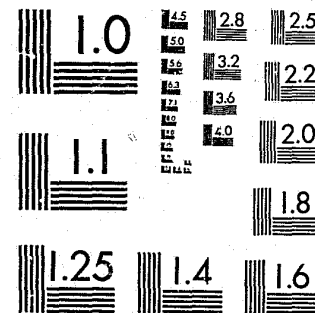


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# Department of Justice

Statement

of

Lawrence Lippe, Chief  
General Litigation and Legal Advice Section  
Criminal Division

before the

Committee on the Judiciary  
Subcommittee on Juvenile Justice  
United States Senate

concerning

THE PARENTAL KIDNAPING PREVENTION ACT OF 1980

May 25, 1983

U.S. Department of Justice  
National Institute of Justice

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ACQUISITIONS

Thank you for the opportunity of appearing here today to discuss with the Subcommittee the actions taken by the Department of Justice to implement the Parental Kidnaping Prevention Act of 1980 (PKPA) as it relates to the issuance of unlawful flight to avoid prosecution warrants. As you know, in Section 10 of the PKPA, Congress expressly declared its intent that the unlawful flight statute (18 U.S.C. 1073) apply to cases involving parental kidnaping and resulting interstate or international flight to avoid prosecution under applicable state felony statutes.

The unlawful flight statute makes it a Federal crime to travel in interstate or foreign commerce with the intent to avoid prosecution for a felony offense under the laws of the place from which the fugitive flees. To obtain an arrest warrant for unlawful flight, there must be probable cause to believe that an individual charged with a state felony offense has fled from that state and that his flight was for the purpose of avoiding prosecution.

Although drawn as a penal statute and, therefore, permitting prosecution in Federal court for its violation, the primary purpose of the unlawful flight statute is to provide the FBI with a jurisdictional basis for assisting state law enforcement agencies in the location and apprehension of

fugitives from state justice. Therefore, prosecutions for violations of the unlawful flight statute are extremely rare. In fact, the statute prohibits prosecution unless formal written approval of the Attorney General or an Assistant Attorney General is obtained.

The unlawful flight statute is not an alternative to interstate extradition. When the FBI locates and arrests an individual on an unlawful flight warrant, the arresting agents normally turn the fugitive over to law enforcement authorities in the asylum state to await extradition or waiver of extradition, and the unlawful flight charge is then dismissed. Therefore, as a matter of policy, we require that any state law enforcement agency requesting FBI assistance, under the unlawful flight statute, give assurances that they are determined to take all necessary steps to secure the return of the fugitive from the asylum state, and that it is their intention to bring the fugitive to trial on the state charges for which he is sought.

Similarly, as a matter of policy, FBI assistance is not authorized when the location of the fugitive is known to the requesting state law enforcement agency. In such cases, the state seeking the fugitive can initiate an interstate extradition proceeding and request state law enforcement authorities in the asylum state to place the fugitive in

custody until there has been a resolution of the extradition proceeding. More than twenty years ago, Congress recognized that the unlawful flight statute is a vehicle in aid of the extradition process; and that FBI involvement is normally limited to those criminal cases in which the state has demonstrated sufficient interest in obtaining the return of the fugitive to warrant incurring the necessary expense incident to extradition. H.R. Rep. No. 827, 87th Congress, 1st Session (1961).

Until recently, it had been a longstanding policy of the Department to avoid involving Federal law enforcement authorities in domestic relations controversies, including parental abduction situations. This policy had been based, in part, on the parental abduction exemption in the Federal kidnaping statute, from which we inferred a Congressional intent that Federal law enforcement agencies stay out of such controversies. Consistent with that policy, the Department, prior to the PKPA, did not authorize FBI involvement under the unlawful flight statute for the purpose of apprehending a parent charged with a child custody related felony offense. In rare instances, the Department made exceptions to this policy in situations where there was "convincing evidence that the child was in danger of serious bodily harm as a result of the mental condition or past behavior patterns of the abducting parent."

Shortly after passage of the PKPA, the Department's policy guidelines limiting involvement in parental kidnaping, under the unlawful flight statute, were reviewed, modified and made less restrictive. It became the Department's policy that, as a matter of prosecutorial discretion, the filing of unlawful flight complaints, based on child custody related felony offenses, would be authorized if, in addition to having probable cause to believe that a violation of the unlawful flight statute had occurred, and the requesting state law enforcement agency was committed to extradite and prosecute the offending parent, there also was independent credible information that the victim child was in physical danger or was then in a condition of abuse or neglect. Very simply, our policy guidelines were relaxed by reducing the standard from "serious bodily harm" to an "abuse or neglect" standard. Further, in an effort to achieve a uniform nationwide application of these policy guidelines, we required Criminal Division authorization prior to the filing of such complaints.

