A Report to the Attorney General on International Parental Kidnapping

Report

Subcommittee on International Child Abduction of the Federal Agency Task Force on Missing and Exploited Children and the Policy Group on International Parental Kidnapping

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Section 1: Introduction

Introduction

Recognizing that "international abduction or wrongful retention of children is harmful to their well-being" (42 U.S.C. 11601), the Federal Government has become increasingly involved in finding solutions to international parental kidnapping. With the goals of deterring abductions, recovering children, and bringing abductors to justice, the Federal Government has entered into international agreements, enacted laws, adopted procedures, and funded programs to improve the response of the civil law and the criminal justice system when international abductions occur.

Two major Federal initiatives facilitate recovery of abducted and wrongfully retained children: the Hague Convention on the Civil Aspects of International Child Abduction and its implementing legislation the International Child Abduction Remedies Act. The Department of State is the U.S. Central Authority for the Hague Convention. The Hague Convention is the primary mechanism preferred under U.S. law for the recovery of children abducted internationally by a parent. It is in force between the United States and 47 other nations. In countries not party to the Hague Convention, parents may still pursue private lawsuits under the laws of the country in which the child is located.

Several Federal laws provide the authority to bring international child abductors to justice, including the Fugitive Felon Act, the International Extradition Treaties Interpretation Act of 1998, and the International Parental Kidnapping Crime Act. In addition, the series of missing children laws passed by Congress plays a vital role in helping to locate abducted children. Other laws also may come into play in an international abduction case. The laws are most successful when they deter abductions outright. When deterrence fails, the civil statutes enable those left-behind parents to seek recovery of the child, and the criminal statutes enable law enforcement and prosecutors to pursue the abductor. Although the child may be located and possibly recovered through the criminal pursuit of the abductor, the criminal process does not assure a child's return, and parents should pursue civil means. Those left behind also need to be aware that pursuing criminal proceedings in fact may diminish the chance of child recovery, particularly in countries that have ratified the Hague Convention.

The States likewise have developed law and practice regarding parental abductions. Every State criminalizes parental kidnapping, although there is no single definition or title of the offense. Statutes label the offense variously as custodial interference, child abduction, parental abduction, child stealing, child snatching, family abduction, and parental kidnapping. All 50 States and the District of Columbia have established missing children clearinghouses. Some States have enacted flagging statutes to monitor requests for birth and school records of missing children. All States have laws addressing the issuance, modification, and enforcement of child custody determinations.

When a child is abducted from or wrongfully retained outside of the United States, State and local law enforcement, left-behind parents, and their advocates naturally turn to the Federal Government for help. After numerous phone calls, they discover that the Departments of State and Justice play parallel but separate roles in facilitating the recovery of a child and the extradition of an abductor to the United States for prosecution, while numerous other Federal agencies and international authorities play secondary roles in child recovery and fugitive apprehension. The quest for help may also lead them to the National Center for Missing and Exploited Children (NCMEC), a nonprofit organization funded, in part, by the Department of Justice, as well as to other nongovernmental organizations, which may also be of assistance.

What parents and law enforcement do not find is a central point of contact in the Federal Government for assistance and guidance on how to access Federal resources. As a result, they are often uncertain about whom to call and whether all available Federal resources have been identified to address their case. Although a network exists among Federal officials who regularly work these cases, it may not be apparent to those parents, advocates, and law enforcement officials who seek assistance as they approach these cases, as most probably do, for a first and only time. Further, agency personnel working either the civil or criminal aspects of an international abduction or wrongful retention case may not know the variety of assistance available, and they may lack an efficient means to find out what resources have already been tapped. Consequently, those working these cases may not pursue certain avenues or make appropriate referrals for further assistance.

Establishment of the Subcommittee on International Child Abduction and the Policy Group on International Parental Kidnapping

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) within the Office of Justice Programs at the Department of Justice is responsible for the Missing and Exploited Children's Program (MECP), authorized by Congress in the Missing Children's Assistance Act of 1984 (42 U.S.C. 5771 et seq.). OJJDP, through MECP, has funded groundbreaking research, programs, and services in relation to interstate and international parental kidnapping cases.

In 1994 the Federal Coordinating Council on Juvenile Justice, chaired by the Attorney General, established a Missing and Exploited Children's Task Force (Task Force) to coordinate Federal law enforcement resources to assist State and local authorities with difficult missing and exploited children cases. In June 1997, OJJDP, in cooperation with NCMEC, sponsored an International Parental Abduction Focus Group to identify common problems, improve the delivery of services and support to parents and children, and reduce or prevent unnecessary stress and suffering faced by victim parents whose children are wrongfully removed to or retained in other countries. Soon after, in December 1997, the Task Force established a Subcommittee on International Child Abduction to clarify the roles and responsibilities of the many Federal agencies that respond to international abduction cases and to explore ways to improve the governmentwide response.

Chaired by Ronald Laney, Director of OJJDP's Office of Missing and Exploited Children's Program, the Subcommittee comprises representatives of numerous Federal agencies as well as other organizations with a special interest in this problem. Participating entities are the Department of State (Office of Children's Issues, which is the U.S. Central Authority for the Hague Convention; Office of the Legal Adviser; Bureau of Diplomatic Security); the Department of Justice (Office of Juvenile Justice and Delinquency Prevention; Missing and Exploited Children's Program; Executive Office for U.S. Attorneys; Criminal Division, the Office of International Affairs and the Child Exploitation and Obscenity Section; the INTERPOL–U.S. National Central Bureau; the Immigration and Naturalization Service; the Federal Bureau of Investigation, the Office of General Counsel and the Office of Crimes Against Children); the Department of Treasury (U.S. Customs Service); the National Center for Missing and Exploited Children; the Kern County, California, District Attorney's Office; and the American Prosecutors Research Institute.

In a series of meetings that began in January 1998, the Subcommittee reviewed how each agency handles international child abduction cases and discussed issues of interagency coordination. It clarified agency roles, responsibilities, and jurisdiction in international abduction cases and identified problems at the State and Federal levels that impact these cases. The Subcommittee also developed recommendations to address the identified problems.

In November 1998, the Attorney General, after discussion with the Secretary of State, convened a Policy Group, comprising key high-level representatives from the Departments of Justice and State, to expedite appropriate reforms in the Federal responses to international child abduction. Using the Subcommittee's recommendations as a springboard for discussion, the Policy Group adopted a series of

recommendations (which appear in section 2), prioritized actions for immediate implementation, and made plans to assess existing resource needs of the agencies as well as budgetary implications of proposed initiatives.

A Report on International Parental Kidnapping

It became evident from the Subcommittee's deliberations that the Federal Government as a whole needs a statement describing current responses in international parental kidnapping cases, including identification of problems.

Section 3 of this report addresses the first need. It describes current Federal responses to international parental kidnapping, distinguishing between civil remedies to recover children and criminal mechanisms to bring abductors to justice, and identifies problems with existing law and practice.

Section 2 describes shortcomings in the current responses and makes recommendations to close the gaps and more effectively engage the many agencies involved to improve the Federal responses to international child abduction cases. It concludes by identifying issues for further study.

Ongoing Commitment to Achieve "Best Practices"

This Report to the Attorney General is an important milestone in the work on international parental kidnapping by the Interagency Subcommittee and the Policy Group. To fulfill the second need identified by the Subcommittee, guides for law enforcement and parents on Federal resources in international parental kidnapping cases also will be developed.[1]

Efforts to improve Federal responses to international parental kidnapping will continue in an interagency working group, which recommendation 1.4 proposes establishing. (Appendix 1 lists members of the proposed core interagency working group.) The interagency working group, to be chaired by the Department of State, will meet at least quarterly to review and seek resolution of difficult cases, explore problems with Hague Convention implementation, and promote interagency coordination. The Policy Group will continue to meet periodically to address issues identified for further study. It and the proposed interagency working group will monitor the Federal Government's responses to international parental kidnapping cases, with a goal of seeking and implementing best practices to prevent and resolve them.

[1] Copies of the Department of State booklet, *International Parental Child Abduction,* and the existing guide, *Federal Resources on Missing and Exploited Children: A Directory for Law Enforcement and Other Public and Private Agencies* (Federal Agency Task Force for Missing and Exploited Children, 1997) accompany this report.

Section 2: Improving Federal Responses to International Parental Kidnapping

Improving Federal Responses to International Parental Kidnapping

This section identifies gaps in the Federal Government's current responses to international parental kidnapping cases, i.e., cases involving the international wrongful removal or retention of a child. Recommendations are made to close the gaps and improve the governmentwide handling of these difficult cases. Many of the recommendations have resource implications.

GAP 1: Establish a more informative and coordinated Federal response to international parental kidnapping

Many different Federal agencies are potentially involved in international child abduction situations. Interagency coordination occurs, but there is no established framework for assuring accurate tracking of case activity by all concerned agencies or for assisting those officials in assuring that all appropriate measures are being taken by all appropriate agencies in any given case.

There also is no central point of contact for information and guidance for parents, their advocates, other assisting organizations, or for State and local law enforcement, all of whom turn to the Federal Government for help in international abduction cases. Much more could be done to provide information to these interested parties about assistance that may be available and how to obtain it, and to facilitate coordination and communication among relevant agencies. In addition, there are significant gaps in services provided, for example, in the area of counseling and support to left-behind parents and to families and children even at the end of the ordeal.

Recommendations

1.1 Identify/designate a point of contact (POC) for left-behind parents, their advocates, interested organizations, and law enforcement in international child abduction cases. The POC for law enforcement may be different than the POC for parents and their advocates. The role of the POC(s) shall be to provide information about assistance that may be available from the Federal Government and other governmental and private sources to address the civil and criminal aspects of international parental kidnapping and to explain how to obtain appropriate assistance. The POC(s) shall serve as a liaison between these offices and interested parties to facilitate communication and promote interagency collaboration to resolve specific cases.

1.2 A comprehensive case tracking system could foster collaboration and coordination among agencies and improve the Federal responses to and services for children, parents, law enforcement agencies, and other organizations involved in international child abduction cases.

1.2.1 A comprehensive system could gather information on the status of international child abduction cases from Federal, State, and local agencies and nonprofit organizations. Appropriate information should be accessible to all Federal agencies and cooperating nonprofit organizations involved in international parental kidnapping cases via computer network, an Internet site, or other source.

1.2.2 Consideration of the system should also include development of a checklist to be used by agencies to gather information from the party requesting assistance. (Missing children clearinghouses and law enforcement at the State and local levels may also use the checklist.)

1.3 Task a group of management information systems specialists from all appropriate Federal agencies and any relevant nongovernmental organizations, as necessary, to review existing systems used for gathering, updating, analyzing, and disseminating both case-specific and aggregate information on international abduction cases and to explore development of a comprehensive case tracking system, as well as a system—responsive to gap 2—that integrates statistics and information from all relevant agencies.

1.4 Establish a working group of the Policy Group, comprising representatives from Federal agencies, the POC(s), and relevant contractors—for example, the National Center for Missing and Exploited Children—chaired by the Office of Children's Issues (which is also the U.S. Central Authority) to meet quarterly, or more often as needed. This group will review and foster resolution of difficult international parental abduction cases, both Hague and non-Hague, including cases identified by the POC; explore systemic problems with the implementation of the Hague Convention; and promote interagency coordination in the resolution of cases.

1.5 Support the National Center for Missing and Exploited Children in its role as a missing children's clearinghouse in international child abduction cases. The clearinghouse would serve as a repository for information, research, literature, and so forth, relating to international child abduction cases; and ensure that this information is accessible to parents, law enforcement officials, prosecutors, lawyers, judges, and other children's advocacy organizations (via the Internet and other means) consistent with applicable privacy laws. (See recommendation 9.6.)

GAP 2: Develop a comprehensive statistical database on international parental kidnapping cases

There is no one comprehensive integrated process for gathering and analyzing data and information on international child abduction cases. Addressing this problem requires that all agencies should assure the timely and complete entry of appropriate information in the abduction cases they handle. The problem of integrating data from various sources must also be addressed. For example, although the Department of State's Office of Children's Issues has taken steps to improve its data collection and analysis, other offices and agencies, each working with its respective database system, may use different criteria to categorize cases, actions, and results. As a consequence, there is no comprehensive, integrated statistical database that can be used to describe reliably the incidence of abduction cases, agency actions with respect to those cases, results and timeliness of results, and the use and efficacy of the Convention and other legal remedies.

If a comprehensive statistical database could be developed, it could serve a variety of objectives, including: (1) more accurately identifying the resource needs of responding Federal agencies; (2) assessing the record of various countries in returning abducted children; (3) identifying problem areas and best practices; (4) evaluating the efficacy of the Hague Convention both as a whole and also with respect to the performance of particular countries; (5) seeking to improve mechanisms for returning children under the Hague Convention and otherwise by sharing data selectively with other countries; (6) advising parents, their advocates, and courts of information (including country-specific information) that may be useful in formulating appropriate court orders and taking other actions to deter abductions; and (7) providing more accurate and useful information to policymakers, the Congress, and the public about the problem of international abductions.

There is a strong case, then, for the benefits of a comprehensive statistical base. However, the technical complexity and resource requirements entailed in developing such a capability need first to be explored.

