petitioner is represented by out-of-state counsel or a prosecutor from another state acting pursuant to Title II, Section 1 of this Act, or a comparable statute, the prosecutor of this state shall provide the association or affiliation required by law necessary to facilitate the appearance of the out-of-state counsel or prosecutor.

Section 2 - Assistance of Law Enforcement

A. Law enforcement shall be authorized to take all actions reasonably necessary to locate a child and to procure compliance with all existing court orders when: (1) a child is taken, detained or concealed by another person in violation of a custody determination; (2) a petition to enforce a custody or visitation determination has been filed in a court of competent jurisdiction pursuant to this Act; or (3) a petition to determine custody or visitation of the child has been filed in a court which has jurisdiction in accordance with the provisions of the PKPA.

B. For the purposes of this Act, the term "all actions reasonably necessary to locate the child or to procure compliance with any order affecting custody or visitation of the child," includes, but is not limited to, the following:

1. Taking a missing person report;

2. Entering the child's description into the NCIC Missing Person File;

3. Taking a crime report of criminal custodial interference;

4. Locating the child;

5. Investigating the crime of custodial interference;

6. Requesting assistance from the Federal Parent Locator Service, or the State Parent Locator Service, if authorized by state law;

7. Accompanying a parent or other party to a custody determination of any state who is recovering an abducted child or securing compliance with a custody or visitation order in order to prevent violence between the parties;

8. Assisting a parent to obtain physical possession of a child pursuant to a custody determination of any state which has been filed in this state pursuant to the UCCJA if there is no claim of a conflicting custody order or other exigent circumstances raised by the other party or otherwise made known to the officer after a reasonably diligent inquiry;

9. Taking the child into physical custody if it reasonably appears that any person will flee the jurisdiction of the court with the child or otherwise hide the child from the court or if exigent circumstances otherwise warrant protection of the child;

10. Coordinating placement of the child with Social Services or Child Protective Services or other placement directed by the court;

11. Securing the personal appearance of a party or a child when a warrant or other court order has been issued directing that the party and/or the child be present at the court proceedings;

12. Executing court orders of this state directing the return of the child to the party entitled to have custody or visitation with the child at that time (including entry into private premises to effectuate such orders as directed by the court, or otherwise authorized by consent or exigent circumstances warranting protection of the child);

13. Arranging to transport the child back to the court of competent jurisdiction pursuant to court order;

14. Serving legal process;

15. Directing that a child's school records or birth certificate be flagged and that the investigating officer be notified in the event that a copy of such records are requested by the abductor parent, if authorized by state law.

16. [Optional Provision. Accessing information contained in the National Child Custody Registry (if enacted).]

C. 1. Such sums as may be necessary to implement the civil provisions of this Title shall be appropriated.

2. When a law enforcement agency incurs expenses implementing the civil provisions of the Act, such expenses shall be reimbursed from state appropriations subject to an offset for any awards on behalf of the

law enforcement agency entered and paid pursuant to this Act.

3. When a law enforcement agency incurs expenses implementing the civil provisions of this Act, the court shall assess against the losing party such expenses unless the losing party establishes by clear and convincing evidence that such an order would be clearly inappropriate. An assessment of costs made pursuant to this Act shall constitute a judgment and shall enforceable as such.

   [Alternative provision] When a law enforcement agency incurs expenses implementing the civil provisions of this Act, the court shall assess such expenses against the losing party unless the losing party establishes by clear and convincing evidence that such an order would be clearly inappropriate. In the event that such expenses are not awarded against the losing party, the court shall, if appropriate, assess some or all of such expenses against the prevailing party. An award of costs made pursuant to this Act shall constitute a judgment and shall be enforceable as such.

Summary and Conclusion

Title I of this Act has as its goal the development of an efficient cost effective set of procedures that can be followed to secure the enforcement of a custody determination including those establishing visitation rights. The procedures have been designed to be simple enough so that they can be followed by individuals who cannot afford to hire counsel either to prosecute or defend the enforcement action. Forms that can be filled out easily by both petitioner and respondent are envisioned as a complement to the Act to make the process even more manageable for laypersons.

In addition, the simplified process may encourage a greater number of attorneys to accept enforcement cases on a pro bono basis or make it easier for hard pressed and overburdened legal services offices to accept these cases. An advantage to involving legal services attorneys in interstate enforcement cases on behalf of low-income clients is that they can seek the cooperation of program attorneys in distant states where the enforcement action is most likely to be filed.

Despite the development of streamlined procedures that may be followed by unrepresented parties, costs may still exceed the resources of a party who would not qualify for available legal or pro bono services. Therefore, the Act provides for the recovery of costs by the prevailing party and, in some limited circumstances, the levy of financial sanctions. In appropriate

cases, certain costs can and should be borne by governmental agencies.

The warrant to take physical custody of the child is important to a speedy enforcement procedure as there are many instances in which a party in violation of a custody determination would thwart the ability of a court to enforce an existing decree by either absconding with the child or placing the child in hiding. Only by securing the child and placing him or her with the other parent, another adult or with a social service agency, can the court be sure that it will be able to formulate appropriate relief in the enforcement action.

The Act is intended for use in intrastate enforcement actions as well as in interstate ones. Indeed, using the Act in intrastate enforcement actions will have the salutary effect of encouraging state courts to apply the PKPA jurisdictional prerequisites when entertaining original custody actions, inasmuch as compliance with the PKPA is a prerequisite to enforcement. This will foster the prioritization of "home state" jurisdiction over all others which will, in turn, foster greater uniformity in addressing jurisdictional questions in all custody disputes.

Title II incorporates features unique to California law. The prosecutor is authorized to provide some very helpful assistance to parents. If a parent disappears with the child while a custody action is pending, the prosecutor will take all reasonable steps available to locate them or otherwise to assist in securing compliance with any existing court order. Likewise, if there is reason to believe that one party will flee with jurisdiction with the child or fail to appear when ordered to do so, the prosecutor can take action. In addition, the prosecutor can file an enforcement action, acting on behalf of the court, or take steps to find a missing child or parent in conjunction with a privately filed action.

Law enforcement officers are also authorized to provide a variety of services in conjunction with custody and enforcement actions. These range from taking a crime report of criminal custodial interference to accompanying a party to a custody determination on a mission to recover an abducted child in order to prevent violence.

This latter function would encourage parents to forego self-help. While parents may turn to self-help to enforce valid custody determinations, the potential for trouble in self-help recoveries looms large. Although the parent with a legal right to custody may contemplate a trouble free, trauma free recovery of his or her child, that may not happen. For example, a parent may go to the home of a former spouse with the intention of quietly picking up the child. In the course of events, the

parent may end up pushing the other parent aside to get the child (an assault) or yelling during an attempt to persuade the other parent to give up the child (creating a disturbance). In short, the parent with the right to legal custody may end up the subject of criminal charges. Section 2 of Title II specifically authorizes an officer to go with a parent to reduce the possibility of this happening.

The availability of legal procedures that can achieve results quickly at low cost and which provide for assistance from law enforcement officers and the prosecutor may cause disgruntled parents to forego self-help where the potential for trauma to the child is high.

While nothing in this Act prohibits a person with a valid custody determination from seeking to effectuate the provisions of the determination without resorting to the courts or law enforcement for assistance, neither does the Act immunize a person with a valid custody determination from civil or criminal penalties that may arise when he or she fails to secure assistance and laws are subsequently broken.

The existence of uniform custody enforcement procedures nationwide and the involvement of law enforcement officers and prosecutors, when appropriate, will do much to further stability and predictability in this complex area of the law.

Comment to Section 2

A person contemplating where to file an enforcement action has several possible choices of venue: (1) where the child and/or the respondent is located, (2) where the court that made the determination for which enforcement is sought is located , or (3) where the court which now can exercise child custody jurisdiction is located. The courts in each of these three locations would have subject matter jurisdiction to entertain an enforcement action. However, as a practical matter, filing where the child and/or the respondent is located will make the most sense in the majority of cases because the order can be quickly executed in the jurisdiction which issued it without resort to any further enforcement action.

Typically, when habeas corpus actions have been used to enforce custody determinations, they have been filed where the child or respondent is located. This is also true where motions to enforce or motions to grant full faith and credit have been vehicles for enforcement. Generally, it is the contempt action, used to effect enforcement, that has been brought either in the jurisdiction where the respondent or child is located or in the jurisdiction that issued the original determination. See, e.g., De la Pena v. Torrone, 467 So. 2d 336 (Fla. Dist. Ct. App. 1985) (Out of state mother held in contempt); Willis v. Willis, 495

N.E.2d 478 (Ohio C.P. 1985) (Ohio court had jurisdiction to rule on father's contempt action despite mother's move to West Virginia); Dobbins v. Maner, 517 So. 2d 619 (Ala. Civ. App. 1987) (The court found the mother, who had moved with her son to Tennessee in contempt for violating the visitation provisions of the Alabama custody decree); Kendall v. Whalen, 526 A.2d 588 (Me. 1987) (The court found it had continuing jurisdiction pursuant to the UCCJA to rule on a contempt motion even if the mother had left the jurisdiction); Brown v. Brown, 676 S.W.2d 519 (Mo. 1984) (Court concluded it had jurisdiction to rule on a contempt motion against an out of state mother); In re Marriage of Kehres, 517 N.E.2d 617 (Ill. App. Ct. 1987) (Illinois court had jurisdiction pursuant to the UCCJA to rule on a contempt action against a mother who had relocated to Virginia). In accord Kirylik v. Kirylik, 357 S.E.2d 449 (S.C. 1987) (The court recognized its inherent power to enforce compliance with its prior custody order through contempt even though the court no longer had jurisdiction to modify the order. Nonetheless, the court declined to hold the Delaware mother in contempt, urging the father to apply for relief in Delaware where a modification action was already pending.)

A decision to file an enforcement action in the state where the original decree was entered may have more to do with encouraging that state to exercise continuing jurisdiction than with a reasonable expectation that the resulting order will lead to immediate compliance by the respondent. It may also be sensible to file an enforcement action before the child is located. In such a case, filing may make most sense where the original determination was made.

Subsection B makes it clear that the expedited procedures developed for enforcement of a custody determination may not be used to modify an existing custody decree. Even if the court could exercise jurisdiction to modify a decree consistently with the provisions of the PKPA, it may not do so. Any modification action must be filed as a separate action.

According to Subsection C, a petitioner who files an action to enforce is not to be subjected to the general jurisdiction of the court by virtue of the filing. This is to ensure that there exists no deterrent to filing such an action when the respondent has violated the provisions of the custody decree.

Comment to Section 3

An action to enforce a custody determination shall always take precedence over an action to modify the determination. This is true whether the modification action has been filed prior to the filing of the enforcement action or subsequent to it. In essence, priority is given to the enforcement of an existing decree because the rights of the parties have already been

determined by it. Thus those rights should be enforced up until the time that they are modified by a court exercising modification jurisdiction in accordance with the provisions of the PKPA.

In addition, an enforcement action brought pursuant to this Act must be resolved quickly. Under most circumstances, an enforcement action could be resolved in less than three weeks. If this is the case, staying a modification proceeding for that limited time period will make little difference to the modification action in the long run.

Subsection B mandates judicial communication which must be initiated by the court hearing the enforcement action. While communication is frequently discretionary, it is required in this circumstance so that: (1) the court in which the modification action is pending can determine whether the enforcement action has been brought in a court which believes it has continuing jurisdiction over the underlying custody matter, (2) the court in which the modification action is pending can determine the approximate length of time that the stay will be in force so that scheduling in the modification action can be made accordingly, and (3) both courts can exchange information that might be relevant in determining whether the court in the enforcement action should consider staying implementation of an order to enforce pending the outcome of the modification action. (See Comment to UCCJA Section 15: "This does not mean that the state of enforcement may not in an emergency stay enforcement if there is danger of serious mistreatment of the child." See also Comment to Section 10.)

Comment to Section 4

A serious obstacle to enforcement of foreign custody decrees is the lack of uniform enforcement procedures that can be implemented in an expeditious fashion. The procedures established in this section are similar to the procedures followed in habeas corpus actions since the habeas format has been designed to encourage the speedy consideration and resolution of issues. Every effort has been made to keep the procedures simple so that a petition to enforce can be filed by a person unrepresented by counsel.

Subsection B of Section 4 of the Act requires that a certified copy of the custody determination be appended to the petition. This requirement is intended to have the same effect as Section 15 of the UCCJA which provides that once a certified copy of a custody determination is filed with the clerk of the court it shall be treated in like manner as a custody decree issued by a court of that state. While filing with the clerk of the court is recommended, it is not required and a failure to do so will not excuse the court from enforcing the determination if

a copy has been appended to the pleadings in compliance with this subsection. Appending the determination to the pleadings rather than filing it separately, as some cases have required (see Comment to Section 7), has at least two advantages: (1) it is cheaper since the separate filing fee will not have to be paid and (2) by appending the decree rather than filing it separately with the clerk, it will be before the court and, therefore, easier for the court to review it as part of its evaluation of the petition and answer, since the court will not have to send down to the clerk's office for a copy.

Subsection B further details the information to be included in the petition and answer. This information all relates to the permitted scope of inquiry in the enforcement action set forth in Section 5. If properly presented this information should enable a court to decide whether a determination is entitled to enforcement without the need for an evidentiary hearing in the majority of cases or to determine that a hearing will be concerned with only a particular issue.

This is designed to supply the court with sufficient information to determine whether the court which entered the determination had subject matter jurisdiction in the case. Was the state the child's home state? If not, was it because there was no home state but the state did have significant connections to the child and at least one parent? Did the court have emergency jurisdiction? Did no other state have jurisdiction consistent with the provisions of the UCCJA and the PKPA?

Similarly, did the respondent receive adequate notice and opportunity to be heard? If the petition and answer confirm that the respondent did not receive actual notice of the original proceeding that resulted in the determination, the court might limit its inquiry at a hearing to whether substituted service was adequate to assure due process under the circumstances of the case. The court could also investigate whether the respondent had taken deliberate steps to make it difficult or impossible for the petitioner to give actual notice of the proceedings. See Comment to Section 7.

If the court learned that other proceedings were pending between the parties, it could schedule a hearing or request further written information to determine if these proceedings would have any bearing on the enforceability of the decree.

In order to make the enforcement process easy for the unrepresented to undertake, forms should be developed for both the petition and the answer that are available from the clerk of the court. The forms should be constructed to enable the parties to provide the required information in sufficient detail so that the court can routinely make decisions based solely on the written pleadings.

Subsection C provides two alternatives for service of process. The first requires that service be in accordance with the provisions of the UCCJA and the PKPA. This provision has the advantage that it requires no change in existing law. The alternative provision for service of process permits personal service to be completed by an adult not a party to the action. This bypasses sheriff or marshal service which can take a long time and be costly. This and other time and money saving methods for achieving service of process are in keeping with the overall goals of the Act of promoting time efficiency and cost effectiveness. This provision is modeled after provisions of the California Code of Civil Procedure. See e.g. Cal. Code Civ. Pro. 415.10, 415.20(b), 414.30, and 415.40.

Subsection D provides for quick review and action when a petition is filed. Review of the petition is triggered by filing of proof of service. Within (5) five days of this event, the court must decide whether, on the face of the pleadings, the petitioner has made a prima facie case for enforcement. If so, it must issue an Order to Show Cause Why the Custody Determination Should Not Be Enforced. If not, the court should dismiss the Petition.

In the event the petitioner has requested a waiver of notice pursuant to the Act, the court must rule upon the request within (2) two days. If the court grants the request, it shall simultaneously issue its Order to Show Cause Why the Custody Determination Should Not Be Enforced. It is presumed that the court would not grant a waiver of notice and the accompanying Warrant to Take Physical Custody of the Child unless the court believed that the petitioner had made a prima facie case for enforcement, thus triggering the requirement that the respondent file an answer.

Subsection E sets forth the information that should be included in the answer. As with the information contained in the petition, the contents of the answer address the issues of subject matter jurisdiction and due process. In addition, they look at whether the decree has been modified and whether other proceedings are currently pending between the parties. This is the only information that should have relevance to the question of whether the custody determination is entitled to enforcement. These requirements foreclose the respondent from seeking entry of a new custody order via the enforcement process. This is modeled on provisions like Ga. Code Ann. § 19-9-23(c) (1978) which prohibits a claim for modification of custody from being raised in a habeas corpus action brought to enforce a child custody order.

Because the expedited enforcement action is not to be used as a vehicle for any other purpose including modification, no other information is relevant. Information, for example, about

the best interests of the child cannot be considered. Therefore, it should not be included in the answer. In the event the respondent does include information other than that required in subsection E, the court must disregard it as it evaluates the pleadings to determine whether or not the custody determination must be enforced. Any modification action must be filed separately and is subject to the stay and communication provisions of this Act.

The respondent is given (5) five days to file the answer. This time may be shortened by order of the court for good cause shown. This is to be determined on a cases by case basis.

Subsection F continues the emphasis on speedy review and resolution of enforcement questions. Within (3) three days of the receipt or filing of the answer, the court must review the pleadings and determine if there are any material issues of law or fact. If there are no material issues of law or fact, the court shall, within the prescribed time period, determine enforceability solely on the basis of the pleadings in much the same fashion that a court would rule on a motion for summary judgment.

A hearing will be scheduled only if the court concludes that a genuine issue of law or fact exists. If that is the case, the hearing shall be scheduled to take place within three days. The court shall limit the hearing to those issues that are contested. If, for example, the only dispute between the parties is whether the respondent received adequate notice of the proceedings, the hearing shall be limited to an exploration of that question. Similarly, if the parties dispute the basis for the exercise of subject matter jurisdiction, the court must allow exploration of that issue. At all times, however, the court must consider these issues with an eye toward application of UCCJA Section 12 "Binding Force and Res Judicata Effect of Custody Decree." In some instances, even if the parties dispute jurisdictional facts, res judicata principles may foreclose revisiting the issue.

According to UCCJA Section 12, the "custody decree" is conclusive as to "all issues of law and fact decided and as to the custody determination made unless and until that determination is modified" if the decision was made by a court exercising jurisdiction under UCCJA Section 3. The decree is binding on all parties who were properly served who were given notice and an opportunity to be heard. In a case where a court found that it had subject matter jurisdiction pursuant to UCCJA Section 3 and the PKPA based on facts presented to it, that ruling would be res judicata on the issue and it could not be relitigated in an enforcement action unless the ruling was clearly not supported by the facts or was predicated on fraud or deceit. See, e.g., Lofts v. Superior Court, 682 P.2d 412, 415 (Ariz. 1984) (The court vacated a lower court order which denied

full faith and credit to an order issued by a Washington court on the basis that a court in a second state need only determine whether the decreeing court "fully and fairly litigated and finally decided" the question of subject matter jurisdiction. If it did, the determination is res judicata and cannot be relitigated in another state.)

Similarly, if the court which entered the determination expressly found that the parties had been given reasonable notice and opportunity to be heard in the custody proceeding, principles of res judicata would preclude relitigation of that question in an enforcement action.

In order to minimize costs to any or all participants, the court may, pursuant to subsection H, allow a party or the prosecutor to participate in a hearing through conference call or other available technology. This may be particularly important to a prosecutor who has assisted in the location of a respondent and /or child pursuant to the provisions of Title II, and who has important information to share with the court pertinent to the enforcement proceeding but who cannot attend an enforcement hearing held in a distant state.

In keeping with the emphasis in the UCCJA on communication between courts, Subsection I also permits communication if reason exists for the court to do so. Such may be the case if the parties provide different interpretations of provisions of the custody determination. The easy answer, call the judge who entered the determination to find out what she or he meant. Communication can occur while the court is scrutinizing the pleadings, during a scheduled hearing or after the hearing while the judge is deliberating. Whenever judicial communication takes place, it shall be on the record and both parties and the prosecutor, if involved in the case, must be given the opportunity to participate.

Subsection J on computation of time parallels the language commonly found in civil rules of procedure governing computation of time.

Comment to Section 5

Another obstacle to enforcement is that some courts have permitted consideration of the best interests of the child to intrude. This has been true particularly in the habeas corpus proceeding. When this occurs, expanding consideration of issues beyond that of whether the custody decree is entitled to enforcement, the proceeding essentially becomes one of modification. See, e.g., Walt v. Walt, 574 So. 2d 205, 211 (Fla. Dist. Ct. App. 1991) (The court stated that when using habeas corpus to enforce a custody decree, a Florida court "must make a finding that the required change of custody" is in the best

interests of the child.) This Act would prohibit such consideration, limiting the scope of inquiry to whether or not the court which issued the custody determination had subject matter jurisdiction to do so consistent with the UCCJA and the PKPA, whether the respondent was given reasonable notice and opportunity to be heard and whether or not the determination has been modified by a court with jurisdiction to do so pursuant to the PKPA. See also Ga. Code Ann. Section 19-9-23(c) (1978) which prohibits consideration of modification in a habeas corpus action brought to enforce a child custody order.

Comment to Section 6

Except where otherwise specified, the preponderance of the evidence standard was selected because this is a civil proceeding which has as its purpose the enforcement of an existing order. While a higher standard might be appropriate for determining the actual merits of a custody determination in the first place, the burden should be less stringent when the focus is the implementation of an existing order.

Comment to Section 7

The petitioner should be able to meet the burden of proof by submitting the information required in Section 4. The petitioner must provide sufficient information to show that the court which issued the determination had subject matter jurisdiction consistent with the provisions of the PKPA. If lawyers and judges are doing their jobs properly, the determination should state this basis clearly, whether it be home state or significant connection jurisdiction, emergency jurisdiction, or the fact that no other state had a basis for subject matter jurisdiction.

Because lack of notice or opportunity to be heard can be raised as a defense to enforcement, the petitioner should clearly describe the kind of notice that the respondent was given and the extent of the respondent's participation in the custody proceeding. The fact that the respondent was not given actual notice will not necessarily defeat an enforcement action particularly if the respondent's purposeful actions made it impossible for him or her to be served. This is frequently the case when an abductor parent absconds with the child and conceals his or her whereabouts. See, e.g., Sanders v. Shephard, 541 N.E.2d 1150 (Ill. App. Ct. 1989). Therefore, if the respondent did not receive actual notice of the proceedings in accordance with the notice provisions of the UCCJA, the petitioner should include in the pleadings an explanation of why constructive notice was used.

Subsection B is included in deference to Section 15 of the UCCJA that a certified copy be filed with the clerk of the court in order to assure that it will be treated like a custody decree

issued by a court of that state. Some courts have taken Section 15 to mean that filing is a condition precedent to enforcement. See, e.g., In re Marriage of Dagan and Dagan, 798 P.2d 253 (Or. Ct. App. 1990) (the court refused to enforce an Israeli judgment because the father who was seeking enforcement failed to file a certified copy of it with the county clerk); In re Marriage of Agathos, 550 N.E.2d 1161 (Ill. App. Ct. 1990) (an order granting comity to a Greek custody order was reversed because the order had been registered pursuant to the Uniform Enforcement of Foreign Judgments Act instead of pursuant to the UCCJA).

Under this statute, filing with the clerk of the court is recommended but it is not necessary and a failure to do so will not excuse the court from enforcing the determination if a copy has been appended to the pleadings in compliance with this subsection. Appending the determination to the pleadings rather than filing it separately, as some cases have required, has the advantage of being cheaper since a separate filing fee will not have to be paid and consideration by the court will be facilitated since the court will not have to send down to the clerk's office to get it when evaluating the petition and answer.

Comment to Section 8

The defenses that can be raised to enforcement are limited to three: (1) that the court that issued the determination lacked subject matter jurisdiction to do so, (2) that the respondent received inadequate notice of the proceedings and/or was denied a meaningful opportunity to participate, and (3) that the decree was subsequently modified by a court exercising jurisdiction in compliance with the provisions and of the PKPA. Lack of notice cannot be raised as a defense if the respondent purposely hid to avoid service of process. Similarly, if the respondent refused to participate in the custody proceeding but had actual notice of it, he or she cannot claim lack of reasonable opportunity to be heard. But note, if a party received notice but refused to participate on jurisdictional grounds, the argument may still exist that the court lacked jurisdiction to enter the order. If the enforcement process is to be meaningful and result in swift and predictable decisions, it must be limited to consideration only of these three issues.

Comment to Section 9

This provision permits a temporary waiver of notice in any case where there is reason to believe that the child will suffer immediate harm or be removed from the jurisdiction once the respondent learns that the petitioner has filed an enforcement action. In the event circumstances justify a waiver of notice, as they always will if the respondent is currently the subject of criminal charges related to custodial interference or is currently hiding the child from the petitioner, the court will

not only grant a temporary notice waiver but will also issue a warrant to take physical custody of the child. When this warrant is executed, the respondent will then receive notice of the proceedings. Note that it is the respondent's intent to conceal the child from the petitioner that is important here. If the petitioner discovers the location of the child despite the respondent's efforts at concealment, the court must still waive notice and issue its warrant in order to prevent further flight and concealment.

It is assumed that the court will issue a waiver of notice and a warrant only when it believes that the petitioner has, in the initial pleadings, made a prima facie case for enforcement. Consequently, if the court issues a warrant, it should simultaneously issue its Order to Show Cause Why the Custody Determination Should Not Be Enforced, thus requiring the respondent to file an answer to the petition.

It is also understood that grounds other than those listed in subsection B may justify the issuance of a warrant to take physical custody of the child. Most likely these would include (1) strong evidence to support allegations that the respondent will flee the jurisdiction with the child or otherwise attempt to hide the child from the petitioner or the court, and (2) strong evidence that the child is being or will be abused or neglected if allowed to remain with the respondent. In these cases, as in any case other than one where the respondent is currently the subject of criminal charges or currently hiding the child from the petitioner, the court must make a case by case determination whether to issue a warrant.

Subsection C establishes a preference for placement of a child taken into custody pursuant to a warrant with the petitioner. Where such a placement would be impractical, perhaps because the petitioner is financially unable to be present when the warrant is executed, or where the placement would be contrary to the best interests of the child, or when good cause exists to believe that petitioner will flee the jurisdiction of the court with the child, the court can order any other appropriate placement including one recommended by the prosecutor pursuant to the provisions of Title II.

Some states currently authorize the posting of cash bonds in custody cases. This Act incorporates the use of the bond as a means of protecting its process. While not mandated, the court can require a petitioner to post a cash bond if the child is placed in his or her custody subsequent to the execution of a warrant to take physical custody of the child. This bond would be subject to forfeiture in the event that the petitioner failed to return with the child for a subsequently scheduled hearing or failed to return the child in the event that the court concluded that the custody determination was not entitled to enforcement.

Bonds are currently required in many states when a temporary restraining order or other preliminary relief is granted.

The bond requirement is not the only condition that the court can impose upon the petitioner. Other conditions can include the surrendering of passports or anything else that would reasonably encourage the petitioner to comply with the court's orders.

Comment to Section 10

Subsection A simply states the obvious, that the court can issue an order to enforce, granting the relief requested. In many instances, particularly if the child is not present, the court may also direct law enforcement officials to assist the petitioner in picking up the child in accordance with the order. This can include entering private property, if necessary. See Section 10C. Very important to securing compliance with an order to enforce is the requirement of subsection B that the courts of every state and the United States accord full faith and credit to the order.

Subsection D of the Act creates the presumption that the prevailing party will be awarded costs and fees. The burden is upon the losing party to convince the court by clear and convincing evidence that such an award would be inappropriate. It would be inappropriate for the court to award costs and fees if to do so would make it difficult or impossible for the losing party to care for the child.

Similarly, the Act creates the presumption that court costs will be assessed against the losing party. Once again, the losing party carries the burden of convincing the court that such an assessment would be inappropriate. If the court so determines, it may then assess the petitioner for these costs unless that would also be clearly inappropriate. In individual cases, court costs can come from federal, state, or local programs.

Financial sanctions are mandated where a party seeks to perpetrate a fraud upon the court. In abbreviated procedures such as those contained in this Act, there can be no tolerance for a litigant who seeks to gain personal advantage by intentionally misleading the court. Financial sanctions will be paid either to the prosecutor, if he or she files the enforcement action or otherwise assists with it, or to the other party, if privately participating. In some cases it may be appropriate to award sanctions to both the private party and the prosecutor. Costs incurred by law enforcement officers acting pursuant to Section 2 of Title II are to be included in an accounting of the prosecutor's costs. Any such amounts actually recovered by the

prosecutor on behalf of a law enforcement agency shall be paid to that agency.

In order to facilitate collection of amounts awarded as reimbursement for costs and fees or sanctions, such an award shall constitute a judgment and shall be enforceable as such.

Although not discussed in Section 10, it is recognized that in very limited circumstances, the court may, at the request of a party or the prosecutor, if he or she is participating in the action, enter a temporary stay of the enforcement order. Such extraordinary relief should be limited to very narrow circumstances where the court has grave concerns that the immediate enforcement of the order would cause serious trauma to the child. Such might be the case only where (1) there has been a period of prolonged and continuous separation of the child and the petitioner, (2) the child has attained sufficient age that his or her opposition to the terms of the existing custody determination deserves consideration, or (3) there is reason to believe that the child will suffer grave physical or emotional harm if the determination is enforced.

In practice, this might work as follows. A parent seeks exercise of emergency jurisdiction in a court which does not have jurisdiction to modify pursuant to the PKPA because of complaints by the child that he or she is being physically abused by the other parent. If the other parent files an action to enforce, pursuant to Section 3, the court before which the emergency jurisdiction petition is pending must stay that action until the court rules on the enforcement petition. The enforcement court may only consider whether the custody determination is entitled to enforcement looking at whether the court which entered it had jurisdiction pursuant to the PKPA and whether the parties were provided adequate due process. If jurisdiction was proper and process provided, the court must grant the petition to enforce.

However, if as the result of the mandatory communication between courts required by Section 3, or as a result of other evidence presented via a petition to stay enforcement, the court is convinced that the child has been or will be physically abused if returned to the prevailing party, it may stay enforcement of its order to allow the respondent to file for modification in the proper jurisdiction. If the parent fails to do so within a time period prescribed by the court, the stay must be lifted. If, however, the action is filed, the court may extend the stay until the modification court enters its order.

In no case, however, should any stay be issued that is open ended in duration. A stay should be of limited duration in order to give the parties an opportunity to address their concerns in the proper forum. For example, a stay could be issued to expire within thirty days in the event that the party seeking it has not

filed for a modification of the existing order in a court with proper jurisdiction.

Comment to Section 11

Like a habeas corpus petition that has been denied, a petition to enforce a custody determination can be filed anew by the petitioner in a higher court for consideration as an original action when it has been dismissed or denied by a lower court. The same procedures are to be followed for this filing as with the original. This will allow for expedited review of a dismissal or a denial.

Following the normal appeals process is required, however, if a respondent wishes to appeal an order enforcing a custody determination. This is to encourage a respondent unhappy with the terms of a custody determination to seek relief via modification of the determination in the appropriate court. This is particularly appropriate since the appeal will be limited to those issues raised in the enforcement action: jurisdiction and due process. Neither presents a vehicle to change the terms of the existing order.

The same reason applies to prohibiting a stay of the order to enforce. If the respondent wishes to challenge the terms of the original order, the logical place to do so is either in the court which issued the determination, if it continues to have jurisdiction in accordance with the PKPA, or in the court which has acquired jurisdiction to modify in accordance with the PKPA.

Title II:

Comment to Section 1

California is currently the only state that authorizes the prosecutor to assist in locating and returning a child who is being detained or hidden in violation of a custody determination. See Chapter 7 "The Role of Prosecutors in the Civil Enforcement of Custody Decrees." Title II of this Act incorporates many features of the California law because of the benefit it brings to all parties seeking the enforcement of a custody determination or help in locating a missing child. The prosecutor has resources to draw upon that are unavailable to the person of average or limited means.

Drawing upon those resources, the prosecutor is authorized to assist in finding a parent or child whose location is unknown and to take all reasonable steps, civil or criminal, to locate the child and procure compliance with an existing custody determination. Specifically, Subsection A requires the prosecutor to locate the child and procure compliance with orders requiring the appearance of a party or the children in

court for the purposes of adjudicating custody and visitation. By reducing the success of pre-decree abductions, the orderly process of establishing custody is enhanced. This, in turn, promotes stability of the child's home life.

The prosecutor acts only after a petition to establish custody has been filed or a temporary custody order obtained. It may also be advisable to give prosecutors the authority to file the petition for custody as California has done. Such authority is useful in those rare cases when expedited action is essential and the parent or other party seeking assistance does not have the resources to petition for custody on his or her own behalf.

According to Section B, prosecutors are authorized to locate children who have been abducted by a parent and to procure compliance with custody and visitation orders. Prosecutors are authorized to use all available civil law remedies as well as criminal charges when appropriate under the law of the forum state. Prosecutors are given broad powers and flexibility to choose the appropriate remedy, civil or criminal, to resolve cases of parental abduction.

Although subsection B requires prosecutors to assist in all cases where the child has been taken, detained, or concealed in violation of a custody or visitation decree, it is anticipated that competition for public resources will impose limits on actions taken pursuant to Section 1 of Title II. Prosecutors are encouraged to develop guidelines for assistance commensurate with the extent of their resources.

Subsection C addresses assistance to be provided in Hague Convention cases. The Hague Convention on the Civil Aspects of International Child Abduction is an international treaty governing the return of internationally abducted and wrongfully retained children. Among signatory nations, it provides for the prompt return of internationally abducted and wrongfully retained children to the country of their habitual residence, subject to limited exceptions. The United States ratified this treaty in 1988 and it entered into force in the United States of July 1, 1988.

The International Child Abductions Remedies Act (P.L. 100-300), 42 U.S.C. § 11601-11610, was enacted in 1988 to implement the provisions of the Child Abduction Convention. Pursuant to this Section, prosecutors and the State Attorney General would assist in locating internationally abducted children and in procuring compliance with court orders pertaining to custody and visitation as well as taking any other action necessary to effectuate this treaty.

In performing the functions mandated by this Act, the prosecutor does not represent any party to the proceeding, but

acts as a "friend of the court." See subsection D. The prosecutor acts to ensure the presence of the parties and the child for the adjudication of custody and visitation by a court of competent jurisdiction, not to advocate for any particular result in the custody proceedings. Once the parties and the child are before the court of competent jurisdiction for purposes of adjudicating custody and visitation, the parties and their attorneys, if any, should address those issues.

In addition to other functions, the prosecutor is authorized in Subsection E to apply to the court for a warrant to take a child into physical custody to ensure the presence of the child at a future custody proceeding. The prosecutor may make a recommendation concerning transporting the child to the jurisdiction of the court undertaking the custody adjudication and housing the child pending the court hearing. The court may make such orders as it deems appropriate. The court is to impose adequate measures to ensure that the child will be present at future custody proceedings.

According to Subsection F, if the prosecutor files an action, the prosecutor shall be eligible to recover costs, fees and financial sanctions in the same fashion as would a private litigant pursuant to Section 10. In addition, a prosecutor's expenses incurred in an investigation (other than a criminal investigation) to locate the parent or a child or to otherwise foster enforcement of a custody determination can be assessed against the losing party.

In order for the prosecutor to perform the functions required by Section 1, additional funds will be needed. These are to come from the state subject to an offset for any award of costs actually paid by a party. In the alternative section, the court has the authority to assess expenses incurred by a prosecutor in civil enforcement and investigations against even a prevailing party when the court finds that it would be clearly inappropriate for the losing party to pay them. This might occur when the losing party is indigent.

It is an underlying theme of Title II that assistance from prosecutors and law enforcement officers will foster the goal of encouraging parties to a custody determination to abide by its terms or to come to mutual voluntary agreement on modification or, if that is impossible, to seek change through the legal system. This goal is one worthy of state support because it fosters stability for children and respect for the rule of law.

Because prosecutors and law enforcement officers are members of broad networks of professionals with the knowledge and resources that can be used to track and locate abducting parents and missing children, they may have greater success in performing these functions than would others outside these networks.

Consequently, if parties know that prosecutors and law enforcement officers are available to help in securing compliance with custody determinations, they may be deterred from interfering with the exercise of rights established by court order.

Since Title II authorizes both the prosecutor and law enforcement officers to undertake tasks in connection with child custody enforcement heretofore not routinely performed, legislatures must give thought to how these additional tasks are to be funded. One option, proposed in the alternative provision, would allow a court to impose a fee upon the person seeking assistance, unless clearly inappropriate, if the court declines to order payment of these costs by the losing party. This is similar to existing California law which allows the court in its discretion to allocate direct costs between the parties.

Such an approach can be controversial. First, requiring a party who seeks help to pay for services may discourage application for assistance, thus thwarting the usefulness of the provision. In addition, the potential assessment of these costs may raise due process concerns. If a party can be assessed the costs incurred by law enforcement and/or the prosecution in locating a missing child, he or she should be informed of the potential liability and what the costs may be when the request for assistance is made. This would protect the party from unknowingly incurring what could amount to a significant and substantial financial liability that could eventually lead to a lien or other attachment of property if left unpaid.

For these reasons, the mechanism to fund prosecutorial and law enforcement involvement in these cases must be given the most careful consideration.

Assessment of costs against a party who has violated the terms of a custody determination is another question, as is the assessment of costs against a party who seeks assistance when none is merited. Indeed the potential of such assessment could have the salutary effect of encouraging compliance or encouraging modification through legal channels or of discouraging requests for help that is unwarranted. Unwarranted help might be provided if a party sought enforcement of a determination that had been modified in compliance with the terms of the PKPA or one entered by a court that clearly did not have jurisdiction. Further, it is not uncommon to assess against a losing party the costs of the litigation that his or her improper actions brought about. Applying the same rationale, prosecutorial and law enforcement services, necessitated because of the losing party's wrongful or improper actions, should be recoverable unless clearly inappropriate.

In order to facilitate collection of costs awarded pursuant to this Act, such awards constitute a judgment and are entitled to be enforced as such.

When enforcement actions are prosecuted by either out-of-state private counsel or by an out-of-state prosecutor, those attorneys may need to obtain court permission to appear in these proceedings. State law routinely requires affiliation with local counsel for such an appearance. To facilitate the appearance, the prosecutor shall provide the affiliation. See Subsection G.

Comment to Section 2

As set forth in Subsection A, law enforcement has a role to play in the civil enforcement of custody and visitation orders. When court orders pertaining to custody and visitation are thwarted by an abduction, a parent should be entitled to assistance in locating the abducted child and in compelling obedience to the custody or visitation decrees. Also, when a pre-decree abduction deprives a parent of the opportunity to have the court adjudicate the issues of custody and visitation, a parent should be entitled to assistance in locating the abducted child and in bringing the abductor and child before the court.

However, nothing in this Section prohibits an allocation of responsibility among law enforcement agencies. Different law enforcement agencies may perform different functions. For example, the sheriff's office may be primarily responsible for the execution of court orders obtained pursuant to Sections 9 and 10 of this Act. However, either the sheriff's office or the city police may accompany a parent on a civil stand-by to keep the peace while a parent recovers a child who has been unlawfully detained.

Although this section requires law enforcement to assist in all cases where the child has been taken, detained, or concealed in violation of a custody or visitation decree, it is anticipated that competition for public resources will impose limits on the actions undertaken pursuant to this Section. Law enforcement agencies are encouraged to develop guidelines for assistance commensurate with the extent of their resources.

The actions listed in Subsection B are not an exhaustive list of all functions law enforcement are permitted to take in cases of parental abduction. They are, instead, examples to illustrate the range of actions permitted.

Some actions, such as the taking of a missing person report and the entering of an abducted child into the NCIC-Missing Person File, are mandated by federal law. (See The Missing Children Act of 1982 (Pub. L. 97-292, 28 U.S.C. § 534(a)) and the National Child Search Assistance Act of 1990, Pub. L. 101-647, 42

U.S.C. § 5780). Other actions, such as flagging school records and birth certificates, are mandated by state laws. (See Arizona, Arkansas, Florida, Idaho, Illinois, Indiana, Kentucky, Mississippi, Missouri, New Mexico, Oklahoma, Rhode Island, and Utah.)

According to Subsection C, costs incurred by law enforcement agencies implementing the civil provisions of this Act are to be paid by the state, subject to an offset for amounts assessed against the losing party and actually paid by that party. In the alternative section the court has the authority to assess expenses incurred by a law enforcement agency in civil actions implementing the civil provisions of this Act against even a prevailing party when the court finds that it would be clearly inappropriate for the losing party to pay them. This might occur when the losing party is indigent. An award of costs assessed against a prevailing party should act, similarly, as an offset against costs paid by the state.

Parties should be advised of their potential liability for costs at the time they seek assistance from a law enforcement agency. In order to facilitate collection of costs assessed pursuant to this Act, such awards constitute a judgment and are entitled to be enforced as such.

PART III: THE CRIMINAL JUSTICE SYSTEM RESPONSE IN LOCATION AND RECOVERY

Chapter 7

THE ROLE OF PROSECUTORS IN THE CIVIL ENFORCEMENT OF CUSTODY DECREES: The California Model

by Janet Kosid Uthe, Esq.

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Chapter 7

THE ROLE OF PROSECUTORS IN THE CIVIL ENFORCEMENT OF CUSTODY DECREES: The California Model

by Janet Kosid Uthe, Esq.

Parents whose children are abducted by the other parent frequently have difficulty obtaining a custody order after the abductor has disappeared with the child. Even a parent who has a custody decree may have difficulty locating his or her child and financing, what may become, a nationwide search extending over many years.

Many parents face additional difficulties once the child is located when they must hire a new lawyer in the state in which the child is located and begin a new round of litigation to enforce the custody order. For many American families, the costs involved are prohibitive. Such families must either rely on self-help or forego search and recovery of the child.

Parents who cannot afford the legal and investigative costs to locate and recover a parentally abducted child may legitimately question the value of their custody orders. What good are they if the other parent can violate them with impunity?

The plight of many left-behind parents has moved lawmakers and others to call for legislation to remedy these obstacles. Many jurisdictions are being pressed to provide improved methods of locating parentally abducted children and to enforce custody orders. Should prosecutors or some other legal representative of the State or County play a role in the civil enforcement of custody orders?

California Authorizes Prosecutors To Civilly Enforce Custody Decrees

One state, California, has enacted a statute that explicitly authorizes the prosecutor to take all actions necessary, whether civil or criminal, to locate the child and to enforce the court's orders.

In 1974, the California State Assembly enacted a Resolution[1] directing the California Department of Justice to

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[1]Assembly Con. Res. 236:

"WHEREAS, The law of this state considers the custody of children by their parents to be a matter of civil law during or after the process of marital dissolution; and

WHEREAS, There are reported instances of one parent concealing a child from the other spouse during or

study the problem of child custody. Pursuant to this Resolution, California's Department of Justice convened a committee to review the problem and to recommend possible solutions.[2]

This Committee determined that, "the primary difficulties to be overcome were the speedy location of the abducted child and the return of the child to an appropriate jurisdiction for adjudication of its custody, in order to achieve as stable a home situation as possible."[3] The Committee recommended comprehensive changes to California's child custody and abduction statutes.

It recommended expanding the scope of the criminal custodial interference statutes and also recommended changes to the Civil Codes pertaining to temporary and ex parte applications for custody. The Committee also recommended changes in the Writ of Habeas Corpus procedures used to secure the presence of the child in the court making the custody determination. Further, the Committee recommended revising the child abuse and neglect laws to enable juvenile authorities to temporarily house abducted children and to arrange for their return.

In addition, in a major departure from common practice, the Committee recommended that the California legislature give county

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> after the course of dissolution proceedings, making it more difficult for the other spouse to present all relevant information to the court for consideration in its awarding custody of the children and its continuing jurisdiction over the children; now therefore, be it RESOLVED BY THE ASSEMBLY OF THE STATE OF CALIFORNIA, THE SENATE THEREOF CONCURRING, That the Department of Justice, in cooperation with the district attorneys of the state and the California State Bar Association, study the problem of child custody and abduction during and after dissolution proceedings and report its findings along with recommendations regarding such practices, including interstate travel of parent and child prior to or after a court award of custody, to the Legislature not later than April 1, 1975; and, be it further
> RESOLVED, That the Chief Clerk of the Assembly transmit a copy of this resolution to the Attorney General."

[2]The Committee was composed of representatives from the Attorney General's Office, the State Bar Association Committee on Family Law, several County District Attorneys' Offices, the State Department of Benefit Payments, the State Social Welfare Board, and the County Probation Offices.

[3]Report to the Legislature - ACR 236, at p. 6.

prosecutors a mandate to enforce custody orders and "to take all steps necessary" to locate and recover an abducted child.

The Committee determined that such a law was necessary to preserve the essentially civil nature of the dispute between parents over custody. The Committee further felt that the District Attorneys had better access to the legal and investigative resources necessary to locate and recover an abducted child than did the parents or the private bar.[4]

The California Legislature responded by enacting a comprehensive bill to reform the state's law on parental child stealing. As part of that comprehensive bill, California Civil Code Section 4604 was enacted as Assembly Bill 2549 (1976). In its current form,[5] Cal. Civ. Code § 4604 provides:

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[4]"It is the view of the committee that part of the problem in resolving these cases has been the reluctance of some District Attorneys to act under existing criminal law, a reluctance based on the nature of the cases and the conflict at times between law and equity. A major part of this problem is the District Attorneys' inability to utilize civil procedures under the habeas corpus statutes or the Uniform Child Custody Jurisdiction Act, where the equities can be resolved and appropriate custody orders made and enforced. While the committee believes the criminal laws should be clarified and expanded as indicated, it strongly supports the concept of making the civil procedures available to the District Attorney to increase the flexibility and rapidity of his response. In addition, location and return of the child are, in many cases, beyond the capacity of anyone outside public agencies. The district attorney's authority and responsibility, however, should be limited to locating and returning the child, at which time private counsel, retained or appointed, would handle the resolution of the custody issue. Further the district attorney should enter the case only if there is an existing custody order or an action to obtain a custody order has been commenced." Report to the Legislature - ACR 236, at p. 18.

[5]The original Civil Code § 4604 was amended in 1983 to add, "The petition to determine custody may be filed by the district attorney,..." to subd. (a) and to add the words "...or visitation..." both times it appears in subd. (b). The 1983 amendments further authorized the district attorney take all actions necessary to locate "...and return the child..." and added "...by use of any appropriate civil or criminal proceeding" to subd. (b).

a. In any case where a petition to determine custody of a child has been filed in a court of competent jurisdiction or where a temporary order pending determination of custody has been entered in accordance with Section 4600.1,[6] and the whereabouts of a party in possession of the child are not known, or there is reason to believe that such party may not appear in the proceedings although ordered to appear personally with the child pursuant to Section 5160,[7] the district

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The statute was amended again in 1989 to add to subd. (c), "If the district attorney represents to the court, by a written declaration under penalty of perjury, that a temporary custody order is needed to recover a child, who is being detained or concealed in violation of a court order, or a parent's right to custody, the court may issue an order placing temporary sole physical custody in the parent or person recommended by the district attorney to facilitate the return of the child to the jurisdiction of the court, pending further hearings. If the court determines that it is not in the best interests of the child to place temporary sole physical custody in one of the above persons, it shall appoint a person to take charge of the child and return him or her to the jurisdiction of the court."

[6]Cal. Civ. Code § 4600.1 delineates the necessary procedures for obtaining temporary custody and for ex parte custody proceedings.

[7]Cal. Civ. Code § 5160, which is part of the State Uniform Child Custody Jurisdiction Act, provides:

(1) The court may order any party to the proceeding who is in this state to appear personally before the court. If that party has physical custody of the child the court may order that he appear personally with the child. If the party who is ordered to appear with the child cannot be served or fails to obey the order, or it appears the order will be ineffective, the court may issue a warrant of arrest against such party to secure his appearance with the child.

(2) If a party to the proceeding whose presence is desired by the court is outside this state with or without the child the court may order that the notice given under Section 5154 include a statement directing that party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to that party.

(3) If a party to a proceeding who is outside this state is directed to appear under subdivision (2) or desires to

attorney shall take all actions necessary to locate such party and the child and to procure compliance with the order to appear with the child for purposes of adjudication of custody. The petition to determine custody may be filed by the district attorney.

b. In any case where a custody or visitation decree has been entered by a court of competent jurisdiction and the child is taken or detained by another person in violation of the decree, the district attorney shall take all actions necessary to locate and return the child and the person who violated the decree and the child and to assist in the enforcement of the custody or visitation decree or other order of the court by use of any appropriate civil or criminal proceeding.

c. In performing the function described in subdivisions (a) and (b), the district attorney shall act on behalf of the court and shall not represent any party to the custody proceedings. If the district attorney represents to the court, by a written declaration under penalty of perjury, that a temporary custody order is needed to recover a child, who is being detained or concealed in violation of a court order, or a parent's right to custody, the court may issue an order placing temporary sole physical custody in the parent or person recommended by the district attorney to facilitate the return of the child to the jurisdiction of the court, pending further hearings. If the court determines that it is not in the best interests of the child to place temporary sole physical custody in one of the above persons, it shall appoint a person to take charge of the child and return him or her to the jurisdiction of the court.

California's criminal custodial interference statutes, in combination with California Civil Code Section 4604, give the prosecutor broad powers and a variety of remedies to resolve parental kidnapping cases. The California prosecutor has great flexibility and can use the resources of the criminal justice system to locate the child and facilitate civil resolution of parental kidnapping cases with or without recourse to criminal charges.

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appear personally before the court with or without the child, the court may require another party to pay to the clerk of the court travel and other necessary expenses of the party so appearing and of the child if this is just and proper under the circumstances.

Prosecutors, acting pursuant to Civil Code Section 4604, do not represent either parent or the child, but act as a friend of the court.[8] According to interviews of prosecutors and District Attorney investigators conducted in 1991 by Dr. Martha-Elin Blomquist[9] of the California Attorney General's Targeted Research Study on the Reporting and Prosecution of Parental Abduction in California, the objective is to secure the return of the child and bring both the left-behind parent and the abductor parent into family court to resolve their custody conflict through the appropriate legal channels. Once the child has been located and returned to the court of competent jurisdiction for resolution of the conflict over custody or visitation, the

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[8]The mechanics of acting as a "friend of the court" to locate and obtain the return of the child vary depending on the type of relief pursued. In many cases, the District Attorney's Office petitions the family law court for an order pursuant to Civil Code Section 4604 authorizing them to "take all steps necessary to locate and return the child to the court of competent jurisdiction." (For a sample § 4604 petition and order, see Appendix B.)

The District Attorney may also petition the court for an order pursuant to either Civil Code Section 5160 (See Appendix A) or for a Warrant in Lieu of a Writ of Habeas Corpus (See note 22 infra and Appendix A). The orders specify that the District Attorney's Office (or any peace officer) is authorized to locate the child, take the child into protective custody, and transport the child back to the court of competent jurisdiction.

In the event that criminal charges are sought against the abducting parent, the District Attorney has a more conventional role. California Penal Code Section 279 authorizes any peace officer investigating a case of criminal custodial interference to take a child into protective custody if it reasonably appears to the officer that any person will flee the jurisdiction of the court with the child. (For the full text of Penal Code Section 279, see Appendix A.)

[9]See preliminary data compiled by Dr. Martha-Elin Blomquist, on behalf of the California Attorney General's Targeted Research Study on the Reporting and Prosecution of Parental Abduction in California. This data was presented by Dr. Blomquist and is presently published in "Prosecutors' Intervention in Parental Child Stealing Cases--What a Difference a Law Makes," 50th Anniversary Meeting of the American Society of Criminology 15 (Nov. 20, 1991).

District Attorney takes no further part in the family law action.[10]

California's prosecutors have responded to the mandate contained in Civil Code Section 4604 in two different ways. One approach, taken by 34 of California's 58 Counties (59%), is to create a specialized staff to investigate parental child stealing and custody violations and to recover parentally abducted children.[11]

Often, although not always, this specialized staff is located in the child support enforcement division of the District Attorney's Office. These staff members may not be assigned exclusively to child stealing, but may have other assignments as well.[12]

In the remainder of California's counties, parental kidnapping and custody violations are assigned to staff members in the same manner as other cases are assigned in that office.[13]

In 1989, 21 Counties (36%) reported both criminal and civil cases of parental abduction.[14] Eleven Counties (19%) reported

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[10]However, if the investigation discloses probable cause to believe that the child is endangered, the prosecutor may have a continuing role in subsequent juvenile court proceedings or a criminal prosecution of a parent for child abuse, neglect, or other acts of child endangerment.

[11]See supra note 9.

[12]Id. at 14.

[13]Id. at 15.

[14]Criminal cases include criminal custodial interference charges or criminal contempt of court proceedings. It is not yet clear whether civil contempt of court proceedings can be brought by the District Attorney. Prosecutors contemplating a civil contempt action should consider the possible application of Safer v. Superior Court, 15 Cal. 3d 230, 124 Cal. Rptr. 174, 540 P.2d 14 (Cal. 1975).

In Safer, the California Supreme Court refused to allow a prosecutor to proceed with civil contempt charges against striking United Farm Workers. The prosecutor had dismissed criminal charges on the day scheduled for jury trial. The Court felt that the effect of the District Attorney's manipulation, if permitted, would be to deprive the striking UFW workers of a jury trial and other criminal safeguards.

only criminal cases. Fifteen Counties (26%) reported only civil cases. And only 11 Counties (19%) did not report parental kidnapping cases at all.[15]

In most cases of parental kidnapping or custody violations, the parent initially calls the local police or sheriff's department to report the case. The law enforcement agency then takes the report. Officers may conduct a preliminary investigation to determine if a crime has been committed.

In some counties, the local police or sheriff's department refer the caller directly to the District Attorney's Office. In addition, the District Attorney's office receives referrals from family court mediators and from family law attorneys.[16]

Once the District Attorney's Office receives the referral (and a copy of the police report if there is one), the prosecutor determines if the case is sufficiently serious to warrant intervention. As resources are limited, it is not possible to provide assistance in all cases.[17]

In parental kidnapping cases, however, the District Attorney is authorized by Civil Code Section 4604 to use "any appropriate civil or criminal proceeding." This specific legislative authorization may suffice to overcome a defense to civil contempt based upon Safer, but no reported case has considered this issue yet.

Civil incidents require remedies such as a Writ of Habeas Corpus, a Warrant in Lieu of a Writ of Habeas Corpus, and, possibly, civil contempt of court proceedings. For a more thorough description of the California Habeas procedure and the Warrant in Lieu of the Writ, see note 22 infra and Appendix A.

[15]Blomquist, supra note 9, at 15-16. This data was obtained from the records of the California Department of Justice Bureau of Criminal History Statistics, the California Missing and Unidentified Persons Unit, the California State Parent Locator Service, and the California State Controller's Office.

[16]Id. at 16-17.

[17]"Due to limited resources, a district attorney will give primary emphasis to the most flagrant custody violations and less attention to debatable visitation disputes. It can also be expected that visitation problems will be submitted to arbitration or counseling before punitive sanctions are imposed." M. Barber, "Enforcement of Support Orders," in Representing Clients in Spousal and Child Support Proceedings, California Continuing Education of the Bar (Jan. 1988) at p. 215.

Once a case is accepted, District Attorney investigators contact the left-behind parent, relatives, and participating attorneys. This may include, in some circumstances, contacting the abductor's attorney.[18] The District Attorney's investigators also contact the offending parent, if possible. If the abducting parent and child cannot be located or will not comply with the court's orders after being apprised of them, the District Attorney's Office can bring either a civil action to enforce the custody order or criminal charges (or both) as appropriate under the circumstances.[19]

In cases in which there is no custody order at the time of the abduction or threatened abduction, the District Attorney or his or her investigator advises the left-behind parent to petition for custody. Although the statute authorizes the prosecutor to file this petition in the event the parent is unable to do so, this authorization is rarely used.[20] District

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Guidelines for accepting cases for civil action or criminal prosecution have been developed in some counties. Facts that influence whether a case will be accepted or rejected include allegations that the child is endangered, a history of child abuse or neglect, domestic violence, outstanding warrants, repeat incidents of abduction, and concealment.

Other factors include the extent to which the custody order has been modified by the consensual conduct of the parties, the extent to which the parenting relationship is severed by the violation of the order, and the specificity of the order. At least one county flatly refuses to enforce orders for "reasonable" visitation.

[18]Although attorney-client confidentiality will be respected, as required by law, attorneys who remain in contact with their "abducting" clients may be asked to communicate the existence of an investigation and the consequences of failure to comply with the court's orders to their clients.

[19]Blomquist, supra note 9, at 16.

[20]District attorneys rarely file the petition for custody on their own motion as, to do so, requires more advocacy on behalf of one or the other parent than is contemplated by their "friend of the court" status. As was noted by the Attorney General's Committee which devised Civil Code § 4604, "The district attorney's authority and responsibility... should be limited to locating and returning the child, at which time private counsel, retained or appointed, should handle the resolution of the custody issue." Report to the Legislature - ACR 236, at p. 18.

However, since the District Attorney is usually responding

Attorneys are not authorized to act pursuant to California Civil Code Section 4604 until there is a custody order or until a petition seeking a custody order has been filed.

When necessary, the prosecutor will initiate an investigation into the whereabouts of the abductor and child. This can be done in cooperation with the local law enforcement agency. The prosecutor can also use all applicable discovery procedures.

Many sources of information are available to prosecutors and to law enforcement investigators, but are not available to the parent or to the parent's attorney. Whether confidential sources of information are available may depend, in part, on whether the investigation is solely for civil purposes or encompasses an investigation into criminal activity as well. In civil custody enforcement actions, brought pursuant to a specific 4604 authorization[21] or a Writ of Habeas Corpus,[22] the District

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to a complaint brought by a left-behind parent, that parent can be assisted to file a petition for custody on his or her own behalf. Nonetheless, this provision allows the prosecutor to act when the parent cannot.

[21]For the full text of a Cal. Civ. Code § 4604 application and order, see Appendix B. Many prosecutors have adopted the Cal. Civ. Code § 4604 application and order as a simpler alternative to the Warrant in Lieu of a Writ of Habeas Corpus.

[22]More specifically, Cal. Penal Code § 1497 provides for a Warrant in Lieu of a Writ of Habeas Corpus:

> "When it appears to any court, or judge, authorized by law to issue the writ of habeas corpus, that any one is illegally held in custody, confinement, or restraint, and that there is reason to believe that the person will be carried out of the jurisdiction of the court or judge before whom the application is made, or will suffer some irreparable injury before compliance with the writ of habeas corpus can be enforced, the court or judge may cause a warrant to be issued, reciting the facts, and directed to any peace officer, commanding the peace officer to take the person held in custody, confinement, or restraint, and immediately bring him or her before the court or judge, to be dealt with according to the law."

The Petition for a Writ of Habeas Corpus must allege that the child is "unlawfully restrained." It is sufficient to allege that the petitioner was awarded custody and that the child is being held in violation of the custody decree. Cal. Penal Code § 1474(2); In re Kyle, 77 Cal. 2d 634, 176 P.2d 96 (1947). (In

Attorney will use investigative techniques available in civil cases. Productive sources of information include, but are not limited to, credit checks, contact with the Department of Motor Vehicles, the State Department of Labor, the Parent Locator Service (State and Federal), and the Department of Health and Welfare. It may also be useful to obtain information from the child's school or physician. Further, it may be necessary to subpoena bank or other financial records.[23]

In cases in which criminal charges are contemplated, the investigation will likely include checking other sources of information available only in criminal investigations. These sources include, but are not limited to, search warrants, criminal history record checks, NCIC entry into the Wanted Person File, mail covers, and, sometimes, access to welfare records.

The District Attorney will intervene in both intrastate and interstate cases and will act whether the child is brought into California from a sister state or is taken out of California to a

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cases of predecree abduction, the California prosecutor will, instead, request a warrant pursuant to Civil Code § 5160. For a further description of this procedure, see fn. 7.)

When a Warrant in Lieu of a Writ of Habeas Corpus is sought, the Petition must also allege the child will be carried from the jurisdiction of the court or will suffer some irreparable harm. Facts supporting such an allegation must also be stated. Ex Parte Rose, 90 Cal. 2d 299, 202 P.2d 1064 (1949).

Despite its location in the Penal Code, both a Writ of Habeas Corpus and a Warrant in Lieu of a Writ of Habeas Corpus, when used to enforce a custody order, are commonly described as civil remedies. Their purpose is to recover the child and enforce the custody order.

Both the Writ of Habeas Corpus and the Warrant in Lieu of a Writ of Habeas Corpus are available to private counsel without the intervention of a public agency as well as being available to the prosecutor. The suggested state legislation: Act to Expedite Enforcement of Child Custody Determination contained in Chapter 6 suggests enactment of a similar procedure as a civil remedy.

[23]For additional suggestions to help locate a parentally abducted child, see, P. M. Hoff and J. Kosid Uthe, Parental Kidnapping: How to Prevent an Abduction and What to Do If Your Child Is Abducted (15-27) (3d ed. 1988) National Center for Missing and Exploited Children.

sister state.[24] In cases in which a California child is taken out of State, the investigation may cross state lines.

Although investigators have traveled to sister states on occasion to appear at the sister state enforcement hearing and accompany the child back to California, scarce public resources limit this activity. For the most part, prosecutors and their investigators pursue interstate investigations by obtaining records and documents containing information about the abductor and the child.

The prosecutor may solicit the assistance of other agencies in other states to assist him or her (to the extent such resources are available). More often, prosecutors subpoena records and follow the abductor's "paper trail." In this process, prosecutors, in common with private attorneys and private investigators, must overcome the significant obstacles associated with obtaining these records.

Subpoenas issued in California may be of little value in a sister state. The cost of filing a lawsuit in the sister state so that a subpoena can be issued in that state to compel the production of records located there can be prohibitive. Conflicting confidentiality laws and procedures among the states create additional obstacles.

If the child is located out of state, the prosecutor may commence enforcement proceedings in the second state, either directly or by hiring local counsel if required by the forum state's law. Or the prosecutor may advise the parent to do so. (For additional information about sister state enforcement proceedings, see, infra pp. 7-16.)

If a report is received from an out-of-state parent that an abducted child is being detained, retained, or concealed within California in violation of a custody order from a court of competent jurisdiction, the prosecutor will initiate an investigation to ascertain the child's whereabouts.

Once the child has been located, the prosecutor will register the custody order pursuant to Section 16 of the Uniform Child Custody Jurisdiction Act (9 U.L.A. § 16). The prosecutor will also commence the appropriate civil custody enforcement proceeding or criminal proceeding.

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[24]For a discussion of prosecutors bringing civil custody enforcement actions in sister states in order to recover a parentally abducted child, see Chapter 6, Title II.

California Civil Code Section 4604 does not limit itself to application in domestic cases alone.[25] California's prosecutors have also found themselves involved in international litigation under the Hague Convention on the Civil Aspects of International Child Abduction[26] and under the international comity provision of the Uniform Child Custody Jurisdiction Act.[27]

In any of the above situations, prosecutors may use the civil laws solely or in combination with appropriate criminal proceedings filed against the abductor parent. California Civil Code Section 4604 provides great flexibility in the choice of remedies and appears to be the most effective law in the nation aimed at preventing, deterring, and combatting parental abductions.

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[25]See 62 Op. Att'y Gen. 369 (Opinion No. 79-519). "California Civil Code Section 4605 authorizes state reimbursement for expenses incurred by the district attorney in retaining Canadian counsel to compel an individual to comply with a California custody order, where the individual has been charged in California with the offense of concealing a child in violation of a custody decree (Penal Code § 278.5), and where criminal extradition of the individual appears futile." (Cal. Civ. Code § 4605 requires the State to reimburse the counties for expenses incurred in implementing the mandate of § 4604 and is discussed in further detail at pp. 7-16, infra.

[26]The Hague Convention is an international treaty governing the return of internationally abducted children. The Hague Convention entered into force in the United States on July 1, 1988, following enactment of Federal implementing legislation, the International Child Abduction Remedies Act (P.L. 100-300; 42 U.S.C. § 11601-11610)

The Hague Convention (Child Abduction Convention) governs the return of wrongfully removed or retained children if both the country of the child's habitual residence and the country to which the child is taken have ratified the Convention. It provides for the prompt return of internationally abducted children to the country of their habitual residence, subject to very limited exceptions.

[27]Article 23 of the Uniform Child Custody Jurisdiction Act (9 U.L.A. § 23) requires that foreign custody orders be honored in American courts if the foreign proceedings were conducted by a court of competent jurisdiction with notice to all affected persons and if those proceedings afforded the parties an opportunity to be heard. This provision of the UCCJA has been enacted by 46 States and the District of Columbia; Missouri, Ohio, Oregon, and South Dakota have not enacted Article 23.

It has been described as "a little program with a lot of impact that deals with the welfare of a lot of children."[28] The law is also popular with prosecutors. A recent budget cutting proposal that would have eliminated funding for the program "sparked a massive protest from prosecutors across the state."[29] Funding was restored.

In 1989, California prosecutors reported intervening in 5,890 custody enforcement cases.[30] In that same year, criminal charges were sought in only 216 cases statewide.[31] In 1991, prosecutors assisted in almost 8,000 cases of civil custody enforcement and recovered 3,000 abducted children.[32]

Prosecutors and their investigators report that more than 90 percent of the custody problems that come to their attention are resolved through telephone advice to both the complaining parent and the parent who is violating the custody order. Once parents realize that taking, detaining, or concealing the child constitutes criminal conduct, many parents cease their criminal conduct and take their problems to family court for resolution.[33]

The study on the Reporting and Prosecution of Parental Abduction in California by Dr. Martha-Elin Blomquist of the Criminal Justice Department, California State University - Bakersfield, for the California Attorney General's Targeted Research Program concludes that when prosecutors have the opportunity to choose what remedy is best, they opt for civil

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[28]Eaker-Perkins, "Abducted Kid-Hunters May Lose Funds," Sacramento Bee, March 8, 1992, at B-1.

[29]Jordan, "Lawmakers Save State's Child-Abduction Budget," The Daily Recorder, March 17, 1992, at 5.

[30]These figures contrast markedly with a 1988 assessment of the effectiveness of California Civil Code Section 4604. "The funding has not been forthcoming and so, although the units are there, there has not really been an expansion to meet the demand." In the work cited "Barber," supra note 17, at 215.

[31]From data reported by law enforcement agencies to the California Department of Justice Bureau of Criminal Statistics. Blomquist, supra note 9, at 20 and Table 3(a).

[32]Jordan, supra note 29, at 5.

[33]Blomquist, supra note 9, at 18.

custody enforcement actions over criminal custodial interference charges unless there are aggravating circumstances.[34]

> "What appears to facilitate prosecutor intervention in the greater number of parental child stealing and custody violation incidents is the civil mandate to enforce custody orders and recover children who are the subject of them. Interventions under the civil law appear to be constructive in helping the family court and the left-behind parent achieve their objectives--return of the child, enforcement of the custody order. They also benefit the abducted child and the offending parent insofar as enforcement resolves the immediate conflict and directs the family to resolve their custody problems in the proper legal forum."[35]

Assessment of Costs

In order to assist the California Counties pay the costs associated with use of Civil Code Section 4604, the State of California is required to reimburse the Counties for their expenses. The Courts, whether criminal or civil, are authorized to assess the costs against either or both parents, as appropriate. The State is, then, entitled to recover these costs from the parents as ordered by the courts.[36] The county is to

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[34]This, in no way, suggests that criminal custodial interference charges are not appropriate in certain cases. The statute, itself, expressly recognizes that criminal remedies are appropriate. Particularly egregious circumstances justifying criminal charges include endangerment of the child by the abductor parent and concealment of the child so that all contact with the left-behind parent is severed.

For further information on standards of criminal charging and prosecution, contact the Parental Abduction Project of the American Prosecutors Research Institute, 1033 Fairfax Street, Suite 200, Alexandria, VA 22314 (703) 739-0321.

[35]Blomquist, supra note 9 at 31.

[36]Cal. Civ. Code § 4605:

> a. When the district attorney incurs expenses pursuant to Section 4604, including expenses incurred in a sister state, payment of such expenses may be advanced by the county subject to reimbursement by the state, and shall be audited by the State Controller and paid by the State Treasury according to law.
>
> b. The court in which the custody proceeding is pending or which has continuing jurisdiction, shall, if

collect the costs from the parents and transmit those payments to the State.[37]

In 1989, the California State Controller's Office received claims from the counties for reimbursement for staff time, travel, and court activities related to the location and recovery of abducted children and their parents, up to and including, the abducting parent's first appearance in a criminal prosecution for parental kidnapping.[38] The California State Controller's Office paid the Counties $3,335,778 for their work in 5,890 cases

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> appropriate, allocate liability for the reimbursement of actual expenses incurred by the district attorney to either or both parties to the proceedings and such allocation shall constitute a judgment for the state for the funds advanced pursuant to this Section. The county shall take reasonable action to enforce such liability and shall transmit all recovered funds to the state.

[37]In practice, however, the counties submit a proposed budget of estimated expenses (in excess of any reimbursement recovered from the parents) to the State on an annual basis. At the end of the State's fiscal year, any funds not expended are carried over into next year's budget. If expenses exceed the estimated budget and funds are available, additional funds may be provided to the county by a supplemental appropriation. (According to the State Controller's Office, Accounting Division.)

[38]The Parameters and Guidelines (9/91) issued by the State Controller's Office concerning implementation of the reimbursement program states:

> "Chapter 1399, Statutes of 1976 ... requires counties to undertake specified activities in order to assist in the resolution of child custody problems, enforce child custody and visitation decrees, and any other court order in a child custody proceeding. Specifically, the law requires the District Attorney's Office to assist persons having legal custody of a child in locating their children when they are unlawfully taken away, in gaining enforcement of custody and visitation decrees and orders to appear, in defraying expenses related to the return of an illegally detained, abducted, or concealed child, in proceedings with civil court actions, and in guaranteeing the appearance of offenders and minors in court actions. Under prior laws, the District Attorney was under no statutory obligation to assist a parent or other person having custody of a child."

statewide in 1989.[39] The 1991-1992 budget for the program is $3,300,000.[40]

The State considers the following activities to be subject to reimbursement:[41]

- receipt of reports and of requests for assistance;
- mediating disputes or advising individuals;
- locating missing or concealed offenders and child(ren);
- preparation and investigation of reports and requests for assistance;
- seeking physical restraint of offenders and/or the child(ren) to assure compliance with decrees or court orders;
- process services and attendant court fees and costs;
- depositions;
- travel expenses, food, lodging, and transportation for the escort and the child(ren);
- other personal necessities for the child(ren);
- costs of notification to the legal custodian and prosecuting attorney in another jurisdiction;
- costs of providing foster care or other short term care for any child pending return to the home state (not to exceed three days unless special circumstances exist in which case no more than 10 days are allowed.) These costs are to be reduced by the amount of state reimbursement for foster home care received by the county for the children so placed;
- securing the personal appearance of an offender and/or child(ren) when an arrest warrant or other court order has been issued to produce the offender or child(ren);
- costs of serving an arrest warrant or order and detaining the individual in custody, if necessary, to assure appearance in accordance with the arrest warrant or order;
- costs of providing foster home care or other short term care for any other child(ren) that was under the physical custody of the individual being detained. The number of days for foster home care or short term care shall not exceed the number of days the individual was detained.

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[39]Blomquist, supra note 9, at 20 and Table 3(a).

[40]Jordaon, supra note 29, at 5.

[41]Sample claim forms are contained in Appendix C.

The following costs are not reimbursable:

- any offsetting savings or reimbursement the district attorney receives from any source;
- costs associated with criminal prosecution, commencing with the defendant's apprehension, surrender, or first court appearance on criminal custodial interference charges;
- costs of locating the offender and serving a warrant related to either a criminal or a civil proceeding defined in [the criminal custodial interference sections of the California Penal Code] wherein the missing, abducted, or concealed child(ren) has been returned to the lawful person or agency;
- costs for the salary and expenses of the governing authority, as defined by the Federal Office of Management and Budget Circular A-87.[42]

Out-Of-State Enforcement Procedures

There are a few issues that cloud the generally successful operation of Civil Code Section 4604. One such issue is the difficulty that prosecutors have with the enforcement of the custody order in the state in which the child is ultimately located. In this respect, prosecutors suffer the same disadvantage as the custodial parent whose child is located out of state -- access to the courts of the jurisdiction in which the child is located.

Some jurisdictions require (and others encourage) that enforcement proceedings be filed in the state in which the child is located. The purpose of these proceedings is to ensure that the custody order whose enforcement is sought has been made by a court of competent jurisdiction pursuant to the dictates of the UCCJA and the PKPA. The court in which enforcement is sought will also verify that the custody order being presented is the latest custody order made and that it is not vulnerable to other valid challenges (e.g., that it was made without providing notice and an opportunity to be heard).

Costs of such sister state enforcement proceedings for California's District Attorneys can be prohibitive. Unlike parents who need appear in only one case, the District Attorneys would have to travel to enforcement hearings in every state in which a California child is ultimately located.

Because there is no local government agency authorized to appear on their behalf in other states, the California counties

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[42]Mandated Cost Manual for Counties, supra at Chapter 1399/76 pp. 2-4.

must bear the costs of retaining a private attorney in the second state to represent California's interests at the enforcement hearings.[43] As with all other litigants, these costs preclude many California counties from obtaining enforcement of valid custody orders. If a procedure such as Civil Code Section 4604 is uniformly adopted by the sister states and is reciprocal, sister state prosecutors could provide the necessary assistance.

Potential Civil Tort Liability For Prosecutors Who Enforce Custody Orders

A second troublesome issue is the potential liability of prosecutors and their investigators for civil damages. As is more fully described in Chapter 8, prosecutors have absolute immunity for actions taken to initiate a criminal prosecution and to present the State's case.[44]

Prosecutors do not have absolute immunity for acts beyond those essential to the presentation of the State's case in criminal prosecutions.[45] To the extent that prosecutors, acting

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[43]California's interests at the enforcement hearing include the speedy location of parentally abducted children and the return of the children to the appropriate jurisdiction for the adjudication of their custody.

[44]Imbler v. Pachtman, 424 U.S. 409, 96 S. Ct. 984, 47 L. Ed. 2d 128 (1975).

> "Although such immunity leaves the genuinely wronged criminal defendant without civil redress against a prosecutor whose malicious or dishonest action deprives him of liberty, the alternative of qualifying a prosecutor's immunity would disserve the broader public interest in that it would prevent the vigorous and fearless performance of the prosecutor's duty that is essential to the proper functioning of the criminal justice system and would prejudice criminal defendants by skewing post-conviction judicial decisions that should be made with the sole purpose of insuring justice." Id. at 427-28.

