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**THE CRIMINAL JUSTICE SYSTEM'S RESPONSE TO
PARENTAL ABDUCTION**

Final Report

March 2000

A project conducted by:

American Bar Association Center on Children and the Law
Westat, Inc.
Research Triangle Institute

Edited by Kathi L. Grasso, Esq.

for the:

Office of Juvenile Justice and Delinquency Prevention
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Finally, we wish to thank the United States Department of Justice, Office of Juvenile Justice and Delinquency Prevention, for giving us the opportunity to study a topic of vital importance to children and their families.

Executive Summary

**THE CRIMINAL JUSTICE SYSTEM RESPONSE TO
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EXECUTIVE SUMMARY

THE CRIMINAL JUSTICE SYSTEM'S RESPONSE TO PARENTAL ABDUCTION

BACKGROUND AND PURPOSE

Every few weeks, many of us receive advertisements in the mail with the pictures of missing children and their alleged abductors. Some of us quickly glance at the pictures; some of us study them more carefully; and some of us do not look at all. The majority of these children have been abducted by relatives, usually a parent. We doubt that we know them and too often think to ourselves: "They must be safe, because they are with their parents." As will be highlighted in this report, the criminal justice system's response to the crime of parental abduction mirrors the mixed reaction of the general public. It is a limited, inconsistent response that may fail the victims of this serious form of child maltreatment.

At least 350,000 children are the victims of parental abduction in any given year. In 1988, the last year for which national estimates of parental abduction were compiled, approximately 354,100 children experienced a parent violating an order or formal/ informal agreement governing their custody or visitation. Abductors of about 163,200 of these children made attempts to conceal them, take them across state lines, or keep them indefinitely.¹

For this current study, parental abduction or custodial interference is defined as "the taking, retention, or concealment of a child or children by a parent, other family member, or their agent, in

¹Finkelhor, D., Hotaling, G., & Sedlak, A., *National Incidence Studies on Missing, Abducted, Runaway and Thrownaway Children in America* (Washington, D.C.: United States Department of Justice, Office of Juvenile Justice and Delinquency Prevention 1990) (hereinafter referred to as NISMART).

derogation of the custody rights, including visitation rights, of another parent or family member."² It encompasses situations in which a child is abducted prior to the issuance of a custody order or when parents are unwed.

Although many, including some law enforcement personnel, perceive parental abduction as "civil in nature," and a private family matter best handled outside the realm of the criminal justice system, it is a crime in all fifty states and the District of Columbia and in the majority of cases constitutes a felony.³ Parental abduction is an offense that can cause extreme trauma to both children and left-behind parents, particularly in cases in which force is used to carry out the abduction or a child has been concealed or held for a lengthy period. Child victims often experience symptoms of serious emotional distress and may be forced to live a secret, nomadic existence. In cases of long-term concealment, children may be forever denied the opportunity of knowing the love and support of their other parent.

Federal, state and local law enforcement authorities have a significant role to play in the enforcement of criminal parental abduction laws. Expedited criminal justice system intervention can enhance the timely recovery of an increased number of children, alleviate harm to children, and ensure that abductors are brought to justice. This intervention includes promptly investigating complaints, documenting reports of parental abduction, making required entries into the National Crime Information Center (NCIC) computer, accessing the resources of federal and other law enforcement agencies as necessary, and filing criminal charges in appropriate cases to ensure that abductors are sanctioned for their illegal conduct.

²Girdner, L., "Introduction," *Obstacles to the Recovery and Return of Parentally Abducted Children*, ed. Linda Girdner & Patricia Hoff (Washington, D.C.: United States Department of Justice, Office of Juvenile Justice and Delinquency Prevention 1993), 1-11.

³In some states, parental abduction constitutes a crime only in cases in which a custody order has been violated. In others, no custody order is required in order for the offense of parental abduction to be committed.

Funded by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) of the United States Department of Justice, this research project was conducted jointly by the American Bar Association's Center on Children and the Law and Westat, Inc. between September 1993 and July 1996. Its primary goal has been to provide further insight into whether and how the criminal justice system intervenes in parental abduction cases by collecting data on the following:

- National estimates of family abduction reports to law enforcement authorities and resulting arrests;
- National estimates of family abduction cases opened by prosecutors and in which criminal charges were filed;
- Use by law enforcement authorities of management information systems (MIS) and written policy and procedure in responding to parental abduction reports;
- Staffing characteristics and administrative resources;
- Staff participation in formal training or special programs addressing parental abduction;
- Parental abduction case flow through the criminal justice system;
- Characteristics of cases in which law enforcement intervened by investigating and/or filing criminal complaints; and
- Model approaches to the handling of parental abduction cases.

This study's findings, as well as recommendations for legal, policy and programmatic reform, are summarized below and discussed in greater detail in the project's final report.⁴ To date, this study is one of the most comprehensive ever conducted of the nation's criminal justice system response to the crime of parental abduction.

RESEARCH DESIGN AND MAJOR FINDINGS

The study consisted of three phases:

- a nationwide survey of law enforcement agencies and prosecutors (see Chapter 2 for detail on the sampling strategy used to select counties);
- interviews of criminal justice personnel and others involved in the processing of parental abduction in six counties which had among the highest number of criminal complaints of parental abduction filed by prosecutors (the selection of these six counties is fully discussed in Chapter 3); and
- analyses of individual case files in three of the six jurisdictions visited (see Chapter 4 for more detail on these analyses).

⁴Most of the research, including the legal analysis, was concluded in 1996. However, an update of the law relevant to the report's recommendation was completed in 1999. If you wish to cite a particular federal or state law, you should check the law itself to ensure you have the most up to date language and citation.

PHASE I: THE NATIONAL SURVEY

Methodology

All law enforcement agencies and prosecutors serving a nationally representative sample of 400 counties were surveyed about their handling of parental abduction incidents occurring in 1992. They comprised 400 prosecutor offices, 405 county law enforcement agencies (LEAs), and 3,625 municipal law enforcement agencies (LEAs). Two questionnaires were developed, one to be filled out by law enforcement agencies and the other by prosecutors, and mailed to the offices of sheriffs, police, and prosecutors in the selected jurisdictions.

Due to a series of follow up mailings and other reminders to survey participants, the response rate was excellent for a mail survey. Overall, 76.6 percent of the LEAs completed the survey; 4.7 percent were found to be ineligible because they did not have the jurisdiction to conduct criminal investigations of parental abductions; and only 0.5 percent directly refused. Three-quarters (75%) of sampled prosecutors responded with 2.5 percent refusing to participate and 22.5% not responding at all.

Major Findings

National Estimates of Reports, Arrests, and Prosecutor Action

The national survey results revealed the following:

- An estimated 30,500 parental abduction cases were reported to law enforcement agencies in 1992. In 82 percent of these cases, a parent was responsible for the abduction; in 12 percent, a family member other than a parent was the abductor; and in 6 percent non-family members were the perpetrators.

- Approximately 4,500 cases of family abduction resulted in arrest, reflecting only 15 percent of all reported cases.
- A higher number of cases than the 4,500 resulting in arrest were referred to prosecutors. Law enforcement agencies referred about 9,200 family abduction cases to prosecutors, corresponding to 30 percent of all reported cases.

Prosecutors reported the following for 1992:

- An estimated 15,000 parental abduction cases were formally opened by prosecutors. This number is substantially higher than the number of referrals to prosecutor offices by LEAs (9,200), implying that many family abduction cases reach these offices by other referral routes, such as through the courts or directly from the aggrieved custodial parent.
- Criminal charges were filed in only an estimated 3,500 (23%) of cases opened by prosecutors. Of these cases, 31 percent were dismissed and 49 percent resulted in convictions.
- When analyzed county by county, of the 400 counties surveyed, only 17 counties had prosecutor offices filing more than 15 criminal complaints in 1992. Only 8 of the 17 counties were outside of California.

This Study's Findings in Relation to NISMART Estimates

The national estimates of reports of parental abduction to law enforcement agencies reflect only those parental abduction cases for which law enforcement officially took a report (30,500) and for which prosecutors' offices officially opened a case (15,000). These figures are substantially

lower than the estimated number of family abduction cases reported in the earlier cited 1990 NISMART study.

Based on interviews with parents and other primary caretakers, the NISMART study found that an estimated 354,100 children had been victims of custodial interference in a one-year period, and that 163,200 of them were involved in family abduction incidents in which the perpetrator had concealed the child, transported the child out of state, or conveyed the intention of permanently altering the custody arrangement. NISMART respondents also indicated that they had contacted police regarding family abductions involving 155,800 children or 44 percent of all familiarly abducted children. This number is more than five times the number of cases in which police officially took a report, according to the present study's estimates. Similarly, NISMART also revealed that aggrieved parties had contacted an attorney in the cases of 177,050 children or 50 percent of cases. This is nearly twelve times the 15,000 family abductions reported in this study to be opened by prosecutors.

Given that the figures from both studies appear equally valid in their own right, they suggest that a very high number of custodial interference cases are being screened out of the criminal justice system between the time of the complainant's initial contact with police or an attorney through to the official act of taking a police report or the prosecutor opening a case. Other reasons for the low numbers reported in this study are:

- the crime may not be identified in some jurisdictions as a parental abduction or custodial interference offense, but as another crime (e.g., domestic violence, assault, violation of non-specified court order);
- criminal justice agencies may incorrectly consider parental abduction incidents to be civil in nature, rather than criminal, and therefore fail to produce a formal police report; and

- aggrieved individuals may be unaware of law enforcement's authority to intervene in cases of custodial interference, or may have been discouraged from seeking police assistance given law enforcement's history of non-involvement in the majority of these cases.

Factors Influencing Law Enforcement and Prosecutor Case Processing

The three factors most frequently cited by law enforcement agencies as influencing their decision to take a report of an alleged parental abduction were: the existence of a custody order (60.1%), the endangerment of a child (52.1%), and joint custody (50.3%).⁵ Two of these factors, endangerment of the child (70.9%) and existence of a custody order (51.9%), were also among three of the most commonly cited factors determining investigative priority. The second most frequently reported factor was the child's disability status, cited by 65.7 percent of agencies.

The most common factors impacting on whether a prosecutor's office opened a case were: the existence of a custody order (70.6%), joint custody (62.8%), and endangerment of a child (62.2%). Regarding whether a case was actually prosecuted (i.e., filing of a criminal complaint), the three most common factors influencing this decision making were: the existence of a custody order (77.0%), the length of time the child had been gone (68.0%), and joint custody (66.9%).

Office Characteristics and Resources

The majority of LEAs reported that they did not have written policies and procedures governing parental abduction (69%); that they did not receive formal training on the handling of parental abduction cases (63%); and that they were not aided by computerized management

⁵The survey instrument made the inquiry as to "whether ... joint custody" was a factor in taking a report or influenced the investigative priority assigned to a case. Whether a court order was necessary to have "joint custody" was left to the interpretation of the responding agency.

information systems (MIS) in providing information on the number of parental abduction cases reported to their agencies (69%). Only 10 percent of LEAs indicated that a special program designed to specifically address familial abduction existed in their jurisdictions.

Prosecutor surveys revealed similar findings. The vast majority stated that they had not been aided by a computerized MIS in providing survey information (85%); that they did not have policies or written guidelines on parental abduction case handling (86%); and that staff did not receive formal training on parental abduction (86%). Seventy-nine percent of prosecutor offices indicated that they did not have specialized parental abduction programs.

PHASE II: VISITS TO SIX SITES

Methodology

In 1994, project staff conducted extensive interviews with individuals familiar with the criminal justice system's processing of parental abduction and visitation interference cases in six sites of varying size and attributes. The primary purpose of site visits was to examine how law enforcement agencies respond to custodial interference reports and to identify unique approaches in case handling practices. The six counties visited were:

- San Diego County, California;
- Snohomish County, Washington;
- Escambia County, Florida;
- Salt Lake County, Utah;

- Hudson County, New Jersey; and
- Pima County, Arizona.

Sites were selected based on the results of the national survey. Primary criteria for site selection were: (a) the prosecutor filed a minimum of fifteen criminal custodial interference complaints in 1992; (b) agencies' use of information management systems to allow for individual case tracking; and (c) geographic diversity. At the time of site selection, it was determined that the filing of a relatively high number of criminal complaints was one indicator of an enhanced law enforcement response to the crime of parental abduction.

At each site, project staff interviewed representatives of law enforcement agencies, prosecuting attorney offices, the judiciary, the private and legal services bar, the family court, and mediation programs. Although the counties visited had more than two local law enforcement agencies, only personnel in police and sheriff departments handling the majority of cases for a jurisdiction were interviewed.

Major Site Visit Findings

Parental Abduction as a Case Handling Priority

With the exception of the San Diego County District Attorney and Hudson County Sheriff's Offices, all criminal justice agencies reported that custodial interference cases comprised only an estimated one to five percent of their workload. Some perceived custodial interference cases as a "low priority" given their agencies' limited staffing and the high volume of other cases they were assigned to handle.

This did not mean, however, that personnel in these offices had not developed some expertise in the handling of custodial interference cases. For the most part, they were detectives assigned to the departmental unit responsible for the investigation of child abuse, parentally and stranger abducted children, and runaway youth.

At sites in which agency staff had developed an expertise in custodial interference or a specialty unit had been created, such as in San Diego and Hudson Counties, it was clear that the initiative of skilled and concerned staff contributed to an enhanced criminal justice system response. However, specialized systems were not necessarily institutionalized within an agency and might not exist if specialized staff were no longer employed by that agency. Of the twelve sheriff and police departments contacted, only five had written policies governing the processing of custodial interference cases. San Diego County was the only site in which a specific criminal justice agency, the District Attorney's Office, was mandated by California law to intervene in a case of custodial interference.

Case Processing/Impact of Court Order on Police Action

With the exception of Utah, the states visited are governed by laws⁶ that could be interpreted to prohibit custodial interference both before and after the issuance of a custody order. California, Florida, and Washington's statutes expressly outlaw custodial interference prior to the issuance of a custody order. Although Arizona's statute is less clear as to whether intervention is authorized in a pre-custody order situation, the Pima County's prosecutor's office interpreted case law as allowing intervention in such cases. In Hudson County, New Jersey, despite the statute's lack of clarity, law enforcement officials reported that they would at a minimum investigate a complaint of parental abduction to ensure the child was safe and at the same time refer the aggrieved parent to the family court to obtain a custody decree.

⁶The law cited in the description of Phase II, Visits to Six Sites, is current as of 1995. This was the law in effect at the time of the site visits.

Generally, law enforcement personnel respond to some degree to a complaint of custodial interference even though an aggrieved party does not have a custody order. In at least three jurisdictions visited, the degree of response (e.g., patrol officer sent to scene, follow up contact with involved parties) varies depending upon whether a court order exists or whether a child is at risk of harm. In the other three counties, a governing custody order has no impact on the degree of response in that a patrol officer is automatically dispatched to the scene or an investigation is conducted to verify the legitimacy of a complaint. At a minimum, in all sites, even if no court order exists, police will travel to the scene of the complaint to assess a child's well-being and at the same time refer parties to local civil courts, legal services or pro bono programs, or the private bar for assistance in filing a petition for custody.

Visitation Interference⁷

Almost all law enforcement agencies visited respond to complaints of visitation interference by sending a patrol officer to the scene or attempting to investigate the matter over the phone. Whether or not police enforce visitation orders depends on the specificity and clarity of the order. Also, not all responses to visitation interference reports are immediate, with some agencies believing that the interference should be of a "protracted" nature. As to interference with a visitation or access order, statutes of five out of six states visited prohibit such conduct. In three of the six states, violation of a visitation order could constitute felonious conduct.

⁷Visitation interference or denial of access encompasses the situation in which a child's legal custodian prevents a parent or individual with court-ordered visitation from exercising those rights.

Production of Crime Report

In all jurisdictions, law enforcement personnel prepare a crime report upon receiving a complaint of custodial interference. Whether or not an incident of custodial interference would be labeled as such varies among jurisdictions. In some sites, custodial interference offenses could be classified as a "miscellaneous," "civil matter," or related offense, such as domestic violence or assault.

Entry into the National Crime Information Center (NCIC)

The National Child Search Assistance Act of 1990, 42 U.S.C. § 5780, requires that state and local law enforcement agencies take a report on a missing child and enter descriptive information on that child into the National Crime Information Center (NCIC) without a waiting period, regardless of whether the abduction constitutes a criminal violation. The NCIC is a computer database with information on missing persons that law enforcement agencies can access to facilitate their recovery of abducted children. The federal Missing Children's Assistance Act of 1984, 42 U.S.C. § 5772(1)(A)(B), provides that for purposes of NCIC entry a "missing child" is:

[A]ny individual less than 18 years of age whose whereabouts are unknown to such individual's legal custodian if--

(A) the circumstances surrounding such individual's disappearance indicate that such individual may possibly have been removed by another from the control of such individual's legal custodian without such custodian's consent; or

(B) the circumstances of the case strongly indicate that such individual is likely to be abused or sexually exploited[.]

Agency personnel reported varying practices as to the entry of information on parentally abducted children and perpetrators into the NCIC. It was the practice in some jurisdictions not to enter information on a parental abduction case unless the child's whereabouts were "unknown," an arrest warrant had been issued, or the abductor had fled out-of-state.⁸

Contact with the Federal Bureau of Investigation (FBI)

Pursuant to the Parental Kidnaping Prevention Act of 1980 (PKPA), 28 U.S.C. § 1738A, the FBI is authorized to investigate cases in which children have been abducted by parents or their agents across state lines or out of the country. In these cases, state or local law enforcement authorities would seek the issuance of a federal Unlawful Flight to Avoid Prosecution (UFAP) warrant to enable the FBI to investigate a parent's whereabouts.

The majority of law enforcement personnel reported minimal contact with the FBI, with the FBI being involved in only a few or none of their cases. Comments reflected a possible underutilization of FBI resources. One individual recommended that the FBI should become more involved with case investigation once an Unlawful Flight to Avoid Prosecution (UFAP) is issued and found a lack of follow up on the FBI's part. Another perceived the FBI as "jumping" on a case quickly if a child were taken out of state. Several viewed their working relationship with the FBI as "good."

⁸According to the American Prosecutors Research Institute (APRI), whether relevant information on a parentally abducted child is entered into the NCIC may depend on how states interpret "missing child." For example, the Nevada Attorney General issued an opinion dated January 23, 1992 stating that in accordance with Nevada law a parentally abducted child is a "missing child" for purposes of NCIC entry. National Center for Prosecution of Child Abuse of the APRI, *Investigation and Prosecution of Parental Abduction* (Washington, D.C.: U.S. Department of Justice 1995), 28.

Utilization of State Clearinghouses on Missing Children

All states, the District of Columbia, Puerto Rico and Canada now have state missing children's clearinghouses. Depending on the jurisdiction, clearinghouses can have a role in educating the public on missing children's issues, can be instrumental in coordinating agency services aimed at child recovery, and can provide assistance to law enforcement agencies in recovering children in specific cases.

With the exception of personnel in three counties, investigators appeared to underutilize state clearinghouses on missing children. These individuals seemed to be unaware of the existence of clearinghouses in their states or if they were aware, did not convey to interviewers that they utilized clearinghouse services.

Other Support Services

Agency personnel have had varying experiences with other support services. Most were not aware of or had never used the federal parent locator service. While the majority were familiar with the publications of the National Center For Missing and Exploited Children, it was less clear whether they were aware of the Center's training programs and provision of technical assistance in individual cases.

Access to Prosecutors

All law enforcement agencies had twenty-four hour access to prosecutors who could advise them on relevant legal issues. In at least three jurisdictions, personnel had direct access to a prosecutor specializing in custodial interference cases.

Child Protective Services Involvement

In all sites, agencies maintained a policy that in custodial interference cases in which a child was endangered or at risk of harm, a referral would be made to the local child protective services agency. In these cases, law enforcement personnel would have the authority to remove a child from a threatening situation.

Training and Specialized Knowledge

With the exception of those sites which had specialty units (e.g., San Diego, Hudson, and Pima Counties), training on parental abduction issues was "on-the-job." For those jurisdictions with formal training, topics covered included: federal and state criminal custodial interference laws, the psycho-social aspects of the crime, written policies and procedures involving case processing, effective interventions, and the interplay between the criminal and civil systems in resolving custodial interference disputes.

Most interviewed were knowledgeable about their state's criminal custodial interference laws. Only those sites with a significant immigrant population, Hudson, Pima, and San Diego Counties, had personnel familiar with the handling of international abduction cases. Personnel in these sites were knowledgeable about the Hague Convention on the Civil Aspects of International Abduction and accessing the services of the United States Department of State, United States Customs Office, and the Immigration and Naturalization Service for assistance in recovering the abducted child.

On the job training was the norm for prosecutors. In two of the seven sites (Pima and San Diego Counties), two prosecutors had become specialists in the field of parental abduction and were viewed as national experts. With the exception of these two counties, although prosecutors were familiar with their state laws addressing criminal custodial interference, they had relatively limited experience with applicable state civil laws, primarily because they did not practice in civil or family courts and did not specialize in custodial interference.

Criteria for Filing Criminal Complaint

In all jurisdictions, the number of criminal custodial interference complaints filed is quite low. For example, in a jurisdiction such as San Diego County where the District Attorney's Office receives as many as 1500 calls regarding custodial interference per year, only about 350 cases are formally opened and of these only an estimated 30 criminal complaints are filed each year. Most, if not all prosecutors reported that prosecution may not be in a child or family's interest and that the most important priority was to recover the child safely and expeditiously. The general consensus was that prior to prosecuting, each case had to be evaluated individually.

Typically, only custodial interference is charged. In two jurisdictions visited, prosecutors may also file child endangerment, burglary, or assault related to domestic violence charges. Only Pima County actively prosecuted misdemeanor visitation interference cases through the County and City Attorneys' Offices.

The criteria for filing a criminal complaint varied among jurisdictions. Prosecutors related the following factors (though not all) as influencing their decisions to prosecute:

- the child and/or abductor could not be located or the abducting party refused to return the child;
- the custodial interference was for a permanent or protracted period (i.e., two to three months);
- the abductor crossed state lines or fled the country;
- a custody or visitation order had been violated; and
- evidence existed of repetitive conduct.

Extradition of Offender

In most sites, extradition of offenders rarely occurred. One reason given for non-extradition was the expense involved in extraditing, especially if the defendant was in a distant location. Extradition was more likely to occur in sites in which prosecutor offices had a unit employing staff who specialized in custodial interference cases.

Case Disposition

The majority of cases filed in all jurisdictions result in plea bargains or dismissals. Those individuals convicted of custodial interference usually receive probation with conditions (e.g., pay restitution to the victim, attend parenting skills classes, must stay away from the victim child). Jail time is extremely rare. It appears that the only time a defendant is incarcerated either prior to or after a conviction is if the defendant refuses to disclose a child's whereabouts.

According to prosecutors, parental abduction cases are rarely tried by a jury or judge. Three jury trials were reported, one in each of three sites. Bench trials (cases in which judge determines guilt or innocence) occurred with some frequency in only one site that actively prosecuted visitation interference cases. Prosecutors perceive custodial interference cases as extremely difficult to try. Not only must they prove the elements of an offense, they must also refute the defense that the abductor acted to protect the child from the other parent's alleged abusive behavior.

Victim Advocacy Programs/Reunification Services

With the exception of Pima County and San Diego counties, victim advocates had a minimal role in assisting parents and children prior to and after a child's recovery. The victim witness advocate of the Pima County Attorney's Office and the investigation-specialists of San Diego's District Attorney's Office have been instrumental in getting aggrieved parties access to civil court and legal services and providing assistance during the reunification process.

Concerns and Recommendations of Those in Field

The overriding concern of most criminal justice system personnel is the need for additional staff and other resources so that they can give all types of cases, including custodial interference cases, the thorough attention warranted. They perceived their caseloads as rising and some voiced anxiety that custodial interference cases might be viewed over time as less of an office priority.

Other recommendations included the following:

- the purchase of enhanced computer technology to allow for quicker access to information which would be useful in investigating cases intra- and interstate;
- the implementation of more in-house training programs on criminal and civil custodial interference issues for all service providers in the system, including patrol officers, law enforcement management, prosecutors, support staff, attorneys, and judges;
- the creation or expansion of specialty units within agencies to effectively and expeditiously intervene in custodial interference cases;
- the establishment of more uniform custodial interference laws nationwide, including more uniform procedures related to order enforcement;
- the appropriation of additional staff and other resources to the FBI and the United States Department of State to enable those agencies to provide additional investigative and other support in appropriate cases;

- the creation of a national child custody order registry to allow those enforcing custody orders to verify orders' legitimacy;
- the issuance of custody and visitation orders that are more specific as to the rights and obligations of the parties and which include the admonition that violation of orders is a criminal offense and punishable by imprisonment;
- the expansion or creation of legal services, family court, and pro bono programs to enhance parents' access to legal representation in child custody and visitation cases;
- the implementation of supervised visitation and mediation programs as an abduction prevention measure; and
- the development of appropriate reunification services (e.g., counseling, specialized foster care) and victim advocate programs to alleviate trauma to children upon their return to the lawful custodian.

Phase III: Individual Case Tracking in Three Jurisdictions

Methodology

In Phase III, the criminal justice system's response to parental abduction was further examined through review of individual case files in three of the jurisdictions visited during the study's second phase -- Hudson, San Diego, and Pima Counties. Individual case tracking produced important findings on the flow of parental abduction cases through the criminal justice system, as well as on case characteristics and their influence on case outcome. It also corroborated many of the findings of the study's site visits.

Sites were selected based on the criteria outlined below:

- Number of criminal complaints filed in 1993;⁹
- Accessibility of case files for tracking in both law enforcement and prosecutor offices;
- Existence of specialized law enforcement or prosecutor units designed to handle parental abduction cases;
- Existence of other unique programs addressing parental abduction concerns; and
- Geographic diversity.

⁹The year 1993 was selected as it was determined that most cases originating in 1993 would have been processed through the criminal court system (if referred), with a final disposition by 1995, the year individual case tracking was planned.

Conducted in 1995, data collection involved abstracting information from existing files (both manual and computer) in the sites' law enforcement and prosecutor offices. The number of cases reviewed in the final sample was as follows:

- 80 cases in Hudson County (62 Sheriff's Office/18 Prosecuting Attorney);
- 96 cases in San Diego County (All in District Attorney's Office); and
- 94 cases in Pima County (80 Tucson Police Department/14 County Attorney).

Major Findings

Case Flow: Report through Disposition

Hudson County

In the Hudson County Sheriff's Office, seventy-two complaints of custodial or visitation interference were recorded for 1993. Custody orders existed in 49 (68%) of these cases, meaning that in nearly one-third of cases, law enforcement personnel responded to a report even if an aggrieved party did not have a custody order. Arrests were made or arrest warrants issued in 20 (27%) cases. The most common reasons cited for closing cases included: the child was voluntarily returned after contact by Sheriff's Office (18%); the child was voluntarily returned with no contact (7%); and the case was handled in civil court (10%).

The Prosecuting Attorney's Office filed criminal charges in fourteen of the cases (19%) handled by the Hudson County Sheriff's Office and in an additional eight cases (11%) involving arrests made by other municipal law enforcement agencies. The majority of the total filed cases (n=17) involved felonies. Only one case proceeded through to sentencing with the defendant

pleading guilty in the county's criminal court. That defendant received thirty months probation. The other cases were no billed by the grand jury, remanded to the municipal court by the county prosecutor, dismissed, still open, or involved pretrial intervention.

San Diego County

In San Diego County, 195 complaints were formally opened by the District Attorney's Office. Custody orders existed for slightly over 50 percent of these cases. Arrests were made or arrest warrants were issued in 21 cases (10%). The most common reason for case closure by the District Attorney's Office was that the case was being handled in civil court (45%). Other common reasons for case closure included: the child was voluntarily returned after agency contact (10%); the case was pending further court proceedings (7%); an out-of-state custody order was unenforceable (6%); and other unspecified reasons (10%).

Felony charges were filed in eight cases and most of these defendants (n=7) pled guilty. One case was dismissed. The sentences imposed on four defendants included both incarceration (ranging from 44 to 184 days) and probation (ranging from 18 months to five years). Three defendants received probation (ranging from one to three years) without jail time.

Pima County

Pima County's criminal justice agencies received 178 complaints of custodial interference. As in San Diego County, custody orders existed for slightly over 50 percent of the cases. Arrests were made or arrest warrants issued in 22 cases. Typical reasons for cases being closed were that the complainant was unwilling to press charges (15%); the child was voluntarily returned to complainant after agency contact (6%); the child was voluntarily returned without agency contact (4%); and the case was handled in civil court (4%).

Criminal charges were filed in 17 cases. Additionally, the County Attorney filed three cases in which arrests were made by the Sheriff's Office. Felony charges were filed in 11 cases; misdemeanor charges were filed by the City Attorney in nine cases. Outcomes in the courts included ten dismissed cases, nine guilty pleas, and one unknown outcome. The sentences received included: (1) incarceration and probation, (2) incarceration only, (3) probation only, and (4) sentence unknown. While the periods of incarceration were unknown, the periods for probation ranged from 45 days to three years.

Case Characteristics

The Children

Sixty percent or more of the cases in each of the three sites pertained to only one child. The most typical case in all three counties involved a child age three or younger. In Hudson and Pima Counties, the child was most likely to live with the complainant (49% and 61% of the cases, respectively). In San Diego County, the child was more likely to live with the perpetrator (40%) than with the complainant (28%), or both the perpetrator and the complainant (25%). This finding is in line with the fact that in many of the cases in San Diego County, the perpetrators were fathers seeking custody rights for children they had previously been ordered to support.¹⁰ Children were returned to complainants in 71 percent of Hudson County cases, 66 percent of Pima County cases, and 42 percent of San Diego County cases.

¹⁰In San Diego County, some requests of fathers for custody and visitation rights were the result of paternity findings after mothers requested public financial assistance. Once fathers were identified, confirmed, and required to pay child support, some of them would then obtain an order in which they were granted custody of their children. Upon the mother's failure to comply with the custody order, a subsequent order to locate the child would be issued. No linkage involving paternity findings and custody issues was found in the other sites' cases.

The Perpetrators and Complainants

In Hudson and Pima Counties, fathers were most likely to be the perpetrators, accounting for 49 percent and 60 percent of the cases, respectively. In San Diego County, mothers were the perpetrators in 71 percent of the cases. Perpetrators in all three counties were most likely to be 26 to 35 years old, white and divorced.

To some extent, the complainants were the mirror image of the perpetrators. In Hudson and Pima Counties, the complainant was the mother in 54 and 61 percent of the cases, respectively. In San Diego County, the complainants were fathers in 67 percent of the cases. The child welfare agency was the complainant in one percent of the Hudson County cases, four percent of the San Diego County cases, and three percent of the Pima County cases.

Complainants were most likely to be found in the same age group, 26 to 35 years, as the perpetrator. However, age data was not available in 30 percent of the cases in Hudson County, 46 percent in San Diego County, and 52 percent in Pima County.

Law Enforcement Agency Response

As was found during site visits, the law enforcement response to reports of custodial or visitation interference varied. In Pima County, police officers were dispatched to the scene in 72 percent of cases and in 45 percent, police had face-to-face contact with the complainant. The Hudson County Sheriff's Office dispatched officers to the scene in 23 percent of the cases, and had face-to-face contact with the complainant in 44 percent of the cases. In San Diego County, investigators from the District Attorney's Office were dispatched to the scene in 16 percent of cases, and had face-to-face contact with the complainant in 21 percent of the cases. The variance in response among jurisdictions may in part be due to the fact that in jurisdictions, such as San Diego and Hudson Counties, other local police agencies may have been the first to respond to a parental abduction report and after face-to-face or other contact with the complainant, referred the case to the San Diego District Attorney and Hudson County Sheriff's Offices.

Entry into the National Crime Information Center (NCIC)

Case records in San Diego County indicated that perpetrator information was entered into the NCIC computer 38 percent of the time, and that child information was entered 41 percent of the time. In Hudson County, police entered information into the NCIC for 31 percent of the perpetrators and 29 percent of the children. In Pima County, records indicated that information on perpetrator and child had been entered into the NCIC for only ten percent of the cases.¹¹ As data on entries into the NCIC were not in the record for 46 percent of Hudson County cases, 43 percent of San Diego County cases, and 17 percent of Pima County cases, these findings are limited.

Referrals To Other Agencies

Law enforcement's response also includes communicating with and making referrals to other agencies for assistance. Records kept by Hudson County Sheriff deputies were more likely to document whether parties were referred to other agencies than the records in the other two sites. In Hudson County, complainants were referred to family court services in 41 percent of the cases. In San Diego County, the District Attorney's Office made referrals to the family court in 21 percent of cases.

Referrals of aggrieved parties to child protective services (CPS) or the local child welfare agency were made in six percent or less of the cases in all three sites. CPS, however, was contacted directly by law enforcement agencies in a higher percentage of cases. In San Diego and Pima Counties, CPS was contacted 23 percent of the time and in Hudson County, in 13 percent of cases.

¹¹The relatively low percentages for entry of information into the NCIC may in part be explained by the fact that the federal Missing Children's Assistance Act of 1984, 42 U.S.C. § 5772 (1)(A)(B), which defines "missing child" for purposes of NCIC entry, is generally interpreted as not requiring entry if a child's whereabouts are known to the child's lawful custodian. Technically, the child is not perceived as being "missing." For a further discussion of this issue, see this summary's Phase II findings and recommendations sections.

A variety of other law enforcement agencies (county, state, out-of-state, out-of-country) were contacted during the investigation of these cases. Records indicated six percent or less of cases involved contact with a state's missing children clearinghouse, the National Center on Missing and Exploited Children, or non-profit missing children organizations.

Extradition

Extradition to return a perpetrator to a jurisdiction occurred in less than ten percent of cases.

Other Case Characteristics

In over 90 percent of cases in Hudson and Pima Counties, and over 70 percent of cases in San Diego, the perpetrator was the only adult involved in the abduction. Force or weapons were used in less than 10 percent of the cases in all three sites. Perpetrators took the child to one or more other states in 47 percent of Hudson County cases, 46 percent of San Diego County cases, and only ten percent of Pima County cases.

Case Characteristics: Impact on Response and Case Outcome

A variety of factors were examined, using chi-square analysis, to determine if they were associated with response and case outcomes, specifically whether an arrest was made or arrest warrant issued and whether charges (felony or misdemeanor) were filed in criminal court.¹² Seventy-four complaints of parental abduction resulted in arrests or the issuance of an arrest warrant across all three sites. Fifty of these complaints resulted in felony and misdemeanor charges being filed.

¹²Characteristics that were missing more than 30 percent of the data were eliminated from the chi-square analysis.

Four perpetrator characteristics out of the twelve examined were found to be positively associated with whether a case resulted in an arrest. That is, cases with the characteristic were more likely to result in the perpetrator's arrest than cases without it. These characteristics included:

- the perpetrator's race/ethnicity (black/African-American, Hispanic, and "other" race perpetrators were more likely to be arrested than white non-Hispanic perpetrators);
- prior criminal record (perpetrators with at least one prior arrest were more likely to be arrested than perpetrators with no prior arrests);
- prior law enforcement incidents or complaints between the perpetrator and complainant (increased the likelihood of arrests if there were some prior complaint involving law enforcement); and
- history of drug and alcohol abuse (perpetrators with a prior history of drug and alcohol abuse, regardless of the source of that information, were more likely to be arrested).

Nine complainant characteristics were examined for their relationship with case outcomes.

Four characteristics were associated with arrests or the issuance of an arrest warrant:

- relationship to the child (cases in which Child Protective Services (CPS) was the complainant were more likely to result in the perpetrator's arrest),
- prior criminal history (cases in which the complainant had a prior criminal record were less likely to result in the perpetrator's arrest),
- history of domestic violence (cases in which the complainant had a history of committing domestic violence were less likely to result in the perpetrator's arrest), and
- history of mental illness (cases where there was an indication of the complainant's past mental illness were less likely to result in the perpetrator's arrest).

One perpetrator characteristic, prior law enforcement incidents or complaints, was found to be associated with the filing of charges by prosecutors' offices. The complainant's history of committing child abuse was also associated with whether or not charges were filed in criminal court.

None of the characteristics associated with the child -- number of children involved in the incident and living situation of child -- were found to be significantly related to case outcomes. This may in part be attributable to the fact that the majority (60% to 78%) of cases in all three sites involved only one child.

Six incident characteristics were examined for association with case outcomes; three were found to be significantly related to arrests/arrest warrants. These included the use of a weapon or force, the return of the child, and whether the perpetrator left the jurisdiction. The perpetrator was more likely to be arrested or have an arrest warrant issued if a weapon or force had been used, the child was returned, and the child had been taken out of the jurisdiction during the abduction incident.

Comparison of Phase I and Phase III Case Level Analysis

Table One compares the percentage of cases that resulted in arrests, filed charges and convictions in each of the sites with the national estimates compiled in Phase I. As can be seen, the percentage of cases resulting in arrest and filings were higher than the national estimates in Hudson County, and lower than the national estimates in Pima and San Diego Counties. Convictions in each of these sites were lower than the national totals estimated in Phase I.

Table One: Comparisons of Parental Abduction Arrests, Filings, and Convictions among Sample Sites and the Nation^{a/}

Sites	Total number of Reports/ Complaints	Percent of Total that had Arrests	Percent of Total that had Filed Cases	Percentage of Total that had Convictions
Hudson County	72	27.8	19.4	1.4
San Diego County	195	10.8	4.1	3.6
Pima County	178	12.4	9.5	5.1
National Estimates	30,536	14.6	11.4	5.7

a/ Percentages based on the number of parental abductions reported to law enforcement.

A lower number of arrests, case filings, and convictions than the national estimates might be indicative of the fact that in the sites studied, criminal justice system intervention usually occurs soon after a report of parental abduction, resulting in a relatively large number of cases being resolved without the need for prosecution.

It is also interesting to compare case tracking findings with the factors identified in Phase I relating to whether a police report was taken, the investigative priority of the case, and whether a prosecutor opened a case and filed charges. In the Phase I findings, existence of a custody order was listed as the most important factor in determining whether a police report was taken and a prosecutor opened a case or filed charges. In the case-level analysis, this factor was not found to be significant. In part, this may be attributed to the fact that custody orders were often not in the record (10 percent of the San Diego County cases, 25 percent of the Hudson County cases, and 36 percent of the Pima County cases). The three counties were also in states where criminal laws were interpreted as not requiring a custody order for the crime of custodial interference to be committed.

Child endangerment was also listed as a top priority influencing police and prosecutor response in Phase I. Case-level analyses revealed that a history of child abuse committed on the part

of the complainant was positively associated with the filing of charges, whereas the perpetrator's child abuse history had no influence on filing. Moreover, Phase I data revealed that a history of prior offenses influenced police response in less than 50 percent of the jurisdictions surveyed, but was a contributing factor to prosecutor response in over 50 percent. In the case-level study, a history of prior offenses for the perpetrator was associated with arrests/arrest warrants.

THE SIGNIFICANCE OF THIS STUDY

Emerging from this study, especially in relation to other national findings on parental abduction, is a picture of a criminal justice system paying relatively scant attention to the crime of parental abduction. As reported in NISMART, an estimated 155,800 children are victims of relatively serious family abduction in the course of a year, yet only 30,500 police reports are officially registered and only an estimated 4,500 arrests for parental abduction are made. On the prosecutor's side, only 9,200 cases are officially opened and only 3,500 criminal complaints are actually filed. Even allowing for the fact that an individual law enforcement or prosecutors' cases may encompass multiple children's abductions, these figures imply a very low response rate overall.

Despite the fact that parental abduction is a crime in all fifty states and the District of Columbia, the study's findings also reveal that criminal justice agencies have not implemented training and other programs that would allow their staff to be better educated on the topic of custodial interference and enable them to respond effectively. As stated earlier, this study's findings indicate that the majority of law enforcement and prosecutor agencies do not have written policies and procedures governing parental abduction, do not provide staff with training on the topic, and do not have special programs designed to specifically address the crime.

However, it must be noted that during site visits, several jurisdictions were identified that have developed unique and effective approaches to the handling of parental abduction cases. If one were to create a model program of service delivery designed to better locate and recover the parentally abducted child and hold the abductor accountable, did the site visits and individual case

tracking provide guidance on best practices for intervention? The answer would have to be in the affirmative.

The characteristics unique to the majority of the jurisdictions visited contributing to an enhanced criminal justice system response were:

- Statutory authority to effectively intervene;
- Agency leaders and staff committed to combating parental abduction;
- Personnel specialized in the handling of parental abduction cases;
- Coordinated agency response;
- Good agency management practices; and
- Agency staff and left-behind parent having access to supportive services (e.g., legal, family court, mediation, reunification, and visitation supervision services).

Strategies for Model Program Implementation

An examination of unique models of intervention raises the issue of how a program becomes institutionalized within an agency so that it will continue to exist once leaders or staff committed to combating the crime are no longer employed within a particular unit or agency. What ensues if leadership changes, and parental abduction is no longer a priority to the individuals in charge, or fiscal restraints require the assignment of staff to other duties? Additionally, for those jurisdictions in which criminal justice system intervention is non-existent or minimal, how does one change an institutional or staff mind set that parental abduction is not a criminal problem? Given that law enforcement agencies have to deal with other serious crime, how can criminal justice systems be

encouraged to make custodial interference a priority, especially in light of limited budgets and staff resources? Answers may be found in this study's model programs chapter, as well as in the following summary of recommendations for statutory, programmatic, and system reform.

RECOMMENDATIONS FOR LEGAL, PROGRAMMATIC, AND POLICY REFORM

Statutory Change:

- **Enact comprehensive criminal parental abduction statutes, such as the Parental Kidnaping Crime Act.**

The first step in implementing a model system for an enhanced law enforcement response to parental abduction is for a jurisdiction to evaluate its current state criminal parental abduction statutes and case law. If criminal justice agencies are to effectively respond to the crime of parental abduction, laws must support their efforts. We cannot talk about making parental abduction a law enforcement priority, unless we first have laws authorizing law enforcement intervention and designating the offense a felony.

Attached in the final report's appendix is a comprehensive uniform "Parental Kidnaping Crime Act."¹³ Those interested in enhancing their criminal justice system's response to the crime of parental abduction should review this model statute, carefully contrasting it to their state's existing statute. As indicated in the Act's introduction, the "Act is intended as a substitute for existing laws that cover the issues addressed in [the] statute" and to enhance the effectiveness of those statutes that are already for the most part in conformity with it. The Act's primary goal is to produce statutory uniformity among states because:

¹³Uthe, J., "Parental Kidnaping Crime Act," *Parental Kidnaping Law Reform Package*, ed. Linda Girdner and Patricia Hoff (Washington, D.C.: United States Department of Justice/Office of Juvenile Justice and Delinquency Prevention 1996).

A uniform approach to the nationwide problem of parental kidnaping will send this message to parents: There is no safe haven for child abductors. Every state treats child abduction as a punishable offense according to the same terms. Faced with predictable criminal consequences for parental kidnaping, more parents are apt to seek civil solutions to their child custody problems, which is in the best interests of children.¹⁴

Briefly, the Act prohibits parental kidnaping which substantially deprives another of his or her right of custody or visitation whether or not a child has been removed from a particular state or a custody order has been issued. Of particular note to law enforcement personnel are provisions of the Act that authorize them to take a child into protective custody under specified circumstances, including if the child “reasonably appears” to be a missing or abducted child¹⁵ and state that “[a] law enforcement officer and a prosecutor and his or her representatives shall not be liable for actions taken pursuant to this Act.”¹⁶

- **Enact state statutes, modeled after California's law and the UCCJEA, that authorize prosecutors to investigate and prosecute custodial interference complaints, including filing pleadings in civil or family court proceedings necessary to the abducted child's recovery.**

The above cited Parental Kidnaping Crime Act does not include language, such as that of CA Family Law Code §§ 3130-3134, giving prosecutors the authority to file appropriate civil or family court pleadings in order to facilitate the recovery of an abducted child. The omission of such provisions should not be construed to mean that the criminal act's drafters did not perceive such prosecutorial authority as important to the abducted child's recovery. They were not made part of the uniform crime act as they address proceedings that are civil in nature.

¹⁴Ibid., iii.

¹⁵Ibid., 6.

¹⁶Ibid.

In addition to CA Family Law Code §§ 3130-3134, Title II of "An Act To Expedite Enforcement of Child Custody Determinations"¹⁷ addresses the role of prosecutors and law enforcement in civilly enforcing custody orders. For example, the Act provides *inter alia* that law enforcement personnel are authorized to seek a court order granting them the right to take temporary custody of a child in cases in which they would have to travel out-of-state to recover an abducted child and/or pick up an offender during extradition proceedings.

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) approved in 1997 by the National Conference of Commissioners on Uniform State Laws, contains very similar provisions. Section 315 gives prosecutors statutory authority to take any lawful action, including using a proceeding under the Act, to locate a child, obtain the return of a child, or enforce a child custody determination. The prosecutor may take action if there is an existing custody determination, a request from a court, a reasonable belief that a criminal statute has been violated or that the child was wrongfully removed or retained in violation of the Hague Convention. Section 316 authorizes law enforcement personnel to assist prosecutors in carrying out their responsibilities under the Act. States should consider enacting the UCCJEA, including these innovative provisions.

- **Ensure that parental kidnaping or custodial interference crime acts encompass visitation interference.**

The model Parental Kidnaping Crime Act makes criminal conduct in which an individual "substantially deprive[s another] of his or her right of...visitation."

¹⁷The full text of the act with commentary can be found in Volenik, A. & Uthe, J., Chapter 6, *Obstacles to the Recovery and Return of Parentally Abducted Children*, ed. Linda Girdner and Patricia Hoff (Washington, D.C.: United States Department of Justice/Office of Juvenile Justice and Delinquency Prevention 1993).

- **The Missing Children's Assistance Act of 1984, 42 U.S.C. § 5772 (1)(A)(B), should be modified to ensure that information on all familially abducted children is entered in the National Crime Information Center computer immediately upon law enforcement's receipt of a report (NCIC).**

Site visits revealed that the above cited federal statutory provision is generally interpreted to mean that if a child's whereabouts are known to the child's lawful custodian, information regarding the child and the abductor need not be entered in the NCIC computer.

Even in cases in which a child's whereabouts are known by the lawful custodian, there is always the serious risk that the abducting parent will flee, possibly immediately, will subject the child to abuse or neglect, or will be involved in other criminal conduct. Clarifying the federal law (e.g. definition of "missing child") to ensure that information on all Familially abducted children is entered into the NCIC, will ensure that entry into the NCIC is conducted more uniformly among states, as well as facilitate intra- and interstate communication among law enforcement agencies on the familially abducted child. It will also enhance the ability of prosecutors who have or may acquire the authority to civilly locate and recover abducted children pursuant to the aforementioned UCCJEA.¹⁸

¹⁸In accordance with NCIC 2000, technological capabilities are being improved. As part of these efforts, guidelines are being developed and implemented. In light of this report's NCIC related findings, the NCIC 2000 code for missing persons should state "parental abduction" rather than "noncustodial parent abduction." This code is too narrow a construct, as sometimes custodial parents conceal children in violation of other parent's visitation rights. They should also expressly allow entry of abducting parents who are missing into the NCIC, regardless of custodial or criminal status. It is imperative that the proposed NCIC 2000 guidelines as they relate to familial abduction (interstate and international) be reviewed to ensure that they facilitate not hinder the identification and recovery of abducted children, regardless of whether a custodian, non-custodian, or other person abducts them.

Programmatic Change:

- **The leadership of criminal justice agencies should recognize that parental abduction is a serious form of child maltreatment and a crime that must be effectively investigated and prosecuted. Leadership should advocate for sufficient staff, enhanced computer technology, and other resources so that staff are able to make the crime of parental abduction a case priority.**

This study's site visit interviews revealed that criminal justice system personnel are increasingly overwhelmed with serious violent and other crime. Although those interviewed perceived parental abduction as a serious criminal offense, they were also concerned that unless additional staff and other resources were provided, they would be unable to respond effectively. Several reported the need to have sufficient and upgraded computer equipment, as well as access to computer technologies that would allow them to quickly access data collection systems (e.g., TRW credit check, Data Quick, medical assistance, internet) and expedite investigations.

- **Criminal justice system agencies on both the state and local levels should develop and implement written agency policies and procedures addressing the handling of cases of parental abduction or custodial interference.**

In order to institutionalize practice and procedure and ensure a uniform, effective response to reports of parental abduction or visitation interference, it is imperative that criminal justice agencies develop and implement agency policies and procedures specific to the processing of these cases. As a matter of good management practice, all personnel, including supervisors and those on patrol should be fully trained on and apprized of agency policies and procedures. It is recommended that agencies evaluate any existing agency policies and procedures on the general handling of missing children's cases to ensure that parental abduction issues are encompassed. In addition, law enforcement and prosecutor personnel should assess the need for formal written protocols governing the appropriate transfer of cases for purposes of prosecution.

- **Develop initial and ongoing training programs for all criminal justice system personnel and leadership on the handling of parental abduction cases, as well as on the psycho-social aspects of the crime and the interrelationship of criminal and civil forums in resolving custodial interference disputes.**

Educating all criminal justice system personnel, including patrol officers and management, about the crime of parental abduction and effective responses to it is essential to changing the mindset that parental abduction is not a serious crime. This study indicated that with the exception of a handful of criminal justice agencies, most law enforcement personnel and prosecutors do not receive any specialized training on issues, policies and procedures relevant to parental abduction. The criminal justice system's current perception of this crime is very much like its view of domestic violence five to ten years ago.

Included in the appendices of the final report are excerpts to one model parental abduction training manual that outlines a variety of topics on parental abduction.¹⁹ These materials are not intended to be all inclusive, but rather to provide a framework for the development of initial training and continuing education programs. Briefly, all agency personnel should be familiar with both federal and state criminal custodial interference laws, the psycho-social aspects of the crime, any written policies and procedures addressing case processing, effective interventions, the interplay between the criminal and civil systems in resolving custodial interference disputes, and community and other support services that may complement law enforcement intervention (e.g., mediation, family court, and legal services programs). In addition, in order to ensure that entry into the NCIC is conducted more uniformly among the states, all law enforcement personnel should receive concerted training on the appropriate and expeditious entry of abduction reports into the NCIC.

¹⁹In 1998, the California Attorney General's office published a comprehensive, authoritative guide to handling parental abduction cases in that state. It is entitled *Attorney General Child Abduction Reference Manual 1998* and was prepared by Raquel M. Gonzalez, Elaine F. Tumonis, and Robin Dunham. States should be supported in replicating this manual to reflect their own state laws and procedures.

Given time constraints for staff training and the number of subjects that must be covered, it may be appropriate to incorporate into already existing domestic violence and child abuse training, specialized training on parental abduction and visitation interference concerns. Management and staff should explore the possibilities of obtaining technical assistance from such organizations and agencies as the National Center For Missing and Exploited Children (NCMEC), the American Prosecutors Research Institute (APRI), the Office of Juvenile Justice and Delinquency Prevention (OJJDP), and the Missing and Exploited Children Comprehensive Action Program (M/CAP).²⁰

In order for such educational programs to be effective, it is imperative that such training be mandatory for all staff. This training must reach the level of staff who are receiving initial reports of custodial interference in both urban and more rural areas. Personnel must know that they should not be turning away aggrieved parents or lawful custodians to fend for themselves. Furthermore, agencies should consider addressing parental abduction topics at roll calls and periodic staff meetings, disseminating bulletins or memoranda, and producing training videotapes in collaboration with NCMEC and APRI for use in rural areas or at staff's convenience.²¹

²⁰Special note should be taken of the Office of Juvenile Justice and Delinquency Prevention's (OJJDP) child abuse curriculum for law enforcement personnel, *Basic Investigation of Missing and Exploited Children*, that includes a component on family abduction. In addition, as reported in *Department of Justice Programs for Missing and Exploited Children*, Fact Sheet #41 (May 1996), "[u]sing strategies developed through the Missing and Exploited Children Comprehensive Action Program, OJJDP provides technical assistance to jurisdictions implementing multidisciplinary, interagency responses to missing and exploited children's issues." This assistance "includes facilitating the involvement of frontline personnel with policy-level officials to develop an interagency agreement that is uniquely responsive to the community's needs."

²¹Those coordinating educational programs should be aware of existing publications of APRI and the NCMEC that their staff will find informative and of practical use. In particular, they should have access to APRI's *Investigation and Prosecution of Parental Abduction*, an investigation and trial manual published in 1995 and NCMEC's *Missing and Abducted Children: A Law Enforcement Guide to Case Investigation and Program Management* published in 1994.

- **Work toward the establishment of specialized units comprised of law enforcement personnel and prosecutors skilled in investigating and prosecuting the crime of parental kidnaping or visitation interference.**

Given the complexity of case investigation and recovery efforts, and the experiences of the Hudson, Pima and San Diego Counties, it is highly recommended that agencies seriously consider establishing sufficiently staffed specialty units to allow for a coordinated and expert response to reports of custodial interference. Patrol officer and line staff still need to be knowledgeable about the issues, but staff specialists can more effectively follow up with necessary investigation, assess the appropriateness of law enforcement intervention, access suitable support services, and ease the line officers' burden in resolving custodial interference complaints.

It is not necessarily being suggested here that specialists only handle custodial interference cases, especially in jurisdictions that may not have a high number of cases. Agencies are encouraged to designate two or more staff who would be fully apprized of all aspects of parental abduction case handling and at the same time be assigned other types of cases. A preferable staffing model would be one, such as the Family Protection Division of the San Diego District Attorney's Office, which handles not only custodial interference, but also child abuse and domestic violence cases.

- **In line with the establishment of specialty units, consider establishing "local" law enforcement missing children's clearinghouses.**

Local law enforcement agencies should more effectively collaborate with their state missing children's clearinghouses. In conjunction with this, consideration should be given to establishing "local" missing children's clearinghouse within state counties to allow for an expert, coordinated response to custodial interference reports. The model for this approach could be that of the Hudson County. Municipal police departments could refer cases for further investigation to a more central county agency, such as the Sheriff's Office which would employ staff specialized in the handling of such cases. Recognizing that this type of coordination might not be easy to accomplish given

agencies' individual priorities or interests, those interested in pursuing such coordination should keep in mind that this approach could be cost-effective and ease the burden of municipal police departments in investigating parental abduction cases.

- **Criminal justice system agencies should develop and implement written inter- and intrastate protocols for the handling of custodial interference cases that potentially involve investigation and/or prosecution of custodial interference in more than one state or within more than one municipality in a state. In addition, federal law enforcement authorities' handling of familial abduction cases needs further study, including assessing the extent of their involvement in investigating abductions pursuant to the Fugitive Felon Act, and investigating and prosecuting international abductions pursuant to the International Parental Kidnaping Crime Act.**

Criminal justice agencies, especially those located in neighboring jurisdictions, should examine whether inter- and intrastate written protocols need to be developed to diminish the possibility that jurisdictional disputes related to agencies' responsibilities will arise during case investigation and prosecution. For example, one could imagine that in the Northeast corridor, comprised of several large metropolitan areas, parental abductions could easily result in the crossing of state lines. If a child were kidnaped from the District of Columbia to Maryland, would Maryland law enforcement agencies have a responsibility to assist in investigating the whereabouts of a District of Columbia child and if so, what would be the level of assistance?

This topic warrants future study. If written protocols addressing inter- or intra-state investigation and prosecution of parental abduction have been developed, they need to be identified and evaluated for effectiveness and possible replication.

- **State and local criminal justice system agencies need to enhance their knowledge of the role of the Federal Bureau of Investigation (FBI) in investigating cases of parental abduction and actively seek the FBI's assistance in appropriate cases.²²**

This study revealed that the FBI may not be as actively involved in identifying the whereabouts of abductors as they might be. This may be the result of several factors: criminal justice system personnel may be unaware of the role the FBI can play in investigating these cases due to inadequate training; state and local law enforcement personnel may be concerned about sharing investigative responsibilities; and as is the case with many state and local law enforcement agencies, the FBI may not perceive cases of parental abduction as a high priority given the number of other serious cases in need of resolution.

The FBI's handling of parental abduction cases and law enforcement's perception of that agency's role may need further assessment. Do FBI policies and procedures as they relate to parental abduction cases need to be revised to enhance case investigation coordination among federal, state, and local authorities? What information on the FBI's role in the handling of parental abduction cases needs to be disseminated through training and other programs to state and local law enforcement personnel and the general public?²³

²²In addition to the FBI, a number of other federal agencies can be of assistance to criminal justice system personnel working on parental abduction cases. An excellent guide to this support is *Federal Resources on Missing and Exploited Children: A Directory for Law Enforcement and Other Public and Private Agencies* (May 1996) prepared by Fox Valley Technical College under a cooperative agreement from the Office of Juvenile and Delinquency Prevention. For further information on obtaining this document, one should call the Juvenile Justice Clearinghouse at 1-800-638-8736.

²³In January 1997, the FBI established the Office of Crimes Against Children (OCAC), within the Violent Crime and Major Offenders Section, Criminal Investigators Division, at FBI headquarters. FBI field agents dealing with federal parental abduction offenses may seek assistance from the OCAC coordinator in FBI headquarters. If it has not done so, the OCAC should develop training materials and programs to ensure uniform and effective FBI response to parental abduction nationwide.

- **State and local criminal justice system leadership and staff should become more knowledgeable about their own state's missing children's clearinghouses, work with them on improving coordination and utilization of services, and advocate for enhanced clearinghouse funding.**

Given the low priority that the majority of law enforcement agencies place on parental abduction cases and the general lack of knowledge about the crime and its handling, it is not surprising that missing children's clearinghouses may be underutilized and consequently, underfunded. This study revealed that enhanced communication between local law enforcement staff and state clearinghouses is needed so that agencies can better understand a clearinghouse's role in providing technical assistance. Police need to be better informed of their clearinghouse's operations and know how to access its services. Collaboration between clearinghouses and local law enforcement is essential if the services most useful to law enforcement are to be provided.

- **Criminal justice agency leadership and others should advocate for the development and continuation of support services that are instrumental in preventing and resolving custodial interference disputes and that complement criminal justice system intervention.**

Those in a position to advocate for enhanced support services should seek the development and continuation of support services that can be cost-effective in preventing abductions and that provide children and families with greater access to civil forums to resolve custodial interference disputes. These services include legal services and pro se projects, family court services, mediation, supervised visitation programs, and educational forums on parental abduction issues. In addition, serious thought should be given to the appointment of independent counsel for children in civil parental abduction proceedings, as well as the development of programs to assist in the reunification of children with their parents. Support services offered in both civil and criminal arenas can be instrumental in making criminal justice system intervention less necessary, as well as diminishing trauma to the abducted child.

CONCLUSION

Throughout the course of this study, several individuals, including project staff and those in the field, have commented that in addressing the problem of parental abduction, we do not focus on the child as victim. Criminal custodial interference statutes, for instance, speak in terms of one parent depriving the other of his or her child. The parent in essence becomes the aggrieved party and not the child. Similarly, the child's point of view is too often lost, especially if the child's whereabouts are unknown. Unlike other types of child abuse cases in which investigators usually have direct contact with a child, too often in parental abduction cases, investigators will not have that contact. Though not intentional, the child's interests, in contrast to his or her parent's, may very well become secondary to those charged with identifying the child's whereabouts as other case priorities take over.

There is no question that a child benefits when the aggrieved parent receives law enforcement and other assistance in resolving custodial interference disputes. However, if we are to motivate criminal justice leadership, legislators, and others in the position to support and implement specialized programs of intervention, we must continually remind them that parental abduction is a form of serious child abuse and a crime in all fifty states and the District of Columbia. Many individual children will benefit if the criminal justice system carefully considers this study's findings and recommendations and begins to perceive this crime as harmful to the well-being of children and their families.

Part One

**THE CRIMINAL JUSTICE SYSTEM'S RESPONSE TO
THE CRIME OF PARENTAL ABDUCTION:
REVIEW OF THE LITERATURE**

Janet Chiancone, M.S.

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- *Three days after speaking to her husband about a divorce, a woman arrived home from shopping and learned that, rather than taking their three children (ages 5, 4 and 2) to get some ice cream, their father had fled with them to an unknown location.*
- *A father who abducted and kept his daughters from their mother for more than seven years pled guilty to two counts of child abduction in an Illinois court and was sentenced to 18 months probation.*
- *One month after taking her daughter to visit her parents living in Europe, a mother notifies her husband that she plans to remain, and that she will not return their daughter to the United States.*

1. INTRODUCTION

A parent whose child has been abducted by the other parent may experience a variety of emotions--anxiety, disbelief, desperation. Faced with this upsetting, often confusing situation, these parents respond by turning to the institutions often used in times of extreme crisis: law enforcement and the criminal court.

Prior research has shown that parental abduction can have a devastating impact on the life of the child who is abducted, as well as the parent who is left behind, and that a quick recovery is critical to reducing the trauma to both child and parent. Law enforcement and criminal court involvement in these cases can make the difference in how effectively the search is conducted, and can influence how quickly the child is recovered.

How responsive is the criminal justice system to the needs of abducted children and their left-behind parents? The little research examining the topic indicates that parents are generally unhappy with this system's response to the crime. However, it also indicates that law enforcement personnel and prosecutors find parental abduction cases problematic for a variety of reasons: inconsistent and unclear statutory language designating parental abduction as a crime; conflicting statements of the involved parents; and concerns that the cases are of a "civil" nature and better handled by family courts. In addition, these cases may be a lower priority for criminal justice system personnel as they

deal with higher profile issues, such as juvenile violent and drug-related crime and contend with deepening budget cuts at federal, state and local levels.

To better understand the nature of parental abduction, and the criminal justice system's response to it, a review of the primary issues as highlighted in the literature is necessary. This chapter examines the extent of the problem of parental abduction, the characteristics of those involved in parental abductions, and the impact of the crime on children and parents. It discusses how law enforcement agencies and criminal courts generally handle this crime.

2. PARENTAL ABDUCTION DEFINED

For purposes of this report, parental abduction is defined as "the taking, retention, or concealment of a child or children by a parent, other family member, or their agent, in derogation of the custody rights, including visitation rights, of another parent or family member" (Girdner, 1994b, p. 1-11).

Abductors may be other family members or their agents (e.g., girlfriend, boyfriend, grandparent, or even a private investigator), although in most cases the abductor is a child's parent (Girdner, 1994b). Some state criminal statutes utilize the term "custodial interference" rather than parental or familial abduction, or kidnapping when referring to this crime, and may include incidents in which children are detained or enticed away from the custodial parent. "Custodial interference" can also be defined to include interference with a court order of visitation or access.

Applicable Criminal and Civil Law

Parental abduction is a crime in the United States. All states, including the District of Columbia, have passed legislation which prohibits acts in violation of custody orders. As of December 31, 1992, at least 16 states had statutes that make parental abduction a crime if one parent deprived the other of custody prior to the issuance of a custody order and approximately 21 had laws

making visitation interference¹ a criminal offense.² Usually referred to as “criminal custodial interference” statutes, these laws vary from state to state as to whether parental abduction is classified as a felony or a misdemeanor. An estimated 24 states consider parental abduction to be a felony only if the child is taken across state lines or other conditions (e.g., child exposed to danger, second or third offense) are met.³

As to federal law impacting the handling of parental abduction cases, the Missing Children Act of 1982, 28 U.S.C. § 534(a), requires the Federal Bureau of Investigation (FBI) to enter descriptive information on missing children into the National Crime Information Center (NCIC), a computer database with information on missing persons that law enforcement agencies nationwide can access. Furthermore, the National Child Search Assistance Act of 1990, 42 U.S.C. § 5780, requires that state and local law enforcement agencies immediately enter information on missing children younger than 18 into the NCIC and prohibits such agencies from maintaining any waiting period prior to taking a report of a missing child.

In addition, the Missing Children’s Assistance Act, 42 U.S.C. § 5771 *et seq.*, enacted in 1984 and reauthorized in 1988 and 1992, resulted in the establishment of the National Center for Missing and Exploited Children. This center serves as the nation’s resource center on missing children providing support to criminal justice system personnel and aggrieved parents as they seek to identify and recover missing children, including those that have been parentally abducted. It operates a toll-free hotline, provides technical assistance to law enforcement personnel in the field, and educates the public and others on relevant issues.

¹Visitation interference or denial of access encompasses the situation in which a child’s legal custodian prevents a parent or individual with court-ordered visitation from exercising those rights.

²Howell, J.C. (1993) Selected State Legislation: A Guide for Effective State Laws to Protect Children (Rev. Ed.). Arlington, VA: National Center For Missing and Exploited Children, pp. 24-28.

³Ibid.

The federal Parental Kidnapping Prevention Act of 1980 (PKPA), 28 U.S.C. § 1738A, which gives jurisdictional priority to the child's home state in parental abduction cases where conflicts arise between two states, is primarily a civil remedy. However, the PKPA extends the Federal Fugitive Felon Act to cases in which a child had been taken out of state where that act would constitute a felony, thus enabling the FBI to investigate. It also authorizes certain persons access to the Federal Parent Locator Service for purposes of identifying the whereabouts of a parentally abducted child.

Another important civil remedy which exists to combat parental abduction is the Uniform Child Custody Jurisdiction Act (UCCJA), a jurisdictional statute which governs when a court has jurisdiction over a parental abduction case and attempts to prevent the occurrence of simultaneous proceedings in two different states. It has been enacted with some variation in all states, including the District of Columbia and the Virgin Islands.⁴

The Hague Convention on the Civil Aspects of International Child Abduction, ratified by the United States in 1988, is an international treaty in effect in 43 countries which serves to simplify and expedite the return process when children have been abducted internationally. The Convention's implementing procedures can be found in the International Abduction Remedies Act (ICARA), 42 U.S.C. §11601 *et seq.* In 1993, the United States also passed the International Parental Kidnapping Act, 18 U.S.C. § 1204, making the abduction or retention of a child from the U.S. a federal felony.

⁷For a more detailed examination of the PKPA and UCCJA, see Rollin, M. (1993). Parental abduction: Relevant State and Federal Statutes court rules, and recent case law. In L. Girdner & P. Hoff (Eds.), Obstacles to the Recovery and Return of Parentally Abducted Children (Chapter 3). Wash, DC: Office of Juvenile Justice and Delinquency Prevention.

3. EXTENT OF THE PROBLEM

Number of Parental Abductions

The most comprehensive study designed to determine the extent of parental abduction is the National Incidence Studies on Missing, Abducted, Runaway and Thrownaway Children in America (NISMART)⁵ (Finkelhor, Hotaling & Sedlak, 1990). Conducted in 1988, this nationwide telephone household survey produced estimates of the number of family abductions (to both domestic and international destinations) nationwide. Cases were categorized as being either "Broad Scope" or "Policy Focal":

- **Broad Scope Cases.** These are cases in which a family member either (1) took a child in violation of a custody agreement or decree; or (2) failed to return or give over a child at the end of a legal or agreed-upon visit (in violation of a custody agreement or decree), and the child was away at least overnight. Researchers estimated that 354,100 children experienced an abduction under this definition. This category included most cases that would be considered abduction under even the broadest statutes, as well as many in which law enforcement agencies and prosecutors would not be involved (either due to more stringent legal definitions or by discretion).
- **Policy Focal Cases.** These are cases which fit the broad-scope definition, but also have at least one of the following characteristics: (1) an attempt was made to conceal the taking or whereabouts of the child and prevent contact with the child; (2) the child was transported out of state; or (3) evidence existed that the abductor intended to keep the child indefinitely or permanently affect custodial privileges. About 46% of the broad scope cases (163,200), fell into this narrower definition (Finkelhor, Hotaling & Sedlak, 1991).

⁵Herein after referred to as NISMART.

NISMART researchers also found that an estimated 44,900 attempted parental abductions had occurred during the same time period (Finkelhor, et al., 1990). Other research looks specifically at cases of international parental abduction. A study of fifty-two 1990 parental abduction cases registered with the National Center on Missing and Exploited Children (NCMEC) revealed that one-tenth of these cases were international abductions (Hatcher, Barton & Brooks, 1992).

Between the late 1970's and 1993, the United States Department of State was contacted in 5,200 cases of children who had either been abducted or prevented from returning to the United States by one of their parents (Markey, 1993). In 1992 alone, 515 children were abducted from the United States to foreign countries--a rate of about ten children per week (Markey, 1993). The Department of State reported having more than 1,000 active and unresolved international abduction cases on file in 1993 (DeHart, 1993). From 1988 until 1992, there were also 564 incoming Hague Convention cases in which parents abducted their children to the United States.

International abduction destinations vary, often depending upon: (1) whether the country is easily reached through international travel (airlines); (2) the unwillingness of courts in a country to enforce foreign custody orders; and (3) the availability of family support for foreign-born abductors fleeing to their home country (Hegar, 1990). Countries with the greatest volume of both incoming and outgoing Hague applications are: the United Kingdom, Canada, Germany, France and Mexico (Agopian, 1987; Markey, 1993).

4. CHARACTERISTICS OF ABDUCTORS AND ABDUCTED CHILDREN

Parental abduction is not restricted to any specific socio-economic or ethnic group, although researchers have identified some shared characteristics, both among perpetrators and victims:

Age of Children and Abductor

The NISMART study (Finkelhor, et al., 1990) found that 52% of all family abductions involved children under the age of eight, and in 23% of cases the child victim was under the age of four. Another study discovered that approximately two-thirds of the cases concerned a single child between the ages of three and seven (Forehand, Long, Zogg & Parrish, 1989). Agopian and Anderson (1981) reported that children between the ages of three and five were the most likely to be abducted, with infants and adolescents being the least likely to be taken.

Data from quantitative studies of both domestic and international cases reveal that both abducting and left-behind parents tend to be in their thirties (Agopian and Anderson, 1981; Finkelhor, et al., 1990). The mean age Agopian found was thirty-four years for abducting parents and thirty-three years for left-behind parents. The NISMART study showed that three out of four abductors were under forty years of age (Finkelhor, et al., 1990).

Gender and Relationship

A larger percentage of boys (58%) were victims of parental abduction, as compared to girls (42%) in the NISMART study, although the differences were not statistically significant. The data also indicated a higher frequency of male abductors (73%) than female abductors, with former husbands and boyfriends comprising the largest group (42%), followed by current husbands and boyfriends (21%). Female abductors in all categories accounted for only 26% of abductions (Finkelhor, et al., 1990).

NISMART results also showed that 25% of the abductions were committed by someone other than the child's parent, such as the mother's husband or boyfriend, the father's wife or girlfriend, in-laws and unrelated persons (Finkelhor, et al., 1990). Data were not collected on whether these people acted on their own or were agents of the child's parent.

Cross-Cultural Marriages

Hegar and Greif (1994) found high rates of cross-cultural or international marriage among the 371 families they studied which had experienced parental abduction. Forty-seven (12.7%) involved couples who differed in race or ethnicity, compared to the national rate of 8.4% (U.S. Bureau of the Census, 1989). Cross cultural marriages accounted for 15.9% (59) of the sample overall. They also found that racially and ethnically intermarried abductors, as well as those from cross-cultural marriages, had higher rates of foreign abduction (about 50%) than the group as a whole (about 20%).

Janvier's, et al. (1990) data, drawn from a survey of 65 left-behind parents nationwide, showed a difference between international and domestic cases. For example, the data reflected that parents were divorced in just over a quarter (26%) of the international cases (compared to 48% of domestic cases), and that in close to one-fifth (19%) of the international cases, parents were married at the time of the abduction (compared to only 2% for domestic cases).

Ongoing Parental Conflict

Both Greif and Hegar (1993) and Finkelhor, et al. (1990) found high numbers (41% and 54%, respectively) of parental abductions occurring during the period between separation and divorce, a time when much conflict can occur. The findings of Johnston, Campbell and Mayes (1985) suggest that children in families having high levels of ongoing parental conflict, (e.g., relitigation of custody, physical or verbal aggression directed toward one parent, or the formation of a parent-child alliance excluding the other parent) are at risk for abduction, even with frequent parental visitation or joint custody arrangements.

5. WHY FAMILY ABDUCTIONS OCCUR

The Motivation to Abduct

Studies have found some abductors are motivated to abduct their child from the other parent in an effort to force a reconciliation, or to continue interaction with the left-behind parent (Agopian, 1981; Sagatun & Barrett, 1990). In other instances, Agopian (1981) and Sagatun and Barrett (1990) found that abductors may have a desire to blame, spite or punish the other parent. Abducting parents (particularly fathers) may fear losing legal custody or visitation rights, thereby facing a diminished parenting role with their child. Janvier, et al. (1990) and Sagatun and Barrett (1990) have also identified this as a motivation for abduction. In extreme cases, the abduction may come about as a result of paranoid delusions and personality disorders on the part of the abductor (Agopian, 1984; Johnston, 1994; Sagatun & Barrett, 1990), or total disregard for the law (Blomquist, 1992; Kiser, 1987).

The motivation to abduct may also be an attempt to protect the child from a parent who is perceived to molest, abuse or neglect the child, and in some cases this may be a legitimate concern (Agopian, 1981; Sagatun & Barrett, 1990). Some abductors fear that the authorities may not take their concerns seriously (Sagatun-Edwards, 1996). In research conducted by the American Prosecutor's Research Institute (APRI), prosecutors who were surveyed reported that abducting parents made allegations of child abuse in 26.5% of their parental abduction cases. In 23 % of these cases allegations were made against the left-behind parent. In 17% of cases, both the abducting and left-behind parent made allegations of abuse (Klain, 1995). The numbers were similar for domestic violence allegations. About one-quarter of the cases included domestic violence allegations against the abductor, and another one-quarter contained allegations against the left-behind parent. About 11 % involved allegations by both parents. Overall, 30% of cases involved allegations of both child abuse and domestic violence (Klain, 1995).

Risk Factors for Abduction

Johnston (1994) and Sagatun-Edwards (1996) conducted research to try and identify those factors which indicate the conditions under which children may be at risk of parental abduction. The study compared 50 families in which children had been abducted to 57 families which were undergoing a very conflictual divorce and custody dispute involving high levels of litigation. The study took place in two urban California counties.

Their findings indicate that many abductors share social factors, including a low socio-economic status (including unemployment), being young parents (many never having been married), and having young children. In addition, a high number of abductors had a prior criminal arrest record (Sagatun-Edwards, 1996). Combinations of these social factors were found to increase the risk of parental abduction (Sagatun-Edwards, 1996).

An abduction was more likely to occur if the abductor had no financial or emotional ties to the geographic area, and/or he or she had resources to help them survive in hiding from the left-behind parent or law enforcement (such as liquidated assets and help from others). Having financial or emotional support connections to another country (often the abductor's native country) also increased the risk of abduction. Some abductors took the children due to concerns about abuse or neglect, whether that concern was valid or not. The act of abduction was an attempt to "rescue" the child from the other parent (Johnston, 1994).

Plass, Finkelhor and Hotaling (1997) used data drawn from the national sample used in the NISMART study to identify characteristics (both demographic and family) that appear to have bearing on whether or not a risk of family abduction exists. The study found that families with white children, a history of violence between adults in the household, and families with younger children (under five years old) were all factors significantly associated with an increased risk of experiencing family abduction. Larger family size (those with three or more children) was associated with a decreased risk of family abduction. While the researchers point out that many potentially important

psychological characteristics may also be predictors of abduction events, this research focused specifically on sociological characteristics. Perhaps one of the most important findings of this study, however, is that there was great similarity in the risk factors identified for both types of family abduction (both Broad Scope and Policy Focus, as discussed previously). The authors point out that this study provides "clear evidence that there may be some consistency in the etiology of all kinds of family abductions, and that measures aimed at preventing or controlling very alarming events (such as those which come to the attention of official agencies of some type) may also be effective in helping families who experience less dangerous, but still alarming, abductions" (Plass, et. al, 1997, p. 347).

History of Family Violence

Greif and Hegar (1993), Hatcher and Brooks (1993), and Kiser (1987) all found that domestic violence had occurred in more than half of the parental abduction cases they studied. Greif & Hegar (1993) found that about 75% of male abductors and 25% of female abductors had exhibited violent behavior in the past. Janvier, et al. (1990) found that child abuse perpetrated by the abducting parent was reported to have occurred in as many as 66% of the domestic cases, and in about 23% of the international cases they studied. However, despite this seemingly high level of family violence, it may not be a clear factor in assessing the risk of abduction. Johnston's (1994) study described above (which compared families who were involved in parental abduction with those involved in a high level of litigation over custody) found that the level of domestic violence was not significantly different for the groups.

6. PSYCHOLOGICAL IMPACT OF ABDUCTION ON CHILD AND PARENT

One of the primary obstacles to the recovery of the parentally abducted child is the general public's perception that children are not at risk of harm if they are in the physical custody of a parent, even if that individual is an abductor. Many law enforcement personnel and others view parental abduction as "civil in nature" and a private family matter that is best handled outside the realm of the criminal justice system (Girdner, 1994a).

This is a serious misperception on their part. The experience of abduction can be emotionally traumatic to both children and left-behind parents, and is particularly damaging in cases in which force is used to carry out the abduction, when the child is concealed, or is held for a long period of time. Looking at the NISMART data, parents reported that abductors used force in 14% of parental abductions, and coercive threats or demands in 17% (Finkelhor, et al, 1990). Nationally, force is used in about 50,000 cases, and over 60,000 cases involve threats or demands (Finkelhor, et al., 1990).

Victim Parents

Greif and Hegar (1991) surveyed left-behind parents registered with a missing child organization and learned that, like their children, they experienced feelings of loss, rage, and impaired sleep following the abduction. Half reported feelings of loneliness, fear, loss of appetite or severe depression. Of this group, slightly more than 50% sought professional help in coping with the situation. One quarter of the parents were treated for depression and one quarter were treated for anxiety and other problems.

Moreover, an abduction of one's child can have a devastating effect upon the economic life of the left-behind parent, which can in turn effect their level of anxiety. Janvier, et al. (1990) found that the mean cost of searching for a child was over \$8,000 in domestic cases and more than \$27,000 in international cases. Hatcher and Brooks (1993) report that the highest percentage (34.6%) of left-behind parents they interviewed spent between \$1,001 and \$5,000 on legal fees during the search. The majority of left-behind parents (88.5%) did not receive money for restitution, damages or costs.

Forehand, Long, Zogg and Parish (1989) were not surprised when parents reported that their levels of psychological disturbance were high during the period the child was missing, and reduced somewhat once the child was recovered. However, the stress and trauma of the experience did not

necessarily end when the child was recovered. Many parents in this study related that their psychological distress was higher after reunification with their children than it had been prior to the abduction. In a different study, Hatcher and Brooks (1993) found that nearly three-fourths (73.1%) of the left-behind parents surveyed related having concerns that their child would be reabducted.⁶

Victim Children

Agopian (1984) interviewed a small sample of five children to determine the impact of family abduction on their lives. He found that the degree of trauma they experienced was related to: (1) the age of the child at the time of the abduction; (2) how the abducting parent treated the child; (3) the abduction's duration; (4) the child's life style during the abduction; and (5) the support and therapy received by the child after recovery.

Few studies definitively examine how long abducted children are typically denied access to the left-behind parent. The NISMART study (Finkelhor, et al. 1990) found that four out of five abductions (in both the broad scope and policy focal cases) lasted less than a week. Forehand, Long, Zogg and Parrish (1989) showed that in most of the seventeen cases they reviewed children had been gone between three and seven months. The length of abductions described in other literature range from several days (Schetky & Haller, 1983) to three years (Terr, 1983).

Agopian's (1984) research found that the length of separation from the left-behind parent greatly influenced the emotional impact on the abducted child. Generally, children held for shorter periods (less than a few weeks) did not give up the hope of being reunited with the other parent, and as a result did not develop an intense loyalty to the abducting parent. In some ways, they were able to view the experience as a type of "adventure."

⁶The sample for this study was based on random sampling of NCMEC's cases. Many parents in the original random sample could not be located. Some of these parents may have moved to prevent the abductor from finding them.

Victims of long-term abductions, however, fared much worse. They were often deceived by the abducting parent, and frequently moved to avoid being located. This nomadic, unstable lifestyle made it difficult for children to make friends and settle into school, if they attended at all. Over time, younger children could not easily remember the left-behind parent, which had serious repercussions when they were reunited. Older children felt angry and confused by the behavior of both parents--the abductor for keeping the child away from the other parent and the left-behind parent for failing to rescue them.