Recommendations

2.1 Task management information systems specialists to explore development of a comprehensive system, as described in 1.3 above. If such a system is feasible, then:

2.1.1 Use the data in making decisions about the resource needs of agencies involved in international abduction cases.

2.1.2 Make appropriate data available to the public consistent with applicable privacy laws.

2.1.3 Provide courts with country-specific information to help parents obtain appropriate safeguards in child custody and visitation orders where there is a risk of international abduction or wrongful retention.

2.1.4 Share information with other countries to foster the return of children under the Hague Convention and otherwise.

GAP 3: Expand diplomatic efforts to resolve international parental kidnapping cases and educate the public about them

Diplomatic efforts can be an important part of addressing the problem of international parental abduction, both in seeking—on multilateral and bilateral bases—to make treaty and nontreaty responses more effective generally and in seeking to resolve difficulties in particular cases involving the location of, return of, and access to abducted children. However, many parents lack an understanding of what the Federal Government can and cannot do to facilitate resolution of international parental child abduction cases. More can be done to provide such information.

More could also be done to systematize and intensify contacts with foreign governments on bilateral and multilateral bases to improve international responses to parental child abductions. This is particularly true with respect to countries that have joined the Hague Convention, as discussed in connection with gap 4. With non-Hague countries, the need is perhaps greater and the task is much more difficult, because no framework of international law governs the matter; instead, each non-Hague country applies its own law to its own nationals and others within its own territory. Nonetheless, this is an area in which all governments should recognize the necessity of transnational legal cooperation in the best interests of the child. The United States should intensively explore possible legal and diplomatic tools that could better address this situation. Similarly, as discussed in connection with gap 5, the problem of access is particularly difficult; although the Hague Convention has a provision on rights of access, this has not been developed, either in the text or in practice, into an effective legal regime.

Recommendations

3.1 Educate parents, attorneys, and other interested parties on:

3.1.1 Sovereignty and dual nationality issues.

3.1.2 Practical application of political and diplomatic pressure in international parental abduction cases in the United States and abroad.

3.1.3 Uses of diplomatic initiatives in multilateral treaty and bilateral contexts.

3.1.4 Diplomatic efforts being made by the United States to improve operation of the Hague Convention.

3.1.5 Differing and sometimes conflicting purposes of the civil and criminal aspects of abduction.

3.2 Invite foreign diplomatic personnel from embassies to participate in informal discussions to overcome barriers that impede resolution of international abduction cases, including special problems that arise in cases involving dual nationals.

3.3 Articulate U.S. policy regarding diplomatic initiatives in international parental kidnapping cases and the ways and means by which the State Department may communicate with foreign governments on behalf of a left-behind parent seeking return of

an abducted child. Include a description of problems and barriers to recovery that have arisen in past cases and describe how they can be overcome. Disseminate this information to left-behind parents, their advocates, and other interested parties.

3.4 Consult left-behind parents on how to improve service, using survey research tools and the family support network (an OJJDP-funded program, known as Project Hope, which trains parents to provide crisis assistance and support to left-behind parents in the United States whose children are victims of international abduction).

GAP 4: Improve implementation of the Hague Convention

The Hague Convention on the Civil Aspects of International Child Abduction provided for the first time an international treaty mechanism for parents to seek the return of abducted and wrongfully retained children and to facilitate access to children located in another country. However, there are systemic problems with how the Convention is implemented in a number of countries, including impediments to locating children, delays in processing of cases, nonenforcement of court orders, lack of access to children, and the imposition of conditions on return orders (undertakings). Efforts must continue to improve the Convention's effectiveness. Enhancing the operation of the Convention worldwide is of great interest to the United States because more children are abducted to and from the United States than any other Convention country.

Recommendations

4.1 Ensure that the issue of international child abduction and the need selectively to increase the number of signatories to the Convention are on the official agenda of relevant bilateral and multilateral meetings attended by appropriate non-Hague countries.

4.2 Raise and examine delays in proceedings, quality of legal representation, and compliance with the provisions of the Convention with central authorities of Hague party countries.

4.3 Address issues, such as noncompliance, failure to enforce return and access orders, procedural delays, inability to locate children, and other problems that impede successful operation of the Convention, in bilateral discussions and at the next meeting of Hague Convention party countries at The Hague.

4.4 Make a concerted effort to expand access to legal services in the United States and abroad for all left-behind parents in Hague and non-Hague cases by:

- 4.4.1 Expanding the International Child Abduction Attorney Network (ICAAN) to include attorneys in other countries who will represent parents of abducted children on a pro bono or reduced-fee basis.
- 4.4.2 Working with foreign central authorities in Hague countries to identify lawyers willing to be added to ICAAN.
- 4.4.3 Encouraging non-Hague countries, through their nonprofit organizations and otherwise, to identify lawyers willing to provide representation in international parental abduction cases.
- 4.4.4 Continuing to expand the ICAAN network in the United States to provide assistance on incoming cases.

4.5 Work to increase the frequency of meetings of party countries in The Hague to review operation of the Convention.

GAP 5: Seek solutions to problems of parental access at an international level

Although not entirely satisfactory, there are somewhat predictable law and practice regarding international child abduction. However, law and practice regarding efforts of parents to visit their children abroad are much less well-developed. The Hague Convention is vague on how access rights (referred to in the United States as visitation rights) are to be effectively exercised internationally, and the Convention does not include return of the child as a remedy

for breach of access rights. There are recognized shortcomings of the Hague Convention that should be addressed. Thus, in Hague and non-Hague countries, a left-behind parent's ability to visit a child may be largely dependent on the laws and customs of the country in which the child is located, which may unfairly disfavor left-behind parents. Moreover, without a clear international legal framework to address access problems, government agencies and private attorneys—both here and abroad—are less able to assist parents in obtaining access.

Two possible avenues to improve the situation regarding access may be to press, on a multilateral basis, for better implementation of Hague Convention provisions, which may provide relief regarding access, and to consider the efficacy of the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement, and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children (Hague Convention for the Protection of Children) as a means of better addressing the access problem. Other solutions should also be explored.

Unmerited denial of access, whether in the context of an abduction or not, is a serious problem which, to date, has not been satisfactorily addressed on an international level.

Recommendations

5.1 Ensure that the issue of access rights is taken up at the next quadrennial meeting of Hague Convention party countries at The Hague.

5.2 Accelerate consideration of the 1996 Hague Convention for the Protection of Children as a possible means of enforcing access rights in party countries.

5.3 Investigate ways to improve international access to children in Hague and non-Hague countries.

5.4 Explore arrangements with countries not party to the Hague Convention to ensure that the left-behind parent may enjoy access to his or her child and that the child has access also to his or her second parent.

GAP 6: Foster more widespread and effective use of NCIC and INTERPOL to stop abductions in progress and to locate abducted children and abductors

When a left-behind parent reports an abduction in progress to U.S. law enforcement authorities, those authorities must immediately attempt both to locate the abductor and child and to halt the abduction. U.S. law requires entering information on the child at once into the missing person database of the National Crime Information Center (NCIC). NCIC is a U.S. nationwide computerized police information system. The FBI administers NCIC on behalf of more than 80,000 U.S. criminal justice agencies at all levels of government. If it has obtained a warrant for the abductor, a law enforcement agency handling an abduction case can enter a record on the abductor in the NCIC wanted person database, as well.

There are, however, certain limitations regarding the use of the NCIC system. First, the system is useful only if law enforcement officers have the training to know when and how to make the best use of it. Not only are there questions about whether officers have been adequately informed about making all appropriate NCIC entries in international abduction cases, but there seem to be instances in which entries are removed prematurely when a missing child is located overseas—but not yet recovered—and subsequent opportunities to identify the child's (or abductor's) movements are lost.

When an international abduction from the United States is underway, U.S. law enforcement must rapidly notify and request assistance from appropriate foreign law enforcement authorities. In addition to calling the FBI field office, U.S. Federal, State, and local law enforcement can alert foreign authorities 24 hours per day, 7 days per week, every day of the year, by contacting the INTERPOL–U.S. National Central Bureau (USNCB).

If an abductor and child have entered one or another foreign country and their location is unknown, U.S. law enforcement can use INTERPOL's powerful notice system to search for them internationally. Red (fugitive), yellow (missing persons, including an abducted child), and blue (trace and locate) notices provide all INTERPOL member countries with a given person's case and identification information and ask any country locating the person to notify the requesting country immediately so that it may request extradition, facilitate a request for the child's return under the Hague Convention, or take other action as appropriate. U.S. law enforcement can apply for INTERPOL notices through the USNCB. However, many U.S. law enforcement personnel are unaware of the various types of assistance available through INTERPOL.

Recommendations

6.1 Explore the feasibility of a policy change for NCIC that would require maintaining NCIC records concerning a child missing in a foreign country until the child is recovered or until the issue of the child's return has been resolved.

6.2 Train U.S. Federal, State, and local law enforcement in using NCIC and INTERPOL more effectively in cases of children abducted from the United States.

GAP 7: Strengthen passport issuance and revocation practices and institute specialized training for border inspectors to aid in deterring and intercepting cross-border parental abductions

Parents who believe their child may be at risk of international abduction look to local and Federal authorities for help in preventing, detecting, and intercepting an abduction. Travelers departing the United States do not encounter exit controls. (Occasionally Federal Inspection Service (FIS) personnel may perform outbound merchandise inspections.) Airlines, not the U.S. Government, may require a passenger to show a valid passport when he or she boards a plane. Even in cases where there may be an opportunity to prevent or delay the departure of a child and/or parent in a suspected abduction, FIS personnel at the border may not be adequately trained to respond to abductions.

Preventing the issuance of a passport to a child may deter some abductions. A parent with a valid custody order may put a hold on the issuance of a U.S. passport to his or her child(ren) by contacting the Department of State. The State Department Office of Passport Services may deny or revoke a U.S. passport of an abducting parent who is the subject of a Federal warrant. However, neither of these measures is widely known to parents or to all law enforcement authorities. It is clear that there needs to be wider training and information materials available to parents and law enforcement.

Because many abducted children are dual nationals, they may also hold a valid passport of the other country. If they don't have one, they may apply for one. There may be no barriers to the issuance of these passports. In fact, the foreign countries' embassies and consulates may be required to issue a passport on demand by one of their nationals. At present there is no requirement for the Passport Office to notify a foreign government when it denies a passport for a dual national child. Nor is there is a formal mechanism to inform foreign governments about lookouts placed in the system for U.S. passport applications for these children.

Recommendations

7.1 Provide a joint training program for Federal Inspection Services personnel at U.S. borders and ports of entry to increase awareness about international child abduction.

7.2 Review policies governing the issuance and denial of U.S. passports.

- 7.2.1 Improve awareness about procedures to prevent issuance of a child's passport to the noneligible parent.
- 7.2.2 Notify the concerned foreign embassy of a lookout placed in the U.S. passport system on a dual national child, at the request of the custodial parent.

7.2.3 Pursue regulatory changes to allow revocation of a child's U.S. passport on the same basis that the issuance of a U.S. passport can be denied.

7.3 Explore ways to increase awareness among Federal, State, and local officials of procedures for and the effect of revoking U.S. passports when a parent (or other person) is criminally charged with child abduction.

GAP 8: Provide education, training, and other assistance

International parental child abduction is a complex and difficult issue. For attorneys, judges, and officials at all levels of government who deal with family law and custody matters, the prospect or fact of an international abduction will generally present issues of law, fact, and practice as to which they have little or no experience or training. For parents—often under extreme stress—the picture is even more daunting. Although information, experience, and assistance are available, they are not easily accessible, nor has there been a systematic, coordinated effort to educate and assist parents and others involved about remedies and resources in international child abduction cases.

Recommendations

8.1 With extensive coordination with other Federal agencies, the Missing and Exploited Children's Program shall develop a formal, comprehensive education, training, and technical assistance program for parents; Federal, State, and local law enforcement officials and prosecutors; State clearinghouses; judges; attorneys; and other agencies and organizations involved in civil and criminal international abduction cases. This effort shall be linked to training on international parental kidnapping provided by other agencies and organizations. (See 8.2.1, below.)

8.2 Identify current training and technical assistance resources. Design, develop, and conduct training; provide technical assistance; and disseminate publications and other products to fill needs and gaps in service delivery. Provide training to State and Federal law enforcement and prosecutors on the investigation and prosecution of parental kidnapping, focusing on actions to be taken immediately in cases of suspected international parental kidnapping. Provide training to agency personnel who deal with left-behind parents to ensure they have the necessary sensitivity and expertise to respond effectively in international abduction cases and are conversant with the rights and services due to Federal crime victims. Train judges and attorneys on the Hague Convention, other intercountry agreements concerning children, problems related to dual nationality, obstacles to recovery, the relationship between domestic violence and parental kidnapping, the impact of abduction on children, and prevention. (See 8.3, below.)

8.2.1 Each Federal agency involved in the civil or criminal aspects of international child abduction shall ensure that there is detailed guidance on appropriate responses in these cases and that training on international parental kidnapping is routinely included in continuing education programs for agency personnel involved in these cases.

8.3 Focus attention on preventing abductions. Develop a media campaign to educate parents, the public, and organizations and agencies involved in these cases. Increase public awareness of the Hague Convention. Highlight problems created by dual nationality. Create and disseminate prevention information (e.g., fact sheets and official letters) to educate judges and parents on issues related to dual nationality and safeguards that can be included in custody orders to deter abductions.