[45]See Burns v. Reed, ___ U.S.___, 111 S. Ct. 1934, 114 L. Ed. 2d 547, (1991). The prosecutor was sued for advice he gave to the investigating police officer prior to charges being lodged against the defendant. The U.S. Supreme Court determined that such advice is not protected by absolute immunity. It is entitled to qualified immunity only.

In Burns, the police suspected that Mrs. Burns had multiple personalities and that one of those personalities had murdered her sons while they slept. The police sought the advice of a state prosecutor who advised them to question Mrs. Burns under

civilly to enforce a custody order pursuant to Civil Code Section 4604 are not seeking criminal charges against the abducting parent or presenting the State's criminal case, it is unlikely that their actions will be accorded absolute immunity from civil suits for damages.[46]

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hypnosis despite the officers' concerns that hypnosis was an unacceptable investigative technique. Under hypnosis, Mrs. Burns referred to herself as "Katie" and also stated that "Katie" killed her sons. Mrs. Burns never made any incriminating statements when she was not under hypnosis and consistently denied her guilt.

> The U.S. Supreme Court found that, "Although the absence of absolute immunity for the act of giving legal advice may cause prosecutors to consider their advice more carefully .... it is incongruous to allow prosecutors to be absolutely immune from liability for giving advice to the police, but to allow police officers only qualified immunity for following the advice." Id. at 564.

Qualified immunity is available only upon a showing that the law enforcement officer acted in good faith. The test for good faith is an objective one. It is not a question of what the law enforcement official believed or what his intent was at the time he or she acted. The question is whether he or she reasonably should have known that his or her actions would violate a clearly established constitutional right. Wood v. Strickland, 420 U.S. 308, 43 L. Ed. 2d 214, 95 S. Ct. 992 (1975), reh'g denied, 421 U.S. 921 (1975).

[46]A 1989 federal court case, M.K. v. Harter, 716 F. Supp. 1333 (E.D. Cal. 1989), extended absolute prosecutorial immunity to the actions of a deputy district attorney and the a district attorney's investigator in the recovery of an abducted child. The child, after recovery, had been placed in the custody of the Children's Protective Services pending investigation and juvenile court resolution of mother's allegations that father sexually abused the child.

The juvenile court found that both parents had neglected and emotionally abused the child in the context of their continuing custody dispute. The child was made a dependent child of the Juvenile Court and placed in foster care. Trial visitation with the father was permitted.

Following one of these visits, the mother brought an action in federal court pursuant to the federal Civil Rights Act of 1871 (42 U.S.C. § 1983) alleging that the prosecutor and the investigator failed to protect the child from further abuse.

This issue was raised in a recent federal court action brought pursuant to the federal Civil Rights Act of 1871 (42 U.S.C. 1983), but was not resolved. In Kinney v. City of Simi Valley, 934 F.2d 324 (9th Cir. 1991), a Deputy District Attorney, a District Attorney's investigator, and a Simi Valley police officer were sued for damages pursuant to the federal Civil Rights Act of 1871 for their actions in enforcing a Maine custody decree awarding custody to the child's father.

The mother had brought the child to California where she sought to avoid the operation of the Maine custody decree. Upon being notified by the father that the child was in Ventura County, the Simi Valley police officer and the Ventura County District Attorney's investigator went to the mother's residence and took physical custody of the child. Following court hearings on the issue of custody, the California courts ordered the child returned to her father pursuant to the Maine order.

The mother thereafter sued the Ventura County Deputy District Attorney, the investigator, and the police officer for deprivation of her constitutional right to the custody of her daughter. She alleged that they exceeded the scope of their authority and illegally took custody of the child from her.

The Ninth Circuit invoked the doctrine of equitable abstention and declined to decide the scope of law enforcement's authority pursuant to Civil Code Section 4604.

> "California, like many states, is grappling with the problems that ensue from custody disputes where parents evade or defy the judgments of its (or a foreign state's) family courts. California has enacted legislation dealing with parental child abduction ... and the authority of its law enforcement and other officials -- including District Attorneys -- to intervene in such situations. See e.g. Calif. Civil Code Section 4604. This action presents those very issues -- the authority and procedures required and permitted under California law. The resolution of these

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Although the federal court for the Eastern District of California accorded the prosecutor and investigator absolute immunity from suit for their actions in locating and recovering the child pursuant to Civil Code Section 4604, this decision precedes that of the U.S. Supreme Court in Burns v. Reed, supra note 45. After Burns v. Reed, it is unlikely that prosecutors' civil enforcement of custody orders will be accorded complete immunity.

issues would necessarily embroil the federal court in matters of paramount state concern and expertise."[47]

The need for prosecutorial intervention and for law enforcement assistance to parents in the location and recovery of parentally abducted children is acute. Civil Code Section 4604's mandate to take all necessary actions to locate the child and to enforce the court orders provides specific legislative authorization for prosecutorial intervention and a broad grant of powers to the District Attorney. The actions of law enforcement, acting under the direction of the District Attorney, should also be covered by that authorization.

The clear legislative mandate contained in Civil Code Section 4604 has given the law enforcement effort in California direction and purpose. It has also provided the resources to undertake a concerted and successful statewide effort to minimize the incidence of parental abduction as well as to locate and recover parentally abducted children.

By providing a clear legislative mandate, the California legislature has also provided the courts with a clear expression of its intent that prosecutors and law enforcement officers have a role to play in the location of parentally abducted children and in the enforcement of custody orders. The legislative intent has not been so clearly expressed by other states whose law enforcement officials have, on occasion, fared poorly in litigation of civil liability for damages resulting from actions taken to enforce custody orders.[48]

Despite the fact that it is unlikely that California's prosecutors will be granted absolute immunity for their actions in civil custody enforcement cases, Civil Code Section 4604 has provided California's prosecutors and law enforcement officials with the legal authority to intervene. This, in turn, offers a significant measure of protection that has not been available to law enforcement officials in other states.

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[47]The federal court suggested that it would be appropriate for the California courts to decide any challenge to the scope of the authority granted the District Attorney and law enforcement agencies by Civil Code Section 4604. As the Plaintiff in Kinney would be barred from initiating a civil suit in the California courts by the statute of limitations, this issue must await resolution in future litigation.

[48]See Chapter 8.

Conclusion

The California Attorney's General's Committee convened pursuant to Assembly Resolution 236 noted, in 1976, the same obstacles to the civil recovery of parentally abducted children as this study notes today. "The primary difficulties to be overcome are the speedy location of the child and the return of the child to the appropriate jurisdiction for adjudication of custody in order to achieve as stable a home situation as possible for the child."[49]

These are the same obstacles we wrestle with today. California has enacted a notably successful program designed to mitigate these obstacles. In giving the district attorneys the authority to use any and all civil remedies to secure the return of the child to the appropriate jurisdiction for the resolution of the custody or visitation dispute, compliance with court orders can be accomplished and the stability of the child's home life preserved. Criminal charges are not necessary in every case.

The investigation into the whereabouts of the child can access all of the sources available to the government and the costs are borne initially by the State. Those costs are, then, assessed as appropriate against the abductor parent or the left-behind parent and repaid to the State as restitution.

Recommendation

Other states should enact similar legislation authorizing the prosecutors to intervene in appropriate cases of custody and visitation violations.[50] Prosecutors in all fifty states should be authorized to "take all steps reasonably necessary to locate and return" an abducted child to the court with jurisdiction to make and enforce custody orders pertaining to the child.

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[49]Assembly Con. Res. 236.

[50]According to data provided by the American Prosecutor's Research Institute, ("Guide to State Prosecution Systems") more than 50% of the prosecutor's offices nationwide already provide some civil legal services. They act as legal advisors to county officials, represent the county and other government officials in civil actions, and collect child support.

Appendix A

1. California Civil Code Section 4604

A. In any case where a petition to determine custody of a child has been filed in a court of competent jurisdiction or where a temporary order pending determination of custody has been entered in accordance with Section 4600.1 and the whereabouts of a party in possession of the child are not known, or there is reason to believe that such party may not appear in the proceedings although ordered to appear personally with the child pursuant to Section 5160, the district attorney shall take all actions necessary to locate such party and the child and to procure compliance with the order to appear with the child for purposes of adjudication of custody. The petition to determine custody may be filed by the district attorney.

B. In any case where a custody or visitation decree has been entered by a court of competent jurisdiction and the child is taken or detained by another person in violation of the decree, the district attorney shall take all actions necessary to locate and return the child and the person who violated the decree and the child and to assist in the enforcement of the custody or visitation decree or other order of the court by use of any appropriate civil or criminal proceeding.

C. In performing the function described in subdivisions (a) and (b), the district attorney shall act on behalf of the court and shall not represent any party to the custody proceedings. If the district attorney represents to the court, by written declaration under penalty of perjury, that a temporary custody order is needed to recover a child, who is being detained or concealed in violation of a court order, or a parent's right to custody, the court may issue an order placing temporary sole physical custody in the parent or person recommended by the district attorney to facilitate the return of the child to the jurisdiction of the court, pending further hearings. If the court determines that it is not in the best interests of the child to place temporary sole physical custody in one of the above persons, it shall appoint a person to take charge of the child and return him or her to the jurisdiction of the court.

2. California Civil Code Section 4605

A. When the district attorney incurs expenses pursuant to Section 4604, including expenses incurred in a sister state, payment of such expenses may be advanced by the county subject to reimbursement by the state, and shall be audited

by the State Controller and paid by the State Treasury according to law.

B. The court in which the custody proceeding is pending or which has continuing jurisdiction, shall, if appropriate, allocate liability for the reimbursement of actual expenses incurred by the district attorney to either or both parties to the proceedings and such allocation shall constitute a judgment for the state for the funds advanced pursuant to this Section. The county shall take reasonable action to enforce such liability and shall transmit all recovered funds to the State.

3. Warrant in Lieu of a Writ of Habeas Corpus

CALIFORNIA PENAL CODE SECTION 1497: When it appears to any court, or judge, authorized by law to issue the writ of habeas corpus, that any one is illegally held in custody, confinement, or restraint, and that there is reason to believe that the person will be carried out of the jurisdiction of the court or judge before whom the application is made, or will suffer some irreparable injury before compliance with the writ of habeas corpus can be enforced, the court or judge may cause a warrant to be issued, reciting the facts, and directed to any peace officer, commanding the peace officer to take the person held in custody, confinement, or restraint, and immediately bring him or her before the court or judge, to be dealt with according to the law.

CALIFORNIA PENAL CODE SECTION 1498: The court or judge may also insert in such warrant a command for the apprehension of the person charged with such illegal detention and restraint.

CALIFORNIA PENAL CODE SECTION 1499: The officer to whom such warrant is delivered must execute it by bringing the person therein named before the court or judge who directed the issuing of such warrant.

CALIFORNIA PENAL CODE SECTION 1500: The person alleged to have such party under illegal confinement or restraint may make return to such warrant as in the case of a writ of habeas corpus and the same may be denied, and like allegations, proofs, and trial may thereupon be had as upon a return to a writ of habeas corpus.

CALIFORNIA PENAL CODE SECTION 1501: If such party is held under illegal restraint or custody, he must be discharged; and, if not, he must be restored to the care or custody of the person entitled thereto.

CALIFORNIA PENAL CODE SECTION 1502: Any writ or process authorized by this chapter may be issued and served on any day or at any time.

CALIFORNIA PENAL CODE SECTION 1505: if the officer or person to whom a writ of habeas corpus is directed, refuses obedience to the command thereof, he shall forfeit and pay to the person aggrieved a sum not exceeding ten thousand dollars ($10,000), to be recovered by action in any court of competent jurisdiction.

4. Joinder Of Parties

CALIFORNIA CIVIL CODE SECTION 5159: if the court learns from information furnished by the parties pursuant to Section 5158 or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child, it shall order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of his joinder as a party. If the person joined as a party is outside this state he shall be served with process or otherwise notified in accordance with Section 5154.

5. Order For Personal Appearance Before Court

CALIFORNIA CIVIL CODE SECTION 5160:

(1) The court may order any party to the proceeding who is in this state to appear personally before the court. If that party has physical custody of the child the court may order that he appear personally with the child. If the party who is ordered to appear with the child cannot be served or fails to obey the order, or it appears the order will be ineffective, the court may issue a warrant of arrest against such party to secure his appearance with the child.

(2) If a party to the proceeding whose presence is desired by the court is outside this state with or without the child the court may order that the notice given under Section 5154 include a statement directing that party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to that party.

(3) If a party to the proceeding who is outside this state is directed to appear under subdivision (2) or desires to appear personally before the court with or without the child, the court may require another party to pay to the clerk of the court travel and other necessary expenses of the party so appearing and of the child if this is just and proper under the circumstances.

6. Protective Custody, Return to Lawful Charge, Expenses, Jurisdiction

CALIFORNIA PENAL CODE SECTION 279:

(a) A peace officer investigating a report of a violation of [criminal custodial interference] may take a minor child into protective custody if it reasonably appears to the officer that any person unlawfully will flee the jurisdictional territory with the minor child.

(b) A child who has been detained or concealed shall be returned to the person, guardian, or public agency having lawful charge of the child, or to the court in which a custody proceeding is pending, or to the probation department of the juvenile court in the county in which the victim resides.

(c) The offenses enumerated in [the criminal custodial interference statutes] are continuous in nature, and continue for so long as the minor child is concealed or detained.

(d) Any expenses incurred in returning the child shall be reimbursed as provided in Section 4605 of the Civil Code. Those expenses, and costs reasonably incurred by the victim, shall be assessed against any defendant convicted of [criminal custodial interference].

(e) Pursuant to Sections 27 and 778, violation of [the criminal custodial interference statutes] is punishable in California, whether the intent to commit the offense is formed within or without the state, if the child was a resident of California or present in California at the time of the taking, or if the child thereafter is found in California.

Appendix B
Section 4604 Application
and Order

GEORGE W. KENNEDY, DISTRICT ATTORNEY
JANET MURPHY HEIM, DEPUTY DISTRICT ATTORNEY
CHILD ABDUCTION UNIT
COUNTY GOVERNMENT CENTER, WEST WING
70 West Hedding
San Jose, CA 95110
Telephone: (408) 299-7401

Appearance on behalf of SANTA CLARA COUNTY SUPERIOR COURT pursuant to Civil Code Section 4604

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

*,	CASE NO. *	
Petitioner,		DECLARATION OF *
vs.		
*,		
Respondent.		

I, *, hereby declare:

I am an investigator for the District Attorney of Santa Clara County.

I am presently assigned on a full time basis to the Parental Abduction Unit, and my duties include the location and recovery of parentally abducted children. On *, the parties obtained an order of * court which *. I am presently investigating a parental kidnapping in violation of said order, which occurred on *, wherein * *.

As of this date, the * continues to detain and conceal the minor child* in violation of the court order and the whereabouts of the child* and the * are still unknown.

I am requesting an Order by this Court pursuant to Civil Code 4604[1] to facilitate the recovery of the abducted child.

I declare under penalty of perjury that the foregoing is true and correct and was executed at San Jose, California, on *.

DATED: *

_____

*

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[1] Civil Code section 4604 provides in pertinent part:

(b) In any case where a custody or visitation decree has been entered by a court of competent jurisdiction and the child is taken or detained by another person in violation of the decree, the district attorney shall take all actions necessary to locate and return the child and the person who violated the decree and the child and to assist in the enforcement of the custody or visitation decree or other order of the court by use of any appropriate civil or criminal proceeding.

(c) In performing the functions described in subdivisions (a) and (b), the district attorney shall act on behalf of the court and shall not represent any party to the custody proceedings. If the district attorney represents to the court, by a written declaration under penalty of perjury that a temporary custody order is needed to recover a child, who is being detained or concealed in violation of a court order, or a parent's right to custody, the court may issue an order, placing temporary sole physical custody in the parent or person recommended by the district attorney to facilitate the return of the child to the jurisdiction of the court, pending further hearings. If the court determines that it is not in the best interests of the child to place temporary sole physical custody in one of the above persons, it shall appoint a person to take charge of the child and return him or her to the jurisdiction of the court.

GEORGE W. KENNEDY, DISTRICT ATTORNEY
JANET MURPHY HEIM, DEPUTY DISTRICT ATTORNEY
CHILD ABDUCTION UNIT
COUNTY GOVERNMENT CENTER, WEST WING
70 West Hedding
San Jose, CA 95110
Telephone: (408) 299-7400

Appearance on behalf of SANTA CLARA COUNTY SUPERIOR COURT pursuant to Civil Code Section 4604

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

*,	CASE NO. *	
Petitioner,		ORDER TO DISTRICT ATTORNEY TO LOCATE AND RETURN MINOR CHILD PURSUANT TO CIVIL CODE SECTION 4604
vs.		
*,		
Respondent.		

On ex-parte application this date, and on further review, this Court determines that there is reason to believe * * is detaining the minor child, * dob * in an unknown location in violation of the Order of this Court.

THEREFORE, IT IS HEREBY ORDERED:

The District Attorney of Santa Clara County and any other peace officer shall take all actions necessary to locate and return the child to the * *.

DATED:

JUDGE OF THE SUPERIOR COURT

CLAIM FOR PAYMENT
Pursuant to Government Code Section 17561
CUSTODY OF MINORS

For State Controller Use only	
(19) Program Number	
(20) Date File	____/____/____
(21) Signature Present	☐

LABEL HERE

(01) Claimant Identification Number:

(02) Mailing Address

Claimant Name

County of Location

Street Address or P. O. Box

City State Zip Code

Type of Claim	Estimated Claim	Reimbursement Claim
	(03) Estimated ☐	(09) Reimbursement ☐
	(04) Combined ☐	(10) Combined ☐
	(05) Amended ☐	(11) Amended ☐
Fiscal Year of Cost	(06) 19____/____	(12) 19____/____
Total Claimed Amount	(07)	(13)
Less: 10% Late Penalty, but not to exceed $1000 (if applicable)		(14)
Less: Estimate Payment Received		(15)
Net Claimed Amount		(16)
Due from State	(08)	(17)
Due to State		(18)

Reimbursement Claim Data	
(22) CM-1, (03)(1)	
(23) CM-1, (03)(2)	
(24) CM-1, (03)(3)	
(25) CM-1, (03)(4)	
(26) CM-1, (04)(1)(e)	
(27) CM-1, (04)(2)(e)	
(28) CM-1, (04)(3)(e)	
(29) CM-1, (04)(4)(e)	
(30) CM-1, (06)	
(31)	
(32)	
(33)	
(34)	
(35)	
(36)	
(37) Batch Total	

(38) CERTIFICATION OF CLAIM

In accordance with the provisions of Government Code 17561, I certify that I am the person authorized by the local agency to file claims with the State of California for costs mandated by Chapter 1399, Statutes of 1977; and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1096, inclusive.

I further certify that there were no applications for nor any grant or payments received, other than from the claimant, for reimbursement of costs claimed herein; and such costs are for new program or increased level of services of an existing program mandated by Chapter 1399, Statutes of 1977.

The amounts for Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs for the mandated program of Chapter 1399, Statutes of 1977, set forth on the attached statements.

Signature of Authorized Representative Date

Type or Print Name Title

(39) Name of Contact Person or Claim Telephone Numeber

( ) Ext.

CUSTODY OF MINORS Certification Claim Form Pursuant to Government Code Section 17561	FORM FAM-27

(01) Leave blank

(02) A set of mailing labels with the claimant's I.D. number and address have been enclosed with the claiming instructions. The mailing labels are designed to speed processing and prevent common errors that delay payment. Affix a label at the place as shown on the Form FAM-27. Cross out any errors and point the correct information on the label. Add any missing address items, except county of location and a person's name. If you didn't receive labels, print or type your agency's mailing address.

(03) If you are filing an original estimated Claim, enter " X " in box of line (03) Estimated.

(04) If the county is filing an original estimated Claim on behalf of districts within the county, enter " X " in box of line (04) Combined.

(05) If you are filing an amended claim to an original estimated or combined, enter " X " in box of line (05) Amended. Leave boxes (03) and (04) blank.

(06) Enter the current fiscal year in which costs are to be incurred.

(07) Enter the amounts of estimated claim from Form CM-1, line (11).

(08) Enter the same amount as shown in line (07).

(09) If you are filing an original reimbursement claim, enter " X " in box of line (09) Reimbursement.

(10) If the county is filing an original reimbursement claim on behalf of districts within the county, enter " X " in box of line (10) Combined.

(11) If you are filing an amended claim to an original reimbursement claim on behalf of districts within the county, enter " X " in box of line (11) Amended.

(12) Enter the fiscal year in which actual costs are being claimed. If actual costs for more than one fiscal year is being claimed, complete a separate Form FAM-27 for each fiscal year.

(13) Enter the amount of reimbursement claim from Form CM-1, line 11.

(14) If the reimbursement claim is filed after November 30 of the fiscal year in which the costs were incurred, the claim must be reduced by a late penalty amount. Enter the result of the multiplication of the 10% late penalty times line (13) or $1000, whichever is less.

(15) If you are filing a reimbursement claim and have previously filed an estimated claim for the same fiscal year, enter the amount received for the estimated claim, otherwise enter a "zero".

(16) Enter the result of subtracting the sum of line (14) and line (15) from line (13).

(17) If line (16) Net Claimed Amount is positive, enter that amount in line (17) Due from State.

(18) If line (16) Net Claimed Amount is negative, enter that amount in line (18) Due to State.

(22) through (36) for the Reimbursement claim

Bring forward cost information as specified on the left-hand column of lines (22) through (36) for the reimbursement claim [e.g., CM-1, (03)(1) means the information is located on Form CM-1, line (03)(1)]. Enter the information on the same line but in the right-hand column. Cost information should be rounded to the nearest dollar, (i.e., no cents) Indirect costs percentage should be shown as a whole number and without the percent symbol (i.e., 35% should be shown as 35). The claim cannot be processed for payment unless this data block is correct and complete.

(37) Add all items in line (22) through (36) and enter the batch total in line (37).

(38) Read the statement "Certification of claim." If the statement is true, the claim must be dated, signed by the agency's authorized representative and must include the person's name and title, typed or printed. Claims cannot be paid unless accompanied by a signed certification.

(39) Enter the name of the person and telephone number that this office should contact if additional information is required.

SUBMIT THREE COPIES OF THE CLAIM FORMS AND TWO COPIES OF THE SUPPORTING DOCUMENTS TO:

Address, if delivered by:
U.S. Postal Service

Gray Davis
State Controller
Division of Accounting
P.O. Box 942850
Sacramento, Ca. 94250-5875

Address, if delivered by:
Other delivery service

Gray Davis
State Controller
Division of Accounting
3301 C Street, Suite 500
Sacramento, Ca 95816

MANDATED COSTS
CUSTODY OF MINORS
CLAIM SUMMARY

FORM CM-1

(01) Claimant:	(02) Type of Claim:	Fiscal Year:
Department:	Reimbursement ☐ Estimated ☐	19___/___

Claim Statistics

(03) Number of Cases Claimed for Each Reimbursable Component:

	Section Code of each component	Number of Cases Claimed
1. Enforcement of Decrees	4604 CC	
2. Out of State Decrees	5157(3) & 5157(4) CC	
3. Offender Detention	5160(1) & 5169(3) CC	
4. Return of Detained or Concealed Minor	279(b) & 279(d) PC	

Direct Costs

(04) Reimbursable Components	Object Accounts (a) Salaries	(b) Benefits	(c) Services and Supplies	(d) Other Charges	(e) Total
1. Enforcement of Decrees					
2. Out of State Decrees					
3. Offender Detention					
4. Return of Detained or Concealed Minor					
(05) Total Direct Costs					

Indirect Costs

(06) Indirect Cost Rate	[From ICRP]	%
(07) Total Indirect Costs	[Line (05)(a) x line (06)] or [{line (05)(a) + line (05)(b)} x line (06)]	
(08) Total Direct and Indirect Costs:	[Line (05)(e) + line (07)]	

Cost Reduction

(09) *Less:* Offsetting Savings, if applicable	
(10) *Less:* Reimbursements	
(11) **Total Claimed Amount:**	{Line (08) - [Line (09) + line (10)]}

CUSTODY OF MINORS CLAIM SUMMARY Instructions	FORM CM-1

Enter the name of claimant.

Type of Claim. Check a box, Reimbursement or Estimated, to identify the type of claim being filed. Enter the fiscal year of costs.

Form CM-1 must be filed for a reimbursement claim. If you are filing an estimated claim and the estimate does not exceed the previous fiscal year's actual costs by 10%, do not complete Form CM-1. Simply enter the amount of the estimated claim on Form FAM-27, line (03), Estimated. However, if the estimated claim exceeds the previous fiscal year's actual costs by more than 10%, Form CM-1 must be completed and attach a statement explaining the increased costs. Without this information the high estimated claim will automatically be reduced to 110% of the previous fiscal year's actual costs.

Number of Cases Claimed for Each Reimbursable Component.

1. Enforcement Decree. Enter the number of cases the district attorney has taken action to procure compliance with a court order in a child custody or visitation proceeding and assist in the enforcement of child custody or visitation decrees.

2. Out of State Decrees. Enter the number of cases the court took action involving custody and visitation decrees from outside the State.

3. Offender Detention. Enter the number of cases which required action to assure the personal appearance of an offender and/or child(ren) before the court.

4. Return of Detained or Concealed Minor. Enter the number of cases involving the return of an illegally detained or concealed child(ren) to its legal custodian or agency.

For each of the reimbursable component, enter the total cost from Form CM-2, line (06) columns (d) and (e), on to CM-1, block (04) columns (a),(b), (c) and (d) in the appropriate row. Total each row.

Total Direct Costs. Total columns (a), (b), (c), (d) and (e).

Enter the Indirect Cost Rate.

Indirect costs may be computed as 10% of direct labor costs, excluding fringe benefits, as long as the direct labor costs are directly related to the costs of performing the mandate.

If an indirect cost rate of greater than 10% is used, include the Indirect Cost Rate Proposal (ICRP) with the claim.

) Total Indirect Costs. Multiply Total Salaries, line (05)(a), by the Indirect Cost Rate, line (06). If both salaries and benefits were used in the distribution base for the computation of the indirect cost rate, then multiply Total Salaries and Benefits, line (05)(a) and line (05)(b), by the Indirect Cost Rate, line (06).

) Total Direct and Indirect Costs. Enter the sum of Total Direct Costs, line (05)(e), and Total Indirect Costs, line (07).

) Less: Offsetting Savings, if applicable. Enter the total savings experienced by the claimant as a direct result of this mandate. Submit a schedule of detailed savings with the claim.

) Less: Reimbursements. Enter the amount of reimbursements for the custody of minors program the county has received from defendants, other individuals, or State's Foster Care Program, or any other sources, (i.e., federal, other State programs, foundations, etc.].

) Total Amount Claimed. Subtract the sum of line (09) and line (10) from line (08). Enter the difference on this line and carry forward to Form FAM 27, line (07) for the Estimated Claim, or line (13) for the Reimbursement Claim.

MANDATED COSTS
CUSTODY OF MINORS
COMPONENT/ACTIVITY COST DETAIL

FORM CM-2

(01) Claimant:

(02) Fiscal Year costs were incurred:

(03) Reimbursable Component: *Check* **ONLY one** *box per form to identify the component being claimed.*

- ☐ *1. Enforcement of Decrees*
- ☐ *2. Out of State Decrees*
- ☐ *3. Offender Detention*
- ☐ *4. Return of Detained or Concealed Minor*

(04) Description of Expense: Complete columns (a) through (f).

(a) Employee Name, Job Classification and Activities Performed or Description of Expense	(b) Hourly Rate or Unit Cost	(c) Hours Worked or Quantity	Object Accounts (d) Salaries	(d) Benefits	(e) Services and Supplies	(f) Other Charges
(05) Total ☐ Subtotal ☐ Page: ____ of ____						

CUSTODY OF MINORS
COMPONENT/ACTIVITY COST DETAIL
Instructions

FORM CM-2

) Enter the name of claimant.

) Enter the fiscal year for which costs were incurred.

Do not file Form CM-2 for an Estimated Claim.

) Check the box which indicates the cost component being claimed. Check only one box per form. A separate Form CM-2 shall be prepared for each component which applies.

) The following tables identifies the type of information required to support reimbursable costs. To detail costs for the component activity box "checked" in line (03), enter the employee names, position titles, a brief description of their activities performed, productive hourly rate, fringe benefits, supplies used, contracted services costs, etc. All supporting documents must be retained by the claimant for a period of not less than three years from the date of final payment on the claim.

Object/ Subobject Accounts	Columns						Submit these supporting documents
	(a)	(b)	(c)	(d)	(e)	(f)	
laries and Benefits Salaries	Employee Name, Title, Activities Performed	Hourly Rate	Hours Worked	(b) x (c) Hourly Rate x Hours Worked			
Benefits		Benefit Rate	Hours Worked	(b) x (c) Benefit Rate x Hours Worked or Benefit Rate x Salary Claimed			
ervices and Supplies Office Expense	Description of supplies used	Unit Cost	Quantity Consumed		(b) x (c) Unit Cost x Quantity Consumed		
Transportation and Travel	Purpose of Trip, Name and Title, Departure and Return Date	PerDiem Rate, Milage Rate, Trans. Cost	Days, Miles Trans. Mode		(b) x (c) Rate X Days or Miles, Total Trans. Cost		
Professional and Specialized Services	Name of Contractor, Specific Tasks performed	Itemize cost for services performed	Time period for which services was provided		Total Cost Claimed		Invoice
Other Charges Support and Care of Persons	Case Number, Child Name, & Nature of S/T Care	Cost Per Day	Number of Days			(b) x (c) Cost per Day Number of Days	

(05) Total line (04), columns (d), (e) and (f) and enter the sum on this line. Check the appropriate box to indicate if the amount is a total or subtotal. If more than one form is needed to detail the component/activity costs, number each page. Enter totals from line (05), columns (d), (e) and (f) to Form CM-1, block (04) columns (a), (b), (c) and (d) in the appropriate row.

Chapter 8

CIVIL LIABILITY OF LAW ENFORCEMENT OFFICIALS FOR THEIR ACTIONS IN PARENTAL KIDNAPPING CASES

by Janet Kosid Uthe, Esq.

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Chapter 8

CIVIL LIABILITY OF LAW ENFORCEMENT OFFICIALS FOR THEIR ACTIONS IN PARENTAL KIDNAPPING CASES

by Janet Kosid Uthe, Esq.

Introduction

Parents of abducted children often turn to law enforcement for assistance in recovering their children. Their expectations about receiving such assistance are understandably high when they have gone through the process of obtaining a court order of custody. Yet the desired help often is not forthcoming.

The reluctance within the law enforcement community to become involved in the civil enforcement of custody orders where criminal charges are not pending against the abductor-parent stems from several interrelated factors.

Certainly, tradition is one reason. When law enforcement officers tend to view criminally-chargeable parental kidnapping as a domestic dispute not warranting their intervention, it is not surprising that there would be even greater reluctance to intercede in the civil aspects of custody disputes.[1]

Another obstacle to law enforcement involvement in the civil enforcement of custody orders is the substantial confusion on the part of both law enforcement agencies, and the courts who are attempting to set standards for police conduct, about what the correct law enforcement response should be. Boundaries between criminal laws and civil laws to determine applicable procedures can be blurred. Lack of clearly formulated and widely disseminated policies and procedures either precludes assistance entirely or frustrates and hampers the efforts of law enforcement who intervene in cases of parental abduction.

Law enforcement officers face other obstacles when asked to assist in enforcing civil custody orders. Eighty percent of the law enforcement officials responding to the parental kidnapping questions of the "Police Practices Study" chose "difficulty verifying custody" as an obstacle to the successful resolution of such cases. In addition, 77% of the responding law enforcement

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[1]A recent study noted the reluctance of law enforcement agencies to involve themselves in parental kidnapping cases. "It is questionable whether the adversarial and overburdened criminal justice system is the place to deal with most incidents of parental abduction which are often manifestations of parental conflict and custody dispute." J. Collins, M. McCalla, L. Powers and E. Stutts, The Police and Missing Children: Findings from a National Survey 133 (1989) (hereinafter Police Practices Study).

officials selected "statutes (custody laws)" as a significant obstacle.[2]

In addition, although it cannot be quantified, the specter of liability for assisting in the civil recovery of parentally abducted children cannot fail to have a chilling effect on the willingness of law enforcement to assist in such cases.[3] This paper examines case law in which law enforcement officers have been sued for their conduct in connection with parental kidnapping cases either for actions taken in investigating a criminal case of parental abduction or for actions taken to assist in the civil recovery of a parentally abducted child. The latter cases are emphasized.

The cases are object lessons in problems faced by police who intervene in child custody disputes. From these cases, recommendations will be made to help limit the prospect of law enforcement liability by defining clearer roles for police in these matters. For a synopsis of these cases, see Appendix A, Table of Cases.

Theories of Law Enforcement Liability

Law enforcement officials have been sued in state courts under state law tort theories of liability. They have also been sued in the federal courts for violations of the federal Civil Rights Act of 1871 (42 U.S.C. § 1982).[4]

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[2]Id. at. 73. The Police Practices Study, however, did not identify what aspects of "statutes (custody laws)" served as impediments to the successful resolution of a parental kidnapping case. It might be helpful if this issue were explored further.

[3]"Few subjects today are as critically important to public officials and employees as being held personally liable in damages for their official actions. At federal, state, and local levels, government personnel are being sued, with increasing frequency and at the hazard of their personal assets, for their own and for their subordinates' erroneous acts or omissions." P. Hardy & J. Weeks, Personal Liability of Public Officials Under Federal Law, 1 (3d ed. 1985).

Also see Clearinghouse Survey, Chapter 9, infra, in which over one third of state missing children clearinghouses reported that law enforcement practices in parental abduction cases were shaped with issues of possible civil liability in mind.

[4]The federal Civil Rights Act of 1871 (42 U.S.C. § 1983) provides:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or

Since the state courts are also empowered to hear claims under the federal Civil Rights Act of 1871, some state court actions have heard and determined federal claims as well. In addition, since state law tort claims may be heard by the federal courts pursuant to pendent jurisdiction, some federal cases have also resolved issues of state law tort liability.

In actions brought either in state or federal court under a state law tort theory of liability, law enforcement officials may receive some protection from a civil suit for damages by the Tort Claims Act in effect in the state.[5] The State Tort Claims Acts

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the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

[5]See Ala. Code § 41-9-74 (1982); Ark. Code Ann. § 12-3401 (Michie 1985); Cal. Gov't. Code § 825 (West 1980); Colo. Rev. Stat. § 24-10-110(1)(b)(I) (1982); Conn. Gen. Stat. Ann. §§ 4-16A, 7-465 (West 1985); Del. Code Ann. Tit. 10, § 4002 (1984); Fla. Stat. Ann. § 768.28(9)(a) (West 1985); Ga. Code Ann. § 45-9-60 (Michie 1982); Ill. Ann. Stat. Ch. 24, para. 1-4-5; Ch. 85, para. 9-102 (Smith-Hurd 1985); Ind. Code Ann. §§ 34-4-16.5-3(6), 34-4-16.5-4 (Burns 1985); Iowa Code Ann. §§ 25A.14, 25A.21, 25A.22, (West 1978); Kan. Stat. Ann. §§ 75-6104(d), 75-6109 (1984); La. Rev. Stat. Ann. §§ 13:5108.1, 13:5108.2 (West 1985); Me. Rev. Stat. Ann. Tit. 14, § 8112 (1980); Md. State Gov't Code Ann. § 122-404, 12-405 (1984); Mass. Gen. Laws Ann. Ch. 258, § 2 (West 1985); Mich. Comp. Laws Ann. § 691.1408 (West 1985); Minn. Stat. Ann. §§ 3.736(3)(b), 466.07(1a) (West 1985); Miss. Code Ann. § 25-1-47(2) (1972); Mo. Ann. Stat. § 105-711 (Vernon 1985); Mont. Code Ann. § 2-9-305 (1985); Neb. Rev. Stat. §§ 81-8, 219(a) (1981); Nev. Rev. Stat. § 41.0349, 41.035 (1983); N.H. Rev. Stat. Ann. §§ 99D:2, 31:105, 31:106 (1983); N.J. Stat. Ann. §§ 59:2-3, 59:10-1 to -4 (West 1982); N.M. Stat. Ann. §§ 41-4-4, 41-4-22, 41-4-23, 41-4-25 (1982 & 1985); N.Y. Pub. Off. Law § 17(3)(a) (McKinney 1984); N.D. Cent. Code § 32-12.1-03 (1983); Or. Rev. Stat. § 30.285 (1987); 42 Pa. Cons. Stat. Ann §§ 8542(a)(2), 8545 (Purdon 1982); R.I. Gen. Laws § 9-31-12 (1984); S.D. Codified Laws Ann. §§ 3-19-1, 3-19-2 (1980); Utah Code Ann. §§ 63-30-36, 63-30-37 (1989); Vt. Stat. Ann. Tit. 12, § 5602(1) (1973); Wash. Rev. Code Ann. § 4.92.090 (West 1985); W. Va. Code § 8-12-7(b) (1976); Wis. Stat. Ann. § 895.46 (West 1985); Wyo. Stat. § 1-39-104 (1985).

do not, however, provide complete immunity even from state law tort suits. Further, when the claim involves a violation of a federal civil right, whether the action is brought in federal or state court, the federal law will apply and the State Tort Claims Acts will not prevent the lawsuit.

In cases arising from law enforcement intervention in both civil and criminal parental kidnapping cases, lawsuits have been filed in both state and federal courts against law enforcement officials for the following state law torts with varied results:

False arrest;[6]
False imprisonment;[7]
Unlawful entry;[8]
Trespass;[9]
Deprivation of custody;[10]
Unspecified intentional torts.[11]

Cases decided under the federal Civil Rights Act of 1871 include: Shields v. Martin, 706 P.2d 21 (Idaho 1985); Sundholm v. Bettendorf, 389 N.W.2d. 849 (Iowa 1986); Dennison v. Vietch, 560 F. Supp. 435 (D. Minn. 1983); Hooks v. Hooks, 771 F.2d 935 (6th Cir. 1985); Smith v. Eley, 675 F. Supp. 1301 (D. Utah 1987); Rykers v. Alford, 832 F.2d 895 (5th Cir. 1987); Capone v. Marinelli, Volpe, O'Neill, & Bambi, 868 F.2d 102 (3d Cir. 1989); Lowrance v. Pfleuger, 878 F.2d 1014 (7th Cir. 1989); Hufford v. Rodgers, 912 F.2d 1338 (11th Cir. 1990), cert. denied, 111 S. Ct. 1312, 113 L. Ed. 2d 246 (1991); and Hurlman v. Rice, 927 F.2d 74 (2d Cir. 1991).

Federal civil rights suits generally allege a violation of plaintiff's due process rights under the Fourteenth Amendment and can arise from both criminal custodial interference actions and civil actions to enforce custody orders. Although there are not

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[6]See, e.g., Mathews v. Murray, 113 S.E.2d 232 (Ga. Ct. App. 1960); Sundholm v. Bettendorf, 389 N.W.2d. 849 (Iowa 1986); Contway v. Camp, 768 P.2d 1377 (Mont. 1989).

[7]Mathews v. Murray, 113 S.E.2d 232 (Ga. Ct. App. 1960); Contway v. Camp, 768 P.2d 1377 (Mont. 1989); Dennison v. Vietch, 560 F. Supp. 435 (D. Minn. 1983).

[8]Sundholm v. Bettendorf, 389 N.W.2d. 849 (Iowa 1986).

[9]Dennison v. Vietch, 560 F. Supp. 435 (D. Minn. 1983).

[10]Mathews v. Murray 113 S.E.2d 232 (Ga. Ct. App. 1960).

[11]Capone v. Marinelli, Volpe, O'Neill, & Bambi, 868 F.2d 102 (3d Cir. 1989).

yet many decisions on cases arising from law enforcement intervention in parental abductions, the general litigation under 42 U.S.C. § 1983 is extensive.

Some issues, such as the absolute judicial immunity from civil liability for damages, are well-settled.[12] Other issues, such as prosecutorial immunity, are still evolving.[13]

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[12]Pierson v. Ray, 386 U.S. 547, 554-555, 87 S. Ct. 1213, 18 L. Ed. 2d 288 (1967). "This immunity applies even when the judge is accused of acting maliciously and corruptly, and it 'is not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, whose interest it is that judges should be at liberty to exercise their functions with independence and without fear of consequences.'"; DiRuggiero v. Rodgers, 743 F.2d 1009 (3d Cir. 1984); and Sipka v. Soet, 761 F. Supp. 761 (D. Kan. 1991).

[13]Prosecutors have absolute immunity for actions taken in initiating a criminal prosecution and in presenting the State's case. Imbler v. Pachtman, 424 U.S. 409, 96 S. Ct. 984, 47 L. Ed. 2d 128 (1975); Rykers v. Alford, 832 F.2d 895 (5th Cir. 1987). However, prosecutors are not granted absolute immunity for acts beyond those essential to the presentation of the State's case. For example, advice given to the investigating officer prior to charges being lodged against the defendant is protected only by qualified immunity. Burns v. Reed, ___U.S.___, 111 S. Ct. 1934, 114 L. Ed. 2d 547 (1991).

Accordingly, prosecutors may be civilly liable in damages for advice given to police, parents, nonprofit missing children's organizations, etc., in cases for which civil recovery of a parentally abducted child is sought. Advice given or actions taken in assisting in any civil recovery is likely to be protected only by qualified immunity.

The difference between the absolute and the qualified immunities is substantial. Absolute immunity defeats a suit at outset. The fate of an official with qualified immunity depends on the circumstances of the case. Not only is the potential liability far greater for actions protected by qualified immunity, but the cost of litigation is far greater as well.

In some jurisdictions, prosecutors provide some, if limited, assistance in facilitating the civil return of a parentally abducted child. This is particularly true in cases where the searching parent is without funds to pursue a separate enforcement action in the jurisdiction in which the child is found. See e.g. Chapters 7 and 9.

Prosecutors who have provided such assistance in the past

Civil Liability for Actions Undertaken in Criminal Cases

On those occasions when law enforcement officials are sued for actions taken in investigating a criminal case of parental abduction, the lawsuit is likely to claim damages for false arrest, deprivation of liberty, and search and seizure violations. In such actions, the judiciary analyses criminal law issues -- such as probable cause or the police entry to execute the warrants.

The issues in such cases are usually well-settled and the analyses are generally conducted without difficulty. These cases include Mathews v. Murray, 113 S.E.2d 232 (Ga. Ct. App. 1960); Contway v. Camp, 768 P.2d 1377 (Mont. 1989); Capone v. Marinelli, Volpe, O'Neill, & Bambi, 868 F.2d 102 (3d Cir. 1989); Sundholm v. Bettendorf, 389 N.W.2d. 849 (Iowa 1986); Rykers v. Alford, 832 F.2d 895 (5th Cir. 1987); and Lowrance v. Pfleuger, 878 F.2d 1014 (7th Cir. 1989).

Civil Liability for Actions Undertaken While Assisting in Civil Recovery

The second type of case stems from actions taken by law enforcement officials to assist in the civil recovery of a parentally abducted child. In such cases, the police have taken some action to "assist" an allegedly custodial parent regain possession of the child. For a variety of reasons, the parent to whom the officers have returned the child is not the lawful custodial parent.

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may reevaluate their willingness to provide such assistance in light of the cost of litigating a claim under 42 U.S.C. § 1983. If so, one method of alleviating one of the obstacles frustrating the civil recovery of parentally abducted children may become unavailable.

Although prosecutors who provide such assistance will probably not be accorded absolute immunity from liability, a clear legislative mandate directing that prosecutors and law enforcement officials take all actions reasonably necessary, whether civil or criminal, to locate and return an abducted child should provide a significant measure of protection from civil liability.

The issue of qualified immunity and of its interrelationship with a legislative mandate is of serious concern for prosecutors and their investigators in California. Prosecutors and District Attorney investigators, there, are subject to such a legislative mandate. This question is explored in further detail in Chapter 7.

The police are then sued by the lawful custodial parent. Most frequently, the custodial parent alleges a deprivation of the constitutionally protected liberty interest in the custody of children and sues pursuant to 42 U.S.C. § 1983.

These cases include Dennison v. Vietch, 560 F. Supp. 435 (D. Minn. 1983); Shields v. Martin, 706 P.2d 21 (Idaho 1985); Hooks v. Hooks, 771 F.2d 935 (6th Cir. 1985); Smith v. Eley, 675 F. Supp. 1301 (D. Utah 1987); Hufford v. Rodgers, 912 F.2d 1338 (11th Cir. 1990) cert. denied 111 S. Ct. 1312; and Hurlman v. Rice, 927 F.2d 74 (2d Cir. 1991).

It is this type of case that presents a special challenge to law enforcement officials. This challenge arises largely because law enforcement officials are often unfamiliar with child custody laws. It also arises because the present civil enforcement and recovery procedures are inadequate. In addition, law enforcement officials are not familiar with potential liability under 42 U.S.C. § 1983 for actions that exceed their normal crime-stopping activities.

Liability under 42 U.S.C. § 1983 obviously exists for actions that intentionally violate the constitutionally protected interest in the custody of one's children. Law enforcement officials have also been found to be liable for their negligent actions that deprive the plaintiff of custody as well[14].

Law enforcement officials, while not enjoying the absolute immunity of the judiciary and (sometimes) prosecutors, enjoy qualified immunity for their actions. Their actions are immune from liability if they do not violate a clearly established right of which a reasonable person would have known.[15]

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[14]See Dennison v. Vietch, 560 F. Supp. 435 (D. Minn. 1983); and Smith v. Eley, 675 F. Supp. 1301 (D. Utah 1987).

[15]The test of good faith is an objective one. It is not a question of what the law enforcement official believed or what his or her intent was at the time he or she acted. The question is whether he or she reasonably should have known that his or her actions would violate a clearly established constitutional right. Wood v. Strickland, 420 U.S. 308, 95 S. Ct. 992, 43 L. Ed. 2d 214, reh'g denied, 421 U.S. 921 (1975).

The clearly established right is the constitutionally protected liberty interest in the custody of one's children (Santosky v. Kramer, 455 U.S. 745, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982); Stanley v. Illinois, 405 U.S. 645, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972); Lossman v. Pekarske, 707 F.2d 288 (7th Cir. 1983); Ruffalo v. Civiletti, 702 F.2d 710 (8th Cir. 1983); Ellis v. Hamilton, 669 F.2d 510 (7th Cir. 1982) cert. denied 459 U.S.

To What Extent Can Law Enforcement Assist?

The cases alleging that law enforcement officials frustrated the plaintiff's liberty interest in the custody of children are of relatively recent vintage. The law is not well-settled. In certain cases, the courts appear to be struggling to determine what is acceptable police conduct. In at least one case, the court looked to police department policy to define the extent of the lawfulness of an officer's conduct.

In Shields v. Martin, 706 P.2d 21 (Idaho 1985) the Idaho Supreme Court found that a police officer who provided "assistance" to a parent in recovering a child did not act in good faith. The child's mother had sought the assistance of the Boise Police Department in enforcing her custody order.

The Officer accompanied the mother to the child's daycare center and instructed the daycare center employees to release the child to the mother. He further instructed the daycare center employees not to call the child's father. Once the mother had possession of the child, she and the child left the state. The father sued the Officer, among others, for deprivation of custody pursuant to the federal Civil Rights Act of 1871 (42 U.S.C. § 1983). Father alleged that the mother's custody order had been superseded.

The Idaho Supreme Court looked to the testimony of a Boise Police Department administrator to determine the correct law enforcement response. Based upon the testimony of the police administrator, the Idaho court determined that the Officer was only allowed to accompany the mother for the purpose of keeping the peace.

1069, 103 S. Ct. 488, 74 L. Ed. 2d 631; Duchesne v. Sugarman, 566 F.2d 817 (2d Cir. 1977); Elam v. Montgomery County, 573 F. Supp. 797 (S.D. Ohio 1983).

To date, appellate courts in civil cases have not considered the clarity of the relative custodial status of each parent as a factor in determining the good faith and, hence, qualified immunity, of the law enforcement official. The courts have looked, instead, at case law that establishes that custody of children is a constitutionally protected liberty interest. Yet, the clarity of the relative custodial status of each parent would appear to be at the heart of a reasonable person's determination of whether his or her conduct would violate a given parent's right of custody and has been considered as such in cases arising from criminal parental kidnapping investigations. See e.g. Rykers v. Alford, 832 F.2d 895 (5th Cir. 1987) and Lowrance v. Pfleuger, 878 F.2d 1014 (7th Cir. 1989).

The court found that a city police officer is not a constitutional officer, such as a sheriff. A police officer may accompany a parent in a self-help recovery in order to keep the peace, but, apparently, only a sheriff may enforce a court order.

The Idaho Supreme Court held that the officer had exceeded the scope of his authority by "assisting" Mother rather than just standing by to prevent violence when Mother removed the child from the daycare center. Since he exceeded the scope of his authority, his actions were unlawful.

What Agency is to Provide Assistance?

The Shields case identifies another obstacle as well. What law enforcement agency, if any, is authorized to provide assistance to a parent seeking enforcement of his or her custody order? A law enforcement administrator setting policy to determine his agency's role in civil recovery of parentally abducted children might conclude, after studying the Shields case, that the only agency authorized to enforce a custody order is the sheriff's. City police are only authorized to keep the peace while a parent recovers the child.[16]

However, in another case, Smith v. Eley, 675 F. Supp. 1301, 1307 (D. Utah 1987), the court noted that it is doubtful that even county sheriff's deputies should assist in the enforcement of valid custody orders absent express direction from the court. In Smith, the mother had been awarded custody of the daughter and the father had been awarded custody of the son. Following financial reverses, the mother requested that Father take the daughter as well. Shortly thereafter she changed her mind and requested that he return the daughter. Father refused. Instead, he obtained an ex parte change of custody.

Mother requested the assistance of the sheriff's office in retrieving her daughter. She presented the deputies with her original custody order and did not inform them of the ongoing dispute. They assisted her to recover the girl. Father sued the sheriff and his deputies.

The sheriff and his deputies requested summary judgment. It was denied and the denial was affirmed on appeal. The federal court questioned whether the sheriff's deputies should have provided any assistance to the mother without express instructions from the state court to do so.

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[16]This procedure is also called "a civil stand-by."

Must There be a Court Hearing to Specifically Authorize Law Enforcement Assistance?

To what agency, then, does a parent turn for "assistance?" The courts are expressing discomfort with law enforcement "assistance" prior to a court hearing in the state in which the abductor and child are found.[17] This court hearing, presumably, would address such issues as which parent had lawful custody, whether the custody order will be enforced, and what procedures can be used to obtain physical custody of the child.

While the UCCJA and the PKPA both require sister states to enforce custody orders made in compliance with their provisions, there is no provision in either that mandates such a hearing. Further, there are currently no uniform enforcement procedures.[18]

In many parental abduction cases, an abductor, given notice of such a hearing, would take the child and flee the jurisdiction. Is notice always required? If not, under what circumstances would it be waived?

Must a hearing be held to direct law enforcement to act if the custody order, itself, directs law enforcement officials, "to accompany and assist" a parent who is recovering the child? Will this order by obeyed if it was made by a court of a different state?

How can a parent, who has already expended funds to obtain a custody order in his or her home state and additional funds to locate the abductor and child, afford the cost of hiring a second lawyer to begin a new round of litigation? To what extent will such requirements foster "snatch and snatch-back" behavior because the alternatives are financially impossible or impractical?

The current state of the law provides little guidance to law enforcement officials who are requested to intervene. So too, it provides little guidance to the courts who must assess the lawfulness of police conduct. Without legislative guidance, both the courts and the police are trying to fashion adequate procedures--often on a case by case basis.

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[17]Dennison v. Vietch, 560 F. Supp. 435 (D. Minn. 1983); Hooks v. Hooks, 771 F.2d 935 (6th Cir. 1985); Smith v. Eley, 675 F. Supp. 1301 (D. Utah 1987); and Hurlman v. Rice, 927 F.2d 74 (2d Cir. 1991).

[18]For a further discussion of recommended state procedures to secure enforcement of custody and visitation rights, see Chapter 6.

In Hooks v. Hooks, 771 F.2d 935 (6th Cir. 1985), the custodial mother was arrested in Tennessee on bad check charges. The arrest took place while she was engaged in a dispute over custody and visitation with the father who lived in Texas. Allegedly, Father brought the existence of the arrest warrant to the attention of the Tennessee authorities.

The arresting agency (Sheriff's Department) contacted the Tennessee Department of Human Services (DHS) to arrange for placement of the children while the mother was in custody. The DHS caseworker advised the sheriff's deputies that it was DHS policy to place the children with the noncustodial parent if the noncustodial parent was available to care for the children. Meanwhile, the mother frantically tried to make arrangements for childcare from the jail, but was allegedly prevented from doing so.

Pursuant to DHS policy, the children were placed in the care of the father -- who had conveniently arrived from Texas at the time of the arrest. He immediately left Tennessee with the children and returned to Texas. The mother sued the Tennessee sheriff's deputies, the DHS caseworker, the father, and others, under 42 U.S.C. § 1983 for conspiracy to deprive her of the custody of her children.

The federal courts held that it was necessary to provide a custodial parent with a pre- or post-deprivation hearing. They further thought that this hearing should be held in Tennessee, the state of the custodial parent's residence. But no custody action had been filed in Tennessee. (The divorce had occurred in Texas.)

Under what authority would Tennessee entertain such an action? Who would house the children pending such a hearing? Could this hearing be expedited? What court would hear the case? Family law court? Juvenile court? The answers are not readily apparent.[19]

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[19]It is not clear from the state of the record if the mother, in this case, was ever awarded damages. The Sixth Circuit held that Mother was bound by a stipulation she allegedly entered into in the Texas custody proceedings. She agreed to dismiss this federal action and the Texas courts subsequently returned custody to her. She denied having stipulated to dismiss this action. The federal courts stayed the federal action to give her time to appeal the stipulation in the Texas Appellate Courts.

By What Standards Should Law Enforcement Conduct Be Judged?

As the courts are unsure of what procedures law enforcement officials should utilize in cases involving the civil enforcement of custody orders, they are also unsure of what standards of conduct to impose on law enforcement officials. Should the court apply criminal laws or civil laws to evaluate the lawfulness of police conduct?

Although most courts have applied criminal standards to criminal custodial interference cases and civil standards to deprivation of custody cases, the boundaries have, at times, become blurred. In at least two cases, courts have judged the lawfulness of the police entry into a house to civilly "pick up" a child according to the criminal standards of consent, warrant, or exigent circumstances.

In Dennison v. Vietch, 560 F. Supp. 435 (D. Minn. 1983), a sheriff's deputy and a city police officer entered Father's apartment late at night while he and the child were sleeping. They did not have a warrant or consent to enter. There were no exigent circumstances. They woke Father and requested that he produce his custody order. When he was unable to do so, they allowed Mother to enter Father's apartment and remove the child. (In fact, neither parent had a custody order.)

Father sued the sheriff's office and the city police for deprivation of custody, false imprisonment, and trespass. The court determined that the entry had been unlawful. Certainly, no court order existed to authorize the entry.

There was no arrest warrant authorizing the police to enter the apartment to arrest Father. Nor was there a court order authorizing the police to enter the apartment to obtain the child on behalf of the mother. Both officers were aware of court procedures for the transfer of custody from one parent to the other which could have been undertaken at a civil hour the next day.

Father prevailed at trial on the deprivation of custody and trespass counts. However, he was awarded only nominal damages for loss of dignity as the court awarded custody to Mother a few weeks later.

In Hurlman v. Rice, 927 F.2d 74 (2d Cir. 1991), the New York State Troopers entered the residence of maternal grandfather to enforce a restraining order prohibiting mother from residing in the home with the child. Following an earlier court hearing in which it was alleged that maternal grandfather had sexually molested other grandchildren, the court had restrained the mother from continuing to reside with the child in that home.

When she, apparently, continued to do so, Father sought the assistance of the New York State Troopers. They forced entry into the home of maternal grandfather and removed the child. They turned custody of the child over to Father. However, the court had not seen fit to change custody. Nor was there any reason to believe that the child was in imminent danger at the time the Troopers entered.

Mother sued the New York State Troopers for deprivation of custody. The court refused to grant summary judgment on behalf of the Troopers. The court found that there was a triable issue of fact concerning the good faith of the Troopers who entered a private residence without a warrant, without consent, and without exigent circumstances.

What procedure is, then, correct? If the child, when located, is not in a public place, must law enforcement officers obtain a search warrant? An arrest warrant? A civil order specifically authorizing them to enter the premises to take custody of the child?

Will an order directing them to return the child to the custodial parent also authorize them to enter a private dwelling to obtain the child or must they "stake out" the residence and wait for the child to be taken to a public place? Must a separate order be obtained authorizing them to enter a private residence? What level of probable cause must be demonstrated before law enforcement officials will be authorized to enter private premises? Can these procedures be expedited if there is risk of further flight by the abductor?

In Sundholm v. Bettendorf, 389 N.W.2d. 849 (Iowa 1986), the custodial parent had obtained a Writ of Habeas Corpus authorizing the Bettendorf police to return the child to her. However, the child was not in a public place. Instead, she was in a private residence belonging to Father's parents.

The police entered the residence without consent in order to obtain possession of the child. Following the entry of the law enforcement officers into the home, Paternal Grandmother assaulted the Officer and Paternal Aunt attempted to flee with the child. They were both arrested, but were acquitted of the charges. Following the acquittal, they sued the police officers for false arrest and unlawful entry.

One of the two women was successful. Although she did not succeed in proving compensatory damages, the case was remanded to the trial court to consider her claim for punitive damages and attorney's fees.

How Easily Can Custody be Verified?

Another problem area, highlighted by law enforcement agencies in their responses to the Police Practices Study, is the difficulty they experience in recognizing, interpreting, and verifying custody orders. The case law bears this out.

In Shields v. Martin, 706 P.2d 21 (Idaho 1985) and Smith v. Eley, 675 F. Supp. 1301 (D. Utah 1987), sheriff's deputies enforced orders which had been superseded. In Lowrance v. Pfleuger, 878 F.2d 1014 (7th Cir. 1989), the sheriff based criminal charges on ex parte custody orders which had never been served upon the defendant. In Hufford v. Rodgers, 912 F.2d 1338 (11th Cir. 1990), cert. denied 111 S. Ct. 1312, 113 L. Ed. 2d 246, (1991), sheriff's deputies enforced a fraudulently altered custody decree. And in Hurlman v. Rice, 927 F.2d 74 (2d Cir. 1991), New York State Troopers thought that restraining orders gave them the authority to enter a residence and remove the child from the presence of an alleged child molester.

The law enforcement officials, in the cases cited above, did not always fail to inquire if other orders existed. In one case, the deputies called the city attorney and the county sheriff, but were unable to obtain verification.[20]

Other difficulties impede the ability of law enforcement officials to verify custody orders. It is not always possible to identify in what jurisdiction the orders may have been obtained. This is especially true when an abductor has obtained conflicting custody orders while leading a transient life-style to avoid detection.

Despite the fact that Section 16 of the UCCJA, mandating a child custody registry, has been enacted by virtually all fifty states, most states do not yet have a child custody registry. In those jurisdictions that do, it is not likely to be statewide and, is, at best, accessible only manually and at limited hours. In some jurisdictions, it takes weeks to provide the necessary verification.

Even if every state had its own registry, police officers would be unable to check the registries of all fifty states absent some systematic computerized network among the states. The existing registries are inadequate and do not accomplish their purpose.

It is clear from both the Police Practices Study and the case law that a national child custody registry would facilitate the smooth functioning of any law enforcement effort to enforce

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[20]Smith v. Eley, 675 F. Supp. 1301 (D. Utah 1987).

custody orders. The ability to quickly verify custody can be important to the police who must choose to leave the child with one parent or the other. They may face civil liability if they choose incorrectly.

What Are the Custody Rights of Unmarried Fathers?

Case law also demonstrates that law enforcement officials have difficulty determining the existence, nature, and extent of the custody rights of unmarried fathers. Just as in criminal custodial interference investigations, law enforcement officials assisting in the civil enforcement of custody orders, have trouble determining when the rights of an unwed father attach. Are his rights equal to those of a married father? What factors distinguish an unwed father with co-equal custody rights from one with no custody rights?

In Dennison,[21] the father and mother were unmarried parents. Paternity had never been adjudicated and custody orders had never issued. Mother, however, acknowledged that Dennison was the father. She asked him to take physical custody of the child. Later, she changed her mind. When she asked Father to return the child to her, he refused.

When the police assisted Mother in recovering the child, he sued for trespass, false imprisonment, and deprivation of custody. The court felt that because he had participated in raising the child, the law granted him some unspecified custody rights.

In Rykers v. Alford, 832 F.2d 895 (5th Cir. 1987), the mother and father were unmarried parents residing in Australia. Following the breakup of their relationship, the mother took the child and returned to the United States without telling the father. He allegedly spent seven years sailing around the world looking for his daughter.

He located her in Louisiana where Mother had changed both their first and last names. He requested and was permitted a weekend visit. During that weekend, he sailed away with the child. He left the mother a note stating that he would call her in two or three weeks. The mother reported a criminal case of parental kidnapping and alleged that she had custody by operation of Australian law.

Following his arrest, Father sued under 42 U.S.C. § 1983 for false arrest and false imprisonment. He named as defendants, the U.S. Attorney, the F.B.I. agents, a local police officer, and the

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[21]Discussed supra. at p. 8-12.

Louisiana prosecutor. The court dismissed the suit as to all defendants.

The court was sympathetic to the confusion of the investigating police officer concerning the application of Australian law to the custody rights of these unwed parents. The court was especially concerned that the police officer was required to justify a determination made under emergency circumstances caused by the father's disappearance with the child. This situation had prevented the officer from fully investigating custody.

Where Can a Child be Housed Pending the Enforcement Hearing?

The civil litigation has also highlighted another area of confusion. In Hooks v. Hooks, 771 F.2d 935 (6th Cir. 1985),[22] sheriff's deputies arrested the custodial parent on charges unrelated to custody. While the custodial parent was in jail, the sheriff's deputies contacted the Department of Human Services to arrange to house the children. The DHS social worker advised the deputies to place the children with the noncustodial father.

This is proper procedure in child abuse and neglect cases when one parent remains available to care for children and the custodial parent is unavailable. However, the Hooks' were engaged in a custody dispute and the noncustodial parent had conveniently arrived from out of state just in time to take possession of the children. Upon receiving the children, he immediately left Tennessee for Texas with the children. The mother sued for conspiracy to deprive her of custody.

The Hooks case is important because most state child protection agencies have similar policies regarding placement of the children with the noncustodial parent when the custodial parent is unavailable to care for them. In most cases, this minimizes trauma to the children and reduces the strain on the already overburdened foster care system. Hearings are rarely, if ever, accorded in this situation because the custodial parent is, after all, unavailable to care for the children.

Intrafamily custody cases, however, present different dynamics than those presented by child abuse and neglect cases. Current child abuse and neglect laws may provide little or no authorization for child protective service agencies to house children caught in the custody battles of their parents. It is recommended that these statutes be revised to specifically authorize child protective service agencies to temporarily house

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[22]See supra. at p. 8-11.

children when other placements are unavailable or would leave the child with a parent who is likely to abscond.

Inadequate Training and Supervision

While investigating officers are having difficulty determining the correct action to take, police administrators are being sued, with some success, for inadequate training or supervision. It is the theory of such lawsuits that when the investigating officer has acted improperly, the cause might be inadequate training and supervision.

Generally speaking, in actions brought under 42 U.S.C. § 1983, supervisory personnel have been held liable when the supervisor directed, participated in, approved, was present at, or had knowledge of a subordinate's misconduct that deprived plaintiff of due process. Further, liability has been established if the supervisor's negligence caused or contributed to the misconduct.[23] To date, there have been three appellate decisions arising from law supervisory action in the civil enforcement of a custody order and one suit arising from criminal charges of custodial interference.

In Dennison v. Vietch, 560 F. Supp. 435 (D. Minn. 1983),[24] the trial court determined that the deputy's supervisor acted properly when he caused custody proceedings to be filed by the county immediately upon being notified of the deputy's action. Due to his actions, the court made a prompt determination of the custody rights of the parents. This limited the father's claim of damages for deprivation of custody. There was, apparently, no claim for inadequate training.

In Smith v. Eley, 675 F. Supp. 1301 (D. Utah 1987),[25] the court held that a supervisor cannot be held liable for inadequate training of police officers based exclusively upon one incident of misconduct. Since the father did not present any evidence of other incidents of this kind, summary judgment was granted on the issue of inadequate training and supervision.

However, since the evidence concerning the extent of the sheriff's direct participation in this incident was disputed, the court denied his request for summary judgment on that issue. In this court's opinion, the sheriff and his deputies had no

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[23]See e.g. Reimer v. Short, 578 F.2d 621 (5th Cir. 1978); Ford v. Byrd, 544 F.2d 194 (5th Cir. 1976); Harris v. Chanclor, 537 F.2d 203 (5th Cir. 1976).

[24]See supra. at 8-12 and 8-15.

[25]See supra. at 8-14.

authority to enforce a custody order absent an express direction from the family law court to do so.

In Hufford v. Rodgers, 912 F.2d 1338 (11th Cir. 1990), cert. denied, 111 S. Ct. 1312, 113 L. Ed. 2d 246 (1991), Father requested the assistance of the sheriff's office in enforcing his custody order. He had fraudulently altered the judgment to make it appear that he had custody. The sheriff's deputies accompanied him to Mother's residence and compelled her to turn the child over to Father.

Once the father had possession of the child, he disappeared. It took Mother fifteen months to locate Father and child in another State. She sued the sheriff and his deputies for their "enforcement" actions.

Mother was not successful in her suit against the two deputy sheriffs. She was, however, successful in her claim that the County Sheriff either inadequately trained his deputies or inadequately supervised their actions.

In Capone v. Marinelli, Volpe, O'Neill, & Bambi, 868 F.2d 102 (3d Cir. 1989), Father was arrested for kidnapping even though Pennsylvania law does not criminalize pre-decree abductions. The arrest warrant was issued before custody was determined.

Father's federal civil rights claims (42 U.S.C. § 1983) survived a motion to dismiss by defendants, Marinelli and Volpe. The bare allegation that the Chief of Police of Plymouth Township had actual knowledge of his subordinates' constitutional violations, or acquiesced, or participated in them was held to be sufficient to withstand a motion to dismiss. The court granted summary judgment as to defendants, O'Neill and Bambi because they reasonably relied on an NCIC teletype informing them that a magistrate had issued an arrest warrant.

Can the Police be Sued for Failure to Act?

In the preceding cases, law enforcement officials have been sued for actions they took to "assist" a parent recover a parentally abducted child that have gone awry. Can law enforcement officials also be sued if they fail to act?

Although there are no parental abduction cases to definitively answer that question, the case of DeShaney v. Winnebago County Dep't of Social Serv., 489 U.S. 189, 109 S. Ct. 998, 103 L. Ed. 2d 249 (1989) offers some guidance. In DeShaney, the minor child (Joshua) and his mother sued various Wisconsin social workers, other local officials, and the child's father. They claimed a deprivation of substantive due process under 42 U.S.C. § 1983 for failure to protect Joshua from violence by his fathe

The local children's protection service agency had failed to prevent Mr. DeShaney from beating Joshua so severely that he suffered brain damage. Joshua DeShaney is expected to spend the rest of his life confined to an institution for the profoundly retarded.

The Wisconsin authorities had received information about Mr. DeShaney's abuse of Joshua numerous times from hospital emergency room personnel and other sources prior to the final beating. Although the defendants had tried to counsel Mr. DeShaney and had tried to stop the abuse by a voluntary parenting agreement, their actions were inadequate and ineffective.

The court held that the Due Process Clause does not require the State to protect the life, liberty, and property of its citizens from invasion by private actors. If the tortfeasor was not acting "under color of state law," the State is not required to prevent the harm and cannot be sued for damages arising from its failure to do so.

Further, the U.S. Supreme Court held that no special duty to protect Joshua from violence was created by the Wisconsin State child abuse laws. Nor was a special duty to protect created because the social workers knew or reasonably should have known that Joshua was at risk of harm from his father.

The court, while finding no constitutional liability under the federal Civil Rights Act of 1871, expressly left open the possibility of tort liability under state laws.[26] To date, the only parental kidnapping case[27] to raise a state tort claim for failure to act is Scozzari v. City of Newport Beach, unpublished, (Ca. Ct. App. 4 Dist. 1991). This opinion has been designated not for publication and is discussed only for the insight it provides into potential future decisions.[28]

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[26]Id. at 201-202.

[27]In other kinds of cases, it is generally held that the specific duty to preserve the peace is one which the officer owes to the public generally, and not to particular individuals. The breach of this duty creates no liability on the part of the officer to any particular individual. Accordingly, courts have generally rejected such claims. For further discussion of this point, see Annotation "Personal Liability of Policeman, Sheriff, or Similar Peace Officer or His Bond, for Injury Suffered as a Result of Failure to Enforce a Law or Arrest Lawbreaker," 41 A.L.R.3d 700, and C. Rhyne, W. Rhyne, S. Elmendorf, Tort Liability and Immunity of Municipal Officials, 182-194 (1975).

[28]By California Rule of Court 977, unpublished opinions cannot be cited as precedent.

In Scozzari, Mother and Father were unmarried parents who resided in Florida. Upon the breakup of their relationship, Father feared that Mother would conceal the child from him. He preempted such action by removing the child from Florida and concealing her whereabouts from the mother.

Mother filed for custody in Florida, but was unable to serve Father. She hired a private investigator to locate Father and child. She successfully located Father near Newport Beach, Ca.

The private investigator informed the Newport Beach police department that a recovery of a parentally abducted child was being undertaken. He informed the police either that the mother had custody in Florida or that the mother had court papers from Florida. However no valid custody order had ever been obtained by either parent.

The private investigator and Mother "snatched" the child from the yard of a relative of Father. Mother boarded a plane with the child and disappeared. She has not yet been located.

The Newport Beach police refused to assist Father when he reported a parental kidnapping. They initially refused to take a police report or to open an investigation. Although a report was taken later, the police did not go out to the airport and prevent Mother from leaving the area with the child. No criminal charges were ever lodged against Mother for parental kidnapping. Nor was an arrest warrant sought.

Father sued Newport Beach and the police for participation in a civil conspiracy and negligence. At trial, he won a $3,825,000 judgment against the City of Newport Beach and the police department. The jury found that the private investigator was not liable. (Mother had been dismissed from the case due to Father's inability to serve the complaint upon her.)

On appeal, the judgment was reversed. The California Court of Appeals held that the city and the police could not be liable for conspiracy if the only other conspirator had been absolved from liability. The Appellate Court further held, that the city and the police could not be liable for negligence unless they owed a duty to Mr. Scozzari. Unless there was a "special duty" owed to Mr. Scozzari, the police are not liable for failure to respond to requests of assistance, to investigate properly, or to investigate at all. The court found no evidence of any special duty owed Mr. Scozzari by the Newport Beach Police Department.

The court concluded, "The police in this case were correctly informed there was a civil dispute over child custody. So informed, they properly declined to intervene on either side. We see no reason to alter the law to create liability where none has

previously existed, in a case where proper decisions were made, rather than erroneous ones." Id. at 13.

A review of the DeShaney and the Scozzari decisions leads inexorably to the conclusion that if a law enforcement official's actions in the civil recovery of a parentally abducted child go awry, the officer, his supervisors, and the city may be successfully sued for damages. However, if the law enforcement official fails to act at all, his failure to act engenders no liability absent a special duty created by state statute or case law. The safe course of law enforcement conduct is, then, to refuse to provide any assistance.

If, however, it is desirable to reduce the obstacles to the civil recovery of parentally abducted children by having law enforcement officials assist in the enforcement of custody orders, the legislature must mandate that action and, further, specify the procedures to be utilized or direct that such procedures be promulgated. Training programs need to be developed and law enforcement officials will need to be provided with the necessary tools.[29]

What Damages Can be Assessed Against Law Enforcement Officials and Who Must Pay Them?

One of the principal concerns of law enforcement, and, indeed, of all public officials subject to lawsuits such as those described herein, is the amount of damages that are recoverable. Damages awarded pursuant to state law tort theories would be governed by the law of the state in which the action is brought. Damages awarded in a federal civil rights action pursuant to 42 U.S.C. § 1983 are governed by federal law.

In both kinds of actions, compensatory damages are proper and might potentially include: 1) compensation for medical and psychological expenses incurred to recover from the pain of losing a child; 2) the costs of subsequently locating the abducting parent and child; 3) compensation for attorneys fees incurred in an action to enforce the custody order.

In an action brought pursuant to the federal Civil Rights Act of 1871 (42 U.S.C. § 1983), damages can be awarded upon a showing of no or only nominal damages as a deterrent to

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[29]For example, a national child custody registry.

infringement of constitutional rights.[30] Substantial damages can be awarded to compensate actual injury.

In both state tort actions and actions brought pursuant to 42 U.S.C. § 1983, punitive damages might also be properly awarded where law enforcement conduct was malicious or otherwise particularly egregious. Attorneys fees are frequently awarded to the prevailing party in both state tort actions and federal civil rights actions.

As is demonstrated by Shields v. Martin, 706 P.2d 21 (Idaho 1985), the assessment of attorney's fees can dwarf the award of compensatory damages. In that case, the deputy sheriff was ordered to pay compensatory damages of $1658 and $13,555 of Father's attorney's fees. In addition, and by virtue of the doctrine of joint and several liability, he was ordered to pay the damages ($8000) assessed by the jury against the abducting parent.

Cities and counties, however, carry indemnity insurance in the event they are required to pay damages to an injured plaintiff. Law enforcement officials may, however, be personally liable if it is determined that their actions exceeded the scope of their employment. Further, they will only be indemnified if they are found to have acted in good faith and with an intent to protect the public interest.[31]

In Sundholm v. Bettendorf, 389 N.W.2d 840 (Iowa 1986), paternal aunt's claim for compensatory damages based upon her inability to move out of state and obtain employment while awaiting trial was dismissed as speculative. However, the case was remanded to the trial court for consideration of an award of punitive damages and attorney's fees.

