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FOREIGN AFFAIRS

**Federal Response to
International Parental
Child Abductions**

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International Affairs Division



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Mr. Chairman and Members of the Committee:

I am pleased to be here today to discuss our preliminary observations on the federal government's response to international parental child abduction.¹ The State Department estimates that about 1,000 children annually are abducted from the United States by one of their parents.² When these cases are reported to authorities, the State and Justice Departments assume roles in locating the abducted children, reporting on their welfare, intervening diplomatically to secure their return, and bringing abductors to justice. However, left-behind parents and others have raised a number of concerns about the federal response to these child abductions.

Because of these concerns, you asked us to (1) examine problems with the federal government's response to parental child abduction and (2) examine how the federal government is attempting to improve its response. Today, I will discuss several of the problem areas that have been identified and what actions federal agencies plan to take to address them. We plan to complete our work and provide a report to this Committee later this year.

Summary

There are a number of problems and issues related to the federal response to international parental child abduction. These problems have been identified by the key agencies involved—the State and Justice Departments and the National Center for Missing and Exploited Children—as well as left-behind parents and others. Together, they present obstacles to left-behind parents in their attempts to locate, gain access to, and return their children. Four problems and issues have received substantial attention. These are

- gaps in federal services to left-behind parents, which make it difficult for parents to recover their abducted children;
- weaknesses within the existing State Department case-tracking process, which impair case and program coordination;

¹International parental child abduction is defined as the removal of a child from the United States or retention of a child outside the United States with intent to obstruct the lawful exercise of parental rights (18 U.S.C. 1204).

²The actual number of cases may be greater because some parents never report the abductions to the State Department but instead pursue a remedy directly with foreign authorities.

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- lack of systematic and aggressive diplomatic efforts to improve international responses to parental child abductions; and
 - limited use of the International Parental Kidnapping Crime Act of 1993³ to pursue abducting parents and bring them to justice.

The State and Justice Departments have developed recommendations, which they believe will address most of the problems if implemented. While we found that action has been taken to implement a number of the recommendations, many await further action and most require resource commitments. In addition, some of the recommended actions are not expected to be implemented for several years. These shortcomings raise questions about the likelihood the recommendations will be put in place.

Background

International parental child abduction is a U.S. federal and state criminal offense. The International Parental Kidnapping Crime Act of 1993 and similar state laws seek to prosecute abductors and bring them to justice. All 50 states, the District of Columbia, and territories have such laws. The Justice Department, including the Federal Bureau of Investigation, is the lead federal agency for pursuing criminal charges against abducting parents. The State Department assumes the U.S. lead role in civil cases.

The State and Justice Departments seek to coordinate their efforts with their state and local counterparts. Other organizations, such as the National Center for Missing and Exploited Children, play instrumental roles in seeking the return of wrongfully abducted or retained children.

The 1980 *Hague Convention on the Civil Aspects of International Child Abduction*⁴ is an international agreement among 54 nations, including the United States, that established civil procedures to follow when locating, accessing, or returning abducted children to resolve custody issues.⁵ About half of all abductions from the United States are to other Hague Convention countries. The balance of abductions is to countries that are not parties to the Hague Convention. For abductions to non-Hague countries, locating,

³Public Law 103-173 codified at 18 U.S.C. 1204.

⁴29 ILM 1501 (1980).

⁵The Hague Convention seeks to ensure that child custody disputes will be resolved in the country of the child's habitual residence.

accessing, or returning abducted children is a case- and country-specific matter. Under the Hague Convention, each country identifies a lead government agency (called a “central authority”) to serve as a central point of contact. The State Department is the central authority for the United States.

Over the past several years, left-behind parents and others have criticized the federal government’s performance in responding to parental child abductions. In 1994, the Justice Department established a Missing and Exploited Children’s Task Force to assist state and local authorities with difficult missing and exploited children cases.

In December 1997, this task force established the Subcommittee on International Child Abduction and in November 1998, the Attorney General created the Policy Group on International Parental Kidnapping⁶ which produced the April 1999 publication entitled *A Report to the Attorney General on International Parental Kidnapping*.