8.4 Develop a mentoring approach to encourage lawyers, prosecutors, and law enforcement officials who have experience with international abduction cases to share their experiences and expertise with similarly situated parties.

GAP 9: Expand the availability of resources to assist left-behind parents

At the international level, securing the return of abducted children, and in the criminal context, the return of abductors, can entail significant costs—

costs that may be beyond the resources of parents or, when a criminal case is involved, of local law enforcement officials. Indeed, lack of funds may be a significant obstacle to recovering abducted children from another country. Left-behind parents may lack the means to travel abroad, to retain a lawyer and pay other legal costs, to engage translators and interpreters, to undertake an international search for the child, to obtain counseling, or even to transport the child home. State and local prosecutors may forego criminal charges in international parental kidnapping cases because of the costs involved in seeking international extradition of fugitive abducting parents, including translating legal documents and paying to transport the abductor and escort officers back to the United States. Also, State missing children clearinghouses may have insufficient resources to effectively assist left-behind parents and local law enforcement in abduction cases.

Recommendations

9.1 Explore the availability of financial resources, such as victim assistance funds from the Office for Victims of Crime, to defray some of the expenses incurred by left-behind parents in international parental kidnapping cases.

9.2 Consider legislation to make Federal funds available in fiscal year 2000 and thereafter to defray the cost of extradition in cases involving State offenses. (The administration supported such legislation in 1998.)

9.3 Encourage States to review the sufficiency of funding and staffing of State missing children clearinghouses and to consider how these entities can best help parents of abducted children.

9.4 Encourage States to add parental kidnapping to the list of offenses for which State victims of crime compensation is available.

9.5 Support the establishment of a mediation program to help resolve wrongful removal and retention cases and to foster voluntary return of children from Hague countries.

9.6 Through the clearinghouses or other appropriate mechanism, promote the development and expansion of support services for parents, including counseling and mentor support networks. (See recommendations 1.5, 3.4, and 8.4.)

Issues for Further Study

1. Further review additional means to interdict abductors before they abduct children from this country.

2. Further review ways to provide meaningful assistance to left-behind parents.

2.1 Consider whether to encourage States to enact the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), including its provisions that authorize State prosecutors (or other designated public officials) to locate and obtain the return of a child in an incoming Hague Convention case.

3. Explore the legal and policy issues involved in authorizing Federal or State law enforcement authorities to place a child, listed on NCIC as missing, into protective custody when the facts known to the law enforcement official encountering the child do not support the arrest of the accompanying adult.

4. Identify specific laws and policies that may encourage abductors or impede resolution of abduction cases, e.g. military regulations.

5. Elaborate NCMEC's role in international parental kidnapping cases. (See recommendation 1.5.)

Section 3: Current Federal Responses to International Parental Kidnapping

Current Federal Responses to International Parental Kidnapping

Overview

International Parental Kidnapping Defined

International parental kidnapping encompasses taking, retaining, or concealing a child outside the country in which the child normally resides by a parent, his or her agent, or other person in derogation of another's parental rights, including custody and visitation rights. These rights may arise by operation of law, by legally binding agreement of the parties, or by court order.

The terms "international parental kidnapping" and "international child abduction" are used interchangeably in this report and include both wrongful removals and retentions of children. The "abduction" itself may range from a taking employing violence, false identifiers, and altered appearances, to the retaining of a child after a period of lawful custody or visitation. These cases typically involve the wrongful removal or retention of a child by a parent in derogation of the other parent's parental rights. However, they may also involve takings or retentions by parents or other family members in violation of custody rights exercised by nonfamily members, such as lawful guardians or State agencies.

International abductions or retentions often involve dual nationals, i.e., a parent who is a citizen of both the United States and another country. The child may also be a dual national. Further, it is common for abductions or retentions to occur before custody has been decided by a court or even before a divorce or custody proceeding is underway.

It is important to note that no two cases of international parental kidnapping are identical. Just as cases differ, so will appropriate and effective responses. What is appropriate for one case may be counterproductive in another. The challenge is to use the right combination of private and public resources to achieve a satisfactory resolution.

Parental Kidnapping Victims

An abducted or wrongfully retained child is a victim, as are those whose parental rights are obstructed. The victim child is wrested from a familiar life, cut off from one parent, and thrust involuntarily into a new reality. Abductions take an emotional toll on all involved.

Practical problem: Left-behind parents often lack the resources to obtain counseling for themselves and their children. See section 2, gap 9 and recommendation 9.6.[2] Also see gap 8, recognizing the extreme stress left-behind parents may experience, and recommendation 8.2, calling for sensitivity training for agency personnel who interact with left-behind parents and training on crime victims' rights.

Scope of the Problem

"Outgoing" cases involve children wrongfully removed from the United States and taken to or wrongfully retained in a foreign country. In calendar year 1998, the Department of State had a caseload of 503 new outgoing cases, for a total caseload of approximately 1,100 outgoing international child abduction cases. (Each outgoing "case" represents one child.) Just under half (49 percent) involved removals to or retentions in countries that are party to the Hague Convention on the Civil Aspects of International Child Abduction (Hague Convention), discussed below. The actual number of outgoing

[2] Gaps and recommendations referred to in this section appear in section 2, "Improving Federal Responses to International Parental Kidnapping."

cases is unknown because some parents never contact the Department, but instead go directly to the foreign central authority for the Hague Convention or to the courts abroad.

"Incoming" cases involve children wrongfully removed from other countries and taken to or wrongfully retained in the United States. In 1998 there were 241 new incoming cases involving the Hague Convention. (Each incoming case represents a "family group," i.e., one or more children.) Over the 3-year period that the Department of State has had the National Center for Missing and Exploited Children (NCMEC) handle incoming cases on its behalf, the organization has processed 1,002 incoming Hague applications. Data on the number of abductions from non-Hague countries to the United States are not available.

Practical problem: The total number of international parental kidnapping cases is not known. Although some entities, including the Office of Children's Issues (OCI) and NCMEC in the Department of State, collect data on international parental kidnapping cases, there is no governmentwide, systematic, integrated process to gather and analyze data. Such a system would serve a variety of purposes, which are described in gap 2 and accompanying recommendations.

Overview of the Legal Response

Private international law (i.e., legal recourse that private parties such as left-behind parents pursue as the party in interest), facilitated by the Federal Government, provides for the recovery of children internationally. Any given effort to recover a child internationally may call upon public and private resources, as well as Federal, State, and local authorities. As to the wrongdoer, every State, territory, and the Federal Government criminalizes the abduction or wrongful retention of a child by his or her parent. In a particular case, any combination of informal, formal, civil, or criminal means may be the best course both to recover a child and to serve the ends of justice.

When a child is removed from the United States and wrongfully taken to or kept in another country, two distinct processes exist—one to return the child and the other to pursue the abductor. Civil legal remedies facilitate the child's return. Once a child has been abducted, child recovery is a private civil legal matter between the parties involved under the laws of the country in which the child is currently located. Fortunately, a number of countries have joined the Hague Convention and thereby incorporated into their own domestic law the Convention's precepts for the return of internationally abducted children. The Convention seeks to protect children from the harmful effects of international abduction by establishing private civil legal mechanisms to pursue an abducted child's prompt return to his or her country of habitual residence. The Hague Convention is the primary mechanism preferred under U.S. law for the recovery of children abducted internationally. It is administered by the Department of State and discussed below.

In countries not party to the Hague Convention, child recovery is effected through private lawsuits under the laws of the country in which the child is located. Parents generally retain lawyers in the foreign country as well as in the United States to represent them and assist with the proceedings.

Criminal prosecution, in conjunction with international extradition, can address the perpetrator. The decision to charge a crime rests solely with the prosecutor and is made on a case-by-case basis. Not every abduction or wrongful retention is charged as a crime. State and Federal criminal parental kidnapping laws target wrongdoers; they do not address child recovery. Although a child may be located in the course of a criminal investigation of an abducting parent and may in fact be recovered as a byproduct of the criminal process, those left behind cannot rely upon the criminal process for a child's return. A parent must be prepared to pursue civil means to locate and recover a child simultaneously with the prosecutor's pursuit of extradition and criminal prosecution of the abductor. Parents should be aware that in some situations pursuing criminal proceedings against the abductor may diminish the chance of child recovery. A list of civil and criminal laws that may apply in cases of international parental kidnapping appears in appendix 2.

Part 1. Outgoing Cases

Prevention

"In international parental child abduction, an ounce of prevention is worth a pound of cure." So states the Department of State's *International Parental Child Abduction* booklet, and for good reason. The Federal Government has limited power to respond to international abductions once the abductor and child reach a foreign country.

Preventing the abduction of a child from this country is largely accomplished at the local level at the initiative of a parent. A local law enforcement officer or prosecutor, at the request of a concerned parent, may be able to deter an abduction by contacting and advising a potential abductor of the criminal consequences of parental kidnapping. State court judges can be instrumental in safeguarding against abductions through specific provisions they include in custody orders.

The Federal Government is involved in many aspects of prevention of international parental child abduction, including education of family court judges, attorneys, and parents; and interdiction at the border and elsewhere. The Department of State may also deny issuance of a child's U.S. passport and revoke previously issued U.S. passports of abductors who are the subjects of Federal criminal warrants.

It is important to note, however, that U.S. passport controls may not deter an abductor. The vast majority of abductors are citizens of the country to which they are returning and therefore their children—although they may be U.S. citizens—may also be citizens of that other country. If dual nationals, these children are eligible for passports of both the United States and the other country of nationality. The Office of Children's Issues at the Department of State provides extensive prevention materials for parents, which underscore the importance of preventing abduction given the difficulties posed by dual nationality and foreign sovereignty once the child is abroad.

At the Local Level

Law Enforcement Intervention

If abduction threats have been made or can be inferred from the other parent's conduct (for example, quitting a job, selling property, closing bank accounts, requesting a child's school records or birth certificate, or contacting relatives in another country with unusual frequency), a concerned parent may ask a local law enforcement officer or prosecutor to contact a likely abductor to explain that parental kidnapping is a crime. This may put a stop to an abduction in the planning stages.

Court-Ordered Prevention Measures

Judges should include prevention provisions in custody orders when there is a risk of international abduction. Strict measures are needed if there is a strong likelihood of abduction, if the child is likely to suffer serious harm, or if the left-behind parent would face many obstacles in seeking to recover the child from abroad. Provisions should be tailored to identified objectives.

A variety of provisions, alone or in combination, may limit the risk of removal from the United States. These include prohibitions on visitation beyond a specified geographical area, restrictions on the removal of a child from the United States, supervised visitation, surrender of passports and other travel documents prior to visits, a substantial bond, and notification to the foreign embassy. If an order allows for visitation in another country, it may condition such visits on a substantial bond, purchase of roundtrip airline tickets, entry of an order in the foreign court containing custody and visitation provisions identical to those in the U.S. order (a "mirror image order"), and the provision of names and addresses of all relatives living abroad.

At the Federal Level

Prevention Packets

The Office of Children's Issues offers comprehensive prevention packets to parents who fear that their children may be abducted abroad. OCI has Hague and non-Hague prevention packets. Both packets contain extensive information, including the OCI booklet, "International Parental Child Abduction"; a prevention flyer; a list of countries party to the Hague Convention; texts of the Hague Convention, the International Child Abduction Remedies Act, and the International Parental Kidnapping

Crime Act; materials written by the American Bar Association; and various articles by private practitioners and judges.

These packets are also supplemented with additional country-specific information as appropriate, including 19 country-specific child custody flyers; a flyer on Islamic family law; and a flyer on passport issuance in child custody cases. Also available for parents are 25 country-specific flyers on judicial assistance abroad; flyers explaining how to obtain evidence abroad, the service of process abroad, enforcement of judgments abroad, authentication of documents for use abroad, and dual nationality; and Consular Information Sheets and attorney lists for every country of the world. These flyers are also available at the Department of State Web site, *www.travel.state.gov*.

This information is often helpful to parents in supporting requests for preventive measures in custody orders. These flyers educate attorneys, parents, and judges about child abduction and the obstacles parents face in recovering children from abroad, particularly when the child is a dual national or when the country to which the child is taken is not party to the Hague Convention. OCI also drafts case-specific letters to parents addressing particular issues of concern.

NCMEC is also involved in prevention efforts, fielding prevention calls through its toll-free telephone number and providing requesting parents and attorneys with a prevention packet containing relevant information.

Passport Issuance and Denials

Flagging applications for U.S. passports. As a general rule, either parent may request U.S. passport information about his or her minor child from the Department of State. If a parent fears that a child might be taken abroad by the other parent without the mutual consent of both parents, that parent ordinarily can request that the child's name be put in the U.S. passport namecheck system. Then, if an application is received, the requesting parent will be informed before issuance of the passport.

Denying issuance of a child's U.S. passport. The U.S. Department of State may deny a child a U.S. passport if the concerned parent has provided the Passport Office with an order from a court of competent jurisdiction, which either grants that parent sole custody or which, in effect, forbids the child's travel without the consent of both parents or the court.

This process does not apply to the issuance of passports by other countries. A child who has or may have citizenship in another country (which could happen if one parent is a foreign national) may be eligible to hold or be included in a foreign passport, in addition to a U.S. passport. The concerned parent may contact the embassy of the other country for information and assistance.

