



International Child Abduction

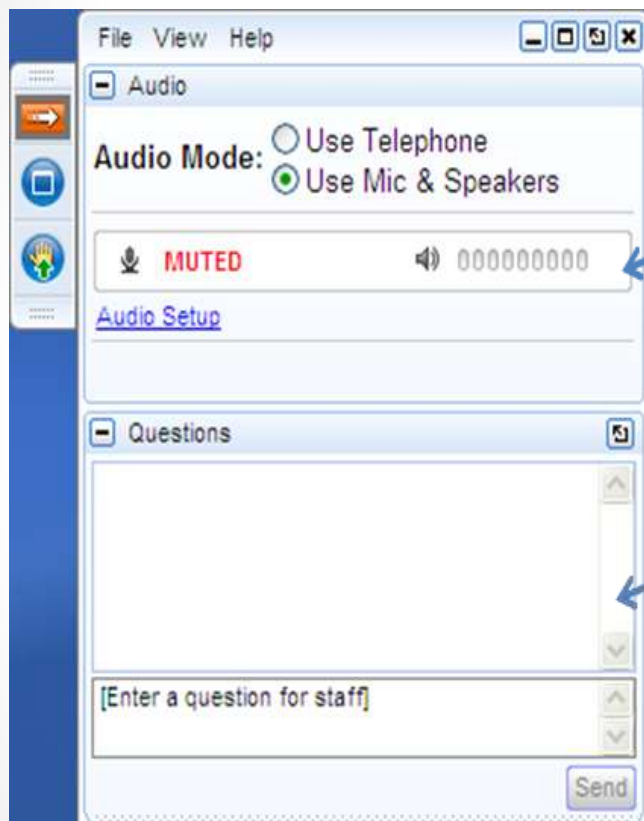
A Role for Prosecutors and Law Enforcement under the Hague Convention and State Law

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Welcome & Overview

On behalf of the U.S. Department of State, thank you for attending this webinar.

Our objectives are to:

- Equip prosecutors to use the Hague Convention and UCCJEA as a civil remedy in international child abduction cases
- Explain law enforcement's role in Hague Convention cases
- Encourage prosecutors to partner with the State Department by joining the Hague Convention Attorney Network



The Hague Convention Attorney Network: An Introduction and Invitation to Prosecutors

Patricia M. Hoff

**Legal Assistance Coordinator/Symtech Contractor
United States Department of State**

What is the Hague Child Abduction Convention?

- **Treaty** aimed at protecting children from the harmful effects of international child abduction
- Convention text: www.travel.state.gov/abduction. Click “For Attorneys & Judges,” then “Hague Abduction Convention Resources”
- U.S. has 68 treaty partners. Full list available at: http://travel.state.gov/abduction/resources/congressreport/congressreport_1487.html
- Article 12: Legal remedy for the prompt return of wrongfully removed or retained children
- Article 21: Access cases

How is the Hague Convention implemented in the U.S.?

- Federal implementing statute, The International Child Abduction Remedies Act (ICARA) 42 U.S.C. 11601 et seq.: procedures for litigating Hague cases in the U.S.
- ICARA text: www.travel.state.gov/abduction. Click “For Attorneys & Judges,” then “Hague Abduction Convention Resources”
- U.S. Central Authority

Department of State

- When a child is abducted across international borders, the difficulties are compounded for everyone involved. The Department of State, Office of Children's Issues, assists parents as they pursue recovery of their abducted children, and offers tools to prevent future abductions.
 - Outgoing and Incoming Divisions; Prevention Unit
- U.S. Central Authority for the Hague Convention on the Civil Aspects of International Child Abduction ("USCA")

Legal assistance under the Hague Convention

- Many countries provide free legal aid to Hague applicants. This means that parents in the U.S. that bring Hague Convention cases in U.S. treaty partner-countries may be provided with free legal counsel.
- The U.S. is not obligated to pay for attorneys except insofar as those costs may be covered by the legal aid system. (Art. 42, Art. 26; 42 U.S.C. 11607(3))
- Foreign nationals are entitled to legal aid as if they were U.S. nationals. (Art. 25)

