



in cooperation with the



Family Abduction

Prevention and Response



Family Abduction Prevention and Response

**2009
Sixth Edition**

Revised by Patricia M. Hoff, Esquire

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Acknowledgments

This is the sixth edition of *Family Abduction: Prevention and Response*. It was prepared by Patricia M. Hoff, Esquire. Julia Alanen, former Director of the National Center for Missing & Exploited Children®'s (NCMEC) International Missing Children's Division and Policy Counsel spearheaded the completion of this edition.

The first three editions of this guide were published as *Parental Kidnapping: How to Prevent an Abduction and What to Do If Your Child Is Abducted*. The first and second editions were written by Patricia M. Hoff. The third edition was revised by Patricia M. Hoff and Janet Kosid Uthe, Esquire. The fourth edition, published under the title of *Family Abduction: How To Prevent an Abduction and What to Do If Your Child Is Abducted*, was revised by Judith Drazen Schretter, Esquire, and Donna Castle Aspell, Esquire. The fourth edition rearranged the original material and incorporated valuable suggestions made by many readers of the earlier versions. The fifth edition, revised by Patricia M. Hoff, was retitled *Family Abduction: Prevention and Response*. In addition to updating the fourth edition with new laws and tips for resolving family-abduction cases, it included for the first time a national directory of abduction laws and resources.

This sixth edition updates and revises the fifth edition. In addition to providing information about new laws and resources it also provides addresses for many helpful websites.

The National Center for Missing & Exploited Children (NCMEC) acknowledges the many people who contributed to the previous editions of this guide and whose efforts paved the way for the current edition. The NCMEC staff members, interns, volunteers, and associates listed below are acknowledged for helping to ensure the presentation of accurate and useful information in this edition. They include John B. Rabun, Jr., ACSW, NCMEC Executive Vice President and Chief Operating Officer; Julia Alanen, Esquire, former Director of NCMEC's International Missing Children's Division and Policy Counsel; Susan Rohol, Esquire, NCMEC General Counsel; Yiota Souras, Director of NCMEC's Office of Legal Counsel; Bud Gaylord, Executive Director of NCMEC's Case Analysis Division; Marsha Gilmer-Tullis, Director of NCMEC's Family Advocacy Division; Bob O'Brien, former Executive Director of NCMEC's Missing Children Division; Patricia Willingham, NCMEC's Deputy Director of Case Management Support; Robert Hoever, NCMEC Associate Director of Training; Angela Johnson, NCMEC's Administration Manager; Fariza Ibrahim, former NCMEC Case Support Specialist; Steven Van Dyke and Anneke Victorica, NCMEC legal interns; Terri Delaney, NCMEC's Director of Publications; Christina Miles and Erin Fitzgerald, NCMEC Publications Specialists; Suzanne Lappin, NCMEC volunteer; and Liss Hart-Haviv, Executive Director of Take Root.

Artwork by John Katsu

A Message to the Reader

Many child abductions in the United States are committed by a parent or other family member. An estimated 203,900 children were victims of family abduction in the United States in 1999, according to the second *National Incidence Studies: Missing, Abducted, Runaway, and Thrownaway Children (NISMART-2)*, a study published by the Office of Juvenile Justice and Delinquency Prevention (OJJDP), U.S. Department of Justice, in 2002.¹ Children who are victims of family abduction are uprooted from their homes and deprived of their other parent. Often they are told the other parent no longer loves them or is dead. Too often abducted children live a life of deception, sometimes under a false name, moving frequently and lacking the stability needed for healthy, emotional development.

The term **parental kidnapping** describes the wrongful removal or retention of a child by a parent. Because child kidnappings are frequently committed by other family members, the term **family abduction** more accurately describes such action. Both terms are used interchangeably in this book. Both have civil and criminal meanings.

When a parental kidnapping occurs the government may pursue **criminal** process against the abductor if a criminal law has been violated. Law enforcement and prosecutors are part of the criminal-justice system. The left-behind parent may pursue **civil** remedies to prevent an abduction or recover a wrongfully removed or wrongfully retained child. The left-behind parent's lawyer and the family court are part of the civil-justice system. It is important to understand both criminal and civil remedies can be pursued when an abduction occurs. The decision to pursue civil remedies is up to the parent, whereas the prosecutor ultimately has discretion whether to pursue criminal process.

This guide covers civil and criminal remedies in parental kidnapping cases. It navigates parents and attorneys through the criminal- and civil-justice systems' responses to parental kidnapping. It describes actions parents can take and laws that may be helpful when their children are the victims of family abduction. It also explains how to prevent abductions.

Parents should take this book with them when they meet with their attorneys, law enforcement, prosecutors, and family-court personnel, many of whom may be handling a family-abduction case for the first time.

Other sources of information about parental-kidnapping cases are available to law enforcement, prosecutors, and judges handling these cases. For instance law enforcement may contact the National Center for Missing & Exploited Children® for a free copy of *Missing and Abducted Children: A Law-Enforcement Guide to Case Investigation and Program Management*. Other publications for parents and concerned professionals are listed in the section titled "Bibliography" beginning on page 143.

¹Andrea J. Sedlak, David Finkelhor, Heather Hammer, and Dana J. Schultz. "National Estimates of Missing Children: An Overview," *National Incidence Studies of Missing, Abducted, Runaway, and Thrownaway Children*. Washington, DC: Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, October 2002, page 10, NCJ 196465 [hereafter *NISMART-2*].

If your child is the victim of a parental kidnapping you can call the National Center for Missing & Exploited Children at 1-800-THE-LOST® (1-800-843-5678) for information and help. You can also encourage the law-enforcement investigator, the prosecutor, or your attorney to contact NCMEC for advice and technical assistance.

For more information about the full range of services and publications offered by NCMEC, please write, call, or visit at

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Glossary

Here are some key words to help you use this guide and communicate with your lawyer and the law-enforcement community.

abducted child – a child who has been wrongfully taken, kept, or concealed by an abductor. Also called **victim child**.

abductor – a person who wrongfully takes, keeps, or conceals a child. The term includes married and unmarried parents, custodial and noncustodial parents, and other family members and their agents.

certified order – a copy of an order signed and certified as a true copy by the clerk of the court with whom the original order was filed. Different jurisdictions use different terms such as “**exemplified**” and “**teste**” orders.

child-snatching lawsuit – civil legal action seeking money damages brought by a victim parent and/or abducted child against an abductor and others who assist or support the abductor.

custodial parent – a parent who has been awarded sole or joint custody by a court.

custody determination – a court order awarding custody, including joint custody, and visitation, or otherwise allocating parenting time. Also called a **custody order**, **custody decree**, and **parenting plan**. Federal law now includes a separate definition of **visitation determination**. In this guide the term custody determination includes visitation determination.

deportation – the formal removal of an alien from the United States when the alien has been found removable for violating U.S. immigration laws.

emergency jurisdiction – legal authority of a court to issue temporary orders to protect a child within that jurisdiction when that child has been abandoned, or a child, sibling, or parent is subjected to or threatened with mistreatment or abuse.

ex parte order – a court order obtained without notice. An *ex parte* order is always temporary and followed by notice of a hearing by the issuing court.

extradition – legal procedure by which a person suspected of a crime, or an escaped criminal, is returned to the jurisdiction in which the crime was committed.

family abduction – the taking, keeping, or concealing of a child or children by a parent, other family member, or person acting on behalf of the parent or other family member depriving another individual of his or her custody or visitation rights. Family abductions can occur before or after a court issues a custody determination. Criminal statutes vary across the country both as to the title of the

offense and the conduct that is considered unlawful. Also called **parental kidnapping, child abduction, child snatching, and custodial interference.**

felony – a serious crime usually punishable by imprisonment for at least one year. A less serious crime is a **misdemeanor.**

Hague Convention – The Hague Convention on the Civil Aspects of International Child Abduction.

