

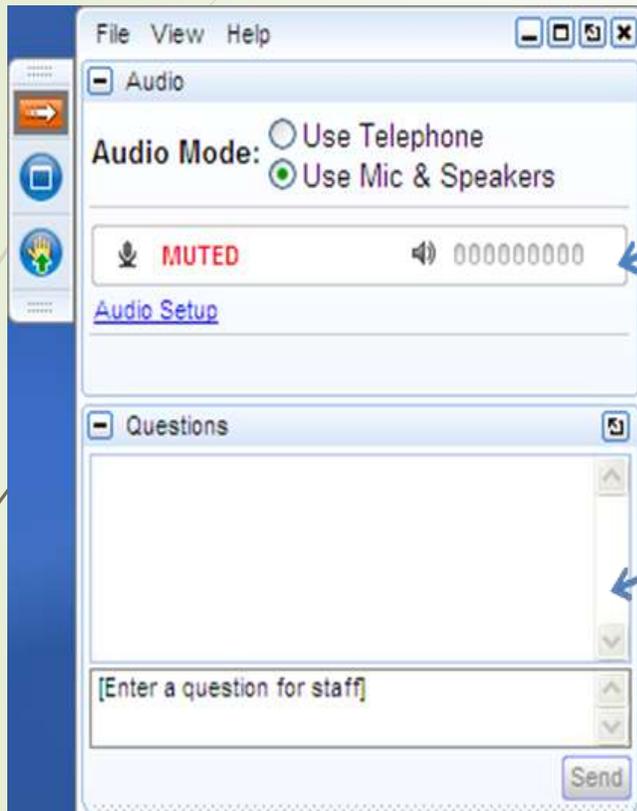


Intersections: Part III

International Child Abduction and Domestic Violence

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Webinar Housekeeping



Audio Support:

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To ask a Question:

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Noelle Hunter, Ph.D.

- Muna's Mom
 - President and Co-Founder of iStand Parent Network Inc.
 - Member, Coalition to End International Parental Child Abduction
 - Survivor, Advocate
 - Public Servant
- 



Webinar Goals

- ▶ Review key takeaways from Webinars I & II
 - ▶ Address questions from Webinars I & II
 - ▶ Discussion
 - ▶ Recommendations
- 



Webinar Goals

At the end of this webinar you may:

- Understand key points from previous webinars
 - Identify the policy intersections of domestic violence and international child abduction
 - Gain knowledge and resources to extend dialogue, improve best practices to effectively resolve these intersections to protect children
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Webinars I & II

▶ Key Takeaways

▶ Webinar 1:

- ▶ Terminology Matters
- ▶ Preventing and resolving international child abduction amid claims of domestic violence requires clarifying terms, priorities and improving systems

▶ Webinar II:

- ▶ Domestic Violence can prompt Flight to Safety
- ▶ Lack of Hague Convention protections are problematic for mothers who flee with their children to escape domestic violence and expose them to greater risk

▶ Divergent Views

- ▶ Abduction vs. "Abduction"
- ▶ Abduction is not a remedy for domestic violence