Attorney Network for Hague Convention Cases

- Despite taking the reservation, in incoming cases, the USCA endeavors to assist parents find counsel to bring Hague cases in U.S. courts
- All-volunteer **Attorney Network**, offering *pro bono*, reduced fee, and full fee legal assistance in incoming cases

Legal Assistance Coordinator

- Maintains and 'grows' the Attorney Network
- Contacts attorneys in the Attorney Network and legal aid organizations to develop attorney referral lists for applicants requesting *pro bono*, reduced fee, or full fee legal assistance.
 - Applicants personally assess eligibility based on U.S. Poverty guidelines used by Legal Services Corporation
- Provides Network attorneys training and technical assistance directly and through attorney mentors
- Seeks to partner with prosecutors around the country to bring Hague cases as friend of court

Prosecutors' strategies in international child abduction cases

- Criminal prosecutions
 - State criminal statutes

- Civil proceedings
 - Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA),
§§ 315 – 317
 - ❖ Authority to bring Hague cases

A New Tool for Prosecutors: UCCJEA §§ 315 – 317

§ 315: Role of [Prosecutor of Public Official]

§ 316: Role of [Law Enforcement]

§ 317: Costs and Expenses

See UCCJEA CHART for state-specific statutory citations

§ 315: Role of [Prosecutor of Public Official]

- a) In a case arising under this [Act] or involving the Hague Convention on the Civil Aspects of International Child Abduction, the [prosecutor or other appropriate public official] may take any lawful action, including resort to a proceeding under this [article] or any other available civil proceeding, to locate a child, obtain the return of a child, or enforce a child custody determination if there is:
- 1) an existing child custody determination;
 - 2) a request to do so from a court in a pending child custody proceeding;
 - 3) a reasonable belief that a criminal statute has been violated; or
 - 4) a reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.
- b) A [prosecutor or appropriate public official] acting under this section acts on behalf of the court and may not represent any party.

§ 316: Role of [Law Enforcement]

At the request of a [prosecutor or other appropriate public official] acting under Section 315, a [law enforcement officer] may take any lawful action reasonable necessary to locate a child or a party and assist [a prosecutor or appropriate public official] with responsibilities under Section 315.

§ 317: Costs and Expenses

If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the [prosecutor or other appropriate public official] and [law enforcement officers] under Section 315 or 316.

- Also see Hague Convention, Article 26, and ICARA, 42 U.S.C. 11607(b)(3)

Hague civil remedy vs. criminal prosecution

- Filing Hague cases as friend of court is the better remedy when the child's return is the principle goal
- Prosecuting abductor parents is the preferred approach when punishment and deterrence are the main objectives
- Relative costs: civil remedy is typically less expensive than criminal prosecution, and costs may be recovered under UCCJEA

Invitation to Join the Attorney Network

Prosecutors: Please RSVP!

- Information about the Attorney Network and an enrollment form are available on the State Department website -
www.travel.state.gov/childabduction
 - ❑ Click 'For Attorneys & Judges'
- Attorney Network members are contacted about cases, but there is never an obligation to take a case
- The USCA partners with California's Attorney General and District Attorneys in incoming and outgoing Hague Convention cases

The Hague Convention on the Civil Aspects of International Child Abduction

Elaine F. Tumonis
Deputy Attorney General
California Attorney General's Office

What Would You Do?

Myths & Realities

- “The kids are with mom/dad; they’re fine.”
- “It’s not a crime; a parent can take their child wherever they want.”
- “It’s a civil matter, not a criminal one; go to family court.”
- “They’re not really missing if you know where they are.”
- Abrupt Change in Living Situation
- Change of Name, Appearance, Gender
- Told Lies: LBP Doesn’t Love Them, Is Dead
- Abducting Parent May Be Abusive, Mentally Ill, Dangerous
- Cases Can Be Deadly

U.S. Convention Partners



Complete list at www.travel.state.gov

www.mecptraining.org

Governing Law And Jurisdiction

- The Treaty Itself
- Implementing Legislation: International Child Abduction Remedies Act (ICARA)