ICARA – International Child Abduction Remedies Act.

INTERPOL – International Criminal Police Organization, the world’s largest international police organization with 186 member countries including the United States. INTERPOL facilitates cross-border police cooperation. INTERPOL color-coded notices of Red, Blue, and Yellow may be issued in international, parental-kidnapping cases.

INTERPOL Blue Notice – seeks to collect additional information about a person’s identity or activities in relation to a crime.

INTERPOL Red Notice – seeks the arrest or provisional arrest of wanted persons with a view to extradition.

INTERPOL Yellow Notice – seeks to locate missing persons, often minors.

interjurisdictional – between two jurisdictions including between two states or two territories or between a state and a territory.

IPKCA – International Parental Kidnapping Crime Act.

joint custodian – a parent who has been awarded joint custody, sometimes called shared custody, by a court. A joint custodian may have joint legal custody, joint physical custody, or both.

jurisdiction – legal authority of a court to make child-custody determinations.

left-behind parent – the parent from whom a child has been wrongfully taken, kept, or concealed. Also called **searching parent** and **victim parent.**

missing child – federal law defines this term to mean any individual younger than 18 years of age whose whereabouts are unknown to such individual’s legal custodian, but note that federal law requires entry of information about missing children younger than 21 into the Federal Bureau of Investigation’s National Crime Information Center database. Definitions of “missing child” vary among states and territories.

missing-child clearinghouse – an agency of a state or territory that maintains records of missing children and, in some cases, assists local law-enforcement agencies in locating and recovering missing children.

modify – change. As a general rule the person seeking to modify a custody order must show a substantial change in circumstances since the custody determination was issued and that the modification would be in the subject child’s best interest. A parent may petition a court to modify an existing custody determination, for instance, to include prevention measures such as supervised visitation and bonds.

NCCUSL – National Conference of Commissioners on Uniform State Laws. This is also known as the Uniform Law Commission. Representatives from all 50 states and the U.S. territories participate in this organization, which drafts uniform laws on various issues. NCCUSL has produced the **Uniform Child Custody Jurisdiction Act**, **Uniform Child Custody Jurisdiction and Enforcement Act**, and **Uniform Child Abduction Prevention Act**.

NCIC – the National Crime Information Center database maintained by the Federal Bureau of Investigation.

NCIC-MPF – the Missing Person File within the Federal Bureau of Investigation’s National Crime Information Center database.

noncustodial parent – a parent who has not been awarded custodial rights by a court. A noncustodial parent may be awarded visitation rights, sometimes called **access rights** or **parenting time**, by a court.

parent – unless otherwise noted **parent** refers to a child’s biological parent, a person with legal custody or guardianship of that child, or a person or entity acting in such a capacity on behalf of that child during a crisis whether such is a family member, friend, or governmental agency.

parental kidnapping – *see family abduction* beginning on page ix.

parole – release of a convicted criminal from prison before his or her full term of incarceration but with restrictions and conditions.

personal service – a means by which a party to a lawsuit receives notice of a court action typically accomplished by handing the notice and other legal documents to the person. Many jurisdictions allow additional methods of service. *See substitute service* on page xii.

pick-up order – a court order directing local law-enforcement officials to pick-up a child from his or her abductor. This is also called a **warrant to take physical custody of child** or **warrant in lieu of a writ of habeas corpus**.

PKPA – Parental Kidnapping Prevention Act.

probation – release of a convicted criminal with no incarceration or before his or her full term of incarceration but with restrictions and conditions.

pro bono – free legal representation provided by an attorney.

pro se – a person who represents him- or herself in a court proceeding.

prosecutor – a person in the criminal-justice system who can file criminal charges against and prosecute an abductor for violating the law. Also called a **district attorney, state’s attorney, commonwealth attorney, or solicitor**. Federal prosecutors are called **U.S. Attorneys** and **Assistant U.S. Attorneys**.

search warrant – a legal order issued by a court allowing law enforcement to locate and take possession of private records, evidence, and information from a specific location for a criminal investigation.

state – as used herein includes a state of the United States of America; the District of Columbia; and any commonwealth, territory, or possession of the United States.

subpoena – legal order used in civil and criminal proceedings to demand an individual to come to court. A subpoena may also demand private records and information be produced for inspection or in court.

substitute service – a substitute for **personal service**. Both parties to a lawsuit must receive notice of all court actions. If a party cannot be found or deliberately conceals his or her whereabouts, most jurisdictions allow **publication** as an alternative to **personal service**.

temporary custody – custody for a limited time period. A judge may issue a temporary custody order before hearing the full case from both parents or after a trial but with the expectation of reviewing the custody decision in the near future. **Temporary orders** are issued in emergency cases.

UCAPA – Uniform Child Abduction Prevention Act.

UCCJA – Uniform Child Custody Jurisdiction Act.

UCCJEA – Uniform Child Custody Jurisdiction and Enforcement Act.

USNCB-INTERPOL – U.S. National Central Bureau of INTERPOL.

Family-Abduction Prevention and Action Checklist

by Patricia M. Hoff

This chapter summarizes steps a parent can take to help prevent an abduction or recover a child after an abduction. Each step is explained in the following chapters. As the checklist illustrates, a parent can seek relief, often simultaneously, from the civil courts, governmental agencies, and the criminal-justice system.

A parent is responsible for getting and enforcing a custody determination through the courts. Typically a parent hires a private attorney to help with the process though parents can appear *pro se*, or without an attorney, in court as well. A parent may also go to court for measures to prevent abduction or hold an abductor and/or accomplices civilly liable for damages resulting from the abduction. A parent may also seek assistance from various agencies with civil remedies when his or her child has been abducted. Such agencies include a missing-child clearinghouse and in an international-abduction case from the Missing Children Division of the National Center for Missing & Exploited Children® and the Office of Children's Issues (OCI) at the U.S. Department of State.

Law enforcement and prosecutors in all levels of government are responsible for investigating and prosecuting parental-kidnapping crimes. Typically a left-behind parent's role is to bring the case to the attention of law enforcement whose response will reflect both mandatory duties and discretionary authority. For example law enforcement has a mandatory federal duty to enter information about each missing-child case into the Federal Bureau of Investigation's National Crime Information Center-Missing Person File (NCIC-MPF) within two hours of report receipt.² Whether a parent will be prosecuted for abduction lies within the discretion of prosecutors. Each parental-kidnapping case is unique, and strategic decisions are made based on the facts of the case and personalities of all involved as to whether criminal process should be used along with civil remedies. Once law-enforcement authorities and/or prosecutors become involved in a case, they may call upon a parent in connection with the investigation or criminal trial. A parent may request status reports about the case, but law-enforcement authorities will not release sensitive information that might jeopardize an ongoing investigation.

²The Adam Walsh Child Protection and Safety Act of 2006 (Adam Walsh Act), Pub. L. No. 109-248 mandates law enforcement entry of information about missing and abducted children into NCIC within two hours of receipt of the report.