Critical Questions

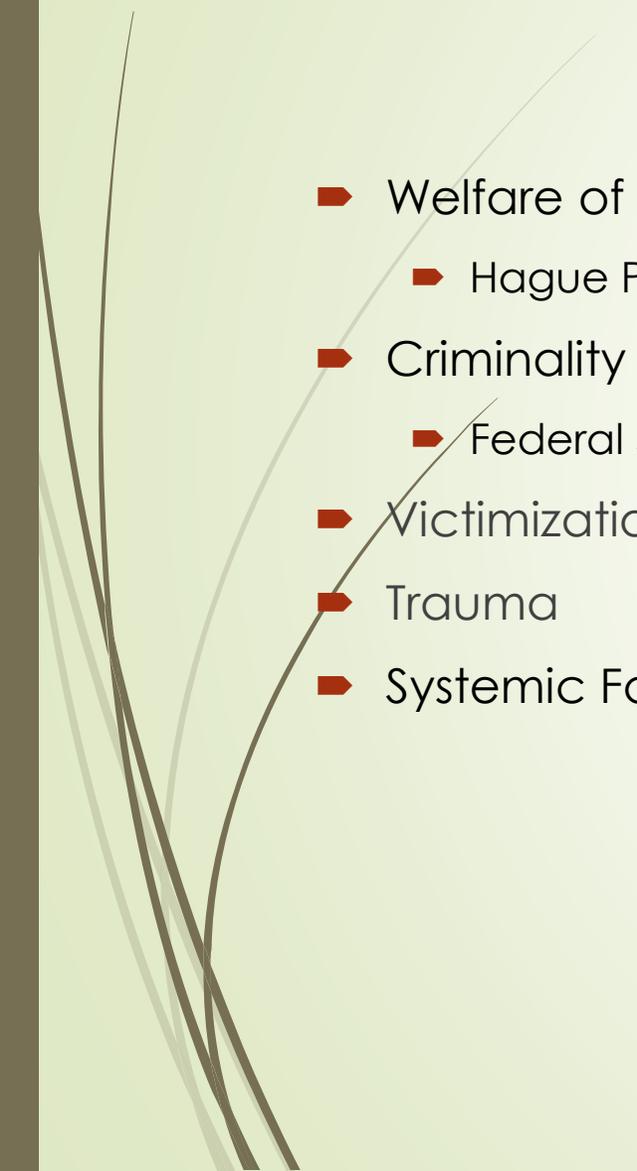
- ▶ If a domestic violence victim must choose between remaining in an abusive situation with his/her children, can victims rely on courts to protect them?
- ▶ If children are returned through a Hague decision, do women and children risk more violence upon return?
- ▶ Are victims hindered by an undue burden of proof requirement in Hague cases?
- ▶ Can the Hague Convention be improved as an effective civil remedy that affirms flight to safety under the Defenses?
- ▶ What is the recourse for women and children victims of domestic violence when systems fail?

Critical Questions

- ▶ In cases of child abduction by a domestic violence victim, whose rights are primary? The adult? The children?
- ▶ Can a court in the nation to which a child is abducted effectively decide if domestic violence claims are valid?
 - ▶ How would a foreign court subpoena witnesses and evidence from the country of the child's habitual residence? Confer with courts and officials to gain a complementary court's findings?
 - ▶ Even if a foreign court does decide that domestic violence is a valid claim, how will it make a child custody determination when "best interest of the child" standards vary by country?
 - ▶ Given these challenges, what happens to the children when delays in Hague proceedings result in months, if not years if court and a judge then rules according to Article 12 (well settled defense)? Does this undermine the intent of the Convention for to act "expeditiously" and in the "best interest" of the children?



Intersections of International Child Abduction and Domestic Violence

- Welfare of the Child
 - Hague Preamble
 - Criminality
 - Federal Statutes
 - Victimization
 - Trauma
 - Systemic Failures permit both
- 

Hague Convention Preamble:

The Preamble to the Hague Convention on International Parental Child Abduction:

"The States signatory to the present Convention,

Firmly convinced that the interests of children are of paramount importance in matters relating to their custody,

Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access,

Have resolved to conclude a Convention to this effect, and have agreed upon the following provisions..."



Intersection: Criminality

International Parental Kidnapping

- ▶ Federal law prohibits a parent from removing a child from the United States or retaining a child in another country with intent to obstruct another parents' custodial rights. The crime is known as International parental kidnapping.
- ▶ U.S. Code 1204 (a):
 - ▶ Whoever removes a child from the United States, or attempts to do so, or retains a child (who has been in the United States) outside the United States with intent to obstruct the lawful exercise of parental rights shall be fined under this title or imprisoned not more than 3 years, or both.



Intersection: Criminality

Violence Against Women Act (VAWA)

- ▶ The Violence Against Women Act of 1994 (VAWA) is U.S. federal law (Title IV, sec. 40001-40703 of the Violent Crime Control and Law Enforcement Act, H.R. 3355) codified in part at 42 U.S.C. sections 13701 through 1404.
- ▶ "VAWA recognizes that domestic violence is a national crime and that federal laws can help an overburdened state and local criminal justice system" (U.S. Dept. of Justice)



Intersection: Criminality

When courts and advocates place the welfare of a taking parent above that of the children it:

- ▶ Further weakens already weak enforcement of the existing criminal laws by establishing an additional excuse - unsupported by evidence or data - that eliminates the immediate response by law enforcement to reports of PCA.
- ▶ Provides an additional incentive for the perpetrator of the violence to utilize the DV argument to protect the illegal abduction of his/her child(ren), eliminating the seeking parent's access to essential legal remedies for the child(ren)'s return.
- ▶ Even under severe circumstances of DV, where the removal of the child from the home is absolutely in his/her best interest, doing so outside of the law cannot be excusable.