Terr's (1983) study reported on a sample of eighteen children seen for psychiatric evaluations following recoveries from abductions (or after being threatened with abduction and/or unsuccessfully abducted). Nearly all of the children (sixteen of eighteen) suffered emotionally from the experience. Their symptoms included grief and rage toward the left-behind parent, as well as suffering from "mental indoctrination" perpetrated by the abducting parent. Likewise, another study of a sample of 104 family abductions drawn from National Center on Missing and Exploited Children (NCMEC) cases revealed that over 50% of the recovered children experienced symptoms of emotional distress as a result of the abduction, including anxiety, eating problems, and nightmares (Hatcher, Barton & Brooks, 1992).

The NISMART study (Finkelhor, et al., 1990) found that in 40% of *all* cases and 52% percent of "policy-focal" cases, left-behind parents believed that their children had been harmed by the abduction; 17 % of these parents considered this harm to be "serious." In 5% of the cases, parents reported that their child had been physically abused during the abduction (Finkelhor, et al., 1990).

In addition, Senior, Gladstone and Nurcombe (1982) reported that recovered children often suffered from uncontrollable crying and mood swings, loss of bladder/bowel control, eating and sleep disturbances, aggressive behavior, and fearfulness. Other reports have documented abduction trauma, such as difficulty trusting other people, withdrawal, poor peer relations, regression, thumbsucking, and clinging behavior (Schetky & Haller, 1983); a distrust of authority figures and

relatives, and a fear of personal attachments (Agopian 1984); nightmares, anger and resentment, guilt, and relationship problems in adulthood (Noble & Palmer, 1984).

In a recently-reported longitudinal study, researchers (Greif, 1998) recontacted victim parents that had been surveyed in an original study conducted in 1989-1991 (cite) to learn how their children were faring after reunification. Of the original 371 surveyed in 1989, 69 were re-contacted for the 1993 survey (Hegar and Greif, 1993) and 39 for the 1995 survey. In the 1993 survey, most parents (86%-97%) reported that their children were healthy and were doing satisfactorily or very satisfactorily in behavior at home and school, and in their school performance. Of these children, about 80% had received some mental health services. In the 1993 follow-up, 67% of parents were concerned about reabduction; in 1995 that number had dropped, but nearly half (48%) were still worried about the threat of reabduction. The 1995 follow-up did not show significant changes in children's behavior, and their scores did not indicate they were less adjusted than a normative group. Though overall, children appeared to be doing quite well, a closer look at the sample showed that "those children who were doing the most poorly had been missing longer, had been reunited with their families for a shorter period of time, had no contact with the abductor, and reportedly had a worse abduction experience." (Greif, 1998, p. 54). The findings indicate that the level of trauma and long-term impact of the abduction can vary depending on the child and family's individual experience and situation.

This conclusion appears to be echoed in findings of a study which used NISMART data to look at the emotional trauma to children who are victims of family abduction. In this study (Plass, Finkelhor, and Hotaling, 1996), researchers indicate that the "emotional trauma of an episode seems related to factors associated with the disruption of the routine of the children(ren), with the presence of an increased level of conflict between adults, and with the general awareness of the child(ren) as to what is happening." They found that abductions involving children age 5 and older, and those that went on for longer periods were more likely to involve mental harm.

8. THE CRIMINAL JUSTICE SYSTEM'S RESPONSE

Federal, state and local law enforcement agencies and prosecutors all have significant roles to play in responding to the crime of parental abduction. Specifically, these agencies are charged with the responsibility of:

- investigating cases of missing children;
- filing criminal charges against abductors, thus enabling them to search for the abductor and child, and gathering evidence for possible prosecution (Girdner, 1994c).

Law Enforcement Response

Law enforcement is often the first avenue of assistance that left-behind parents turn to when their child has been taken. Hatcher and Brooks (1993) discovered that parents whose children had been abducted by the other parent called law enforcement first in 90.2% of cases, and usually within twenty-four hours of their initial concern (61.6%). Families also reported calling NCMEC (41.2%) and relatives of the abductor (29.4%) for assistance.

Utilizing the data collected in the NISMART study, Plass, Finkelhor, and Hotaling (1995) found that parents reported that they contacted the police in about 40% of the cases (about 141,000). This indicates a higher reporting rate than in other family crimes such as domestic violence (Plass, et al., 1995). Results also indicated that parents were more likely to contact police if the child was actually taken, the abductor threatened to prevent any contact with the child, or an attempt was made to conceal the location of the child. Making a report to law enforcement agencies, however, does not ensure they will investigate. Collins, Powers, McCalla, Ringwalt and Lucas (1993) surveyed both left-behind parents and law enforcement personnel and learned that, rather than handling these cases themselves, the police refer many cases to family court, prosecutors, and social service agencies.

This response is consistent with law enforcement agencies' traditional reluctance to get involved in cases perceived as being domestic or civil in nature. Forst and Blomquist (1991) found that police pay more attention to stranger abductions, tending not to take parental abduction cases as seriously unless substantial information about sexual or physical abuse is evident. In addition, the ratio of police reports of runaways to those of family abductions is fifty-three to one, and only 27% of 1,060 law enforcement agencies surveyed across the country had written policies or procedures for handling parental abductions (Collins, et al., 1993).

Obstacles to Handling Parental Abduction Cases

Law enforcement agencies point to the many obstacles they face in handling parental abduction cases, including:

- verifying custody, and trying to overcome the poor documentation available to them on custody orders (across states, etc.);
- deciphering the deceptive and contradictory information provided by the left-behind and abducting parents;
- the vagueness of laws or statutes regarding custody and child abduction;
- clarifying law enforcement and prosecutors' roles in other jurisdictions;
- a lack of cooperation among judges (in enforcing civil custody orders); and
- having to rely on less than cooperative law enforcement authorities in other jurisdictions to assist in the return of the child and the abductor (Collins, et al., 1993).

High Priority Parental Abduction Cases

The limited research available indicates that law enforcement personnel are more likely to respond to those cases of parental abduction considered to be more "serious." This includes cases in which the child is taken out of state, and/or the child is concealed (Finkelhor, et al., 1991 and Girdner, 1994d). A police response is more likely if a court order delineating custody has been

issued in the state of the abduction. The existence of a restraining order prohibiting the removal of the child from a state doubles the number of states in which police would undertake a search for a parentally abducted child. (Girdner, 1994d).

Other factors which may prompt a high priority police investigative response are cases in which there is a family history of abusing the child; the abducted child is in danger of sexual exploitation; or the child has special medical needs (Collins, et al., 1993).

Reporting and Investigation

The National Child Search Assistance Act of 1990 requires that law enforcement agencies take a missing child report and enter information on that child into the National Crime Information Center's (NCIC) computer without a waiting period, regardless of whether the abduction constitutes a criminal violation. Primary responsibility for entering the missing child's description in NCIC rests with law enforcement agencies. Left-behind parents surveyed by Hatcher and Brooks (1993) reported that 55.8% of law enforcement agencies entered the child's name in NCIC during the first week after their children's abductions. However, almost half (14) of the missing child state clearinghouses surveyed by Girdner (1994d) reported that, in practice, law enforcement personnel inaccurately believe that there must be a violation of the state parental abduction statute before they are required to enter a parentally-abducted child into the NCIC. Most identified an alternative agency as authorized to make an NCIC entry. In one-third of the states no entry was made if the designated law enforcement agency failed to make an entry (Girdner, 1994d).

In practice, entry into NCIC could also be dependent on the marital and custodial status of the left-behind parent, in part due to the nature of some states' custodial interference statutes. The existence of a custody order doubled or tripled the number of states in which an NCIC entry on the child was reported to be routinely entered. About 40% of respondents stated that law enforcement rarely or never entered names of abducted children, unless there was an existing or pending custody order (Girdner, 1994d).

The study conducted by Plass, Finkelhor and Hotaling (1995) looked at law enforcement's response upon receiving a report of parental abduction. According to parents, the police took an average of three actions for each case⁷:

- police took a report over the phone (27%);
- an officer was sent to the scene (54%);
- the responding officer interviewed the parent (58%);
- the officer produced a written report during the interview (61%);
- police obtained photographs of child(ren) (24%);
- police referred the case to another agency (36%).

Parents surveyed in this study did not perceive the police response as appropriate. Sixty-two percent said they were "somewhat" or "very" dissatisfied with police handling of their cases (Plass, et al., 1995).

State Missing Children's Clearinghouses

State missing children's clearinghouses can provide law enforcement agencies with assistance in investigating and recovering parentally abducted children. With the exception of two states, all states and the District of Columbia have official state missing children's clearinghouses, and most are housed in a state's central criminal justice agency. They provide public education and information, communicate and coordinate with parents, attorneys, law enforcement and other agencies, and assist in the location and recovery of abducted children. Some also serve as a state contact for the United States Central Authority in Hague Convention cases (Girdner, 1994d).

¹⁰It is important to note that these results do not necessarily reflect the actual police response, but rather parents' perception of the response (Plass, et al., 1995). Police were not interviewed in this study.

In a study of clearinghouses, Girdner (1994d) learned that about one-half had handled over 200 cases of parental abduction since their inception. Eighty-one percent of these clearinghouses are housed in criminal justice agencies (e.g., state police, criminal investigation, justice), although only 45 percent report having any type of law enforcement authority. Almost 75% reported that they provide technical assistance in specific cases and keep a centralized file of cases.

Federal Bureau of Investigation

The PKPA authorizes the FBI to assist in cases of parental abduction in accordance with the Fugitive Felon Act. In most cases of parental abduction, the FBI does not intervene. The vast majority of cases (73.1%) reviewed by Hatcher and Brooks (1993) revealed no assistance from the FBI. Of those which did have FBI involvement, half of the parents reported being very satisfied with the agency's work (Hatcher & Brooks, 1993). Parents also had strong feelings when the FBI did not intervene. Over thirty-nine percent of left-behind parents believed FBI involvement would have led to a faster recovery of their child. About one-fourth (26.3%) of these parents also stated that, based on their knowledge, their cases did qualify for FBI assistance (Hatcher & Brooks, 1993).

How Police Response Affects Outcome

The left-behind parent's vigilance in searching for his or her child can be one of the most significant factors in locating and recovering the child. Police involvement in locating the child can also be a critical factor. About one quarter (26.9%) of parents interviewed by Hatcher and Brooks (1993) whose children had been recovered related that it was a lead established by the parent which led to their child's recovery. Parents also related that leads established by the FBI (9.6%), a law enforcement officer (7.7%), an attorney (5.8%), a private citizen (5.8%), and missing children's organizations (3.8%) helped to recover their children. Janvier, et al., (1990) found that, of those children recovered in her study, eight were found by the police or legal authorities, five were located by missing children's organizations, three were found by the left-behind parent, and one was voluntarily returned by the abducting parent.

Some information also exists indicating that immediate reporting to a law enforcement agency results in a greater likelihood of recovery. Agopian (1981) studied the relationship of parental action following the abduction (reporting the incident to law enforcement personnel) and recovery of the missing child. Most parents whose children had been returned had notified authorities within one week of the child's disappearance. Only two percent of children had been returned in cases in which police were notified more than one month after the abduction (Agopian, 1981).

Confounding Problems for Law Enforcement Agencies

As stated earlier, parents generally report that they are unhappy with police handling of their parental abduction cases. However, police agencies point to the complexity of these cases which often makes law enforcement's role unclear. A factor contributing to the inconsistent handling of cases may be confusion between county and municipal law enforcement agencies (e.g., county sheriffs and municipal police departments) about their respective roles. While no research has been done on law enforcement jurisdictional conflict with regard to the specific issue of family abduction, it has been documented in other areas. Municipal and county law enforcement agencies often cover overlapping territory, and mutual aid agreements established between these different agencies tend to be unwritten and informal, if they exist at all (Baer, 1979). Most municipalities have their own detectives and often "zealously guard their independence . . . [making them] . . . reluctant to utilize [county level detectives], resulting in a lack of inter-jurisdictional coordination in the solution (sic) of crimes." (Baer, 1979, p. 419)⁸ Jurisdictional conflict can become even more confusing with an issue such as family abduction, which includes civil and criminal elements. Conflicts also may arise between law enforcement agencies in two different states whenever interstate abductions occur.

¹¹One area in which there has been great conflict is traffic enforcement, and this conflict can interfere with criminal justice proceedings. In one case, a sheriff's deputy stopped a motorist for a traffic violation and subsequently found that the offender was in possession of illegal drugs and firearms. The deputy arrested the motorist. Later, the state lodge of the Fraternal Order of Police (the police union) filed a court brief on behalf of the motorist, alleging that sheriffs and deputies do not have the power of arrest for traffic violations (McGeehan, 1993).

Another problem frequently faced by law enforcement officers is the risk of civil liability when police mistakenly return a child to a parent who does not have legal custody (Uthe, 1994). Police officers, as well as administrators, have been sued successfully in these situations. Fear of law suits causes law enforcement officers to be reluctant to involve themselves in enforcing child custody orders and recovering abducted children (Uthe, 1994).

Criminal Court and Prosecutors

The criminalization of parental abduction at both federal and state levels has resulted in changes not only in law enforcement's, but in criminal court and prosecutor's handling of these cases. Prior to the enactment of the UCCJA and PKPA, even in cases in which custody orders had been issued, parents who left a state with a child might be able to obtain a conflicting order in another state which might then be upheld. Most left-behind parents seeking to recover their children had to do so without help from law enforcement agencies. Additionally, even though civil courts had the authority to impose civil sanctions on parents who violated their court orders, they apparently rarely did so (Blomquist, 1992).

Few jurisdictions have had much experience in prosecuting cases of parental abduction. A nationwide survey of 74 prosecutor's offices conducted by the American Prosecutor's Research Institute (APRI) indicated that 78% of respondents handle only one to five parental abduction cases every year; 90.3% handle between one and twenty per year (Klain, 1995). A much smaller number (4.2%) handle more than 100 cases each year. Just one in twenty five prosecutors offices in the country have specialized parental abduction units. Most (57.5%) parental abduction cases are handled by non-specialists; or by one or several designated attorneys. The rest are handled by domestic violence, family crimes, special assault or child abuse units. (Klain, 1995).

Of the 43 incidents of parental abduction reviewed by Sagatun and Barrett (1990), criminal proceedings were instituted in 58% of cases (67% of cases committed by mother; 33% committed by father); with a warrant being issued in 52%. In 69% of cases in which a warrant was issued,

arrests were made. These 43 incidents were cases handled by a California family court services agency from 1983 to 1987.

If a criminal offense of parental kidnapping was committed under state law, over 40% (15) of the state missing children's clearinghouses surveyed by Girdner (1994d) reported that local prosecutors' offices were involved in locating the child, most frequently by obtaining warrants.

There have been some encouraging developments in the handling of these cases. An article in a leading periodical for prosecutors (Kreston, 1998) provided professionals in the criminal justice field with basic background materials on parental abduction, as well as the special procedures and strategies that can be used to investigate and prosecute cases of international parental abduction. The article states that "prosecutors need to be able to refute the myth that these cases are really family court matters and should not 'waste' the resources of the criminal justice system" (Kreston, 1998, p. 20).

9. A LIMITED CRIMINAL JUSTICE SYSTEM RESPONSE

While no statistics exist which enable a comparison between the number of criminally litigated cases and the number of serious or "policy focal" cases reported by the NISMART study (141,000) (Finkelhor, et al., 1991), anecdotal evidence indicates that a disproportionate number of criminal parental abduction cases are being screened out of the criminal justice system, or not being addressed at all. Girdner (1994a) identified some reasons for this low number:

- Parental abduction statutes vary from state to state, with some terming the crime a felony and others a misdemeanor;
- Many states fail to use or are inconsistent in using other procedures (i.e., flagging school and birth records) when investigating the abduction;
- Law enforcement agencies and missing children's clearinghouses are generally underfunded, and parental abduction cases get a lower priority due to the high demands of other offenses; and

- Law enforcement personnel and prosecutors are inexperienced or lack knowledge in the handling of these cases, and consequently are not complying with federal and state laws (e.g., taking missing child reports, entering information into NCIC).

International parental abduction cases are further complicated by the need to enlist the help and cooperation of foreign governmental agencies, including law enforcement and the courts. In some cases, left-behind parents and those who assist them must contend with cultural and religious prejudices, as well as relatives and underground networks which facilitate the abductor's and child's disappearance. (Kiedrowski, Jayewardene, and Dalley, 1994). Some abductors also participate in "forum shopping": locating a country and jurisdiction where he or she believes courts will grant him or her custody.

10. THE CURRENT STUDY

In response to the lack of available research, the American Bar Association Center on Children and the Law and Westat, Inc. have conducted an in-depth analysis of the way in which the criminal justice system handles cases of parental abduction. A series of reports detailing the results of this research follows this chapter.

This study was comprised of three phases: (1) a nationwide survey of law enforcement and prosecutor's offices; (2) site visits to six jurisdictions which had a significant number of parental abduction cases being prosecuted; and (3) a review of individual parental abduction cases in law enforcement agencies and prosecutors' offices in three model jurisdictions. This study looks at all facets of the criminal justice response: the reporting of the incident, investigation of the case, location and recovery of the child, and criminal prosecution of abductors. It provides insight into various aspects of effective and unique programs identified during site visits and attempts to identify those characteristics that result in an enhanced criminal justice system response to the crime of parental abduction. Its final report also incorporates recommendations for statutory, policy and programmatic change.

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Part Two

THE CRIMINAL JUSTICE SYSTEM'S RESPONSE

TO PARENTAL ABDUCTION:

NATIONAL SURVEY OF LAW ENFORCEMENT AGENCIES

AND DISTRICT ATTORNEYS/PROSECUTORS

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APPENDIX

- I Survey Instruments
- II Developing Weights for the National Sample

1. INTRODUCTION

The Office of Juvenile Justice and Delinquency Prevention of the United States Department of Justice awarded a contract to the American Bar Association Center on Children and the Law and Westat, Inc. to examine the criminal justice system's response to parental abduction. The study was conducted in three phases.

- In Phase I, a national survey of prosecutors and of county and municipal law enforcement agencies was conducted.
- In Phase II, counties with high numbers of criminal complaints of parental abduction filed among criminal justice agencies were examined to more closely determine exact response rates and agency characteristics that facilitate the response.
- Phase III consisted of case level analyses of response rates and how cases move through the law enforcement and criminal court systems.

In its entirety, the study produces national estimates of the number of parental abductions that are reported to law enforcement and the number referred for prosecution; describes how the criminal justice system handles cases of parental and familial abduction of children; examines how decisions are made and cases are processed; and identifies model approaches to the handling of parental abduction cases.

This report describes the implementation and findings from the national survey; specifically it includes a discussion of methodology, national estimates of parental abduction, and results of the prosecutors and the law enforcement surveys.

2. METHODOLOGY

2.1 Overview

This chapter describes the data collection methodology for the parental abduction survey. It describes the survey instruments used; how the sample was selected; the methods used to collect data; data retrieval efforts for incomplete surveys; response rates; and the assignment of weights, adjustments for non-response, and development of national estimates.

2.2 Survey Instruments

Two survey instruments were used for this study: one for county and municipal law enforcement agencies, and the other for the jurisdiction's prosecuting authority (e.g., County Attorney, Prosecuting Attorney, District Attorney, State's Attorney). Each was a brief questionnaire comprised of nine questions about how the agency handled cases of parental or familial abduction of children. A copy of each survey is found in Appendix I.

2.3 Sample Selection

A nationally representative sample of 400 counties was selected from a sampling frame of 3,141 United States counties as identified by the 1990 Census. The counties were ranked on the basis of the 1990 population of persons age 17 or under. The 104 largest counties were selected with certainty. The remaining 296 counties were selected from eight strata defined by Census region and metro status. Within each stratum, counties were ranked on the basis of population. Counties were then sampled with a probability proportionate to size.

Using the 1993-94 *National Directory of Law Enforcement Administrators, Correctional Institutions and Related Agencies*, all prosecutor, county and municipal law enforcement agencies (LEAs) were identified for the selected counties. Where there was obvious overlap, for example, a jurisdiction was listed by different names in separate but identical entries, duplicate entries were

eliminated from the list. Each jurisdiction was assigned a unique seven-digit identifier for use in the analysis.

The final sample consisted of 400 prosecutors, 405 county law enforcement agencies (LEAs), and 3,625 municipal law enforcement agencies.

2.4 Data Collection

Surveys were mailed to each individual (chief of police, sheriff or prosecutor) in our selected sample. A four-step mailing process, incorporating a modified Dillman method was used, to maximize the response rate. Mailings were staggered to accommodate the large volume of surveys to be sent. The questionnaire asked for data on parental abductions occurring in 1992.

The first mailing to prosecutors and county and municipal LEAs was completed by the end of December 1993, and contained the initial questionnaire and a first class postage paid return envelope addressed to Westat, Inc.

The second mailing, which was sent about one week after the initial mailing, consisted of a "reminder" postcard to everyone in the sample. Two weeks later, a third mailing was sent to all who had not yet responded to the initial mailing. This third mailing consisted of a follow-up letter from the project's principal investigator, and an additional copy of the survey.

Finally, seven weeks after the initial mailing, a fourth mailing was sent to all who had not yet responded to the prior mailings. This mailing consisted of a second follow-up letter from the principal investigator and a copy of the survey. It also included a Federal Express envelope addressed to Westat, Inc. in order to encourage respondents to return their surveys promptly. The inclusion of the Federal Express envelope served to alert respondents to the importance of their timely response. It also proved cost-effective, since payment for the Federal Express service was required only upon Westat's receipt of the package.

In early May, a final mailing was conducted in order to determine how many nonrespondents were eligible for inclusion in the study and how many were ineligible. Postcards were sent to those county LEAs which had not responded to the survey asking whether or not they had jurisdiction to conduct criminal cases of parental or familial abduction. Responses from 20 county LEAs were received: 17 reported that they had jurisdiction and three reported that they did not.

A toll-free telephone number was included in each mailing so project staff could handle questions and comments from survey respondents. Calls received during regular business hours were answered. Voice mail was also available for calls that came in when the toll-free line was busy or after the close of business. These calls were returned promptly. On average, about 30 calls per day in the week following each mailing were received. In all, staff responded to over 600 calls during the data collection period.

2.5 Data Retrieval

As each survey was received, it was reviewed and evaluated for completeness. Level of completeness was judged on the basis of four categories: *complete*; *partially complete with further data retrieval necessary*; *partially complete with no further data retrieval necessary*; and *refused (incomplete)*. For those surveys categorized as *partially complete with further data retrieval necessary*, respondents were called to obtain more complete information.

2.6 Final Survey Response Rates

These data collection efforts yielded excellent response rates for mailed surveys. As Table 2-1 shows, three-quarters (75%) of sampled prosecutors responded to the survey, 2.5 percent refused to participate, and no response rate was received from the remaining (22.5%) prosecutors. The response rates for LEAs are reported in two ways: as a percentage of the **total** LEAs in the sample; and, as a percentage of the **eligible** LEAs in the sample. Nearly 15 percent of the county LEAs in

the sample were determined to be ineligible for study participation.¹ More than two-thirds (66.7%) of the total number of county LEAs in the sample completed the survey, and 18.8 percent did not respond. Of the agencies which did not respond, 4.2 percent were known to be eligible and 14.6 percent were of unknown eligibility. None of the county LEAs refused to participate in the survey. Response rates for county LEAs are considerably better when ineligible jurisdictions are taken out of the equation.² Nearly eight of ten (78%) eligible county LEAs completed the survey, while 22 percent did not respond. Of those county LEAs who did not respond, 17.1 percent of the agencies were of unknown eligibility.

The response rate for the law enforcement survey from the total sample of municipal LEAs was an impressive 77.9 percent, with a negligible amount of refusals (0.3%), and no response from 17.7 percent of jurisdictions. As with the county LEA figures, the municipal LEA response rate increased slightly (to 81.2%) when ineligible agencies were eliminated, and the percentage of nonrespondents increased slightly (to 18.5%), while refusals did not change.

Overall, response rates are very close to the rates reported for municipal LEAs, due to the fact that over 80 percent of the sample is comprised of municipal LEAs. Less than one in twenty (4.7%) jurisdictions in the sample were determined to be ineligible, over three-quarters of jurisdictions (76.6%) completed surveys, a minimal number (0.5%) refused, and no response was received from 18.2 percent. These numbers are adjusted upward when ineligible jurisdictions are excluded, yielding an overall response rate of 80.4 percent, and no response from 19.1 percent of jurisdictions.

Weights were developed for both the law enforcement and prosecutor questionnaire. Procedures for developing and assigning those weights are discussed in Appendix II.

¹Ineligibility was based on whether the LEAs had jurisdiction to conduct criminal investigations of parental abduction. This determination was made using their response to the post card or other correspondence indicating their lack of jurisdiction in such matters.

²This is undoubtedly due to the fact that LEAs which do not have jurisdiction in cases of parental abduction would have nothing to report, and thus would disregard the survey.

Table 2-1. Response Rates for the Mail Survey

	Percent of Total	Percent of Eligible
Prosecutors/District Attorneys: (N=400)		
Disposition		
Complete	75.0%	
Refusal	2.5%	
No response	22.5%	
County LEAs: (N=405)		
Disposition		
Ineligible	14.6%	
Complete	66.7%	78.0%
Refusal	0.0%	0.0%
No response	18.8%	22.0%
Eligible agencies	(4.2%)	(4.9%)
Agencies of unknown eligibility	(14.6%)	(17.1%)
Municipal LEAs: (N=3,625)		
Disposition		
Ineligible	4.1%	--
Complete	77.9%	81.2%
Refusal	0.3%	0.3%
No response	17.7%	18.5%
Overall: (N=4,430)		
Disposition		
Ineligible	4.7%	--
Complete	76.6%	80.4%
Refusal	0.5%	0.5%
No response	18.2%	19.1%

3. NATIONAL ESTIMATES OF FAMILY ABDUCTIONS REPORTED TO CRIMINAL JUSTICE AGENCIES

This chapter presents the key findings from the mail survey: national estimates of the numbers of cases dealt with by law enforcement agencies and prosecutors' offices in 1992.

Table 3-1 presents the estimates of the total number of family abduction cases reported to law enforcement agencies, the number in which arrests were made, and the number referred to prosecutors. Subcategory estimates for the numbers of cases involving abduction by a parent (or his/her agent) versus the numbers involving abduction by other family members are also given. Note that the total estimates are greater than the sum of the subcategory estimates in each case because some respondents could provide totals only. For each estimate, the table provides the standard error, the 95 percent confidence bounds, and the coefficient of variation (C.V.). The C.V. is the ratio of the standard error to the estimate itself, and it is expressed as a percent in the table. Generally, C.V.'s in the region of 10 to 15 percent are considered acceptable in survey research, whereas those that approach or exceed 50 percent are unacceptable. The latter reflect estimates that are highly unreliable and which are associated with 95 percent confidence intervals that include zero.

In 1992, approximately 30,500 cases were reported to law enforcement agencies in which a family member or his/her agent (e.g., boyfriend, private investigator) abducted a child. In about 25,000 of those cases (or 82%) a parent was responsible for the abduction, while a family member other than a parent was responsible in about 3,700 (or 12%) of the cases. The remaining 6% of the reported family abduction cases were not subdivided into these two perpetrator-based categories. The distributions of perpetrator subcategories at other levels of activity (arrest and referral to prosecutor) conform fairly well to this overall 82%/12%/6% breakdown.³

³Specifically, the breakdown for arrests is 84%, 12%, and 4%, and the breakdown for referrals to prosecutors is 82%, 12%, and 6%.

An estimated 4,500 cases of family abduction resulted in arrest. This represents almost 15 percent of all reported cases. However, arrests were not made in all cases referred to the prosecutor. Approximately 4,700 cases with no arrests are referred to the prosecutor to determine whether an arrest should be made.⁴ Nationwide, law enforcement agencies referred an estimated 9,200 family abduction cases to prosecutors in 1992, a figure which reflects about 30 percent of all reported cases.

Table 3-2 provides the national estimates derived from the prosecutors' survey responses. Prosecutors opened an estimated total of nearly 15,100 cases of family abduction in 1992. Notice that this estimate is well above the estimated number of referrals to prosecutors by law enforcement agencies (and well outside the 95 percent confidence bounds of the referral estimate), a fact which strongly indicates that many family abduction cases reach the prosecutors' offices by other referral routes (e.g., courts, referrals by the aggrieved custodial parent, etc.). Of cases opened by prosecutors the majority involved abductions by parents (91%), and only a small percentage concerned abductions by other family members (4%) or were not classifiable by perpetrator's relationship to victim (5%).⁵ Again, this distribution was essentially similar at other levels of case activity (filing of charges, court dismissal, and conviction).⁶

Prosecutors nationwide filed charges in an estimated total of nearly 3,500 family abduction cases in 1992, or for approximately 23 percent of the family abduction cases they opened that year. In nearly 1,100 of these cases, charges were dismissed by the court. This represents a 31 percent dismissal rate for filed cases. Convictions were reported for about 1,700 family abduction cases, or nearly half (49%) of those where charges were filed.

⁴All cases in which an arrest is made are included in the estimates of those referenced to the prosecutor.

⁵The questionnaire provided no definition for "opening" a case in the prosecutor's office. Each office interpreted the phrase as it applied to its operations. In some cases that might mean that an order to locate a child had been issued; in another jurisdiction a case might be opened as a result of an individual calling in a complaint.

⁶Parental abductions comprised between 88% and 92% of the cases at those other activity levels; other family member abductions comprised between 6% and 9% of the cases at those other levels.

Table 3-1. National Estimates of Family Abduction Reports to Law Enforcement

Category	Estimate	Standard Error	95% Confidence Bounds		C.V. (%)
			Lower	Upper	
Family Abductions:					
Total Reported	30,536	1,688	27,227	33,845	5.53
Arrests	4,464	302	3,871	5,056	6.77
Referred to the Prosecutor	9,222	635	7,978	10,466	6.88
... by Parents:					
Total Reported	24,919	1,458	22,061	27,777	5.85
Arrests	3,762	284	3,206	4,318	7.54
Referred to the Prosecutor	7,551	498	6,576	8,528	6.60
... by Other Family Members					
Total Reported	3,738	360	3,033	4,443	9.63
Arrests	536	76	388	684	14.12
Referred to the Prosecutor	1,080	163	761	1,399	15.07

Table 3-2. National Estimates of Family Abduction Cases Opened by Prosecutors

Category	Estimate	Standard Error	95% Confidence		C.V. (%)
			Lower	Upper	
Family Abductions:					
Cases Opened	15,066	3,588	8,033	22,099	23.82
Cases Where Charges Were Filed	3,496	352	2,805	4,187	10.08
Cases Dismissed by the Court	1,098	258	594	1,604	23.44
Convictions	1,729	210	1,318	2,141	12.14
... by Parents:					
Cases Opened	13,673	3,590	6,637	20,708	26.25
Cases Where Charges Were Filed	3,119	323	2,485	3,752	10.36
Cases Dismissed by the Court	1,016	241	544	1,488	23.72
Convictions	1,518	199	1,129	1,908	13.09
... by Other Family Members					
Cases Opened	675	94	491	860	13.91
Cases Where Charges Were Filed	287	55	178	396	19.31
Cases Dismissed by the Court	71	40	-8	150	56.45
Convictions	159	31	97	220	19.78

4. RESULTS FROM THE LAW ENFORCEMENT SURVEY

4.1 Introduction

This chapter describes the results of the survey of county and municipal law enforcement agencies. It describes the administrative policies and programs available in the jurisdictions surveyed and discusses factors that influence officers' decisions to take a report and to investigate a complaint.

4.2 Administrative Policies and Programs

Law enforcement agencies were asked whether they were aided by a computerized Management Information System (MIS) in providing data to the survey; whether they had any policies or written guidelines focused on responding to parental or familial abduction cases; whether their officers receive any formal training on responding to parental or familial abduction cases; and whether there are any special programs in their jurisdiction designed specifically to address parental or familial abduction.

As Table 4-1 shows, the majority of jurisdictions do **not** have the administrative resources available to manage and/or provide information regarding parental or familial abduction. Slightly more than one-quarter (25.4%) of jurisdictions reported that they were aided by a computerized MIS in providing information on the number of parental or familial abductions reported, the number resulting in arrest, and the number referred to the prosecutor. Slightly more (30%) reported that they had policies or written guidelines regarding such cases and over one-third (36.4%) reported that their officers receive formal training focused on responding to parental or familial abduction cases. Only 10 percent of jurisdictions reported that they have special programs that specifically address parental or familial abduction.

4.3 Officers' Decisions

The survey asked law enforcement agencies about the number of calls regarding parental or familial abduction that result in written reports and to indicate the factors that influence whether a report is taken and the factors that are investigative priorities.

Table 4-1. Availability of Administrative Resources

	Yes	No	Not Ascertained	Total*
MIS	25.4%	68.5%	6.1%	100.0%
Policy	30.0%	68.7%	1.3%	100.0%
Training	36.4%	62.7%	1.0%	100.0%
Program	10.0%	87.7%	2.3%	100.0%

*a Based on weighted total of 11,085, from sample of 3,093.

b May not sum to 100% due to rounding error.

4.3.1 Number of Calls that Result in Written Reports

As Table 4-2 shows, seven out of ten (71.7%) of the county and municipal law enforcement agencies surveyed reported that all of the calls alleging that children were wrongfully taken, kept, or concealed by their parents, other family members, or their agents result in the production of written reports. Just 17.5 percent of agencies reported that some calls result in written reports. Only 10.2 percent of county and municipal law enforcement agencies surveyed reported that none of the calls they receive result in written reports.

Table 4-2. Number of Calls that Result in a Report

Number of Cases	Agencies
All	71.7%
Some	17.5%
None	10.2%
DK/NA	0.6%
TOTAL	100.0%

* Based on weighted total of 11,085, from sample of 3,093.

4.3.2 Factors that Determine Whether a Report is Taken and Factors that are Investigative Priorities

Agencies were asked to indicate the factors that influence whether they decide to take a report in response to a call about child abduction and to indicate those factors that are investigative priorities. These factors appear in Table 4-3. Since these factors were self-reported, it is not possible to determine whether they actually influenced the agency's behavior.

An interesting point to note is that the factors which are most important in influencing whether or not a report is taken differ somewhat from those that influence the investigative priority of the case. Among the most important factors influencing the decision to take a report were the existence of a custody order, the endangerment of the child, and joint custody. The most important factors in determining the investigative priority assigned to a case were the endangerment of the child, the disability status of the child, and the existence of a custody order.

Six out of ten (60.1%) of the agencies reported that the existence of a custody order determines whether a report is taken; 51.9 percent reported that the existence of a custody order determines the investigative priority given to the case. While slightly over half (52.1%) of the agencies reported that the perceived endangerment of the child determines whether a report is taken, a much higher percentage (70.9%) reported that this factor determines the case's investigative priority, making it

the most important factor in deciding investigative priority. For over one-half (50.3%) of agencies, joint custody determines whether a report is taken, while only four in ten (40.7%) report it as a factor in determining investigative priority. Another leading factor in determining investigative priority is the disability status of the child (identified by 65.7 percent of agencies), while that was reported as only the fifth leading factor in deciding whether or not to take a report (identified by 47.3 percent of agencies).

The least important factors in determining whether a report is taken and the investigative priority assigned to a case are also significantly different. The least important factors in determining whether to take a report were whether the alleged offense is a felony, the history of prior offenses, and the removal of the child from the state. For 39 percent of agencies, whether the alleged offense is a felony was the least important factor in determining whether to take a report. For a slightly higher percentage (39.7%) of agencies, the history of prior offenses and the removal of the child from the state were factors whether to take a report.

The least important factors in determining the investigative priority assigned to a case were the marital status of the parents (32.1 percent of agencies), the existence of a paternity order (33.7%), and the state from which the custody order was issued (34.2%).

Table 4-3. Factors Influencing Taking a Report and Investigative Priority

Factors	Report Taken			Investigative Priority (Once Report Taken)		
	Yes	No	Total	Yes	No	Total
Existence of custody order	60.1%	33.2%	93.3%	51.9%	31.6%	83.5%
Endangerment of child	52.1%	41.6%	93.7%	70.9%	13.7%	84.6%
Joint Custody	50.3%	43.1%	93.5%	40.7%	42.9%	83.6%
Restraining order	48.4%	45.2%	93.6%	50.0%	33.3%	83.3%
Child's disability	47.3%	46.4%	93.6%	65.7%	18.1%	83.8%
Violation of visitation rights	44.1%	49.3%	93.4%	38.4%	45.4%	83.7%
Pickup or accompany/assist order	43.5%	49.4%	92.8%	44.8%	37.9%	82.7%
Paternity order	42.5%	50.4%	92.9%	33.7%	49.7%	83.4%
State of custody order issuance	42.3%	51.1%	93.4%	34.2%	49.5%	83.7%
Length of time child gone	42.2%	51.3%	93.5%	50.2%	33.7%	83.9%
Child's age	40.9%	52.8%	93.7%	47.1%	36.8%	83.9%
Marital status of parents	40.8%	52.5%	93.3%	32.1%	51.7%	83.8%
Abduction occurred prior to divorce decree	40.7%	52.5%	93.2%	36.0%	47.6%	83.6%
Whereabouts of child known/ unknown	40.2%	53.1%	93.3%	49.8%	33.4%	83.3%
Removal of child from state	39.7%	54.0%	93.6%	47.5%	36.4%	83.8%
History of prior offenses	39.7%	53.9%	93.6%	47.9%	35.9%	83.8%
Alleged offense is felony	39.0%	54.1%	93.2%	49.7%	33.9%	83.7%

^a Based on weighted total of 11,085, from sample of 3,093.

5. FINDINGS FROM THE PROSECUTORS SURVEY

5.1 Introduction

This chapter describes the findings from the survey of prosecuting authorities for the study of the criminal justice system's response to parental abduction cases. It characterizes the jurisdictions surveyed, discusses the factors that influence prosecutors' case-handling decisions, and describes the outcomes of cases filed in criminal court for both parental and family member abductions.

5.2 Characteristics of Jurisdictions

This section describes the size of prosecutors' staff, including the number of full-time prosecutors and the number of investigators with peace officer powers. It also reports on the kind of administrative resources available to the prosecutors surveyed.

5.2.1 Size of Staff

Prosecutors were asked to indicate the number of full-time prosecutors they had on staff, including supervisory personnel, handling all types of cases. As Table 5-1 notes, the majority of jurisdictions reported they had one to four prosecutors on staff. Nearly one-fifth of the jurisdictions (17.6%) had 5 to 20 prosecutors; only a small percentage (2.1%) were large agencies with over 50 prosecutors on staff. Likewise, a relatively small percentage of jurisdictions (7.6%) reported that they had no prosecutors on staff.

Table 5-1. Number of Prosecutors by Jurisdiction

Number of Prosecutors	Percent of Jurisdictions
0	7.6%
1-4	66.7%
5-20	17.6%
21-50	4.5%
51+	2.1%
NA/DK	1.5%
TOTAL	100.0%

a Based on weighted total of 3,034 from sample of 300.

5.2.2 Number of Investigators with Peace Officer Power

Prosecutors were asked to indicate the number of full-time investigators with peace officer powers (i.e., authority to execute arrest warrants, enforce court orders, and carry firearms) they had on staff. Over 40 percent of jurisdictions reported that they had at least some investigators with peace officer powers in the prosecutor's office. As Table 5-2 indicates, 7.8 percent of jurisdictions had at least 5 investigators with peace officer powers on staff. Nearly half (45.2%) reported they had no investigators with peace officer powers on staff.

Table 5-2. Number of Investigators with Peace Officer Powers

No. of Investigators	With Peace Officer Powers	Without Peace Officer Powers
0	45.2%	51.4%
1-4	33.5%	15.7%
5 +	7.8%	1.6%
DK/NA	13.5%	31.3%
TOTAL	100.0%	100.0%

a Based on weighted total of 3,034, from sample of 300.

5.2.3 Administrative Policies and Programs

Prosecutors were asked whether they were aided by a computerized management information system (MIS) in providing data to the survey; whether they had any policies or written guidelines focused on responding to parental or familial abduction cases; whether their staff received any formal training on responding to parental or familial abduction cases; and whether there were any special programs in their jurisdiction designed specifically to address parental or familial abduction.

As Table 5-3 shows, few jurisdictions reported administrative resources, policies or programs specifically addressing parental abduction. Eighty-five percent of the agencies did not have a computerized management information system (MIS) to aid in providing information to the survey. A nearly equal percentage (86.4%) reported that they did not have policies or written guidelines focused on responding to parental or familial abduction cases. Nearly the same percentage (85.5%) reported that their staff received no formal training on how to respond to parental or familial abduction cases, while slightly fewer (79%) reported that they do not have special programs designed specifically to address parental or familial abduction.

Table 5-3. Availability of Administrative Resources

	Yes	No	Not Ascertained	Total
MIS	9.7%	85.0%	5.3%	100.0%
Policy	10.0%	86.4%	3.6%	100.0%
Training	10.9%	85.5%	3.6%	100.0%
Program	14.9%	79.3%	5.8%	100.0%

^a Based on weighted total of 3,034, from sample of 300.

5.3 Prosecutors' Decisions

The survey asked prosecutors about the number of cases opened in response to complaints of parental or familial abduction and about the factors that influence whether a case is opened and whether a case is prosecuted.

5.3.1. Cases Opened

The overwhelming majority of jurisdictions reported that cases are opened for some or all complaints of parental or family abduction. As Table 5-4 indicates, 22.4 percent of jurisdictions reported that they open cases for all complaints, alleging that children were wrongfully taken, kept or concealed by their parents, other family members, or their agents; 59.8 percent reported that they open cases for at least some of these complaints. Only 13 percent of jurisdictions reported that they did not open cases for familial abduction complaints.

Table 5-4. Number of Cases Opened in Response to Complaints

Cases Opened	Percent of Jurisdictions
All	22.4%
Some	59.8%
None	13.0%
DK/NA	4.8%
TOTAL	100.0%

a Based on weighted total of 3,034, from sample of 300.

5.3.2 Factors that Determine Whether a Case is Opened or Prosecuted

Prosecutors were asked to indicate the factors that influence whether they decide to open a case in response to a complaint and whether they decide to prosecute a case. These factors appear in Table 5-5.

Among the most important factors influencing both the decision to open a case and the decision to prosecute were the existence of a custody order, joint custody, the endangerment of the child, and the length of time the child had been gone.

Nearly three-quarters of the jurisdictions (70.6%) reported that the existence of a custody order influences whether a case is opened; 77 percent reported that this factor influences the decision whether to prosecute a case. Nearly two-thirds (62.8%) of jurisdictions reported that joint custody influences whether a case is opened, and a slightly larger percentage (66.9%) reported that this factor influences whether to prosecute. For 62.2 percent of jurisdictions, the perceived endangerment of the child was a factor in opening a case versus influencing the decision to prosecute in 64.6 percent of jurisdictions. For 61.9 percent of jurisdictions, the length of time the child was gone from home was a factor in determining whether to open a case; for 68 percent of jurisdictions, it was a factor in determining whether to prosecute.

Of lesser, but noteworthy importance, are those factors which determine both whether a case was opened and whether a case was prosecuted. These factors are the state in which a custody order was issued, the existence of a pickup or accompany/assist order, and the marital status of the parents. For 34.1 percent of jurisdictions, the state in which the custody order was issued was a factor in determining whether a case is opened; for 29.7 percent of jurisdictions, it was a factor in determining whether to prosecute. For 42.3 percent of jurisdictions, a pickup or accompany/assist order was a factor in determining both whether to open a case and whether to prosecute. For 42.7 percent of jurisdictions, the marital status of the parents was a factor in determining whether a case is opened and, for 41.4% of jurisdictions, it was a factor in determining whether to prosecute.

Table 5-5. Factors that Influence Whether a Case is Opened or Prosecuted

Factors	Case Opened			Prosecute		
	Yes	No	Total	Yes	No	Total
Existence of custody order	70.6%	8.9%	79.5%	77.0%	2.8%	79.8%
Joint Custody	62.8%	16.6%	79.4%	66.9%	12.9%	79.8%
Endangerment of child	62.2%	17.5%	79.7%	64.6%	15.0%	79.6%
Length of time child gone	61.9%	17.6%	79.5%	68.0%	11.7%	79.7%
Paternity order	60.6%	18.5%	79.1%	62.0%	17.3%	79.3%
Violation of visitation rights	59.1%	20.4%	79.5%	65.3%	14.4%	79.7%
Removal of child from state	58.9%	20.6%	79.5%	62.7%	17.1%	78.8%
Restraining order	56.3%	22.1%	78.4%	59.0%	20.6%	79.6%
Child's disability	55.6%	23.5%	79.1%	50.2%	29.3%	79.5%
Child's age	53.6%	26.1%	79.7%	58.9%	20.9%	79.8%
Abduction occurred prior to divorce decree	53.3%	24.9%	78.2%	48.5%	29.1%	77.6%
Whereabouts of child known/unknown	53.0%	25.4%	78.4%	57.8%	21.1%	78.9%
History of prior offenses	52.4%	27.1%	79.5%	61.9%	17.9%	79.8%
Alleged offense is felony	44.0%	35.2%	79.2%	49.0%	30.4%	79.4%
Marital status of parents	42.7%	36.8%	79.5%	41.4%	38.4%	79.4%
Pickup or accompany/assist order	42.3%	32.7%	75.0%	42.3%	32.2%	74.5%
State of custody order issuance	34.1%	45.3%	79.4%	29.7%	50.1%	79.8%

a Based on weighted total of 3,034, from sample of 300.

6. SUMMARY AND CONCLUSIONS

This mail survey of law enforcement agencies and county prosecutors' offices afforded important information regarding the processing of familial abduction cases. It provided national estimates of the number of reports, arrests, and filings concerning parental or familial abductions, as well as factors influencing case processing. Data on written policies, training, and special programs were also collected.

6.1 General Approach

The sample used for this study included 400 prosecutors, 405 county law enforcement agencies (LEAs), and 3,625 municipal law enforcement agencies. Response rates were comparable for prosecutors (75%) and LEAs (76.6%), resulting in 300 prosecutor responses and 3,393 LEA (2,824 municipal LEAs, and 607 county LEAs) responses.

6.2 National Estimates of Justice System Responses

An estimated 30,536 parental abduction cases were reported to law enforcement agencies in 1992. In 82 percent of those cases, a parent was responsible for the abduction; a family member other than a parent was responsible in 12 percent of the cases; while 6 percent of the cases involved other perpetrators. An estimated 4,500 cases of family abduction resulted in arrest, which reflects 15 percent of all reported cases. More cases were referred to the prosecutor (i.e., beyond those which involved arrests per se). Nationwide, law enforcement agencies referred an estimated 9,200 family abduction cases to prosecutors in 1992, which corresponds to 30 percent of all reported cases.

In the national estimates derived from the prosecutor's survey response, an estimated 15,066 parental abduction cases were opened by the prosecutors. This number is substantially higher than the estimated number of referrals by LEAs, a fact which indicates that many family abduction cases

reach the prosecutors offices by other referral routes, such as courts or directly from the aggrieved custodial parent. Charges were filed in an estimated 3,496 (23%) of the cases opened that year. Thirty-one percent of the filed cases were dismissed; convictions were reported for nearly half (49%) of the filed cases.

By sampling the most populous counties in the nation, jurisdictions handling nearly 50 percent of all reported cases were included in the sample (see Table 6-1). The table indicates that the participating law enforcement agencies' files held records concerning 45 to 50 percent of all family abductions in the nation. Whether this relates to the percentage of United States child population living in these counties, or whether it indicates that a disproportionate number of these cases occur in the more populous counties has not yet been explored. (Note that the country sample for this study was drawn with probability proportionate to size, which meant that the more populous countries were more likely to be selected). This finding is consistent with the results of an earlier study by Research Triangle Institute (1989), which found that reporting rates increased with the size of the police department. In that earlier study, the median number of reports of parental abductions was zero for a department with fewer than 50 officers, one for departments of 50 to 99 officers, three for departments employing 100 to 299 officers, and increasing to 15 reports for departments with 300 or more officers.

Table 6-1. Samples and Estimates of Family Abduction Cases Derived from the Survey of Law Enforcement Agencies

	No. cases in responding agencies	Estimated total no. cases in the U.S.	% of U.S. cases in responding agencies' files
Reports to law enforcement	13,713	30,536	45%
Arrests	2,137	4,464	48%
Referred to Prosecutor	4,564	9,222	49%

6.3 Relation to NISMART Estimates of National Totals of Family Abducted Children

The above national estimates of the number of parental abduction cases reflect only the subsets of these cases for which law enforcement agencies officially took a report (30,536) and for which prosecutors' offices officially opened a case (15,066). These figures are substantially lower than the estimated number of family abduction cases given by the National Incidence Studies of Missing, Abducted, Runaway, and Thrownaway Children (NISMART) in 1990.⁷ That study, based on interviews with parents and other primary caretakers, found that an estimated 354,100 children had been victims of family abductions in a one-year period, and that 163,200 of these were involved in 'policy focal' circumstances (that is, family abductions in which the perpetrator had concealed the child, transported the child out of state, or conveyed the intention of permanently altering the custody arrangement by means of the abduction). Further, NISMART respondents indicated that they had contacted police regarding 44 percent of all family abducted children, or concerning 155,800 of the children. This is more than five times the number of family abductions where police actually and officially took a report, according to the estimates given in the present study.

Likewise, the NISMART finding that an attorney has been contacted for 50 percent of family-abducted children involves an estimated 177,050 children. This is nearly 12 times the number of family abduction cases for which prosecutors open cases, according to the present study. Figures from both studies appear equally valid in their own right. Possible explanations for the disconnect between the two studies include:

- Classification of the crime within the system may not be readily identifiable. For example, a violation of a custody order may not be distinguishable in the system from a violation of any other court order.

⁷Finkelhor, D., Hotaling, G., and Sedlak, A. (1990). *Missing Abducted, Runaway, and Thrownaway Children in America, First Report: Numbers and Characteristics, National Incidence Studies*. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

- Failure to report parental abductions which occur in concert with other crimes. For example, police may record other crimes, such as assault and battery or breaking and entering, and only mention the parental abduction in the narrative of the report.
- Lack of jurisdiction by some LEAs to conduct criminal investigations on parental abductions.
- Informal handling of cases by both police and civil attorneys to return the child to the custodial parent.

6.4 Structure of Law Enforcement and Prosecutor Agencies and Resources Related to Familial Abduction Cases

Law enforcement agencies were asked questions about administrative policies and resources in relation to family abductions. Approximately one-quarter of agencies reported that they were aided by a computerized MIS in providing information on the number of parental abduction cases reported to their agencies. Thirty percent reported that they had policies or written guidelines regarding such cases; more than one-third (36.4%) of the agencies reported that their officers receive formal training on how to respond to parental abduction cases. Only ten percent of LEAs had special programs that specifically address parental or familial abduction.

The survey directed to prosecutors' offices included questions about office characteristics, and administrative resources concerning family abduction. Two questions were asked on the offices' staff characteristics: number of full-time prosecutors and number of full-time investigators with peace officer powers. The majority (66.7%) of jurisdictions had between one and four prosecutor's on staff. Less than 10 percent indicated they had no full-time prosecutors on staff; only 2.1 percent of the jurisdictions reported 51 or more prosecutors on staff. Over two-fifths (41.3%) of jurisdictions reported having some investigators with peace officer powers. Only 17.3 percent of the jurisdictions

reported having investigators without peace officer powers. However, almost one-third of the jurisdictions (31.3%) claimed that they did not know how many officers were on staff without peace officer powers.

The vast majority of the jurisdictions said that they were not aided by a computerized management information system in providing information for the survey (85%); that they did not have policies or written guidelines focused on case handling of parental abduction cases (86%); and that staff receive no formal training on how to respond to these cases (86%). A slightly lower percentage of prosecutors' offices (79%) than LEAs reported (88%) that they did not have special programs designed to address parental or familial abduction.

6.5 Factors Influencing Law Enforcement and Prosecutor Processing of Familial Abduction Reports

The responding law enforcement agencies indicated whether specific factors influenced the decision to take a report concerning an alleged parental abduction. The three factors most frequently cited as influencing this decision were the existence of a custody order (60.1%), the endangerment of the child (52.1%), and joint custody (50.3%). Two of these factors -- endangerment of the child (70.9%) and existence of a custody order (51.9%) -- were also among the three most commonly cited factors in determining investigative priority. However the second most frequently reported factor influencing the investigative priority was the disability status of the child, cited by 65.7 percent of the jurisdictions.

The most common factors for determining whether the prosecutor's office opened a case were existence of a custody order (70.6%), joint custody (62.8%), and endangerment of a child (62.2%). Note that these were the same three most common factors which influenced whether a police report was taken. The three most common factors which influenced whether a case was prosecuted (i.e., complaint filed with the court) were existence of a custody order (77.0%), length of time the child was gone (68.0%), and joint custody (66.9%).

6.6 Conclusions and Implications

The picture which emerges from this study in relation to other national findings is one of relatively scant law enforcement and criminal justice attention to family abductions. An estimated 155,800 children are the victims of relatively serious (policy focal) family abductions in the course of a year, yet only 30,500 police reports are officially registered (only 20 percent of the policy focal total) and only 4,500 family abduction arrests are made (i.e., only three percent of the policy focal total). On the prosecutor's side, only 9,200 cases are officially reviewed (or only six percent of the policy focal total), and only 3,500 criminal complaints are actually filed (only two percent of the focal total). Even allowing for the fact that multiple children's abductions may be addressed in an individual law enforcement/criminal justice case, these figures imply a very low response rate overall. However, these independent studies do not reveal what characteristics of jurisdictions or agencies are associated with higher response rates. The case studies conducted for the second phase of this study may shed some light on this, but future research will need to separately measure both community incidence and law enforcement response in the same jurisdictions.

Outstanding questions could also be addressed with the current survey database. For instance, county-level indices of the rates of reported or referred family abductions per 1,000 children in the population could be established. This measure could be used to compare counties where LEAs claimed to have explicit training, policies, or programs with counties where LEAs did not indicate any specialized focus on family abduction issues.

Finally, the fact that such a large proportion of the cases nationwide were within the case files of participating agencies in this 400-county survey indicates that this survey approach may be a valuable tool for locating case-specific information on relatively rare events. Its potential use in this connection should be explored in other contexts.



Part Three



THE CRIMINAL JUSTICE SYSTEM'S RESPONSE
TO PARENTAL ABDUCTION
IN SIX SITES

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1. INTRODUCTION/HIGHLIGHTS OF FINDINGS

In 1994, two legal and law enforcement experts conducted extensive interviews with individuals familiar with the criminal justice system's handling of parental abduction and visitation interference cases in six sites. The purpose of making these site visits was to examine, through case study methodology, how law enforcement agencies respond to reports of custodial interference by a family member. The case study methodology enabled the investigators to examine first hand case handling practices in cities and counties across the country of varying sizes and attributes. The six sites visited were:

- San Diego County, California;
- Snohomish County, Washington;
- Escambia County, Florida;
- Salt Lake County, Utah;
- Hudson County, New Jersey; and
- Pima County, Arizona.

In consultation with the project's Advisory Board, sites were selected based on survey data collected during the project's first phase. The primary criteria for site selection were: (a) the prosecutor filed a minimum of fifteen criminal custodial interference complaints in 1992; (b) agencies' utilization of information management systems to allow for future case tracking; and (c) geographic diversity. As reported earlier in this report, of the 400 counties surveyed, only 17

counties had prosecutors filing more than 15 criminal complaints in 1992. Only eight of the seventeen were outside of California.¹

At each site using a semi-structured questionnaire (Appendix III), the consultants interviewed representatives of law enforcement agencies, prosecuting attorney offices, the judiciary, the private and legal services bar, the family court, and mediation programs. Although the counties studied had more than two local law enforcement agencies, only personnel in police and sheriff departments handling the majority of cases for a jurisdiction were interviewed.²

The following chapter presents a general overview of site visit findings and summarizes the interviews conducted. In addition, included in this study's final chapter is a comprehensive discussion of effective and unique programs identified during site visits with guidance as to how jurisdictions can replicate them.

Parental Abduction as a Case Handling Priority

With the exception of the San Diego County District Attorney and Hudson County Sheriff's Offices, all criminal justice agencies reported that custodial interference cases only comprised an estimated one to five percent of their workload. Despite this, however, personnel in these offices had developed some expertise in the handling of custodial interference cases. For the most part, they were detectives assigned to the departmental unit responsible for the investigation of child abuse, parentally and stranger abducted children, and runaway youth. Table One provides an

¹An additional county in Pennsylvania was visited which did not have a high volume of parental abduction reports. That site visit is not reported here due to the lack of case activity in the prosecutor's office and police department.

²Within the law enforcement community, two recognized components are the police and the sheriff. Police agencies' duties entail commonly observed patrol and investigation activities, whereas those of sheriff departments vary based upon local contingencies. In areas in which no local police agency exists, such as unincorporated jurisdictions, sheriff offices may assume more traditional police duties in addition to providing jail and court security.

overview of each site's approach to case handling (in all sites, the patrol officer responding to a complaint would be the first line of response).

TABLE ONE CRIMINAL JUSTICE SYSTEM APPROACH TO CASE HANDLING					
	ASSIGNMENT OF CASES			WRITTEN POLICY	
	Sheriff	Police	Prosecutor	Sheriff	Police
SAN DIEGO	Immediate referral to prosecutor	Detective specialists; small % of caseload (require add. invest.); referral to prosecutor	Specialty unit; almost entire caseload custodial interference	Yes	Yes
SNOHOMISH	Detective specialists; small % of caseload (require add. invest.)	Detective specialists; small % of caseload (require add. invest.)	Staff specialization for felonies; small % of caseload; random assignment for misd. cases	No	Yes
ESCAMBIA	Detective specialists; small % of caseload (require add. invest.)	Detective specialists; small % of caseload (require add. invest.)	Staff specialization for felonies; small % of caseload; random assignment for misd.	No	No
SALT LAKE	Detective specialists; small % of caseload (require add. invest.)	Detective specialists; small % of caseload (require add. invest.)	Staff specialization for felonies; small % of caseload; random assignment for misd.	Yes	Yes
HUDSON	Detective specialty unit; entire caseload cust. int. and missing persons	Detective specialists; small % of caseload (require add. invest.)	Random assignment for both felonies and misd.; small % of caseload	No	No
PIMA	Detective specialists/ small % of caseload (require add. invest.)	Detective specialists; small % of caseload (require add. invest.)	Staff specialization for felonies; small % of caseload; random assignment for misd.	No	No

For some of those interviewed, custodial interference cases were perceived as a "low priority" given their agencies' limited staffing and the high volume of other cases they were assigned to handle. In addition, several staff reported that patrol officers might not be as knowledgeable about custodial interference concerns as detectives, though in some sites patrol officers were apprised of issues, at least briefly, during their initial police academy training or at periodic training programs.

At sites in which agency staff had developed an expertise in custodial interference or a specialty unit had been created, it was clear that the initiative of skilled and concerned staff contributed to an enhanced criminal justice system response. These specialized systems, however, were not necessarily institutionalized within all agencies and might not exist if specialized staff were no longer employed by a agency. Of the twelve sheriff and police departments contacted, only five had written policies governing the processing of custodial interference cases. San Diego County was the only jurisdiction visited in which a specific criminal justice agency was statutorily mandated to intervene in a case of custodial interference.

Case Processing/Impact of Court Order on Police Action

With the exception of Utah, the states visited are governed by laws that could be interpreted to prohibit custodial interference both before and after the issuance of a custody order. California, Florida, and Washington's statutes expressly outlaw custodial interference prior to the issuance of a custody order. Although Arizona's statute is less clear as to whether intervention is authorized in a pre-custody order situation, the Pima County prosecutor's office interpreted case law as allowing intervention in such cases. In Hudson County, New Jersey, despite the statute's lack of clarity, law enforcement officials reported that they would at a minimum investigate a complaint of parental abduction to ensure the child was safe and at the same time refer the aggrieved parent to the family court to obtain a custody decree.

Generally, law enforcement personnel respond to some degree to a complaint of custodial interference even though an aggrieved party does not have a custody order. In at least three jurisdictions visited, the degree of response (e.g., patrol officer sent to scene, follow up contact with

involved parties) varied depending upon whether a court order exists or whether a child is at risk of harm. In the other three, a governing custody order has no impact on the degree of response in that a patrol officer is automatically dispatched to the scene or an investigation is conducted to verify the legitimacy of a complaint. At a minimum, in all sites, even if no court order exists, police will travel to the scene of the complaint to assess a child's well-being and at the same time refer parties to local civil courts, legal services or pro bono programs, or the private bar for assistance in filing a petition for custody. See Table Two.

Visitation Interference³

In almost all sites, law enforcement agencies respond to complaints of visitation interference by sending a patrol officer to the scene or attempting to investigate the matter over the phone. Whether or not police enforce visitation orders depends on the specificity and clarity of the order. Also, not all responses to visitation interference reports are immediate, with some agencies believing that the interference should be of a "protracted" nature. As to interference with a visitation or access order, statutes of five out of six states visited prohibit such conduct. In three of the six states, violation of a visitation order could constitute felonious conduct. See Table Two.

Production of Crime Report

In all jurisdictions, law enforcement personnel (police or sheriff) prepare a crime report upon receiving a complaint of custodial interference. Whether or not an incident of custodial interference would be labeled as such varied among jurisdictions. In some sites, custodial interference offenses could be classified as a "miscellaneous," "civil matter," or related offense, such as domestic violence or assault.

³Visitation interference or denial of access encompasses the situation in which a child's legal custodian prevents a parent or individual with court-ordered visitation from exercising those rights.

**TABLE TWO
POLICE ACTION AS GOVERNED BY COURT ORDER IN CASES OF
PARENTAL ABDUCTION AND VISITATION INTERFERENCE**

	STATUTE	PARENTAL ABDUCTION		VISITATION INTERFERENCE	
		Sheriff	Police	Sheriff	Police
SAN DIEGO	Custodial int. crime w/wo custody order; visitation inter. is crime	Immediate referral to prosecutor	Intervention w/wo custody order, plus referral to prosecutor	Immediate referral to prosecutor	Conduct prel. investigation; plus referral to prosecutor
SNOHOMISH	Custodial int. crime w/wo custody order; visitation. inter. is crime	Unless child in danger, does not intervene if no custody order and child's whereabouts are known; referral made to family court	Unless child in danger, does not intervene if no custody order and child's whereabouts are known; referral made to family court	Response if order is specific	Response if order is specific
ESCAMBIA	Custodial int. crime w/wo custody order; unclear visitation inter. is crime	Unless child in danger, does not intervene if no custody order; referral to court, legal services, or private bar	Unless child in danger, does not intervene if no custody order; referral to court, legal services, or private bar	Response if order is specific	Unless protracted delay in child being returned home, no intervention
SALT LAKE	Custody order required for commission of crime; visitation inter. is crime	Unless child in danger, does not intervene if no custody order; referral to court, legal services	Unless child in danger, does not intervene if no custody order; referral to court, legal services	Response even if court order is non-specific	Response if interference is for "a substantial length of time"
HUDSON	Statute unclear whether custody order required; visitation inter. is crime	Intervention w/wo custody order; plus referral to family court, legal services	Intervention w/wo custody order; plus referral to family court, legal services	Response in all cases	Intervention if "life-threatening situation or child gone for a number of hours"

TABLE TWO POLICE ACTION AS GOVERNED BY COURT ORDER IN CASES OF PARENTAL ABDUCTION AND VISITATION INTERFERENCE					
	STATUTE	PARENTAL ABDUCTION		VISITATION INTERFERENCE	
		Sheriff	Police	Sheriff	Police
PIMA	Case law interpreted custodial inter. crime w/wo custody order; presum. mother lawful custodian until paternity established under AZ law; visitation interference is crime	Intervention w/wo custody order; if no court order, refer to victim witness advocate employed by County Attorney's Office	Intervention w/wo custody order; if no court order, refer to victim witness advocate employed by County Attorney's Office	Intervention; response could include telephoning complainant to investigate; advise individual to seek services of attorney; option of issuing citation under AZ law	Intervention; option of issuing a citation under AZ law

Entry Into The National Crime Information Center (NCIC)

The National Child Search Assistance Act of 1990, 42 U.S.C. § 5780, requires that state and local law enforcement agencies take a report on a missing child and enter descriptive information on that child into the National Crime Information Center (NCIC) without a waiting period, regardless of whether the abduction constitutes a criminal violation. The NCIC is a computer database with information on missing persons that law enforcement agencies can access to facilitate their recovery of abducted children. The federal Missing Children's Assistance Act of 1984, 42 U.S.C. § 5772(1)(A)(B), provides that for purposes of NCIC entry a "missing child" is:

[A]ny individual less than 18 years of age whose whereabouts are unknown to such individual's legal custodian if--

(A) the circumstances surrounding such individual's disappearance indicate that such individual may possibly have been removed by another from the control of such individual's legal custodian without such custodian's consent; or

(B) the circumstances of the case strongly indicate that such individual is likely to be abused or sexually exploited[.]

Agency personnel reported varying practices as to the entry of information on parentally abducted children and perpetrators into the NCIC. It was the practice in some jurisdictions not to enter information on a parental abduction case unless the child's whereabouts were "unknown," an arrest warrant had been issued, or the abductor had fled out-of-state.⁴

Contact with the Federal Bureau of Investigation (FBI)

Pursuant to the Parental Kidnapping Prevention Act of 1980 (PKPA), 28 U.S.C. § 1738A, the FBI is authorized to investigate cases in which children have been abducted by parents or their agents across state lines or out of the country. In these cases, state or local law enforcement authorities would seek the issuance of a federal Unlawful Flight to Avoid Prosecution (UFAP) warrant to enable the FBI to investigate the whereabouts of a child and fugitive parent.

The majority of law enforcement personnel reported minimal contact with the FBI, with the FBI being involved in only a few or none of their cases. Comments reflected a possible underutilization of FBI resources. One individual recommended that the FBI should become more involved with case investigation once an Unlawful Flight to Avoid Prosecution (UFAP) is issued and found a lack of follow up on the FBI's part. Another perceived the FBI as "jumping" on a case quickly if a child were taken out of state. Several viewed their working relationship with the FBI as "good."

⁴According to the American Prosecutors Research Institute (APRI), whether relevant information on a parentally abducted child is entered into the NCIC is dependent on how states interpret "missing child." For example, the Nevada Attorney General issued an opinion dated January 23, 1992 stating that in accordance with Nevada law a parentally abducted child is a "missing child" for purposes of NCIC entry. National Center for Prosecution of Child Abuse of the APRI, *Investigation and Prosecution of Parental Abduction* (Washington, D.C.: United States Department of Justice, Office of Juvenile Justice and Delinquency Prevention 1995), 28.

Utilization of State Clearinghouses on Missing Children

All states, with the exception of West Virginia and Utah, have state missing children's clearinghouses. Depending on the jurisdiction, clearinghouses can have a role in educating the public on missing children's issues, can be instrumental in coordinating agency services aimed at child recovery, and can provide assistance to law enforcement agencies in recovering children in specific cases.

With the exception of personnel in three counties, detectives appeared to underutilize state clearinghouses on missing children. These individuals seemed to be unaware of the existence of clearinghouses in their states or if they were aware, did not convey to interviewers that they utilized clearinghouse services.

Other Support Services

Agency personnel have had varying experiences with other support services. Most were not aware of or had never used the federal parent locator service. While the majority were familiar with the publications of the National Center For Missing and Exploited Children, it was less clear whether they were aware of the Center's training programs and provision of technical assistance in individual cases.

Access to Prosecutors

All law enforcement agencies had twenty-four hour access to prosecutors who could advise them on relevant legal issues. In at least three jurisdictions, personnel had direct access to a prosecutor specializing in custodial interference cases.

Child Protective Services Involvement

In all sites, agencies maintained a policy that in custodial interference cases in which a child was endangered or at risk of harm, a referral would be made to the local child protective services agency. In these cases, law enforcement personnel would have the authority to remove a child from a threatening situation.

Training and Specialized Knowledge

With the exception of those sites which had specialty units (e.g., San Diego, Hudson, and Pima Counties), training on parental abduction issues was "on-the-job." For those jurisdictions with formal training, topics covered included: federal and state criminal custodial interference laws, the psycho-social aspects of the crime, written policies and procedures involving case processing, effective interventions, and the interplay between the criminal and civil systems in resolving custodial interference disputes.

Generally, those interviewed were knowledgeable about their state's criminal custodial interference laws. Only those sites with a significant immigrant population, in particular Hudson, Pima, and San Diego Counties, had personnel familiar with the handling of international abduction cases. They were knowledgeable about the Hague Convention on the Civil Aspects of International Abduction and accessing the services of the United States Department of State, United States Customs Office, and the Immigration and Naturalization Service for assistance in recovering the abducted child.

As it was for many law enforcement personnel, on the job training was the norm for prosecutors. In two of the seven sites (Pima and San Diego Counties), two prosecutors had worked closely with the American Prosecutors Research Institute (APRI) and are viewed as national experts in the field of child abduction. With the exception of these two counties, although prosecutors were familiar with their state laws addressing custodial interference, they had relatively limited experience

with applicable civil laws, both state and federal, primarily because they did not practice in civil or family courts and did not specialize in custodial interference.

Criteria for Filing of Criminal Complaint

In all jurisdictions, the number of criminal custodial interference complaints filed is quite low. For example, in a jurisdiction such as San Diego County where the District Attorney's Office receives as many as 1,500 reports of custodial interference per year, only about 350 cases are formally opened and of these only an estimated 30 criminal complaints are filed each year. Most, if not all prosecutors reported that prosecution may not be in a child's or family's interest and that the most important priority was to recover the child safely and expeditiously. The general consensus was that prior to prosecuting, each case had to be evaluated individually.

Typically, only custodial interference is charged, if charges are filed at all. In two jurisdictions visited, prosecutors may also file child endangerment, burglary, or assault related to domestic violence charges. Only Pima County actively prosecuted misdemeanor visitation interference cases through the County and City Attorneys' Offices.

The criteria for filing a criminal complaint varied among jurisdictions. Prosecutors related the following factors (though not all) as influencing their decisions to prosecute:

- the child and/or abductor could not be located or the abducting party refused to return the child;
- the custodial interference was for a permanent or protracted period (i.e., two to three months);
- the abductor crossed state lines or fled the country;
- a custody or visitation order had been violated;
- evidence existed of repetitive conduct; and

- seriousness of interference; impact of interference on child; repetitiveness of conduct (for visitation interference cases).

Extradition of Offender

In most sites, extradition of offenders rarely occurred. The primary reason given for non-extradition was the expense involved in extraditing, especially if the defendant was in a distant location. The sites in which extradition were more likely to occur were those in which the prosecutor's office had a unit in which staff specialized in custodial interference cases.

Case Disposition

The majority of cases filed in all jurisdictions result in plea bargains or dismissals. Individuals convicted of custodial interference usually receive probation with conditions (e.g., pay restitution to the victim, attend parenting skills classes, must stay away from the victim child). Jail time is extremely rare. It appears that the only time a defendant is incarcerated either prior to or after a conviction is if the defendant refuses to disclose a child's whereabouts.

According to prosecutors, parental abduction cases are rarely tried by a jury or judge. Three jury trials were reported, one in each of three sites. Bench trials (cases in which judge determines guilt or innocence) occurred with some frequency in only one site that actively prosecuted visitation interference cases. Prosecutors perceive custodial interference cases as extremely difficult to try. Not only must they prove the elements of an offense, they must also refute the defense that the abductor acted to protect the child from the other parent's alleged abusive behavior.

Victim Advocacy Programs/reunification Services

With the exception of Pima County and San Diego counties, victim advocates had a minimal role in assisting parents and children prior to and after a child's recovery. The victim witness advocate of the Pima County Attorney's Office and the investigation-specialists of San Diego's

District Attorney's Office were instrumental in getting aggrieved parties access to civil court and legal services and providing assistance during the reunification process.

General Concerns/recommendations

The overriding concern of most criminal justice system personnel was the need for additional staff and other resources so that they could give all types of cases, including custodial interference cases, the thorough attention warranted. They perceived their caseloads as rising with some voicing anxiety that custodial interference cases might be viewed with time as less of an office priority.

Other recommendations included the following:

- the purchase of enhanced computer technology to allow for quicker access to information which would be useful in investigating cases intra- and interstate;
- the implementation of more in-house training programs on criminal and civil custodial interference issues for all service providers in the system, including patrol officers, law enforcement management, prosecutors, support staff, attorneys, and judges;
- the creation or expansion of specialty units within agencies to effectively and expeditiously intervene in custodial interference cases;
- the establishment of more uniform custodial interference laws nationwide, including more uniform procedures related to order enforcement;
- the appropriation of additional staff and other resources to the FBI and the United States Department of State to enable those agencies to provide additional investigative and other support in appropriate cases;

- the creation of a national child custody order registry to allow those enforcing custody orders to verify orders' legitimacy;
- the issuance of custody and visitation orders that are more specific as to the rights and obligations of the parties and which include the admonition that violation of orders is a criminal offense and punishable by imprisonment;
- the expansion or creation of legal services, family court, and pro bono programs to enhance parents' access to legal representation in child custody and visitation cases;
- the implementation of supervised visitation and mediation programs as an abduction prevention measure;⁵ and
- the development of appropriate reunification services (e.g., counseling, specialized foster care) and victim advocate programs to alleviate trauma to children upon their return to the lawful custodian.

⁵Supervised visitation, mediation, and reunification services are discussed in greater detail in the model programs chapter of this final report.

2. SAN DIEGO COUNTY, CALIFORNIA SITE SUMMARY

The County has an estimated population of two and a half million, with the City of San Diego having an approximate population of one million. The population of the county has increased by 40% since 1980. Twenty-four percent of San Diego City family households are headed by a single parent.⁶

2.1 CALIFORNIA STATUTES ON CRIMINAL CUSTODIAL AND VISITATION INTERFERENCE⁷ AND DISTRICT ATTORNEY'S ROLE

2.1.1 CA PENAL CODE § 277 (1992)

Elements of the Crime

This section addresses the situation in which a child's mother and father both have the right to custody of their child as no court order delineates custody and visitation rights. In cases in which no custody order exists, it is presumed that both parents have an equal right to custody of their child. In these cases, a person violates § 277 if he or she does the following:

maliciously takes, detains, conceals, or entices away the child:

- 1) within or without the State;
- 2) without good cause; and
- 3) with the intent to deprive the custody right of another person or public agency also having a custody right to the child.

⁶U.S. Bureau of the Census, *County and City Data Book* (Washington, DC 1994).

⁷The statutory summaries outlined are modeled on those in "State Criminal Legislation on Parental Abduction" compiled by the National Center For Prosecution Of Child Abuse of the American Prosecutors Research Institute. With possible minor exceptions, they are the statutory provisions that were in effect at the time of 1994 site visits. They are not necessarily verbatim excerpts of the statutes. Any citations the reader wishes to make should be based on an examination of the code itself to ensure accuracy of wording and citation.

Even if the perpetrator obtains a court order establishing custody rights subsequent to committing the above stated act, he or she can still be subject to criminal prosecution.

Defenses

"Good Cause" includes:

- 1) a good faith and reasonable belief that the taking, detaining, concealing, or enticing away of the child is necessary to protect the child from immediate bodily injury or emotional harm; or
- 2) a good faith and reasonable belief by a person with a right to custody of the child who has been the victim of domestic violence by another person with a right of custody of the child, that the child, if left with the other person, will suffer immediate bodily injury or emotional harm.

In order to raise a "good cause" defense, the individual who takes, detains, or conceals the child must file a report with the district attorney's office of his or her action. In addition, he or she must file a request for custody, within a reasonable time in the jurisdiction where the child had been living, setting forth the basis for the immediate bodily injury or emotional harm to the child. The address of the parent, or a person who has been granted access to the minor child by a court order, who takes, detains, or conceals the child, with good cause, must remain confidential until released by court order. The statute goes on to define domestic violence and emotional harm.

Penalty

Imprisonment in the county jail for a period of not more than one year, a fine of \$1,000, or both; or

Imprisonment in the state prison for 16 months, or two or three years, a fine of not more than \$10,000, or both.

2.1.2 CA PENAL CODE § 278 (1984)

Elements of the Crime

This section deals with the situation in which person does not have any right to the custody of a child. A person violates § 278 if:

- a) the person does not have a right of custody; and
- b) he or she maliciously takes, detains, conceals, or entices away a minor child with the intent to detain or conceal that child from a person, guardian, or public agency having the lawful charge of the child.

Penalty

Imprisonment in the state prison for two, three or four years, a fine of not more than \$10,000, or both; or

Imprisonment in a county jail for a period of not more than one year, a fine of not more than \$1,000 or both.

2.1.3 CA PENAL CODE § 278.5 (1989)

Elements of the Crime

This section addresses situations in which a court order defines custody and visitation rights. An individual violates § 278.5, if he or she:

- a) has a right to physical custody of or visitation with a child pursuant to an order, judgment, or decree of any court which also grants another person, guardian, or public agency right to physical custody of or visitation with that child; and
- b) detains, conceals, takes, or entices away that child:
 - 1) within or without the state; and
 - 2) with the intent to deprive the other person of his or her right to custody or visitation.

Penalty

Imprisonment in the state prison for 16 months, or two or three years, a fine of not more than \$10,000, or both; or

Imprisonment in a county jail for a period of not more than one year, a fine of not more than \$1,000, or both.

2.1.4 CA PENAL CODE § 279 (1992)

This section addresses several issues, including the authority of a peace officer to take a child into protective custody, placing a child with the lawful custodian, resolution of conflicting custody orders, and assessing a perpetrator for costs incurred by a victim.

It provides that the offenses stated in §§ 277, 278, 278.5 are continuous in nature. They continue for as long as the minor child is concealed or detained.

It states that a violation of §§ 277, 278, or 278.5 is punishable in California:

a) whether the intent to commit the offense is formed within or without the state:

- 1) if the child was a resident of California or present in California at the time of the taking;
- 2) if the child thereafter is found in California; or
- 3) if one of the parents, or a person granted access to the minor child by court order, is a resident of California at the time of the alleged violation of §§ 277, 278, or 278.5 by a person who was not a resident of or present in California at the time of the alleged offense.

The statute further defines for purposes of §§ 277, 278, 278.5 the following:

a) "A person having a right of custody" means:

- 1) the legal guardian of the child;
- 2) a person who has a parent and child relationship with the child pursuant to 3010 of the Family Code; or
- 3) a person or an agency that has been granted custody of the child pursuant to a court order.

b) "Right of Custody" means the right to physical custody of the child. In the absence of a court order to the contrary, a parent loses his or her right of custody to the child to the other parent if:

- 1) the parent having the right of custody is dead;
- 2) is unable or refuses to take custody; or
- 3) has abandoned his or her family.

2.1.5 CA FAMILY LAW CODE §§ 3130-3134 (1994)

County district attorneys' offices are authorized to take appropriate actions to identify the whereabouts and recover the abducted child in both criminal and civil forums. The following statutes address that authority, the court's response, and the reimbursement of district attorneys for expenses incurred in pursuing civil actions to recover children.

Section 3130 provides:

If a petition to determine custody of a child has been filed in a court of competent jurisdiction, or if a temporary order pending determination of custody has been entered in accordance with Chapter 3 (commencing with Section 3060), and the whereabouts of a party in possession of the child are not known, or there is reason to believe that the party may not appear in the proceedings although ordered to appear personally with the child pursuant to Section 3411, the district attorney shall

take all actions necessary to locate the party and the child and to procure compliance with the order to appear with the child for purposes of adjudication of custody. The petition to determine custody may be filed by the district attorney.

Section 3131 provides:

If a custody or visitation order has been entered by a court of competent jurisdiction and the child is taken or detained by another person in violation of the order, the district attorney shall take all actions necessary to locate and return the child and the person who violated the order and to assist in the enforcement of the custody or visitation order or other order of the court by use of an appropriate civil or criminal proceeding.

Section 3132 provides:

In performing the functions described in Sections 3130 and 3131, the district attorney shall act on behalf of the court and shall not represent any party to the custody proceedings.

Section 3133 provides:

If the district attorney represents to the court, by a written declaration under penalty of perjury, that a temporary custody order is needed to recover a child who is being detained or concealed in violation of a court order or a parent's right to custody, the court may issue an order, placing temporary sole physical custody in the parent or person recommended by the district attorney to facilitate the return of the child to the jurisdiction of the court, pending further hearings. If the court determines that it is not in the best interest of the child to place temporary sole physical custody in the parent or person recommended by the district attorney, the court shall appoint a person to take charge of the child and return the child to the jurisdiction of the court.