Preventing an Abduction

- Go to court and obtain a custody determination specifically defining custody and visitation rights and clearly stating the basis for the court's jurisdiction and manner in which notice and opportunity to be heard were given to the parties.
- If there is a risk of abduction, ask the court to include prevention measures in the custody order. Provide the court with evidence establishing a credible risk of abduction in **your** case, and request prevention measures tailored to **your** case.
- Abduction risk factors and personality profiles of potential abductors, as well as abduction-prevention measures, are discussed in the chapter titled "Preventing Abductions" beginning on page 9. By way of example, abduction risk factors include past abductions or abduction threats, lack of economic or familial ties to a child's home state, and evidence of abduction planning activities.
- Check laws in your jurisdiction for abduction-prevention statutes. A few jurisdictions already have such laws and others may soon enact the recently completed Uniform Child Abduction Prevention Act. In the absence of specific prevention statutes, judges may enter prevention orders to protect children.
- Abduction-prevention measures include supervised visitation, posting a bond, entering a child's name in the Passport Issuance Alert Program, and surrendering a child's passport(s) to the court.
- Parents can take precautionary measures to reduce the risk of abduction. These are discussed in the chapter titled "Preventing Abductions" beginning on page 9. Some examples are to notify your child's school or daycare of custody orders, flag passport applications for your child, and teach your child to use the telephone to call for help.

If Your Child Is Abducted

- Once you are sure your child has been abducted, immediately call or go to your local law-enforcement agency and file a missing-person report. Complete the "Missing-Person Report for an Abducted Child" on page 261, and bring it with you when going to your local law-enforcement agency.
- Ask law enforcement to enter information about your child into the FBI's NCIC. Federal law requires law enforcement to enter each missing-child case into NCIC within two hours of report receipt. Relevant sections of the applicable laws – Missing Children Act, National Child Search Assistance Act, and Adam Walsh Child Protection and Safety Act of 2006 – are reprinted respectively beginning on pages 155, 157, and 158. Bring this guide with you when meeting with law-enforcement authorities and show them these Acts. Law enforcement will decide if the circumstances of a child's disappearance meet the protocol for activation of an America's Missing: Broadcast Emergency Response (AMBER) Alert and/or other community notification.
- Report your child missing to the National Center for Missing & Exploited Children (NCMEC) by calling toll-free at 1-800-THE-LOST® (1-800-843-5678). Visit NCMEC's website at www.missingkids.com.

- Verify law enforcement has made the NCIC entry. If you cannot get this information from your local law-enforcement agency, call NCMEC toll-free at 1-800-THE-LOST (1-800-843-5678) and ask them to check NCIC to see if your child is listed. NCMEC can confirm NCIC entries but is not authorized to make them.
- If law enforcement does not enter information about your child into NCIC, your missing-child clearinghouse may be able to help by contacting law enforcement about your case. *See* the missing-child clearinghouse list in the section titled “Nationwide Directory of Family-Abduction Laws and Resources” beginning on page 199 or contact NCMEC for additional information. You can also ask your local FBI office to enter information about your child into NCIC. The Missing Children Act authorizes the FBI to make such entries. Contact information for the FBI is available in your local telephone book and at www.fbi.gov. From the home page click on the “Your Local FBI Office” link.
- If you suspect your child has been taken out of the country, call NCMEC toll-free at 1-800-THE-LOST (1-800-843-5678) and the U.S. Department of State’s Office of Children’s Issues toll-free at 1-888-407-4747 or by dialing directly at 202-736-9090 for advice about what to do. Find out if you have a remedy under the Hague Convention on the Civil Aspects of International Child Abduction (Hague Convention). If you do, consider filing an application under the Hague Convention for your child’s return. If you do not have a passport, apply for one in the event you have to travel outside of the United States to recover your child. Visit the U.S. Department of State’s website at www.travel.state.gov, and click on the “Apply for a Passport” link.
- If your child is in the process of being abducted internationally by a family member, contact the Office of Children’s Issues **without delay** toll-free at 1-888-407-4747 or by dialing directly at 202-736-9090. Also call NCMEC toll-free at 1-800-THE-LOST (1-800-843-5678) and the FBI. Contact information for the FBI is available in your local telephone book and at www.fbi.gov. From the home page click on the “Your Local FBI Office” link.
- If your child has been taken out of this country, or is in the process of being taken out of the country, report the abduction to your local FBI office. Ask to speak to the FBI’s Crimes Against Children Coordinator. The FBI has jurisdiction to investigate violations of the federal International Parental Kidnapping Crime Act (IPKCA).
- If an international abduction is in progress, urge law enforcement to immediately contact the U.S. National Central Bureau (USNCB)-INTERPOL for help in intercepting the abductor. USNCB-INTERPOL does not respond to requests directly from parents. Law-enforcement agencies may contact USNCB-INTERPOL directly or through the INTERPOL State Liaison Office. Law-enforcement agencies in the United States may contact USNCB-INTERPOL directly through Nlets, The International Justice and Public Safety Network, at DCINTER00. Parents concerned about an abduction-in-progress should also immediately contact NCMEC; OCI; transportation carriers the abductor may use such as airlines, train and bus companies; and local law-enforcement and Immigration and Customs Enforcement (ICE) officials at airports and other transportation facilities the abductor may use. Put them

on notice of the imminent abduction and request help in preventing your child's removal from the country. Provide a photograph of your child and suspected abductor if available. Please remember abductors may use remote or distant transportation facilities instead of those closest to the abduction site.

- Contact your missing-child clearinghouse and any local nonprofit, missing-children organization (NPO) for whatever assistance they may provide. Consult the section titled "Nationwide Directory of Family-Abduction Laws and Resources," beginning on page 199, for information about the missing-child clearinghouse and NPOs in your area. Referrals to other NPOs are available from the Association of Missing and Exploited Childrens Organizations Inc. (AMECO) by calling toll-free at 1-877-263-2620, dialing directly at 703-838-8379, or visiting www.amecoinc.org.
- If you do not already have a custody order, immediately get one. Consider hiring a lawyer to help you. A **temporary custody order** is usually enough to get help from law-enforcement authorities at least until your child is located. You do not need a custody order to file a missing-person report or have your child's description entered into NCIC. A court can issue a custody order even if your child has been abducted from your jurisdiction or outside of the country and you were never legally married to the abductor. If the abductor's whereabouts are unknown, making it impossible for you to serve him or her personally with notice of the lawsuit, you are allowed to give notice by publication. The sooner you act the more likely it is you can prevent the abductor from getting a valid custody determination from another jurisdiction or country. This in turn will make it easier for you to enforce your custody order and recover your child.
- If you already have a custody order get additional copies from the court. It is helpful to have at least one, but preferably two or three, **certified** copies available to show or give to law-enforcement and other agencies.
- Consider asking law enforcement or the prosecutor to file criminal charges against the abductor. Weigh the pros and cons of such action. You must be prepared to press charges after your child is returned. In some international-abduction cases foreign judges applying the Hague Convention will not return a child to the United States if criminal charges are pending in this country against the abductor. If you want to press charges meet personally with the local prosecutor to discuss prosecution. Be aware that the criminal law in your jurisdiction or the jurisdiction in which your child is located may or may not cover the abductor's conduct. Citations to criminal laws can be found in the section titled "Nationwide Directory of Family-Abduction Laws and Resources," beginning on page 199. Even if the abductor is criminally charged and government is proceeding against the abductor, you should be prepared to bring a civil action in court to enforce your custody order when the child is located.
- If the prosecutor charges the abductor with a felony, law-enforcement authorities should promptly enter the felony warrant into NCIC. NCIC files for the child and abductor should be cross-referenced. Ask law enforcement or NCMEC to verify these NCIC entries have been made.
- If there is evidence the abductor has fled the state or country to avoid felony prosecution, also ask the prosecutor to apply to the local U.S. Attor-

ney for a federal Unlawful Flight to Avoid Prosecution (UFAP) warrant pursuant to the Fugitive Felon Act. If a UFAP warrant is issued the FBI can conduct an investigation to find the abductor.