Source: Return Us Home Inc. (RUSH)



Feedback and Questions from Webinars I & II

- ▶ Ambiguity and Nuance - Is it really an "abduction"?
- ▶ Victim-Centered Legislation
- ▶ The Hague Convention
- ▶ Promising Practices to Further Understanding
- ▶ Recommendations for Professionals
- ▶ Resources



Terminology Matters: Ambiguity and Nuance

Is it really an abduction?

- "Abduction" vs "Abduction"
- "Best Interest of the Child"
- Default: Definitions codified by law

Intersection: Criminality and Legal Reform

What does victim-centered legislation look like?

- Demands compliance with the National Child Search Assistance Act (42 U.S. Code § 5780), ensuring that there are no conflicting statutes within State criminal or family law, that prohibits the demand for law enforcement to enter a child reported missing due to PCA* into both the state law enforcement database, and the National Crime Information Center database - within 2-hours of receiving a report.
- Establishes standardized, child-focused, policies and procedures that outline the necessary steps to responding to PCA cases, and codifies them in appropriate sections of the state legal statutes.
- Requires annual training for family court judges, law enforcement specifically addressing Parental Child Abduction and appropriate response and prevention measures.
- Establishes funding for a cadre of mental health professionals who are specifically trained on PCA, and provides free mental health support to families impacted by this crime.

Source: *Return US Home*. *RUSH prefers the encompassing term PCA referring to domestic and international child abduction



Intersection: Promising Practices to Further Understanding

Are there ongoing efforts to address the problems with the current application of the Hague Convention in IPCA cases where domestic violence is alleged?

The Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in Respect of Parental Responsibility and Measures for the Protection of Children (the Child Protection Convention)

- Hague 1996 clarifies and attempts to normalize "best interest of the child" standards
- Hague 1996 also seeks to clarify certain terms and relationships between "other international instruments" that are used to resolve cases international child abduction
- "International law is critical to developing the guidelines by which decisions affecting children and families separated across borders must be made. In order to make good decisions, legal and judicial stakeholders around the world must have access to high quality social work services, provided in a timely manner, by local social work experts."
(International Social Services)



Recommendations – Into Action

What are some recommendations for professionals serving families for increasing the likelihood of safe outcomes?

For:

- ▶ Judges
- ▶ Family Attorneys/Prosecutors
- ▶ Law Enforcement
- ▶ Federal Agencies
- ▶ Researchers



Recommendations – Into Action

Law Enforcement

- ▶ Remember that **both** domestic violence and international child abduction are crimes.
- ▶ Get training on this specific intersection to put children first.
- ▶ Use tools at your disposals (ex. NCIC)
- ▶ Apply the federal laws on missing children whenever a parent reports their child as abducted.
- ▶ Develop written policies and procedures for responding to cases that do not rely on the existence of a custody order - in accordance with the National Child Search Assistance Act.

Source: Return US Home, iStand Parent Network Inc.



Recommendations – Into Action

Judges

- ▶ Do not minimize either scenario and elevate the welfare of the child above all.
- ▶ Immediately initiate legal preventions to protect children while cases unfold.
- ▶ Believe victims, fully investigate claims and deploy risk assessment mechanisms.
- ▶ Get educated and trained on domestic violence and international child abduction.
- ▶ Work with court administration to establish travel restraining orders that are enforceable across all state and federal jurisdictions.
- ▶ Embrace robust prevention and resource refer practices including a standard process to automatically register international travel restraint orders with the Department of State, Office of Children's Issues for registry into the Prevent Departure program.
- ▶ Require data collection on all PCA cases that enter the court system, and an annual review of filings, judgments, and outcomes of these cases.
- ▶ Require mediation in all contested custody disputes, especially when domestic violence is alleged, that encourages voluntary compliance with prevention measures.

Sources: Return US Home, iStand Parent Network



Recommendations – Into Action

Federal Agencies

- ▶ Consistently enforce the laws pertaining to the criminality of domestic violence and child abduction.
- ▶ Develop written policies and procedures for responding to child abductions that alleviate the seeking parent's necessity to become the "expert" in the laws
- ▶ Apply existing laws to the full extent as justice and deterrence, including:
 - ▶ prosecution of abductors and batterers
 - ▶ use and pursuit of enforcement of extradition orders in IPCA cases
 - ▶ consistent escalation of actions sanctioned for use with countries cited as persistently non-compliant under the Goldman Act
- ▶ Expand exit controls at US borders and develop controls for land borders.

Source: Return US Home and iStand Parent Network Inc.



