

Domestic Relations Law 3

International Child Abductions

The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction

Introduction

Although international child abduction is not a new problem, the incidence of such abductions continues to grow. International child abductions have serious consequences for both the child and the left-behind parent. The child is removed, both from contact with the other parent and from his or her home environment, and transplanted to a culture with which he or she may have had no prior ties. International abductors move the child to another State with a different legal system, social structure, culture and, often, language. These differences, plus the physical distance involved, can make locating, recovering and returning internationally abducted children complex and problematic.

The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction seeks to combat parental child abduction by providing a system of co-operation between Central Authorities and a rapid procedure for the return of the child to the country of the child's habitual residence.

The Return Mechanism

The principal object of the Convention, aside from protecting rights of access, is to protect children from the harmful effects of cross-border abductions (and wrongful retentions) by providing a procedure designed to bring about the prompt return of such children to their residential state. The Convention is based on the idea that, save in exceptional circumstances, the wrongful removal or retention of a child across international boundaries is not in the interests of the child, and that the return of the child to the State of their habitual residence will promote his or her interests by vindicating the right of the child to have contact with both parents, by supporting stability in the child's life, and by ensuring that any determination of the issue of custody or access is made by the most appropriate court having regard to the likely availability of relevant evidence. The principle of prompt return also serves as a deterrent to abductions and wrongful removals, and this is seen by the Convention to be in the interests of children generally. The return order is designed to restore the situation which existed before the wrongful removal or protection, and to deprive the wrongful parent of any advantage that might otherwise be gained by the abduction. A return order is not a custody determination. It is simply an order that the child be returned to the jurisdiction which is most appropriate to determine custody and access.

Co-Operation

As is usual among the Hague Children's Conventions, Central Authorities in each Contracting State are given an integral role as the focus for administrative co-operation in achieving child protection. Central Authorities in each country provide assistance in locating the child and in achieving, if possible, a voluntary return of the child or an amicable resolution of the issues. They also co-operate to prevent further harm to the child by helping to initiate proceedings for the return of the child, and by making the necessary arrangements to secure the child's safe

return. The convention also gives the Central Authorities obligations to promote the peaceful enjoyment of access rights and to take steps to remove, as far as possible, obstacles to the exercise of such rights.

Protecting Children and Their Rights

The 1980 Hague Convention has contributed to resolving thousands of abduction cases and has served as a deterrent to many others through the clarity of its message and through the simplicity of its central remedy. With more than 80 Contracting States, the 1980 Hague Convention is one of the most successful family law instruments to be completed under the auspices of the Hague Conference on Private International Law.

The operation of the 1980 Hague Convention has been further strengthened by complementing provisions in the 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.

Federal and State Law regarding Child Custody.

What relief does the law allow if a child is removed/separated from your home state in order for someone else to obtain custody? If you already have a Court Order determining custody, there is Federal legislation designed to inhibit child snatching. The Parental Kidnapping Prevention Act of 1980 (PKPA), 28 U.S.C.A. § 1738A (Spec. Pamp. 1981) is designed to prevent child snatching and states severe penalties for persons engaging in this conduct. On a state legislative level, NM is a signatory to The "Uniform Child-Custody Jurisdiction and Enforcement Act" 40-10A-101 NMSA 1978. This Act is designed to prevent interstate forum shopping. It also is designed to create stability in Child Custody determinations. As with any Federal or Uniform Acts, these pieces of legislation also cover many other activities and enforcement of the law. These acts are also subject to interpretation by case law. Before you act, it is important to obtain qualified legal advice to make sure you are not jeopardizing your case, your child/children, or creating civil/criminal liability.