The court, in Dennison v. Vietch, 560 F. Supp. 435 (D. Minn. 1983), found that Father suffered no pecuniary loss. He was

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[30]See e.g., Carey v. Piphus, 435 U.S. 247, 98 S. Ct. 1042, 55 L. Ed. 2d 252, (1978); Smith v. Wade, 461 U.S. 30, 103 S. Ct. 1625, 75 L. Ed. 2d 632, (1983); Dennison v. Vietch, 560 F. Supp. 435 (D. Minn. 1983).

[31]"Because most of the statutes indemnify only non-malicious acts performed within the official's scope of employment, many municipal officials, particularly police officers, receive only limited indemnity protection. In most circumstances liability itself is only imposed when the official acts maliciously or outside the scope of their employment. The official is thus not indemnified in the area where he faces the greatest threat of liability." C. Rhyne, W. Rhyne, & S. Elmendorf, Tort Liability and Immunity of Municipal Officials, 338 (1976).

awarded nominal damages for his loss of dignity. Punitive damages were denied by the court. Apparently, there was no request for attorney's fees.

The amount of damages assessed against the county sheriff was not specified in the appellate decision in Hufford v. Rodgers, 912 F.2d 1338 (11th Cir. 1990), cert. denied, 111 S. Ct. 1312, 113 L. Ed. 2d 246 (1991). Although the two deputies were found not liable, the county sheriff was found by the jury to be liable for improperly training and supervising his staff.

The father, in Scozzari, was awarded $3,825,000 by the jury. But this award was overturned by the Court of Appeal in an unpublished opinion. Although the specter of an award of $3,825,000 is a sobering one, it should be remembered that this award was overturned on appeal. The police in Scozzari were deemed to have acted within their discretion.

Most of the cases cited herein have reached the appellate courts on appeals from a motion to dismiss or a motion for summary judgment.[32] The issue has been whether the plaintiff will be allowed to proceed with the case. Nonetheless, it appears that actual damage awards have been few and, with the exception of Shields v. Martin and Scozzari v. City of Newport Beach, minimal.

Legislation

Title II, Section 2 of the Act to Expedite Enforcement of Child Custody Determination (see Chapter 6, supra) is such legislation. The proposed legislation authorizes law enforcement to take all actions reasonably necessary to locate a child and to procure compliance with all existing court orders affecting custody or visitation. The services law enforcement are authorized to provide range from taking a missing person report, to assisting a parent to obtain physical possession of a child pursuant to a valid custody determination under specified circumstances.

Interim Recommendations for Law Enforcement Officials

Pending enactment of comprehensive legislation detailing the role of law enforcement in the civil enforcement of custody and

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[32]Murray v. Mathews, 113 S.E.2d 232 (Ga. Ct. App. 1960); Contway v. Camp, 768 P.2d 1377 (Mont. 1989); Hooks v. Hooks, 771 F.2d 935 (6th Cir. 1985); Smith v. Eley, 675 F. Supp. 1301 (D. Utah 1987); Rykers v. Alford, 832 F.2d 895 (5th Cir. 1987); Capone v. Marinelli, Volpe, O'Neill, & Bambi, 868 F.2d 102 (3d Cir. 1989); Lowrance v. Pfleuger, 878 F.2d 1014 (7th Cir. 1989); and Hurlman v. Rice, 927 F.2d 74 (2d Cir. 1991).

recovery of abducted children, law enforcement officials should prepare policies and procedures governing child custody and parental abduction situations.

Law enforcement agencies should adopt prudent policies that afford them as much protection as possible from civil suits. But the small number of cases in which liability has been found and generally minimal damages awarded should not prove so "chilling" as to make such assistance unavailable.

Civil liability often has its genesis in confusion over what should be done. In order to ensure that future court decisions find that law enforcement officers acted appropriately, the appropriate law enforcement response should be spelled out. Law enforcement agencies should draft policies to guide the actions of their officers in parental abduction cases.

Law enforcement guidelines should address such issues as when a report of a parentally abducted child should be taken, when an NCIC Missing Persons Report should be entered,[33] and when an investigation into the whereabouts of a parentally abducted child should be initiated. Law enforcement policies should also provide guidance to officers regarding civil stand-bys and the circumstances under which it is appropriate for an officer to assist a parent in the recovery of a parentally abducted child.

As a threshold matter, it is vital that the officer verify who has custody. If there is no significant risk that the abductor may flee with the child, the simplest way to verify custody is to ask the alleged abductor for a custody order granting him or her custody. Or the officer can contact the court that issued the orders presented by the custodial parent. In some cases, it may also be wise to contact the courts in any location in which the abductor parent is known to have spent significant periods of time.

In the event that a risk of further flight necessitates an emergency "pick up," the custodial parent should be advised to obtain local orders authorizing the "pick up" and placement of the child pending verification of custody and/or a noticed hearing to examine conflicting claims of custody.

If the alleged abductor concedes the issue of custody, it appears that "civil stand-bys" will be tolerated. If not, the

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[33] See Chapter 2 for a more complete description of the requirements imposed upon law enforcement by the Missing Children Act of 1982 (Pub. L. 97-292, 28 U.S.C. § 534(a) and the National Child Search Assistance Act of 1990, (Pub. L. 101-647, 42 U.S.C. § 5780.)

clear preference of the courts is to hold a hearing in the courts of the state in which the abductor and child are located. The court can, then, examine conflicting claims of custody.

Turning a child over to an allegedly custodial parent may be risky if it subsequently turns out that the custody order the officer is enforcing is invalid. There is also some risk that the custodial parent will flee the jurisdiction of this court prior to the enforcement hearing.

In any case in which a claim is made that the noncustodial parent has a conflicting custody order, the officer should leave the custodial status quo undisturbed unless there is a risk that one parent will abscond with the child prior to court hearings to determine custody or there are other exigent circumstances. In the event a flight risk exists, and if local law allows, the officer should place the child in protective custody until a hearing has been held to resolve the competing claims of custody.

In the event that an emergency exists jeopardizing the child's safety, the officer should notify the child protective services agency and invoke those procedures to ensure the safety of the child.

If entry must be made into private premises to secure physical custody of a child, the officer should secure consent to enter or evaluate the existence of exigent circumstances. Otherwise, the left-behind parent should be advised to obtain prior court authorization to enter private premises.

In the event that an out-of-state court order is presented by the custodial parent which authorizes law enforcement to "accompany and assist" the custodial parent reclaim physical custody of the child, the left-behind parent should be advised to register the out-of-state custody order pursuant to UCCJA, Section 16. This section provides that, once a custody order is registered, it is to be treated as if it were a local decree and enforced in the same manner as a local order.

Thereafter, the officer should follow the same procedures used to enforce local court orders. Whenever the authority to act is doubtful, the left-behind parent should be advised to obtain orders from the local jurisdiction.

Conclusion

The lack of clearly formulated and widely disseminated policies and procedures impedes the efforts of law enforcement officials who are asked to assist in the civil enforcement of custody orders. This is especially true of cases requiring interstate cooperation.

Law enforcement officials who err, however unwittingly, in providing assistance in such cases may face civil liability. Custody decrees are difficult to verify and custody laws are unfamiliar to those trained in the criminal justice system. It is especially frustrating that the courts give little consideration to the clarity of the respective custody status of each parent as a factor in determining the good faith and qualified immunity of the law enforcement official.

The potential for civil liability cannot fail to have an effect on the willingness of law enforcement officials to assist in the enforcement of custody and visitation orders. When custody and visitation orders are not easily enforceable, the deterrent effect of the existing statutes is diminished.

The role of law enforcement in the civil enforcement of custody orders needs to be clarified. Enactment of uniform laws and procedures nationwide would facilitate interstate coordination and cooperation essential to successful resolution of interstate cases. Training of the various professions involved in the civil recovery of parentally abducted children should be mandated and the resources to develop such training programs should be appropriated.

Appendix A

Table of Cases

I. State Court Cases Alleging Both State and Federal Tort Claims

1. Mathews v. Murray, 113 S.E.2d 232 (Ga. Ct. App. 1960). State law tort action for malicious arrest, false imprisonment, and deprivation of custody. Following an incident of alleged domestic violence, Father took the child from Mother. Mother had Father arrested for spousal abuse and obtained a Possessory Warrant for the child.

   The Writ did not authorize the sheriff to turn the child over to Mother. The Writ directed the sheriff to produce the child to the court for custody proceedings. Following the arrest of Father, the sheriff turned the child over to Mother who left the State with her.

   Father sued the sheriff. His action for malicious arrest and false imprisonment was dismissed, but he was allowed to proceed on his deprivation of custody tort action.

2. Shields v. Martin, 706 P.2d 21 (Idaho 1985). State court action under 42 U.S.C. § 1983 for deprivation of custody. Mother sought assistance in enforcing her custody order from police officer. The officer accompanied her to the child's daycare center and assisted her in recovering custody of the child. Father sued the officer, among others, alleging that Mother's custody order had been superseded.

   The Idaho Supreme Court held that the officer had exceeded the scope of his authority by "assisting" Mother rather than just "standing by" to prevent violence when Mother removed the child from the daycare center. Under the doctrine of joint and several liability, the officer was ordered to pay compensatory damages assessed against Mother ($8000) as well as damages assessed against him ($1658). He further was ordered to pay $13,555 of Father's attorney's fees.

3. Sundholm v. Bettendorf, 389 N.W.2d. 849 (Iowa 1986). State court action under 42 U.S.C. § 1983 for false arrest and unlawful entry. Father refused to return the child to Mother following the expiration of his visitation. He took the child to the home of his parents. Mother obtained a Writ of Habeas Corpus awarding her physical custody of the child and sought the assistance of the police in enforcing the Writ of Habeas Corpus.

When the officers were refused admission to the home of Father's parents, they forced their way in and recovered the child. In the process, Paternal Grandmother assaulted the police officer and Paternal Aunt tried to flee with the child. They were both arrested, but were acquitted of these charges. Both women sued. The jury found that Paternal Grandmother had not been falsely arrested and that Paternal Aunt, who had been falsely arrested, had not suffered compensatory damages. Paternal Aunt was allowed to pursue her claim for punitive damages and attorney's fees.

4. Contway v. Camp, 768 P.2d 1377 (Mont. 1989).
State law tort claim for false arrest and false imprisonment. Father abducted the children in violation of the custody decree. He removed them from the State. After a felony arrest warrant had issued, he returned the children to the State of Montana and left them with employees of the Office of Family Services. Thereafter Father was arrested on the felony warrant.

Father sued under state tort law for false arrest. The parental kidnapping statute in Montana provides that charges will be dismissed if the children are voluntarily returned prior to the arrest of the abducting parent. The court dismissed Father's suit. Leaving the children with the Office of Family Services did not constitute return of the children. The children must be returned to the custodial parent before dismissal is required.

5. Scozzari v. City of Newport Beach, unpublished (Cal. Ct. App. 4 Dist. 1992).
Mother and Father were unmarried parents residing in Florida. Upon the breakup of their relationship, Father removed the daughter from Florida and brought her to reside with him in California. Mother filed for custody in Florida, but was unable to locate Father to serve him. Father did not obtain custody either.

Mother hired a private investigator to locate Father. When he had done so, Mother joined him in California. They followed Father to the house of a relative. When the child was playing outside on the lawn, the private investigator and Mother "snatched" her and fled. Mother immediately left California with the child.

Following Mother's removal of the child from Father, he sought the assistance of the Newport City Police Department. The Newport City Police took a report of a missing child, but did little else. They did not go out to the airport and prevent Mother from leaving the State with Daughter although they were aware that she was at the airport. Her whereabouts remain unknown.

Father sued the Newport Beach Police Department for the state law torts of civil conspiracy and negligence. Although at trial he was awarded $3,825,000, the verdict was overturned on appeal.

II. Federal Court Actions Alleging Both Federal and State Tort Claims

1. Dennison v. Vietch, 560 F. Supp. 435 (D. Minn. 1983). Federal court action under 42 U.S.C. § 1983 for deprivation of custody, trespass, and false imprisonment. Father and Mother were unmarried parents. Paternity had never been adjudicated nor custody orders issued. Mother asked Father to take physical custody of the child. Later she changed her mind. When Father refused to return the child, she sought the assistance of the sheriff's deputies.

The deputies entered Father's apartment late at night, without consent or exigent circumstances, while he slept. They awoke Father. When he was unable to produce a custody order, they allowed Mother to remove the child. When the sheriff was informed of this action the following day, he caused custody proceedings to be filed immediately. Custody was awarded to Mother a few weeks later.

Father's claim of false imprisonment was dismissed. The claim of trespass and deprivation of custody were sustained against the deputies. No monetary damages were proven. Father was awarded nominal damages for loss of dignity. No claim was sustained against the sheriff as he acted properly once notified of the incident.

2. Hooks v. Hooks, 771 F.2d 935 (6th Cir. 1985). Federal court action under 42 U.S.C. § 1983 for deprivation of custody. Mother was arrested in Tennessee on bad check charges. While she was in custody, the children were placed in the physical custody of Father--who had fortuitously arrived from Texas for that purpose. This placement was made on the advice of the Department of Human Services. Once Father got the children, he returned with them to Texas.

When Mother made bail, she sued Father, the Tennessee sheriff's deputies, and the Department of Human Services (among others). She alleged a conspiracy among all parties to deprive her of custody. However, she is bound by a stipulation to dismiss the federal action allegedly entered into in subsequent proceedings in the Texas Family Law Courts unless she is successful in setting it aside in the Texas courts.

3. Smith v. Eley, 675 F. Supp. 1301 (D. Utah 1987). Federal court action under 42 U.S.C. § 1983 for deprivation of custody. Mother was awarded custody of the daughter. Father was awarded custody of the son. Mother asked Father to take the daughter also, then changed her mind. Father obtained ex parte orders giving him physical custody of daughter. Mother denied receiving notice of these orders.

   Mother requested assistance from the sheriff's deputies in retrieving her daughter in accordance with the superseded custody decree. She did not inform them of the ongoing litigation. With their assistance, she recovered physical custody of daughter. Father sued the sheriff's deputies and was allowed to proceed on that cause of action.

4. Rykers v. Alford, 832 F.2d 895 (5th Cir. 1987). Federal court action under 42 U.S.C. § 1983 for false arrest and false imprisonment. Mother and Father never married. They met, lived together, and had a baby in Australia. In 1977 they separated and Mother left Australia with the child. She did not tell Father where she was going. He allegedly sailed the world for 7 years searching for Mother and child.

   In 1984, he found Mother and child in Louisiana. He requested a weekend visit. During this visit, he sailed off with the child for parts unknown. He left a note telling Mother that he would call her in 2 or 3 weeks. She pressed felony parental kidnapping charges and a federal UFAP warrant was issued. Father was arrested and the child recovered in Key West, Florida.

   No custody order had ever been issued and Louisiana law precludes prosecution of parental abduction when custody has not been established. The criminal charges were dismissed and Father sued the U.S. Attorneys, the F.B.I. agents, the Louisiana prosecutor, and the city police.

   Father's action against the U.S. Attorneys and the Louisiana prosecutor were dismissed because prosecutors are immune from damage liability for actions taken in the course of a criminal prosecution. Father's action against the F.B.I. agents was dismissed because they acted in reliance on an arrest warrant that was valid on its face. Father's action against the city police officer was also dismissed because the officer was entitled to believe Mother's assertion that she had custody by operation of Australian law when Father's unilateral removal of the child created an emergency that prevented him from fully investigating custody.

5. Capone v. Marinelli, Volpe, O'Neill, & Bambi, 868 F.2d 102 (3d Cir. 1989).
Federal court action under 42 U.S.C. § 1983 for false arrest and unspecified state law intentional torts. Father was arrested for kidnapping. No custody order had been issued to divest Father of his natural co-equal right to custody. Pennsylvania law precludes prosecution of parental kidnapping charges in the absence of an order establishing custody.

Upon dismissal of the criminal charges, Father sued the city police and their supervisors. He was allowed to pursue his claims for actual fraud, actual malice, and wilful misconduct in addition to his claim of a federal civil rights violation against defendants Marinelli and Volpe. The court granted summary judgment as to defendants O'Neill and Bambi because they reasonably relied on an NCIC teletype informing them that a magistrate had issued an arrest warrant.

6. Lowrance v. Pfleuger, 878 F.2d 1014 (7th Circuit 1989).
Federal court action under 42 U.S.C. § 1983 for false arrest. Mother obtained an ex parte order for custody. Before it could be served, Father left the State and took the child to Wisconsin. Mother pressed criminal parental kidnapping charges and Father was arrested in Wisconsin. The child was returned to Mother. Father sued the Kenosha Wisconsin police officers who arrested him and the Benton County Tennessee Sheriff who sought the arrest warrant.

The Court dismissed Father's action, finding that all officers acted in good faith and their actions were protected by qualified immunity. Because of his flight with the child, the Benton County Sheriff reasonably believed that Father knew Mother had obtained or was imminently about to obtain a custody order. The Kenosha, Wisconsin officers acted in good faith upon a facially valid arrest warrant.

7. Hufford v. Rodgers, 912 F.2d 1338 (11th Cir. 1990). cert. denied, 111 S. Ct. 1312, 113 L. Ed. 2d 246 (1991).
Federal court action under 42 U.S.C. § 1983 for deprivation of custody. Father sought the assistance of the Gilchrist County Sheriff's Deputies. He presented them with a fraudulently altered document purporting to award custody to him. The deputies went to Mother's home and removed the child. They gave the child to Father. Father disappeared with the child. It took Mother 15 months to locate Father and recover the child.

She sued the Gilchrist County Sheriff and his deputies. Although she lost at trial on the liability of the deputies,

she prevailed against the sheriff on the theory that he had improperly trained and/or supervised his deputies. These verdicts were upheld on appeal.

8. Hurlman v. Rice, 927 F.2d 74 (2d Cir. 1991). Federal court action under 42 U.S.C. § 1983 for deprivation of custody. Father obtained an order restraining Mother from residing with the child in the home of Maternal Grandfather. He alleged that Maternal Grandfather had been previously convicted of sexually molesting other grandchildren. When Mother continued to reside in the home of Maternal Grandfather, Father sought the assistance of the New York State Troopers in removing the child from that environment. The New York State Troopers entered the home of Maternal Grandfather without consent and without exigent circumstances and removed the child.

   Mother successfully contested the allegations of molestation, regained custody, and sued the New York State Troopers and Father. The Court allowed Mother to proceed with her civil suit finding that the restraining order did not authorize the Troopers to enter a home and remove the child from the custodial parent. A triable issue of fact existed concerning the officers' good faith beliefs and, thus, qualified immunity.

Chapter 9

THE VIEW FROM STATE MISSING CHILDREN CLEARINGHOUSES

by Linda K. Girdner, Ph.D.

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Chapter 9

THE VIEW FROM STATE MISSING CHILDREN CLEARINGHOUSES

by Linda K. Girdner, Ph.D.

Introduction

In addition to surveys of attorneys and judges, as described in Chapter 4, a third survey was conducted of state missing children clearinghouses. Clearinghouses are uniquely well-situated to provide information regarding the obstacles to the location, recovery, and return of parentally abducted children experienced by parents, law enforcement, and clearinghouse personnel.

Forty-two states and the District of Columbia have official missing children clearinghouses.[1] An additional three states have a person or persons in a particular agency designated as a contact regarding missing children. Utah's clearinghouse is authorized by statute, but has not been established. In Hawaii, the authorization for a clearinghouse was recently defeated. Other states lacking a clearinghouse include Idaho, West Virginia, and Wisconsin.[2]

Of the forty-two official state missing children clearinghouses which were sent the survey, thirty-six returned completed questionnaires. Thus, the results reflect 86% of the entire population[3] of official state missing children clearinghouses existing at that time. The first section of the chapter depicts the findings from the survey of official clearinghouses. Although most clearinghouses are located in law enforcement or justice-related agencies, a few are not. The second section of the report, which focuses on the role of law enforcement only includes those clearinghouses located within the criminal justice system. This includes two clearinghouses, which are not "official," but are considered "contacts" for law enforcement and public information purposes.

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[1]Alaska's clearinghouse was established subsequent to the survey.

[2]This information was provided by Barbara Johnson, Director of Outreach, National Center for Missing and Exploited Children (NCMEC). Many of the clearinghouses work closely with NCMEC.

[3]Data are presented in the first section as percentages of the entire population of official state missing children's clearinghouses existing at the time of the survey, of which 14.3% failed to respond.

A. Official State Missing Children Clearinghouses

Characteristics of Official Clearinghouses

Most state missing children clearinghouses came into being in the mid to late 1980's; half were established between 1984 and 1986. Almost two-thirds (64.3%) of all clearinghouses were statutorily created. Other methods have included executive order (9.5%), agency or departmental initiative (7.1%), and legislative mandate attached to an appropriations bill (2.4%).

Since their establishment, eleven have handled under 200 cases and about half (12) have handled over 200 parental abduction. Nine reported that under 100 cases were closed during that time, five reported that between 101-200 were closed, and an additional five reported that over 200 were closed. These aggregate data are not sufficient to determine the incidence or "success" rates, as they cover differing numbers of years.

Thirty-four clearinghouses (81%) exist within one or more criminal justice agencies, i.e., departments of public safety, state police, state patrol, criminal investigation, criminal justice, justice, or attorney general's office. One clearinghouse is part of the department of education and another exists within the state office of management and budget.

Despite the high number of clearinghouses existing within some type of law enforcement agency, only nineteen (45.2%) report having law enforcement authority. Another fourteen (33.3%) report that they do not have law enforcement authority. In another nine (21.4%), no response was given.

The size of clearinghouse staff varies, reflecting in part a possible lack of differentiation in responses between full-time staff in the agency who share the work of the clearinghouse with full-time clearinghouse staff. Half of the clearinghouses have 1-3 full-time staff members. Six clearinghouses have 4-6 full-time staff members and five have 7-9 full-time staff members. Three clearinghouses reported larger full-time staffs (10, 29, and 58, respectively). Particularly the larger two are likely to reflect full-time staff who devote only a portion of their time to clearinghouse activities. One clearinghouse reported having no full-time staff. Twelve clearinghouses (26.2%) also reported using part-time staff. Thirty-two clearinghouses (76.2%) reported that they did not use volunteers, whereas four (9.5%) did.

Funding for clearinghouses was frequently unknown or ranged widely. It appears that the clearinghouses often do not have a separate budget, which makes estimates difficult. However, three clearinghouses stated that their appropriations for fiscal year 1991 were zero. Seventeen clearinghouses (40.5%) said that the

sum appropriated was insufficient; nine (21.4%) found it sufficient, while an equal number did not know. Since fiscal year 1991, the appropriated sum has increased for four clearinghouses, decreased for seven, and became or remained zero for five. Sixteen clearinghouse respondents (38.1%) did not know whether their funding had increased or decreased. (Legislation may have been pending at the time of the questionnaire.)

Functions of State Missing Children Clearinghouse

Types of functions

Clearinghouse respondents were asked to identify which of fifteen functions the clearinghouse performed. Generally, the functions involve public education, coordination and communication, and location and recovery assistance. Table 1 shows the percentages of clearinghouses which perform public education and information functions.

Table 1

Public Education and Information Functions
Performed by Clearinghouses
Relating to Parental Abduction

Public Education and Information	#	%
Disseminates Education and Information	33	78.6
Conducts educational programs for public on abduction prevention.	17	40.5
Maintains toll-free hotline.	20	47.6
Compiles statistics.	25	59.5

Public education and information functions are most independent of the type of agency or department in which the clearinghouse is located. Disseminating general information is the public education and information function performed by most clearinghouses. Not all clearinghouses compile statistics, which explains why some were unable to respond to questions about caseload and reveals the difficulties of attempting to assess incidence of parental abduction.

Clearinghouses serve a variety of functions in communicating and coordinating information and actions involving parents, and various public agencies. In addition, many are involved directly in activities relating to the location and recovery of parentally abducted children. These functions are summarized in Table 2 on the following page.

Over 60% of clearinghouses report a high level of communication between parents and law enforcement, which increases the likelihood that, a missing child report will be taken. Moreover, the coordination among intrastate agencies enhances the possibility an investigation will be commenced. These two functions facilitate location and recovery activities, particularly intrastate. A similar percentage of clearinghouses sets the stage in international cases, by serving as the state contact for Hague Convention cases. The function performed by more clearinghouses than any other is the communication and coordination with local, state, and federal agencies, which is needed in interstate cases.

Almost three-quarters of clearinghouses provide technical assistance in specific parental abduction cases and keep a centralized file of parental abduction cases. Forty to sixty percent engage in other location and recovery activities. Table 2 depicts communication, location and recovery functions.

Schools, however, do not appear to be included in the location and recovery process in many states. About 40-45% of clearinghouses do not involve schools in activities often regarded as helpful in locating the child. The lack of involvement of schools is further confirmed by over half of the clearinghouses (22) which reported that the public schools in their state do not check the names of newly enrolled students against the clearinghouse list of missing children. Only six clearinghouses (14.3%) reported that public schools in their state did make such a check.

Table 2

Communication, Location and Recovery Functions
Performed by State Clearinghouses
Parental Abduction Cases

Communication and Coordination	#	%
Acts as liaison between parents and law enforcement agencies in relation to handling reports.	26	61.9
Establishes system of intrastate communication of information to facilitate immediate investigation of reports of law enforcement.	29	69.0
Communicates and cooperates with all appropriate local, state and federal agencies in location and recovery.	35	83.3
Serves as state contact under Hague Convention on the Civil Aspects of International Child Abduction.	26	61.9
Location/Recovery Assistance		
Provide technical assistance in specific cases.	31	73.8
Conduct training programs for law enforcement on investigation and recovery.	21	50.0
Establish centralized file for exchange of information.	31	73.8
Compile lists with photographs, distributed to law enforcement.	26	61.9
Compile lists with photographs, distributed to local school districts.	17	40.5
Coordinate or foster flagging of school records.	19	45.2
Coordinate or foster flagging of birth records.	23	54.8

Frequency and Importance of Functions

Clearinghouse respondents were asked to list the three functions, of the fifteen described in Tables 1 and 2, which the clearinghouse performed most frequently. Twenty-six clearinghouses (62.4%) identified the communication and cooperation function with appropriate local, state, and federal agencies in their top three. Next, but chosen by far fewer clearinghouses (12 or 28.8%), was providing technical assistance in specific cases. Ten clearinghouses each (24%) identified

acting as a liaison between parents and law enforcement, distributing lists with photographs to law enforcement, and keeping a centralized file, as frequent tasks. It is interesting to note that each of the fifteen functions was mentioned by at least one respondent as within the top three most frequently performed functions.

Three functions were identified most often as the top three important functions performed by the clearinghouses. Communication and cooperation with local, state and federal agencies was mentioned by 16 clearinghouses (38.4%). Keeping a centralized file was identified as among the three most important tasks by 14 clearinghouses (33.6%), and 13 or 31.2% responded that the liaison role between parents and law enforcement was very important. Although other functions were not rated important by as many respondents, all of the functions were chosen by at least one clearinghouse, with the exception of serving as a state contact for the Hague Convention.

Comparing the most frequent and most important tasks performed by clearinghouse personnel reveals that their time is often devoted to activities that they believe to be of considerable importance. Communication and cooperation with multiple agencies appears as the most frequent and important task. The two other tasks listed among the most important were among the top five frequently performed tasks.

Parental Abduction Caseload

Missing children clearinghouses have a responsibility to address the wide spectrum of missing children problems. These include runaways, thrownaway children and stranger abductions as well as parental abductions. The functions outlined in the preceding section only address those performed in relation to parental abductions. How much of the workload of clearinghouses relates to parental abductions and how do the cases differ in type and level of difficulty?

Over two-thirds of the clearinghouses (29) offer services in individual parental abduction cases, with 11.9% stating that they do not. (The remainder were missing responses). Exactly one-third (14) of the clearinghouses responded that the parental abduction caseload comprises no more than a fourth of their entire caseload. Other qualities were almost evenly split, with five clearinghouses having a caseload of 26-50%, four with a caseload of 51-75%, and another five devoting 76-100% of their caseload to parental abduction cases. The reasons for such a distribution are unclear.

Parental abduction cases may be intrastate, interstate, or international. Intrastate cases may involve issues of venue, as a parent may seek to use a court in one county to change the

order of the court from another county. Often parents can disappear with their children as easily within a state, particularly a large one, as across state lines. Certain types of location assistance are not available for intrastate cases, e.g., Unlawful Flight to Avoid Prosection (UFAP) warrants and FBI involvement. In addition, in some states intrastate abduction is a misdemeanor, not a felony, making it a lower priority in terms of law enforcement assistance.

About forty percent of clearinghouses claimed that intrastate cases comprised less than half of their parental abduction caseload, whereas about sixteen percent claimed that it was more than half. (Forty percent of clearinghouses did not respond to this question.) Only one clearinghouse respondent thought that intrastate cases were "very easy" and nine said they were "easy" to resolve. More frequently (15/35.7%), clearinghouse respondents found them "difficult," with a smaller number (3) finding them "very difficult."

Interstate parental abduction cases generally are more legally complex and problematic than intrastate cases, which is born out by the responses of the survey. No respondent thought these were "very easy" cases, and only two found them "easy." Eighteen (42.9%) found interstate cases to be "difficult" and eight (19%) found them "very difficult." Interstate cases also make up the largest category of parental abduction cases handled by most clearinghouses. Of those responding to this question (27), one-third said that interstate cases comprised no more than a quarter of their parental abduction caseload, an equal number stated that they made up 26-50% of these cases, and a final third claimed they were more than half of the caseload, divided between 51-75% (6 clearinghouses) and 76-100% (3 clearinghouses).

International cases can include abductions from within the U.S. to another country or vice-versa. As mentioned earlier, twenty-six clearinghouses (61.9%) serve as the state contact under the Hague Convention on the Civil Aspects of International Child Abduction, which means they provide assistance in cases involving abductions from other Hague countries to their state. The role of state clearinghouses in abductions to another country is not clear. In Hague cases, presumably clearinghouses would instruct the left-behind parent to contact the U.S. Department of State. International cases are clearly perceived as the most difficult of parental abduction cases for state missing children clearinghouses. Twenty-two clearinghouses (52.4%) considered them "very difficult" and four (9.5%) said they were "difficult." No one thought they were easy. The burden of handling these hard and troublesome cases may be relieved only by the fact that they make up under a quarter of the parental abduction caseload.

Client Population and Levels of Assistance

Who is Served by State Missing Children Clearinghouses?

Three-fifths of clearinghouses (25) provide services in parental abduction cases involving children under the age of eighteen. A few (4) do not provide services when children are above sixteen and one does not serve parentally abducted children older than fifteen. It is doubtful that the lower age criteria disadvantage older adolescents. According to NISMART, only one percent of broad scope family abductions involved sixteen and seventeen year olds, some of which were younger at the time of the incident.[3] Furthermore, older adolescents have been known to take custody matters into their own hands by moving to the preferred parent's household, which is not the same as the parent unilaterally taking the child. It is unclear whether a clearinghouse closes a case when the child reaches the upper age limit set by that clearinghouse. For example, if a twelve year old is abducted from the state with the under sixteen limitation, and the child is not recovered by his or her sixteenth birthday, are all efforts to locate the child stopped?

Thirty clearinghouses provided information as to the type of interstate cases they handle. None of these restrict themselves only to state residents. Thirteen provide services if the children were residents of the state prior to the abduction and out-of-state children are believed to be in the state. Seventeen provide services regardless of whether the abducted child was ever in the state.

Levels of Assistance

Clearinghouses vary as to the levels of assistance offered to left-behind parents, based on the characteristics of the case and the legal status of the left-behind parent.

When a custody order exists, the abduction violates the order of that state or of a sister state. Over sixty percent of clearinghouses provide information and referral assistance when court orders are violated and at least half provide location and recovery and return assistance. These services are relatively independent of whether the court order is from that state or from another state, as can be seen from the negligible differences noted in Table 3.

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[3]NISMART, pp. 49-50.

Table 3

Levels of Assistance by State Clearinghouses
When Court Order Violated

	Own State's Order	Another State's Order
	#/%	#/%
No Assistance	1/2.4	1/2.4
Information/Referral	26/61.9	28/66.7
Location Assistance	21/50.0	23/54.8
Recovery/Return	22/52.4	21/50.0

The positive aspect of this finding is that clearinghouses are even-handed in their response to cases, whether they involve a court order from their state or another state. The negative dimension is that about 20% of clearinghouses offer no information and referral services when court orders are violated and over 30% provide no location, recovery or return assistance in these cases.

Parental abduction cases can involve a multitude of different legal circumstances. Assistance by the clearinghouse when no order is in effect is substantially lower than when an order is violated, as can be seen in Table 4.

Table 4

Level of Assistance by Clearinghouse
When No Custody Order Exists

	No Pending Action	Action Pending	Restraining Order
No Assistance	#/%	#/%	#/%
Information and Referral	6/14.3	6/14.3	3/7.1
Location	30/71.4	28/66.7	25/59.5
Assistance	9/21.4	9/21.4	17/40.5
Recovery/Return	3/7.1	5/11.9	12/28.6

Without a custody order, left-behind parents do not receive assistance in locating and recovering their children from the overwhelming majority of state clearinghouses. The difference is marginal if a custody order is pending. If a restraining order has been issued prohibiting the removal of the child from the jurisdiction, location assistance from clearinghouses almost doubles and recovery assistance is substantially more available, though still under 30%. Considering that pre-decree abductions are relatively common, the low level of location, recovery, and return assistance from missing children clearinghouses presents an obstacle for these left-behind parents.

Other ambiguous custodial situations in the context of parental abductions involve unwed, noncustodial, and joint custody parents. When no custody order exists, unwed mothers are more likely to receive assistance of various types from clearinghouses than unwed fathers, as noted in Table 5.

Table 5

Levels of Clearinghouse Assistance Received by Unwed Parents Without Custody Orders

	Unwed Mothers	Unwed Fathers
	#/%	#/%
No Assistance	3/7.1	7/16.7
Information/ Referral	29/69.0	25/59.5
Location Assistance	15/35.7	11/26.2
Recovery/Return	13/31.0	3/7.1

There are a number of factors that might explain these differences. First, in some states unwed mothers have sole custody by operation of law (without a court order). Mothers from these states should receive the same degree of support as parents who have a court order of sole custody. Conversely, custodial rights, including visitation rights, for unwed fathers must first be based on establishing paternity. When paternity has not been established, the father may receive no more assistance than a stranger. However, if the unwed father has court-ordered custody or visitation, then he should receive the same level of support as divorced parents with such orders.

The support available to noncustodial parents as well as to those who have joint custody is provided in Table 6.

Table 6

Levels of Clearinghouse Assistance for Noncustodial and Joint Custody Parents

	Noncustodial	Joint Custody
	#/%	#/%
No Assistance	2/4.8	1/2.4
Information/ Referral	30/71.4	30/71.4
Location Assistance	12/28.6	19/45.2
Recovery/Return	8/19.0	17/40.5

Levels of information and referral are available equally to noncustodial parents and joint custody parents. However, disparities appear in the provision of location assistance. Almost three-fifths of the clearinghouses do not provide location assistance to noncustodial parents whose specific visitation rights are violated by the custodial parent's disappearance with the child.

Greater disparities are apparent between noncustodial and joint custody parents in recovery and return assistance. Understandably, one would not expect children to be "returned" to noncustodial parents, since often "return" implies a reunification with the parent who had custody.

About half of the clearinghouses help with the location and recovery of children who have been abducted by noncustodial parents. Clearinghouses in far fewer states are available to assist in the location and recovery of children whose noncustodial or joint custodial parents appeal for assistance. Children whose left-behind parents had no custody order and no restraining order receive location and recovery assistance from very few clearinghouses.

Law Enforcement Practices in Parental Abduction Cases

Source of Information

This section describes practices of law enforcement officers based on the responses of 46 state missing children clearinghouses located within law enforcement or justice-related agencies. Two were state missing children contacts and 44 were

official state clearinghouses.[5] Only data from those located within the criminal justice system were used, since these clearinghouses are more likely to be better sources of information about law enforcement practices in their states than clearinghouses located in agencies unrelated to law enforcement.

To successfully carry out communication and coordination functions, clearinghouses would need to know about law enforcement practices and procedures in relation to parental abduction cases. Some, however, indicated that they had insufficient knowledge to answer specific questions. It is difficult to determine whether lack of knowledge about law enforcement on the part of some clearinghouse respondents resulted from being uninformed about existing practices and procedures or from the lack of clarity and specificity of law enforcement practices and procedures in these states.

First, law enforcement practices relating to missing child reports and NCIC entry are examined, practices which are mandated by federal law. Then law enforcement's role investigating the whereabouts of the child examined. Finally, "civil stand-by" and "pick-up" orders are examined as practices relating to the recovery and return of parentally abducted children.

Missing Child Reports

When parents first realize that their children are missing, and probably taken by the other parent, they often reach out to local law enforcement. They expect the police officer or sheriff to take a report and help them find their children. The taking of a missing child report is a critical threshold in the location and recovery of a parentally abducted child. Without a missing child report, no law enforcement investigation will begin and no description of the child will be entered into the National Crime Information Center (NCIC). The Missing Child Act of 1982 and the National Child Search Assistance Act of 1990[6] mandate that law enforcement take a report and enter the child in NCIC without a waiting period and regardless if the abduction constitutes a criminal violation.

According to respondents, all but one clearinghouse said that local law enforcement had primary responsibility for taking missing child reports, whereas one stated it was the responsibility of the state police. A few clarified that the state police constituted local law enforcement in rural areas of their states.

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[5]For the purposes of this section, "clearinghouse" is used to refer to official clearinghouses and contacts.

[6]See Chapter 2 for brief summaries of these laws.

Eighty percent (29) of the clearinghouses reported that, when law enforcement officers took a missing child report, they did so immediately. A minority, however, responded that the reports were not taken immediately, varying from one claiming within 24 hours, two within 72 hours, one over 72 hours, and one claiming that "it depends." Three-fourths of the respondents (27) reported that law enforcement "routinely" took missing child reports, whereas six claimed that law enforcement "sometimes" took reports and one stated that law enforcement "rarely" took reports. At first glance, it appears that most states are complying with the federal law.

About half (52.8%) of the clearinghouses are authorized to take a report, if the designated agency does not. In this way, the clearinghouse acts as a safety net. Two fifths (41.7%) of the respondents answered that they were not authorized to take missing child reports, even if the law enforcement agency did not.

The high compliance rates of law enforcement with the federal law, as reported earlier, began to decline when cases were differentiated by other criteria. In cases involving violations of court orders, law enforcement officers in <u>twice</u> as many states were reported to routinely take a missing child report if the violation was of an order from their state rather than another state, as is seen in Table 7. In almost <u>four</u> times as many states, law enforcement took a report when a state's order was violated compared to when no order existed.

Table 7

Taking Missing Child Reports
When Custody Order Violated

	Own State's Order	Another State's Order
	#/%	#/%
Never Taken	0/0	2/5.6
Rarely Taken	0/0	2/5.6
Sometimes Taken	4/11.1	10/27.8
Routinely Taken	30/83.3	16/44.4
Don't Know	2/5.6	6/16.7

Having a court action for custody pending increases the chances of the report being taken in a few more states than when no action was commenced. The number of states in which law enforcement reportedly routinely took a missing child report when there was no court order almost doubles when there is a restraining order not to remove the child from the jurisdiction, as shown in Table 8.

Table 8

Taking Missing Child Reports
When No Custody Order Exists

	No Pending Action	Restraining Order
	#/%	#/%
Never Taken	7/19.4	7/19.4
Rarely Taken	8/22.2	6/16.7
Sometimes Taken	5/13.9	8/22.2
Routinely Taken	8/22.2	9/25.0
Don't Know	8/22.2	5/16.7

Law enforcement officers in only a few states were reported as routinely taking missing children reports, regardless of the existence or state of issuance of a custody order.

What aspects of a parent's custodial status impact on the frequency and number of states in which a report is taken? As can be seen from the Table 9, unwed mothers, noncustodial parents, and joint custody parents fare similarly.

Table 9

Taking Missing Child Reports
from Unwed Mothers, Noncustodial Parents,
and Joint Custody Parents

	Unwed Mothers	Noncustodial Parents	Joint Custody Parents
	#/%	#/%	#/%
Never Taken	3/8.3	5/13.9	2/5.6
Rarely Taken	5/13.9	6/16.7	7/19.4
Sometimes Taken	7/19.4	8/22.2	6/16.7
Routinely Taken	14/38.9	10/27.8	12/33.3
Don't Know	7/19.4	7/19.4	8/22.2

In the first instance, clearinghouse respondents were asked how often law enforcement took a missing child report when the child was abducted from an unwed mother who had sole custody by operation of law.[7] These sole custody mothers fare better than joint custody parents and noncustodial parents in just a few states, but are not as well-served as parents with court orders of sole custody, particularly from within the state.

About half of the respondents reported that missing child reports in their states were taken sometimes or routinely from noncustodial and joint custodial parents. However, reports are never or rarely taken in 25-30% of the states.

Apparent from the above findings is that, based on clearinghouse reports, law enforcement agencies charged with the mandate of taking a missing child report of any missing child discriminate in the reports they take on the basis of the marital and custodial status of the left-behind parents. In some states this practice of differential treatment may relate to the belief that there must be a criminal violation before a missing child report can be taken. Parents who abduct prior to the issuance of a custody order, unwed parents, joint custodial parents, and sole custodial parents who abduct are not in violation of criminal

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[7]It is likely that unwed fathers and unwed mothers without custody by operation of law have even greater difficulty having a missing child report taken, unless they have a court order granting them sole custody.

custodial interference statutes in many states. Almost forty percent (13) of the clearinghouses reported that law enforcement in their states required the violation of a state criminal statute before they would take a missing child report.

Compelling law enforcement to take a missing child report is a critical threshold. Without it, law enforcement will not make an NCIC entry or begin an investigation to find the child.

National Crime Information Center (NCIC) Entries

Law enforcement has the primary responsibility for entering the description of a child in NCIC. Less than half of the clearinghouses (14) report that, in practice, there must be a violation of the state parental abduction statute before law enforcement will make an entry of a parentally abducted child into NCIC. Fifteen state that no violation is needed for an entry to be made.

Almost three-quarters of the respondents (26) answered that law enforcement routinely made entries into NCIC; about twenty percent (7) said they sometimes did; and one clearinghouse each claimed that law enforcement in their state rarely or never made a NCIC entry. When the designated agency fails to enter a description of a child in NCIC, the majority of clearinghouses identified an alternative. In a quarter of states, the clearinghouse itself made the NCIC entry, while in a third of states no entry was made if the designated agency failed to make an entry.

When the designated agency failed to make an entry, the FBI provided back-up in six states (13.9%), state police in six states (13.9%), and other local law enforcement in four (11.1%). It appears that when entries are made, they were done quickly. Almost ninety percent of the respondents stated that, in practice, there was no waiting period between the time a missing child report is taken and the NCIC entry is made.

However, as seen in the taking of missing child reports, entry into NCIC was heavily dependent on the marital and custodial status of the left-behind parent, again probably due to there being no criminal violation in many states under some of these circumstances. As noted in Table 10, parental abductions involving violations of court orders from the same state were much more likely to lead to NCIC entries than violations of orders from another state.

This parallels the pattern noted in the taking of missing child reports. It is difficult to discern whether the difference in treatment between in-state and out-of-state orders constitutes a real problem, as long as one state is taking the report and entering the child into NCIC. Perhaps a parent first contacts or

is referred to local law enforcement, which is, more often than not, in the state which issued the order. Under these circumstances, law enforcement may routinely enter these orders, and is simply less likely to be contacted by a parent in another state. However, if there are situations in which a parent cannot prevail upon law enforcement in their own state or another state to take a missing child report or to enter the child in NCIC, it constitutes a significant obstacle to the location of the child.

Table 10

Entering Child in NCIC
When Custody Order Violated

	One State's Order	Another State's Order
	#/%	#/%
Never Enter	0/0	0/0
Rarely Enter	0/0	3/8.3
Sometimes Enter	6/16.7	8/22.2
Routinely Enter	27/75.0	16/44.4
Don't Know	2/5.6	8/22.2

Having a custody order doubles or triples the number of states in which an NCIC entry on the child was reported to be routinely entered, compared to entry of a child for whom custody has not yet been determined. Having an action pending was only better than not having filed at all in only a few states. When there is no custody order, the issuance of a restraining order prohibiting the removal of the child from the jurisdiction almost doubles the number of states which would then routinely enter the child into NCIC. Conversely, about forty percent of respondents stated that law enforcement rarely or never entered the names of children for whom no custody proceeding had been commenced and about thirty percent rarely or never entered the names of children who were the subject of pending orders. These findings are depicted in Table 11.

Table 11

Entering Child in NCIC
When No Custody Order Exists

	No Pending Action	Action Pending	Restraining Order
	#/%	#/%	#/%
Never Enter	7/19.4	6/16.7	3/8.3
Rarely Enter	7/19.4	5/13.9	4/11.1
Sometimes Enter	5/13.9	8/22.2	7/19.4
Routinely Enter	8/22.2	9/25.0	15/41.7
Don't Know	8/22.2	7/19.4	6/16.7

One-third of the respondents stated that law enforcement officers in their state routinely entered the names of children of unwed mothers with sole custody by operation of law and joint custodial parents in NCIC. Children of joint custody parents were reported to be subjects of NCIC entries in more states than noncustodial parents, but not nearly as many as those with sole custody orders.

Table 12

Entering Child into NCIC for
Unwed Mothers, Noncustodial Parents,
and Joint Custody Parents

	Unwed Mothers	Noncustodial Parents	Joint Custody Parents
	#/%	#/%	#/%
Never Enter	2/5.6	6/16.7	1/2.8
Rarely Enter	5/13.9	5/13.9	5/13.9
Sometimes Enter	10/27.8	7/19.4	9/25.0
Routinely Enter	12/33.3	9/25.0	12/33.3
Don't Know	6/16.7	8/22.2	8/22.2

The views from most state missing children clearinghouses located within the criminal justice system of their states reveal a pattern of widespread noncompliance by law enforcement officers with the Missing Children Act of 1982 and the National Child Search Assistance Act. Factors not relevant to the federal law are used to determine whether and how often a missing child report is taken and a child's name is entered in NCIC. These factors include the existence of a criminal violation, the existence and state of issuance of a custody order, the marital status of the parents, and the specific custodial rights, including visitation rights, of the left-behind parents. Such discriminatory practices undermine the intent of the federal law, which was designed to ensure that every missing child benefit from being the subject of a missing child report and an NCIC entry--necessary steps to the location of the child in interstate cases.

Investigations as to Whereabouts

Threshold Issues

Law enforcement's decision to investigate is a critical factor in the process of locating a parentally abducted child. About 45% of respondents reported that law enforcement requires a violation of the state's criminal parental abduction statute before the designated agency will undertake an investigation of the whereabouts of the child. About an equal number do not require a criminal violation.

Most respondents (27) reported that, in practice, law enforcement officers did not have a waiting period between the time in which the missing child report was taken and the investigation was begun. However, a waiting period from one day to one week existed in a few states, whereas others stated that it depended on a court order or some other contingency.

Almost all of the clearinghouses (34) identified law enforcement as the agency with primary responsibility for an investigation of the child's whereabouts. One respondent indicated that the clearinghouse had primary responsibility. In practice, clearinghouses conducted the investigation in a few states or assisted law enforcement in doing so.

Types of Cases Investigated

Agency procedures, practices, and policies impact whether or not law enforcement officers determine a particular parental abduction case warrants investigation. Table 13 depicts the responses of clearinghouses as to whether law enforcement in their state investigated cases of different types.

Table 13

Law Enforcement Investigations by Case Type

	Yes	No	Don't Know
Investigation is Conducted	#/%	#/%	#/%
When custody order of that state was violated.	33/91.7	0	2/5.6
When custody order of another state was violated.	25/69.4	2/5.6	8/22.2
When no custody order exists and none is pending.	10/27.8	19/52.8	7/19.4
When no custody order exists, but one is pending.	12/33.3	13/36.1	11/30.6
When only restraining order exists.	20/55.6	4/11.1	12/33.3
When noncustodial parent seeks missing child.	13/36.1	10/27.8	12/33.3
When joint custody order exists.	15/41.7	7/19.4	13/36.1
When left-behind parent is unwed mother with custody by operation of law.	19/52.8	6/16.7	11/30.6

Children whose left-behind parent has custody from that state were subject to search efforts in almost all states, according to clearinghouse respondents. A significant number of respondents did not know whether location efforts were commenced in a variety of other circumstances.

When children were abducted prior to the commencement of a custody proceeding or the issuance of a decree, far fewer respondents claimed that law enforcement in their state initiated searches to find them. The existence of a restraining order prohibiting the removal of the child doubled the number of states in which a search would be undertaken.

Just over half of the respondents (19) reported that law enforcement in their states searched for children of unwed mothers who have sole custody by operation of law, while over 15% (6) reported that law enforcement did not search for these children. Left-behind parents whose visitation rights had been violated were reported to receive location assistance, according

to a third of the respondents, but more than a quarter indicated that, in their states, location efforts were not provided by law enforcement.

Investigation Activities

Respondents reported that law enforcement in their states engaged in a number of different actions in the search for the child, as shown in Table 14.

Table 14

Actions Taken in Investigating Whereabouts

	Yes	No
	#/%	#/%
Gathering information from parent	31/86.1	5/13.9
Obtaining subpoenas	19/52.8	17/47.2
Entering child's name into NCIC	27/75.0	9/25.0
Entering abductor's name into NCIC	27/75.0	9/25.0
Contacting NCMEC	25/69.4	11/30.6
Assisting in obtaining UFAP Warrant	24/63.9	12/36.1
Requesting assistance from federal or state parent locator service	19/52.8	17/47.2
Coordinating with social services or child protective services	19/52.8	17/47.2
Contacting/coordinating with other agencies in and out of state	29/80.6	7/19.4

The most common action taken in searching for the child was gathering information from the left-behind parent, followed by contracting and coordinating with other agencies in and out of the state. NCIC entries of the child and the abducting parent were made by law enforcement according to three-quarters of the respondents, but a quarter reported that no NCIC entry was made in the investigation as to the whereabouts of the child. This alone represents a significant obstacle to locating missing children from or in those states.

NCMEC was reported to be contacted as part of the search, according to almost as many respondents who reported NCIC entries. Considering there is no mandate to contact NCMEC, this may indicate that law enforcement is more aware of NCMEC than they are of the federal laws applicable in these cases.

Respondents were relatively evenly split as to whether or not law enforcement officers in their states obtained subpoenas, requested assistance from the federal or state parent locator services or coordinated with social services or child protective services during the investigation into the whereabouts of a parentally abducted child. This appears to indicate an underutilization of these resources in searching for children, although it may be that some of these activities are undertaken pursuant to a criminal investigation of the abductor.

The Prosecutor's Role

If a criminal offense of parental kidnapping was committed under state law, over 40% of the respondents (15) stated that the local prosecutor's office was involved in the location of the parentally abducted child. The involvement most frequently entailed obtaining warrants. When no criminal statute was violated, respondents from only three states credited prosecutors for having a role in the location of the child.

The role of prosecutors in obtaining pick-up orders varies in frequency across states. Only two respondents claim that this was routinely done by prosecutors. Nine (25%) answered sometimes, five (13.9%) responded rarely and three (8.3%) respondents said that prosecutors never obtain pick-up orders. Almost half (17) respondents did not know.

If the abductor is found, but the child is not, the majority of respondents (31/86.1%) claimed that the investigation into the whereabouts of the child would continue. Although none one said it would be discontinued, several did not know.

Civil Stand-By

"Civil stand-by" refers to a law enforcement officer accompanying the parent or family member who is seeking recovery of the child. A third of the respondents reported that civil stand-by was performed by law enforcement in their state, a quarter claimed it was not, whereas over forty percent did not know whether law enforcement performed this function in recovering a child. Respondents from only two states knew of guidelines for civil stand-bys, whereas three answered that no such guidelines existed.

Civil stand-bys are not available to all left-behind parents, as depicted in Table 15. Although these findings further reinforce the pattern of fewer services being available to parents in less clear-cut situations than that of sole custody pursuant to a court order, the reasoning behind this pattern is clearer here than it is, for example, in the taking of a missing child report or entry in NCIC. Since stand-by involves the presence of law enforcement when a parent recovers a child, it is

critically important that the parent taking the child is the parent with whom the child is supposed to be. Over a third of the respondents reported that law enforcement practices concerning parentally abducted children in their state were shaped with issues of possible civil liability in mind.[7]

Table 15

Availability of Civil Stand-by Type of Case

	Yes	No	Don't Know
Civil stand-by is available:	#/%	#/%	#/%
When custody order of that state was violated	10/27.8	1/2.8	11/30.6
When custody order of another state was violated.	10/27.8	1/2.8	11/30.6
When no custody order exists and none is pending.	3/8.3	9/25.0	10/27.8
When no custody order exists, but one is pending.	3/8.3	8/22.2	11/30.6
When only restraining order exists.	8/22.2	4/11.1	10/27.8
When noncustodial parent seeks missing child.	6/16.7	5/13.9	11/30.6
When conflicting custody orders exist.	4/11.1	5/13.9	13/36.1
When joint custody orders exist.	4/11.1	4/11.1	14/38.9
When left-behind parent is unwed mother with custody by operation of law.	7/19.4	2/5.6	13/36.1

The marital and custodial status of the left-behind parent are not the only factors affecting law enforcement accompaniment in the recovery of a child. A third of the respondents reported that the parent must file an out-of-state decree in the local court before law enforcement would provide civil stand-by. Slightly more then ten percent said it was not required. A quarter indicated that, in addition to filing the decree, the

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[7]The examination of case law relating to civil liability of law enforcement officers in the preceding chapter demonstrates that their concern is warranted.

parent was required to obtain a local court order before a civil stand-by could be done. Just under twenty percent said that was not needed.

Perhaps the most striking finding about civil stand-bys is that about a quarter to a third of clearinghouse personnel do not know if and under what circumstances law enforcement in their state will accompany parents in recovering their children. Considering the importance of the information and assistance functions of clearinghouses in these cases, the clearinghouses would clearly benefit from being better informed about law enforcement practices and procedures.

Pick-up Order

"Pick-up" order is a general term for various types of orders which are issued by a court and direct law enforcement to assist in the pick-up of a child. They include, for example, writ of habeas corpus, warrant in lieu of a writ of habeas corpus, and writ of attachment.

About forty percent of clearinghouses either did not respond to most of the questions about pick-up orders or indicated that they did not know. Again, this may indicate the lack of knowledge on the part of clearinghouses of law enforcement practices and procedures in relation to the recovery of parentally abducted children. Alternatively, it may be a reflection of law enforcement's own ambiguity and lack of specificity on this issue.

Eight respondents stated that law enforcement in their states routinely required pick-up orders, whereas eleven said they were sometimes needed. If the pick-up order was issued out-of-state, almost 14% of the respondents stated that law enforcement rarely executed them, whereas an equal number said they routinely executed them. Almost twice as many said that law enforcement sometimes executed pick-up orders issued in other states.

Over forty percent of respondents noted that the clearinghouse or law enforcement routinely provided assistance to parents in identifying the specific kind of legal order or type of document they needed. Thirty percent answered that law enforcement in their state sometimes directly assisted parents in obtaining pick-up orders, while a quarter rarely did, and almost fourteen percent never did. Only one state provided such assistance to parents on a routine basis.

If violence between the parents seemed likely, over forty percent of respondents stated that law enforcement could pick up and deliver the child either to the custodial parent waiting at another location or to the court.

States varied, according to respondents, as to whether the custodial parent was expected to be present in the jurisdiction when a pick-up orders was executed. Fourteen percent each said never, rarely, and sometimes, and under six percent said it was routinely required. Variation also existed among states as to whether the parent was required to accompany law enforcement when they executed the order. A quarter stated it was never required and only two clearinghouses explained that it was routinely required. A quarter of respondents believed that custodial parents were sometimes encouraged to accompany law enforcement. Well over half of the clearinghouses believed that requiring or encouraging a parent to accompany law enforcement would depend (sometimes or routinely) on the officer's assessment of the potential for physical violence between the parents.

If the custodial parent is not available in the jurisdiction at the time the pick-up order is issued or executed, a number of options may be available, as indicated in Table 16.

Table 16

Options Regarding Pick-up Orders
When Parent Not Present

	Yes	No
	#/%	#/%
Pick-up order obtained by affidavits or other declarations.	9/25	27/75
State law enforcement agencies have alternative placements for child.	15/41.7	21/58.3
Social services or children protective services agencies temporarily place child.	27/75	9/25

According to clearinghouse respondents, most jurisdictions appeared flexible in permitting pick-up orders to be issued on an affidavit or other declaration when a parent cannot be present. After an order was executed and the child was picked up, social services or child protective services was almost twice as likely as law enforcement in finding a temporary placement for the child. Temporary placement generally referred to temporary foster care.

More than half of respondents reported that, sometimes or routinely in their state, the child was turned over to the custodial parent. Half indicated that, after the pick-up is executed, further court hearings were sometimes required, whereas only two said they were routinely required.

Discussion and Recommendations

Information and Resources

Through the survey, a portrait of the activities of official state missing children clearinghouses and the practices and procedures of law enforcement officers in parental abduction cases emerges from across the country. It is a portrait depicting public servants who are carrying a multitude of responsibilities, but who often are provided insufficient resources to perform their duties. Five official clearinghouses operate with no budget. In many other states the clearinghouse budget is within the budget of the larger agency, leaving little knowledge or control of needed resources.

Most law enforcement agencies are beleaguered in terms of resources. Priorities are set as to how time, funds, and staff are allocated. Family issues, particularly those considered civil matters, are not high priorities and often are seen as outside the realm of police work.[9]

With few exceptions, clearinghouses are situated in law enforcement or other justice-related agencies. Despite this, many were not knowledgeable of the policies, practices, and procedures law enforcement officers follow in parental abduction cases. This was particularly true in relation to recovery activities, such as civil stand-bys and pick-up orders. This lack of knowledge may result from a failure in communication between law enforcement and clearinghouses, although it may simply reflect that these procedures are fraught with ambiguity and vagueness for law enforcement as well. Other research on the role of law enforcement in missing children cases found that police were involved in few parental abduction cases. Police "frequently refer them [left-behind parents] to another agency" and "were often uncertain that their involvement was appropriate."[10]

There are exceptions to the general patterns described above. Some clearinghouses and law enforcement agencies have the necessary ingredients needed to perform their functions: resources, statutory authority, knowledge, and commitment. They should receive recognition for their efforts and support for

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[9]Many clearinghouse respondents mentioned this in response to an open-ended question about obstacles to law enforcement involvement.

[10]Collins, J., Powers, L., McCalla, M., Lucas, R., Forst, M. Law Enforcement Responses to Runaway and Abducted Children and Youths. Research Triangle Institute. 87 (1990).

expanding their functions to include consultation and technical assistance to their counterparts in other states.

Recommendations:

State legislatures should fund state missing children's clearinghouses and law enforcement agencies at a level which allows them to carry out their functions related to the location, recovery, and return of parentally abducted children.

State missing children clearinghouses, police departments, and sheriffs' offices should receive educational materials, training, and technical assistance relating to the location, recovery and return of parentally abducted children. They should take advantage of federal assistance in handling missing children's cases. For example, through NCMEC, clearinghouses can apply for funds for computer equipment and training to improve operations. Project ALERT, a recently established federal initiative, involves volunteer retired law enforcement investigators who can assist in parental abduction cases at the request of local law enforcement.

Location and Investigatory Assistance

When a child is abducted by a parent, the left-behind parent often knows the child's whereabouts. These parents do not need location assistance by the clearinghouse nor do they need an investigation of the whereabouts of the child by law enforcement. As described in NISMART, these children are not truly "missing," they just may not be where they are supposed to be. It is recovery assistance, not location assistance the parents want in these cases.

In cases where the parent does not know the whereabouts of the child, location assistance from the clearinghouse and, particularly, law enforcement is critical. The threshold for getting location assistance is to have a missing child report taken and the child's name entered into NCIC. These acts are mandated by federal law for all missing children. The findings of the survey indicate that law enforcement generally has failed to comply with the mandate of the legislation on a consistent basis across the country. Law enforcement officers are considering factors such as the existence of custody orders and criminal violations, the type of custody, and the marital status of the parents in determining whether or not to take a report or make an NCIC entry.

Attention to these factors relating to the status of the parents can lead one to lose sight of the focal point of a parental abduction case: the child. When the parentally abducted child is missing, the relationship between that child and his or her left-behind parent is severed and ties with school

and community are abruptly disrupted. That many state agencies place a higher value, through the disproportionate distribution of location assistance, on some of these children than others is tragic. These practices disadvantage children based on factors beyond a child's control, such as whether their parents are wed, what type of custody orders they have, if any, and whether that state considers the abduction a crime.

In only a few states does an unwed mother with sole custody by operation of law share the advantages of parents with court orders of sole custody. Other unwed parents, particularly fathers, appear to be receive very little assistance. Consequently, children born out-of-wedlock, who are disproportionately poor and African-American, appear less likely to be recipients of clearinghouse and law enforcement efforts to find them, after their parents or other family members have abducted them, than are the children of separated or divorced parents whose noncustodial parents have taken them.

Joint custody is an increasingly common form of custodial arrangement. Generally, joint custody parents share in making decisions about the residential, educational, medical, and religious aspects of their child's life and, in some cases, divide the physical custody of the child. Joint custody parents receive assistance in finding their children less frequently and in fewer states than sole custody parents, but more often and in more states than noncustodial parents. Conversely, when joint custody parents abduct they are more likely to be the target of a search than a sole custodial parent who abducts, but less likely than a noncustodial parent who takes the child.

The differing availability of location assistance reinforces already existing gender differences and conflicts relating to custody issues. Women, who more frequently have been the primary caretakers of young children and sole custodians after divorce, would benefit from staying this traditional course rather than opting for joint custody. Men, on the other hand, who are more often the noncustodial parents, improve their chances of securing assistance to locate their children if they opt for joint custody.

The implications of these differences in location assistance for separated and divorcing parents disputing or deciding issues of custody are significant. These parents are not generally informed by lawyers, mediators, or judges that the type of child custody decree they will have materially affects the help the left-behind parent is likely to receive from the public domain if the other parent abducts the child.

Despite the frequency of pre-decree abductions, many clearinghouses and law enforcement agencies do not assist in the location of these children, although the existence of a

restraining order prohibiting the removal of the child from the jurisdiction makes a difference in several states. Although parents without court orders should be able to obtain an ex parte order after the abduction, precious hours impacting upon the success of location efforts can be lost by not acting more quickly. Earlier intervention in these cases might reduce opportunities for the abducting parent to leave the state, which generally makes the case more difficult to resolve.[10]

A variety of activities can be undertaken in searching for a missing child and law enforcement in many states take advantage of them. Better dissemination of information about the parent locator service and NCMEC could increase inclusion of these resources to those who presently do not utilize them. Schools appear consistently overlooked, considering that 40-45% of clearinghouses do not involve schools in their efforts to locate parentally abducted children.

Recommendations:

Law enforcement officers should be better informed of their mandates under the Missing Children Act of 1982 and the National Child Search Assistance Act of 1990. Communication can be achieved through organizational newsletters, departmental directives, and training videotapes.

Procedural or attitudinal barriers to compliance (relating to the marital, custodial, and criminal status of the parents) should be changed, so that no parentally abducted child is discriminated against in receiving law enforcement or in clearinghouse efforts to find him or her.

State legislatures should pass record-flagging statutes to ensure that school and vital statistic records are utilized in search efforts.

Recovery Assistance

The issue of recovery assistance is less clear-cut than the issue of location assistance. Steps relating to recovery and return generally lead to removal of the child from the abductor

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[10]In some states law enforcement officers do not provide assistance when the custody order is granted to the left-behind parent after the abduction, because they require a criminal violation. They do not consider there to be a violation, since the abductor could not have "knowingly" violated an order when the order did not exist at the time of the abduction. This issue was not specifically addressed in the survey, but was raised by clearinghouses and other non-profit organizations during the course of the project.

and placement of the child with the other parent or in a temporary placement. Consequently, the custodial status of the parents is critical to taking appropriate actions in recovery and return. When no court order, joint custody or conflicting orders exist, the situation is fraught with ambiguity and law enforcement is wise to tread carefully. Police officers lack a reliable means to confirm that the order is currently valid. In some states assistance is provided to parents as to how to establish the legitimacy of the order. How unwed mothers who have custody by virtue of law can similarly document their status is unclear.

Recovery and return actions are much more closely linked to operations of the civil court, such as pick-up orders, than are location efforts. Law enforcements' familiarity with the civil courts appears minimal. Law enforcement and clearinghouses seem to lack clear-cut policies and guidelines relating to their interaction with the civil court in parental abduction cases and their responsibilities in the civil enforcement of parentally abducted children.

Recommendations:

State legislatures should clearly define the statutory authority under which law enforcement officers can act to enforce a custody order from that state or another state. Procedures for ensuring the validity of the decree should be clearly identified.

Law enforcement agencies, civil courts, clearinghouses, and social services should work together to develop efficient and effective procedures relating to the recovery and return of parentally abducted children.

Law enforcement officers and clearinghouse personnel should receive additional training and continuing education in the laws and procedures affecting their performance in the recovery and return of parentally abducted children.

Chapter 10

KEY ISSUES AND OBSTACLES IN THE CRIMINAL PROSECUTION OF PARENTAL KIDNAPPING

by Janet Kosid Uthe, Esq.

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Chapter 10

KEY ISSUES AND OBSTACLES IN THE CRIMINAL PROSECUTION OF PARENTAL KIDNAPPING CASES

by Janet Kosid Uthe, Esq.

I. Overview

Parental kidnapping--the unlawful taking of a child by one parent from the legal custody of the other--has become a significant and troubling issue in American society in recent years. Parental kidnapping is not a new phenomenon, nor is it unique to American society. Nonetheless, the escalation of the divorce rate we have experienced in the past fifty years has contributed to a significant increase in the incidence of parental kidnapping. Parental kidnapping is now described as a persistent, recurring phenomenon, posing legal difficulties of a nationwide scope.[1]

It is estimated that one-half of all American marriages end in divorce. Studies by the Association of Family and Conciliation Courts have determined that custody and visitation will be contested in 10-15% of all divorce actions.[2] One-ninth of all children are likely to experience on-going parental acrimony over their custody or care and are at high risk of emotional problems.[3]

The National Study of the Incidence of Missing Children has concluded that there were an estimated 354,100 family abductions in 1988. This study further concluded that 163,200 of those cases were serious or "Policy Focal" cases. Cases are "Policy Focal" cases when: a) an attempt was made to conceal the child or to prevent contact with the child; b) when the child was removed from the state; or c) when there was evidence that the abductor

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[1]Report of the U.S. Attorney General's Advisory Board on Missing Children, Missing and Exploited Children: The Challenge Continues, (1988) U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, Washington, D.C.

[2]Thoennes and Pearson, "Summary of Finding From the Sexual Abuse Allegations Project," in Sexual Abuse Allegations in Custody and Visitation Cases, 4 (B. Nicholson and J. Bulkley eds., (American Bar Association 1988).

[3]Johnson, Campbell, and Tall, "Impasses to the Resolution of Custody and Visitation Disputes," 55 Am. J. Orthopsychiatry., 112 (1985).

intended to keep the child indefinitely or to permanently alter custodial privileges.[4]

Recognition that parental abduction should not always be viewed as a benign resort to "self-help" by a loving parent is increasing. Psychological and social science research emphasizes that, unless there is abuse, neglect, or other extraordinary circumstances, children need and want to have continuing and frequent contact with both of their parents.[5] Parental kidnapping is almost certain to intensify and prolong the psychological trauma and stress the child is experiencing as a result of the separation of his or her parents.[6]

Although, in some cases, the parent who kidnaps his or her child is motivated by a sincere concern for the well-being of the child, in others, the child will be used as a pawn by a parent seeking retaliation or revenge for the breakup of the family, to harass the estranged partner, as a "bargaining chip" to reduce support obligations, or to extort a reconciliation. In many cases, whether consciously or not, the abducting parent manipulates the child's loyalty--forcing the child to make an emotional choice between the two parents.

Abducted children are taken from home, school, pets, and friends. On occasion, only one child is taken by the abducting

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[4]Finkelhor, Hotaling and Sedlak, "Missing, Abducted, Runaway, and Thrownaway Children in America," First Report: Numbers and Characteristics, National Incidence Studies, U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Washington, D.C. (May 1990).

[5]Hetherington, Cox, and Cox, "Long-term Effects of Divorce and Remarriage on the Adjustment of Children," 24 J. Am. Acad. Child Psych. 518 (1985); Hess and Camara, "Post-Divorce Family Relationships as Mediating Factors in the Consequences for Children," 35 J. Soc. Issues 79 (1979); Jacobson, "The Impact of Marital Separation on Children: Findings from Overall Study," 2 J. Divorce 175 (1978); Luepniz, "Child Custody: A Study of Families After Divorce," D.C. Health (1982); Guidubaldi and Perry, "Divorce and Mental Health Sequelae for Children: A Two-Year Follow-Up of a Nationwide Sample," 24 J. Am. Acad. Child Psych. 600 (1978); Wallerstein and Kelly, "The Effects of Parental Divorce: Experiences of the Pre-School Child," 14 J. Am. Acad. Child Psych. 600 (1975); Wallerstein and Kelly, "The Effects of Parental Divorce: Experience of the Child in Later Latency," 46 Am. J. Orthopsychiatry. 256 (1976); Benedek and Benedek, "Post-Divorce Visitation," 16 J. Am. Acad. Child Psych. 271 (1977).

[6]Huntington, "Parental Kidnapping: A New Form of Child Abuse," Center for Family in Transition, (Corte Madera, CA., 1984).

parent and the child loses all contact with siblings as well. In addition, the child may lose all contact with beloved members of the extended family--grandparents, aunts, uncles, and cousins. This may include members of the abducting parent's extended family as well if the abductor fears contact with family will increase the risk of discovery.

Abducted children can experience inconsistent and erratic schooling, poverty, and isolation as the abducting parent moves frequently and changes employment to escape detection. Such children report experiencing anger, depression, guilt, and loneliness. The abducting parent, under the stress of continued isolation and concealment, may become abusive or neglectful.

II. Obstacles to Prosecution of Parental Kidnapping

Criminal parental kidnapping statutes, also referred to as custodial interference statutes, have been enacted by every state and the District of Columbia to punish parents (and other persons) who wrongfully take, retain or conceal their children. There is no uniformity among the state enactments, with each state defining the conduct which is punishable within that state. The dual objectives of criminal parental kidnapping statutes are to deter parental kidnapping and to punish abductors. The child is not the object of the criminal process, and prosecution of the abductor is no guarantee of the child's location and return. With only 155 cases reported from 37 states, it is clear that criminal custodial interference cases are encountering roadblocks at some level. It is not within the scope of this report to identify whether those roadblocks exist primarily at the investigative level, at prosecutorial intake, or at trial. Nonetheless, comparing the number of litigated cases with the number of serious or Policy Focal cases reported by the National Incidence Study,[7] clearly indicates that a disproportionate number of criminal parental kidnapping cases are being screened out of the criminal justice system.

In recent years there has been a marked increase in criminal custodial interference laws enacted (or amended) by the state legislatures. Forty state legislatures, including the District of Columbia, have amended their custodial interference statutes since 1987. An additional seven state legislatures revised their statutes between 1985 and 1987. These legislative revisions are designed to make the criminal statutes more effective.

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[7]There were an estimated 163,200 Policy Focal cases in 1988. Abductions lasting more than one month, however, constituted only 10% of this figure. The sample size for the Policy Focal cases in the household survey was small, so any generalization should be made with caution.

Nonetheless, because the number of cases is so small compared to the number of potential cases, the obstacles identified in this review of appellate litigation should not be taken as representative of all of the obstacles encountered in pursuing a criminal custodial interference case.

Should Parental Kidnapping be a Felony?

Since serious cases of parental kidnapping can cause serious disruptions in the lives of parent and child, effective remedies are necessary. Felony status affects not only the severity of the penalty ultimately imposed, but also whether effective investigation and prosecution will occur in the first instance. Scarce law enforcement resources are more readily available for felony offenses than for misdemeanor offenses. This is especially true of those most useful in pursuing an investigation across state lines.

Search warrants are more readily available in felony cases. Labor-intensive investigations tracing financial records are authorized more readily in felony cases. Application for nationwide F.B.I. assistance can only be made in felony cases. And, if the abductor is located outside of the state, extradition, as a practical matter, is only pursued in felony cases. While discovering the location of the abductor is the goal of the criminal investigation, quite often the child will be located. Then civil legal remedies to secure the child's return can be implemented.

In several cases, investigators and prosecutors struggled to overcome these obstacles. In one California case,[8] the father of a toddler took his daughter from her home in northern California and left her in Mexico. He returned to his employment as a college professor in a northern California city where, for four years, he professed to be distraught with grief over the disappearance of his daughter.

During those four years, his former wife depleted her life savings and mortgaged her home in search for the child. The father visited the child on rare occasions. During those visits, the child was told he was her godfather.

Finally, the mother found her and brought her home. At the time the child was taken, the crime of custodial interference was only a misdemeanor in the state of California regardless of the circumstances.

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[8]People v. Rios, 177 Cal. App. 3d 445, 222 Cal. Rptr. 913 (1986).

In some cases, as in the case described above, prosecutors have sought out other potentially applicable felony crimes.[9] In other cases, parental kidnapping investigations that have long been stalled have been resolved once the state made parental kidnapping a felony crime.[10]

Although not every case of parents struggling over custody and visitation should result in felony charges, prosecutors should be given the option of seeking felony charges for serious cases of parental abduction.

The foregoing obstacles could be removed by enactment of felony statutes which apply, at a minimum, when: a) the child is being concealed; b) when the child has been removed from the state; c) whenever there is probable cause to believe that the child is at risk of harm.

Removal from the State

Many state laws require that a child be removed from the state before a charge of parental abduction is appropriate. Many others require that the child be removed from the state before felony charges are appropriate. The obvious problem stemming from a requirement that the child be removed from the state is that, when the whereabouts of the child have been concealed, it is not known whether the child has been removed from the state.