The PKPA also requires the Attorney General to report semi-annually to the Congress on the Department's implementation of the Act. It was determined that the FBI would assume responsibility for compiling data relating to parental kidnaping complaints. It was also decided that in keeping with the spirit of the PKPA, the FBI would compile data on all

complaints alleging parental abductions, rather than limiting the data only to requests received from state law enforcement agencies. Since passage of the PKPA, the Department has submitted five reports to the Congress setting forth our efforts to implement the Act as well as the accumulated statistical data relating to the issuance of unlawful flight warrants in child custody related felony cases.

In calendar year 1981, the Department took action on 129 law enforcement requests for unlawful flight warrants in parental kidnaping cases. Consistent with our parental kidnaping policy guidelines, FBI involvement was authorized in 48 cases and was declined in 81 cases. In calendar year 1982, FBI involvement was authorized in 46 such cases and was declined in 36 cases. Although there was no formal data compilation prior to the PKPA, the FBI has informed us that in the seven years prior to the PKPA, FBI involvement was authorized in a total of 49 cases, an average of seven cases per year. Clearly, there was a significant increase in the level of FBI involvement in parental kidnappings in the first two years after passage of the PKPA.

As you know, our parental kidnaping policy guidelines have been the subject of considerable criticism by members of Congress and others. We think it is important to note, however, that of the 117 law enforcement requests that were

declined in 1981 and 1982, a substantial number of these requests were declined for reasons wholly independent of our parental kidnaping policy guidelines. For example, we regularly received requests for FBI involvement in situations in which the accused parent was living at a known location in another state, or in which the accused parent had obtained a presumptively valid custody decree in another state. Clearly, there was no need for FBI fugitive hunts in such situations.

Based on numerous inquiries received by the Department, it appears that many complaining parents and others are under the mistaken impression that the PKPA authorizes the FBI to seek an unlawful flight warrant based on the parent's complaint, as opposed to a state law enforcement request. It further appears that many concerned parents are under the mistaken impression that an unlawful flight warrant authorizes the FBI to locate and return abducted children to the custodial parents. In response to inquiries from FBI agents in the field, we have advised that the PKPA and the unlawful flight statute confer no authority on the arresting agents to take custody of a fugitive's child. Very simply, an unlawful flight warrant gives the arresting agents authority to take into custody only the person or persons named in the warrant. We further suggested that when a fugitive is arrested in the company of a child, it may be proper and appropriate to leave the child with

a responsible adult relative or friend of the fugitive. If no responsible adult is available, the arresting agents would arrange for the local child welfare agency to take custody of the child.

In the latter part of 1982, the Department undertook another review of the parental kidnaping policy guidelines. As a result of this review, a determination was made that the guidelines would be suspended indefinitely. This policy decision was communicated to all United States Attorneys' Offices by a teletype dated December 23, 1983. In approximately one year, we will review this policy change. As a result of this decision, parental kidnaping felonies now are handled on the same basis as other fugitive felon requests. In the first three months after suspension of the guidelines, FBI involvement was authorized in 38 parental kidnaping felony cases and was declined in 3 cases.

It continues to be the Department's position that the unlawful flight statute is to be used for the purpose of assisting state law enforcement authorities in serious criminal cases, and that the statute should not be used merely as a pretext for enforcing compliance with child custody decrees. Unfortunately, our experience has shown that, in some cases, state prosecutors have declined to seek extradition of accused parents, arrested on unlawful flight warrants, the issuance of



which they had requested. We have advised United States Attorneys that care should be taken not to authorize warrants where there is reason to believe the state will not extradite and prosecute once the fugitive is located and arrested by the FBI.

Since December 23, 1982, authorization to file unlawful complaints in child custody related felony offenses is a matter entirely within the sound discretion of the various United States Attorneys. The Criminal Division, of course, remains available for consultation and advice in all fugitive cases. We expect that this policy change will significantly increase FBI assistance to state law enforcement agencies seeking fugitives wanted for parental kidnaping felony prosecutions.

**END**