This report highlighted the problems with the current federal response and made recommendations to correct those problems. In this regard, the report underscored weaknesses with the current case-tracking process and coordination problems between the State and Justice Departments as well as the need to improve services to left-behind parents and aggressively pursue diplomatic efforts to resolve Hague Convention implementation problems. The report suggested ways in which the State and Justice Departments should address these problems. It also offered additional recommendations to develop an enhanced role for the National Center for Missing and Exploited Children to work more closely with U.S. left-behind parents, increase education and training resources for federal and local law enforcement, and tighten mechanisms, such as passport revocation practices, to prevent departure. The report also distinguished between the civil remedies to recover children and the criminal mechanisms to bring abductors to justice.

⁶The subcommittee includes representatives of the State and Justice Departments as well as representatives from the Treasury Department (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. The policy group is comprised of high-level representatives of the Justice and State Departments and seeks to expedite reforms in the federal response.

Problems With the Federal Response

Key problems cited by the State and Justice Departments, left-behind parents, and others that create obstacles to locating and returning internationally abducted children include gaps in federal services to left-behind parents and weaknesses within the existing case-tracking process. In addition, State Department officials and left-behind parents have cited certain countries that are signatories to the Hague Convention but that are not complying with its provisions. Left-behind parents have also cited the Justice Department's limited use of the 1993 International Parental Kidnapping Crime Act as a problem.

Gaps in Services to Left-Behind Parents

Certain gaps exist in federal services to left-behind parents that make it difficult for these parents to recover their abducted children. Left-behind parents and others have criticized the U.S. central authority—the State Department—for not providing a central point of contact for information and guidance on how to address abduction cases. They also cited as problems limited U.S. government-provided financial assistance and counseling services, and infrequent and inconsistent communication with officials managing their cases.

One problem is that there is no central point of contact within the federal government that can provide complete information on international parental child abduction cases, making it difficult for left-behind parents to monitor the status of their cases. For example, the State Department's Office of Children's Issues can apprise left-behind parents on the status of their civil cases, but the office usually does not have information on the status of the criminal aspects of these cases. Parents would have to obtain this information from the Justice Department.

Inadequate financial and other assistance to parents has been identified as a problem. Currently, neither the State nor the Justice Departments provide financial assistance to left-behind parents that would be sufficient to offset their costs, unlike some other Hague countries. Securing the return of abducted children can entail significant cost. For example, left-behind parents usually will have to travel abroad, retain a lawyer, and pay other fees. One U.S. left-behind parent told us he spent over \$200,000 pursuing his abducted child, while the abducting parent's costs were paid-in-full by her government. Some countries—Germany and Austria, for example—require that Hague applications and supporting documents be filed in their native language. In these cases, left-behind parents may be required to pay for translation services. Often these costs are beyond parents' means.

Moreover, left-behind parents and siblings may need counseling services, but the federal government has not traditionally provided financial assistance for counseling. Using Justice Department funds, a program managed by the National Center for Missing and Exploited Children has provided limited financial assistance to some left-behind parents so they can travel overseas to pick up children returned to their custody.

Another gap in services involves the lack of staff at State's Office of Children's Issues to keep parents informed about the status of their case. For most of fiscal year 1999, the average caseload was about 150 cases per caseworker. An ideal caseload, according to social work experts, is 35 cases per caseworker. Office of Children's Issues staff told us that contact with left-behind parents has suffered as a result of the heavy caseload. Although the Office of Children's Issues does not have a specific requirement regarding the frequency of contact with left-behind parents, the general guidance has been that parents should be contacted once a month on Hague Convention cases and every 4 to 6 months on non-Hague cases.

Coordination Problems in Managing Cases

As I mentioned earlier, although several agencies may be involved in international kidnapping cases, the federal government does not have a comprehensive system to track agency activities or assure that all appropriate measures are being taken by all appropriate agencies. The State Department and the National Center for Missing and Exploited Children have separate databases that track international parental kidnapping cases. A Justice Department database tracks criminal cases brought against child abducting parents. These databases are not integrated and may use different criteria to categorize cases, actions, and results. This situation has led to coordination problems and duplication of effort. For example, a caseworker in the State Department Office of Children's Issues made inquiries on an open Hague case only to find that the Federal Bureau of Investigation had located the child and closed its case a month earlier. This caseworker also told us that his office and the Federal Bureau of Investigation often make duplicate inquiries on the same case.