- If your child has been abducted from the United States, or such conduct has been attempted, or wrongfully retained in another country, a federal law violation may have occurred. Consider meeting with the U.S. Attorney to discuss possible charges under the International Parental Kidnapping Crime Act. As described above, criminal charges against the abductor may interfere with your efforts under the Hague Convention to secure your child's return. Discuss this possible pitfall with the federal prosecutor.
- Conduct your own search while law enforcement is conducting its investigation. You will find many search tips in the chapter titled "Searching for Your Child" beginning on page 63. If you have questions about a particular search method, including whether it would interfere with the criminal investigation, check with law enforcement before proceeding.
- Contact the crime victims' assistance office in your jurisdiction, as well as the Office for Victims of Crime (OVC) in the federal government, to find out if any assistance, such as financial, counseling, or otherwise, is available to help you with locating and recovering your child. OVC can be reached at 202-307-5983 or www.ovc.gov. This website lists contact information for other crime-victim programs.

After Your Child is Located

- To facilitate enforcement of your custody order, file or register your custody order with the local family court in the jurisdiction where your child is located. Follow procedures set forth in the law of that jurisdiction. If the Uniform Child Custody Jurisdiction Act (UCCJA) is in effect, send a certified copy of your custody order to the clerk of the court for filing. Under the UCCJA, once filed, a sister-jurisdiction order is entitled to be enforced as if it were a local order. If the jurisdiction in which your child is located has enacted the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), streamlined procedures in that law allow, but do not require, you to register your custody order. Registration is designed to simplify and expedite enforcement proceedings at a later date. A registered child-custody order can be enforced as if it were a local custody order.
- Ask local law-enforcement authorities to help with the recovery. The UCCJEA in many jurisdictions authorizes prosecutors, and law enforcement acting on their request, to assist with civil enforcement of custody orders. This statutory role is discretionary, however, and they may not get involved. In some jurisdictions law enforcement may assist based on custom and practice or written guidelines. In many jurisdictions, however, local law enforcement will not help recover an abducted child without a local court order. Filing or registering your order, *see* above, should be sufficient for law enforcement inclined to help.
- It may be necessary to petition the court where your child is located to enforce your custody order. A lawyer can help you do this. If notice of an enforcement proceeding, or other court action such as registration, is likely to cause the abductor to flee with or endanger your child, you can ask the court

to issue a special pick-up order for your child. *See* the chapter titled “Recovering Your Child” beginning on page 93.

- If your child is located in another country, consider hiring an attorney in that country to help recover your child. This may entail filing a petition for return under the Hague Convention, if it is in effect, or an action asking the foreign court to enforce your U.S. order or issue its own custody order. Send copies of your custody order and any criminal warrants for the abductor to your attorney. **Note:** Some Hague Convention countries provide counsel for the applicant-parent.
- Take steps to prevent a repeat abduction. Consider going back to court after your child is recovered to limit the abductor’s visitation rights and add prevention provisions to your custody decree to reduce the risk of another abduction. *See* the chapter titled “Preventing Abductions” beginning on page 9.
- Consider seeking psychological help for every family member to help with the reunification process. *See* the chapter titled “Psychological Issues in Recovery and Family Reunification” beginning on page 127.
- Consider filing a child-snatching lawsuit against the abductor and any accomplices. *See* the chapter titled “Civil-Court Remedies If Your Child Is Abducted” beginning on page 23.
- Be responsive to prosecutors’ requests as they prepare and present the government’s criminal case against the abductor.
- Inform all entities from which you have requested help that your child has been recovered.

Preventing Abductions

by Patricia M. Hoff

Chapter Overview

This chapter explains what parents can do to help safeguard children against family abduction. It focuses on special provisions that can be included in custody orders to help prevent abduction. Knowing when to ask for preventive measures, and which ones to request, is facilitated by an evaluation of three factors – the risk of abduction, obstacles to recovery, and potential harm to a child if abducted. This information should be helpful to parents seeking to prevent repeat or threatened abductions, as well as to those who suspect the other parent may be planning a first-time abduction. Below is a **summary list of prevention tips** more fully discussed in this chapter.

1. You need a custody order specifying the rights of both parents with respect to your child. Most jurisdictions call these rights “custody and visitation,” although some jurisdictions use different terminology. Consider hiring a lawyer to help you.
2. Be sure the custody order clearly states the basis for the court’s jurisdiction and manner in which notice and opportunity to be heard were given to the parties. This will facilitate interjurisdictional enforcement of custody and visitation rights and the recovery of your abducted child.
3. If you are concerned about abduction, ask the judge to include prevention provisions in the custody order. Your jurisdiction may be one of the few that already has abduction-prevention laws such as the Uniform Child Abduction Prevention Act (UCAPA). Other jurisdictions may soon enact UCAPA. Even in the absence of specific abduction-prevention statutes, judges may enter prevention orders to protect children.
4. To decide which prevention measures to request, evaluate the risk of abduction, obstacles you would encounter trying to recover your child, and potential harm your child is likely to suffer if abducted. More restrictive preventive measures will be needed when the risk of abduction is high, obstacles to recovering your child would be difficult to overcome, and abduction is likely to be harmful to your child.
5. How can you tell if there is a risk of abduction? Consider the list of “red flag” indicators of abduction risk and six personality profiles listed below. One caveat is the absence of these indicators does not mean an abduction will not occur and their presence does not guarantee an abduction will occur. There may be an increased likelihood of abduction if a parent has
 - Previously abducted or threatened to abduct your child
 - No strong ties to the jurisdiction in which your child lives
 - Friends or relatives living in another state, territory, or country
 - A strong support network
 - No job, is able to work anywhere, or is financially independent – in other words is not tied to the area for financial reasons
 - Engaged in planning activities such as quitting a job; selling a home; terminating a lease; closing a bank account or liquidating other assets; hiding or destroying documents; applying for a passport and/or visa,

- birth certificates, school or medical records; purchasing airline tickets for your child; or undergoing plastic surgery to materially alter appearance
 - Experienced a change in immigration status affecting his or her right to remain in this country
 - A history of marital instability, lack of cooperation with the other parent, domestic violence, or child abuse
 - A criminal record
6. While there may be no way to know for sure if a parent will abduct his or her child, six personality profiles have been identified by social scientists³ that may be helpful in predicting which parents may pose a risk of abduction.
- | | |
|-----------|--|
| Profile 1 | Parents who have threatened to abduct or abducted previously |
| Profile 2 | Parents who suspect or believe abuse has occurred and friends and relatives support these beliefs |
| Profile 3 | Parents who are paranoid delusional |
| Profile 4 | Parents who are severely sociopathic |
| Profile 5 | Parents who are citizens of another country, or dual citizens of the United States and another country, with strong ties to the country of origin and in a mixed-culture marriage that is ending |
| Profile 6 | Parents who feel alienated from the legal system and have family/social support in another community |
7. You may ask the court to include prevention provisions in a custody order such as
- Specific statement of custody and visitation rights; avoid terms such as “reasonable visitation”
 - Supervised visitation
 - Bonds and other guarantees
 - Joint-custody orders – avoid in parental abduction and family violence cases; if ordered, specify residential arrangements for the child
 - Prohibition on unauthorized pick-up of child
 - Authorization for law-enforcement assistance to recover an abducted child
 - Relocation restrictions on custodial parent with the child
 - Restrictions on removal of the child from his or her home state, territory, or country such as surrendering passports; prohibiting passport applications; notifying foreign consulate of passport restrictions; putting in place mirror-image orders; requiring assurances of return from foreign visits; and defining terms in the custody order in conformance with the Hague Convention on the Civil Aspects of International Child Abduction (Hague Convention)
8. Practical steps parents can take to reduce the risk of abduction
- Taking pictures of your child
 - Keeping a complete written description of your child
 - Making a record of your child’s Social Security Number (SSN)
 - Having your child fingerprinted
 - Teaching your child to use the telephone
 - Seeking counseling
 - Asking law enforcement or the prosecutor to intervene
 - Notifying schools, daycare centers, and babysitters of custody orders
 - Making lists of information regarding the child and other parent
 - Filing/Registering the custody order where the noncustodial parent lives
 - Flagging passport applications for your child
 - Treating child support and visitation as separate issues

³Janet R. Johnston and Linda K. Girdner, “Family Abductors: Descriptive Profiles and Preventive Interventions,” *Juvenile Justice Bulletin*, Washington, DC: Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, January 2001, NCJ 182788. Janet R. Johnston, Inger Sagatun-Edwards, Martha-Elin Blomquist, and Linda K. Girdner. *Early Identification of Risk Factors for Parental Abduction*. Washington, DC: Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, March 2002, NCJ 185026. Consult the section titled, “Bibliography” beginning on page 143 for information about obtaining these bulletins or *see* page 13.