Section 3134 provides:

(a) When the district attorney incurs expenses pursuant to this chapter, including expenses incurred in a sister state, payment of the expenses may be advanced by the county subject to reimbursement by the state, and shall be audited by the Controller and paid by the State Treasury according to law.

(b) The court in which the custody proceeding is pending or which has continuing jurisdiction shall, if appropriate, allocate liability for the reimbursement of actual expenses incurred by the district attorney to either or both parties to the proceedings, and that allocation shall constitute a judgment for the state for the funds advanced pursuant to this section. The county shall take reasonable action to enforce that liability and shall transmit all recovered funds to the state.

2.2 POLICE RESPONSE

Complainants make reports directly to the District Attorney's Child Abduction Unit, the Sheriff's Department (jurisdiction over unincorporated areas in the county), the San Diego Police Department, and seventeen municipal police departments. Fifty percent of the Child Abduction Unit's cases are law enforcement referrals.

2.2.1 SAN DIEGO COUNTY SHERIFF'S DEPARTMENT

The Sheriff's Department produces written reports of custodial interference incidents and immediately refers them to the District Attorney's Child Abduction Unit for follow up. Their primary responsibility to the City of San Diego is to provide jail space. The Sheriff's Department reported that they have written policy addressing referral of cases to the District Attorney's Office.

2.2.2 SAN DIEGO POLICE DEPARTMENT

Organizational Background:

The San Diego Police Department employs 1840 officers in seven districts. Each district has a detective/juvenile unit. These units are supported when appropriate by the central Headquarters Unit known as the "Robbery/Sex Crimes Unit." The detective/juvenile unit is comprised of one lieutenant, two sergeants, and fourteen detectives. In addition to parental abduction cases, it primarily handles cases in which the child victim's assailant is not in a position of trust, including kidnappings by strangers.

As of August 1994, the departmental budget was \$140,000,000.

Case Statistics:

A comparison of custodial interference case numbers for the period January 1, 1993 through August 23, 1993, as contrasted with the same period in 1994, disclosed the following (laws cited below are summarized in earlier statutory background section):

	<u>1993</u>	<u>1994</u>
Penal Law 277	12	17
Penal Law 278	26	24
Penal Law 278.5	12	16

Initial Response/Investigation:

The San Diego Police Department has written procedure on how officers are to proceed when responding to reports of parental abduction. The procedure entitled "Child Stealing Cases" (SDPD

Procedure 39, "Missing/Runaway Juveniles," Section B) cites parental abduction as an example of child stealing.

Upon receiving a custodial interference report, the patrol officer conducts a preliminary investigation, including, but not limited to, an actual visit to the location suggested by the reporting parent (if within the jurisdiction) and contacts relatives or others familiar with the family. Police will intervene whether or not a custody order is in existence delineating parental rights. The immediate goal is to protect the child's well being, followed by the apprehension of the offending parent when appropriate. Alternatively, a police department dispatcher can also refer individuals directly to the District Attorney's Office if a child did not appear to be in danger. A written report is produced.

If a child has been abducted by a stranger, an all points bulletin will be issued. The investigative team will be proactive and will likely contact the FBI and law enforcement agencies in neighboring counties and states. A twenty-four hour operation will be established.

The patrol officer ensures that either the National Crime Information Center (NCIC) or the Department's communications division (this can be done by utilizing a computer in police vehicles) is notified of a child's disappearance or parental abduction. According to those interviewed, entry into the NCIC is not always necessary.

Regarding visitation interference reports, officers conduct a preliminary investigation by sending a patrol officer to the scene and contacting relatives to get investigative leads. The Department reports that it treats these cases seriously, but that law enforcement staff do not always view these cases as criminal offenses. A written report is not necessarily produced.

Subsequent to the initial investigation and if the child is not located, the case is transferred from the patrol officer to a local district detective/juvenile unit. If a more intense investigation is required, the unit receives assistance from the central headquarters "Robbery/Sex Crimes Unit."

Detectives will review the case to ensure that a basic investigation had been conducted and will then refer the case to the District Attorney Office's Child Abduction Unit, as statutorily mandated. There is no minimum or maximum time for referral.

After referral, the department is permitted to close and record it as a "cleared" case. However, detectives will continue to investigate a case to ensure a child's safety for as long as they have "active" leads.

Upon a child's recovery, if the police reasonably believe that the child is at imminent risk of harm by being left in the custody of either parent or the parents' credibility is questioned, police have the authority to remove the child and place him or her in a state shelter facility. According to those interviewed, the child can remain in temporary shelter care for up to seventy-two hours prior to a civil court hearing. At the time the child is taken into care, child protective services will intervene. As of August 1994, there were no recorded incidents of this occurring in the context of a parental abduction case.

In cases in which police are asked to enforce a "pick-up" order (court direction to police to retrieve a child), an officer will be dispatched to determine the existence or validity of the court order. If after investigation, the officer possesses a valid "pick-up" order, he or she will detain the child subject to the order. A supervisor will go to the scene and assist in placing the child. The child could be placed in a temporary shelter facility or arrangements could be made for the child to be flown out of the jurisdiction to return to the lawful custodian. In such cases, the abductor will be arrested and the District Attorney's office notified.

As to international cases, law enforcement personnel would treat such cases as "federal." They would contact the FBI and the District Attorney's Office for assistance.

Police are confronted with issues related to the Mexican illegal residents. They believe that they can do little when responding to "cross-the-border" abductions because of a lack of judicial cooperation on both sides of the border, the transience of families, and delays in reporting. It is perceived that many of these abductions occur as a result of drug trafficking.

A member of the prosecutor's office assigned to police headquarters is available for twenty-four hour consultation. The Department has a "good" relationship with the District Attorney's office.

Interaction with the FBI and other LEAs:

Detectives reported having a good working relationship with the FBI, though they have not had to call upon that agency in a parental abduction case. They would call upon their FBI liaison if a child were reported as having been taken across state lines.

Moreover, they obtain assistance from other municipal law enforcement agencies in the county. They have not sought the assistance of the State's Missing Children's Clearinghouse.

Interaction with non-LEA agencies:

The Department has utilized community volunteer groups who have assisted police in distributing posters and other information on abducted children. The Department also operates a volunteer program which includes county residents in policing efforts, though these activities are not specific to parental abduction cases.

Primarily because the District Attorney's Office plays a greater role in investigating parental abduction cases, the police department does not seek the services of other agencies. For example, department representatives reported that they had not utilized the federal parent locator service.

Training/Knowledge of Law, Policy and Practice:

Training on the handling of abduction cases has been implemented as a result of the Polly Klass case, a nationally publicized incident in which a young girl was brutally kidnapped and murdered by a stranger. Lieutenants undergo more formalized training. Periodic training is also provided during mandatory roll call lectures.

Recommendations/Concerns:

According to the law enforcement authorities, they like the District Attorney's office handling of these cases. They discussed how these cases are both civil and criminal in nature and reflected that twenty years ago, they were viewed as more of a civil issue. The procedures currently in place are workable.

2.3 THE PROSECUTOR'S RESPONSE

Organizational Framework

In accordance with California law, the District Attorney's Office has the primary responsibility for locating and recovering missing children, including investigation and prosecution of custodial interference cases. As a result of the law's enactment, District Attorneys were required to form specialty units. These units originally had only investigation responsibilities and a review panel of prosecutors to evaluate cases.

In 1988, the Child Abduction Unit of the San Diego District Attorney's Office was created with the hiring of an investigation specialist and Deputy District Attorney. The Unit Chief interviewed was assigned to the unit in 1990. As of August 1994, the Child Abduction Unit employed one attorney, one part-time sworn investigator (shared with other units in the family protection division), three investigation-specialists, and one secretary.⁸ As their services are state-mandated, the State reimburses the District Attorney's Office for tasks performed that are civil in nature (e.g., filing civil petition to obtain a "pick up" order to allow for child's return to jurisdiction).

The Child Abduction Unit comes under the auspices of the Family Protection Division comprised of 20 full-time attorneys. This division addresses child protection, domestic violence, and family abduction.

The District Attorney's office, the fifth largest in the country, has 900 employees, including 265 attorneys.

⁸Effective December 1995, the office employs four full-time investigators, three of whom are peace officers able to perform police functions, such as making arrests, executing search warrants, serving summonses, and taking witness statements. The peace officers have extensive law enforcement backgrounds having worked for other criminal justice agencies.

Case Statistics/Record keeping

Fifty percent of complainants contact the District Attorney's office directly for assistance. The other fifty percent are referrals from law enforcement agencies. Given that the District Attorney's office has been involved in parental abduction cases since 1978, the public has become increasingly aware of the District Attorney's role in these cases.

The Unit receives approximately 1500 custodial interference complaints each year. The majority of these reports are one time contacts; individuals are only seeking information on divorce and custody matters and they are referred to the family court. Of the 1500 contacts, an estimated 300-500 cases are open (at the time of meeting with investigation specialists the number opened was 350). More than half of these cases are resolved by the parties. Some cases become inactive as individuals do not desire further assistance.

A significant number of cases involve non-parent relatives abducting children. Over fifty percent of the office's non-custody order cases concern non-parent relatives. In addition, staff estimate that approximately ten percent of their caseload concerns parents or others who abduct children from court-ordered foster care or other out-of-home placements. In August 1994, the office had 15-20 active international cases.

The office files approximately thirty criminal felony complaints in the Superior Court each year, although numbers appeared to be decreasing to a low of fifteen. Of this fifteen, only about three to four cases are "fresh." Misdemeanors are rarely charged. No jury trials have been conducted.

A separate log and computer tracking system is maintained. A "Telephone/Walk In Contact" form is utilized to record contacts with all individuals reporting cases of custodial interference. In 1990, the office became automated and all police reports were entered in a computer. Variables

entered into the computer include the names of the abducting parent, the complaining witness, other defendants, the child, a case number, and the office case handler. This readily available information enables staff to keep track of individuals who may continually call. Older cases have been purged. Normally files are retained for five years.

Case Processing

When an aggrieved party reports an incident of custodial interference, unit staff start with the assumption that they are dealing with a criminal complaint that is also civil in nature. If the reporter indicates that a custody order is being violated and the alleged abductor's whereabouts are known, an investigation specialist (discussed in victim advocacy services section below) will make a courtesy call to that individual. The investigation specialist will usually approach the alleged abductor in a "very friendly" manner and will not intimidate him or her. She or he will hear that individual's version of events.⁹

Unit staff related that once the violating party is contacted by the District Attorney's Office and advised of the illegality of their actions, in most situations, the case is resolved as most people do not want involvement with the criminal justice system.¹⁰ They feel this process expedites the process of getting a child back to his or her lawful custodian. Upon resolution, if certain legal issues still need to be addressed, the parties will be referred to the San Diego Family Court.

⁹Staff proceed cautiously in investigating reports, always keeping in mind that in some cases the complainant may not be providing an accurate statement of the facts. A case example was related in which a father sought the placement of his child with him pursuant to a custody order. He alleged that the child's mother was incapable of caring for the child due to the mother's mental retardation. Upon further inquiry, staff discovered that the order had been an ex parte one (order granted out of the presence of the mother) and that the father had been convicted of the rape and murder of an eleven year old. The court revoked the custody order.

¹⁰One investigation specialist reported that in July 1994, she had fifty-two contacts with about one-half of them being resolved.

Cases will be opened if the child or abducting parent's whereabouts are unknown or the abductor has fled to another state, or if the parent continues to violate a valid custody order, or if the abductor has fled to another state. After opening a case, unit staff then make an entry into the National Crime Information Center (NCIC) system. If staff believe a child is at risk of harm, they will also contact the local child protective services program.

In cases in which no custody order exists and the situation cannot be resolved, the District Attorney's Office can file in accordance with California law its own civil petition for purposes of recovering the child.¹¹ According to the Unit Chief, the Office files petitions in approximately fifty cases each year with most of these cases involving enforcement of out-of-state orders. In other non-custody order cases, staff refer complainants to the family court's clerk's office to obtain an order. Also, instructional packets are available for parents who wish to initiate custody actions.

As to in-state cases with already existing orders, the District Attorney's Office will seek a warrant in lieu of a writ of habeas corpus (pick-up order to bring the child into court or return to legal custodial parent).

If a preliminary investigation is necessary (e.g. an abductor and child's whereabouts are unknown), investigation specialists will speak with relatives, friends, and others who can provide leads. They will take advantage of a variety of computer technologies. If an alleged abductor has a unique characteristic or professional association, they will pursue relevant contacts. For example, one abductor was known to be a gambler and investigation specialists contacted gambling organizations for leads.

¹¹The District Attorney's Office does not file for custody as the attorney for the left-behind parent. CA Family Law Code § 3132 provides that "the district attorney shall act on behalf of the court and shall not represent any party to the custody proceedings." If the District Attorney's Office does file for custody, it is only for purpose of placing a child in the state's protective custody temporarily.

Regarding the San Diego Police Department's role, Unit staff indicated that police do minimal investigation in cases given the District Attorney's role in performing such tasks. Law enforcement intervention is to some extent dependent on the officer responding to a custodial interference complaint. Some do investigate and get the child back. They will more typically be involved in cases of "stranger" abduction, not handled by the District Attorney's Office.

Form letters are sent to a referring law enforcement agency informing it of case status, and when appropriate, to remove the NCIC entry for a missing child. Staff are also always cognizant of an abductor's flight risk. If they know that they are close to identifying the abductor and the child's whereabouts, they will coordinate with law enforcement personnel.

The Unit does take officer calls from the field. The District Attorney's office offers a twenty-four hour service to police in which they can obtain advice on how to handle a custodial interference case (e.g., information on statutes). Staff will also investigate the validity of custody orders by calling court systems in and out-of-state.

Filing of Complaint

The District Attorney's office does not necessarily charge the offender upon locating him or her. Criminal action is viewed as "the last resort" as the primary goal is to bring back the child to the jurisdiction. As stated earlier, as of August 1994, the Unit only had 15 open cases in which criminal complaints have been filed, with only three to four being "fresh" cases.

A felony criminal complaint will be filed if the child and/or abductor cannot be located or the abducting party refuses to return the child.¹² The defendant can be charged under criminal

¹²Resources are not a factor in prosecuting. If negotiation is unsuccessful, the case will be submitted for prosecution.

custodial interference laws, as well as under abuse and neglect (i.e., child endangerment) statutes. Charging additional or misdemeanor offenses does not happen often.

If the offender is arrested in another state, extradition of the offender will be sought. It would be a unique case in which a defendant would not be extradited.

Once a criminal complaint is filed, a readiness conference will be held prior to a preliminary hearing. Generally, a defendant will always plead guilty to the offense charged. The offender is motivated to plead guilty because he or she wants to see his or her child.

Case Disposition/Sentencing:

Generally, defendants will plead guilty to offenses charged prior to trial. The defendant needs to be out of jail to see his or her child and be able to defend a civil custody action.

If convicted, individuals usually are placed on probation for three to five years. On occasion, they will serve an average of four to six months in jail or prison. The court may also order that the defendant make restitution to the victim, attend parenting classes, submit to a Fourth Amendment waiver (defendant's home can be searched without warrant in case in which a child has not been returned), or pay a fine.

Interaction with FBI and other LEA agencies:

Once a criminal complaint is filed, the unit will contact the FBI only when seeking a UFAP (Unlawful Flight to Avoid Prosecution Warrant). The Unit Chief will write the FBI a letter detailing case history and the necessity of a UFAP warrant based on evidence that the suspect has fled the state.

The District Attorney's Office works closely with the State Missing Children's Clearinghouse housed in California's Department of Justice located in Sacramento.

Interaction with non-LEA agencies:

As reported earlier, when a child is perceived to be at risk of harm, the local child protective services (CPS) agency will be contacted. However, those interviewed perceive CPS as unwilling to get involved in custody battles and as not typically intervening in custodial interference cases.

Some parents hire private investigators. Unit staff also refer people to the National Center For Missing and Exploited Children, the Adam Walsh Foundation, Child Find, and the Vanished Children Alliance.

Use of Victim Advocacy Services/GALS/Other Support Personnel

A unique aspect of a pro-active approach in dealing with parental abduction is the role of the investigation specialists. Hired by the county, the investigation specialists are both sworn and non-sworn staff who do the footwork in locating and recovering missing children. They travel out-of-state (e.g., Hawaii, New York, Washington) to bring children back to San Diego County and in the process work with local courts and law enforcement in enforcing custody orders.¹³ They have the ability to negotiate and settle cases, prepare subpoenas, and will access court resources for families. Moreover, they monitor long-term cases with few leads.

¹³In an out-of-state jurisdiction, the specialist may go to chambers and present an order to a judge for enforcement. He or she has attended out-of-state court hearings after the child has been picked up by law enforcement personnel or the specialist. The specialist generally does not bring the complainant parent with him or her. In addition to a lack of financial resources to travel to pick up the child (an estimated nine out of ten parents cannot afford to go), parents often do not want to be subject to out-of-state court jurisdiction.

The part-time investigator who is a sworn officer (unique in most California agencies) can also make arrests, execute search warrants, and take witness statements. Investigators take full advantage of all resources, such as the National Center For Missing and Exploited Children, the Adam Walsh Foundation, Child Find, the federal parent locator service, and the Departments of Motor Vehicles.

Each specialist has been trained in reunification strategies. With this training, they have been better able to bond with the child experiencing the trauma of parental separation. According to the specialists, they find that children located will go with them within minutes of meeting them. When they meet a child, they introduce themselves, offer the children toys, and advise them of progressing events. One specialist cited the case of a child taken at age one from a Northern California County to Mexico. The child was located at age five or six years. The specialist went to the border with the mother to get the child. The specialist met with child and mother for several hours.

There are no specific job requirements for their positions. The investigator specialists have previous experience with the County performing general case investigation. They are competent to mediate disputes.

The District Attorney's office also has a victim advocacy program providing victims of crime with financial assistance and support throughout the criminal court process. A grant-funded program enables the office to keep bags of toys in knapsacks to give to children when they are located and picked up. There also is a special room for children which sometimes is used for reunification purposes. The room has videotaping equipment to record interviews with children when appropriate.

Generally in criminal cases, a guardian ad litem or other support person is not appointed to support a child during criminal proceedings. One might be appointed in a major civil custody dispute.

Training/Knowledge of Law

Staff are generally well versed on the subject of custodial interference and are familiar with both criminal and civil laws governing such case.

Staff has compiled a training manual that is continually updated for use by internal staff. The Abduction Unit issues training bulletins to whoever requests them.

The investigation specialists obtain training bi-yearly. They have attended conferences sponsored by the Center for the Study of Trauma of the University of California, San Francisco.

Prosecutor Concerns/Recommendations

One problem encountered is that when children are abducted to other states, aggrieved family members may have to find legal assistance in those jurisdictions. This need for legal advocacy may result from the lack of uniformity nationwide in the enforcement of custody orders. For example, an investigation specialist traveled to Hawaii to recover a child. Upon arrival, she had to obtain a temporary "pick-up" order which required her to obtain the services of a private attorney.

Unit staff indicated that they wanted access to enhanced computer technology (e.g., TRW credit check, Data Quick, and medical assistance information) to track cases. They also wanted additional training on reunification issues.

Staff recommends that more resources or specialized assistance be provided to the United States State Department to aid in international abduction cases. It is difficult to track a case over time and response to inquiries may sometimes be delayed.

2.4 JUDICIAL SYSTEM'S RESPONSE

Criminal Court

Given the very limited number of criminal complaints filed in San Diego, no judges were interviewed who had presided over the criminal prosecution of a parental abduction case.

Family Court Judge

One judge of San Diego County's Family Court reported that he encounters custodial interference cases when he reviews a request for a writ in lieu of habeas corpus for purposes of locating a child and when he is asked to enforce an existing custody/ visitation order. He has presided over several international abduction cases that have tended to be high profile.

In rendering decisions, the judge looks to the child's "best interest"¹⁴ and will generally honor the court orders of "sister" states in accordance with the Uniform Child Custody Jurisdiction Act (UCCJA) and the Parental Kidnapping Prevention Act (PKPA). If the order is from San Diego County, he can review the Family Court's record. The judge also expressed concern about the issuance of ex parte orders in other jurisdictions. He stated that a meeting with judicial officials in Mexico had been scheduled for the fall of 1994 to address issues involving inter-country custody disputes.

In cases in which the abducting parent alleges abuse and neglect on the part of the other parent, he indicated that he would not ignore such allegations and that he would refer the case to family counseling services. He might also hold a hearing or telephone the judge involved in the case

¹⁴The "child's best interest" standard is always used by judges in resolving child custody cases.

from another jurisdiction. He is reluctant to return a child if he is concerned about the child's welfare and observes the child's reaction to a plan for reunification.

Regarding a child's return to California from another State, he may arrange for a neutral party to pick up the child. In such a case in which a child is located, the District Attorney's investigation specialist or family friend might be able to meet the child for a return trip.

All judges assigned to the County's Family Court are certified family law specialists, as are fifty percent of practicing family law practitioners. To be certified as a specialist, an attorney must have litigated a certain number of contested trials and settlements (negotiations). They must have taken an examination and undergone peer review.

Although he recognizes that the prosecutor may have other priorities due to limited staff and difficulties inherent in getting convictions, he recommends more criminal prosecution of parental abduction cases and perjury. He believes that criminal prosecution does have a deterrent effect.

Family Court Services

Family Court Services' central office is located in San Diego's Family Court. Its staff number 25 professionals located in four different locales. Four counselors are able to speak Spanish. Counselors provide guidance to pro se litigants in domestic relations cases¹⁵ and perform a variety of therapeutic functions, including acting as mediators.¹⁶

Staff generally have at a minimum a Master's Degree and two years experience in child and family issues. Upon employment, they will spend six weeks with other more experienced counselors attending mediation and counseling sessions.

The Family Court Clerk and Services Offices are not permitted to give legal advice. Individuals will be referred to a women's legal resource or volunteer lawyer's program. The lawyer referral service will provide a half hour of free consultation. It is estimated that only approximately sixty percent of litigants in the Family Court are represented by counsel.

¹⁵The office coordinates an orientation at the courthouse for pro se litigants. Presenters include lawyers, psychologists, and counselors. Generally, the program will start at 5:30 pm and will take as long as necessary. The audience consists of fifteen to thirty people. Many have returned two to three times. A video, "Child Custody for Parents", is also available in the office's waiting room area.

¹⁶It should be noted that mediation is court mandated in custody/visitation cases. If a case cannot be resolved through alternative dispute resolution, a mediator can make recommendations to the court. Mediation sessions are not confidential; counselors can be called to testify. On occasion, threats are made to abduct or interfere with visitation during mediation sessions. An attempt is made to resolve these issues as quickly as possible.

Family Court Services encounters about ten custodial interference cases per year. Some children have endured separations of some duration. Once children are recovered, their cases will be reviewed by the family court relatively quickly. Staff have never been involved in a criminal custodial interference prosecution.

The Family Court can issue an order to locate a child or enforce an out-of-state order. If the child is located, Services staff will do an assessment of family members, including parents, siblings, step-siblings, grandparents, and anyone with significant connection to the child. Many of these cases are international abductions.

If the child is to be reunified with the non-abducting parent, assessments may take up to four to six hours. Counselors have to reintroduce the absent parent to his or her children. According to staff, in most cases, children do not show much fear of the absent parent. However, a problem does arise when children believe that they have been molested in the past by the absent parent, even though there is no evidence of molestation. There is some feeling that the abducting parent may also work to convince a child that he or she was abused. When confronted with such a case, child protective services would get involved to conduct an investigation.

If a child cannot be immediately returned to either parent, child protective services will arrange a placement. Services staff were concerned about the appropriateness of placing children at the Hillcrest shelter facility given that children with varying behaviors and problems were mixed together.

As stated earlier, Family Court Services staff encounter a relatively large number of international abduction cases. On more than one occasion, mothers who have lost custody of their children in the United States have traveled to Mexico with their children hoping that they will regain legal custody in Mexico as the country still applies the tender years doctrine (in the child's best interest to be in the mother's physical custody).

2.5 ANCILLARY COMPONENTS TO THE CRIMINAL JUSTICE SYSTEM'S RESPONSE

There were no noted ancillary components to the criminal justice system's response. Within the police and district attorney's offices and the family court, a full range of services were available to parents dealing with familial abduction.

3. SNOHOMISH COUNTY, WASHINGTON SITE SUMMARY

Snohomish County is located approximately seventy miles from Seattle, which is in neighboring King County. As of 1992, its estimated population was 501,380. The County Seat is Everett with a population of 75,100.¹⁷

3.1 WASHINGTON STATUTES ON CRIMINAL CUSTODIAL AND VISITATION INTERFERENCE¹⁸

3.1.1 WASH. REV. CODE § 9A.40.060 (1994)

Custodial Interference in the First Degree

Elements of the Crime

A relative of child under eighteen or of an incompetent person commits custodial interference in the first degree if he or she, with the intent to deny access to the child or incompetent person by a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person, does the following:

- a) takes, entices, retains, detains, or conceals the child or incompetent person from the agency or person with a lawful right to physical custody; and

¹⁷U.S. Bureau of the Census, *County and City Data Book* (Washington, D.C., 1994).

¹⁸The statutory summaries outlined are modeled on those in "State Criminal Legislation on Parental Abduction" compiled by the National Center For Prosecution Of Child Abuse of the American Prosecutors Research Institute. With possible minor exceptions, they are the statutory provisions that were in effect at the time of 1994 site visits. They are not necessarily verbatim excerpts of the statutes. Any citations the reader wishes to make should be based on an examination of the code itself to ensure accuracy of wording and citation.

- b) intends to hold the child or incompetent person permanently or for a protracted period;
or
- c) exposes the child or incompetent person to a substantial risk of illness or physical injury;
or
- d) causes the child or incompetent person to be removed from the state of usual residence;
or
- e) retains, detains, or conceals the child or incompetent person in another state after expiration of any authorized visitation period with the intent to intimidate or harass a parent, guardian, institution, agency, or other person having lawful right to physical custody or to prevent a parent, guardian, institution, agency, or other person with lawful right to physical custody from regaining custody.

A child's parent commits custodial interference in the first degree if he or she does the following:

- a) takes, entices, retains, detains, or conceals the child; and
- b) intends to deny access to the other parent having the lawful right to time with child pursuant to a court-ordered parenting plan; and
- c) intends to hold the child permanently or for a protracted period; or
- d) exposes the child to substantial risk of illness or physical injury; or
- e) causes the child to be removed from the state of usual residence.

A parent or other person acting under the direction of the parent is also guilty of custodial interference in the first degree if the following occurs:

- a) the parent or other person intentionally takes, entices, retains, or conceals a child, under eighteen with the intent to deprive the other parent from access to the child permanently or for a protracted period; and
- b) no lawful custody order or parenting plan has been entered by a court of competent jurisdiction.

Penalty

Class C Felony

3.1.2 WASH. REV. CODE § 9A.40.070 (1989)

Elements of Crime of Custodial Interference in the Second Degree

A relative is guilty of custodial interference in the second degree if he or she does the following:

- a) takes, entices, retains, detains, or conceals a person from a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person; and
- b) has the intent to deny access to such a person.

This section does not apply to a parent's noncompliance with a court-ordered parenting plan.

A child's parent is guilty of the above-stated crime if he or she does the following:

- a) takes, entices, retains, detains, or conceals the child, with the intent to deny access, from the other parent having the lawful right to time with the child pursuant to a court-ordered parenting plan; or
- b) has not complied with the residential provisions of a court-ordered parenting plan after a finding of contempt under RCW 26.09.010(3); or
- c) the court finds the parent has engaged in a pattern of willful violations of the court-ordered residential provisions.

Other provisions

The law specifically states that an absence of a finding of contempt does not preclude prosecution under the above-stated statute.

Penalty

Gross Misdemeanor for first conviction; Class C Felony for second or subsequent conviction

3.1.3 WASH. REV. CODE § 9A.40.080 (1989)

Custodial Interference-Assessment of Costs-Defense-Consent Defense, Restricted.

First, the defendant must be assessed any reasonable expenses incurred in locating or returning a child or incompetent person under the above-stated statutes.

Second, it is a "complete" defense of the above-stated statutes, if established by a preponderance of the evidence, if:

- a) the defendant's purpose was to protect the child, incompetent person, or himself or herself from imminent physical harm, that the belief in the existence of the imminent physical harm was reasonable, and that the defendant sought the assistance of the police, sheriff's office, protective agencies, or the court of any state before committing the acts giving rise to the charges or within a reasonable time thereafter; or
- b) the complainant had, prior to the defendant committing the acts giving rise to the crime, for a protracted period of time, failed to exercise his or her rights to physical custody or access to the child under a court-ordered parenting plan or order granting visitation rights, provided that such failure was not the direct result of the defendant's denial of access to such person; or
- c) the complainant consented to the acts giving rise to the charges; or

- d) the defendant, after providing or making a good faith effort to provide notice to the person entitled to access to the child, failed to provide access to the child due to the reasons that a reasonable person would believe were directly related to the child's welfare, and allowed access to the child in accordance with the court order within a reasonable period of time (burden of proof that denial of access was reasonable is upon person denying access).

Third, consent of a child less than sixteen years old or of an incompetent person does not constitute a defense to an action under the above-stated statutes.

3.1.4 WASH. REV. CODE § 9A.40.010 (1975)

The terms restrain, abduct, and relative are defined.

3.2 POLICE RESPONSE

3.2.1 SNOHOMISH COUNTY SHERIFF'S OFFICE AND EVERETT POLICE DEPARTMENT

Organizational Background

The Snohomish County Sheriff's Office is comprised of approximately 165 officers. Its Crimes Against Children Unit of the Sexual Assault Division is responsible for investigating more serious custodial interference cases. The division has six detectives, one sergeant, and one child interviewer specialist.

The Everett Police Department has an estimated 146 officers. The Department's Crimes Against Children Unit designated to handle custodial interference cases employs four detectives, one

sergeant, and one interview specialist (civilian) from the Providence Sexual Assault Center (see this report's "ancillary" section).

Case Statistics

As of August 1994, the Sheriff and Everett Police Departments did not have any active custodial interference cases in which the whereabouts of a child were unknown. Agency representatives estimated that their Crimes Against Children Units may receive at most four reports per months of custodial interference, including interference with visitation.¹⁹ Everett Police Department generated the following statistics:

<u>MONTH/YEAR</u>	<u>NUMBER OF CASES</u>
June 1993	6
July	5
August	5
September	8
October	4
November	5
December	6
January 1994	0
February	4
March	4
April	2

They have had no experience with international abduction cases.

¹⁹Westat, Inc.'s first phase data reflected that in 1992 the Snohomish County Sheriff's Office received 46 reports of custodial interference resulting in 21 arrests and 21 referrals to the prosecuting attorney's office. Its data on the Everett Police Department revealed 56 reported cases, resulting in 10 arrests and four referrals for prosecutorial intervention.

Initial Response/Investigation

Depending on their place of residence in the county, aggrieved individuals contact the Snohomish County Sheriff's Department, the Everett Police Department, or sixteen other local police departments. In the majority of cases, residents contact the Sheriff and the Everett Police Departments.

The Snohomish County Sheriff and the Everett Police Departments handle cases of custodial interference in a similar manner. Upon receiving a complaint of custodial or visitation interference from a parent, guardian, or other concerned individual, a patrol officer or deputy will usually travel to the complainant or the crime scene. He or she will review all documentation in the parent's possession establishing custody.

After the preparation of a written incident report, law enforcement personnel will not intervene further if the complainant does not have a custody/visitation order and the child's whereabouts are known. In cases in which no custody orders exist or orders are vague (e.g., visitation order does not specify exact time for visitation), police will generally advise parents to obtain an attorney or go to court to get a order to gain custody of their children. More specifically, parents will be referred to a family court facilitator who can provide parents with information on proceeding pro se and obtaining legal assistance.

If a preliminary search for a child whose whereabouts are unknown proves to be unsuccessful, the case will immediately be forwarded to detectives in the Crimes Against Children Unit for a more intensive investigation. In other types of custodial interference cases (e.g., whereabouts of the child are known, visitation disputes), cases will be referred to detectives depending on case characteristics.

In all cases, including cases in which no custody order exists, law enforcement personnel will assess a situation to determine whether any individual, including the child, is at risk of harm. If a child is at risk of harm or the parents' credibility is questioned, an officer has the authority to take a child into protective custody and refer the case to the local child protective services (CPS) agency.

In cases involving the enforcement of out-of-state custody orders, police usually refer aggrieved parties to the local civil court to obtain an order specifically giving a law enforcement agency authority to pick up a child and enforce an out-of-state custody order. If officers have any doubts regarding their authority to take appropriate action, a patrol supervisor and/or the Office of the Prosecuting Attorney will be consulted. Inquiry will be made as to whether a criminal case can be made against the alleged offender. Prosecuting attorney staff is readily available to law enforcement staff.

Once a parental abduction is verified, officers will prepare a police crime report for the crime of custodial interference. An arrest will be made if the offender is present. Unresolved cases will be referred to detectives for further investigation.

If domestic violence is apparent, law enforcement personnel have materials on domestic violence available for distribution while on patrol. According to those interviewed, police are required by state statute to provide the number of the battered women's shelter to victims of domestic violence.

Further Intervention/Investigation

Law enforcement personnel's use of the National Crime Information Center's (NCIC) computer system is restricted. To enter onto the system, law enforcement agencies must either have a clear, unquestionable case, or know the whereabouts of an abducted child. Entry into the NCIC is only required if a child is missing or a runaway.

Detectives in the Snohomish County Sheriff's Office follow an "Investigative Checklist." This checklist specifically deals with "first" and "second" degree custodial interference offenses. It ensures that police perform essential investigative tasks, including alerting schools to notify police when an alleged offender makes an inquiry about an abducted child's school records.

Interaction with DA, FBI, and other LEAs

Law enforcement agencies confer with the prosecuting attorney's office, especially after an arrest has been made. Prosecutors will not file a case if a case can be resolved, and law enforcement agencies know a child's whereabouts.

The Everett Police Department has never had cause to involve the FBI in a case. They do, however, work with local law enforcement authorities in investigating cases.

Law enforcement personnel have not utilized Victim Advocate Services advocates have not been needed. If necessary, they could obtain such services through the Office of the Prosecuting Attorney.

Child Protective Services and other non-LEA involvement

There is no legal or departmental requirement that custodial interference cases be referred to CPS. CPS rarely gets involved in these cases and will do so only if child abuse or neglect is suspected. Law enforcement staff, however, can work with CPS to obtain available information on the family.

The respondents stated that the Dispute Resolution Center, funded by Volunteers of America (see interview summary below), offers a beneficial service and eases their burden in resolving conflict in domestic cases by assisting parents in developing a parenting agreement before a marriage is dissolved. Washington law requires the development of such an agreement.

Training/Knowledge of Relevant Law, Policy, and Procedure

Neither agencies' personnel have received specialized training on parental abduction. At most, each officer obtains information on the subject in monthly law enforcement digests produced by the Washington State Criminal Justice Training Commission.

Recommendations/Concerns

Those interviewed believed that custody and visitation orders needed greater specificity and should be clear and concise. They should state that if a court order were violated, the violator would be subject to criminal charges and could be held in contempt of court.

Aggrieved individuals also need access to legal assistance so that appropriate civil legal action, such as contempt proceedings, can be initiated. A problem arises when litigants run out of money and can no longer afford to pay for their attorneys.

One individual recommended resolving these cases without criminal prosecution because of the necessary expenditure of staff time and other resources.

3.3 THE PROSECUTOR'S RESPONSE

Organizational Background

Prosecution of parental abduction cases in Snohomish County is the responsibility of the Office of the Prosecuting Attorney. There are approximately forty criminal prosecuting attorneys assigned to civil, criminal, juvenile, district court, and family support divisions in this office. Felony cases are assigned to one prosecutor and misdemeanor cases are handled by any number of prosecutors assigned to the local District Court. Felony custodial interference cases comprise approximately one fourth of the felony attorney's caseload.

Case Statistics/Record keeping

The felony prosecutor maintains a listing of custodial interference cases. Cases are also logged into a computer system under the suspect's name permitting case tracking. In 1992, the office opened an estimated 35 felony cases. The misdemeanor division handles at most eight or ten cases per year. These cases are most likely to involve visitation interference.

Case Processing/Filing Complaint

If law enforcement authorities in consultation with the prosecuting attorney's office deem prosecution appropriate, they forward written reports on custodial interference cases directly to the prosecuting attorney's office. The felony prosecutor receives these reports in all first degree cases and refers misdemeanor cases to prosecutors in the district court unit.

No one attorney in the office reviews all cases to assess whether or not they should be classified as felonies or misdemeanors. Cases initially classified by law enforcement authorities as misdemeanors (officers can write tickets/citations) may go directly to the misdemeanor unit where they are randomly assigned.

The prosecuting attorney's office has the sole discretion for charging a felony. A felony will be charged if the custodial interference is "permanent or for a protracted period" as stated in Wash. Rev. Code § 9A.40.060 (1994). If the interference is not yet "permanent or protracted," the prosecutor will wait to charge the defendant or will initially charge him or her with a misdemeanor. According to the prosecutor, the difficulty at this point is that the Washington custodial interference law does not define "permanent or protracted."

The prosecutor cannot get a warrant for unlawful flight to avoid prosecution (UFAP) if the charge is not a felony. In many instances, it is difficult to find hard evidence establishing that the offender has traveled out-of-state. In custodial interference cases, the felony prosecutor will consider

charging alternative offenses. In one case, for example, an individual who had broken into his ex-wife's home and snatched his child was charged with second degree burglary.

If a criminal misdemeanor complaint is filed, the case will go to the Snohomish County District Court. If a felony is charged, the case will go to the Snohomish County Superior Court. On the civil side, complaining parents can file motions for contempt which are heard by a superior court judge or family court commissioner.

Case Disposition/Sentencing

In Washington State, sentencing guidelines are utilized. A standard sentence for felony custodial interference would range from zero to twelve months. Fines are rarely imposed. Violation of the misdemeanor statute is viewed as "de minimis." An example of this type of violation would be a parent taking a child for a couple of hours to spite the other parent, who accordingly files a complaint.

The dispositions of the 35 felony cases handled in 1992 were as follows: approximately 26 complaints were dismissed; charges were not filed in two; one case resulted in a hung jury; one resulted in a conviction pursuant to a plea bargain; two went to district court as misdemeanor cases; one went to municipal court; and two had outstanding bench warrants.

From 1991-1994, the misdemeanor division has never had a custodial interference case go to trial or had anyone plead guilty. Either a case is dismissed without prejudice (can refile complaint if future violation) or charges are not filed. Cases are resolved out of concern that children will have to testify.

In appropriate case, parties will be usually be referred to the civil court for modification of parenting plans, as well as to the Dispute Resolution Center. (See interview summary below.)

Other Investigative/Agency Resources

In Washington State, the prosecuting attorney's office relies on law enforcement staff to conduct investigations in custodial interference cases. The felony prosecuting attorney preparing for a case may also examine child protective service records, the divorce file if available, and any other information he or she can retrieve from the civil system.

The FBI has been contacted for purposes of obtaining UFAPs in cases involving Florida and Mexico.

Except for local police and minimal FBI support, the prosecuting attorney's office does not utilize any other government services in investigating cases, such as the Washington State Patrol or the state's missing children's clearinghouse. The office will refer parents to Operation Lookout, a non-profit missing children's support group. (See interview summary below.)

Enforcement of Out-of-State Orders

The issue of enforcement of out-of-state orders arises when a parent comes to Washington from another state and seeks enforcement of an out-of-state custody order. Law enforcement authorities contact a prosecutor for advice on the enforceability of the order. As prosecutors and law enforcement agencies are concerned about their civil liabilities, police officers are advised that they cannot legally retrieve children even if an out-of-state court order awards custody to the complainant, unless he or she has an order from the local county court directing the Sheriff's Department to pick up the child.

Use of Victim Advocacy Unit and Guardians Ad Litem or Other Support Personnel

The Office of the Prosecuting Attorney employs victim advocacy staff, those this staff has not been assigned to custodial interference cases.

Guardians Ad Litem (GALs) are not appointed in criminal proceedings and may not always be appointed in civil dependency proceedings. However, in the one custodial interference case tried before the jury, the GAL appointed to represent children in the concurrent civil case was a witness in the criminal case. Neither side called the child to testify.

Training/Knowledge of Law

Formal training with law enforcement personnel on custodial interference issues has not been conducted. Periodic support and training on custodial interference cases are provided to district court deputy prosecutors. The felony and misdemeanor prosecutors have not received formal training on the handling of custodial interference cases, yet some have had training on domestic violence.

Prosecutorial Concerns/Recommendations

A major concern in prosecuting custodial interference cases is that the currently worded Washington law allows defendants to raise the defense that they acted in good faith to protect their children without the criminal court or jury considering previous civil court determinations on abuse allegations. One prosecutor's concern is that "[t]he statutory defense as presently worded ... prevents successful prosecution of a parent who refuses to abide by a civil judge's residential placement and visitation order after a parent's claim of harm has been fully considered and rejected by the civil judge." In effect, abuse and neglect issues already resolved in a civil case have to be retried at great cost to the State.

The felony prosecutor related an experience with the one custodial interference case that was tried before a jury in which the defendant parent raised the protection defense. In this case, the defendant mother lost custody of her children at a civil custody trial (lasting eighteen and one half days) in which her allegations of sexual abuse perpetrated by the children's father were determined by the court to be unfounded. The children's father was awarded custody and she was granted visitation rights. After the civil trial's completion, she abducted the children and went "underground."

The prosecutor asserted that the inadmissibility of evidence related to a defendant's parental shortcomings "resulted in the defendant attacking the civil judge's ruling without the criminal jury knowing the whole story behind the civil ruling." She added that at the same time the defendant asserted the defense of protection in the criminal prosecution, she invoked confidentiality privileges as to sealed civil court reports and medical and psychological records.

After hearing the evidence, the jury voted eleven to one to acquit the defendant. The prosecuting attorney's office decided not to retry the case. Public opinion was on the mother's side. As of August 1994, the defendant had disappeared and the children's father had legal and physical custody.

The felony prosecutor recommended as a precondition to raising the protection defense the following statutory amendment: "[T]he defendant was not knowingly violating any court order addressing residential provisions for the child or parental visitation rights with the child." She stated that "[w]ithout this amendment, unsuccessful litigants in civil court will be able to disregard civil court orders, subject their children to a fugitive life, and avoid criminal sanction."

3.4 JUDICIAL SYSTEM'S RESPONSE

The judges interviewed had not presided over any criminal custodial interference cases. They had, however, handled a number of civil domestic disputes involving custody and visitation interference.

One judge reported that a penalty for interfering with custody or visitation rights is "to make things even." If one parent deprives the other of 200 visitations, that depriving parent should lose 200 visitations. In such a case, the judge could enter an order that the offending parent not be permitted future visits. Another judge stresses to the violator the risk of losing his or her child entirely.

Aggrieved parties can file motions for contempt that can be heard by a superior court judge or family court commissioner. However, as one judge reflected, issuance of remedial sanctions in domestic cases is difficult in Washington courts as judges cannot punish past contempt. Contempt is only committed in the presence of a judge. The usual response is to order some future action.

The judges were knowledgeable about the Uniform Child Custody Jurisdiction Act (UCCJA) and the Parental Kidnaping Prevention Act (PKPA). They have conferred with judges in other states in resolving interstate custody conflicts.

Regarding criminal prosecution in custodial interference cases, one judge stated that cases must be individually evaluated. Prosecution may be appropriate if a child is abducted or missing for a protracted period.

Judges do not receive formal training on custodial interference cases. Upon taking the bench, they receive a one week training on the issues they are going to encounter every week, and according to one judge, the UCCJA is not one of those issues. Once on the bench, they can partake of continuing legal education and conference opportunities.

Family Court Facilitator

Aggrieved parties seek the assistance of the family court facilitator in approximately ten custodial interference cases per month. Especially during the summer, the court facilitator may see two to three such cases per day. The office generally handles about 500 cases (all types) per month.

The family court facilitator indicated little could be done for individuals with custodial interference problems, as she is not able to give consumers legal advice. However, if individuals come to the office with a parenting plan, the court facilitator can provide them with a writ of habeas corpus package. The package includes forms to enable an individual without a lawyer to modify parenting plans and seek a restraining order prohibiting the other parent from removing the child from the jurisdiction. Form pleadings to modify custody are also available. Writs are issued discreetly, usually only if a child is in danger, out-of-state or out-of-county.

Those individuals who do not have a parenting plan are referred to the Office of Support Enforcement where paternity is established and the development of a parenting plan is initiated. If necessary, a case could also be referred to mediation.

The facilitator's office has a scheduled meeting with law enforcement agencies in which one agenda item is custodial interference cases.

3.5 ANCILLARY COMPONENTS TO THE CRIMINAL JUSTICE SYSTEM'S RESPONSE

Dispute Resolution Center of Snohomish and Island Counties

The Dispute Resolution Center was founded by the Volunteers of America in 1982 as the Rental Housing Mediation Service. In 1986, after the Revised Code of Washington § 7.75 was enacted, the service became the first alternative dispute resolution center in Washington State.

The Center employs ten staff and approximately 150 volunteers who serve as intake counselors, conciliators, mediators, arbitrators, outreach persons, and trainers. Thirty percent of the volunteers are lawyers. Also on staff are a training coordinator/staff attorney, an assistant training coordinator, and a training assistant/mediator coordinator. Two offices are maintained in Everett and Lynnwood, both in Snohomish County.

The Center's 1993 Annual Report on Dispute Resolution Centers published by the Office of the Administrator for the Courts provides statistics on numbers and types of cases handled. In 1993, the program handled 762 cases addressing parenting plans, 203 family cases, and 95 marriage dissolution cases. After landlord-tenant disputes (6165 cases), cases addressing parenting plans were most frequently handled.

Domestic cases are handled when staff are contacted by a second party. Referrals to the agency come via telephone, police, sheriff, prosecutors, and other county government and private agencies. Several court annexed programs have been implemented where staff and volunteers work directly with superior, district and small claims courts. In 1986, the Family Court began to refer cases. Individuals experiencing problems within their families may also directly contact the program. More specifically, the 1993 annual report reflected that 289 cases (all types) were referred to the program by law enforcement agencies.

Domestic mediation to a large degree focuses on the development of a parenting plan (See Appendix: sample plan). Washington State law mandates that such a plan be produced prior to marriage dissolution. According to the Center's executive director, this statutory mandate is unique in the nation. Mediation is not mandatory in Snohomish County. By court rule, it is mandatory in nearby King County (including Seattle) and Thurston County in contested divorces involving children.

Mediators do encounter situations in which parents make threats to abduct their children. Their response is to acknowledge the parents' feelings and attempt to resolve the issues. However, if they determine children will be abducted, they will not mediate. The Center has also mediated cases involving interference with visitation. The Center does not take cases involving violence (e.g., domestic violence, abuse and neglect). Mediators are required to report suspected abuse and neglect to the local child protective services agency.

The Center has an excellent training program for mediators. Their basic training program attracts people from around the nation. Mediators are required to have forty hours of basic training. They take a twenty question essay test. The program is one third lecture, one-third demonstration, and one-third practice. Usually, there are twenty-four to twenty-seven people in a class with ten to twelve trainers who are certified mediators, with different styles. The director also interviews fifty percent of the trainees. Trainees complete an internship, six mediation observations, and then participate in a mock mediation in which they are critiqued.

The Center is funded through private grants, including grants from the Washington Legal Foundation (IOLTA: Interest on Lawyer Trust Accounts) and the William and Flora Hewlett Foundation. Funding is used in part to assist other jurisdictions in organizing and establishing resolution centers and to provide training to staff and volunteers who operate centers. Also, parties to mediation are charged a small fee for sessions based on a sliding fee scale of up to \$100.00.

Operation Lookout, National Center For Missing Youth

Operation Lookout is a non-profit organization created in the early 1980's after the founders began producing a newsletter including pictures of missing children. The organization investigates and provides supportive services in cases of family and non-family abductions, runaways, and unexplained disappearances. The staff is comprised of an executive director, two case handlers, a public relations staff person, finance staff, interns, volunteers, and a data entry volunteer. Approximately 4,574 volunteers network throughout the country.

Operation Lookout does not receive any government funding. It has a budget of \$512,000 per year. There is no charge for services; however, consumers are encouraged to make a tax-deductible contribution to the program. The Center reported that for the period of May 6, 1994 through August 3, 1994 it handled 30 family abduction and 61 runaway cases in Washington State. Very few of the Center's cases originate in Snohomish County.

The Center usually gets calls from parents who are not satisfied with assistance they have received elsewhere and who are desperate. If a parent needs an attorney referral, the case handler will assist him or her. The Center has a list of referrals comprised of attorneys in the community, including those who might be willing to provide pro bono representation. Cases without court orders comprise about a quarter to one third of the agency's caseload and an attorney may be needed to develop a parenting plan. Parents are also referred to other support groups, such as the National Center For Missing and Exploited Children.

At the time of intake, a parent is provided with a registration form in which relevant information is requested. Case handlers also request photographs to allow for poster production. Posters will only be produced with a parent's approval. Case handlers will speak with detectives and send law enforcement agencies copies of the posters.²⁰

Operation Lookout also attempts to provide reunification services. Staff related that a pilot project was developed in King County (Seattle) to address a child's reunification with a custodial parent he or she might not have seen in years. The center's volunteer mental health professionals view abduction as serious trauma. They feel that there needs to be greater emphasis on reunification

²⁰As to publicizing abductions, staff have concerns that abductors will go into hiding, or become suicidal or homicidal. However, if a child is missing for an extended period, new leads need to be generated.

services. The Center has produced a video to teach Canadian and US customs staff how to detect abductions.

The staff cited one non-Snohomish County case in which the children were retrieved after an abduction by their father to Iran. With the FBI's intervention, the children were located in Canada. A mental health professional drove up to Canada to be present for the reunification. Child Find, a missing children's organization in British Columbia, expedited the reunion.

Operation Lookout gives police access to resources which might not otherwise be available to them, such as information on federal law. Staff members have also worked with the State's Missing Children's Clearinghouse in Olympia.

Operation Lookout staff developed a "take a cop to lunch" program in order to educate law enforcement about their services.

Providence Hospital Sexual Assault Recovery Center

The Center, associated with Providence Hospital, is comprised of a director, a child advocate acting as a liaison to agencies, an administration coordinator, a full-time crisis counselor, a forensic interviewer to assist law enforcement and provide medical advocacy, a nurse practitioner, and twenty-four volunteers. Staff specialize in working with victims of sexual assault.

Center employees have encountered approximately five to ten cases in the last five years in which abduction has occurred. If a parent comes to the Center and reports an abducted child, staff will assist the parent by ensuring that schools are aware of the abduction. They will refer the parent to Operation Lookout and the National Center For Missing and Exploited Children, as well as police authorities. If a parent is in need of legal assistance, he or she will be referred to a number of attorneys who may be willing to handle the case pro bono (without fee).

The Center representative voiced concern that custodial interference cases may not always get the attention they deserve, as individuals think that because the child is with a parent, even an abducting parent, that the child is not at risk of harm. Other problems may stem from a misunderstanding of the gravity of some of the situations, as well as from the fact that some police may not have strong understanding of family court system.

Guardian Ad Litem (GAL)

The attorney Guardian Ad Litem who testified in the earlier discussed custodial interference criminal trial was interviewed. She had advocated for the children in the lengthy civil custody proceedings prior to abduction. According to the GAL, after the civil custody trial, the children's mother was able to obtain false birth certificates and change the children's names. She departed with the children to Oregon. The FBI ultimately located the children and their mother in Florida. The mother was arrested in Florida and the children were released to their father without a hearing.

The GAL testified at the criminal trial that she believed that the children had been sexually abused while in their mother's care. She voiced concern about the mother's expert witness, who supported the mother's position. She felt that he had relied on limited information or misinformation in making his recommendations and was not competent to make determinations as to custody. The GAL feels that the threat of abduction was at issue at the original civil custody trial and that the mother's visitation with her children should have been supervised.

During her involvement in this case, the GAL sought the assistance from the National Center For Missing and Exploited Children.

She reiterated the prosecutor's concerns about the wording of the custodial interference statute, which allows parents who have abducted children to raised a "good faith" defense, as well as the in admissibility of certain evidence at trial.

King County (Seattle) Child Find Unit

The unit has had limited involvement with Snohomish County law enforcement agencies. In one case, the detective interviewed had a court writ from his jurisdiction and the suspect was in Snohomish County. A Snohomish County deputy located the suspect and served him. The King County detective feels that he has built up good rapport with the police department. He is familiar with Operation Lookout, as he sits on its board of directors.

4. ESCAMBIA COUNTY, FLORIDA SITE SUMMARY

The County's population is an estimated 271,000, including the City of Pensacola's population of approximately 59,800.²¹

4.1 FLORIDA STATUTES ON CUSTODIAL AND VISITATION INTERFERENCE²²

4.1.1 Fla. Stat. ch. 787.03 (1994)

Elements of the Crime of Interference with Custody

A person commits the crime of interference with custody if he or she does the following:

- a) knowingly or recklessly takes or entices, or aids, abets, hires, or otherwise procures another to take or entice, any child 17 years of age or under or any incompetent person from the custody of his parent, guardian, a public agency having the child or incompetent persons' lawful charge, or any other lawful custodian; and
- b) does so without legal authority.

In the absence of a court order determining custody or visitation rights, a parent of a child 17 or under or of an incompetent individual, whether natural or adoptive, stepparent, legal guardian, or relative with custody commits interference with custody if he or she does the following:

²¹U.S. Bureau of the Census, *County and City Data Book* (Washington, D.C., 1994).

²²The statutory summaries outlined are modeled on those in "State Criminal Legislation on Parental Abduction" compiled by the National Center For Prosecution of Child Abuse of the American Prosecutors Research Institute. With minor exceptions, they are the statutory provisions that were in effect at the time of 1994 site visits. They are not necessarily verbatim excerpts of the statutes. Any citations the reader wishes to make should be based on an examination of the code itself to ensure accuracy of wording and citation.

- a) takes, detains, conceals, or entices away that child or incompetent individual within or without the state, with malicious intent to deprive another person of his right to custody of the child or incompetent person.

Penalty

Felony of the third degree

Defense/Other Provisions:

First, a subsequently obtained custody or visitation order does not affect the law's application.

Second, the defense can be raised that the defendant reasonably believed that his action was necessary to preserve the child or the incompetent person from danger to his welfare.

Third, the defense can be raised that the child or incompetent person was taken away at his own instigation without enticement and without purpose to commit a criminal offense with or against the child or incompetent person.

Fourth, proof that a child was 17 years of age or under creates a presumption that the defendant knew the child's age or acted in reckless disregard thereof.

Fifth, the law does not apply to a spouse who is the victim of domestic violence or has reasonable cause to believe that he or she is about to become the victim of domestic violence and seeks shelter along with his or her child. In addition, it is inapplicable if the spouse believes that his or her action is necessary to preserve the child or the incompetent person from danger.

4.1.2 FLA. STAT. CH. 787.04 (1988)

Elements of Crime to remove minors from state or to conceal minors contrary to state agency or court order

A person commits the above-stated offense if the individual does the following:

- a) leads, takes, entices, or removes a minor beyond the limits of the state, or conceals the minor's location; and
- b) has personal knowledge of a court order and does so in violation of that order; or
- c) does so during the pendency of any action or proceeding affecting the minor's custody, after having received notice as required by law of the action's pendency and without the court's permission; or
- d) does so during the pendency of a dependency proceeding affecting the minor or during the pendency of any investigation, action, or proceeding concerning the alleged abuse or neglect of the minor, after receiving notice of said investigation, action or proceeding, and without permission of the state agency or court.

It is also unlawful for any person who has taken the child beyond the limits of the state with the court's permission or in accordance with court order to fail to produce the child in the court or to deliver the child to the person designated by the court.

Defense

The defendant can raise the defense that he or she reasonably believed that his or her action was necessary to protect the minor from child abuse.

Penalty

Felony of the third degree

4.2 POLICE RESPONSE

Depending on their residency, aggrieved individuals contact either the Escambia County Sheriff or Pensacola Police Departments. These law enforcement authorities will refer appropriate cases to the State Attorney's Office for prosecution.

4.2.1 ESCAMBIA COUNTY SHERIFF'S DEPARTMENT:

Organizational Background

The Sheriff's Department is comprised of approximately 325 sworn deputy sheriffs plus support personnel. One investigator is assigned to the "missing persons unit" and is responsible for parental abductions. The Department is also responsible for operating the county jail which employs another 100 officers.

Case Statistics/Record keeping

In 1993, the Escambia County Sheriff's Office opened approximately 25 cases. The investigator assigned to "missing persons" cases estimated that as of August 1994, the Department had an active caseload of 40 missing persons.

Initial Response/Investigation

Upon receiving a custodial interference report, a patrol officer will contact the complainant and will take a missing persons report. The narrative will state that the parent suspects an abduction and, as such, the child is not officially missing. Unless foul play is suspected, beyond canvassing the area, the police officer usually will not conduct a further investigation.

The Escambia County Sheriff's Office has a written policy on "Kidnapping/False Imprisonment & Interference With Custody." This directive provides definitions and directs officers to prepare an official "Offense/Incident Report" in all cases, even if an officer believes that the act may not be malicious. As the directive indicates, this will provide documentation in case future incidents of this nature lead to malicious activity.

Once an official report of "Interference With Custody" has been prepared, if foul play is suspected, the case is referred to the Missing Persons Unit for further investigation. This investigation would include checking with family members, neighbors, and others who could provide potential leads.

Crime reports are computerized. All missing persons are entered in the National Crime Information Center's (NCIC) system within twenty-four hours. As stated earlier, a child abducted by a parent is not necessarily viewed as a missing child., given that in many of these cases the child's whereabouts are known. Staff indicated that if a warrant were issued they would enter it into the NCIC.

In cases in which the complainant does not have a custody order, the officer will refer that party to the civil court to obtain a custody order. Deputies will not forcefully take a child away from the parent alleged to have abducted the child if no court order governs, unless the child is perceived to be in danger.

Likewise, if an out-of-state order does not specifically give law enforcement authority to enforce, authorities will refer the aggrieved parent to the local court to have the out-of-state order "domesticated" by the local court (the court reviews the order and determines enforceability). The same procedure is used for court decrees from other Florida counties.

Even in cases in which a custody order exists, deputies encounter problems if orders are too vague. If a parent with visitation rights does not return his or her child at an expected time and that time is not specified in a court order, deputies cannot intervene.

If an order is specific as to the department's authority to enforce, the patrol officer can do so, or a detective will be assigned to locate the child. If a question arises as to the necessity of law enforcement intervention, staff will contact the State's Attorney's Office for advice as to whether the reported conduct is an "actual crime" or a "civil dispute."

If the abducting parent returns the child, criminal charges will not be pursued. In other cases in which a child cannot be located or a parent refuses to return the child, detectives automatically communicate with the State's Attorney's Office regarding the filing of criminal charges and the issuance of arrest warrants.

Twenty-four hour legal advice is available from the State's Attorney's Office, with whom the Department has a liaison.

Interaction with FBI and other LEAs

If an abducting parent crosses state lines, the Sheriff's staff will call their liaison at the FBI for assistance.

Staff are aware of the services of the state's Missing Children's Clearinghouse.

Interaction with non-LEA agencies

In all cases in which officers suspect a child to be at risk of harm, officers have the authority to remove the child and will refer the case to child protective services.

In the past, the Sheriff's Department has utilized the services of the National Center For Missing and Exploited Children, the Adam Walsh Center, the Farber House (domestic violence shelter), and Catholic Charities.

Training/Knowledge of Relevant Law, Policy and Procedure

Training on the handling of custodial interference cases is "on-the-job."

Recommendations/Concerns

Sheriff staff believed that custodial interference cases should be civilly resolved. Current court orders and related laws on this issue are too vague, making enforcement difficult. Improperly prepared orders are a problem. Orders should define the Sheriff's authority to enforce them.

The staff voiced concern about the lack of uniformity in the issuance and enforcement of custody orders throughout the states and the possibility of being sued for malicious prosecution. One issue raised was the enforcement of ex parte orders in cases in which one party may not have been served with the order they were being asked to enforce.

4.2.2 PENSACOLA POLICE DEPARTMENT

Organizational Background

The Pensacola Police Department has 147 sworn officers. One sergeant and five investigators are employed in its Crimes Against Persons Unit. The unit is responsible for handling robberies, homicides, domestic violence, child physical sexual abuse, and custodial interference.

Statistics

A comparison of the custodial interference reports (case "cleared by arrest") for the Pensacola Police Department for the period 1991-August 1994 disclosed:

<u>1991</u>	<u>1992</u>	<u>1993</u>	<u>1994 (through August)</u>
4	2	8	7

Staff indicated that the department may in fact handle "a lot" more cases as officers deal with them in the field. At the time of the site interview, no parental abduction cases were open.

The Department has not had any involvement with international child abductions.

Initial Response/Investigation

The Department does not have a written policy or procedure on the handling of custodial interference cases. Custodial interference cases are treated like other crimes in terms of response. An offense report, except in some visitation interference cases, is prepared for all complaints whether a custody order exists or not.

A patrol officer will respond to a complaint of custodial interference by meeting with the complainant and obtaining pertinent case information. If the officer is advised that the child is with the other parent, the officer will check with that parent.

If necessary, staff will put out a bulletin and will enter the case into the NCIC. (Specific criteria for NCIC entry was not provided.) They would follow up on leads on the abductor by contacting relatives, parents, or strangers, and would perform necessary background checks, notify other law enforcement agencies, and assess whether probable cause exists to arrest.

Cases involving the enforcement of out-of-state, out-of-county, and in-county custody orders go directly to the Sheriff's Department, unless the order specifically directs the Pensacola Police Department to intervene. If the complainant does not have a court order, he or she will be advised to obtain legal counsel and a court order or be referred to the local legal services office. If a patrol officer has a question about enforcing a court order, that officer would likely call the sergeant of the Crimes Against Persons Unit who is available at home after work hours.

If a child is alleged to be endangered, the officer will immediately notify the Crimes Against Persons Unit. As many custodial interference cases are resolved on the street, the Unit gets few of these cases. The officer will also report any suspected abuse or neglect to the Florida Department of Health and Rehabilitative Services (DHRS) and request protective services for the child.

Regarding violations of visitation orders, no "offense/incident" reports are prepared, unless there is a "protracted delay" in a child being returned. If the child has not been returned for a brief period (e.g., approximately three hours), the parent will be advised to wait, to call the police back later, and to report the incident to his or her attorney for court action.

If the department believes criminal charges are warranted or have a question about the appropriateness of filing a criminal complaint, staff will contact the State's Attorney's Office for legal advice.

Interaction with FBI and other LEAs

Those interviewed had never called the FBI in on a case. They do encounter cases in which abductors have crossed state lines. In these cases, they would notify the other jurisdiction of the abduction and would work with that jurisdiction upon the abductor's apprehension and the child being located.

Staff were aware of the State's Missing Children's Clearinghouse. However, they have not utilized their services.

Interaction with non-LEA agencies

With the exception of the local child protective services agency, staff have not worked with any missing children's support groups.

If child abuse is indicated, police will report the case to DHRS. Police coordinate joint investigations with DHRS. However, child protective services will not get involved in custodial interference cases unless harm to the child is alleged.

Training

Training is provided on a regular basis, but it is not specific to custodial interference. Staff receive on-going training on a variety of topics, including AIDS, domestic violence, and community social services.

Staff interviewed appeared knowledgeable about state custodial interference laws and had them readily accessible.

Concerns/Recommendation

The staff supported the idea of a family court system designed to resolve family conflict. They perceived criminal prosecution as deterring custodial interference.

4.3 THE PROSECUTOR'S RESPONSE

4.3.1 THE STATE'S ATTORNEY'S OFFICE

Organizational Background

The State's Attorney's Office does not have a specialist attorney or specialty unit handling custodial interference cases. Any prosecutor could be assigned either felony or misdemeanor custodial interference cases. However, one assistant state's attorney is in charge of extradition in abduction cases and would prosecute the most serious ones.

The Office is comprised of eight criminal divisions employing eighteen attorneys (two attorneys per division and two assigned to the juvenile division). The State's Attorney's Office employs a total of fifty-two attorneys and support staff.

Case Numbers

Custodial interference case numbers have diminished, which may be due in part to a change in Sheriff's Office personnel handling custodial interference cases. In the late 1980's, the Office handled two to three cases per year.

Case Processing/Filing of Complaints

Cases are referred to the State's Attorney's Office by the Sheriff's Department, the local legal services program, private attorneys, and victims. Law enforcement authorities call a state's attorney in their efforts to get a warrant. The attorney meets with the officers and reviews all documents, including custody orders, to assess whether or not orders have been violated. Then he ensures that the party alleged to have abducted the child has received notice of the order.

The State's Attorney's Office does not file pleadings in the Circuit Court's Family Division. Aggrieved parents would have the option of filing civil pleadings to obtain or enforce court orders, including seeking civil contempt sanctions.

Interaction with other LEAs

The prosecutor's office has not had to contact the FBI on a parental abduction case, though they are familiar with the UFAP process. The office would utilize INTERPOL if seeking the whereabouts of an abducted child in an international abduction case.

Interaction with non-LEAs

For civil law interpretation, the prosecutor will contact the local legal aid program or civil attorneys. The prosecutor's office is familiar with the work of the National Center For Missing and Exploited Children and the American Prosecutor's Research Institute.

Training/Knowledge of Law

The prosecutor interviewed is in charge of training in the State's Attorney's Office. He ensures that staff get updates on the law. Office staff are generally self-educated on the topic of parental abduction.

Concerns/Recommendations

Custodial interference laws should be uniform nationwide, like those on extradition.

A greater dissemination of legal knowledge to the local level is needed, such as in the form of training manuals.

4.4 JUDICIAL SYSTEM'S RESPONSE

Criminal Court

Given the jurisdiction's limited number of prosecutions, no judges who had presided over criminal custodial interference cases were available.

Civil Court - Circuit Court Judges

The family law division was created in 1982. Escambia County was one of the first counties in Florida to create a family law division. Four family court judges handle domestic relations cases. The juvenile court, distinct from the family court, presides over dependency cases. In Escambia county, there are an estimated 6,000 active domestic relations cases. A request has been made for an additional full-time judge and recently the court was allotted a part-time judge. Judges are assigned different dockets every two to three years.

The administrative judge for the family court has been instrumental in organizing a family and children's workshop with attendees from law enforcement agencies, local agencies, and the media. The groups meets every six weeks to focus on different topics of relevance to child welfare. She has also ensured uniformity of procedure in the division by circulating written directives to family division judges on the filing and enforcement of foreign custody decrees.

One judge's assistant stated that she periodically takes calls from individuals filing pro se motions or other pleadings. She refers these pro se applicants to the family court liaison. She indicated that during summer months, the court experiences an increase in custodial interference disputes as parties plan more extended visitation, and problems arise at the start of the school year when one parent does not return the child as planned.

Occasionally, she will see contempt petitions filed when problems involving visitation arise. Usually, these litigants are represented by attorneys. If they are proceeding pro se, they can obtain forms entitled "Motions for Enforcement" from the clerk's office or from the family court liaison.

Family Law Assistant of Circuit Court

The family court liaison, a paralegal, is the first such liaison in Florida. Briefly, the family court liaison "perform[s] detailed case management in coordinating cases filed in the Family Law Division", including "providing assistance to litigants filing pro se cases in the Family Law Division, reviewing and analyzing court files for correct pleadings, completeness of pleadings and related legal documents in accordance with Florida Statutes, rules and case law." The liaison does not give legal advice. She refers pro se litigants or aggrieved parties to appropriate community agencies.

According to the liaison, an "incredible" number of custodial interference cases arise during the summer. It is estimated that from January 1994 through August 1994, individuals in ten cases of familial abductions and twenty to thirty visitation interference cases were assisted. Sixty to sixty-five percent of all domestic cases filed are pro se cases.

The liaison can provide parents without custody orders copies of a form order "Temporary Petition for Custody." They can then file the pleadings pro se. If a party wishes to enforce an order, the liaison will refer him or her to the court clerk's office.

The liaison has scheduled civil contempt proceedings seeking enforcement of visitation and other orders. However, in ninety-nine percent of cases, the petitioner calls and cancels further proceedings. In contested contempt cases, she will assist the petitioner in getting an attorney. She makes referrals to Northwest Florida Legal Services. The private bar also conducts a free domestic relations legal clinic on Saturday mornings.

The liaison indicated that current court dockets are quite crowded. As of August 1994, cases were being scheduled through January.

The liaison's office is also attempting to set up an alternative dispute resolution program so that domestic cases could automatically be referred to mediation. Mediation is currently required when one files for dissolution of a marriage. If the case involves child custody, parents need to develop a "shared parental responsibility agreement."

The court offers a mandatory course, "Helping Children Cope with Divorce," in dissolution cases. The course is a four hour seminar in which individuals can talk with the facilitator.

Guardians ad litem (GALs) are occasionally appointed. The GAL is responsible for doing home studies in custody cases. These home studies were previously conducted by the local child protective services agency. In addition, the GAL program is working on obtaining witness rooms to provide a better environment for interviewing children and videotaping their responses.

Recommendations/Concerns

The liaison believed that Florida statutes needed to be revised to enable law enforcement personnel to enforce custody orders. No guidelines currently exist for enforcement of such orders by police.

She perceives custodial interference cases as overlapping with domestic violence cases. She estimates that in about ninety percent of custodial interference cases, abuse has been experienced by the parties. She suggested that implementing programs which teach parties how to communicate with one another and resolve crises would be one solution.

It was also felt that judicial staff resources needed to be increased to handle an increased volume of case and to ensure that courts could give parties to proceedings the attention they deserve.

4.5 ANCILLARY COMPONENTS TO THE CRIMINAL JUSTICE SYSTEM'S RESPONSE

Northwest Florida Legal Services, Inc.

The Escambia and Santa Rosa Counties of Northwest Legal Services, Inc. employs three attorneys plus support staff. Custodial interference cases are a small part of the caseload. Staff indicated that custodial interference cases are a top priority of legal services offices in Florida. When they are unable to handle a case, they attempt to get the private bar to take the case pro bono.

Because of limited resources, they generally have to turn away visitation interference cases. They would refer aggrieved parties to the family court where pro se "Motion for Enforcement" forms are available.

Individuals call the legal services program seeking assistance in custodial interference cases. The first question staff ask is whether an individual has a custody order from Escambia County or another jurisdiction. If the custody order is from another jurisdiction, the foreign judgment needs to be domesticated by registering the order with the court clerk. The clerk is required to keep a registry of all custody orders.

Staff reported that cases are handled civilly or aggrieved parties encounter a "dead end." When this office sends an individual to the Sheriff's Office with a custody order, the Sheriff will not enforce the order until directed by the local court to do so. Prior to investigating, the Sheriff's Office prefers to have the order in hand.

In cases in which a parent's whereabouts are unknown, legal services staff will also ask the Sheriff's office for assistance. They might also attempt to utilize records of the local Department of Health and Rehabilitative Services to locate parent and child. They indicated that they might contact

Child Find of America, Inc. If the child's whereabouts were known, they could file a writ of habeas corpus.

The court requires that foreign custody orders be registered and that a file is opened in these cases. Generally, it will take only a few hours for the court to review pleadings. They usually get an immediate resolution and get an order directing the sheriff to pick up the child.

Escambia County has a separate family court. They feel that the court "stays up on changes of the law." Judges are familiar with the UCCJA and PKPA.

Recommendations/Concerns

The attorneys were concerned about the enforceability of orders in other jurisdictions; whether or not orders are enforced is dependent on each state's local practice. They recommended the creation of a national central registry of child custody orders. They voiced concerns regarding individual access to legal assistance. They discussed the benefits of criminal prosecutions for violation of custodial interference laws.

Private Bar/Attorney

A private practitioner was interviewed who had handled domestic relations cases in the area for many years. He reported that, in Escambia County, law enforcement authorities "will attempt diligently to do what the court expects of them" and will not "try to be the judge." LEAs will look to the court for direction on enforcement and interpretation.

Issues do arise in interpreting court orders, such as whether an order gives an individual custody and the meaning of "reasonable" visitation. For instance, law enforcement personnel will be called up to prevent the violation of visitation orders. However, if an order states reasonable visitation, they will not make the determination as to "reasonableness."

When a criminal complaint is filed, the resulting arrest warrant is helpful in locating the abductor and child. Upon the defendant's arrest, the defendant can be extradited. The practitioner believes that fear of criminal prosecution would deter abductors; however, he also noted that care needs to be taken, as this is a family law matter.

As to access to legal services, Northwest Florida Legal Services might be of assistance to aggrieved parents. Child protective services has been effective.

Cordova Counseling Center a/k/a Court-Ordered Counseling.

Created in 1984, the Center has a private contract with the County Court Administrator to provide mediation services. The Center's Director reported that his office does all court-ordered mediation. In 1986, mediation was mandated in cases establishing custody and visitation arrangements.

Of the Center's nine to ten clinicians, only two are mediators. The mediators can be mental health professionals, as well as attorneys or other professionals. They are certified by the Florida Supreme Court after participating in forty hours of court supervised training.

Clients pay for mediation services depending on their income. Usually, they are charged approximately \$150.00 per case. There are generally three mediation sessions.

The Director does encounter cases in which threats are made to abduct. He handles mediation in which visitation is also at issue and parents are denied access to their children. He surmises that if an agreement is reached regarding custody and visitation, an abduction might be prevented.

The Center encourages individuals to actively participate in mediation and formulate an agreement addressing specific concerns. Questions posed include: where is the child's primary

residence? what is the visitation plan? Parties are asked to identify each holiday and be very specific as to when visitation will take place and how. The district's school calendar is utilized. For parties living out-of-state, agreements address extended vacations and alternating holidays. Individuals can participate at additional mediation sessions if problems arise with agreements.

Children, with the exception of some older children, are not typically involved in the mediation process. Lawyers for the parties also do not participate.

Mediators cannot be called to court to testify and parties are aware of this prohibition.

Recommendations/Concerns

The ideal system would be one in which children were provided for first. The respondent stated that law enforcement agencies and child protective services would benefit by better training and more information about intervening in domestic relations cases.

Guardian Ad Litem (GAL) program

Guardians ad litem are not appointed in criminal cases and as such would not be involved in criminal prosecutions of custodial interference.

In Escambia County, there are 86-90 Court Appointed Special Advocate (CASA) or GAL volunteers. Seventy percent are appointed in dependency cases and thirty percent are appointed in domestic cases. The program employs one paid full-time supervisor and one half volunteer supervisor.

5. SALT LAKE COUNTY, UTAH SITE SUMMARY

Salt Lake County's population is approximately 763,500. Salt Lake City's is about 165,800.²³

5.1 UTAH STATUTES ON CRIMINAL CUSTODIAL AND VISITATION INTERFERENCE²⁴

5.1.1 UTAH CODE ANN. § 76-5-303 (1984)

Elements of Crime of Custodial Interference

A person, whether a parent or other, commits the crime of custodial interference if he or she does the following:

- a) without good cause, takes, entices, conceals, or detains a child under the age of 16 from his or her parent, guardian, or other lawful custodian; and
- b) knows he or she does not have the right to do so; and
- c) intends to hold the child for a period substantially longer than the visitation or custody period previously awarded by a court of competent jurisdiction.

In addition, a person, whether a parent or other, commits the crime of custodial interference if, having actual physical custody of a child under the age of 16, pursuant to a judicial award of any

²³U.S. Bureau of the Census, *County and City Data Book* (Washington, D.C., 1994).

²⁴The statutory summaries outlined are modeled on those in "State Criminal Legislation on Parental Abduction" compiled by the National Center For Prosecution of Child Abuse of the American Prosecutors Research Institute. With minor exceptions, they are the statutes that were in effect at the time of 1994 site visits. They are not necessarily verbatim excerpts of the statutes. Any citations the reader wishes to make should be based on an examination of the code itself to ensure accuracy of wording and citation.

court of competent jurisdiction which grants to a person visitation or custody rights, he or she does the following:

- a) without good cause, conceals or detains the child; and
- b) intends to deprive the other person of lawful visitation or custody rights.

Defense

Defendant can raise a "good cause" defense.

Penalty

Class A misdemeanor unless the child is removed and taken from one state to another, in which case crime is a felony of the third degree.

See also Utah Code Ann, § 78-32-12.1, Community service for violation of visitation order or failure to pay child support; Utah Code Ann, § 78-32-12.2 Definitions-Sanctions.

5.2 POLICE RESPONSE

Depending on county residency, complainants report custodial interference to the Salt Lake County Sheriff's Office, the Salt Lake City Police Department, and seven other municipal police departments. The Salt Lake City Police Department and the Salt Lake County Sheriff's Office respond to the majority of cases.

5.2.1 SALT LAKE COUNTY SHERIFF'S OFFICE

Organizational Background

The Sheriff's Office serves a population of approximately 400,000 people. The Office does patrol and police work. Staff also provide security for the courts, serve warrants, and operate the jail. The office is comprised of 360 sworn officers. The Sheriff's Office is the largest law enforcement agency in the area. If support staff and law enforcement personnel operating the jail are included, the number of staff is closer to 1,000. The total office budget is \$48,000,000.

The Juvenile Division is responsible for investigating cases of custodial interference and enforcing court orders. It consists of seven detectives. Five are assigned to handle child abuse cases. These cases are predominately sexual abuse. The unit receives an estimated 18-20 sex abuse cases and 100 reports of child abuse per month. In addition to child abuse and custodial interference cases, the division investigates juvenile assaults and coordinates transporting juveniles to and from the juvenile court. The Sheriff's Office has a missing persons specialist and a detective specialist who handles custodial interference cases.

Statistics/Record keeping

Custodial interference cases comprise about one fourth of one detective's caseload. In October 1994, he was working on twenty-one of these cases.

In this first 10 months of 1994, there were 25-30 cases which required investigation and the issuance of warrants. It is difficult to retrieve numbers on all custodial interference cases reported as they may be classified as a "civil problem." In addition, in cases in which a parent did not want to press charges, the office would not open a case. Staff reported that they have retrieved every child in their custodial interference caseload reported missing.

Initial Response/Investigation

The Sheriff's Office does not have written policies or procedures addressing the handling of custodial interference cases.

When a parent contacts the Sheriff's Office with a complaint of custodial interference, staff will first attempt to learn whether or not a custody order exists. Without a court order, the deputy cannot take the child from the alleged abductor unless the child is in danger, e.g., parent is intoxicated or is on drugs.

Even without a court order, a deputy will search for a child to ensure the child's well-being. If after a preliminary investigation, "everyone seems o.k.," the patrol officer will inform the parties that they need to hire a lawyer as the situation is a "civil matter." In cases in which the child appears to be endangered, the deputy has the authority to remove the child from the alleged abductor and will contact the Utah Department of Family Services.

Because the patrol officer has limited time, if an additional investigation is required, the officer will write a report and forward it to the juvenile division within two to three days, unless an emergency is alleged. Such a case would be labeled a "custodial interference," "missing child," or "civil problem."

It may take two to three days for the patrol officer's report to get to the detective specialist's desk. If a patrol officer believed that child were in danger, the officer would immediately call the detective or juvenile division.

A juvenile division detective would then interview the complainant and obtain certified copies of any court orders. He would attempt to contact the alleged abductor, advising him or her that "this is the Sheriff's Office," that the abductor may be subject to custodial interference charges,

that a warrant might be issued resulting in incarceration, and that the child should be returned. Sometimes this approach works and the child is returned.

If the child is returned, the Sheriff's Office will not intervene further. A report will be written and the case will be "cleared." If a case remains unresolved, the detective will screen the case with the County Attorney's Office. The County Attorney's Office will usually inquire as to whether or not the alleged abductor has been contacted. They will assist in getting warrants issued and withdrawing warrants when necessary. The Sheriff's Office has twenty-four hour access to County Attorney staff "on-call."

The Office does not automatically put a missing person report into the National Crime Information Center (NCIC) system. They will do so if child is taken out-of-state by an abductor with the intent to hide the child. Runaway reports are not entered.

In addition to entering into the NCIC, if a child is taken out-of-state, staff will ensure that a warrant is issued for the abductor's arrest. According to the detective, this gives out-of-state police the authority to contact the abductor. Sheriff's Office staff will fax the warrant for arrest to the out-of-state law enforcement agency. In most cases, a father will have taken his child. Upon the child's recovery, the mother will usually have to travel to the other state (or in-state location) to retrieve him or her. At this point, they will go to the County Attorney's Office and have the warrant withdrawn if it has not been executed.