42 U.S.C. § 11601 *et seq.*
- Hague Cases May Be Brought in State and Federal Court

What the Convention Can Do

- Secure Prompt Return of Wrongfully Removed or Retained Children
- Secure and Enforce Visitation (Access) Rights
- Ensure Rights of Custody and Access are Respected in Other Countries
- Deter Future International Abductions

Requirements

- Both Countries are Treaty Partners
- Child is Under Age 16
- Child Was Wrongfully Removed or Retained Away from Habitual Residence in Violation of Left-Behind Parent's Right of Custody/Access
- At Time of Taking, LBP was Actually Exercising Right of Custody/Access

Not A Custody Proceeding

- It is not a Vehicle for Resolving Custody Disputes or Determining the Best Interests of the Children (See Art. 16)
- It is a Mechanism for Returning a Child to the Habitual Residence Country Where Custody and Best Interests Can Be Resolved

No Custody Order Is Required

Applicant's Right of Custody Can Be Pursuant to Law or Court Order (Art. 5)

Treaty Obligation To Return Child

Art. 12: If time from wrongful removal/retention to commencement of court proceeding is

- Less Than One Year:

Mandatory Return of Child

- One Year or More:

Mandatory Return *Unless Child is Settled in New Environment*, in Which Case Return is **Discretionary**

NOTE: This is not a statute of limitations

Other Exceptions

- Grave Risk of Physical/Psychological Harm if Child is Returned (Art. 13b)
- Older, Mature Child Objects to Return (Art. 13)
- Applicant was Not Actually Exercising Custody Rights (Art. 13a)
- Applicant Consented to /Acquiesced in removal or retention (Art. 13a)
- Return Would Violate Human Rights (Art. 20)

Who Does What?

- Central Authorities
- California Attorney General's Office
- District Attorneys' Offices
- The Courts

INCOMING HAGUE CASES

FOREIGN CENTRAL AUTHORITY



UNITED STATES CENTRAL AUTHORITY
U.S. Department of State - Office of Children's Issues



**CALIFORNIA ATTORNEY GENERAL'S
OFFICE**



DISTRICT ATTORNEY'S OFFICE

Incoming Cases: Attorney General's Role

- Receive, Review and Transmit All California Incoming Hague Cases to District Attorneys
- Inform, Guide, Assist DAs as Needed
- Monitor Progress of Cases
- Serve as Liaison Among Agencies Involved
- Handle Appeals in Criminal Child Abduction Cases

Incoming Cases: District Attorney's Role

- Review Incoming Application
- Investigate; Interview Applicant
- Locate & Recover Children
- Prepare Hague Case for Court
- Act on Behalf of Court

(Fam. Code § 3455)

- Coordinate With Counsel
- Arrange Return of Child

Pleadings

- Petition for Return
- Ps and As Explaining Hague Convention
- Copies of Convention, ICARA
- Hague Application and Attachments
- Applicant Parent's Declaration
- Declaration of Habitual Residence
- Protective Custody Warrant
- Documents Need Not be Authenticated: 42 U.S.C. § 11605 (But Use of Certified Copies is Recommended)

Incoming Cases: District Attorney's Role

- Help Judge Understand Purpose & Requirements of Hague Convention
- Arrange for Return of Child
- In California, Appear Pursuant to CA Family Code Sections 3130 *et seq.*, 3455

OUTGOING HAGUE CASES



Outgoing Hague Cases: District Attorney's Role

- Help Left-Behind/Applicant Parent Complete and Submit Hague Application to U.S. State Department
- Help Gather Additional Information & Evidence Requested by Other Country
- Assist With Arrangements to Return Child
- Facilitate Reunification

Incoming Hague Cases: The Nuts and Bolts

Jim Bacin

Deputy District Attorney

Office of the District Attorney, Orange County (CA)

Overview

- This is a generalized, practical walk-through of how we typically handle these cases
- Please keep in mind:
 - This is how **our** office handles these cases
 - Minor variations within California
 - Legal and/or practical issues might require different practices in **your** jurisdiction
 - Your state's **civil/family court** system and procedures may be different.
 - And, that system may use different names or titles for pleadings, hearings, etc.

So . . . you've received an
incoming Hague case . . .

Now what?