Get a Valid, Enforceable Custody Order

It is important for a parent who is trying to prevent an abduction to get a valid **custody order** from a court with jurisdiction to make such an order. A well-written custody order not only defines the rights and responsibilities of both parents with respect to their child, but also is often critical to recovering a child after an abduction. Special provisions can be included in custody orders – both original and modification orders – to help prevent abduction.

To make or modify a custody order a court must have jurisdiction under law, the UCCJA or UCCJEA, over custody matters and notice must be given to the parties. The court's exercise of jurisdiction must also comply with the Parental Kidnapping Prevention Act (PKPA), in order for its custody determination to be eligible for "full faith and credit" or enforcement nationwide as a matter of federal law. These laws and the process for getting and enforcing valid custody determinations are described in the chapter titled "Civil-Court Remedies If Your Child Is Abducted" beginning on page 23.

Most parents retain a lawyer to obtain a custody order, whether it is an original order or a modification of an existing order. A lawyer can also assist in getting a custody order enforced and your child returned. Your attorney may work with a lawyer in another jurisdiction or country if you have to bring enforcement proceedings in another jurisdiction. Your lawyer can also help you request the filing of criminal charges against the abductor if such action is desirable and then advocate for investigation and prosecution.

Your jurisdiction may be one of the few that already has abduction-prevention laws. Consult the section titled "Nationwide Directory of Family-Abduction Laws and Resources" beginning on page 199. Many other jurisdictions may soon enact the recently completed Uniform Child Abduction Prevention Act (UCAPA) available at www.nccusl.org. From the home page click on the "Final Acts & Legislation" link. Then in the "Select an Act Title" field select "Child Abduction Prevention," and then click on the "Search" button. This act is also reprinted beginning on page 191. These laws provide parents and courts with guidance about when abduction-prevention measures are needed and which prevention measures may be ordered. Parents seeking prevention measures and their lawyers should read UCAPA. Even in the absence of specific abduction-prevention statutes, judges may enter abduction-prevention orders to protect children.

Prevention Provisions in the Custody Order

Specific provisions can be included in custody orders to help protect against abduction and deter violations of the order. If the original order does not include prevention provisions you may go back to court to modify the order. This entails filing a petition in which you ask a court with modification jurisdiction to order specific preventive measures. Under both the UCCJEA and PKPA the jurisdiction that issued the original custody order has exclusive continuing modification jurisdiction so long as specified conditions are met.

Often the risk of abduction arises before there is a custody order. If circumstances permit, promptly seek temporary custody with prevention provisions. In exigent circumstances, such as when an abduction is in progress, courts in many jurisdictions will issue temporary emergency relief, for instance an injunction, to prevent an abduction even before custody has been determined. As a general rule

any relief the court grants on an emergency basis is temporary. The next step is to get a custody order incorporating safeguards on a more permanent basis.

Be careful about the provisions you ask the court for because too many restrictions may be counterproductive. For instance making visitation too infrequent, structured, or impersonal may exacerbate tensions between the parents and actually lead to rather than prevent an abduction. Also consider your child's needs and feelings. Even if your child was previously abducted, he or she may have a close, caring relationship with the abducting parent despite the emotional pain and distress you experienced. Counseling may help your family arrive at an acceptable compromise.

Making the Case for Prevention Provisions

Be prepared to persuade the judge the prevention measures you seek are necessary. Focus your argument on the three factors of **risk of abduction; obstacles to location, recovery, and return if your child is abducted; and potential harm to your child if abducted.**

Risk of Abduction Risk factors that may increase the chances of a child being abducted include having a parent who has

- Previously abducted or threatened to abduct your child
- No strong ties to the jurisdiction in which your child lives
- Friends or relatives living in another state, territory, or country
- A strong support network
- No job, is able to work anywhere, or is financially independent – in other words is not tied to the area for financial reasons
- Engaged in planning activities such as quitting a job; selling a home; terminating a lease; closing a bank account or liquidating other assets; hiding or destroying documents; applying for a passport and/or visa, birth certificates, school or medical records; purchasing airline tickets for your child; or undergoing plastic surgery to materially alter appearance
- Experienced a change in immigration status affecting his or her rights to remain in this country
- A history of marital instability, lack of cooperation with the other parent, domestic violence, or child abuse
- A criminal record

Caveat: The absence of these factors does not guarantee an abduction will not occur and their presence does not make an abduction certain. While there may be no way to know for sure if a parent will abduct his or her child, social scientists⁴ have identified six personality profiles that may be helpful in predicting which parents may pose a risk of abduction.

⁴*Id.*

Profile	Characteristics
1	Parents who have threatened to abduct or abducted previously
2	Parents who suspect or believe abuse has occurred and friends and relatives support these beliefs
3	Parents who are paranoid delusional
4	Parents who are severely sociopathic
5	Parents who are citizens of another country, or dual citizens of the United States and another country, with strong ties to the country of origin and are in a mixed-culture marriage that is ending
6	Parents who feel alienated from the legal system and have family/social support in another community

Abducting parents across the six personality profiles share many common characteristics. They are likely to deny or dismiss the value of the other parent to the child. They believe they know what is best for the child; cannot see how or why they should share parenting with the other parent; and are likely to have very young children who are easy to transport and conceal and who are also unlikely to protest verbally or tell others of their plight. With the exception of the paranoid profile, abducting parents are apt to have the financial and moral support from a network of family members, friends, and/or cultural or underground groups. Many abductors do not consider their actions illegal or morally wrong. Mothers and fathers are equally likely to abduct, though at different times – fathers before a court order and mothers after an order has been issued.

The common characteristics of abducting parents and the profiles of parents at risk of abducting their children outlined above are described in detail in *Early Identification of Risk Factors for Parental Abduction and Family Abductors: Descriptive Profiles and Preventive Interventions*.⁵ Both reports are available at www.ncjrs.gov. From the home page, in the “Site Search” field, respectively enter “NCJ 185026” and “NCJ 182788,” and then click on the “Go” button. Free copies may also be obtained by calling the National Criminal Justice Reference Service (NCJRS) toll-free at 1-800-851-3420 or dialing directly at 301-519-5500.

Obstacles to Locating and Recovering Your Parentally Abducted Children A parent may encounter legal, procedural, cultural, and practical obstacles to recovering his or her abducted child. In family abduction cases, lack of funds is a common barrier to hiring lawyers and financing searches. Local statutes may not provide adequate remedies, making it harder to recover a child. The failure of law-enforcement agencies to take a missing-child report, make an NCIC entry, or actively investigate a family abduction can be major obstacles to locating an abducted child and also violate mandates stipulated in the Missing Children Act, National Child Search Assistance Act, and Adam Walsh Child Protection and Safety Act of 2006.

International abductions to countries that have not yet ratified the Hague Convention may present difficult obstacles if the “abducted-to” country does not recognize court orders issued in the United States; favors its own nationals; or awards custody based on religious, cultural, or gender grounds.