Revoking a child's passport. Current practice does not include revocation of minors' passports on the basis of a custody dispute or court order, and current regulations do not provide for such revocation in all cases of concern. Courts can reduce the likelihood of flight by ordering a parent to surrender a child's passport for safekeeping.

Denying or revoking an abductor's passport. The Department of State can take revocation action against the abductor. A request to deny or revoke a passport may be a useful tool in limiting the movement of a fugitive who is a U.S. citizen only. However, revocation or denial of a passport does not guarantee the return of the abductor or the child.

Requests for denial or revocation of a U.S. citizen's passport must come from Federal law enforcement authorities, i.e., the FBI, U.S. Attorney, or the Department of Justice. The Department of State will not accept such requests from private individuals or attorneys. Denial and revocation actions against U.S. citizens are protected by the Privacy Act. The State Department can discuss such actions with law enforcement authorities only, not with left-behind parents.

Limitations. Revocation or denial of a passport to a parent is not a foolproof method to prevent an abduction. In the case of a dual national parent, revocation or denial of a U.S. passport does not affect the ability of that parent to obtain or retain travel documents from his or her other country of nationality. As in the case of the dual national child, a request can be made to the foreign embassy or consulate for reciprocity, but there is no international law obligation to

cooperate, and there may be limitations under the foreign domestic law.

Entry controls: Denying visas. If a consular officer abroad has reason to believe that an alien may be proceeding to the United States in order to abduct a child or cause harm to a family member, that officer may deny a visa to the alien or revoke any existing visa under section 212(a)(3)(A)(ii) of the Immigration and Nationality Act. The law makes inadmissible any alien whom the consular officer has reason to believe is seeking to enter the United States for the purpose of engaging in unlawful activity.

Departure controls. Section 215 of the Immigration and Nationality Act (8 U.S.C. 1185) could conceivably be used to prevent an abductor who is an alien from leaving the United States with a child, although it is not presently used for this purpose. The law and implementing regulations (8 CFR Part 215 and 22 CFR Part 46) authorize departure-control officers to prevent an alien's departure from the United States if the alien's departure would be prejudicial to the interests of the United States. These regulations should be amended if a decision is made to attempt to use section 215 to prevent child abductions.

Entry-exit control system. The Illegal Immigration Reform and Immigration Responsibility Act of 1996 (section 110, Public Law 104–208; 8 U.S.C. 1221 note) requires the development of an automated entry-exit control system for aliens entering and departing the United States at airports in the United States not later than October 15, 1998 (this deadline has since been extended), and at land and sea ports of entry not later than March 31, 2001. This system will collect a record of departure for every alien leaving the United States and match it with records of the alien's arrival in the United States. Tracking the inbound and outbound travel of aliens may help to identify and stop abductors as they attempt to enter or leave the United States.

Practical problems:

- *Prevention measures are effective only if they are used. A concerted effort must be made to alert parents, lawyers, judges, and law enforcement about the steps that can be taken to safeguard against international abductions. See gap 7, recommendation 7.2.1; gap 8, recommendations 8.2 and 8.3.*
- *Currently, a concerned parent seeking to prevent the abduction of his or her dual national child bears the burden of informing the relevant foreign government about measures taken by the U.S. Passport Office, in the Department of State, either denying issuance of a passport for the child or flagging any passport application for the child. The Department of State should notify the appropriate foreign government when it denies a passport for a dual national child or places such a child in its namecheck system. See gap 7, recommendation 7.2.2.*
- *A child's passport is not subject to revocation on the basis of a custody dispute or court order under current practice. The ability to revoke a child's passport may be helpful in securing return to this country of a U.S. citizen child who is abducted to a non-Hague country. Upon revocation of the passport, such a child might be undocumented and therefore subject to return by the foreign government. See gap 7, recommendation 7.2.3.*

Locating Abducted Children and Their Abductors

Both non-law enforcement and criminal justice authorities may assist those left behind in locating a child. The location of an abducted or wrongfully retained child often is known by those left behind. In some cases, however, those left behind may need assistance in locating or confirming the location of a child. In Hague cases, the relevant central authority must make efforts to locate or to confirm the location of a child. In addition, abducted children may be found during the course of a criminal investigation focused on the abductor; certain search tools are available only within the context of a criminal investigation of the abductor. What follows is a description of Federal agencies and tools that may be involved in a search for a child, an abductor, or both.

National Crime Information Center

Local, State, and Federal criminal justice agencies throughout the United States can use the Federal Bureau of Investigation's vast National Crime Information Center (NCIC) database of records (including missing persons, wanted persons, and vehicles) to help locate the abductor and child.

Immediate Entry of a Child into the Missing Person File

The Missing Children Act and the National Child Search Assistance Act, enacted in 1982 and 1990 respectively (28 U.S.C. 534; 42 U.S.C. 5779 and 5780), together require Federal, State, and local law enforcement agencies to enter descriptions of missing children into the NCIC Missing Person File (MPF) without any waiting period and without regard to whether a crime has been committed. If local law enforcement fails to enter a valid case into NCIC as required by law, the left-behind parent may request assistance from the FBI. The FBI has a concurrent mandate to make the entry, provided NCIC entry criteria are met. NCMEC can confirm entries into NCIC–MPF, but it does not have the authority to make entries.

NCIC Entries on the Abductor: Wanted Person File and Vehicle File

Law enforcement should enter an abductor into the NCIC Wanted Person File if the abductor is charged with parental kidnapping under State or Federal law. The abductor's vehicle should be entered in the NCIC Vehicle File.

Practical problem: Law enforcement needs training to ensure the timely, complete, and correct entry of all appropriate NCIC records when international abductions occur. See gap 6 and accompanying recommendations.

Department of State, Office of Children's Issues

OCI, located in the Office of Overseas Citizens Services, Bureau of Consular Affairs of the U.S. Department of State, can assist, both directly and indirectly, in locating a U.S. citizen child and checking on the child's welfare.

If a child is believed to be in a Hague Convention country, OCI, as the U.S. Central Authority for the Convention, can request its foreign counterpart to "discover the whereabouts of a child who has been wrongfully removed or retained." (Art. 7(a), Hague Convention) The Convention requires the foreign central authority to take steps to locate the child. There need be neither a criminal warrant as to the abductor nor a custody order. A left-behind parent or the U.S. Central Authority can also ask the foreign central authority to report on the child's condition.

Welfare and Whereabouts Visits for U.S. Citizens Abroad

In Hague and non-Hague countries, OCI or a left-behind parent may request a consular officer in the U.S. Embassy or consulate to conduct a welfare and whereabouts check on a U.S. citizen child (including a dual national). The Embassy works with local authorities to locate the child. A consular officer then attempts to visit the child and report back on his or her condition. If an abducted child is a national only of the country to which she or he has been taken (and not also a U.S. citizen), the embassy of that country should be contacted for assistance.

The abductor may refuse to allow U.S. authorities to visit the child and/or to disclose the child's foreign address to the left-behind parent. If the abductor will not permit the consular officer to see the child, the U.S. Embassy or consulate can request the assistance of local authorities, either to arrange for such a visit or to have the appropriate local official make a visit and provide a report on the child's health and welfare.

Department of State, Diplomatic Security Service

The Diplomatic Security Service (DSS) Criminal Investigative Liaison Branch serves as the primary contact for law enforcement seeking assistance from Regional Security Officers (DSS–RSO). In many countries, the DSS–RSO is the sole representative of U.S. law enforcement physically located in the country. In conjunction with efforts by OCI, the DSS–RSO at the U.S. Embassy abroad may request that foreign police contacts ascertain the child's location, whether or not there is a warrant for the abductor, and the location of the abductor when there is a criminal investigation.

INTERPOL–U.S. National Central Bureau

INTERPOL is a 178-nation police communications network that enables police forces around the world to coordinate international criminal investigations and to exchange humanitarian information, such as missing persons inquiries. Each of INTERPOL's member countries maintains a national central bureau

(NCB) to serve as the country's point of contact with the international law enforcement community. In this country, the INTERPOL–U.S. National Central Bureau (INTERPOL–USNCB, or USNCB) is an office within the Department of Justice.

The USNCB serves Federal, State, and local law enforcement, as well as its foreign police counterparts. The USNCB and almost all INTERPOL national central bureaus operate 24 hours per day, 7 days per week, 365 days per year. They communicate with one another only at the request of law enforcement, using a dedicated telecommunications system or, in some instances, telefax. INTERPOL national central bureaus may also communicate by telephone in urgent circumstances, such as attempts to stop an abduction in progress.

Specifically, the USNCB can at any time transmit immediate, text-only messages, called "diffusions," to one or any number of other national central bureaus, asking police authorities of each recipient country (1) to search for a fugitive charged with a crime carrying more than 1 year's imprisonment, whom the prosecutor is willing to extradite; (2) to trace and locate an abductor, whether or not charged with a crime; and/or (3) to locate and ascertain the safety and welfare of a missing or abducted child. Diffusions may also inform foreign authorities of any medical conditions that a child may have or any particular danger to the child and/or ask that an abducted child be placed into protective custody.

Any national central bureau may in addition apply to INTERPOL headquarters in Lyons, France, for color-coded notices. Each notice includes the subject's identification, photograph, and (if available) fingerprints, in addition to case information. INTERPOL headquarters translates notices into four languages and sends them to all 178 INTERPOL members. The process takes at least several months.

Red (fugitive) notices seek persons wanted for extradition. A red notice requires a State or Federal arrest warrant for at least one crime that carries more than 1 year's imprisonment, plus the prosecutor's written agreement to extradite the fugitive (generally, from any country that can extradite the fugitive to the United States for the crime in question). A red notice asks police in all INTERPOL member countries to locate the fugitive and, if permissible under the law of the country in question, to detain or even arrest the fugitive for a limited period so that the seeking country can make a formal request for extradition through the prescribed channel.

Blue (trace and locate) notices seek persons, including abductors, whether or not they have been charged with any crime. Yellow (missing person) notices seek missing persons, including abducted children. It is possible to request a yellow notice on an abducted child and a red or blue notice on the abductor. Whether to request a diffusion and/or notice in any given case is a decision for law enforcement and the prosecutor.

Each foreign law enforcement authority handles all INTERPOL diffusions and INTERPOL notices that it receives according to its country's law and practice. The USNCB has no authority whatsoever over how a foreign country handles INTERPOL communications. The USNCB, however, promptly conveys any response it receives to the relevant U.S. authorities. This includes responses received by telephone during abductions in progress.

Practical problems:

- *INTERPOL is underutilized by law enforcement in international parental kidnapping cases. Federal, State, and local law enforcement could make significantly greater use of INTERPOL as to abductions in progress and completed abductions. INTERPOL's communications network may facilitate the interception of an urgent matter or the resolution of a longstanding one. Law enforcement needs training on immediate responses following an abduction, as well as on completed abductions, including contacting INTERPOL for appropriate assistance. See gap 6 and accompanying recommendations.*
- *The USNCB needs additional resources to support its efforts in halting and in locating fugitives and abducted children.*

Federal Bureau of Investigation

The FBI is the law enforcement agency tasked with investigating international parental kidnapping cases under Federal law. The FBI may discover the whereabouts of an abducted child when assisting State authorities in locating a fugitive or when conducting

its own criminal investigation of an international kidnapping matter. If an abductor is in another country, the FBI Legal Attache (Legat) stationed at the U.S. Embassy abroad may request assistance from local law enforcement in that country either to locate or to confirm a location as to the abductor and child. Although the FBI will not divulge criminal investigative information to the left-behind parent, the case agent may notify the parent if the child is found so that the parent can pursue appropriate civil remedies to secure the child's lawful return.

Practical problems:

- *When international parental kidnappings occur, prompt law enforcement response may result in intercepting an abduction in progress and/or may incidentally help to locate an abducted child. FBI agents should continue to receive training on the agency's responsibilities in international parental kidnapping to ensure effective responses in these cases. See gap 8 and recommendation 8.2.1.*
- *Resources are needed to support FBI efforts in locating abducted children.*

U.S. Postal Service

The U.S. Postal Inspection Service can provide change-of-address information upon the request of local, State, or Federal law enforcement officers investigating an international child abduction case.

Federal Inspection Services Personnel at U.S. Ports of Entry: U.S. Customs Service and Immigration and Naturalization Service

Federal inspectors from the U.S. Customs Service (Customs), the Immigration and Naturalization Service (INS), and other Federal agencies comprise the Federal Inspection Service (FIS). Customs and INS inspectors are cross-designated to carry out their respective responsibilities at land borders. They are referred to collectively as "Federal inspection services" (FIS) personnel.

Customs inspectors have legal authority to check persons entering and leaving the United States for merchandise and contraband. They may stop vehicles at the border and board vessels and aircraft without a warrant in order to perform inspections. They work side-by-side with INS inspectors, who play a gatekeeper role at designated air, land, and sea ports of entry to guard against the illegal entry of aliens. INS inspectors may question any person coming into the United States to determine his or her admissibility.

FIS personnel use the Interagency Border Inspection System (IBIS) to check the status of those entering and sometimes of those leaving the country. IBIS is an online system that links various Federal agency databases—including NCIC, the INS National Alien Lookout System (NAILS), and the Department of State Consular Lookout and Support System (CLASS)—to streamline inquiries as to critical information checked at U.S. ports of entry.