Any evidence tending to prove that the child has been removed from the state would be uncovered by an investigation. But no investigation can be launched until there is evidence (probable cause) to support a reasonable belief that the child has been removed from the state. Successful concealment effectively precludes the initiation of an investigation. The financial burden of a nationwide search is almost always beyond the means of the average left-behind parent.

The effect of such a law is particularly troublesome because cases of successful concealment are the most serious and disruptive of parental kidnappings. The parent from whom the child was taken has no idea whether the child is safe or well-cared for. The destruction of the parent-child bond is complete. Yet since concealment has effectively prevented or substantially hindered the filing of criminal or felony charges, federal, state, and local law enforcement agencies may be unable

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[9]People v. Rios, supra; State v. Thomas, 668 P.2d 1294 (Wash. Ct. App. 1983); State v. Baldalich, 479 So. 2d 197 (Fla. Dist. Ct. App. 1985); State v. Alladin, 408 N.W.2d 642 (Minn. Ct. App. 1987).

[10]People v. Caruso, 519 N.E.2d 440 (Ill. 1987); People v. Harvey, 435 N.W.2d 456 (Mich. Ct. App. 1989).

to provide assistance in precisely the kind of case where assistance is needed most.

State laws should also continue to make it a felony crime to remove a child from the state. Concealment should not be the exclusive trigger for felony treatment. Criminal remedies for interstate parental abduction, such as extradition, are available, as a practical matter, only in felony cases. In the event that an abductor has removed the child from the state and there is a significant effort on the part of the abductor to interfere with the custody of the child, it is essential that felony charges be available.

The foregoing obstacles could be remedied by state enactment of laws making the concealment of a child for a significant period of time a felony. In concealment cases, the states should eliminate any requirement of proof of removal from the state. Further, states should enact laws making the removal of a child from the state a felony if there is a significant effort on the part of the abductor to interfere with custody permanently or for a protracted period of time.

Violation of an Order of a Court of this State

Some states do not treat parental abduction as a criminal offense if the custody order being violated was issued by a court of another state.[11] A custodial parent who moves to such a state, after obtaining a custody order in a sister state, will be denied the protection of the criminal laws in the event that a parental kidnapping should subsequently occur.

As the U.S. Attorney General's Advisory Board on Missing Children commented in 1988, "The Advisory Board sees no persuasive reason for a State to treat violation of a valid custody order as less worthy of criminal prosecution simply because the order was entered in another jurisdiction and strongly recommends that distinctions in criminal parental abduction laws based on this factor be eliminated."[12]

Consistent with this recommendation, states should amend their criminal parental kidnapping statutes to eliminate any requirement that the custody order be made by a court in the

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[11]Rhode Island (R.I. Gen. Laws. § 11-26-1.1 (1981)); South Carolina (S.C. Code Ann. § 16-17-495 (Law. Coop. 1985)).

[12]U.S. Attorney General's Advisory Board on Missing Children, Missing and Exploited Children: The Challenge Continues, p. 42, U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Washington, D.C. (1988).

state in which prosecution is brought. Violation of any valid custody decree should suffice.

Pre-decree Abductions

The traditional rule has been that, in the absence of a court order altering his or her natural custody rights, neither parent commits the crime of parental kidnapping by taking exclusive possession of the child. This situation may arise when one parent takes the child from the other when the parents separate, or when custody proceedings have been filed but no custody determination has yet been made by the court.

However, a parent who takes exclusive possession of the child does so in derogation of the rights of the other parent. The parents of a child have equal powers and duties with respect to the child. Neither has any greater right to the child than the other. In addition, since the psychological consequences suffered by children of divorce can, generally, be mitigated by frequent contact with both parents, an abduction often injures the child as well.

The National Incidence Study of Missing, Abducted, Runaway, Thrownaway Children in America found that 41% of the family abduction cases studied occurred before the parents were divorced.[13] Abductions occurring prior to the issuance of a custody order are not rare and the issue of whether pre-decree abductions and criminally punishable is being hotly contested in the courts. At least one state's Supreme Court has acknowledged that the competing policy considerations underlying the criminalization of pre-decree abduction are compelling and has requested a legislative resolution.[14]

Several states have enacted laws[15] prohibiting pre-decree abductions. California, New Mexico, and Washington prohibit the abduction of a child whenever it is done with the intent to deprive the other parent of lawful custody rights. Illinois prohibits a taking intended to prevent a court from deciding custody. Wisconsin prohibits abductions occurring after the filing of the custody action. Appellate decisions in Arizona and Delaware have concluded that a taking by one parent deprives the

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[13]"Missing, Abducted, Runaway, and Thrownaway Children in America" op. cit. p. xii.

[14]Commonwealth v. Beals, 541 N.E.2d 1011 (Mass. 1989).

[15]Cal. Penal Code § 277 (1988); N.M. Stat. Ann. § 30-4-4 (1989); Wash. Rev. Code Ann. § 9A.40.060 (1988); Ill. Ann. Stat. Ch. 38, para. 10-5(b)(4)(1988); Wis. Stat. Ann. § 948.31 (1988-1989).

other parent of co-equal custody rights and is, therefore, prohibited conduct.[16]

Criminal statutes should be written broadly enough to cover the large class of pre-decree abduction cases.

Joint Custody

When parents share custody, each parent has been granted a shared right to parent the child. When a joint custodian abducts the child, he or she does so in derogation of the rights of the other joint custodian. The abductor violates the custody order by depriving parent and child of their court-ordered right to shared parenting.

Ironically, the increasing use of joint custody orders--often pursuant to state statutes designed to preserve a meaningful relationship between a child and both parents--has complicated the prosecution of parental abduction when one joint custodian abducts the child. Parental abduction, under such circumstances, is an act clearly at odds with the public policy given expression by the joint custody statutes. The few courts that have considered this issue to date[17] have determined that an abduction in violation of a joint custody order constitutes custodial interference.

Nonetheless, it is widely believed by parents and prosecutors that a joint custodian may not be charged with custodial interference because, by analogy to a house held in joint tenancy, each joint tenant has full control over the chattel. By this reasoning, a joint custodian commits no crime by exercising exclusive possession. Despite the courts' expressions of repugnance over treating children as chattel, there remains a widespread belief that custodial interference cannot be charged if custody is shared. Many law enforcement officers and prosecutors also appear to share this belief.

A clear policy expression to the effect that joint custodians do not have license to violate one another's rights would facilitate prosecution of parental kidnapping cases. State criminal custodial interference statutes should expressly

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[16]State v. Donohue, 680 P.2d 191 (Ariz. Ct. App. 1984) (dicta); State v. Todd, 509 A.2d 1112 (Del. Super. 1986).

[17]People v. Irwin, 155 Cal. App. 3d 891, 202 Cal. Rptr. 475 (1984); People v. Harrison, 402 N.E.2d 822 (Ill. Ct. App. 1980); State v. Whiting, 671 P.2d 1158 (N.M. Ct. App. 1983); State v. West, 688 P.2d 406 (Or. Ct. App. 1984).

prohibit abduction in violation of a joint custody order.[18] It is further suggested that the civil courts, in issuing joint custody decrees, specifically articulate the child's residential arrangements so that it is clear when either of the joint custodians is in violation of the custody order. See Cal. Civ. Code Sec. 4600.5(g) (1983).

Liability of Unwed Fathers

The liability of unwed fathers for the crime of parental abduction is not clearly delineated. Much of the confusion centers around whether unwed fathers should be charged as a "parent" with parental abduction, or as a "stranger" with kidnapping.

There is a tremendous difference between the liability of an unwed father who has established a parental relationship with a child and the liability of an unwed father who denies paternity and abducts the child to extort a dismissal of a paternity action. In addition there are fathers who have acknowledged the child, but prior to the abduction have not established a parental relationship with the child, and those who have been adjudicated as a parent in a paternity action. Under which of these circumstances can an unwed father claim the co-equal right to custody enjoyed by a married father?

States should clarify the application of the general kidnapping statutes and criminal parental kidnapping statutes to the unwed father. Must an unwed father obtain a judgment of paternity before the abduction he commits is treated as a parental abduction and not general kidnapping? Or will informal actions to acknowledge the child suffice?

Unlawful Interference with Visitation

Parental abductions also occur when the custodial parent fails to allow the noncustodial parent visitation. Although, for the most part, such violations are appropriately handled by the family law courts and should not be criminalized, when the custodial parent is concealing the whereabouts of the child the deprivation of the parent-child relationship can be as devastating to both parent and child as when the noncustodial parent conceals the child.

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[18] See, e.g., N.J. § 2C:13-4(4) which provides that a person is guilty of interference with custody "if he: (4) after the issuance of a temporary or final order specifying custody, visitation or joint custody rights, takes, detains, entices or conceals a minor child from the other parent in violation of the custody or visitation."

Further, the noncustodial parent is likely to face greater obstacles in locating the absconding custodial parent: Many of the services available to help custodial parents locate abducted children are not available to noncustodial parents.

By 1988, nineteen states had enacted legislation prohibiting interference with visitation. A carefully drafted statute could prohibit interference with visitation without flooding the criminal justice system with cases of minimal significance. Specifically, state custodial interference statutes should prohibit concealment of the child by both the custodial and the noncustodial parents.

Extraterritorial Jurisdiction

Most criminal offenses are prosecuted in the state in which the crime occurs. However, in some types of crimes, acts done in one state are intended to, and do, have their effects in another state. Parental kidnapping is one such crime. The case of People v. Gerchberg, 131 Cal. App. 3d 618, 181 Cal. Rptr. 505 (1982) is illustrative.

In 1976, Mr. and Mrs. Gerchberg divorced. Mrs. Gerchberg was awarded custody and Mr. Gerchberg was awarded visitation rights. In the summer of 1976, Mrs. Gerchberg, in California, sent the children to visit their father who lived in New York. Mr. Gerchberg, however, did not return the children. Instead, he took the children and disappeared. He and the children were located four years later.

Mr. Gerchberg's criminal charges were dismissed because he did not conceal the children in California. Therefore, he claimed that California did not have the authority to prosecute him for actions performed entirely outside its borders. The unlawful actions were performed in New York. But prosecution there would have been unsuccessful because the New York statute prohibits only removal from the state.[19]

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[19]Cases denying jurisdiction when acts committed out-of-state: People v. Bormann, 6 Cal. App. 3d 292, 85 Cal. Rptr. 638 (1970); People v. Gerchberg, 131 Cal. App. 3d 618, 181 Cal. Rptr. 505 (1982); State v. Cochran, 538 P.2d 791 (Idaho 1979); State v. McCormick, 273 N.W.2d 624 (Minn. 1978).

Cases upholding jurisdiction:
Wheat v. State, 734 P.2d 1007 (Alaska Ct. App. 1987); People v. Caruso, 519 N.E. 2d 440 (Ill. 1987); State v. Costa, 558 So. 2d 525 (Fla. Dist. Ct. App. 1990); People v. Harvey, 435 N.W.2d 456 (Mich. Ct. App. 1989); Roberts v. State, 619 S.W.2d 862 (Tex. Crim. App. 1981); Rios v. State, 733 P.2d 242 (Wyo. 1987).

The United States Supreme Court has upheld statutes designed to enlarge the jurisdiction of the state courts in such circumstances.[20] The Model Penal Code contains an expanded jurisdictional statute. Several states have enacted laws based on the Model Penal Code which allow a state to punish the cause of harm if acts done outside the state are intended to, and do, cause harm inside the state. The trend in recent cases is for the courts to find that they do have jurisdiction.

To remove existing obstacles to prosecuting a parent whose actions outside the state cause harm within the state, all states should enact laws conferring jurisdiction to prosecute abductors when their actions outside the state violate custody orders pertaining to children who reside in the state.

Is Parental Abduction a Continuing Offense?

Is custodial interference an offense that concludes the day the child is taken from the custodial parent? Or is it an offense that recurs each day the child is withheld from the custodial parent in violation of the custody order? The answer is significant for two reasons.

If the abducting parent succeeds in concealing his or her whereabouts and those of the child for long enough, prosecution may be barred by the statute of limitations if the statute begins to run on the date of the initial taking. Further, if the statutes are amended after the initial taking to authorize higher penalties and allow access to felony investigative tools, prosecution under the new laws may be an ex post facto application of the law.

Yet, the longer the child is withheld, the more serious the case becomes due to the increasing destruction of the bond between parent and child and the detrimental effect that living in hiding can have on the child. Most of the court decisions on this issue have concluded that, where the statute prohibits the retention, detention, or concealment of the child, the offense is a continuing one.[21]

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[20] Strassheim v. Dailey, 221 U.S. 280 (1911).

[21] Cases holding parental abduction to be a continuing offense: People v. Hyatt, 18 Cal. App. 3d 618, 96 Cal. Rptr. 156 (1971); People v. Irwin, 155 Cal. App. 3d 891, 202 Cal. Rptr. 475 (1984); People v. Caruso, 519 N.E.2d 440, (Ill. 1987); People v. Harvey, 435 N.W.2d 456 (Mich. Ct. App. 1989); State v. Rose, 706 P.2d 583 (Or. Ct. App. 1985).

Cases holding parental abduction is not a continuing offense:

To remove doubt as to whether a parent can be charged with parental kidnapping at any time after the initial abduction, states should enact laws clarifying the legislative intent to make parental abduction a continuing offense.

Extradition

Although earlier cases allowed the courts some latitude to determine if defendant was substantially charged with a crime, the recent U.S. Supreme Court decision in California v. Superior Court of San Bernadino County (Smolin et. al.)[22] disapproved of this practice. If the extradition documents are in order, the defendant has been charged with a crime, the defendant is the person named in the request for extradition, and the defendant is a fugitive, the courts in the asylum state are to proceed with the extradition.

Due to the interstate nature of many parental abduction cases, extradition is an essential component of any successful prosecution. The obstacle, here, is the availability of funds with which to pay the costs of extradition.

Parental kidnapping cases must compete with all of the other felony crimes for priority in the budgeting of extradition funds. Prosecutors must be educated concerning the serious impact some cases of parental abduction have on the lives of the left-behind parent and of the child. Perhaps then, parental kidnapping cases will more successfully compete for extradition dollars.

Key law enforcement personnel should receive training in the dynamics of parental abduction cases. Consideration should be given to exploring alternative sources of funding for extradition of parental abductors. Statutes should be enacted authorizing the court to assess the cost of extradition against a convicted offender as part of a restitution order.

Remedies for Recovery of the Child

An additional obstacle is the limited nature of the remedies afforded by the criminal law to recover the child. A warrant for the arrest of an abducting parent does not authorize the law enforcement officer to take the child into protective custody. Traditional laws authorizing the child to be taken into protective custody apply only when the child appears endangered, abused, or neglected.

People v. Bormann, 6 Cal. App. 3d 292, 85 Cal. Rptr. (1970); State v. White, 189 N.E.2d 160 (Ohio Ct. App. 1962) (dicta).

[22]California v. Superior Court of California, San Bernadino County, 482 U.S. 400 (1987).

Since the child may require placement until the custodial parent can arrive and a civil enforcement hearing can be held, it may be necessary to amend the child protection laws to permit the child to be placed in the custody of a social services agency pending such a hearing.

States should enact laws authorizing law enforcement officers to take children into protective custody if it reasonably appears that they are endangered or that they will be removed from the jurisdiction of the court. States should, further, enact laws authorizing law enforcement officers to return a child to the person with lawful custody or to deliver the minor child to the public agency designated to provide care for children pending court proceedings.

Restitution

When a person is convicted of committing the crime of parental abduction, the sentencing judge should have the statutory authority to order the offender to pay restitution to the lawful custodian for reasonable costs incurred in locating and recovering the child as well as for costs of medical or mental health services to assist in reestablishing the relationship between the lawful custodian and child. Further, the sentencing judge should have the statutory authority to order the abductor to reimburse any public agency for costs incurred in the location and recovery of the child.

States should amend their parental kidnapping laws to authorize courts to order restitution as part of sentencing. States should also consider extending compensation to parental kidnapping victims under state Crime Victim Compensation statutes.

Should Parental Kidnapping be a Federal Crime?

The complexity and interstate nature of parental kidnapping cases requires exploration of this question. In the last two decades, the states have made many efforts to combat the problem of parental kidnapping. But, as the divorce rate grows and the American population becomes increasingly mobile, the problem of parental kidnapping grows apace.

The Parental Kidnapping Prevention Act (PKPA) authorizes the FBI to investigate state felony parental kidnapping cases upon request of the state prosecutor. The role of the FBI is investigative, and once the fugitive is arrested, federal criminal charges pursuant to the Unlawful Flight to Avoid Prosecution statute (18 U.S.C. 1073) are dropped and prosecution under state law proceeds. Accordingly, most of the obstacles described herein will still be encountered even in cases where such federal assistance is obtained.

In addition to the civil statutes, all fifty states and the District of Columbia have enacted criminal parental kidnapping legislation. But the glitches and gaps, some of which are discussed in the preceding pages, have resulted in a disproportionate number of serious cases of parental abduction being screened out of the criminal justice system. Also, the difficulties inherent in obtaining information from out of state sources make resolution of these cases inordinately difficult.

For these reasons, the Supreme Court of Minnesota and the Chief Justice of the Supreme Court of Wyoming have each requested that parental abduction be made a federal crime. "A more effective...[way would be to enact]...federal legislation which avoids constitutional difficulties inherent in the assertion of extraterritorial jurisdiction by state courts."[23] And for this same reason, an appellate court in Ohio complained about the Balkanization of the administration of justice.[24]

Federal criminal legislation would enhance the ability of law enforcement authorities to pursue parental kidnapping investigations across state lines. Inconsistent state laws would be preempted by federal laws establishing a uniform and consistent body of law. The expense, difficulties, and complications of extradition proceedings would be eliminated.

It must be conceded that there are compelling reasons to seek a federal criminal parental kidnapping law. Unfortunately, there are also countervailing reasons, equally as compelling, to seek another solution.

There are only 400 F.B.I. field offices in the United States. The F.B.I. has fewer field agents in the entire country than the Los Angeles Police Department has in a single city. Further, there are 19,000 State and local law enforcement agencies across the United States that exist to handle state and local law enforcement concerns. Transfer of a potential 16,000 cases/year[25] of parental abduction to the F.B.I. might simply

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[23]State v. McCormick, 273 N.W.2d 624, 628 (Minn. 1978); See also Rios v. State, 733 P.2d 242, 251-252 (Wyo. 1987) (Dissenting opinion by Chief Judge Brown reiterated the McCormick court's statement with approval.)

[24]State ex. rel. Gilpin & Armell v. Stokes, 483 N.E.2d 179 (Ohio Ct. App. 1984).

[25]If there are 163,200 policy focal case per year and 10% of those cases are still active a month after the abduction, there are approximately 16,300 cases that may be appropriate for criminal prosecution per year.

inflate expectations of improved law enforcement response without any hope of improvement in fact.

In light of the basic constitutional tenets of our Federalist system, any Federal involvement in parental kidnapping would have to be limited to interstate cases. A requirement of removal from the state in the federal statute may not be less problematic than it has already proven for effective enforcement of state laws containing such a provision.

Although the complexities and costs of extradition need no longer be borne by the states, the federal government would be required to assume the financial burden of transferring defendants back to the Federal District in which the abduction took place. Because of the current state of the federal budget, it is unlikely that the federal government would be willing or able to absorb those costs.

Further, any transfer of criminal authority in this area would be hampered by the fact that the federal judges have limited experience in collateral child custody matters. Federal officials have no authority to pick up a child and no facilities for housing a child pending the return of the child to the custodial parent.

Recommendations

Given these competing considerations, perhaps it would be possible to seek compromises and complementary federal legislation. The federal government can do much to encourage the states to work together to address the gaps and inconsistencies and resulting problems.

Congress should enact federal legislation to encourage the development of a Uniform Criminal Parental Kidnapping Act and to encourage the development of, and provide funding for, organizations to promote cooperation and information-sharing between federal, state, and local law enforcement agencies in parental kidnapping cases. Such federal legislation should also encourage, and provide funding for training of police, prosecutors, judges, and associated criminal justice professionals in parental kidnapping cases.

The Federal Bureau of Investigation should also be directed to develop a program designed to assist state and local law enforcement officials obtain information essential to locate the abductor who has removed the child from the state and who is successfully concealing their whereabouts.

III. Conclusion

As in the case of civil laws applicable to child abduction, the effective prosecution of criminal parental kidnapping cases is thwarted by: (1) lack of specificity and uniformity in state criminal statutes and (2) widespread inexperience among prosecutors in using these statutes. The Digest of Key Issues that follows should help overcome knowledge gaps for law enforcement officers and prosecutors who investigate and prosecute cases under the many different statutes.

Appendix A:

DIGEST OF KEY ISSUES IN THE CRIMINAL PROSECUTION OF PARENTAL KIDNAPPING

by Janet Kosid Uthe, Esq.

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Appendix A:

DIGEST OF KEY ISSUES IN THE CRIMINAL PROSECUTION OF PARENTAL KIDNAPPING

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Users' Note: Readers should be aware that the cases cited herein were decided on the basis of statutes in effect at the time the case was charged. Subsequent legislative amendments may change the result in cases with similar facts. Consult current criminal parental kidnapping law.

Pre-decree Abductions - Can a Parent be Liable for Criminal Custodial Interference Before the Issuance of a Custody Order?

Several states have now enacted legislation to prohibit custodial interference before a custody order has been issued under certain circumstances. (See, e.g., California, District of Columbia, Florida, Idaho, Illinois, Massachusetts, Minnesota, Missouri, Montana, Texas, Washington, and Wisconsin.) However, absent such specific legislation, the prevailing view is that, in the absence of a custody order, both parents are equally entitled to the custody of the child and action by one to exercise exclusive custody does not violate the custodial interference statutes.

This view is being challenged by a still small number of court decisions holding that, in the absence of a custody order, each parent has, at most, a co-equal right of custody. Action by one to take exclusive possession of the child deprives the other parent of his or her equal right to custody. These courts have found that a pre-decree abduction violates the custodial interference statute.

No Liability for Pre-Decree Abduction

California:
Wilborn v. Superior Court, 51 Cal. 2d 828, 337 P.2d 65 (Cal. 1959).
(The statute was subsequently amended to criminalize pre-decree abduction.)

Colorado:
Armendariz v. People, 711 P.2d 1268 (Colo. 1986).

Iowa:
State v. Dewey, 136 N.W. 533 (Iowa 1912).

Kansas:
State v. Al-Turck, 552 P.2d 1375 (Kan. 1976).

Massachusetts:
Commonwealth v. Beals, 541 N.E.2d 1011 (Mass. 1989).

Mississippi:
State v. Powe, 66 So. 207 (Miss. 1914).

Missouri:
State v. Huhn, 142 S.W.2d 1064 (Mo. 1940).
(Persuasive dissent by the Chief Justice.)
New York:
People v. Workman, 157 N.Y.S. 594 (N.Y. 1916).
People v. McDonald, 554 N.Y.S.2d 394 (N.Y. Sup. 1990).
Pennsylvania:
Commonwealth v. Stewart (James), 543 A.2d 572 (Pa. Super. Ct. 1988).
(Custody order was issued, but not properly served.)
Washington:
State v. LaCaze, 630 P.2d 436 (Wash. 1981).

Liability Despite Lack of Custody Order

Arizona:
State v. Donahue, 680 P.2d 191 (Ariz. Ct. App. 1984) (Dicta)
Delaware:
State v. Todd, 509 A.2d 1112 (Del. Super. Ct. 1986).

Can Nonparents be Charged with Abducting a Child from a Parent if No Custody Order Exists Giving the Parent Legal Custody?

Not liable:
California:
People v. Bormann, 6 Cal. App. 3d 292, 85 Cal. Rptr. 638 (1970) (Mother's former boyfriend not liable).
Liable:
Arizona:
State v. Grooms, 702 P.2d 191 (Ariz. 1985) (Stepfather liable).
Ohio:
State v. White, 189 N.E.2d 160 (Ohio Ct. App. 1962) (Stepfather liable).

Can a Parent Who Has Joint Custody be Liable for Custodial Interference?

Can a parent with joint custody be convicted of custodial interference? Does it make a difference if the joint custody order is for joint legal or joint physical custody?

The reported cases of prosecution for violation of a joint custody order uniformly have found that a prosecution can validly be maintained. The joint custodian has, at best, a co-equal right to custody with the other parent. An exercise of exclusive right to possession of the child by one parent violates the rights of the other parent and the interest of the child in maintaining a relationship with both parents. As such, an abduction by a joint custodian violates the purposes of the statute.

The more explicit the order is in specifying the division of parenting time and the child's residential arrangements, the more likely it is that a prosecution will be successful. Minor ambiguities, however, should not deter a prosecutor. See People v. Lortz, 137 Cal. App. 3d 363, 187 Cal. Rptr. 89 (1982) (Challenge to specificity of reasonable visitation denied).

Cases Holding that a Joint Custodial Parent Who Abducts a Child is Liable for Custodial Interference

California:
People v. Irwin, 155 Cal. App. 3d 891, 202 Cal. Rptr. 475 (1984).
(Joint legal custody does not authorize a parent to deprive the physical custodian of physical custody.)
Illinois:
People v. Harrison, 402 N.E.2d 822 (Ill. App. Ct. 1980).
New Mexico:
State v. Whiting, 671 P.2d 1158 (N.M. Ct. App. 1983).
New York:
People v. Morel, 566 N.Y.S.2d 653 (N.Y. App. Div. 1991).
(Joint legal custody does not authorize a parent to deprive the physical custodian of physical custody.)
Oregon:
State v. West, 688 P.2d 406 (Or. Ct. App. 1984).

For a similar analysis, see also:

Arizona:
State v. Donahue, 680 P.2d 191 (Ariz. Ct. App. 1984).
Delaware:
State v. Todd, 509 A.2d 1112 (Del. Super. Ct. 1986).

Cases Holding that a Joint Custodial Parent Who Abducts a Child is Not Liable for Custodial Interference

None.

Parental Liability for Kidnap or False Imprisonment

What are the appropriate charges? Is custodial interference the only appropriate charge? If a parent cannot be charged with conspiracy to abduct his or her own child, can that parent be charged as a principal to kidnapping? Can a parent be charged with false imprisonment of his or her own child? The answers are not consistent.

False Imprisonment

Arizona:

State v. Lawrence, 663 P.2d 580 (Ariz. Ct. App. 1982).
(A parent cannot be charged with false imprisonment of her own child.)

California:

People v. Rios, 177 Cal. App. 3d 445, 222 Cal. Rptr. 913 (1986).
(A parent can be charged with false imprisonment of his or her own minor child.)

Florida:

State v. Badalich, 479 So. 2d 197 (Fla. Dist. Ct. App. 1985).
(Natural father cannot be charged with false imprisonment for abduction of his own child. He is, however, properly charged with custodial interference.)

Washington:

State v. Thomas, 668 P.2d 1294 (Wash. Ct. App. 1983).
(The specific custodial interference statute (misdemeanor) applies in lieu of the general unlawful restraint statute (felony).)

Kidnap

Arizona:

State v. Wilhite, 772 P.2d 582 (Ariz. Ct. App. 1989).
(Father whose parental rights had previously been terminated is no longer a parent and can be charged with crimes carrying a higher penalty.)

State v. Viramontes, 788 P.2d 67 (Ariz. 1990).
(In order to prevent others from learning of his incestuous relationship with his stepdaughter, Defendant kidnapped and abandoned the infant she bore him. In sustaining his conviction of kidnap, the court held that a parent cannot exercise his lawful authority over a child in order to commit unlawful acts upon the child such as abandonment.)

Colorado:

Lee v. People, 127 P. 1023 (Colo. 1912).
(Conviction of noncustodial parent for kidnapping sustained. No specific custodial interference statute enacted. There is a good discussion for policy in this opinion.)

Kansas:

In re Peck, 72 P. 265 (Kan. 1903).
(General kidnapping statute applies to noncustodial parent. This case was decided prior to the enactment of the more specific custodial interference statute.)

Maine:

State v. Benner, 385 A.2d 48 (Me. 1978).
(The more specific custodial interference statute must be charged instead of kidnapping.)

Minnesota:

State v. Alladin, 408 N.W.2d 642 (Minn. Ct. App. 1987).
(Parent can be charged with kidnapping own child despite more specific custodial interference statute.)

Tennessee:

State v. Holtcamp, 614 S.W.2d 389 (Tenn. Crim. App. 1980).
(General kidnapping statute applies to parents.)
State v. Sammons, 656 S.W.2d 862 (Tenn. Crim. App. 1982).
(General kidnapping statute applies to parents.)

Rights of Unwed Fathers

Decisions in this area vary widely and often are dependent upon the existence of statutory or common law protections affecting the rights of unwed fathers. State statutes or other common law protections awarding custody of children born out of wedlock to the mother unless there is a court order to the contrary can also determine the outcome. Some cases may be affected by the manner in, and extent to which the father has acknowledged the child prior to the abduction.

To date, all constitutional challenges to gender-based differences in the statutory presumptions of custody rights of unwed parents have been denied. The courts have concluded that these distinctions serve important governmental purposes and there is a rational basis for the existence of such distinctions.

In many cases, the issue is whether an unwed father should be charged with custodial interference as a parent, or with kidnapping or false imprisonment as a "stranger." In these cases, the extent to which Defendant is acknowledged to be a parent can be an important factor.

Cases Denying Equal Protection Challenge to Gender-Based Discrimination in Custody Statutes

California:

People v. Carillo, 162 Cal. App. 3d 587, 208 Cal. Rptr. 684 (1984).

Illinois:

People v. Morrison, 584 N.E.2d 509 (Ill. App. Ct. 1991).
(Challenge to both equal protection and due process grounds denied. The statute was unconstitutionally applied to Defendant because he had been an active parent prior to the abduction.)

Wisconsin:

State v. Hill, 283 N.W.2d 451 (Wis. Ct. App. 1979).

What is the Proper Charge?

California:

People v. Johnson, 151 Cal. App. 3d 1021, 199 Cal. Rptr. 231 (1984).
(Conviction of child abduction by person with no right of custody reversed. Defendant had maintained a parental relationship with the children.)

People v. Carillo, 162 Cal. App. 3d 587, 208 Cal. Rptr. 684 (1984).
(Conviction of child abduction by person with no right of custody upheld. Defendant denied paternity and had no relationship with the child prior to the abduction. The mother had custody by operation of law.)

Florida:

State v. Badalich, 479 So. 2d 197 (Fla. Dist. Ct. App. 1985).
(Charges of false imprisonment dismissed. Charges of misdemeanor custodial interference reinstated. Paternity was acknowledged by the Defendant prior to the abduction and conceded by the State. The mother had custody by operation of law.)

Illinois:

People v. Shephard, 525 N.E.2d 456 (Ill. App. Ct. 1988).
(Defendant was charged with aggravated kidnap and custodial interference. Defendant was found not guilty by the jury of aggravated kidnap, but guilty of custodial interference. Defendant had minimally acknowledged the child prior to the abduction, but had taken no responsibility for the child's care. Conviction of custodial interference upheld. The mother had custody by operation of law.)

Michigan:

People v. Reynolds, 429 N.W.2d 662 (Mich. Ct. App. 1988).
(Charges of parental abduction were reinstated and Defendant was remanded for trial. Defendant was acknowledged to be the child's father, but the mother had custody by operation of law.)

Oregon:

State v. Keaton, 516 P.2d 490 (Or. Ct. App. 1973); reh'g. denied, 1974.
(Defendant was charged with first degree kidnap. The jury convicted of second degree kidnap as a necessarily lesser included offense. Defendant denied paternity. The Defendant may have been trying to extort a dismissal of the paternity action.)

Wisconsin:

State v. Hill, 283 N.W.2d 451, (Wis. Ct. App. 1979).
(Defendant was convicted of custodial interference. Defendant had acknowledged the child and had maintained a parental relationship with the child. The mother had custody by operation of law.)

Agent/Accomplice Liability

The States have been divided on the question of whether a parent's immunity from liability for kidnapping or for pre-custody decree parental kidnapping will extend to an agent or accomplice of the abductor parent. In general, the decisions seem influenced by the following factors: Is the agent/accomplice a relative of the abductor parent? Is the abductor parent present to take immediate charge of the child? Will the child be in the presence of a stranger for some undetermined period of time following the abduction?

Agent/Accomplice Held Criminally Liable

Alaska:
Crump v. State, 625 P.2d 857 (Alaska 1981).
Arizona:
State v. McLaughlin, 611 P.2d 92 (Ariz. 1980).
State v. Donahue, 680 P.2d 191 (Ariz. Ct. App. 1984).
California:
Wilborn v. Superior Court, 51 Cal. 2d 828, 337 P.2d 65 (Cal. 1959).
People v. Carillo, 162 Cal. App. 3d 587, 208 Cal. Rptr. 684 (1984).
Massachusetts:
Commonwealth v. Nickerson, 87 Mass. 518 (1862).
Commonwealth v. Bresnahan, 150 N.E. 882 (Mass. 1926).

Agent/Accomplice Held Not Criminally Liable

Idaho:
State v. Breslin, 112 P. 1053 (Idaho 1911).
Iowa:
State v. Dewey, 136 N.W. 533 (Iowa 1912).
Kansas:
State v. Angell, 21 P. 1075 (1889).
Louisiana:
State v. Elliott, 131 So. 28 (La. 1930).
Michigan:
People v. Nelson, 33 N.W.2d 786 (Mich. 1948).
New Jersey:
State v. Stockdale, 350 A.2d 539 (N.J. Super. Ct. 1974).
New York:
People v. Workman, 157 N.Y.S. 594 (N.Y. 1916).
North Carolina:
State v. Walker, 241 S.E.2d 89 (N.C. Ct. App. 1978).

Parental Liability for Conspiracy to Abduct

If a parent is not liable for parental kidnapping, either because the offense occurred prior to the issuance of a custody order or because the U.S. Attorney has sought to bring the action

under the federal kidnapping statute (18 U.S.C. 1201), can a parent be subject to liability for conspiracy to kidnap? The courts to date have held that the legislatures did not intend for parents to be liable for conspiracy.

Parent Liable for Conspiracy to Abduct Own Child

None.

Parent Not Liable for Conspiracy to Abduct Own Child

Alaska:
Lythgoe v. State, 626 P.2d 1082 (Alaska 1980).
Federal Court:
U.S. v. Boettcher, No. 84-5301, slip. op. (4th Cir. 1985).

What is a "Custody Order?"

The question of what constitutes a "custody order" within the meaning of the criminal statute has been litigated in several State courts. Is an ex parte order sufficient? Is a stipulation sufficient? Is a temporary order sufficient? Does the Department of Social Services automatically have custody once children have been placed into protective custody?

The modern cases appear to hold that if custody has been established in any manner by the courts or by state law and the Defendant has knowledge of the custody rights of the other parent, a prosecution can validly be maintained. Some of the older cases are not in accord.

Custody Order Sufficient to Trigger Liability for Violation

California:
People v. Irwin, 155 Cal. App. 3d 891, 202 Cal. Rptr. 475 (1984).
(Joint legal custody did not protect joint custodian from prosecution for violation of statute aimed at protecting rights of physical custody.)
Idaho:
State v. Chapman, 702 P.2d 879 (Idaho Ct. App. 1985).
(A temporary custody order is sufficient.)
Kansas:
State v. Al-Turck, 552 P.2d 1375 (Kan. 1976).
(Temporary custody order is sufficient (Dicta).)
New York:
People v. Morel, 566 N.Y.S.2d 653 (N.Y. App. Div. 1991).
(Stipulation is sufficient.)
North Dakota:
State v. Patten, 353 N.W.2d 30 (N.D. 1984).
(A temporary custody order is sufficient (Dicta).)

State v. Rathjen, 455 N.W. 2d 845 (N.D. 1990).
(A sister state decree is sufficient.)

Oregon:

State v. Gambone, 763 P.2d 188 (Or. Ct. App. 1988).
(The Department of Social Services has automatic custody once it takes children into protective services. Its custody rights continue until the expedited detention hearing.)

Wisconsin:

State v. Britzke, 324 N.W.2d 289 (Wis. Ct. App. 1982), aff'd., 329 N.W.2d 207 (Wisc. 1983).
(Conviction of mother who retained legal custody was upheld when the grandmother had been awarded physical custody by the Juvenile Courts.)

Custody Orders Not Sufficient to Trigger Liability for Custodial Interference

California:

People v. Johnson, 151 Cal. App. 3d 1021, 199 Cal. Rptr. 231 (1984).
(Ex parte order that was never served upon Defendant not sufficient.)
People v. Barber, 1 Cal. App. 4th 793, 2 Cal. Rptr. 403 (1991).
(Restraining order is not sufficient.)

Georgia:

Adams v. State, 126 S.E.2d 624 (Ga. 1962).
(Temporary custody orders are not sufficient as they are not a permanent determination of the rights of the parents.)

Illinois:

People v. Dworzanski, 580 N.E.2d 1263 (Ill. App. Ct. 1991).
(When the Defendant is charged with violation of Ill. Crim. Code 10-5(b)(2), the order must prohibit concealment or detention of the child.)

Indiana:

Cook v. State, 547 N.E.2d 1118 (Ind. Ct. App. 1989).
(Statute that prohibits removal of the child from the State in violation of a custody order is only triggered when the custody order itself prohibits removal of the child from the State.)

Mississippi:

State v. Powe, 66 So. 207 (Miss. 1914).
(Stipulation between the parties not sufficient. Note: Stipulations today are commonly submitted to the court to confirm them as court orders. A stipulation that has been confirmed as a court order should suffice to trigger criminal liability.)

Proof of Knowledge of Custody Order

Is personal service the only way to prove that Defendant had knowledge of the custody order he or she is accused of violating? No. Knowledge can be proven by many kinds of evidence, including circumstantial evidence.

It is important, however, to distinguish between the concept of proof of service, by which notice of the custody proceeding is given to the respondent in the custody action, and proof of knowledge that a valid custody order has been made by a court of competent jurisdiction.

If a defendant has actual knowledge of the existence of the court order, that should be sufficient even if Defendant has never been personally served with the order. The issue here is knowledge of the valid custody order--not notice of the custody proceeding.

A few of the older cases did not require knowledge of the custody order. These cases imposed upon a defendant the obligation to ascertain the outcome of the pending custody action. Failure to do so resulted in liability for criminal custodial interference.

Cases Holding Actual Knowledge is Sufficient

California:

People v. Hyatt, 18 Cal. App. 3d 618, 96 Cal. Rptr. 156 (1971).
(This is an excellent example of the use of circumstantial evidence to prove knowledge of the custody order.)

Illinois

People v. Sherleen Rodriguez, 523 N.E.2d 185 (Ill. App. Ct. 1988).
("I didn't believe it" was insufficient defense.)

New York:

People v. Lawrow, 447 N.Y.S.2d 213 (N.Y. App. Div. 1982).

Pennsylvania:

Commonwealth v. Stewart (James), 543 A.2d 572 (Pa. Super. Ct. 1988).

Defendant Has Obligation to Ascertain Custody

Kansas:

State v. Taylor, 264 P. 1069 (Kan. 1928).

Massachusetts:

Commonwealth v. Bresnahan, 150 N.E. 882 (Mass. 1926).

Criminal Intent

Several cases have examined the element of intent in custodial interference cases. A few States require proof of the specific intent to deprive the other parent of contact with the child in addition to proof that the abductor intended to violate the custody order. Other States, however, merely require proof of the general intent, i.e., that the abductor intended to violate the order.

Various reasons have been offered by defendants to justify their violations of the custody order. Mistake of law, mistake of fact, and necessity have been determined by the courts to negate criminal intent.

Cases Requiring Specific Intent

Arizona:

State v. Kracker, 599 P.2d 250, 123 Ariz. 294 (Ariz. Ct. App. 1979).

California:

People v. McGinnis, 55 Cal. App. 2d 931 (1942). (Intent may be proven by circumstantial evidence.)

People v. Hyatt, 18 Cal. App. 3d 618, 96 Cal. Rptr. 156 (1971).

People v. Lortz, 137 Cal. App. 3d 363, 187 Cal. Rptr. 89 (1982).

People v. Johnson, 151 Cal. App. 3d 1021, 199 Cal. Rptr. 231 (1984).

People v. Howard, 686 P.2d 644 (Cal. 1984). (The concurring and dissenting opinions contain an extensive discussion of the element of intent required by Cal. Penal Code § 278.)

People v. Grever, 211 Cal. App. 3d Supp. 1, 259 Cal. Rptr. 469 (Cal. App. Dep't Super. Ct. 1989).

Ohio:

State v. Wengatz, 471 N.E.2d 185 (Ohio Ct. App. 1984).

Tennessee:

State v. Holtcamp, 614 S.W.2d 389 (Tenn. Crim. App. 1980).

Washington:

State v. Lund, 821 P.2d 508 (Wash. Ct. App. 1991). (Intent to hold child as bait to extort reconciliation is sufficient evidence of intent to deny access to child to former spouse.)

Cases Requiring General Criminal Intent

Illinois:

People v. Sherleen Rodriguez, 523 N.E.2d 185 (Ill. App. Ct. 1988).

People v. Dworzanski, 580 N.E.2d 1263 (Ill. App. Ct. 1991).

Massachusetts:
Commonwealth v. Nickerson, 87 Mass. 518 (1862).
Wisconsin:
State v. Britzke, 324 N.W.2d 289 (Wis. Ct. App. 1982).

Defenses Negating Intent

California:
People v. Johnson, 151 Cal. App. 3d 1021, 199 Cal. Rptr. 231 (1984) (Mistake of law).
People v. Howard, 686 P.2d 644 (Cal. 1984) (Mistake of law).
People v. Grever, 211 Cal. App. 3d Supp. 1, 259 Cal. Rptr. 469 (Cal. App. Dep't. Super. Ct. 1989) (Mistake of law).
People v. Flora, 228 Cal. App. 3d 662, 279 Cal. Rptr. 17 (1990) (Mistake of law).
North Carolina:
State v. Walker, 241 S.E.2d 89 (N.C. Ct. App. 1978) (Mistake of fact).
North Dakota:
State v. Patten, 353 N.W.2d 30 (N.D. 1984) (Mistake of fact).

Collateral Attack on Validity of Custody Order

Some criminal courts refuse to allow the Defendant to collaterally attack the validity of the custody order. If the custody order was issued and the Defendant had knowledge of the order, defendant's remedy is to move to set aside or to appeal the order. The defendant is not allowed to subjectively determine that the order is invalid and disregard it.

Cases Rejecting Collateral Attack on the Custody Order

Arizona:
State v. Kracker, 599 P.2d 250, 123 Ariz. 294 (Ariz. Ct. App. 1979).
State v. McLaughlin, 611 P.2d 92 (Ariz. Ct. App. 1980).
California:
People v. Beach, 194 Cal. App. 3d 955, 240 Cal. Rptr. 50 (1987).
Colorado:
People v. Coyle, 654 P.2d 815 (Colo. 1982).
Illinois:
People v. Sherleen Rodriguez, 523 N.E.2d 185 (Ill. App. Ct. 1988).
Oregon:
State v. Rose, 706 P.2d 583 (Or. Ct. App. 1985).

Extraterritorial Jurisdiction

May a State prosecute custodial interference when the acts of interference occurred entirely outside of the charging State? This issue arises often in custodial interference cases. Children are routinely sent to visit a parent residing in another state and then not returned by the noncustodial parent. The increasing mobility of the U.S. population guarantees that this issue will arise frequently.

The majority of the courts considering this issue have permitted prosecution based on expanded jurisdictional statutes authorizing prosecution if an act is intended to, and does, produce a detrimental effect in that State. The U.S Supreme Court decision of Strassheim v. Dailey, 221 U.S. 280 (1911) is frequently cited as authority for the constitutionality of this position.

Wyoming found that prosecution was permissible despite the lack of a statute expanding territorial jurisdiction. The Wyoming court determined that there was no constitutional impediment to such an assertion of jurisdiction and upheld the conviction. Rios v. State, 733 P.2d 242 (Wyo. 1987).

California, in People v. Gerchberg (cited below), had interpreted its jurisdictional statute narrowly and required acts amounting to an attempt before it would find criminal jurisdiction. Subsequent legislative amendments in California now specifically authorize the extension of jurisdiction in child stealing cases (Cal. Penal Code § 279(e)).

Minnesota, in State v. McCormick (cited below), declared its custodial interference statute to be invalid based on an impermissible assertion of extraterritorial jurisdiction. The Minnesota statute criminalized custodial interference only if the child was removed from the State of Minnesota. Since the only criminal conduct that could occur under that statute must occur outside the State of Minnesota, the entire statute was rendered unenforceable. Minnesota amended its criminal parental abduction statute ("Depriving another of custodial or parental rights") subsequent to the McCormick decision. North Dakota, however, termed such a result absurd and refused to interpret its statute in that manner. See State v. Rathjen, 455 N.W.2d 845 (N.D. 1990).

Cases Upholding Jurisdiction

Alaska:

Wheat v. State, 734 P.2d 1007 (Alaska Ct. App. 1987).

Illinois:

People v. Caruso, 519 N.E.2d 440 (Ill. 1987).

Florida:
State v. Costa, 558 So. 2d 525 (Fla. Dist. Ct. App. 1990).
Michigan:
People v. Harvey, 435 N.W.2d 456 (Mich. Ct. App. 1989).
North Dakota:
State v. Rathjen, 455 N.W.2d 845 (N.D. 1990).
Texas:
Roberts v. State, 619 S.W.2d 862 (Tex. Crim. App. 1981).
Wyoming:
Rios v. State, 733 P.2d 242 (Wyo. 1987).

Cases Refusing to Allow Assertion of Extraterritorial Jurisdiction

California:
People v. Bormann*, 6 Cal. App. 3d 292, 85 Cal. Rptr. 638 (1970).
People v. Gerchberg*, 131 Cal. App. 3d 618, 181 Cal. Rptr. 505 (1982).
(*Note: Subsequently enacted statute would change the result.)
Idaho:
State v. Cochran, 538 P.2d 791 (Idaho 1975).
Compare State v. Chapman, 702 P.2d 819 (Idaho Ct. App. 1985).
(Defendant formed no intent and initiated the abduction in Idaho.)
Minnesota:
State v. McCormick, 273 N.W.2d 624 (Minn. 1978).

Is Custodial Interference a Continuing Offense?

Is custodial interference an offense that concludes the day the child is taken from the custodial parent? Or is it an offense that continues with each day that the child is withheld from the custodial parent in violation of the custody order? If an abductor succeeds in concealing his or her whereabouts and those of the child for a period in excess of the statute of limitations, has the abductor succeeded in beating the system? If the statutes are amended to authorize higher penalties and allow access to law enforcement tools (such as UFAP warrants and extradition) during the time the abductor is detaining the child in violation of the custody order, is prosecution under the newer statutes an ex post facto application of the law?

The courts have generally considered custodial interference to be a continuing offense. It recurs anew each day the child is withheld from the custodial parent in violation of the custody order. This result, however, is only permissible if the State custodial interference statute criminalizes conduct other than the initial "taking."

Cases Holding Custodial Interference to Be a Continuing Offense

California:
People v. Hyatt, 18 Cal. App. 3d 618, 96 Cal. Rptr. 156 (1971).
People v. Irwin, 155 Cal. App. 3d 891, 202 Cal. Rptr. 475 (1984).
People v. Del Love, 203 Cal. App. 3d 1425, 251 Cal. Rptr. 6 (1988).
Illinois:
People v. Caruso, 519 N.E.2d 440 (Ill. 1987).
Michigan:
People v. Harvey, 435 N.W.2d 456 (Mich. Ct. App. 1989).
Oregon:
State v. Rose, 706 P.2d 583 (Or. Ct. App. 1985).
Pennsylvania:
Commonwealth v. Stewart (May), 544 A.2d 1384 (Pa. Super. Ct. 1988).

Cases Holding that Custodial Interference is Not a Continuing Offense

California:
People v. Bormann, 6 Cal. App. 3d 292, 85 Cal. Rptr. 638 (1970).
(Penal Code § 278 has been amended since this case was decided. Cf. People v. Irwin, supra.)
New York:
People v. McDonald, 554 N.Y.S.2d 394 (N.Y. Sup. Ct. 1990).
Ohio:
State v. White, 189 N.E.2d 160 (Ohio Ct. App. 1962) (Dicta).

Extradition

Extradition is governed by the terms of the Uniform Extradition Act and the cases interpreting that Act. Based on two U.S. Supreme Court cases interpreting that Act (Kentucky v. Dennison, 24 How. 66 (Ky. 1861) and Michigan v. Doran, 439 U.S. 282 (1978)) the courts overwhelmingly limit their consideration of a defendant's contentions to: a) whether the extradition documents on their face are in order; b) whether the defendant has been charged with a crime in the demanding state; c) whether the defendant is the person named in the request for extradition; and d) whether the defendant is a fugitive.

Earlier cases allowed asylum courts some latitude to examine the underlying charges of the demanding state to determine if defendant was "substantially charged with a crime." However, the recent parental kidnapping case of California v. Superior Court of San Bernadino County (Smolin et. al.), 482 U.S. 400 (1987), rejected this practice. As this case was an extradition

on custodial interference charges and presented a most sympathetic case for consideration of the validity of the demanding state's underlying criminal charges, it appears that courts will, in the future, likely confine their inquiry to the above-listed four elements.

Cases Allowing Extradition

Arizona:
Golden v. Dupnik, 726 P.2d 1096 (Ariz. Ct. App. 1986).
California:
California v. Superior Court of San Bernadino County (Smolin et. al.), 482 U.S. 400 (1987).
Idaho:
Kerr v. Watson, 649 P.2d 1234 (Idaho Ct. App. 1982).
Iowa:
Thoman v. Harris, 20 N.W.2d 22 (Iowa 1945).
Nebraska:
State ex. rel. Partin v. Jensen, 279 N.W.2d 120 (Neb. 1979).
Ohio:
State ex. rel. Gilpin & Armell v. Stokes, 483 N.E.2d 179 (Ohio Ct. App. 1984).
Texas:
Wray v. State, 624 S.W.2d 573 (Tex. Crim. App. 1981).
West Virginia:
Cronauer v. State, 322 S.E.2d 862 (W. Va. 1984).

Cases Granting Writ of Habeas Corpus and Denying Extradition

New Jersey:
Ex Parte Kelsey, 21 A.2d 676 (N.J. Court of Common Pleas, 1941).
New York:
People ex. rel. Kuzner v. N.Y.P.D. 102 N.Y.S.2d 614 (N.Y. Sup. Ct. 1950).
See also discussion in Cronauer v. State of antecedent extradition proceedings in North Carolina. 322 S.E.2d 862 (W. Va. 1984).

Issuance of UFAP Warrant

In most felony criminal offenses, when a suspect has left the original state to avoid prosecution, prosecutors can request the issuance of a federal Unlawful Flight to Avoid Prosecution (UFAP) warrant. Following issuance of this federal UFAP warrant, the F.B.I. provides assistance to the state law enforcement authorities in locating the fugitive.

Prior to 1980, the U.S. Department of Justice refused to issue UFAP warrants in cases of parental abduction. The U.S.

Department of Justice took this position because Congress had always refused to make parental kidnapping a federal offense.

In 1980, however, the federal Parental Kidnapping Prevention Act was passed by Congress (Pub. L. No. 96-611). That Act instructed the U.S. Department of Justice to issue UFAP warrants on the application of state law enforcement authorities in felony parental kidnapping cases. 18 U.S.C. § 1073.

In response to the enactment of the federal Parental Kidnapping Prevention Act, the U.S. Department of Justice promulgated guidelines for the issuance of UFAP warrants in cases of parental abduction. The guidelines required independent evidence of risk of harm to the child before a UFAP warrant would be issued. In 1984, the U.S. Department of Justice revised its guidelines and UFAP warrants are now issued in parental abduction cases under the same circumstances as other felony crimes.

Before a federal UFAP warrant will be issued, certain prerequisites must be met in all types of cases:

- The underlying state crime must be a felony charge;
- There must be probable cause to believe that the felon has left the state;
- The prosecutor must guarantee that the state will prosecute the crime once the offender is located;
- The prosecutor must guarantee that the state will extradite once the offender is located.

Cases Denying Issuance of UFAP Warrant

Federal:
Beach v. Smith, 535 F. Supp. 560 (S.D. Cal. 1982).

Cases in Which Assistance was Given by the F.B.I.

California:
People v. Pointer, 151 Cal. App. 3d 1128, 199 Cal. Rptr. 357 (1984).
Colorado:
People v. Tippett, 733 P.2d 1183 (Colo. 1987).
Massachusetts:
Commonwealth v. Beals, 541 N.E.2d 1011 (Mass. 1989).
Minnesota:
State v. McCormick, 273 N.W.2d 624 (Minn. 1978).
North Dakota:
State v. Patten, 366 N.W.2d 459 (N.D. 1985).
(See also, 353 N.W.2d 30 (N.D. 1984) and 380 N.W.2d 346 (N.D. 1986).)
Ohio:
State v. Wengatz, 471 N.E.2d 185 (Ohio Ct. App. 1984).

Pennsylvania:
Commonwealth v. Stewart (James), 543 A.2d 572 (Pa. Super. Ct. 1988).
Commonwealth v. Stewart (May), 544 A.2d 1384 (Pa. Super. Ct. 1988).
South Dakota:
State v. Rome, 426 N.W.2d 19 (S.D. 1988).
Federal Court:
Rykers v. Alford, 832 F.2d 895 (5th Cir. 1987).

Other Federal Assistance

Immigration and Naturalization Service

Kansas:
State v. Al-Turck, 552 P.2d 1375 (Kan. 1976).
Wyoming:
Rios v. State, 733 P.2d 242 (Wyo. 1987).

International Extradition (U.S. Department of Justice, Criminal Division, Office of International Affairs)

Florida:
State v. Costa, 558 So. 2d 525 (Fla. Dist. Ct. App. 1990).

Double Jeopardy Arising From Prior Adjudication of Contempt

Defendants who have been held in contempt of family law custody orders and who have been sentenced to jail as punishment for their contemptuous actions have raised this issue as a bar to prosecution in several States. Few courts have been receptive to this argument.

Family law courts have the authority to ensure compliance with their orders by punishing those who disobey the orders. Family law judges have the authority to sentence civil contemnors to jail in appropriate cases. Several factors distinguish a civil contempt from a criminal contempt.

Civil contempt is an action brought to enforce compliance with court orders for the benefit of private litigants. Usually civil contempt proceedings are brought by the private litigant and not by the State. The purpose of a civil contempt action is to coerce obedience to court orders and not to punish an offense against the public weal.

Several courts noted that there was a tremendous potential for defendants to delay the court proceedings until they had been adjudged in contempt by the family law courts. Thereafter the defendants could plead double jeopardy and suffer only the civil

contempt penalties. The courts did not feel that the penalties for civil contempt were sufficient to vindicate the State's interests in serious cases of abduction.

The recent U.S. Supreme Court decisions in Grady v. Corbin, 495 U.S.___, 110 S. Ct. 2084, 109 L. Ed. 2d 548 (1990) may have an impact on this line of cases. The Grady case held that the Double Jeopardy Clause bars any subsequent prosecution in which the government will prove conduct that constitutes an offense for which the defendant has already been prosecuted.

No custodial interference case has considered the impact of Grady yet. However, recent decisions in domestic violence cases, illustrate the application of Grady by analogy: in these cases, double jeopardy barred prosecution. See, e.g., State v. Vanselow, 572 N.E.2d 269 (Ohio Mun. 1991), State v. Magazine, 393 S.E.2d 385 (S.C. 1990), and State v. Kipi, 811 P.2d 815, cert. denied, ___U.S.___, 112 S. Ct. 194, 116 L. Ed. 2d 154 (1991).

Double Jeopardy Bars Prosecution

Illinois:
People v. Rolando Rodriguez, 514 N.E.2d 1033 (Ill. App. Ct. 1987).
In re D'Attomo v. D'Attomo, 570 N.E.2d 796 (Ill. App. Ct. 1991).
(Subsequent criminal contempt barred by antecedent custodial interference prosecution.)
Louisiana:
State v. Hope, 449 So. 2d 633 (La. Ct. App. 1984).

Double Jeopardy Does Not Bar Prosecution

California:
People v. Derner, 182 Cal. App. 3d 588, 227 Cal. Rptr. 344 (1986).
People v. Batey, 183 Cal. App. 3d 1281, 228 Cal. Rptr. 787 (1986).
Illinois:
People v. Doherty, 518 N.E.2d 1303 (Ill. App. Ct. 1988).
Ohio:
State v. Kimbler, 509 N.E.2d 99 (Ohio Ct. App. 1986).
Tennessee:
State v. Sammons, 656 S.W.2d 862 (Tenn. Crim. App. 1982).
(Dicta.)

Necessity as a Defense:
Protecting Child From Imminent Harm

Several defendants have raised the issue of necessity as a justification for their actions. Some of these defendants have alleged child abuse and sexual molestation as grounds for their

actions. As one judge noted, "Unfortunately, child abuse by some parents is a too frequent occurrence. All parent-child relationships are not idyllic and loving. The legislature has wisely provided that the concealment of a child by one parent from the other parent is justified if done to 'protect the child from imminent physical harm.'" State v. McCoy, 421 N.W.2d 107 (Wisc. 1988).

But who is to determine if the child is being harmed? Must the necessity of protecting the children be objectively apparent to a reasonable juror? Or is it sufficient if the defendant held a subjective belief in necessity? How imminent is imminent? How long can a defendant claim that his or her actions were necessary?

Necessity must be apparent to a reasonable person and the action must be taken to avert imminent harm. It is not sufficient that defendant subjectively believes that his or her actions were necessary to protect the children.

Further, the defendant is protected only until he or she reaches a position of safety. Thereafter, he or she must resort to lawful means of protecting the children. The law will not countenance the violation of custody orders at the subjective discretion of the defendant.

Several states, however, have enacted laws expanding this defense in cases of domestic violence or abuse.

Cases in which defense of necessity (i.e., imminent harm to child) raised. Results vary.

Alaska:
Gerlach v. State, 699 P.2d 358 (Alaska Ct. App. 1985).
California:
People v. Beach, 194 Cal. App. 3d 955, 240 Cal. Rptr. 50 (1987).
People v. Grever, 211 Cal. App. 3d Supp. 1, 259 Cal. Rptr. 469 (Cal. App. Dep't. Super. Ct. 1989).
Colorado:
People v. Tippett, 733 P.2d 1183 (Colo. 1987).
Illinois:
People v. Welacha, 542 N.E.2d 927 (Ill. App. Ct. 1989).
People v. Dworzanski, 580 N.E.2d 1263 (Ill. App. Ct. 1991).
Oregon:
State v. Easton, 582 P.2d 37 (Or. Ct. App. 1978).
South Dakota:
State v. Rome, 426 N.W.2d 19 (S.D. 1988).
State v. Boettcher, 443 N.W.2d 1 (S.D. 1989).
Wisconsin:
State v. McCoy, 421 N.W.2d 107 (Wisc. 1988).

Consent of the Child

Can an abducting parent defend against criminal custodial interference charges by producing evidence that the child did not object when taken by that parent? To date, the courts have held that the question of the child's consent is immaterial.

Consent of the Child is Not a Valid Defense

California:
People v. Grever, 211 Cal. App. 3d Supp. 1, 259 Cal. Rptr. 469 (Cal. App. Dep't. Super Ct. 1989).
Massachusetts:
Commonwealth v. Nickerson, 87 Mass. 518 (1862).
Washington:
State v. Rhoades, 69 P. 389 (Wash. 1902).
Wyoming:
John v. State, 44 P. 51 (Wyo. 1896) (Dicta).

Consent of the Child is a Valid Defense

Michigan:
People v. Congdon, 43 N.W. 986 (Mich. 1889).
(Natural parent removed child from custody of adoptive parents with consent of child.)

Unconstitutionally Vague

A statute is void for vagueness when the language of the statute is so vague and ambiguous that a reasonably intelligent person cannot ascertain what conduct is prohibited.

Statute upheld

California:
People v. Lortz, 137 Cal. App. 3d 363, 187 Cal. Rptr. 89 (1982).
People v. McGirr, 198 Cal. App. 3d 629, 243 Cal. Rptr. 793, (1988).
Colorado:
People v. Tippett, 733 P.2d 1183 (Colo. 1987).
Indiana:
McNeely v. State, 391 N.E.2d 838 (Ind. Ct. App. 1979).
New York:
State v. Obertance, 432 N.Y.S.2d 475 (N.Y. Crim. Ct. 1980).
Ohio:
State v. Wengatz, 471 N.E.2d 185 (Ohio Ct. App. 1984).
Tennessee:
State v. Holtcamp, 614 S.W.2d 389 (Tenn. Crim. App. 1980).
Washington:
State v. Carver, 781 P.2d 1308 (Wash. 1989).

Wisconsin:
State v. Hill, 283 N.W.2d 451 (Wisc. Ct. App. 1979).
State v. McCoy, 421 N.W.2d 107 (Wisc. 1988).

Statute Declared Unconstitutional for Vagueness

None.

Sufficiency of the Evidence

Several cases examined the issue of whether the evidence was sufficient to support a criminal conviction. In general, courts give great deference to the findings of fact made by the trial court.

Evidence is Insufficient

Florida:
Costlow v. State, 543 So. 2d 1259 (Fla. Dist. Ct. App. 1989).
Georgia:
Brassell v. State, 385 S.E.2d 665 (Ga. 1989).
Illinois:
People v. Dworzanski, 580 N.E.2d 1263 (Ill. App. Ct. 1991). (As to Defendant, Scott Cihlar.)
Indiana:
Highley v. State, 535 N.E.2d 1241 (Ind. Ct. App. 1989).
New Mexico:
State v. Sanders, 628 P.2d 1134 (N.M. Ct. App. 1981).
State v. Cotton, 790 P.2d 1050 (N.M. Ct. App. 1990).
New York:
People v. Page, 353 N.Y.S.2d 358, (N.Y. Town Ct. 1974).
People v. Tegins, 395 N.Y.S.2d 907 (N.Y. Dist. Ct. 1977).
Ohio:
State v. Switzer, 157 N.E.2d 466 (Ohio Mun. 1956).
Tennessee:
Hicks v. State, 12 S.W.2d 385 (Tenn. 1928).

Evidence is Sufficient

California:
People v. McGinnis, 55 Cal. App. 2d 931 (1942).
People v. Lortz, 137 Cal. App. 3d 363, 187 Cal. Rptr. 89 (1982).
People v. Del Love, 203 Cal. App. 3d 1425, 251 Cal. Rptr. 6 (1988).
Colorado:
Lee v. People, 127 P. 1023 (Colo. 1912).
People v. Tippett, 733 P.2d 1183 (Colo. 1987).
Idaho:
State v. Chapman, 702 P.2d 878 (Idaho Ct. App. 1985).

Illinois:
People v. Williams, 434 N.E.2d 412 (Ill. App. Ct. 1982).
People v. Sherleen Rodriguez, 523 N.E.2d 185 (Ill. App. Ct. 1988).
People v. Welacha, 542 N.E.2d 927, (Ill. App. Ct. 1989).
People v. Dworzanski, 580 N.E.2d 1263 (Ill. App. Ct. 1991). (As to Defendant, Elizabeth Dworzanski.)

Indiana:
State v. McNeely, 391 N.E.2d 838 (Ind. Ct. App. 1979).

Minnesota:
State v. Alladin, 408 N.W.2d 642 (Minn. Ct. App. 1987).

New Jersey:
State v. Butterfoss, 561 A.2d 312 (N.J. Super. Ct. 1988).

New York:
People v. Morel, 566 N.Y.S.2d 653 (N.Y. App. Div. 1991).

North Dakota:
State v. Patten, 353 N.W.2d 30 (N.D. 1984).

Ohio:
State v. White, 189 N.E.2d 160 (Ohio Ct. App. 1962).

Oregon:
State v. Keaton, 516 P.2d 490 (Or. Ct. App. 1973).

Pennsylvania:
Commonwealth v. Stewart (May), 544 A.2d 1384 (Pa. Super. Ct. 1988).

Tennessee:
State v. Sammons, 656 S.W.2d 862 (Tenn. Crim. App. 1982).

Texas:
Roberts v. State, 619 S.W.2d 161 (Tex. Crim. App. 1981).

Washington:
State v. Rhoades, 69 P. 389 (Wash. 1902).
State v. Carver, 781 P.2d 1308 (Wash. 1989).

Issues of Judgment and Sentence

Primarily, defendants have challenged sentences as excessive. Defendants have also challenged the terms of probation, and orders of restitution.

Excessive Sentence/Terms of Probation

Alaska:
Sandelin v. State, 766 P.2d 1184 (Alaska Ct. App. 1989). (3 years suspended sentence and 5 years probation upheld as not excessive).

Arizona:
State v. Grooms, 702 P.2d 260 (Ariz. Ct. App. 1985). (Enhancement of sentence based on silence of defendant as to whereabouts of child prohibited by the 5th Amendment. "The fact that the child's whereabouts were unknown could be used as an aggravating circumstance, but not the fact that the defendant refused to divulge that information".)

California:

People v. Hyatt, 18 Cal. App. 3d 618, 96 Cal. Rptr. 156 (1971).
(Defendant was precluded from visiting his children until the issue of visitation had been determined by the family law courts. This condition of probation was held to be not excessive. Further, the order requiring defendant to pay the expenses in finding and recovering the children was upheld.)

Minnesota:

State v. Alladin, 408 N.W.2d 642 (Minn. Ct. App. 1987).
(An order prohibiting defendant from contacting his children without the consent of the custodial parent or the children's consent once they reach 18 was upheld under the circumstances of the case. Defendant was convicted of the attempted murder (in full view of the children) of his wife and also of taking his youngest daughter hostage.)

Oregon:

State v. Donovan, 770 P.2d 581 (Or. 1989).
(A condition of probation that defendant bring no action to modify custody was excessive.)

Tennessee:

State v. Holtcamp, 614 S.W.2d 389 (Tenn. Crim. App. 1980).
(30 days incarceration not excessive.)
State v. Sammons, 656 S.W.2d 862 (Tenn. Crim. App. 1982).
(10 years in state prison not excessive under the circumstances. Defendant kidnapped the child 5 times.)

Restitution

Colorado:

People v. Cheek, 734 P.2d 655 (Colo. Ct. App. 1986).
(It is permissible to assess as restitution the cost of the attorney fees incurred by custodial parent to defend defendant's conflicting custody action in different state.)

Illinois:

People v. Harrison, 402 N.E.2d 822 (Ill. App. Ct. 1980).
(The order for restitution was upheld, except as to the attorney fees for the custody enforcement action. Attorney fees are not to be awarded in the absence of specific statutory authorization.)

Washington:

State v. Halsen, 757 P.2d 531 (Wash. 1988).
(Restitution order upheld under specific Washington statute providing for restitution of the costs of locating and recovering children in custodial interference cases.)
State v. Vinyard, 751 P.2d 339 (Wash. Ct. App. 1988).
(Some costs assessed as restitution not allowed: speculative future expenses of custodial parent, and costs incurred by missing children organization that custodial parent was under no obligation to pay.)

Miscellaneous

Alaska:

Crump v. State, 625 P.2d 857 (Alaska 1981).
(Ransom is not an essential element in all kidnapping cases.)

Arizona:

State v. Coleman, 733 P.2d 1166 (Ariz. Ct. App. 1987).
(Withdrawal of guilty plea.)
In re: Maricopa County Juvenile Action No. JD-4974, 785 P.2d 1248 (Ariz. Ct. App. 1990).
(The criminal custodial interference statute cannot be used by a private litigant to compel the return of a child to her.)

California:

Wilborn v. Superior Court, 175 Cal. App. 2d 898, 1 Cal. Rptr. 131 (1959).
(Custodial interference charges dismissed for violation of Defendant's right to speedy trial.)
Cline v. Superior Court of Alameda County, 135 Cal. App. 3d 943, 185 Cal. Rptr. 787 (1982).
(Custodial parent exercising self-help to recover child may not be charged with child stealing.)
People v. Lortz, 137 Cal. App. 3d 363, 187 Cal. Rptr. 89 (1982).
(A contempt adjudication is not a prerequisite to the filing of custodial interference charges.)
People v. Flora, 228 Cal. App. 3d 662, 279 Cal. Rptr. 17 (1990). (It is not necessary to reverse Defendant's conviction although the statute was reported. The replacement statute continues to prohibit Defendant's conduct.)

Colorado:

Lee v. People, 127 P. 1023 (Colo. 1912).
(Contempt is not the exclusive remedy for parental abduction.)
People v. Coyle, 654 P.2d 815 (Colo. 1982).
(Criminal prosecution is not barred by collateral estoppel because extradition was denied by New Mexico.)
People v. Anderson, 703 P.2d 650 (Colo. Ct. App. 1985).
(Withdrawal of guilty plea.)
People v. Tippett, 733 P.2d 1183 (Colo. 1987).
(Testimony of Defendant's divorce attorney is admissible if communication was not confidential. Testimony of judge of Defendant's divorce trial as to his opinion of Defendant's truth and veracity is admissible. The statute is not overly broad.)
Tippett v. H.B. Johnson, 742 P.2d 314 (Colo. 1987).
(Defendant's request for complete discharge of his sentence is made moot by his release from custody.)

Kansas:

State v. Taylor, 264 P. 1069 (Kan. 1928).
(Conviction of kidnapping by natural parent upheld when custody had been awarded to a stepparent.)

Michigan:

People v. Langley, 466 N.W.2d 724 (Mich. Ct. App. 1991).
(Double jeopardy does not bar retrial when new trial ordered due to error in jury instructions.)

Minnesota:

State v. Andow, 386 N.W.2d 230 (Minn. 1986).
(Statute requiring dismissal of charges if child is returned within 14 days creates 14 day grace period. Abductor parent who is arrested within 14 days, though still concealing the child at time of arrest, is entitled to dismissal of charges (Statute subsequently amended).)

Montana:

State v. Lance, 651 P.2d 1003 (Mont. 1982).
(Withdrawal of guilty plea.)

New York:

Schrotenboer v. Soloff, 549 N.E.2d 458 (N.Y. 1989).
(The State is not bound by a promise of immunity extorted by the defendant.)

North Dakota:

People v. Patten, 366 N.W.2d 459 (N.D. 1985).
(Defendant's request for credit for time served is moot after Defendant has completed his sentence.)
People v. Patten, 380 N.W.2d 346 (N.D. 1986).
(Defendant is not entitled to have his sentence reduced to a misdemeanor when he was sentenced to serve more than a year in prison.)

Ohio:

State v. Crafton, 239 N.E.2d 571 (Ohio Ct. App. 1968).
(Authentication of documents. The child stealing statutes apply to parents.)

Oklahoma:

Harber v. Shaffer, 755 P.2d 640 (Okla. 1988).
(A civil contemnor is not entitled to criminal sentence reduction credits.)

Oregon:

State v. Keaton, 516 P.2d 490 (Or. Ct. App. 1973).
(Second degree kidnapping and custodial interference are lesser included offenses of kidnapping.)
State v. Dirks, 581 P.2d 85 (Or. Ct. App. 1978).
(The number of counts is determined by the number of victims. The victim of custodial interference is the parent who is divested of custody of the children. Thus, even though two children are taken, the correct number of counts is one.) (No other jurisdiction reviewed follows this practice.)
State v. Scott, 583 P.2d 1156 (Or. Ct. App. 1978).
(The court will not imply an upper age limit of 16 in the absence of statutory authorization.)

State v. Rose, 706 P.2d 583 (Or. Ct. App. 1985).
(Conviction upheld despite conflicting custody order from different state.)

South Carolina:

State v. Neva, 388 S.E.2d 791 (S.C. 1990).
(Presumption impermissibly shifted the burden of proof from the prosecution to the Defendant. The statute presumes the noncustodial parent intended to violate the custody decree if the child is retained out of State for more than 72 hours.)

Texas:

Roberts v. State, 619 S.W.2d 161 (Tex. Crim. App. 1981).
(Custodial interference statute applies to nonparents.)
Cabrera v. State, 647 S.W.2d 654 (Tex. Crim. App. 1983).
(Form of order did not give sufficient notice to parent.)

Washington:

State v. Myers, 742 P.2d 180 (Wash. Ct. App. 1987).
(Evidence of similar conduct inadmissible. Prejudice outweighs probative value. The similar incidents occurred 4 years before the charged offense.)

Wyoming:

John v. State, 44 P. 51 (Wyo. 1896).
(No kidnapping has occurred when the noncustodial parent has the consent of the custodial parent.)

PART IV: CONCLUSIONS OF THE ABA RESEARCH

Chapter 11: Summary and Conclusions Relating to Law and Legal Practice
by Patricia M. Hoff, Esq.

Chapter 11

SUMMARY AND CONCLUSIONS RELATING TO LAW AND LEGAL PRACTICE

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Chapter 11

SUMMARY AND CONCLUSIONS RELATING TO LAW AND LEGAL PRACTICE

by Patricia M. Hoff, Esq.

I. Background

In the last decade Congress has actively sought remedies for interstate and international parental abduction and child custody cases. Beginning in 1980 with the enactment of the Parental Kidnapping Prevention Act, congressional concern about the harmful effects experienced by parentally abducted and other missing children has resulted in passage of numerous laws, including the Missing Children Act, the Missing Children Assistance Act, the National Child Search Assistance Act, Senate ratification of the Hague Convention on the Civil Aspects of International Child Abduction and subsequent passage of the International Child Abduction Remedies Act to implement the treaty. During this period, the National Center for Missing and Exploited Children was established and has enjoyed the continued support of the federal government in its mission to help locate parentally abducted and other missing children.

The Obstacles Project is itself a reflection of Congress' ongoing interest in providing necessary and targeted responses to the persistent problem of parental kidnapping. The Project is a direct outgrowth of a congressional directive to the Office of Juvenile Justice and Delinquency Prevention, set forth in Section 408 of the Juvenile Justice and Delinquency Prevention Amendments of 1988, to:

> "(a) ...conduct a study to determine the obstacles that prevent or impede individuals who have legal custody of their children from recovering such children from parents who have removed such children from such individuals in violation of law; and
>
> (b) ...submit a report...containing a description, and a summary of the results, of the study..."

The two-year project period was devoted to a comprehensive review of the numerous laws, procedures and rules that comprise the responses of the civil and criminal justice systems in parental abduction cases, and the way in which private attorneys, judges, prosecutors and law enforcement have implemented the law in practice.