Information about foreign family/child custody law is available on the U.S. Department of State’s website at www.travel.state.gov. From the home page click on the “Children & Family” link. Under the “International Parental Child

⁵*Id.*

Abduction” heading click on the “Guarding against & responding to parental child abduction” link. Then respectively click on the “Resources” and “Country Specific Fliers” links.

Abductions to most countries that are parties to the Hague Convention present fewer obstacles because a legal remedy exists to seek a child’s return. Some Hague Convention countries, however, are non-compliant with the Hague Convention and may pose obstacles to return.

The U.S. Department of State prepares annual Hague Convention compliance reports, which are available at www.travel.state.gov. From the home page click on the “Children & Family” link. Under the “International Parental Child Abduction” heading click on the “Guarding against & responding to parental child abduction” link. Then respectively click on the “Resources” and most recently posted “Report on Compliance with the Hague Abduction Convention” links.

Potential Harm to the Child Family abduction has been characterized as a form of child abuse because of the harmful effects it has on children. Abducted children may be forced to lead a fugitive life under assumed names, sometimes with altered appearances, and kept out of school to avoid detection. The abductor may tell them the left-behind parent abandoned them, does not love them, or is dead. They may be neglected by their abductors and indoctrinated to fear law-enforcement officers and other adults who might help them. These and other problems experienced by abducted children are discussed in the chapter titled “Psychological Issues in Recovery and Family Reunification” beginning on page 127. In addition to possible long-term psychological harm, abducted children may be physically harmed at the time of the abduction as well as during the period of concealment. Parents most likely to harm their children are those who have serious mental and personality disorders, a history of violence or abuse, or little or no prior relationship with their child.

For more information about the impact of abduction on victim children contact Take Root, an organization of adult members who were victims of parental abduction as children. Visit www.takeroot.org or call toll-free at 1-800-ROOT-ORG (1-800-766-8674).

Weighing the Factors Strict preventive measures are warranted when the risk of abduction is high, a child is likely to be harmed, and/or the obstacles to recovery would be difficult to overcome. Less restrictive measures may suffice when the risk of abduction is low, the likelihood of location and recovery high, and there is little or no projected harm to the child.

Sample Prevention Provisions

To simplify enforcement of custody and visitation orders in the United States and facilitate recovery after an abduction, every well-written custody order should clearly state the

- Basis for the court’s exercise of jurisdiction and
- Manner in which notice and opportunity to be heard were given

In addition to these provisions, which belong in **every** custody order, consider the prevention safeguards noted below either alone or in combination.

Specify Custody and Visitation Rights Clearly state the custody and visitation rights of each party, including grandparents who have been granted visitation.

Avoid vague language such as “reasonable visitation.” Parents may not agree about what is “reasonable,” which can lead to conflict, and authorities may be unwilling to intervene when court orders are vague. Specify when visitation begins and ends including days and times. The order should identify the parent with whom the child will spend birthdays, school vacations, and major holidays. Specify the child’s residential arrangements at all times.

State the Penalties for Violating the Order Include a provision, prominently placed on the first page of the order, plainly stating violation of the order may subject the party in violation to civil and/or criminal penalties. Also ask the judge to advise the parties, while they are in court, about the possible consequences of violating the order.

Supervised Visitation Some situations warrant supervised visitation such as when an abduction has previously occurred or abduction threats have been made, when domestic violence or child abuse are alleged, or where the possibility exists the child will be abducted to a country from which recovery would be difficult. Ask the judge to allow visits only at designated times and places such as the custodial parent’s home; a supervised visitation center; or under the supervision of a person designated by the court such as a social worker, member of the clergy, or relative.

To find a supervised visitation center in your area, visit the website of the Supervised Visitation Network at www.svnetwork.net or call 904-389-7800.

Bonds and Other Guarantees When there is a risk of child abduction or noncompliance with the provisions of a custody order, it may be wise to ask the court to require a parent to post a bond or give some other security or guarantee to help ensure compliance with its orders and/or the child’s continued presence in or return to the jurisdiction. Some jurisdictions have enacted laws governing issuance of bonds in child-custody cases. These laws are listed in the section titled “Nationwide Directory of Family-Abduction Laws and Resources” beginning on page 199. Bonds may also be available in other jurisdictions that have not yet enacted specific laws; however, they may not be available in all jurisdictions.

A parent can request the court in an initial custody proceeding to order the other parent to post a bond. If certain circumstances arise after the court has issued its initial order a parent may file a motion with a court that has modification jurisdiction. Such circumstances could include abduction threats or new plans to exercise visitation in another country. The parent requesting a bond should be prepared to present persuasive evidence there is a risk of abduction or future violation of the custody/visitation order.

The amount of the bond should be sufficient to deter an abduction or other violation of the custody or visitation provisions of a court order, taking into account the financial circumstances of the parent who must post it, the “obligor.” A wealthy parent may be required to post a substantial cash bond. As an alternative to a cash bond a parent of limited means may be ordered to deposit with the

court title to real estate or personal property such as a car. The property would be held in escrow pending compliance with the order and/or return of the child. The parent whose custody or visitation rights are protected by the bond is known as the obligee.

Generally if the obligor violates the conditions of the bond, the obligee files a motion with the court to hold the obligor in contempt and order payment or forfeiture of the bond. Upon court order the proceeds of the bond are released to the obligee. The money is then available to the obligee to search for the child, hire an attorney, bring legal proceedings to recover the child, or enforce custody or visitation rights.

If the obligor is ordered to post a bond in connection with a civil proceeding, the bond remains in effect for as long as the civil judge orders. If a parent is directed to post a bond in connection with a criminal proceeding, such a bond remains in effect for no longer than the period of criminal punishment.

After consultation with the National Center for Missing & Exploited Children® (NCMEC), the Professional Bail Agents of the United States (PBUS) created a child-custody and visitation bond to be available to parents in high-risk situations. PBUS trains agents and insurance agencies regarding use of these bonds.

For information about obtaining child-custody and visitation bonds in your area, contact PBUS at 202-783-4120 or visit www.pbuis.com.

Joint-Custody Orders Joint custody is a valuable option for some families because it allows both parents to actively participate in the upbringing of their children. Joint custody does not work, however, in all situations. If possible avoid joint custody in cases where there is a history of family violence, parental kidnapping, friction between the parents; when an objection has been expressed by one parent to joint custody; or when the parents live in different jurisdictions or countries.

Whenever joint custody is ordered, the custody order should clearly specify the child's residential arrangements at all times. This is particularly important for enforcement purposes. Courts need to know what they are enforcing, and law-enforcement officers are reluctant to intervene in alleged custodial-interference cases when court orders are vague about where, and with whom, the child is supposed to be.

Authorize Law-Enforcement Assistance Many law-enforcement officers are unclear about their role in preventing and responding to parental-kidnapping cases. A provision in the custody order directing law-enforcement officers to take specific actions may produce faster, more effective assistance. One useful provision would direct law enforcement to "accompany and assist" the left-behind parent in recovering his or her child. Another would authorize law enforcement to recover the child.

Prohibit Unauthorized Pick-Up of the Child Prohibit the noncustodial parent from picking up the child from school, daycare centers, and babysitters, unless the custodial parent gives written permission.

Restrict Noncustodial Parent's Right to Remove the Child from the Jurisdiction or Country Include a provision in the custody order prohibiting the noncustodial parent from removing the child from the jurisdiction, the country, or both

without prior consent of the court or written consent of the custodial parent. A provision in the order restricting the child's removal from the United States will enable a parent to request the U.S. Department of State not to issue a U.S. passport for the child. Be advised such a provision will not prevent another country from issuing a passport for a child who is also a national of that country. Parents can, however, ask the other country to restrict issuance of a passport. Other countries may do so at their discretion.