IBIS is critical to stopping an abduction at a U.S. border or international airport, as an IBIS query will reveal NCIC records and lookouts placed in IBIS by the FBI, INTERPOL, or other Federal law enforcement agencies, any of which may result in locating an abductor and child as they attempt to leave or reenter the country.

Practical problem: Heightened awareness on the part of border personnel could potentially result in stopping more incoming and outgoing abductions. Training for FIS personnel on how to recognize and respond to international abduction cases should be provided. See gap 7 and recommendations 7.1 and 8.2.1.

Defense Department Legal Assistance Offices and Worldwide Military Locator Services

When children are abducted from the United States by a member of the armed services or family member accompanying the service member, the Legal Assistance Office for the particular branch of the service can help find the child by providing information on the service member's location. Location information on service members can also be obtained by family members and by State and Federal agencies from the Military Worldwide Locator Services for each service branch.

Federal Parent Locator Service

Pursuant to the Parental Kidnapping Prevention Act of 1980 (42 U.S.C. 663), "authorized persons" may request address information on abductors and abducted children from the Federal Parent Locator Service (FPLS), for purposes of making or enforc-

ing child custody determinations and for enforcing State or Federal criminal parental kidnapping law. Authorized persons are the U.S. Central Authority and OJJDP for Hague cases; any agent or attorney of any State with the duty or authority under State law to enforce child custody determinations; courts (or their agents) with jurisdiction to make or enforce a child custody determination; and Federal and State attorneys authorized to investigate, enforce, or prosecute the unlawful taking or restraint of a child. Federal prosecutors and FBI agents may submit location requests directly to FPLS. Authorized State and local authorities may submit requests to the relevant State Parent Locator Service, which forwards them to FPLS.

National Center for Missing and Exploited Children

The Missing Children's Assistance Act (42 U.S.C. 5771 et seq.) directs OJJDP to address the problem of missing and exploited children by, among other things, establishing a toll-free telephone line to receive reports of missing children; establishing and operating a national clearinghouse of information about missing and exploited children; and providing technical assistance to law enforcement agencies, nonprofit agencies, and families to help locate and recover missing children. OJJDP provides funding to NCMEC to fulfill the Act's requirements. NCMEC is not a Federal agency or instrumentality. It is an independent nonprofit organization.

Since its establishment in 1984, NCMEC has had a significant impact on how the criminal justice community responds to stranger abductions and interstate and international parental kidnapping cases. NCMEC has been successful in locating missing children around the world. NCMEC's Web site, *www.missingkids.com*, posts pictures of missing children that may be accessed anywhere in the world. NCMEC is currently partnering with police agencies around the world to place their photos of missing children on the NCMEC site.

Practical problem: NCMEC's role in international parental kidnapping cases in relation to the various Federal agencies is neither fully developed nor clearly delineated. Federal agencies have an interest in defining an expanded role for NCMEC in outgoing cases, particularly on behalf of left-behind parents and other interested parties. See gap 1, recommendations 1.1, 1.4, 1.5, 8.4, and 9.6; and Issues for Further Study, 6.

Missing and Exploited Children's Program Web Site

OJJDP's Missing and Exploited Children's Program (MECP) Web site, *www.ncjrs.org/ojjdp/missing/index.html*, offers practical information to parents and law enforcement in connection with parental kidnapping and missing children cases.

Practical problem: Many different Federal agencies are potentially involved in international parental kidnapping situations. However, although a network exists among Federal officials who regularly work these cases, there are no designated Federal points of contact for left-behind parents or law enforcement to refer them to appropriate agencies for help. See gap 1 and accompanying recommendations.

Civil Remedies to Recover the Abducted Child

Mechanisms for Child Recovery

Hague Convention Remedy

The Hague Convention on the Civil Aspects of International Child Abduction provides the legal basis to seek the prompt return of children wrongfully removed to or retained in countries that are party to the Convention. The Convention took effect in the United States in 1988 following enactment of the International Child Abduction Remedies Act (ICARA) (42 U.S.C. 11601 et seq.), which establishes procedures for its implementation in this country. The Department of State, Office of Children's Issues is the U.S. Central Authority for the Hague Convention.

Fifty-four countries have become party to the Convention, with the expectation that others will join in the future. As of March 1999, the Convention is in force between the United States and 47 countries: Argentina, Australia, Austria, Bahamas, Belize, Bosnia and Herzegovina, Burkina Faso, Canada, China (Hong Kong Special Administrative Region only), Chile, Colombia, Croatia, Cyprus, Czech Republic, Denmark (except the Faroe Islands and

Greenland), Ecuador, Finland, the Former Yugoslav Republic of Macedonia, France, Germany, Greece, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Luxembourg, Mauritius, Mexico, Monaco, Netherlands, New Zealand, Norway, Panama, Poland, Portugal, Romania, Saint Kitts and Nevis, Slovenia, South Africa, Spain, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, Venezuela, and Zimbabwe.

When a child is removed from the United States and wrongfully taken to or kept in another Hague Convention country, the left-behind parent can use the Convention's administrative and legal remedies to seek the return of and access to the child. The Convention provides an immediate right of action to seek a child's prompt return to the country where he or she was habitually resident prior to the abduction. The premise of the Hague Convention is that the abducted child's custody should be determined by a court in the child's country of habitual residence and not by the unilateral actions of one parent. The goal is to restore the child to his or her home country for further custody proceedings in the courts there. A return order does not represent a decision regarding the merits of custody. By denying abductors the opportunity to litigate custody in their country of choice and promptly restoring the child to his or her habitual residence, the Convention is intended to deter abductions from occurring in the first place. A key feature of the Convention is that a parent does not need a custody order to seek a child's return. This is very important because so many abductions occur before a custody order has been issued.

Each country party to the Convention must establish a central authority to perform a variety of functions, including locating abducted children; facilitating the voluntary return of abducted children; assisting, either directly or indirectly, in the institution of legal proceedings for the child's return; and in some countries, arranging legal assistance for the left-behind parent.

Help is available from the U.S. Central Authority and from the central authority in the country in which the child is located or believed to be located. The U.S. Central Authority is the primary source of information on the Hague Convention in the Federal Government. The U.S. Central Authority provides left-behind parents with a copy of the application used to seek return of the child (or enjoyment of access rights) under the Convention. Although the foreign central authority has primary responsibility for operation of the Convention in that country, the U.S. Central Authority serves as liaison to the foreign central authority until the case is resolved. The U.S. Central Authority does not act as an attorney or agent on behalf of the applicant parent.

The person seeking the child's return may file an application for return either with the U.S. Central Authority, which forwards the application to the foreign central authority, or directly with the foreign central authority. After filing the application, the applicant, usually through his or her attorney in the other country, may need to bring a civil legal action for return in a court in the foreign country. (Left-behind parents are not required to contact central authorities to invoke the Convention. They may bypass both central authorities and file directly in a foreign court for return of the child under the Convention.)

The Convention requires the court to order the child's return forthwith if it finds the removal or retention to be wrongful and less than 1 year has elapsed from the date of the wrongful removal or retention to the date the proceedings commenced. The Convention provides limited exceptions to the return obligation, as follows: (1) more than a year has elapsed and the child is now settled in the new environment; (2) the person seeking return did not actually exercise custody rights or consented to or subsequently acquiesced in the removal or retention; (3) there is a grave risk that return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation; (4) a sufficiently mature child objects to being returned; and (5) return would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms. However, a court retains discretion to order the child returned even if one of these exceptions is proved.

The return process is meant to be expeditious. The Convention requires countries party to it to use the "most expeditious" procedures available to implement it and requires judicial or administrative authorities to act "expeditiously" in proceedings for the return of children. If a decision is not made within 6 weeks,

the applicant parent or the central authority of the requested country has the right to request a statement of the reasons for the delay. The U.S. Central Authority can initiate such inquiry through the central authority in the country in which return proceedings are pending.

Practical problems:

- *Implementation problems with respect to the Hague Convention, which have arisen in some countries, need to be addressed. See gap 4 and accompanying recommendations.*
- *Although the Convention purports to ensure that rights of access (visitation) may be exercised across international borders, in reality parents continue to face great difficulties gaining access to their children who are in other countries. See gap 5 and accompanying recommendations.*

Although it is probably the best remedy in international parental kidnapping cases, the Convention is not the exclusive remedy in countries party to it. Left-behind parents also may seek a child's return under foreign domestic law, as discussed below.

Non-Hague Convention Country Recovery

If a child is abducted from the United States to a country that is not party to the Hague Convention, the parent can petition a court in that country to enforce a custody order made by a U.S. court. However, Federal and State laws of this country that govern State court jurisdiction to make, modify, and enforce custody determinations—the Uniform Child Custody Jurisdiction Act (UCCJA) (9 U.L.A.123 (1988)) and the Parental Kidnapping Prevention Act (PKPA) (28 U.S.C. 1738A)—do not apply in other countries. Courts in other sovereign countries apply their own family law. They are not legally bound to enforce custody orders made in the United States, although some may do so voluntarily as a matter of comity (i.e., the principle of reciprocity among sovereigns).

If the foreign court refuses to honor the U.S. custody order, it may be necessary to file for custody in the foreign court under the laws and customs of that country. In some countries the parent may encounter religious laws and customs or biases based on gender or nationality that preclude an award of custody.

Recovery by Department of Defense Mechanisms

It is Department of Defense (DoD) policy, with due regard for mission requirements, international agreements, and ongoing DoD investigations and courts-martial, to cooperate with courts and Federal, State, and local officials who request assistance in enforcing court orders relating to active-duty members of the Armed Forces (DoD members) and civilian employees (DoD employees) stationed outside the United States, and family members who accompany them, who have been charged with or convicted of a felony in a court, have been held in contempt by a court for failure to obey the court's order, or have been ordered to show cause why they should not be held in contempt for failing to obey the court's order.

The policy and applicable procedures are set forth in Department of Defense Directive 5525.9, Compliance of DoD Members, Employees, and Family Members Outside the United States With Court Orders. The directive requires the head of the DoD component concerned or a designee to attempt to resolve the matter to the satisfaction of the court without the return of or other action affecting the member, employee, or family member (the subject). When that is not possible, the directive specifies procedures the DoD component head or designee must follow with respect to the subject, unless an exception is granted. If a request pertains to a felony or to contempt involving the unlawful or contemptuous removal of a child from the jurisdiction of a court or the custody of a parent or other person awarded custody, the DoD component head or designee is required to order the DoD member to return expeditiously to the United States. DoD employees and family members accompanying DoD members and employees are to be strongly encouraged to comply with the court order. Adverse consequences may result for those who do not comply, including withdrawal of command sponsorship and possible removal from Federal service.

Although the child is not the subject of a return order or other adverse action, the practical effect may be the same. The child may return to the United States with the service member who is ordered back to the United States. Or the child may return with or be returned by a DoD member, employee, or

accompanying family member who stands to lose a job, sacrifice benefits, or face other adverse consequences for noncompliance.

Practical problem: Participants in an international parental abduction focus group cited problems enforcing custody orders and recovering their children from parents connected with the U.S. military overseas. See Issues for Further Study, 4.

Encouraging Returns Through Visa Denials

Section 212(a)(10)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)(C)), providing for the denial of visas to certain international child abductors, is another statutory tool that may bring about the return of an abducted child to the lawful custodian under U.S. law. This ground of denial provides that any alien who detains, retains, or withholds a child of U.S. citizenship outside the United States in violation of a U.S. custody order is inadmissible until the child is surrendered to the person granted custody by that order. The exclusion does not apply if the child is located in a country that is party to the Hague Convention. Thus, U.S. border inspectors have authority to deny entry and U.S. consular officials abroad have authority to deny a visa to any alien parent who has abducted a child from the United States to a non-Hague country in violation of a U.S. custody order until the alien surrenders the child to the left-behind parent.

Effective October 21, 1998, section 212(a)(10)(C) also in certain circumstances makes an alien who intentionally assists or provides support to an alien abductor ineligible to enter the United States until the child is surrendered to the person granted custody of the child. This section also does not apply when children are in Hague countries.

Federal Role in Civil Child Recovery

Recovering a child who has been abducted from the United States or wrongfully retained in another country is a daunting challenge for a left-behind parent. The Federal Government may facilitate the process in a number of ways, including helping to locate the child, reporting on the child's welfare, facilitating negotiations for voluntary return, helping to find attorneys, providing country-specific information, facilitating legal proceedings abroad, intervening diplomatically, and facilitating travel back to this country.

Welfare and Whereabouts

Finding the child is the first priority when the child's whereabouts are unknown. Federal resources for locating abducted children and checking on their welfare are described in Locating Abducted Children and Their Abductors, above.

Voluntary Return

The Hague Convention charges central authorities to take appropriate measures, directly or indirectly, "to secure the voluntary return of the child or to bring about an amicable resolution of the issues." OCI and NCMEC, in both Hague and non-Hague cases, may facilitate negotiations between the disputants and make arrangements for the child's return if negotiations succeed, but they may not represent either party. Family members, other nongovernmental organizations such as Child Find, and sometimes law enforcement also may negotiate with an abductor or between the disputants in order to effect a return without litigation. A successful voluntary return is the best possible result, because it provides the best opportunity for the custody contestants to resolve their differences amicably.