The State Department's case-tracking system also does not generate meaningful statistics that can be used for program management. For example, the system cannot accurately describe the incidence of reported abduction cases because it does not include information on all international parental abductions and because double counting occurs in

some cases. Also, although the system can provide data on the number of closed cases, it cannot report on all the reasons why cases are closed and whether the child was returned. Because of these shortcomings, the Office of Children's Issues lacks data to determine where best to allocate resources or identify the elements of successfully resolved cases.

Noncompliance With the Hague Convention

The State Department's 1998 report⁷ to Congress on the issue of compliance with Hague rules identified Austria, Honduras, Mauritius, Mexico, and Sweden as the most serious violators of the convention. In some cases, these countries have disregarded their obligations to take appropriate measures to discover the whereabouts of abducted children. In others, their judicial systems have interpreted the convention in a manner that the State Department believes undermines the Convention's basic goal of ensuring the prompt return of children to their habitual residence. Left-behind parents have criticized State for not pursuing diplomatic initiatives more vigorously with these and other countries to enforce implementation of the Hague rules and to resolve other problems. The State Department acknowledges that more systematic and aggressive diplomatic efforts are needed to address problems with the Hague Convention.

Limited Prosecutions Under the International Parental Kidnapping Crime Act

You asked us to comment on the Justice Department's implementation of the International Parental Kidnapping Crime Act, which makes parental abduction a federal felony. Since 1993, the Justice Department has indicted 62 parents under the International Parental Kidnapping Crime Act. As a result of these indictments, 13 parents have been convicted of felony parental kidnapping.

Decisions to bring cases under the act rest with each of the independent Offices of the U. S. Attorneys. We spoke with some Assistant U.S. Attorneys who have prosecuted abducting parents and they cited a number of reasons to explain their limited use of the act. For example, some prosecutors indicated that as a general policy they will not indict abducting parents until civil remedies are exhausted under the Hague Convention. They cited congressional intent that the procedures under the Hague

⁷Report on Compliance with the Hague Convention on the Civil Aspects of International Child Abduction (Washington, D.C.: Department of State, 1999).

Convention should be the option of first choice for a parent who seeks the return of a child.⁸ Other prosecutors noted that prosecuting abducting parents can compromise efforts under the Hague civil process to return a child since some Hague countries have asserted their unwillingness to continue pursuing civil remedies if criminal charges are pending against its citizens.⁹

In addition, the Assistant U.S. Attorneys believe they can provide significant federal assistance to left-behind parents by supporting state-level prosecutors in their pursuit of international parental abductors rather than by bringing cases under the act. State-level prosecutors, who have already investigated and indicted a parental abductor, can request from an Assistant U.S. Attorney a federal arrest warrant when the abductor unlawfully crosses state or international borders to avoid prosecution under state law.¹⁰ By doing so, state-level prosecutors can bring a battery of federal resources to bear against the abducting parent. For example, the Federal Bureau of Investigation can assist state-level law enforcement officers with locating the abductor, and federal law enforcement officials can request the State Department to deny or revoke an abductor's passport to prevent departure. Also, federal warrants can be used to invoke international police (INTERPOL) notices to seek abductors wanted for extradition.¹¹

Even with these mechanisms, however, Justice Department officials noted that many countries, including several Hague signatories, do not consider a parental abduction to be a criminal offense as the United States does, and thus do not consider international parental abduction to be an extraditable offense. Moreover, even if a foreign country deems parental abduction a criminal offense, it often will not be willing to extradite its own nationals. This is particularly true with respect to the civil law nations of Latin America and Europe.

⁸Public Law 103-173, §2(b).

⁹According to the American Bar Association in its 1998 report *Issues in Resolving Cases of International Child Abduction*, four central government authorities reported that some judges in their country will not order a child's return if criminal charges are outstanding.

¹⁰The 1980 Parental Kidnapping Prevention Act, Public Law 96-611, expressly declares that the Fugitive Felon Act, 18 U.S.C. 1073, applies to state felony cases involving parental kidnapping.

¹¹State arrest warrants can also invoke INTERPOL notices.

Lastly, Justice Department officials noted that the act seeks to prosecute abducting parents, an action that does not guarantee the return of the child.¹² In this regard, however, they were unable to provide us with information on how many abducted children have been returned because the Justice Department does not maintain such statistics.