II. Overview of the ABA Research

With the goal of identifying obstacles to the location, recovery and return of parentally abducted children, the following general questions were developed to guide the legal research components;

- What laws apply to parental abduction cases?
- What are the purposes of these laws, and are these objectives being met? If not, why not?
- What are the strengths and weaknesses of the laws?
- Are the weaknesses in the laws themselves, or in the way they are used by attorneys and/or interpreted by courts?
- Are there identifiable gaps in the laws, court rules, procedures and policies that impede the location, recovery and return of parentally abducted children?
- Do lawyers, judges, private attorneys, police and prosecutors have a working knowledge of the civil and criminal laws and procedures applicable in parental abduction cases?

In all, eleven distinct yet interrelated legal and policy research projects were undertaken to identify obstacles to the location, recovery and return of abducted children. Certain issues covered in the general review of statutory and case law warranted more concentrated study, and thus were the subject of specific papers as well.[1]

Research focusing on the civil legal response included:

- a legal literature review, to document obstacles identified in scholarly law journals and practical legal publications;
- an in-depth analysis of relevant state and federal statutes, court rules and recent case law;
- a thorough examination of the provisions of law which are intended to prevent simultaneous proceedings, and a review of the process by which interstate jurisdictional disputes are resolved when prevention fails;
- an overview and analysis of existing state law and procedures for enforcing custody determinations, with suggested forms for facilitating enforcement under current law;

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[1]This intentional overlap accounts for the substantially similar findings and recommendations in the related research.

- the development of a suggested state statute, with commentary, setting forth expedited procedures for the enforcement of child custody decrees and the recovery of abducted children, including a role for law enforcement and prosecutors;

- a review of tort liability on the part of third parties who assist in the abduction or concealment of a child; and

- surveys of judges and lawyers, to ascertain how the law is implemented in practice.

Research focusing on the criminal justice system response included:

- a review and analysis of the California law which authorizes prosecutors to play a role in the civil enforcement of custody determinations;

- a survey of cases involving tort claims filed against law enforcement for assistance rendered (or refused) in the recovery of parentally abducted children and enforcement of custody orders;

- an examination of appellate cases involving prosecution of parental kidnapping crimes; and

- a survey of state missing children clearinghouses to assess how they perceive their functions, and those of prosecutors and law enforcement in their states, in parental abduction cases.

With the exception of the literature review, which is described in Chapter 1, each research endeavor is summarized below along with the resulting significant findings and recommendations.

Several useful products related to the legal research are set forth in appendices. These include a compendium of forms for enforcing custody orders under current law, and a digest of key issues in the criminal prosecution of parental kidnapping cases, along with case briefs. A fifty-state directory of state laws and court rules applicable to parental abduction cases has been compiled and will be available for dissemination in the near future.

III. Civil Remedies in Parental Abduction Cases: Summary of Research

A. Parental Abduction: Relevant State and Federal Statutes, Court Rules and Recent Case Law (Chapter 3)

1. Research

The initial task consisted of identifying, collecting, and analyzing the laws and court rules of all fifty states, the District of Columbia, Puerto Rico, and the Virgin Islands. These included laws pertaining to obtaining an enforceable custody order, enforcing the custody order, locating the missing child, seeking tort relief for interference with custody, and criminal prosecution for parental kidnapping.

Research of recent cases applying the UCCJA, PKPA and related laws was then undertaken to assess whether and how lawyers are using the laws, and how the law is being interpreted by judges around the country.[2]

2. Findings - Major Obstacles

a. State law.

The research revealed great variation among state enactments of the Uniform Child Custody Jurisdiction Act (UCCJA). To achieve their stated objectives, uniform acts depend upon uniformity in language and court interpretation of the standard provisions. As a practical matter, the numerous variations in the UCCJA have rendered its use in sister states more difficult for out-of-state practitioners. It cannot be assumed that the UCCJA in effect in one state is the same as in the second state. This tends to complicate resolution of jurisdictional conflicts and enforcement of custody orders in interstate parental abduction cases.

The analysis identified numerous statutory changes in the UCCJA which undermine the very purposes of the act. In these areas, the lack of uniformity in UCCJA enactments is a serious obstacle to obtaining custody orders that will be enforceable

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[2]In light of the problems presented when two courts exercise jurisdiction at the same time with regard to the same child, a concentrated examination of cases involving simultaneous proceedings was undertaken and is described in III.B., below. The findings and recommendations from the general case law review presented here coincide with those of the targeted research, where more detailed discussion may be found.

under the UCCJA and the federal Parental Kidnapping Prevention Act (PKPA).

Other statutory variations actually improve the UCCJA. In particular, greater specificity in the procedural provisions of the UCCJA is generally advantageous. For example, references to specific procedures for giving notice provide lawyers with clear guidance. This inures to the benefit of the parent who must eventually pay the legal bill: time saved by the lawyer in determining applicable procedures means money saved by the client.

The analysis of state laws was not limited to the UCCJA. It also highlighted novel provisions of state law that facilitate the location, recovery and return of parentally abducted children. For example, by law in California prosecutors are empowered to take actions to enforce custody orders, and law enforcement officers have the authority to pick up children to prevent them from being abducted or concealed. These beneficial laws should be considered for widespread adoption.

In summary, the fifty-state review of parental abduction laws revealed a lack of uniformity and specificity in the UCCJA statutes across the country that undermines their utility in parental abduction cases. Some variations in the UCCJA, particularly those that specify procedures, are beneficial and should be adopted by other states. Finally, other provisions of state law that facilitate the location, recovery and return of the child should be widely adopted.

b. Practice.

Just how have these laws been applied in practice? The recent cases revealed that the statutes are not always applied correctly. More egregious, however, was the discovery that either the UCCJA and/or the PKPA were not applied at all in a significant number of recently reported cases in which these laws should have been applied. In some cases, application of the PKPA would have changed the outcome. The failure to apply the PKPA has resulted in incorrect jurisdictional decisions which, in turn, have resulted in the issuance of custody orders that are not entitled to full faith and credit in sister states. This is a major obstacle to the recovery and return of a child who is the subject of such an order.

It is clear from many of the recent cases that lawyers and judges alike are unfamiliar with some of the key requirements of the PKPA. There is apparent confusion about the relationship of the UCCJA to the PKPA, particularly in regard to the priority to be accorded "home state" jurisdiction under the PKPA. A lack of understanding about which proceedings are subject to the PKPA is also evident in the caselaw.

Chapter 3 provides numerous examples of the problems of legal practice under the PKPA and UCCJA. One illustration involves the PKPA section which provides for exclusive continuing modification jurisdiction, a provision which has been misunderstood by many courts. The misinterpretation of this section has resulted in states improperly exercising jurisdiction when, in fact, a sister state court continues to have the exclusive right to modify its own orders.

3. Recommendations[3]

Based on the research, four major recommendations are made:

(1) Congress should expressly authorize federal courts to resolve jurisdictional disputes involving application of the PKPA.

(2) Congress should amend the Parental Kidnapping Prevention Act to clarify the concept of exclusive continuing jurisdiction, the exercise of emergency jurisdiction, and various other provisions of that law.

(3) State legislatures should amend the UCCJA, and enact other remedial statutes that facilitate the location, recovery and return of abducted children, as set forth in Chapter 3; and

(4) Training on the laws relating to parental abduction should be provided for lawyers and judges to foster more informed use of the available remedies, and a more uniform body of law reflective of the intended purposes of the applicable statutes.[4]

The education of bar and bench should include practice pointers that would facilitate interstate enforcement of custody orders (such as including express findings on the face of custody orders as to the jurisdictional basis upon which the court relied) and would deter

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[3]For more on the first two recommendations, and the important related recommendation that a national child custody registry be established, see discussion of research on "Jurisdictional Conflicts and Simultaneous Proceedings," III.B., below.

[4]The lawyers and judges surveys corroborate this recommendation. There was a clear consensus among respondents that continuing legal and judicial education relating to parental abduction cases was needed. See discussion of these surveys at III.F., below. This is also a conclusion of the research on simultaneous proceedings, discussed at III.B., below.

parental abductions (such as court-ordered supervised visitation and posting of bonds where there is a history or likelihood of flight).

(5) The fifty-state directory of the laws and court rules relating to the location, recovery, and return of parentally abducted children which the Obstacles Project is compiling should be widely disseminated. This directory will be an invaluable resource for all parents and professionals involved in parental kidnapping disputes. Judges, private attorneys, law enforcement, prosecutors and parents can consult this resource as a first step in identifying the legal tools available in a particular state for addressing a parental abduction case. Policy-makers at the state and federal levels can use the analysis of, and commentary on, the myriad different parental abduction-related statutes in effect across the country to guide legislative reforms.

B. Jurisdictional Disputes in Interstate Child Custody and Parental Kidnapping Cases (Chapter 4.B.)

1. Research

Interstate parental abduction cases often result in custody proceedings concerning the abducted child being filed in courts in two states. If both of these states proceed to hear the case, the result often is that two conflicting custody orders are made. Which parent is legally entitled to the child's custody under these circumstances? Can either or both parents be guilty of civil contempt, or criminally liable, when each has a custody order awarding him or her custody? Who should have physical custody of the child pending resolution of the jurisdictional dispute? While these difficult legal questions are being addressed by frequently protracted litigation, the child's legal status is uncertain and his or her emotional stability is undermined.

But how can courts in different states simultaneously consider the custody of the same child when the UCCJA and PKPA expressly prohibit simultaneous proceedings? Is there not a legal remedy to stop concurrent proceedings before conflicting custody decrees are made? And if one of the two proceedings is not stayed or dismissed, how, then, can the resulting jurisdictional conflict best be resolved? These are some of the questions addressed in another major legal research component of the Obstacles Project.

The research focused on how simultaneous proceedings can be prevented and, failing that, how jurisdictional disputes can be resolved. The laws and procedures that apply in cases of

simultaneous proceedings were examined, and illustrative cases were presented which contrast how the laws are intended to work with how they have been applied in practice.

2. Findings - Major Obstacles

Notwithstanding PKPA and UCCJA provisions which are intended to deter simultaneous proceedings in sister state courts over custody of the same children, case law revealed that parents engaged in struggles over child custody are still able to obtain conflicting custody orders in courts in different states. Lack of knowledge on the part of lawyers and judges of the applicable provisions of law appears to be a major obstacle to preventing competitive proceedings.

Generally speaking, lawyers are ignorant of, do not understand, or simply choose to ignore the prohibitions on simultaneous proceedings in the UCCJA and PKPA. These conditions result in actions being brought either in states that lack subject matter jurisdiction, or in states that are prohibited from exercising jurisdiction due to pending proceedings elsewhere, and in the failure of opposing counsel to seek stays or dismissals of actions improperly brought.

Judges are not without responsibility for concurrent proceedings. It is the judge's duty to examine the pleading to determine whether other proceedings concerning the same child are pending in another state. If so, inter-court communication is to occur to resolve the jurisdictional dispute before custody determinations are made. Unfortunately, such communication does not regularly occur. This is attributable, in part, to the failure of the UCCJA to specify procedures for accomplishing judicial communication. It also reflects a lack of initiative on the part of lawyers in requesting judges to communicate. Judges are also remiss in their duty to dismiss sua sponte (that is, on their own motion without application of a party) those actions in which subject matter jurisdiction is clearly lacking, or in which the local proceeding is barred because a proceeding is pending elsewhere in compliance with the PKPA.

Avoiding concurrent proceedings is premised on access to information about prior orders and simultaneous proceedings pending in other courts. Section 16 of the UCCJA calls upon courts to establish registries for filing documents related to out-of-state custody proceedings. The research revealed that this provision has been honored primarily in the breach: formal

registries simply do not exist in most courts around the country.[5]

Compliance with this provision is of critical importance. A recommendation is presented below for establishment of a national child custody registry. In the interim, lawyers should file custody orders with clerks of state courts, even if this entails creating new registries.

When conflicting custody orders are made, the existing system for resolving the jurisdictional conflict stands as a significant impediment to the recovery of the abducted child. The appellate process for seeking review of custody orders is time-consuming and expensive. Even if litigation proceeds through the highest courts of the two competing states, there may still be no resolution unless and until the United States Supreme Court agrees to grant review of the case. This review is discretionary, and predictably will not be granted in every custody case.

This bleak picture stems in part from a recent decision of the United States Supreme Court in the case of Thompson v. Thompson, 484 U.S. 174, 108 S. Ct. 513 (1988). That case held that there is no right under the PKPA to go into federal court for a determination as to which of two states that have issued custody orders has done so pursuant to the federal law. By eliminating federal district courts as tie-breakers in interstate child custody jurisdictional impasses, the Supreme Court removed a remedy that had been provided by numerous federal courts prior to the Thompson decision in 1988. A line of cases beginning with Flood v. Braaten, 737 F.2d 303 (3d Cir. 1984), had held that federal district court action to break state court jurisdictional deadlocks was appropriate.

The Thompson case did not turn on constitutional issues. Indeed, the court noted that Congress might choose to revisit the issue, as is recommended by the Obstacles Project, immediately below.

3. Recommendations

(1) Congress should enact legislation to expressly create a federal court role in resolving which of two states courts has complied with the PKPA. This would remove a

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[5]Interestingly, of the judges surveyed by the project, 55% reported that their courts had registries. The respondent judges were selected based on their experience with parental kidnapping cases. This fact may account for the unexpectedly high rate of responses indicating that registries exist. The survey did not elicit descriptive information about the registry.

major obstacle to determining which of two custody orders is enforceable, which in turn would result in the prompt enforcement of the valid custody order. A specific amendment to the PKPA to create this cause of action is set forth in Chapter 3.

(2) Education programs should be developed and presented to lawyers and judges to eliminate the knowledge gap which frustrates the correct use of the PKPA and UCCJA. (The need for legal and judicial training was also recommended based on the findings of the research into laws and practice, set forth at III. A, above.) Dissemination of information on techniques for effective and efficient judicial communication should be a priority, as cooperation between judges is an essential ingredient in avoiding jurisdictional competition and conflict.

(3) Congress should enact legislation to create a national child custody registry to make all custody determinations and information about child custody filings readily accessible to courts throughout the country. For suggested statutory language, see Chapter 3. Pending establishment of such registry, parents or their lawyers should file custody determinations with the clerks of state courts in accordance with the UCCJA.

(4) Certain fine-tuning of the PKPA would improve its effectiveness in parental abduction and interstate custody cases. Amendments to clarify the meaning of "commencement of proceedings," "declination of jurisdiction," and the duration of continuing jurisdiction are suggested. Specific recommendations are set forth in Chapter 3.

C. Legal Procedures for the Enforcement of Child Custody Determinations and the Recovery and Return of Parentally Abducted Children (Appendix A to Chapter 6)

1. Research

Parents are often frustrated by the expense and time involved in using the legal process to recover their abducted children, particularly when the results are not assured. This entails going to court to obtain an order enforcing a previously obtained custody decree. Even after a judge orders the enforcement of a custody decree, a parent still may have difficulty in getting the child back.

Once a custody order is issued, parents understandably feel that the order should be readily enforceable wherever the child

is found. If it cannot be, parents are inclined to forsake the legal system in favor of self-help. In other words, parents may try to recover their abducted children themselves without seeking an enforcement order from a court. Yet self-help is rarely, if ever, risk-free for either the parent or the child.

Why are parents frustrated by the legal process? Who is responsible for actually restoring the child to its lawful custodian after a court has ordered the enforcement of a custody decree? Are the laws applicable to custody enforcement unclear? Are the laws used effectively by lawyers and applied correctly by courts? Do the laws provide effective and expeditious remedies for recovering an abducted child? What changes in the system for enforcing custody orders would ameliorate the perceived problems?

The third major legal research component of the Obstacles Project addressed these and related questions. The research consisted of an in-depth examination of existing state and federal laws and procedures that govern interstate enforcement of child custody determinations. The resulting paper, set forth in an Appendix, identified the strengths and weaknesses of the most common enforcement techniques in use around the country, and provides step-by-step directions for using these procedures. Existing solutions to practical problems inherent in custody enforcement cases are presented, including procedures that can be employed to prevent the abduction of a child during the pendency of an action to enforce custody.

A set of model pleadings was developed to facilitate use of existing legal procedures for enforcing custody orders. Equipping lawyers with the legal tools to use existing procedures on behalf of their clients will improve the use of current law. These will be useful until the "Act to Expedite the Enforcement of Child Custody Determinations," developed by the Obstacles Project, is implemented nationwide. (<u>See</u> III. D. and recommendation, below.) The model pleadings are reprinted in an Appendix.

<u>2. Findings - Major Obstacles</u>

Despite the mandate of the federal Parental Kidnapping Prevention Act (and similar mandate of the UCCJA) that custody determinations made consistently with its provisions shall be enforced and not modified by sister state courts, the research revealed that many custody orders are not being enforced.

There are numerous reasons why this is happening. One is that applicable threshold jurisdictional requirements set forth in the UCCJA and the PKPA are being ignored in the process of obtaining custody orders. When custody orders are made inconsistently with the jurisdictional provisions of the PKPA,

they are not entitled as a matter of federal law to nationwide enforcement.

The law itself is part of the problem. The UCCJA mandates interstate custody enforcement and nonmodification of custody orders made in compliance with its provisions, but then is silent as to what procedures should be used to enforce these orders. Each state defines its own set of enforcement procedures. The lack of specificity and uniformity in enforcement procedures impedes implementation of the duty to enforce custody orders.

Further, intentional differences in the language of the PKPA and the UCCJA have also created some confusion for lawyers and judges who have not studied the provisions carefully. For instance, many lawyers and judges remain unfamiliar with the PKPA's preference for "home state" jurisdiction. The effect has been that custody orders made by courts exercising "significant connection" jurisdiction when a "home state" court exists are not entitled to enforcement in sister states under the PKPA. The lack of knowledge of the laws has undermined the ability of parents to get custody orders which are entitled to full faith and credit enforcement in sister state courts.

Gaps in the law also impede prompt enforcement of custody orders. Neither the UCCJA nor the PKPA spell out what role, if any, law enforcement should play in the civil enforcement of custody orders. Parents often seek assistance from police officers in the recovery of their children. This assistance is seldom forthcoming because the law gives no clear guidance as to what actions can properly be taken by law enforcement in parental abduction/custody enforcement situations.

Moreover, the law does not expressly resolve when it is lawful, if ever, for parents simply to recover their own children through self-help. One of the primary motivations behind the use of self-help is the immediate recovery of the child, without incurring additional legal fees and suffering the delays inherent in the judicial process. Despite its seeming attractions, however, self-help is fraught with potential pitfalls for the parent, possible emotional perils for the child, and the prospect of civil liability for law enforcement who intervene in the recovery.

3. Recommendations

(1) The interests of parents, children, lawyers, judges and law enforcement would be served by the development and nationwide enactment of a system of uniform streamlined procedures to simplify and expedite the legal process for enforcing custody and visitation rights without exhausting financial resources in the process. See III.

D., below, for a proposed act to expedite custody enforcement.

(2) Until such time as the proposed act is widely enacted, the suggested forms for enforcing custody determinations under current law should be used to simplify enforcement. The proposed forms are generic and should be adapted based on procedural requirements in effect in the state in which enforcement is sought.

(3) Whether or not the proposed act is enacted, judges should make specific factual and legal findings with regard to the basis for the exercise of custody jurisdiction. Every custody order should include these findings. Lawyers should request that such findings be included in court orders, and be prepared to provide the court with draft language.

(4) Many noncustodial parents do not know that they can enforce their visitation rights pursuant to the UCCJA and PKPA when such rights are violated. Parents should be made aware that these statutes allow for the enforcement of custody and visitation rights. State and local bar associations and the National Center for Missing and Exploited Children are well-situated to inform parents of their statutory remedies.

D. An Act to Expedite Enforcement of Child Custody Determinations (Chapter 6)

To implement the important recommendation noted in III. C. 3.(1), above, legislation was developed in the second year of the project. The "Act to Expedite Enforcement of Child Custody Determinations" is designed to be enacted by every state, the District of Columbia, Puerto Rico and the Virgin Islands.

The Act consists of two titles. Title I is a direct outgrowth of the analysis done of the strengths and weaknesses of existing procedures and practices available across the country for enforcing child custody orders. It establishes standard procedures to be followed in every jurisdiction to enforce custody and/or visitation rights. Title I limits the time frame within which a court must decide on a petition to enforce a custody determination, restricts the issues that can be considered, prohibits consideration of modification requests in the context of the enforcement action, and describes the few defenses that may be allowed. The procedures and pleadings are kept simple so that parents seeking enforcement can do so on their own if they choose not to employ, or cannot afford, counsel.

Title II of the Act incorporates recommendations resulting from two research projects, discussed in greater detail in IV. B. and C., below, to the effect that prosecutors and law enforcement should play a part in the civil enforcement of child custody determinations. Because civil enforcement of custody orders is not within the traditional scope of duties of either prosecutors or law enforcement officers, Title II expressly creates statutory authority for their involvement in child custody enforcement and parental abduction cases even when criminal charges against the abductor are not pending. Such legislative authority is intended to minimize the possibility that the prosecutor and/or law enforcement officers will incur liability for providing assistance in these cases.

Section 1 of Title II is modeled on California law, which authorizes the prosecutor to provide assistance to parents whose children have been abducted, or who are seeking enforcement of custody orders. The prosecutor is authorized to locate children, to assist in securing compliance with courts orders, to take steps to prevent removal of the child from the jurisdiction, and to file enforcement actions.

Section 2 of Title II authorizes law enforcement officers to take all actions reasonably necessary to locate a child and to procure compliance with all existing valid court orders. A variety of services is set forth ranging from taking a crime report to accompanying and assisting a party in the recovery of a child.

The two Titles of the Act together comprise an effective vehicle for fast, inexpensive and effective location of abducted children, enforcement of custody orders, and recovery and return of abducted children.

E. When Friends, Relatives and Lawyers Are Part of the Problem (Chapter 5)

1. Research

The Project was directed to examine practical impediments to the location, recovery and return of parentally abducted children. A review and analysis of case law involving tort actions brought by left-behind parents against friends, relatives, and lawyers of abducting parents was undertaken to evaluate the impact these third parties have on the left-behind parent's search and recovery efforts.

2. Findings - Major Obstacles

A growing body of case law revealed that conduct of third parties, be they friends, relatives or lawyers of abductors, can

frustrate a parent's best efforts to locate and recover an abducted child.

Seldom can a parent abduct and conceal his/her children without assistance from some other person or persons. Many "socially supportive individuals" who have helped parents abduct and/or conceal their children have been held financially liable in tort actions brought against them.

Many of the cases involved grandparents who extended varying degrees of assistance to their sons or daughters who had abducted their children. Other relatives are often drawn into the abduction plan or ensuing concealment scheme. Predictably, the abductor's boyfriend or girlfriend may go along with the planning and execution of the abduction, as have sympathetic employers who have forwarded paychecks to abductors.

Abductors may also enlist the help of their lawyers. There is reported case law involving active participation by lawyers in formulating abduction plans, and in frustrating enforcement of a custody order. Inaction on the part of a lawyer has also facilitated the removal of children from the country and resulted in liability for the lawyer. Lawyer misconduct contributing to parental kidnapping or impeding legitimate location and recovery efforts has prompted malpractice suits and/or professional disciplinary actions against errant attorneys.

3. Recommendations

(1) An effort focused on educating the public regarding third-party liability in parental abduction cases would be beneficial to the extent that the "help" provided by third parties may be given in ignorance of the potential consequences.

It is recognized that there are some individuals who would knowingly offer assistance to an abductor regardless of the consequences. For instance, a person who is fully cognizant of the risk of liability may nevertheless assume that risk if he or she believes that the abductor acted justifiably, such as when the abductor has fled to protect the child from physical or sexual abuse. Such individuals would gain from information suggesting alternative means for protecting the child, which eventually could lead to a resolution of the underlying problem.

Relatives and friends of abductors could be reached by public service announcements, or by pamphlets that could be disseminated by the National Center for Missing and Exploited Children, by state missing children clearinghouses, and by private organizations.

Lawyers could be reached through continuing legal education programs, particularly in states that require mandatory ethics courses.

(2) States should enact legislation clearly defining what conduct by parents and third parties constitutes tortious interference with child custody and visitation. Legislating a civil damages remedy would serve three important purposes: compensation of the injured parent, deterrence of those people who might otherwise assist in an abduction and concealment scheme, and fostering the return of absent children.

F. Practices of Judges and Lawyers: Survey Results

1. Research

Two distinct detailed questionnaires were developed for private attorneys and judges to elicit information about actual practice under the laws applicable in parental kidnapping cases.

2. Findings - Major Obstacles

There is a dearth of expertise in the area of parental abduction law among judges and lawyers. Survey responses indicated that even attorneys and judges who have had experience with parental abduction and interstate child custody cases are not fully familiar with applicable law.

From a survey population selected on the basis of experience with these cases, half of the judges reported that attorneys rarely or never informed them of the PKPA in cases in which it was applicable. Over forty percent of the responding attorneys reported that judges were unfamiliar with the PKPA, and about two-thirds noted that opposing counsel were unfamiliar with that law. Judges and lawyers were even less familiar with the Hague Child Abduction Convention according to survey results. While lawyers and judges reported being more informed about the UCCJA, survey responses revealed that many of the attorneys and judges do not routinely use procedures mandated by the UCCJA to prevent simultaneous proceedings.

3. Recommendations

(1) Continuing legal and judicial education should be presented on the law applicable in interstate and international child custody and parental abduction cases to private attorneys, legal services attorneys, prosecutors, and trial and appellate level judges.

(2) Curriculum should be developed for law students devoted to issues arising in interstate custody and parental

abduction cases. Law schools should offer clinical experience for students in family law cases involving these complex issues.

(3) Reference manuals (e.g., bench books) should be developed and disseminated to judges to facilitate the proper resolution of parental abduction and interstate and international child custody cases.

IV. The Criminal Justice System Response to Parental Abduction Cases: Summary of Research

A. Key Issues and Obstacles in the Criminal Prosecution of Parental Kidnapping Cases (Chapter 10)

1. Research

The criminal justice system can play an important role in deterring parental abductions if parents considering abduction understand that perpetrators will be prosecuted under the criminal parental kidnapping statutes. But are parents being criminally charged and prosecuted for parental kidnapping under the laws now in effect in every state and the District of Columbia? If so, to what extent? If not, what are the impediments to effective prosecution in appropriate cases?

Appellate opinions in criminal parental kidnapping cases decided across the country were reviewed, based upon which an analysis was done of the key issues and obstacles to the criminal prosection of parental kidnapping cases.

2. Findings - Major Obstacles

(1) The criminal statutes

Although every state and the District of Columbia have enacted laws to punish parents and other persons who wrongfully take, retain or conceal their children, there is no uniformity among these laws, with each state defining the conduct which is punishable in that state. Yet many of the same issues arise regarding application of these laws. To alleviate the recurrent problems, all criminal parental abduction statutes should be drafted to eliminate any ambiguity as to which conduct is punishable.

The legal research revealed a compelling need for states to enact felony, rather than misdemeanor parental kidnapping statutes. Felony status affects not only the severity of the available sentence, but also whether effective law enforcement investigation and prosecution will occur at all. Law enforcement investigation is often crucial to locating the abductor and child.

Parental abduction statutes should expressly cover concealment of a child by either a custodial or noncusotdial parent. In concealment cases, the state should eliminate any requirement of proof of removal from the state.

The crime should be tied to the violation of any valid custody order, and not limited to violations of custody orders made by courts in the state from which the child was abducted.

Because so many abductions occur prior to the entry of custody orders, criminal statutes should be written broadly enough to specifically cover pre-decree abductions.

Statutes should also expressly prohibit abductions in violation of joint custody orders. In the absence of such legislation, prosecutors and law enforcement are reluctant to intervene in disputes alleging violations of joint custody orders.

States should clarify the custody rights of unwed parents, so that it is clear who can be prosecuted for abducting nonmarital children.

To remove obstacles to prosecuting a parent whose actions outside the state cause harm within the state, all states should enact laws conferring jurisdiction to prosecute abductors when their actions outside the state violate custody orders pertaining to children within the state. This would clarify the liability of noncustodial parents who retain children outside the state after the expiration of lawful visitation periods.

State laws should expressly make parental abduction a continuing offense.

Because criminal parental kidnapping laws are directed against the wrongdoer parent, they do not typically authorize law enforcement to pick up the child once the abductor is arrested, or to otherwise intervene when it appears that the child is in danger of being taken out of the state. This gap in the law should be closed. Parental abduction statutes should authorize law enforcement to take children into protective custody if it appears that they are endangered or will be removed from the jurisdiction of the court. The law should also authorize law enforcement officers to return a child to the person with lawful custody or to deliver the child to the public agency designated to provide temporary custody pending court proceedings.

Statutes should also expressly authorize courts to order restitution as part of sentencing. In a related vein, state crime victim compensation programs should expressly provide assistance in parental kidnapping cases.

(2) Prosecutions

The research revealed a disturbing fact: criminal parental kidnapping cases appear to be screened out of the criminal justice system. This is true notwithstanding enactment by every state of criminal parental kidnapping laws which reflect public policy that these are serious matters properly within the realm of the criminal justice system. While it is clear that criminal custodial interference cases are encountering roadblocks at some level, it is unclear whether those roadblocks exist primarily at the investigative level, at prosecutorial intake, or at trial.

Because so many of the laws have been recently enacted, prosecutors find little, if any, case law precedent in their own states to assist them in interpreting and applying these relatively recent enactments. The shortage or complete lack of state precedent, coupled with the inexperience of the prosecutor in prosecuting these new crimes, are real impediments to the bringing, and successful prosecution, of parental kidnapping cases. While experience in prosecuting this crime cannot be obtained other than by actually prosecuting cases, the problem of insufficient state precedent can be overcome by examining caselaw from other states.

However, the Obstacles Project identified a gap in the resource materials available to those who prosecute parental kidnapping cases. Lack of such information can have two noteworthy effects. First, to the extent a prosecutor is unfamiliar with the elements of the state law and how those provisions have been judicially interpreted, he or she may be reluctant to bring an otherwise worthy case. The alleged abductor then goes unpunished, and the deterrent purposes of the statute are not served. Second, where criminal prosecution is pending, the prosecutor may be unable to respond promptly and persuasively to defendant's contentions regarding application of the statute to the facts of the case. This ultimately can undermine successful prosecution, which in turn may discourage criminal prosecution of other appropriate parental kidnapping cases in the future.

A Digest of Key Issues in Parental Kidnapping Prosecutions was developed to identify recurrent, significant issues in criminal parental kidnapping cases, and how these issues have been resolved by courts which have addressed them. Summaries of the cases are set forth in an appendix.

3. Recommendations

(1) Congress should enact legislation to encourage development of a uniform criminal parental kidnapping act. Specific recommendations for the elements of such

statute are discussed in Chapter 10 and summarized in the findings, above.

If a uniform law is not drafted, then all states should amend their statutes to encompass the suggested provisions. At a minimum, states should enact felony parental kidnapping/custodial interference statutes.

(2) The Digest of Key Issues in Parental Kidnapping Prosecutions, and the companion compendium of case briefs which describes in greater detail the cases identified in the Digest, should be disseminated to prosecutors nationwide.

(3) Training for prosecutors on the issues arising in the criminal prosecution of parental kidnapping cases should be provided. This can be done in conjunction with the OJJDP-funded parental kidnapping prosecution project being carried out by the American Prosecutors Research Institute.

B. The Role of Prosecutors in the Civil Enforcement of Custody Decrees: The California Model (Chapter 7)

1. Research

In virtually every state except one, the responsibility for locating and recovering a parentally abducted child rests with the left-behind family member whose success (or failure), apart from sheer luck, depends upon that person's financial ability to pay for skilled legal representation -- often in two states -- and for the services of a private investigator. This often leaves a parent without any affordable and effective means of recovering an abducted child.

One state, California, has authorized the prosecutor to take all actions necessary, whether civil or criminal, to locate the child and to enforce court orders. The California statutory scheme was evaluated for its potential use as a model for implementation by other states.

2. Findings - Major Obstacles

Recognizing that prosecutors have better access to the legal and investigative resources needed to locate and recover an abducted child than do either parents or the private bar, the California state legislature enacted Civil Code Section 4604 to bring about the location of abducted children and their return to an appropriate jurisdiction for deciding custody issues.

The statue authorizes the prosecutor to take all actions necessary to locate and return a child and the person who

violated the decree, and to assist in the enforcement of a custody or visitation decree by use of any appropriate civil or criminal proceeding. The prosecutor is also authorized to obtain an order to pick up a child if such an order is needed to recover a child who is being detained or concealed in violation of a court order or a parent's right of custody. Legal authority is also created for the prosecutor to procure compliance with orders to appear with the child for purposes of adjudicating custody. The statute allows the prosecutor to file a petition for the determination of custody.

California's criminal custodial interference statutes, in combination with California Civil Code Section 4604, gives prosecutors in that state broad powers and a variety of remedies to resolve parental kidnapping cases. The California prosecutor has flexibility to use the resources of the criminal justice system to locate the child and facilitate civil resolution of parental kidnapping cases with or without recourse to criminal prosecution.

Significantly, findings of Dr. Martha-Elin Blomquist cited in this research indicate that prosecutors and their investigators are able to resolve more than 90% of the custody problems that are brought to their attention by telephone without additional commitment of resources.

The ability of the prosecutor to enforce a custody order is often frustrated by the expense involved in proceeding in a sister state. This obstacle would be overcome if prosecutors across the country were authorized to provide reciprocal assistance to out-of-state prosecutors in custody enforcement cases.

3. Recommendations

(1) All states should enact legislation modeled on California Civil Code Section 4604 to authorize prosecutors to intervene in appropriate cases of custody and visitation violations. Prosecutors should be directed to take all steps necessary to locate and return an abducted child to the court with jurisdiction to make and enforce custody orders pertaining to the child.

Specific language modeled on the California law has been incorporated into Title II, Section 1, of "An Act to Expedite Enforcement of Child Custody Determinations," which is recommended for adoption by all states. See Chapter 6 and III.D., above.

C. Civil Liability of Law Enforcement Officials for Their Actions in Parental Abduction Cases (Chapter 8)

1. Research

There is a widespread reluctance on the part of law enforcement officers to become involved in the enforcement of child custody orders and civil recovery of abducted children. Reasons given by law enforcement for declining to render assistance to distraught parents include tradition, lack of clearly identifiable policy, an inability to readily verify custody, and the fear of being sued by the parent who has physical custody of the child for whatever assistance they may give to the left-behind parent.

The research identified and examined case law in which law enforcement officers have been sued for actions taken in connection with investigating a criminal parental abduction case and assisting in the civil recovery of a parentally abducted child. The latter cases were emphasized.

2. Findings - Major Obstacles

The cases clearly illustrated problems faced by police who had intervened in child custody disputes. The police had taken some action to assist an alleged custodial parent regain physical possession of the child. For a variety of reasons, the parent to whom the child was returned was not the lawful custodian, and the lawful custodian then sued the police. Police have been held liable in these situations.

While investigating officers have difficulty determining the appropriate action to take in custody and abduction cases, police administrators have also been sued, with some success, for inadequate training or supervision.

Law enforcement officers also face the prospect of being sued for failing to act when requested to do so by a parent whose child has been abducted. The research explored this question and concluded that failure to act would engender no liability absent a special duty created by state statute or case law.

3. Recommendations

(1) Legislatures should authorize law enforcement to assist in the enforcement of child custody orders and the recovery of abducted children. This will reduce the obstacles presently faced by parents who seek to recover their parentally abducted children.

Specific legislation authorizing law enforcement to provide assistance in connection with parental

abduction and child custody and visitation enforcement is set forth in Title II, Section 2 of "An Act to Expedite Enforcement of Child Custody Determinations," discussed in Chapter 6 and III.D., above.

(2) In the interim, policies, procedures and protocols should be developed to guide law enforcement responses in the recovery of abducted children and the civil enforcement of child custody orders. Clear definition of the kind of assistance law enforcement officers are to provide will limit the potential for liability and enhance the ability of a parent to locate and recover an abducted child.

(3) Training for law enforcement should be mandated and the resources to develop such training should be appropriated.

D. The View From State Missing Children Clearinghouses (Chapter 9)

1. Research

A survey of State Missing Children Clearinghouses was developed to ascertain what role state missing children clearinghouses play in connection with parental abduction cases, and to evaluate the extent to which they assist in the location, recovery and return of abducted children. Questions were also included to elicit the perceptions of the clearinghouses as to law enforcement practices in the location, recovery and return of abducted children and their compliance with federal missing children laws.

2. Findings - Major Obstacles

Most of the state missing children clearinghouses have insufficient budgets to carry out the many functions they are charged with performing. Although nearly all of the clearinghouses are within law enforcement or justice agencies, many lacked knowledge of the policies, practices and procedures law enforcement follow in parental abduction cases. Nevertheless, many clearinghouses were aware that law enforcement agencies considered parental abduction cases to be civil matters which did not command high priority.

3. Recommendations

(1) Another OJJDP-funded research project was to address criminal investigative issues in missing children cases. Unfortunately, parental kidnapping cases were not the focus of that study. To fill this gap, the clearinghouse survey attempted to discover, through the

observations of clearinghouse personnel, how law enforcement agencies respond in parental abduction cases. The information obtained is interesting though anecdotal. Law enforcement practices in parental abduction cases is an area in need of further directed research.

(2) Clearinghouses should be funded at sufficient levels to carry out prescribed functions, including public education, law enforcement training, communication and cooperation, and providing assistance in the location, recovery and return of missing children.

(3) Clearinghouses should become more familiar with law enforcement practices so that they can provide information and referrals to parents of abducted children.

V. Directions for Future Research, Policy Development and Technical Assistance

A. Family Violence

The Obstacles Project identified the lack of coordination between family violence and parental kidnapping laws as a significant problem. The relevant laws were enacted without consideration of their interrelationship. The project staff consulted with experts from the domestic violence and parental abduction fields regarding parental abduction cases in which an abductor parent flees to protect himself or herself, or the child, from abuse. Based on research and discussion, the Obstacles Project formulated recommendations for law reform. These recommendations are set forth in Section II. E. of Chapter 3.

Changes in the laws affecting family violence and parental kidnapping are apt to be controversial, both with advocates for victims of family violence, and with advocates for sound parental abduction laws. Public discussion of the issues, as well as additional research into these frequently overlapping areas of law, are needed.

Family violence issues should be incorporated into future program priorities for research and training in parental abduction cases.

B. Military Cases

The Obstacles Project recommends further review of the obstacles encountered by parents whose children are abducted by members of the armed services or their spouses. It is recommended that Congress convene an oversight hearing regarding military

policies and procedures in child custody and parental abduction cases.

C. International Abductions

International child abduction cases pose unique problems. For abductions and wrongful retentions involving countries that are party to the Hague Convention on the Civil Aspects of International Child Abduction, a treaty remedy exists for the prompt return of abducted children. The treaty has been in effect in the United States since 1988. It is recommended that a comprehensive review of all cases decided pursuant to the treaty and implementing legislation be prepared to facilitate use of these laws by lawyers, and their uniform interpretation by judges. In addition, a national conference on issues inherent in international child abduction cases, in general, and the Hague Convention in specific, should be convened for lawyers and judges who handle these matters.

Further research into the obstacles encountered in trying to locate and to secure the return of children abducted to non-Hague countries is recommended.

D. Relationship of Custody to other Child-Related Proceedings

[redacted]Project Advisory Board noted the complex interrelationship [redacted]een child custody proceedings brought pursuant to the UCCJA and the PKPA, and other child-related proceedings brought in juvenile court, or in some instances, in tribal courts. Two compacts that deal with the interstate placement of children and the return of juveniles also raise issues of potential jurisdictional overlap with child custody proceedings within the purview of the UCCJA and PKPA. Additional research to identify and clarify the blurred relationship between the jurisdictional requirements of these various statutes would be helpful.

E. Lawyer Referrals

A major problem faced by parents whose children are abducted is finding a lawyer who is knowledgeable with the issues in an abduction and/or interstate child custody case. It is recommended that a system be devised to identify lawyers with training in and/or experience with parental abduction cases so that appropriate referrals can be made expeditiously upon the request of a parent.

F. Nonprofit Missing Children Organizations

Many nonprofit organizations provide various services to parents of abducted children. There is no regulation of these entities.

Technical assistance should be provided to assist nonprofit missing children and parental abduction organizations in providing a meaningful level of services. However, only those organizations that meet acceptable standards of performance should be eligible for financial support from public funds.

G. School and Child Welfare Records

School records can be a potentially fruitful source of information for locating abducted children. Yet the survey of missing children clearinghouses revealed that schools do not appear to be utilized routinely in the location of abducted children. A review of state law and school policies regarding school involvement in identifying abducted and missing children should be undertaken.

Similarly, state child welfare agencies may have information useful in locating abducted children. Sometimes an abducted child is placed in the care of state welfare authorities who may be unaware that the child has been abducted. Cross-checking of child welfare and missing children records would facilitate location of these children. A review of state law and policies on such cross-checking should be done.

VI. Conclusion

With the analysis of the law and practice complete, and recommendations for law reform made, the need remains to look at the big picture: How should each of the potential players in a parental kidnapping drama -- parents, lawyers, judges, social workers, schools, police, prosecutors, and missing children organizations -- respond when a parental abduction occurs? The legal research, combined with the findings and recommendations of the social science research, should be used to develop a model comprehensive, coordinated response to parental kidnapping cases.

VOLUME TWO: UCSF RESEARCH

PART V: INDIVIDUAL EXPERIENCES AND COMMUNITY RESPONSE IN PARENTAL ABDUCTION CASES

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Chapter 12

PERSPECTIVES FROM LEFT-BEHIND PARENTS AND THEIR HELPERS IN SPECIFIC CASES

by

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Introduction

This data collection in the Obstacles to Recovery and Return in Parental Abduction Project sought to retrospectively examine a national sample of closed (child recovered) parental abduction cases from the perspective of the left-behind parent, law enforcement officer, civil attorney, and social support individual to obtain a descriptive and quantitative assessment of both obstacles and the interrelationship among obstacles, abduction events, and left-behind parent stress. The sample consisted of 52 cases randomly selected from the closed files of the National Center for Missing and Exploited Children.

The chapter is divided into six major sections. Section I is a summary of key findings and recommendations. Section II, Public Policy Research Issues in the Obstacles to Recovery and Return Project, reviews the relevance of the interaction of government system obstacles, life, and abduction events, and left-behind parent psychological distress.

Section III, Goals of the Data Collection, presents the specific goals of this phase of the overall project, and major areas of investigation.

Section IV, Method, reports the design of the data collection effort.

Section V, Results, reports the outcome of the data collection effort by descriptive sections for each respondent, and by analytic section for relationships among respondents, and events.

Section VI, Discussion and Recommendations, presents a review of major findings by respondent and across respondent with recommendation for public policy consideration.

I. Summary of Findings and Recommendations

1. Pre-Abduction Circumstances

FINDING: The majority of left-behind parents report a high frequency of very stressful life events before the parental abduction.

COMMENT: Parent abductions occur in the context of serious family problems which have been in existence for years previously. For the law enforcement officer, attorney, and other government agency staff, it is important to take the time to assess pre-abduction family life events to accurately assess current case information and gain the best level of cooperation from the left-behind parent and their extended family members. Early detection and intervention programs aimed at the prevention of family abduction are not currently in existence.

RECOMMENDATION:

A focused, multi-year field test of various parental abduction prevention options should be conducted within a large urban area likely to have a sufficiently large parental abduction case flow.

2. Victims of Parental Abduction

FINDING: The kindergarten and elementary aged child is the primary victim of parental abduction.

COMMENT: Parentally abducted children of this age and their parents must currently attempt to understand and cope with a very complex event. Public information about the impact of parental abduction upon children and their families is not available to parents in conflict, left-behind parents, or abducting parents.

RECOMMENDATION:

Dissemination of information from OJJDP-sponsored research on the impact of parental abduction upon children and their families would be of significant value.

3. Family Violence

FINDING: About half of the left-behind parents reported that they had been physically abused by the abducting parent and over sixty percent reported that child abuse or neglect had occurred in the family prior to the abduction. In a small minority of cases, these abusive acts were part of

the public record through requests for orders of protection, reports of child abuse, criminal charges and convictions. Law enforcement officers assigned to the parental abduction case investigation were not aware of this information.

COMMENT: This lack of awareness of family violence by law enforcement is probably due to failure to inquire specifically about family violence, high caseloads, and difficulties in checking past parent histories through multiple county and state systems. Protocols and procedures for such checking are not currently available. In addition, in the absence of public records, methods of determining the validity of allegations regarding past abuse are lacking.

RECOMMENDATION:

Protocols and procedures for the checking of past parent histories through multiple county and state systems, as modeled by the Los Angeles County Child Death Review Team, should be developed and disseminated. In addition, protocols for assessing the validity of abuse allegations in parental abduction cases should be developed and tested.

Law enforcement officers and attorneys should become more educated about family violence and regularly inquire as to the history of abuse in the family. When the abductor has a past history of abuse, it should be assumed that the child is in immediate danger. Law enforcement should give these abduction cases the highest priority in location, recovery and return. In an custody enforcement action, attorneys should request that the child be picked up prior to the enforcement hearing.

4. Parental Abduction Predictors

FINDING: No consistent pattern of behavior has been shown for predicting parental abduction.

COMMENT: A series of studies have now been conducted of left-behind parents, attorneys, law enforcement officers, and others which, although not specifically designed for this purpose, have not shown a pattern for predicting parental abduction. The most practically usable information in this regard is likely to be obtained from large sample interviews of parental abductors themselves.

RECOMMENDATION:

A large sample study of parental abductors should be initiated.

5. International Parental Abduction Cases

FINDING: One-tenth of the parentally abducted children in this study were transported to another country. One-quarter of the law enforcement officers assigned to juvenile investigations in this study have handled two or more international parental abduction cases.

COMMENT: While the frequency of international parental abduction cases may be low relative to the more numerous, short term domestic cases, international cases do involve high levels of law enforcement contact and effort.

RECOMMENDATION:

Increased educational and support assistance for law enforcement officers is warranted on the investigaton of international parental abduction cases.

6. Lack of Attorneys Experienced in Parental Abduction Cases

FINDING: One-fourth of the attorneys retained by the left-behind parent had never been previously involved with a parental abduction case. An additional one-third of the attorneys had only been involved with one to two prior cases.

COMMENT: A relatively small number of attorneys are available who are experienced in parental abduction cases. This is probably due to the infrequency with which these cases present themselves to attorneys as well as their lack of knowledge of the applicable law.

RECOMMENDATION:

A program of educational materials, training, and access to specialized consultation should be instituted for attorneys. Attorneys should be supported to advise clients of their prior experience in parental abduction cases.

7. Variability of Law Enforcement Experience in Parental Abduction

FINDING: The majority of law enforcement officers in this study had either handled a substantial number of prior parental abduction cases, or only a few.

COMMENT: It is probable that the successful location and recovery of the child is associated with the extent of the law enforcement officer's experience in investigating parental abduction cases. Consequently, citizens may be differentially served, depending upon whether they have access to a very experienced investigator or one with relatively little, or no, prior experience.

RECOMMENDATION:

A program of educational materials, training, and access to specialized consultation should be supported for law enforcement officers.

8. Law Enforcement Assistance in Child Recovery

FINDING: One-third of left-behind parents in this study rated law enforcement as not helpful in child recovery.

COMMENT: This may be partially accounted for by a combination of a local law enforcement policy defining parental abduction as an offense warranting limited assignment of resources, and law enforcement as an available and convenient focus for left-behind parent frustration about the overall difficulty of child recovery.

RECOMMENDATION:

Both citizens and law enforcement agencies would benefit from clearer policy statements about the extent of services offered, and educational material for citizens about the legal constraints within which law enforcement must function.

9. Use of Private Investigators

FINDING: Private investigators were employed by one-fourth of the left-behind parents in this study, with very limited satisfaction in the results. However, in a small group of cases, satisfaction was very high.

COMMENT: Private investigators are generally employed by left-behind parents with very limited financial resources. The issues of how left-behind parents search for a private investigator, what criteria are used in deciding to retain the private investigator, and how funds spent are related to actual child recovery are unknown at present.

RECOMMENDATION:

A study of the use and effectiveness of private investigators by left-behind parents should be conducted,

with attention to identifying characteristics or procedures of highly effective private investigators.

10. FBI Involvement

FINDING: The majority of cases in this study were interstate abductions. Despite the supposed access to UFAP warrants and the FBI in interstate cases, no common pattern could be found for UFAP requests and involvement by the FBI.

COMMENT: Left-behind parents lack accurate and specific information on the purpose and function of the FBI in parental abduction cases.

RECOMMENDATION:

FBI involvement in parental abduction cases would benefit from further definition for both left-behind parents and local law enforcement agencies.

11. Legal Assistance

FINDING: Attorneys and left-behind parents had very different opinions about left-behind parent satisfaction with legal services. Attorneys consistently overestimated left-behind parent satisfaction.

COMMENT: This may be a difference in perceptions about what constitutes optimal legal service and positive case outcome. While attorneys may be aware of the limitations within the legal system regarding parental abduction cases, left-behind parents are likely to be uninformed about legal procedures and much less accepting of the limitations of the legal system.

RECOMMENDATION:

Additional attorney effort and education for left-behind parents is warranted to attempt to reduce these differences between attorney and client about service satisfaction.

FINDING: One-fifth of attorneys for left-behind parents had little or no knowledge of the criminal proceedings subsequent to the recovery of the child.

COMMENT: The attorneys' lack of knowledge of criminal proceedings reflects the separate nature of civil and criminal actions in parental abduction cases. The work of the civil attorneys representing the left-behind parents in actions to obtain, modify, or enforce child custody

orders does not necessitate knowledge of criminal proceedings. However, particularly if the child has been concealed during the abduction, the civil attorney should be knowledgeable of and encourage criminal charges being brought against the abductor, since that can increase location efforts.

RECOMMENDATION:

Training, educational materials, and specialized consultation to attorneys about parental abduction cases should include a emphasis upon the importance of their awareness and involvement in criminal proceedings involving the abducting parent.

12. Assistance to Abducting Parent

FINDING: Left-behind parents reported that the abducting parent received assistance in three-fourths of the cases, with the abductor's mother and friends being most frequently identified.

COMMENT: This high rate of assistance to abductors by others has been noted by other studies, as well. Such results would imply that parental abduction is an offense which would be most difficult to carry out without external assistance.

RECOMMENDATION:

Additional study should be undertaken to identify individuals, commonly perceived by both the left-behind parent and law enforcement as providing abductor assistance, and then to proceed to examine ways to alter this source of support.

13. Fate of Abducting Parent

FINDING: In half of the cases in this study, the abducting parent was arrested, and most were brought to trial. Of those brought to trial, half were convicted. Of those convicted, two-thirds received sentences of 3-4 months.

COMMENT: The arrest and conviction rates of this small NCMEC sample are substantially higher than the current prevailing belief regarding arrest and conviction on parental kidnapping charges. At present, no sentencing guidelines exist for judges to employ in parental abduction cases.

RECOMMENDATION:

A program of model sentencing guideline construction should be supported, utilizing a consensus building approach with senior judges examining a range of actual case examples.

14. Expenses Incurred by Left-Behind Parent

FINDING: One-third of left-behind parents in the NCMEC sample spent between $1,000-$5,000 on child recovery related legal expenses, with one-fourth reporting lost income in the same range. Additional expenses were incurred in travel to the site of child recovery and in child search supplies.

COMMENT: Left-behind parents with very limited financial resources frequently expend significant funds in the search and recovery process.

RECOMMENDATION:

Local bar associations should be supported in the development of a parental abduction interest subgroup within existing family law interest groups. Such parental abduction interest subgroups should be encouraged to provide pro bono legal services provided to low income clients.

15. Recovery of Child

FINDING: Law enforcement officers indicate that the left-behind parent most frequently developed the lead that resulted in the recovery of the child.

COMMENT: Continued parental activity in the search process is very important to recovery.

RECOMMENDATION:

A study should be conducted to determine the nature of leads that result in child recovery in parental abduction, with attention to those developed by the left-behind parent.

16. Placement of Child Upon Recovery

FINDING: About forty-five percent of the recovered children were not immediately returned to the left-behind parent. These children were placed temporarily in foster care, youth shelters, with relatives or others, or remained with the abductors.

COMMENT: Children may be placed in temporary care when the custodial parent is unable to be present at the time of the child's recovery. Travel time and costs may be a contributing factor to the parent's unavailability.

This finding reinforces the importance of recovery and reunification training for law enforcement officers and community agency personnel, as is currently being developed by the Reunification of Missing Children Project.

RECOMMENDATION:

Reunification of missing children training should be made available to law enforcement officers and community agency personnel, through the development of regional Reunification of Missing Children Teams where possible, and through general education where not.

17. Reabduction

FINDING: Almost three-fourths of the left-behind parents interviewed in the study were concerned about reabduction and about a half had taken measures to prevent a reabduction.

COMMENT: Over a quarter of the left-behind parents reported that the abductor supervised visitation. Over ten percent each had a bond in place and the abductor's passport restricted. About a third of the parents had not taken action to prevent a reabduction. Such family failures to initiate change may be due to a fatalistic belief about not being able to prevent reabduction or may represent a lack of constructive coping. Effective counseling and self help for these families will depend upon an identification of the beliefs and values which restrict constructive coping.

Some left-behind parents in NCMEC files were unable to be located for the study, perhaps indicating that they had moved or obtained an unlisted number as a means of abduction prevention.

RECOMMENDATION:

Further research into family coping after child recovery should include attention to family beliefs and behavior about reabduction and behaviors to prevent reabduction.

18. Attitudes Toward Government Agencies

FINDING: Overall, the abduction experience produces a generalized negative attitude change by about half of left-behind parents and their social supports toward government agencies.

COMMENT: Confidence in government institutions is weakened by the experience of many of these parents. This may lead them to be less likely to seek assistance in the future.

RECOMMENDATION:

New parental abduction legislative initiatives, and programs of education for law enforcement officers and other government agency personnel, and programs of assistance for abducted children and their families should include measurement of attitude and service satisfaction change.

II. Public Policy Issues

In the Obstacles to Recovery and Return in Parental Abduction Project, the identified public policy issue is parental abduction and the obstacles which prevent or significantly inhibit the ability of the left-behind parent to physically recover custody of the abducted child. The issue of parental abduction has developed rapidly, with substantial attention to aspects of governmental (law enforcement, judicial, and legislative) systems as being the major obstacles to child recovery.

It is individual citizens who must encounter these governmental systems as the recovery of their parentally abducted child is pursued. The ability of the citizen to successfully understand and employ these governmental systems is affected by life events and the level of psychological distress being experienced.

Further, it is individual law enforcement officers and private attorneys operating within governmental systems that encounter the citizen who has lost a child to parental abduction. To the degree that law enforcement officers, private attorneys, and left-behind parents share a common understanding of parental abduction case events and a common perception of each other's experience, government system response to child recovery may be enhanced.

Left-behind parents are also likely to attempt to cope with the abduction in the context of a social support and extended family system.

For these reasons, a public policy relevant investigation of obstacles to recovery in parental abduction needs to document the actual experience of law enforcement and civil attorneys pursuant to child recovery, document the obstacles encountered, the effect of life events and varying levels of psychological distress of left-behind parents in coping with these obstacles. Further, the reliability of this documentation would be enhanced if obtained from the multiple perspectives of the individuals primarily involved in parental abduction child recovery.

III. Goals of the Data Collection

With the above issues in mind, this data collection in the Obstacles to Recovery and Return in Parental Abduction Project sought to retrospectively examine a national sample of closed (child recovered) parental abduction cases from the perspectives of the left-behind parent, law enforcement officer, civil attorney, and social support individual. The goals of the data collection were to examine these perspectives and their interrelationship, to obtain information about the perceived obstacles to the recovery and return of the abducted children, and to describe the relationship between the psychological stress of the left-behind parent and various abduction events.

IV. Method

Subjects

The sample universe for this data collection consisted of parental abduction cases registered with the National Center for Missing and Exploited Children (NCMEC). NCMEC is the national clearinghouse for information on all categories of missing and exploited children, and provides direct assistance to left-behind parents and law enforcement agencies in the investigation and recovery of missing children. NCMEC represents the most comprehensive, nationally visible and credible resource for assistance in finding missing children, and represents a common point of communication of state government missing children clearinghouses. In the conduct of the above activities, NCMEC has established and maintains the most comprehensive national registry of missing children, including the parental abduction category.

For the above reasons, the NCMEC missing child registry was selected for utilization in this project. However, it is recognized that the NCMEC data base does have some limitations. Not every missing child case in the United States is entered into the NCMEC data base, as entry is voluntary and not mandated by law. Instead, cases may be entered into regional, municipal, county, or state wide data bases, or by voluntary entry by legal mandate into the data bases of private non-profit organizations. To attempt to better understand potential differences among these missing child data bases, 1990 closed parental abduction cases from the NCMEC

data base were compared to 1990 closed parental abduction cases obtained from the data bases of the I-SEARCH Unit of the Illinois State Police, representing the most uniformly constructed and well maintained municipal, county, or state wide data base; and 1990 closed parental abduction cases obtained from the data base of Child Find of America, Inc., representing one of the most organized and well maintained private volunteer organization missing child data bases.

It is noted that these data bases are not comparable in some respects. Most significantly, each data base had somewhat different case entry rules. For a case to be registered with NCMEC, the left-behind parent must have sole legal custody of the child being sought. Entry into the Child Find and I-Search data bases does not require that the left-behind parent have sole legal custody. Child Find accepts cases in which the left-behind parent has a custody order granting them custody or visitation rights. Parental abduction cases are mandated to be entered into the I-SEARCH data base without delay as soon as a child is reported missing, regardless of custody status.

These data bases were compared on system case entry guidelines and on seven demographic characteristics to determine if significant differences existed which might infer the possibility of a systematic bias in such data bases. However, due to different methods of data entry rules, these variations can still be descriptive and inferential, and are not subject to statistical confirmation.

With regard to age, I-SEARCH reported a higher number of very young children of one year of age or less (21.3%), as compared to NCMEC (6.4%), or Child Find (4.8%). Additionally, Child Find reported slightly greater numbers of children 3-5 years of age, than did NCMEC or I-SEARCH for the same age groups.

With regard to race, the majority of parentally abducted children in all data bases for 1990 closed cases were Caucasian (NCMEC-83.6%, Child Find-78.9%, and I-SEARCH-66.8%). The I-SEARCH data base contained a significantly greater number of African-American children (33.2%) than did the NCMEC (9.4%), or Child Find (9.0%) data bases. To place this figure in perspective, African-Americans constitute 15% of the U.S. population and 20% of the total population of the state of Illinois. Consequently, African-Americans are underrepresented in the NCMEC and Child Find data bases and overrepresented in the I-SEARCH data base.

The differences in entry guidelines are probably at the root of the racial variation. Since a significant number of African-American parents are unwed (and unwed parents generally have not obtained custody orders), they would be ineligible for location

assistance from NCMEC or Child Find.[1] I-SEARCH, however, automatically takes the cases of unwed and predecree parents if they report their children as missing.

With regard to the sex of parentally abducted children, there were no significant differences among all three data bases in terms of the number of boys and girls registered.

With regard to time missing, in the I-SEARCH data base, more than half of the cases were resolved within one week (52.3%), and nearly three-fourths of the cases were resolved within four weeks (72.5%). Again, this is probably due to immediate reporting of all cases of child disappearance by law enforcement. Over one-third of the cases registered with NCMEC were resolved within 2 months or less (38.2%), and over half were resolved within 6 months (66.3%). Most notably, approximately one-fourth of the cases registered with Child Find were reported as missing for more than 5 years (22.6%). It could be inferred from this finding that the I-SEARCH, mandated by law to include any reported missing child, has a data base containing a high percentage of cases which are very quickly resolved. NCMEC and Child Find, on the other hand, may have data bases in which case resolution is more difficult.

While all data bases had information on missing child age, race, sex, and length of time missing, only NCMEC and Child Find were able to provide information about the relationship of the individual who reported the disappearance and the child. In both data bases almost all of the individuals reporting child disappearance were parents (NCMEC-87.3% and, Child Find-94.7%). While the NCMEC data base did not distinguish between mothers and fathers, the Child Find data base reflected that in slightly over half of the cases the individual reporting an abduction was the child's father (52.4%).

In summary, alternative child parental abduction data bases were descriptively compared to the NCMEC data base. Some racial, missing child age, and time missing variability among data bases was noted as potentially relevant to the discussion of results of this study. Variability observations should be viewed with caution, as different data base case entry precluded statistical tests of significance.

In order to identify all registered parental abductions occurring during 1990, the NCMEC missing child registry electronic data files were entered by NCMEC staff in conjunction with project staff. Project staff then identified a random sample of NCMEC parental abduction cases closed during calendar year 1990. The

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[1]The lack of location and recovery assistance for unwed parents was identified as a problem in the clearinghouse survey, reported in Chapter 9.

left-behind parent was then contacted by telephone and asked about interest and willingness to participate in the study. If the left-behind parent was interested in participating, he or she was then asked to indicate the private attorney utilized, the law enforcement investigating officer, and a socially supportive individual who was of assistance during the course of the case. All study respondents, the left-behind parent and the collateral individuals, were sent study information and a participation consent form. Left-behind parents were also sent a release of information and study participation consent form which was then transmitted to law enforcement officers and private attorneys as required. Study respondents were then interviewed by telephone at a time of their convenience.

Interview Format

This project was designed to better understand the process of child recovery and return in parental abduction cases, leading to the identification of obstacles to successful recovery and return. Information was then systematically obtained via interviews with the left-behind parent, private attorney for the left-behind parent, the investigating law enforcement officer, and a social support person identified as such by the left-behind parent. This information involved demographic data as well as objective and valuative information about pre-abduction events, abduction events, abduction investigation, civil legal events, and the eventual recovery/return. Psychological distress of the left-behind parents was measured by a nationally normed psychological instrument (Symptom Checklist 90 Revised).

V. Results

Study results are reported descriptively and analytically. First, study results are presented descriptively for each category of respondent: left-behind parent, investigating law enforcement officer, private attorney for the left-behind parent, and social support person identified by the left-behind parent. Second, study results are presented analytically across categories of respondents, including differences across groups and relationships among study variables. Principal study findings are then reviewed with implications for public policy decisions and further investigation.

Study Sample

Seventy-five left-behind parents were contacted in order to obtain a sample of 52 cases, for an initial project participation

rate of 69%.[2] For these 52 cases, 39 (75%) private attorneys consented to participate, 4 (7.7%) private attorneys declined to participate (indicating that they did not participate in individual case surveys of any kind whether or not the client had signed a release), 8 (15.4%) cases had no private attorney, and in one case, the attorney was unavailable due to overseas location. This resulted in an eligible attorney response rate of 90.7% which constituted 75% of the total of 52 cases. For these 52 cases, 42 (80.8%) law enforcement investigating officers consented to participate, 2 (3.8%) law enforcement officers declined to participate, and 8 (15.4%) cases had no law enforcement investigating officer. This resulted in an eligible law enforcement investigating officer response rate of 95.5% which constituted 80.8% of the total of 52 cases.

For these 52 cases, 46 (88.5%) social support individuals consented to participate, 3 (5.8%) social support individuals declined to participate, and 3 (5.8%) cases had no social support individuals. This resulted in an eligible social support individual response rate of 93.9% which constituted 88.5% of the total of 52 cases.

With regard to participation by collateral respondents: law enforcement (15.4%), and attorneys (15.4%), were more frequently likely not to have been involved in cases than were social supports (5.8%). With regard to study interview participation, there was no substantial difference in the numbers of collateral respondents who declined to participate when law enforcement (4.5%), attorneys (9.3%), and social supports (6.1%) were compared.

With regard to case participation in addition to the parent, all three collateral groups were represented in 36 of the 52 cases (69.2%); only two of the three collaterals were involved in 13 cases (25.0%); only one of the three collaterals were involved in 3 cases (5.8%). The collaterals who were identified by the parent as having been involved in the case were then contacted and asked to participate in the study. With regard to study interview participation, in 29 of the 52 cases (55.8%), all three of the collaterals actually participated; in 17 of the 52 cases (32.7%), two of the collaterals actually participated; in 6 of the 52 cases (11.5%), only one collateral participated in the study.

In summary, participation by study respondents across categories was very high.

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[2]It was necessary to make additional random selections from the NCMEC data files to obtain seventy-five successful contacts as many of those initially selected were not able to be contacted. To what extent this was a result of relocation to prevent future abductions cannot be determined.

Left-Behind Parent Case Experience

1. Characteristics of the Left-Behind Parent

Gender. The gender split of the left-behind parents were roughly equal, with 48% being the biological mother and 52% being the biological fathers. This result indicates that the abducting parent is approximately equally likely to be a father or a mother. It is significant to note that a multi-year prospective study (Hatcher, Barton, and Brooks, 1991) of 104 parental abduction cases found that a very small minority of parental abductors were not parents of record but were involved with pre-abduction child care as an extended family member or as a nurturing parent figure. The presence of such child abductors has also been noted in a multi-year prospective field test (Hatcher, Barton, and Brooks, 1992) of reunification of missing children.

Age. The largest age grouping of left-behind parents were 26 to 30 years old (30.8%). Over 70% of the left-behind parents were between the ages of 26 and 40. The abductors' ages closely matched this same pattern.

Ethnicity. The majority of left-behind parents interviewed were Caucasian (87%), followed by Hispanics (8%). African-Americans and Asian/Pacific Islanders were substantially under-represented, at 4% and 2%, respectively. The abductor group was quite similar in ethnic breakdown, but was composed of fewer Caucasians (81%) and more Hispanics (14%). By comparison, the U.S. national population is made up of Caucasians (71%), African-Americans (15%), Hispanics (11%), and Asian/Pacific Islanders (3%) (U.S. Census, 1990).

The National Incidence Study of Missing and Exploited Children (Finkelhor, Hotaling, and Sedlak, 1990), commonly referred to as NISMART, found the left-behind parent population to be made up of Caucasians (80%), African-Americans (17%), and Hispanics (3%). In an earlier study of Los Angeles County parental abduction cases, Agopian (1981) found that the incidence of Caucasian abducting parents was representative of the percentage of Caucasian custodial parents in Los Angeles County. African-American and Hispanic abducting parents slightly exceeded their numbers in the population of custodial parents while Asians were substantially under-represented.

These findings suggest that: parental abduction by Caucasians is representative of the percentage of Caucasians in the national population whereas parental abduction by Hispanics is higher (for unknown reasons) than the percentage of Hispanics in the national population. It may be that national studies (such as the present study) may obscure meaningful regional differences in the incidence of parental abduction by minorities. Alternatively, results from studies of parental abduction incidence may differ by the type of

study methodology used, e.g., random digit dial telephone survey vs. closed law enforcement case survey, and the entry criteria, e.g. inclusion of unwed parents.

Socio-Economic Status. The occupational group best represented by the left-behind parents was the minimum wage unskilled laborer (33%), followed by skilled manual labor (21%). The majority of left-behind parents had graduated from high school or had college training (83%). Such a population is highly likely to have limited financial resources with which to obtain private legal assistance for the recovery of their child. This limitation would make approximately half of the left-behind parents primarily dependent upon local law enforcement for child recovery.

Marital Status. The majority of left-behind parents in the NCMEC sample were either married to but separated from the abducting parent (29%) or were divorced and were living with a new partner (29%). The relationship with the abducting parent most often had lasted from 3 to 5 years (37%), with the vast majority lasting 3 or more years (86%). The abductions typically occurred within 12 to 24 months post divorce or separation (31%) or more than two years afterward (29%).

The majority of left-behind parents characterized their relationship with the abducting parent as being mostly negative (33.3%) or extremely negative (28%). Over one-quarter of the left-behind parents had new partners. Whether the presence of these new partners is a factor in abducting parent's decision to take the child, and in the left-behind parent's ability to pursue child recovery, may indeed be important to determine in future studies.

2. Family Stressors

Family Life Events. The majority of left-behind parents reported the occurrence of significantly stressful life events from the birth of the missing child up to the year prior to the abduction. These events included: parental conflict (67.3%), separation from the abductor (59.6%), family member emotional problems (51.9%), family member alcohol/drug dependency (48.1%), financial strain (46.2%), parental divorce (44.2%), and physical or sexual abuse within the home (38.5%).

Family Events One Year Prior to Abduction. The majority of left-behind parents reported the occurrence of significantly stressful family events during the year prior to the abduction. Included in these events were: conflict with the abductor (76.9%), family member emotional problems (48.1%), family member alcohol/drug dependency (38.5%), financial strain (36.5%), separation from the abductor (32.7%), parental job change (26.9%), physical/sexual abuse within the home (25%), and difficulty managing children (25%). None of the family members experienced the death of a spouse/ex-spouse/partner, sibling or non-family

member living in the home. Also, few cases reported that the missing child had been ill (3.8%) or had lived with an extended family member (3.8%), another family (3.8%), or in foster care (3.8%).

Families do not face the problem of parental abduction with a blank slate from their prior life. These findings illustrate how parental abductions frequently occur in the context of serious, and often chronic, family problems. However, pre-abduction psychological counseling from mental health, social service, or clergy is infrequently utilized pre-abduction by these families (Hatcher, Barton, and Brooks, 1991). Such counseling is, of course, voluntary and dependent upon the initiative of the parents, except in some municipal jurisdictions where mediation is mandated as part of family or dependency court involvement. The effectiveness of such policies in reducing subsequent parental abduction, however, is unknown.

3. Characteristics of the Abducting Parent

Abductor's Age. Slightly over one-fourth of abductors (26.9%) were between the ages of 26 and 30 years old at the time of the abduction. Approximately one-fourth of the abductors (23.1%) were between the ages of 36 and 40 years old, while slightly fewer were between the ages of 31 and 35 years old (17.3%), and 21 to 25 years old (15.4%), with the fewest number (1.9%) being 20 years old or less.

Abductor's Race. The majority of abductors were Caucasian (80.8%), with the second greatest number being Hispanic (13.5%). African-American (3.8%) and Asian/Pacific Islanders (1.9%) accounted for a small number of abductors, and American Indian/Alaskans were not represented. This racial mixture parallels that of the left-behind parents.

Characterization of Abductor-Child Relationship. Over half of the left-behind parents reported that the relationship between the abductor and the abducted child was either mostly positive (30.8%), or sometimes positive (25%), and 11.5% rated the relationship as extremely positive. Another 11.5% also rated the relationship as being "mostly negative" or "extremely negative."

Assistance to the Abductor. The abductor received assistance with the abduction in the majority of cases (86.5%). Friends and family members of the abductor were most frequently cited as providing assistance. Friends were reported as the most frequently assisting individual (34.6%), followed by the mother of the abductor (32.7%), a sibling of the abductor (30.8%), extended family member of the abductor (28.8%), and a new spouse (17.3%). None of the left-behind parents' family members were reported to have assisted the abductor, and only 13.5% of the abductors were reported to have received no assistance from anyone.

Janvier, McCormick, and Donaldson (1990) found an abductor assistance rate of 80% in a sample of longer term parental abduction cases, whereas the NISMART study (Finkelhor, Hotaling, and Sedlak, 1990) found an abductor assistance rate of only 25% in a sample of cases where the average length of child disappearance was one month. It is noted that all of the above results are based upon left-behind parent report, although the current study's results are confirmed by the law enforcement officers involved in the case investigations.

These results imply that parental abduction is an offense that is difficult to carry out without the assistance of friends or relatives. Experienced law enforcement investigators are well aware of this issue, and may focus their initial interviews upon abductor extended family, hoping to establish a channel of communication with the abductor. Some abductor extended family and friends do become concerned about the escalating criminal case and do establish such a communication channel, while others refuse to cooperate in any way. Unfortunately, empirical evidence is not presently available on the motivations and value systems of abductor extended family and friends who attempt to seek a legal solution to the abduction versus those who refuse to even talk to law enforcement. Further, such individuals are unlikely to be clearly divided into the above two groups, but rather are likely to be influenced by factors such as investigator or abductor provided information during the period of the child's disappearance. Enhanced effectiveness in case investigation may be highly affected by knowledge of why some individuals involved in assisting parental abductors eventually do communicate with law enforcement investigators and attempt to assist in a legal solution.

4. Family Characteristics

Abuse in Family. Approximately half of the left-behind parents indicated they had been physically abused in their relationship with the abducting parent. Less than half of those parents, however, obtained a restraining order against the abducting parent. Approximately one-fourth of the involved abducting parents had been formally charged with spousal abuse, and less than one-tenth of these cases led to a conviction (2/26 or 8% of the physically abusive abducting parents).

On the other hand, about one-third of the left-behind parents had been accused of spousal physical abuse by the abducting parent (34%). Thirty-nine percent of these parents, (who were reportedly abusive), had a restraining order issued against them. Twenty-eight percent of the left-behind parents accused of physical abuse had been formally charged with spousal abuse, but only one was convicted (1/18 or 6%).

Most of the left-behind parents indicated that some form of child abuse or neglect had occurred in the family prior to the

child/ren's abduction (61.5%). Forty-six percent indicated that their spouse/ex-spouse/partners had neglected the child(ren), 26.9% involved physical abuse of the child, and 17.3% indicated sexual abuse of the child. Only 39% of the cases indicated, however, that abuse had ever been reported. Formal charges of abuse/neglect were even less frequent: physical abuse (9.6%), sexual abuse (4%), and neglect (4%). Only one conviction of an alleged abusive parent was reported, for physical abuse (2%). The majority of left-behind parents also indicated that they had been accused by the abducting parent of some form of child abuse or neglect prior to the abduction (53.8%). Thirty-seven percent had been accused of physical abuse, 28.8% had been accused of child neglect, and 19.2% had been accused of sexually abusing their child. Only 1 parent (2% of sample), however, was ever convicted of abuse (physical).

These findings suggest that pre-abduction allegations of physical abuse are frequently made by both parents. Further, pre-abduction restraining orders are often obtained against both the abducting parent and the recovering parent.