Practical problem: Voluntary return of children is often elusive because few mechanisms exist to promote nonlitigated solutions to international abduction and retention cases. See recommendation 9.5.

Finding a Lawyer

Left-behind parents ordinarily seek the services of an attorney to bring legal proceedings to recover the child if efforts to secure voluntary return have been or would be unproductive. This normally requires finding and retaining a lawyer in the foreign country who speaks English, is versed in family law, and has affordable fees. The Federal Government cannot act as a private lawyer for the left-behind parent seeking the return of an abducted child from another country. However, the State Department, through OCI, can help parents find lawyers abroad.

If a left-behind parent plans to bring legal proceedings under the Hague Convention to secure return of the child, the foreign central authority may be responsible to provide or to help the parent find counsel. Unless the Hague country in which the child is located has taken a reservation to the Convention regarding legal counsel, the applicant may be eligible for free legal counsel provided by the foreign country, if he or she meets the foreign country's eligibility standards. The U.S. Central Authority can query the foreign central authority as to the availability of counsel in that country for the applicant parent in the United States.

In non-Hague cases (and in Hague cases in which the foreign government does not provide a lawyer), OCI can provide the left-behind parent with information on retaining a foreign attorney and a list, prepared by U.S. Embassies and consulates abroad, of attorneys in the foreign country who speak English and have expressed a willingness to represent U.S. citizens abroad. However, the attorneys on the list do not necessarily have family law expertise. Nongovernmental sources of lawyer referrals (e.g., the International Academy of Matrimonial Lawyers) are also available. The Legal Assistance Office for each branch of the military also provides legal assistance to members of the U.S. armed services whose children are abducted.

Practical problem: Left-behind parents in this country often need help in finding affordable, knowledgeable counsel in other countries and in paying for their services. See recommendations 4.4, 4.4.1, 4.4.2, and 4.4.3; gap 9 and recommendations 9.1 and 9.4.

Facilitating Legal Proceedings Abroad

Civil proceedings before courts in foreign countries for return of a child, whether pursuant to the Hague Convention or other law, are private international law matters. As such, the Federal Government's role is limited to providing assistance to facilitate the private right of action. In Hague cases, the U.S. Central Authority assists in processing return applications and reports on the status of return proceedings. Embassy consular officers assist when there are communication problems with a foreign attorney, and they provide updates on cases pending in the foreign country. OCI and consular officers also provide general information on the customs and legal practices in the country in which the child is located and on procedures for serving process, obtaining evidence, and authenticating documents for use in that country.

Practical problem: Left-behind parents and their lawyers would benefit from other services, including mentoring programs (parent-to-parent and lawyer-to-lawyer), mediation programs, and other efforts to resolve abduction and retention disputes short of litigation. See recommendation 8.4; gap 9 and recommendations 9.5 and 9.6.

Diplomatic Initiatives

Part of the Department of State's role as the chief U.S. foreign affairs agency is protecting the welfare of all U.S. citizens abroad (including abducted children) and seeking the fair and equal treatment of U.S. citizens abroad (including parents seeking return of their abducted children). The Department of State uses a variety of diplomatic initiatives to pursue U.S. interests abroad. These initiatives range from the negotiation of international conventions and treaties to direct actions in specific cases. These direct actions may include diplomatic intervention at the highest levels, formal written diplomatic communications such as diplomatic notes, or less formal communications such as an exchange of letters. As noted above, in Hague Convention cases, the established mechanism for return is a private civil action. Various forms of diplomatic action, however, can be important to promote and improve implementation of the Convention in order to foster the return of and access to children.

The Department of State attaches high priority to seeking participation in the Hague Convention by countries not yet parties to that agreement and systematically pursues outreach to countries that would make good treaty partners.

Practical problems: Left-behind parents expect the U.S. Government to intercede directly with foreign governments on their behalf to recover their children. When diplomatic action is not taken, some may feel the Government has let them down. Federal law and policy must be articulated and explained to parents. In addition, the United States should

undertake further bilateral and multilateral efforts to improve operation of the Hague Convention, promote its adoption by select countries, and develop better solutions in non-Hague countries when international custody and visitation disputes occur. See gap 3 and accompanying recommendations; gap 5.

Facilitating a Child's Return to the United States

The Federal Government can help remove obstacles that stand in the way of returning abducted children to this country.

Travel documents. If the child is a U.S. citizen but lacks a passport, the U.S. Embassy abroad may issue a passport on an urgent basis to prevent delay in returning the child to the United States.

Transportation costs. Transportation expenses may be prohibitive for many left-behind parents who bear the cost of the child's return. The Hague Convention does not require countries to pay these expenses. Federal victim assistance funds may be available to cover some or all of these expenses in criminal cases. NCMEC, through a grant from the Justice Department's Office for Victims of Crime, is able to provide parents who meet needs-based criteria financial assistance to attend court hearings in foreign countries or for transportation costs for U.S. citizen children to return to the United States.

Practical problem: In a word, money. Left-behind parents incur expenses, often beyond their means, seeking recovery of their abducted children. See gap 9, recommendations 9.1 and 9.4.

Repatriation loans. The U.S. Embassy abroad can arrange repatriation loans for U.S. citizens meeting needs-based eligibility criteria. Repatriation loans must be repaid. The foreign government may offer similar loan programs to its nationals.

Practical problem: See Transportation costs, above.

Significant public benefit parole. A "parole" within the immigration context permits an alien to enter the United States for a particular purpose when the alien would otherwise be ineligible under U.S. law to enter the country. Either the abductor or the child, if not a U.S. citizen, may require a parole to enter the United States. Courts in some Hague Convention proceedings have been reluctant to order a child returned under the Convention when the abducting parent cannot enter the United States under U.S. immigration laws and is therefore unable to return to this country to participate in custody proceedings.

When these concerns arise (e.g., after the abductor is denied a visa by the U.S. Embassy or consulate), the foreign government may request that a parole be granted for the abductor for purposes of participating in custody or related proceedings in a U.S. court. The Department of State's Visa Office submits the request for Significant Public Benefit Parole to the Immigration and Naturalization Service, Parole Unit, which adjudicates the parole request.

In addition to the possibility of parole for an ineligible alien, there is also the possibility of a waiver of visa ineligibility pursuant to section 212(d)(3)(A) of the Immigration and Nationality Act (8 U.S.C. 1182 (d)(3)(A)). A waiver would require the recommendation of the consular officer or the Department of State (Bureau of Consular Affairs/Visa Office) and the approval of the Attorney General (INS).

Stopping an Abduction in Progress: Intercepting the Child

It may be possible to recover a child by stopping an abduction in progress at a land border or airport in the United States or as the child enters, leaves, or transits another country. Successful interdiction usually depends upon there being a criminal warrant or investigation in connection with the abductor. Foreign governments may be responsive to a Hague application transmitted on an urgent basis, or they may take other measures as to the welfare of the child. (This is discussed in Criminal Prosecution and Extradition, below.)

Intercepting the child in the United States. In the United States, absent a criminal warrant or facts supporting probable cause to arrest, it is unlikely that an abduction in progress can be stopped and a child intercepted. However, if a child is identified at a land border or at an airport in the United States as a result of an NCIC inquiry, FBI and FIS personnel may detain the child at least temporarily, even if there is no criminal warrant for the abductor, pending questioning of the suspected abductor to determine whether the International Parental Kidnapping

Crime Act (IPKCA) or Fugitive Felon Act statute (discussed below) is being violated. If the person accompanying the child is ultimately detained on this basis, agents and inspectors may be able to detain the child temporarily until the relevant State authorities arrive. If, upon further investigation, the facts do not support a violation of IPKCA or the Fugitive Felon Act by the person accompanying the child, there is no basis under Federal criminal law to continue to detain the child.

Intercepting the child abroad. The Department of State, Office of Children's Issues may request foreign governments (in Hague and non-Hague countries) to exercise any power they may have under their own domestic law to protect an abducted child. Foreign authorities may have discretion to arrest, admit, or deport an abductor and child at a foreign port of entry. Some foreign authorities will use their domestic police powers to act as to the child alone if they find a factual basis to believe the child is endangered without regard to whether the abductor is subject to a criminal arrest warrant.

In very rare instances, certain cooperative Hague countries will intervene to take a child in transit with an abductor into protective custody upon the urgent filing of a Hague application. When pursuing this option, the Office of Children's Issues at the Department of State takes the lead coordinating with the central authority in the destination country and with law enforcement there as to itinerary and arrival times. Abductions in progress to or through Canada reported to the Royal Canadian Mounted Police Missing Children's Registry may be stopped and the child intercepted.

Criminal Prosecution and Extradition

All 50 States, the District of Columbia, the territories, the Federal Government, and many foreign governments recognize the abduction of a child by his or her parent as a "serious crime," subject to penalties in excess of 1 year in prison. A State or Federal criminal prosecution, coupled with international extradition, addresses the perpetrator. In appropriate cases, either State or Federal authorities may prosecute the abductor. The FBI, with its jurisdiction over both interstate flight and the Federal international parental kidnapping statute, may be contacted immediately in any matter involving a parental abduction from the United States. Either a State prosecution facilitated by Federal efforts or a direct Federal prosecution may serve as a basis for the international extradition of the abductor. The facts of the case and any relevant extradition treaty may indicate that State or Federal prosecution is preferable.

When the facts of an international parental abduction warrant criminal process, the left-behind parent still must ensure that civil efforts to locate and recover the child go forward as expeditiously as possible. Criminal prosecution (and the attendant investigation) may incidentally locate the child, but the arrest, extradition, prosecution, and incarceration of the abductor will not necessarily result in the child's recovery. In some cases, criminal process may frustrate child recovery, particularly in Hague countries.

State Law Prosecution, Assisted by Federal Law

Federal authorities can assist State criminal investigations and prosecutions in locating the fugitive and facilitating international extradition. With this assistance, State law is usually sufficient to address the criminal aspects of an international parental kidnapping and to seek international extradition. State prosecutors are not obliged to seek FBI assistance, but they must contact the Department of Justice, Office of International Affairs (OIA) for assistance regarding international extradition. State and local prosecutors may consult with the American Prosecutors Research Institute for information concerning the investigation and prosecution of parental kidnapping crimes, developed under a grant from OJJDP.

Fugitive Felon Act: Unlawful Flight to Avoid Prosecution Warrants

The Fugitive Felon Act (18 U.S.C. 1073) is a Federal statute in aid of State prosecution. It enhances the ability of States to pursue abductors beyond State and national borders. Because it permits the FBI to investigate an otherwise State case, it also may facilitate investigation internationally. In addition, the Parental Kidnapping Prevention Act (18 U.S.C. 1073 note) clarifies congressional intent that Federal fugitive felony warrants (i.e., unauthorized flight to avoid prosecution, or UFAP warrants) may

be issued in parental kidnapping cases when the abductor has fled the State or this country to avoid prosecution under applicable State felony statutes.

The local or State prosecutor requests a UFAP warrant in writing from a Federal prosecutor (United States Attorney) or the FBI. The requirements for obtaining a UFAP warrant in parental kidnapping cases are the same as in other fugitive felony cases: (1) existence of a State or local felony warrant; (2) probable cause to believe the fugitive has fled the jurisdiction of the State in order to avoid prosecution or confinement; and (3) assurance that the State or local prosecutor will extradite the fugitive for prosecution. If satisfied these requirements are met, the United States Attorney may authorize the FBI agent assigned to the case to file a request for a Federal UFAP warrant with the U.S. District (i.e., Federal) court.

The focus in UFAP matters is to locate and apprehend the abductor for a criminal law violation. If agents discover during a UFAP investigation that the abductor has left the country with the child, the FBI may be able to continue its investigation internationally by requesting the assistance of law enforcement authorities in one or more countries. In addition, if FBI agents discover the child's whereabouts during the course of their efforts to locate and apprehend the abductor, they may be authorized to alert local child welfare authorities and left-behind parents so that they can pursue recovery of the child.

Federal Prosecution Under the International Parental Kidnapping Crime Act

In 1993 Congress enacted the International Parental Kidnapping Crime Act (18 U.S.C. 1204). IPKCA makes it a Federal felony to remove a child under 16 from the United States or to retain a child outside the United States with the intent to obstruct the lawful exercise of parental rights. The statute defines parental rights as the right to physical custody of the child (including visitation rights), whether the right is joint or sole and whether the right arises by operation of law, court order, or legally binding agreement of the parties. IPKCA provides affirmative defenses if the defendant: (1) was acting within the provisions of a valid custody or visitation order; (2) was fleeing an incidence or pattern of domestic violence; or (3) failed to return the child due to circumstances beyond his or her control, notified or made reasonable attempts to notify the other parent within 24 hours, and returned the child as soon as possible. Violation of this statute is punishable by fine, up to 3 years' imprisonment, or both.

IPKCA clearly establishes international parental kidnapping as a crime. (See H.R. Rep. No. 103–390 (1993).) The House Report articulates that IPKCA is intended to send a strong message to the international community that the United States views parental kidnapping as a serious crime it will not tolerate. With the passage of IPKCA, Congress hoped to deter at least some abductions and enhance the force of U.S. diplomatic representations in seeking the return of children, particularly from countries not party to the Hague Convention.