1. Have investigator contact the left-behind parent (the “LBP”)

- Will probably need an interpreter
- Several reasons to contact the LBP:
 - To verify their version of the facts
 - To help prepare for any potential defenses (e.g., treaty exceptions that might be asserted by the taking parent)
 - Ask the LBP: “If we were to ask the abductor why they did this, what do you think they’d say? How would they justify it?”

1. Contact the LBP (cont'd)

- The **main** reason to contact the LBP: to try to ***get them here for the hearing*** to (1) rebut any defenses and (2) receive the child.
 - Determine whether they can appear,
 - Determine ***when*** (how soon) that can happen, and
 - Begin setting it up.
- This is almost always a ***lengthy*** process
 - Which will be ongoing while you work on other aspects of the case

Can the LBP personally appear in your case?

1. Can they afford it (including time off from work)?
2. Do they have a visa?
 - If not, why not? (Reason may affect ability to get one now)
 - Previously deported?
 - Never applied?
 - If not: work with both the LBP and the State Department to get the LBP a temporary visa for the purpose of appearing in this case

If the LBP *cannot* travel to your jurisdiction (no \$ or no visa)

1. Try to have them appear telephonically (if your court allows)
 - This usually needs to be approved by the court in advance
 - State Department can help set it up

If the LBP *cannot* travel to your jurisdiction (no \$ or no visa)

2. If telephonic appearance not allowed, you will need to rely on LBP's Application, and Declaration (if any)
 - If no Declaration: get one?
3. In either case, LBP will need to send a representative (family member, friend) with a Power of Attorney (translated into English)
 - To receive the child, and transport child back
 - Unless your office willing to do so

1. Contacting the LBP (cont'd)

- Finally, during your contact with the LBP, make it clear that you are *not* their family law attorney
 - You are acting on behalf of the courts (and governments) of both countries, and the Hague Convention
 - If they want an attorney to represent and advocate for their personal interests, they will need to get their own

2. Help line up local (personal) counsel for the LBP?

- Because *you* are not *their* attorney
- This (the LBP having their own counsel) is not a requirement, but is usually very helpful
 - And is especially important if the LBP cannot appear in person

2. Help line up local (personal) counsel for the LBP? (cont'd)

- Private counsel can help with many of the practical details related to the LBP (personal or telephonic appearance, procuring a visa, Power of Attorney, etc.)
- The State Department can assist greatly in finding local counsel for the LBP
 - Network of attorneys
 - Pro bono (or low fees)

3. Determine whether the abductor is a flight risk

- This will determine how you proceed (when you file, what you file, etc.)
- Investigation:
 - Verify abductor's address; rent v. own?
 - Discover if/where child attends school
 - Check abductor's employment status
 - Check abductor's immigration status
 - Etc.
- Based on all these factors: abductor = flight risk?

If you believe the abductor is *not* a flight risk

Attempt to contact the abductor and seek *voluntary compliance*?

- “Hi, this is the DA’s office . . . Why don’t you do the right thing?”
- Offer to assist with the logistics of returning the child to the LBP

If you believe the abductor is *not* a flight risk (cont'd)

(If no voluntary compliance):

Once you are logistically ready to proceed:

1. Put together your Hague Petition filing/package (more details below)
2. File your Petition in court
 - Ask the clerk for a hearing date that's good for your LBP and/or their representative
 - (Orange County: earliest date is at least four weeks out)

If you believe the abductor is *not* a flight risk (cont'd)

- If there is a judge with experience handling Hague cases, ask that the case be assigned to them
 - Some courts in larger cities have a pre-assigned judge handling all Hague cases
3. Then, serve the abductor

If you believe the abductor is a flight risk

1. Put together your Hague Petition filing/package
 - Include a request for an **emergency pick-up order** for the child.
 - (In California, this is called a “Protective Custody Warrant”)
 - Include your/your investigator’s Declaration explaining why this is necessary
 - Include (in Hague Petition/request for pick-up order) a request that you be ordered to seize and hold everyone’s passports (or visas) pending the case’s resolution (court can also hold them)

If you believe the abductor is a flight risk (cont'd)