Formal charges of pre-abduction spouse abuse (approximately 6%), however, rarely lead to a conviction. This finding may mean that law enforcement, judicial, and social service systems may frequently face a number of parental abduction cases in which allegations of abusive behavior by either parent toward either adults or children are common (yet meaningful), but in only a small number of cases does the evidence of such abuse meets the legal threshold for a conviction. A conviction often depends on the application of a comprehensive, and often painful, screening and evaluation process to both parents in order to identify a relatively small number of abusive parents. While the technology to implement such a screening and evaluation process is not currently available, law enforcement and social service agency personnel must still pursue such investigations. This process is also affected by varying levels of agency personnel commitment and motivation about the utility of an intensive investigation which is not likely to yield a conviction. Parents who have come to the conclusion that government support is inadequate to protect their children from abuse by the other parent may respond by abducting the child.

Children Abducted. Of the 52 parental child abduction families, three involved 3 children (6%), twenty-eight involved 2 children (54%), and nineteen involved 1 child (37%).

Age of Missing Child. Approximately three-fourths of the abducted children were between the ages of three and ten years old at the time of their abduction. Approximately one-fourth of the children were between the ages of three and four years old, between five and six, and between seven and ten years old. Slightly more than one-tenth of the children (13.5%), were two years of age. Less than one-tenth were between eleven and thirteen years old

(9.6%), and almost none of the children were older than fourteen (1.9%).

Parental abduction, then, is primarily oriented toward the kindergarten and elementary school aged children. It is within this age range that children gain the ability to verbally communicate more freely with adults, about both their feelings and their thoughts. This is an age range in which the child is most likely to accept whatever explanations are given by the abducting parent about the left-behind parent, and the abduction event itself.

Upon recovery and return, the child faces acceptance of a different set of expectations, and demands are usually complied with on the surface. The child may not yet have attained the cognitive skills to completely understand the complexities of the abduction event, and as the child grows into adolescence and young adulthood, the event is more likely to become a focus of more open attention, discussion, and emotion by the child. Unfortunately, public information about the impact of parental abduction upon children within this (or any other age range) is not available at this time to parents in conflict, left-behind parents, or abducting parents.

Several events were thought by a substantial percentage of the left-behind parents to have preceded their child/ren's abduction. These events included (a) changes in stability (job loss) of abducting parent (35%), (b) changes in demands (telephone calls) related to access to the child/ren made by the abducting parent (35%), (c) a move or impending move of the abducting parent (27%), (d) changes in the custody order which reduced visitation of the abducting parent (19.2%), and (e) the leveling of allegations of left-behind parent's physical abuse or neglect of the child/ren (19.2%) (see Table PREDICT for a more complete list of these interview items.)

Table PREDICT

The Most Prevalent Risk Factors Occurring in the Family Within One Month of the Abduction

1. Changes in the stability of the abductor. (34.6%)

2. Changes in the abductor's demands (telephone calls) related to access to the child/ren. (34.6%)

3. Abductor's move or impending move. (26.9%)

4. Custody order reduced the abductors's visitation. (19.2%)

5. Allegations of left-behind parent's physical abuse or neglect of child/ren. (19.2%)

6. Changes in the custody order which did not affect visitation rights. (13.5%)

7. Allegations of abductor's physical abuse or neglect of child/ren. (13.5%)

8. A move or impending move by the left-behind parent. (11.5%)

Over half (51.9%) of the left-behind parents felt that the abducting parents took the child/ren to exact revenge from the left-behind parent for the separation or divorce. Other reasons posited were the abducting parent's (a) belief that he/she would not be given a desirable custody agreement (15%), (b) belief that he/she was not going to be given custody (14%), and (c) dissatisfaction with the child visitation rights (14%). A notable 46.2% of the cases reported abductor motivation as other than the options listed. While these study results identify categories of events believed by left-behind parents to precede abduction, no consistent pattern emerges for pre-abduction events which would enhance abduction prediction.

Military Status and Military Involvement. The majority of respondents were not members of the armed forces and were not married to members of the armed forces (88.5%) at the time of the abduction. In a small number of the cases the abductor was a member of the armed forces (5.8%), or the left-behind parent was a member of the armed forces (3.8%). Almost no cases involved abduction from or to a military post or base. Children were abducted from military posts in only 3.8% of the cases and abducted to a military post in none of the cases. Few of the left-behind parents lived on a military base at the time of the abduction

(3.8%), and none of the abductors lived on a military base at the time of the abduction.

5. Custody Arrangements

Custody Agreement. In over three-quarters of the cases, a written custody order was present. Half of the left-behind parents (50%) reported having sole physical and sole legal custody at the time of the abduction. Of the total cases, a custody decision was pending in 7.7% of the cases and no custody was being sought in 9.6% of the cases at the time of the abduction. In equivalent percentages of cases, the custody agreement had been in place for more than two years prior to the abduction (13.7%), seven months to a year (13.7%), or four to six months (13.7%).

Visitation. In most of the cases (75%), the left-behind parent and abductor had a visitation agreement prior to the abduction. In 13.5% of the cases, left-behind parents were entitled to 90% of the visitation time. In 11.5% of the cases, left-behind parents were entitled to 80% of the visitation time. In 7.7% of the cases, left-behind parents were entitled to 70% of the visitation time, and in only 17.3% of the cases left-behind parents were entitled to less than 50% of the visitation time.

6. The Abduction

Place of Abduction. The majority of left-behind parents reported that their child was abducted from the home of the abductor (38.8%). Approximately one-fourth (26.5%) of the left-behind parents reported that their child was abducted from their own home, fewer (14.3%) reported that the child was abducted from the home of a relative of the abductor. None of the children were thought to have been abducted from foster care, day care, or the home of a left-behind parent's friend. In over half (59.6%) of the cases, abductions were a failure to return the child/ren following a scheduled visitation.

Initial Left-Behind Parent Concern and Actions after Child Disappearance. Left-behind parents reported that in approximately half (48.1%) of the cases, they suspected that their child had been abducted within an hour of their initial concern about their child's whereabouts. Another 36.6% of the left-behind parents believed their child had been abducted between one and five hours from their initial concern. Very few left-behind parents waited over six hours before their concerns about their child became beliefs (15.3%). One case (1.9%), however, waited over four weeks after the initial concern before believing an abduction had occurred.

The most frequently reported initial action taken by left-behind parents after their initial concern about abduction was to telephone law enforcement (90.2%). Families also reported calling

NCMEC (41.2%) and relatives of their spouse/ex-spouse/partner (29.4%). Respondents did not telephone or go to the child's school and very few actually went to the home of their spouse/ex-spouse/partner's relatives (5.9%) or friends (3.9%).

The highest percentage of cases (37.3%) contacted a law enforcement agency within 1 to 2 hours of their initial concern, more than one-fourth (27.5%) contacted a law enforcement agency within less than an hour, and 13.7% contacted a law enforcement agency within 3 to 5 hours. Only 11.8% waited two days or more. One of the families that waited (2.0%), did so after four weeks.

In contrast, only 19.2% of the families contacted an attorney in 1 to 2 hours of their initial concern and in 19.1% of the cases the parent waited for more than a day. Another 13.5% contacted an attorney within 3 to 5 hours. In a small number of the cases (13.5%) an attorney was not contacted.

In more than half (61.6%) of the cases, left-behind parents contacted a missing child center within 24 hours of their initial concern about the children. Almost one-fourth of the families (24.9%) waited until two or more weeks after their initial concern to contact an agency, but there were no cases in which a family did not contact an agency.

7. The Location of the Child During Abduction

Left-Behind Parent's Belief About the Whereabouts of the Child During Abduction. Most of the left-behind parents believed their children were either at the home of the abductor (26.9%), or at the home of a relative of the abductor (25%) at the time of their initial concern. About one-fourth (23.1%) of the respondents reported that they did not know the whereabouts of the child at the time of their initial concern. Additionally, some of respondent/s (11.5%) believed their child was somewhere other than those locations specified by the interview which included school, foster care, day care, and the homes of the left-behind parent's relatives, or friends. Some (9.6%) thought their child was at the home of a friend of the abductor, and only a few (3.8%) believed their child to be at their own home.

Movement of Abducted Child/ren. The child/ren were transported from their predominant place of residence in the majority of the cases (88.5%). Most frequently children were initially taken to other states (55.8%). Only 7.7% were initially taken to another country.

California was the most frequent state (11.5%) from which children were abducted in the NCMEC sample, although 28 of the 50 states were represented in this study.

Child Location During Abduction. California was most frequently reported as the state of destination for parental abductions (13.5%). Twenty other states were designated as states to which a child was taken by left-behind parents in this study. Almost one-fourth (23.1%) reported that this question "did not apply" to them.

Overall, children were taken out of the United States at some point during the abduction in about one-seventh (15.3%) of the cases. Mexico was the country to which children were most frequently taken (9.6%). Canada, Ecuador, and the United Kingdom, were the only other countries to which children were reportedly taken.

The location of the child changed during the abduction in 82.4% of the cases. Most children were reportedly kept out of their states of residence for the majority of the abduction period (58.8%). Only 5.9% were kept out of the country during the majority of the abduction and there was no information about the child's whereabouts in 9.8% of the cases.

The most frequently reported locations in which abductors and children resided during the abduction period were: (a) on the road (51%), (b) in the home of relatives of the abductor in another state (39.2%), and (c) in the home of friends of the abductor in another state (35.3%). Only 5.9% stayed at a home or facility providing housing and care for parents taking their children.

Child Concealment. Children were reportedly physically concealed in over a third of the cases (35.3%), their appearances were changed in about one-fifth of the cases (19.6%), and their names were changed in a seventh of the cases (15.7%). Other concealment methods were used in just a few cases (3.9%).

8. Emotional Support

Primary Emotional Support Within Family. The mother of the left-behind parent was most frequently reported as the left-behind parent's primary source of emotional support (44.2%). Partners of the left-behind parent were also frequently cited as emotionally supportive (28.8%). Remaining children were reported as a primary source of emotional support in only 3.8% of the cases.

Other Emotional Support. Left-behind parents most frequently identified friends (92.3%), relatives (84.6%), missing child center staff (78.4%), attorneys (64.7%), personal knowledge (63.5%), religious beliefs (58.8%), and law enforcement (55.8%), as sources of emotional support during the abduction period. Of all the left-behind parents, more than half (59.6%) of these cases reported friends were greatly supportive, as opposed to moderately, minimally, or not supportive. Relatives were perceived as greatly supportive by more than half (61.5%) of all the left-behind

parents, and in one-third of the cases (33.3%), attorneys were perceived as greatly supportive by left-behind parents.

9. Law Enforcement Assistance

Parent Evaluation of Law Enforcement Assistance. One-third of the left-behind parents (32.7%) reported that no law enforcement agency was helpful in efforts to recover their child. Police departments in the state of residence were identified by less than one-fifth (17.3%) of the left-behind parents as the most helpful law enforcement agency. Sheriff's offices were identified by fewer (13.5%) of the left-behind parents as the most helpful law enforcement agency. Police departments not in the state of residence were identified by a small number (11.5%) of the left-behind parents as the most helpful law enforcement agency, while the F.B.I. was listed as the most helpful agency in only 7.7% of the cases.

This finding is especially striking since law enforcement agencies were involved in all of the cases examined. One-third of the left-behind parents rated law enforcement agencies as not helpful in the child recovery process. This low rating most likely reflects a combination of parental abduction as an offense warranting limited law enforcement resources (in some communities) and law enforcement as an available and convenient focus for left-behind parent frustration about the combined legislative, judicial, and law enforcement obstacles to child recovery. The limited endorsement of the F.B.I. as the most helpful agency by left-behind parents is not surprising since the F.B.I. is rarely the lead agency in such cases.

Involved States. Approximately half (51.9%) of the left-behind parents reported that there were two states involved in the abduction; less than one-tenth reported three states involved in the abduction; and one-fourth (25%) of the parents reported that there were four or more states involved.

Initial Communication From Law Enforcement. Left-behind parents reported that approximately one-third (34%) of the law enforcement officers who were initially contacted took case information and made helpful suggestions about how they should pursue child recovery. Information was not taken for a variety reasons in one-fifth (20%) of the cases. In a small number (12%) of the cases, the law enforcement officer required proof of custody before actions could be taken. In a small number of the cases (12%), case information was taken, but recovery was not pursued. In a very small percentage of the cases, left-behind parents stated that the law enforcement officer told them that the child must be missing for a period of time (6%) or an arrest order was needed before an officer could take action (6%).

In a number of cases, left-behind parents reported that law enforcement officers did not initially take case information and provide guidance about further steps. Relative to other types of felony crimes, parental abduction has a short history in law enforcement. Agencies are limited by parental abduction case intake protocols that are available to the individual desk sergeant or detective on duty (Hatcher, Barton, and Brooks, 1992).

Law Enforcement Actions During First Week. Of the actions reported by the left-behind parent to be taken by law enforcement agencies during the first week of the child abduction, 55.8% entered the child's name into the National Crime Information Center, 53.8% requested that the left-behind parent make an in-person report, 50% entered the abductor's name into the National Crime Information Center, 48.1% took further case information over the telephone, 48.1% were available for weekly telephone contact, and 42.3% of the law enforcement agencies in the left-behind parent's state of residence assisted in the search for the child. Only 5.8% of law enforcement agencies in another state refused to assist and 3.8% of agencies in both the same state and another state refused to assist in the pickup of the child/ren.

Continuing Law Enforcement Action. After the first week of the case, approximately half (46.2%) of the left-behind parents reported that the law enforcement agencies took further case information over the telephone, more than one-third were available daily (36.5%), or weekly telephone contact (32.7%). One-third of the left-behind parents were assisted by law enforcement agencies within their state (32.7%). One-fourth from law enforcement agencies from out of state (26.9%), one-fourth had their child's name(s) entered in the National Crime Information Center (25%), one fourth had the abductor's name entered into the National Crime Information Center (25%), and one-fourth reported that law enforcement took no further action after the first week. Few families reported that law enforcement in another state refused to assist in either the search for or pick-up of the child/ren. Also, few law enforcement officers contacted NCMEC after the first week of the abduction.

In the area of initial and continuing law enforcement response, left-behind parents reported a range of positive steps for child recovery by a majority of law enforcement agencies. While being mindful that a quick recovery may logically preclude the need to take some steps, study data do not adequately explain why the majority of law enforcement agencies quickly take a range of positive steps for child recovery, and a minority of agencies do not.

Telephone Contact With Law Enforcement. The great majority of left-behind parents (90.4%) had telephone contact with a law enforcement agency.

Close to half (45.7%) of the left-behind parents reported that they initiated every telephone contact with law enforcement. A fifth (19.6%) reported that they initiated most (90%) of the contacts with law enforcement. Only 4.4% of the left-behind parents initiated phone contact half or less of the time.

The issue of who initiates follow-up telephone contact appears to be a sensitive one for left-behind parents. While heavy investigation caseloads may severely limit the time available to the law enforcement officer for initiating follow-up telephone calls, this issue has been cited previously by left-behind parents in other studies (Hatcher, Barton, and Brooks, 1992). This issue would appear to be an item for both agency policy consideration and, more importantly, for discussion in public information materials for left-behind parents.

Law Enforcement Case Priority and Investigative Support. Additionally, half of the law enforcement officers reported that the case concerned was given a very high level of priority, while only a small number of officers reported that the case was given a very low level of priority. This study result points to a stated high level of law enforcement agency priority for parental abduction cases, while, at the same time, indicating a low level in a meaningful minority of agencies. Thus, while the overall national picture of agency priority policy may be very high, the citizen whose residence is in a jurisdiction with a low priority policy may receive minimal law enforcement response and assistance.

The majority of law enforcement officers reported that they were very satisfied with the assistance they received on the current case from other law enforcement officers and commanding officers, however, a small number of officers reported that they were minimally or not satisfied with assistance received from other officers and commanding officers.

Along similar lines, three-fourths of the law enforcement officers, reported that they were very motivated to assist with the current case, however one-quarter of the officers indicated moderate or minimal motivation to assist. These findings would mean that left-behind parents may be receiving differential service based upon locally differential attitudes by law enforcement officers toward the relative importance of parental abductions as compared to other crimes.

The issue of F.B.I. case entry did not apply to the majority of the cases. When applicable, law enforcement officers most frequently reported that they were very satisfied with F.B.I. assistance. Half of law enforcement officers reported that they did not believe that F.B.I. assistance would have resulted in faster child recovery. In contrast, one-third of the left-behind parents whose cases did not have F.B.I. assistance believed that F.B.I. assistance would have led to faster child recovery.

Fewer than one-fifth reported that the case qualified for intervention, but that the F.B.I. did not enter the case. Law enforcement officers most frequently reported that they did not know why the F.B.I. did not assist with the current case. These study results are similar to left-behind parent statements in reflecting a lack of clarity with regard to priority for F.B.I. mission and investigative assistance in parental abduction cases.

Parent's Satisfaction With Law Enforcement in State of Residence. Over half (52%) of the parents who rated their satisfaction of in-state law enforcement agencies reported that they were not satisfied with the actions taken by law enforcement in their case. Additionally, less than one-fourth (22%) reported they were moderately satisfied, and fewer (16%) reported they were very satisfied with the law enforcement actions.

Parent's Satisfaction With Law Enforcement in Another State. Satisfaction with law enforcement officers in another state was greater than within state law enforcement. Approximately one-fourth of the cases stated rating law enforcement assistance from a second state did not apply. Of the applicable cases, only 28.9% of the left-behind parents were "not satisfied" with law enforcement in another state and 42.1% of the left-behind parents were "very satisfied." Parents' increased satisfaction with law enforcement in another state over law enforcement in the state of residence may be accounted for by the fact that most child recoveries in this sample were made by a law enforcement agency in another state.

Unlawful Flight to Avoid Prosecution Warrant (UFAP). The majority of left-behind parents (65.4%) reported that obtaining an Unlawful Flight to Avoid Prosecution Warrant was not applicable to their case. A request for an Unlawful Flight to Avoid Prosecution warrant was requested by law enforcement in approximately one-third (34.6%) of the cases. Of the cases requesting a UFAP warrant approximately three-fourths (77.8%) of the left-behind parents were granted an Unlawful Flight to Avoid Prosecution Warrant. Only 22.2% of cases sought and were not granted such an award.

10. Other Assistance in Recovery of the Child

Private Investigation. In approximately three-fourths (71.2%) of the cases, no private investigator was hired. Those parents who hired a private investigator were motivated to do this because of dissatisfaction with law enforcement search efforts (80%), dissatisfaction with negative results of law enforcement (80%), or the desire to do everything possible to locate the missing child (73.3%). A clear majority of the left-behind parents employing private investigators reported minimal or no satisfaction: 33.3% reported that they were minimally satisfied, and 26.7% reported not being satisfied. However, one-third of the left-behind parents were very satisfied with the efforts of the private investigator.

These results would imply that a subsample of all private investigators is successful. As the employment of private investigators was initiated by families with very limited financial resources at the time of child disappearance, how parents search for a private investigator, what criteria are used in deciding to retain the private investigator, and how the funds spent are related to child recovery is clearly quite relevant and important.

F.B.I. Assistance. In approximately three-fourths (73.1%) of the cases, parents received no assistance from the F.B.I.. In the cases receiving F.B.I. assistance, intervention did not occur prior to 5 or 6 days into the abduction and in only 7.1% of these cases did the F.B.I. intervene. Only 35.7% of the total cases were entered by the F.B.I. one month after the abduction, and 35.7% of the cases were entered by the F.B.I. after five months or more after the abduction.

In 50% of the cases receiving F.B.I. assistance, left-behind parents reported being very satisfied with the work of the F.B.I., while 28.6% reported not being satisfied.

In 39.5% of the cases where F.B.I. assistance was not received, the left-behind parents believed F.B.I. assistance would have led to a faster recovery. When asked why the F.B.I. did not assist with the parental abduction case, around one-third (31.6%) of the left-behind parents reported that they did not know, about one-third (34.2%) reported that their case did not qualify for F.B.I. assistance, and only slightly more than one-fourth (26.3%) reported that although their case was eligible for F.B.I. assistance, the F.B.I. did not intervene.

While the majority of cases were interstate abductions, recoveries were largely conducted by a local law enforcement agency working in conjunction with a law enforcement agency in another state. Local law enforcement requests for an Unlawful Flight to Avoid Prosecution (UFAP) warrant, and hence F.B.I. case entrance, does not seem to be typical. Further, left-behind parent information on the purpose and function of the F.B.I. in parental abduction cases is unclear and very limited.

Hague Convention. Of the left-behind parents, few (9.8%) did not know whether the country to which their child was abducted was a signatory to the Hague Convention. A small number reported that the country to which their child was abducted was a signatory to the Hague Convention, and fewer reported that the country was not a signatory to the Hague Convention.

11. Legal Proceedings

Legal Proceedings. Half (50%) of the left-behind parents reported that legal proceedings were brought in only one state and

in two states for a third (32.7%) of the cases. In 7.7% of the cases, legal proceedings were not brought in any state.

Involvement of Civil or Private Attorneys in State of Residence. In over one-half of the cases (63.5%), only one civil or private attorney was involved, in a seventh of the cases (15.4%) two civil or private attorneys were involved, and in an eighth of the cases (13.5%), no civil or private attorneys were involved. Forty percent of the left-behind parents who retained a civil or private attorney reported that they were very satisfied with the civil or private attorneys within their state of residence, one-fifth were moderately satisfied (22.2%), one-fifth were not satisfied (22.2%), fewer were minimally satisfied (15.6%).

Involvement of Civil or Private Attorneys in a Second State. Three-fourths (75%) of the left-behind parents reported that there were no civil or private attorneys from a second state involved in their case, and a limited number (15.4%) reported that there was just one attorney from a second state involved with their case.

Satisfaction With Civil or Private Attorneys in A Second State. Of those left-behind parents who received help from a civil or private attorney from a second state, well over a third reported being very satisfied (38.4%), an identical proportion being moderately (23%) or not satisfied (23%), and 15.4% being minimally satisfied.

Involvement of Prosecuting Attorneys in State of Residence. Approximately one-half of the left-behind parents (48.1%) reported no involvement by a prosecuting attorney within their state of residence. In slightly less than one-half of the cases (42.3%) only one prosecuting attorney and in a small number of the cases (5.8%) two prosecuting attorneys were involved. With regard to left-behind parents' satisfaction with assistance by prosecuting attorneys (when applicable), the largest percentage reported they were not satisfied (37%), or they were very satisfied (33.3%) with the legal assistance they received from prosecuting attorneys within their state of residence.

Time Between Concern for Child and Involvement. With regard to the amount of time between the involvement of an attorney and the left-behind parent's initial concern about the child's whereabouts, more than one-third (36.5%) of the left-behind parents had an attorney at the time of their concern or were able to involve an attorney within one hour, and 30.8% involved an attorney between one hour and one day of their initial concern. In 9.6% of the cases no attorney was retained and in 7.7% of the cases over four weeks lapsed between the parent's initial concern and the involvement of an attorney.

These study data indicate that most parents secure the involvement of a private attorney within one day. However, in

approximately one-fifth of the cases, attorney involvement did not take place at all, or for more than one month post-abduction.

Time Between Post-Abduction Involvement of an Attorney and First Court Date. For 12.8% of the respondents who retained an attorney, the time between involvement of an attorney and the first court date, was four to six months, in 10.6% of the cases the time between the involvement of an attorney and the first court date was two weeks to 20 days, for 10.6% of the respondents the time was three to four days, and for 10.6% of the respondents the time was one day or less. The time intervals until the first court date ranged from one day or less up to seven to nine months. In 6.4% of the cases who retained an attorney a court date was never set (13.7% of total).

Request for Calendar Priority. Half (50%) of the left-behind parents reported that their attorney requested a calendar priority, approximately one-third (30.8%) reported that no request for calendar priority was made, and less than one-fifth (19.2%) reported that the issue was not applicable to their case.

Time Between Court Date and Entry of Order by Judge. In over half (59%) of the cases which obtained a court date, the time between court date and the entry of an order by a judge was one day or less. There was no order entered by a judge in 6.8% of the cases. Court date and the time until an order was entered ranged from less than a day up to four to six months later.

Custody Order Changes Sought. Approximately half (48.1%) of the left-behind parents sought either a custody order modification or initial custody decision during the abduction. Of the cases seeking these changes, most of the left-behind parents sought custody changes to obtain sole physical and sole legal custody (30.8%). The abductor sought sole physical and sole legal custody in 11.5% of the cases. In approximately two-thirds of the cases, left-behind parents were granted sole physical and legal custody during the abduction. Abductors were granted sole physical and legal custody in 8% of the cases, while in 9.6% of the cases custody arrangements which did not involve sole physical and legal, or joint physical and legal custody were made. No custody decisions were reported to still be pending.

Delays in Obtaining Custody Order. The majority of left-behind parents (78.8%) reported that the issue of a delay in obtaining a custody order did not apply to their case. A minority (15.4%) reported that the delay in obtaining a custody order was due to the delay in obtaining an initial hearing date. In 9.6% of the cases, a delay was a result of a post-hearing delay in the judge issuing an order.

Legal Events During Abduction. Several left-behind parents reported legal events which occurred during the abduction: in 53.8%

of the cases a petition was filed within the state of residence for a warrant to deliver the child; in 50% of the cases left-behind parents tried to enforce custody in their state of residence; in 44.2% of the cases a custody order was filed or modified within the state of residence; in 40.4% of the cases, a court within the state of residence enforced a custody order; in 36.5% of the cases, a petition for writ of habeas corpus was brought; in 34.6% of the cases, the left-behind parent tried to enforce a custody order in a state other than their state of residence; in 30.8% of the cases, a petition for a warrant to deliver the child was brought within a state other than the state of residence; in 23.1% of the cases, relief was sought through the Parental Kidnapping Prevention Act; and in 23.1% of the cases, relief was sought through the Uniform Child Custody Jurisdiction Act.

12. Actions Taken Against Abductor

Abductor Arrest. Approximately half (53.8%) of the abductors were arrested. In the event that the abductor was not arrested, left-behind parents most frequently gave reasons for non-arrest other than their own lack of cooperation: the District Attorney's wish not to pursue criminal charges, law enforcement's decision not to arrest, and the release of the abductor due to a reduction in the charge from a felony to a misdemeanor.

Actions Following Arrest. Of those abductors who were arrested, approximately half (46.2%) were charged with a felony. Of those abductors who were charged with a felony, 83% were brought to trial. Of those abductors who were brought to trial, approximately half pled not guilty. This represented less than one-fourth (17.3%) of the total cases. Of the abductors charged with a felony 41.7% were convicted. In only 12.5% of these cases was a trial still in progress, and in another 12.5% of the cases in which a felony charge was brought, the abductor was acquitted. The sentencing stipulations for abductors included incarceration (13.5%), regular reporting (13.5%), restricted travel (11.5%), and options other than those listed in the interview (11.5%). Of the abductors actually charged, 29.2% were incarcerated with an average length of incarceration of approximately 3 months. This is in contrast to the popular belief that all convicted parental abductors receive suspended sentences, rather than jail time.

13. Expenses Incurred by Left-Behind Parent

Legal Expenses. The highest percentage of left-behind parents (34.6%) reported spending between $1,001.00 and $5,000.00 on legal fees during the search for their child. Approximately one-fourth of the left-behind parents (21.2%) did not spend any money on legal fees during child recovery. Notably, 1.9% of the respondents spent $70,001.00 to $90,000.00 on the recovery of their child and 1.9% spent $20,001.00 to $30,000.00 on the recovery of the child. The

modal family spent between $1.00 and $1,000.00 on the recovery of their child.

Other Expenses. While approximately half of the left-behind parents (48.1%) lost no money due to time away from work, one-fourth of the left-behind parents (25%) lost between $1001.00 and $5000.00. The amount of money lost ranged up to $30,000.00. While three-fourths of the left-behind parents spent no money on private investigation, a small number (13.5%) spent between $101.00 and $500.00. The amount of money spent on these services ranged up to $10,000.00. A majority of the left-behind parents spent $5,000.00 or less on travel costs during child recovery. The majority of left-behind parents also spent some money on supplies while searching for their child. Close to half of the left-behind parents (42.3%) spent between $101.00 and $500.00 on child recovery search supplies. Given the limited financial resources present for most families pre-abduction, the costs of attorney fees, lost wages, investigation, search supplies, and reunification travel are quite substantial. These families do not qualify for assistance under existing victim/witness programs, so they must then typically meet these expenses by borrowing funds.

The vast majority of left-behind parents (88.5%) spent no money on mental health services while attempting to recover their child. This is supported by another study (Hatcher, Barton, and Brooks, 1991) which found very low utilization rates for any kind of mental health or counseling services.

Money Received by Left-Behind Parent. The majority of left-behind parents (88.5%) did not receive money for restitution, damages, or costs, and the issue of the amount of money received for damages did not apply to the majority of cases (92.3%), 5.8% of the left-behind parents only received between $1.00 and $100.00, and 1.9% received between $1,001.00 and $5,000.00.

Victim Assistance Aid. None of the left-behind parents received any financial assistance from a state or county victim assistance program. While the majority of left-behind parents did not receive mental health services (69.2%), those that did receive services tended to be very satisfied with the professional mental health assistance they received (75%). Only 6.3% of the left-behind parents receiving services reported minimal to no satisfaction with mental health services received.

14. Recovery of the Child

Sources of Information. The most frequently reported sources of information for the left-behind parent were: missing child center staff (90.4%), law enforcement agencies (75%), personal knowledge held by the left-behind parent (71.2%), attorneys (71.2%), friends (57.7%), District Attorneys (50%), and F.B.I. agents (50%). Approximately half of the left-behind parents

(48.1%), perceived missing child agencies as greatly helpful, as opposed to moderately, or minimally helpful. Approximately one-third of all the left-behind parents viewed attorneys (32.7%) and law enforcement officers (32.7%) as greatly helpful. Information sources that were predominantly not used by left-behind parents were movies (82.7%), mental health professionals (90.4%), physicians (86.5%), psychics (90.4%), child care workers (80.8%), and clergy (80.8%).

Of all possible sources of information, approximately one-fourth of the left-behind parents (23.1%) reported that missing child center staff members were their primary source of information about child recovery. Mental health professionals were not listed by any left-behind parent as a primary source of information, neither were religious beliefs, movies, support groups, physicians, child care workers, social workers, psychics, clergy, and school system employees.

Missing child centers, law enforcement, personal knowledge, attorneys, and friends were all cited as useful sources of information. Use of missing child center resources is extremely high in this study sample, as the sample itself was drawn from National Center for Missing and Exploited Children closed case files. Other studies that examined samples directly from law enforcement case files found a much lower utilization rate by left-behind parents of 27.9% for missing child centers (Hatcher, Barton, and Brooks, 1991). Mental health professionals had almost no contact with left-behind parents in both study samples cited above, either as sources of information or as sources of support.

Child Recovery. Approximately one-fourth of the left-behind parents (26.9%) indicated that it was a lead established by themselves which led to the child/ren's recovery, and a similar proportion (25%) indicated that a factor other than a lead established by either the left-behind parent, a law enforcement officer, an attorney, a private investigator, a private citizen, a family member, the F.B.I., a missing child organization, or the abductor's voluntary return of the child, led to the child/ren's recovery. A minority of left-behind parents (17.3%) reported that the abductor returned the child voluntarily. Only 5.8% of parents reported that the lead to recovery was established by an attorney. Only 3.8% of the parents reported the lead came from a missing child organization and only 7.7% of the parents claimed the lead was from a law enforcement officer. The F.B.I. however, established the lead resulting in the child/ren's recovery in 9.6% of the cases and a private citizen disclosed the child/ren's whereabouts in 5.8% of the cases.

Provider Knowledge of Parental Abduction. Left-behind parents most frequently identified law enforcement officers as uninformed about parental abduction recovery procedures (63.5%), followed by attorneys (42.3%). Approximately half of the left-behind parents

(53.8%) reported that they had to continue to educate law enforcement officers about child recovery procedures beyond an initial briefing of the officer. Similarly, approximately one-third of the left-behind parents (36.5%) reported there was a need to continue to educate attorneys about child recovery procedures beyond an initial consultation.

Left-Behind Parent Time Away From Work. The majority of left-behind parents (44.2%) did not or were unable to take time away from work while recovering their child. Twenty-five percent did take 11-30 days away from their jobs and 13.5% took over a month away.

Location of Abductor and Child. In 88.5% of the cases, the abductor and the child were found at the same location.

Individuals Present at Child Recovery. Approximately half of the left-behind parents identified themselves (46.2%) and/or a relative (46.2%) as individuals present at child recovery. Slightly fewer than half of the left-behind parents identified the abductor (42.3%), and/or a law enforcement officer from a state other than the left-behind parent's state of residence (40.4%), as present at the time of child recovery. No hospital staff members or foster care parents were present, and only 3.8% of the initial recoveries included a mental health professional.

Re-Abduction Issues. Approximately three-fourths of the left-behind parents (73.1%) reported they were concerned their child might be abducted once again. Less than half of the left-behind parents (40.4%) reported that they took measures other than bond placement, restriction of passport, and supervised visitation to ensure that their child would not be re-abducted. Approximately one-fourth of the left-behind parents (26.9%) obtained supervised visitation in order to guard against re-abduction. More than one-third of the respondents (34.6%) did not take any measures to prevent their child being abducted once again.

15. Placement of Child Upon Recovery

Protective Services. While the issue of child detention by Protective Services was not applicable to the majority of cases (73.1%), children were detained by Protective Services in a minority of cases due to alleged physical abuse (11.5%), reasons other than abuse or neglect (11.5%), alleged neglect (5.8%), and alleged sexual abuse (3.8%).

Child Placement Prior to Return. A minority of left-behind parents reported that their child was placed with someone other than themselves prior to return (41.2%). These placements included foster care (11.8%), a youth shelter (9.8%), with the abductor (7.8%), or with a relative (5.9%). In 9.8% of the cases children were placed in a place "other" than the response options given.

Return of Child to Care of Left-Behind Parent. While the majority of children were returned to the care of the left-behind parent upon recovery, a small number of left-behind parents reported that their child was returned between one and three days following recovery (12.2%), or that they currently know the whereabouts of the child, but have not been able to recover the child (8.2%).

16. Child Recovery Obstacles

Primary Child Recovery Obstacles. Almost all left-behind parents (90.2%) identified the inability of the legal system to respond quickly to the needs of left-behind parents as a primary obstacle faced during child recovery. Almost three-fourths of the left-behind parents identified general reluctance of law enforcement to assist with their case as a primary obstacle they confronted during their child's recovery (70.6%). Most of the left-behind parents identified difficulty obtaining information about the location of the abductor and the child (68.6%), lack of financial resources (64.7%), and their own lack of understanding about legal issues and procedures related to parental abduction (64.7%) as primary obstacles.

Single Greatest Obstacle Faced by Left-Behind Parents. Approximately one-third of the left-behind parents (35.3%) identified legal obstacles and inconsistencies in state laws as the single greatest obstacle faced by parents during child recovery; law enforcement obstacles (33.3%) also were considered a primary obstacle by one-third of the parents.

Second Greatest Obstacle Faced by Left-Behind Parents. Slightly more than one-fourth of the left-behind parents (27.5%) identified law enforcement obstacles as the second greatest obstacle faced by parents during child recovery. Fewer (25.5%), identified lack of funds with which to conduct the child search, and about one-fifth of the respondents (21.6%) identified a lack of knowledge about conducting the search as the second greatest obstacle.

Left-Behind Parent Beliefs about Government/Community Agency Response. Inquiries were made into left-behind parent beliefs, post child recovery, about responsiveness of government/community agencies and personal sense of control. Most left-behind parents reported diminished belief in the responsiveness of government agencies, and increased belief about the responsiveness of missing child agencies. With regard to personal sense of control over their lives, the picture was divided, with approximately half reporting decreases and approximately half reporting increases. The majority of left-behind parents (56.9%) reported that their general belief in the responsiveness of the legal system decreased following child abduction. Approximately half of the left-behind parents (51%) reported that their belief in the responsiveness of

the law enforcement system had decreased since the abduction of their child. Less than half of the left-behind parents reported that their belief in the responsiveness of social service agencies had decreased (42.3%), or had stayed the same (40.4%), since the abduction of their child. The majority of left-behind parents (65.4%) reported that their belief in the responsiveness of missing child agencies increased following child abduction. While more than one-third of the left-behind parents reported that their belief in their ability to control their environment had decreased (42.3%), a similar number (40.4%) reported that their belief in their ability to control their environment had increased following the child/ren's abduction.

These results illustrate the abduction experience produces more generalized negative attitude change by the majority of left-behind parents toward government agencies. Such generalized negative attitudes are likely to extend beyond the left-behind parents to other family members and friends. This type of spread of effect of loss of confidence in government agencies by citizens is worthy of concern.

Law Enforcement Case Experience

1. General Findings

Number of Parental Abduction Cases Handled by Law Enforcement Previously. The majority of law enforcement officers involved in these cases had either handled a substantial number of parental abduction cases, or a rather small number of abduction cases. Few officers handled a moderate number of parental abduction cases. Over one-fourth of the law enforcement officers (28.6%) reported that they handled sixteen or more cases previously. One-fourth of the law enforcement officers reported that they had handled between three and five cases previously (26.2%). Approximately one-fifth of the law enforcement officers surveyed reported that they had never handled a parental abduction case (19%). The majority of law enforcement officers reported that they had handled from one to more than sixteen interstate abductions (61.9%). While the majority of law enforcement officers reported that they had never been involved in an international abduction (64.3%), it is far more striking to note that 26.2% had been involved in an international abduction case.

Law Enforcement Officers Involved With Case. Approximately one-fourth of the law enforcement officers reported that there were five or more officers from different agencies who were involved with the case investigation (23.8%). Almost half reported that between two and four officers from different agencies were involved with the case (49.9%). Within the lead agency itself, law enforcement officers most frequently reported that only one officer assisted with the case (40.5%). Approximately one-third of the

officers (31%) reported that there were two officers from their agency that assisted with the case.

2. Law Enforcement Awareness

Law Enforcement Awareness of Allegations of Pre-Abduction Physical and Sexual Abuse Within the Family. When asked about their awareness of allegations of spouse or child abuse within the family, more than one-tenth of the law enforcement officers reported awareness of allegations of physical abuse of the child by the abductor, less than one-tenth reported allegations of neglect of the child by the abductor, and approximately one-tenth reported awareness of allegations of physical abuse of the left-behind parent by the abductor.

These reports were generally lower than the incidence of spouse and child abuse reported by the left-behind parent within the family. Left-behind parents reported that abductors had physically abused them in half of the cases. The left-behind parents were also aware the abductor had physically abused the child in 26.9% of the cases, sexually abused the child in 17.3% of the cases, and neglected the child in 46% of the cases.

One-tenth of the law enforcement officers reported that they were aware of allegations of physical abuse of the child by the left-behind parent. One-tenth also reported awareness of allegations of neglect of the child by the left-behind parent, and a very small number reported awareness of allegations of physical abuse of the abductor by the left-behind parent. Additionally, a very small number of law enforcement officers reported awareness of allegations of sexual abuse of the child by the left-behind parent.

Concealment of Child Identity. Law enforcement officers reported being aware of child concealment which took the form of physical concealment (11.9%), changing the child's appearance (7.1%), or providing the child with a new name (9.5%). Slightly more than half of the law enforcement officers (54.8%), reported that they were not aware that the abductor tried to conceal the identity of the child during the abduction. Approximately one-fifth of the law enforcement reported that they did not know whether the child had been concealed (21.4%).

Abductor Assistance. The majority of law enforcement officers (61.9%) reported that the abductor did receive assistance with the abduction. In contrast, left-behind parents reported much higher rates of assistance to the abductor (86.5%). While slightly more than one-fourth of the law enforcement officers (26.2%) indicated that they did not know who assisted the abductor, the most frequently identified assisting individual was the mother of the abductor (21.4%). A slightly fewer number of friends of the abductor were reported as being of assistance (19%). In contrast, left-behind parents reported much higher rates for friends of

abductor (34.6%), and higher rates for mother of the abductor (32.7%).

3. Law Enforcement Perception of Assistance to Left-Behind Parent

Sources of Information. This section of the study results report pertains to the law enforcement officers' knowledge of left-behind parent sources of information about child abduction and recovery. Generally, officers were able to report definitively that the left-behind parent had not used a particular source of information, or that the officer had no knowledge of use. Slightly more than one-third of the law enforcement officers reported that parents sought information about the recovery of their child from religious beliefs (35.7%), the majority of the law enforcement officers reported that left-behind parents had sought information from personal knowledge (61.9%), a child care worker (31%), a missing child center staff member (61.9%), relatives (54.8%), a District Attorney (52.4%), a law enforcement officer (88.1%), and an attorney (61.0%). In summary, officers were most frequently able to report that the left-behind parent had not used a particular source of information, or that they did not know whether the parent had utilized a particular designated resource.

Primary Source of Emotional Support for Left-Behind Parent. The largest group of law enforcement officers reported that relatives were the primary source of emotional support for parents following parental abduction (47.6%).

4. Actual Assistance Provided by Law Enforcement

Law Enforcement Response. The largest number of law enforcement officers reported that parents contacted a law enforcement agency within one to two hours of their initial concern about the abduction (42.4%). Slightly less than half of the officers reported that the left-behind parent was given helpful suggestions during their first contact with a law enforcement agency (45.2%). Slightly less than one-third (31%) reported that they did not have any information about what the left-behind parent was told during their initial contact with a law enforcement agency. This study result may reflect a lack of available standard information for officers to disseminate at the case level.

The majority of law enforcement officers reported that during the first week of the child's disappearance, a variety of actions were taken, including: the child's name was entered into the National Crime Information Center computer (66.7%); that law enforcement was available for daily telephone contact (64.3%); the law enforcement agency in the parent's state of residence assisted in the search effort (59.5%); the abductor's name was entered into the National Crime Information Center computer (57.1%); and law enforcement took case information over the telephone (57.1%). These study results are somewhat elevated compared to left-behind

parent perceptions of law enforcement actions during the first week of disappearance.

After the first week of child abduction, law enforcement officers reported that continued actions were taken, although there was a marked decline in frequency of actions compared to those which occurred during the first week of the abduction. Slightly less than half of law enforcement officers reported that case information was taken over the telephone (47.%), fewer than half reported that law enforcement was available for daily telephone contact (42.9%), slightly more than one-third reported that law enforcement in the left-behind parent's state of residence assisted with the search (35.7%), and one-third reported that law enforcement in another state assisted in the search for the child (33.3%). These study results are mildly discrepant from left-behind parent reports, with parents reporting less activity.

More than one-fourth of the officers (28.6%) reported that they initiated half of the telephone contact with parents.

5. Law Enforcement Evaluation of Services Provided

Law Enforcement Evaluation of Parent's Satisfaction With Services. The majority of law enforcement officers (58.3%) reported that left-behind parents were very satisfied with the law enforcement they received in their state of residence. In contrast, less than one-fifth of left-behind parents reported being very satisfied. The majority of law enforcement officers (55.3%) reported that left-behind parents were very satisfied with the law enforcement they received in a second state.

Level of Priority Given to Case. Half of the law enforcement officers reported that the case concerned was given a very high level of priority (50%). Slightly more than one-fourth reported that the current case was given a moderately high level of priority (26.2%). Slightly less than one-fifth of the law enforcement officers reported that an average level of priority was given to this case (19%), while a small number of officers reported that either a moderately low level (2.4%), or a very low level (2.4%), of priority was given. This study result points to a stated high level of law enforcement agency priority for parental abduction cases, while, at the same time, indicating a low level in a significant minority of agencies. Thus, while the overall national picture of agency priority policy may be very high, the citizen whose residence is in a jurisdiction with a low priority policy may find himself/herself with minimal law enforcement response.

Law Enforcement Officers' Satisfaction With Assistance Received From Other Officers. The majority of law enforcement officers reported that they were very satisfied with the assistance they received on the current case from other law enforcement officers (59.5%). Less than one-fifth of law enforcement officers

reported that they were moderately satisfied with the assistance they received on the case from other officers (14.3%). Less than one-tenth of the law enforcement officers reported that they were minimally satisfied with assistance received (7.1%), and a very small number reported that they were not satisfied with assistance received from other officers (2.4%). Notably, slightly less than one-fifth of the law enforcement officers reported that the issue of assistance satisfaction did not apply to this case (16.7%). The lack of application of this item was selected in cases for which officers were reportedly unassisted in their efforts to recover the child.

Law Enforcement Officers' Satisfaction With Assistance Received From Commanding Officers. The majority of law enforcement officers reported that they were very satisfied with the assistance they received on the current case from commanding officers (52.4%). Slightly more than one-tenth of the law enforcement officers reported being moderately satisfied with the assistance received from a commanding officer (11.9%), a small minority of officers reported not being satisfied with assistance received from commanding officers (4.8%), and an even smaller number of officers reported being minimally satisfied with the assistance received from their commanding officers while working on this case (2.4%). More than one-fourth of the law enforcement officers reported that their satisfaction with the assistance received from a commanding officer did not apply to this case (28.6%).

Law Enforcement Officers' Level of Motivation to Assist. Approximately three-fourths of the law enforcement officers (73.8%) reported that they were very motivated to assist with the current case. Fewer than one-fifth of the law enforcement officers reported being moderately motivated to assist with the current case (16.7%), while a small number of officers reported being minimally motivated (4.8%), or that the issue of motivation did not apply to this case (4.8%). On the positive side, the majority of officers indicated that they were highly motivated to assist with the case, however, one quarter of the officers indicated moderate or minimal motivation to assist. This finding would mean that left-behind parents may be receiving differential service based upon differential attitudes toward the relative importance of parental abductions as compared to other crimes.

Law Enforcement Evaluation of Private Investigation of Case. The majority of law enforcement officers reported that the left-behind parent did not hire a private investigator (64.3%). Law enforcement officers reported that of left-behind parents who were reported to have hired a private investigator, 50% wanted to do everything possible to locate children, and only 33.3% were dissatisfied with law enforcement.

Law Enforcement Evaluation of F.B.I. Assistance. Slightly less than three-fourths of law enforcement officers reported that the

F.B.I. did not assist with the case (71.4%). While the case entry of the F.B.I. did not apply to the majority of cases, law enforcement officers in cases the F.B.I. did enter most frequently reported that they did not know how long after the abduction the F.B.I. entered the case (33%). While the issue of F.B.I. case entry did not apply to the majority of the cases, when applicable, law enforcement officers most frequently reported that they were very satisfied with F.B.I. assistance (55.6% of total). A small number of law enforcement officers reported that they were either moderately satisfied with F.B.I. assistance (22%), or minimally satisfied with F.B.I. assistance (22%).

Two-thirds of the law enforcement officers in cases with no F.B.I. assistance reported that they did not believe that F.B.I. assistance would have resulted in faster child recovery (66.7%). One-fifth of these law enforcement officers reported that the issue of F.B.I. assistance resulting in faster child recovery did not apply to this case (66.7%), slightly more than one-twentieth of the officers reported that they did not know whether F.B.I. assistance would have benefitted this case (6.7%), and slightly more than one-twentieth reported that they believed F.B.I. assistance would have resulted in faster child recovery (6.7%).

Law enforcement officers most frequently reported that they did not know why the F.B.I. did not assist with the current case (in applicable cases) (31%). Fewer than one-fourth reported that the case qualified for intervention, but that the F.B.I. did not enter the case (24.1%). These study results are similar to left-behind parent statements in reflecting a lack of clarity with regard to F.B.I. mission and investigative assistance in parental abduction cases.

6. Events Leading to Child Recovery

Law Enforcement Report of Events Leading to Child Recovery. Law enforcement officers acknowledged that a range of events led to child recovery. They most frequently reported that events other than leads established by law enforcement, the left-behind parent, an attorney, a private investigator, a private citizen, the F.B.I., a missing child center, a family member, or the abductor's voluntary return, led to child recovery (21.4%). Of those possible events leading to child recovery, law enforcement officers did acknowledge that the most frequent leads, were established by parents (16.7%). While left-behind parents stated that recovery was due to a lead provided by them in one-quarter of the cases, the most important finding here is that continued parental activity in the search process is very important to recovery.

7. Child Recovery Obstacles

Primary Obstacles Faced by Law Enforcement. Half of the law enforcement officers indicated that the inability of the legal

system to respond promptly to the issue of parental abduction was a primary obstacle they faced when assisting parents (50%). Slightly less than half indicated that difficulty locating the abductor and child was a primary obstacle they faced during child recovery (45.2%). Approximately one-third reported that reluctance of a court in another state to enforce a custody order was a primary obstacle (31%). Slightly less than one-third of law enforcement officers reported that lack of legal information on the part of the left-behind parent was a primary obstacle (28.6%).

The majority of the law enforcement officers reported that they believed legal obstacles and inconsistencies in state laws presented the greatest obstacle which faced left-behind parents (69%). Law enforcement officers believed that the second greatest obstacle faced by parents recovering children following parental abduction, were problems and obstacles with law enforcement (47.6%).

Legal Education. Almost all law enforcement officers believed that legal education related to parental abduction would benefit police officers (97.6%), officers in the sheriff's department (97.6%), District Attorneys (92.9%), and F.B.I. agents (71.4%).

8. Summary Observations by Law Enforcement Officers

Law Enforcement Officers' Beliefs. This section of the report pertains to law enforcement officers' beliefs in government agencies, community agencies, and sense of personal control. Generally, law enforcement officers reported no change in their belief of the responsiveness of government/community agencies, or sense of personal control. This finding contrasts with the increased negative changes and perceived loss of personal control reported by left-behind parents.

Attorney Case Experience

1. General Findings

Attorney Practice Description. The attorneys interviewed were the civil attorneys representing the left-behind parents. All attorneys involved in the current parental abduction cases had generally practiced law for three years or more prior to being interviewed. Of these attorneys, one-third had practiced between 6 to 10 years (33.3%), and over two-fifths (43.6%) had practiced for more than ten years. In general, the attorneys practiced in states throughout the United States and of these attorneys 10.3% practiced in Pennsylvania, 10.3% in Texas, 7.7% in Oregon, and 7.7% in California. More than one-third of the attorneys had practices of which 30% involved domestic relations, and a small number (12.8%) had practices of which 50% involved domestic relations. It is interesting to note that 2.6% of the attorneys assisting left-behind parents were not involved in family law practice.

Slightly more than one-third (38.5%) of the attorneys had handled 1 to 2 parental abduction cases previously, and slightly less than one-fourth (23.1%) had handled 3 to 5 cases. Approximately one-fourth (25.6%) had never been involved in a parental abduction case. Here again, study results indicate that left-behind parents were represented by private attorneys with no or minimal prior case experience in parental abduction. The largest group of attorneys (38.5%) had not handled any interstate abductions, and approximately one-third (33.3%) had been involved in 1 to 2 interstate parental abductions. Approximately one-fifth of the attorneys (20.5%) had handled 1 to 2 international abductions.

Legal Proceedings. In slightly more than one-half (56.4%) of the abductions, legal proceedings were brought in only one state, and in slightly more than one-third of the cases (38.5%), legal proceedings were brought in two states.

Hague Convention Signatories. In the majority of cases (79.5%), the child was not taken to another country; therefore the Hague Convention issue was not applicable. In cases where there was an international abduction, it was notable that 50% of the attorneys did not know if the country to which the child was taken was a signatory to the Hague Convention, and in approximately two-fifths of international abductions, the child was taken to a country that was not a signatory to the Hague Convention.

2. Legal Assistance to Left-Behind Parent

Legal Assistance - State of Residence. In over half of the cases (51.3%), only one civil or private attorney was involved from the left-behind parent's state of residence. Two attorneys were included in approximately one-third of the cases (33.3%). Overall, attorneys reported that left-behind parents were very satisfied with the legal assistance received in their state of residence (64.1%). Fewer than one-fifth were reported as moderately satisfied (17.9%), and only a few parents were reported as not satisfied (5.1%).

Legal Assistance - Second State. In general, the majority of cases did not have an attorney or firm involved from a second state (69.2%). Approximately one-fourth of cases had 1-2 attorneys involved from a second state. (1 Attorney - 12.8%; 2 attorneys - 12.8%). This datum is of interest, since 77% of the cases were interstate abductions, as reported by parents. In most of the cases, the level of parent satisfaction with legal assistance received from civil attorneys in a second state was not applicable (69.2%). Of the cases involving legal assistance received from civil attorneys in a second state, attorneys responded that 40% of left-behind parents were very satisfied, 20% were moderately satisfied, and 40% were not satisfied.

Attorney Level of Case Priority. Slightly over three-fourths of attorneys responded that the level of priority they gave their case was very high (76.9%). About one-sixth gave their case moderately high priority (15.4%), and only a small number of attorneys said they gave their case average priority (7.7%).

3. Involvement of Prosecuting Attorneys

Prosecuting Attorneys - State of Residence. Almost half of the cases involved the involvement of one prosecuting attorney in the left-behind parent's state of residence (46.2%). Less than one-third (28.2%) did not involve a prosecuting attorney. Of the private attorneys assisting parents, one-fifth (20.5%) did not know whether a prosecuting attorney was involved in the case in their client's state of residence. This study result is noteworthy. It would appear to indicate that, in a meaningful minority of cases, the status of criminal proceedings in a parental abduction case were not viewed by the private attorney as relevant to the status of civil proceedings. Further, criminal proceedings are pursued in some cases and not in others, without a definable pattern.

For cases involving prosecuting attorneys, almost one-half (45%) of left-behind parents were reported by their private attorneys to be very satisfied with their efforts. Attorneys also reported that fewer than one-third (30%) were moderately satisfied, while 5% were minimally satisfied, and 15% were not satisfied. Of all of the private attorneys interviewed, a small number (12.8%) did not know the level of parent's satisfaction with the prosecuting attorneys in their state of residence. Here again, study results point to an absence of knowledge by a meaningful minority of private attorneys of events surrounding criminal proceedings in these cases.

Prosecuting Attorneys - Second State. Although parents reported that 77.4% of the cases were interstate abductions, the majority of attorneys reported that cases did not involve a prosecuting attorney from a second state (64.1%). About one-tenth (10.3%) involved one prosecuting attorney from a second state, and a smaller number involved two prosecuting attorneys from a second state (2.6%). Of the private attorneys assisting parents, one-fourth (23.1%) did not know whether the left-behind parent involved a prosecuting attorney from a second state.

More than one-tenth (15.4%) of the cases of all of the attorneys did not know the parent's level of satisfaction with the prosecuting attorney in a second state. Of only the cases involving prosecuting attorneys in a second state, attorneys reported that a small number of parents were very satisfied (40%), or were not satisfied (40%), and fewer were moderately satisfied (20%).

4. Attorney Perception of Family Dynamics

Attorney's Awareness of Abuse Within Family. With regard to attorney's knowledge of violence, abuse, or neglect within the family of the abducted children, over half (56.4%) of attorneys were not aware of any abuse. Other attorneys reported a general incidence of abuse across multiple categories. Approximately one-fifth reported being aware of allegations of physical abuse of left-behind parent by abductor (20.5%), neglect of children by abductor (20.5%), and physical abuse of child/ren by abductor (15.4%). In terms of charges filed for abuse, attorneys reported that, in about one-half (53.8%) of the cases, there were no charges filed and they were not aware of abuse; and in approximately one-third (30.8%) of the cases, there were no charges filed and they were aware of allegations of abuse. Criminal charges for abuse filed by category were: physical abuse of left-behind parent by abductor (5.1%); neglect of child/ren by abductor (2.6%); and physical abuse of abductor by left-behind parent (2.6%). A few attorneys interviewed did not know if criminal charges for abuse were filed (5.1%).

Attorney Belief About Abductor's Motivation. Almost one-third of attorneys believed that the abductor's motivation for abducting the child/ren was to get back at the left-behind parent following separation or divorce (30.8%). Approximately, one-fourth of the attorneys responded "other" (25.6%), and more options often answered included questions involving custody and visitation (thought he/she would not receive custody order wanted - 12.8%; dissatisfied with visitation rights - 12.8%). This study result of revenge as the dominant motivation for abduction is consistent across all respondents; little support is thereby provided for more tangible issues of parental disagreement such as visitation as the dominant motivation for abduction.

Left-behind Parent Accused of Abuse. As reported by attorneys, about half of left-behind parents were accused of some form of abuse by the abductor. Over one-third of left-behind parents were accused of being neglectful (35.9%); approximately one-fourth were accused of being physically harmful (25.6%); and less than one-fourth of being sexually harmful (20.5%). Abductors did not accuse the left-behind parent of abuse in less than half of the cases (41.0%). These study results are similar across respondents, highlighting the pattern of allegation and cross-allegation of family abuse in the majority of these cases.

5. The Abduction

Location Child Initially Taken. Of the attorneys interviewed, over one-half reported that the initial location where the child/ren were taken was to another state (56.4%). Approximately one-fifth (17.9%) reported that they had no information about where the child/ren were initially taken. Less than one-tenth of the

children were taken to another country (7.7%) and the remainder of the children stayed in the same state of their legally approved residence. Here again, a significant majority of attorneys report no knowledge of individual case details.

Predominant Location of Child/ren. With regard to where child/ren stayed the majority of the abduction period, attorneys reported that approximately three-fifths were taken to another state (61.5%). There is some variation noted around the definition of interstate abduction, as some cases involved transport to another state followed by abductor return with the child to the state of residence prior to child recovery. Less than one-fifth (17.9%) of the attorneys interviewed had no information about where the child/ren were taken, and in only a small number of cases, the child/ren were not transported from the initial destination (15.4%).

Attorneys reported that abducted children were most often on the road (38.5%), at the home of the abductor's relatives in another state (30.8%) and/or at the abductor's home in another state (28.2%) during the abduction period. Almost one-fourth of attorneys did not know where the child/ren resided during the abduction (23.1%).

Identity Changes. Over one-half of the attorneys (51.3%), were not aware of any methods used by the abductor to conceal the child/ren's identity. Approximately one-third (30.8%) did not know whether the abductor attempted to conceal the children's identity. Of the methods reportedly used, physically concealing child/ren was more frequent (12.8%) than giving a child a new name (7.7%), or changing the child's appearance. In sharp contrast, left-behind parents reported child concealment methods in many of cases (physical concealment, 35.3%; changing child's name, 15.7%; changing child's appearance, 19.6%).

6. Attorney Perception of Assistance to Left-Behind Parent

Left-Behind Parent Sources of Information. This section of results reports inquiries into the private attorneys' knowledge of left-behind parent sources of information about child abduction and recovery. Generally, private attorneys indicated a mix of knowledge of parental activity. While many attorneys were knowledgeable about the left-behind parent's search for information on parental abduction, approximately one-fourth had no knowledge of this area for their client. Attorneys reported that left-behind parents sought information from personal knowledge (79.5%), relatives (66.7%), friends (64.1%), police officers (87.2%), child care workers (38.5%), social workers (38.5%), missing child center staff members (64.1%), or clergy (15.4%), and District Attorneys (69.2%) and themselves (94.9%). As reported by their attorneys, the majority of parents did not seek information from a school system employee (20.5%), or an FBI agent (23.1%).

Primary Source of Information. According to attorneys, the left-behind parent's primary source of information was most frequently their private attorney (20.5%), followed by police officer (15.4%), personal knowledge (10.3%) and relatives (10.3%).

7. Legal Proceedings

First Court Date. Attorneys reported that two weeks was the most frequent length of time between involvement of an attorney and first court date (17.9%). The next most common length of time was one day or less (15.4%). For a minority of families (7.7%), a three month period of time was necessary before the first court date.

Similarly, left-behind parents reported 17.6% of the cases were given their first court date within 2 days of the retainment of an attorney; and another 17.6% of the cases were given their first court date within 1-2 weeks of their retainment of an attorney. However, slightly more parents reported waiting 3 months or more for their first court date (21.6%).

Calendar Priority. Attorneys reported that they did request a calendar priority in approximately half of the cases (51.3%). A calendar priority was not requested in slightly less than one-fourth of the cases (23.1%), and in approximately one-fourth of the cases a calendar priority request was not applicable.

Order Entered by Judge. According to attorneys in cases where a court date was set, an order was entered by a judge in one day or less in over two-fifths of the cases (45.7%); attorneys reported another 14.3% took 2-4 days; 11.4% took 1 week; 8.6% took 4 weeks to 2 months; and 8.6% took 3 to 6 months. Only 11.4% of the attorneys in cases which the judge enforced an order, did not know when the judge entered an order.

Custody Order at Time of Abduction. As reported by attorneys, the left-behind parent had sole physical and sole legal custody in just under half of the cases at the time of abduction (43.6%). In approximately one-fifth of the cases (20.5%), custody was not being sought by either left-behind parent or abductor at the time of the abduction.

Custody Order Changes During the Abduction. Changes were sought in the custody order during the abduction in over half of the cases (56.4%), according to attorneys. The most frequent change sought (in applicable cases) was by the left-behind parent for sole physical and sole legal custody (45.8%). Most frequent after that, was the abductor for sole physical and sole legal custody (37.5%). In 38.5% of the abduction cases, changes were not sought in custody. Of the changes in custody that were granted in cases seeking custody changes during the abduction, in one-half

(50%) the left-behind parent was given sole physical and sole legal custody.

These study results are generally consistent with left-behind parent reports. A small number of attorneys reported that custody changes were denied due to reasons other than allegations of abuse or neglect by left-behind parents or abductors, inability to care for self or others on the part of left-behind parents or abductors, or the care of the child by family members other than the left-behind parent or the abductor (13.6%). A very small number of attorneys reported that custody changes were denied due to allegations of neglect on the part of the left-behind parent (4.5%). The issue of length of time it took to obtain a custody order was not applicable to approximately half of the cases, as they were not seeking custody changes. Most frequently a custody order change was obtained when sought in one day or less (13.6%), or in between 3 to 7 days (13.6%). Slightly less than one-tenth of the left-behind parents obtained a custody order within 2 to 4 weeks (9.1%). In a small number of cases it took 3 months to obtain custody (9.1%), and in a minority of cases, a custody order was not obtained for four to six months (9.1%). Attorneys reported that the matter of delay in obtaining a custody order did not apply to the majority of cases (27.3%). Of those cases in which delay was involved, it was primarily due to a delay in obtaining an initial hearing date (13.6%).

Legal Actions During the Abduction. With regard to legal actions taken during the abduction, the majority of attorneys reported that they had tried to enforce a custody order in the left-behind parent's state of residence (64.1%). Approximately half of the attorneys filed a custody order in the left-behind parent's state of residence (53.8%), and in over half of the cases the court enforced the custody order within the left-behind parent's state of residence (51.3%). In just under half of the cases, attorneys reported they had filed a petition for warrant to deliver children within the left-behind parent's state of residence (48.7%). In over one-third of the cases (41.0%), attorneys sought relief through the Uniform Child Custody Jurisdiction Act, and just under one-fourth sought relief through the Parental Kidnapping Prevention Act (23.1%). A little under one-fourth filed a petition for warrant to deliver the children from a state other than left-behind parent's residence (23.1%), approximately the same number brought a petition for declaratory/injunctive relief (20.5%), and approximately one-tenth petitioned for a writ of habeas corpus (10.3%).

Unlawful Flight to Avoid Prosecution (UFAP) Warrants. Attorneys reported that in a majority of cases, UFAP warrants were not requested (61.5%). This is noteworthy, as the dominant majority of cases were interstate abductions.

8. Actions Taken Against Abductor

Abductor Arrest and Trial. Attorneys reported that over half of the abductors were arrested (59.0%). Three-fourths of attorneys in cases where the abductor was not arrested stated that abductors were not arrested for reasons other than left-behind parents withdrawal of cooperation, District Attorney no longer wished to press charges, decision of law enforcement not to arrest, or reduction of charge from a felony to a misdemeanor (75%). According to attorneys, of those abductors who were arrested, almost three-fourths were charged with a felony (73.9%). With regard to abductor extradition, attorneys reported that the situation did not apply in approximately two-fifths of the total cases (41.0%). Abductors were extradited from another state in just under one-fourth of the total cases (23.1%).

Abductor Brought to Trial. Approximately two-fifths of abductors who were charged were brought to trial (43%). Slightly under one-third (30%) of the attorneys with cases that were brought to trail did not know how the abductor pled, and one-half reported that the abductor had pled guilty (50%). Under one-half of attorneys where the abducting parent was brought to criminal trial reported they did not know the legal outcome of the proceeding with the abductor post-arrest (50%), and a small number of attorneys reported that the abductor was convicted of a felony (30%).

One-fifth of attorneys with cases brought to trial responded that they did not know about the abductor's sentencing conditions (20.5%), and about half reported that the abductor's sentence included regular reporting (50%), restricted travel (50%), and incarceration (40%). Again, study results reflect that in a significant minority of attorneys, knowledge of criminal proceedings is limited.

9. Expenses Incurred by Left-Behind Parent

Attorney Fees. Half of the attorneys estimated their hourly fee charged to be $75.00 (51.3%), about one-fourth estimated their fee to be $100.00 per hour (25.6%), about one-tenth charged $125.00 hourly (10.3%), one-fifth charged $50.00 per hour (5.1%), and one-fifth reported charging more than $150.00 per hour (5.1%). One-third of attorneys (33.3%) reported that their approximate total bill for fees and expenses in the left-behind parent's case was between $1001.00-$5000.00. Under one-fifth of attorneys reported that they had not charged any money (17.9%), and slightly more than one-third of attorney's bills fell between $1.00-$1000.00 for the total bill ($1-$100, 10.3%; $101-$500, 10.3%; $501-$1000.00, 15.4%). A small number of attorneys estimated their total bill to be between $5001.00-$10,000.00 (7.7%).

Restitution to Left-Behind Parent. The majority of attorneys reported that the left-behind parent did not receive any money for

criminal restitution, civil tort damages, or civil award of costs (66.7%). Approximately one-fourth of attorneys reported that the left-behind parent had received money (25.6%). In contrast, only 11.5% of parents reported receiving any money. Approximately one-tenth of the attorneys did not know the amount of money the left-behind parent had received. Of those few parents who did receive money, the largest group received between $1-$100 (40%), and a smaller number received between $101-$500 (30%).

10. Child Recovery Obstacles

Primary Obstacles to Recovery Faced by Attorney. With regard to primary obstacles to recovery faced by the attorney, over three-fourths of attorneys (76.9%) reported lack of financial resources on the part of the left-behind parents to be an obstacle. Just under three-fourths responded that there was difficulty obtaining information about location of the abductor and child/ren (74.4%). Two-thirds of the attorneys cited a general reluctance of law enforcement to assist (66.7%). Over half of the attorneys reported an inability of the legal system to respond quickly to the needs of the left-behind parent (59.0%). Slightly less than half reported as an obstacle, a lack of understanding about legal issues and procedures on the part of left-behind parents (43.6%).

Just over one-third of attorneys cited a reluctance of law enforcement in another state to pick-up child/ren once located (35.9%). Finally, obstacles that were cited by approximately one-fourth of attorneys were: lack of support from legal organization (25.6%); lack of understanding about legal issues and procedures on the part of trial attorneys (25.6%); lack of understanding about legal issues and procedures on the part of prosecuting attorneys (25.6%); and lack of understanding about legal issues and procedures on the part of the responding attorney (23.1%).

Greatest Obstacle for Left-Behind Parents According to Attorney. Over one-fourth of attorneys reported that the greatest obstacle to recovery for left-behind parents was lack of funds with which to conduct a search (28.2%). Approximately one-fourth of attorneys responded that the greatest obstacle was legal obstacles and inconsistencies in state laws (25.6%), and the remainder of attorneys were evenly divided between law enforcement obstacles (15.4%), personal emotional obstacles (15.4%), and lack of knowledge about conducting search (15.4%).

11. Summary Observations by Attorneys

Education on Parental Abduction Procedures and Policies. With regard to the question of who would benefit from education on legal policies and procedures related to parental abductions, almost all attorney respondents thought it would be beneficial for family lawyers (92.3%), most thought it would be beneficial for judges

(84.6%), and over three-fourths thought it would be beneficial for general practitioners (79.5%).

Attorney Beliefs. The majority of attorneys reported that their belief in the responsiveness of the legal law enforcement (64.1%), and social service systems (74.4%), had stayed the same since their involvement with the case. One-fourth of the attorneys felt that their beliefs in the law enforcement system's effectiveness had decreased, and belief in the effectiveness of the missing child centers increased in 25.6% of the cases.

Social Support Individual Case Experience

1. Characteristics of the Social Support Individual

Social Support's Relationship to Left-Behind Parent. The largest category of socially supportive individuals were friends of the left-behind parents (28.3%). Most frequently socially supportive individuals had known left-behind parents for eleven years or more prior to the abduction (38.6%). One-fifth of the socially supportive individuals had known the left-behind parent for between two to three years prior to the abduction (20.5%). Most frequently, socially supportive individuals had known abductors for one month or less prior to the abduction (40.9%). The next largest group of socially supportive individuals had known abductors for 11 years or more (20.5%).

2. Social Support Perception of Family Dynamics

Relationship Between Left-Behind Parent and Abductor. Most frequently socially supportive individuals characterized the relationship between the left-behind parent and the abductor as extremely negative (30.4%). Slightly less than one-fourth of the social supports reported that they did not know how to characterize the relationship between the left-behind parent and the abductor (23.9%).

Relationship Between Abducted Child and Abductor. Close to one-third of the social supports reported that they did not know about the quality of the relationship between the abducted child and the abductor prior to abduction (31.1%). One-fourth of the social support respondents characterized the relationship as sometimes negative (22.2%), and another 17.8% characterized the relationship as mostly positive.

Awareness of Family Abuse. While the majority of social support respondents were not aware of any abuse in the families of missing children (78.3%), one-fifth of the social support respondents did report awareness of abuse (21.7%). Physical abuse of left-behind parent by abductor was reported in more than one-tenth of the total cases (15.2%). Physical abuse of the child by the abductor was reported in approximately one-tenth of the total

cases (10.9%). In a small number of the total cases awareness of abuse included: sexual abuse of child by abductor (6.5%), physical abuse of abductor by left-behind parent (6.5%), neglect of child by abductor (4.3%), physical abuse of child by left-behind parent (2.2%), and neglect of child by left-behind parent (2.2%).

Notably, slightly less than one-fifth of the social support respondents reported that they did not know whether charges related to child abuse had been filed (17.4%). One-tenth of the social support respondents were aware that charges had not been filed in spite of their awareness of abuse (10.9%). Less than one-tenth of the social support respondents reported that charges had been filed for physical abuse by abductor (8.7%). Small numbers of social support respondents reported that charges were filed for physical abuse of child by abductor (2.2%), sexual abuse of child by abductor (2.2%), physical abuse of abductor by left-behind parent (2.2%), and sexual abuse of child by left-behind parent (2.2%).

Slightly less than one-third reported that the abductor had made allegations of physical abuse against the left-behind parent (28.3%), and approximately one-fifth reported that the abductor had accused the left-behind parent of being sexually abusive (21.7%). Slightly less than one-fourth of the social support respondents reported having no knowledge about whether the abductor had accused the left-behind parent of child abuse (23.9%).

Abductor's Motivation. Most frequently social support respondents believed that the abductors were motivated to take children in order to get back at the left-behind parent for separation/divorce (43.5%).

Events in Left-Behind Parent's Life in Year Prior To Abduction. Social support respondents reported that of the events that occurred in the left-behind parent's life in the year prior to abduction, conflict with spouse/ex-spouse/partner was most frequent (68.9%). Major financial strain was reported in nearly half of the cases (48.9%), almost the same number reported that a family member appeared to have emotional problems (46.7%), and one-third reported separation from abductor (35.6%). Approximately one-fourth reported children lived with extended family (26.7%), and an equal number reported that a family member appeared to depend on alcohol or drugs (26.7%).

3. Social Support Perception of Assistance to Left-Behind Parent

Sources of Information. As reported by social support respondents slightly under three-fourths of the left-behind parents sought information from attorneys (84.8%), law enforcement officers (80.4%), missing child center staff members (80.4%), friends (76.1%), relatives (76.1%), personal knowledge (69.6%), books (45.7%), District Attorneys (43.5%), social workers (43.5%), mental health professionals (41.3%), and support groups (34.8%).

Social Support's Belief About Left-Behind Parent's Primary Source of Information. The largest group (19.6%) of social support respondents believed that the primary source of information for parents was law enforcement officers. Attorneys were believed to be the second most frequent provider of information (15.2%). Additionally, missing child center staff members were also reported as being the primary source of information in slightly more than one-tenth of the cases (13%).

Parent Satisfaction With Law Enforcement. Around two-fifths of the social support respondents believed that left-behind parents were not satisfied with the law enforcement assistance they received (41.3%), and almost one-fourth of the social support respondents believed that left-behind parents were very satisfied (23.9%).

Parent Satisfaction With Legal Assistance. Just over one-third of the social support respondents believed that left-behind parents were not satisfied with the legal assistance they received (35.6%), and just over one-fourth believed that left-behind parents were very satisfied (26.7%).

Primary Source of Emotional Support. In over one-third of the cases, socially supportive individuals reported that the left-behind parent's primary source of emotional support were relatives (37.8%), this was followed by friends who were reported by one-fifth of the social support respondents as being the primary source of emotional support (20%).

4. Assistance Provided by Social Support

Social Support Assistance. With regard to assistance given to left-behind parents by social support respondents during the first week of the abduction, nearly all respondents said that they gave emotional support to parents (87%); well over half of the social support respondents assisted the left-behind parent financially (60.9%); just over half gathered information about conducting a search (56.5%); and almost as many acquired information about the abductor's whereabouts (52.2%). Approximately half of the social support respondents answered the telephone for left-behind parents (47.8%), and just under half spoke with law enforcement on an ongoing basis (43.5%).

Almost all of the social support respondents continued to provide emotional support to left-behind parents after the first week of the abduction (82.6%). Approximately half of the social support respondents continued to answer the telephone for parents (52.2%), and to assist financially (50%). Just under half continued to acquire information about the abductor's whereabouts (43.5%), and almost as many continued to speak to law enforcement on an on-going basis (41.3%).

While assisting left-behind parents during the abduction, well over half of the social support respondents had difficulty acquiring information about the abductor's whereabouts (61.4%). Over half had difficulty understanding how to help left-behind parents get assistance from law enforcement (54.5%), and over two-fifths had difficulty finding time to fulfill their own personal and family responsibilities during the abduction period (40.9%).

Time Away From Work. Nearly three-fourths of the social support respondents reported that they did not take time away from work to assist the left-behind parents during the abduction (73.9%). One-third of the social support members taking any time off from work reported taking thirty-one days or more away from work (33.3%), and the same amount reported taking between eleven and thirty days away from work (33.3%).