Restrict the Custodial Parent's Right to Relocate With the Child A noncustodial parent may desire a provision in the custody order requiring the custodial parent to get consent from the noncustodial parent or court before moving away with the child. The restriction may cover domestic or international moves. The noncustodial parent may be concerned the child will be moved so far away that meaningful access is restricted or the child will be relocated to a country that will not honor a U.S. custody order. **Note:** A provision giving a noncustodial parent the right to be consulted about where the child lives may be interpreted by some courts as a right of custody within the meaning of the Hague Convention, which in turn would give a noncustodial parent the right to seek the child's return under the Hague Convention.

There is a growing body of law concerning the right of a custodial parent to relocate with his or her child. The trend is in favor of allowing relocation. Therefore, before seeking restrictions on the custodial parent's right to relocate with the child, noncustodial parents and their lawyers should review the law to determine what standards, tests, and/or presumptions apply.

Ideally, if the custodial parent plans to move, both parents should discuss what effect this will have on visitation. Litigation may be avoided if the parents can agree on the move and necessary adjustments to the visitation schedule. Depending on the distances involved it may be practical to have fewer but longer visits. For instance it may be better for the child to spend summers and major holidays with the noncustodial parent and the school year with the custodial parent. It is also a good idea to consider dividing the increased costs of visiting between the parents or allocating those costs to the parent who is moving away, instead of leaving the full burden on the noncustodial parent. If these issues are anticipated at the time the original order is made, that order can expressly permit the custodial parent to move with the child and indicate how visitation will change, if at all, in the event of a move. Otherwise the original order will have to be modified to reflect changes in visitation. The order should also require the parents to keep each other informed of their new addresses and telephone numbers.

Preventing International Abductions and Wrongful Retentions

The provisions noted below, alone or in combination, may also help deter international abductions and wrongful retentions in other countries. Some provisions are geared toward preventing removal of a child from this country. Others are intended to help ensure a child's return to this country after a lawful visit to another country. Also *see* the chapter titled "International Child Abduction," beginning on page 105, for more information about this topic.

The U.S. Department of State's website at www.travel.state.gov provides information about preventing international, parental, child abduction. From the home page click on the "Children & Family" link. Under the "International Parental Child Abduction" heading click on the "Guarding against & responding to parental child abduction" link. Then respectively click on the "Prevention," and "Children's Passport Issuance Alert Program" links.

Prevention measures include

- **Restricting a child's removal from the United States.**
- **Surrendering passports and other travel documents.** The custody order can direct the noncustodial parent to surrender his or her passport(s) and other travel documents, as well as any passports or other travel documents for the child in his or her possession, **before** visiting the child. The court may order passports surrendered to, among others, the custodial parent, the court, the clerk of the court, or the party's attorney.
- **Prohibiting issuance of new or replacement passport for a child.** Regulations reduce the possibility a passport issued in the United States could be obtained to further an abduction. The law and accompanying regulations require any person applying for a U.S. passport for a child younger than 16 to demonstrate both parents' consent to its issuance or the applicant-parent has sole authority to obtain a passport for a child.

To prevent issuance of a new or replacement passport for your child, seek a court order or provision in a custody order prohibiting the other parent from applying for a passport on the child's behalf. Send a copy of your court order to the Office of Children's Issues, U.S. Department of State, 2201 C Street, Northwest, SA-29, Washington, DC 20520-2818. They may be reached by calling toll-free at 1-888-407-4747, dialing directly at 202-736-9090, and via fax at 202-736-9132.

You should also ask the Office of Children's Issues to enter information about your child into the Children's Passport Issuance Alert Program. See "Flag Passport Applications" on page 22 for additional information about this program.

More information about restricting the issuance of passports is available in the chapter titled "International Child Abduction" beginning on page 105. Passport information is also available at www.travel.state.gov. From the home page click on the "Children & Family" link. Under the "International Parental Child Abduction" heading click on the "Guarding against & responding to parental child abduction" link. Then respectively click on the "Prevention," and "Children's Passport Issuance Alert Program" links.

Note: Foreign governments are not bound by custody orders issued by courts in the United States and may issue passports to children who are their nationals and visas to children who are not. You can, however, ask a foreign embassy or consulate not to issue a passport or visa to your child. Send the embassy or consulate a written request along with certified copies of any court orders you have addressing custody or international travel regarding your child. You should copy the U.S. Department of State on any letter you send. There is no legal mandate for foreign governments to comply with U.S. court orders or requests, but they may do so voluntarily.

- **Notifying foreign consulate of passport restrictions.** The court order may require the foreign parent to notify his or her embassy or consulate of the

order prohibiting the issuance of a new or replacement passport for a child. The court may further require the parent to furnish the court with a letter from the foreign embassy or consulate acknowledging receipt of a copy of the order. Although they are under no legal mandate to comply with U.S. court orders or requests, foreign governments may do so voluntarily.

- **Seeking mirror-image orders.** Before allowing your child to visit another country, the court may require the noncustodial parent to obtain an order from a court in the country where the visit is to occur recognizing the U.S. custody order and continuing jurisdiction of the U.S. court and agreeing to enforce the U.S. order in the event of a wrongful removal or retention. Alternatively the foreign court may issue its own order with terms identical to the U.S. order.

Be aware foreign courts are not legally obligated to issue such an order. Seeking a mirror-image order may be counterproductive in some countries, so before seeking this type of prevention measure it is advisable to consult an attorney in the foreign country about any “downside” risks. Although courts in a few countries, such as Australia, Canada, New Zealand, and the United Kingdom, may issue identical orders, courts in many countries may assume jurisdiction and enter their own custody orders, which may not conform to U.S. custody orders or ignore provisions conflicting with religious or other internal law. For example Islamic countries may not honor a U.S. order awarding custody to a mother under certain circumstances.

- **Seeking assurances of return from foreign visits.** When international visits are to occur the parent in the United States may ask the court to order the other parent to give assurances the child will be returned. Examples of such assurances include requiring the noncustodial parent to provide the custodial parent with a copy of the child’s round-trip airline tickets, an open ticket for the left-behind parent to travel to the country in case the child is not returned, addresses where the child will be, and telephone numbers of people with whom the child will be staying.
- **Defining terms in the custody determination to facilitate use of the Hague Convention.** Under the Hague Convention custody rights are defined by the law of the child’s country of habitual residence. In order for the Hague Convention to apply the child must have been removed from, or retained outside of, his or her country of habitual residence. To simplify application of the Hague Convention the party in the United States should ask the court to include a provision declaring the United States to be the child’s habitual residence. There is no assurance, however, a foreign court will treat a declaration of “habitual residence” made by a court in the United States as binding.

A person with “custody rights” has the right to seek return under the Hague Convention. The right to determine the child’s residence is considered a right of custody. If a noncustodial parent has the right to be consulted before a child is taken to another country, he or she **may** be deemed by some courts to have “custody rights” and thus may seek the child’s return under the Hague Convention. For this reason a noncustodial parent may seek – and a custodial parent may resist – a provision in a custody determination requiring consultation and consent before the child is removed from the country. This

was discussed under the section titled “Restrict the Custodial Parent’s Right to Relocate with the Child” on page 17.