The IPKCA statute expresses the sense of Congress that the Hague Convention should be the option of first choice for a parent seeking a child's return in cases in which the Hague Convention applies. Although IPKCA provides a criminal remedy in international abduction cases, it is not intended to detract from the operation of the Hague Convention.

The FBI investigates IPKCA violations, usually following a complaint by the left-behind parent. The U.S. Attorney, usually in the district from which the child was taken, may bring Federal charges after weighing a number of factors. The initial requirement under IPKCA—that Federal prosecutors seek approval before bringing an IPKCA case—has expired. However, Federal prosecutors still may consult with and obtain information concerning the statute from the Department of Justice, Child Exploitation and Obscenity Section. Federal prosecutors must seek assistance regarding international extradition from the Department of Justice, Office of International Affairs. Because State charges assisted by Federal resources may be just as effective as Federal charges in the international arena, pursuit of an IPKCA charge may not be appropriate if State charges are already pending. However, IPKCA may be the only available charging option if an abduction cannot be charged under State law (e.g., abductions occurring before the entry of a custody decree in States requiring violation of such orders for prosecution; abductions interfering with visitation rights not encompassed by a State statute).

Practical problem: Many State and Federal prosecutors have little or no experience with parental kidnapping prosecutions. Detailed guidance should be made available to these attorneys and those who assist them. See gap 8, recommendations 8.2 and 8.2.1.

Charging Considerations in Criminal Cases

Abductions to Hague Countries

The decision to charge a parental kidnapping crime under State or Federal law must be made on a case-by-case basis, depending upon the facts of the case and whether the child has been taken to or kept in a Hague country.

The prosecutor must weigh countervailing considerations before seeking criminal charges in an abduction to a Hague Convention country. First, if criminal charges are being considered, IPKCA expresses the sense of Congress that the Convention, if applicable, is the preferred remedy for child recovery. Second, criminal charges under IPKCA (or any other State or Federal statute) may adversely affect return proceedings under the Hague Convention. An outstanding criminal warrant may deter a voluntary or negotiated return; in other cases the outstanding warrant may be useful to locate and facilitate return of a child. In Hague proceedings, some foreign judges have been reluctant and others have refused to order a child's return to the United States if the parent's return would result in his or her arrest and attendant inability to participate in civil custody proceedings.

On the other hand, use of State and Federal criminal remedies may also be appropriate when abductors violate Hague court orders and refuse to return the child.

Abductions to Non-Hague Countries

When a child is abducted to a non-Hague country, filing criminal charges against the abductor may be useful in locating the abductor and child, but the criminal process and extradition address only the alleged offender and do not assure the child's return. Unfortunately, many countries not party to the Hague Convention also do not recognize this type of abduction or wrongful retention as a crime, making international extradition unavailable. Although extradition from a given country may not be available, INTERPOL alerts of various kinds may facilitate the detection of the abductor's travel to other countries from which extradition might be possible. As to the child, left-behind parents should pursue efforts specific to child recovery.

Imposition of Sentencing Conditions

When a State or Federal prosecutor secures a conviction against a defendant in a criminal international parental kidnapping case, it may be possible for the prosecutor to seek conditions in the sentence imposed as to the return of the child. The conviction of a father for the abduction of his three children to Egypt (a non-Hague country) under IPKCA, as well as the sentencing court's imposition of a special condition that the father return the children to the United States, were upheld on appeal. (See *United States v. Amer,* 110 F.3d 873, 877 (2d Cir. 1997).) The imposition of such conditions has proven ineffective to date; therefore, the imposition of such conditions must be considered on a case-by-case basis.

Federal Victim-Witness Assistance

The Federal Victims of Crime Act (42 U.S.C. 10607; 18 U.S.C. 3509) provides for the rights of and services to victims of Federal crimes, including international parental kidnapping. The Attorney General's Guidelines on Victim-Witness Assistance provides further direction for investigators, prosecutors, and victim-advocates handling child victims and witnesses. Statutes require the investigating and prosecuting agencies to: (1) identify child victims of an offense and provide the nonoffending parent or guardians with notice of their rights and the services for which they may be eligible, including counseling, support, compensation, and restitution; and (2) notify victims of major events in the conduct of the cases. The use of a multidisciplinary team and appointment of a guardian ad litem are encouraged in appropriate situations. Congress mandates that all Federal agencies dealing with victims of Federal crime maintain and adhere to written guidelines consistent with Federal law on victim-witness assistance. However, the decision as to the release of sensitive case information ultimately rests with the prosecutor in conjunction with the Federal investigator.

Practical problem: All Federal agencies that deal with international parental kidnapping crime victims must become conversant with their responsibilities under Federal victim-witness guidelines and regulations. See gap 8, recommendation 8.2.

Conduct of International Criminal Investigations

Those left behind, as well as State and local law enforcement, may engage FBI assistance by contacting the local FBI field office. INTERPOL may also facilitate foreign police assistance. The FBI or the State investigator may request that INTERPOL–USNCB send appropriate messages on their behalf.

International Legal Assistance

Although police-to-police contacts may secure investigative information, when the information sought from another country requires a judicial order or other form of compulsion for its production, the State or Federal prosecutor must seek assistance from the foreign government via mutual legal assistance treaty or letters rogatory requests. The prosecutor may seek evidence, records, and testimony in support of substantive charges or to locate the fugitive. These requests, sought through the Department of Justice, Office of International Affairs, although usually productive, may sometimes take a very long time, and in some countries may not be entirely productive. Further, seeking foreign information, e.g., foreign bank records, may result in notice to the fugitive. The lead prosecutor should discuss and pursue these issues and matters with the country specialist from OIA.

Extradition

International extradition is a means to return the abductor to the United States for prosecution. The Department of Justice, Office of International Affairs assists Federal and State prosecutors in the international extradition of fugitives. Both Federal and State prosecutors must contact OIA at the outset of a case in which they intend to seek extradition. Federal and State prosecutors may seek to immobilize those charged with international extradition by seeking an urgent "provisional arrest with a view towards extradition" (often used in efforts to intercept an abduction). If the requested foreign government provisionally arrests the defendant, the United States (by its prosecutor) must submit the full extradition request (including sufficient evidence) via the Department of State to the foreign government within the deadline provided by the applicable extradition treaty. If an abductor's further flight appears unlikely, the prosecutors may omit the provisional arrest step and take the time to prepare and submit a full request for extradition with all necessary evidence at the outset. Either a State or Federal felony violation may serve as the basis for an extradition request, provided the potential maximum penalty exceeds 1 year's imprisonment.

Extradition for both State and Federal prosecutors reflects a commitment to prosecute the abductor. The prosecutor must commit in writing to prepare the extradition request with supporting evidence; to pay the costs of extradition (translation and travel costs for escorts and fugitive); and to prosecute the abductor, if extradition is successful, whether or not the child can be returned.

Practical problem: State prosecutors may forego prosecuting abductors for international child abduction because of the costs associated with international extradition. See gap 9, recommendation 9.2.

Extradition depends upon whether the United States has a bilateral extradition treaty with the country of refuge, whether the treaty partner can extradite for international parental kidnapping, and whether the country of refuge will extradite its own nationals. The United States has more than 100 extradition treaties in effect. The Extradition Treaties Interpretation Act of 1998 (Title II of Public Law 105–323) authorizes the United States to interpret extradition treaties listing "kidnapping" as encompassing the offense of parental kidnapping. It is understood that this interpretation will be adopted only where it is shared by the other country. (See *Federal Register,* Vol. 64, No. 15, January 15, 1999, pp. 3735–36.) Ultimately, decisions to extradite offenders rest entirely with the foreign state, through its judiciary and other authorities.

The abducted child is not subject to extradition. The prosecutor and law enforcement should consider the effect that any effort to arrest and extradite an abductor may have upon the welfare of the child and his or her recovery. When the whereabouts of the abductor and child are not known, efforts to locate

the abductor for purposes of arrest and extradition may indirectly facilitate child recovery. However, particularly in Hague countries, such efforts may hinder civil child recovery under the Convention. Those left behind will not necessarily be informed of any or all efforts to locate and arrest the abductor, for a variety of reasons, including the use of informants and the maintenance of sensitive law enforcement relationships abroad. However, when an abductor is arrested, authorities will inform the left-behind parent so that he or she can take steps to recover the child. The foreign government also may use its own child welfare authority to take the child into protective custody, pending further proceedings.

Stopping an Abduction in Progress: Intercepting the Abductor

When an abduction is in progress and law enforcement is notified immediately, it may be possible to stop the abduction before the abductor leaves the United States, while the abductor is transiting through a second country, or upon arrival but before admission to the foreign destination country.

In the United States

As a general rule, law enforcement efforts to stop an abduction in progress will be directed at intercepting and detaining the suspected abductor for violating State or Federal criminal law. Once the suspected abductor is located, if there is no criminal warrant pending against him or her and if there is no other basis to detain the abductor further for criminal investigative purposes (such as indications the child is in danger), law enforcement authorities must release the abductor and the child to continue on their journey. The conclusion to draw is that, although a suspected abductor and victim child may be temporarily detained for a variety of reasons, the only effective means of stopping an abduction in progress is through criminal process.

Immediately upon being informed by the left-behind parent of an international abduction in progress, local law enforcement may contact the FBI field office and/or INTERPOL for assistance. Once contacted, the FBI works with the lead prosecutor and local investigator and coordinates with other appropriate agencies (including, depending upon the facts of the case, the Department of State, INTERPOL, OIA, Customs and INS, and local law enforcement authorities such as port authority police) to investigate and, if possible, stop an abduction in progress. Prompt NCIC entries on the child (Missing Person File) and abductor (Wanted Persons File if there is a warrant) improve the chances for detection in the United States. The FBI agent may treat the abduction in progress as a UFAP matter or an IPKCA investigation and open a preliminary or full investigation. The FBI will use the resources and tools that are used to track and arrest any criminal fugitive attempting international flight. The INTERPOL–USNCB immediately contacts all appropriate U.S. and foreign authorities in an effort to halt the abduction and to recover the child.

(In cases relying solely upon the Hague Convention or the exercise of foreign police powers as to the welfare of the child, the Department of State, Office of Children's Issues will take the lead. See Stopping an Abduction in Progress: Intercepting the Child, above.)

Upon Arrival or Entry at Foreign Country

Interception abroad may be possible through the use of a U.S. criminal arrest warrant coupled with a request pursuant to any applicable extradition treaty for urgent provisional arrest and/or through the expedited revocation of passports or other travel documents. However, all discretion to intercept an abductor and child at a foreign port of entry rests with the foreign law enforcement and immigration authorities. The United States may request but cannot dictate what steps will be taken. Foreign authorities may execute a request from the United States for the urgent provisional arrest of the abductor for purposes of extradition. The foreign government involved may also be able to exercise authority under its domestic law to prevent the entry of the abductor, to expel or deport the abductor, and/or to address the welfare of the child. If the abductor is arrested, foreign authorities generally take steps to protect the child pending efforts by those left behind in the United States to recover the child.

Part 2. Incoming Cases

Locating Abducted Children and Their Abductors in the United States

Many of the resources available to find children and their abductors in outgoing cases are also available to find abducted children and their abductors in this country. In addition, non-U.S. citizens seeking return of their children from the United States should contact their embassy in the United States for assistance.

National Center for Missing and Exploited Children

Child Abducted From a Hague Convention Country

NCMEC handles incoming Hague cases on behalf of the Office of Children's Issues under a tri-party agreement with the Department of State, as U.S. Central Authority, and OJJDP. In this capacity NCMEC assists in discovering the whereabouts of wrongfully removed and retained children in the United States. NCMEC receives Hague Convention applications for incoming cases and helps locate children abducted from Hague countries. NCMEC, handling incoming cases for the U.S. Central Authority, may also be requested by the foreign central authority or left-behind parent to report on the abducted child's condition. NCMEC coordinates with its State contacts to carry out such requests.

Child Abducted From a Non-Hague Convention Country

NCMEC also provides location assistance in non-Hague cases. NCMEC's considerable locating capabilities include broadcasting fax posters of abducted children to more than 9,000 law enforcement agencies, FBI field offices, missing children clearinghouses, and border offices. It provides informational materials to any parent or law enforcement officer searching for a child missing in the United States from another country.

Department of State, Office of Children's Issues

The Department of State plays no role in locating a child abducted to this country from a non-Hague Convention country. The foreign government would call upon its own consular officers in the United States to locate, visit, and report on the condition of the child.

INTERPOL–USNCB

Foreign police usually send messages through INTERPOL to alert U.S. authorities about an abduction if they believe that the abductor may travel or is traveling to the United States. As part of its humanitarian mission, INTERPOL–USNCB forwards to U.S. authorities, as appropriate, incoming foreign messages concerning children abducted to or retained in the United States and relays all U.S. responses. USNCB may coordinate with NCMEC (which has a mandate to locate missing children) and/or with appropriate Federal, State, or local authorities to locate a child abducted to the United States from a Hague Convention country or a non-Hague country.

If the abduction is in progress, INTERPOL–USNCB forwards any foreign investigative request to appropriate State and U.S. port-of-entry liaisons. They notify USNCB if the abductor and/or the child attempt to enter the United States.

Federal Inspection Service: INS and Customs

Abducted children and their abductors may be identified at U.S. borders and international airports by FIS personnel as a result of their observations or of IBIS queries in connection with border inspections.