As to the criminal prosecution of the individual arrested out-of-state, extradition of that individual to Utah is a problem. The warrants issued are non-extraditable warrants and the Sheriff's Office does not have the authority to make them extraditable. Although in serious cases, defendants will be extradited, extradition is viewed as being expensive.

Regarding the enforcement of out-of-state orders, as long as orders are certified and another law enforcement agency requests enforcement, the Sheriff's Office will enforce them. The Office views itself as acting as an agent for the other state. The other law enforcement agency will fax staff a copy of the custody order. The Sheriff's Office will proceed to locate the family, put out a warrant, and advise the alleged abductor of criminal penalties. If a parent from another jurisdiction requests order enforcement, departmental staff will call the local law enforcement authority in the state in which the order was issued or the parent is advised to go to his or her local law enforcement agency to file a complaint.

With the exception of one case, staff have not handled any international abduction cases. They did report that they do respond to visitation interference cases.

Staff encourage people to report alleged abductions earlier. People believe incorrectly that one has to wait twenty-four hours to call in a missing persons report.

Interaction with FBI and other LEAs

As stated earlier, once case information is entered into the NCIC, an out-of-state law enforcement agency can contact the abductor. The out-of-state agency will assist in apprehending the abductor after the warrant is faxed to them. The Sheriff's Office has dealt with law enforcement agencies in Washington, California, Texas, Nevada, and Florida.

They have not worked with the FBI on custodial interference cases, as they have not needed to get that agency involved.

Utah does not have a Clearinghouse on Missing Children. Those interviewed would like to have one.

Interaction with non-LEAs

The Sheriff's Office staff utilize the services of the National Center on Missing and Exploited Children. They have not used the federal parent locator service.

As stated earlier, if a patrol officer perceives that a child is at risk for harm, he or she will contact the Department of Family Services (DFS). In Salt Lake County, local police and DFS conduct joint child abuse and neglect investigations. Under a new state house bill, DFS must report suspected abuse to police. The law allows agencies to share information and addresses confidentiality concerns. They have a liaison at DFS who is a former DFS investigator.

DFS will only get involved if there are allegations of abuse and neglect. Such allegations are not always made in custodial interference cases.

Staff are not aware of any support groups in Utah addressing the problems of missing children or any underground organizations assisting parents in abducting their children.

Use of Victim Witness Advocate or Other Support Personnel

A Children's Justice Center is being created in Salt Lake City. Police and child welfare professionals will have access to a special interview room with videotaping capabilities.

Training/Knowledge of relevant law, policy, and procedure

Staff do not have training specific to custodial interference. Staff receive about fifty hours of mandatory training each year. Classes have been scheduled on child welfare, domestic violence, and child sexual abuse.

Recommendations/Concerns

Staff believed that additional staff were needed to deal with ever increasing child abuse caseloads.

5.2.2 SALT LAKE CITY POLICE DEPARTMENT

Organization Background

The Police Department's Juvenile Division has three investigators to work on cases involving runaways, child abuse and neglect, vandalism of property, assault, and custodial interference. Staff resources are limited. The Department employs 363 sworn officers and 140 civilians. Its budget is between \$22,000,000 and \$23,000,000.

Case Statistics/Record keeping

From January 1994 through October 1994, the Department handled about twenty-eight custodial interference cases. No criminal complaints were filed in these cases. Of the twenty-eight, half were resolved quickly. Typically, children are returned.

With the exception of runaways, there has only been one child unaccounted for in four years.

Juvenile Division case statistics are as follows: 10 new cases are received each day; 800 runaway cases (some are repeaters) per year; 2500 vandalism complaints per year; 2,000 assaults per year. Fifty percent of the runaway cases are resolved in one day. The total departmental caseload (all types of cases) is approximately 190,000.

Custodial interference cases would be coded as "custodial interference." Visitation interference cases would be classified as "civil disputes."

Case Processing

The Department does not have written policies specific to the handling of custodial interference cases. However, upon receiving a report of custodial interference, the patrol officer will conduct a preliminary investigation by contacting the complainant and reviewing any court orders governing custody. If no custody order exists, a parent will be advised that he or she needs to obtain one. Police will intervene no further as "no crime has been committed." As neither party has applied for sole guardianship of his or her child, under law, both parents have an equal right to custody.

In all cases, the patrol officer will produce a written report of the complaint. If the officer needs advice on how to proceed in a case, he or she can call a field commander. More serious cases are referred to the Juvenile Division for assignment to a detective. If necessary, staff will issue an attempt to locate bulletin.

If a child is taken out-of-state or out-of-county, the report will be quickly entered into the NCIC. A case will be entered if there is "substantial reason to believe that a criminal offense has been committed."

Most cases are resolved when the child is returned to the primary caretaker. However, if a child is perceived to be at risk of harm, the Department of Family Services will be contacted and the child may be removed from his or her custodian. If a child's safety is balanced against adherence to a court order, DFS will become the child's advocate.

If a complaint involves visitation interference, in order for police to intervene, the interference "has to be for a substantial length of time" for criminal charges to be considered.

If the Department is asked to enforce an out-of-state order, staff will verify the order's validity with the out-of-state court or will talk to a judge in their jurisdiction regarding the issuance of a comparable order. If a parent comes from another jurisdiction and wants to take a child out-of-state, they will take the child into shelter care and a court hearing will be scheduled for the next day.

Detectives assigned more serious cases will communicate with the County Attorney's Office regarding prosecution. If the patrol officer needs advice as to how to proceed with a case, he or she can call the field commander.

The Office has had limited involvement with international abduction cases, having only handled one to date.

Interaction with FBI and other LEAs

The Department's involvement with the FBI has been minimal in custodial interference cases. According to those interviewed, the FBI will quickly respond to their requests for assistance if a child is taken out-of-state.

In relating the Department's interaction with out-of-state law enforcement agencies, a case example was presented. In July 1993, a mother of two children found herself involved in divorce proceedings in Connecticut. The Connecticut court awarded her custody of her children. The mother informed the Connecticut court that she was going to Utah where it turned out the paternal grandmother lived. Upon the children's arrival in Utah, the paternal grandmother took the children without the mother's permission to Connecticut for placement with their father. He alleged that the mother had sexually abused the children and contacted local child protection authorities.

In turn, the Salt Lake County Attorney's Office issued an arrest warrant for the grandmother and father. Connecticut law enforcement authorities were able to arrest both individuals. The father refused to waive extradition. As the Connecticut court refused to honor the Utah Governor's

extradition warrant, the father's case was dismissed in Connecticut. The mother hired an attorney in Utah. However, the Salt Lake County court remanded the case to Connecticut for further proceedings.

Interaction with non-LEA agencies

If law enforcement authorities are concerned about a child's welfare, they will contact DFS. Law enforcement personnel will seek to have the child placed in protective custody to safeguard a parent absconding with a child, even if the case does not involve abuse and neglect. DFS and the LEAs conduct joint investigations or "dual workups."

In investigating cases, authorities check welfare records and obtain information on license plate numbers.

Few support groups are available in the area to assist parents in locating their children. The Police Department has an arrangement with a printing business in Salt Lake City. The business owner felt the need to help the community and will print flyers on missing children and fax them to other stores in the community. Parents also use Child Find.

The Department has no knowledge of any underground networks designed to assist parents in abducting their children.

Interaction with Victim Advocacy or other Support Personnel

Reunification services are not available to staff. The Department has a crisis worker on call who is a licensed social worker and victim's advocate.

Training/Knowledge of relevant law, policy, and procedure

Departmental staff receive no training specific to custodial interference cases. It is relatively rare that an officer will have to respond to such a call. Four hour training blocks on a variety of topics are offered periodically.

Recommendations/Opinions

Staff reported a need for additional staff, a more uniform approach across states to deal with custodial interference cases, and enhanced sensitivity training on family-related issues for police. Mediation programs were supported.

Some respondents believed that the initiation of contempt proceedings might be more effective than criminal prosecution. These proceedings were viewed as an "easier" way to enforce orders as enforcement could be done "quickly" and probable cause was not required for intervention. It was their perception that contempt citations are rarely issued.

5.3 THE PROSECUTOR'S RESPONSE

5.3.1 The County Attorney's Office

Organizational Background

The County Attorney's Office is comprised of approximately 45-60 attorneys. It has a special victim team of five attorneys who handle all sex crimes and custodial interference cases. Custodial interference cases are about five to ten percent of the team's caseload and are cases in which a court order has been violated. A few cases might be handled by the misdemeanor section. The Office's juvenile division handles child abuse and neglect cases. There are also approximately eight

investigators on staff who receive assignments after charges are filed. No information on the budget was available.

Statistics

Those interviewed indicated that they receive approximately one custodial interference report each week. They do not handle many visitation interference cases.

Case Processing

There are no written policies or procedures governing the processing of custodial interference cases. The Office generally assists law enforcement personnel in obtaining arrest warrants and initiating extradition in "more serious" cases, though extradition rarely, if ever, occurs.

The County Attorney's primary source for case referral is law enforcement agencies with the majority of cases coming from the Sheriff's Office. The County Attorney also receives inquiries on the filing of criminal charges from private attorneys who are advised to contact local law enforcement agencies for initial case screening.

Prosecutors are assigned on a regular basis to screen cases and are available after hours. There is no one attorney in particular who has this responsibility. The office files complaints on most of the cases that they screen.

If no custody order governs and one parent deprives the other of custody, in accordance with Utah law, no crime has been committed. Parents need a certified court order for police and prosecutors to intervene. Without a custody order, parents have equal custody rights. Prosecutors could bring kidnapping charges if a person other than parent, such as a relative, abducted a child.

In visitation interference cases, a child must be gone for at least ten days prior to the filing of criminal charges. During this period, however, the police will conduct an investigation. An earlier filing might be justified, if a parent threatened to abscond with his or her children.

If the County Attorney's Office is confronted with an out-of-state order and the abductor is in Utah, that individual will be arrested and charged in Utah.

Regarding extradition, the County Attorney's Office will not extradite in misdemeanor cases. In custodial interference cases, they would extradite, though as was noted earlier, extradition rarely occurs. One attorney in the County Attorney's office handles all extradition cases. The United States Marshall's office will assist in extraditing by providing transportation.

Prosecutors do not intervene in civil proceedings. Parents would have the option of filing pleadings seeking custody or court order enforcement, including contempt sanctions.

The County Attorney's Office has not handled any international abduction cases.

Filing of Criminal Complaints

In filing a criminal complaint, staff determine whether sufficient evidence exists to support a charge. They need a court order in hand. Inquiry is made as to whether police have conducted sufficient investigation. Is there a substantial probability that the child is being unlawfully kept from the custodial parent?

Criminal complaints are filed in most of the custodial interference cases screened. Approximately eighty to ninety percent are presented to the grand jury. The crime of custodial interference is usually charged. Staff estimate that an equal number of misdemeanors and felonies are charged. In addition to custodial interference, other possible charges are kidnapping and child abuse.

Disposition/Case Resolution

Case disposition is dependent on whether the child is located and recovered. In many cases, the custodial parent has an idea about the child's whereabouts. Disposition hinges on the facts, whether the child has suffered any injuries, and the reasonable likelihood of successful prosecution (e.g. credible witnesses).

Routinely, cases are plea bargained. If a Class A misdemeanor is charged, a defendant may plead to a Class B misdemeanor for attempted custodial interference. Cases are rarely tried by a jury or judge. Trying a case before a jury can be difficult because a defendant can raise the defense that he or she fled with the child out of concern that the child was being abused. A terrible story of alleged abuse is conveyed to the jury.

In one case, a father took his seven year old out of the state. He and his wife were divorced. The father was found in Nevada. The trial lasted 12 to 15 days. The father took the witness stand and stated that the child's mother had physically abused her. The prosecutor had to prove that the father did not have good cause to abduct his child. He believed that the allegations of abuse were unfounded. After deliberating for six to seven hours, the jury was unanimous to acquit.

Staff did not recall anyone being sentenced to a jail term in a custodial interference case. Convicted individuals usually receive a sentence of probation, are fined, and ordered to make restitution to the victim. The court usually admonishes them that if they violate the law again, they will serve jail time. They have not encountered any repeat offenders.

The police reported a case in which the County Attorney's Office wanted to keep a warrant active when a parent threatened to abduct a child a second time. The father was arrested and jailed. At the hearing, the mother failed to appear and the case was dismissed.

Interaction with FBI

Staff have worked on two or three cases in which the FBI found an abductor. Police will usually make the request for FBI assistance.

Use of victim witness advocate and other support personnel

Prosecutors reported that a guardian ad litem had recently been appointed in a criminal case. They related that funding was needed to provide for GALs in these cases.

Videotaping of children's testimony is not utilized in the jurisdiction.

Training/Knowledge of relevant law, policy, and procedure

Staff do not receive training specific to custodial interference cases. However, they do professional reading to ensure that they are informed of recent developments in the law.

Recommendations/Concerns

Staff found the "good cause" defenses abducting parents raised problematic. As stated earlier, such defenses created difficulties, especially in trying cases before juries.

5.4 JUDICIAL SYSTEM'S RESPONSE

No criminal or civil judges were available for interviewing.

5.5 ANCILLARY COMPONENTS TO A CRIMINAL JUSTICE SYSTEM RESPONSE

LEGAL SERVICES PROGRAMS:

Utah Legal Services, Inc.

Utah Legal Services, Inc. handles only emergency domestic relations cases on an expedited basis. There is a waiting list for divorce and paternity cases.

Legal Aid Society of Salt Lake

According to its 1993 Annual Report, the Legal Aid Society provided legal assistance to approximately 1500 clients. The Executive Director estimates that of the office's 1,500 referrals about fifty percent involve custody problems. They have a large client demand and a six month waiting list. The office will try to provide immediate assistance, if an emergency exists, e.g. child being taken out of state.

The Executive Director has been with his agency for approximately three years. The office employs seven attorneys, including himself, and seven paralegals. Five attorneys are full-time domestic attorneys and one attorney handles all domestic violence cases. The Legal Aid Society handles most of the domestic cases in the area, while Utah Legal Services handles other types of cases. The office receives no federal funds. They receive funding from United Way and the IOLTA (Interest on Lawyer Trust Accounts) program.

The program was instrumental in developing a pro bono project to aid clients. They are able to distribute divorce and modification of custody packets to clients. Private attorneys also volunteer at court and assist with pro se filings.

Utah has a commissioner (hearing officer) system. All domestic relations matters go before commissioners first. If there is no settlement, the case is tried before a judge.

Staff had handled several cases in which clients' children have been taken out of state. In one case, a client had obtained a protection order awarding her temporary custody of her child in Utah. During visitation, the client's husband took the child to Florida and refused to return the child. The client called the Legal Aid Society and staff advised her that she should contact the Sheriff's Office.

Upon receiving her report, the Sheriff's Office contacted Florida authorities as staff believed that the father had violated custodial interference laws. The Florida police investigated, the father was arrested, and the child was taken into protective custody.

A shelter care hearing was held in Florida at which time the father made allegations that the child's mother was unfit. The Florida court ordered that the child be turned over to his paternal grandparents in Florida. Subsequently, Florida's Division of Family Services checked into the allegations and spoke with Utah officials who did not have any record of abuse or neglect. They reported to the Florida DFS that mother was fit. The Florida judge was not convinced.

Throughout the course of proceedings in Florida, the mother was not represented. However, Florida DFS advocated the mother's position. The Florida judge indicated that he was unwilling to enforce the Utah order because it was just a protective, temporary order. He needed a "real" order.

The Legal Aid Society attorney in Utah then went to court to obtain a custody order mandating the child's immediate return. The Florida court would still not enforce the order. A conference call was then arranged under the UCCJA. The Florida judge stated that he wanted to speak with a judge, not a commissioner. A judge was found to participate in the conference call.

Ultimately, the courts determined that Florida did not have jurisdiction over the case. The child was returned with the final decree providing for supervised visitation. The father was criminally charged and was extradited to Utah for further criminal proceedings.

The 1993 Annual Report also detailed the following case scenario: "A 25-year old woman sought emergency assistance after a man she had been living with moved out, taking their son. Legal Aid Society obtained an order granting her custody until the case came to court and obtained an order restraining him from removing the child from Salt Lake City before the hearing. In violation of the order, the father took the child to California. The [Society] worked with Utah and California authorities to locate the child. Within two months, the father was arrested in California, and the child returned to the mother. To prevent such incidents in the future, the Third District Court has restricted the father to supervised visitation only."

If one comes to Utah with an out-of-state order which that person wishes enforced, the person must get the order domesticated. A hearing must be held in a Utah court.

Generally, law enforcement officials throughout state will not enforce a custody order, even a certified one, unless one has a specific writ of assistance (lea is directed to enforce specific provisions of an order). Staff perceived law enforcement personnel as often viewing custodial interference cases as civil cases and not a law enforcement responsibility.

If clients are advised by leas that the enforcement of their custody order is a "civil matter," Legal Aid Society staff advised them to communicate to police that police have the authority to do a "well-check" to ensure that the children are safe. If a child is in danger, CPS can be notified to remove the child from the parent.

The Executive Director concluded that governmental response depends on the agency or individual with whom one is dealing. For example, the new mayor has taken an interest in domestic violence. By working with the Mayor's office, the Legal Aid Society was able to get all "beat cops"

trained on issues related to domestic violence. Yearly training on these issues is now mandatory. A victim advocacy group provides the training. As part a federally administered crime victim assistance program, there is the requirement that the community be educated on family violence issues.

The Annual Report indicates that "the 3rd and 4th District Courts require divorcing parents to attend a divorce education seminar. It is designed to educate parents on effects of divorce and to sensitize parents to the needs of their children. Also, a pilot mediation project is to be operated under auspices of the Administrative Office of the Courts.

Recommendations/Concerns

Staff want to see a family court system established in Utah. Court procedures need to be in place for parties to obtain immediate redress. Individuals, especially indigent ones, need access to the courts, including assistance in filing pro se pleadings.

Regarding custodial interference cases, law enforcement staff need mandatory education on both the civil and criminal aspects of these cases.

Most lawyers need additional training on domestic cases. Legal Aid Society does provide training to the private bar on domestic relations issues.

To handle the ever increasing caseload, more staff are needed. Funding is necessary to continue pro bono programs and develop pro se materials.

6. HUDSON COUNTY, NEW JERSEY SITE SUMMARY

The County, comprised of twelve municipalities, is located directly across the Hudson River from New York City's lower Manhattan. As of 1992, its estimated population is 550,000, including Jersey City's population of 228,000.²⁵ It is a transient area with a large immigrant community from the Middle East, India, Asia, Puerto Rico, and Central America.

6.1 NEW JERSEY STATUTES ON CRIMINAL CUSTODIAL AND VISITATION INTERFERENCE²⁶

6.1.1 N.J. REV. STAT. § 2C:13-4 (1990)

Elements of the Crime

Custody of Children

A person, including a parent, guardian or other lawful custodian, is guilty of interference with custody if:

- A) he or she takes or detains a minor child with the purpose of concealing the minor child and thereby depriving the child's other parent of custody or visitation of the minor child;
- or

²⁵U.S. Bureau of the Census, *County and City Data Book* (Washington, D.C., 1994).

²⁶The statutory summaries outlined are modeled on those in "State Criminal Legislation on Parental Abduction" compiled by the National Center For Prosecution Of Child Abuse of the American Prosecutors Research Institute. With minor exceptions, they are the statutory provisions that were in effect at the time of 1994 site visits. They are not necessarily verbatim excerpts of the statutes. Any citations the reader wishes to make should be based on an examination of the code itself to ensure accuracy of wording and citation.

B) he or she takes, detains, entices or conceals a minor child for the purpose of depriving the child's other parent of custody or visitation, or to evade the jurisdiction of the courts of the State:

- 1) within or outside of the State; and
- 2) after having been served with process or having actual knowledge of an action affecting marriage or custody but prior to the issuance of a temporary or final order determining custody and visitation rights of the minor child; or

C) he or she takes, detains, entices or conceals a child for the purposes of evading the jurisdiction of the courts of the State:

- 1) within or outside of the State; and
- 2) after having been served with process or having actual knowledge of an action affecting the protective services needs of a child pursuant to Title 9 of the Revised Statutes in an action affecting custody, but prior to the issuance of a temporary or final order determining custody rights to the minor child; or

D) he or she takes, detains, entices or conceals a minor child from the other parent in violation of a custody or visitation order:

- 1) after the issuance of a temporary or final order specifying custody, visitation or joint custody rights.

Custody of Committed Persons

A person is guilty of a crime in the fourth degree if he or she knowingly takes or entices any committed person away from lawful custody when he or she is not permitted to do so.

A "committed person" is the following:

- a) anyone committed under judicial warrant;
- b) any orphan, neglected or delinquent child;

- c) individual with a mental disability; or
- d) any other dependent or incompetent person entrusted to another's custody by or through a recognized social agency or otherwise by authority of law.

Defenses:

First, it is a defense to the crime of custodial interference that the defendant reasonably believed that the action was necessary to preserve the child from imminent danger to his or her welfare. The defense is not available unless the defendant gives notice of the child's location to the police department of the municipality where the child resided, the office of the county prosecutor in the county where the child resided, or the Division of Youth and Family Services in the Department of Human Services. Notice must be given as soon as reasonably practicable but in no event more than 24 hours after taking the child under his or her protection.

Second, it is a defense that the actor reasonably believed that the taking or detaining of the minor child was consented to by the other parent, or by an authorized State agency.

Third, it is a defense that at the time of the taking or concealment, the child was not less than fourteen years of age, was taken away with the child's consent and without purpose to commit a criminal offense with or against the child.

All of the above-stated defenses must be proved by the defendant by clear and convincing evidence.

Finally, it is a defense that a parent having the right of custody reasonably believed he or she was fleeing from imminent physical danger from the other parent. To claim this defense, the parent, as soon as reasonably practicable, must:

- a) give notice of the child's location to the police department of the municipality in which the child resided, the office of the county prosecutor in the county where the child resided, or the Division of Youth and Family Services in the Department of Human Services; or
- b) begin an action affecting custody in an appropriate court.

Other provisions:

The statute provides that the above-stated offenses are continuous in nature and continue for so long as the child is concealed or detained.

It also addresses the defendant reimbursing the victim for costs incurred.

It defines "parent" as a parent, guardian or other lawful custodian of the minor child.

Penalties:

Interference with Custody is a crime of the third degree (the presumption of non-imprisonment as set forth in subsection e of N.J.S. 2C:44-1 for a first offense of a crime of the third degree does not apply to the crime of custody interference).

If the child is taken, detained, enticed or concealed outside the United States, there is an enhanced penalty and the crime is one of the second degree.

When imposing a sentence for interference with custody, the court must consider whether the person returned the child voluntarily and the length of time the child was concealed or detained.

6.1.2 N.J. REV. STAT. § 2A:34-31.1 (1990)

This section provides that after the issuance of a temporary or permanent order determining custody or visitation of a minor child, a law enforcement officer having reasonable cause to believe that a person is likely to flee the State with the child or otherwise by flight or concealment evade the jurisdiction of the courts of the State, may take a child into protective custody and return the child to the parent having lawful custody, or to a court in which a custody hearing concerning the child is pending.

6.2 POLICE RESPONSE

Complainants report the majority of custodial interference cases (possibly as many as nine out of ten cases) to the Hudson County Sheriff's Office. Approximately eleven other municipal law enforcement agencies, including the Jersey City Police Department (county's largest), might also be contacted. Cases deemed appropriate for prosecution would be referred to the County Prosecutor's Office for the filing of criminal complaints.

6.2.1 HUDSON COUNTY SHERIFF'S OFFICE

Organizational Background

The Sheriff's Office is comprised of 160 sworn officers and 35 civilian staff. The total office budget is \$7,000,000 to \$8,000,000. The Office has a child abduction specialty unit employing two detectives who have primary responsibility for addressing custodial interference complaints.

Case Statistics/Record keeping

For the first ten months of 1994, the unit handled eighty-four complaints of custodial interference with over a ninety percent clearance rate. In 1992, they had a ninety-five percent

recovery rate. From 1991, they have only one open case. Unit staff estimated that they investigate about nine out of ten Hudson County custodial interference cases, the majority of which involve the enforcement of a governing custody order.

The Sheriff's Office also works on a substantial number of international abduction cases. In 1993, they handled eleven cases. From January 1994 through September 1994, fewer cases have been reported. The Unit still has one outstanding case from 1991 involving a father who abducted his children to Pakistan.²⁷

Initial Response/Investigation

The Sheriff's Office does not have written policy addressing the handling of custodial interference cases. According to detectives, the unit receives its referrals from parents, community police departments, including Jersey City's, and the family court. Upon receiving a referral, they will attempt to contact the alleged abductor to see if they can get the child back to the lawful custodian. Visitation interference cases are also taken "seriously."

If the complainant does not have a court order, one of the detectives will refer him or her to family court. The clerk's office can provide limited assistance to a party proceeding pro se. Detectives will also periodically refer parents to Hudson County Legal Services, a legal assistance program for individuals with low incomes. However, that office's resources are limited and usually staff will only get involved in international abduction cases. Most individuals referred to the Sheriff's Office are indigent.

²⁷The abductor did return to the New York area and was arrested in the summer of 1994. As of the time of the interview, he was being detained pending his criminal trial on parental abduction charges. He ultimately plead guilty to the offenses as charged and finally, disclosed his children's exact whereabouts. The children were ultimately returned to their mother.

In investigating a parental abduction, detectives will examine the complainant's documents, including any court orders and photos of the child. They will ask preliminary questions to get a sense as to child's whereabouts and whether or not the child is at risk of harm, and if warranted, will travel outside the office to investigate. Their primary concern is the child. If they have evidence that the abducting parent has left the jurisdiction, they will issue a warrant for that individual's arrest.

In international abduction cases, they first determine where the parent might have absconded with the child by contacting the airlines, and communicating with locally based embassies or consulates to find out whether any passports have been issued. Other actions include contacting the United States State Department in Washington for information on the Hague Convention and practical support. They will then get a Unlawful Flight to Avoid Prosecution (UFAP) warrant issued. At the same time, they will attempt to get a private attorney or Hudson County Legal Services to represent the parent. Detectives have a close, unique working relationship with the courts which gives them access to necessary records, a benefit local law enforcement agencies in the area may not have.

The general policy regarding NCIC entry is that upon receiving a report of custodial interference, one of the two detectives will immediately enter information on the child into the NCIC. However, before entry, he or she would look at any existing court orders, if available, to ensure complainant has legitimate claim. Information on the perpetrator is entered for arrest purposes and upon the issuance of a warrant.

Regarding the enforcement of out-of-state orders, deputies will usually enforce an order without requiring domestication (review) by a Hudson County judge as long as they receive a show cause order directing the abductor in their jurisdiction to return a child. Prior to enforcement, the detectives ensure that the order gives their agency the authority to pick up.

Detectives refer cases for review and prosecution to the Prosecuting Attorney's Office. A law enforcement officer employed by the Prosecuting Attorney's Office will assist detectives with the extradition process and the issuance of warrants.

Interaction with other LEAs

The Sheriff's Office staff stated that the State Police are good working partners and that they will help out in any investigation with which the Sheriff's Office is involved. The Sheriff's Office has a liaison at the State Police Department's Clearinghouse on Missing Persons.

The Office deals with the FBI frequently and perceives their relationship as "very good." Staff assist with the issuance of UFAP warrants and will send agents to locate an abducted child as long as a felony warrant is issued. They will assist in both court order and non-court order cases. They also interact with the United States Immigration and Naturalization Services (INS) who can assist in stopping an abductor at United States borders through their liaison in Jersey City.

Involvement with CPS and other agencies

Detectives will contact the liaison for the local child protective services agency, the Division of Youth and Family Services (DYFS), if they suspect child abuse or neglect. DYFS will not get involved in a custodial interference case for investigative purposes, unless abuse and neglect is alleged. If a child is located and needs temporary shelter in a neutral setting, law enforcement personnel can take the child into protective custody until the custodial parent is contacted.

The National Center For Missing and Exploited Children (NCMEC) will on occasion assist with reunification efforts, including supporting the issuance of posters in out-of-state flight cases.²⁸ Staff have in their possession numerous NCMEC publications.

Training/Knowledge of relevant law, policy, and procedure

The detectives get on-the-job training. One detective is an instructor at the Jersey City Police Academy where she conducts a four hour presentation on missing persons issues, including custodial interference cases. She stresses to trainees that there is no longer a waiting period for entry of missing persons into the NCIC. Standards for training are developed in Trenton. State Police personnel have also provided training on missing persons at the State Police Academy.

Detectives participated at the American Bar Association's conference on international abduction in November 1993 in Washington, D.C. They are knowledgeable about both civil and criminal laws governing custodial interference, including the UCCJA and PKPA.

Concerns/Recommendations

The detectives experience frustration in cases in which authorities in other states and countries refuse to honor Hudson County court orders. They would like to see all states follow the same rules for enforcement and take custodial interference cases seriously as California and New Jersey do.

Because the Hudson County area has a large immigrant population, staff need access to interpreters.

²⁸The Unit's detectives recently met with NCMEC representatives in Washington. During their visit, they learned of available technology and received information on supportive resources that could reactivate investigations in several cases.

Enhanced coordination between the criminal and civil systems and a recognition of their overlap would be beneficial. The criminal as well as the civil system needs to handle these cases. Also, they advocate for the centralized handling of cases as opposed to several different police agencies intervening.

They are cognizant of the need for reunification services (i.e. picking up child located out of jurisdiction) and the respective funding. The Office usually has to rely on parents who have limited funds to make transportation arrangements to get a child back to the jurisdiction. They advise parents at the onset that they should be prepared to retrieve the child, even if the child is in another jurisdiction, and to appear in that jurisdiction's court.

6.2.2 JERSEY CITY POLICE DEPARTMENT

Organizational Background

The Jersey City Police Department is the largest municipal police department in Hudson County. Within the Department, there are four districts. A lieutenant is in charge of the Juvenile Bureau which handles most cases involving missing adults and children originating in Jersey City. The division had one to three staff members investigating missing persons cases. Eleven other detectives are assigned to investigate delinquent crimes.

Case Statistics/Record keeping

For purposes of crime reporting, custodial interference cases are more likely to be reported as "missing persons" or "abduction" cases instead of custodial interference. It is estimated that the number of parental abduction cases the Jersey City Police Department handles is "very small" (approximately five percent of cases in his unit; actual numbers not available) as the majority of case handled involve runaways (700-800 per year). The Jersey City Police Department does not handle

international cases as they are outside their jurisdiction. They will refer such cases to the Prosecuting Attorney's Office.

Initial Response/Investigation

The Department does not have written policies governing the handling of custodial interference cases. However, a complainant can go to one of four districts within the Department's jurisdiction to report custodial interference. Upon receiving a complaint, an officer will communicate with the complainant and conduct an initial investigation, including inquiring as to whether a court order governs custody. Depending on the circumstances (e.g., child in danger), an immediate search for the child with the assistance of district detectives might be conducted. If a case required enhanced investigation, district detectives would forward the case to the Department's Juvenile Bureau. In investigating a case, the patrol officer would conduct the initial investigation, make a "initial incident report,"²⁹ and input the information on the missing child into the NCIC, even if no court order governed custody.

If there were evidence that a child had been taken out-of-state, staff would notify the Prosecuting Attorney's Office and might call out-of-state law enforcement agencies for assistance. The Department has a liaison at the Prosecuting Attorney's Office who staff can call for advice.

The level of law enforcement intervention for violations of visitation orders depends on the situation. An officer has to assess the report and decide whether to investigate further. If a child is one or two hours late, police might not take "too much action." It may be that the party with the child has been delayed for a legitimate reason (e.g., involved in traffic accident). As such, a report would not be taken. At a minimum, a police officer would ask questions to learn of any existing custody orders and whether the child is in danger.

²⁹A recent department policy requires that complainants sign the missing persons report.

If an aggrieved party does not have a court order, he or she will be referred to the family court to obtain an order or other relief. Officers do not have written information on custodial interference to provide complainants.

Appropriate cases are referred to the Prosecuting Attorney's Office for review and the filing of criminal charges. Unit staff would look at each case individually and consider the elements of the crime committed. Factors to consider would include abuse of the child and violation of a court order.

Interaction with other LEAs

The respondent had not had any contact with the F.B.I. He has worked with the State Police Missing Person's Unit.

Interaction with CPS and non-LEA agencies

According to staff, the CPS system is overwhelmed. They do contact CPS when abuse or neglect is alleged; however, intervention is not guaranteed.

The Department is familiar with the National Center For Missing and Exploited Children.

Several social organizations will assist individuals searching for missing persons (names not available). On occasion, the Bureau has contacted cable T.V. for coverage.

Training/Knowledge of relevant law, policy, and procedure

Although staff are sent to various trainings and seminars, they do not receive as much training as they would like. They have not received training specific to custodial interference, but

have had some training on domestic violence. Hudson County has its own police academy and recruits receive in-service training.

Concerns/Recommendations

The staff would like feedback on case outcomes. The department needs additional detectives to deal with an increasing number of cases.

6.3 THE PROSECUTOR'S RESPONSE

Organizational Background

The Hudson County Prosecuting Attorney's Office employs fifty-six attorneys, plus the First Assistant and the Prosecuting Attorney. There are over 300 staff members, including investigators, law enforcement personnel, and clerical staff. The office has divisions on sex crimes, homicide, career criminals, narcotics and gambling, as well as a screening unit. There is no specialty unit or any specific attorney assigned to the handling of custodial interference cases. The total budget for the office is \$12,000,000.

Case Statistics/Record keeping

The Office does not handle "a great number" of custodial interference cases in which no court orders exist or which involve out-of-state orders. For the period January 1994 through July 31, 1994, seven defendants were charged with violating custodial interference laws. To date, only one has pled guilty. Six cases remain unresolved. In 1993, twenty one criminal complaints were filed. Of these, only four resulted in indictments. The remainder were either no billed (grand jury may have found no probable cause to arrest) or withdrawn because of case resolution.

Case Processing/Filing Complaint

Follow up investigation on custodial interference cases is performed by the Prosecuting Attorney's Office which has a staff of over 100 investigators, most of whom are assigned to narcotics. Sheriff's Office detectives will usually contact the Prosecuting Attorney's Office sergeant. They will advise him that a defendant is in a particular state and will forward the signed complaint stating that the defendant is in violation of a court order and that the child is at risk. The sergeant will then contact the local law enforcement agencies in the jurisdictions where the defendant is believed to be.

Staff are more "circumspect" in the handling of cases in which no court order delineates custody and visitation rights. They are cognizant that under New Jersey law, an aggrieved party does not need a custody/visitation decree in order for a violation of custodial interference laws.

There are four court districts in which a case might be initiated.³⁰ When the complaint is filed, a first appearance date is scheduled for central arraignment court. An assistant prosecuting attorney will be in court to represent the State at that time. This assistant would be employed in the screening unit of the prosecuting attorney's office.

If a criminal complaint is filed, the prosecuting attorney's office will usually only charge one count of custodial interference in the second degree. If child is taken out of the country, the charge is a second degree offense carrying an enhanced penalty.

For purposes of coordination, the Office communicates with private attorneys and family court in a limited number of cases regarding the criminal prosecution of a case. Private or legal

³⁰New Jersey's system of prosecution is different from other jurisdictions visited in that a formal complaint is actually filed in the court's municipal division as opposed to a higher level court. The complaint is signed by the victim or the police on information and belief.

services attorneys do initiate civil contempt proceedings. In these cases, the family court will not release the abductor until a child is returned.

The Office has prosecuted a number of international cases, including a widely publicized case previously noted involving an abduction to Pakistan. A father abducted his children from their mother who had been awarded custody of the children by the Hudson County Family Court. He had picked the children up for a visit and was not seen again. The father was indicted in October 1991. In August 1994, he was seen in New York City. He was arrested and detained in Hudson County pending a criminal trial on parental abduction charges, as well as on civil contempt charges. He ultimately pled guilty to the offenses charged and finally, disclosed his children's exact whereabouts. The children were reunited with their mother in the fall of 1994.

Regarding a defendant's extradition upon arrest in another jurisdiction, if the defendant is in another state, the Prosecuting Attorney's Office must decide whether or not to extradite. The respondents reported that for the first nine months of 1994, the office had moved to extradite five defendants. A problem, however, can arise when civil custody orders from two different states conflict. In one case, a parent abducted children to South Carolina in violation of a New Jersey order and was able to obtain an ex parte custody order in that state. In this type of case, they would be unable to extradite unless the court and law enforcement authorities in South Carolina cooperated.

Another obstacle arises in cases involving Puerto Rico. Unless Hudson County is willing to extradite, Puerto Rican law enforcement authorities will not enforce custody orders. An alleged abductor may be detained in Puerto Rico but will not be extradited to Hudson County because of costs, in particular airfare, lodging, and staff time. If lawyers are advocating for the parties in these cases, they may attempt to resolve them.

Disposition/Case Resolution

According to staff, many criminal custodial interference cases are not actively prosecuted. The majority of cases are resolved or voluntarily withdrawn prior to adjudication or at time of arraignment. If a child is returned to the lawful custodian, they do not prosecute the case. See statistics/Record keeping section above for information on case resolution.

Interaction with LEAs

The respondent interviewed stated that the only case which the office worked with the F.B.I. was the case of the above-mentioned abduction of the children to Pakistan. The respondent interviewed has not sought the issuance of Unlawful Flight To Avoid Prosecution (UFAP) warrants. UFAP would be utilized in an extraordinary circumstance, such as in a case where violence is alleged.

Periodically, the Prosecuting Attorney's Office will be asked by local law enforcement to interpret court orders. Orders are usually "fairly clear." The Office does provide local law enforcement agencies with liaisons. Different staff are assigned to different municipalities for emergency duty.

Interaction with CPS and other non-LEA agencies

Defendants raise the defense that they have abducted their children to protect them. When confronted with this defense, the case is referred to the Division of Youth and Family Services (DYFS) for further investigation.

Staff do not have direct contact with any support groups that might aid in locating missing children. They indicated that the local legal services program gets involved in representing parents.

They are not familiar with any underground networks. A father's rights group operates in the area. No mediation services are offered in the criminal court system.

Use of Victim Advocacy, GALs, or Other Support Personnel

Guardians ad litem or support personnel are not appointed in criminal custodial interference cases. According to the Presiding Judge of the Family Court, the appointment of the GAL is discretionary in civil custody disputes. If a GAL is appointed in a case, that person will generally be asked to do so pro bono.³¹

The victim witness assistance unit's involvement with custodial interference cases is minimal, if any.

Training/Knowledge of relevant law, policy, and procedure

Staff do not receive training on issues related to custodial interference. Generally, new prosecutors receive training at the Attorney General's Division for Criminal Justice. The Prosecuting Attorney's Office attempts to send attorneys to programs sponsored by the National Association of District Attorneys. Attorneys also have "a lot of direct supervision."

³¹The Deputy Director of Hudson County Legal Services reported that children are rarely represented in contested custody cases. With the exception of civil abuse and neglect proceedings, funds have not been appropriated for a GAL's appointment in custody cases and parental rights termination cases. Appointment is relatively rare in contested custody proceedings due to the fact that an attorney would have to represent a child pro bono.

Recommendations/Concerns

Although these cases emanate from the family court, the Family Court, Sheriff's Office, and Prosecuting Attorney's Office are able to coordinate their handling. This coordination is facilitated as all of these agencies are all in one building.

Access to family court records is important. It would make sense to have the same judge be involved in both the criminal and civil aspects of cases, especially in terms of coordinating civil and criminal contempt proceedings.

One prosecutor believes that criminal prosecution brings leverage to negotiating a child's return. Each case needs to be evaluated individually as prosecution may not be appropriate in all custodial interference cases.

The respondents feel that coordination between local law enforcement authorities and the Sheriff's Office should be enhanced. A system should be in place in which local police can immediately refer a case of custodial interference to the Sheriff's Department. Complaints should be made right at the Sheriff's Office as their staff are more capable of making an informed evaluation.

Even if extradition is attempted, problems occur when countries are not parties the Hague Convention. Pakistan is such a country. Problems have also been encountered in getting children returned from Mexico.

6.4 THE JUDICIAL SYSTEM'S RESPONSE

Criminal Court

No judges were available to be interviewed who had presided over a criminal parental abduction case. As stated, few cases are prosecuted and not one has gone to a jury trial.

The Family Court

The Family Division is comprised of seven judges who handle approximately 27,000 domestic and juvenile cases each year. Of these cases, a very small percentage involve custodial interference or parental abduction. In abduction cases, the court has the authority to issue a show cause order directing the appearance of the alleged abductor. Upon the person's apprehension, the court would have the option of placing restrictions on that individual's visitation rights. If the person abducted the child and refused to state his or her whereabouts, the person could be jailed for civil contempt.

If the court were asked to enforce an out-of-state order, a judge would issue an "establishment" order. In all likelihood, the court would communicate with the other jurisdiction before returning the child to that jurisdiction. The court would have the option of holding a hearing to review the case. The respondent was knowledgeable about UCCJA and PKPA requirements.

Pursuant to New Jersey court rule, every civil custody and visitation case is first referred to mediation. In addition to a professional mediator, mental health experts are available to the court. There is a part-time psychologist on staff to conduct evaluations. Because of limited resources, this person cannot provide therapeutic services.

No family court liaison works with pro se litigants. Access to legal counsel is a "substantial problem" in that parental abduction cases require "expert lawyering." The lawyers who are available

do not have the legal expertise to handle cases in this very specialized area of the law and also often will not take these cases due to the time consuming nature of the representation. The local legal services program can only take the cases of income eligible individuals and private representation is generally very costly. A judge sometimes appoints counsel.

New Jersey has an Institute for Continuing Legal Education whose programs have included training on interstate and international abduction. New judges go to the judicial college for about five to six days. They receive training on a variety of topics and acquire three or four handbooks, though not necessarily specific to parental abduction. Also, judges already on the bench must attend the judicial college every year.

As to criminal prosecution in custodial interference cases, the judge interviewed contemplated whether criminal prosecution would be appropriate in all custodial interference case. He indicated that when a child was returned the offense was "rectified." He stated that it would not help the child or custodial parent to put the "economic source" in jail. Those involved have to be careful in the handling of these cases as "nothing is easily resolved."

Family Court Mediation Project

Housed in the Hudson County Family Court is the Mediation Project. The executive director is a full-time mediator for the Hudson County Family Court, with no support staff.

The mediator (and the legal services program representatives) reported that the inadequacy of supervised visitation programs results in judges ordering unsupervised visitation in situations warranting supervision. This is especially dangerous in cases in which abuse or abduction are threatened. The mediator described a quality supervised visitation program in Ocean County, New

Jersey.³² She reported that Ocean County had very comfortable facilities for visitation. The facilities consisted of large rooms with tables and toys. No court personnel were allowed in the rooms. The rooms have one-way mirrors for observation purposes and video cameras. In contrast, in Hudson County, there is a room in the court house where probation officers or on occasion, the part-time psychologist supervise visitation. Facilities are inadequate and not user friendly. The probation officers utilize volunteers in setting up visits.

In the past, the family court mediation project has mediated about 700 cases per year. In 1994, the office had mediated approximately 500 cases, averaging 30 to 40 cases per month. Eighty to eighty-five percent of cases are settled. The parties to mediation enter into a formal agreement that is tailored to the family. Some agreements have to be more specific than others. Some families are able to handle the flexibility of an agreement and do not have to have anything spelled out. Families can always return to mediation if a problem with an agreement arises. There is no independent follow up.

The mediator has encountered two cases in which abduction was threatened in which she addressed the issue with the party threatening abduction. She believed that if certain issues, such as a threat to abduct, are confronted early, future crises might be prevented.

Mediation creates an environment in which individuals are encouraged to talk. Children rarely participate in the mediation process. Mediators avoid putting a child in the position of choosing one parent over the other or being asked to make decisions that the parents need to make. On occasion, the mediator meets with a child without the parents being present.

As stated earlier, mediation is mandated by court rule in all custody, visitation, and divorce cases in which children are involved. When parties are referred to mediation, they are required to

³²The court in Atlantic County referred to custody/visitation arrangements as co-parenting plans.

watch a video entitled "Don't Divorce the Children" produced by LifeTime Television. The mediator also conducts workshops on family issues that are approximately two and one-half hours, which periodically a family court judge attends.

6.5 ANCILLARY COMPONENTS TO A CRIMINAL JUSTICE SYSTEM RESPONSE

Hudson County Legal Services

The Office has approximately thirty staff members handling all types of cases. Three attorneys are assigned domestic relations cases, including custodial interference ones. Two handle such cases full-time and one handles them part-time. Uncontested divorce cases are transferred to a pro bono panel of attorneys.

The program's deputy director has handled both domestic and international parental abduction cases and is the expert on international abduction for Hudson County Legal Services. In addition to her managerial responsibilities, the deputy director handles approximately fifty cases at any given time.

Legal Services staff felt that has been an effective response in the handling of custodial interference cases since the Sheriff's Office detective who created the specialty unit became involved. The deputy director speculated that most aggrieved individuals are referred to the Sheriff's Office by family court staff.

The program staff believe that the criminal justice system should be more involved from the very start in locating an abducted child. It is critical that the investigative capacity of law enforcement be utilized immediately after the abduction. Criminal charges need to be filed and a detective assigned.

When FBI gets involved in a case, they will issue a UFAP. However, they do not utilize their investigative resources to assist, unless the case is a high profile one or if there is an allegation of sexual abuse.

In addition to those cases in which an actual abduction does occur, staff encounter international cases in which threats are made to abduct. In these cases, they will investigate whether a child has dual citizenship, will inquire about passports, and will request discovery during the discovery period. They are especially concerned in those cases involving countries that do not honor the Hague Convention. More signatories to the Act are needed.

The office has also represented individuals who seek to enforce an out-of-jurisdiction custody order. Attorneys will request that a Hudson County judge review the order; he or she will usually enforce it after speaking with the court in the other jurisdiction.

Staff training is primarily on-the-job. Staff attend state wide legal services training and other continuing legal education programs. The deputy director has trained other legal services attorneys on parental abduction. Publications on custodial interference concerns are also available for staff use.

Recommendations/Concerns

With the exception of the Sheriff's Office, law enforcement's response to parental abduction cases is generally problematic. However, the problem might be alleviated to some extent if all municipal police departments were able to refer cases to a centralized speciality unit in a jurisdiction, such as the Hudson County Sheriff's Office. Such a specialized approach to the handling of case would be cost-effective.

The Sheriff's Office's resources are "now grossly inadequate." A prosecutor should be "actively" assigned to the unit along with an investigator.

Parents also need legal counsel. The majority of people with custodial interference problems are turned away by legal services programs because they are not income eligible. Few attorneys are experienced in the handling of abduction cases.

It is especially difficult for persons who require legal advocacy in other jurisdictions. It is very expensive to hire a lawyer in another jurisdiction. Hudson County Legal Services receives a great number of calls from other legal services programs asking for their assistance.

There is a serious need for "sizable" supervised visitation programs. Currently, judges have few options open to them. An adequate visitation program would have user friendly rooms with furniture and toys appropriate for children and adequate security. Experts would be accessible to facilitate visitation. Video cameras would be available to record visits for future court review, as well as two-way mirrors for viewing interaction between parent and child.

In addition, in cases in which children are at risk of harm for abduction, the court should order potential abductors to surrender their passports, post bond, and provide their passport numbers. This should be routinely done.

Parties in custody actions need to be aware that certain behavior has criminal repercussions. All custody/visitation orders should include language advising parties of the consequences should they interfere with custody or visitation. Staff seek to ensure that the court signs an order incorporating such an admonition. They use form orders that are available in both English and Spanish. Likewise, court orders should be specific and legible. One concern is that fill-in-the-blank orders are difficult to read.

Finally, one staff member believed that the judiciary should be more aware of both civil and criminal laws addressing custodial interference and interstate custody. Prosecutors also need to be educated on the civil aspects of these cases.

7. PIMA COUNTY, ARIZONA SITE SUMMARY

As of 1992, Pima County had an estimated population of approximately 690,200, including Tucson with an estimated population of 415,000.³³

7.1 ARIZONA STATUTES ON CRIMINAL CUSTODIAL AND VISITATION INTERFERENCE³⁴

7.1.1 Ariz. Rev. Stat. Ann. § 13-1302 (1990)³⁵

Elements of the Crime

A person commits the crime of custodial interference or visitation interference if he or she does the following:

- a) knowingly takes, entices or keeps any child who is less than eighteen years of age or incompetent from his or her lawful custodian or specified court ordered visitation; and
- b) does not have the legal right to do so.

³³U.S. Bureau of the Census, *County and City Data Book* (Washington, D.C., 1994).

³⁴The statutory summaries outlined are modeled on those in "State Criminal Legislation on Parental Abduction" compiled by the National Center For Prosecution Of Child Abuse of the American Prosecutors Research Institute. With minor exceptions, they are the statutory provisions that were in effect at the time of site visits in 1994. They are not necessarily verbatim excerpts of the statutes. Any citations the reader wishes to make should be based on an examination of the code itself to ensure accuracy of wording and wording.

³⁵In 1994, the statute was amended to delete any reference to "specified visitation." It is unclear at this time what impact this change in the law will have on the criminal prosecution of visitation interference cases.

The law provides that if the child is born out of wedlock, the mother is the legal custodian for purposes of the law until the child's paternity is established and a court determines custody.

Specified visitation means a specific time, day or place that has been designated pursuant to court order which allows a noncustodial person to have direct access to a child.

Penalties:

Class 3 Felony: if crime of custodial interference is committed by a person other than a parent or an agent of the parent of the person taken;

Class 6 Felony: if crime of custodial interference is committed by a parent or an agent of parent of the person taken;

Class 1 Misdemeanor: if crime of custodial interference is committed by a parent or an agent of a parent of the person taken and the person taken is returned voluntarily by the perpetrator/defendant without injury prior to his/her arrest;

Class 3 Misdemeanor: if visitation interference is committed by a parent or an agent of a parent of the person kept from specified visitation.

7.2 POLICE RESPONSE

Complainants make reports to the Pima County Sheriff and the Tucson Police Department, as well as the County Attorney's victim witness advocate in the majority of cases. They may also communicate with two other municipal law enforcement agencies located in the county.

7.2.1 PIMA COUNTY SHERIFF'S DEPARTMENT

Organizational Background

The Sheriff's Office employs 350 commissioned and 350 corrections officers. The agency's patrol service provides a full range of investigative services, including search and rescue for Pima County.

The division which handles custodial interference investigation is the unit that also handles robberies, assaults, and domestic violence complaints. The division consists of the Sergeant-in-Charge who has been with the unit one and one-half years. A few months prior to the site visit, one detective had been assigned to handle all custodial interference cases. However, due to the relatively high number of these and other case, all eight detectives are now assigned to handle reports of custodial interference.

Case Statistics/Record keeping

For the period January 1994 through November 30, 1994, the Department received 131 reports of custodial interference resulting in seven arrests.

A new information management system has been implemented allowing staff to make immediate entries into a computer system. The result has been a diminishment of paperwork. Computer data includes the Offense Category, complainant's name, suspect's name, and case number. If there are no arrests or leads, the case will eventually be closed out.

Some custodial or visitation interference cases might be classified as a miscellaneous incident or civil matter.

Initial Response and Investigation

The Sheriff's Department does not have any written policies or procedures addressing custodial interference (though it does for domestic violence complaints). However, each patrol officer carries a book delineating criminal laws, including those addressing custodial interference.

Generally, a patrol officer will go to a scene and take a report which will be called in by the end of his shift. Ninety percent of the time, the report is: "I am the custodial parent and my ex-husband did not bring the kids back." Usually children in these circumstances are being used as pawns. Rarely do they get a report that a parent has left the state with a child. Aggrieved parties are not asked to fill out any forms.

If the officer perceives the offense to be a misdemeanor custodial interference, he or she can do a "field cite and release" directing the defendant's appearance in the city's municipal court at a later date. Depending on the seriousness of the case, the officer has the option of making an arrest.

All reports of custodial interference are referred to the Sergeant-in-Charge for further review and investigation. Cases involving abduction out-of-state are assigned for further investigation. Regarding complaint investigation, detectives will "work up" a case, put warrants out, tap phones, and perform other investigative tasks.

If an aggrieved parent does not have a custody order, the patrol officer will try to mediate the situation. If the parties are married, they would have equal rights to custody of a child. However, in cases in which parties are not married, the mother is presumed to be the legal custodian under Arizona law and the child will be placed in her custody.

The Sheriff's Department does not honor out-of-state orders, unless the order has been reviewed by the local civil court.. Parents seeking enforcement of out-of-state court orders will be

referred to the local court. Most likely, they will be referred to the County Attorney's Office's victim witness advocate. (See discussion of his role in County Attorney's Office section below.) He would assist an individual with gaining access to a judge for the issuance of a pick up order. It is common knowledge among patrol officers that the victim witness advocate can be of assistance to parents.

As to entry into the National Crime Information System (NCIC), if a child is missing and the parent has left the state, the officer will call the agency's terminal operations and will enter the child as missing. The interviewee was unclear as to whether or not an entry was made in a case in which the child is with the alleged abductor, but whereabouts are known.

Officers will always respond to a report of visitation interference. The response might be a telephone call to the aggrieved individual with the officer advising the individual to seek the services of an attorney. As to threats to abduct, the agency will respond "very minimally."

Whether the charge in a case is a felony or a misdemeanor is dependent on whether abducting parent gives up the child voluntarily. If the abductor leaves town and does not make arrangements for the child's return, the Department will issue a felony warrant for the individual's arrest. If the child is returned voluntarily, a misdemeanor will be charged.

Interaction with other LEAs

Staff have a good working relationship with the County Attorney's Office. The office's specialist in custodial interference cases will seek extradition of offenders. Staff have twenty-four hour access to the specialist and her staff. It is within law enforcement's discretion to notify the County Attorney's Office as notification is not mandated.

Law enforcement staff have not worked with the F.B.I. on custodial interference cases. On occasion, they have contact with the F.B.I. on drug-related kidnappings.

Law enforcement officers may also obtain state police assistance from the Department of Public Safety. Arizona's missing children's clearinghouse is in the Arizona Department of Public Safety, Criminal Investigation Research Unit.

Interaction with non-LEA agencies

If child abuse and neglect is suspected, the patrol officer refers the case to the local child protective services office. However, child protective services is involved "not all that often." He or she would have the authority to take children into protective custody if they are at risk for abuse and neglect. If they do take children into protective custody, child protective services will be notified.

They have not utilized the services of the National Center on Missing and Exploited Children.

Training/Knowledge of relevant law, policy, and procedure

The specialist at the County Attorney's Office has conducted training sessions on parental abduction with the Sergeant-In-Chief and his staff. According to the Sergeant-In-Chief, this training does not generally get to the patrol level.

Regarding formal training, new recruits spend eighteen weeks at the police academy with a four week session in which rules and procedures are reviewed. Recruits then spend two months in the field. There is no training specific to custodial interference. In addition to academy training, each officer must attend training sessions two days per year for eight hour sessions. This training is also not specific to custodial interference. Training on these cases is on-the-job.

Recommendations/Concerns

Adequate staffing was perceived as being needed to ensure that every case could be thoroughly "looked at." There is a need for case follow up.

7.2.2 TUCSON POLICE DEPARTMENT

The Tucson Police Department is the major law enforcement agency in the county with 800 officers.

Organizational Background

The Department has a Dependent Child Unit comprised of approximately four detectives, one officer, and one clerical support person. This unit investigates child abuse, custodial interference, and missing children's cases.

Case Statistics

A review of case activity from January 1, 1994 through December 2, 1994 disclosed 119 cases of family offenses involving custodial interference, with seventeen cases being cleared by arrest.

Initial Response/Investigation

The Tucson Police Department has written procedure that explicitly tells police how to respond when responding to parental abductions. Guidelines are contained in a chapter entitled "Juvenile Procedures." (Note in appendices: TPD Procedure 1300, sub 1322 "Custodial Interference.")

Officers are dispatched to investigate custodial interference complaints. They conduct a preliminary investigation in which they ascertain whether any court order governs custody.

If a party has a recent Pima County Superior Court order awarding him or her custody, and the child is present, an officer will first investigate the order's validity and if valid, return the child to the custodial parent. If no court order exists, in accordance with Arizona law, the officer will return the child to his or her mother. If paternity has been established, the officer will return the child to the individual who has had custody for most of the previous six months. If custody is not clear, the officer will leave the child with the person who had custody prior to police involvement. If the officer still is in doubt, he or she will contact the Department's Dependent Child Unit or legal advisor for assistance. Included in written procedure is the prosecutor's telephone number, as well as guidelines to determine who has legal custody of a child.

Officers produce a "Multi-Purpose Report and Runaway/Custodial Interference Supplement" in all cases, even if the case appears to be a "civil matter" (no custody order). Officers are advised to document cases thoroughly. The officer making the initial report has the responsibility of ensuring case information is entered into the computer system. Written procedure instructs patrol officers to notify the dispatcher to enter information into the NCIC system.

Officers have the option of issuing misdemeanor or visitation interference citations. If visitation interference is at issue, the officer may only enforce court orders that designate when visitation is to occur.

All cases are routed to the Department's Dependent Child Unit, where felony cases will be investigated.

Interaction with D.A., F.B.I. and other LEAs

As does the Sheriff's Department, the Police Department calls upon the Prosecutor's Office for assistance. That office's abduction specialist is known on a first name basis. They also utilize the services of the Victim Witness Advocate and the Judicial Supervision Program (discussed in Ancillary Components section).

Tucson Police Department detectives have a good working relationship with the FBI and use their services when necessary.

Staff noted that issues arise relating to the illegal alien population from Mexico. They noted that a good working relationship exists between police on both sides of the border (El Paso and Juarez). The FBI is willing to assist in across the border cases.

Training/Knowledge of law, policy and procedure

Police staff receive training on custodial interference issues through the County Attorney's Office. In initial training, efforts are made to ensure that patrol officers are educated on the department's written custodial interference guidelines discussed above.

Recommendations/Concerns

Additional funding is needed to enhance computer technology. Staff believed that they should be able to be communicate electronically with agencies, such as the local child protective services office. They also perceived the need for greater uniformity among states' criminal custodial interference laws.

7.3 THE PROSECUTOR'S RESPONSE

The County Attorney's Office, as well as the City Attorney's Office, actively prosecute misdemeanor cases.

7.3.1 COUNTY ATTORNEY'S OFFICE

Organizational Background

The County Attorney's Office has one attorney who specializes in the prosecution of felony custodial interference cases. She has been handling these cases for over fifteen years. This attorney spends approximately five percent of her time on these cases. She is the Chief Deputy and has numerous administrative responsibilities. Most cases are referred to the County Attorney's Office by law enforcement agencies.

The office has a misdemeanor division in which less serious custodial or visitation interference cases originating outside of Tucson are tried by any number of attorneys assigned to the division. (the City Attorney's Office handles the Tucson misdemeanor cases.) The division is comprised of five attorneys (one position now vacant), one legal assistant, ten clerical staff, and a supervisor who handle a collective active caseload of approximately 4500. The caseload constitutes domestic violence (1,468 for 1/94-10/95), DWI (DUI), criminal traffic offenses, game and fish violations, and visitation interference. The majority of attorneys in this division are relatively new.

The Office's victim witness advocate also supports parents by investigating cases (law enforcement agencies still have primary responsibility) and making appropriate referrals for legal and other assistance. The advocate receives referrals from law enforcement agencies, and parents also contact him directly regarding both custodial and visitation interference.

The Office employs approximately 320 employees. Office divisions include criminal, civil, misdemeanor, and child support units. Fifty-five attorneys are assigned to the criminal division.

Statistics/Record keeping

Ninety percent of the office's custodial interference cases involve failing to return a child after visitation.

The felony specialist attorney reported that her office filed 22 complaints from January through October 1994 and 26 complaints in 1993. Additional cases were referred to the office, but no charges were filed. These cases usually were resolved upon the child's return to the lawful custodian.

The office experiences an increased number of custodial and visitation interference cases around the Christmas holidays. The specialist attorney estimates that the number of calls regarding custodial interference she gets per year is approximately 66-88 calls. She states that she gets about two to three calls per week.

The County Attorney's misdemeanor unit files about forty cases per year and at any given time, may have about 10-15 active cases. The misdemeanor supervisor reports that given that the division's jurisdiction excludes Tucson, the City Attorney's office handles the majority of visitation interference cases.

The victim witness advocate reported that he assists two to three parents a month who seek to retrieve their children from an abducting parent. He also gets about three to four calls per day from parents complaining of visitation interference.

The County Attorney's computer system tracks cases by defendants name, case number, or law enforcement agency assigned to the case. Reports can be issued on types of crimes and the system can retrieve custodial interference cases from a specific law enforcement agency.

Case Processing/Filing Complaint

The office has a written policy and training manual on custodial interference. Generally, cases are referred to the specialist attorney directly from local law enforcement agencies, and periodically from parents.

As stated earlier, the specialist attorney handles the more serious felony cases. Less serious, usually "visitation" interference cases, are referred to the misdemeanor unit. A case gets to the misdemeanor division after the patrol officer issues a ticket to the offending party for "access interference." The responding officer has the discretion to issue a citation summoning the offender to court. If an officer is uncertain as to how to proceed, he or she will consult with the office's paralegal. She in turn may then consult the felony specialist attorney. The officer may decide the citation needs to be issued as a felony. The felony specialist attorney may also believe a case is more appropriate for misdemeanor prosecution.

The misdemeanor supervisor stated that law enforcement authorities have primary responsibility for investigating cases. Occasionally, misdemeanor division staff will call the complainant to get a copy of a court order if the police have not provided it to them.

Most complainants in misdemeanor cases are not represented by their own attorneys. Almost all are individuals with low-incomes. They are referred to the local legal aid program, but usually that office is unable to serve them because of the office's limited staff resources.

Parents come to Arizona with pick-up orders. The felony specialist attorney has trained police not to pick up a child without a court order that is certified and with a clerk's affidavit from

the issuing court. The police need to ensure that there are no other superseding court orders in the file. The supervisor described a case in which a Minnesota woman went to a judge in Pima County with her court order and the judge issued a pick up order. The police executed the pick up order. The court was unaware that there was a superseding court order. (See also section below on victim witness unit.)

Filing of Complaint

Custodial interference cases are charged as felonies. Visitation interference involving a "shorter failure to return" will be charged as misdemeanors.

In assessing whether or not to charge or file a custodial interference complaint, the offender's criminal intent is assessed. Other charges can also be filed if there is evidence of child abuse, burglary, and related offenses.

In filing a misdemeanor visitation interference complaint, the criteria for filing includes: a) seriousness of the interference (e.g., in a case in which the parent is twenty minutes late bringing back the child, they will not charge the parent; however, if the parent takes the child on a Friday night with the child to be returned that same night and the child is not returned until Saturday morning, criminal charges will be filed); b) evidence of repetitive conduct; c) child is upset by parental conduct.

Arizona law is unclear on the issue of whether an abductor is guilty of the offense of custodial interference if no court order governs custody. The specialist prosecutor interprets the Arizona case law as providing authority for the proposition that a court order is not required for an individual to be guilty of custodial interference.

It may be that in rural areas law enforcement and prosecuting authorities are not as familiar with Arizona case law and less likely to intervene in cases in which no custody order exists. Also,

as was stated earlier, some patrol officers and desk sergeants, even with departmental directives being issued, may be under a misperception that court orders are needed prior to police intervention.

A visitation interference criminal complaint will only be filed in a case in which there is a court order.

Case Disposition/Sentencing

Regarding the criminal court's handling of felony cases, no specific judge presides over custodial interference cases.

Of the twenty-five to twenty-six felony cases handled each year, only about two cases per year go to trial. All of these cases have resulted in convictions. Other cases have resulted in plea bargains. It is likely that a defendant will plead to a misdemeanor.

If the defendant is in another state, the County Attorney's Office will extradite. One approach is to have a defendant waive extradition and return to Arizona to plead to a misdemeanor.

Regarding sentencing, if the defendant has been convicted of prior felonies, the defendant receives a mandatory prison term. In other cases, the defendant will receive probation and sometimes restitution.

Misdemeanor cases are generally "hotly contested." The defending parent usually raises the defense that the other parent is unfit or has abused and neglected the child. Occasionally, child protective services becomes or is already involved. In many of these cases, abuse or other allegations are unfounded. Roughly eighty percent of misdemeanor cases result in judge determinations of "not guilty." Cases usually go to trial.

These misdemeanor cases are tried by justices of the peace. They are elected and do not necessarily have to be lawyers.

Upon conviction for visitation interference, a defendant will receive six to twelve months unsupervised probation and be ordered to attend "anger" counseling or parenting skills classes. Defendants will not receive jail time as it is difficult in these cases to have the court order incarceration.

In addition, given Pima County's proximity to the Mexican border, a number of cases involve individuals snatching children across the border. The case example cited concerned a father who snatched his children and, during a high speed chase, attempted to run through a guard rail at the Mexican border. Mexican police stopped him and the children were returned to their lawful custodian.

The misdemeanor supervisor was not aware of anyone ever being held in civil contempt for violating a custody/visitation order.

Interaction with other LEAs

The felony attorney specialist has only worked with the FBI a few times over the past several years. In one case, a father had traveled to Mexico with his child and the FBI got involved. She had not initiated the contact with them; the police had. They were able to get the child back.

She has only sought an unlawful flight to avoid prosecution (UFAP) warrant in approximately five or six cases. Most of the time the FBI does get involved when the County Attorney's Office knows the parent's whereabouts. A UFAP will only be issued in those cases in which parent's whereabouts are unknown or the possibility exists that the abductor will flee the country or go underground. To issue a UFAP, an indictment and arrest warrant are needed. UFAPs are helpful because they get the FBI involved. The agency has increased investigative resources.

In another Mexican case, FBI agents had familiarity with Mexican police who were able to make arrangements to ensure that the FBI was waiting for the abductor when his plane landed in the States.

Interaction with non-LEAs

There is not a great deal of interaction between CPS and law enforcement personnel in these cases. CPS would occasionally be involved in custodial interference cases after offending parents raised an abuse or unfitness defense. Usually these allegations are unfounded. If warranted, a patrol officer would make a referral to child protective services. Police will make a report to CPS if an allegation of abuse is made. Police have the authority to place the child in protective custody.

Use of Victim Witness Advocate or Other Support Personnel

The attorney specialist also works closely with the one victim witness advocate employed by the County Attorney's Office (two co-workers are in training). According to the specialist, the advocate handles an "incredible" number of custodial interference cases (only comprises five percent of caseload; majority of his cases involve domestic violence). He will talk with aggrieved parents, advise them to immediately file a custodial interference report with the police, and walk them through the civil system so that they can obtain appropriate court orders. He views himself as a "broker" who works both the social services and legal world. He does not have written handouts for parents.

As Pima County does not have a family court or any court personnel, such as a pro se coordinator, to assist pro se litigants, the victim witness advocate can help get the aggrieved parent communicate with law enforcement authorities. Parents have advised him that they have called, for example, the police and have been advised that their problem is a "civil" matter or that police cannot intervene without a court order. In these cases, the advocate will call the department's detectives on behalf of the parent.

In addition, the victim advocate assists parents by accessing the resources they need to reunite them with their children. Parents, as well as out-of-state police, may call him from out-of-state to assist with reunification. He advises them of the "paperwork" they will need to get their children back and will refer them to the court clerk's office. He will also communicate with law enforcement personnel in Pima County. He will go to the airport and meet parents upon arrival, assist them with getting shelter, and help with getting their out-of-state order registered. He usually has court orders and other paperwork reviewed by the felony prosecutor.

The victim advocate does not enforce pick-up orders. He will go with the victim to the scene of the pick-up and offer support. Sometimes he will go up to the door of the alleged abductor's residence with the victim. However, he is not authorized to serve the order. His support is helpful to the victim in that frequently "fireworks start" as soon as law enforcement authorities request a child's return. Upon the child's return to the parent, he will assist the parent in getting out of the jurisdiction with the child (e.g., driving parent to airport). He does not provide reunification counseling services to the parent.

The victim witness advocate attempts to obtain counsel for the many aggrieved parents who are not represented. Legal fees can be quite high in a custodial interference case. The advocate cited a case involving an interstate custody dispute involving Georgia in which the mother had to pay \$2,000 to a lawyer in Georgia. He attempts to persuade counsel to take custodial interference cases for a reduced or no fee. As the local legal aid program has limited resources, its staff does not generally handle these cases.

In addition, parents call after the other parent fails to return a child after periods of visitation. He will refer parents to the mediation program (conciliation court). According to the advocate, it is rare that the parties with whom he works can utilize this service due to the contested nature of their disputes. (See Ancillary Component section below on mediation).

Military personnel living in the area also report complaints. If an abduction occurs off the base, the County Attorney's Office can intervene. If it does not, it becomes difficult to prosecute.

A family services unit at Davis Air Force Base can assist if military personnel are involved in abduction. The advocate has been able develop a relationship with the family services unit. He related the case of a mother who had not seen her child for five years as the child's father, who was in the military, had taken the child to Germany. The family services unit was helpful in contacting appropriate authorities in Germany to assist in getting the child back.

How do aggrieved individuals know to contact the victim advocate? Police know that he handles custodial interference cases for the County Attorney's Office. If an individual calls the front desk of the County Attorney's Office, the receptionist will also refer the call to him.

The advocate has handled custodial interference cases for the past eight years. He was sent to one training and was introduced to the problems of custodial interference. He also became interested after three fathers came to his office within one week to advise him that they had not seen their children for lengthy periods of time. He has conferred with the American Prosecutors Research Institute (APR) to obtain information on custodial interference cases and reunification services.

GALs are not appointed in criminal cases involving custodial interference.

Training/Knowledge of Law

The specialist prosecutor conducts numerous training programs for law enforcement staff on custodial interference. She has attended numerous regional and national conferences on the subject, including those sponsored by the American Prosector's Research Institute (APR). Staff is knowledgeable on various aspects of the criminal and civil law as it relates to custodial and visitation interference. A comprehensive training manual has been developed and utilized.

The misdemeanor supervisor also provides twice weekly and twice monthly training to her staff on a variety of topics, including visitation interference. Given the staff's trial schedules, training are conducted in the early morning and over the lunch hour. The misdemeanor division has a relatively high turnover so that new staff have to be trained on a regular basis. Staff generally prefer to work in the felony division.

Recommendations/Concerns

The specialist attorney viewed custodial interference cases as having many complex civil issues. Often, prosecutors will perceive custodial interference cases as being less glamorous. These are not the "stranger" abduction cases. In order to process custodial interference cases effectively, more staff resources are needed.

One respondent suggested that prosecutorial resources should be expended on more serious cases in which the abductor intends to permanently deprive the other parent of custody (e.g., a case in which a father lives in another county and he indicates that he will never give the children back.) The abductor's intent has to be evaluated. In cases in which the abductor's intent is not to permanently deprive (main intent is to harass other parent), the civil court system should be involved. It is not the role of criminal justice system to get involved in all minor custody and visitation disputes. All divorcing parents should be required to participate in a class on custodial interference.

The Arizona statute could be clarified to ensure that the criminal justice system can intervene in custodial interference cases in cases in which no court order delineates custody rights. As discussed earlier, Arizona appellate case suggests that a court order is not a prerequisite to a guilty finding in a custodial interference case.

Respondents also believe that training of judges, the defense bar, and other attorneys is necessary. Her office is attempting to provide training on domestic violence issues. It might be helpful to have parents who have experienced an abduction to be involved in training.

One respondent suggested that more airlines should provide free flights to better enable parents to reunify with their children.

There is also a communication problem between civil and criminal court. For example, an order of protection in a domestic violence case might be issued against the father, but the father might still have visitation rights pursuant to a civil court custody order.

7.3.2 TUCSON CITY ATTORNEY'S OFFICE

Organizational Background

The City Attorney's Office handles misdemeanor custodial/visitation interference cases that arise within the City's limits. Any attorney assigned to the misdemeanor division could handle such a case. The misdemeanor trial supervisor has the responsibility of reviewing cases for attorney assignment.

Statistics/Record keeping

The City Attorney's Office handles an estimated fifteen prosecutions per year as the County Attorney's office handles the majority of cases. The trial supervisor had not encountered any cases without court orders delineating custody or visitation rights.

Case Processing

Law enforcement agencies are the office's referral source for cases. On occasion, a parent will call the office directly seeking assistance. A designated sergeant is the office's contact person with the Tucson Police Department.

Patrol officers responding to complaints of custodial or visitation interference have the authority to issue a citation (see earlier discussion of TPD response). The city attorney's preference would be for street officers to review cases with her office prior to issuing a citation. She is concerned that statutory changes have been enacted making it more difficult to prosecute as the standard for intent to commit the crime of custodial interference is now different.

Many cases resolve themselves when the child being unlawfully held is voluntarily returned.

Filing of Complaint

Prosecution in these cases is appropriate when the offending conduct is of a continuous nature. In addition, evidence must establish an intentional defiance of a court order. For example, being one hour late in returning a child from visitation is not enough. Generally, complaints will not be filed in cases in which no court defines custody rights.

Case Disposition/Sentencing

Regarding case disposition, those convicted are placed on probation. The court may also impose fines and community service. The trial division supervisor had never encountered a case in which an individual had been incarcerated. Cases have never been so egregious as to warrant jail.

She recalled one case in which the prosecutor did ask for the offender to be incarcerated. The case was one in which the person was convicted of custodial interference. The offender had picked

up a child for a visit and did not return the child or call the parent regarding child for two weeks. The case went to trial. The offender was convicted, but a jail term was not imposed.

7.4 JUDICIAL SYSTEM'S RESPONSE

Criminal Court

No specific judge is assigned to handle custodial interference cases.

Civil Court

Pima County does not have a family court. The clerk's office has forms to enable pro se litigants to file domestic pleadings on their own.

Parents have the option of filing civil pleadings seeking contempt sanctions for violation of court orders or to obtain a custody order. One judge interviewed reported that he does receive requests for orders to show cause for violation of custody and visitation orders. He usually sanctions violators by assessing attorney's fees against them.

Prosecuting attorneys do not get involved in the civil aspects of litigation.

7.5 ANCILLARY COMPONENTS TO THE CRIMINAL JUSTICE SYSTEM'S RESPONSE

The Judicial Supervision Program

Established in 1988, the Judicial Supervision Program (JSP) is a service mandated by law, Ariz. Rev. Stat. Ann. § 25-338, which assures parents that the custodial or visitation terms of a decree are carried out. The JSP provides the following services: telephone monitoring (program

calls each parent to verify that court-ordered visitation schedule is being followed); exchange supervision (enables child to go from one parent to the other without parents having to meet one another in the process); visit supervision (supervisor monitors entire visit between parent and child; provides transportation for special outings); therapeutic supervision (takes place in therapeutic setting under counselor's supervision with aim of helping parent and child reestablish relationship); networking and referral (refers parents to therapists and mediators specializing in family issues).

Visitation usually does not take place at the program's administrative offices. It occurs at a location where the child will feel comfortable. The program plans to move to a new building that will have a user friendly visiting room.

In order to participate in the program in most cases, a Pima County Domestic Relations or Juvenile Court order is required. Program supervisors testify in court when requested.

Statistics for 1993 reflected 4.92 cases involving custodial interference issues, 22 cases involving lack of access, and 12.83 involving lack of contact. About twenty-five percent of their cases involved the provision of therapeutic services. The program may handle approximately 90-95 cases at any given time.

The program manager stated that the JSP is unique in the country. The program operates under the auspices of Casa de los Ninos, a residential crisis nursery. (As of July 1, 1996, Casa de los Ninos continues to provide supervision services; however, its funding source for the provision of supervised visitation services has changed.)

The JSP budget is \$150,000 per year. Clients pay for services. Sometimes the court will order one or the other party to pay for the visitation services. If a parent is indigent, the program has reduced fees. Therapeutic supervision services are more costly. Costs may be \$60.00 per hour with a reduced fee of \$30.00 for an indigent individual.

Regarding custodial interference, the program manager described a case in which a father abducted his child and traveled to Nevada. When the father returned to the area with the child, the judge only ordered "exchange supervision". However, JSP had concerns about the need for enhanced supervision. The abductor had been convicted of custodial interference. The case is scheduled for a hearing on the need for greater supervision during visitation.

Recommendations/Concerns

The program manager's "biggest" frustration with the handling of domestic cases is the lack of consistency within the court system. In Pima County, there are two judges and five commissioners hearing cases and the same case may have different judges assigned at different times.

Family Center of the Conciliation Court (Mediation Program)

Briefly, the Family Center offers marriage and divorce counseling, conciliation counseling, mediation, child custody/visitation evaluation, and community education. A grant from the Arizona Supreme Court makes possible a divorce education program for teens, pre-teens and their families.

The individual interviewed has been a mediator at the Family Center for approximately seven years. During mediation and/or counseling sessions, he does encounter threats to abduct. This happens two or three times per year. Upon hearing these threats, he tries to assess how serious they are. If there is a "real" risk of abduction, he will refer case to the Judicial Supervision Program, the local child protection services agency, and the court.

He related that he had attended a session on parental abduction (risk factors) at a conference of the American Association of Family and Conciliation Courts in Madison, Wisconsin. He related that he had no experience with law enforcement agencies and their handling of custodial/visitation interference cases.

Legal Services Program: Southern Arizona Legal Aid, Inc.

Southern Arizona Legal Aid, Inc. employs two full-time attorneys specializing in domestic relations law and two paralegals who conduct divorce workshops. Seven attorneys handle non-domestic cases. The legal services attorney interviewed had experience with custodial interference cases from the civil perspective in both Arizona and Maryland.

Fifty percent of calls to the legal aid office are domestic related. The office's case priorities include: domestic violence, loss of the family home, and post-decree cases in which a child is in danger (e.g. sex abuse). If a case involved a snatch "itself," they would help by referring the case to local police and advocating for that agency's intervention.

The office does not get many cases in which a snatch has occurred and the child is endangered. Individuals seek legal assistance in many cases in which visitation is the primary issue. The attorney interviewed reported that approximately seventy-five percent of their domestic relations cases involve visitation disputes.

She indicated that a "good" system was in place enabling individuals to represent themselves. Individuals can obtain forms from the court to proceed pro se.

Arizona law is different than other states' laws in that in cases in which parents are not married, the mother is presumed to be the legal custodian. This presumption makes it easier to get a child back from a father who abducts even though there is no court order.

Recommendations/Concerns:

Problems exist with magistrates issuing custody and visitation orders even though they do not have the jurisdiction to do so, as well as some court failing to honor other states' custody orders.

Private Bar

One domestic law practitioner perceived some patrol officers as still viewing custodial interference as a civil matter, as opposed to a criminal one. This individual believed that patrol officers were less likely to be of assistance to aggrieved parents who were represented by an attorney. They perceived the attorney as having the responsibility to resolve custodial interference disputes in civil court.

8. CONCLUSION

As stated earlier, this study's final chapter provides further insight into various aspects of effective and unique programs identified during site visits. An attempt is made in that chapter to distinguish those characteristics that result in an enhanced criminal justice system response to the crime of custodial interference.



Part Four



**THE CRIMINAL JUSTICE SYSTEM'S RESPONSE
TO PARENTAL ABDUCTION:
DETAILED CASE TRACKING
IN THREE LOCAL JURISDICTIONS**

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1. INTRODUCTION

As with child abuse, cases of parental abduction tend to be characterized by a few high visibility cases that result in front page news coverage or made for television movies. High profile cases have involved a dramatic "rescue" of the child in the middle of the night and some have even involved Congress. While the reality of the parental abduction problem includes these high profile cases, it is not defined by them. This study is an effort to begin to look at how criminal justice systems are dealing with parental abduction cases.

As was seen in Phase I and Phase II of this study, the response of the criminal justice system to these cases of parental or familial abduction is far from uniform, and in some cases is even nonexistent. Many law enforcement agencies consider parental abduction cases to fall under the jurisdiction of the civil court. In Phase III, the criminal justice (law enforcement and prosecutor) response was tracked for individual cases in three sites. The three counties that had filed among the highest number of criminal complaints of parental abductions identified in Phase I were selected for this tracking. The goal of this case level investigation is to provide a more detailed view of parental abduction cases and characterize some of the variations in the system's response to these cases.

The case level analysis will provide information on the general class of cases labeled "parental abduction." While most parental abductions involve one parent unlawfully removing a child (or denying access to a child) from the other parent, a great variety of cases can be subsumed under this general description. For example, relatives may remove a child from a parent that the relatives feel is unable to care for the child. Parents also abduct children from child protective services agencies, to whom courts have given custody after removing the child from the home. Parental abduction cases are often complicated by multiple custody orders from several jurisdictions. In addition, various factors may broaden the scope of the case to include federal or even international agencies. The Phase III analysis will identify these complicating factors and look at the effects such issues have on the criminal justice response.