Financial Assistance. Over half of the social support respondents reported that they did spend their own money on the search for the missing child (56.5%). Less than half of the social support respondents reported that they did not spend their own money assisting the left-behind parent in searching for the missing child (43.5%). Most frequently social support respondents who spent any money spent between $101.00 and $500.00 assisting left-behind parents (34.6%), and one-tenth spent between $501.00 and $1000.00 (19.2%). It is notable that a very small number of social support respondents who spent any money spent between $10,001.00 and $20,000.00 assisting left-behind parents (3.8%).

5. Child Recovery Obstacles

Primary Obstacles. Almost three-fourths of the social support respondents believed a primary obstacle faced by left-behind parents was the inability of the legal system to respond quickly to the needs of parent (71.7%). Well over half of the social support respondents believed a primary obstacle faced by parents was difficulty in obtaining information about the location of the abductor (58.7%). The third most frequently reported obstacle according to social support respondents was lack of financial resources on the part of the left-behind parent, as reported by over half of the respondents (56.5%). According to social support respondents the greatest obstacle faced by left-behind parents were legal obstacles and inconsistencies in state law (54.3%). With regard to the second greatest obstacle faced by left-behind parents, nearly one-third of the social support respondents identified lack of funds with which to conduct a search (32.6%), and slightly less than one-third identified law enforcement obstacles as the second greatest obstacle faced by left-behind parents (28.3%).

6. Summary Observations by Social Support

Social Support Individual's Beliefs. Nearly half of the social support respondents reported that their belief in the legal system had stayed the same after their involvement with this case (45.7%), and over one-third reported that their belief in the responsiveness of the legal system had decreased since their involvement with this case (37%). Over one-third of the social support respondents reported that their belief in the responsiveness of the law enforcement system had decreased since their involvement with this case (37%). Similarly, over one-third reported that their belief in the responsiveness of the law enforcement system had stayed the same (37%), while approximately one-fourth reported increased belief (26.1%). Just under half of the social support respondents reported that their belief in the responsiveness of social services had stayed the same (45.7%). Slightly less than one-third reported a decrease (30.4%), and almost one-fourth reported an increase (23.9%). Over half of the social support respondents reported that their belief in the responsiveness of missing child agencies had increased since the time of the abduction (52.2%), while under half reported that their belief in responsiveness had stayed the same (41.3%). Most frequently, social support respondents reported that their belief in their ability to control their environment and living situation had stayed the same since the time of the abduction (45.7%), while over one-third reported a decrease (37%).

These results show that, post child recovery, negative attitudes about the responsiveness of governmental agencies extend beyond the left-behind parent. It is of special note that the post child recovery negative attitudes are much more widely endorsed by social support individuals, i.e., those that view government agency response to parental abduction from a distance, than those left-behind parents directly involved in the case.

Measuring Distress of Left-Behind Parents

Parental distress over their child/ren's abduction was assessed using the Symptom Checklist 90 - Revised (SCL-90-R). The SCL-90-R is a 90-item self-report instrument developed by Derogatis and colleagues (Derogatis, 1977, 1983; Derogatis, Lipman, & Covi, 1973; Derogatis & Cleary, 1976) for assessing psychiatric disturbance. All of the items pertain to either physical problems (e.g., "1. Headaches" and "39. Heart pounding or racing") or emotional/psychiatric disturbances (e.g., "16. Hearing voices that other people do not hear" and "77. Feeling lonely even when you are with people"). Respondents are asked to rate how much during the past week they were distressed by each disturbance, on a one to five point scale which ranges from "not at all" to "extremely." The SCL-90-R provides an index of general symptom distress (GSI) as well as information about specific psychiatric syndromes (Derogatis, 1977, 1983). Nine syndromes measured by the SCL-90-R

are Anxiety, Hostility, Paranoid ideation, Phobic-anxiety, Somatization, Psychoticism, Obsessive-compulsive, Depression, and Interpersonal sensitivity.

As a group, the left-behind parents showed significant elevations across the SCL-90-R scales, with all but Phobic-anxiety falling greater than 10 T-score points above the mean. These findings are presented below in Figure OBSCL. The two highest scales, Anxiety and Depression, fell near or at 20 T-score points above the scale mean (70.0 and 69.8, respectively). These findings provide strong evidence of the psychological distress experienced by parents of parentally-abducted children.

Insert Figure OBSCL about here

The GSI scale, an overall index of psychological disturbance and distress, was also highly elevated (68.7). The GSI was employed in later analyses as a dependent measure of psychological distress. In most cases, however, differences in demographic and other objective data did not predict GSI and those findings are not reported here. GSI-measured distress, however, was positively and significantly associated with whether the abducted child was believed to have been physically and/or sexually abused prior to the abduction ($F = 4.96$, $df = 1,51$, $p < .05$). In addition, low GSI-measured distress was significantly associated with the parent's use of law enforcement officers as a source of information about their child/ren.

To contrast this finding, two factors emerged as inverse predictors of left-behind parent distress. Law enforcement officers assisting in the search for the missing child and law enforcement officers being available for telephone contact were significantly associated with lower parental distress (explaining 64% and 58% of the statistical variance accounting for GSI in separate regression equations).

Integrative Analysis of Responses

In this section the findings are integrated across respondents.

Prior Case Involvement. There was variability in the number of parental abduction cases in which both the attorneys and the law enforcement officers had been involved prior to the case in question. The range of the number of previous cases that the attorneys had worked was between none and sixteen or more, with 62% of the attorneys having worked on at least one previous abduction case. The law enforcement officers also had a range of none to more than sixteen previous cases, with the 81% having worked on at least one previous case, and 29% having experience with sixteen or more previous abduction cases.

Law Enforcement and Left-Behind Parent. Differences were found between (1) parental satisfaction with the investigative assistance from the law enforcement received from their state and (2) law enforcement officer's perception of the parent's satisfaction with them. Specifically, 62% of the law enforcement officers felt that the parents were very satisfied with their investigative assistance; only 9% felt the parents were not satisfied. The majority of the parents, however, were not satisfied with the assistance (52%), while only 16% were very satisfied with the assistance they received.

When asked if FBI assistance would have resulted in a faster recovery of the child/ren, the majority of parents answered this question affirmatively (63%). The majority of law enforcement officials, on the other hand, felt that FBI assistance would not have resulted in a faster recovery (63%).

Finally, parents and law enforcement officials differed in their estimates of the length of time passing after the abduction before the FBI entered the case. The parents' estimations ranged from 5-6 days to more than 5 months. The law enforcement officials' estimations ranged form 3-4 days to 4 months, with 3-4 days being the most frequently identified length of time before case entry (4.8%).

Attorneys and Left-Behind Parent. When reporting the number of attorneys, civil and private, that had been involved in the case since the abduction, the parents' and attorneys' reports differed. The majority of both the parents and the attorneys reported that only one attorney had been involved with the case since abduction (63% and 53% respectively). However, while only 15% of the parents reported the involvement of two attorneys, 34% of the attorneys reported the involvement of two attorneys.

Left-behind parents and their attorneys had significant disagreements about the level of satisfaction the parents had with the attorney. For example, while 40% of the parents reported being very satisfied, over 71% of the attorneys thought the parents were very satisfied. At the other end of the satisfaction continuum, 36% of parents were reportedly not satisfied as opposed to 6% of attorneys rating the parents at that level of satisfaction.

Though not statistically different, it appears as though the parents were more dissatisfied with the legal efforts undertaken by the prosecuting attorney than the attorneys perceived them to be (37% of parents were not satisfied versus only 15% of attorneys believing the parents were not satisfied).

Disagreement was also apparent between parents and attorneys when reporting whether the case was brought to trial if the abductor was charged. The majority of the parents reported that the case was brought to trial (79.2%), although in cases in which

abductors were charged with a felony, attorneys reported that the case had been brought to trial in only 59.2% of the cases. Finally, the parents and their attorneys also disagreed significantly with regard to whether the parent was awarded money for criminal restitution, civil tort damages, or civil award of costs. Eight percent of the parents reported receiving court-ordered money, while 26% of the attorneys answered affirmatively when asked whether the parents had received a monetary award.

Social Supports and Left-Behind Parent. It is noteworthy that all of the left-behind parents were either the biological mother or father of the abducted child/ren. The majority of the relationships of the social supports were either friends (28%) or classified as "other" (17%).

The level of education of the parents ranged from completed ninth grade to graduate school/professional degree, while that of the social supports ranged from partial high school to graduate school/professional degree. Only 15% of the parents had at least finished college, while 41% of the social supports had at least a college degree (i.e., graduated college or had completed some graduate training).

Though not statistically significant, over two-thirds (69%) of the parents characterized their child's relationship to his/her abductor as negative (from sometimes negative to extremely negative), while less than half (48%) of the social supports characterized the child's relationship to his/her abductor as negative. When characterizing the relationship between the left-behind parent and the abductor, there was less of a discrepancy with 73% of the left-behind parents reported that it was negative (i.e., either sometimes negative, mostly negative, or extremely negative), while 83% of the social supports reported a negative relationship between the left-behind parent and the abductor.

All Respondents. The interview items shared by the left-behind parent, the attorney, the law enforcement officer, and the social support were compared and contrasted. For all significant overall differences among the respondents, post hoc tests (Fisher's exact tests with modified Bonferonni correction for experiment-wise error) were calculated between the parent and other respondent reports. The areas in common were abductor accusations of child abuse and left-behind parent use of selected sources of information, and perceived obstacles to child/ren recovery. These findings are reported in the sections below.

Abducting Parents' Accusations of Child Abuse and Neglect. The respondents did not differ in their proportion who reported that the abductor had accused the left-behind parent of physical abuse, with an overall mean of 31% reporting this. Similarly, the respondents were in agreement about the accusations by the

abducting parent regarding sexual abuse (mean = 19%) or child neglect (31%).

Use of Information. When asked about the left-behind parents' use of selected sources of information, the respondents differed in several areas. The respondents differed in the extent they reported the left-behind parent utilized information from his/her religious beliefs, with the parent and social support reporting greater use (37% and 39%, respectively) than the attorney and law enforcement (11% and 17%, respectively). Post hoc tests revealed a significant difference between the parent and attorney reports ($X^2 = 5.7$, df = 1, $p < .05$). The respondents also differed in their report of the parents' use of information from relatives. About half of the parents reported using this source of information, while more than two-thirds of the respondents in the other groups believed this was a source of the parents' information. Significant differences were found between the reports by the parents and the attorneys ($X^2 = 6.9$, df = 1, $p < .01$) and the parents and the social supports ($X^2 = 11.2$, df = 1, $p < .001$). A similar pattern emerged in the respondent's reports of the parental use of information from friends: whereas a bit more than half (58%) of the parents reporting using friends for information, more than 70% of the other respondents indicated this source. Here, only the parents and the social supports differed significantly ($X^2 = 7.2$, df = 1, $p < .01$).

The parents reported a lower rate of use of sources of information than the other respondents felt was the case. Nearly ten percent of the parents (5/52 or 9.6%) reported using a mental health professional as a source of information. While this proportion is greater than the estimate given by the law enforcement officer (2/42 or 4.8%), it is significantly below the estimates of parental mental health professional use given by the attorneys (29%) and the social supports (50%), who believed the parents used this source of information to a greater extent. As compared to the parents, attorneys, law enforcement, and social supports believed that the parents relied more on information from child care workers (19% versus an average of 45%). Significant differences were found between the parents and the attorneys ($X^2 = 7.8$, df = 1, $p < .01$) and the parents and the law enforcement officer ($X^2 = 8.7$, df = 1, $p < .01$). A similar pattern was found in the reported use of social workers for information, with 21% of the parents reporting this groups as a source and about half of all respondents in the other groups reporting this source utilization. Significant differences were found between the parents and the attorneys ($X^2 = 7.3$, df = 1, $p < .01$), the parents and the law enforcement officer ($X^2 = 5.5$, df = 1, $p < .05$), and the parents and the social supports ($X^2 = 9.0$, df = 1, $p < .01$).

A fairly consistent pattern was found in each respondent's tendency to overestimate the extent to which the parents used them as a source of information. Regarding information from law

enforcement officers, nearly all of the attorneys and the law enforcement officer felt the parents used this as a source of information (94% and 95%, respectively), as compared to a relatively smaller percentage of the parents themselves (75%) and their social supports (88%). Significant post hoc test results were found in comparisons between the parents and the attorneys (X^2 = 5.7, df = 1, $p < .05$) and the parents and the law enforcement officer (X^2 = 6.4, df = 1, $p < .05$). All but one attorney indicated they were used by the parent as a source of information (97%); a relatively smaller percent of the parents, 70%, indicated that the attorneys were a primary source of information. Significant differences were found between the parents and the attorneys (X^2 = 10.3, df = 1, $p < .01$), the parents and the social supports (X^2 = 5.6, df = 1, $p < .05$). The attorneys also provided relatively high endorsements (79%) for the parents' use of district attorneys as compared to that of the parents themselves (50%; X^2 = 7.5, df = 1, $p < .01$).

Resources for Emotional Support. For the most part, the respondents agreed about the left-behind parents' use of resources for emotional support in coping with their child's abduction. The respondents differed significantly in the extent they reported the left-behind parent relied on movies for emotional support (X^2 = 11.1, df = 1, $p < .05$). Here, 19% of the parents (10 of the respondents) reported using this resource. Only 3% of the social supports (1 respondent) and none of the attorneys or law enforcement officers indicated they believed the left-behind parents utilized movies for emotional support.

The respondents also differed significantly in the extent they reported the left-behind parent relied on support groups for emotional support (X^2 = 10.2, df = 1, $p < .05$). While less than 10% of the left-behind parents (5 of the respondents) indicated support groups as a resource, around a third of the respondents in the attorney, law enforcement, and social support groups reported this to be the case (29%, 29.4%, and 36.4%, respectively).

Attorneys differed significantly from the other respondent in the extent they felt that the left-behind parents used their attorneys and the District Attorney emotional support (X^2 = 13.1, df = 1, $p < .01$; X^2 = 8.9, df = 1, $p < .05$). Whereas nearly 95% of the attorneys felt they were used for emotional support, less than 65% of the respondents in the other groups thought this to be the case. Similarly, over half of the attorneys felt they District Attorneys were used by the left-behind parent for emotional support, but less than a third of the respondents in each of the other groups had a similar view.

Obstacles to Recovery and Return: Respondents Views

Obstacles to Child Recovery. When asked about the obstacles to recovering their child/ren, the majority of left-behind parents

indicated lack of financial resources (64%), their own lack of understanding about legal issues and procedures (64%), and difficulty obtaining information about the location of the abductor and the child/ren (67%). The left-behind parent's primary social supports shared their perception of the primary obstacles to child recovery, with most indicating the lack of financial resources (57%) and the difficulty obtaining information about the location of the abductor and the child/ren (59%). Most attorneys indicated the most significant obstacles to be a lack of financial resources (77%) and the difficulty in obtaining information about the location of the abductor and the child/ren (74%). To this query, the law enforcement officers did not have a predominant response (indicating an equally-weighted range of obstacles to child/ren recovery).

When asked about the greatest obstacle to child recovery, the respondents differed substantially and in a statistically significant fashion (see Figure OBSOBS). Here, the law enforcement officers. social support persons, and the left-behind parents were most likely to state that legal obstacles were the greatest impediment to child recovery (69%, 54%, and 35%, respectively). The parents were also highly likely to indicate that the law enforcement obstacles were the greatest barriers to child/ren recovery (33.3%). Attorneys were likely to indicate lack of funds to conduct search (28%) and legal obstacles (26%). These data indicate widely varying perspectives on what are the obstacles to the recovery of parentally-abducted child/ren.

Insert Figure OBSOBS about here

DATA ANALYTIC RESULTS-STATISTICAL PREDICTORS

In an attempt to explore further the patterns and implications in the obstacles to recovery data set, a series of analyses were accomplished to identify statistical predictors of (a) left-behind parent psychological distress, (b) recovery-return time latency, (c) latency between abduction time and help seeking, (d) satisfaction with attorneys and law enforcement officers, (e) family abuse, (f) child concealment activities, and (g) left-behind parent concern about future child(ren) abductions. Approximately fifty correlations, chi-square analyses, and analyses of variance were calculated using empirically-defined high and low groups of psychological distress (SCL-90-R GSI raw scores), recovery/return latency, and satisfaction with attorneys and law enforcement officers, along with dichotomous variables created for custody arrangement, revenge as abduction motive, and location of child during abduction (in-state versus out of state). Significant findings from these analyses are reported below.

Predictors of Left-Behind Parent/Abducting Parent Relationship. The left-behind parent's marital status was a

significant determinant of the ratings of their relationship with the abducting parent. In post hoc tests, significantly higher ratings were given when the left-behind parent was married to and was living with the abducting parent (between sometimes positive and mostly positive), as compared to those parents who were still married to but were separated from the abducting parents (averaging a mostly negative relationship rating). Significantly lower ratings were also given to those left-behind parents who were divorced from the abducting parent and were living with a new partner.

Revenge as Motive and Psychological Distress. High levels of psychological distress were found in those left-behind parents who felt that the abduction was motivated by the abducting parent's pursuit of revenge for the separation or divorce (62% of the cases who had indicated revenge as a motive). Although not statistically significant, the majority of parents (69%) who felt revenge was not a motive were in the low distress category. The abductor's motivation for taking the child was perceived by the left-behind parent to involve custody issues or visitation rights in 23.1% of the cases.

Real Versus Entitled Visitation Time Prior to the Abduction. Prior to the abduction, the percent of time the left-behind parents reported they were entitled for visitation was highly correlated (82%) with the percentage of time they actually received. What is perhaps more important, however, is that the correlation was not 100%, which, in the ideal circumstance, should be the case. This finding points to a high but not complete association between the left-behind parents' deserved v. actual visitation time with the child(ren).

Attorney Behavior Predictors and Parent Satisfaction With Attorney. Thirty (30) attorney behaviors were examined in their relation to left-behind parent satisfaction (with attorney). The attorney behaviors that were assessed ranged from (a) actions directed toward seeking changes in custody order and whether these changes were granted by the court, (b) attempts to file or enforce custody orders and to file petitions for a warrant to return the child(ren), (c) efforts to obtain relief through the Hague Convention, the Parental Kidnapping Prevention Act (PKPA), and the UCCJA (Uniform Child Custody Jurisdiction Act), (d) filing tort action for damages, and (e) the requesting and receiving of an Unlawful Flight to Avoid Prosecution (UFAP) warrant. Unfortunately, no single variable was identified that was significantly associated with left-behind parent satisfaction with their attorney. The results indicate that actual attorney behaviors had relatively little or no influence on their client's satisfaction regarding the services they were provided. On the other hand, no significant association was found between the left-behind parents' satisfaction with their attorney and twelve activities of the left-behind parent's attorney.

A similar pattern emerged when these same attorney behaviors were examined in relation to the left-behind parent's psychological distress. No single (left-behind parent) attorney activity was significantly related to high or low distress. Bringing a petition for writ of mandamus/prohibition regarding the court's action, however, was found more often in low distress parents, although this association only approached statistical significance. A strong positive association was found, however, between the left-behind parents' high distress and the abducting parent's attorney actions to secure for the abducting parent sole legal and physical custody of the child(ren).

Law Enforcement Officer Behavior and Prediction of Left-Behind Parent Satisfaction with Law Enforcement. The left-behind parent's satisfaction with law enforcement was examined with regard to fifty-five law enforcement officer behaviors. The law enforcement behaviors ranged from giving information and taking case information over the telephone, interviewing other family members, assisting in the search for the child(ren), circulating photos of the child(ren), and contacting the FBI National Crime Computer Network (NCIC) and the National Center for Missing and Exploited Children (NCMEC). Twenty-one of the law enforcement officer activities (38%) were linked significantly to greater satisfaction (Table LAWSAT). In contrast to the attorney actions, it is apparent that law enforcement officers have an array of activities that may influence the left-behind parent's satisfaction with their services.

Insert Table LAWSAT about here

Similarly, seven (or 13%) of the law enforcement activities were associated with lower psychological distress reported by the left-behind parent (Table LAWDIS). Here again, law enforcement officers appear to have greater sway in influencing the left-behind parents reaction to the abduction.

Insert Table LAWDIS about here

The left-behind parents' satisfaction with law enforcement officers was significantly related to having to initiate a relatively lower percent of phone calls to the law enforcement officers, with an average of 8.5 call initiated by the high satisfaction group versus 10.7 for the low satisfaction group.

Perception of FBI Utility in Child Recovery. As might be expected, a greater proportion of left-behind parents who believed that their children had been initially taken out of state during the abduction felt that the involvement of the FBI would have led to a faster recovery of their child/ren (13/18 or 72%).

Child Abuse and Time from Recovery to Return. A shorter time lapse between recovery and return was observed in those families where child physical abuse, but not sexual abuse or neglect, was alleged to have been perpetrated by the abducting parent. In fact, in 8 of 9 cases (89%), return occurred at the same time as the recovery. In contrast, in only 10 of the 26 cases (39%) where sexual abuse or neglect abuse was alleged did the return occur at time of recovery.

Predictors of Concern for Abduction Recurrence. A number of variables were assessed for their association with the left-behind parent's fear about abduction happening again. The left-behind parent's fear about a future abduction could be predicted somewhat from the criminal charges raised against the abducting parent. Eighty-seven percent of the left-behind parents in cases where the abducting parent was charged with a felony expressed concern that the child(ren) might be abducted again.

Summary of Results

Several conclusions can be drawn from the findings reported here. First, left-behind parents of parentally abducted children show marked distress, particularly in anxiety and depression, on a self-report measure of psychological disturbance. This distress appears to cut across nearly all social, ethnic, and economic divisions. Distress is greater in families where reported sexual and/or physical child abuse had occurred prior to the abduction. Left-behind parent distress can be mitigated in part by law enforcement officers assisting in the search for the missing child and law enforcement officers being available for telephone contact. Second, while there is a fair amount of agreement about legal obstacles as being significant impediments to their child/ren's recovery, there was considerable differences between parents, attorneys, law enforcement officers, and social support persons, about the most significant obstacles. Third, relative to the parent's report, the attorneys and law enforcement personnel tend to overestimate the extent to which the parents utilize them for information about their child/ren's recovery, and the degree to which parents are satisfied with their services. Professionals and other service providers should take this information into account in their work with left-behind parents of abducted children, and acknowledge that these parents may be utilizing other sources of information.

Left-behind parents' use of law enforcement officers as a source of information was associated with lower psychological distress. This finding suggests that use of law enforcement for providing information to the parent may help to mitigate the adverse effects of parental child abduction. Along a similar track, the findings presented here suggest strongly that law enforcement officers, but not attorneys, can and do behave in ways that enhances their (left-behind parent) client's satisfaction with

services and help to attenuate the adverse psychological impact of parental child abduction. These findings should help to encourage continued activities by law enforcement officers and promote examination of other legal assistance and actions to help more adequately meet the needs of these clients. One potential area for improvement is in attorney-client communication (and clarity thereof), in light of the marked differences found between those parties' perception of events and their outcomes related to the abduction episode.

V. Discussion

Parental abduction has appeared in literary references as a phenomenon of human relations since antiquity. The theme of a child being detained from a loving parent and the parent's joy upon child recovery is included in the children's tales of Pinocchio (Collodi, 1931, translated from the Italian), Hansel and Gretel, The Lost Son (Lang, 1920), and Euripides' Greek tragic play of Medea.

Yet it has only been in the last decade that parental abduction has gained the attention of the general public, and the legal, social science, and mental health systems in the United States. The study examines parental abduction cases from the multiple perspectives of the left-behind parent, and the individuals (law enforcement, private attorney, social support individual) involved in each case. Principal study findings are reviewed and discussed in the following sections.

Pre-Abduction Family Life Events. The majority of left-behind parents reported the occurrence of significant stressful life events from the birth of the missing child continuing through the period up to the point of abduction. This included not only the somewhat predictable substantial conflict with the abductor, but financial difficulties, child management problems, parental job change, physical/sexual abuse reports, family emotional problems, and alcohol/drug abuse. Families do not face the problem of parental abduction with a blank slate from their prior lives. The abductions occur in the context of serious family problems which may have been in existence for years previously. For the left-behind parent, such prior problems may combine with the stress of child loss to produce a less than desirable interaction with law enforcement or other governmental agency involved in child recovery. For the law enforcement officer or other agency staff member, it may be necessary to take the time to assess pre-abduction family life events in order to accurately assess case information and gain the best level of cooperation from the left-behind parent and their extended family members.

From a prevention viewpoint, early detection/intervention programs aimed at parental abduction incidence reduction are not currently in existence. Further, psychological counseling from

mental health, social service, or clergy is infrequently utilized prior to the abduction by these families. Such counseling is, of course, voluntary and dependent upon the initiative of the parents. Alternatively, many of these families live in areas where they may have been required to participate in court ordered mediation as a part of a divorce/child custody action. While it is recognized that neither psychological counseling nor court mediation (if applied) has been shown to be effective in reducing subsequent parental abduction, a focused field test of various prevention options should be implemented to hopefully reduce the necessity for the direction of increasing government agencies resources to child recovery and civil/criminal court actions.

Demographic Variables. The parental abductor is not more likely to be male or female. Both biological mothers and biological fathers appear to be approximately equally involved in these actions. The overwhelming majority of the abductors were under the age of 40. Given comparison with other studies, it would appear that the incidence of parental abduction among racial/ethnic groups of Caucasians and African-Americans is proportionate to the national population, with under representation of Asian/Pacific Islanders and possible under representation of Hispanics. The explanation for such underrepresentation by these two minority groups is unknown. For the majority of cases in this study, the socio-economic status was lower to lower middle class by occupation. Such a population is highly likely to have very limited financial resources with which to obtain legal assistance for child recovery, making them highly dependent upon whatever level of services were available from local law enforcement.

The kindergarten and elementary school aged child is the primary victim of parental abduction. It is within this age range that children gain the ability to verbally communicate more freely with adults, about both their feelings and their thoughts. This, in turn, may lead to greater difficulty on the part of abducting parents in dealing with the separations after the regular pre-abduction scheduled visitation. This is also an age range in which the child is most likely to accept whatever explanations are given by the abducting parent about the left-behind parent, and the abduction event itself. Upon recovery and return, the child faces acceptance of a different set (that of the left-behind parent) of expectations and demands which are usually complied with on the surface. The child has not yet attained the cognitive skills to completely understand the complexities of the abduction event. As the child grows into adolescence and young adulthood, the abduction event is more likely to become a focus of more open attention, discussion, and emotion. Unfortunately, at this time, public information about the impact of parental abduction upon children within this (or any other age range) is not available to parents in conflict, left-behind parents, or abducting parents. Dissemination of this information from OJJDP sponsored research and other studies would be of significant value.

Pre-Abduction Physical and Sexual Abuse within the Family-All Respondents. The interview items shared by the left-behind parent, the attorney, the law enforcement officer, and the social support were compared and contrasted. For all significant overall differences among the respondents, post hoc tests (Fisher's exact tests with modified Bonferonni correction for experiment-wise error) were calculated between the parent and other respondent reports.

Half of the left-behind parents reported that they had been physically abused in their relationship with the abducting parent. About one-fourth reported that the abducting parent had physically abused a child and accused the abductor of sexually abusing a child. The left-behind parents similarly reported about the same incidence of counter allegations of spousal physical and child physical/sexual abuse against themselves.

Law enforcement officers, attorneys, and social support persons were also generally aware of these high rates of abuse allegation. One-tenth of left-behind parents provided descriptions of pre-abduction abuse charges and convictions. This information was unknown to the law enforcement officers involved in the case. This lack of agreement may be reflective of high law enforcement caseloads, low level of importance attached to family violence issues, and possibly difficulties in checking past histories through multiple county and state systems. Protocols and procedures for such checking are not widely available. However, such protocols and procedures have proved very useful in other child welfare areas. (For example, the Los Angeles County Child Death Review Team examines each child death to determine possible adult involvement. Their review protocol researches data systems for abuse, neglect, violence, criminal history through current and multiple past residences.) Incidences of abuse in families often are not part of the public record, so lack of information through other data systems is not necessarily an indication of the absence of abuse.

Pre-abduction restraining orders have frequently been obtained against both the abducting parent and the left-behind parent. Yet, formal charges of pre-abduction spouse abuse or child abuse are only brought in about one third of the cases, and conviction on these charges are rare. This may mean that law enforcement and other government agencies may frequently face a number of parental abduction cases in which allegations of abusive behavior by either parent toward either adults or children are very common.

Abduction Precursors. A substantial number of left-behind parents reported events thought to have proceeded the abduction, such as abductor job change, increased telephone calls by abductor about child access, move or impending move by abductor, custody order changes, or allegations against the left-behind parent about child physical/sexual abuse. However, no consistent pattern

emerges for pre-abduction events which would enhance abduction prediction at this time. As has been true with other felony crimes, the more practically usable information in this regard has been obtained from the offenders themselves, and it is with this population that further predictive studies should be profitably pursued.

Custody and Visitation Agreements. In more than three-fourths of the cases, a written custody order was present. This compares with NISMART findings and Families of Missing Children findings of 60% and 62% respectively. Although some variation is present in these findings, it would appear that there is strong support for the belief that written custody orders are present in the majority of parental abduction cases. In more than three-fourths of the cases, the left-behind parent and the abducting parent had a visitation agreement prior to the abduction.

Abduction Events. Most of the left-behind parents believed their child was either at the home of the abductor, the home of a relative of the abductor, or at their own home at the time of their initial concern. One-fourth of the left-behind parents did not know of the whereabouts of the child at the time of initial concern. This study finding is contrasted with the following child location findings from NISMART (Finkelhor, Hotaling, and Sedlak, 1990) of left-behind parent's home (35%), another home (8%), and with abducting parent (50%), and from the Families of Missing Children Study (Hatcher, Barton, and Brooks, 1991) of left-behind parent's home (36.5%), another's home (7.7%), and with abductor (17.3%). Some of the variation in findings among these studies are due to definitional differences between "another's home" and "with abductor." The common finding across these studies is that the majority of children are abducted from a home or while with the abductor rather than from another location such as a school or day care facility.

Half of the left-behind parents suspected that their child had been parentally abducted within an hour of their initial concern about their child's whereabouts, and an additional one-third had this suspicion within five hours from their initial concern. Over three-fourths of left-behind parents had contacted a law enforcement agency within 24 hours of their concern and a comparable number contacted a missing child center as well. Such prompt contact with attorneys was much less universal.

In the majority of cases parentally abducted children were transported to other states. This finding is in considerable contrast to the NISMART study which found that only less than one-tenth of the cases were transported to another state. This difference in findings is a significant clue to the variability in the results of NISMART and other studies, as the majority of NISMART cases are within state abductions and the majority of cases in other studies are interstate abductions. This difference

becomes more meaningful when the variable of time gone is also considered in that 90% of the parentally abducted children in the NISMART sample were returned within one month, as contrasted with 30.7% recovered in the current study, and 49% recovered in the families of missing children study. In the later two studies, almost all children were home by one-year post-abduction. It is likely that such substantial differences are due to study methodology and definitional variations.

It would appear that meaningful public policy decisions would be enhanced by clarifying the differences among studies using different methodologies and definitions. The NISMART random digit dial methodology has identified a large number of parental abduction cases as self-defined by the adult head of household, whereas other studies who have drawn their samples from national registries or law enforcement find fewer cases which sometimes have different characteristics. This later group of cases appears to be representative of the frequency and type of cases encountered by law enforcement and other government agencies. A remaining question may be whether the NISMART methodology identified a large group of unidentified and therefore unserved parental abduction cases (taking place within the state and being of short duration), or whether this large group of respondent defined parental abductions, when brought to the attention of law enforcement, would actually meet the legal criteria for parental abduction in their jurisdiction.

One-tenth of the parentally abducted children in this study were transported to another country, and one-quarter of the law enforcement officers had previously handled one or more international cases. This is a meaningful number of cases which are likely to be of extended length and legal complexity. While the frequency of international cases may be low relative to short term domestic cases, such cases do appear to be involving high levels of law enforcement contact and effort.

Abducting Parent Motivation. Most frequently social support respondents believed that the abductors were motivated to take children in order to get back at the left-behind parent for separation/divorce. This result is consistent for all study respondents. Correctly or incorrectly, the abducting parent is viewed by the left-behind parent and the community response system as most characteristically a vengeful person. Currently, only anecdotal accounts are available which present the abduction from the abductor's point of view. In the area of abductor motivation as well as other associated topics, it is apparent that a quantitative study with a sample of 30-50 abducting parents is essential to further progressing in abduction prevention.

Concealment. Children were reported by left-behind parents as physically concealed in more than one third of the cases, with name changes and physical appearance changes also taking place.

Attorneys reported lower rates of child concealment by abducting parents and less knowledge of techniques used to conceal children than reported by left-behind parents. Child concealment can be viewed as either supportive of the abducting parent's effort to avoid arrest or to avoid child return to an alleged previously abusive situation. In either case, concealment is an important issue in parental abduction cases. Differences in perception between attorney and client on this issue may be due to: (1) attorney lack of knowledge of child concealment, and/or (2) attorney/client disagreements about case facts. Fully effective attorney representation of the client would be best served by enhanced attorney attention to the child concealment issue.

One-third of the law enforcement officers also reported being aware of child concealment. However, one-fifth of the law enforcement officers reported that they had no knowledge about whether the child had been concealed and half were not aware of any concealment efforts. It can be reasonably assumed that effort to acquire information about child concealment would be a significant addition in considerations of the case for prosecution, as well as, a potential subsequent factor in sentencing.

As this is a substantial subgroup of the total number of cases, the issue of concealment and the extent to which an abducting parent will pursue such concealment may be an important dimension not only in assessing the behavior of the abducting parent relative to the best interests of the child, but also in assessing the potential psychological consequences to the child.

Two-fifths of the left-behind parents took one to four weeks off work to assist in efforts to recover their child, while one-tenth took more than one month. This illustrates that economic consequences to the family extend beyond attorney fees and other more direct financial expenditures.

Prior Attorney Experience with Parental Abduction Cases. Of the attorneys who participated in this project, all had practiced law for a minimum of three years prior to a study of parental abduction case, with most reporting at least 20% of their practice was in family law. Consequently, it appears that left-behind parents were able to locate and involve attorneys with a base of legal experience in family law. In spite of this, approximately one-fourth of the attorneys had never been involved, previously, with a parental abduction case, and an additional one-third had handled only one to two prior cases. This information may indicate that currently, a relatively small number of attorneys have had extensive experience with parental abduction cases. This makes it difficult for left-behind parents to obtain an attorney well experienced in the area of parental abduction. This may be due to the relatively recent emerging awareness of parental abduction as a family law problem, and is indicative of a substantial need for additional education for attorneys about parental abduction.

Previous Law Enforcement Experience with Parental Abduction Cases. The majority of law enforcement officers involved with the study cases had either handled a substantial number of parental abduction cases, or a very limited number. Notably, one-fourth of the law enforcement officers had been involved in an international abduction case. It is probable that child recovery is associated with extent of investigative experience, and that consequently, citizens may be differentially served depending upon whether they have access to a very experienced officer or an officer with relatively little, or no, prior experience, as was true in one-fifth of the cases. This substantial variation in investigative experience would support the importance of increased training for law enforcement officers in the area of parental abduction prior to case involvement.

Social Support Relationship to Left-Behind Parent and Abductor. The majority of socially supportive individuals were friends of the left-behind parents, and had known left-behind parents for multiple years prior to the abduction, about one-sixth, however, had known the abducting parent for one month or less.

Socially supportive individuals reported that of the events that occurred in the left-behind parent's life in the year prior to abduction, conflict with spouse/ex-spouse/partner was present in two-thirds of the cases. Major financial strain, the appearance of emotional problems in a family member, spousal separation, dependence on alcohol or drugs, and child residence with extended family members were also frequently identified as events which occurred in the left-behind parents life during the year prior to the abduction. These results approximated left-behind parent reports of such events.

Less than one-fourth of the socially supportive individuals reported that they did not know how to characterize the relationship between the left-behind parent and the abductor because they did not know the abductor, or they had no information about the spousal relationship. Similarly, close to one-third of the social supports reported that they did not know about the quality of the relationship between the abducted child and the abductor prior to abduction, and one-fourth characterized the relationship as sometimes negative. Notably, one-fifth characterized the relationship between abductor and child as mostly positive.

These findings illustrate the limitations of knowledge of family relationships for the individual designated by the left-behind parent as the most supportive individual during the abduction. While socially supportive individuals' knowledge of history of family discord is generally similar to that of the left-behind parent, the perspective represented is less consistent in the assessment of family relationships and child feelings.

Law Enforcement Actions Taken. Law enforcement officers reported that most left-behind parents contacted them almost immediately after their initial concerns about child abduction.

Slightly less than half of the law enforcement officers reported that left-behind parents were given helpful suggestions during their first contact with a law enforcement agency. Slightly less than one-third (31%) reported that they did not have any information about what the left-behind parent was told during their initial contact with a law enforcement agency. In one-fifth of the cases, left-behind parents reported that officers did not initially take case information and provide guidance about further steps. This likely indicates a lack of available standard information for officers to disseminate at the individual case level. Relative to other types of felony crimes, parental abduction has a short history in law enforcement. Agencies are limited with regard to parental abduction case intake protocols that are available to the individual desk sergeant or detective on duty (Hatcher, Barton, and Brooks, 1992). NCMEC has made an outstanding effort within a very limited time frame to author such public education materials. The enhanced distribution of such materials would appear to be very supported by this study finding.

The majority of law enforcement officers reported that during the first week of the child's disappearance, a variety of appropriate actions were taken, including: the entry of the child's name into the National Crime Information Center computer; the availability of law enforcement for daily telephone contact; the assistance of the law enforcement agency in the parent's state of residence; the entry of the abductor's name into the National Crime Information Center computer; and the communication of case information over the telephone to law enforcement. These study results were generally confirmed by left-behind parents. While being mindful that a quick recovery may logically preclude the need to take some steps, current study data do not provide an explanation as to why the majority of law enforcement agencies quickly take a range of positive steps for child recovery, and minority of agencies do not appear to do so.

As one might expect, law enforcement officers reported a decline in case activity after the first week of child abduction. While officers reported a decline in law enforcement activities, the decline was perceived as greater by left-behind parents.

While law enforcement agencies were involved in all of the cases, one-third of the left-behind parents rated law enforcement as not helpful in child recovery. This finding may be partially accounted for by a combination of a local law enforcement jurisdiction policy defining parental abduction as a offense warranting limited assignment of resources, and law enforcement as an available and convenient focus for left-behind parent frustration about the many practical and governmental obstacles to

child recovery. Both citizens and law enforcement agencies may benefit from clearer policy statements about the exact nature and extent of services offered in a local jurisdiction, and the legal constraints within which law enforcement must function.

Law Enforcement, the Left-Behind Parent, and Services Satisfaction. Differences were found between (1) left-behind parent satisfaction with the investigative assistance from the law enforcement received from their state and (2) law enforcement officer's perception of the left-behind parent's satisfaction with their services. Specifically, 62% of the law enforcement officers felt that the parents were very satisfied with their investigative assistance; only 9% felt the parents were not satisfied. The majority of the parents, however, were not satisfied with the assistance (55%), while only 17% were very satisfied with the assistance they received.

This split perception about satisfaction was also evident in reports about law enforcement services. Around two-fifths of the social support respondents believed that left-behind parents were not satisfied with the law enforcement assistance they received, and almost one-fourth of the social support respondents believed that left-behind parents were very satisfied.

Most follow up telephone calls were initiated by left-behind parents themselves, and this is a sensitive issue for these parents. Two factors emerged as inverse predictors of left-behind parent distress. Law enforcement officers assisting in the search for the missing child and law enforcement officers being available for telephone contact were significantly associated with lower parental distress (explaining 64% and 58% of the statistical variance in this study's distress measure in separate regression equations). While heavy law enforcement investigation caseloads may be seen to severely limit the time available to the law enforcement officer to initiate such calls, it remains such a strong issue that it should be considered in local agency policy review and, more importantly, for discussion in public information materials for left-behind parents.

Private investigators were employed by more than one-fourth of the left-behind parents in this sample, with satisfaction of results being generally very limited. However, in a small subsample of cases, satisfaction with private investigators' efforts was very high. As the employment of private investigators was done by families with very limited financial resources at the time of child disappearance, the issues of how parents search for a private investigator, what criteria are used in deciding to retain the private investigator, and how the funds spent are related to actual child recovery would be quite relevant and remain unexplored at present.

While the majority of cases were interstate abductions, child recoveries were largely by a local law enforcement agency in the left-behind parent's state of residence working in conjunction with a local law enforcement agency in another state. Local law enforcement requests for a UFAP warrant, and hence F.B.I. case entrance does not seem to be characterized by a typical case protocol or status. Further, left-behind parent information on the purpose and function of the F.B.I. in parental abduction cases is very limited and unclear. This is an area deserving of policy review and increased public education.

When asked if FBI assistance would have resulted in a faster recovery of the child/ren, the majority of parents (in applicable cases) answered this question affirmatively (60%). The majority of law enforcement officials, on the other hand, felt that FBI assistance would not have resulted in a faster recovery (63%). Parents and law enforcement officials differed in their estimates of the length of time passing after the abduction before the FBI entered the case. The parents' estimations ranged from 5-6 days to more than 5 months. The law enforcement officials' estimations ranged form 3-4 days to 4 months, with 3-4 days being the most frequently identified length of time before case entry (4.8%).

Law Enforcement Perception of Parent Satisfaction with Law Enforcement Services. The majority of law enforcement officers reported that left-behind parents were very satisfied with the law enforcement they received in their state of residence, and in a second state of residence. In contrast, less than one-fifth of left-behind parents reported being very satisfied.

Legal Procedures and Custody Changes. Private attorney involvement was secured by most left-behind parents within one day. However, in one-tenth of the cases, attorney involvement did not take place at all or for more than one month post-disappearance. Here again, there appears to be a meaningful minority of cases which are unserved by an important source of assistance.

Most attorneys reported that left-behind parents had sole physical and legal custody at the time of the abduction, more than one-fourth of the left-behind parents sought sole physical and legal custody following the abduction, as did slightly less than one-fourth of the abductors. Left-behind parents who had to seek custody orders were more distressed (at a statistically significant level) than parents who had existing custody orders. While generally, attorneys indicated that custody orders for left-behind parents were obtained promptly, in slightly less than one-tenth of the cases a custody order was not obtained for four to six months. The reasons for delay in this minority of cases are not clearly due to the complexity of the case, nor to the promptness with which the left-behind parent sought legal consultation. This subset of cases warrants additional attention in subsequent studies, with attention to the relationship between: (1) delayed custody order and child

recovery time, (2) delayed custody order as a function of the local judicial system, and (3) delayed custody order as a function of attorney effectiveness.

Disagreement was also apparent between parents and their attorneys when reporting whether the abductor was charged and brought to trial. The majority of the parents reported that the case was brought to trial (74%) while the majority of the attorneys reported that the case had not been brought to trial (59%). Finally, the parents and their attorneys also disagreed significantly with regard to whether the parent was awarded money for criminal restitution, civil tort damages, or civil award of costs. Eight percent of the parents reported receiving court-ordered money, while 28% of the attorneys answered affirmatively when asked whether the parents had received a monetary award.

Attorney Perception of Parent Satisfaction with Legal Services. There was a marked discrepancy between the perceptions of attorneys and left-behind parents about left-behind parent satisfaction with legal services. Social support individuals' assessment of satisfaction with legal services was much closer to that of left-behind parents. While attorneys reported a high level of left-behind parent satisfaction with legal services, left-behind parents reported a lower rating of satisfaction. For example, while 40% of the parents reported being very satisfied, over 65% of the attorneys thought the parents were very satisfied. At the other end of the satisfaction continuum, 22% of parents were reportedly not satisfied as opposed to 5% of attorneys rating the parents at that level of satisfaction. This may be indicative of a difference in perceptions about what constitutes optimal legal service in this situation and positive case outcome. While attorneys may recognize the limitations of legal systems to respond to the needs of left-behind parents and proceed to work within them, parents may be focusing their dissatisfaction about the inability to recover their child on their attorneys. Differences are under desirable in any circumstances, and warrant additional attorney efforts to attempt to reduce these differences between attorney and client about legal procedures.

Assistance Provided to Left-Behind Parent by Social Support. With regard to assistance given to left-behind parents by social support respondents during the first week of the abduction, nearly all respondents said that they gave emotional support to parents, and well over half of the social support respondents assisted the left-behind parent financially. Half reported obtained information about conducting a search, acquiring information about the abductor's whereabouts, answering the telephone for left-behind parents, and speaking with law enforcement on an ongoing basis.

The practical and emotional support provided by social supports was generally sustained past the first week of the abduction. Almost all of the social support respondents continued

to provide emotional support to left-behind parents after the first week of the abduction. Between half and two-fifths of the social support respondents generally, continued to answer the telephone for parents, assist financially, acquire information about the abductor's whereabouts, and speak to law enforcement on an on-going basis.

While assisting left-behind parents during the abduction, well over half of the social support respondents reported difficulty acquiring information about the abductor's whereabouts, and understanding how to help left-behind parents get assistance from law enforcement. Notably, about two-fifths had difficulty finding time to fulfill their own personal and family responsibilities during the abduction period. This indicates that, in addition to the family or the left-behind parents, a substantial number of other individuals directly affect by the abduction.

While most of the social support respondents reported that they did not take time away from work to assist the left-behind parents during the abduction, about one-sixth reported taking between eleven and thirty-one days or more away from work.

Over half of the social support respondents reported that they did spend their own money on the search for the missing child. Most frequently social support respondents spent between $101.00 and $500.00 assisting left-behind parents, but about one-tenth spent between $501.00 and $1000.00. It is notable that a very small number of social support respondents spent between $10,001.00 and $20,000.00 assisting left-behind parents.

Both in terms of time away from work and direct financial contributions, there appears to be a minority subgroup of social support individuals who make major sacrifices to assist in these cases. As is true with individuals assisting abducting parents, the values and rationale of this subgroup who assists the left-behind parent warrants new attention and study.

Arrest, Criminal Proceedings, and Restitution. For most cases, attorneys reported that UFAP warrants were not obtained, although most cases were interstate or international abductions. Attorney knowledge of law enforcement rationale for utilization of non-utilization or UFAP warrants appears to be without a defined pattern.

More than three-fourths of the left-behind parents reported that the child and the abducting parent were recovered at the same location. In half of the cases, the abducting parent was arrested, and approximately four-fifths of those arrested were eventually charged with a felony. More than three-fourths of those charged were brought to trial. Of those brought to trial, half pled not guilty and half were eventually convicted. Of those convicted, two-thirds received jail sentences of around 3-4 months. The rate

of incarceration found in this study is substantially different than the current prevailing perception that convicted parental abductors do not receive any jail sentences. At present, there are no sentencing guidelines for judges to employ in parental abduction cases. A need for such guidelines has been consistently noted informally during project staff contact with parents, law enforcement officers, attorneys, and judges.

The majority of attorneys reported that over half of the abducting parents were arrested and reported that almost three-fourths of those arrested were subsequently charged with a felony. One-fifth of the attorneys had little or no knowledge of the criminal proceedings subsequent to child recovery. Left-behind parents represented by this minority subset of attorneys are taken to be less well served than parents with access to more knowledgeable and involved attorneys.

While attorneys were generally aware of criminal proceedings, their perception of the financial restitution received by left-behind parents differed from that of parents. Approximately, one-fourth of the attorneys reported that left-behind parents received money for damages, in contrast to slightly more than one-tenth of the left-behind parents who reported receiving money following parental abduction.

Left-behind parents reported that the abducting parent received assistance in more than three-fourths of the cases, with the abductor's mother and friends being most frequently identified. These high rates of assistance to abductors have been confirmed by other studies (Hatcher, Barton, & Brooks 199 ; Hatcher, Barton, & Brooks 1992). Collectively, such results from several studies would infer that parental abduction is an offense which would be most difficult to carry out without the assistance of friends or relatives of the abductor. Further study attention should identify individuals, commonly perceived by both the left-behind parent and law enforcement, as providing abductor assistance, and then examine potential ways to alter this source of support.

The majority of law enforcement officers reported that abductors had received assistance but their reports were fewer than those of left-behind parents. Law enforcement officers and left-behind parents agreed that the mothers and friends of abductors were the most likely to assist with the abduction process. As previously indicated in the left-behind study results, it would appear that, in many cases, parental abduction would be very unlikely without assistance to the abductor by family and friends. A significant effort should be composed to study the motivations and value systems of this group of individuals.

Information Provided to the Left-Behind Parent. Overall, a fairly consistent pattern was found in the tendency of law enforcement officers, and attorneys to overestimate the extent to

which left-behind parents used them as a source of information. Generally, officers were able to report that the left-behind parents had not utilized a specific source of information, or that they had not knowledge of use. One-fifth of left-behind parents were reported to have sought information from an attorney. The report of lack of attorney consultation is striking considering that 84.6% of the cases involved an attorney as reported by parents. Overall, study findings appear to point to limitations in law enforcement officers' knowledge of family law case events, as well as, limitations in attorneys' knowledge of Criminal Law case events. With regard to attorney knowledge of the information sought by left-behind parents while searching for their children, attorneys reported a mixture of perceptions. While many attorneys were knowledgeable about the efforts of their clients to acquire information about child recovery, one-fourth indicated that they had no information about their clients' actions in this regard. This is likely to be related to the study finding that most attorneys viewed themselves as the primary source of information for recovering parents, which left-behind parents reported law enforcement as the primary source. Two considerations are relevant here, first, a substantial minority of attorneys had no information about client efforts to gain information about the abduction, which may well contribute to less than complete comprehension of the case and ongoing client behavior during the case. Second, left-behind parents perceive the information providing role of attorneys as less significant than attorneys. This is an additional component of a set of case perceptual differences between attorney and clients. With regard to information provided, left-behind parents most frequently reported missing child centers as their most useful source of information about parental abduction, with a series of other government and personal sources being sought out as well.

Emotional Support Provided to the Left-Behind Parent. For the most part, the respondents agreed about the left-behind parents' use of resources of for emotional support in coping with their child's abduction. The respondents also differed significantly in the extent they reported the left-behind parent relied on support groups for emotional support ($X^2 = 10.2$, $df = 1$, $p < .05$). While less than 10% of the left-behind parents (5 of the respondents) indicated support groups as a resource, around a third of the respondents in the attorney, law enforcement, and social support groups reported this to be the case (29%, 29.4%, and 36.4%, respectively). While law enforcement officer knowledge of left-behind parent sources of information may have been limited, they appeared to have a considerable understanding of the emotional support sought by parents. In agreement with left-behind parents, law enforcement officers reported that relatives were the primary source of emotional support for parents following parental abduction. Similarly, as a substantial number of attorneys had no knowledge of parental pursuit of information about child recovery, most attorneys reported either that, their clients had no emotional support or that they had no information about their clients efforts

to obtain emotional support. This finding is in contrast to reports by the majority of left-behind parents that they had sought emotional support from friends, relatives, missing child center staff, law enforcement, and attorneys. In effect, attorneys were generally unaware of the support systems of their clients, in spite of the fact that they were frequently identified as being an emotional support source by left-behind parents. This finding may be the result of attorneys not choosing to define emotional support as part of their professional role. Within such a definition, however, attorney case management is likely to be most effective when the attorney is able to understand whether emotional supports are or are not present to stabilize the client's behavior as the case proceeds.

Financial Expenses to the Left-Behind Parent. More than one-third of left-behind parents spent between $1,000 to $5,000 on child recovery related legal expenses, and with one-fourth reporting lost income in the same range. Additional expenses were incurred in travel to the site of child recovery and child recovery search supplies. These amounts do not include additional funds contributed by the majority of individuals identified as the primary social supports. This finding illustrates that parents with very limited financial resources frequently expend significant funds in the search and recovery process.

Left-Behind Parent's Assessment of Law Enforcement and Attorney Knowledge Base. Left-behind parents reported that more than half of the law enforcement officers and more than one third of the private attorneys contacted were uninformed about parental abduction child recovery procedures. Further, similar numbers of these parents reported that they had to continue to educate law enforcement officers and attorneys beyond the initial contact. This finding needs to be further addressed to determine how much of the finding is accounted for by a perception and frustration of left-behind parents about delays in child recovery, and how much is accounted for by limited law enforcement and attorney knowledge.

Left-Behind Parent Distress. Study findings provided strong evidence of the psychological distress, characterized by anxiety and depression, experienced by parents of parentally-abducted children, as measured by a widely accepted nationally normed psychological test measure.

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In most cases, however, differences in demographic and other objective data did not predict distress. However, distress of the left-behind parent was positively and significantly associated with allegations of pre-abduction child physical and sexual abuse. Distress was negatively and significantly associated with the parent's use of law enforcement officers as a source of information

about their child/ren. These quantitative findings of high left-behind parent distress are similar to findings from other national sample studies (Hatcher, Barton, and Brooks, 1991), and indicate that allegations of pre-abduction child abuse are an important factor in this heightened distress, and that positive contact with law enforcement can significantly reduce such distress.

Child Recovery Events. Law enforcement officers acknowledged that a range of events led to child recovery. Of those possible events leading to child recovery, law enforcement officers did acknowledge that the most frequent leads, were established by parents. While left-behind parents stated that recovery was due to a lead provided by them in one-quarter of the cases, the most important finding here is that continued parental activity in the search process is very important to recovery.

Almost half of the recovered children were temporarily placed in a county child protective services facility prior to reunification with the left-behind parent. This finding reinforces the importance of recovery and reunification training for community providers, as is currently being developed by the Reunification of Missing Children Project (Hatcher, Barton, and Brooks, 1992).

Almost three-fourths of the left-behind parents were concerned about reabduction, yet more than one-third did not take any measures to prevent reabduction. This finding is similar to results from the Families of Missing Children Project (Hatcher, Barton, and Brooks, 1991) which found that a similar number of families did not change family/child safety rules after the abduction. Such failures to initiate change may be due to a fatalistic belief about not being able to prevent reabduction or may represent a lack of constructive coping. Effective counseling and self help for these families will depend upon an identification of the beliefs and values which restrict such constructive coping.

One-third of left-behind parents identified the inability of the legal system to respond quickly as the primary child recovery obstacle, followed by law enforcement obstacles.

Left-behind parents identified legal problems and inconsistencies in state laws as the primary obstacle to recovery, while attorneys ranked left-behind parent lack of financial resources as the primary obstacle to child recovery.

In summary, left-behind parents and attorneys viewed the abduction and subsequent child recovery in distinctly different ways. While they agreed about the presence of abuse allegations made toward left-behind parents and abductors, they differed about left-behind parent satisfaction with legal services, abduction events, information and emotional support sought by left-behind parents, and about the most significant obstacle faced during child recovery. The differences in left-behind parent and attorney

perceptions indicate that enhanced communication between attorneys and clients during parental abduction cases is highly desirable. This would include increasing attorney awareness of abduction case circumstances, status of left-behind parent knowledge of legal procedures, law enforcement actions taken, and social support available to left-behind parents.

The majority of the law enforcement officers reported that they believed legal problems and inconsistencies in state laws presented the primary obstacle which faced left-behind parents, followed by problems with law enforcement. While slightly less than one-third of law enforcement officers reported that lack of legal information on the part of the left-behind parent was an obstacle, almost all law enforcement officers believed that legal education for officers in parental abduction would be of benefit.

According to over half of the social support respondents, the primary obstacle faced by left-behind parents were legal problems and inconsistencies in state law, followed by lack of funds with which to conduct a search (one-third), and problems with law enforcement (one-third).

Belief Change. Overall, the abduction experience produces a generalized negative attitude change by the majority of left-behind parents toward government agencies. Such generalized negative attitudes are likely to extend beyond the left-behind parents to other family members and friends. This type of spread of effect of loss of confidence in government agencies by citizens is worthy of concern and programmatic response.

Generally, law enforcement officers reported no change in their belief of the responsiveness of government/community agencies, or sense of personal control.

Alternatively, attorneys reported no change in their belief of the responsiveness of government/community agencies, or sense of personal control. This finding contrasts with the increased negative changes and perceived loss of personal control reported by left-behind parents.

The picture of changes in beliefs of social supports about the responsiveness of social systems was mixed. Nearly half of the social support respondents reported that their belief in the legal system had stayed the same after their involvement with this case, and over one-third reported that their belief in the responsiveness of the legal system had decreased since their involvement with this case. Over one-third of the social support respondents reported that their belief in the responsiveness of the law enforcement system had decreased since their involvement with this case. Similarly, over one-third reported that their belief in the responsiveness of the law enforcement system had stayed the same, while approximately one-fourth reported increased belief in

responsiveness. Over half of the social support respondents reported that their belief in the responsiveness of missing child agencies had increased since the time of the abduction. While most frequently, social support respondents reported that their belief in their ability to control their environment and living situation had stayed the same since the time of the abduction, over one-third reported a decrease.

The reports of social supports reflect a substantial understanding about the circumstances and events experienced by left-behind parents in association with parental abduction. As supports for left-behind parents, the lives of these individuals appear to be significantly impacted by the abduction event, as may the lives of their family members. Approximately one-third of the socially supportive individuals appear to have decreased faith in the responsiveness of governmental agencies independent of the experiences of left-behind parents. This appears to illustrate a broader phenomenon in which individuals who view government agency response to parental abduction from a distance may judge that response more negatively that those directly involved in a parental case. Over time, this is likely to produce a sizeable group of individuals, beyond those just directly affected by the abduction.

Summary

In the last decade, parental abduction has gained the attention of the general public, and the legal, social science, and mental health systems in the United States. This study examined a national sample of parental abduction cases from the multiple perspectives of left-behind parent, law enforcement officer, private attorney, and social support individual. The findings from this study show left-behind parents to be experiencing a significant degree of clinical distress as a consequence of the abduction; and document, in detail, the characteristics of the abduction and the abduction response. The findings further illustrated differences in case knowledge and understanding among left-behind parent, attorney, and law enforcement officer. The recommendations resulting from these findings are identified in the summary provided at the beginning of the chapter.

Table LAWSAT.
Law enforcement officer behaviors associated with higher
ratings of left-behind parent's satisfaction.

1. Took further case information over the phone.

2. Were available for daily phone contact.

3. Were available for weekly phone contact.

4. Came to your home to get further information.

5. Interviewed other family members.

6. Assisted in search for child/ren.

7. Refused to assist in search for child/ren (inversely related).

8. Entered child/ren's name into NCIC.

9. Entered abductor's name into NCIC.

10. Contacted NCMEC.

11. Initiated search of court records.

12. Initiated search of credit bureau records.

13. Initiated search of Department of Motor Vehicle records.

14. Continued to take case information over the telephone.

15. Continued to be available for daily phone contact.

Table LAWSAT. (cont.)
Law enforcement officer behaviors associated with higher ratings of left-behind parent's satisfaction.

16. Continued to be available for weekly phone contact.

17. Continued to assist in search for child/ren.

18. Law Enforcement in other state continued to assist in search for child/ren.

19. After first week, entered abductor's name into NCIC.

20. After first week, initiated search of credit bureau records.

21. After first week, initiated photo circulation of child/ren.

Table LAWDIS.
Law enforcement officer behaviors associated with lower
left-behind parent psychological distress.

1. Were available for daily phone contact.

2. Continued to assist in search for child/ren.

3. Law Enforcement in other state continued to refuse to assist in search for child/ren (inversely related).

4. Assisted in the pick-up of your child/ren.

5. After first week, initiated photo circulation of child/ren.

6. Entered abductor's name into NCIC.

7. No actions taken by law enforcement after first week (inversely related).

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Chapter 13

COMMUNITY RESPONSES TO PARENTAL ABDUCTION CASES: AN EXAMINATION OF THREE SITES

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Introduction

In the preceding chapter, a nationwide sample of closed parental abduction cases were examined retrospectively from the perspectives of multiple participants. This chapter examines parental abduction cases from the community level. The data collection sought to retrospectively examine a geographically distinct, multi-site sample of closed parental abduction cases from the perspective of the left-behind parent, law enforcement officer, private attorney, and prosecuting attorney to obtain a descriptive and quantitative assessment of community government systems response to parental abduction. From these perspectives, the interrelationship between community government systems response, child recovery obstacles, abduction events, and left-behind parent stress were examined as well.

Project Data Collection B differed from Project Data Collection A in: (1) selection of cases from geographically distinct agencies, (2) more intensive case review (added interviews of district attorneys and case record review). Two sampling considerations are relevant. First, in an absolute sense, the total sample size and sample size per site are limited. This warrants caution in the degree of: (1) generalizability of Project results to and the experience of all left-behind parents, (2) generalizability of project results to the conduct of all parental abduction case investigations, and (3) interpretation of between project site differences.

The sample for this data collection consisted of parental abduction cases selected from the closed case files at three project sites. Each project site was a law enforcement agency with responsibility for the investigation of parental abduction cases within a given jurisdiction. The project sites were: 1.) the Child Abduction Section, Office of the Prosecuting Attorney, Los Angeles, California, 2.) 2. Waukegan Police Department, Waukegan, Illinois (Metro Chicago, Illinois area), and 3.) Ocean County Prosecutor's Office, Tom's River, New Jersey.

The chapter is divided into five major sections. Section I summarizes the key findings and recommendations. Section II, Goals of the Data Collection, presents the specific objectives of this phase of the overall project, and major areas of

investigation. Section III, Method, reports the design of the data collection effort. Section IV, Results, reports the outcome of the data collection effort by descriptive sections for each respondent, and by analytic section for relationships among respondents, and events. Finally, Section IV, Discussion and Recommendations, presents a review of major findings by respondent and across respondent with recommendation for public policy consideration.

I. Summary of Key Findings and Recommendations

FINDING: With parental abduction, there is not a clear picture for the representation of minority groups.

COMMENT: Depending upon the local jurisdiction, African-American, Hispanic, and Asian/Pacific Islander ethnic groups all seem to vary from 5-10% above or below their representation in the population. When parental abductions are studied within an area known to have a higher given ethnic population, the incidence of parental abduction does not necessarily rise proportionately. Several different variables may be contributing to this result. First, ethnic attitudes and behaviors relating to child custody determinations and parental abductions may vary from the majority of the population. Second, law enforcement services and involvement in parental abduction cases may vary from community to community. Third, previous ethnic group treatment by law enforcement may affect requests for assistance.

RECOMMENDATION:

The relationship among ethnic group status, parental abduction, and law enforcement service delivery remains unknown and is worthy of focused additional study.

FINDING: Parental abductors may take all of the children within a family or may abduct only one or two of the children.

COMMENT: The decision by the parental abductor to differentially abduct children from within a family may be due to child age, biological child versus step child status, degree of abductor identification and attachment to a child, and/or anticipated logistical problems in carrying out the abduction of all of the children in the family.

RECOMMENDATION:

Future interview studies of parental abductors themselves need to attend to abductor motivation to differentially abduct children from within a family.

FINDING: Well over half of the parental abduction cases in this data collection had custody orders that were in existence prior to the abduction. Approximately one-fourth of the left-behind parents had sole physical/legal custody at the time of the abduction.

COMMENT: The singular presence, pre-abduction, of custody orders does not seem to forestall parental abductions. Custody orders in these cases tended not to include clauses identifying consequences for parental abduction.

RECOMMENDATION:

While prevention oriented educational strategies appear to have minimal impact upon individuals determined to commit other types of crimes, it would be worthwhile to assess, by field test, whether such strategies would have deterrence value with a significant number of parents considering child abduction.

FINDING: Certain jurisdictions are experiencing disproportionately higher rates of international abduction than would be true nationally, with resulting higher investigative experience levels for law enforcement.

COMMENT: Several variables may be involved. First, parents that chose to take the child out of the country often have foreign citizenship or family of origin connections in the destination country. Second, these parents may be more highly represented in certain jurisdictions. Third, to the degree that law enforcement within a given jurisdiction places a priority upon response to parental abduction cases, a higher absolute number of international abduction cases may be noted. An international abduction is generally more complex, lengthy, and more demanding of parent, law enforcement, and court resources than abductions within the U.S.

RECOMMENDATION:

Due to these factors, it may be important to insure that the field test of the prevention/education strategies described in the previous section would include sites with: (1) disproportionately higher rates

of international abduction, and (2) a population with a range of foreign ethnic identification (as a single prevention/education strategy may be effective with one foreign cultural system and not with another).

FINDING: Compared to the law enforcement officers interviewed in connection with the NCMEC sample, law enforcement officers at the sites studied were (1) more knowledgeable about abduction case details, such as child concealment; (2) had higher rates of telephone contact with the left-behind parent; (3) initiated more concrete investigative steps throughout the disappearance period; and had higher rates of left-behind parent satisfaction with law enforcement services.

COMMENT: These findings are likely due to the fact that this data collection utilized cases from sites that are regionally recognized as having an acknowledged interest in the investigation of parental abduction cases, whereas the NCMEC sample was a random national sample of cases. These findings offer preliminary support for the hypothesis that higher levels of law enforcement agency interest in parental abduction cases may result in higher left-behind parent satisfaction with services provided.

RECOMMENDATION:

Law enforcement agencies responding to parental abduction cases and achieving high rates of successful case resolution and left-behind parent satisfaction should be identified and recognized, thereby providing models for potential adoption by agencies in other communities.

FINDING: In this study, the Federal Parent Locator Service was virtually unknown and/or unused as an investigative resource for parental abductions by law enforcement officers interviewed.

COMMENT: This finding may infer that the value of the Federal Parent Locator Service resource in parental abduction investigation may need to be defined and more completely disseminated to law enforcement agencies.

RECOMMENDATION:

A study group of experienced parental abduction investigators, National Center for Missing and Exploited Children staff, and OJJDP staff should confer with Federal Parent Locator Service staff to determine

the most useful role for the Service in the investigation of parental abduction cases.

FINDING: Private attorneys and prosecuting attorneys involved in parental abduction cases have very discrepant evaluations of each other's level of cooperation in these cases.

COMMENT: Private attorneys reported a high level of cooperation from prosecuting attorneys in half of the cases. Alternatively, prosecuting attorneys reported a high level of cooperation from private attorneys in slightly more than one-fourth of the cases. Private attorneys reported moderate to no cooperation from prosecuting attorneys in slightly less than one-third of the cases. Conversely, prosecuting attorneys reported moderate to no cooperation from private attorneys in almost half of the cases.

RECOMMENDATION:

- **While statutory and procedural role definitions for private attorneys and prosecuting attorneys in parental abduction cases currently exist, this finding supports consideration of the development of a more functional, local/interpersonal level model of respective responsibilities and shared cooperation between private attorneys and prosecuting attorneys in this type of case.**

FINDING: In the area of cooperation from the prosecuting attorney, the California site investigators were overwhelming in their evaluation of prosecuting attorney cooperation.

COMMENT: This high evaluation is probably due to the fact that California is the only state which mandates a role for prosecuting attorneys in the civil enforcement of custody orders. Contributing factors may be that 1) the California parental abduction investigator's work within the county prosecuting attorney's office, which potentially enhances collaborative work relationships, and (2) there may be a tendency to provide more favorable ratings to co-workers within the same work unit. As described in chapter 7, California's model continues to be discussed as a desirable, consolidated model for other states.

RECOMMENDATION:

Focused, large sample size research examining multiple California sites and a representative sample of models employed by other states would be indicated.

II. Goals of the Data Collection

As previously reported, the data collection presented in Chapter 12 sought to retrospectively examine a nationwide sample of closed parental abduction cases from the perspectives of multiple participants. This data collection sought to retrospectively examine a geographically distinct, multi-site sample of closed parental abduction cases from the perspective of the left-behind parent, law enforcement officer, private attorney, and prosecuting attorney. Closed cases are defined as cases in which a law enforcement record was opened due to child abduction and closed due to subsequent child recovery. The objective of the study was to obtain a descriptive and quantitative assessment of community government systems response to parental abduction. From these perspectives, the interrelationship between different aspects of the community response, child recovery obstacles, abduction events, and left-behind parent stress were examined as well.

The three-site data collection differed from the nationwide sample in that the cases were selected from geographically distinct agencies and were subjected to a more intensive case review, including interviews of district attorneys and case record review. From a sampling standpoint, two considerations are relevant. First, in an absolute sense, the total sample size and sample size per site are limited. This warrants caution in the degree of: (1) generalizability of study results to and the experience of all left-behind parents, (2) generalizability of study results to the conduct of all parental abduction case investigations, and (3) interpretation of between project site differences.

The major areas for investigation of this data collection were the child recovery experience of the left-behind parent, investigating officer, private attorney for the left-behind parent, and the prosecuting attorney. These data were supplemented by a review of the law enforcement case record and assessment of psychological distress of the left-behind parent. The relationship among these variables were examined, particularly as they relate to level of satisfaction, collaboration, and case record accuracy.

III. Method

Subjects

The sample universe for this data collection consisted of parental abduction cases selected from the closed case files at three project sites. Each project site was a law enforcement agency responsible for the investigation of parental abduction cases within a given jurisdiction. Cases were selected if they were closed prior to 1991. Cases appearing more recently were not selected as the project intent was to review cases that had been completely adjudicated after child recovery. The procedure produced a sample of parental abduction cases that: (1) could be studied from case onset through investigation to child recovery and case closure/adjudication, and (2) were representative of the experience of agencies involved in the investigation of parental abduction cases in three geographically distinct areas of the United States.

The project sites were: 1.) the Child Abduction Section, Office of the Prosecuting Attorney, Los Angeles, California, 2.) 2. Waukegan Police Department, Waukegan, Illinois (Metro Chicago, Illinois area), and 3.) Ocean County Prosecutor's Office, Tom's River, New Jersey.

The California site was included because California's model for prosecutorial involvement is frequently cited as a model for the country. The Los Angeles site has over one hundred cases per year and had demonstrated interest in multi-agency erest in justice research.

The Illinois site was selected as was recommended as the site most likely to be cooperative with the study by the Illinois I-SEARCH Unit/Illinois State Missing Child Clearinghouse, has over 20 parental abduction cases per year, and has a prior history of multi-agency interest in child abuse/child related crimes. Due to high rates of relocation among left-behind parents at this site, the closed cases were drawn from 1988-1991.

The New Jersey site was selected as it has over 20 parental abduction cases per year and prior history of multi-agency interest in child abuse/child related crimes.

A fourth site was initially selected, but lack of sufficient caseload led it to be dropped. This may be an indication that the sites which participated in the study are not typical of other locations.

Potential project participants were initially contacted by staff at the three participating project sites. During these initial telephone contacts, left-behind parents were asked if they would be willing to receive a telephone call from UCSF staff

explaining the project. UCSF staff then contacted left-behind parents by telephone, explained the project, reviewed participation consent, sought permission to allow collateral individuals to release case information during an initial telephone contact, and scheduled a telephone interview at a time convenient for left-behind parents.

In addition to the initial telephone contact, left-behind parents were mailed a participation consent form and a release of information form. Release forms were transmitted to collaterals such as private attorneys and prosecuting attorneys as required.

Interview Format

This project was designed to better understand the process of child recovery and return in parental abduction cases, leading to the identification of obstacles to successful recovery and return. Information was then systematically obtained via interviews with the left-behind parent, private attorney for the left-behind parent, the investigating law enforcement officer, and the case associated prosecuting attorney. The law enforcement agency case record was reviewed as well. This information involved demographic data as well as objective and valuative information about pre-abduction events, abduction events, abduction investigation, civil legal events, and the eventual recovery/return. Psychological distress of the left-behind parents was measured by a nationally normed psychological instrument (Symptom Checklist 90 Revised).

IV. Results

Study results are reported descriptively and analytically. First, study results are presented descriptively for each category of respondent: left-behind parent, investigating law enforcement officer, private attorney for the left-behind parent, and prosecuting attorney. Second, study results are presented analytically across categories of respondents, including differences across groups and relationships among study variables. Principal study findings are then reviewed with implications for public policy decisions and further investigation.

Study Sample Characteristics

A total of 53 cases were received from the three project sites in order to obtain a sample of 39 participating parents. A total of 17 cases were received from the New Jersey site and all were contacted. Of those cases, 16 chose to participate in the project, and one declined, resulting in a 94.1% site participation rate. A total of 21 cases were received from the Illinois site. Of those cases, 9 chose to participate in this study, and 2 declined. The remainder could not be contacted

because 6 cases had no telephone and did respond to multiple requests by correspondence, and 4 cases could not be located due to a change of residence, resulting in a 81.8% site participation rate. A total of 16 cases were received from the California site and all were contacted. Of those cases, 14 chose to participate, and two declined, resulting in a 87.5% site participation rate.

For the 39 study cases, 20 (51.3%) private attorneys consented to participate, 5 (12.8%) private attorneys declined to participate, 14 (35.9%) cases had no private attorney. This resulted in an eligible attorney response rate of 80.0% (which constituted 51.3% of the total of 39 cases). For these 39 cases, all the law enforcement investigating officers were present and consented to participate, resulting in a 100% response rate. For these 39 cases, 7 (17.9%) prosecuting attorneys consented to participate, no (0.0%) prosecuting attorneys declined to participate, and 32 (82.1%) of the cases did not have involvement with a prosecuting attorney. This resulted in a eligible prosecuting attorney response rate of 100% (which constituted 17.9% of the total of 39 cases).

With regard to participation by collateral respondents, law enforcement was involved with each case, whereas prosecuting attorneys (18.9%) and private attorneys (64.1%) were less frequently involved.

All three collateral respondent groups were represented in 6 of the 39 cases (15.4%); two of the three collateral respondents were involved in 20 cases (51.3%); one of the three collateral respondents were involved in 13 cases (33.3%).

In summary, participation by eligible study respondents across categories was high, although two-thirds of the cases did not involve more than two of the four respondent categories.

Left-Behind Parent Case Experience

Gender. The gender split of the left-behind parents showed slightly more biological fathers as the left-behind parent, with 41% being the biological mother and 59% being the biological fathers. The findings in Chapter 12 and another study by UCSF (Hatcher, Barton, and Brooks, 1991) indicate that the abducting parent is approximately equally likely to be a father or a mother.

Age. The largest age grouping of left-behind parents were 26 to 30 years old (30.8%). Over 80% of the left-behind parents were between the ages of 26 and 40. Seventy percent of the abductors' ages also ranged between 26 and 40 years old, although one-third of the abductors were between 31 and 35 years old.