Practical Things Parents Can Do to Reduce the Risk of Abduction

- **Take pictures of your child.** Take photographs of your child often. Be sure to take profile shots as well as front poses. If possible buy your child’s school portraits every year and take videos. A photograph of the other parent may also be helpful in the event of an abduction.
- **Keep a complete written description of your child.** This should include hair and eye color; height; weight; date of birth; birthmarks; other unique physical attributes; and other features such as glasses, contact lenses, braces, piercings, and tattoos.
- **Make a record of your child’s Social Security Number (SSN).** Internal Revenue Service rules require all children older than 1 year of age to have a SSN. You need a SSN to claim a child as a dependent on a tax return.
- **Have your child fingerprinted.** Most law-enforcement agencies provide this service at no charge, but they do not keep the child’s prints on file. You will be given the only fingerprint card for safekeeping.
- **Teach your child to use the telephone.** Teach your child his or her full name and how to use the telephone. Make sure your child knows your complete telephone number including area code. If your child is old enough to remember more than one number, teach your child your office, cellular, and/or other numbers at which you can be reached. Tell your child you will accept a collect call. Show your child how to dial the operator and “911” for help.
- **Consider counseling.** Some abductors may take a child when they feel, rightly or wrongly, their parental relationship with the child is threatened. Counseling may help ease you through potentially threatening times such as the initial separation, filing of a lawsuit for divorce or custody, issuance of final decrees, and start of a new romantic relationship.

Consider seeking assistance from Child Find[®] of America. This nonprofit organization serves missing children and their families, offers telephone counseling for parents who are considering abducting their own children, mediation, support services, and referrals to other organizations. The mediation program can be reached toll-free at 1-800-A-WAY-OUT (1-800-292-9688), and Child Find can be reached at 1-800-I-AM-LOST (1-800-426-5678) and at [www.childfind[®]ofamerica.org](http://www.childfind[®]ofamerica.org).

- **Ask law enforcement or the prosecutor to intervene.** Take abduction threats seriously especially if the parent making them has recently quit a job, sold a home, terminated a lease, closed a bank account, or taken any other action in preparation for flight. Threats may indicate a growing frustration that could motivate that parent to disappear with your child. Ask law enforcement or the prosecutor to contact the would-be abductor about the consequences of the abduction namely that taking a child is a crime and the offender could be imprisoned, be fined, or both. If the potential abductor has threatened your child, another family member, or you, notify your local law-enforce-

ment agency or the prosecutor. You may also be able to get a protection order under local law.

- **Notify schools, daycare centers, and babysitters of custody orders.** Certified copies of your custody order should be placed in your child's school files and copies should be given to teachers, daycare personnel, and babysitters. If there is a risk of abduction by the noncustodial parent, inform all individuals who care for your child of that risk and give them a photograph of the noncustodial parent if you have one. Ask to be immediately alerted if the noncustodial parent makes any unscheduled visits, and instruct them not to allow your child to leave the property with the noncustodial parent without your permission.

The best protection is to have a provision in your custody order prohibiting unauthorized pick-up of your child by the noncustodial parent from schools, daycare centers, and babysitters. Even without such a provision, though, a child should be released only to the parent entitled to custody. It is important to keep school authorities, daycare personnel, and babysitters aware of any changes in your custody or visitation arrangements. The custodial parent must also realize if the noncustodial parent is violent or threatening, school and daycare officials as well as babysitters may have no alternative but to release your child to that parent in order to prevent immediate injury to your child or other children in the area. Ask your child's school and/or caretakers to **immediately** notify law enforcement in the event of an abduction. A copy of the custody order should be immediately given to law enforcement responding to the call.

Custodial parents should notify school officials, daycare personnel, and babysitters if their children are going to be absent and ask to be immediately notified if their children do not arrive on schedule. A few jurisdictions require school officials to verify student absences, but custodial parents need to be sure all people who normally care for their children know the situation and the possibility of abduction. Time is critical in abduction cases. If a child is abducted on the way to school, daycare, or the babysitter, it is extremely important for the custodial parent to be immediately notified so a search for the child and abductor can immediately begin.

- **Keep lists of information.** Make a list of the noncustodial parent's address, telephone numbers, SSN or citizen-identification numbers, passport number(s), driver's license number, credit-card numbers, bank-account numbers, and date and place of birth. The same information should be gathered for relatives and friends who might help the abductor carry out an abduction.
- **File or register the custody decree where the noncustodial parent lives.** Follow procedures in the UCCJA or UCCJEA, whichever law is in effect in the state where the noncustodial parent lives and child will be visiting. Filing or registering puts the court on notice that a custody determination already exists. A valid order is entitled to enforcement and cannot be modified except as specified in the PKPA and consistent state laws. More information about filing and registration is found in the chapter titled "Recovering Your Child" beginning on page 93.
- **Treat child support and visitation as separate issues.** Child support and visitation are legally separate issues. As a general rule the refusal to pay child support is not a legal ground for denying visitation, and denial of visitation is

not a legal excuse to not pay child support. Additionally child abduction does not relieve the duty to support.

Caveat: It has been noted a parent may abduct a child as revenge because the custodial parent sued for overdue child support. While it is not our intention to discourage you from enforcing your right to collect overdue child support, it may be advisable to take extra precautions while doing so.

- **Flag passport applications.** A parent who is concerned a child may be taken to another country without his or her consent can request the child's name be placed in the U.S. Department of State's Children's Passport Issuance Alert Program. To make use of this program a parent or attorney should provide the child's full name, date and place of birth, telephone number, and a copy of the relevant custody orders to the Office of Children's Issues, U.S. Department of State, 2201 C Street, Northwest, SA-29, Washington, DC 20520-2818, 1-888-407-4747, 202-736-9090, fax 202-736-9132. This form is available at www.travel.state.gov. From the home page click on the "Children & Family" link. Under the "International Parental Child Abduction" heading click on the "Guarding against & responding to parental child abduction" link. Then respectively click on the "A-Z Index of Topics" and "Form – Request Entry into the Children's Passport Alert Program" links. A copy of this form is also found on page 269.

The requesting parent should be notified when a passport application is received for his or her child. If the U.S. Department of State has a court order on file providing for joint or sole custody to the requesting parent or restricting the child's travel, a passport should not be issued.

Civil-Court Remedies If Your Child Is Abducted

by Patricia M. Hoff

Chapter Overview

This chapter focuses on civil-court actions a parent can take to get a custody determination that will be enforceable between jurisdictions and how to find an attorney to help with that process. It also covers child-snatching lawsuits seeking compensation for the pain and suffering and out-of-pocket expenses caused by an abduction.

The information in this chapter is important for married parents going through a separation or divorce and unwed parents who may need a custody order to obtain help in the event of an abduction. There is also a section explaining the rights and remedies of noncustodial parents in custody and visitation disputes. Parents in abusive relationships will find a section addressing domestic-violence issues in the context of child abduction. Special issues in custody cases involving Native American children and military dependents are also addressed. A **summary of civil-court remedies if your child is abducted by a family member** is presented below. These remedies are more fully discussed in this chapter.

1. If you do not already have a custody determination, you should promptly get one. Do not delay.
2. File for custody in a court with child-custody jurisdiction. Under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), in effect in nearly all states, the child's "home state" has priority to enter an initial custody determination. The child's "home state" is also the preferred place to file for an original custody order under federal law. Courts in every jurisdiction are required to enforce "home state" custody orders.
3. If you already have a custody order and want to change it, the original issuing court has exclusive jurisdiction to modify the order under the UCCJEA and federal law if the respective statutory criteria are met. A court may have exclusive jurisdiction to modify even if the child has moved and established a new home elsewhere.
4. Consider hiring a lawyer to help you. Try to find an attorney who is knowledgeable about parental-kidnapping issues and whose services you can afford. Use the list of sources in this chapter to find a lawyer in your area.
5. You must give the abductor notice of your custody lawsuit. If you cannot give actual notice, for example because the abductor has gone into hiding, the law allows you to publish notice. You may be required to seek court permission before doing so. Inform the court of your unsuccessful efforts to give actual notice.