Results from the Phase III report are presented in the following chapters:

- Chapter 2 provides information on site selection and sampling strategy.
- Chapter 3 outlines the data collection efforts (i.e., development of the data collection forms, training data collectors, data availability, and problems encountered at each of the sites).
- Chapter 4 presents the flow of cases through the criminal justice system for each site, showing how and with what frequency cases move from the complaint stage to the sentencing stage.
- In Chapter 5, the perpetrators, complainants, and children that comprise the parental abduction cases are each described. In addition, case characteristics, such as law enforcement response and whether the children were located and returned will be discussed.
- In Chapter 6, factors or elements that influence whether a case moves through law enforcement to the criminal court are discussed.
- Conclusions based on the case level analysis are presented in Chapter 7.

2. DESIGN OF THE STUDY

The design of Phase III was informed from both the Phase I and Phase II findings. The development of estimates for familial abductions occurring in 1992 were used to help target the site visits in Phase II. The following sections discuss the process for selecting three sites from those visited in Phase II, provide a brief overview of those sites selected, and the sampling strategy used within each site. Please note that the data collected for Phase III was for familial abductions occurring in 1993.

The Phase III study was designed as three case studies. For the purposes of presentation, the data from all three sites are frequently shown on the same tables. However, because of differences among the three sites in terms of reporting agencies (Sheriff's Department, municipal police department, and prosecutor's office) and differences in case selection policies, the study is not meant as a comparative analysis of jurisdictions.

2.1 Site Selection

In order to select the three sites which would be the focus of the project's third phase involving individual case tracking, the research team, project advisory board, and OJJDP program manager reviewed the information gathered during Phase II's six on-site visits. Relying on the following criteria, they evaluated the appropriateness of each site for case tracking:

- (1) *Number of Cases Filed* - In how many 1993 cases were charges filed in the prosecutor's office? The research team selected the year 1993 for case review because it was determined that most cases originating in 1993 would have been processed through the criminal court (if referred), with a final disposition by 1995.
- (2) *Accessibility of File/Management Information System* - How accessible are case files (both law enforcement and prosecutor files) in the jurisdiction? Will case readers be able to review the actual case files on-site in a timely manner?
- (3) *Specialized Law Enforcement Units and/or Officers* - Does the jurisdiction provide a specialized unit and/or designate specific law enforcement officers to handle cases of family abduction?

- (4) *Specialized Prosecutor Units and/or Attorneys* - Does the jurisdiction provide a specialized unit and/or designate specific prosecutors to handle cases of family abduction?
- (5) *Unique/Special Programs to Address Family Abduction Issues* - Is there a unique program in the jurisdiction addressing issues surrounding family abduction (e.g., prevention, victim services, reunification). This could be a court-sponsored, non-profit or other program.
- (6) *Geographic Diversity*

The number of cases filed were approximately the same for all sites. No site had more than 18 criminal complaints of family abduction filed in 1993 and most sites had less than 10 cases filed. When compared to other jurisdictions around the country, however, these numbers are considered "high." All six sites had already been selected for closer examination during Phase II due to the fact that they had a high number of cases.

Project staff also looked at accessibility of case files to determine whether a timely data collection would be feasible at the site. Most sites indicated that actual files for 1993 were available and retrieval of these files would not be excessively burdensome for the agencies. In addition, all sites felt that on-site review of these files by case reviewers would not be a problem.

Table 2-1 outlines to what extent the sites reviewed in Phase II met the remaining criteria.

The information on the sites was summarized and presented to the project Advisory Board for discussion. The three sites selected to be the focus of Phase III were San Diego County, California; Hudson County, New Jersey; and Pima County, Arizona.

Table 2-1. Site Selection Criteria

Site	Specialized LEA Units/Officers	Specialized Pros. Units/Attorneys	Unique/Special Program in Community	Geographic Diversity
San Diego County, CA	Sheriff: No Police: Desig. Officers/referrals	Special unit in Co. with design. investigators/attorneys	Victim Advocacy Unit; investigators act as mediators	Southwest coast
Snohomish County, WA	Sheriff & Police: Desig. Officers	Staff desig. for felony/random assignment for misdemeanor	Operation Lookout (non-profit) to help LEA in abductions	Northwest coast
Hudson County, NJ	Sheriff: Special Unit Police: Desig. Officers	No designated unit/attorneys; random assignment	Legal services program; Sheriffs Department helps parents get legal services	Northeast
Escambia County, FL	Sheriff & Police: Desig. Officers	Staff desig. for felony/random assignment for misdemeanor	Legal services program	Southeast
Salt Lake County, UT	Sheriff & Police: Desig. Officers	Staff desig. for felony/random assignment for misdemeanor	Legal services program	West
Pima County, AZ	Sheriff: Desig. Officers Police: Special Unit	Staff desig. for felony/random assignment for misdemeanor	Legal services program; supervised visitation program; victim-witness advocate	Southwest

2.2 Sites Participating in Phase III

As stated above, the prosecuting authorities of the three sites selected had filed among the highest number of criminal complaints of parental abduction in the United States. However, these numbers are still relatively low in relation to all felony filings. For each of the sites, the first step in a parental abduction case is to determine whether a custody order exists and, if so, whether it specifically addresses the conditions of the abduction as described by the complainant. Each of the three jurisdictions established unique procedures for handling parental abduction cases in law enforcement. A brief description of each site and how parental abduction cases were handled in each is provided in the following section.

2.2.1 Hudson County, New Jersey

Hudson County, New Jersey is the smallest of the three jurisdictions selected. U.S. Census population estimates for 1994 show a county population of 552,384. Twenty-two percent of the county population is 17 years old or younger, slightly less than the percentage of children that comprise the national population (26%). In general, this area shows a decline in population. Hudson County (and Jersey City) is bounded by the Hudson River; the Manhattan skyline can be seen from many parts of the county. Flight to another State (New York) and international flight (with the close proximity of Kennedy International Airport across the river) is a real issue for this jurisdiction. There are approximately eleven municipal law enforcement agencies as well as the Sheriff's Department, that provide police protection to the county. Jersey City is the largest of these local law enforcement agencies and is also the county seat.

The Sheriff's Department has designated two officers to handle parental abduction cases. These officers constitute the Missing Persons Unit and have been handling parental abduction cases for approximately three years. Local jurisdictions within the county often refer parental abduction cases to the Sheriff's Department for investigation because of the special unit. However, local jurisdictions do handle some of these cases. After an arrest, the case can be handled by any attorney in the Prosecutor's Office. Misdemeanors are remanded to the local city attorney's office.

2.2.2 San Diego, California

San Diego was the largest jurisdiction selected for the study. San Diego had an estimated 1994 population of 2,632,047 persons; 24 percent of the county population is comprised of children 17 years old or younger. The city of San Diego had an estimated population of 1,151,977 in 1994. San Diego differs from the other two sites in that reports of parental abduction are referred directly to the District Attorney's Office (DA) for investigation. These reports can be made directly to the DA by parents or can be referred from the 19 law enforcement agencies in the county, including the Sheriff's Department and the San Diego Police Department. These reports are investigated by investigators from the Child Abduction Unit of the District Attorney's Office. In addition to parental abduction cases, these investigators handle child protection, domestic violence, and family abduction. Generally, parental abduction cases are handled by a single attorney. This unit was set up in 1988 to handle the investigation and prosecution of these cases. All abductions are considered felonies in this jurisdiction.

Like other counties in California, the DA's Office focuses the attention of its criminal prosecutions only on the most egregious (felony) cases because California District Attorneys have the statutory authorization to pursue the less egregious cases civilly. This role includes obtaining civil or family court orders enabling DA staff to recover the child.

2.2.3 Pima County, Arizona

Pima County, Arizona was also selected for the study. The population of Pima County was estimated at 731,515 in 1994; 25 percent of the county population is 17 years old or younger. Tucson, the largest city in the county accounts for 59 percent of the county's population. A variety of Indian reservations are also located within the county and the City of Tucson; reservation police agencies have jurisdiction over the reservations. The two largest law enforcement agencies in Pima County -- the Tucson Police Department (TPD) and the Pima County Sheriff's Office -- each had designated officers to handle parental abduction.

The Tucson Police Department (TPD) handled 180 cases classified as parental abduction during 1993; the Sheriff's Office handled 38. Five officers and one sergeant staff the Dependent Children Unit of the TPD. The primary responsibility of this unit is to investigate child physical abuse cases, followed by their responsibility to investigate cases of custodial interference. The eight-person Sheriff's Office division which investigates custodial interference cases also handles robberies, assaults, and domestic violence complaints. In the Sheriff's Office, the parental abduction cases could also be subsumed under the category of "violations of a court order." There were approximately 1,500 violations of a court order in the Sheriff's Office in 1993. No further breakdown of those violations was available via the computer.

The parental abduction specialization unit in the TPD was created in response to the abduction of a child from a school yard in 1986. Felony cases are handled by a single county attorney. This attorney has specialized in these cases for over 15 years. Misdemeanors are handled by both the city attorney's office and the misdemeanor division of the County Prosecutor's Office. Within the City Attorney's Office, parental abduction cases are usually handled by two designated attorneys, however, these attorneys rotate annually.

2.3 Sample Selection

The case-level phase of this project was designed to sample the maximum number of cases prosecuted as felonies in the three selected sites. First, case files of all prosecuted parental abduction felonies for these three sites were reviewed. Second, a sample of cases from the law enforcement agency handling most of the parental abduction cases within a county were identified. The overall study design called for approximately 100 cases (from each site) to be included in the combined sample (i.e., cases prosecuted and not prosecuted). Cases were then weighted to reflect the total parental abduction case load of the participating law enforcement agency.

2.3.1 Sampling Plan

The selected law enforcement and prosecutors' offices provided listings of their parental abduction cases for the year 1993. Upon reviewing these lists, project staff refined them, as some cases handled by the agencies were not actually parental abductions. For example, in Hudson County missing persons cases involving victims older than 18 had to be excluded. In addition, assists to other law enforcement agencies located both within and outside the three counties were not included because of the lack of information in case files and the fact that the prosecuting attorney did not have jurisdiction over these cases.

Table 2-2 shows the universe of cases, the number of cases sampled, and the number of cases in the final sample after the duplicates and inappropriate cases were removed for the three sites. In Hudson County, all cases involving parental abduction from both the Sheriff's Office and the Prosecuting Attorney's Office were selected. Our initial inquiry into the number of cases filed by the Hudson County Prosecuting Attorney showed a larger number of filed cases than that shown in the table (n=37). However, when the files were reviewed, it was found that of the original list of 37 filed cases, only 18 were filed as felonies. The remainder were remanded to Municipal Court as misdemeanors. In San Diego County, all the filed cases from the District Attorney's Office were included and a little less than one-half (46%) of the District Attorney's complaint cases where orders to locate were issued were sampled. In Pima County, all 15 of the filed cases found in the County Attorney's Office were included in the sample. Within the Tucson Police Department computer system, police reports are categorized on the basis of the level of investigation assigned to the case. The cases were assigned A, B, and C classifications, where A represented little police involvement other than the initial complaint, B reflected more intensive investigation, and C represented cases in which supplemental police reports were made. All cases with a classification of B (n=44) or C (n=14) were included in the sample. The remaining complaints were then randomly sampled from the A cases.

Because of the way the sampling lists were structured as provided by the agencies, it was not possible to identify duplications prior to data collection. Duplicates between complaints and filed cases were identified at the completion of data collection.

Weights were applied to the sample to ensure that the distribution of cases in the analyses would accurately represent the 1993 caseload for the three law enforcement jurisdictions. The formula used to develop the weights was simple. When all cases from a jurisdiction or office (i.e., the Hudson County Sheriff and prosecuting attorney cases, the San Diego County District Attorney filed cases, and the Pima County Attorney prosecuted cases) were sampled, a weight of one was applied. In other words, each case represented itself. When only a portion of the cases from a jurisdiction or office (i.e., the San Diego District Attorney investigated cases and the TPD reported cases) were sampled, each case was weighted by a ratio of the number of cases investigated or reported divided by the number of cases sampled. Note, in the sample from the Tucson Police Department all cases with high levels of investigation were included in the sample. Sampling and assignment of weights other than one were limited to the cases in which the lowest level of investigation was conducted.

Table 2-2. Sampling Framework

Jurisdiction	Agency	Universe of Cases	Number of Cases Sampled	Number of Cases in the Final Sample ¹
Hudson County, NJ	Sheriff's Office	73	73	62
	Prosecuting	18	18	18
San Diego, CA	District Attorney-Complaints	191	90	88
	District Attorney-Filed Cases	8	8	8
Pima County/Tucson, AZ	Tucson Police Department	180	90	80
	County Attorney	15	14 ²	14

¹These are the cases sampled minus the duplicates from the filed cases and the cases that were determined inappropriate (i.e., not parental abduction cases or assists to other jurisdictions).

²One of the cases filed by the County Attorney was "No Billed" by the Grand Jury. The case records for this case were destroyed and could not be reconstructed for the purposes of data collection.

3. DATA COLLECTION

Data collection was conducted during the summer of 1995. Data collection involved abstracting data from existing files (both manual and computer) in the law enforcement agencies and the prosecutors offices. In an effort to review the flow of both misdemeanor cases and felony parental abduction cases, police complaints/arrests were also tracked through the City Attorney's Office in Tucson. Prior to beginning the data collection, case tracking instruments were developed, pilot tested, and revised. Local data collectors were identified and trained, and then data collection was conducted. Each of these activities is discussed below.

3.1 Development of the Case Tracking Instrument

3.1.1 Design of the Case Tracking Instrument

The research team looked to a variety of sources to develop the case tracking instrument. Developing this instrument was particularly challenging as it had to be adapted to collect relevant, measurable data, utilizing management information systems from law enforcement and prosecutors offices in three different jurisdictions. Researchers sought to develop a uniform, multi-page booklet to be used in all three selected sites to ensure that data collected could be compared among sites.

The goal was to create an instrument that would enable case readers to:

- (1) extract identifying information concerning complainant, children and perpetrator in cases of parental abduction (also called familial abduction, custodial interference, visitation interference);
- (2) abstract details on incidents of parental abduction, providing a full coded description of who abducted whom, when, how, and with what result;
- (3) complete details regarding law enforcement agencies and responses to this and prior incidents of parental abduction (if applicable), including the filing of criminal charges; and

- (4) complete details regarding the custodial/court history of the involved parties, and criminal court action subsequent to the incident of parental abduction.

As the feasibility of adequate data collection was one consideration in selecting Phase III sites, the research team had contacted law enforcement and prosecutors from the six sites visited during Phase II, and requested copies of forms used by their offices in gathering information on all types of criminal cases. Types of forms collected included both:

- (1) law enforcement forms such as: incident/police reports, investigation reports, arrest warrants and reports, missing person reports, NCIC entry forms, log sheets, and victim/witness information forms; and
- (2) prosecutors' forms, including those detailing charges filed, grand jury proceedings, hearings, and final dispositions; sample copies of court documents (e.g. custody orders), as well as blank case file folders documenting case summary information and case numbers.

The San Diego County District Attorney's office had a substantial number of forms, primarily because this agency acts as both the investigating and prosecuting agency in cases of parental abduction. San Diego forms included missing persons reports, investigative reports, "Order to Locate" forms, case log forms and information summary forms. In addition, these cases included copies of custody orders and, in some cases, copies of municipal police department records.

Sites were also asked to send copies of any materials/forms specifically developed for gathering information on cases of parental abduction. Hudson and San Diego counties had materials specifically targeted to parental abduction. In general, these forms collected extensive background information about children and abductors (i.e., descriptive information, education, medical history), as well as custody and court information.

3.1.2 Pilot Testing the Case Tracking Instrument

Pilot testing the instrument in the three identified sites was critical in order to develop a valid and reliable instrument, and to ensure that actual case tracking would not be burdensomely expensive and time-consuming. The research team arranged for site visits to the three jurisdictions to conduct

case tracking using the draft instrument. The team, consisting of 2 to 3 project staff from both the ABA and Westat, spent a few days in each jurisdiction.

Prior to the site visit, the team obtained a count of the case numbers from the year 1993 which had been opened in the law enforcement agencies, and a list of those cases which had been referred to prosecutors' offices. In San Diego, the team got a count of the number of cases opened in the District Attorney's Child Abduction Unit for 1993, and a list of the cases in which charges had been filed by the District Attorney. Agencies provided staff with a sample of six to eight cases for testing of the instrument.

The pilot test allowed project staff to assess whether questions reasonably applied in all three sites. It also enabled staff to thoroughly review the types and typical contents of data records maintained at each site. Data files in the prosecutors' offices contained the most information, both on case and court processing. Although the information varied somewhat across the sites, information typically contained in prosecutors' manual case files included:

- a police or sheriff's report;
- criminal complaint filed;
- probation or presentence report;
- any orders associated with the case (i.e., order to locate, court appointed counsel, civil custody orders);
- witness list or worksheet; and
- victim/witness notifications of case dispositions.

In Hudson and San Diego counties, a form specific to parental abduction had been developed by the sheriff and prosecutors' offices, respectively, to capture extensive information on the complainant and the perpetrator (e.g., prior criminal record, use of court mediation services, last contact between the two). The form also included information on abducted children, such as

language spoken, birthmarks, school address, and medical history. These forms were used extensively in completing the abstracts.

Data collection in each of the law enforcement agencies was based primarily on the information in the arrest/complaint report. These agency files generally contained less information than those in the prosecutors' offices. In some cases, very little information was available, other than that the police responded to the complaint and took a report. In these cases, it was often unclear whether and why a case had been closed. In some cases, officers indicated that they had discussed the case with the prosecutor's office, who advised the police that a complaint case would not be filed. These comments on the police report were the only documentation of this contact with the prosecutor's office, as no formal documentation of the communication existed in the prosecutor's office.

At each site, the team:

- provided agency staff with a copy of the draft instrument;
- completed the draft case tracking booklet reviewing a sample of cases in the prosecutors' offices; and
- completed the draft case tracking booklet using a small sample of cases in the law enforcement agencies.

After completing the draft instrument, the research team met with staff from these offices to ask additional questions on case processing and to obtain feedback on the draft instrument. At the end of the visit, a tentative date was scheduled for actual case tracking.

3.1.3 Final Case Tracking Instrument

The research team used the information gathered during pilot testing to reorganize and edit the case tracking instrument, and to assemble a field manual for case readers. The final instrument, a 26-page "case tracking workbook," consisted of seven sections:

- I. *Person roster*: Identifying information gathered in this section was used for tracking purposes only, and was removed and destroyed once all information had been filled out and verified. This roster included the first and last names of the complainant, perpetrator and child (or children) involved in incidents of parental abduction. As different agencies track in different ways (some by complainant name, some by perpetrator, some by child), this information was extremely important to ensure that no duplication occurred and that all files were captured. In addition, individuals' gender and birthdates (or age) at the time of the incident were entered.
- II. *Roster of case/court ID numbers*: As some of the cases being reviewed had to be "matched" to another agency (e.g. police files "matched" to prosecutor files), this roster was used to extract all law enforcement, court, and other agency case numbers listed in the file. This roster was also used to capture connecting cases within an agency.
- III. *Hearings information*: This section captured information regarding the criminal court process (arraignment, bail hearing, other hearings, trial, and final disposition).
- IV. *Case reporting questions*: This series of questions primarily focused on law enforcement's (or the District Attorney investigator's in San Diego) involvement in the case and included questions about reporting of the incident, what occurred during the incident, and history of prior law enforcement involvement (if any).
- V. *Case characteristics questions*: This section gathered demographic and descriptive information about the perpetrator, complainant and child(ren) in the case, including prior arrest/criminal record, domestic violence, and drug abuse.
- VI. *Case processing questions*: This section continued the documentation of both law enforcement agency and prosecutor's involvement in the case, documenting whether warrants were issued, if perpetrators and/or children were located or recovered, and how the case was closed (if applicable). This section also tracked charges filed and convictions, as well as sentencing outcomes. A series of questions was included to track the communication between the investigating agency and other agencies, offices and organizations in the locality, state, country and other country.
- VII. *Custodial civil court history*: In order to capture the civil history of the case, this section gathered information about custodial status at the time of the incident, past incidents of parental abduction, and the relationship between the perpetrator and complainant.

3.2 Training Data Collectors

Local data collectors were hired in each of the sites to review and abstract data from selected agencies' records. Training was conducted over a two-day period in each of the sites. A training manual for case readers, specific to each site, was developed. It included copies of sample files that could be found in each site and also contained:

- site specific instructions for completing the items within the abstract. For example, data collectors in San Diego were instructed how to answer questions about the referrals to the District Attorney since all cases were investigated by the District Attorney's Office rather than by local law enforcement agencies;
- names of the prosecutors in each site, as well as their titles, to help data collectors respond correctly to questions on referrals;
- summaries of custodial and visitation interference statutes for each state visited;
- where information might commonly be found for items. For example, a description of the incident can be found in the complaint/arrest report or a presentence report. Dispositions can be found in a Victim/Witness notification letter or a disposition work sheet. Filed charges can be found on an Information Summary.

Data collectors were provided with training materials in advance of training sessions. The sessions were conducted in the offices in which the data would be collected. Every item in the abstract was reviewed with case readers and instruction was provided on how best to locate data. Data collectors were expected to review all of the materials in the files in order to answer as many items in the abstract as possible. Project staff worked with the data collectors for two days, going over as many cases as possible, so that data questions could be addressed while staff were on site. Data collectors were provided with an 800 phone number to access project staff to call if questions arose after the training. Each of the data collectors was required to sign a confidentiality statement that prohibited them from discussing the cases they reviewed.

3.3 Data Collection

Data collection took approximately one month to complete in each site. The level of difficulty, as well as the number of files that had to be reviewed, varied across sites. In San Diego County, data collectors were required to learn only one filing system since all cases were located in the District Attorney's Office. In Hudson County, data collectors retrieved information from both the Prosecuting Attorney's and the Sheriff's Office. However, both offices were located in the same building. In Tucson, project staff did all data collection for the cases filed by the County Attorney. Local data collectors were responsible for collecting data from the Tucson Police Department's files and then tracking those cases into the City Attorney's Office where office staff utilized the court clerk's computer system to obtain case specific information.

Data stored on computer included case disposition, hearing held, and whether the complaint involved a citation (failure to obey a judge's order) or another form of complaint. The computer system allowed cases to be accessed by inputting the Tucson Police Department's case number or name and date of birth of the perpetrator. There were nine matches found in the city attorney's office for filed cases.

4. CASE FLOW ANALYSIS

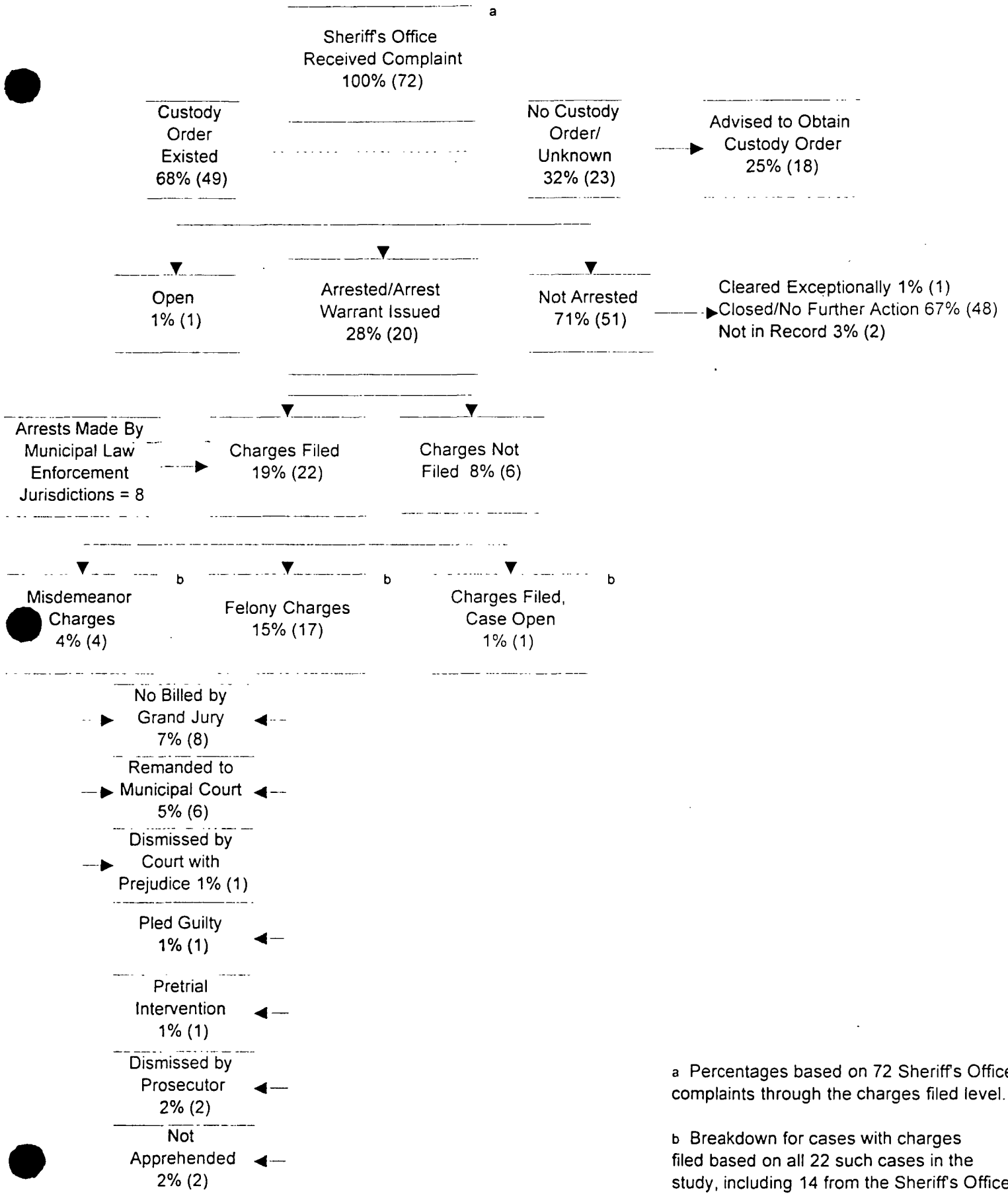
Analysis of the parental abduction data involved examining how reports of parental abduction flow through the criminal justice system. Case movement through the criminal justice system was tracked by using certain responses on the data collection form to determine the path each case followed. Within each site, the custody order status, arrests or arrest warrants, filing of charges in the Prosecutor's Office and case outcomes in criminal court are described for each site's complaints.

This analysis used the weighted sample of 495 complaints (see chapter 2, The Sampling Plan). In order to accurately present the movement of these cases, the percentages used to calculate case progress differ slightly in each site. In Hudson County, cases were drawn from both the Sheriff's Office and the Prosecuting Attorney's Office. Eight of the cases sampled from the Prosecuting Attorneys' Office were referred directly to that Office from municipal law enforcement agencies. These cases enter the flow chart at the point when charges were filed since they did not move through the Sheriff's Office. In San Diego County, all parental abduction cases are handled by a special investigative unit in the District Attorney's Office. As a result, sampled cases are based on the total number of cases (complaints and filed cases) found in that office. In Pima County, cases were drawn from the Tucson Police Department and the County Attorney's Office. Three of the filed cases sampled from the County Attorney's Office were referred from the Pima County Sheriff's Office. As with the Hudson County cases, these cases enter the flow chart at the point when charges were filed.

4.1 Hudson County, New Jersey

The movement of cases in Hudson County, New Jersey, is presented in Chart 4-1 (see next page). The boxes in the top four levels of the chart reflect the movement of cases along the paths and branches as percentages of the 72 complaints in the Hudson County Sheriff's Office. Beginning

Chart 4-1. Hudson County, New Jersey



a Percentages based on 72 Sheriff's Office complaints through the charges filed level.

b Breakdown for cases with charges filed based on all 22 such cases in the study, including 14 from the Sheriff's Office and 8 that came from other municipal law enforcement jurisdictions.

with the breakdown into types of filed charges, the percentages are based on all 22 such cases in the study, including 14 from the Sheriff's Office and eight that came from other municipal law enforcement agencies.

4.1.1 Custody Order Status

In more than two-thirds (68%) of the complaints, custody orders had been issued by a civil court. In one-quarter of complaints, the complainant was advised by the Sheriff's Office to obtain a custody order after the incident report had been taken.

4.1.2 Arrested/Arrest Warrant Issued

Only a minority of the complaints resulted in arrests or the issuance of arrest warrants. In many cases, the police response (a visit to the perpetrator or even just a phone call) was sufficient to restore custody or remove the visitation interference. In other cases, since there was no custody order to enforce, there was no action to be taken on the part of law enforcement officers, other than to recommend the complainant obtain a custody order.

More than one-quarter (28%) of the complaints resulted in arrests or the issuance of arrest warrants. The bulk of these (21 percent of the complaints) represented cases for which arrests were made. The specific arrest charges for these 15 cases included felony custodial interference (13 cases), "other" (unspecified) charges (one case), and both felony custodial interference and "other" charges (one case). The other seven percent of complaints in the arrest/arrest warrant category had outstanding arrest warrants, but an arrest had not been made at the time data collection activities were completed. These five cases are briefly described below:

- The complainant (the child's mother) sought custody from the child's father after returning to the jurisdiction after a five year absence. A warrant was issued mandating the father's appearance in court. After the father and complainant appeared in court, the judge continued the custody assignment with the father, and the case was closed without an arrest.

- The mother and father had each filed for custody in the court. The father fled to California with the child. When the father failed to appear for a custody hearing, a domestic warrant was issued. After the mother and father reconciled, the charges were dropped, and the case was closed without an arrest.
- The perpetrator fled to Puerto Rico with the child. An arrest warrant was issued for the perpetrator. The complainant retrieved the child from Puerto Rico and then wanted to drop the charges.
- The perpetrator fled to Florida with her children. The complainant filed a missing persons report and warrants were issued to recover the perpetrator and children. The perpetrator then returned to a battered woman's shelter in New Jersey, but was not apprehended. She was protected by law from the warrant because she fled from domestic violence.
- The father had visitation rights with the child, but the mother had legal custody. The mother took the child to England and did not return. The case remained open in the Sheriff's Office after a warrant was issued pending apprehension of the perpetrator.

One case in Hudson County (representing one percent of the complaints) was still active without an arrest at the time of data retrieval. In this case, the perpetrator had taken two children from the custodial mother who then filed a domestic violence complaint. Law enforcement was notified about the complaint on May 26, 1993 and the children were located and returned on that day. The Sheriff's Office still had an open warrant to arrest the perpetrator on his return to Hudson County when data collection activities ended in August 1995.

The remaining 71 percent of complaints in Hudson County did not result in arrests. The majority of these non-arrest cases (representing 57 percent of the complaints) had custody orders on file in civil court at the time of the incident. In addition, most of the non-arrest cases (representing 67 percent of the complaints) were classified as closed with no further action by the Sheriff's Office. One case was cleared exceptionally, and two cases did not have the case classification in the record.

Multiple reasons for case closure could be provided for each of the cases that did not result in arrests and that had been classified as closed with no further action by the Sheriff's Office. These reasons included: child voluntarily returned after agency contact (18 percent of the complaints), "other" unspecified reasons (18%), case handled in civil court (10%), child voluntarily returned

without agency contact (7%), lack of custody order (3%), lack of evidence (3%), complainant unwilling to press charges (3%), lack of visitation order (1%), out-of-state order unenforceable (1%), pending further court proceedings (1%), reconciliation (1%) and pending resolution of jurisdictional problems (1%).

4.1.3 Charges Filed

Nineteen percent of the complaint cases had criminal charges filed by the Prosecuting Attorney's Office after the perpetrator's arrest. Charges were not filed in eight percent of the complaint cases. In three of these cases, a warrant was issued but no arrest was made and charges were never filed. In the other three cases, the perpetrator was arrested, but no charges were filed. The case details for the three arrest cases that did not have filed charges are described below.

- The perpetrator took the child to Puerto Rico. Once the mother filed a complaint, the perpetrator was arrested. After the perpetrator voluntarily returned the child, the mother wanted to drop the complaint. As a result, the case was administratively dismissed by the Sheriff's Office before criminal charges were filed.
- The father abducted the children. After local authorities found the perpetrator and children in Virginia, the perpetrator was arrested. The perpetrator was out on bail with a governor's warrant to appear in court in New Jersey and with a hearing date in Virginia.
- The perpetrator was arrested for weapons possession and unlawful purpose. The municipal law enforcement agency investigating the case received information that the perpetrator had two children abducted from parental custody in Kansas. The Sheriff's Office was called in on the case and executed the Kansas warrant. Since the Kansas officials never came, the case was closed without filing parental abduction charges against the perpetrator in the Prosecuting Attorney's Office.

It is possible that some of these arrest cases had misdemeanor charges filed by municipal courts, however, cases were not traced through any of the misdemeanor courts in Hudson County. If information on misdemeanor filings was available from the Sheriff's Office then that information was captured from that level.

As the chart notes, beginning with the breakdown into types of charges filed, the percentages are based on all 22 such cases in the study. Felony charges were filed in 15 percent of complaints and misdemeanor charges in four percent. One case remained open in the Prosecuting Attorney's Office after charges were filed at the time of data retrieval in August of 1995. This was the case described earlier where an arrest warrant had been issued in February of 1993 after the mother abducted the child to England.

The specific filed charges were extracted from case records in the Prosecuting Attorney's Office during data collection for the 22 cases with criminal complaints. Felony custodial interference was the filed charge in 14 of the 22 cases. Two cases reported both felony custodial interference and "other" unspecified filed charges, and one additional case had these two charges and a charge of threats or intimidation. Child detention was the only criminal offense charged in one case. Information on the specific charges was not available for three cases and as mentioned above one case remained open in the Prosecutor's Office and did not list the specific charges.

4.1.4 Case Outcome

Once in the Prosecuting Attorney's Office, seven percent of the complaints were no-billed by the grand jury. In other words, the grand jury felt that the case was not strong enough to warrant prosecution. Five percent of the cases were remanded to municipal court, two percent were dismissed by the prosecutor, and two percent did not have an outcome in the case files because the perpetrator had not been apprehended after the charges were filed. Perpetrators pled guilty to the filed charges in one percent of the complaints. Pretrial intervention was the criminal court outcome in one case, as was dismissal by the court with prejudice.

The one convicted felony offender in Hudson County pled guilty to felony custodial interference and one "other" (unspecified) charge. This perpetrator received a 30-month probation sentence.

4.2 San Diego County, California

The District Attorney's Office in San Diego County received 195 complaints of custodial/visitation interference or child abduction in which orders to locate were issued. Any custodial interference cases received by the Sheriff's Department or municipal law enforcement agencies in San Diego County were referred to the District Attorney's Office's Child Abduction Unit. The movement of these cases through the criminal justice system is depicted in Chart 4-2 (see next page). The percentages of cases moving along all paths presented in this chart are reported as a percentage of all 195 complaints received by the District Attorney's Office.

4.2.1 Custody Order Status

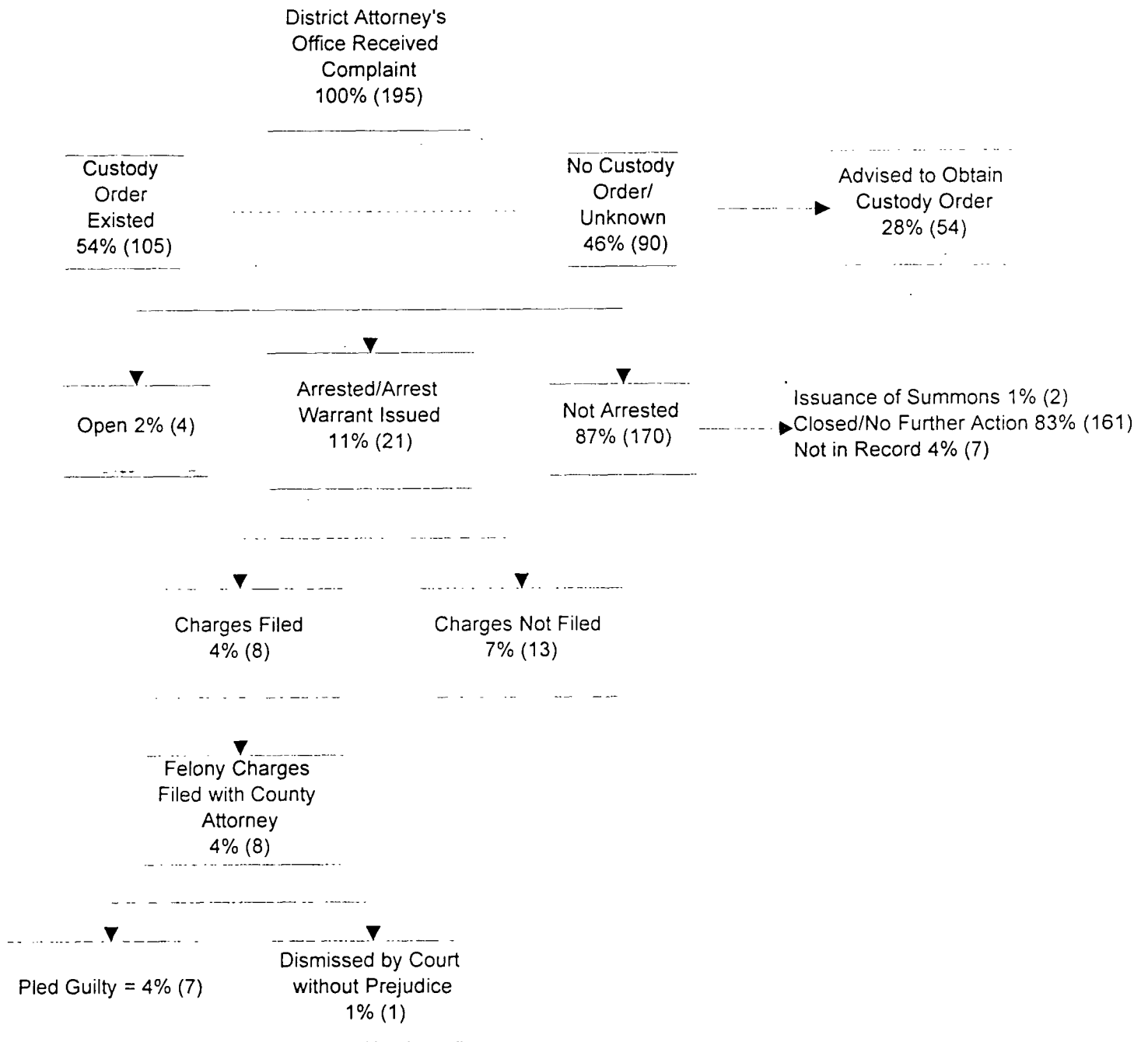
More than half (54%) of the complaints in San Diego County had custody orders at the time of the incident. Complainants without custody orders were advised to obtain them in 28 percent of cases. The remaining 18 percent of cases did not have custody orders and the complainant was not advised to obtain a custody order by the District Attorney's Office at the time of the incident.

4.2.2 Arrested/Arrest Warrant Issued

Arrests were made (n=7) or warrants were issued (n=14) in 11 percent of complaints in San Diego County (i.e., 21 cases all together). For the seven arrest cases, the perpetrators were arrested for:

- Custodial Interference (one perpetrator)
- Custodial Interference and Illegal Entry into the U.S. (one perpetrator)
- Parental Child Stealing (two perpetrators)
- Child Detention (two perpetrators)
- Child Abuse (one perpetrator)

**Chart 4-2. San Diego County,
California**



In the other 14 complaints in the arrest/arrest warrant category (where arrest warrants were issued), arrests were not made primarily because the perpetrators could not be located after leaving the jurisdiction. In one case, where CPS was the complainant, law enforcement did not arrest the perpetrator after recovering the child pending a home evaluation by CPS to determine custody. In another case, the perpetrator voluntarily returned the children because of ongoing civil custody proceedings, and because an arrest warrant had been issued.

Two percent of the complaints were active in the District Attorney's Office at the time of data retrieval. In these cases, the perpetrators had fled to other countries with the children and the cases were either still being processed through the Hague application or pending retrieval of the children.

Perpetrators were not arrested in the remaining 87 percent of complaints. Custody orders were on file in the family court for more than one-half of these. In addition, most of the non-arrest cases (83 percent of the complaints) were closed with no further action by the investigating agency. Only two non-arrest cases were closed by the District Attorney's Office with an issuance of a summons for the perpetrator. For the remaining seven non-arrest cases, no information on the case status was found in the case files.

The reasons the District Attorney's Office closed cases without further action were available from case records for the non-arrest complaints in San Diego County. The most common reason for case closure by the District Attorney's Office was that the case was being handled in the family court (45 percent of the complaints). In ten percent of the complaints, the child was voluntarily returned after agency contact. "Other" unspecified reasons were cited in another ten percent of the complaints. The case was pending further court proceedings in seven percent of the complaints, and the out-of-state custody order was unenforceable in six percent. Several other reasons were also cited for closing cases, each in less than five percent of the complaints. These reasons included: case opened only to serve documents, perpetrator disappeared, complainant unwilling to press charges, perpetrator served with an order to show cause hearing, complainant and perpetrator

planning to reconcile in another state, complainant resumed visitation with child, complainant never followed-up with the investigating agency, and CPS in another state would supervise custody.

4.2.3 Criminal Charges Filed

In four percent of the complaints, criminal charges were filed after an arrest had been made or an arrest warrant issued. The specific charges filed for each of the eight perpetrators in these cases are described below.³

- Child Detention (three perpetrators)
- Child Detention and Parental Child Stealing (one perpetrator)
- Child Detention and Child Detention Without a Court Order (one perpetrator)
- Child Abuse (one perpetrator)
- Child Detention Without a Court Order (one perpetrator)
- "Other" Unspecified Charges (one perpetrator)

The other arrest cases (seven percent of the complaints) did not have charges filed by the District Attorney's Office. These cases were among those described earlier in which only arrest warrants had been issued with no actual arrests made.

4.2.4 Case Outcome

Perpetrators pled guilty in almost all of the felony cases filed by the District Attorney's Office -- these seven cases represent four percent of the original complaints. Three of the seven perpetrators pled guilty to child detention with right to custody. Two of them pled guilty

³Although prosecutors in California have the discretion to file either felony or misdemeanor child abduction charges, in San Diego County, data collection revealed that only felony child abduction charges are initially filed. With the exception of child abuse and "other" unspecified charges, specific charges correspond to CA Penal Code §§ 277, 278 and 278.5.

to charges of felony custodial interference. Child detention without a court order and child abduction were each the conviction charge in one San Diego County case. The other filed criminal complaint was dismissed by the court without prejudice.

Courts can impose a variety of sentences on the convicted offenders, with conditions, such as incarceration plus probation, court costs, and restitution. Sentencing orders often include specific provisions, such as attend parenting classes, or requirements that offenders do not leave the country without the court's permission. In San Diego County, four of the seven convicted perpetrators were incarcerated (for periods ranging from 44 to 184 days) and placed on probation (for periods ranging from 18 months to five years). The court also imposed fines (\$200 to \$4,327), restitution (\$200 to \$9,396) and other specific instruction as part of the sentence in these cases. Three other cases with convictions resulted in offenders being placed on probation without having to serve time in jail or prison. The probation periods for these perpetrators ranged from one to three years.

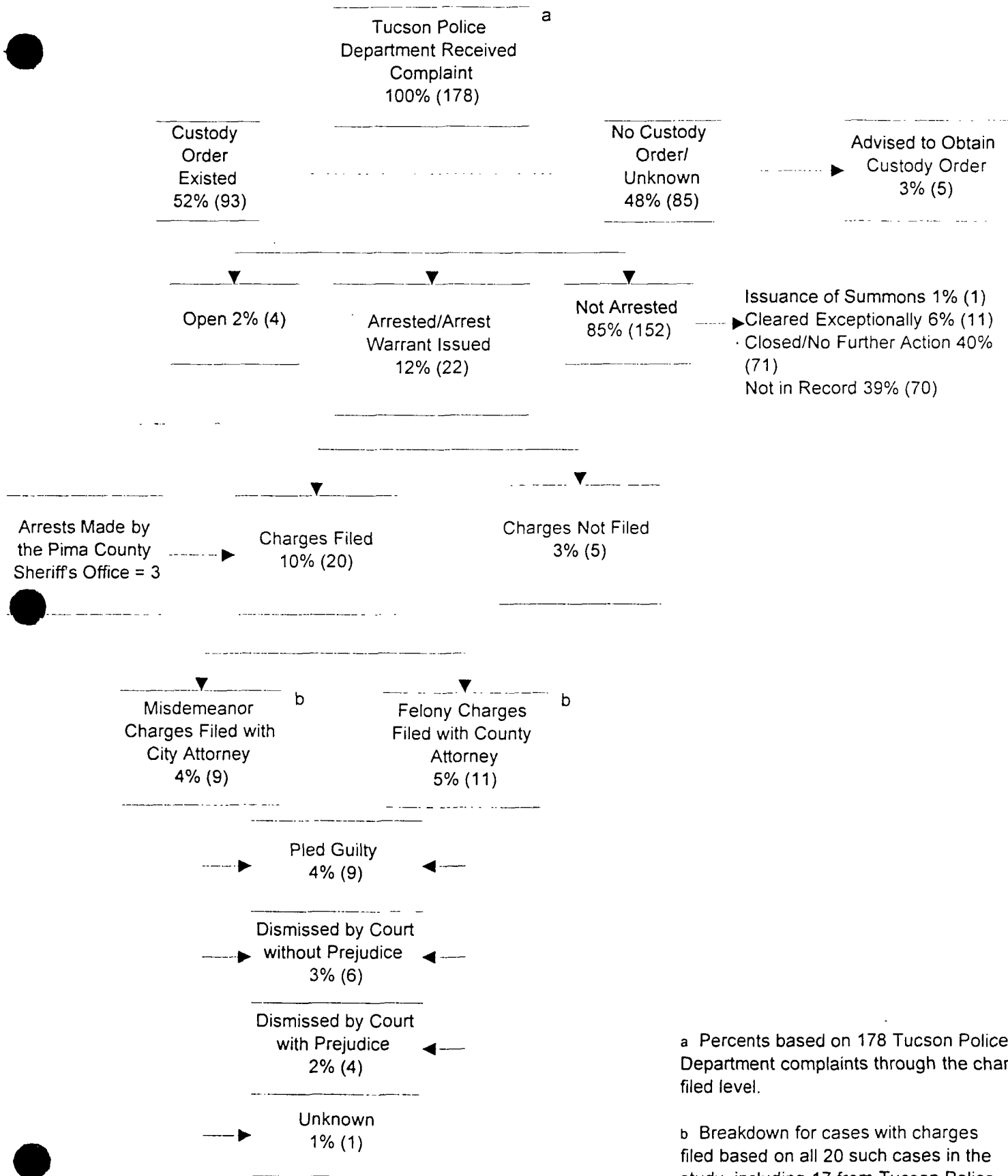
4.3 Pima County, Arizona

The movement of complaint cases through the criminal justice system in Pima County, Arizona is presented in Chart 4-3 (see next page). The Tucson Police Department is the major law enforcement agency in Pima County. The boxes in the first four levels of the chart report the movement of cases along the paths and branches as percentages of the 180 complaints received by the Tucson Police Department. As the chart notes, three additional cases were filed with the Pima County Sheriff's Office and enter the flow chart after charges were filed by the County Attorney's Office.

4.3.1 Custody Order Status

More than one-half (52%) of the complaints had custody orders on file in civil court. In only three percent of cases, the record indicated that the complainant was advised to obtain a custody order by the Tucson Police Department.

Chart 4-3. Pima County, Arizona



a Percents based on 178 Tucson Police Department complaints through the charges filed level.

b Breakdown for cases with charges filed based on all 20 such cases in the study, including 17 from Tucson Police Department and 3 that came from the Sheriff's Office.

4.3.2 Arrested/Arrest Warrant Issued

Twelve percent of the complaints (n=22) either resulted in arrests or the issuance of arrest warrants by the Tucson Police Department. Most of these (n=17) resulted in the perpetrator's arrest for the charges listed below.

- Felony Custodial Interference (seven perpetrators)
- Felony Custodial Interference and Domestic Violence (three perpetrators)
- Felony Custodial Interference and Narcotics Charges (one perpetrator)
- Felony Custodial Interference, Aggravated Assault and Resisting Arrest (one perpetrator)
- Misdemeanor Custodial Interference (one perpetrator)
- Threats/Intimidation (one perpetrator)
- Unlawfully Giving Liquor to a Minor (one perpetrator)
- Arrest Charges Not in Case Record (two perpetrators)

The remaining five cases in the arrest/arrest warrant category had arrest warrants issued but the arrests were not actually made. In one of these, the children were returned from another jurisdiction and the County Attorney's Office closed the case. In the four others, the perpetrator fled the jurisdiction with the child/children, and so eluded arrest.

Two percent of the complaints remained active in law enforcement without either arrest warrants or arrests being made by the Tucson Police Department at the time data collection activities were completed. These cases were open in law enforcement because the perpetrator had taken the child out of the jurisdiction and the police department had not closed the case, issued a warrant, or made an arrest.

The majority (85%) of complaints in Pima County did not result in either the issuance of arrest warrants or actual arrests. Fifty-five percent of the non-arrest cases (representing 46 percent of the complaints) had custody orders in place at the time of the incident. The other non-arrest cases (representing 38 percent of the complaints) did not have custody orders.

The case status of the non-arrest cases was also collected from records in the Tucson Police Department. Most of the non-arrest cases were closed with no further action or did not have case status information in the record. A few cases were cleared exceptionally and a summons for the perpetrator was issued in one non-arrest complaint case. The reasons cases were closed by the Tucson Police Department included: complainant was unwilling to press charges (15 percent of complaints), child voluntarily returned to complainant after agency contact (6%), child voluntarily returned to complainant without agency contact (4%), case was handled in civil court (4%), lack of visitation order (3%), lack of custody order (2%), lack of evidence (2%), prosecutor refused to prosecute (2%), and “other” unspecified reasons (2%).

4.3.3 Charges Filed

Ten percent of the complaint cases had charges filed. Three percent of the complaints did not have charges filed. Three of these were among the cases that only had arrest warrants issued. The other two cases had arrests made by the Tucson Police Department but charges were not filed by either the County or City Attorney’s Office. In the first of these, the child was in CPS custody, but placed with the perpetrator. The perpetrator refused to disclose the child’s location. During the investigation, the perpetrator fled the police department and charges were never filed. In the other arrest case, the perpetrator was arrested, all of the involved children were taken to the hospital, and CPS was notified. However, charges were not filed against the perpetrator.

As the chart notes, the breakdown for cases with charges filed is based on all such cases in the study, including 17 cases from the Tucson Police Department, and three that came from the Sheriff’s Office. Five percent of the total were felony complaints filed by the County Attorney’s Office, and four percent were misdemeanor complaints filed by the City Attorney’s Office. Among

those cases with filed charges, the data extracted from records revealed the following specific charges:

- Felony Custodial Interference (ten perpetrators)
- Misdemeanor Custodial Interference (four perpetrators)
- Felony Custodial Interference and Child Abuse (one perpetrator)
- Felony Custodial Interference and Federal Kidnapping (one perpetrator)
- Threats/Intimidation (one perpetrator)
- Aggravated Assault and Resisting Arrest (one perpetrator)
- Kidnapping and Child Abuse (one perpetrator)
- Missing Filed Charges (one perpetrator)

4.3.4 Case Outcome

Four percent of the perpetrators in Pima County pled guilty to the charges filed against them. Three percent of the cases had charges filed but were then dismissed by the court without prejudice. Another two percent were dismissed by the court with prejudice. The case outcome was unknown for one case. In this misdemeanor case, a complaint and summons were authorized and signed after the case was reviewed by the City Attorney's Office. The perpetrator was charged with one count of custodial interference, but there was no further information about the case disposition in the file.

For those few cases where the perpetrator pled guilty (n=9), the conviction offenses were also collected from records in the County Attorney's Office. Of the nine Pima County cases with guilty perpetrators, two of them pled guilty to charges of felony custodial interference. One additional perpetrator was convicted of both felony custodial interference and solicitation to commit custodial interference. Perpetrators pled guilty to misdemeanor custodial interference, federal kidnapping, child abuse, threats or intimidation, and resisting arrest charges each in one case. The conviction charges were missing from the case record in one case.

Court sentences included both incarceration (of unknown duration) and probation (for periods ranging from 6 months to three years) for five of the convicted perpetrators. One of these perpetrators was sentenced to the shock incarceration program for 45 days and then to probation for three years. Jail terms (of unknown duration) without any probation period were the sentences in two cases. One perpetrator was sentenced to 3 years of probation. The sentence was unknown for one case.

5. SAMPLE CHARACTERISTICS

This chapter is divided into three sections. The first section describes the demographic characteristics of the perpetrators, complainants and children. In the second section, the case characteristics are described. The third part reports on case outcomes. The data in each category are presented by sampling site based on weighted totals of 80 cases in Hudson County, 195 cases in San Diego County and 181 cases in Pima County.⁴

Frequently, the information needed to complete data items in the abstract was not found in the case records. This was a recurring problem in all three counties. The percentages of cases in which data were not found are reported in Tables 5-1 to 5-34. Percentages reported in the tables are based on the weighted totals of all cases sampled, including those that were missing information.

5.1 Demographic Characteristics

Demographic characteristics are presented in this section for perpetrators, complainants and children. This information was taken from both the person roster and the data collection form.

5.1.1 Who are the Perpetrators?

This section begins by describing the perpetrator's relationship to the child, age, occupation/income source, race/ethnicity, sex, citizenship status, relationship to the complainant, and living situation with the complainant. This section also presents information from law enforcement records on the prior arrest record of the perpetrator, prior custodial interference involving the perpetrator and complainant and any history of perpetrator problems.

⁴These are the totals derived from applying weights to the final sample of cases. They do not exactly correspond to the original sampling universe because the components of that universe (law enforcement complaints and cases filed in criminal court) were duplicated. The duplicates were removed for this analysis.

Perpetrator's Relationship to the Child (Table 5-1). While the majority of perpetrators in all three counties were parents of the child, the relative distribution between mothers and fathers differed by county. More than one-half (60%) of the complaints in Pima County had perpetrators who were fathers of the abducted child/children. Just under one-half (49%) of Hudson County cases had fathers as perpetrators. In contrast, San Diego County perpetrators were more often mothers (71%) than fathers (27%). While the largest number of perpetrators were parents (mother or father), reports were made against other family members, most notably grandparents in Pima County who accounted for 11 percent of the perpetrators.

Table 5-1. Perpetrator Relationship to Child

Relationship	Hudson County	San Diego County	Pima County
Mother	43%	71%	19%
Father	49%	27%	60%
Maternal Grandparent	4%	*	5%
Paternal Grandparent	*	*	6%
Aunt/Uncle	3%	1%	5%
Other Relative		1%	*
Stranger	*	*	1%
Friend of Mother/Father	1%	*	2%
Not in Record	1%	*	2%

Perpetrator's Age (Table 5-2). Perpetrators in all three counties were concentrated in the 26 to 35 year old age category. Almost one-half (48%) of the complaint cases in Pima County, nearly one-third (32%) in San Diego County, and just under one-quarter (23%) in Hudson County had perpetrators in this age range. Relatively few cases had juvenile perpetrators (18 years or younger) or perpetrators over 46 years old. Age information was missing in a large percentage of cases in Hudson (40%) and San Diego (35%) Counties.

Table 5-2. Age of Perpetrator

Age	Hudson County	San Diego County	Pima County
<=18	3%	*	*
19 to 25	13%	15%	12%
26 to 35	23%	32%	48%
36 to 45	21%	17%	18%
46 to 55	1%	2%	4%
>=56	*	*	3%
Not in Record	40%	35%	14%

Perpetrator's Occupation/Income Source. The majority of cases in both Pima (82%) and Hudson (68%) Counties were missing any information on the perpetrator's occupation or income source. While 40 percent of the cases in San Diego County were missing information on the perpetrator's occupation/income source, in 39 percent of the cases the perpetrator was the recipient of welfare benefits. An additional one-fifth of San Diego County cases had perpetrators who were employed at the time of the incident.

Perpetrator's Race/Ethnicity (Table 5-3). Perpetrators were white in the largest percentage (46%) of cases in San Diego County. Another one-fifth of perpetrators were Hispanic and 17 percent were black/African-American. In Pima County, more perpetrators were white (58%) and Hispanic (29%) than in San Diego County, while fewer cases had black/African-American (4%) perpetrators. The largest percentage (26%) of cases in Hudson County did not have information on the perpetrator's racial/ethnic background in the case files. The cases that did record this data reported more Hispanic (25%) perpetrators than either white (23%) or black/African-American (21%) perpetrators.

Table 5-3. Race/Ethnicity of Perpetrator

Race/Ethnicity	Hudson County	San Diego County	Pima County
Asian or Pacific Islander	3%	1%	1%
Black/African American	21%	17%	4%
Hispanic	25%	20%	29%
American Indian/Alaskan Native	*	*	1%
White	23%	46%	58%
Other ^a	3%	7%	*
Not in Record	26%	10%	8%

^aIncludes multi-racial.

Perpetrator's Sex (Table 5-4). As expected, the differences between counties in the perpetrator's gender parallels those found when analyzing at the perpetrator's relationship to the child (see Table 5-1). About one-half (51%) of the perpetrators in Hudson County were male, compared to somewhat more (66%) in Pima County, and to substantially fewer (27%) in San Diego County.

Table 5-4. Sex of Perpetrator

Sex	Hudson County	San Diego County	Pima County
Male	51%	27%	66%
Female	44%	73%	32%
Not in Record	5%	*	2%

Perpetrator's Citizenship Status. Records on citizenship status were not found very often in Hudson and Pima Counties, where this information was missing in 79 and 94 percent of case files, respectively. In San Diego County, more information on the citizenship status of complainants and perpetrators was available. The majority (67%) of these perpetrators were United States citizens, with 11 percent of cases reporting aliens or citizens of other countries.

Perpetrator's Relationship and Living Situation with Complainant (Tables 5-5 and 5-6).

Parental abductions occur within a variety of relationships and living situations. While the majority of complaints in all three sites did in fact involve parents abducting children, other family members or friends were sometimes involved. Consequently, a variety of relationships and living situations between the perpetrator and the complainant were observed, as seen in Tables 5-5 and 5-6.

Divorce was the most common relationship between perpetrator and complainants in all three sites. Pima County had the highest percentage of such cases (42%) in which the parties were divorced. In San Diego County, relationships varied more; 28 percent of perpetrators and complainants were divorced; 27 percent were never married to each other; 21 percent were married to each other; and 12 percent were separated from each other. In Hudson County, the relationship between the perpetrators and complainants was not in the case record in the largest percentage (28%) of cases. Otherwise, 21 percent of perpetrators and complainants were divorced from each other; 19 percent were separated from each other; 13 percent were never married to each other; and 12 percent were related.

Table 5-5. Relationship between Perpetrator and Complainant

Relationship	Hudson County	San Diego County	Pima County
Married to Each Other	4%	21%	2%
Divorced from Each Other	21%	28%	42%
Separated from Each Other	19%	12%	1%
Never Married to Each Other	13%	27%	17%
Grandparent	6%	1%	9%
Aunt/Uncle	1%	*	4%
Friend	1%	1%	2%
Other, Related	5%	3%	3%
Other, Not Related	3%	1%	5%
Not in Record/Not Applicable	28%	6%	15%

In all three counties, perpetrators and complainants lived apart in the majority of cases. This finding makes sense since most of the perpetrators were divorced, separated or never married to the complainants. Only in San Diego County (where 21 percent of cases involved married perpetrators and complainants) did a large portion (24%) of cases have perpetrators and complainants who lived together.

Table 5-6. Living Situation between Perpetrator and Complainant

Living Together	Hudson County	San Diego County	Pima County
Yes	4%	24%	5%
No	86%	69%	89%
Not in Record/Not Applicable	10%	7%	6%

Perpetrator’s Prior Arrest Record (Table 5-7). San Diego County had records of criminal histories for 27 percent of the perpetrators, while one-fifth of them had no prior record. More than one-half (53%) of San Diego County cases did not have any information on the perpetrator’s arrest record. Information on the perpetrator’s arrest record was not available for the majority (81%) of cases in Hudson County. Nearly one-half (46%) of the cases in Pima County did not have any arrest information on the perpetrator in case files.

Table 5-7. Prior Arrest Record of Perpetrator

Prior Arrest Record	Hudson County	San Diego County	Pima County
Yes, Had Record ^a	6%	27%	49%
No, Did Not have Record	13%	20%	5%
Not in Record	81%	53%	46%

^a For one percent of the cases with criminal histories, the record referred to a prior criminal record, but no information was provided on the specific crimes.

As the table above shows, prior arrest records were found more often for Pima County perpetrators. In part this is a function of the search techniques involved. Project staff in the City Attorney’s office searched all records for prior offenses of the sampled perpetrators. In the other jurisdictions, knowledge of prior offenses was limited to what was indicated in the police file. No

separate search was conducted. Traffic violations, drug or alcohol offenses and domestic violence were the most frequent prior arrests followed by criminal mischief, property crimes, violent crimes, violation of probation, and child abuse. In San Diego County, drug or alcohol offenses and property crimes were the most common prior offenses. Perpetrators had also been arrested for domestic violence, child abuse, violent crime, criminal mischief, resisting arrest, violation of probation, and traffic violations. The few perpetrators in Hudson County with prior arrest records had offense charges ranging from domestic violence, sexual assault, and violent crime to property crimes, drug or alcohol offenses, criminal mischief, and violation of probation.

Prior Custodial Interference between the Perpetrator and Complainant (Table 5-8). Files in San Diego County showed that cases had prior custodial interference incidents or complaints between the perpetrator and complainant in 41 percent of the time. Eighteen percent of the total had law enforcement involvement while 14 percent did not. Information on law enforcement involvement was not indicated in case records for the remaining nine percent of the total. Hudson County had prior custodial interference incidents between the perpetrator and complainant for more than one-quarter (a total of 26%) of the cases. Law enforcement was involved in only ten percent of these. Only seven percent of Pima County cases had prior custodial interference between the perpetrator and complainant.

Table 5-8. Prior Custodial Interference between Perpetrator and Complainant

Prior Custodial Interference	Hudson County	San Diego County	Pima County
Yes, LEA Involved	10%	18%	2%
Yes, LEA Not Involved	1%	14%	1%
Yes, LEA Involvement Not Indicated	15%	9%	4%
No	30%	29%	49%
No, But Other LEA Incidents	6%	11%	2%
Not in Record	38%	19%	42%

Perpetrator Problems (Table 5-9 and 5-10). The amount of available information about perpetrator problems varied widely by county. Given the greater availability of data, San Diego County reported the highest percentage of perpetrator problems. In San Diego County, more than

one-third of cases had each of the following problems: alcohol/drug abuse (40%), domestic violence (39%), mental illness (34%) and child abuse (34%). Fewer cases had information about perpetrator problems in Hudson County, with 21 percent of cases reporting a history of domestic violence, 13 percent alcohol/drug abuse, seven percent child abuse, and five percent mental illness. Likewise, Pima County cases did not have many perpetrator problems in case records. Only 14 percent of cases had any alcohol/drug abuse, nine percent had child abuse, six percent had domestic violence, and five percent had mental illness. The records for the majority of cases in Hudson County (71%) and Pima County (75%) did not document any problems.

Table 5-9. Perpetrator Problems^a

Perpetrator Problems	Hudson County	San Diego County	Pima County
History of Domestic Violence	21%	39%	6%
History of Child Abuse (CPS Involvement Indicated)	4%	14%	6%
History of Child Abuse (CPS Involvement Not Indicated)	3%	20%	3%
History of Alcohol or Drug Abuse	13%	40%	14%
History of Mental Illness	5%	34%	5%
No History of Problems/Not in Record	71%	23%	75%

^a Percentages may sum to more than 100 percent since each case could have more than one perpetrator problem.

One important question about these perpetrator problems is the source of the information. For child abuse, in particular, allegations made by the complainant, friends, neighbors, Child Protective Services (CPS), police, or counselor/caseworker were distinguished from recorded offenses (as in information found in prior arrest records or prosecutors' Office files). In several cases, child abuse was alleged by the complainant, but was unsubstantiated by an official investigation (criminal justice or child protective services). Police officers in Pima County commented that complainants use allegations of child abuse in an attempt to effect a stronger response from law enforcement.

Official agencies -- CPS, the Sheriff's Office or Police Department, District Attorney's Office -- were the source of the child abuse allegations in only a few cases in this study. For the five Hudson County cases with prior child abuse, the sources of information were the child (n=2) and the complainant (n=1) with source information not available in two cases. In the majority (72%) of San Diego County cases with prior child abuse, the source was listed as the complainant. Social services (13%), the District Attorney's Office (7%), friend or neighbor (3%) and prior offenses (3%) were each cited less often as the source of information on the perpetrator's history of child abuse. In Pima County, the largest percentage (37%) of cases did not have information about the source in the case files. Complainants were the source in one-quarter of cases and social services in 13 percent. Friend/neighbor, police, child, and counselor/caseworker were each the source in one case. As these numbers indicate, reports of prior child abuse more often came from allegations from one of the parties to the case than from confirmed offenses.

Table 5-10. Source of Child Abuse Information

Source	Hudson County (n=5)	San Diego County (n=65)	Pima County (n=16)
Complainant	20%	72%	25%
Social Services	*	13%	13%
Friend/Neighbor	*	3%	6%
Police	*	*	6%
Child	40%	*	6%
Counselor/Caseworker	*	*	6%
Prior Offenses	*	3%	*
District Attorney	*	7%	*
Not in Record	20%	2%	37%

5.1.2 Who are the Complainants?

Complainant characteristics in the following categories are presented in this section: relationship to child, age, occupation/income source, race/ethnicity, sex, citizenship status, prior arrest record, and any history of specific problems. Complainant information was even less well

documented than perpetrator information in the law enforcement files of all three counties. In Hudson and Pima Counties, very little information about the complainant's characteristics was available. Data collectors were able to find somewhat more information on complainants in San Diego County.

In some cases, the complainant was CPS or the child welfare agency. For these cases, complainant characteristics were not recorded on the data collection form. These cases are included in the "Not in Record/Not Applicable" category in the tables in this section.

Complainant's Relationship to the Child (Table 5-11). In all three counties, most complainants were parents of the abducted child. In Hudson and Pima Counties, the majority of complainants were the mother of the child. However, in San Diego County, fathers comprised the majority (67%) of complainants. CPS or the child welfare agency was reported as the complainant in four percent of cases in San Diego County, in three percent of cases in Pima County, and in one percent of cases in Hudson County.

Table 5-11. Complainant Relationship to the Child

Relationship	Hudson County	San Diego County	Pima County
Mother	54%	27%	61%
Father	31%	67%	24%
Stepmother	1%	*	2%
Maternal Grandparent	8%	1%	4%
Paternal Grandparent	3%	*	*
Aunt/Uncle	3%	1%	2%
Friend	*	*	1%
Child Welfare Agency	1%	4%	3%
Not in Record	*	*	3%

Complainant's Age (Table 5-12). Age information was missing in the largest percentage of cases in each county. Twenty-six to 35 year old complainants were involved in more than one-quarter (28%) of Hudson County cases, exactly one-quarter of Pima County cases, and less than one-quarter

(22%) of San Diego County cases. Somewhat older complainants, in the 36 to 45 year old age group, were found in 19 percent of Hudson County cases, 15 percent of San Diego County cases, and nine percent of Pima County cases. In the younger age group, 16 percent of Hudson County cases, 12 percent of San Diego County cases and 14 percent of Pima County cases had 19 to 25 year old complainants. Less than ten percent of complainants in each county were less than 18 years of age, 46 to 55 years of age, or more than 56 years of age.

Table 5-12. Age of Complainant

Age	Hudson County	San Diego County	Pima County
<=18	3%	*	1%
19 to 25	16%	12%	14%
26 to 35	28%	22%	25%
36 to 45	19%	15%	9%
46 to 55	3%	5%	*
>=56	3%	*	*
Not in Record/Not Applicable	30%	46%	52%

Complainant's Occupation/Income Source. The majority of case files in each county did not have information about the complainant's occupation/income source. Often the only relevant information available in the police files was a business phone address. Most of the occupation/income sources listed on the data collection form occurred in less than 10 percent of cases. Overall, complainants were employed in just over one-fifth (21%) of Hudson County cases, 22 percent of San Diego County cases, and seven percent of Pima County cases. Fourteen percent of San Diego County complainants were unemployed or recipients of welfare benefits, while just six percent of Hudson County complainants and one percent of Pima County complainants were in this category.

Complainant's Race/Ethnicity (Table 5-13). The largest percentage of complainants were white in all three counties. Approximately one-fifth of complainants were Hispanic in all three sites while Hudson and San Diego Counties also had black/African-American complainants in one-fifth or more of cases. Racial and ethnic information was not in the record or not applicable for 20 percent of the complainants in Pima County, 18 percent in Hudson County and 15 percent in San Diego County.

Table 5-13. Race/Ethnicity of Complainant

Race/Ethnicity	Hudson County	San Diego County	Pima County
Asian or Pacific Islander	4%	*	1%
Black/African American	24%	20%	3%
Hispanic	20%	18%	22%
American Indian/Alaskan Native	*	*	1%
White	34%	44%	52%
Other ^a	1%	4%	*
Not in Record/Not Applicable	18%	15%	20%

^a Includes multi-racial.

Complainant's Sex (Table 5-14). Complainants were female in the majority of cases in Hudson and Pima Counties and male in the majority of cases in San Diego County.

Table 5-14. Sex of Complainant

Sex	Hudson County	San Diego County	Pima County
Male	33%	67%	25%
Female	64%	29%	70%
Not in Record	4%	4%	5%

Complainant's Citizenship Status. Only in San Diego County did a large portion of cases have any information on the complainant's citizenship status. Almost three-quarters (71%) of complainants in San Diego County were United States citizens. Only five percent were aliens (citizenship unknown) and five percent were citizens of other countries. The 17 percent of Hudson County cases that had any information on the complainant's citizenship status were distributed as

follows: 13 percent were United States citizens, three percent were aliens (citizenship unknown) and one percent were citizens of another country. Only five percent of cases in Pima County reported citizenship information for complainants -- three percent were United States citizens and two percent were aliens.

Complainant's Prior Arrest Record (Table 5-15). Thirty-nine percent of cases in San Diego County had arrest records for the complainant. An additional two percent of complaints had prior records for the complainants reported by one of the parties in the case. The remaining 40 percent of San Diego County cases did not have information about the complainant's arrest record in the case files. The vast majority of Hudson County (90%) and Pima County (94%) cases also did not have this information in the record.

Table 5-15. Prior Arrest Record of Complainant

Prior Arrest Record	Hudson County	San Diego County	Pima County
Yes, Had Record	1%	39%	1%
Yes, Had Record but Priors Not Ascertained	*	*	1%
No, Did Not Have Record	8%	19%	5%
No Record of Priors, but Priors Reported by One of the Participants	1%	2%	*
Not in Record, Not Applicable	90%	40%	94%

The one Hudson County complainant with a prior offense record had been arrested for a violent crime. Pima County also had one complainant with a prior arrest history. This person was arrested for unspecified charges. San Diego County had the most complainants with criminal histories. The bulk of those arrested had histories of drug or alcohol, property crimes, and domestic violence offenses. Complainants had also been arrested for child abuse, violent crime, criminal mischief, violation of probation, and traffic violations. None of the prior arrests in any of the three sites were for custodial or visitation interference.

Complainant Problems (Table 5-16). Complainant problems were most often found in San Diego County, where forty percent of the complainants had been alleged to have committed domestic violence. Nearly as many (34%) had prior alcohol/drug abuse in the case files, while 22 percent had mental illness, and 20 percent had child abuse. In Hudson and Pima Counties, complainant problems were documented substantially less often. In Hudson County, eight percent of cases had complainants with histories of alcohol or drug abuse, six percent with child abuse, four percent with domestic violence, and one percent with mental illness. In Pima County, nine percent had complainants with histories of child abuse, six percent with alcohol or drug abuse, two percent with domestic violence, and one percent with mental illness. The case files showed no record of complainant problems in 86 percent of Pima county cases and 83 percent of Hudson County cases.

Table 5-16. Complainant Problems^a

Complainant Problems	Hudson County	San Diego County	Pima County
History of Domestic Violence	4%	40%	2%
History of Child Abuse (CPS Involvement Indicated)	1%	8%	6%
History of Child Abuse (CPS Involvement Not Indicated)	5%	12%	3%
History of Alcohol or Drug Abuse	8%	34%	6%
History of Mental Illness	1%	22%	1%
No History of Problems/Not in Record	83%	38%	86%

^a Percentages may sum to more than 100 percent since each case could have more than one complainant problem.

5.1.3 Who are the Children?

Number of Children (Table 5-17). The majority of complaints in all three counties involved just one child. San Diego County had more cases with multiple children. Two children were involved in 22 percent of San Diego County cases, 19 percent of Hudson County cases, and 16 percent of Pima County cases while three or more children were involved in 19 percent of cases in San Diego County, nine percent of cases in Pima County, and just four percent of cases in Hudson County.

Table 5-17. Number of Children

Number of Children	Hudson County	San Diego County	Pima County
One	78%	60%	75%
Two	19%	22%	16%
Three	4%	14%	8%
Four	*	4%	1%
Five	*	1%	*

Child's Age (Table 5-18). In all three counties, the involved children were most typically in the youngest age group. Forty-one percent of complaints in Hudson County, and nearly as many in San Diego County (38%) and Pima County (36%) had children three years of age and younger. Four-to-seven year old children were found in more than one-quarter of the complaints in all three counties. Somewhat fewer complaints in each of the counties had children in the older age groups.

Table 5-18. Age of Child/Children^a

Age	Hudson County	San Diego County	Pima County
<=3	41%	38%	36%
4 to 7	28%	30%	26%
8 to 11	16%	14%	20%
12 to 14	8%	9%	14%
15 to 18	6%	1%	2%
>=19	*	*	2%
Not in Record	14%	28%	13%

^a Percentages may sum to more than 100 percent since each case could have more than one child.

Child's Living Situation (Table 5-19). The child lived with the complainant in more than one-half (61%) of cases in Hudson County and in just under one-half (49%) in Pima County. Children lived with the perpetrators in 40 percent of Hudson County cases, and 17 percent of Pima County cases. In San Diego County, the child lived with the perpetrator in the highest percentage of cases (40%), with the complainant in 28 percent of cases, and with both the complainant and perpetrator in one-quarter of cases.

Table 5-19. Living Situation

Living Situation	Hudson County	San Diego County	Pima County
Living with both Perpetrator and Complainant	6%	25%	7%
Living with Complainant	49%	28%	61%
Living with Perpetrator	36%	40%	17%
Other ^a	1%	3%	10%
Not in Record	8%	4%	5%

^a Includes institution, shared living, foster care and relatives.

Child's Custody Status (Table 5-20). Personnel in each jurisdiction stated that the existence of a custody order was a critical factor in decisions about going forward with an investigation. In the cases examined, data collectors found that custody orders did not exist at the time of the incident for 36 percent of San Diego County cases, 12 percent of Pima County cases, and 10 percent of Hudson County cases. Information about the child's custody status was not in the record in 36 percent of Pima County cases, 25 percent of Hudson County cases, and ten percent of San Diego County cases. Pima County was the only jurisdiction in which custody is statutorily presumed to be with the mother in cases in which parents are not married or no custody orders exist.

In cases in which a custody order did exist, it was often difficult to identify the specifics of that order in the case documentation. While custody orders were frequently a part of the files in each site's prosecutor's office, copies of such orders were rarely available in the police records. For example, records might contain the statement that the complainant had custody, with no indication if it was joint custody, physical, or legal. In Pima County, the complainant had sole legal and physical custody or joint legal and physical custody in nine percent of cases, while the perpetrator had one of these two types of custody in just two percent of complaints. The specific custody arrangements were unknown in more than three-quarters (76%) of cases -- in 40 percent of these the perpetrator had custody and in 36 percent the complainant had custody.

Table 5-20. Custody Status^a

Custody Status	Hudson County	San Diego County	Pima County
Complainant Custody			
Sole Legal and Physical Custody	28%	11%	8%
Joint Legal and Sole Physical Custody	6%	5%	*
Joint Legal and Physical Custody	3%	4%	1%
Unsupervised Visitation	9%	11%	1%
Supervised Visitation	3%	3%	*
Denied Visitation	*	2%	*
Other ^b	4%	4%	6%
Custody Specifics Unknown	14%	12%	36%
Perpetrator Custody			
Sole Legal and Physical Custody	9%	7%	1%
Joint Legal and Sole Physical Custody	4%	9%	*
Joint Legal and Physical Custody	3%	4%	1%
Unsupervised Visitation	10%	8%	7%
Supervised Visitation	1%	5%	*
Denied Visitation	6%	1%	*
Other ^b	8%	8%	3%
Custody Specifics Unknown	25%	12%	40%
No Custody Order In Place	10%	36%	12%
Not In Record	25%	10%	36%

^a Percentages may sum to more than 100 percent since each case could have both perpetrator and complainant custody information listed.

^b Includes physical custody, legal custody and joint custody.

Complainants in San Diego County had custody in less than one-fifth of cases, as did perpetrators. An additional 12 percent of cases had perpetrators with custody (but unknown specifics) and another 12 percent had complainants with custody (but unknown specifics). In 11 percent of cases, the complainant was granted unsupervised visitation with the child. The perpetrator had unsupervised visitation rights in eight percent of cases.

Overall, in more than one-half (51%) of Hudson County cases, the complainant had custody, compared to 41 percent of cases where the perpetrator had custody. Complainants had sole legal and physical custody of the child in more than one-quarter (28%) of the total caseload. Fourteen percent of cases had complainants with custody of the child but the details of the custody agreement were not found in the case files. In one-quarter of cases, the perpetrator had custody but the details of the custody arrangement were unknown. Perpetrators were allowed unsupervised visitation in ten percent of Hudson County cases. The remaining custody agreements were found in less than ten percent of cases.

5.2 Case Characteristics

The investigating agency documented certain case activities as the case was investigated. Data collectors found information on the initial case classification, involvement of adults other than the perpetrator and complainant in the incident, use of weapon and force, whether the child was located and returned, whether the perpetrator was located, whether the perpetrator left the jurisdiction with the child during the incident, whether the case involved Hague applications, and the number of days between law enforcement notification and the closing of the case by law enforcement.

5.2.1 Initial Classification of the Crime (Table 5-21)

The majority of cases in Hudson (69%) and Pima (93%) Counties were initially classified as custodial interference by the investigating agency. In Hudson County, an additional 18 percent of cases were classified as visitation interference while six percent were kidnapping or child stealing and 13 percent had “other” unspecified classifications. Visitation interference, kidnapping or child stealing, runaway, domestic violence, and “other” classifications (including unlawfully giving liquor to a minor) were each found in three percent or less of Pima County cases.

In San Diego County, the largest percentage of cases (39%) was missing any information about the initial classification of the case by the investigating agency. Thirty-seven percent of San

Diego County cases were classified as custodial interference, nine percent as kidnapping or child stealing, nine percent as concealing, four percent as visitation interference and two percent had “other” unspecified case classifications.

Table 5-21. Initial Classification

Initial Classification	Hudson County	San Diego County	Pima County
Custodial Interference	69%	37%	93%
Visitation Interference	18%	4%	1%
Kidnapping/Child Stealing	6%	9%	1%
Runaway	*	*	2%
Concealing	*	9%	*
Domestic Violence	*	*	1%
Other	13%	2%	3%
Not in Record	1%	39%	1%

5.2.2 Involvement of Other Individuals (Table 5-22)

San Diego County had the largest percentage of cases (28%) in which adults other than the perpetrator or complainant were involved in removal of the child. However, the additional offender was arrested in only one of these cases. Only nine percent of Pima County cases and six percent of Hudson County cases involved other adults. None of the three adults in Pima County were arrested, while four of the six percent of cases with other adults in Hudson County were arrested.