NCIC

U.S. law enforcement in any capacity (e.g., State, local, FBI, and FIS personnel) and anywhere (e.g., at ports of entry or elsewhere in the country) may query NCIC directly or through IBIS to cross-check information before them against NCIC files. When an NCIC record matches the inquiry, the record will be confirmed and appropriate action taken.

FBI

At the request of a foreign police agency, the FBI may attempt to locate a child abducted to the United

States in violation of the criminal laws of the requesting country. The FBI Legal Attache assigned to the country from which the child was abducted transmits the request to the appropriate FBI field office. If the child is located by U.S. law enforcement, the FBI notifies the requesting foreign police agency.

U.S. Postal Service

Local, State, or Federal law enforcement officers investigating an incoming child abduction case may request change-of-address information through the U.S. Postal Inspection Service. The Postal Service also has a photo distribution program to fax flyers of abducted children to post offices nationwide for display and for dissemination by mail carriers.

Defense Department Legal Assistance Offices and Worldwide Military Locator Services

When a child residing abroad is wrongfully taken to or retained in the United States by a member of the armed services or other family member accompanying the service member, the Legal Assistance Office for the particular branch of the service can help find the child by providing information on the service member's most recent duty assignment and location. This information can also be obtained by family members and by Federal and State agencies from the Military Worldwide Locator Services for the specific branch of the service in which the abductor (or family member) serves.

Federal Parent Locator Service

Address information on abductors and abducted children may be available from FPLS. The directory of new hires may be the most useful source of address information in incoming abduction cases, particularly if the abductor has no previous employment history in the United States. However, a Social Security number is needed to do a search.

Civil Remedies for Child Recovery

Hague Convention Remedy

The Hague Convention can be used to seek return of a child who has been wrongfully taken to or kept in this country from another Hague Convention country. A left-behind parent in another country may file an application for return with the foreign central authority or with the U.S. Central Authority, but is not required to do so. Instead, a return proceeding may be filed directly in court.

At present, NCMEC handles incoming applications for return under the Hague Convention on behalf of OCI. NCMEC receives applications for assistance pursuant to the Hague Convention, corresponds with foreign central authorities, assists in locating abducted children, coordinates with State missing children clearinghouses, provides legal referrals and parental support, and acts as liaison to law enforcement. Once a child is located, NCMEC facilitates negotiations between family members and the initiation of legal proceedings for return of the child under the Hague Convention.

Legal Proceedings Under the Convention

A left-behind parent abroad may bring legal proceedings in the United States for return or access under the Convention. Procedures for using the Convention in this country are set forth in the International Child Abduction Remedies Act (42 U.S.C. 11601 et seq.). Implementation of the Convention is further clarified in the Code of Federal Regulations (Chapter 22, Part 94). As with outgoing cases, neither NCMEC nor the U.S. Central Authority is a party to the return proceeding. OCI as the U.S. Central Authority may send an informational letter about the Convention to the court and the parties. The U.S. Central Authority is also authorized by the Convention to request a status report on the case from the court if a ruling is not made within 6 weeks.

The Hague Convention is not the exclusive remedy in international child abduction cases. A left-behind parent may use any means available under State law to seek return of abducted children or to exercise visitation rights. He or she need not notify the U.S. Central Authority or NCMEC to invoke the Convention or to bring any other lawsuit concerning the child.

Lawsuits to Enforce Foreign Custody and Visitation Orders

In the United States, the Uniform Child Custody Jurisdiction Act gives parents in other countries

a civil remedy to recover a child who has been wrongfully taken to or kept in this country in violation of a foreign custody or visitation order. UCCJA, as adopted in nearly every State, requires State courts to recognize and enforce foreign custody orders if reasonable notice and opportunity to be heard were given to all affected persons.

An even more explicit requirement for enforcement of foreign custody determinations is contained in the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), which was promulgated in 1997 as a replacement for UCCJA. As a uniform State law, UCCJEA is available for adoption nationwide; to date, two States have enacted it. UCCJEA requires State courts to enforce foreign custody determinations as if they were made by sister States. UCCJEA also empowers State law enforcement and prosecutors to assist in the location and civil recovery of children abducted from other States and countries, including Hague countries.

Through a private attorney, a left-behind parent may file a petition in State court pursuant to UCCJA (or UCCJEA, as States adopt that statute) to enforce the custody and/or visitation provisions of a custody order. The Federal Government plays no role in these proceedings.

In States that adopt UCCJEA, the designated State public official (who is likely to be the local prosecutor) would assist in locating internationally abducted children; securing compliance with the Hague Convention; and, subject to conditions set forth in the statute, enforcing foreign custody orders. The public official acts on behalf of the court and does not represent any party.

Practical problem: UCCJEA is a uniform State law. For UCCJEA to have the greatest impact, all 50 States and the District of Columbia must enact it. Federal support for the statute might accelerate its consideration by the States. In that UCCJEA may facilitate incoming Hague and non-Hague cases, relevant Federal agencies should review it and consider promoting its adoption. See Issues for Further Study, 2.1.

Finding a Lawyer

Hague Cases

International Child Abduction Attorney Network. The International Child Abduction Attorney Network (ICAAN) is a network of attorneys willing to represent parents in incoming Hague cases on a pro bono or reduced-fee basis. NCMEC now maintains and endeavors to expand ICAAN, which was originally established by the American Bar Association's Center on Children and the Law under an OJJDP grant.

NCMEC, under its agreement with the Department of State to handle incoming cases, makes every effort, using ICAAN, to find lawyers for parents. The need for ICAAN arose because the United States, when it ratified the Hague Convention, took a reservation to Article 26, pursuant to which this country is not obligated to provide free lawyers to foreign applicants who seek return of or access to their children under the Convention except to the extent provided by our legal aid system. Also with OJJDP funding, the American Bar Association developed materials for practitioners and judges about the Hague Convention. NCMEC provides attorneys participating in ICAAN with these and other educational materials.

California's public prosecutors. California has a statewide network of prosecutors who handle incoming Hague matters involving children abducted to that State. NCMEC refers incoming Hague cases to the California State Attorney General's Office, which refers the matter to the district attorney for the county in which the child is located. Although the State prosecutors do not represent any party, their efforts may obviate the need for the left-behind parent to hire his or her own lawyer, particularly if the return proceeding is uncontested.

Defense Department legal assistance. Members of the armed services may be able to secure legal help from the Legal Assistance Office for their respective branch of the service.

Non-Hague cases. In non-Hague cases (and in Hague cases in which the applicant does not obtain a lawyer via ICAAN or from the U.S. legal aid system), OCI refers parents to nongovernmental sources of lawyer referrals (e.g., the American

Academy of Matrimonial Lawyers, the American Bar Association Section on Family Law, and the International Academy of Matrimonial Lawyers). California district attorneys (and other States' authorities if empowered by UCCJEA or otherwise) may provide assistance with respect to children abducted to that State. As is true in Hague cases, legal assistance may be available to military personnel through the Legal Assistance Office for their specific branch of service.

Intercepting a child at U.S. ports of entry. See Intercepting Incoming Abductions in Progress, below.

Criminal Arrest and Extradition

Many foreign governments send INTERPOL messages to alert U.S. authorities about an abductor who may enter or already may have entered the United States and whom the requesting country may wish to extradite.

Provisional Arrest and Extradition

Persons charged with violating foreign criminal statutes who are located in the United States may be subject to provisional arrest and extradition at the request of a foreign government if the United States has an extradition treaty in place that covers parental child abduction. When a foreign arrest warrant is outstanding and the foreign government seeks provisional arrest in the manner provided by the applicable treaty, the Department of State and/or OIA reviews the request and, as appropriate, forwards it for action. Provided the fugitive is arrested, the requesting country must submit a formal extradition request and supporting documents pursuant to the applicable treaty. OIA generally attempts to cross-check incoming extradition requests against pending incoming Hague matters.

A fugitive arrested for purposes of extradition is entitled to a full hearing, appellate review, and a final determination by the Secretary of State regarding his or her surrender to the country requesting extradition. As in outgoing cases, separate and coordinated efforts must be made to secure the recovery of the child when the extradition of the fugitive is pursued.

Intercepting Incoming Abductions in Progress

Incoming abduction cases may be stopped at U.S. ports of entry by border authorities. The best chance of interception is when a flight arrives at an airport in this country, assuming foreign authorities have notified U.S. authorities. The full panoply of border lookouts, international police-to-police communication, and quick responses by those concerned bears on the success of stopping an incoming abduction in progress. Additional tools for alien exclusion and deportation are also available under U.S. law, which may serve in the recovery of a child, as discussed elsewhere.

FIS personnel, who are cross-designated to carry out their respective duties at land borders, are usually the first U.S. officials encountered by travelers who seek to enter the United States. If an FIS inspector discovers and confirms a lookout for an abductor or a child (e.g., an IBIS or NCIC record), that inspector may detain the person who is the subject of the lookout. The agency originating the NCIC record generally provides further instructions and information as to the disposition of the subject. Any person is subject to arrest at the border if there is probable cause to arrest or if a U.S. criminal warrant is outstanding as to him or her. Further, under immigration authority FIS personnel can deny admission to the United States of certain aliens. If deemed inadmissible, FIS personnel can direct that the alien return to the country from which he or she came.

If NCIC has an entry for a fugitive from foreign justice for whom there is an INTERPOL red notice, INS ordinarily detains the subject briefly. Foreign fugitives cannot be arrested based solely upon an NCIC record regarding a foreign warrant. The foreign government must seek provisional arrest with a view toward extradition. If the abductor is the subject of a red notice, OIA is notified without delay so that, if possible, provisional arrest and extradition can be coordinated with the State Department and the foreign government.

If the abductor is arrested, INS coordinates with local law enforcement and State welfare authorities to secure temporary care for the child if age and circumstances warrant. Information on the child and abductor's whereabouts is transmitted to the foreign NCB.

Conclusion

Federal policy and practice pertaining to international parental kidnapping have evolved significantly in the last 20 years in tandem with changes nationwide at the State level. As this report documents, the Federal Government may respond in many different ways when international abductions are threatened or occur. Responses aim to prevent abductions, and if they occur, to facilitate civil child recovery and, as appropriate, the investigation, extradition, and prosecution of abductors.

Even the best efforts will not ensure the return of every parentally abducted child and the satisfactory resolution of any case as to all parties. However, the current U.S. responses can improve, particularly in the areas of prevention, training, and education of parents and all who address these cases; technical and case coordination; and international outreach. All such efforts will benefit victim children and those left behind.

All such efforts have resource implications. Both specific measures and the resources to support them must be available to ensure that the Federal Government is doing its utmost to protect children from the harmful effects of international parental kidnapping.

Appendices

Appendix 1: Members of the Interagency Working Group

U.S. Department of State, Chair
- Office of Children's Issues*
- Office of the Legal Advisor

U.S. Department of Justice
- Child Exploitation and Obscenity Section, Criminal Division*
- Federal Bureau of Investigation, Office of Crimes Against Children*
- INTERPOL—U.S. National Central Bureau*
- Office of International Affairs, Criminal Division*
- Office of Juvenile Justice and Delinquency Prevention

National Center for Missing and Exploited Children*

* Member of the core interagency working group.

Appendix 2: Laws That May Apply in International Parental Kidnapping Cases

- Defense Department Regulations (32 CFR Part 146); Department of Defense Directive 5525.9, Compliance of DoD Members, Employees, and Family Members Outside the United States With Court Orders.
- Extradition Treaties Interpretation Act of 1998 (Title II of Public Law 105–323). (See also *Federal Register*, Vol. 64, No. 15, January 25, 1999, pp. 3735–36.)
- Fugitive Felon Act (18 U.S.C. 1073).
- Hague Convention on the Civil Aspects of International Child Abduction, Senate Treaty (Document Number 99–11, 1985; 19 ILM 1501). (See also *Federal Register*, Vol. 51, No. 58, March 26, 1986, pp. 10498 et seq.)
- Illegal Immigration Reform and Immigration Responsibility Act of 1996 (section 110, Public Law 104–208; 8 U.S.C. 1221 note).
- Immigration and Nationality Act (section 212(a)(3)(ii), 8 U.S.C. 1182(a)(3)(ii)).
- Immigration and Nationality Act (section 212(a)(10)(C), 8 U.S.C. 1182(a)(10)(C)).
- Immigration and Nationality Act (section 215, 8 U.S.C. 1185).
- International Child Abduction Remedies Act (42 U.S.C. 11601 et seq.).
- International Parental Kidnapping Crime Act (18 U.S.C. 1204 and 28 U.S.C. 1738A).
- Missing Children Act (28 U.S.C. 534).
- Missing Children's Assistance Act (42 U.S.C. 5771 et seq.).
- National Child Search Assistance Act (42 U.S.C. 5779, 5780).
- Parental Kidnapping Prevention Act of 1980 (18 U.S.C. 1073 note, 42 U.S.C. 502; 94 Stat. 3573; 42 U.S.C. 663).
- State criminal parental kidnapping statutes.
- State flagging laws.
- Uniform Child Custody Jurisdiction Act (9 U.L.A. at 123 (1988)).
- Uniform Child Custody Jurisdiction and Enforcement Act (9 U.L.A. at 115 (Part 1) (1997)).