Ethnicity. The majority of left-behind parents interviewed were Caucasians (72%), followed by African-Americans (15%). Hispanics and Asian/Pacific Islanders were substantially under-represented, at 5% and 8%, respectively. The abductor group was quite similar in ethnicity breakdown, but was composed of slightly fewer Caucasians (69%), African-Americans (13%) and Asian/Pacific Islanders (5%), while reporting more Hispanics (12.8%). By comparison, the U.S. national population is made up of Caucasians (71%), African-Americans (15%), Hispanics (11%), and Asian/Pacific Islanders (3%) (U.S. Census, 1990). When examining ethnic origin for both left-behind parents and abductors as a group, the ethnic distribution in this data collection closer to the U.S. population distribution than the underrepresentation of African-Americans and Asian/Pacific Islanders found in the NCMEC sample described in Chapter 12. From both data collections, it appears that parental abduction by Caucasians is representative of the percentage of Caucasians in the national population, but the picture is less clear for minorities. Future studies of parental abduction incidence should focus upon clarifying this issue.

Socio-Economic Status. The occupational group best represented by the left-behind parents was the technician, semi professional, very small business owner category (21%), followed by the minor professional, small business owner, manager, farm owner category (15%). The majority of left-behind parents had either one year of college or technical training (36%) or had only graduated high school (33%). This sample is then globally at a higher socio-economic status than the NCMEC sample which consisted of 33% unskilled laborers. This would infer that left-behind parents in the multi-site sample might be somewhat more assertive and knowledgeable about the use of government systems in their communities.

Marital Status. The majority of left-behind parents were either married to, but separated from, the abducting parent (26%), divorced and a single parent (21%) or were never married and a single parent (21%). The abductions typically occurred more than two years post-divorce or separation (31%) or within 12 to 24 months post-divorce or separation (21%). The majority of left-behind parents characterized their relationship with the abducting parent as being extremely negative (31%) or mostly negative (21%).

Children Abducted. Of the 39 parental child abduction families, three involved three children (8%), four involved two children (10%), and thirty-two involved one child (82%). The NCMEC sample described in Chapter 12 appeared to involve more cases where two children were abducted. Further attention is needed in the study of the motivation and plans of parental abductors to determine the motivation to take a particular child or multiple children.

Abuse in Family. Over half (51%) of the left-behind parents indicated they had been physically abused in their relationship with the abducting parent. Over a quarter (28%) of the parents had obtained a restraining order against the abducting parent. Only one-tenth of the involved abducting parents had been formally charged with spousal abuse and half of these charged cases led to a conviction. Almost one-third (31%) of the left-behind parents stated that the abducting parent had accused them of spousal physical abuse. Fifty-eight percent of these parents, had been issued a restraining order (18% of the total sample). Twenty-five percent of the left-behind parents accused of physical abuse had been formally charged with spousal abuse, but only one was convicted (8%). Two-thirds of the abductors who had formally charged the left-behind parents did so prior to the abduction and one-third did so post-abduction.

Almost half (44%) of the left-behind parents indicated that some form of child abuse or neglect had occurred in the family prior to the abduction. Twenty-six percent indicated that their spouse/ex-spouse/partners had neglected the child(ren), 16.3% indicated physical abuse of the child, and 2.3% indicated sexual abuse of the child. Over a fifth (21%) of the cases included reports of the abuse to authorities. No formal charges of abuse/neglect were reportedly brought against any of the abductors.

Almost half (44.4%) of the left-behind parents also indicated that they had been accused by the abducting parent of some form of child abuse or neglect prior to the abduction. Twenty percent had been accused of physical abuse, 16% had been accused of child neglect, and 9% had been accused of sexually abusing their child. Only 2 parents (5% of the total sample), however, were ever charged with abuse and only one left-behind parent was convicted of abuse (2% of the total sample; 50% of the cases charged). The left-behind parent convicted of abuse was charged after the abduction.

These findings are generally consistent with findings from the NCMEC sample, with the exception of child sexual abuse allegations, which were lower in the multi-site sample. Findings from both studies point to a lack of clarity in substantiating abuse allegations in abduction cases.

Age of Missing Child. Approximately three-fourths of the eldest abducted children were between the ages of two and eleven years old at the time of their abduction. Approximately one-fourth of the eldest abducted children were between the ages of infant and two years old, another fourth between three and four, and another fourth between five and seven years old. Only 5.2% of the children were less than one year old and the ages ranged from infant to 14 years of age.

Gender of Missing Child. The gender of the eldest missing child was almost evenly distributed between male (56.4%) and female (43.6%). These missing child age and gender characteristics are generally consistent with the findings of the NCMEC sample.

Abductor's Age. One-third of the abductors were between the ages of 31 and 35 years old at the time of the abduction. Approximately one-third of the abductors (30.8%) were between the ages of 26 and 30 years old, while slightly fewer were between the ages of 21 and 25 years old (15.4%), 36 to 40 years old (10.3%), and 41 years old or older (10.3%). These abductor age findings are generally consistent with the data collection in Chapter 12.

Characterization of Abductor-Child Relationship. Notably 74.8% of the missing children were reported to have between an extremely positive relationship with the abductor and a sometimes positive relationship with the abductor. The remaining children were reported to have a sometimes negative relationship with the abductor (10.3%) or a mostly negative relationship with the abductor (5.1%). About 10 percent (10.3%) of the parents did not know about the child's relationship with the abductor. These findings are also similar to the earlier data collection.

Custody Agreement. In over half of the cases (59%), a written custody order was present. One-fourth of the left-behind parents (25.6%) reported having sole physical and sole legal custody at the time of the abduction. A custody decision was pending in 12.8% of the cases and no custody was being sought in over one fourth (28.2%) of the cases. In over one-third (38.5%) of the cases, no custody agreement had been made at the time of the abduction. In a majority of the cases, the custody agreement, if made, had been in place for more than two years prior to the abduction (28.2%). Equivalent percentages of cases had a custody agreement four to six months (7.7%), seven months to a year (7.7%), or eighteen months or less (7.7%) at the time of the abduction. Few families had an agreement either one month or less (2.6%) or two years or less (2.6%) and 5.1% of the cases had an agreement 1 week or less before the abduction. Generally, these cases had fewer pre-abduction custody orders. Overall, the presence of a custody/visitation order, in and of itself, does not seem to forestall parental abduction.

Child Abuse During the Abduction. Left-behind parents reported that 64.1% of the abductors did not abuse the child during the abduction and 17.9% of the left-behind parents did not know about this issue. Almost one-fifth (17.9%) of the abductors neglected the child/ren and 2.6% of the abductors physically abused the child/ren during the abduction. In 71% of the cases with abuse, the abuse was reported (13.2% of all cases). None of the abductors were charged with the abuse. As previously cited,

high rates of sexual abuse for children during a parental abduction are not recorded, whether by actual low incidence rates or by other factors influencing victim reporting as referenced in the child sexual abuse literature (Fontana and Besharov, 1979).

Motivation for Abduction. Over half (53.8%) of the left-behind parents reported the child was abducted as a way for the abductor to gain revenge for the separation or divorce. One-fifth (20.5%) of the parents reported the abduction was due to the abductor's dissatisfaction with visitation or custody.

Point of Abduction. The more frequent points of abduction were from the home of the abductor (35.9%) or a relative of the abductor (23.1%). Approximately one-tenth (10.3%) of the left-behind parents reported that their child was abducted from their own home; fewer (5.1%) reported that the child was abducted from the home of a relative of the left-behind parents. A small number of cases were also reported to be abducted from the child's school (5.1%), day care (2.6%), or the home of both the left-behind parent and the abductor (7.7%). None of the children were thought to have been abducted from foster care, the home of a left-behind parent's friend, or an option other than the responses listed. Only one parent (2.6%) did not know from where the child was abducted. In over half (56.4%) of the cases, abductions were a failure to return the child/ren following a scheduled visitation.

Initial Left-Behind Parent Concern and Actions after Child Disappearance. Left-behind parents reported that in over one-third (38.5%) of the cases, they suspected that their child had been abducted within an hour of their initial concern about their child's whereabouts. Another 10.3% of the left-behind parents believed their child had been abducted between three and five hours from their initial concern. About one-fourth of the left-behind parents waited between six hours and four days before their concerns about their child became beliefs (28.2%). Another 23.1%, however, waited over one week after the initial concern before believing an abduction had occurred.

The most frequently reported initial action taken by left-behind parents after their initial concern about the abduction was to telephone law enforcement (87.2%). Families also reported calling an attorney (43.6%), their relatives (30.8%) and relatives of their spouse/ex-spouse/partner (33.3%). They also telephoned their ex/partner (17.9%), their ex/partner's friend's home (15.4%) and a missing child agency (12.8%). Even fewer respondents reported telephoning the National Center for Missing and Exploited Children (NCMEC) (7.7%) or going to their child's school (2.6%). Very few respondents actually went to the home of their spouse/ex-spouse/partner's home (12.8%), their ex/partner's relative's home (10.3%) or ex/partner's friend's home (2.6%); and

12.8% of the respondents reported doing something other than the response options listed.

The highest percentage of cases (43.6%) contacted a law enforcement agency immediately upon their initial concern; more than one-fourth (25.6%) contacted a law enforcement agency between the time of one hour post-concern and one day post-concern; and yet another fourth, 28.6%, waited to contact a law enforcement agency for between two days to over four weeks. One case (2.6%) reported never contacting a law enforcement agency.

Similarly, 30.8% of the families contacted an attorney immediately upon their initial concern; another eighteen percent of the respondents contacted an attorney between one hour and one day post-concern and in 30.8% of the cases the parent waited for more than a day. In one-fifth of the cases (20.5%) an attorney was not contacted.

Almost half (48.7%) of the cases never contacted a missing child center. Another 25.7% of the cases waited for two weeks or more to contact a center. Only 18% of the cases contacted an agency within two days of their initial concern and the remaining 7.7% waited three to four days to contact an agency.

Globally, these findings are similar to those of NCMEC sample described in Chapter 12 with some exceptions. More parents in the multi-site study waited longer to act after initial concern that an abduction had taken place and fewer had custody orders. Also, NCMEC was not contacted by many of the parents in the multi-site study, whereas the other study was based on a NCMEC sample.

Movement of Abducted Child/ren. The abducted children were transported from their predominant place of residence in the majority of the cases (94.7%). Most frequently children were taken to another state (46.2%), although 17.9% were taken to another country.

Child Location During Abduction. Florida was most frequently reported as the state of destination for parental abductions (10%). Nineteen other states were designated as states to which either one or two child/ren were taken by left-behind parents in this study. Almost one-fourth (23.3%) reported that this question "did not apply" to them.

Children were taken out of the United States in one-fourth (25.9%) of the cases. No country was used as a destination in more than one case. The countries reported as destinations were Australia, Canada, Greece, Ireland, Mexico, New Zealand, the Philippines, Yugoslavia, the Dominican Republic, and Uruguay.

The location of the child changed during the abduction in 84.6% of the cases. Most children were reportedly kept out of their states of residence for the majority of the abduction period (61.5%). Another 20.5% were kept out of the country during the majority of the abduction and either there was no information or the question did not apply in 5.2% of the cases.

Both UCSF data collections indicate high rates of interstate parental abduction. The multi-site data collection's higher rate of international abduction (25.9% vs. 15.37% in Data Collection A) may be due to the high rate of abduction to a foreign (usually European) country found in the Ocean County, New Jersey site.

Left-Behind Parent Time Away From Work. While one-third of the parents reported they took over a month off work during the abduction, another 23.1% only took 0-3 days off of work. The remaining parents took 4-10 days off of work (20.5%), 11-30 days off of work (12.8%) or did not work (10.3%).

Parent Identification of the Primary Law Enforcement Agency. The district attorney's office in the left-behind parents state of residence was listed as the primary law enforcement agency in the case by 38.5% of the parents. The police department (23.1%) and the sheriff's office (30.8%) were also listed by a notable percentage of parents as the primary law enforcement agency involved in their case. In much smaller proportions the police department in another state (2.6%) and the sheriff's office in another state (5.1%) were listed. The higher frequency of identification of the district attorneys' office as the primary law enforcement agency in this study compared to the NCMEC sample is most likely due to the inclusion of the California site, which mandates a role for prosecutors in these cases, and the high level of investigative priority given to parental abduction cases in the Ocean County, New Jersey Prosecutor's Office.

Parent Evaluation of Law Enforcement Assistance. Only one-tenth of the left-behind parents (10.3%) reported that no law enforcement agency was helpful in efforts to recover their child. Police departments in the state of residence were identified by less than one-sixth (12.8%) of the left-behind parents as the most helpful law enforcement agency. Sheriff's offices were identified by more (23.1%) of the left-behind parents as the most helpful law enforcement agency. However, one third (33.3%) of the parents reported the district attorney's office was the most helpful to them in obtaining the recovery of their child. Other agencies listed as the most helpful in the child's recovery included: the sheriff's office in another state (5.1%), a private attorney in the state of residence (5.1%), the F.B.I. (2.6%), the district attorney's office in another state (2.6%), a private attorney in another state (2.6%), and a state missing child clearinghouse (2.6%). The limited endorsement of the F.B.I. as

the most helpful agency by left-behind parents is not surprising since the F.B.I. is rarely the lead agency in such cases.

Globally, fewer parents rated law enforcement agencies as not helpful in the multi-site study (10.3%) compared to the nationwide NMCEC sample (32.7%). District attorney services per se were always rated higher. This is likely due to the acknowledged pre-study interest in parental abduction cases by the sites utilized. A possible inference from these results would be that higher levels of law enforcement interest in parental abduction cases may well result in higher left-behind parent satisfaction with services provided.

Initial Communication From Law Enforcement. Initially, almost half (48.7%) of the parents called the police department in their state of residence with concerns about their child/ren. The rest of the parents called the district attorney's office in their state of residence (28.2%), the sheriff's office in their state of residence (20.5%) and the police department in another state (2.6%). Left-behind parents reported that approximately one-half (48.7%) of the law enforcement officers who were initially contacted took case information and made helpful suggestions about how they should pursue child recovery. As with parent satisfaction with law enforcement assistance, the multi-site study appeared to have higher levels of law enforcement assistance at the time of initial report, and continuing through the first week of the investigation and beyond. The sites also appeared to have higher rates of law enforcement initiated telephone contact as the investigation continued.

It was notable that Federal Parent Locator Service was virtually unknown and unused as an investigative resource. This finding may infer that the desired role and methods of access for the Federal Parent Locator Service may need to be defined and more completely disseminated to law enforcement agencies.

In a small number of the cases, the law enforcement officer required proof of custody before actions could be taken (13%) or case information was taken, but recovery was not pursued (10.9%). In a very small percentage of the cases, left-behind parents stated that the law enforcement officer told them that the child must be missing for a period of time (4.3%) or an arrest order was needed before an officer could take action (2.2%). In only 8.7% of the cases was no action taken due to lack of evidence and in 2.2% of the cases there was no initial contact with a law enforcement officer.

Law Enforcement Case Priority and Investigative Support. Additionally, over half (64.1%) of the law enforcement officers reported that the case concerned was given a very high level of priority, while only a small number of officers reported that the case was given a very low level of priority. This study result

points to a stated high level of law enforcement agency priority for parental abduction cases in certain agencies and communities. However, parents who reside in communities with a low priority policies or procedures may receive minimal law enforcement response and assistance.

The majority of law enforcement officers in the three sites reported that they were very satisfied with the assistance they received on the current case from other law enforcement officers (71.8%) and commanding officers (59%).

Along similar lines, over three-fourths (84.6%) of the law enforcement officers, reported that they were very motivated to assist with the current case. However, 15.4% of the officers indicated moderate or minimal motivation to assist. These findings would mean that left-behind parents may be receiving differential service based upon locally differential attitudes by law enforcement officers toward the relative importance of parental abductions as compared to other crimes.

Involvement of Civil or Private Attorneys in State of Residence. In over 30.8% of the cases, only one civil or private attorney was involved, in over one-fourth of the cases (28.2%) two civil or private attorneys were involved, and in a tenth of the cases (10.3%), three civil or private attorneys were involved. No civil attorneys were involved in 30.8% of the abduction cases. Globally, more cases in the multi-site study had no civil attorney (30.8%) than in the NCMEC sample (13.5%). One possible hypothesis is that high levels of parental abduction case interest displayed by the project site agencies may have reduced the need to retain an attorney.

Almost half (48.1%) of the left-behind parents who retained a civil or private attorney reported that they were very satisfied with the civil or private attorneys within their state of residence, one-third were moderately satisfied (33.3%), slightly over one-seventh were not satisfied (14.8%), and fewer were minimally satisfied (3.7%).

Time Between Concern for Child and Attorney Involvement. With regard to the amount of time between the involvement of an attorney and the left-behind parent's initial concern about the child's whereabouts, almost one-third (30.8%) of the left-behind parents had an attorney at the time of their concern or were able to involve an attorney within one hour of their initial concern, and 35.9% involved an attorney between one hour and one week of their initial concern. Over one-eight of the families waited two weeks to over four weeks (12.9%). In 20.5% of the cases no attorney was retained, as contrasted with Data Collection A where no attorney was retained (9.67%).

Time Between Involvement of an Attorney and First Court Date. For 12.8% of the respondents who retained an attorney, the time between involvement of an attorney and the first court date was two weeks to twenty days, in 10.3% of the cases the time between the involvement of an attorney and the first court date was 2 months to 2 months 29 days, and for another 10.3% of the respondents the time was four to six months. The time intervals until the first court date ranged from one day or less up to more than two years. In 30.8% of the cases a court date was never set, as contrasted with the NCMEC sample (6.4%). The potential variables and variable combinations creating such differences are substantial, making it difficult to determine the reasons for these variations.

Time Between Court Date and Entry of Order by Judge. In over one-third (35.9%) of the cases which obtained a court date, the time between court date and the entry of an order by a judge was one day or less. There was no order entered by a judge in 25.6% of the cases and the time until an order was entered ranged from less than a day up to between thirteen and to eighteen months later. Only 5.1% of the cases did not know whether an order was entered by a judge or not.

Custody Order Changes Sought. Approximately half (53.8%) of the left-behind parents sought a custody order change during the abduction. When changes were sought, left-behind parents most often sought custody changes to obtain sole physical and sole legal custody (48.7%). The abductor sought sole physical and sole legal custody in 15.4% of the cases. In approximately one-half of the cases (46.2%), left-behind parents were granted sole physical and legal custody during the abduction. Abductors were granted sole physical and legal custody in only 2.6% of the cases.

Delays in Obtaining Custody Order. The majority of left-behind parents (74.4%) reported that the issue of a delay in obtaining a custody order did not apply to their case. A minority (10.3%) reported that the delay in obtaining a custody order was due to the delay in obtaining an initial hearing date. In 10.3% of the cases, a delay was a result of a post-hearing delay in the judge issuing an order; in 7.7% of the cases, a delay was due to continuance(s); in 5.1% of the cases, delays were due to the preparation of social studies or other needed reports; in 5.1% of the cases there was a post-hearing delay in the judge issuing an order; and finally in 2.6% of the cases, there was a delay in obtaining an attorney.

Child Recovery. Approximately one-fourth of the left-behind parents (28.2%) indicated that they established the lead which led to the child/ren's recovery, and a similar proportion (20.5%) indicated that a lead by a law enforcement officer led to the child's recovery. A minority of left-behind parents (12.8%)

reported that the abductor returned the child voluntarily, and another 12.8% reported a family member disclosed the whereabouts of the child/ren or abductor. Only 5.1% of parents reported that the lead to recovery was established by an attorney. Only 5.1% of the parents reported the lead came from the F.B.I. and only 7.7% of the parents claimed the lead was provided by a private citizen who disclosed the whereabouts of the child/ren or abductor. A missing child organization (2.6%) or a private investigator (2.6%) was named in few cases as establishing the lead that led to recovery. Finally, a source other than those listed above established the lead resulting in the child/ren's recovery in 10.3% of the cases.

In contrast with the NCMEC sample, law enforcement was rarely credited with developing a lead which resulted in child recovery. As previously noted, the agencies in the multi-site study have recognized high levels of interest connected to the higher percentage of law enforcement effectiveness found in this sample of cases.

Protective Services. While the issue of child detention by Protective Services was not applicable to the majority of cases (66.7%), children were detained by Protective Services in a minority of cases due to alleged physical abuse (2.6%), alleged sexual abuse (5.1%), neglect (2.6%) and/or reasons other than abuse or neglect (10.3%). As noted in findings related to allegations of child physical or sexual abuse pre-abduction, allegations at the point of recovery were very low (5.2%), even lower than the NCMEC sample (11.3%).

Abductor Arrest and Trial. The left-behind parents reported that slightly less than half (43.6%) of the abducting parents were arrested. Left-behind parents further reported that the abductor was extradited to another state in less than one-fifth of the cases (17.9%). Of the abducting parents that were arrested, the majority (61%) were charged with a felony. Fewer abducting parents were charged with a misdemeanor (11%). In almost one-fourth of the cases involving an arrest, the left-behind parent did not know if the abductor had been charged.

In the remaining cases, failure to arrest was very rarely a result of lack of willingness to pursue charges (5.2%) on the part of law enforcement or the prosecuting attorney. Anecdotally, project interviewers reported that an agreement to voluntarily return the child ended further criminal legal action against the abductor.

In summary, while the left-behind parents reported that the majority of abductors were not arrested and charged with a felony, the absence of charges does not appear to be linked to lack of motivation to pursue further criminal legal action by law enforcement or the prosecuting attorney.

Abductor Brought to Trial. According to left-behind parents, the majority (67%) of abducting parents who were arrested and charged were brought to trial. The abductor pled guilty in approximately two-fifths (42%) of the cases, not guilty in one quarter (25%) of the cases, and charges were dropped in one third of the cases (33%). Left-behind parents reported that one quarter (25%) of the prosecutions resulted in conviction of a felony, less than one-fifth (17%) resulted in conviction of a misdemeanor, less than one-fifth (17%) still had a trial pending, and approximately two-fifths (42%) and charges dropped.

The left-behind parents reported that the abductor's sentence included regular reporting (22%), restricted travel (22%), and/or incarceration (44%).

In summary, left-behind parents perceptions of the criminal legal process appears to vary from that of prosecuting attorneys and as recorded in case records. This may be reflective of a difficulty for left-behind parents in being briefed on the progress and outcome of the criminal case or in understanding the information being communicated to them by law enforcement or the prosecuting attorney.

Restitution to the Left-Behind Parent. The majority of left-behind parents interviewed reported that they received no restitution for criminal restitution, civil tort damages, or civil award of costs (84.6%).

Primary Child Recovery Obstacles. Two-thirds of the left-behind parents (66.7%) identified the inability of the legal system to respond quickly to the needs of left-behind parents as a primary obstacle faced during child recovery. Nearly as many cases listed as a primary obstacle to the child's recovery a lack of understanding about the issues and procedures related to parental abductions on the part of the left-behind parents (64.1%) and difficulty obtaining information about the location of the abductor/child (64.1%). Approximately half (53.8%) of the left-behind parents reported a lack of financial resources as a primary obstacle. Close to one-third of the respondents listed a lack of understanding on the part of the civil attorneys (38.5%), reluctance of a court/law enforcement in another state to enforce a custody order (35.9%), reluctance of law enforcement in another state to pick-up the child/ren once located (33.3%), a lack of understanding about these cases on the part of judges (30.8%), and general reluctance of law enforcement to assist with their case (30.8%) as a primary obstacle they confronted during their child's recovery.

Single Greatest Obstacle Faced by Left-Behind Parents. Approximately one half of the left-behind parents (53.8%) identified legal obstacles and inconsistencies in state laws as the single greatest obstacle faced by parents during child

recovery. A lack of funds with which to conduct a search (17.9%), lack of knowledge about conducting a search (12.8%), law enforcement obstacles (7.7%) and personal emotional obstacles (7.7%) were also considered a primary obstacle by the parents.

Second Greatest Obstacle Faced by Left-Behind Parents. Slightly more than one-fourth of the left-behind parents (25.6%) identified a lack of funds with which to conduct a search (15.4%) as the second greatest obstacle faced by left-behind parents in the search for their child. Legal obstacles and inconsistencies in state laws (20.5%) as well as law enforcement obstacles (20.5%) were also identified as the second greatest obstacle faced by parents during child recovery. Fewer respondents identified personal emotional obstacles (17.9%) or a lack of knowledge about conducting a search as the second greatest obstacle they faced.

As a recurrent theme, left-behind parents in the multi-site study viewed law enforcement as much less of an obstacle to recovery than the parents in the NCMEC sample; again this is probably connected to site agency case interest.

Law Enforcement Case Experience

Number of Parental Abduction Cases Handled by Law Enforcement Previously. Just over half of law enforcement officers involved in these cases had previously handled over sixteen parental abduction cases (51.3%). Another 38.5% were involved in six to fifteen cases and the remaining 10.2% were involved in one to five cases. No officers reported they had not handled any parental abduction cases previously.

Of the parental abduction cases handled, 46.2% of the officers reported they had previously handled over sixteen interstate abduction cases, while only one (2.6%) of the officers reported never having previously handled an interstate abduction case.

Although most of the officers reported they had either not been involved in any international abduction cases (30.8%) or they were only involved in one or two international abduction cases (28.2%), one-fifth of the officers were involved in six to ten international abductions (20.5%), 12.8% were involved in eleven to fifteen international cases and one officer (2.6%) was involved in over sixteen international abduction cases.

Abductor Motivation. From the perspective of the law enforcement officers, the motivation for the abductor to take the child/ren was most often a form of revenge against the left-behind parent following a divorce/separation (33.3%) or due to dissatisfaction with visitation or custody rights on the part of

the abductor (25.6%). These two motivations were also given by the left-behind parents in the largest number of cases.

Concealment of Child Identity. Law enforcement officers reported being aware of child concealment during the abduction which took the form of physical concealment (12.8%), changing the child's appearance (5.1%), or providing the child with a new name (15.4%). Slightly more than half of the law enforcement officers (74.4%), reported that they were not aware that the abductor tried to conceal the identity of the child during the abduction. Few of the law enforcement reported that they did not know whether the child had been concealed (2.6%). As a recurrent theme, multi-site study law enforcement officers appeared to demonstrate greater knowledge of their cases than in the NCMEC sample.

Law Enforcement Evaluation of Parent's Satisfaction With Services. The majority of law enforcement officers (87.2%) reported that left-behind parents were very satisfied with the law enforcement they received in their state of residence. In contrast, less than one-half of left-behind parents reported being very satisfied (43.6%). Almost half of the law enforcement officers (41%) reported that left-behind parents were very satisfied with the law enforcement they received in a second state. Again, this sample reported higher levels of law enforcement activity and left-behind parent satisfaction on a variety of variables, as compared to the NCMEC sample.

Level of Priority Given to Case. Almost all of the law enforcement officers reported that the case concerned was given an average or above priority (94.9%). A small number of officers, however, reported that the case was given a moderately low level of priority (5.1%). This study result points to a stated high level of law enforcement agency priority for parental abduction cases, while, at the same time, indicating a low level in a significant minority of cases.

Primary Obstacles Faced by Law Enforcement. Getting information concerning the location of the abductor and/or child/ren was reported as a primary obstacle faced by law enforcement in over two-thirds of the cases (69.2%). Over half of the law enforcement officers indicated that the recovering parents lack of financial resources (51.3%) was a primary obstacle and almost half of the officers reported law enforcement in another state's reluctance to pick up the child was a primary obstacle (46.2%). Other obstacles reported in a large number of cases include assistance the abductor received from relatives and friends (48.7%) and the inability of the legal system to respond promptly to the issue of parental abduction (41%).

The majority of the law enforcement officers reported that they believed legal obstacles and inconsistencies in state laws

presented the greatest obstacle which faced left-behind parents (53.8%). Law enforcement officers believed that the second greatest obstacle faced by parents recovering children following parental abduction, were the recovering parent's lack of funds with which to conduct a search (38.5%), and left-behind parent's emotional obstacles (23.1%). As has been well referenced by now, when compared to the nationwide sample of NCMEC cases, law enforcement was less frequently an obstacle to recovery, whether by left-behind parents or law enforcement officers.

Private Attorney Case Experience

Attorney Practice Description. The civil attorneys who were interviewed in this study had practiced law for as little as one year in one-tenth of the cases (10%) to as much as 16 or more years in a majority of the cases (55%). Only one-fifth (20%) of the attorneys practiced law in two states. Of the attorneys interviewed, at least 30% of their practices were in domestic relations. Almost one-third of the attorneys (30%) reported that all of their practice was in domestic relations.

As with the NCMEC sample, slightly less than one-third (30%) of the attorneys interviewed previously had handled one to two parental abduction cases, and another third (35%) had never been involved in a parental abduction case. Here again, study results indicate that a significant minority of left-behind parents were represented by private attorneys with no or minimal prior case experience in parental abduction. Similar results were found concerning interstate abduction cases. Almost one-third (30%) of the attorneys who were interviewed had only been involved in one or two interstate parental abduction cases while over another third (35%) had never been involved in an interstate parental abduction case. Well over half of the interviewed private attorneys had never been involved in an international parental abduction case (65%) and another one-fifth of the attorneys (20%) had handled only one or two international parental abductions.

Cooperation and Coordination from Other Services. In half of the cases, attorneys reported a great deal of cooperation and coordination from the prosecuting attorney (50%). However, one-third of the attorneys interviewed reported a moderate to nonexistent amount of cooperation, although it was needed (30%). When the interviewed attorneys were asked to compare the level of cooperation and coordination received from the prosecuting attorney's office in the abduction cases with other similar cases, they primarily reported cooperation/coordination was the same or higher than other cases (55%), they were not involved in any other cases with which to compare it (10%), or they did not need assistance from the prosecuting attorney's office (5%).

Over half of the attorneys reported a great deal of cooperation and coordination from law enforcement (55%). One-

fifth either reported a moderate amount, a little cooperation/coordination or no cooperation, although needed. One-fifth did not know the level of cooperation and coordination received (20%). Comparing the cooperation and coordination received from law enforcement with other cases, almost two-thirds (60%) of the attorneys reported it was a equivalent or higher than past cases. Yet, one-tenth (10%) of the attorneys interviewed reported cooperation with law enforcement was a lot lower than previous cases.

While in a majority of the cases, cooperation/coordination was not needed and not received from social service agencies (60%), only 15% of the interviewed attorneys stated that they received a great deal of cooperation. Ten percent of the reporting attorneys stated they received only a little cooperation from social service agencies and fifteen percent stated they did not know what level of cooperation they received from social service agencies in this case.

Attorney's Awareness of Abuse Within Family. With regard to attorney's knowledge of violence, abuse, or neglect within the family of the abducted children, sixty percent of the attorneys were not aware of any allegations of abuse. Over one-third of the interviewed attorneys were aware of physical abuse of the left-behind parent by the abductor (35%), one-tenth (10%) of the attorneys reported an awareness of physical abuse of the child by the abductor, over one-tenth of the interviewed attorneys reported they were aware of sexual abuse of the child by the abductor (15%) and five percent reported awareness of neglect of the child by the abductor (5%).

Although stating they were aware of alleged abuse within the family, fifteen percent of the interviewed attorneys reported no charges were filed. Attorneys did report charges were filed in ten percent of the cases against the abductor for physical abuse of the left-behind parent (10% of total; 28.6% of families with abuse), in five percent of the cases against the abductor for physical abuse of the child (5% of total; 14.3% of families with abuse), and in five percent of the families against the abductor for sexual abuse of the child (5% of total; 14.3% of families with abuse).

Attorneys who were interviewed also reported an awareness of accusations by the abductor against the left-behind parent concerning alleged abuse: fifteen percent of the attorneys reported knowledge of accusations stating the left-behind parent was sexually abusive to the child/ren (15% total; 50% of families alleging abuse); fifteen percent of the attorneys reported knowledge of accusations stating the left-behind parent was neglectful to the child/ren (15% total; 50% of families alleging abuse); and ten percent of the attorneys reported knowledge of

accusations stating the left-behind parent was physically abusive to the child/ren (10% total; 33.3% of families alleging abuse).

Attorney Belief About Abductor's Motivation. Half of the attorneys interviewed believed that the abductor's motivation for abducting the child/ren was to get back at the left-behind parent following separation or divorce (50%). One-fifth of the attorneys responded "other" (20%), and more options often answered included questions involving custody and visitation (thought he/she would not receive custody order wanted - 5%; dissatisfied with visitation rights - 15%). These results closely mirror the left-behind parent beliefs, over half of whom (53.5%) reported revenge against them as the primary motive. In the NCMEC sample, revenge against the parent was the most frequently cited motivation.

Location Child Initially Taken. Of the attorneys interviewed, almost one-third reported that the initial location from where the children were taken, was to another state (30%). Approximately one-third (35%) reported that they had no information about where the child/ren was initially taken. As noted earlier, a significant minority of private attorneys report limited knowledge of individual case details. One-fourth of the children were taken to another country (25%) and the remainder of the children stayed in the same state of their legally approved residence.

Assistance to Abductors with Abduction. Attorneys who were interviewed reported a majority of the abductors received assistance from others with the abduction of the children (60%) and the attorneys reported they did not know whether abductor's received assistance in the rest of the cases (40%). Over one-third of the attorneys reported the abductors received assistance from their mother (35%); one-fifth received assistance from their father (20%); one-seventh received assistance from either a brother or sister of the abductor (15%); and one-tenth received assistance from friends (10%). Another spouses/ex-spouses of the abductors assisted in the abduction in ten percent of the attorney's cases. Still, in over one-third of the cases, attorneys did not know who assisted with the abduction (35%).

First Court Date. Attorneys reported that one day or less was the most frequent length of time between involvement of an attorney and first court date (35%). However, one-fourth of the attorneys reported it took over three months from an attorney's retainment and the first court date.

Order Entered by Judge. According to attorneys who were interviewed, an order was entered by a judge in one day or less after the initial court date in over one-half of the cases (55%). After these cases the next quickest time an order was entered by a judge in the reporting attorneys cases was between five and six

days after the first court date (5%). Ten percent of the cases waited over two months after the first court date for the judge to enter an order. Fifteen percent of the attorneys who were interviewed did not know how long it took for the order to be issued.

Legal Actions During the Abduction. With regard to legal actions taken during the abduction, many of the interviewed attorneys reported they had filed a custody order in the left-behind parent's state of residence (55%), issued a county warrant for the arrest of the abductor (45%), and/or tried to enforce a custody order in a state other than the left-behind parent's state (40%). According to the attorney, the court within the left-behind parent's state of residence (in their cases) enforced the custody order in almost half of the cases (40%). Over one-third (35%) of the attorneys reported they filed a petition within the left-behind parents state of residence for a warrant to deliver the children. Few of the reporting attorneys stated that a tort action was filed for damages (10%), passport denial/revocation was sought (10%), the court within another state would not enforce a custody order (10%), and/or relief was sought thought the Hague Convention (5%).

Unlawful Flight to Avoid Prosecution (UFAP) Warrants. Attorneys reported that UFAP warrants were not requested in nearly one-third of the cases (30%). In one-half of the cases, the attorney did not know whether a UFAP warrant was issued.

Primary Obstacles to Recovery Faced by Attorney. About three-fourths of the attorneys identified the assistance given to the abductor by his or her relatives (75%) as the primary obstacle. Almost as many answered the following as primary obstacles: a lack of financial resources on the part of the left-behind parents (70%), difficulty obtaining information about the location of the abductor and children (70%), and inability to locate the children (70%). Over half of the attorneys reported careful planning on the part of the abductor (55%) as a primary obstacle to recovery. Difficulty obtaining a UFAP warrant (5%) and concealment of the children's I.D. (5%) were rarely considered primary obstacles to recovery in these cases as was lack of understanding about parental abduction case procedures on the part of civil attorneys (5%). This last finding is in contrast to the NCMEC sample, in which 23% of attorneys identified lack of knowledge about legal issues and procedures.

Greatest Obstacle for Left-Behind Parents According to Attorney. Over one-half of the attorneys reported that the greatest obstacle to recovery for left-behind parents in their case was a lack of funds with which to conduct a search (60%). Less than one-sixth of attorneys responded that the greatest obstacle was legal obstacles and inconsistencies in state laws (15%), and the remainder of attorneys were divided between lack

of knowledge about conducting search (10%), personal emotional obstacles (5%), and unknown (10%).

Prosecuting Attorney Case Experience

Prosecuting Attorney Practice Description. Almost three fourths of the prosecuting attorneys who were interviewed had practiced law for between six and ten years prior to being interviewed and one-fourth had practiced law for between eleven to fifteen years (28.6%). Two of the prosecuting attorneys who were interviewed (28.6%) had practices in which 100% of their cases were a result of disputes arising out of domestic conflict. One (14.3%) had a practice in which only 10% of his/her cases were a result of disputes arising from domestic relations, and four (57.9%) indicated that the question did not pertain to them.

All of the prosecuting attorneys who were interviewed reported having handled sixteen or more parental abduction cases previously. Almost half of the prosecuting attorneys interviewed (42.9%) had handled 10-15 interstate abductions in the past, and the remaining prosecuting attorneys interviewed (57.1%) had been involved in sixteen or more interstate parental abductions. Approximately half of the prosecuting attorneys (42.9%) had handled one or two international abductions, and a quarter reported having handled an average of four international parental abduction cases (28.6%) or sixteen or more international parental abduction cases (28.6%).

Legal Assistance - State of Residence. Prosecuting attorneys reported that in over two-thirds of the cases in which they were involved (71.4%), there was only one prosecuting attorney involved from the left-behind parent's state of residence. As many as two prosecuting attorneys were included in the remaining cases in which they were involved. Overall, prosecuting attorneys reported that left-behind parents were very satisfied with the legal assistance received from the prosecuting attorney (71.4%).

Cooperation from Individuals and Agencies. Even though over one-fourth of the prosecuting attorneys (28.6%) indicated that they received a great deal of cooperation from the left-behind parent's private attorney, almost half of the interviewed prosecuting attorneys reported they received only moderate to no assistance from the civil attorney, although help was needed (42.9%). Despite the low reported amount of assistance from the civil attorneys, almost three-fourths of the prosecuting attorneys stated the cooperation they received from the civil attorneys was the same or better than in other cases (71.5%). This finding is of note, as private attorneys did not similarly report such a lack of cooperation from prosecuting attorneys. This finding may: (1) be connected with results from both the NCMEC and multi-site samples indicating limited knowledge on the

part of a minority of private attorneys about the criminal aspects of a parental abduction case, and (2) support the development of a model of respective responsibilities and shared cooperation in such cases between prosecuting attorneys and private attorneys.

While slightly over one-fourth of the prosecuting attorneys were reported to receive a great deal of cooperation from the left-behind parents (28.6%), almost one-third of the prosecuting attorneys reported that they received moderate to no cooperation from the left-behind parents in their cases (32.9%). Prosecuting attorneys who were interviewed also reported that in their cases the amount of cooperation/coordination they received from left-behind parents was very often the same or higher than in other cases (71.5%).

The prosecuting attorneys interviewed indicated that they received a great deal of cooperation from law enforcement (85.7%). All of the prosecuting attorneys who were interviewed and reported some knowledge of the level of law enforcement cooperation with them during the case, responded the cooperation they received was about the same as other cases (85.7%).

Almost half of the prosecuting attorneys interviewed reported the cooperation they received from social service agencies during their cases was only moderate (42.9%).

Child Abuse and Neglect During the Abduction. None of the prosecuting attorneys indicated an awareness of child physical or sexual abuse taking place during the abduction. Forty percent of the prosecuting attorneys indicated an awareness of allegations of neglect of the child/ren during the abduction. No charges of abuse or neglect were filed.

Prosecuting Attorney Belief About Abductor's Motivation. The most frequent reasons given for the abduction by the prosecuting attorneys who were interviewed were the abducting parent's belief that he/she was not going to receive the custody order he/she wanted (57.1%), that he/she was not going to be given custody at all (42.9%), and/or that he/she was not going to receive any visitation rights (42.9%). Over a fourth of the prosecuting attorneys also reported that the abducting parent believed his/her visitation rights were going to be lessened (28.6%), the left-behind parent had been emotionally harmful to the child/ren (28.6%), was dissatisfied with his/her visitation rights, and/or expected the recent remarriage of either parent (28.6%). Unlike the left-behind parents the belief that the abductions in the prosecuting attorney's cases were a way of seeking revenge against the left-behind parent for the separation/ divorce was only endorsed by 28.6% of the prosecuting attorneys interviewed. Left-behind parents endorsed this as a motivation for the abduction in 53.8% of the cases.

Predominant Location of Children. Over half of the prosecuting attorneys reported that the children were taken initially to another country (57.1%), namely Canada, Greece, Ireland, and Uruguay. This percentage of children taken initially to another country is much higher than the left-behind parents report, as the majority of cases in the total sample did not involve a prosecuting attorney. Further, the high rate of international abductions is strongly influenced by the high rate of international abductions at the Ocean County, New Jersey site. This does point out, however, that some law enforcement agencies find international abductions to be a more frequent problem within their jurisdiction than is encountered nationally. Over a quarter (28.6%) of prosecuting attorneys believe the children were initially taken to another state. All of the prosecuting attorneys interviewed believe that in their cases the children's location changed during the abduction episode, and for the majority of the time the children were in another state (42.9%) or another country (42.9%).

The prosecuting attorneys who were interviewed most frequently reported that abducted children in their cases resided on the road (42.9%), at the home of the abductor's relatives in another state (28.6%), at the home of the abductor's relatives in another country (28.6%), at the abductor's friends in another country (28.6%), and/or at a home or facility providing housing and care for parents who take their children (28.6%).

Abducting Parent Use of Help. All of the prosecuting attorneys indicated that the abducting parent had received help during the abduction. The majority of these respondents indicated that help came from the abducting parent's friends (71.4%) and over a quarter said it came from the abducting parent's mother (28.6%) or father (28.6%).

Identity Changes. A large majority of the prosecuting attorneys were aware of attempts used by the abductors in their cases to conceal the children's identity. Of the methods reportedly used, physically concealing children was most frequent (57.1%), followed by giving the children a new name (42.9%) and changing the children's appearance (28.6%).

Custody Order at Time of Abduction. As reported by the prosecuting attorneys who were interviewed, the left-behind parent had sole physical and sole legal custody in just under half of their cases at the time of abduction (42.9%). In less than one-sixth of the cases (14.3%), a custody decision was pending or the abducting parent had sole legal and physical custody of the child/ren. Custody was not being sought in 28.6% of the cases at the time of the abduction.

Custody Order Changes During the Abduction. Changes were sought in the custody order during the abduction in nearly all of

the interviewed prosecuting attorneys' cases (85.7%). The most frequent change sought was that the left-behind parent receive sole physical and sole legal custody (71.4%). ("Other" was endorsed in the remaining cases). These changes were granted in all applicable cases. The length of time it took to obtain a custody order varied widely, with the prosecuting attorneys reporting that a custody order change was obtained in one day or less (14.3%) to within 3 months (14.3%).

Legal Actions During the Abduction. With regard to legal actions taken during the abduction, the majority of interviewed prosecuting attorneys (85.7%) reported that a county warrant had been issued to arrest the abductor. Nearly half indicated that the filing of (42.9%) and the enforcing of (42.9%) a custody order in the left-behind parent's state of residence had also taken place.

Unlawful Flight to Avoid Prosecution (UFAP) Warrants. Over half of the prosecuting attorneys (57.9%) reported that they had requested UFAP warrants following the abduction. This is noteworthy, since the majority of cases were interstate abductions. According to the prosecuting attorneys, a UFAP warrant was granted in every case that it was requested.

Abductor Arrest and Trial. The prosecuting attorneys reported that all of the abducting parents in their cases were arrested and were charged with a felony. The abductor was extradited to another state in over one-fourth of these cases (28.6%).

Abductor Brought to Trial. According to the prosecuting attorneys, all of the abducting parents in their cases were reportedly brought to trial and in over one half (57.1%) of the applicable cases the abductor pled not guilty (only 28.6% pled guilty). Nearly half of the prosecuting attorneys reported that the abductors in their cases were convicted of a felony (42.9%), which is higher than that reported by left-behind parents. Over a quarter indicated that the abductors in their cases were acquitted (28.6%) or that the charges against the abductors were dropped (28.6%). The prosecuting attorneys reported that the abductor's sentence included regular reporting (57.1%) and/or incarceration (28.6%).

Restitution to Left-Behind Parent. The majority of prosecuting attorneys interviewed reported that the left-behind parents in their cases did not receive any money for criminal restitution, civil tort damages, or civil award of costs (85.7%).

Priority Given Case. All of the prosecuting attorneys who were interviewed indicated that they gave the case in question an average or very high priority.

Motivation in the Case. The majority of prosecuting attorneys indicated they were very motivated in handling the case in question (71.4%).

Primary Obstacles to Recovery Faced by Prosecuting Attorney. With regard to primary obstacles to recovery faced by the prosecuting attorneys, the most common obstacle reported was difficulty obtaining information about location of the children (85.7%). Over half of the prosecuting attorneys interviewed cited a lack of financial resources on the part of the left-behind parent (57.1%), a lack of understanding about legal issues and procedures on the part of the left-behind parent (57.1%), problems involving enforcement of the Hague Convention laws (57.1%), careful planning of the abduction by the abducting parent (57.1%), assistance provided to the abducting parent by family members (57.1%), assistance provided to the abducting parent by special interest groups (57.1%), and the concealment of the child during the abduction (57.1%).

Greatest Obstacle for Left-Behind Parents According to Prosecuting Attorneys. Over one-fourth of the prosecuting attorneys reported that the greatest obstacle to recovery for left-behind parents was a lack of funds with which to conduct a search (71.4%) and approximately one-fourth of the prosecuting attorneys reported that the greatest obstacle was the left-behind parent's lack of knowledge about conducting a search (28.6%).

Second Greatest Obstacle for Left-Behind Parents According to Prosecuting Attorneys. The second greatest obstacle to recovery for left-behind parents, according to the prosecuting attorneys, was most often listed as personal emotional obstacles (57.1%).

Caes Review Protocol

In the design of the multi-site study, the parental abduction case records were reviewed for completeness and accuracy. The following topic areas were reviewed and the findings recorded:

Demographics of Left-Behind Parent
Demographics of Abductor
Marital Status of Left-Behind Parent and the Abductor
Charges of Abuse Against the Abductor
Charges of Abuse Against the Left-Behind Parent
Child Abuse or Neglect by Abductor
Child Abuse or Neglect by Left-Behind Parent
Race of Abducted Child
Custody Agreement at the Time of Abduction
Abuse During Abduction
Motivation for Abduction

Location Left-Behind Parent Believed Children to be at Time of Initial Concern.
Point from which Children were Abducted
Left-Behind Parent's Action Following Initial Concern about Children's Abduction
Length of Time between Initial Concern and Contact with Individuals and Agencies
Abduction following a Scheduled Visitation
Child Transportation
Primary Law Enforcement Agency Handling the Left-Behind Parent's Case
Number of States Involved in Left-Behind Parent's Case, From Initial Point of Abduction until Recovery
Agency Left-Behind Parent Initially Called with Concerns about Children
Information Law Enforcement Agency Conveyed to Left-Behind Parent in Initial Telephone Contact
Law Enforcement Response
Other Individual/Investigative Agency Involvement in the Case
Private Attorney Involvement
Custody Changes
Abductor Arrest
Events Leading to Recovery
Child Pick-up

The examination of the results of the case record review indicated that almost 100% of the data sought was present in the record and was consistent with the case data recalled by law enforcement personnel involved with the case. This is a very positive endorsement of the record-keeping procedures of the three study site agencies.

Comparisons Among Left-behind Parents, Law Enforcement Officers, Private Attorneys, and Prosecuting Attorneys

Satisfaction Ratings

Law Enforcement Officers and Left-Behind Parents. On a global level, discrepancies were noted between parental satisfaction with the investigative assistance from the law enforcement officers and the perception by the law enforcement officer of the parent's satisfaction with them. All of the law enforcement officers felt that the left-behind parents were moderately or very satisfied with the assistance they had provided. Eighty seven percent felt that the parents were very satisfied. By contrast, while most of the parents indicated that they were moderately or very satisfied with the assistance (61.5%), a third (33.3%) indicated that they were minimally or not at all satisfied with the assistance received from law enforcement.

A substantial proportion of parents (38.5%) felt that assistance from the FBI would have resulted in a faster recovery of the children. On the other hand, only one law enforcement officer (2.6% of those to whom this question applied) felt that FBI involvement would have helped and the clear majority of law enforcement officials felt that FBI assistance would not have resulted in a faster recovery (71.8%).

Finally, parents and law enforcement officials agreed in their estimates of the length of time passing after the abduction before the FBI entered the case. Estimates from both groups ranged from one week to more than five months, with over half indicating that three or more months had elapsed before the FBI was called.

Private Attorneys, Prosecuting Attorneys and Left-Behind Parents. Left-behind parents and their attorneys disagreed in their ratings of parental satisfaction with the attorney. For example, while nearly half (48.1) of the parents reported being very satisfied, three-quarters (75%) of the attorneys thought the parents were very satisfied. At the other end of the satisfaction continuum, nearly a fifth (18.5%) of parents reported being minimally or not at all satisfied with their attorney, as opposed to only 5% of attorneys sharing this perception about parental satisfaction.

Prosecuting Attorneys and Left-Behind Parents. Parents were also less satisfied with the legal efforts undertaken by the prosecuting attorney than the prosecuting attorneys reported the parents to be. About twenty percent (20.5%) of the parents rated themselves to be very satisfied with the prosecuting attorneys, while over seventy percent (71.4%) of the prosecuting attorneys gave this rating of parental satisfaction. While all of the prosecuting attorneys perceived the parents as being very or moderately satisfied with their work, a similar percentage (93.3%) of the parents agreed.

Disagreement was also apparent between parents and attorneys when reporting whether the case was brought to trial if the abductor was charged. A quarter of these parents (25.6%) reported that the case was brought to trial, while attorneys reported that the case had been brought to trial in 90% of the cases. Parents and their attorneys agreed with regard to whether money was awarded for criminal restitution, civil tort damages, or civil award of costs (12.8% versus 15%).

Prior Case Experience. Considerable variability was found in the number of parental abduction cases in which the law enforcement officers and the attorneys had been involved prior to the case in question. All of the law enforcement officers reported having worked on at least one previous parental abduction case, and over half (51.3%) indicated that they had

experience with sixteen or more previous cases. By contrast, private attorneys' experience was notably more limited. Over a third (35%) indicated they had no experience with parental abduction prior to the case in question. A similar percent (30%) indicated they had experience with one or two other cases, and only half that number had experience with sixteen or more cases. Of the prosecuting attorneys all indicated they had handled sixteen or more past cases.

Obstacles to Child Recovery. When asked about the greatest obstacle to child recovery, the respondents differed significantly (see Table 1). Here, the left-behind parents and law enforcement officers were more likely to state that legal obstacles were the greatest impediment to child recovery (53.8%, and 53.8%, respectively). On the other hand, private attorneys and prosecuting attorneys were more likely to indicate that the left-behind parent's lack of funds was the greatest obstacle to recovery (66.7% and 71.4% of the samples, respectively). These data indicate widely disparate perspectives on what are the obstacles to the recovery of parentally abducted children.

Table 1

Percent of Respondents Endorsing Specific Problems Areas as Providing the Greatest Obstacle to Abducted Child Recovery.

	Respondent			
Obstacle	Left-Behind Parent	Private Attorney	Prosecuting Attorney	Law Enforcement Officer
Legal	53.8%	16.7%	0%	53.8%
Law	7.7%	0%	0%	0%
Personal	7.7%	5.6%	0%	23.1%
Knowledge	12.8%	11.1%	28.6%	20.5%
Funds	17.9%	66.7%	71.4%	2.6%

Data Analytic Results

Left-Behind Parent Distress Measure Characteristics. To assess distress resulting from the abduction, the Symptom Checklist 90 - Revised (SCL-90-R) was administered to the left-behind parents of the abducted children. The SCL-90-R is a 90-item self-report instrument developed by Derogatis and colleagues (Derogatis, 1977, 1983; Derogatis, Lipman, & Covi, 1973; Derogatis & Cleary, 1976) for assessing psychiatric disturbance. All of the items pertain to either physical problems (e.g., "1. Headaches" and

"39. Heart pounding or racing") or emotional/psychiatric disturbances (e.g., "16. Hearing voices that other people do not hear" and "77. Feeling lonely even when you are with people"). Respondents are asked to rate how much during the past week they were distressed by each disturbance, on a one to five point scale which ranges from "not at all" to "extremely." The SCL-90-R provides an index of general symptom distress (GSI) as well as information about specific psychiatric syndromes (Derogatis, 1977, 1983). Nine syndromes measured by the SCL-90-R are Anxiety, Hostility, Paranoid ideation, Phobic-anxiety, Somatization, Psychoticism, Obsessive-compulsive, Depression, and Interpersonal sensitivity.

Statistical analyses were calculated on the SCL-90-R findings to estimate the scale's validity and reliability. Cronbach's alpha coefficient was calculated on the GSI with all of the subscales used as component parts, the GSI with all of the items used as component parts, and each SCL-90-R subscale with all of their constituent items. Item total correlations for each item were calculated using the GSI, the SCL-90-R items sum, and each of the subscales. Between-subscale correlations were also calculated to assess their unique and shared contributions to the distress construct being examined.

Cronbach's alpha coefficient was high (.95) for the GSI with all subscales used as component parts, with the items used as constituency the alpha for the total was lower, but still was relatively high (.71). Similarly, the SCL-90-R subscales possessed high to very high internal consistency, with alphas ranging from .77 (Paranoia) to .89 (Anxiety). These findings suggest that samplings by the SCL-90-R and its subscales were internally consistent. Significant correlations were found between every SCL-90-R subscale (see Table 2). These subscale correlations indicate substantial overlap in the constructs being measured and suggest that a single dimension is tapped by the subscales. A probable construct for this dimension is psychiatric distress. This finding is consistent with the NCMEC sample results, providing a degree of confidence to study conclusions about emotional distress in left-behind parents.

Table 2

Between scale correlations on the SCL-90-R*.

Subscale	Host	Anx	Dep	Int	Obs	Som	Phob	Para	Psy	
Hostility	---	.70	.74	.75	.63	.67	.43	.82	.71	
Anxiety		---	.81	.77	.78	.80	.70	.71	.85	
Depression			---	.89	.83	.74	.53	.79	.82	
Interp Sensitivity				---	-.73	.65	.50	.86	.83	
Obsessive Compulsive					---	.78	.44	.66	.75	
Somatization					---	.64	.64	.82		
Phobic Anxiety						---	.44	.54		
Paranoia							---	.75		

*$p < .01$ for all correlations

Distress in Left-Behind Parents. As a group, the left-behind parents showed significant elevations across the SCL-90-R scales, with all but Phobic-anxiety and Somatization falling at least 10 T-score points above the mean. The highest T score values were found on Anxiety (68.1), Depression (67.5), Obsessive Compulsive (66.5), and Paranoid Ideation (63.9). The SCL-90-R subscale scores for the left-behind parents are presented in Table 2. These findings provide further evidence of the clinical levels of psychological distress experienced by parents of parentally abducted children.

These SCL-90-R findings are remarkably consistent with the SCL-90-R data obtained in the NCMEC sample described in Chapter 12, except that the second group of left-behind parents showed slightly lower T-score elevations. In contrast to the present sample, only one subscale in the NCMEC sample, Phobic-anxiety, did not exceed 10 T score points above the mean. The two highest scales from the initial assessment, Anxiety and Depression (70.0 and 69.8 T score points, respectively), were also slightly higher than these same (also highest) subscales in the second assessment (68.1 and 67.5, respectively). These two independent assessments, in any event, are strikingly consistent in demonstrating clinical levels of psychological distress in the left-behind parents of parentally abducted children.

Statistical Predictors of Left-behind Parent Satisfaction with Service Providers. A series of stepwise multiple regression statistics were calculated to identify those factors that influenced the left-behind parent's satisfaction with the work of their attorneys and the law enforcement officers. In these calculations, profession-specific activities were assessed for their ability to predict satisfaction. For law enforcement officers, 19 activities were assessed, including taking case information and giving suggestions, visiting the left-behind parent's home, and entering abducting parent's name into the FBI

national crime computer network. For private attorneys, 21 activities were assessed, including filing a petition for a warrant to deliver the child(ren) bringing a petition for writ of habeas corpus, and seeking relief through the Parental Kidnapping Prevention Act.

Two activities were significant predictors of left-behind parent satisfaction with law enforcement officers: (1) Searching of abducting parents credit bureau records ($df=2,34$; Beta=-.43; $p<.01$), and (2) continuing to assist in the search in the left-behind parent's state of residence ($df=2,34$; Beta=.39; $p<.05$). These two activities explained 31 percent of the statistical variance in left-behind parent satisfaction with law enforcement officers. On the other hand, none of the attorney activities predicted parental satisfaction with the attorney.

Custody. Potential areas of impact related to the children's custody status were analyzed. Chi-square analyses were calculated on the children's custody status by distress level (high versus low SCL-90-R GSI scores), amount of time the children were out of the home (long time versus brief time), satisfaction with law enforcement officers (high versus low), issuance of a restraining order (yes versus no), spousal abuse by abducting parent, and abducting parent sexual abuse, physical abuse, or neglect of the children. A dichotomous custody status variable was calculated in which sole legal and physical custody could be compared with all of the other custody arrangements combined. Only one of these comparisons, abducting parent neglect of children by custody status, proved to be statistically significant ($x^2=6.7,df=1,p<.01$). Left-behind parents were more likely to have sole custody if neglect by the abducting parent had occurred.

Spousal Abuse. The left-behind parents were asked about whether they had ever been physically abused by their spouse (abducting parent). SCL-90-R psychological distress scores between those who indicated spousal abuse and those who did not, were not statistically significant ($x^2=.68$, $df=1$, $p=.41$). The length of time in which the children were away was not significantly different for those left-behind parents who reported being physically abused by the abducting parent ($x^2=2.5,df=1,p=.11$). These findings indicate that: (1) left-behind parent distress may be more generally tied to child loss and pre-abduction life stresses other than spousal abuse, and (2) allegations of spouse physical abuse are not associated with more lengthy parental abductions.

Child Abuse Allegations. In a preliminary test, it was found that the fathers were significantly more likely than the mothers to have been alleged to have physically abused the children ($x^2=6,2,df=1,p<.05$). In fact, all of the abducting parents

reported to have physically abused the child/ren were fathers. This finding did not hold for sexual abuse (x^2=.81,df=1,p=.37).

Analysis of variance revealed no significant difference in distress of left-behind parents who alleged that the abducting parent had physically abused (F=.06,df=1,38;p=.81), sexually abused (F=.31,df=1,38;p=.58) or neglected (F=.64,df=1,38;p=.43) the children. In addition, chi-square testing showed no significant differences between left-behind parents who did or did not report these three child abuse types on the length of time (several months versus a few days) during which the children had been abducted. These findings indicate that allegations of child physical or sexual abuse are not associated with more lengthy parental abductions.

In chi-square and analysis of variance testing, no significant differences were found in distress levels of left-behind parents who had or had not been accused of child abuse.

Satisfaction with Service Providers and Duration of Missing Child Episode. Statistical analyses were conducted on the extent to which left-behind parents were satisfied with law enforcement, the FBI, private investigators, and attorneys vis a vis the amount of time their children had been gone (i.e., several months versus a few days). The service providers' ratings of parental satisfaction were also analyzed in relation to the duration of the missing child episode. For none of the respondents, except for private attorneys, were the parent ratings or their own significantly different for long and short duration abductions. The left-behind parents and the attorneys gave higher parent-satisfaction ratings when the children were gone for the brief period of time (x^2=4.3,df=1,p<.05; x^2=7.5;df=1, p<.01, for parents and attorneys, respectively).

Comparisons Across Project Field Sites

A series of analyses were conducted to assess the comparability of parental abduction cases from three geographically distinct sites. The dimensions that were assessed included both demographic and interview data and are presented in summary from below.

Demographics. The sample composition from the three sites differed significantly in terms of missing child ethnic status (df=6, x^2=22.6;p,.01). Ninety-four percent of the respondents from New Jersey indicated that the missing child was Caucasian. In the Illinois sample, 44% of the missing children were Caucasian and 44% were African-American. In California, 42% were Caucasian and 36% were Hispanic.

No across-site differences were found in the gender of the missing children. The results approximate the population demographics of each site.

Abduction Information. No across-site differences were found in the amount of time that the children had been gone from the home.

Left-Behind Parent Satisfaction. Left-behind parent satisfaction with their attorney, law enforcement officer, prosecuting attorney, FBI, and private investigators did not differ significantly among the three sites.

Cooperation Between Service Providers to Left-Behind Parents. No differences were found among left-behind parent, private attorney, and prosecuting attorney ratings of cooperation among the service providers. The ratings by the law enforcement officers about cooperation from the district attorney's office and social service agencies, however, did differ across the sites.

Law enforcement officers from the three sites differentially rated the level of cooperation they received from the district attorney ($df=8, x^2=29.4, p, .001$). All of the California site law enforcement officers (12 out of 12 cases) rate the cooperation as being a "great deal." (It is important to note however that all of the California law enforcement officers are investigators assigned to the prosecuting attorney's office). Ratings from law enforcement officers in Illinois and New Jersey sites ranged from a "great deal" to "no cooperation needed". Twenty five percent of the (8) Illinois officers gave ratings of a "great deal", "a little", "none although needed", and "none needed". In New Jersey, 40% of the officers indicated they received "a great deal" of cooperation from the district attorney's office, 33% indicated "moderate cooperation", and 26,7% indicated that no cooperation was needed.

As previously indicated in the discussion of sample characteristics, caution is indicated in examining results among sites. In this case, the higher evaluation of district attorney's office cooperation could be due to: (1) the California parental abduction investigator's residence within the prosecuting attorney's Office and the potential enhancement of working relationships created, and/or (2) by a potential tendency to provide more favorable ratings to co-workers within the same work unit. Nonetheless, it is worthwhile to note that California state law assigning responsibility for parental abduction case investigation to the County prosecuting attorney's Office continues to be discussed as a desirable, consolidated function model for other states. Focused, comparative, large sample size research examining multiple California sites and a representative sample of models employed by other states would be very useful.

Across the three sites, the law enforcement officers also differentially rated the cooperation they received from the social service agencies ($df=6, x^2=6.7, p.05$). Of the officers interviewed in the New Jersey sample, 60% indicated they had received "a great deal" of cooperation, 20% indicated "moderate," and 20% indicated that none was needed. In Illinois, 25% reported "a great deal" of cooperation from social service agencies and 75% said that no cooperation was needed. Seventy five percent of the California officers said they had received "a great deal" of cooperation from the social service agencies and the remaining twenty five percent said that "none, but cooperation was needed."

Lack of Information as Obstacle. Fifty percent of the left-behind parents in the New Jersey sample and forty-three percent of the California respondents indicated that the private attorney was uninformed. None of the Illinois respondents stated that their private attorney was uninformed.

Law enforcement officers across the three sites also differed in their beliefs about what are the greatest obstacles to child recovery ($df=6, x^2=24.9, p<.01$). Of the New Jersey officers, 75% indicated legal obstacles/inconsistencies in state laws as the biggest impediments to child recovery, 12.5% indicated emotional obstacles (of the left-behind parent), 12.5% indicated a lack of knowledge about conducting a search by the left-behind parent. In California, 64.3% rated legal obstacles/inconsistencies in state laws, 28.6% indicated the left-behind parent's lack of knowledge about conducting a search, and the remaining officers (7.1%) indicated emotional obstacles.

Summary of Findings

Three conclusions can be drawn from the findings reported here. First, left-behind parents of parentally abducted children show marked distress, particularly in anxiety and depression, on a self-report measure of psychological disturbance. Second, while there is a fair amount of agreement about legal obstacles as being significant impediments to their children's recovery, there was considerable differences between parents, private attorneys, law enforcement officers, and prosecuting attorneys, about the most significant obstacles. Third, relative to the parent's report, the attorneys and law enforcement personnel tend to overestimate the degree to which parents are satisfied with their services. Professionals and other service providers should take this information into account in their work with left-behind parents of abducted children.

IV. Discussion

As previously reported in Chapter 12, the NCMEC sample study sought to retrospectively examine a nationally representative

sample of closed parental abduction cases from the perspectives of multiple participants.

In contrast to the NCMEC sample in which the sample was drawn from many different jurisdictions, this data collection sought to retrospectively examine a sample of closed parental abduction cases from three geographically distinct jurisdictions from the perspective of the left-behind parent, law enforcement officer, private attorney, prosecuting attorney, and law enforcement case records to obtain a descriptive and quantitative assessment of community responses to parental abduction. From these perspectives, the interrelationship between community responses, child recovery obstacles, abduction events, and left-behind parent response were examined.

From this data collection, the following series of findings have been selected for further discussion.

Ethnicity. From both UCSF data collections it appears that parental abduction by Caucasians is representative of the percentage of Caucasians in the national population. However, the picture is less clear for minorities. With parental abduction, African-American, Hispanic, and Asian/Pacific Islander ethnic groups all seem to range from 5% to 10% above or below their representation in the national population. When parental abductions are studied within an area known to have a higher given ethnic population, the incidence of parental abduction does not necessarily rise proportionately. Several different variables may be contributing to this result. First, ethnic attitudes toward parental abduction may vary from the population majority. Second, law enforcement services in parental abduction cases may vary from community to community, depending upon the tax base and area socio-economic level. Many ethnic groups are represented at a disproportionately higher level in communities with lower socio-economic levels. There may be an interactive effect between the relative placement of parental abduction as a law enforcement service priority in lower income communities and ethnic group status. In addition, ethnic group experience with law enforcement may lead some not to expect assistance from them. In any event, the relationship among ethnic group status, parental abduction, and law enforcement service delivery remains unknown and is worthy of focused additional study.

Number of Children Abducted. From both UCSF data collections, it is evident that parental abductors may take all of the children within a family or may abduct only one or two of the children. The decision by the parental abductor to differentially abduct children from within a family may be due to child age, biological child versus step child status, degree of abductor identification and attachment to a child, and/or anticipated logistical problems in carrying out the abduction of all of the children in the family. Future interview studies of

parental abductors themselves need to attend to abductor motivation to differentially abduct children from within a family.

Spousal and Child Physical/Sexual Abuse. Both UCSF data collections indicated that allegations and counter allegations of spousal physical abuse and child physical abuse/neglect within the family occur for approximately one half of all left-behind parents and of parental abductors, as well. Allegations and counter allegations of child sexual abuse ranged from 2% to 17% in the two data collections. Further, findings from this data collection indicated that allegations of child physical/sexual abuse are not associated with more lengthy parental abductions, nor were higher levels of left-behind parent distress. Allegations of child physical/sexual abuse at the point of recovery were low (2% -11%). Such findings are not supportive of high levels of child physical/sexual abuse either by the abducting parent or the left-behind parent before the abduction, or by abducting parent during the abduction. Law enforcement and other government agencies are then faced with the difficult task of assessing large numbers of allegations to identify a small, but clearly very important, number of cases where the allegations can be substantiated to a legal threshold for conviction. The composition and field test of alternate screening and evaluation technologies for allegations of child physical/sexual abuse within the context of parental abduction is an essential step in improved government service to these families.

Custody Agreement. Well over half of the parental abduction cases in this data collection had custody orders that were in existence prior to the abduction. Approximately one-fourth of the left-behind parents had sole physical/legal custody at the time of the abduction. The singular presence, pre-abduction, of custody orders does not seem to forestall parental abduction. Descriptively, it appears to be rare for custody orders to contain standard clauses identifying consequences for parental abduction. While such prevention oriented educational strategies appear to have minimal impact upon individuals determined to commit other types of crimes, it would be worthwhile to assess, by field test, whether such strategies would have deterrence value with a significant number of parents considering child abduction.

Child Location during Abduction. Both project data collections indicated that more than half of the abducted children were taken out of state. International rates were significant as well with higher rates in the multi-site study. Law enforcement officer case experience in international abductions was also higher in this study exceeding one-fourth of the officers with 1-2 prior cases and an additional one-third of the officers with more 6-16 prior cases. It does appear that certain jurisdictions are experiencing disproportionately higher

rates of international abduction than would be true nationally, with resulting higher investigative experience levels for law enforcement.

Several variables may be involved. First, parents who chose to take the child out of the country often have foreign citizenship or family of origin connections in the destination country. Second, parents with foreign citizenship and/or ethnic identification may be more highly represented in certain jurisdictions. Third, to the degree that law enforcement within a given jurisdiction places a priority upon response to parental abduction cases, a higher absolute number of international abduction cases may be noted. An international abduction is generally more complex, lengthy, and more demanding of parent, law enforcement, and court resources than abductions within the U.S.

Due to these factors, it may be important to insure that the field test of the prevention/education strategies described in the previous section would include international abduction cases as well.

Parent Evaluation of Law Enforcement Assistance. Globally, fewer left-behind parents rated law enforcement agencies as not helpful in the multi-site study (10.3%) than in the study using an NCMEC sample (32.7%). Similarly, with the NCMEC sample, law enforcement was rarely credited with developing a lead which resulted in child recovery. Yet, in the multi-site study, one-fifth of the left-behind parents credited law enforcement agencies with developing the lead resulting in child recovery. These law enforcement officers were: (1) more knowledgeable about abduction case details, such as child concealment; (2) had higher rates of telephone contact with the left-behind parent; and (3) initiated more concrete investigative steps throughout the disappearance period. Prosecuting attorney services were also rated higher.

These findings are likely due to the fact that this study utilized cases from sites that are regionally recognized as having an acknowledged interest in the investigation of parental abduction cases, whereas the other study utilized a random national sample of cases from NCMEC. These findings offer preliminary support for the hypothesis that higher levels of law enforcement agency interest in parental abduction cases may result in higher left-behind parent satisfaction with services provided.

Law enforcement agencies responding to parental abduction cases and achieving high rates of successful case resolution and left-behind parent satisfaction should be identified and recognized, thereby providing models for potential adoption by agencies in other communities.

Federal Parent Locator Service. It was notable that the Federal Parent Locator Service was virtually unknown and/or unused as an investigative resource for parental abductions by law enforcement officers interviewed. This finding may infer that the Federal Parent Locator Service resource value in parental abduction investigation may need to be defined and more completely disseminated to law enforcement agencies.

Level of Law Enforcement Priority Given to Parental Abductions. Both data collections identified the overwhelming majority of law enforcement officers as assigning a moderately high to very high level of priority to parental abduction cases. However, few (approximately 5%) law enforcement officers were also identified who assign a low to very low priority to parental abduction cases. Thus, parents in locations where law enforcement officers place a low priority on these cases are not as well-served.

Prior Parental Abduction Case Experience for Private Attorneys. As with the NCMEC sample, approximately one-third of the private attorneys interviewed had handled 1-2 prior parental abduction cases, and an additional one-third have never been involved in a parental abduction case prior to the case about which they were being interviewed. These findings point to the need for additional education for attorneys about parental abduction and for the availability of specialized consultation resources.

Cooperation Between Private Attorney and Prosecuting Attorney. In this data collection, private attorneys were interviewed about their evaluation of case cooperation from prosecuting attorneys. A similar inquiry was made of prosecuting attorneys to determine their evaluation of case cooperation from private attorneys. The evaluations were very discrepant. Private attorneys reported a high level of cooperation from prosecuting attorneys in half of the cases. Alternatively, prosecuting attorneys reported a high level of cooperation from private attorneys in slightly more than one-fourth of the cases. Private attorneys reported moderate to no cooperation from prosecuting attorneys in slightly less than one-third of the cases. Conversely, prosecuting attorneys reported moderate to no cooperation from private attorneys in almost half of the cases. This finding may: (1) be connected with results from both project data collections indicating limited knowledge on the part of a minority of private attorneys about the criminal aspects of a parental abduction case, and (2) support the development of a model of respective responsibilities and shared cooperation in such cases between private attorneys and prosecuting attorneys.

Parental Abduction Case Records. In this data collection, law enforcement records of parental abduction case in the sample were reviewed for completeness and accuracy across a broad range

of areas. Results of this case record review indicated that almost 100% of the data sought was present in the record, and was consistent with case data recalled by the law enforcement personnel involved with the case. This finding is a very positive endorsement of the record keeping procedures of the three study site agencies. Such complete records are of very important value if a change of investigators occurs during the present case, or subsequently if there is another incident. All three study sites are regionally recognized for placing a level of priority upon parental abduction investigations, and such record keeping may well be one outcome of that priority policy. Overall, from this project's limited sampling, it does appear that law enforcement agencies with an acknowledged priority for parental abduction cases do have higher rates of left-behind parent satisfaction with services, more case knowledgeable investigators, and very high rates of case record completeness.

Left-Behind Parent Psychological Distress. Both project data collections found strong evidence of psychological distress, characterized by anxiety and depression, experienced by left-behind parents, as measured by a widely accepted, nationally normed psychological test measure. Such levels of psychological distress are highly likely to influence left-behind parent ability to most effectively assist the law enforcement officer and the private attorney in case resolution. Programmatic efforts to reduce obstacles to the recovery and return of parentally abducted children need to include components for psychological distress reduction.

Service Providers, Ratings of Cooperation, and Organizational Models in Parental Abduction Investigation. As previously indicated in the chapter discussion of sample characteristics, caution is indicated in examining data results among sites. In the area of cooperation from the prosecuting attorney, the California site investigators were overwhelming in their evaluation of prosecuting attorney cooperation. This high evaluation could be due to: (1) the California parental abduction investigator's organizational residence within the county prosecuting attorney's office and the potential enhancement of working relationships that might create, and/or (2) by a potential tendency to provide more favorable ratings to co-workers within the same work unit.

Nonetheless, it is worthwhile to note that California state law assigning responsibility for parental abduction case investigation to the county prosecuting attorney's office continues to be discussed as a desirable, consolidated function model for other states. Focused, large sample size research examining multiple California sites and a representative sample of models employed by other states would be indicated.

Summary of Discussion

In the last decade, parental abduction has gained the attention of the general public, and the legal, social science, and mental health systems in the U.S. This data collection retrospectively examined a geographically distinct, multi-site sample of closed parental abduction cases from the perspectives of multiple participants. The findings primarily: (1) confirm some of the initial data collection results reported in Chapter 12, and (2) assist in understanding differences between the national and sample local responses to parental abduction investigation, and (3) assist in understanding the experience of the prosecuting attorney in parental abduction cases.

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