Table 5-22. Other Adults Involved in the Incident

Involvement	Hudson County	San Diego County	Pima County
Other Adults Involved, Arrested	4%	1%	*
Other Adults Involved, Not Arrested	2%	27%	9%
No Other Adults Involved	94%	72%	91%

5.2.3 Law Enforcement Response (Tables 5-23, 5-24, and 5-25).

There were several elements of the law enforcement response to complaints of custodial interference. Law enforcement response included the actions taken by the investigating agency at the time the incident was initially reported. In addition, referrals to other services and communication with other agencies were part of the investigating agency's handling of the case.

In the majority (72%) of Pima County cases, the investigating agency responded by dispatching a patrol officer to the scene. Forty-five percent of cases had face-to-face contact between the investigating agency and the complainant. The investigating agency responded to fourteen percent of Pima County cases by telephoning the perpetrator. All of the other responses by Pima County law enforcement investigators were found in less than ten percent of complaints.

Hudson County cases most often (44%) had face-to-face contact with the complainant. Nearly one-quarter (23%) of cases had patrol officers dispatched to the scene. In one-fifth of cases the investigating agency telephoned the perpetrator, 16 percent of cases had "other" unspecified responses to the complaint, and 11 percent had face-to-face contact between the investigating agency and perpetrator.

Table 5-23. Investigating Agency Response^a

Investigating Agency Response	Hudson County	San Diego County	Pima County
Dispatched personnel to scene	23%	16%	72%
Telephoned perpetrator	20%	3%	14%
Face-to-face contact with perpetrator	11%	*	7%
Face-to-face contact with complainant	44%	21%	45%
Referred case to investigators/detectives for further intervention	9%	17%	7%
Issued citation, referred to Court	1%	4%	*
Attempted to locate perpetrator at home	*	2%	1%
Talked with friends/relatives of perpetrator	*	*	1%
Recorded Statement	*	1%	*
Followed up with complainant	3%	4%	3%
Called other police departments	3%	*	1%
Prosecutor issued an Order to Locate	*	4%	*
DA talked with complainant's lawyers	*	3%	*
Other Response	16%	6%	5%
No Response	*	1%	*
Not in Record	6%	33%	19%

^a Percentages sum to more than 100 since each case could have more than one type of agency action.

The "Not in Record" category was the largest in San Diego County, with agency response information unavailable for one-third of the complaints. This may, in part, be explained by the fact that the initial response may have come from municipal police departments or the Sheriff's Office, with the case subsequently being taken over by investigators in the District Attorney's Office. More than one-fifth (21%) of cases had face-to-face contact between law enforcement personnel and the complainant, sixteen percent had patrol officers dispatched to the scene, and seventeen percent had cases referred to investigators or detectives for further intervention.

Law enforcement response to the incident also could have included referrals to and communication with other agencies and services. The largest percentage of cases in each county (84 percent in Pima County, 64 percent in San Diego County, 45 percent in Hudson County) had no

referrals to other agencies or services indicated in the case record. Forty-five percent of Hudson County cases, 21 percent of San Diego County cases, and only two percent of Pima County cases were referred to Family Court Services by the investigating agency. The case was referred to child protective services and to private counseling each in six percent of Hudson County cases. Referrals to family mediation services, juvenile court services and legal services were made in five percent or fewer of the complaints in each county.

Table 5-24. Referrals to Other Agency/Service^a

Referrals to Other Agency/Service	Hudson County	San Diego County	Pima County
Family Mediation/Conciliation	*	5%	*
Child Protective Services	6%	3%	2%
Family Court Services	41%	21%	2%
Juvenile Court Services	1%	*	1%
Private Counseling	6%	2%	1%
Legal Aid/Legal Services Program	3%	2%	1%
Other	1%	5%	5%
No Referrals in Record	45%	64%	84%

^a Percentages may sum to more than 100 percent since each case could have more than one referral.

The investigating agency communicated with other agencies more often than they referred cases to other services. CPS, other law enforcement agencies in the county or state and other law enforcement agencies in other states were contacted with some frequency in all three counties. The investigating agency contacted CPS in 23 percent of both San Diego cases and Pima County cases, and 13 percent of Hudson County cases. Other law enforcement agencies in the county were contacted in nearly one-third (32%) of San Diego County cases, almost one-quarter (24%) of Hudson County cases and just six percent of Pima County cases. Law enforcement officials in another state, commonwealth or territory were contacted in fewer cases: 18 percent in San Diego County, 13 percent in Hudson County and eight percent in Pima County. Still fewer cases in each county (12 percent in San Diego County, 11 percent in Hudson County and two percent in Pima County) involved communication between the investigating agency and other law enforcement agencies

within the state. In addition, San Diego County had a large percentage of cases (45%) where the investigating agency communicated with “other” local, state or federal agencies.

Table 5-25. Communication with Other Agency/Service^a

Communication with Other Agency/Service	Hudson County	San Diego County	Pima County
Other LEA’s within the County	24%	32%	6%
Other LEA’s within the State	11%	12%	2%
LEA’s in Another U.S. State, Commonwealth or Territory	13%	18%	8%
U.S. Customs	3%	2%	1%
FBI	3%	3%	1%
Interpol	*	1%	*
LEA in Another Country	*	7%	1%
U.S. State Department	3%	10%	*
CPS	13%	23%	23%
State Missing Children’s Clearinghouse	6%	6%	3%
National Center on Missing and Exploited Children	1%	1%	1%
Non-Profit Missing Children’s Organization	1%	2%	*
Other Local, State or Federal Agencies	8%	45%	12%

^a Percentages may sum to more than 100 since the investigating agency could have communicated with more than one other agency/service.

In all three sites, there were very few referrals to federal agencies and to the National Center on Missing and Exploited Children. The FBI was contacted in just three percent of cases in Hudson and San Diego Counties and in one percent of Pima County cases. Referrals were made to the National Center on Missing and Exploited Children in only one percent of cases in all three counties.

5.2.4 Use of National Crime Information Center (NCIC) Computer (Table 5-26)

Case record documentation revealed that information on the perpetrator was entered into the NCIC computer in 38 percent of San Diego County cases, 31 percent of Hudson County cases, and ten percent of Pima County cases. Information about the child was entered for an almost equal percentage of complaints: 41 percent in San Diego County, 29 percent in Hudson County and ten percent in Pima County. Again, the reader should note that data on NCIC entry was extracted from the narrative of the police report, which may not have always included all law enforcement actions in the case.

Table 5-26. Information Entered into NCIC Computer

Information Entered into NCIC Computer	Hudson County	San Diego County	Pima County
Perpetrator			
Yes	31%	38%	10%
No	26%	14%	71%
Not in Record	43%	48%	18%
Child			
Yes	29%	41%	10%
No	25%	15%	73%
Not in Record	46%	43%	17%

5.2.5 Use of Weapon and/or Force (Table 5-27)

The majority of cases in all three counties did not involve the use of either weapons or force. Both weapons and force were used during incidents in three percent of Hudson County cases and just one percent of Pima County cases. Perpetrators used force but not weapons in seven percent of cases in Pima County, four percent in Hudson County, and two percent in San Diego County. Only one case (in Hudson County) involved a weapon but no force.

Table 5-27. Weapon and/or Force Used During the Incident

Weapon and/or Force	Hudson County	San Diego County	Pima County
Force and Weapon Used	3%	*	1%
Weapon Only	1%	*	*
Force Only	4%	2%	7%
Neither	78%	80%	70%
Not in Record	15%	17%	23%

5.2.6 Child Located (Table 5-28)

The child was located within the state in one-half of Pima County cases. One-quarter of these cases did not have information about where the child was located in the case record. The investigating agency found the child in another state in ten percent of cases. The propensity for Pima County children to be found within Arizona may be due, in part, to the distance between Tucson and the state border. Children were found in other states in the largest percentage of Hudson County cases (39%) and San Diego County cases (35%). Both counties also located the child within the state in more than one-third of cases. The proximity of New York City means that perpetrators in Hudson County can flee out of state with the child simply by crossing the Hudson River. Children were not located by the investigating agency in eight percent of San Diego County cases, six percent of Pima County cases and three percent of Hudson County cases.

Table 5-28. Child Located

Child Located	Hudson County	San Diego County	Pima County
Within State	36%	34%	50%
In Other State	39%	35%	10%
In U.S. Territory	4%	1%	*
In Other Country	6%	6%	2%
Location Unknown	1%	3%	6%
Not Located	3%	8%	6%
Not in Record	11%	12%	25%

5.2.7 Perpetrator Located (Table 5-29)

Perpetrators were found in similar locations to the child in all three counties. In just over one-half (51%) of Pima County cases, the investigating agency located the perpetrator within Arizona while 11 percent located the perpetrator in another state. Perpetrators were located in other states (38%) and within the state (40%) in more San Diego County cases than were children. The investigating agency located 39 percent of Hudson County perpetrators in another state, while 31 percent were located in New Jersey. Perpetrators were not located in eight percent of San Diego County cases, seven percent of Pima County cases and three percent of Hudson County cases.

Table 5-29. Perpetrator Located

Perpetrator Located	Hudson County	San Diego County	Pima County
Within State	31%	40%	51%
In Other State	39%	38%	11%
In U.S. Territory	4%	1%	*
In Other Country	6%	5%	2%
Location Unknown	1%	1%	6%
Not Located	3%	8%	7%
Not in Record	16%	6%	23%

5.2.8 Child Returned (Table 5-30 and Table 5-31)

Whether the children were returned to the complainant (or visitation had been reestablished) and, if so, the manner in which recovery occurred was also information obtained from case records, whenever possible. Children were not returned to the complainant in 40 percent of San Diego County cases. Law enforcement returned the child in 16 percent of cases, and the perpetrator voluntarily returned the child in 11 percent of cases in San Diego County. Hudson County had many more children returned voluntarily by the perpetrator, with 29 percent of cases. Law enforcement returned children in 16 percent of Hudson County cases. In Pima County, the largest percentage (35%) of cases did not have information about the child's return in the case record. More than one-

quarter of cases (27%) had children returned voluntarily by the perpetrator. The child was returned but specific information was not available in ten percent of cases.

Table 5-30. Child Returned to Complainant

Child Returned	Hudson County	San Diego County	Pima County
Voluntarily Returned by Perpetrator	29%	11%	27%
LEA Returned	16%	16%	6%
Complainant or Agent Returned	9%	8%	3%
Other	8%	2%	5%
Returned, No Specifics	6%	5%	10%
Child Not Returned	9%	40%	15%
Not Applicable (Visitation Interference)	3%	*	*
Not in Record	21%	18%	35%

Data collectors also recorded when the child was returned or when visitation resumed, if these dates were available (dates were not in the record in 71 percent of San Diego County cases, 58 percent of Pima County cases, and 34 percent of Hudson County cases). In Hudson and Pima Counties, children were returned relatively quickly, with 44 percent of Hudson County cases, and 36 percent of Pima County cases spanning seven or fewer days between law enforcement notification and the return of the child or resumption of visitation. Fourteen percent of the San Diego County cases indicated that children were returned or visitation was restored 36 or more days after the initial law enforcement notification.

Table 5-31. Number of Days between Initial Notification and Child Returned/Visitation Resumed

Number of Days	Hudson County	San Diego County	Pima County
0 to 7	44%	5%	36%
8 to 14	4%	4%	3%
15 to 21	5%	1%	1%
22 to 28	5%	3%	1%
29 to 35	3%	2%	*
36 or More	6%	14%	1%
Date Not in Record	34%	71%	58%

5.2.9 Perpetrator Left Jurisdiction and Perpetrator Extradited (Tables 5-32 and Table 5-33)

Perpetrators had taken the child to one or more other states in 47 percent of Hudson County cases, 46 percent of San Diego County cases, and only ten percent of Pima County cases. However, in Pima County, data collectors did not find any information about the perpetrator's actions in the vast majority of cases (81%). In addition, more than one-third of case files in Hudson County (38%) and San Diego County (35%) did not have information on whether or not the perpetrator left the jurisdiction. Children were taken out of the United States in 11 percent of San Diego County cases, eight percent of Hudson County cases, and four percent of Pima County cases.

Table 5-32. Perpetrator Left Jurisdiction

Perpetrator Left Jurisdiction	Hudson County	San Diego County	Pima County
Took the Child Out of State	44%	36%	9%
Took the Child Out of U.S.	8%	11%	4%
Attempted to Take the Child Out of State	3%	*	*
Attempted to Take the Child Out of U.S.	3%	1%	*
Took Child to More Than One Other State	3%	10%	1%
Other	8%	11%	3%
None of the Above Indicated in the Record	38%	35%	81%

Perpetrators were extradited in only six percent of Hudson County cases and three percent of San Diego County cases. Extradition was attempted in an additional seven percent of Hudson County cases (in three percent the perpetrator returned voluntarily after the extradition attempt and in four percent the perpetrator was not extradited), and two percent of San Diego County cases (in one percent the perpetrator returned voluntarily after the extradition attempt and in one percent the perpetrator was not extradited). Extradition was not attempted in 28 percent of Hudson County cases, two percent of Pima County cases, and one percent of San Diego County cases. Extradition information was not available for the vast majority of cases in Pima (95%) and San Diego Counties (95%) and for a substantial number in Hudson County (59%).

Table 5-33. Extradition Proceedings

Extradition Proceedings	Hudson County	San Diego County	Pima County
Extradited	6%	3%	*
Extradition Attempt, Returned Voluntarily	3%	1%	*
Extradition Attempt, Not Extradited	4%	1%	3%
No Extradition Attempt	28%	1%	2%
Not in Record	59%	94%	95%

5.2.10 Hague Applications

There were twelve cases included in the study that involved Hague applications (i.e., cases in which the perpetrator fled with the child to another country, a signatory to the Hague Convention on the Civil Aspects of International Child Abduction).⁵ Hague application cases in the study also included three cases where the perpetrator fled to the United States from another country. In three of the cases, the perpetrator fled to San Diego County (from Mexico or Sweden). In each of these cases, the District Attorney's Office was first notified of the abduction by the State Department, and the children were then recovered. In two of these cases, the court ordered that the children be returned to the complainant in their home country. In the third case, the court ordered the child turned over to the Mexican authorities, while the Mexican court worked out the dispute. In one of these cases, the child was actually abducted twice and returned twice.

The nine cases involving flight from the United States, were comparable to cases in which national boundaries were not crossed. Seven of the cases were included in the San Diego sample and two were from the Hudson County sample. Children were returned in two of these cases and records did not reflect if the child had been returned in a third case. Perpetrators fled to Hungary, Mexico, Canada, and Chile. Fathers were perpetrators in the majority of these cases. In one case, both the father and mother were involved in kidnapping the child from the foster parents during a "supervised" visit. The mother was eventually prosecuted and received a reduced sentence as part of a bargain to help return the child. The father had not yet been arrested at the close of data collection. Findings in the other cases included:

⁵The Hague Convention establishes international law between countries who have agreed to become parties to the Convention. The Convention requires the prompt return of children who have been wrongfully removed from, or retained outside of, their country of habitual residence. It is the law a party country's local court is to follow in determining whether or not a child is to be returned to the country of the left-behind parent. Currently, only forty-three countries are signatories to the Hague Convention, meaning that Convention provisions are not applicable to many countries in which a child might be abducted. Data collectors did not have access to the actual Hague applications. In some cases, the complainant was encouraged to pursue this process. An application under the Convention might not be pursued for a number of reasons, including a voluntary return of the child to the child's "habitual residence."

- case dismissed by the prosecutor after the child and perpetrator were detained at Kennedy airport as they were reentering the country;
- the complainant withdrew their complaint in the hopes of a reconciliation;
- the perpetrator was arrested and the case was remanded to municipal court;
- the perpetrator pled guilty and was sentenced;
- the complainant and perpetrator entered into an agreement to have the child returned; and
- no further action after perpetrator fled (case was an assist to the Chicago Police Department and the investigating agency had no jurisdiction to pursue further).

5.2.11 Number of Days between Law Enforcement Notification and Case Closure (Table 5-34)

In Hudson County, a majority (55%) of cases were closed by law enforcement within seven days of official notification. Eighteen percent of Hudson County cases had a duration of 36 or more days. Thirty-eight percent of San Diego County cases spanned 36 or more days between law enforcement notification and case closure. The law enforcement notification date or the closure date was missing for 36 percent of San Diego County cases. In Pima County, 48 percent of the cases were closed within seven days of law enforcement notification while 31 percent did not have these dates in the case record.

Table 5-34. Number of Days between Law Enforcement Notification and Case Closure

Number of Days between Notification and Case Closure	Hudson County	San Diego County	Pima County
0 to 7	55%	5%	48%
8 to 14	8%	8%	4%
15 to 21	6%	1%	4%
22 to 28	6%	9%	2%
29 to 35	1%	3%	2%
36 or More	18%	38%	9%
Dates Not in Record	6%	36%	31%

6. CHI-SQUARE ANALYSIS

A key focus of the analyses in this study was to identify the case characteristics that were systematically related to different case outcomes. This section describes the different factors that influenced whether law enforcement agencies issue and execute arrest warrants, and whether prosecuting authorities file criminal charges. As indicated in Chapter 5, there were substantial missing data elements in the case records. This, coupled with the small number of cases with arrest and/or filings (see Chapter 4), limited the analyses that could be conducted. In the first part of this chapter, the method of analysis is described. The second section presents the factors significantly related to arrests or arrest warrants, and the third section details the factors related to the filing of charges.

6.1 Analyzing Case Outcomes

The analyses presented in the next sections report the factors that were significantly related to two case outcomes -- arrests or the issuance of arrest warrants, and filings of criminal charges. As described earlier, this study examined samples drawn from cases in three counties. For the purpose of this analysis, these three samples were combined. This permitted the analyses to be done with the combined total number of cases which had arrests/arrest warrants or filed charges, thereby maximizing the analytic potential of the database.

Analyses of the relationship between perpetrator, complainant, child, and incident characteristics and the two case outcomes were conducted using chi-square tests. The chi-square test provides an index of the strength of the relationship between two factors (i.e., the degree to which the distribution of cases on one factor is not independent of their distribution on the other factor).⁶

⁶Blalock, H. Social Statistics. New York: McGraw Hill 1960. pp. 275-277.

In conducting the chi-square analyses to identify factors related to case outcomes, we began with four sets of potentially important case characteristics:

- Perpetrator Characteristics
 - Age
 - Sex
 - Race/Ethnicity
 - Relationship to Child
 - Relationship Between Perpetrator and Complainant
 - Living Situation Between Perpetrator and Complainant
 - Arrest/Criminal Record
 - Prior LEA Incidents or Complaints between Perpetrator and Complainant
 - History of Specific Problems
 - Domestic Violence
 - Child Abuse⁷
 - Alcohol/Drug Abuse
 - Mental Illness

- Complainant Characteristics
 - Age
 - Sex
 - Race/Ethnicity
 - Relationship to Child
 - Arrest/Criminal Record
 - History of Specific Problems
 - Domestic Violence
 - Child Abuse
 - Alcohol/Drug Abuse
 - Mental Illness

- Child Characteristics
 - Age
 - Sex
 - Living Situation

⁷The source of the child abuse history was rarely taken from “official records” and was more likely to come from allegations made by the complainant, or in Hudson County, by the child.

- Incident Characteristics
 - Custody Order
 - Prior Custodial Interference
 - Use of Weapon/Force
 - Child Returned
 - Perpetrator Left Jurisdiction
 - Number of Days Between Law Enforcement Notification and Case Closed

Each of these characteristics was included in a chi-square test to determine whether it was significantly related to the case outcome under study. Those characteristics with significant ($p < .05$) or marginal ($p < .10$) relationships with arrests/arrest warrants or filed charges are presented in the following sections. The results of all analyses are presented in Tables 6-1 and 6-2 in Appendix 1. The totals and percentages for the significant finding are presented in Tables 6-3 and 6-4 in Appendix 1.

As discussed in Chapter 4, data collectors did not find information pertaining to all items sought during data collection activities. Missing data compromises the results of the chi-square tests since not all cases in the sample can be included in the analysis. Findings can be biased, depending on the extent of missing (i.e., excluded) cases. As a guideline for this study, the analysis was abandoned if a characteristic was missing more than 30 percent of the data. Using this criterion, two characteristics, age of the complainant and age of the child, were excluded from the analysis.

In addition, the small number of cases in the study resulted in some characteristic categories with only a few cases in them. As a guideline for the chi-square analysis, if there were not ten cases in the category, then the chi-square test was excluded. For the filed charges outcome, two characteristics -- the perpetrator's relationship to the child and the complainant's relationship to the child -- had fewer than ten cases in one of the categories. In these cases, even though there were insufficient cases to meet the guidelines, the pattern of results is briefly noted in the text.

6.2 Arrest or Arrest Warrants

Pooling all three samples, 74 complaints had arrests or arrest warrants issued for the perpetrator by law enforcement. In these cases, once the complaint was received and the investigation completed, the law enforcement agency had enough evidence to arrest the perpetrator or to issue a warrant for the his/her arrest. The characteristics of the perpetrator, complainant, child, and incident that were associated with the existence of an arrest/arrest warrant are detailed in the following sections and summarized below.

- Significant Perpetrator Characteristics
 - Perpetrator's Race/Ethnicity
 - Perpetrator's Arrest/Criminal Record
 - Prior LEA Incidents/Complaints between Perpetrator and Complainant
 - Perpetrator's History of Drug/Alcohol Abuse

- Significant Complainant Characteristics
 - Complainant's Relationship to Child
 - Complainant's Arrest/Criminal Record
 - Complainant's History of Domestic Violence
 - Complainant's History of Mental Illness

- Significant Incident Characteristics
 - Use of Weapon/Force
 - Child Returned
 - Perpetrator Left Jurisdiction

6.2.1 Perpetrator Characteristics

Four of the perpetrator characteristics analyzed proved to be related to an arrest/arrest warrant outcome. These characteristics were the perpetrator's race/ethnicity, the perpetrator's arrest/criminal record, prior law enforcement incidents or complaints between the perpetrator and complainant, and the perpetrator's history of alcohol/drug abuse.

The perpetrator's race/ethnicity made a marginal difference when looking at arrests/arrest warrants in law enforcement. When comparing white, non-Hispanic perpetrators with perpetrators

in all other racial/ethnic groups, those in the latter category (including black/African-American, Hispanic, Asian or Pacific Islander, Native American or Alaskan Native) were more likely to be arrested or to have arrest warrants issued than white, non-Hispanic perpetrators. Just 14 percent of the 211 white non-Hispanic perpetrators were arrested or had arrest warrants issued, compared to one-fifth of the 190 perpetrators in all other racial/ethnic groups.

Next, cases in which the perpetrator had a prior arrest/criminal history were more likely to result in an arrest/arrest warrant than cases in which the perpetrator did not have a prior record. More than one-fifth (22%) of the 145 perpetrators with prior arrest records were arrested for the current incident, compared to only 14 percent for the 311 perpetrators without any prior arrests.

As well, a record of prior law enforcement incidents or complaints between the perpetrator and complainant positively influenced the arrest/arrest warrant outcome for the current incident. Seventy-eight complaints indicated a prior law enforcement incident or complaint between the perpetrator and complainant in the case record. Nearly one-quarter (24%) of these resulted in the perpetrator's arrest. In contrast, only 14 percent of the 378 cases without such incidents had arrests or arrest warrants.

Finally, when the perpetrator had a history of alcohol or drug abuse, regardless of the source of information on the prior abuse (i.e., investigating agency, complainant, or friend or neighbor of the perpetrator), an arrest/arrest warrant for the current incident was more likely. Twenty-two percent of the 114 perpetrators with prior alcohol or drug abuse histories were arrested by law enforcement, compared to just 14 percent of the 342 perpetrators without such histories.

6.2.2 Complainant Characteristics

The complainant's relationship to the child, arrest/criminal record, and histories of domestic violence and mental illness problems were all significantly related to the arrest/arrest warrant outcome.

First, the complainant's relationship to the child (categorized as either parent, other relative or CPS) was related to whether or not a case resulted in an arrest or the issuance of an arrest warrant. When CPS made the complaint against the perpetrator to the law enforcement agency, the complaint was more likely to result in the perpetrator's arrest or the issuance of an arrest warrant for the perpetrator than when either a parent or non-parent relative filed the complaint. The majority (61%) of the 13 cases where CPS made the complaint to law enforcement resulted in the perpetrator's arrest or the issuance of an arrest warrant for the perpetrator. The complainant was the parent of the child in 410 cases, but in only 15 percent of these cases was the perpetrator arrested. Cases in which complainants were non-parent relatives of the child (27 cases), resulted in the arrest/arrest warrant outcome just 19 percent of the time.

Second, the complainant's own arrest/criminal record was related to the arrest/arrest warrant outcome for the perpetrator in the case at hand. Cases in which the complainant had a prior arrest record were much less likely to result in an arrest/arrest warrant for the current incident (4 percent of the 77 cases), than cases without any prior record (19 percent of the 379 cases).

Finally, among the four specific complainant problems tested in this analysis (domestic violence, child abuse, alcohol/drug abuse and mental illness), two complainant problems were significantly related to the perpetrator's arrest or the issuance of an arrest warrant. Cases where the complainant had a history of either domestic violence or mental illness were less likely to have arrests/arrest warrants for the perpetrator involved in the case than when complainants did not have these problems. Four of the 83 cases (5%) where the complainant's history of domestic violence was noted resulted in the perpetrator's arrest, compared to nearly one-fifth (19%) of the 373 cases without complainant domestic violence. Only one of the 45 cases (2%) in the sample with a complainant history of mental illness resulted in the perpetrator's arrest or the issuance of an arrest warrant for the current incident, compared to 69 of the 373 cases (19%) without mental illness problems.

6.2.3 Child Characteristics

Neither the sex of the child nor the child's living situation (i.e., lived in same household with perpetrator and complainant, lived with complainant, lived with perpetrator, complainant, both or neither) were related to the arrest/arrest warrant outcome.

6.2.4 Incident Characteristics

Several incident characteristics, including the use of force or weapons, the return of the child after the abduction incident, and whether or not the perpetrator left the jurisdiction during the incident were significantly related to arrests/arrest warrants. However, the existence of a custody order, prior custodial interference, and the number of days between law enforcement notification and case closure were not related to arrests or the issuance of arrest warrants for the perpetrator.

Cases in which the perpetrator used force or weapons to abduct the child/children were more likely to result in arrest/arrest warrant than cases without any weapons or force involved. Thirty-nine percent of the 23 cases that involved the use of force or weapons force resulted in the perpetrator's arrest. In contrast, only 15 percent of the 433 cases without force or weapons had arrests or arrest warrants.

Surprisingly, when the child was returned to the complainant after the incident, the perpetrator was more likely to be arrested or to be the target of an arrest warrant than when the child was not returned. Law enforcement arrested the perpetrator or issued an arrest warrant for the perpetrator in more than one-quarter (26%) of the 229 cases where the child had been returned. Among those cases where the child was not returned, only six percent had an arrest/arrest warrant outcome. For some of the cases in which the child was not returned, complainants reported not pursuing charges because they were trying to reconcile with the perpetrator. A few cases remained opened pending location of the perpetrator and child.

Finally, if the perpetrator left the jurisdiction with the child, then the arrest/arrest warrant outcome was significantly more likely to occur. One-quarter of the 203 perpetrators who left the jurisdiction with the child during the abduction incident were arrested or had arrest warrants issued, compared to just ten percent of the 221 perpetrators who stayed within the jurisdiction.

6.3 Filed Charges

Criminal charges were filed by prosecutors' offices in a total of 50 complaints across the three samples. After the perpetrator's arrest or the issuance of an arrest warrant by law enforcement, the case moved into the prosecutors' offices for review. If enough evidence existed, charges were filed. Some of the charges were filed as felonies, and some as misdemeanors. One Hudson County case remained open in the Prosecuting Attorney's Office at the time data collection activities were completed. While specific charges had not yet been filed, this case was included in the filed charges category since it was still active in the Prosecuting Attorney's Office.

This section explores those factors that are significantly related to prosecutor's filing criminal complaints among the 74 cases that had been cleared by an arrest or the issuance of an arrest warrant. Those perpetrator, complainant, and incident characteristics that influenced the filing of charges in the prosecutors' offices are summarized below.

- Significant Perpetrator Characteristics
 - Prior LEA Incidents/Complaints between Perpetrator and Complainant
- Significant Complainant Characteristics
 - History of Child Abuse
- Significant Incident Characteristics
 - Prior Custodial Interference
 - Perpetrator Left Jurisdiction

6.3.1 Perpetrator Characteristics

If the perpetrator and complainant had been involved in prior law enforcement incidents or complaints, then the perpetrator was more likely to have charges filed in criminal court for the current incident. Sixteen of the 19 cases (84%) which had documentation of prior law enforcement incidents or complaints between the perpetrator and complainant resulted in the filing of criminal charges. In contrast, only 34 of 55 cases (62%) without such incidents had charges filed against the perpetrator. As seen in the previous section, this factor also influenced the arrest/arrest warrant outcome.

Although the chi-square results were excluded for the perpetrator's relationship to the child because fewer than ten cases were in one relationship category, the general pattern of cases for this characteristic is briefly noted here. While the perpetrator's relationship to the child did not influence the arrest/arrest warrant outcome, the trend was toward non-parent relatives to have filed charges against them more often than parents. All seven of the perpetrators who were non-parent relatives of the child had charges filed against them, compared to only 43 of 67 cases (64%) with perpetrators who were parents of the child had this outcome.

6.3.2 Complainant Characteristics

One complainant characteristic influenced criminal complaint filing outcomes -- the complainant's history of child abuse. The complainant's history of child abuse influenced whether the prosecutors' offices filed criminal charges against the perpetrator in the case. Cases in which the complainant had a history of child abuse were marginally more likely to have charges filed in the case than cases without any child abuse history. Almost all (91%) of the 11 arrest/arrest warrant cases with complainant histories of child abuse resulted in the filing of charges against the perpetrator. Only 40 of the 63 cases (64%) without this history had charges filed by the Prosecutor's Office. While this factor did not make a difference in the arrest/arrest warrant outcome, these results suggest that when child abuse was involved in the case, regardless of whether the perpetrator was responsible, the case was more likely to be subject to criminal court jurisdiction.

The chi-square test for the complainant's relationship to the child was excluded because of the small number of cases in some of the relationship categories. Again, the case patterns are briefly noted here. Only three of eight cases (37%) in which CPS made the complaint resulted in filed charges.⁸ By comparison, 46 of 64 cases (71%) in which the complainant was the child's parent or relative had criminal charges filed against the perpetrator.

6.3.3 Child Characteristics

Neither the sex of the child nor the child's living situation were related to the charges filed outcome.

6.3.4 Incident Characteristics

Two incident characteristics were marginally related to the filing of criminal charges. Among the 16 arrest/arrest warrant cases with documented incidents of prior custodial interference by either the perpetrator or complainant, 14 of them (87%) resulted in filed charges against the perpetrator. Somewhat fewer (62%) of the 58 cases without records of prior custodial interference had charges filed. While this factor did not make a difference in the arrest/arrest warrant outcome, once in prosecutors' offices, these cases were more likely to be the subject of criminal charges.

Finally, when the perpetrator left the jurisdiction during the abduction incident, the case was less likely to result in criminal prosecution than when the perpetrator remained local. Almost all (85%) of the 21 arrest/arrest warrant cases that had perpetrators who stayed within the jurisdiction resulted in filing of charges against the perpetrator. In contrast, just 32 of the 52 cases (62%) where the perpetrator left the jurisdiction with the child during the abduction incident had criminal court charges filed. While the perpetrator leaving the jurisdiction during the abduction incident was more

⁸This finding should be viewed with some caution since the small number of cases in the CPS category generated small expected cell counts in the chi-square analysis.

likely to invoke an arrest/arrest warrant response in law enforcement, prosecutors' offices were less likely to file charges in these cases. Explanations for this variation may include the possibility that prosecutors' offices did not file charges against these perpetrators because they could not locate them or because out-of-state custody orders conflicted with the orders issued in their state.

7. SUMMARY OF FINDINGS AND IMPLICATIONS FOR FUTURE RESEARCH

This phase has produced important findings from the case flow analysis, sample characteristics, and predictor analysis. The three jurisdictions selected for the case-level analyses, as well as other sites identified in Phase II of the study, provide models upon which other jurisdictions may choose to develop a program that responds to the problem of parental abduction/visitation interference. The three case-level sites provide three different models for investigating these crimes, depending on the investigating agency: the Sheriff's Department (Hudson County), a municipal law enforcement agency (Pima County), or the District Attorney's Office (San Diego County). Prosecution of felonies was also different in the three sites. San Diego and Pima Counties designated specific attorneys to handle these cases, whereas Hudson County assigned cases to assistant prosecutor's on a rotating basis. In Tucson, the City Attorney is active in prosecuting misdemeanor charges of visitation interference.

Highlights of the sample characteristics, case flow, and predictor analyses are summarized below for each of these sites. Finally, the implications from this research will be discussed in terms of what it can tell us about future research; in other words, where do we go from here?

7.1 Case Flow Analysis

The movement of cases through law enforcement and the criminal justice system was outlined in Chapter 4 and is discussed below.

Seventy-two complaints that involved allegations of custodial or visitation interference were recorded in the Hudson County Sheriff's Office. Custody orders existed in 49 (68%) of these cases, meaning that nearly one-third of the cases got a law enforcement response without a custody order. Arrests were made or arrest warrants issued in 20 (27%) cases. The most common reasons cited for closing the cases included: the child was voluntarily returned after contact by Sheriff's Office (18%), the child was voluntarily returned with no contact (7%), and the case was handled in civil court (10%). In fourteen cases, charges were filed in criminal court. An additional eight cases were filed

by the county prosecutor from arrests made in municipal law enforcement agencies. The majority of the total filed cases involved felonies (n=17). Only one case proceeded through to sentencing (defendant pled guilty) in the county criminal court. The other cases were no billed by the grand jury, remanded to municipal court by the county prosecutor, dismissed, remained open, or received pretrial intervention. The sentence received in the one case was 30 months probation.

In San Diego County, 195 complaints were received by the District Attorney's Office. Custody orders existed for slightly over 50 percent of these cases. Arrests were made or arrest warrants were issued in 21 cases (10%). The most common reason for case closure by the District Attorney's Office was that the case was being handled in civil court (45%). Other common reasons for case closure included: the child was voluntarily returned after agency contact (10%), case was pending further court proceedings in (7%), out-of-state custody order was unenforceable (6%), and other unspecified reasons (10%). Felony charges were filed in eight cases and most of these defendants (n=7) pled guilty. One case was dismissed. The sentences imposed on four defendants included both incarceration (ranging from 44 to 184 days) and probation (ranging from 18 months to five years). Three defendants received probation (ranging from one to three years) without jail time.

Pima County received 178 complaints of custodial interference. As in San Diego County, custody orders existed for slightly over 50 percent of the cases. Arrests were made or arrest warrants issued in 22 cases. Typical reasons for cases being closed were that the complainant was unwilling to press charges (15%), the child was voluntarily returned to complainant after agency contact (6%), the child was voluntarily returned without agency contact (4%), and the case was handled in civil court (4%). Criminal charges were filed in 17 cases. Additionally, the County Attorney filed three cases in which arrests were made by the Sheriff's Office. Felonies were filed in 11 cases; misdemeanors were filed by the City Attorney in nine cases. Outcomes in the courts included ten dismissed cases, nine defendants who pled guilty, and one unknown outcome. The sentences received included: (1) incarceration and probation, (2) incarceration only, (3) probation only, and (4) sentence unknown. While the periods of incarceration were unknown, the periods for probation ranged from 45 days to three years.

Table 7-1 compares the percentage of cases that resulted in arrests, filed charges and convictions in each of the sites with the national estimates in Phase I. As can be seen, the percentage of cases resulting in arrest and filings were higher than the national estimates in Hudson County, and lower than the national estimates in Pima and San Diego Counties. Convictions in each of these sites were lower than the national totals estimated in Phase I.

Table 7-1. Comparisons of Parental Abduction Arrests, Filings, and Convictions among Sample Sites and the Nation^{a/}

Sites	Total number of Reports/ Complaints	Percent of Total that had Arrests	Percent of Total that had Filed Cases	Percentage of Total that had Convictions
Hudson County	72	27.8	19.4	1.4
San Diego County	195	10.8	4.1	3.6
Pima County	178	12.4	9.5	5.1
National Estimates	30,536	14.6	11.4	5.7

^{a/} Percentages based on the number of parental abductions reported to law enforcement.

7.2 Sample Characteristics

7.2.1 The Perpetrators

In Hudson and Pima Counties, the father was the most likely perpetrator, accounting for 49 percent and 60 percent of the cases, respectively. In San Diego, mothers were the perpetrators in 71 percent of the cases. Some of the requests for custody and visitation rights in San Diego were the result of paternity findings in instances where mothers request welfare. Once fathers were identified, confirmed, and required to pay support for the child, some of the fathers then obtained custody/visitation orders and a subsequent order to locate was issued when the mother failed to comply with the custody order. No linkage involving paternity findings and custody issues was found in cases at the other two sites.

The perpetrators in all three counties were most likely to be 26 to 35 years old, white, and divorced. Relatively little was known about the occupation of the perpetrators. In Pima and Hudson Counties, this information was missing in over 60 percent of the cases. More information was found in the San Diego files regarding the perpetrator's occupation. The most common occupation/income source listing was welfare (39%).

Information on the prior arrests and other problems of the perpetrator varied significantly among sites. In Hudson County, less than 20 percent of the cases had information from law enforcement files on prior arrests. In San Diego County, less than half of the cases had information on the perpetrator's prior record. In Pima County, slightly over half of the cases had information on prior arrests of the perpetrators. Prior problems, such as alcohol/drug abuse, domestic violence, mental illness, or child abuse were recorded for 39 percent of the perpetrators in San Diego, 21 percent in Hudson County, and only 14 percent in Pima County. Prior custodial interference was claimed in 41 percent of the San Diego cases, 26 percent of the Hudson County cases, and only 7 percent of the Pima County Cases. In nearly a third of those incidents in each site, local law enforcement was involved.

7.2.2 The Complainants

Even less information was available on the complainant than was available on the perpetrator. To some extent the complainants are the mirror image of the perpetrators. In Hudson and Pima Counties, the complainant was the mother in 54 and 61 percent of the cases, respectively. In San Diego County, the complainants were fathers in 67 percent of the cases. The child welfare agency was the complainant in one percent of the Hudson County cases, four percent of the San Diego County cases, and three percent of the Pima County cases. Complainants were most likely found in the same age group, 26 to 35 years old, as the perpetrator. However, age data were not available for 30 percent of the cases in Hudson County, 46 percent in San Diego County, and 52 percent of the cases in Pima County. Information on occupation or income source was available for only 41 percent or less of the cases. Where information was available about the complainant's

occupation, the most common information was simply that the individual was employed, with no specifics available.

As might be expected, data on the prior arrest record of the complainant was missing for a large number of complainants. In Hudson and Pima Counties, prior arrest information was not in the record or not available for 90 percent or more of the complainants. In San Diego County this information was available for 60 percent of the cases and 39 percent of the complainants had a prior offense record. The prior offenses for these San Diego County complainants included drug or alcohol offenses, property crimes, and domestic violence. None of the prior arrests in any of the three sites were for custodial or visitation interference.

Similarly, allegations or reports of prior problems were less likely to be found in case files for the complainants. Again, in Hudson and Pima Counties, there was no history or record of problems for 83 percent or more of the complainants. In San Diego County, 62 percent of the complainants did have some history or record of problems, the most typical being a history of domestic violence (40%).

7.2.3 The Children

Sixty percent or more of the cases in each of the three sites involved only one child. The most typical case in all three counties involved a child age three or younger. In Hudson and Pima Counties, the child was most likely to live with the complainant (49% and 61% of the cases respectively). In San Diego County, the child was more likely to live with the perpetrator (40%) than with the complainant (28%), or both the perpetrator and the complainant (25%). This finding is in line with the fact that in many of the cases in San Diego, the perpetrators were fathers seeking custody rights or enforcement of custody orders for children they were currently under court order to support.

No custody order was in place or information on the custody order was not in the record for 48 percent of the Pima County cases, 46 percent of the San Diego cases, and 35 percent of the

Hudson County records. In cases in which a custody order did exist, it was often difficult to identify the specifics of that order in the case documentation. While custody orders were frequently included in the files in the prosecutor offices at each of the sites, copies of such orders were rarely available in the police records. Specifics of the complainant's custody order were unknown in 36 percent of the Pima County cases, 14 percent of the Hudson County cases, and 12 percent of the San Diego County cases. Those percentages increase regarding the perpetrator's custody; specifics were unknown in 40 percent of the Pima County cases, 25 percent of the Hudson County cases, and 12 percent of the San Diego County cases. These findings point to the difficulty that jurisdictions face in enforcing allegations of custodial and visitation interference without access to the actual custody order.

7.2.4 The Case

A variety of case characteristics were examined. The majority of cases in Hudson (69%) and Pima (93%) Counties were initially classified as custodial interference by the investigating agency. This was the most typical (37%) initial classification in San Diego as well. In over 90 percent of the cases in Hudson and Pima Counties, and over 70 percent of the cases in San Diego, the perpetrator was the only adult involved in the abduction. Force or weapons were used in less than 10 percent of the cases in any site. Perpetrators had taken the child to one or more other states in 47 percent of Hudson County cases, 46 percent of San Diego County cases, and only ten percent of Pima County cases. Children were returned in 71 percent of the Hudson County cases, 66 percent of the Pima County cases, and 42 percent of the San Diego County cases.

The law enforcement response to the custodial or visitation interference was varied. In Pima County, police officers were dispatched to the scene in 72 percent of the cases. In 45 percent of the cases, the Tucson Police Department had face-to-face contact with the complainant. The Hudson County Sheriff's Office dispatched officers to the scene in 23 percent of the cases, and had face-to-face contact with the complainant in 44 percent of the cases. Investigators from the District Attorney's Office in San Diego were dispatched to the scene in 16 percent of the cases, and had face-to-face contact with the complainant in 21 percent of the cases. Case records in San Diego County

indicated that perpetrator information was entered into the NCIC computer 38 percent of the time, and that child information was entered 41 percent of the time. In Hudson County, police entered information into the NCIC for 31 percent of the perpetrators and 29 percent of the children. In Pima County, the records indicated that information had been entered into NCIC for only ten percent of the cases, each, for perpetrator and child.

Law enforcement response also included communicating with and making referrals to other agencies. Records kept by Hudson County Sheriff deputies were more likely to document that parties were referred than the records in the other two sites. In Hudson County, parties to the case were referred to Family Court Services in 41 percent of the cases. In San Diego County, the District Attorney's Office made referrals to Family Court in 21 percent of the cases. Referrals to Child Protective Services (CPS) or the Child Welfare Agency were made in six percent or less of the cases in all three sites. However, CPS was contacted directly by law enforcement in more cases. In San Diego and Pima Counties, CPS was contacted 23 percent of the time. In Hudson County, the Sheriff's office contacted CPS in 13 percent of the cases. A variety of other law enforcement agencies were contacted during the investigation of these cases, both within the county and State and outside the State, and in other countries, however, these were much less common. Also, the records indicated six percent or fewer cases involved contact/notification to the state's missing children clearinghouse, the National Center on Missing and Exploited Children, or non-profit missing children organizations.

Extradition to return the perpetrator to the jurisdiction occurred in less than ten percent of the cases. Cases of international abductions from the United States to another country (n=19) were not particularly different from cases in which national borders were not crossed. Of the three cases in which the perpetrator abducted from another country to the United States, two cases went to court and the children were returned to the complainant or the government authority.

7.3 Chi-Square Analysis

A variety of factors were examined, using chi-square analysis, to determine if they were associated with the case outcomes, specifically whether an arrest was made or arrest warrant issued and whether charges (felony or misdemeanor) were filed in criminal court.⁹ Seventy-four complaints resulted in arrests or the issuance of an arrest warrant across all three sites. Fifty of these complaints resulted in charges -- felonies and misdemeanors -- being filed.

Four perpetrator characteristics out of the 12 examined were found to be positively associated with whether the case resulted in an arrest. That is, cases with the characteristic were more likely to result in the perpetrator's arrest than cases without it. These characteristics included:

- the perpetrator's race/ethnicity (black/African-American, Hispanic, and "other" race perpetrators were more likely to be arrested than white non-Hispanic perpetrators);
- prior criminal record (perpetrators with at least one prior arrest were more likely to be arrested than perpetrators with no prior arrests);
- prior law enforcement incidents or complaints between the perpetrator and complainant (increased likelihood of arrests if there was some prior complaint involving law enforcement); and
- history of drug and alcohol abuse (perpetrators with a prior history of drug and alcohol abuse, regardless of the source of that information, were more likely to be arrested).

One perpetrator characteristic -- prior law enforcement incidents or complaints (charges were more likely to be filed when the parties in the case had been involved in a prior law enforcement incident) -- was found to be associated with filing charges in the prosecutor's office. A second characteristic, relationship to child (charges were more likely to be filed against non-parent relatives), was also found to be associated with the filing of charges; however, this finding should be considered tentative because of the very few cases involved in the analysis.

⁹Characteristics that were missing more than 30 percent of the data were eliminated from the chi-square analysis.

Nine complainant characteristics were examined for their relationship with the case outcomes. Again, four characteristics were associated with arrests or the issuance of an arrest warrant:

- relationship to the child (cases in which CPS was the complainant were more likely to result in the perpetrator's arrest),
- prior criminal history (cases in which the complainant had a prior criminal record were less likely to result in the perpetrator's arrest),
- history of domestic violence (cases in which the complainant had a history of domestic violence were less likely to result in the perpetrator's arrest), and
- history of mental illness (cases where there was an indication of the complainant's past mental illness were less likely to result in the perpetrator's arrest).

Again, only one of these characteristics was also found to predict whether charges were filed in criminal court: the complainant's history of child abuse. Cases in which the complainant had some history of child abuse were more likely to go to court. A second characteristic, the complainant's relationship to the child, was also associated with filing of criminal charges. This finding involved arrest/arrest warrant cases in which CPS was the complainant; charges in these cases were less likely to be filed than in cases in which the parent was the complainant. This result is the opposite of the finding for the arrest/arrest warrant outcome, in which complaints were more likely to result in an arrest where CPS was the complainant. Because of the very small number of cases used in the analysis (only 13 cases involved CPS as the complainant), this finding should be viewed as tentative.

None of the characteristics associated with the child -- number of children involved in the crime and living situation of child -- were found to be significantly related to case outcomes. This may in part be attributable to the fact that the majority (60% to 78%) of cases in all three sites involved only one child.

Six incident characteristics were examined for association with case outcomes; three were found to be significantly related to arrests/arrest warrants. These included the use of weapon or force, the return of the child, and whether the perpetrator left the jurisdiction. The perpetrator was

more likely to be arrested or have an arrest warrant issued if a weapon or force had been used, the child was returned, and the child had been taken out of the jurisdiction during the abduction incident. Two of these characteristics -- prior custodial interference and leaving the jurisdiction -- were also marginally related ($p < .1$) to the filing of criminal charges. There was a greater likelihood for arrest/arrest warrant cases involving prior custodial interference resulting in the filing of charges. However, when the perpetrator left the jurisdiction, the case was less likely to result in criminal prosecution. This finding is interesting given that leaving the jurisdiction was more likely to result in an arrest. One possible explanation might be that cases in which the perpetrator left the jurisdiction were more likely to be open at the time of data collection; that is, arrest warrants were issued but the filing of charges awaited identifying the perpetrator's whereabouts. These cases may also involve more conflicts with cross-state custody orders. More study on these findings is warranted.

It is interesting to compare these findings with the factors identified in Phase I which related to whether a police report was taken, the investigative priority of the case, whether the prosecutor opened a case, and whether the case was prosecuted. In the Phase I findings, existence of a custody order was listed as the most important factor in determining whether a police report was taken, a prosecutor case was opened, or a case was prosecuted. In the case-level analysis, this factor was not found to be significant. In part, this may be attributed to the fact that custody orders were often not in the record (10 percent of the San Diego County cases, 25 percent of the Hudson County cases, and 36 percent of the Pima County cases).

Endangerment of the child was also listed as a top priority for the police response and prosecutor response in Phase I. For the case-level analyses, a history of child abuse on the part of the complainant was positively associated with the likelihood of filing charges, but the perpetrator's child abuse history did not influence the filing of charges. A history of prior offenses was considered a factor in less than 50 percent of the jurisdictions in Phase I in terms of the police response. It was listed as a contributing factor to the prosecutor response in over 50 percent of the jurisdictions. In the case-level study, a history of prior offenses for the perpetrator was associated with arrests/arrest warrants.

7.4 Implications For Future Research

The case-level analysis provides an objective look at how the criminal justice system responds to custodial and visitation interference cases. What we learned from the case-level analysis is that the law enforcement response to cases of parental abductions is limited. Even jurisdictions in which officers are specifically assigned and trained to work with these cases are faced with the increasing costs of extradition, the mobility of the parents, conflicting court orders or lack of court orders, and limited prosecution of cases (in part because the parent who is willing to call the police is unwilling to go to court). We also learned from this analysis that the initial response by law enforcement may be sufficient to address the problem (i.e., once the perpetrator understands that the police are involved, then his or her behavior falls into line).

What this research does not indicate is the recidivism rate after law enforcement becomes involved and how that compares to jurisdictions in which law enforcement is not involved. Some information was collected regarding past custodial interference. In fact, 41 percent of the San Diego cases indicated some prior custodial interference. What is the frequency of the recidivism (i.e., does it continue until the child reaches majority)? In the majority of cases across all sites, children seven years old or less were being abducted. The potential for continuing the pattern is staggering.

The practical problem of collecting recidivism data, however, was demonstrated in this data collection. Prosecutor files were often destroyed. For example, in some jurisdictions files were destroyed even for cases that were "no billed" by the grand jury. Misdemeanor files, even where the individual was convicted, were destroyed in one jurisdiction approximately one year later. The computer files were retained for longer periods and could still be accessed, but those files had very limited information concerning case details from a data collection perspective. Given the limits of retrospective data collection, it might be necessary to conduct a study prospectively to obtain data relevant to recidivism. This would encompass reviewing individual cases as they entered the criminal justice system and ensuring appropriate documentation of events so that information on recidivism could be collected during subsequent periods.

This research also does not address the child and what is the best interest of the child or what the overall outcomes were from the child's perspective. In many cases, the record did not indicate whether the child was even returned. This was true in 18 percent of the San Diego cases, 21 percent of the Hudson County cases, and 35 percent of the Pima County cases. In addition, the role of the civil or family court in those individual cases reviewed was not studied; it would be important to know what happened to those cases "being handled civilly." How many of these cases come under the jurisdiction of the family or juvenile court? How frequently does the civil or family court address enforcement of its custody or visitation orders? Does the court ever impose sanctions for violations of its court orders?

Future research should also consider the impact on custodial/visitation interference cases as a result of paternity orders and the increased efforts to have fathers pay child support, particularly in the case of mothers receiving state assistance. There was some evidence of this issue in San Diego. When fathers have been identified and required to pay child support, they are in turn suing for visitation (if not custody) of the child. Mothers have often not cooperated in setting up these visits.

Another avenue of research would be to consider the actions taken by Child Protective Services when they are called in by law enforcement. In some cases, CPS may simply be called in to escort children when they are being returned. In other cases, they may be called in to investigate the family (perpetrator and complainant) capability of caring for the child. As stated earlier, we know that cases in which children are removed from CPS by their parents are more likely to be prosecuted. However, the full role of CPS in parental abduction cases needs to be explored.

APPENDIX

Table 6-1. Results of Chi-Square Analysis for the Arrest/Arrest Warrant Outcome

Model	Chi-Square Value	Probability	Degrees of Freedom
Perpetrator Characteristics			
Age	3.580	.311	3
Sex	.266	.606	1
Race/Ethnicity	2.768	.096 ^d	1
Relationship to Child	.008	.928	1
Relationship to Complainant	2.651	.618	4
Living Situation with Complainant	.067	.795	1
Arrest/Criminal Record	4.677	.031 ^c	1
Prior LEA Incidents/Complaints	4.637	.031 ^c	1
History of Domestic Violence	.061	.805	1
History of Child Abuse	1.243	.265	1
History of Drug/Alcohol Abuse	4.035	.045 ^c	1
History of Mental Illness	.034	.853	1
Complainant Characteristics			
Sex	1.005	.316	1
Race/Ethnicity	1.734	.188	1
Relationship to Child	20.640	.000 ^a	2
Arrest/Criminal Record	10.101	.001 ^a	1
History of Domestic Violence	9.743	.002 ^b	1
History of Child Abuse	.062	.804	1
History of Drug/Alcohol Abuse	.536	.464	1
History of Mental Illness	7.268	.007 ^b	1
Child Characteristics			
Sex	.244	.885	2
Living Situation	3.164	.367	3

a: Pr < .001
b: Pr < .01
c: Pr < .05
d: Pr < .10

Model	Chi-Square Value	Probability	Degrees of Freedom
Incident Characteristics			
Existence of Custody Order	1.654	.198	1
Prior Custodial Interference	.351	.554	1
Use of Weapon/Force	9.363	.002 ^b	1
Child Returned	33.008	.000 ^a	1
Perpetrator Left Jurisdiction	18.613	.000 ^a	1
Number of Days between Notification and Case Closure	3.566	.168	2

a: Pr < .001
b: Pr < .01
c: Pr < .05
d: Pr < .10

Table 6-2. Results of Chi-Square Analysis for the Filed Charges Outcome

Model	Chi-Square Value	Probability	Degrees of Freedom
Perpetrator Characteristics			
Age	.044	.978	2
Sex	.563	.453	1
Race/Ethnicity	.097	.755	1
Relationship to Child	3.671	.055 ^d	1
Relationship to Complainant	.387	.534	1
Living Situation with Complainant	.677	.411	1
Arrest/Criminal Record	.760	.383	1
Prior LEA Incidents/Complaints	3.153	.076 ^d	1
History of Domestic Violence	1.691	.194	1
History of Child Abuse	.995	.319	1
History of Drug/Alcohol Abuse	.004	.950	1
History of Mental Illness	1.433	.231	1
Complainant Characteristics			
Sex	.541	.462	1
Race/Ethnicity	.136	.713	1
Relationship to Child	3.852	.050 ^c	1
Arrest/Criminal Record	1.913	.167	1
History of Domestic Violence	2.008	.157	1
History of Child Abuse	3.160	.075 ^d	1
History of Drug/Alcohol Abuse	1.031	.310	1
History of Mental Illness	.481	.488	1
Child Characteristics			
Sex	.031	.985	2
Living Situation	3.569	.312	3

a: Pr < .001
b: Pr < .01
c: Pr < .05
d: Pr < .10

Model	Chi-Square Value	Probability	Degrees of Freedom
Incident Characteristics			
Existence of Custody Order	.001	.974	1
Prior Custodial Interference	3.422	.064 ^d	1
Use of Weapon/Force	.466	.495	1
Child Returned	.072	.789	1
Perpetrator Left Jurisdiction	3.760	.052 ^d	1
Number of Days between Notification and Case Closure	1.853	.396	2

a: Pr < .001
b: Pr < .01
c: Pr < .05
d: Pr < .10

Table 6-3. Percentages and Totals Generated from the Chi-Square Analysis for the Arrest/Arrest

Warrant Outcome

	<u>Arrested/Arrest Warrant</u>		<u>Not Arrested/ No Arrest Warrant</u>	
	Number	Percent of Row Total	Number	Percent of Row Total
Perpetrator's Race/Ethnicity				
White, Non-Hispanic	29	14%	182	86%
Other	38	20%	152	80%
Perpetrator's Arrest/Criminal Record				
Yes	31	22%	114	78%
No	42	14%	269	86%
Prior LEA Incidents/Complaints between Perpetrator and Complainant				
Yes	19	24%	59	76%
No	55	14%	323	86%
Perpetrator's History of Drug/Alcohol Abuse				
Yes	25	22%	89	78%
No	48	14%	294	86%
Complainant's Relationship to Child				
Parent	59	15%	351	85%
Non-Parent Relative	5	19%	22	81%
CPS	8	61%	5	39%
Complainant's Arrest/Criminal Record				
Yes	3	4%	74	96%
No	71	19%	308	81%

	<u>Arrested/Arrest Warrant</u>		<u>Not Arrested/ No Arrest Warrant</u>	
	Number	Percent of Row Total	Number	Percent of Row Total
Complainant's History of Domestic Violence				
Yes	4	5%	79	95%
No	70	19%	303	81%
Complainant's History of Mental Illness				
Yes	1	2%	44	98%
No	73	18%	338	82%
Use of Weapon/Force				
Yes	9	39%	14	61%
No	65	15%	368	85%
Child Returned				
Yes	60	26%	169	74%
No	14	6%	213	94%
Perpetrator Left Jurisdiction				
Yes	52	25%	152	75%
No	21	10%	199	90%

Table 6-4. Percentages and Totals Generated from Chi-Square Analysis for the Filed Charges Outcome

	<u>Arrested/Arrest Warrant</u>		<u>Not Arrested/ No Arrest Warrant</u>	
	Number	Percent of Row Total	Number	Percent of Row Total
Perpetrator's Relationship to Child				
Parent	43	64%	24	36%
Non-Parent Relative	7	100%	0	*
Prior LEA Incidents/Complaints between Perpetrator and Complainant				
Yes	16	84%	3	16%
No	34	62%	21	38%
Complainant's Relationship to Child				
Parent/Non-Parent Relative	46	71%	19	29%
CPS	3	37%	5	63%
Complainant's History of Child Abuse				
Yes	10	91%	1	9%
No	40	64%	23	36%
Prior Custodial Interference by Complainant or Perpetrator				
Yes	14	87%	2	13%
No	36	62%	22	38%
Perpetrator Left Jurisdiction				
Yes	32	62%	20	38%
No	18	85%	3	15%

Part Five

**PROMISING APPROACHES TO THE HANDLING
OF
PARENTAL ABDUCTION CASES**

Kathi L. Grasso, Esq.

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1. INTRODUCTION

As reported earlier, in 1994, project staff conducted extensive interviews with individuals familiar with the criminal justice system's handling of custodial interference cases in six sites throughout the country. In consultation with the Project's Advisory Board, sites were selected based on the nationwide survey results of the project's first phase.¹ The primary criteria for site selection were: (a) the prosecutor filed a minimum of fifteen criminal custodial interference complaints for the survey period, 1992; (b) agencies' utilization of information management systems to allow for future case tracking; and (c) geographic diversity. Of the 400 counties initially surveyed, only 17 had prosecutors filing more than 15 criminal complaints in 1992. Only eight of the seventeen were outside of California.² Site visits revealed that the filing of a relatively high number of criminal complaints was one indicator of an enhanced law enforcement response to the crime of parental abduction.

If one were to create a model program of service delivery designed to better locate and recover the parentally abducted child and hold the abductor accountable, did the site visits provide guidance on model approaches for intervention? The answer would have to be in the affirmative. The characteristics unique to the majority of these jurisdictions resulting in an enhanced system response were:

- Statutory authority to effectively intervene;
- Agency leaders and staff committed to combating parental abduction;

¹For more information on these results, refer to this study's Part Two, "National Survey of Law Enforcement Agencies and District Attorneys/Prosecutors."

²Sites visited were in Arizona, California, Florida, New Jersey, Utah, and Washington. Interviews of criminal justice personnel and other professionals were conducted by Kathi Grasso, Esq., and Joseph Ryan, Ph.D. Detailed site summaries can be found in this study's Part Three, "The Criminal Justice System's Response to Parental Abduction in Six Sites."

- Personnel specialized in the handling of parental abduction cases;
- Coordinated agency response;
- Good agency management practices; and
- Agency staff and left-behind parent having access to supportive services (e.g., legal, family court, mediation, reunification, and visitation supervision services).

This chapter will highlight effective and unique programs identified during site visits and provide guidance on how jurisdictions can replicate them. To facilitate implementation of such interventions, recommendations will be made throughout as to legal, programmatic, and policy reform. Included in the appendices are samples of model statutes, policies, and other information that may be of use to individuals interested in getting their local criminal justice agencies to more actively respond to the needs of families victimized by the crime of familial abduction.

2. STATUTORY AUTHORITY TO EFFECTIVELY INTERVENE

The first step in implementing a system for an enhanced law enforcement response to parental abduction is for a jurisdiction to evaluate its current state criminal parental abduction statutes and case law.³ If criminal justice agencies are to respond effectively to the crime of parental abduction, laws must support their efforts. We cannot talk about making parental abduction a law enforcement priority, unless we first have laws authorizing law enforcement intervention and designating the offense as a felony.

It is interesting to note that the majority of states visited have relatively comprehensive parental abduction or custodial interference laws.⁴ In five out of the six states visited, serious parental abduction offenses are designated felonies without consideration as to whether the abducted child has been taken out-of-state. One exception, Utah's statute, provides that custodial interference constitutes a felony only if the child is taken out-of-state.⁵

³Review of state appellate and published trial court decisions complements an assessment of state statutes. Written court opinions interpreting criminal parental kidnaping or custodial interference statutes can provide statute drafters with insight as to the need for amendments. For example, a statute may be ambiguous as to whether or not law enforcement agencies have the authority to investigate a report of custodial interference if no court order has been issued delineating custody or visitation rights. In interpreting such a law, the appellate court may hold that a defendant cannot be convicted of custodial interference if no custody order exists. A statutory amendment might be in order to clarify that the law does indeed encompass the circumstance in which a child is abducted prior to the issuance of a custody order. For a comprehensive overview of state case law up to mid-1992, one should refer to Janet Kosid Uthe's, "Criminal Appellate Case Briefs" in *Appendices to Obstacles to the Recovery and Return of Parentally Abducted Children*, ed. Linda Girdner & Patricia Hoff (Washington, D.C.: United States Department of Justice/Office of Juvenile Justice and Delinquency Prevention 1993). Supplementing her appendix materials is more recent case law summarized in Appendix VI compiled by Thomazine E. Shanahan.

⁴Outlines of criminal custodial interference statutes of the states visited can be found at the beginning of each site summary in Part Three.

⁵Most state statutes allow for court discretion in sentencing in that lesser penalties are provided, especially if the abducted child is returned voluntarily and has not been detained for a protracted period. See N.J. Rev. Stat. §2C:13-4 (1990) and Ariz. Rev. Stat. Ann. §13-1302 (1990).

The states visited are also governed by laws that could be interpreted to prohibit custodial interference both before and after the issuance of a custody order. California, Florida, and Washington's statutes expressly outlaw custodial interference prior to the issuance of a custody order. Although Arizona's statute is less clear as to whether intervention is authorized in a pre-custody order situation, in the site visited, the prosecutor's office interpreted case law as allowing law enforcement intervention without a custody order. In the New Jersey site, despite the statute's lack of clarity, law enforcement officials interviewed reported that they would at a minimum investigate a complaint of parental abduction to ensure that the child was safe and at the same time refer the aggrieved parent to the family court to obtain a custody decree. .

As to interference with a visitation or access order, statutes of five out of six sites prohibit such conduct.⁶ Florida's statutes are unclear to whether visitation interference amounts to a criminal offense. In three of the six states, violation of a visitation order could constitute felonious conduct.

Arizona and Utah's visitation interference statutes appear to be unique in the country in that both recently enacted laws set out procedures for how an aggrieved party, law enforcement agencies or the court should address the problem. Arizona's law provides guidance to law enforcement personnel responding to a report of visitation interference. It authorizes police to demand that the person interfering with access return the child to the person legally entitled to be with the child, as long as the complainant provides the officer with a certified copy of the access order, the denial of access is personal access, and the officer observes the offending behavior. Ariz. Rev. Stat. Ann. § 13-1305 (1994).

In Utah, in addition to the state's criminal custodial interference statute, other statutory provisions govern civil court procedures and the sanctions courts can impose in visitation interference cases. Upon entertaining a petition, the court has the authority to order a parent in

⁶Visitation interference or denial of access encompasses the situation in which a child's legal custodian prevents a parent or individual with court-ordered visitation from exercising those rights.

violation of a visitation order to perform a minimum of ten hours of community services, as well as to participate in educational programs designed “to educate the parent about the importance of complying with [a] court order and providing a child a continuing relationship with both parents.” Utah Code Ann. § 78-32-12.1(1)(a)(b). Should an individual repeatedly violate an access order, the Court also can make a probable cause finding that the crime of custodial interference has been committed and order the case referred to the County Attorney’s office for prosecution. Utah Code Ann. § 78-32-12.2(9).

Besides the above-described Arizona law, statutes in three of the states visited expressly address various aspects of the interrelationship of the criminal and civil courts responsible for handling custodial interference concerns. For instance, in California, district attorneys’ offices are authorized to take appropriate action to identify the whereabouts and recover the abducted child in both criminal and civil court forums. CA Family Law Code §§ 3130-3134 (1994).⁷ This action could include a district attorney's office filing its own civil petition to obtain a “pick up” order to allow the child to be transported back to California by district attorney staff.

Without visits to other jurisdictions with similar statutes, it may be difficult to establish conclusively that comprehensive statutes can be the impetus behind an enhanced law enforcement response. However, at a minimum, making the crime of custodial interference a felony with serious penalties is one step toward getting criminal justice system personnel to recognize that familial abduction is a serious form of child maltreatment.

⁷California’s innovative approach to the handling of custodial and visitation interference cases will be discussed in this article’s section on the Child Abduction Unit, Family Protection Division of the San Diego County’s District Attorney’s office. For additional information on California’s system of intervention, one should also read Janet Kosid Uthe’s “The Role Of Prosecutors In The Civil Enforcement of Custody Decrees: The California Model,” Chapter 7, *Obstacles to the Recovery and Return of Parentally Abducted Children*, ed. Linda Girdner & Patricia Hoff (Washington, D.C.: United States Department of Justice/Office of Juvenile Justice and Delinquency Prevention 1993). Although the content of statutes cited in Uthe’s article has essentially remained unchanged, it should be noted that since the article’s publication, Civil Code § 4604 has been recodified, renumbered, and consolidated into California’s new Family Law Code §§ 3130-3134 (1994).

Individuals contemplating the enactment of statutes better aimed at combating parental abduction should pay particular attention to California's custodial interference statutes, as well the model Parental Kidnaping Crime Act recently produced by the ABA Center on Children and the Law.⁸ As noted earlier, Arizona and Utah's statutes on visitation interference should also be examined given that this offense is often viewed by law enforcement personnel as an even lower priority than custodial interference.

3. THE HUDSON COUNTY SHERIFF'S DEPARTMENT

Jurisdictions can learn much from the Sheriff's Department of Hudson County, New Jersey about implementing and operating an effective system for the handling of both domestic and international parental abduction cases.⁹ Its experience should be examined because unlike California, no statutory mandate exists in New Jersey specifying a certain criminal justice system response to the crime of parental abduction. The Hudson County approach reveals how the commitment and initiative of individual law enforcement personnel with the support of agency leadership can make a significant difference in how an agency responds to the needs of left-behind parents and their abducted children. It reflects how adopting a staff specialist approach to the handling of parental abduction can result in the employment of trained and experienced staff better able to recover kidnaped children and who can assist in the subsequent prosecution of the abductor.

⁸The Act is discussed in greater detail in this Chapter's conclusion highlighting recommendations for legal, programmatic, and policy reform. It is included in Appendix VII along with other model statutes.

⁹The County comprised of twelve municipalities is located directly across the Hudson River from New York City's lower Manhattan. As of 1992, it had an estimated population of 550,000, including Jersey City's population of about 228,000. U.S. Bureau of the Census, *County and City Data Book* (Washington, D.C., 1994). The jurisdiction's population is transient with a large immigrant community from the Middle East, India, Pakistan, Puerto Rico, and Central America.

The Sheriff's Office child abduction specialty unit came into being in 1987 primarily because of the efforts of one deputy who perceived an increasing need for a coordinated law enforcement response to complaints of parental abduction. Initially, the unit was an entity primarily responsible for recording reports of missing persons. With the support of agency leadership, the deputy was able to develop a greater expertise in the subject matter and focus her attention on assisting parents who reported familial abductions. As the number of complaints increased, another deputy was assigned to the unit in 1991.¹⁰ As of October 1994, unit staff reported an estimated clearance rate of ninety percent, indicative of successful case resolution.

Case Processing: A Coordinated Agency Response

Over the years, municipal police departments within Hudson County have come to know that the Sheriff's office has detective specialists who will investigate parental abduction cases and have the option of making an immediate referral to that office. Parents and the Hudson County Family Court also directly contact the office.

The referral of cases to one central law enforcement authority provides for an enhanced coordinated response. Complainants are assisted by deputies who are extremely knowledgeable about all aspects of custodial interference, including the interrelationship between the civil and criminal systems, how to access law enforcement, legal, and other services, and the psycho-social

¹⁰This project's findings appear to support the proposition that although criminal justice system and court personnel may not perceive parental abduction to be a problem for their jurisdictions, once a jurisdiction's law enforcement or prosecutor's office actively intervenes in investigating and prosecuting custodial interference cases, the number of reports begin to rise. One can assume that aggrieved parents or others now know where to go for assistance and that law enforcement is better informed that the crime of parental abduction is not merely a "civil" matter, but a serious violation of the law.

consequences of parental abduction.¹¹ It is a cost-effective approach which supports municipal police departments in the recovery of the abducted child and frees them to deal with other types of cases.

As discussed earlier, New Jersey's statute is ambiguous as to its applicability to custodial interference situations in which no custody or visitation order exists. Despite the statute's lack of clarity, in Hudson County, detectives take these cases seriously and conduct a preliminary investigation to ensure the child's well-being. At the same time, they act as a liaison with the family court and will physically escort an aggrieved parent to the court's clerk or judge so that necessary civil proceedings to determine custody and visitation rights can be initiated.¹² They have also formed an ongoing relationship with the staff of Hudson County Legal Services who have been willing to provide legal services to a limited number of low-income eligible clients in international and domestic parental abduction cases. The deputies are able to facilitate easily these contacts due to the fact that the Sheriff's Department is located in the same building as the courthouse and within one block of the local legal services office.

Upon receiving a report of a parental abduction, detectives will examine the complainant's documents, including any court orders and photographs of the child. They will ask preliminary questions to get a sense as to the child's whereabouts and whether or not the child is at risk of harm. If warranted (e.g., an emergency is alleged), they will travel outside the office to investigate.¹³ Their

¹¹The unit's founder is an instructor at the Jersey City Police Academy where she conducts a four hour presentation on missing persons issues, including those related to parental abduction. Although the detectives' training has primarily been "on-the-job," they have sought out information on parental abduction by attending a national conference on international abduction and taking full advantage of publications produced by the National Center For Missing and Exploited Children (NCMEC).

¹²The development of an ongoing relationship with the Family Court has also meant expedited access to relevant family court records necessary to recovering the abducted child.

¹³In many cases, a uniformed officer from a municipal police department will respond to the scene to conduct the preliminary investigation prior to contacting the Sheriff's Department.

primary concern is the child. If evidence exists that an abducting parent has left the jurisdiction, they will issue a warrant for that individual's arrest. Most importantly, if the complainant's claim appears to be legitimate, they will immediately enter information on the child into the National Crime Information Center (NCIC) and on the abductor upon the issuance of an arrest warrant.

Regarding the enforcement of out-of-state orders, the detectives will usually enforce an order without requiring domestication or review by a Hudson County judge as long as the out-of-state show cause order directs the abductor in their jurisdiction to return a child. Prior to enforcing, the detectives ensure that the order also gives their agency the authority to recover a child.

In handling reports of international abduction, both detectives have become well-versed in making the necessary contacts to prevent a child's removal from the country. They first try to determine where the abductor will take or has taken the child. The airlines to those destinations are contacted. They communicate with embassies or consulates to find out whether any passports have been issued to the abductor. At the same time, they contact the United States Department of State for information on that agency's supportive services and the Hague Convention on the Civil Aspects of International Child Abduction (Hague Convention).¹⁴ In addition, they will communicate with

¹⁴The Hague Convention establishes international law between countries who have agreed to become parties to the Convention. The Convention requires the prompt return of children who have been wrongfully removed from, or retained outside of, their country of habitual residence. It is the law a local court is to follow in determining whether or not a child is to be returned to the country of the left-behind parent. Only forty-three countries are signatories to the Hague Convention, meaning that Convention provisions are not applicable to many countries to which a child might be abducted.

federal authorities to get an Unlawful Flight to Avoid Prosecution (UFAP) issued and will attempt to identify a private or Hudson County Legal Services attorney to represent the left-behind parent.¹⁵

Although the Hudson County Prosecuting Attorney's Office does not have specialty attorneys designated to handle parental abduction cases, it does employ a law enforcement officer who will assist detectives with the issuance of warrants, the extradition process, and follow-up investigation in parental abduction cases. Criminal charges are filed in appropriate cases, though the majority of cases are resolved or voluntarily withdrawn prior to adjudication or at the time of arraignment. According to staff of the Prosecuting Attorney's Office, if a child is returned to the lawful custodian, the case is generally not prosecuted.

The Sheriff Department's success in recovering abducted children is due in part to the network of support services they have developed over the years. In addition to working closely with the local family court and legal community, they have effectively sought the assistance of other law enforcement agencies within and outside of New Jersey. They have a relationship with the New Jersey State Police that the detectives describe as "fantastic." According to the detectives, the State Police will help out in any investigation in which they are involved. They also communicate frequently with their liaison at the State Police Department's Clearinghouse on Missing Persons.

As to federal agencies and other national support, detectives work closely with the Federal Bureau of Investigation (FBI), the United States Immigration and Naturalization Services (INS), and the National Center for Exploited Children (NCMEC). Their liaisons with the FBI and the INS

¹⁵One case exemplifies how the detectives' diligence and active criminal prosecution made a difference in recovering two children who had been unlawfully abducted by their father in 1991 from Hudson County to Pakistan, a non-Hague country. Shortly after the abduction, the father was indicted. Over the next three years, the detectives never closed the case, but continued to pursue leads. In the summer of 1994, the father was discovered in the New York area. He was arrested and detained in Hudson County pending a criminal trial on parental abduction charges, as well as on civil contempt charges. He ultimately pled guilty to the offenses charged and finally, disclosed his children's exact whereabouts. The children were reunited with their mother in the fall of 1994.

are located in nearby Newark, and Jersey City, respectively. FBI staff will assist with the issuance of Unlawful Flight to Avoid Prosecution (UFAP) warrants and will send agents to search for an abductor and child as long as a felony warrant is issued. INS agents can attempt to stop an abductor at the United States borders. Recently, detectives also met with representatives of the NCMEC. During their visit, they learned of available technology and received information on supportive resources that could be instrumental in reactivating investigations in several cases.

Reflections on the Hudson County Approach

To summarize, the Hudson County Sheriff's Office's willingness to commit staff to investigate and aid in the prosecution of parental abduction cases is to be commended. This approach reflects that even in the absence of a statutory mandate, experienced and highly motivated law enforcement and prosecutor personnel can play a significant role in locating abducted children. It shows how a coordinated agency response in which civil and criminal justice systems work together enhance the chance that a child will be recovered expeditiously.

4. THE SAN DIEGO COUNTY DISTRICT ATTORNEY'S OFFICE

Much legal and other literature on parental abduction focuses on California's approach for investigating and prosecuting these cases. As such, this discussion will only briefly outline how the San Diego County District Attorney's Office handles complaints of parental abduction. This section's primary focus will be on the provision of services that are not usually available even in those jurisdictions where parental abductions are actively investigated and prosecuted -- the employment of investigation specialists to resolve complaints and provide reunification services.

General Background

As stated earlier, in accordance with California Family Law Code §§ 3130-3134, county district attorney offices are statutorily mandated to investigate and prosecute cases of parental abduction and are authorized to initiate both civil and criminal proceedings in their efforts to locate and recover a child. For those offices, this means taking on more of a typical law enforcement role of resolving cases of familially abducted children, as well as obtaining appropriate court orders to recover children.

Although police or sheriff deputies may respond to an initial report of parental abduction, their involvement is relatively limited, with cases being quickly referred to the local District Attorney's Office.¹⁶ According to representatives of the Child Abduction Unit of the District Attorney Office, approximately fifty percent of complainants contact the District Attorney's Office directly for assistance. The other fifty percent are referrals from law enforcement agencies. Given that the District Attorney's office has been involved in parental abduction cases since 1978, the public has become increasingly aware of that office's role in such cases.

After the enactment of Civil Code § 4604 (now Family Law Code §§ 3130-3134) in 1978, the San Diego County's District Attorney Office became more involved in the investigation and prosecution of parental abduction cases. In 1988, the office established a Child Abduction Unit

¹⁶Representatives of the San Diego police department were interviewed on the processing of parental abduction and visitation interference cases. Law enforcement personnel are knowledgeable about the District Attorney's role in investigating and prosecuting these types of cases and are trained on the department's written procedures regarding the handling of abduction cases. Upon receiving a custodial interference report, the patrol officer conducts a preliminary investigation, including, but not limited to, an actual visit to the location suggested by the reporting parent (if within the jurisdiction). Police will intervene whether or not a custody order is in existence. The immediate goal is the child's well-being, followed by the apprehension of the offending parent when appropriate. A police dispatcher can also refer individuals directly to the District Attorney's Office if the child does not appear to be in danger. District Attorney staff indicate that they continually update local law enforcement agencies about the District Attorney's role in the handling of abduction cases to ensure that aggrieved individuals are quickly directed to them.

which, as of August 1994, employed one attorney, one sworn part-time investigator, three investigation-specialists, and one secretary.¹⁷ It is a subdivision of the Family Protection Division comprised of twenty full-time attorneys who address child protection and domestic violence concerns. As the unit's services are statutorily mandated, the State reimburses the District Attorney's Office for tasks performed that are civil in nature.

The Role of the Investigation-Specialist

Case Processing

The employment of trained and experienced investigation-specialists to handle many aspects of case processing, including the provision of reunification services, is a practice that other jurisdictions should seriously consider replicating. It results in a cost-effective utilization of staff who can competently investigate reports of custodial interference, mediate and resolve disputes, and assist in the reunification process. In the San Diego County's District Attorney's Office, the three investigation-specialists are both sworn and non-sworn staff¹⁸ who had previously worked for the County performing general case investigation. They have received extensive training on issues relevant to parental abduction, including reunification strategies.

¹⁷Project staff were recently advised by the District Attorney's Office of staffing changes, effective December 1995. The office currently employs four full-time investigators, three of whom are peace officers able to perform police functions, such as making arrests, executing search warrants, serving summonses, and taking witness statements. The peace officers have extensive law enforcement backgrounds having worked for other criminal justice agencies.

¹⁸Sworn staff are able to perform the above described law enforcement functions. They are viewed by one office representative as having greater influence over abductors than non-sworn staff as they have been "actual 'cops'." For the same reason, they are "better equipped" to travel to other jurisdictions and work with other law enforcement agencies in enforcing California court orders.

Investigation-specialists are involved with a case from the time of the initial report. Upon receiving a complaint, they start with the assumption that they are dealing with a criminal complaint that is also civil in nature. If the aggrieved party indicates that a custody order is being violated and the alleged abductor's whereabouts are known, the investigation-specialist will make a courtesy call to attempt to obtain that individual's version of the events.¹⁹ He or she will usually approach the alleged abductor in a "friendly" manner and will attempt to mediate a resolution, if at all possible. Investigation-specialists report that in most cases, once an offending party is contacted by the District Attorney's Office and is advised of the illegality of his or her actions, the case is resolved and if appropriate, referred to the local family court for a more final settlement of custody and visitation rights. According to the investigation-specialists, most people do not want involvement with the criminal justice system.²⁰

Cases will be opened if the child or abducting parent's whereabouts are unknown, the abductor has fled to another state, or if the parent continues to violate a valid custody order. In these cases a preliminary investigation is warranted and the investigation-specialists will speak with relatives, friends, and others who can provide leads. For instance, in one case, investigation specialists contacted gambling organizations for leads when it became known that the abductor was a gambler. Moreover, upon opening the case, unit staff will make an entry on the child and abductor

¹⁹Staff proceed cautiously in investigating reports, keeping in mind that in some cases the complainant may not be providing an accurate statement of the facts. A case was related to site interviewers in which a father sought to have his child placed with him pursuant to an order granting him custody. He alleged that the child's mother was incapable of caring for the child due to the mother's mental retardation. Upon further inquiry, staff discovered that the order had been an ex parte one (order granted out of the presence of the mother) and that the father had been convicted of rape and the murder of an eleven year old. The court revoked its order.

²⁰As of August 1994, the Unit was receiving approximately 1500 custodial interference complaints each year. The majority of these reports were one time contacts; individuals were only seeking information on divorce and custody matters and were referred to the jurisdiction's family court. Of the 1500 contacts, an estimated 300-500 cases were opened. Over half of these cases were resolved by the parties.

into the National Crime Information Center (NCIC) system. If they perceive that a child is at risk, they will also contact the local child protective services program.

