

Parental Abduction Laws

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In modern times, an increasing number of parents abduct their children in defiance of existing regulations and laws. Parental child abduction is an act of one parent removing and retaining his or her child or children without the other parent's official consent. Typically, a parent kidnaps his or her child during or after divorce process and thus, circumvents the court regardless of the formal custody order. In most cases, parental abduction laws define child abduction by a parent as a criminal offense that should be prosecuted by law enforcement agencies. In general, parental abduction laws recognize that the parent who holds and hides his or her child defies the custodial rights of the child's other parent due to the lack of the legal custody of the child and the other parent's official consent.

Parental child abduction is considered an unlawful act of a parent taking a child by persuasion, force, or fraud without notifying the other parent. Statistics show that caregivers abduct his or her child from the other parent twice more frequently than strangers ("Annual Report on International Child Abduction," 2018). This type of child abduction usually occurs when parents are separated or involved in divorce proceedings. According to the United States law system, a parent who removes a child from the other parent with no intent of return commits the federal crime of parental kidnapping and will be prosecuted by law enforcement ("Report on Child Abduction," 2018). Local and state prosecutors usually use the Fugitive Felon Act, 18 U.S.C. § 1073, to seek a federal unlawful transfer of a child to avoid a prosecution warrant if a parent is accused of child abduction and flees the jurisdiction ("Report on Child Abduction," 2018). Parental child abduction is a serious legal issue that requires a strong legal system and criminal liability.

However, under U.S. law, parental abduction laws differ depending on the state in which parental abduction occurs. For example, in California and Texas, there is a uniform state law dealing with parental abduction working under the Uniform Child Abduction Prevention Act that recognizes parental abduction as a criminal offense. In New York State, family courts do not have jurisdiction over parental abduction cases until one of the parents proves that the child, who was abducted, lived in New York for the last six months. The state of Massachusetts follows a different law, which is called the Uniform Child Custody Jurisdiction Act, which does not consider child abduction a criminal offense, especially when the parents have not been living together for at least two years (“Report on Child Abduction,” 2018). In Massachusetts, there is no formal custody order for a child whose parents are involved in divorce proceedings; that is why family court is not authorized to consider such cases.

International child abduction cases are highly challenging because when one of the parents abducts his or her child across borders, the law can be insufficiently equipped to provide a remedy. International child abduction takes place when a parent unlawfully takes and retains a minor child in a country other than the child’s place of residence (“Report on Child Abduction,” 2018). If the country to which a child was transferred by one of the parents or caregivers is a party to the Hague Convention on the Civil Aspects of International Child Abduction, the child can be found and returned to the country of origin by the guardian assigned by the court in the host country (“Report on Child Abduction,” 2018). The return of the child cannot be exercised if a parent has custodial rights and proves that the removal of the child occurred within these rights. International law requires parents to sign bilateral or multilateral agreements on who and how long one can take a child to another country. Otherwise, the illicit transfer of the child will be

prosecuted by law enforcement agencies to ensure that the other parent's custodial rights are preserved.

In the European Union, parental abduction laws are based on the Child Abduction and Custody Act of 1985 and the Hague Convention on the Civil Aspects of International Child Abduction of 1980. According to the European system of law, the court in the country where a child lived before abduction is responsible for resolving a dispute ("Parental Child Abduction," 2019). European law envisions a maximum of seven years of imprisonment for child abduction if the official custody order was placed, and a parent committing abduction caused psychological or physical harm to the child ("Parental Child Abduction," 2019). European Central Authorities assist parents who are victims of cross-border child abduction by launching a procedure to return the child ("Parental Child Abduction," 2019). In such a case, the court has six weeks to rule on the matter, and the child should be provided with the opportunity to testify. In the United Kingdom, France, Italy, and Spain, the court gives great weight to the testimony of the child who was abducted by one of the parents when making a final decision. Therefore, parental abduction laws in European Union countries are more loyal to a parent abducting his or her child in defiance of the official custody order.

On the contrary, Asia is facing criticism from the international community over poor compliance with international treaties that establish rules for cross-border parental child abduction. In particular, Singapore, China, and Japan were accused of the failure to comply with a reliable legal system based on the Hague Abduction Convention ("Missing Children in Southeast Asia," 2016). Asia not only lacks a strong legislative framework for dealing with domestic parental abduction but also rejects international or bilateral treaties with other

countries, including the U.S., which would set regulations for international parental child abduction. For instance, China does not recognize international courts when it comes to foreign child custody orders, meaning that there is little chance to exercise the abducted child's extradition to his or her home country which is other than an Asian one ("Missing Children in Southeast Asia," 2016). Thus, Asian parental abduction laws are controversial and make it difficult for Europe and the U.S. to deal with international child abduction cases on the Asian continent.

Latin America also lacks legislation for providing legal aid services in the case when parental abduction occurs. According to the Law Library of Congress, such Latin American countries as Cuba, Haiti, Jamaica, Guyana, and Saint Lucia do not provide any form of legal assistance to a parent whose child was abducted by the other parent ("Provisions on Child Abduction," 2015). For instance, in Guyana, national laws do not presuppose a designated agency for handling legal representation in cases involving parental abductions ("Provisions on Child Abduction," 2015). Although Saint Lucia, Haiti, and Jamaica grant legal representation from legal aid authorities to affected parties in court, their legislative basis is weak enough due to insufficient or limited means of protecting a parent's custodial rights. At the domestic level, Latin America protects the rights of children and parents in parental abduction cases since its law requires written consent from the father if the parents are married and written consent from the mother if they are not married to take the child abroad. However, at the international level, Latin America is far behind the U.S. and European Union which effectively deals with international parental abductions cases based on the Hague Convention on the Civil Aspects of International Child Abduction.

As a result, parental abduction laws vary depending on the country, and even on the state, where a child who was abducted by one of his or her caregivers has habitual residence. In the U.S. and the European Union, the legal system recognizes the act of a parent's holding and hiding a child as a criminal offense that envisions criminal liability. By abducting a child, a parent breaks the law and defies the other parent's custodial rights. The Hague Convention on the Civil Aspects of International Child Abduction provides a strong legislative basis for dealing with parental abduction and protects the custodial rights of the other parent. Meanwhile, Asia and Latin America lack a reliable legal system to handle parental abduction cases and should be forced to rethink its policies and regulations on that matter. American and European parental abduction laws offer effective measures to enforce the court's custody orders that demand a parent to return a child to his or her place of residence or home country.

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