State and Justice Departments Plan to Improve Federal Response

The State and Justice Departments have developed several recommendations they believe will correct the problems we have discussed. Their April 1999¹³ report about deficiencies in the federal response to parental child abductions contains recommendations that seek to expand services and resources to left-behind parents, establish a comprehensive case-tracking system, and implement diplomatic initiatives to address Hague implementation issues. Also, both departments have taken an additional step and developed an implementation plan in August, which, according to the Justice Department, serves as a guide to identify the resources needed to implement proposed changes. We reviewed both the recommendations and the implementation plan and found that State and Justice have made some progress toward implementing their recommendations. However, many of the recommendations are not clearly defined and lack specific resource requirements.

Some Progress Made in Specific Areas

The State and Justice Departments have made some progress toward improving services to left-behind parents, designing an integrated case-tracking system and pursuing diplomatic initiatives. Specifically, the State Department has made progress toward improving caseworker services to left-behind parents. In this regard, since October 1998, the Office of Children's Issue has hired 10 additional staff to reduce caseload. In addition, State has recently hired a coordinator who will work out of the offices of the National Center for Missing and Exploited Children, which State expects will facilitate an enhanced relationship between the State

¹²In at least one case, a federal judge conditioned an abductor's sentence on the return of the child. The judge's sentence was upheld on appeal. See *U.S. v. Amer*, 110 F.3d 873 (2d Cir. 1997).

¹³*A Report to the Attorney General on International Parental Kidnapping* prepared by the Subcommittee on International Child Abduction of the Federal Agency Task Force on Missing and Exploited Children and the Policy Group on International Parental Kidnapping (April 1999).

Department and the National Center for Missing and Exploited Children.¹⁴ Also, the Justice Department has made limited funding available to nonprofit organizations to provide mentoring services to left-behind parents.

Both the State and Justice Departments have acknowledged the need for a comprehensive, integrated case-tracking system, which they are attempting to develop. The Office of Children's Issues is taking the lead to develop this system, and a preliminary needs assessment is underway. The actual system design should begin early next calendar year.

Finally, State has pursued some diplomatic initiatives with a few countries that have had Hague implementation problems. However, most planned diplomatic initiatives have not yet begun.

Implementation of Recommendations Will Be Difficult Without Clear Resource Commitments

Although State and Justice have made some progress, without clear resource commitments it will be difficult to implement the remaining recommendations in a timely manner. As we mentioned earlier, according to State and Justice, they use their implementation plan to identify the resources needed to carry out proposed changes. However, neither department has been able to provide us with information about such resources. For example, according to State Department officials, all of its planned diplomatic initiatives are contingent on additional funding, but they have not provided us with information about the source and level of funding necessary for these activities. Moreover, State and Justice have not provided us funding information for nearly all the remaining planned changes in the federal response, including the resources needed to fully implement the case-tracking system.

In addition to lacking resource commitments, many of the remaining recommendations we reviewed fail to identify the specific actions the State and Justice Departments will take to achieve their objectives. As we mentioned earlier, the State Department acknowledges that more systematic and aggressive diplomatic efforts are needed to address Hague Convention noncompliance. Most of the recommendations in this regard seek to review, study, and explore Hague implementation issues but fail to

¹⁴State and Justice have signed a cooperative agreement with the National Center for Missing and Exploited Children that is designed to enhance the center's role in abduction cases.

identify how these activities will actually help solve Hague implementation problems.

In summary, both the State and Justice Departments have taken positive steps to clarify and describe how they will respond to identified international parental abduction problems. However, without resource commitments, it is uncertain whether they will be able to take additional steps to correct most problems. Both State and Justice Departments agree that they need to establish resource commitments. We expect that as recommendations are implemented and accomplished, a clearer perspective on their efficacy will emerge.

Mr. Chairman, while we have not yet completed our work our preliminary observations are that the State and Justice Departments should continue to define the specific actions and resources necessary to implement their recommendations. Doing so will enable both departments to more effectively manage their corrective actions.

Mr. Chairman and Members of the Committee, that concludes my prepared statement. I will be happy to answer any questions you may have.

Contact and Acknowledgments

For future contacts regarding this testimony, please contact Jess T. Ford at (202) 512-4268. Individuals making key contributions to this testimony included Boris L. Kachura, Michael C. Zola, La Verne Tharpes, and Mark Dowling.

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