Investigation-specialists have also acquired knowledge of computer systems and take advantage of such technologies in identifying the whereabouts of abducted children.²¹ They communicate with and take full advantage of the resources of the National Center For Missing and Exploited Children, the Adam Walsh Foundation, Child Find, the federal parent locator service, and state departments of motor vehicles.

Also reflective of their commitment to children and their families, the investigation-specialists continue to work on “inactive” cases in an attempt to get parents at least some minimal contact with their children. In one case, the abductor took a child to the Middle East, to a country not a party to the Hague Convention on the Civil Aspects of International Child Abduction. Although the child had been gone for nearly five years, an investigation-specialist continued to write to family members and others in that country. She was sensitive to cultural concerns in making her appeal to the father for access to the child. As a result, the mother was able to obtain pictures and school records of the child. According to the investigation-specialist handling the case, the mother became “overwhelmed” upon receiving her child’s photograph as she had not seen her child for five years.

Reunification Services

Many individuals interviewed during project site visits commented on the need to provide services (e.g., specialized counseling and foster care) to diminish the trauma a child might

²¹They reported requiring greater access to a number of data collection systems for purposes of case tracking, including TRW credit check, Data Quick, and medical assistance information.

experience upon recovery and reunification with the left-behind parent.²² Very few programs designed to provide such support to the abducted child and his or her family exist nationwide. Jurisdictions contemplating the creation of such an assistance program should look to see how the San Diego County District Attorney's investigation-specialists work to reunite the abducted child with his or her lawful custodian.²³

These specialists have been actively involved in getting court orders enforced and picking up children in out-of-state jurisdictions for their return to California. When necessary, they go directly to the judge in the foreign jurisdiction to present the California court order for enforcement. Upon recovery of the child by law enforcement personnel, they attend out-of-state court proceedings to ensure that the court is informed about the District Attorney's concerns.

They also make referrals to Family Court Services of San Diego County's Family Court which employs skilled mediators who have been instrumental in reuniting parents with their children. These individuals have been educated on "parental alienation" syndrome and are perceived as knowing how to respond to it.²⁴

²²For a discussion of an abduction's impact on a child, see Part One's literature review.

²³See Kathryn Turman, *Recovery and Reunification of Missing Children: A Team Approach* (Arlington, VA.: National Center for Missing and Exploited Children 1995) for additional information on reunification services.

²⁴Further study needs to be conducted on the appropriateness and effectiveness of mediation as an intervention in reunifying families and preventing abduction. Alternative dispute resolution as an abduction prevention tool is discussed in the "Other Program Development Considerations" section of this chapter.

Trained in reunification strategies,²⁵ the investigation-specialists recognize that children, especially ones who have not communicated with one of their parents for an extended period, may have a very difficult time adjusting to a “new” life with the left-behind parent. Upon meeting children, they introduce themselves, advise them in a comprehensible manner about what has and will happen to them, and offer them toys.²⁶ A meeting can last for several hours, as was the situation in one case in which the child’s mother also accompanied the investigation-specialist to the site of reunification.²⁷ The investigation-specialists have found that in most cases, children appear to trust them and will go with them readily. Their experiences reveal that they may help in easing the child’s transition to living with a parent who may be a stranger to them.

The investigation-specialist approach can work if personnel assigned to investigation and reunification tasks are trained and have reasonable caseloads. Even in the system described above, the employment of additional investigation-specialist staff might be warranted given the ever increasing number of cases the Child Abduction Unit must handle. As of August 1994, no additional staff had been hired since 1989. In addition, in light of the relative “newness” of reunification services for the abducted child and family, the need exists for the development of additional training programs, further study of existing programs, and the necessity for expanded service delivery in this area (e.g., specialized counseling services post-reunification).

²⁵The investigation-specialists attend training bi-yearly and have participated at conferences sponsored by the Center for the Study of Trauma of the University of California, San Francisco. They receive support from their supervisor, the Unit’s Chief Deputy District Attorney, a nationally recognized expert in the handling of parental abduction cases. They also have access to a comprehensive manual on custodial interference produced by their office. Its table of contents is included in Appendix VIII.

²⁶A grant-funded program enables the office to keep toys in knapsacks to give to children when they are located.

²⁷Parents generally do not travel with the investigation-specialists to pick up their children. In addition to a lack of financial resources to do so (estimated nine out of ten parents cannot afford to go), parents do not want to risk coming under out-of-state court jurisdiction.

5. THE PIMA COUNTY, ARIZONA APPROACH

Like Hudson County, Pima County, Arizona²⁸ has developed criminal justice programs for intervention in parental abduction cases without a statutory mandate to do so. Within the County Attorney's Office, a system of intervention has developed in which one attorney specializes in the prosecution of parental abduction cases, with a victim witness advocate providing supportive services to left-behind parents. Similarly, the jurisdiction's municipal and city law enforcement agencies have personnel who have been able to develop an expertise in the handling of parental abduction cases. In addition, this jurisdiction is unique in that it may be one of the few counties in the country in which misdemeanor visitation interference cases have been actively prosecuted. Both the County and the City (Tucson) Attorneys' Offices have successfully tried a relatively high number of these cases.

The County Attorney's Office

The County Attorney's Office employs a nationally recognized, highly experienced attorney who specializes in the prosecution of felony custodial interference cases.²⁹ Usually, cases are referred to the specialist attorney directly from the area's law enforcement agencies.³⁰ Periodically,

²⁸As of 1992, Pima County had a population of approximately 690,200 including Tucson with an estimated population of 415,000. U.S. Bureau of the Census, *County and City Data Book* (Washington, D.C., 1994).

²⁹At the time of the site interview, this attorney was in the process of training a successor to specialize in parental abduction cases. She is the Chief Deputy County Attorney and has numerous administrative responsibilities. She spends about five percent of her time on parental abduction cases.

³⁰The Tucson Police Department and the Pima County Sheriff's Office have detectives who are knowledgeable in investigating reports of parental abduction. Personnel in both agencies work closely with the County Attorney's Office. The specialist prosecutor is known to them on a first-name basis. She and her staff are available to them on a twenty-four hour basis. For an example of written procedure on parental abduction for law enforcement personnel, refer to the Tucson Police Department's Procedure 1300, sub 1322 "Custodial Interference" in Appendix IX.

she will receive a call directly from an aggrieved parent. She handles the more serious felony cases, with misdemeanor or “access interference” cases being assigned to the office’s misdemeanor division as discussed below. The attorney specialist has been instrumental in implementing formal written policy and developing a training manual on the office's handling of custodial interference cases.

The office files approximately twenty-five felony custodial interference complaints per year. Most cases referred to the office are resolved prior to a complaint being filed as the child is voluntarily returned. In assessing whether or not to charge or file a complaint, the offender’s criminal intent is assessed. Other charges can be filed if evidence of child abuse, burglary, and related offenses exist. The majority of filed cases result in convictions for custodial interference with defendants receiving mandatory prison terms if they are repeat offenders. In most cases, the defendant receives a suspended sentence, is placed on probation, and may be ordered to pay restitution to the victim.

If the defendant is in another state, the County Attorney’s Office will extradite. One approach to extradition is to have the defendant waive extradition and return to Arizona to plead to a misdemeanor.

What is unique about the specialist attorney’s role is that she has reached out to law enforcement personnel to educate them on relevant custodial interference issues. At the time of the site visit interview, she had just conducted a training session for newly hired police. During training programs, she provides the police with guidance on court order enforcement. She advises police that in assisting a parent in recovering a child, they must ensure that the order they enforce is certified with a clerk’s affidavit from the issuing court and not be superseded by a more recent order.

The Victim Witness Advocate

The attorney specialist in the County Attorney's Office works closely with the Office's victim witness advocate, an individual with almost a decade of experience handling parental abduction cases.³¹ Not only does he work on cases in which criminal complaints have been filed, but he also assists parents at the earliest stages of an abduction.³² He will talk with aggrieved parents, advise them to immediately file a custodial interference report with the police, and walk them through the civil system so that they can obtain appropriate court orders. He views himself as a "broker" who works within both the social services and legal world.

It should be noted that his caseload is primarily comprised of domestic violence cases with custodial interference cases constituting only five percent. He estimates that he assists two to three parents each month who seek recovery of their abducted children, as well as three to four parents per day who call about visitation interference.

The victim witness advocate helps get the aggrieved parent "past the door" of law enforcement authorities. Parents will periodically report to him that the police have advised them that their problem is a "civil" one or that the police cannot intervene unless a custody order exists.

³¹He became interested in issues of custodial interference upon attending a conference on the subject and after three fathers came to his office within one week desiring access to children they had not seen for lengthy periods. He continually seeks to educate himself about parental abduction concerns, including reunification services, and has conferred with the American Prosecutors Research Institute (APRI) to obtain information.

³²How do individuals know to contact the victim advocate? Over the years, law enforcement personnel have come to know his work on specific parental abduction cases, and have been educated on a regular basis on the County Attorney's role in the handling of parental abduction cases by that office's prosecutor specialist. The County Attorney's Office's receptionist will also immediately refer intake calls from parents to him.

In these cases, the advocate will call knowledgeable detectives in the area to seek their intervention on behalf of the parents.³³

In referring parents to the civil court system, the advocate recognizes that he cannot practice law and give legal advice. His goal is to ensure that parents are able to make contact with the judge, programs, or authorities who can provide direct services. He will attempt to identify attorneys who are willing to provide their services for free or a reduced fee for those parents in need of representation. Regarding visitation interference cases, he will assist by referring the family to the local mediation program, or as it is known in the jurisdiction, the conciliation court. He plays a crucial role in accessing the resources parents need to be reunited with their children.

The advocate also has parents and police calling him from out-of-state to assist with reunification. He advises parents of the “paperwork” they will need to get their children back and will refer them to the local court clerk’s office. At the same time, he will communicate with appropriate local law enforcement authorities and the attorney specialist in his office. Moreover, he will go to the airport and meet parents upon their arrival, help them obtain shelter, and then support them in getting their out-of-state order registered and a “pick-up” order issued.

The advocate has developed a good rapport with the jurisdiction’s local judges. Usually a superior court judge will receive the parent and advocate in chambers. He will show the judge the pleadings at which time the parent is sworn in for the taking of testimony. If deemed appropriate, the judge will order that law enforcement personnel be authorized to retrieve the child for return to his or her lawful custodian. Occasionally, a parent will go to the judge on his or her own to obtain the “pick-up” order.

³³Even in jurisdictions in which specialty units exist, patrol officers and others in the field who respond to complaints of parental abduction or visitation interference must be informed of services offered within their own or other agencies. They also must be educated that custodial interference is violative of the criminal law and not purely a “civil matter” and be apprized of appropriate interventions in handling such complaints.

The victim advocate does not enforce pick-up orders. He will go with the victim to the scene of the pick-up and offer support. Sometimes he will go to the door of the alleged abductor's residence with the victim. However, he is not authorized to serve the order. His support is helpful to the victim in that frequently "fireworks start" as soon as law enforcement authorities request a child's return. Upon the child's return to the lawful custodian, he will assist that individual in getting out of the jurisdiction, for example, by driving the parent to the airport. He does not provide reunification counseling to the parent.

Finally, the victim witness advocate has developed a working relationship with the family services unit at nearby Davis Air Force base. Occasionally, military personnel will be involved in incidents of custodial interference. In one case, for instance, a mother had not seen her child for five years as the child's father, in the military, had taken the child to Europe. The military's family services unit was helpful in contacting the appropriate authorities to get the child returned to the mother.

Prosecution of Visitation Interference Cases

As stated earlier, Pima County is unique in contrast to many other jurisdictions in the nation because of its criminal justice system's investigation and prosecution of visitation interference or denial of access cases. Two independent prosecutor agencies handle these cases: the Pima County Attorney's Office with jurisdiction over cases outside Tucson, and the Tucson City Attorney's Office with jurisdiction over cases within the City.

The County Attorney's misdemeanor division files criminal complaints in approximately forty visitation interference cases each year with about ten to fifteen being active at any given time. A case gets to the division after a patrol officer issues a ticket or citation summoning an offender to appear in court for "access interference." If an officer is uncertain as to how to proceed, he or she will usually contact the division's paralegal who then may consult with the felony attorney specialist for an assessment as to whether the case should be processed as a felony or misdemeanor.

In filing a misdemeanor visitation interference complaint, the criteria for filing includes: a) the seriousness of the interference; b) evidence of repetitive conduct; and c) the impact on the child of parental conduct. As an example, if a parent is twenty minutes late returning a child, a criminal complaint will not be filed. If a parent takes a child on a Friday night with the child's return to be on the same night and the child is not returned by Sunday, prosecution will ensue.

According to a representative of the County Attorney's misdemeanor division, access interference cases are usually "hotly contested." The defending parent typically raises the defense that the other parent has abused or neglected the abducted child. Occasionally, child protective services becomes or is already involved with the family. In many cases, abuse and neglect allegations are determined to be unfounded.

Roughly eighty percent of these cases result in a judge determination of "not guilty." These county visitation interference cases are tried by justices of the peace who may not be lawyers. Individuals convicted will placed on six to twelve months of unsupervised probation and are ordered to attend "anger" counseling or parenting skills classes.

Likewise, the City Attorney's Office files criminal complaints in approximately fifteen cases per year with almost all referrals coming from the Tucson Police Department. The criteria for filing is similar to that of the County Attorney's Office. Regarding case disposition, those convicted are placed on probation, may be fined, and/or ordered to perform community service.

As revealed during site visits, most complainants in these misdemeanor cases are not represented by their own attorneys. Almost all are individuals with low-incomes who, though eligible for legal services, may not be served by the local legal aid office because of its very limited staff resources. This raises the issue of whether visitation disputes involving parties who are able to afford legal representation are more likely to end up in the civil court system as opposed to the criminal one. As discussed in the recommendations section of this section, the provision of civil legal services and access to family courts, including mediation services, is critical to the prevention

and resolution of custodial interference and may diminish the necessity for criminal justice system intervention.

Visitation Supervision Program

Several individuals interviewed during site visits, including judges, advocated for the creation of supervised visitation programs if abductions were to be prevented. For the most part, judges can only deny visitation to a parent in the most extraordinary of circumstances (e.g., parental rights have been terminated, parent convicted of serious abuse and neglect) and may be reluctant to deny access to a parent solely because one parent alleges that the other parent may abduct the child.

If a judge is concerned about a child's well-being in the unsupervised presence of a parent, a judge can order that the visitation be supervised by a responsible adult. However, the appointment of a person to take on such responsibilities can be costly and logistically impossible. The individual may not always be available at times when visitation between parent and child is feasible, or most importantly, may not have the therapeutic skills or "neutrality" to appropriately supervise. In Pima County, judges and families have another option open to them.

Established in 1988, Pima County's Judicial Supervision Program (JSP) is a service mandated by Arizona law ³⁴ to provide the court and families with assistance in ensuring the implementation of civil custody and visitation orders. In order to participate in the program, a Pima County domestic relations or juvenile court order is necessary. As of December 1994, the program was operated under the auspices of the Casa de los Ninos³⁵ and provided the following services:

³⁴Ariz. Rev. Stat. Ann. §25-338 (1988).

³⁵As of July 1, 1996, Casa de los Ninos continues to provide supervision services; however, its funding source for the provision of such services has changed.

- 1) Telephone monitoring: each parent is called to verify compliance with court-ordered visitation schedules;
- 2) Exchange supervision: staff escorts child for visits to and from parent so that parents do not have to deal with each other;
- 3) Visit supervision: staff monitors the entire visit between parent and child and may also provide transportation for special outings; and
- 4) Therapeutic supervision: visits take place in therapeutic setting under counselor's guidance with the aim of helping the parent and child reestablish their relationship.

Visitation usually does not occur at the program's administrative offices, but at a site in which the child will feel comfortable. As of December 1994, the program was planning to move to a new building with a user friendly visiting room.

In addition to the above-described services, Judicial Supervision Program staff provide expert and other evidence to the court on the appropriateness of varying degrees of visitation supervision, as well as progress of ongoing visitation arrangements. For example, in a case in which a parent was convicted of custodial interference, program staff might make a recommendation for enhanced visitation supervision, not merely exchange supervision.

At any given time, the program may be involved in approximately ninety-five cases. Statistics for 1993 reflected the program's involvement in five custodial interference cases and twenty-two lack of access cases. Therapeutic services were provided in an estimated twenty-five percent of all cases handled.

As of December 1994, the Judicial Supervision Program's budget was approximately \$150,000 per year. Parties pay for services. The court has the discretion to order one or the other

parent to pay for the program's services. If a parent is indigent, they may pay a reduced fee. Therapeutic intervention is more expensive, \$60.00 per hour with a reduced fee of \$30.00, than less intensive supervision.³⁶

6. OTHER PROGRAM DEVELOPMENT CONSIDERATIONS

In implementing promising approaches of intervention, one needs to consider programs designed to alleviate the family dysfunction that leads to custodial interference or which support criminal justice personnel in their efforts to locate and recover abducted children. Some, such as the Judicial Supervision Program, have been discussed above. These cost-effective programs include legal services and pro se projects, family court services, mediation, and educational forums on parental abduction issues.

Access to Competent Legal Counsel for Parents and Children

Lack of affordable and competent legal representation for aggrieved parents is a major obstacle to the recovery and return of parentally abducted children. Findings in *Obstacles to the Recovery and Return of Parentally Abducted Children* (1993) reflected the following:

The analyses of recent case law and survey responses reveal a portrait of the legal and judicial profession as not adequately informed as to applicable law in parental abduction cases. Parents have difficulty finding attorneys, often in two states, who have sufficient knowledge and experience. The costs of legal representation relating to the location, recovery and return of an abducted child exceed the means of many of these parents.³⁷

³⁶See also Robert B. Straus, "Supervised Visitation and Family Violence," *Family Law Quarterly* 29, no. 2 (summer 1995); Committee on Family Court and Family Law of the Association of the Bar of the City of New York, "Court Ordered Supervised Visitation: Documenting an Unmet Need," *The Record* 50, no. 1 (November 1994).

³⁷"Executive Summary," *Obstacles to the Recovery and Return of Parentally Abducted Children*, ed. Linda Girdner and Patricia Hoff (Washington, D.C.: United States Department of Justice/Office of Juvenile Justice and Delinquency Prevention 1993), 2-9 to 2-10.

This study's site visits verified the above-outlined concerns. The litigating of parental abduction cases is complex, especially if the abductor has crossed state or international borders. Even in states in which law enforcement agencies and prosecutors will intervene prior to the issuance of a custody order, it is almost always necessary for the left-behind parent to obtain a civil or family court order establishing custody or visitation rights. In those cases in which a custody order has been issued and violated, the appropriateness of filing civil contempt proceedings also needs to be assessed taking into consideration double jeopardy ramifications if criminal prosecution is to be pursued.

Moreover, children are usually not afforded independent counsel in civil proceedings related to parental abduction, in contrast to civil child abuse and neglect proceedings. In those proceedings, guardians ad litem who are frequently attorneys are typically appointed to advocate for children.³⁸ This attorney or advocate is an independent voice for the child ensuring that the child's interests are protected. Given that parental abduction is a serious form of child maltreatment, judges should automatically appoint an attorney for the abducted child in custody proceedings so that the court is fully apprized of the child's interests prior to the issuance of any orders impacting on the child.³⁹

³⁸Despite federal and state legal mandates, many children in these proceedings may go unrepresented. See U.S. Department of Health and Human Services, *National Study of Guardian Ad Litem Representation* (1990).

³⁹Approved by the House of Delegates of the American Bar Association on February 12, 1979, *Standards Relating to Counsel for Private Parties* supports the proposition that all children should be afforded legal counsel in custody proceedings. Standard 2.3(b) provides:

Counsel should be available to the respondent parents, including the father or an illegitimate child, or other guardian or legal custodian in a neglect or dependency proceeding. Independent counsel should also be provided for the juvenile who is the subject of proceedings affecting his or her status or custody. Counsel should be available at all stages of such proceedings and in all proceedings collateral to neglect and dependency matters, except where temporary emergency action is involved and immediate participation of counsel is not practicable.

For these reasons, in working toward an enhanced criminal justice system response to the crime of parental abduction or visitation interference, one should not forget the importance of ensuring left-behind parents and children, including those with low-incomes, access to knowledgeable legal counsel. In providing individuals with access to justice, special attention should also be paid to the development of educational programs that not only educate law enforcement authorities and prosecutors, but also inform attorneys, mediators, judges and other court personnel on issues pertinent to familial abduction.

As reflected in the discussion of the Hudson County Sheriff's Department, legal services programs, such as Hudson County Legal Services, should be replicated given the critical role such programs can play in supporting law enforcement's investigation and recovery efforts.⁴⁰ Hudson County Legal Services has developed an ongoing relationship with the Sheriff's office and will provide legal representation, resources permitting, to eligible clients in serious domestic and international child abduction cases. The program's deputy director is an expert on international and domestic abduction and continues to educate herself on the issues.

However, it should be noted that nationwide a significant number of individuals with custodial interference problems are turned away by legal services programs because they do not have low enough incomes to be eligible for services or are nonresident aliens. Even if they are eligible, they may also be unable to obtain legal assistance as many legal services offices have limited budgets and staff resources. These problems will only worsen as legal services programs suffer substantial cutbacks in federal and in some jurisdictions, state funding.

For an in depth discussion of children's right to counsel, see Catherine J. Ross, *From Vulnerability To Voice: Appointing Counsel For Children In Civil Litigation*, 64 Fordham L. Rev. 1571 (1996).

⁴⁰Not only do the Sheriff deputies refer left-behind parents to the legal services office, but they also on occasion refer alleged offenders. They recognize that successful case resolution is more likely to occur if both parties perceive themselves as having a voice in court proceedings.

Those interested in creating a coordinated approach to the handling of parental abduction cases should approach their local legal services offices to determine whether and how parental abduction cases can be made a priority of those offices. In addition, state and local bar associations, especially those bar sections working on family law issues, should be contacted to ascertain if volunteer or reduced fee lawyer services are available to the parents and their children.⁴¹

Family Court Services/Pro Se Projects

Given diminishing funding for legal services programs and the high number of individuals with low incomes in need of legal services, court projects designed to enable individuals to represent themselves in legal proceedings, at least less complex cases, are of increasing importance in providing individuals with access to the justice system. Although it is preferable for individuals to be represented by counsel in custody proceedings, family court services or pro se projects can be of help to left-behind parents in establishing their custody rights immediately after an abduction, in enforcing out-of-state custody orders, and in resolving visitation interference disputes.

Individuals interested in learning more about pro se or family court projects in their jurisdictions should contact their local or state bar associations to inquire about existing projects or the possibility of developing such services. Two family court projects identified during site visits may be of interest. They are: Family Court Services of San Diego County's Family Court and the Office of the Family Court Liaison, Circuit Court, First Judicial Circuit of Florida serving Escambia County.⁴²

⁴¹For further elaboration on access issues, one may wish to review "Access to Legal Representation in Child Custody and Parental Abduction Cases" authored by V. Wendy Bhambri, Esq., a consultant to the Parental Abduction Training and Dissemination Project of the ABA's Center on Children and the Law, and produced in 1996. The project was supported by a grant from the Office of Juvenile Justice and Delinquency Prevention, United States Department of Justice

⁴²The general information telephone numbers for these court programs are: San Diego County Family Court -- (619) 557-2100; and the Office of Family Court Liaison, Circuit Court, 1st Judicial Circuit of Florida -- (904) 436-9474.

It should be noted that court personnel are generally prohibited from providing individuals with legal advice. However, many family and civil courts, including the ones named above, have developed pro se packets, including form and sample pleadings, to enable non-lawyer litigants to file for relief in less complex divorce, custody, child support, and visitation proceedings.

Alternative Dispute Resolution/Mediation Programs

Mediation is a process whereby persons with disputes meet in a neutral setting with an individual trained to facilitate a resolution acceptable to them. Generally, individuals participate in mediation voluntarily, though in some jurisdictions, participation is mandatory in custody proceedings. Although mediation would probably not be appropriate in all custodial interference cases, the process of alternative dispute resolution can be instrumental and cost-effective in preventing abduction and resolving visitation interference disputes.

Mediators were interviewed at several sites and the majority reported that on occasion parties participating in mediation sessions threatened to abduct or interfere with visitation. They acknowledged the importance of identifying risk factors to abduction and knowing how to respond to such threats.⁴³ One mediator indicated that if a threat appeared to be “serious,” he would notify the court or child protective services. Upon hearing threats, mediators related that they would also advise parties as to the illegality and repercussions of parental abduction or visitation interference.

⁴³The American Bar Association Center on Children and the Law, in conjunction with the Center for the Family in Transition, is completing a research project entitled “Prevention of Parent and Family Abduction through Early Identification of Risk Factors.” Funded by the Office of Juvenile Justice and Delinquency Prevention, United States Department of Justice, the study is designed to 1) identify characteristics differentiating abductors and their families from high conflict nonabducting parents engaged in custody litigation and 2) develop and evaluate interventions to prevent abductions in families at risk for abduction. The project’s findings should enhance the ability of individuals working with families in conflict to identify risk factors for abduction and the need for appropriate interventions. For more information, contact Linda Girdner, Ph.D., ABA Center on Children and the Law at 202-662-1722.

One mediation program of particular note is the Dispute Resolution Center of Snohomish County, Washington. As of 1994, the Center employed ten staff and 150 trained volunteers who worked as counselors, conciliators, mediators, arbitrators, outreach persons, and trainers. The Center's 1993 annual report reflected that the program handled a significant number of domestic relations related cases, at least 762 of which involved the development of parenting plans.

Communities interested in abduction prevention strategies should look closely at Washington State's statutory scheme requiring the filing of parenting plans with the court and specifying the conditions under which such a plan will be approved. Revised Code of Washington §26.09.180 *et. al.* As outlined in the statute, two of the primary goals of the "permanent parenting plan" are to "[m]inimize the child's exposure to harmful parental conflict" and "[e]ncourage the parents, where appropriate..., to meet their responsibilities to their minor children through agreements in the permanent parenting plan, rather than by relying on judicial intervention." RCW § 26.09.181(1)(e).

In developing a parenting plan agreement, a mediator will anticipate potential problems that might arise regarding custody and visitation by addressing such topics as where a child will reside during vacations, holidays, and special occasions, how a child will be transported between parents, and any restrictions on visitation.⁴⁴ The plan, which would ultimately be filed with the court in the form of an order, would also clearly delineate that violation of the plan could result in contempt and criminal charges.

Staff interviewed at the Dispute Resolution Center indicated that local law enforcement agencies have been supportive of mediation, recognizing that having access to trained mediators can be beneficial in resolving familial disputes. This particular program has worked to educate officers

⁴⁴For an example of a form parenting plan outlining the various issues parents need to consider in evaluating custody and visitation arrangements, refer to Appendix X.

on patrol about mediation by giving them “Police Department Referral Slips” with the Center’s telephone number so that they can provide citizens with access to mediation services.⁴⁵

Interviews with mediators reveal the importance of ensuring that mediators and other professionals addressing family discord are well-educated on abduction risk factors, the criminal nature of parental abduction and visitation interference, and appropriate interventions. This holds true for criminal justice system personnel as well.

Educational Forums for Law Enforcement Personnel

As will be discussed in more detail below in this Chapter’s conclusion, educating patrol or “street” officers (those likely to be the first to respond to a report) on parental abduction and missing children’s issues is essential if the criminal justice system is promptly and effectively to reunite children with their legal custodians. Jurisdictions should explore avenues by which training on parental abduction issues is not only mandated at the police academy, but also conveyed on a relatively regular basis at the workplace (e.g., brief bulletins, inclusion in training manuals, mention at roll call or staff meetings, videotapes).

“Take-A-Cop To Lunch” was one project discovered in Washington State. Operation Lookout, a non-profit missing children’s support organization located in Washington State about fifty miles north of Seattle, has established a program in which their staff take patrol officers to lunch to educate them about missing children’s concerns and the services their agency can provide in locating and recovering children.

⁴⁵It should be noted that not all cases, especially those involving domestic violence, are appropriate for alternative dispute resolution. If an agency were to utilize a referral slip such as the one available to police in Snohomish County, an agency would have to ensure that leadership and patrol officers were trained on appropriate case referrals. One would not want law enforcement authorities failing to immediately intervene in cases where the parties were at risk of harm.



7. STRATEGIES FOR PROGRAM IMPLEMENTATION

An examination of these promising approaches of intervention raises the issue of how a program becomes institutionalized within an agency so that it will continue to exist once leaders or staff committed to combating the crime are no longer employed within a particular unit or agency. What ensues if leadership changes, and parental abduction is no longer a priority to the individuals in charge, or fiscal restraints require the assignment of staff to other duties? Additionally, for those jurisdictions in which criminal justice system intervention is non-existent or minimal, how does one change an institutional or staff mindset that parental abduction is not a criminal problem? Given that law enforcement agencies have to deal with an increasing volume of serious violent or juvenile crime, often drug-related, how can criminal justice systems be encouraged to make custodial interference a priority, especially in light of limited budgets and staff resources? Answers may be found in the above discussion of promising approaches, as well as the following summary of recommendations for statutory, programmatic, and system reform. It should be noted that many of the recommendations stated below are the same as those of the criminal justice system personnel interviewed in the field.⁴⁶

⁴⁶The site summaries of this study list the general concerns and recommendations of those law enforcement personnel and other professionals.



Recommendations for Legal, Programmatic, and Policy Reform

Statutory Change:

- A) **Enact comprehensive criminal parental abduction statutes, such as the Parental Kidnaping Crime Act.**

Attached in Appendix VII is a comprehensive uniform “Parental Kidnaping Crime Act.”⁴⁷ Those interested in enhancing their criminal justice system’s response to the crime of parental abduction should review this model statute, carefully contrasting it to their state’s existing statute. As indicated in the Act’s introduction, the “Act is intended as a substitute for existing laws that cover the issues addressed in [the] statute” and to enhance the effectiveness of those statutes that are already for the most part in conformity with it. The Act’s primary goal is to produce statutory uniformity among states because:

⁴⁷The statute and commentary were produced by Janet Kosid Uthe, legal consultant to the Parental Abduction Training and Dissemination Project of the ABA Center on Children and the Law in consultation with Linda K. Girdner, Ph.D., project director, and Patricia M. Hoff, Esq., legal director. Ms. Uthe is also on this project’s Advisory Board.

Also included in appendix VII are a “Missing Children Record Flagging Act” and a “Tortious Interference with Child Custody and Visitation Act.” These Acts, respectively, provide for law enforcement authorities to be notified whenever anyone attempts to obtain certain records (i.e., birth certificate, school, day care) of a missing child, and for the filing of civil tort suits against abducting parents for interference with child custody or visitation. The Acts were authored by Noy Davis of the ABA Center on Children and the Law.

The production of these model statutes was supported by a grant from the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice. The attached statutes and commentary do not represent the official position or policies of the U.S. Department of Justice or of the American Bar Association.



A uniform approach to the nationwide problem of parental kidnaping will send this message to parents: There is no safe haven for child abductors. Every state treats child abduction as a punishable offense according to the same terms. Faced with predictable criminal consequences for parental kidnaping, more parents are apt to seek civil solutions to their child custody problems, which is in the best interests of children.⁴⁸

Briefly, the Act prohibits parental kidnaping which substantially deprives another of his or her right of custody or visitation whether or not a child has been removed from a particular state or a custody order has been issued. Of particular note to law enforcement personnel are provisions of the Act that authorize them to take a child into protective custody under specified circumstances, including if the child “reasonably appears” to be a missing or abducted child⁴⁹ and state that “[a] law enforcement officer and a prosecutor and his or her representatives shall not be liable for actions taken pursuant to this Act.”⁵⁰

- B) Enact state statutes, modeled after California's law and the UCCJEA, that authorize prosecutors to investigate and prosecute custodial interference complaints, including filing pleadings in civil or family court proceedings necessary to the abducted child's recovery.**

The above cited Parental Kidnaping Crime Act does not include language, such as that of CA Family Law Code §§ 3130-3134, giving prosecutors the authority to file appropriate civil or family court pleadings in order to facilitate the recovery of an abducted child. The omission of such provisions should not be construed to mean that the criminal act's drafters did not perceive such prosecutorial authority as important to the abducted child's recovery. They were not made part of the uniform crime act as they address proceedings that are civil in nature.

⁴⁸Uthe, “Parental Kidnaping Crime Act,” iii.

⁴⁹Ibid., 6.

⁵⁰Ibid.



In addition to CA Family Law Code §§ 3130-3134, Title II of "An Act To Expedite Enforcement of Child Custody Determinations"⁵¹ addresses the role of prosecutors and law enforcement in civilly enforcing custody orders. For example, the Act provides *inter alia* that law enforcement personnel are authorized to seek a court order granting them the right to take temporary custody of a child in cases in which they would have to travel out-of-state to recover an abducted child and/or pick up an offender during extradition proceedings.

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) approved in 1997 by the National Conference of Commissioners on Uniform State Laws, contains very similar provisions. Section 315 gives prosecutors statutory authority to take any lawful action, including using a proceeding under the Act, to locate a child, obtain the return of a child, or enforce a child custody determination. The prosecutor may take action if there is an existing custody determination, a request from a court, a reasonable belief that a criminal statute has been violated or that the child was wrongfully removed or retained in violation of the Hague Convention. Section 316 authorizes law enforcement personnel to assist prosecutors in carrying out their responsibilities under the Act. States should consider enacting the UCCJEA, including these innovative provisions.

C) Ensure that parental kidnaping or custodial interference crime acts encompass visitation interference.

The attached Parental Kidnaping Crime Act makes criminal conduct in which an individual "substantially deprive[s another] of his or her right of...visitation." One might also want to consider Arizona and Utah's visitation interference statutes discussed earlier in this chapter.

⁵¹The full text of the act with commentary can be found in Volenik, A. & Uthe, J., Chapter 6, *Obstacles to the Recovery and Return of Parentally Abducted Children*, ed. Linda Girdner and Patricia Hoff (Washington, D.C.: United States Department of Justice/Office of Juvenile Justice and Delinquency Prevention 1993).



- D) The Missing Children's Assistance Act of 1984, 42 U.S.C. § 5772 (1)(A)(B), should be modified to ensure that information on all familially abducted children is entered in the National Crime Information Center computer immediately upon law enforcement's receipt of a report (NCIC).**

Site visits revealed that the above cited federal statutory provision is generally interpreted to mean that if a child's whereabouts are known to the child's lawful custodian, information regarding the child and the abductor will not be entered in the NCIC computer. The statute provides that a "missing child" is:

[A]ny individual less than 18 years of age whose whereabouts are unknown to such individual's legal custodian if--

(A) the circumstances surrounding such individual's disappearance indicate that such individual may possibly have been removed by another from the control of such individual's legal custodian without such custodian's consent; or

(B) the circumstances of the case strongly indicate that such individual is likely to be abused or sexually exploited[.]⁵²

Even in cases in which a child's whereabouts are known by the lawful custodian, there is always the serious risk that the abducting parent will flee, possibly immediately, will subject the child to abuse or neglect, or will be involved in other criminal conduct. According to the American Prosecutors Research Institute (APRI), whether relevant information on a parentally abducted child is entered into the NCIC is dependent on how states interpret "missing child."⁵³ For example, the Nevada Attorney General issued an opinion dated January 23, 1992 stating that in accordance with Nevada law a parentally abducted child is a "missing child" for purposes of NCIC entry.⁵⁴

⁵²42 U.S.C. § 5772 (1984).

⁵³National Center for Prosecution of Child Abuse of the American Prosecutors Research Institute, *Investigation and Prosecution of Parental Abduction* (Washington, D.C.: United States Department of Justice 1995), 28.

⁵⁴*Ibid.*



Clarifying the federal law (e.g. definition of “missing child”) to ensure that information on all Familiially abducted children is entered into the NCIC, will ensure that entry into the NCIC is conducted more uniformly among states, as well as facilitate intra- and interstate communication among law enforcement agencies on the familially abducted child. It will also enhance the ability of prosecutors who have or may acquire the authority to civilly locate and recover abducted children pursuant to the aforementioned UCCJEA.⁵⁵

Programmatic Change:

- E) The leadership of criminal justice agencies should recognize that parental abduction is a serious form of child maltreatment and a crime that must be effectively investigated and prosecuted. Leadership should advocate for sufficient staff, enhanced computer technology, and other resources so that staff are able to make the crime of parental abduction a case priority.**

This study's site visit interviews revealed that criminal justice system personnel are increasingly overwhelmed with serious violent and other crime. Although those interviewed perceived parental abduction as a serious criminal offense, they were also concerned that unless additional staff and other resources were provided, they would be unable to respond effectively. Several reported the need to have sufficient and upgraded computer equipment, as well as access to computer technologies that would allow them to quickly access data collection systems (e.g., TRW credit check, Data Quick, medical assistance, internet) and expedite investigations.

⁵⁵In accordance with NCIC 2000, technological capabilities are being improved. As part of these efforts, guidelines are being developed and implemented. In light of this report's NCIC related findings, the NCIC 2000 code for missing persons should state “parental abduction” rather than “noncustodial parent abduction.” This code is too narrow a construct, as sometimes custodial parents conceal children in violation of other parent's visitation rights. They should also expressly allow entry of abducting parents who are missing into the NCIC, regardless of custodial or criminal status. It is imperative that the proposed NCIC 2000 guidelines as they relate to familial abduction (interstate and international) be reviewed to ensure that they facilitate not hinder the identification and recovery of abducted children, regardless of whether a custodian, non-custodian, or other person abducts them.



- F) Criminal justice system agencies on both the state and local levels should develop and implement written agency policies and procedures addressing the handling of cases of parental abduction or custodial interference.**

In order to institutionalize practice and procedure and ensure a uniform, effective response to reports of parental abduction or visitation interference, it is imperative that criminal justice agencies develop and implement agency policies and procedures specific to the processing of these cases. As a matter of good management practice, all personnel, including supervisors and those on patrol, should be fully trained on and apprized of agency policies and procedures. It is recommended that agencies evaluate any existing agency policies and procedures on the general handling of missing children's cases to ensure that parental abduction issues are encompassed. In addition, law enforcement and prosecutor personnel should assess the need for formal written protocols governing the appropriate transfer of cases for purposes of prosecution.

- G) Develop initial and ongoing training programs for all criminal justice system personnel and leadership on the handling of parental abduction cases, as well as on the psycho-social aspects of the crime and the interrelationship of criminal and civil forums in resolving custodial interference disputes.**

Educating all criminal justice system personnel, including patrol officers and management, about the crime of parental abduction and effective responses to it is essential to changing the mindset that parental abduction is not a serious crime, but a civil, domestic, or family problem not necessitating law enforcement's attention. This study indicated that with the exception of a handful of criminal justice agencies, most of these being in California, most law enforcement personnel and prosecutors do not receive any specialized training on issues, policies and procedures relevant to parental abduction. The criminal justice system's current perception of this crime is very much like its view of domestic violence five to ten years ago.



Included in the appendix is an excerpt to a parental abduction training manual that outlines a variety of topics on parental abduction.⁵⁶ This material is not intended to be all inclusive, but rather to provide a framework for the development of initial training and continuing education programs. Briefly, all agency personnel should be familiar with both federal and state criminal custodial interference laws, the psycho-social aspects of the crime, any written policies and procedures addressing case processing, effective interventions, the interplay between the criminal and civil systems in resolving custodial interference disputes, and community and other support services that may complement law enforcement intervention (e.g., mediation, family court, and legal services programs). In addition, in order to ensure that entry into the NCIC is conducted more uniformly among the states, all law enforcement personnel should receive concerted training on the appropriate and expeditious entry of abduction reports into the NCIC.

⁵⁶In 1998, the California Attorney General's office published a comprehensive, authoritative guide to handling parental abduction cases in that state. It is entitled *Attorney General Child Abduction Reference Manual 1998* and was prepared by Raquel M. Gonzalez, Elaine F. Tumonis, and Robin Dunham. States should be supported in replicating this manual to reflect their own state laws and procedures.



Given time constraints for staff training and the number of subjects that must be covered, it may be appropriate to incorporate into already existing domestic violence and child abuse training, specialized training on parental abduction and visitation interference concerns. Also, management and staff, as many already do, should explore the possibilities of obtaining technical assistance from such organizations and agencies as the National Center For Missing and Exploited Children (NCMEC), the American Prosecutors Research Institute (APRI), the Office of Juvenile Justice and Delinquency Prevention (OJJDP), and the Missing and Exploited Children Comprehensive Action Program (M/CAP).⁵⁷

In order for such educational programs to be effective, it is imperative that such training be mandatory for all staff. This training must reach the level of staff who are receiving initial reports of custodial interference in both urban and more rural areas. Personnel must know that they should not be turning away aggrieved parents or lawful custodians to fend for themselves. Furthermore, agencies should consider addressing parental abduction topics at roll calls and periodic staff meetings, disseminating bulletins or memoranda, and producing training videotapes in collaboration with NCMEC and APRI for use in rural areas or at staff's convenience.⁵⁸

⁵⁷Special note should be taken of OJJDP's child abuse curriculum for law enforcement personnel, *Basic Investigation of Missing and Exploited Children*, that includes a component on family abduction. In addition, as reported in *Department of Justice Programs for Missing and Exploited Children*, Fact Sheet #41 (May 1996), "[u]sing strategies developed through the Missing and Exploited Children Comprehensive Action Program, OJJDP provides technical assistance to jurisdictions implementing multidisciplinary, interagency responses to missing and exploited children's issues." This assistance "includes facilitating the involvement of frontline personnel with policy-level officials to develop an interagency agreement that is uniquely responsive to the community's needs."

⁵⁸Those coordinating educational programs should be aware of existing publications of APRI and the NCMEC that their staff will find informative and of practical use. In particular, they should have access to APRI's *Investigation and Prosecution of Parental Abduction*, an investigation and trial manual published in 1995 and NCMEC's *Missing and Abducted Children: A Law Enforcement Guide to Case Investigation and Program Management* published in 1994.



H) Work toward the establishment of specialized units comprised of law enforcement personnel and prosecutors skilled in investigating and prosecuting the crime of parental kidnaping or visitation interference.

Given the complexity of case investigation and recovery efforts, and the experiences of the Hudson, Pima and San Diego Counties, it is highly recommended that agencies seriously consider establishing sufficiently staffed specialty units to allow for a coordinated and expert response to reports of custodial interference. Patrol officer and line staff still need to be knowledgeable about the issues, but staff specialists can more effectively follow up with necessary investigation, assess the appropriateness of law enforcement intervention, access suitable support services, and ease the line officers' burden in resolving custodial interference complaints.

It is not necessarily being suggested here that specialists only handle custodial interference cases, especially in jurisdictions that may not have a high number of cases. Agencies are encouraged to designate two or more staff who would be fully apprized of all aspects of parental abduction case handling and at the same time be assigned other types of cases. A preferable staffing model would be one, such as the Family Protection Division of the San Diego District Attorney's Office, which handles not only custodial interference, but also child abuse and domestic violence cases.

I) In line with the establishment of specialty units, consider establishing "local" law enforcement missing children's clearinghouses.

As recommended earlier, local law enforcement agencies should more effectively collaborate with their state missing children's clearinghouses. In conjunction with this, consideration should be given to establishing "local" missing children's clearinghouse within state counties to allow for an expert, coordinated response to custodial interference reports. The approach could be that of Hudson County as described above. Municipal police departments could refer cases for further investigation to a more central county agency, such as the Sheriff's Office which would employ staff specialized in the handling of such cases. Recognizing that this type of coordination might not be easy to accomplish given agencies' individual priorities or interests, those interested in pursuing such



coordination should keep in mind that this approach could be cost-effective and ease the burden of municipal police departments in investigating parental abduction cases.

- J) Criminal justice system agencies should develop and implement written inter- and intrastate protocols for the handling of custodial interference cases that potentially involve investigation and/or prosecution of custodial interference in more than one state or within more than one municipality in a state. In addition, federal law enforcement authorities' handling of familial abduction cases needs further study, including assessing the extent of their involvement in investigating abductions pursuant to the Fugitive Felon Act, and investigating and prosecuting international abductions pursuant to the International Parental Kidnaping Crime Act.**

Criminal justice agencies, especially those located in neighboring jurisdictions, should examine whether inter- and intrastate written protocols need to be developed to diminish the possibility that jurisdictional disputes related to agencies' responsibilities will arise during case investigation and prosecution. For example, one could imagine that in the Northeast corridor, comprised of several large metropolitan areas, parental abductions could easily result in the crossing of state lines. If a child were kidnaped from the District of Columbia to Maryland, would Maryland law enforcement agencies have a responsibility to assist in investigating the whereabouts of a District of Columbia child and if so, what would be the level of assistance?

This topic warrants future study. If written protocols addressing inter- or intra-state investigation and prosecution of parental abduction have been developed, they need to be identified and evaluated for effectiveness and possible replication.



K) State and local criminal justice system agencies need to enhance their knowledge of the role of the Federal Bureau of Investigation (FBI) in investigating cases of parental abduction and actively seek the FBI's assistance in appropriate cases.⁵⁹

This study revealed that the FBI may not be as actively involved in identifying the whereabouts of abductors as they might be. This may be the result of several factors: criminal justice system personnel may be unaware of the role the FBI can play in investigating these cases due to inadequate training; state and local law enforcement personnel may be concerned about sharing investigative responsibilities; and as is the case with many state and local law enforcement agencies, the FBI may not perceive cases of parental abduction as a high priority given the number of other serious cases in need of resolution.

The FBI's handling of parental abduction cases and law enforcement's perception of that agency's role may need further assessment. Do FBI policies and procedures as they relate to parental abduction cases need to be revised to enhance case investigation coordination among federal, state, and local authorities? What information on the FBI's role in the handling of parental abduction cases needs to be disseminated through training and other programs to state and local law enforcement personnel and the general public?⁶⁰

⁵⁹In addition to the FBI, a number of other federal agencies can be of assistance to criminal justice system personnel working on parental abduction cases. An excellent guide to this support is *Federal Resources on Missing and Exploited Children: A Directory for Law Enforcement and Other Public and Private Agencies* (May 1996) prepared by Fox Valley Technical College under a cooperative agreement from the Office of Juvenile and Delinquency Prevention. For further information on obtaining this document, one should call the Juvenile Justice Clearinghouse at 1-800-638-8736.

⁶⁰In January 1997, the FBI established the Office of Crimes Against Children (OCAC), within the Violent Crime and Major Offenders Section, Criminal Investigators Division, at FBI headquarters. FBI field agents dealing with federal parental abduction offenses may seek assistance from the OCAC coordinator in FBI headquarters. If it has not done so, the OCAC should develop training materials and programs to ensure uniform and effective FBI response to parental abduction nationwide.



- L) State and local criminal justice system leadership and staff should become more knowledgeable about their own state's missing children's clearinghouses, work with them on improving coordination and utilization of services, and advocate for enhanced clearinghouse funding.**

Given the low priority that the majority of law enforcement agencies place on parental abduction cases and the general lack of knowledge about the crime and its handling, it is not surprising that missing children's clearinghouses may be underutilized and consequently, underfunded. This study revealed that enhanced communication between local law enforcement staff and state clearinghouses is needed so that agencies can better understand a clearinghouse's role in providing technical assistance. Police need to be better informed of their clearinghouse's operations and know how to access its services (e.g., know that the clearinghouse within their state may not actually be called a "clearinghouse"). Collaboration between clearinghouses and local law enforcement is essential if the services most useful to law enforcement are to be provided.

- M) Criminal justice agency leadership and others should advocate for the development and continuation of support services that are instrumental in preventing and resolving custodial interference disputes and that complement criminal justice system intervention.**

Those in a position to advocate for enhanced support services should carefully review this Chapter's sections addressing support services that can be cost-effective in preventing abductions and that provide children and families with greater access to civil forums to resolve custodial interference disputes. As discussed above, these services include legal services and pro se projects, family court services, mediation, supervised visitation programs, and educational forums on parental abduction issues. In addition, serious thought should be given to the appointment of independent counsel for children in civil parental abduction proceedings, as well as the development of programs to assist in the reunification of children with their parents. Support services offered in both civil and criminal arenas can be instrumental in making criminal justice system intervention less necessary, as well as diminishing trauma to the abducted child.



8. CONCLUSION

Throughout the course of this study, several individuals, including project staff and those in the field, have commented that in addressing the problem of parental abduction, we do not focus on the child as victim. Criminal custodial interference statutes, for instance, speak in terms of one parent depriving the other of his or her child. The parent in essence becomes the aggrieved party and not the child. Similarly, the child's point of view is too often lost, especially if the child's whereabouts are unknown. Unlike other types of child abuse cases in which investigators usually have direct contact with a child, too often in parental abduction cases, investigators will not have that contact. Though not intentional, the child's interests, in contrast to his or her parent's, may very well become secondary to those charged with identifying the child's whereabouts as other case priorities take over.

A child can benefit when the aggrieved parent receives law enforcement and other assistance in resolving custodial interference disputes. However, if we are to motivate criminal justice leadership, legislators, and others in the position to support and implement specialized programs of intervention, we must continually remind them that parental abduction is a form of serious child abuse and a crime in all fifty states and the District of Columbia. Many individual children will benefit if the criminal justice system carefully considers this study's findings and recommendations and begins to perceive this crime as harmful to the well-being of children and their families.

DEPARTMENT OF
SOCIAL SERVICES
NEW YORK STATE OFFICE OF CHILDREN'S SERVICES (NCS)



Appendices



APPENDIX I:

National Survey for Law Enforcement Agencies

National Survey for District Attorneys/ Prosecutors



WESTAT ID NUMBER,
AGENCY NAME,
& COUNTY NAME

JUSTICE SYSTEM PROCESSING OF PARENTAL ABDUCTION CASES

**NATIONAL SURVEY
FOR LAW ENFORCEMENT AGENCIES**

Conducted by:

American Bar Association
Center on Children and the Law
1800 M Street, NW, Suite 200
Washington, DC 20036

and

Westat, Inc.
1650 Research Boulevard
Rockville, MD 20850

For:

The Office of Juvenile Justice and Delinquency Prevention
Office of Justice Programs
U.S. Department of Justice
Washington, DC 20531

December 1993

PURPOSE OF THE STUDY

The results of this study will be used to estimate the number of children abducted by parents or family members who are reported to law enforcement agencies and the degree to which these cases are acted upon by prosecutors nationwide.¹ This survey pertains ONLY to your agency's jurisdiction in the county named on the cover page label.

YOUR AGENCY

1. Does your agency have jurisdiction to conduct criminal investigations of cases in which a child is reported as missing or possibly abducted by a parent or family member?

No..... SKIP TO QUESTION 8.
 Yes CONTINUE WITH QUESTION 2.

2. In your department, how many of the calls alleging that children were wrongfully taken, kept, or concealed by their parents, other family members, or their agents (e.g., boyfriend, private investigator) result in a written report?

All.....
 Some.....
 None.....

3. Considering only reports about abductions by parents or family members, please indicate whether each of the following factors determines whether a written report is taken or plays any role in determining the investigative priority assigned to the case.

	Whether a Written Report is Taken?		The Investigative Priority Assigned to the Case	
	YES	NO	YES	NO
a. Child's age	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Perceived endangerment of child	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Child's disability status or medical needs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Existence of a custody order.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. State in which custody order was issued.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Marital status of parents	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g. Existence of an order determining paternity.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h. Length of time child has been gone	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i. History of prior offenses	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
j. Whether child was removed from state.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
k. Whether the alleged offense is a felony	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
l. Whether alleged abduction by a parent..... occurred prior to divorce decree.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
m. Whether there is violation of visitation rights.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
n. Whether there is joint custody.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
o. Whereabouts of child known/unknown.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
p. Existence of "pick-up" or "accompany/assist" order.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
q. Existence of a restraining order	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

¹ Several items in this questionnaire are adapted from the *National Study of Law Enforcement Agencies Policies and Practices Regarding Missing Children and Homeless Youth* conducted by the Research Triangle Institute in 1987. In this way, responses from the current study can be compared with the findings of the earlier study.

CRIMINAL REPORTS OF PARENTAL OR FAMILIAL ABDUCTED CHILDREN IN CALENDAR YEAR 1992

4. Please give us the number of criminal reports of parental or familial abduction your department received in 1992 in each of the following categories. Put an asterisk (*) next to any numbers that are estimates. Include only those reports relating to your agency's jurisdiction in the county named on the cover page label.

	Total Number Reported	Number Resulting in Arrest	Number Referred to the Prosecutor
a. Abductions by Parents or Their Agents: A parent or parent's agent (e.g., boyfriend, private investigator, etc.) was alleged to have wrongfully taken, kept, or concealed a child/youth from another parent or legal guardian.	_____	_____	_____
b. Abductions by Other Family Members or Their Agents: Another family member or this person's agent (e.g., boyfriend, private investigator, etc.) was alleged to have wrongfully taken, kept, or concealed a child/youth from the child's parent or legal guardian. (INCLUDE ONLY THOSE CASES NOT LISTED UNDER a ABOVE).	_____	_____	_____

5. In providing the numbers above, were you aided by any computerized MIS (Management Information System) in your agency?

No.....
 Yes.....

6. Do you have any policies or written guidelines focused on responding to parental or familial abduction cases?

No.....
 Yes.....

7. Do your officers receive any formal training focused on responding to parental or familial abduction cases?

No.....
 Yes.....

8. Are there any special programs in your jurisdiction designed to specifically address parental or familial abduction?

No.....
 Yes.....

Please describe: _____

9. Please return this questionnaire in the enclosed postage-paid envelope. Thank you for participating in this national survey.

**WESTAT ID NUMBER,
AGENCY NAME
& COUNTY NAME**

JUSTICE SYSTEM PROCESSING OF PARENTAL ABDUCTION CASES

**NATIONAL SURVEY
FOR DISTRICT ATTORNEYS/PROSECUTORS**

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December 1993



PURPOSE OF THE STUDY

The results of this study will be used to estimate the number of children abducted by parents or family members who are reported to law enforcement agencies and the degree to which these cases are acted upon by prosecutors nationwide.¹ This survey pertains only to your department's jurisdiction in the county named on the cover page label.

YOUR AGENCY

1. At the present time, how many full-time staff (including supervisory personnel) do you have in the following categories?

- _____ prosecutors
- _____ investigators with peace officer powers
- _____ investigators without peace officer powers

2. In your office, for how many of the complaints alleging that children were wrongfully taken, kept, or concealed by their parents, other family members, or their agents (e.g., boyfriend, private investigator, etc.) do you open a case?

- All.....
- Some.....
- None.....

3. Considering only complaints about abductions by parents or family members, please indicate whether each of the following factors determines whether a case is opened or plays any role in determining what action to take (e.g., whether or not to prosecute).

		Whether a Case is Opened?		What Action to Take (e.g., to prosecute or not)	
		YES	NO	YES	NO
a.	Child's age	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b.	Perceived endangerment of child	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c.	Child's disability status or medical needs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d.	Existence of a custody order.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e.	State in which custody order was issued.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f.	Marital status of parents	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g.	Existence of an order determining paternity.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h.	Length of time child has been gone	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i.	History of prior offenses	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
j.	Whether child was removed from state.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
k.	Whether the alleged offense is a felony	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
l.	Whether alleged abduction by a parent	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	occurred prior to divorce decree.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
m.	Whether there is violation of visitation rights.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
n.	Whether there is joint custody	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
o.	Whereabouts of child known/unknown.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
p.	Existence of "pick-up" or "accompany/assist" order.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
q.	Existence of a restraining order	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

¹Several items in this questionnaire are adapted from the *National Study of Law Enforcement Agencies Policies and Practices Regarding Missing Children and Homeless Youth* conducted by the Research Triangle Institute in 1987. In this way, responses from the current study can be compared with the findings of the earlier study.

REPORTS OF PARENTAL OR FAMILIAL ABDUCTED CHILDREN IN CALENDAR YEAR 1992

4. Please give us the number of parental and familial abductions on which cases were opened by the prosecutor in 1992 in each of the following categories. Put an asterisk (*) next to any numbers that are estimates. Include only those cases relating to your department's jurisdiction in the county named on the cover page label.

	Considering All Cases Opened by the Prosecutor		Of Those Cases in Which Criminal Charges Were Filed....	
	Total Number of Cases Opened	Number in Which Charges Were Filed in Criminal Court	Number Dismissed by the Court	Number Resulting in Conviction
a. Abductions by Parents or Their Agents: A parent or parent's agent (e.g., boyfriend, private investigator, etc.) was alleged to have wrongfully taken, kept, or concealed a child/youth from another parent or legal guardian.	_____	_____	_____	_____
b. Abductions by Other Family Members or Their Agents: Another family member or this person's agent (e.g., boyfriend, private investigator, etc.) was alleged to have wrongfully taken, kept, or concealed a child/youth from the child's parent or legal guardian. (INCLUDE ONLY THOSE CASES NOT LISTED UNDER a ABOVE).	_____	_____	_____	_____

5. In providing the numbers above, were you aided by any computerized MIS (Management Information System) in your agency?

No.....
 Yes.....

6. Do you have any policies or written guidelines focused on responding to parental or familial abduction cases?

No.....
 Yes.....

7. Does your staff receive any formal training focused on responding to parental or familial abduction cases?

No.....
 Yes.....

8. Are there any special programs in your jurisdiction designed to specifically address parental or familial abduction?

No.....

Yes.....

Please describe: _____

9. Please return this questionnaire in the enclosed postage-paid envelope. Thank you for participating in this national survey.



APPENDIX II:

Developing Weights for the National Sample



Appendix 2: Developing Weights for the National Sample

In order to make national estimates using sample survey data, a weight must be associated with each completed questionnaire. For the Parental Abduction Study the weight is given by

$$w_i = b_i f_1 f_2,$$

where

b_i = a base weight equal to the inverse of the prosecutor or law enforcement agency (LEA) probability of selection;

f_1 = a factor which adjusts for not always knowing whether a nonrespondent has jurisdiction over parental abduction cases; and

f_2 = a factor which adjusts for nonresponse among sampled prosecutors and those sampled LEAs that were known to have jurisdiction.

Since no sampling of LEAs or prosecutors was done within county, the base weight can be expressed as follows:

$$\begin{aligned} b_i &= 1, \text{ for the 104 certainty selected counties; or} \\ &= \frac{c_h}{n_h c_{hi}}, \text{ for the remaining 296 counties,} \end{aligned}$$

where

c_h = 1990 population (ages 0 - 17) in county sampling stratum h ;

n_h = number of counties selected from stratum h ; and

c_{hi} = 1990 population (ages 0 - 17) in county i sampled from stratum h .

The two weight adjustments f_1 and f_2 were computed separately for prosecutors, Sheriffs and municipal police within adjustment cell. Twelve adjustment cells were defined in terms of the stratification variables used in selecting the county sample: Census region for certainty selected counties (4 cells) and Census region by metropolitan area status for noncertainty selected counties (8 cells). For sheriffs, some collapsing of cells was necessary because of sparse data.



The first weight adjustment factor is given by

$$f_1 = \frac{\sum_{i \in A_1} b_i c_i}{\sum_{i \in A_2} b_i c_i}, \text{ for prosecutors and for sheriffs; or}$$

$$= \frac{\sum_{j \in A_1} b_j P_{jU}}{\sum_{j \in A_2} b_j P_{jU}}, \text{ for municipal police}$$

where

b_i = the base weight;

c_i = 1990 population (ages 0 - 17) in county i ;

P_{jU} = population served by municipal police department j in county i ;

A_1 = the set of all sampled prosecutors (or sheriffs or municipal police departments); and

A_2 = the set of all sampled prosecutors (or sheriffs or municipal police departments for which jurisdiction has been determined).

Note no adjustment was necessary for district attorneys regarding jurisdiction over these cases; consequently f_1 is always equal to 1.

The second weight adjustment factor is given by

$$f_2 = \frac{\sum_{i \in A_3} b_i f_1 c_i}{\sum_{i \in A_4} b_i f_1 c_i}, \text{ for prosecutors and for sheriffs; or}$$

$$= \frac{\sum_{j \in A_3} b_j f_1 P_{jU}}{\sum_{j \in A_4} b_j f_1 P_{jU}}, \text{ for municipal police}$$

where

b_i = the base weight;

f_1 = the adjustment for undetermined jurisdiction;

c_i = 1990 population (ages 0 - 17) in county i ;

P_{ij} = population served by municipal police department j in county i ;

A_3 = the set of all sampled prosecutors (or for sheriffs or municipal police departments, only those which are known to have jurisdiction), regardless of whether they completed a questionnaire; and

A_4 = the set of all prosecutors, sheriffs, or municipal police departments completing a questionnaire.

Tables 1 through 3 detail the computation of f_1 and f_2 by adjustment cell for prosecutors, sheriffs, and municipal police.

APPENDIX III:

The Criminal Justice System's Response to Parental Abduction in Six Sites:

Parental Abduction Survey



PARENTAL ABDUCTION SURVEY

AMERICAN BAR ASSOCIATION

Questionnaire prepared by:

Joseph F. Ryan, Ph.D.
Pace University
White Plains, New York 10606

Marianne Walsh
Victim Assistance Services
Westchester County
Elmsford, New York 10523

(Final Revision August 19, 1994)



PARENTAL ABDUCTION SURVEY

CITY/TOWN: _____

POPULATION: _____

*Ethnic/Racial
% Makeup*

- _____ *white*
- _____ *black*
- _____ *hispanic/latino*
- _____ *asian*
- _____ *other*

**LAW ENFORCEMENT
AGENCY NAMES:**

**CONTACT
PERSON:**

TELEPHONE: FAX:

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

*DISTRICT ATTORNEY'S/ CONTACT
PROSECUTOR'S OFFICE PERSON: TELEPHONE: FAX:*

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

*OTHER INTEGRAL P.A./ CONTACT
INDIVIDUALS/AGENCIES PERSON: TELEPHONE: FAX:*

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

ORGANIZATION INFORMATION:

LAW ENFORCEMENT AGENCY:

AS OF JANUARY 1, 1994:

Annual Budget: _____

Full time sworn personnel: _____

Full time civilian personnel: _____

Part time sworn personnel: _____

Part time civilian personnel: _____

Number of Parental Abductions: _____

Number of these cases cleared: _____

DISTRICT ATTORNEY'S/PROSECUTOR'S OFFICE:

AS OF JANUARY 1, 1994:

Annual Budget: _____

Full time prosecutors: _____

Full time civilians: _____

Part time civilians: _____

Victim/Witness Unit*:
(*Is this an agency outside the DA/PROS. Office? _____)

OTHER INTEGRAL PARENTAL ABDUCTION AGENCIES:

AS OF JANUARY 1, 1994:

Annual Budget:

Full time personnel:

Part time personnel:

Volunteers:

Describe case load:

QUESTIONS FOR LAW ENFORCEMENT AGENCIES:

Questions 1 through 7 deal with the filing of the initial report of parental abduction

1. Which law enforcement agency (e.g., town, village, county, state, etc.) has overall crime reporting responsibility?

2. How were these decisions reached?

3. Describe what happens when a person reports (discuss if there is a requirement that the person appear at the police facility, or whether a car is dispatched, etc) the abduction of a child whom they believed has been abducted by a parent, guardian or other parental agent. What about previous history.

- a. Are there factors that you take into consideration when you are listening to the details of the incident (e.g., age of child, length of time missing, past history of the family re family violence, substance abuse, etc, previous reports of runaway child, truthfulness the parent, etc.)?

- b. Is the individual asked to fill out any forms? If yes, please provide us with a copy. What is the purpose of this form?

4. Is there a statute, implementing regulation, and/or departmental policy that governs your response to the parental abduction? Discuss each separately.

- a. If yes, can you provide a copy (of each)? Briefly describe any nuances about this/them, that are not self explanatory.

- b. How is parental abduction defined in this agency?

5. Are parental abduction cases handled differently than cases involving non-family abductions and runaways? If so, in what way are they handled differently?

6. Is there an informal process for handling parental abductions? If yes, describe.

7. Do you have have customs or guidance on interpretation of custody orders (e.g., who is entitled to custody, etc.)? Do you ask to see a copy of the order? If it is unclear who has what legal right, do you (the officer) have the authority to take the child into protective custody until it can be determined which parent has lawful authority? Discuss responses.

- a. What happens in cases in which a parent reports a parental abduction and no custody order exists? What advice do you give the parent/reporter if they do not have a court order? What happens in cases in which the parents are not married to each other? How do you approach cases in which a court order awards joint custody? Discuss.

- b. If you do not have authority to remove the child, what, if any agency do you contact to provide shelter for a child until a legal decision can be made on the child's welfare.

Questions 8 through 18 deal with the investigative process for reports of parental abduction

8. What happens after the initial report is prepared (e.g., are notifications to other agencies required)?

a. Where does report go/whom is it referred to?

b. Is there a special investigative unit, such as a missing persons squad, youth bureaus? If yes, describe its function, scope of duties, number of personnel. Please supply a copy of your organization chart.

c. If the the child protective agency or other child welfare agency was not notified when the report was received, do you involve them in this phase of the investigation? If yes, what is their role? Also, to what degree/extent do you remain involved with the case? Is contact maintained with these agencies throughout the case? Discuss.

9. Are there separate guidelines that investigators/detectives must follow when investigating parental abductions (or any other guidelines for investigative follow-up by supervisors)? If yes, describe. Please provide a copy of these guidelines.

- a. What procedures are followed if there are allegations of other charges (sexual assault against the child, etc.)? Describe what happens.

- a1. Does it change the investigative response? Describe.

- b. Do you or other police personnel enter the information into NCIC? Describe process, time frame, information entered.

- b1. Can parents verify if the information has been entered?

- c. Do you notify other law enforcement agencies such as the FBI, Federal Parent Locator Service, etc? If yes, is this a requirement (legal, policy, etc.)?

- d. How frequently do you involve other law enforcement agencies? Who and why are they involved?

- e. In conducting your investigation, do you notify a child's school district not to release school records to abductor, or to flag records should an abductor request them? Do you notify day care facilities or medical professionals of the same?

10. Describe your record system/case management process.

11. Is there a requirement that the prosecutor's office be notified? Discuss.

a. Is there a minimum/maximum amount of time for this notification?

b. Are you aware of cases that are reported directly to the prosecutor's office? If yes, how do you get involved?

c. Describe your relationship with the prosecutor's office.

d. Do you have access to legal advice when needed-from whom?

e. Does the prosecutor have a liaison who works with your agency?

12. What other steps do you take in parental abduction cases?

13. Is there any other pertinent information about parental abductions that would be helpful to us in understanding how you handle these cases?

- a. Are there particular instances where you felt frustrated when investigating a case(s) (do not supply names)?

- b. Are there circumstances where parental abduction cases may be hidden or lost? If yes, describe.

14. Is there a public information section, or other unit involved that assists in notifying the media, posting of flyers, posters, etc.? If yes, describe.

15. Are you involved in cases involving international parental abductions? If so, what procedures are followed?

16. Is your agency involved in locating missing or abducted children who have been reported missing in other states? Do you utilize "pick-up" orders if the child is discovered in your state? What other procedures are utilized when a child is discovered in your state who is the victim of a parental abduction?

17. How does your agency respond to threats (define threat) of parental abduction?

18. Are you (is your agency) aware of specific state and federal laws addressing parental abduction, such as Missing Children's Act, National Child Search Assistance Act, or the International Parental Kidnapping Act of 1993? Discuss responses.

19. Are you aware of any other ways or avenues in which parents might turn to in hopes of absconding with, or having their child reutrn to them, such as underground railroad networks

NOTE: THE FOLLOWING QUESTIONS WILL BE ASKED OF ALL WHO ARE INTERVIEWED:

20. To what extent do existing laws and policies direct or constrain the handling of these cases in the justice system?

21. What structures, laws, and procedures are associated with more expedient case handling and satisfactory outcomes (as judged by those involved in the cases)?

22. Does your agency provide specialized training or *special/innovative approach/program* to deal with the development of an aggressive criminal justice response to parental abductions? If yes, answer a, b and c.

- a. Who provides the specialized training?

- b. What promoted the training (e.g., legal action, etc.)?

- c. Who attends the training?

23. Are there procedures in place for a follow-up with the family, or is this aspect left solely to probation? Discuss.

QUESTIONS FOR PROSECUTOR/DISTRICT ATTORNEY'S OFFICE:

1. Under what circumstances do parental abduction cases come to your attention?

2. What role does your office take in the investigation?

- a. Is there a special investigative unit? If yes, describe its function, scope of duties, number of personnel. Please supply a copy of your organization chart. Also, what factors are taken into consideration to utilize and or supplement the initial law enforcement investigation?

3. Which court has primary response for parental abduction cases (e.g. family, juvenile, domestic relations, circuit, district, superior, and criminal)?

- a. How are these decisions made?

- b. In the context of other than criminal courts, is there a role for a child "law guardian," "guardian ad litem" (GAL), "Court Appointed Special Advocate" (CASA), or attorney? If yes, describe how they are utilized.

- c. If the incident involves the FBI, does the case shift to a federal court? How many in the last year?

- d. How frequently do you apply to the U.S. Attorneys Office for an Unlawful Flight to Avoid Prosecution warrant? How many in the last year?

- d1. How often were such applications successful?

- e. What percentage of cases do you estimate have already existing court (which court?) involvement at time of parental abduction? If you are aware of court involvement in a particular case, do you notify that court? Discuss.

4. How much overlap is there between processing of these cases by prosecutors and by other justice system personnel (e.g., family court, juvenile, etc)?

- a. Describe the degree of coordination between these various agencies/courts.

5. Describe the process from beginning to end when you receive a parental abduction case (Is it possible to conduct an actual walk through of a case?)

- a. How much time does each step in the process take?

- b. Are there identifiable case characteristics which are associated with delays in processing?

c. Are there specific points in the process which are more often associated with delays?

6. Do docket crowding and other case flow management practices affect case processing?

Please supply the following information:

	<u>NUMBER OF CASES</u>
Parental abductions referred to prosecutor's office	_____
Cases indicted/charging document filed	_____
Cases "stetted" or postponed to evaluate defendant's willingness to cooperate or seek treatment	_____
Plea agreements	_____
Nolo Contendere Pleas	_____
Jury Trials	_____
Appeals	_____

7. Are particular types of cases or allegations associated with different outcomes (e.g., under what circumstances do cases go to grand jury, trials.)?

a. What crimes are charged?

b. What is the context of case dismissal?,

c. Of findings of guilt or innocence?, and

d. Of probation, plea bargaining agreements, restitution, prison/counseling?

e. How do judges respond to parental abduction cases? When a defendant is convicted, how do judges approach sentencing? Maximum penalty? Prison? Fines? Probation? Community Service? Other?

8. How frequently were abductors returned to the state where the abduction occurred through the use of extradition processes?

a. What procedures, practices, and legal authorities are followed when the abductor leaves the country?

9. How often does the criminal (or family, juvenile, etc.) court play a significant role in the actual return of a child to the custodial parent?

- a. What are the most prominent case characteristics in these cases?

10. How frequently, and under what circumstances, do court orders include requirements that the abducting parent provide restitution for expenses related to the location of abducted children (e.g., for expenses related to the use of private investigator fees, attorney fees in civil cases, and transportation, counseling services for parents and child, etc.)?

11. What role does a victim advocate agency perform in these cases?

12. What role do children play in the processing of these cases (e.g., called to testify, etc.)?

13. What role does the child protective or any other child welfare agency play in the prosecution?

14. What steps are taken to minimize trauma to children by this participation (e.g., videotaped depositions, testimony, or interviews admitted in criminal court proceeding; use of close circuited television testimony; closing courtroom to spectators during child's testimony; appointment of support person)? Discuss.

15. Are there specific state and federal laws addressing parental abduction, such as Missing Children's Act, National Child Search Assistance Act, or the International Parental Kidnapping Act of 1993, which have an impact on how you handle the case? Discuss responses.

16. Are you aware of any other ways or avenues in which parents might turn to in hopes of absconding with, or having their child reutrn to them, such as underground railroad networks

NOTE: THE FOLLOWING QUESTIONS WILL BE ASKED OF ALL WHO ARE INTERVIEWED:

17. To what extent do existing laws and policies direct or constrain the handling of these cases in the justice system?

18. What structures, laws, and procedures are associated with more expedient case handling and satisfactory outcomes (as judged by those involved in the cases)?

19. Does your agency provide specialized training or *special/innovative approach/program* to deal with the development of an aggressive criminal justice response to parental abductions? If yes, answer a, b and c.

- a. Who provides the specialized training?

- b. What promoted the training (e.g., legal action, etc.)?

c. Who attends the training?

20. Are there procedures in place for a follow-up with the family, or is this aspect left solely to probation? Discuss.

NOTE: THE FOLLOWING QUESTIONS WILL BE ASKED OF ALL WHO ARE INTERVIEWED:

4. To what extent do existing laws and policies direct or constrain the handling of these cases in the justice system?

5. What structures, laws, and procedures are associated with more expedient case handling and satisfactory outcomes (as judged by those involved in the cases)?

6. Does your agency provide specialized training or *special/innovative approach/program* to deal with the development of an aggressive criminal justice response to parental abductions? If yes, answer a, b and c.

- a. Who provides the specialized training?

- b. What promoted the training (e.g., legal action, etc.)?

c. Who attends the training?

7. Are there procedures in place for a follow-up with the family, or is this aspect left solely to probation? Discuss.



APPENDIX IV:

Detailed Case Tracking in Three Local Jurisdictions:

Chi-Square Analysis Tables



Table 6-1. Results of Chi-Square Analysis for the Arrest/Arrest Warrant Outcome

Model	Chi-Square Value	Probability	Degrees of Freedom
Perpetrator Characteristics			
Age	3.580	.311	3
Sex	.266	.606	1
Race/Ethnicity	2.768	.096 ^d	1
Relationship to Child	.008	.928	1
Relationship to Complainant	2.651	.618	4
Living Situation with Complainant	.067	.795	1
Arrest/Criminal Record	4.677	.031 ^c	1
Prior LEA Incidents/Complaints	4.637	.031 ^c	1
History of Domestic Violence	.061	.805	1
History of Child Abuse	1.243	.265	1
History of Drug/Alcohol Abuse	4.035	.045 ^c	1
History of Mental Illness	.034	.853	1
Complainant Characteristics			
Sex	1.005	.316	1
Race/Ethnicity	1.734	.188	1
Relationship to Child	20.640	.000 ^a	2
Arrest/Criminal Record	10.101	.001 ^a	1
History of Domestic Violence	9.743	.002 ^b	1
History of Child Abuse	.062	.804	1
History of Drug/Alcohol Abuse	.536	.464	1
History of Mental Illness	7.268	.007 ^b	1
Child Characteristics			
Sex	.244	.885	2
Living Situation	3.164	.367	3

a: Pr < .001
b: Pr < .01
c: Pr < .05
d: Pr < .10



Table 6-2. Results of Chi-Square Analysis for the Filed Charges Outcome

Model	Chi-Square Value	Probability	Degrees of Freedom
Perpetrator Characteristics			
Age	.044	.978	2
Sex	.563	.453	1
Race/Ethnicity	.097	.755	1
Relationship to Child	3.671	.055 ^d	1
Relationship to Complainant	.387	.534	1
Living Situation with Complainant	.677	.411	1
Arrest/Criminal Record	.760	.383	1
Prior LEA Incidents/Complaints	3.153	.076 ^d	1
History of Domestic Violence	1.691	.194	1
History of Child Abuse	.995	.319	1
History of Drug/Alcohol Abuse	.004	.950	1
History of Mental Illness	1.433	.231	1
Complainant Characteristics			
Sex	.541	.462	1
Race/Ethnicity	.136	.713	1
Relationship to Child	3.852	.050 ^c	1
Arrest/Criminal Record	1.913	.167	1
History of Domestic Violence	2.008	.157	1
History of Child Abuse	3.160	.075 ^d	1
History of Drug/Alcohol Abuse	1.031	.310	1
History of Mental Illness	.481	.488	1
Child Characteristics			
Sex	.031	.985	2
Living Situation	3.569	.312	3

a: Pr < .001
 b: Pr < .01
 c: Pr < .05
 d: Pr < .10

Model	Chi-Square Value	Probability	Degrees of Freedom
Incident Characteristics			
Existence of Custody Order	1.654	.198	1
Prior Custodial Interference	.351	.554	1
Use of Weapon/Force	9.363	.002 ^b	1
Child Returned	33.008	.000 ^a	1
Perpetrator Left Jurisdiction	18.613	.000 ^a	1
Number of Days between Notification and Case Closure	3.566	.168	2

a: Pr<.001
b: Pr<.01
c: Pr<.05
d: Pr<.10

Table 6-3. Percentages and Totals Generated from the Chi-Square Analysis for the Arrest/Arrest Warrant Outcome

	<u>Arrested/Arrest Warrant</u>		<u>Not Arrested/ No Arrest Warrant</u>	
	Number	Percent of Row Total	Number	Percent of Row Total
Perpetrator's Race/Ethnicity				
White, Non-Hispanic	29	14%	182	86%
Other	38	20%	152	80%
Perpetrator's Arrest/Criminal Record				
Yes	31	22%	114	78%
No	42	14%	269	86%
Prior LEA Incidents/Complaints between Perpetrator and Complainant				
Yes	19	24%	59	76%
No	55	14%	323	86%
Perpetrator's History of Drug/Alcohol Abuse				
Yes	25	22%	89	78%
No	48	14%	294	86%
Complainant's Relationship to Child				
Parent	59	15%	351	85%
Non-Parent Relative	5	19%	22	81%
CPS	8	61%	5	39%
Complainant's Arrest/Criminal Record				
Yes	3	4%	74	96%
No	71	19%	308	81%

Model	Chi-Square Value	Probability	Degrees of Freedom
Incident Characteristics			
Existence of Custody Order	.001	.974	1
Prior Custodial Interference	3.422	.064 ^d	1
Use of Weapon/Force	.466	.495	1
Child Returned	.072	.789	1
Perpetrator Left Jurisdiction	3.760	.052 ^d	1
Number of Days between Notification and Case Closure	1.853	.396	2

a: Pr<.001
b: Pr<.01
c: Pr<.05
d: Pr<.10

Table 6-4. Percentages and Totals Generated from Chi-Square Analysis for the Filed Charges Outcome

	<u>Arrested/Arrest Warrant</u>		<u>Not Arrested/ No Arrest Warrant</u>	
	Number	Percent of Row Total	Number	Percent of Row Total
Perpetrator's Relationship to Child				
Parent	43	64%	24	36%
Non-Parent Relative	7	100%	0	*
Prior LEA Incidents/Complaints between Perpetrator and Complainant				
Yes	16	84%	3	16%
No	34	62%	21	38%
Complainant's Relationship to Child				
Parent/Non-Parent Relative	46	71%	19	29%
CPS	3	37%	5	63%
Complainant's History of Child Abuse				
Yes	10	91%	1	9%
No	40	64%	23	36%
Prior Custodial Interference by Complainant or Perpetrator				
Yes	14	87%	2	13%
No	36	62%	22	38%
Perpetrator Left Jurisdiction				
Yes	32	62%	20	38%
No	18	85%	3	15%

	<u>Arrested/Arrest Warrant</u>		<u>Not Arrested/ No Arrest Warrant</u>	
	Number	Percent of Row Total	Number	Percent of Row Total
Complainant's History of Domestic Violence				
Yes	4	5%	79	95%
No	70	19%	303	81%
Complainant's History of Mental Illness				
Yes	1	2%	44	98%
No	73	18%	338	82%
Use of Weapon/Force				
Yes	9	39%	14	61%
No	65	15%	368	85%
Child Returned				
Yes	60	26%	169	74%
No	14	6%	213	94%
Perpetrator Left Jurisdiction				
Yes	52	25%	152	75%
No	21	10%	199	90%

APPENDIX V:

Detailed Case Tracking in Three Local Jurisdictions:

Case Tracking Instrument



CASE TRACKING INSTRUMENT

CRIMINAL JUSTICE RESPONSE
TO PARENTAL ABDUCTION CASES

Conducted by:

American Bar Association
Center for Children and the Law

and

Westat, Inc.