Recommendations – Into Action

Prosecutors/Family attorneys

- ▶ Know federal and state statutes regarding domestic and international IPCA, and understand the difference between criminalizing statutes and the more immediate reporting statutes requiring law enforcement to act.
- ▶ Become informed of the identified risk factors for IPCA and initiate legal prevention measures for the protection of the child immediately.
- ▶ Believe a parent when he/she claims the risk of IPCA exists.
- ▶ Stay current on research and case law and seek training to effectively represent the best interests of children in these cases.

Source: Return US Home and iStand Parent Network Inc.



Recommendations: Into Action

Researchers

- ▶ "Lopsided" body of literature on this intersection
 - ▶ Literature on domestic violence and (to an extent) DV and IPCA is more prevalent than that of IPCA
- ▶ Update existing (and dated) studies on international parental child abduction



Recommendations: Into Action

Everyone

- ▶ Care. Share.
 - ▶ October - Domestic Violence Awareness Month
 - ▶ November – International Parental Child Abduction Awareness Month
 - ▶ Remember: Every day matters for victimized, traumatized children
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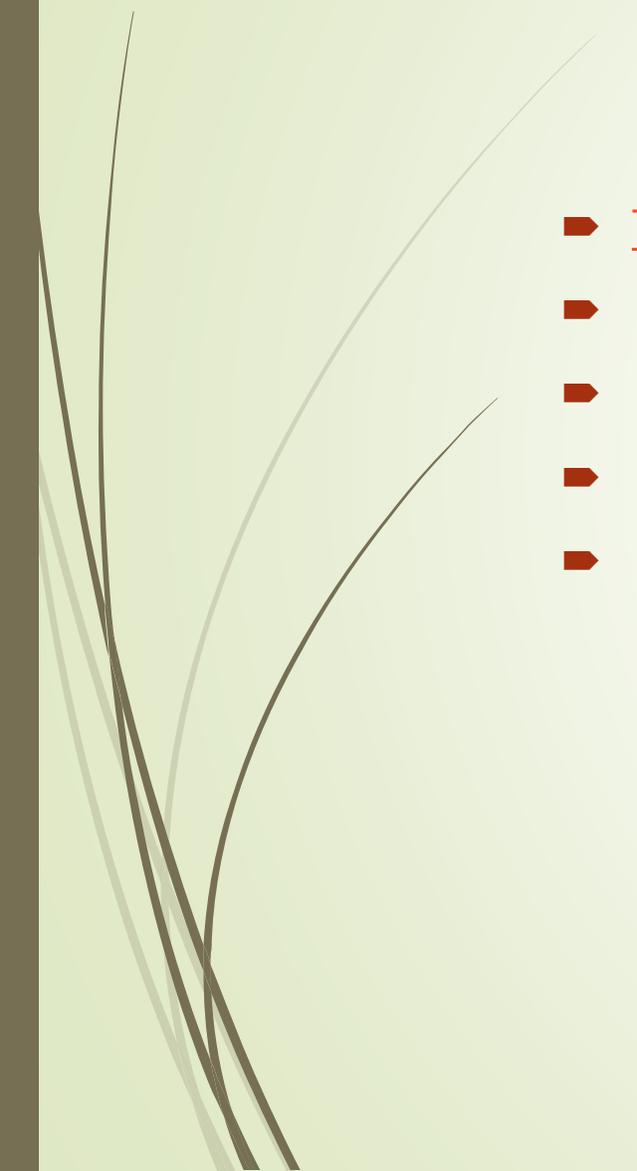


Resources

- ▶ [1996 Hague Convention Practice Guide](#)
- ▶ [Identifying Risk Factors for Parental Child Abduction](#)
- ▶ [National Center for Missing and Exploited Children](#)
- ▶ [International Child Abduction Attorney Network \(ICAAAN\)](#)
- ▶ [Istand Parent Network Inc.](#)
- ▶ [Bring Abducted Children Home](#)
- ▶ [Bring Our Kids Home](#)



Resources



- ▶ [The International Child Abduction Prevention and Remedies Act of 2014](#)
- ▶ [Laws and Regulations in IPCA](#)
- ▶ [U.S. Dept. of State Resources and Reports](#)
- ▶ [National Criminal Justice Reference Service](#)
- ▶ [Office of Justice Programs Office for Victims of Crime](#)



Acknowledgements

- ✓ National Criminal Justice Training Center at Fox Valley Technical College
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- ✓ You!

Thank you!



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