2. File your Petition in court

- Ask the filing clerk to send the case ***forthwith*** to the duty/warrant judge, to review, sign off and give you the pick-up order
- There will be no hearing date set at this time (because you don't yet know exactly when your team will be able to serve the abductor and pick up the child)
- Your pick-up order should specifically state that a hearing on the Petition will be held shortly after the order is served and the child picked up (usually, "the next court day")

If you believe the abductor is a flight risk (cont'd)

3. Then, when everybody's ready to go (LBP or their representative is "on the ground" in your jurisdiction, standing by):
 - Serve the pick-up order (and the Hague Petition) on the abductor and seize their passport,
 - Pick up the child and seize their passport, and
 - Give the child to the LBP (or their representative), serve **them** with the pick-up order (because it orders **them** to go to court the next day, too!), and seize their passport.
4. Then, attend the hearing (more below).

4. What to file:

- Your Hague Petition
 - Including:
 - (If appropriate) a request for a pick-up order
 - A request that you be ordered to seize and hold *everyone's* passports (or visas) pending the case's resolution (court can also hold them)
 - A request that the abductor reimburse your costs

What to file: (cont'd)

- Your Hague Petition (cont'd)
 - Attach as exhibits:
 - The LBP's Hague application (should already be translated)
 - The LBP's Declaration (if any) (may need to be translated)
 - Any correspondence from the State Department, the other country's Foreign Ministry, your state's Attorney General, etc.

What to file: (cont'd)

- A request for a hearing on that Petition
 - In California: “Application for an Order to Show Cause”
- And, unless you **know** that the case will be assigned to a judge who has Hague experience, you should **also** file an amicus brief:
 - Explaining and describing the Hague Convention
 - Attaching (as an exhibit) the text of the Convention itself, and the ICARA

Pleading tips

- Parties in caption:
 - LBP: “Petitioner Under the Hague Convention”
 - Abductor: “Respondent”
 - Your office: “Appearing Pursuant to Family Code §§3130-3457” (or whatever statute authorizes your involvement)

5. At the hearing

- Where do you stand (in the courtroom)?
 - My preference: at the **end** of Petitioner's side of counsel table
- How do you introduce yourself for the record?
 - My preference: "[Name], appearing pursuant to the Family Code and the Hague Convention"

Who calls/examines witnesses?

- It depends on who's testifying, and why
- My position is that the filing of the Petition and the LBP's application (and declaration, if any) creates a *prima facie* case for return, and shifts the burden to the abductor
 - So, I don't call any witnesses initially

Who calls/examines witnesses? (cont'd)

- If the abductor raises an exception (defense) (either in writing or in open court):
 - I cross-examine the abductor
 - Then, if the LBP is available to testify (in person or telephonically), I have them testify in rebuttal of the abductor
 - Can call child as witness (if competent)
 - May want to have minor's counsel appointed

Practice tip: getting foreign CPS involved

- If the abductor alleges harmful or dangerous living conditions “back home,” offer to have your CPS contact their counterparts in the home country (e.g., DIF in Mexico) to do a home check
 - Can adjourn the hearing for a day or two while that happens
- Can also request that the child be returned, with request for the foreign CPS to continue to monitor the home, or even supervise the family there

Transporting the child if return ordered

1. Best option: LBP
2. Next best: their personal representative
3. Last resort: your investigative staff (if approved by your office)
 - Work with your state DOJ's international/Mexico liaison
 - Best practice: meet the LBP at the border

Resources

- www.travel.state.gov
- www.hcch.net
- www.missingkids.com
- www.childabductions.org

Resources

www.travel.state.gov/childabduction [Click “For Attorneys & Judges”]
Includes texts of Hague Convention, ICARA, Attorney Network Enrollment Form, Hague Litigation Manual, links to sample pleadings

<http://www.law.upenn.edu/bll/archives/ulc/uccjea/final1997act.htm>
[UCCJEA text]

<https://www.ncjrs.gov/pdffiles1/ojjdp/189181.pdf> [OJJDP Bulletin: UCCJEA] See, in particular, description of prosecutors’ role

<http://bit.ly/njDvhq> [UCCJEA Chart: Prosecutor’s Authority to Bring Hague Convention Cases]

<http://bit.ly/peoABF> [Attorney Network Enrollment Form]

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