For the Office of Juvenile Justice
and Delinquency Prevention



Put Westat
ID
Label here

CASE TRACKING INSTRUMENT
CRIMINAL JUSTICE RESPONSE TO PARENTAL ABDUCTION CASES

CASE READER INITIALS: _____
DATE: __/__/__

II. ROSTER OF CASE/COURT ID #'s [ENTER ALL CASE/ID NUMBERS AVAILABLE:]

POLICE: _____	CRIMINAL COURT: _____	<u>OTHER MATTERS*:</u> _____
	_____	_____
	_____	_____
SHERIFF: _____	CIVIL/FAMILY COURT: _____	_____
	_____	_____
PROSEC/DA: _____	JUVENILE COURT: _____	_____
	_____	_____

*Other Matters includes other Court numbers; "Connect-up" numbers, etc.

NOTE: FOR CASES BEING REVIEWED IN TUCSON POLICE DEPARTMENT, HUDSON COUNTY SHERIFF'S DEPARTMENT, OR FOR "NO FILE" CASES IN SAN DIEGO, STOP HERE AND SKIP TO NEXT PAGE.

=====

III. HEARINGS INFORMATION

ONLY ANSWER THIS SECTION IF REVIEWING CASES IN PIMA COUNTY ATTORNEY'S OFFICE, HUDSON COUNTY ATTORNEY'S OFFICE, OR FOR "FILED" CASES IN SAN DIEGO. LOOK AT FILE FOLDER/COVER TO ANSWER THESE ITEMS:

- i. DATE CASE OPENED IN PROSECUTOR/DISTRICT/
COUNTY/CITY ATTORNEY'S OFFICE: (__/ __/ __)
- ii. DATE OF FINAL DISPOSITION: (__/ __/ __)
- iii. CHARGES AT TIME OF COMPLAINT



iv. CHECKLIST OF COURT PROCEEDING DATES:

a. ARRAIGNMENT DATE: (__ / __ / __)

b. DATE OF BAIL HEARING (May be same as arraignment date): (__ / __ / __)

c. BAIL AMOUNT: \$ _____

d. OUTCOME OF BAIL HEARING:

Released on bail.....1 (d)
R.O.R.....2
Committed indefinitely.....3 (f)
Committed without bail.....4 (f)
Not indicated in record.....8

e. ANY SPECIAL CONDITIONS ON RELEASE?

Yes.....1 (e)
No.....2
Not indicated in record.....8

f. DESCRIBE CONDITIONS: _____

g. PRELIMINARY HEARING(S): (__ / __ / __)
(__ / __ / __)
(__ / __ / __)
(__ / __ / __)
(__ / __ / __)
(__ / __ / __)

h. PRE-TRIAL CONFERENCE: (__ / __ / __)

i. TRIAL (__ / __ / __)

j. SENTENCING: (__ / __ / __)

k. PLACE OF COMMITMENT/DETENTION: _____



IV. CASE REPORTING:

1. DATE INCIDENT OCCURRED (DATE CHILD TAKEN,
NOT RETURNED, OR MISSED): (__/__/__)
2. DATE INVESTIGATING OR LAW ENFORCEMENT
AGENCY WAS NOTIFIED/DATE COMPLAINT REPORT TAKEN: (__/__/__)
3. WAS THE INVESTIGATING AGENCY THE FIRST AGENCY NOTIFIED ABOUT THIS INCIDENT?
Yes.....1 (SKIP TO Q5)
No.....2
Not in record.....8
4. IF NO, WHICH TYPE OF AGENCY WAS FIRST NOTIFIED ABOUT THIS INCIDENT?
County law enforcement agency (sheriff).....1
Local (municipal) LEA (Specify: _____).....2
Reservation/tribal police.....
Other LEA in State (Specify: _____).....3
LEA in another State (Specify: _____).....4
Prosecutor/District Attorney's Office.....5
CPS/Local DSS.....6
Other (Specify: _____).....7
Not in record.....8
5. HOW WAS THE AGENCY TO WHICH THE REPORT WAS FIRST MADE NOTIFIED ABOUT THE
INCIDENT? [IF ANSWERED YES TO Q3, AGENCY IS SAME AS THE INVESTIGATING AGENCY;
OTHERWISE ANSWER FOR AGENCY IDENTIFIED IN Q4.]
- Telephone call.....1-----> Was this a:
911 or emergency call.....1
Walk-in.....2 Non-emergency call.....2
Other method: _____...3 Not in record.....8
Not in record.....8



6. INDICATE IF . . .

- (A) . . . Complainant was referred to investigating agency by Court/Judge?
Yes.....1
No.....2
Not in record.....8
- (B) . . . Complainant's attorney contacted investigating agency?
Yes.....1
No.....2
Not in record.....8
- (C) . . . Other than the court/judge or complainant his/herself, did anyone else (person or organization) refer the complainant to investigating agency?
Yes.....1
No.....2
Not in record.....8

7. UPON RECEIVING THE INITIAL REPORT OF CUSTODIAL/VISITATION INTERFERENCE WHAT WAS THE RESPONSE OF AGENCY TO WHICH THE REPORT WAS FIRST MADE? (AGENCY IDENTIFIED IN QUESTIONS 3 AND 4). (CIRCLE ALL THAT APPLY):

- Patrol officer/LEA personnel dispatched to scene.....1(a)
LEA/Investigating agency personnel telephoned perpetrator.....2
LEA/Investigating agency personnel had face-to-face contact w/perpetrator.3
LEA/Investigating agency personnel had face-to-face contact w/complainant.4
Case was referred to investigators/detectives for further intervention....5
LEA/Investigating agency issued citation; referred to Court.....6
Other response: _____.....7
Not in record.....8

(a) If available, indicate # of officers responding/dispatched to the scene: _____

8. HOW WAS THIS CASE INITIALLY CLASSIFIED BY THE FIRST RESPONDING AGENCY?

- Custodial Interference.....1
Visitation Interference.....2
Kidnapping.....3
Runaway.....4
Other: _____.....5
Not in record.....8



9. IN ONE PARAGRAPH, BRIEFLY DESCRIBE THE INCIDENT OF CUSTODIAL OR VISITATION INTERFERENCE:

10. IS THERE ANY INFORMATION IN THE RECORD TO INDICATE THAT INDIVIDUALS IN ADDITION TO THE PERPETRATOR WERE INVOLVED IN THE ABDUCTION?

Yes.....1 (a)
Not indicated in record.....8

(10a) WHO ELSE WAS INVOLVED (circle all that apply)

Family member(s) of the perpetrator.....1
Friend(s) of the perpetrator.....2
Family of complainant.....3
Friend(s) of complainant.....4
Other: _____.....5
Not indicated in record.....8

11. WAS A WEAPON USED DURING THE INITIAL INCIDENT?

Yes, a weapon was used.....1 (a)
No, a weapon was not used.....2
Use of a weapon not indicated in record.....8

(11a) TYPE OF WEAPON(S): _____

12. WAS FORCE USED DURING THE INITIAL INCIDENT?

Yes, force was used.....1 (a)
No, force was not used.....2
Use of force not indicated in record.....8

(12a) DESCRIBE TYPE OF FORCE: _____



13. IS THERE INFORMATION IN THE FILE INDICATING LEA INCIDENTS/COMPLAINTS INVOLVING THE COMPLAINANT AND PERPETRATOR PRIOR TO THE DATE IN QUESTION #1?

- Yes.....1 (a-d)
- None found.....2 (SKIP)
- Not indicated in record.....8

(13a) IDENTIFY LEA(S): _____

(13b) EARLIEST LEA CONTACT DATE: __/__/__

(13c) NATURE OF INCIDENT/COMPLAINT HISTORY (circle all that apply):

- Prior custodial interference incident(s).....01
- Prior visitation interference incident(s).....02
- Threats to abduct child/ren.....03
- Threats to deny visitation.....04
- Threats of violence, assault.....05
- Allegations of child abuse, neglect.....06
- Allegations of domestic violence.....07
- Allegations of assault.....08
- Other: _____.....09
- Not indicated in record.....88



V. CASE CHARACTERISTICS

**FILL OUT FOLLOWING INFORMATION REGARDING
COMPLAINANT**

14. RELATIONSHIP TO INVOLVED CHILDREN:

Mother.....01
Father.....02
Stepmother.....03
Stepfather.....04
Maternal Grandparent.....05
Paternal Grandparent.....06
Other relative
(relationship: _____).....07
Other person
(relationship: _____).....08
Child Welfare Agency.....09
Not in record.....88

16. RACE/ETHNICITY:

Asian or Pacific Islander.....1
Black/AfricanAmerican.....2
Hispanic.....3
American Indian/Alaskan Native.....4
White.....5
Other: _____6
Not in record.....8

18. CITIZENSHIP/RESIDENCY STATUS:

U.S. citizen.....1
Alien.....2 (a,b)
Visitor to U.S.....3 (b)
Other: _____4
Not in record.....8

18(a) STATUS IF ALIEN:

Legal/Documented.....1
Illegal/Undocumented.....2
Not in record.....8

18(b) COUNTRY OF ORIGIN:

PERPETRATOR

15. RELATIONSHIP TO INVOLVED CHILDREN:

Mother.....01
Father.....02
Stepmother.....03
Stepfather.....04
Maternal Grandparent.....05
Paternal Grandparent.....06
Other relative
(relationship: _____).....07
Other person
(relationship: _____).....08
Child Welfare Agency.....09
Not in record.....88

17. RACE/ETHNICITY:

Asian or Pacific Islander.....1
Black/AfricanAmerican.....2
Hispanic.....3
American Indian/Alaskan Native.....4
White.....5
Other: _____6
Not in record.....8

19. CITIZENSHIP/RESIDENCY STATUS:

U.S. citizen.....1
Alien.....2 (a,b)
Visitor to U.S.....3 (b)
Other: _____4
Not in record.....8

19(a) STATUS IF ALIEN:

Legal/Documented.....1
Illegal/Undocumented.....2
Not in record.....8

19(b) COUNTRY OF ORIGIN:



COMPLAINANT

20. WHERE WAS HE/SHE LIVING AT THE TIME OF THE INITIAL INCIDENT?
- In state where incident occurred.....1
 - In another state
(name of state: _____).....2
 - In another country
(name of country: _____).....3
 - Not indicated in record.....8

22. OCCUPATION/INCOME SOURCE:

24. ARMED FORCES STATUS:
- Member of armed forces
at time of incident.....1
 - Not indicated in record.....8

26. DID RECORD INDICATE COMPLAINANT HAD AN ARREST/CRIMINAL RECORD?

- Yes, had record.....1 (a,b)
- No, did not have record.....2
- Not in file.....8

(26a) FILL OUT "PRIOR ARREST/OFFENSE WORKSHEET" (NEXT PAGE)

(26b) WHAT WAS STATUS OF COMPLAINANT WITHIN CRIMINAL JUSTICE SYSTEM AT TIME OF THIS OFFENSE?

- On probation.....1
- On parole.....2
- Escapee.....3
- Warrant issued.....4
- Other
(specify: _____).5
- Not indicated in record.....8

PERPETRATOR

21. WHERE WAS HE/SHE LIVING AT THE TIME OF THE INITIAL INCIDENT?
- In state where incident occurred.....1
 - In another state
(name of state: _____).....2
 - In another country
(name of country: _____).....3
 - Not indicated in record.....8

23. OCCUPATION/INCOME SOURCE:

25. ARMED FORCES STATUS:
- Member of armed forces
at time of incident.....1
 - Not indicated in record.....8

27. DID RECORD INDICATE PERPETRATOR HAD AN ARREST/CRIMINAL RECORD?

- Yes, had record.....1 (a,b)
- No, did not have record.....2
- Not in file.....8

(27a) FILL OUT "PRIOR ARREST/OFFENSE WORKSHEET" (NEXT PAGE)

(27b) WHAT WAS STATUS OF PERPETRATOR WITHIN CRIMINAL JUSTICE SYSTEM AT TIME OF THIS OFFENSE?

- On probation.....1
- On parole.....2
- Escapee.....3
- Warrant issued.....4
- Other
(specify: _____).5
- Not indicated in record.....8



PRIOR OFFENSE WORKSHEET - COMPLAINANT

Please list all priors from documents in the file.

Offense					Outcome	
Date	Description	Counts	Code	Fel/Mis/DK	Description	Code



PRIOR OFFENSE WORKSHEET - PERPETRATOR

Please list all priors from documents in the file.

Offense					Outcome	
Date	Description	Counts	Code	Fel/Mis/DK	Description	Code



COMPLAINANT

28. IS DOMESTIC VIOLENCE INDICATED IN THE
COMPLAINANT'S HISTORY?

Yes.....1 (a)
Not indicated in record.....2

(28a) BRIEFLY STATE WHAT THE RECORD
SAYS ABOUT THE DOMESTIC VIOLENCE:

30. IS COMMITTING CHILD ABUSE OR NEGLECT
INDICATED IN THE COMPLAINANT'S HISTORY?

Yes.....1 (a,b)
Not indicated in record.....2

(30a) BRIEFLY STATE WHAT THE RECORD
SAYS ABOUT THE CHILD ABUSE AND/OR NEGLECT:

(30b) DID CPS OR OTHER CHILD WELFARE
AGENCY INTERVENE (INVESTIGATION, REMOVAL OF
CHILD FROM HOME, ETC.)?

Yes.....1 (c)
Not indicated in record.....2

(30c) DESCRIBE THE CPS INTERVENTION:

PERPETRATOR

29. IS DOMESTIC VIOLENCE INDICATED IN THE
PERPETRATOR'S HISTORY?

Yes.....1 (a)
Not indicated in record.....2

(29a) BRIEFLY STATE WHAT THE RECORD
SAYS ABOUT THE DOMESTIC VIOLENCE:

31. IS COMMITTING CHILD ABUSE OR NEGLECT
INDICATED IN THE PERPETRATOR'S HISTORY?

Yes.....1 (a,b)
Not indicated in record.....2

(31a) BRIEFLY STATE WHAT THE RECORD
SAYS ABOUT THE CHILD ABUSE AND/OR NEGLECT:

(31b) DID CPS OR OTHER CHILD WELFARE
AGENCY INTERVENE (INVESTIGATION, REMOVAL OF
CHILD FROM HOME, ETC.)?

Yes.....1 (c)
Not indicated in record.....2

(31c) DESCRIBE THE CPS INTERVENTION:



COMPLAINANT

32. IS ALCOHOL OR DRUG ABUSE (DWI, DRUG POSSESSION, COUNSELING) INDICATED IN THE COMPLAINANT'S HISTORY?

Yes.....1 (a)
Not indicated in record.....2

(32a) BRIEFLY STATE WHAT THE RECORD SAYS ABOUT THE ALCOHOL AND/OR DRUG ABUSE:

34. ARE MENTAL ILLNESS OR MENTAL HEALTH PROBLEMS INDICATED IN THE COMPLAINANT'S HISTORY?

Yes.....1 (a)
Not indicated in record.....2

(34a) BRIEFLY STATE WHAT THE RECORD SAYS ABOUT THE MENTAL HEALTH PROBLEMS OR MENTAL ILLNESS.

PERPETRATOR

33. IS ALCOHOL OR DRUG ABUSE (DWI, DRUG POSSESSION, COUNSELING) INDICATED IN THE PERPETRATOR'S HISTORY?

Yes.....1 (a)
Not indicated in record.....2

(33a) BRIEFLY STATE WHAT THE RECORD SAYS ABOUT THE ALCOHOL AND/OR DRUG ABUSE:

35. ARE MENTAL ILLNESS OR MENTAL HEALTH PROBLEMS INDICATED IN THE PERPETRATOR'S HISTORY?

Yes.....1 (a)
Not indicated in record.....2

(35a) BRIEFLY STATE WHAT THE RECORD SAYS ABOUT THE MENTAL HEALTH PROBLEMS OR MENTAL ILLNESS.



VI. CASE PROCESSING:

36. WAS INFORMATION ABOUT THE PERPETRATOR ENTERED INTO THE NCIC COMPUTER?
Yes.....1
No.....2
Not indicated in record.....8
37. WAS INFORMATION ABOUT THE MISSING CHILD/REN ENTERED INTO THE NCIC COMPUTER?
Yes.....1
No.....2
Not indicated in record.....8
38. WAS THE PROSECUTOR/DISTRICT/COUNTY ATTORNEY NOTIFIED?
Yes.....1 (a)
No.....2
Not indicated in record.....8
- 38a. DATE OF FIRST CONTACT BETWEEN LEA AND PROSECUTOR/DISTRICT/COUNTY
ATTY: (___/___/___)
39. WAS A WARRANT ISSUED FOR THE ARREST OF THE PERPETRATOR?
Yes.....1----> DATE ISSUED: (___/___/___)
No.....2
Not indicated in record.....8
40. DID THE LEA/DISTRICT/COUNTY ATTORNEY'S OFFICE APPLY FOR A UFAP (UNLAWFUL FLIGHT
TO AVOID PROSECUTION) WARRANT FROM THE U.S. ATTORNEY'S OFFICE?
Yes.....1----> DATE ISSUED: (___/___/___)
No.....2
Not indicated in record.....8
41. WAS THE . . .

PERPETRATOR LOCATED?
Yes.....1 (a & b)
No.....2
Not indicated in record.....8
- CHILD OR CHILDREN LOCATED?
Yes.....1 (a & b)
No.....2
Not indicated in record.....8



Perpetrator

Child/ren

(41a) DATE LOCATED:

___/___/___

___/___/___

(41b) LOCATION: (CIRCLE ANSWER:)

Within state incident occurred.....1.....1
 Other state (Name: _____) ...2.....2 (_____)
 U.S. Territory (Name: _____) .. 3.....3 (_____)
 Other country (Name: _____) ...4.....4 (_____)
 Not indicated in record.....8.....8

42. WHO LOCATED . . .

(42a) . . . THE PERPETRATOR? _____

(42b) . . . THE CHILD/REN? _____

43. ACCORDING TO THE FILE, HAD CHILD/REN BEEN RECOVERED/RETURNED, OR IN CASES OF VISITATION INTERFERENCE, HAD THE COMPLAINANT ESTABLISHED OR RE-ESTABLISHED VISITATION ACCESS TO THE CHILD?

Yes.....1 (a)
 No.....2
 Not indicated in record.....8

FOR CASES OF CUSTODIAL INTERFERENCE/ABDUCTION:

(43a) RECOVERY/RETURN DATE: (___/___/___)

OR

FOR CASES OF VISITATION INTERFERENCE:

(43a) DATE VISITATION RESUMED (OR BEGUN) FOLLOWING INCIDENT: (___/___/___)

44. HOW WAS/WERE CHILD/REN RECOVERED/RETURNED? (DO NOT ANSWER FOR VISITATION INTERFERENCE)

Voluntarily returned by perpetrator.....1
 LEA picked up child/ren.....2
 Complainant or agent picked up child/ren.....3
 Other: _____4
 Not indicated in record.....8
 N.A. Visitation interference.....9



45. IN WHOSE CARE WAS CHILD PLACED UPON RECOVERY? (DO NOT ANSWER FOR VISITATION INTERFERENCE)

- Complainant.....1
- Perpetrator.....2
- Other relative (_____).....3 ✓
- Friend (_____).....4
- Protective Custody.....5
- Other: _____.....6
- Not in record.....8
- N.A. Visitation Interference.....9

46. DURING THE INCIDENT OF CUSTODIAL OR VISITATION INTERFERENCE INDICATE IF THE PERPETRATOR: (CIRCLE ALL THAT APPLY)

- Took the child out of the State.....1-->to what State: _____
- Took the child out of the U.S.....2-->to what Country: _____
- Attempted to take the child out of the State.....3 (a)
- Attempted to take the child out of the U.S.....4 (a)
- Took child to more than one other State.....5-->States: _____
- Took child to more than one other country.....6-->Countries: _____
- Other: _____.....7
- None of above indicated in record.....8

(46a) DESCRIBE THE ATTEMPT:



47. WAS THE PERPETRATOR ARRESTED?
- Yes.....1 (a, b, c)
 - No.....2
 - Not indicated in record.....8

(47a) WHAT WERE THE ARREST CHARGES? (FILL OUT TABLE BELOW)

Statute	Description of Charges

(47b) CITY, STATE OF ARREST: _____

(47c) DATE OF ARREST: (__ / __ / __)

48. WERE OTHER POSSIBLE OFFENDERS ARRESTED FOR ASSISTING THE PERPETRATOR IN THIS INCIDENT?
- Yes.....1 (a)
 - No.....2 SKIP to 49
 - Not indicated in record.....8

- (48a) WHO WERE THE OTHER POSSIBLE OFFENDERS ARRESTED?
- Family member(s) of perpetrator.....1
 - Friends of perpetrator.....2
 - Family of complainant.....3
 - Friends of complainant.....4
 - Other: _____.....5
 - Not indicated in record.....8



IF PERPETRATOR NOT ARRESTED, SKIP TO 51.

IF PERPETRATOR ARRESTED IN STATE, SKIP TO QUESTION 50.

- 49. DID THE JURISDICTION INITIATE PROCEEDINGS TO EXTRADITE THE PERPETRATOR?
 - Yes.....1
 - No.....2 (SKIP TO 51)
 - Not indicated in record.....8
 - N/A Arrested in State.....9

- 50. OUTCOME OF EXTRADITION ATTEMPT:
 - Perpetrator was extradited from:.....1
 - Perpetrator returned voluntarily from:.....2
 - Not extradited.....3 (a)
 - Not in record.....8

(50a) REASON(S) FOR LEA OR PROSECUTOR NOT EXTRADITING:

(NIR if not in record) _____

(FOR BAIL QUESTIONS, GO TO PAGE 2)

- 51. DATE CASE CLOSED IN LAW ENFORCEMENT OR INVESTIGATING (District Attorney in San Diego NO FILE CASES) AGENCY: (___/ ___/ ___)

- 52. HOW WAS THE CASE CLOSED/CLEARED BY THE INVESTIGATING AGENCY (OR IF NO FILE IN San Diego, by District Atty OFC)?

- Arrest.....1
- Issuance of Summons or Citation.....2
- Cleared Exceptionally.....3 (a)
- Closed/No further action.....4 (a)
- Not indicated in record.....8

(52a) INDICATE REASON(S) FOR CASE CLOSURE (CIRCLE ALL THAT APPLY):

- Lack of custody order.....01
- Lack of visitation order.....02
- Out-of-state order/unenforceable.....03
- Joint custody w/no physical custody order.....04
- Lack of evidence.....05
- Complainant unwilling to press charges.....06
- Complainant unwilling to testify.....07
- Child voluntarily returned to complainant w/o agency contact...08
- Child voluntarily returned to complainant after agency contact.09
- Prosecutor refused to prosecute.....10
- Prosecutor refused to extradite.....11
- Other: _____.....12
- Not indicated in record.....88



IF REVIEWING CASES IN TUCSON POLICE DEPARTMENT, HUDSON COUNTY SHERIFF'S DEPARTMENT OR "NO FILE" CASES IN SAN DIEGO, SKIP TO QUESTION 55.

53. WERE CHARGES FILED RELATED TO THIS INCIDENT?

- Yes.....1 (a,c)
- No.....2 (b)
- Not indicated in record.....8

(53a) WHAT WERE THE CHARGES? (FILL OUT TABLE BELOW)

Statute	Description	Date of Filing

(53b) IF NO CHARGES WERE FILED, REASON GIVEN: (WRITE "NIR" IF NOT IN RECORD, THEN SKIP TO QUESTION 55.)

54. HOW WAS CASE DECIDED? (Circle one)

- Pled guilty.....01 (a-e)
- Pled nollo contendre.....02
- Jury trial - not guilty.....03
- Jury trial - guilty.....04 (a-e)
- Jury trial - hung jury/mistrial.....05
- Pretrial intervention.....06
- Dismissed by Court with prejudice.....07 (f)
- Dismissed by Court without prejudice.....08
- Dismissed by Prosecutor/D.A.....09 (f)
- "No-billed" by grand jury.....10
- Other (Specify: _____)....11
- Not indicated in record.....88



(54a) PERPETRATOR WAS CONVICTED OF WHAT OFFENSES? (FILL OUT TABLE BELOW)

Statute	Description	Date

(54b) SENTENCE: _____

(54c) DID SENTENCE INCLUDE ANY RESTRICTIONS ON CONTACT WITH CHILD?

- Yes, contact temporarily terminated.....1
- Yes, supervised contact only.....2
- No restrictions.....3
- Other: _____4
- Not indicated in record.....8

(54d) WAS SENTENCING BASED ON CHARGES COMBINED FROM ANOTHER OFFENSE?

- Yes.....1 (e)
- No.....2
- Not indicated in record.....8

(54e) PLEASE PROVIDE ANY ADDITIONAL COMMENTS ON THE SPECIFICATIONS/CONDITIONS TO THE SENTENCE (e.g., concurrent, time served, etc.):

(54f) IF CHARGES WERE DISMISSED, WHAT WERE REASONS FOR DISMISSAL?



55. WAS COMPLAINANT REFERRED TO ANY OF THE FOLLOWING AT ANY TIME BEFORE CASE CLOSING?

Family mediation/conciliation.....1
 Child Protective Services.....2
 Family Court services.....3
 Juvenile Court services.....4
 Private counseling.....5
 Legal aid/legal services program.....6
 Other: (specify: _____).....7
 No referrals in record.....8

56. WERE THERE ANY CONCURRENT CIVIL CONTEMPT OR OTHER COURT PROCEEDINGS RELATED TO THE ENFORCEMENT OF A CUSTODY/VISITATION ORDER?

Yes.....1 (a & b)
 No.....2
 Not indicated in record.....8

(56a) WHO FILED THEM? _____

(56b) DESCRIBE CONCURRENT PROCEEDINGS:



IN THE PROCESS OF INVESTIGATING THE CASE AND IN PURSUING CHARGES, WAS THERE COMMUNICATION BETWEEN THE INVESTIGATING AGENCY AND . . .

<i>[Law enforcement agencies]</i>	<u>Yes</u>	<u>No</u>	<u>Not in file</u>
57. OTHER LAW ENFORCEMENT AGENC(IES) WITHIN THE COUNTY? (57a) Name of LEA: _____	1	2	8
58. OTHER LEA(S) WITHIN STATE? (58a) Name of LEA: _____	1	2	8
59. LEA(S) IN ANOTHER U.S. STATE, COMMONWEALTH OR TERRITORY (I.E., PUERTO RICO, GUAM)? (59a) Name of LEA: _____	1	2	8
60. U.S. CUSTOMS?	1	2	8
61. FEDERAL BUREAU OF INVESTIGATION (FBI)? (61a) DATE CONTACTED: (__/__/__) (61b) AGENT ASSIGNED TO CASE? (circle one) Yes.....1 No.....2 Not indicated in record.....8	1	2	8
62. INTERPOL? (62a) DATE CONTACTED: (__/__/__) (62b) AGENT ASSIGNED TO CASE? (circle one) Yes.....1 No.....2 Not indicated in record.....8	1	2	8
63. LEA IN ANOTHER COUNTRY? (63a) NAME OF LEA/COUNTRY: _____	1	2	8
64. U.S. STATE DEPARTMENT? (IF SUBMITTED HAGUE APPLICATION, ANSWER YES)	1	2	8



[Other Agencies] Yes No Not in file

65. CHILD PROTECTIVE SERVICES? 1 2 8

(65a) Which counties/states: _____

(65b) Was a copy of police report/investig report forwarded to this CPS?

Yes.....1
 No.....2
 Not in record...8

66. STATE OR FEDERAL PARENT LOCATOR SERVICE? 1 2 8

67. STATE MISSING CHILDREN'S CLEARINGHOUSE? 1 2 8

[AZ: Arizona Dept. of Public Safety
 CA: California Dept. of Justice
 NJ: New Jersey State Police]

68. NATIONAL CENTER ON MISSING & EXPLOITED CHILDREN (NCMEC)? 1 2 8

69. NON-PROFIT MISSING CHILDREN'S ORGANIZATION? 1 2 8

(69a) Name of organization: _____

70. OTHER LOCAL, STATE OR FEDERAL AGENCIES NOT MENTIONED ABOVE? 1 2 8

(70a) Name(s) of organization(s)/agenc(ies):



VII. CUSTODIAL/CIVIL COURT HISTORY:

71. WERE THE COMPLAINANT AND PERPETRATOR LIVING TOGETHER IN THE SAME HOUSEHOLD AT THE TIME OF THE INCIDENT?
Yes.....1
No.....2
Not indicated in record.....8
72. RELATIONSHIP BETWEEN PERPETRATOR AND COMPLAINANT AT TIME OF INCIDENT:
Married (to each other).....1
Divorced (from each other).....2
Separated (from each other).....3
Never married to each other.....4
Related: (specify: _____).....5
Other: _____.....6
Not indicated in record.....8
73. LIVING SITUATION OF CHILD/CHILDREN AT TIME OF INCIDENT (WHERE WAS CHILD/CHILDREN LIVING THE MAJORITY OF THE TIME DURING THE YEAR?):
Living together with both perpetrator and complainant (same hh)...1
Living with complainant.....2 (a)
Living with perpetrator.....3 (a)
Other (fostercare, relatives) Specify: _____.....4
Not indicated in record.....8
74. WAS THERE ANY INFORMATION IN THE FILE ABOUT PAST CUSTODIAL/VISITATION INTERFERENCE ON THE PART OF EITHER THE PERPETRATOR OR COMPLAINANT (PRIOR TO THE CURRENT INCIDENT)?
Yes, the perpetrator only.....1
Yes, the complainant only.....2
Yes, both the perpetrator and complainant.....3
Not indicated in file.....8
75. AT THE TIME OF THE INCIDENT WAS A CUSTODY AND/OR VISITATION ORDER IN EXISTENCE?
Yes.....1 (a)
No.....2
Not indicated in record.....8
- (75a) WERE THERE MULTIPLE COURT ORDERS ON THE SAME CHILD?
Yes.....1
No.....2
Not indicated in record.....8



76. IS THERE A COPY OF THE CUSTODY AND/OR VISITATION ORDER IN THE CASE FILE?
 Yes.....1
 No.....2 SKIP to 82

77. UNDER THIS ORDER DID THE . . . (CIRCLE ONE FOR EACH)

(A) <u>PERPETRATOR HAVE . . .</u>	(B) <u>COMPLAINANT HAVE . . .</u>
Sole legal and physical custody.....01	Sole physical & legal custody.....01
Joint legal & sole physical custody...02	Joint legal & sole physical custody...02
Joint legal & joint physical custody..03	Joint legal & joint physical custody..03
Unsupervised visitation.....04	Unsupervised visitation.....04
Supervised visitation.....05	Supervised visitation.....05
Denied visitation.....06	Denied visitation.....06
Other:_____..07	Other:_____..07
Not in record.....88	Not in record.....88

78. WAS THIS COURT ORDER A . . . (CIRCLE ALL THAT APPLY)
 T.R.O. (Domestic violence order).....1
 Temporary Custody order.....2
 Other:_____3
 None of the above.....4
 Not in record.....8

(78a) ADDITIONAL NOTATIONS ON COURT ORDER:

79. WHICH COURT ORDERED CUSTODY AND/OR VISITATION (TYPE OF COURT, CITY, STATE)?

80. DATE ORDER GRANTED: (__/__/__)

81. FOLLOWING THE INCIDENT, DID THE COMPLAINANT TAKE STEPS TO HAVE THE ORDER ENFORCED (e.g., meet with counsel, file court papers, etc.)?
 Yes.....1 (a)
 No.....2
 Not indicated in record.....8

(81a) DESCRIBE THE STEPS TAKEN:



82. IF THERE WAS NO CUSTODY/VISITATION ORDER IN EXISTENCE AT TIME OF INCIDENT, WAS THE COMPLAINANT ADVISED/ASSISTED TO OBTAIN A CUSTODY AND/OR VISITATION ORDER AFTER THE INCIDENT HAD OCCURRED?

Yes.....1 (a-e)
No.....2 SKIP to 83
Not indicated in record.....8 SKIP to 83

(82a) WHO ADVISED OR ASSISTED? _____

(82b) TYPE OF CUSTODY OR VISITATION ORDER GRANTED:

Sole legal and physical custody.....01
Joint legal & sole physical custody...02
Joint legal & joint physical custody..03
Unsupervised visitation.....04
Supervised visitation.....05
Denied visitation.....06
Other: _____..07
Not in record.....88

(82c) WAS THIS A TEMPORARY ORDER?

Yes.....1
No.....2
Not in record.....8

(82d) WHICH COURT ORDERED CUSTODY/VISITATION (TYPE OF COURT, CITY, STATE):

(82e) DATE ORDER GRANTED: (__/__/__)

83. DID A VICTIM ADVOCACY OR OTHER SUPPORT UNIT PROVIDE SERVICES TO THE CHILD OR HIS/HER FAMILY IN THIS CASE?

Yes.....1 (a)
Not indicated in record.....2

(83a) DESCRIBE THE SERVICES PROVIDED:



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A horizontal line of text across the middle of the page, possibly a title or section header.



Vertical line of text on the left side, possibly a page number or margin indicator.



84. WAS COMPLAINANT REPRESENTED BY COUNSEL IN CONNECTION WITH THIS INCIDENT?
Yes.....1 (a)
No.....2
Not indicated in record.....8

(84a) TYPE OF COUNSEL:

Private attorney.....1
Legal aid/legal services.....2
Public defender.....3
Court-appointed.....4
Other: _____5
Not indicated in file.....8

(84b) DESCRIBE COUNSEL'S INVOLVEMENT (E.G., REPRESENTED COMPLAINANT IN COURT PROCEEDINGS, CONTACTED LEA FOR COMPLAINANT, ETC.)

85. DESCRIBE ANY SUBSEQUENT ABDUCTION/VISITATION INTERFERENCE ACTIVITY BETWEEN THE INVOLVED PARTIES:

(85a) DATE OF SUBSEQUENT ACTIVITY: (___ / ___ / ___)

(85b) OUTCOME: _____

86. DESCRIBE ANY UNIQUE, UNUSUAL OR OTHERWISE IMPORTANT COMPONENTS OR CHARACTERISTICS OF THIS CASE NOT NOTED ELSEWHERE, OR AREAS WHICH NEED TO BE EXPANDED UPON. (LIMIT TO 1 OR 2 SENTENCES)



APPENDIX VI:

Parental Abduction/Custodial Interference Case Summaries

Compiled by: Thomazine E. Shanahan







Parental Abduction/Custodial Interference Case Summaries

Alaska

Cornwall v. State, 915 P.2d 640 (Alaska App. 1996)

Facts: D, child's mother, was convicted of interference with official proceedings and first-degree custodial interference. D took child out of town after Department of Health and Social Services had taken emergency custody of child. Child had been sexually abused by step-father. DHSS allowed child to remain with mother despite putting child in their custody. At her attorney's advice, D left town with child and eventually moved to Michigan. She was located there and brought back to Alaska. D appeals.

Issue: Did the grand jury err in indicting D?

Holding: No. D's indictment is upheld. However, D is entitled to a new trial because she was not permitted to present testimony concerning an element of custodial interference. Conviction for custodial interference reversed, call for supplemental briefing on conviction for interference with official proceedings.

Strother v. State, 891 P.2d 214 (Alaska App. 1995)

Facts: D, father of child, was convicted of first-degree custodial interference. D took child out-of-state after the child's mother was awarded temporary custody of her. D appeals.

Issue: 1) Does the custodial interference statute apply to D if D did not know that his wife had sole custody of the child? 2) Did D's actions satisfy the actus reus of the offense? 3) Did the jury instructions contain prejudicial error? 4) Are the custodial interference statutes unconstitutionally vague? 5) Was jury instruction on culpable mental state plain error?

Holding: 1) Yes. The crime of custodial interference prohibits any custodian from depriving the rights of the other custodian. 2) Yes. Taking the child from the state and concealing the child constituted actus reus. 3) Error in jury instructions was not prejudicial. 4) Custodial interference statutes are not unconstitutionally vague as applied to D. 5) No. D's attorney accepted this wording at the time of instruction. Plain error does not exist because no reasonable possibility exists that the jury was led astray by the phrasing of the instruction. Affirmed.

*Includes extensive discussion of interpretation of custodial interference statute and statutes in other states.



Seaman v. State, 825 P.2d 907 (Alaska App. 1992)

Facts: D, father of child, was convicted of first-degree custodial interference after taking child from Alaska to Arizona when the mother had custody of the child. D was convicted of custodial interference and other charges in Arizona. He was then brought back to Alaska and convicted there as well. He appeals.

Issue: Did the trial court err in denying D's motion to dismiss because D had already been convicted of custodial interference in Arizona?

Holding: No. The Alaska custodial interference charge and the Arizona custodial interference charge describe two different acts. The Alaska charge was for the act of taking the child from Alaska in 1990. The Arizona charge was for the act of keeping the child from the lawful custody of his mother in 1990. Double jeopardy did not bar conviction. Affirmed.

Arizona

State v. Aussie, 175 Ariz. 125, 854 P.2d 158, 1993

Facts: D, mother of children, was indicted on custodial interference after refusing to return children to their father after court-ordered summer visitation. D was charged in Navajo county, where father resided, although D resided in Mohave County. Indictment was dismissed based on improper venue. State appeals.

Issue: Did the trial court err in finding that the custodial interference charge was not triable in Navajo County?

Holding: Yes. Venue in prosecution for custodial interference is proper in the county where the custodial parent resides. Reversed and remanded.

State v. Bean, 174 Ariz. 544, 851 P.2d 843, 1992

Facts: D, father of child, was convicted of custodial interference after refusing to return child to the mother following a limited visitation. D was sentenced to 4 years in prison due to two prior felony convictions and the trial court's finding of aggravating circumstances. D appeals.

Issue: 1) Does the Arizona custodial interference statute violate the due process and equal protection clauses of the Constitution? 2) Did the trial court err by failing to define "parental rights" for the jury? 3) Did the trial court err in finding an aggravating factor of emotional harm to the mother?

Holding: 1) No. The Arizona statute does not deprive D of any established parental rights and does not prevent D from establishing parental rights. 2) No. There was no error in the court's



instruction. 3) No. D's statements to the mother that she would never see her child again were an aggravating circumstance. Emotional harm is not an element of custodial interference, and therefore is an appropriate aggravating circumstance for the sentencing court to consider. Affirmed.

State v. Ramsey, 171 Ariz. 409, 831 P. 2d 408, 1992

Facts: D, mother of children, was found guilty of custodial interference. D had given children to her aunt and uncle for adoption when children were six. She visited children occasionally. When the children were fifteen, she took them to North Carolina and kept them from their adoptive parents. She was arrested in North Carolina and charged in Arizona. The judge classified D as a domestic offender and imposed a sentence under domestic violence statute. This allowed D to be placed on probation and have judgment of guilt deferred. State appeals.

Issue: 1) Does adoption decree sever parent/child relationship for purposes of domestic violence statute? 2) Does language of domestic violence statute violate separation of powers doctrine? 3) Can the unconstitutional part of the statute be severed?

Holding: 1) No. D is still related to children by blood. D was eligible to have judgment of guilt deferred under the domestic violence statute. 2) Yes. 3) Yes. The trial court properly severed prosecutorial concurrence from the statute. Affirmed.

Delaware

State v. Leguy, 653 A.2d 306, 1994 (decision without published opinion)

Facts: D, child's mother, was charged with felony custodial interference after taking child out of Delaware. Child's father had visitation rights. Court found that D should have been charged with a misdemeanor rather than a felony and that the case should have been removed to Family Court. State appeals.

Issue: Did the trial court err in finding that D should have been charged with a misdemeanor?

Holding: Yes. The trial court incorrectly applied the custodial interference statute when it determined that D did not interfere with the father's custodial rights until after she left the state of Delaware. The custodial interference statute applies to situations in which a parent removes a child from the state without consent of another legal custodian or the court. The trial court also erred in making a factual determination of D's mental state, an issue which a jury should have resolved. Reversed and remanded.



State v. Akina, 73 Haw. 75, 828 P.2d 269, 1992

Facts: D, unrelated to child, was convicted of custodial interference in the second degree after he allowed child to stay at his home. The child, a ward of the state, had run away from her foster parents' home and met D in a park.

Issue: 1) Did the court abuse its discretion by failing to dismiss case as de minimis? 2) Is the custodial interference statute unconstitutionally vague? 3) Did the court err in construing the custodial interference statute by convicting D on facts of this case?

Holding: 1) Yes. The case should have been dismissed under de minimis statute. The court abused its discretion by failing to dismiss the case under a statutory exception for conduct causing harm "too trivial to warrant" conviction. Other two issues not reached. Reversed.

Idaho

State v. Doyle, 121 Idaho 911, 828 P.2d 1316, 1992

Facts: D, father of child, was convicted of felony custodial interference after refusing to return child to his mother. The parents had a joint temporary custody agreement. The father lived in Washington and the mother lived in Idaho, and they exchanged the child every two weeks in Oregon. D failed to meet the mother in Oregon after his two weeks of custody, and kept the child from the mother for a year and a half until he was arrested for theft in Kentucky. D appeals.

Issue: Did the trial court have subject matter jurisdiction despite the fact that D did not commit the crime in Idaho?

Holding: Yes. The keeping or withholding of the child and the deprivation of custodial rights occurred in Idaho, where the mother resided. Affirmed.

Maryland:

Trindle and Marcus v. State, 326 Md. 25, 602 A.2d 1232, 1992

Facts: Trindle and Marcus, father and step-mother of children, were convicted of child abduction after taking children to Jordan rather than returning them to their mother after a weekend visit. Trindle and Marcus appeal based on lack of jurisdiction. Trindle died before the case was argued.

Issue: 1) Did the Maryland court have jurisdiction despite the fact that the crime was committed outside of Maryland? 2) Did the court err in convicting Marcus under the child abduction statute?

Holding: 1) Yes. The court had jurisdiction because the effect of the crime occurred in Maryland. 2) No. Marcus was charged as a principle, not as an accessory as she claimed, and was properly



convicted under the statute. Judgment against Trindle vacated, case remanded to circuit court to dismiss information filed against Trindle as moot, judgment against Marcus affirmed.

Michigan

People v. Langley, 187 Mich. App. 147, 466 N.W.2d 724, 1991

Facts: D was convicted of parental kidnapping and custodial interference. The Court denied D's motion for judgment notwithstanding the verdict but set aside the verdict and ordered a new trial because of failure to instruct the jury on reasonable doubt. At a subsequent hearing, the case was dismissed because the judge believed that retrial was barred by double jeopardy. Prosecutor appeals.

Issue: Did judge err in determining that retrial was barred by double jeopardy?

Holding: Yes. Double jeopardy clause does not prohibit retrial if conviction was set aside due to error in jury instructions. Reversed and remanded.

Minnesota

State v. Maidi, 537 N.W.2d 280 (Minn. 1995) (See State v. Maidi, below)

Facts: D, father of children, was convicted of two counts of depriving another of custodial or parental rights. D took children to Algeria after being served a summons and petition commencing divorce proceedings. Mother counter-abducted children back to America, incurring expenses of \$147,000. D sentenced to 6 months in prison under a stay of imposition of sentence, 2 years probation for each count, and restitution of \$147,000. D appealed conviction, the Court of Appeals affirmed. D petitions for review on the issue of restitution.

Issue: 1) Did the sentencing court err in disregarding Community Corrections' restitution recommendation? 2) Does including "counter-abduction" expenses in restitution violate public policy? 3) Did the sentencing court fail to properly consider D's ability to pay the restitution amount?

Holding: 1) No. The sentencing court, not Community Corrections, has authority to impose restitution. 2) No. The order of restitution was within the sentencing court's discretion. 3) No. The sentencing Court properly considered D's resources. Affirmed.

State v. Maidi, 520 N.W.2d 414 (Minn. App. 1994)

Facts: D, father of children, was convicted of two counts of depriving another of custodial or parental rights. D took children to Algeria after being served a summons and petition



commencing divorce proceedings. Mother counter-abducted children back to America, incurring expenses of \$147,000. D sentenced to 6 months in prison under a stay of imposition of sentence. 2 years probation for each count, and restitution of \$147,000. D appeals conviction.

Issue: 1) Was the evidence insufficient to prove that an action relating to child visitation/custody had commenced before D took the children? 2) Did the sentencing court err in ordering D to pay \$147,000 in restitution?

Holding: 1) No. The evidence was sufficient for the trial court to conclude that an action relating to child visitation or child custody had commenced. 2) No. Statute allows sentencing court to authorize "any expense" incurred in returning the children. Court of Appeals affirmed.

New Mexico

State v. Luckie, 120 N.M. 274, 901 P. 2d 205, 1995, consolidated with State v. Tran

Facts: Both Ds were indicted for custodial interference (in unrelated cases). Two district court judges dismissed their indictments because they determined that the phrase "without good cause" was vague and rendered the statute unconstitutional. State appeals dismissals.

Issue: Is the New Mexico custodial interference statute unconstitutionally vague?

Holding: No. The statute provides a definite standard by which conduct can be measured. Reversed and remanded.

New York

People v. Wyne, 607 N.Y.S.2d 102, 200 A.D.2d 779, 1994

Facts: D, father of children, was convicted of custodial interference in the first degree and criminal contempt in the second degree after taking his children to Pakistan when D's wife had pendente lite custody of them.

Issue: Did the prosecution fail to prove D's guilt beyond a reasonable doubt?

Holding: No. The evidence was legally sufficient to support jury's conclusion. Affirmed.

People v. Thornton-Bey, 580 N.Y.S.2d 321, 180 A.D.2d 610, 1992

Facts: D, father of child, was convicted of assault in the third degree and custodial interference. D appeals based on the fact that the prosecutor did not serve notice of his intent to introduce D's



prior Family Court testimony.

Issue: Does the prosecutor's failure to serve notice of intent to introduce D's prior family court testimony require reversal?

Holding: No. Proof of D's guilt was overwhelming, and a notice of intent was not required because the statement was one made by D at a prior trial where he was represented by counsel.

Oregon

State v. Fitouri, 133 Or. App. 672, 893 P.2d 556, 1995

Facts: D was convicted of custodial interference. D was married to and living with the child's mother when he took the child to Libya without discussing the trip with his wife. D appeals.

Issue: Did the trial court err in denying D's motion for judgment of acquittal?

Holding: No. The custodial interference statute applies to cases where one parent takes the child and conceals the child from the other parent, even if no custody order exists. The prosecution did not have to prove that D knew that there was a custody order; they only had to prove that D knew that he was infringing on the mother's equal custodial rights. Affirmed.

*Includes discussion of interpretation of statute.

State v. Bayse, 122 Or. App. 608, 859 P.2d 542, 1993

Facts: D, maternal grandmother of children, was convicted of custodial interference. D took the children from their father and his girlfriend, who had physical custody of them. The children's mother had legal custody, which she delegated to her mother. D believed that the father and his girlfriend were abusing the children. She hid them at various locations outside the state for over two years. She was finally arrested in Minnesota and returned to Oregon for trial. At trial, the judge ruled that evidence of child abuse was not relevant and would be excluded. D testified that she relocated with the children for their safety. The judge granted a mistrial. D was convicted after a second trial. D appeals.

Issue: 1) Did the trial court err in dismissing D's motion to dismiss on the ground of double jeopardy? 2) Did the trial court err in ruling to exclude evidence of child abuse?

Holding: 1) No. The motion for mistrial was granted for manifest necessity, and therefore did not bar retrial. 2) Yes. The evidence was relevant as an explanation for why D hid the children. Reversed and remanded for new trial.



Tennessee

State v. Lewis, 1995 WL 115853, 01C01-9404-CC-00125, 1995 (not reported in S.W.2d)

Facts: D, father of child, was convicted of felony custodial interference after refusing to return his daughter to her mother after a court-ordered visitation and taking the child out-of-state for four months. D appeals sentence given by the trial.

Issue: Did the trial court err in sentencing D to 118 days in prison (equal to the number of days he hid daughter from her mother)?

Holding: Yes. The Court of Criminal Appeals held that the trial court erred in determining the number of days for D to serve by basing the sentence on the number of days D kept the child illegally. The Court modified the sentence to 90 days. The Court affirmed all other aspects of the trial court judgment.

State v. Williams, 914 S.W.2d 940 (Tenn. Cr. App. 1995)

Facts: D, father of child, was convicted of misdemeanor custodial interference after refusing to return child to her mother after a court-ordered weekend visitation.

Issue: 1) Did the trial court err in denying D a sentencing alternative to incarceration? 2) Was D denied a fair trial? 3) Was evidence insufficient to sustain D's conviction?

Holding: Affirmed. 1) No. The sentence of a \$500 fine and 11 months, 29 days in jail was not error. 2) This issue was waived because it was too broad. 3) No. The evidence was sufficient for the jury to find D guilty of custodial interference.

Washington

State v. Ohrt, 71 wash. App. 721, 862 P.2d 140, 1993

Facts: D, roommate of child's father, was charged as an accomplice to custodial interference. Father (McCray) took child from mother's house with D's help and kept child from the mother. Both McCray and Ohrt appeal.

Issue: Did the State fail to prove that Ds took child away from someone who had a right to physical custody, an element of the crime of custodial interference?

Holding: No. Failing to serve father with temporary restraining order was irrelevant to his guilt. Affirmed.



APPENDIX VII:

Parental Kidnapping Law Reform Package



PARENTAL KIDNAPPING LAW
REFORM PACKAGE

May 1996

PARENTAL KIDNAPPING LAW REFORM PACKAGE

Three new state statutes are proposed for adoption by every state:

- "Parental Kidnapping Crime Act"
- "Missing Children Record Flagging Act"
- "Tortious Interference With Child Custody and Visitation Act"

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PARENTAL KIDNAPPING CRIME ACT

Problem

- Abductor parents can escape punishment for parental kidnapping if the state criminal custodial interference laws in the state from which the child was removed or in the haven state do not apply to the specific conduct that has occurred.
- For instance, in some states a parent who takes a child before there is a custody order may not be prosecuted. In others, a parent with joint custody may not be criminally charged for kidnapping. Still in others, a custodial parent who hides a child from the noncustodial parent may not be subject to prosecution.
- Interstate kidnappings present serious problems for law enforcement officers and prosecutors. Unless the first state commits its resources to extradition, the abductor can evade prosecution by leaving the state.
- Inconsistencies in state laws make it possible for parents to get away with kidnapping, to the detriment of thousands of children.

Solution

- The proposed uniform criminal parental kidnapping law melds the best provisions found in existing state laws into one comprehensive statute.
- To protect **all** children from kidnapping, the statute clearly defines a broad range of situations that are criminally punishable.
- The Parental Kidnapping Crime Act is recommended for adoption by every state to deter parental kidnapping and to promote prosecution of abductors who violate the law.

FLAGGING SCHOOL, DAY CARE & BIRTH RECORDS OF MISSING CHILDREN ACT

Problem

- Abductor parents frequently request the abducted child's school records and birth certificate to enroll the child in a new school and to obtain passports.
- In some states, parental requests for these records can be "flagged." If the abductor requests records that have been flagged, the searching parent and/or law enforcement is notified. Information about the requesting parent, particularly address information, can then be used to find the abducted child.
- Many states, however, do not authorize "flagging," either by law or regulation. As a result, invaluable leads to the abductor's and the child's whereabouts go undetected.

Solution

- Every state should enact "flagging" laws.
- Requests for missing children's birth certificates and school and day care records should be shared with law enforcement.
- States that already have flagging laws should review their laws against the guidelines in this statute to ensure the maximum efficacy.
- A uniform act enables states to better assist one another in flagging in interstate kidnapping cases.

TORTIOUS INTERFERENCE WITH CHILD CUSTODY AND VISITATION ACT

Problem

- Abductors who succeed in taking and concealing their children often have help from relatives, friends, and others.
- Left-behind parents have sued these "helpers" on grounds that their conduct has caused them harm and resulting damages.
- Most of these law suits have been based on common law torts, as very few states have enacted tort statutes governing child abduction-related harms. In the absence of statutory guidance, some courts have allowed parental kidnapping tort suits while others have refused to recognize these causes of action.

Solution

- States should enact legislation expressly allowing tort suits for interference with child custody and visitation and specifying the relief available.
- Three important purposes are served by the proposed statute: compensation of the injured parent, deterrence of those who might otherwise assist in the abduction and concealment scheme, and fostering the return of abducted children.



PARENTAL KIDNAPPING CRIME ACT

Introduction

Background

Criminal parental kidnapping¹ statutes, also called criminal custodial interference, have been enacted by 50 states and the District of Columbia.² These statutes are designed to stop one parent (and those who assist the parent) from taking a minor child from the custodial parent.³ The intent of these statutes is twofold: to deter parental kidnapping and to punish those who, without good cause, destroy the bonds between parent and child.

Because each state legislature has enacted its own law, statutes vary from state to state. This variation in state laws has created problems in investigating and prosecuting abductions, particularly in interstate cases. Law enforcement agencies, in two recent surveys, identified variation in the terms of custodial interference statutes as a significant obstacle to the recovery and return of parentally abducted children.⁴ Appellate case law has highlighted gaps and inconsistencies in many statutes that have allowed abductor-parents to evade responsibility for their wrongful acts. This prompted one judge to complain about the Balkanization of the administration of criminal justice among multiple jurisdictions.⁵

To facilitate the investigation and prosecution of parental kidnapping cases, the Obstacles to the Recovery and Return of Parentally Abducted Children Project recommended enacting a uniform state parental kidnapping statute. A proposed uniform law is attached for consideration by state legislatures. The statute should enjoy strong bipartisan support.

The statute and commentary were drafted by Janet Kosid Uthe, legal consultant to the Parental Abduction Training and Dissemination Project at the ABA Center on Children and the Law. Co-editors were Linda K. Girdner, project director, and Patricia M. Hoff, legal director. This project was supported by Grant No. 93-MC-CX-0002 from the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice. The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

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Shortcomings of current law on parental kidnapping

A parent who wrongfully takes or keeps a child may escape criminal liability for his or her actions if the criminal custodial interference statute in effect in either the state from which the child is removed or the haven state does not encompass the specific conduct that has occurred. Some states have so narrowly defined the crime that current state laws fail to address the full variety of circumstances that actually constitute parental kidnapping. For example, some states do not treat parental abduction as a criminal offense if the custody order being violated was issued by a court of another state, even if the left-behind parent was a resident of the state from which the child was removed at the time of the abduction. Numerous states have not criminalized the frequent kidnappings that occur before a custody order has been issued.

Other states criminalize abduction (or elevate the crime to felony status) only if the child is removed from the jurisdiction. In evaluating such a case for investigation, there must be evidence that the child has been removed from the jurisdiction. In cases of concealment of the child, such evidence is not available at the outset of the case. Since the elements of the crime are not met at the outset, no investigation is commenced and no evidence of removal of the child from the jurisdiction is developed. Thus, cases involving the successful concealment of a child, which are the most serious and disruptive of parental abductions, can be those least likely to receive law enforcement assistance.

Law enforcement efforts in pursuit of abductor-parents are hampered when an abductor crosses state lines. Because the range of prohibited behavior is frequently limited to the taking of a child from the state, it is unlikely that the abductor will be criminally charged under the laws of the haven state. Where the initial taking was lawful (such as during the exercise of visitation) and the subsequent withholding of the child from the custodial parent at the conclusion of the visit is the wrongful act, neither jurisdiction may be able to prosecute. The state in which the custodial parent lives cannot prosecute because the initial taking was lawful and the unlawful acts occurred in another jurisdiction. The state in which the child is being withheld from the custodial parent cannot prosecute because the child has not been removed from that jurisdiction.

On occasion, extradition might be pursued to require the return of the abductor to the state from which the child was taken. If extradition is accomplished, there is no assurance that the abducted child will be returned to the custodial parent as return of the child is beyond the scope of most criminal parental kidnapping statutes.

Interstate investigations also encounter complications where investigators must pursue labor intensive investigative methods such as tracing financial records across state lines. Court orders to produce records may not always be honored by financial (and other) institutions outside of the jurisdiction issuing the court order.

Interstate consistency in criminal parental kidnapping laws should produce greater cooperation between law enforcement officers and prosecutors across the country as familiarity with uniform concepts and procedures grows. This will help overcome another real shortcoming of existing practice: the failure to enforce these laws consistently or uniformly.

Proposed uniform law

What can be done to achieve the goals common to the diverse parental kidnapping statutes in effect across the country? A uniform statute could be enacted by every state. This would deprive abductors of safe havens. Interstate consistency in criminal parental kidnapping laws would also remove an obstacle to cooperation among law enforcement officers across the country in locating abducted children, and would help prosecutors bring abductors to justice wherever they are found. An interstate network of law enforcement officers and prosecutors committed to enforcing the same parental kidnapping law could have a remarkable educational and deterrent effect on would-be abductors.

Summary of "Parental Kidnapping Crime Act"

The proposed "Parental Kidnapping Crime Act" combines into a comprehensive statute the best features of laws in effect around this country.

The Act consists of nine sections. Section 1 contains definitions of terms used in the statute. Section 2 sets forth the prohibited acts. Section 3 states the jurisdictional reach of the statute. Section 4 addresses bail. Section 5 provides defenses. Section 6 provides penalties for violating the Act, including restitution. Section 7 establishes procedures for the return of abducted children and to "pick up" children when they are at risk of being abducted. Section 8 immunizes law enforcement officers for actions they take under this Act. Section 9 is an evidentiary provision.

The proposed Act is intended as a substitute for existing laws that cover the issues addressed in this statute. Even states that have recently enacted or revised parental kidnapping statutes should reconsider their laws in light of this proposed statute. If state law is broader in scope than the proposed Act, then the provisions of this Act should replace only similar provisions, leaving in place additional remedies in state law.

A uniform approach to the nationwide problem of parental kidnapping will send this message to parents: There is no safe haven for child abductors. Every state treats child abduction as a punishable offense according to the same terms. Faced with predictable criminal consequences for parental kidnapping, more parents are apt to seek civil solutions to their child custody problems, which is in the best interests of children.

1 **PARENTAL KIDNAPPING CRIME ACT**

2 **Section 1. Definitions**

3 For the purposes of this Act:

4 (1) "Child" means a person under the age of 18.

5 (2) "Court order/custody order/custody determination" means any decree, judgment, or order,
6 whether permanent or temporary, initial or modification, issued by a court of competent
7 jurisdiction of this state or another state consistently with the Parental Kidnapping
8 Prevention Act, Title 28 U.S.C. 1738A, which affects the custody or visitation of a child.
9 An order once made shall continue in effect until it expires, is modified, rescinded or
10 terminates by operation of law.

11 (3) "Keeping/withholding" means retaining physical possession of a child, whether or not the
12 child resists or objects.

13 (4) "Lawful custodian" means a person, guardian, or public agency having a "right of physical
14 custody" of a child.

15 (5) The term "person" includes, but is not limited to, a parent, agent of a parent, or person acting
16 as a parent.

17 (6) "Right of physical custody" means the right to physical possession of a child which may
18 arise (1) by order of any court of competent jurisdiction, including an order for sole physical
19 custody, or joint or shared physical custody, or (2) by operation of law when there is no
20 court order.

21 Whenever a public agency takes protective custody or jurisdiction of the care, custody,
22 control, or conduct of a child by statutory authority or court order, that agency is a "lawful
23 custodian" of that child. In any subsequent placement of the child, the public agency
24 continues to be a "lawful custodian" of that child until the public agency's right of physical
25 custody is terminated by court order or by operation of law.

26 A parent whose parental rights have been terminated by court order is no longer a lawful
27 custodian and no longer has a right of physical custody.

28 (7) "Visitation" means the time for access to the child allotted to any person by court order.

1 **Section 2. Prohibited Acts**

2 (a) A person shall not take, entice away, keep, withhold, or conceal any minor child
3 from a parent, or other lawful custodian, or person having visitation rights, and substantially
4 deprive the other of his or her right of physical custody or visitation. This section shall apply
5 whether the right of physical custody (sole, joint, or shared) arises from a custody order or, in the
6 absence of a custody order, by operation of law.

7 (b) A person shall not knowingly violate the terms of an order prohibiting the concealment of a
8 child or the removal of a child from the jurisdiction.

9 (c) A person shall not, before or during the commission of an offense prohibited by this section
10 and with the intent to promote or facilitate the offense, aid or abet another in the planning or
11 commission of the offense.

12 (d) Nothing contained in this Section shall be construed to limit the court's contempt power.

13 **Section 3. Extraterritorial Jurisdiction/Continuing Offense**

14 (a) Any violation of this section by a person who was not a resident of, or present in, this state at
15 the time of the alleged offense is punishable in this state, whether the intent to commit the
16 offense is formed within or outside of this state, if:

17 (1) the child was a resident of, or present in, this state at the time the child was taken,
18 enticed away, kept, withheld, or concealed; or

19 (2) the child is found in this state; or

20
21 (3) a parent, other lawful custodian, or person having visitation rights was a resident of this
22 state at the time the child was taken, enticed away, kept, withheld, or concealed.

23 (b) The offenses enumerated in this section are continuous in nature, and continue for as long as
24 the child is kept, withheld, or concealed.

25 (c) The keeping, withholding, or concealing on or after the effective date of this Act of a child
26 who was taken, enticed away, withheld or concealed prior to the date of this Act shall be
27 punishable under this Act.

1 **Section 4. Bail**

2 When a person is arrested for an alleged violation of this section, the court, in setting bail,
3 shall consider whether the child has been returned to the lawful custodian or person having
4 visitation rights and, if not, shall consider whether there is an increased risk that the child may
5 not be returned, or that the defendant may take the child and flee the jurisdiction, or, that the
6 defendant, by flight or concealment, may evade the authority of the court.

7 **Section 5. Defenses**

8 (a) In addition to any other defense provided by state law, it shall be an affirmative defense that:

9 (1) The defendant's purpose was to protect the child, the child's sibling, or himself or herself
10 from imminent physical harm, that the belief in the existence of the imminent physical harm was
11 held in good faith and was reasonable; or that the defendant was fleeing a pattern of domestic
12 violence; and

13 (i) Within 30 calendar days of the taking, enticing away, keeping, withholding or
14 concealment of a child, the defendant makes a report to the [police department], [sheriff's office],
15 [prosecutor] in the county in which the child was residing before such acts. The report shall
16 include the present address and telephone number of the child, the name of the person taking the
17 action, and the reasons for such acts; and

18 (ii) Within 45 calendar days of such action, the defendant files an action for a custody
19 determination in a court which has jurisdiction consistent with the Parental Kidnapping
20 Prevention Act, 28 U.S.C. 1738A and gives notice in accordance with state law. For purposes of
21 the application of this section, it is sufficient if filing occurs within 45 days provided notice is
22 given within the time limits provided by state law;

23 2. The address and telephone number of the person and the child provided to the [police
24 department], [sheriff's office], [prosecutor] as specified in subsection 1 shall remain confidential
25 unless released pursuant to state law or, in the absence of such state law, subject to appropriate
26 safeguards to ensure the safety of parent and child.

27 (b) The complainant had, prior to the defendant committing the acts giving rise to the alleged
28 offense, for a protracted period of time, failed to exercise his or her rights of custody or
29 visitation, provided that such failure was not the direct result of the defendant's denial of access
30 to the child.

31 (c) The acts giving rise to the charges were consented to by the complainant.

32 (d) A custody order obtained after the commission of an offense under this section shall not
33 constitute a defense to a crime charged under this section.
34

Section 6. Penalties

(a) Violation of this Act shall be a felony and shall be punishable by imprisonment in the state prison for a period of [two years] or fine of [\$5,000.00] [\$10,000.00] or both.

(b) The court may reduce the offense to a misdemeanor and impose sentence as for a misdemeanor, if, after consideration of the circumstances of the offense including the factors in aggravation and mitigation, he or she finds that the interests of justice so require.

(c) The court shall have the authority to suspend the sentence and to place the defendant on probation.

(d) The court may enhance the penalty for each of the following aggravating factors established at trial or at a sentencing hearing. In addition to any other aggravating factors otherwise established by state law, the court shall consider whether the defendant:

(1) Abused, neglected, or abandoned the child during commission of the offense;

(2) Inflicted or threatened to inflict physical harm on a parent, lawful custodian of the child, or on the child during commission of the offense;

(3) Committed the abduction while armed with a dangerous or deadly weapon;

(4) Took, enticed away, kept, withheld, or concealed the child outside of the United States;

(5) Exposed the child to a substantial risk of illness or physical injury during commission of the offense;

(6) Encouraged the child to participate in the abduction or in the planning of the abduction;

(7) Inflicted emotional harm on the child by telling the child derogatory lies about the other parent or telling the child the other parent was dead;

(8) Threatened or warned the child not to be cooperative with the other parent regarding visitation or custody;

(9) Substantially altered the appearance and/or the name of the child during commission of the offense;

1 (10) Denied the child the education or training appropriate for the child during commission of
2 the offense;

3 (11) Kept, withheld, or concealed the child for an extended period of time; or

4 (12) Previously abducted the child or threatened to abduct the child; or

5 (13) Has not returned the child to the lawful custodian, or has refused to divulge the
6 whereabouts of the child.

7 (e) The court may mitigate the penalty for each of the following mitigating factors established at
8 trial or at a sentencing hearing. In addition to mitigating factors otherwise established by state
9 law, the court shall consider whether the defendant:

10 (1) Returned the child unharmed and prior to arrest or issuance of a warrant for arrest,
11 whichever is first;

12 (2) Provided information leading to the child's safe return;

13 (3) Has no prior criminal record;

14 (4) Acted in response to abuse by the other parent or a cohabitant of either the defendant
15 or of the child, or child's sibling.

16 (f) Factors in aggravation and mitigation shall be proved by [a preponderance of the evidence]
17 [clear and convincing evidence].

18 (g) Conditions of probation may include, but are not limited to:

19 (1) Probationary supervision;

20 (2) Compliance with court orders, including a no contact order;

21 (3) Jail time;

22 (4) Participation in a counseling program;

23 (5) Participation in a mediation program if the defendant is amenable and the other parent or
24 lawful custodian consents; and

25 (6) Community service in lieu of incarceration in jail if allowable under state law.
26

1 (h) Restitution:
2

3 In addition to other penalties for violation of this Act, a court shall order a violator to pay
4 restitution for reasonable expenses incurred by any person, organization, or government entity in
5 locating and securing the return of the child unless the violator establishes that such order would
6 be clearly inappropriate. An award made pursuant to this section shall constitute a final
7 judgment and shall be enforceable as such.

8 **Section 7. Recovery of the Child**

9 (a) A law enforcement officer shall take a minor child into protective custody when:

10 (1) It reasonably appears to the officer that the child is a missing or abducted child or that
11 any person is likely to conceal the child, flee the jurisdiction with the child, or by flight or
12 concealment evade the authority of the court; or

13 (2) A minor child is found in the company, or under the control, of a person arrested for an
14 offense under this Act.

15 (b) When a law enforcement officer takes a child into protective custody pursuant to Section A
16 the officer shall do one of the following:

17 (1) Release the child to the lawful custodian or person having visitation rights unless it
18 reasonably appears such placement would cause the child to be endangered, or it reasonably
19 appears that such person is likely to conceal the child, flee the jurisdiction with the child, or, by
20 flight or concealment, evade the authority of the court;
21

22 (2) Return the child as ordered by a court of competent jurisdiction; or

23 (3) Release the child to the social services agency responsible for arranging shelter or foster
24 care until a hearing can be held in a court of competent jurisdiction.
25

26 **Section 8. Law Enforcement Immunity**

27 A law enforcement officer and a prosecutor and his or her representatives shall not be liable
28 for actions taken pursuant to this Act.

29 **Section 9. Evidence**

30 In a prosecution under this section, existing provisions of law prohibiting the disclosure of
31 confidential communications between husband and wife do not apply, and both husband and wife
32 are competent to testify for or against each other as to all relevant matters.

Section-by-Section Analysis and Commentary

Comment to Section 1. Definitions

1. In most jurisdictions, children reach the age of majority at eighteen. For that reason, children who have not yet attained eighteen years of age are covered by this statute.
2. The definition of court order/custody order/custody determination is intended to be consistent with the usage in the Uniform Child Custody Jurisdiction Act (UCCJA) and the Parental Kidnapping Prevention Act (PKPA), 28 U.S.C. §1738A. See recommendations in OBSTACLES TO THE RECOVERY AND RETURN OF PARENTALLY ABDUCTED CHILDREN, pp 3-101 - 3-102 (para. 15), Linda K. Girdner & Patricia M. Hoff, eds., Office of Juvenile Justice and Delinquency Prevention, Washington, D.C. (1994). The terms are intended to be interpreted broadly enough to cover other court-ordered, custodial arrangements allowed under state law, such as parenting plans. An elastic definition is important in an area of law where traditional concepts of custody and visitation rights are giving way in some states to terminology focused on parental responsibilities toward the child. Prosecutors and judges should apply this statute flexibly to follow emerging legal trends.
3. This Act is designed to prohibit interference with the custody of any person committed under judicial warrant, any neglected, dependent, or delinquent child, mentally defective or insane child, or any other incompetent child entrusted to another's custody by authority of law.
4. "Lawful custodian" refers to a person or public agency with a right of physical custody.
5. The prohibited acts in Section 2 are intended to prohibit interference with the lawful exercise of physical possession of the child by a person with custody, whether sole, joint or shared, or visitation rights granted by court order. It is also intended to prohibit interference with custody rights that arise by operation of law. Section 2 is not intended to protect rights of legal custody (the right to participate in parenting decisions).
6. The term, "person" includes, but is not limited to, a parent, or agent of a parent, or person acting as a parent. Under certain circumstances, it may be appropriate to charge abductions committed by other family members under this section. Although, ordinarily, the general kidnap statutes would be preferable where the abductor is a nonfamily member, there may be circumstances in which it is appropriate to charge nonfamily members under this section.
7. The term, "a right of physical custody arising by operation of law" is intended to include the equal custodial rights of each parent in the absence of a custody order where those rights are provided by state law. Married parents have equal custody rights prior to divorce, and neither parent may unilaterally remove, retain, or conceal a child without violating the other's equal custodial rights.

The term "a right of physical custody arising by operation of law" is intended to include those rights provided by state statutes to parents of children born out of wedlock. Some state statutes presume that, when the parties have never been married to each other, the mother has custody of the child unless a valid court order states otherwise. Other states address this issue within the context of Uniform Parentage Act presumptions.⁶

The prohibitions of Section 2 are intended to protect the rights of parents of children born out-of-wedlock to the extent that the otherwise applicable state laws provide such custody rights. It is recommended that states without clear legislative guidance directing whether and when a father of a child born out-of-wedlock acquires a "right to physical custody" revise their civil family law to provide such guidance.

8. A parent whose parental rights have been terminated by court order is no longer a lawful custodian and no longer has a right of physical custody. A parent whose parental rights have been so terminated and who abducts his or her child can be charged under the general kidnapping statutes. This definition is consistent with federal law, 18 U.S.C. § 1201 (h) (1994), pursuant to which parents whose parental rights with respect to the victim have been terminated by final court order are subject to prosecution for kidnapping.

Comment to Section 2 Prohibited Acts

1. Section 2(a) prohibits the taking of the child if the initial taking is wrongful (e.g., not pursuant to the lawful exercise of visitation or custody rights). It specifically prohibits the keeping or withholding of a child from the parent entitled to possession of the child at the expiration of visitation or the commencement of the other parent's parenting time. Thus, the retention of the child past the expiration of one parent's time with the child is prohibited even if the initial taking was not wrongful provided the defendant's actions substantially interfere with the other parent's custody or visitation rights.

2. This section prohibits the taking, enticing away, keeping, withholding, or concealing of a minor child when these acts substantially deprive the other parent or lawful custodian of his or her right to custody or visitation. The acts are wrongful whether or not the child resists or objects.

Examples of a "substantial deprivation" could include a deprivation that encompasses at least half of the period of visitation, or a retention where a reasonably diligent inquiry by the searching party does not disclose the child's whereabouts. However, it would not be a "substantial deprivation" for a parent to leave the family home with the child upon the separation of the parties where the separating parent remains in contact with the other parent and access to the child is arranged with or without court order.

3. Concealment of the child from the other parent or lawful custodian is specifically prohibited. Cases of successful concealment are among the most disruptive and serious of parental kidnapping cases. The parent from whom the child was taken has no idea whether the child was safe or well-cared for. The destruction of the parent-child bond is complete.

4. The wrongful acts of taking, enticing away, keeping, withholding, or concealing are prohibited by this section even before custody orders have been issued or custody proceedings commenced. Prior to the issuance of a custody decree and in the absence of statutory custody presumptions, the parents have equal powers and duties with respect to the child. Neither parent has any greater right to the child than the other parent. A parent who takes exclusive possession of a child--even before issuance of a custody decree--does so in derogation of the rights of the other parent.

The National Incidence Study of Missing, Abducted, Runaway, Thrownaway Children in America found that 41% of the family abduction cases studied occurred before the parents were divorced. The Massachusetts Supreme Court has acknowledged that the policy considerations underlying the criminalization of pre-decree abduction are compelling and has requested a legislative resolution. *Commonwealth v. Beals*, 541 N.E.2d 1011 (Mass. 1989).

5. The prohibitions of Section 2(a) are intended to prohibit wrongful acts of abduction even though the abductor has been granted shared or joint physical custody. When parents share physical custody, each parent has been granted a shared right of physical custody. When a joint physical custodian abducts the child, he or she does so in derogation of the rights of the other joint custodian. The abductor violates the custody order by depriving parent and child of their court-ordered right to shared parenting time. The abductor also violates the public policy fostered by such custody arrangements.

It is always advisable for a joint custody order to specify residential arrangements for the child to enable all parties to determine with whom the child is to reside and when. Specific terms in a custody order facilitate implementation of criminal remedies and enforcement of custody orders.

6. 'Parental abductions' as defined in this statute also occur when the custodial parent refuses to allow the noncustodial parent to exercise rights of visitation. Although minor violations of visitation provisions can be appropriately handled by the family law courts and do not constitute criminal conduct, substantial violations can be as destructive to the parent-child bond as any other abduction and should be treated as such.

Concealment of the child by the custodial parent destroys the parent-child bond. Further, because many services available to custodial parents are not available to noncustodial parents, the noncustodial parent faces even greater obstacles in locating the abducting parent and child and in reestablishing his or her relationship with the child.

Section 2(a) prohibits the taking, enticing away, keeping, withholding, and concealing of a child by the custodial parent in derogation of the visitation rights of the other parent if those actions will substantially deprive the other parent of his or her court-ordered parenting time. The limitations imposed by this requirement should criminalize significant violations without flooding the criminal justice system with cases of minimal significance.

7. Section 2(b) specifically prohibits the abduction of a child in violation of restraining orders prohibiting the concealment or detention of a child or in violation of orders prohibiting the removal of the child from the jurisdiction. This section is applicable whether or not custody orders have been issued in conjunction with or in addition to the restraining orders. The term "restraining order" is used generically as these orders may be called by different names in different states.

8. Section 2(c) specifically prohibits others from assisting a parent in the commission of a parental abduction. This section is intended to supplement, rather than supersede, the state law prohibiting aiding and abetting. It is intended to specifically prohibit persons from intentionally preventing or delaying the apprehension of a person charged with an offense prohibited by this Act. The intentional obstruction of, or interference with, efforts to locate the minor child is prohibited. The intentional destruction, alteration, or concealment of evidence and the furnishing of false or misleading information concerning the abduction are also prohibited.

9. Section 2(d) clarifies that prosecution under this Act is not intended to interfere with or limit the contempt power of either the criminal courts or a court of competent jurisdiction for the underlying custody proceedings. Nonetheless, the principles of double jeopardy remain applicable and may bar prosecution of both contempt and a criminal offense where the elements of both offenses are identical or the conduct that forms the basis of the offenses is identical. *Grady v. Corbin*, 495 U.S. 508, 110 S.Ct. 2084, 109 L.Ed.2d 548 (1990). For additional information, see Janet Kosid Uthe, "Key Issues in the Criminal Prosecution of Parental Kidnapping," in *OBSTACLES TO THE RECOVERY AND RETURN OF PARENTALLY ABDUCTED CHILDREN*, Appendix A, Linda K. Girdner & Patricia M. Hoff, eds, Office of Juvenile Justice and Delinquency Prevention, Washington, D.C. (1994).

10. Section 2 is derived primarily from Idaho Code § 18-4506 (1987); Minn. Stat. Ann. §609.26 (1991); 720 Ill. Comp. Stat. Ann. § 5/10-5 (1992); and Cal. Penal Code § 277 (1992).

Comment to Section 3
Extraterritorial Jurisdiction/Continuing Offense

1. Most criminal offenses are prosecuted in the state in which the crime occurs. However, in some types of crimes, acts done in one state are intended to, and do, cause an effect in another state. Parental kidnapping is one of those crimes. Children are routinely sent to visit a parent who resides in another state and then are not returned by the noncustodial parent. Similarly, a custodial parent may not send the children for court-ordered visitation.

The majority of the state courts considering the extraterritorial jurisdiction issue have permitted prosecution.⁷ However, other courts have refused to allow prosecution for acts performed outside the state's territorial boundaries.⁸ Many states have enacted statutes expanding their criminal jurisdiction in general in order to provide the state with the authority to prosecute for crimes committed outside of the state, whose effects are felt in the state. The U.S. Supreme Court has upheld such expanded jurisdictional statutes. *Strassheim v. Daly* 221 U.S. 280 (1911). The Model Penal Code (U.L.A. Section 1.03(1)(a)) contains an expanded jurisdiction statute.

Other states have enacted provisions in their criminal custodial interference statutes specifically authorizing prosecution when the child was a resident of the state or was present in the state at the time the child was taken, kept, withheld, or concealed, or the child is subsequently found in the state, or when a parent or lawful custodian resides in the state at the time the violation occurs. Cal. Penal Code §279 (1992); D.C. Code Ann. §16-1023 (1989); N.M. Stat. Ann. §30-4-4 (1989).

2. If the abducting parent succeeds in concealing his or her whereabouts and those of the child for long enough, prosecution may be barred by the statute of limitations if the statute begins to run on the day of the initial taking. Yet, the longer the child is withheld, the more serious the offense due to both the increasing destruction of the bond between parent and child and the harmful effects of living in hiding.

The intent of this section is to make clear that the keeping, withholding, and concealing of the child recurs anew each day the child is detained. In the event that the initial "taking" was not wrongful or was not felonious, the continued acts of keeping, withholding, or concealing the child recurring anew each day may be wrongful or felonious. An abduction (*i.e.*, taking, enticing away,) that occurred prior to the effective date of this Act is not actionable under this Act. However, conduct that continues after the effective date of this Act (*i.e.*, keeping, withholding, or concealing) is actionable under this Act.

3. The language in this section is drawn from Cal. Penal Code §279 (1992); D.C. Code Ann. §16-1023 (1989); N.M. Stat. Ann. §30-4-4 (1989).

Comment to Section 4. Bail

1. When the child has not been returned to the lawful custodian, this section directs that the court, upon setting bail, shall consider that as a factor enhancing the risk that the defendant will flee the jurisdiction, or by flight or concealment, further evade the authority of the court. (c.f. *Smith II v. State*, 829 S.W.2d 85 (Tex. Cr. App. 1992).
2. Victim safety issues should be considered, to the extent permissible under existing state law, when determining the release of offenders. Conditions of bail might include protective orders such as a "no unsupervised contact" order or an order barring the defendant from coming within a certain distance of the left-behind parent or the child's school or daycare center. *State v. Kane*, 625 A.2d 1361 (R.I. 1993).

The court should consider whether prior convictions, child abuse, threats against the left-behind parent or child, or failure to comply with prior court orders increase the likelihood of re-offense or flight. If the defendant posts bail, no information about the child's location should be released to the defendant to minimize the possibility of reabduction or assault.

3. See also Parental Kidnapping, Domestic Violence and Child Abuse: Changing Legal Responses to Related Violence, Eva J. Klain, American Prosecutors Research Institute, Alexandria, Va. (1995).

Comment to Section 5. Defenses

1. This section applies in addition to, rather than supersedes, the laws pertaining to self-defense and defense of others applicable in the enacting state. Child abuse and domestic violence are both issues of special concern in parental kidnapping prosecutions as they are in all family law cases.
2. Consistent with those concerns, victims of domestic violence and abuse are entitled to assert the affirmative defense of necessity. The necessity for such action must be perceived in good faith and be reasonable. The burden of proof is on the person asserting the defense and the standard of proof shall be the same as that applicable to other affirmative defenses under the law of the enacting state. The defense of necessity has been expanded to protect persons fleeing a pattern of domestic violence in addition to persons fleeing imminent harm.
3. Section 5(a) provides that flight from family violence shall not constitute an offense under this Act. However, the fleeing parent is obliged to notify the appropriate law enforcement authorities in the jurisdiction from which the child has been removed of the circumstances that made such action necessary as well as the whereabouts of parent and child.

The address and telephone number of the child shall be kept confidential by the law enforcement agency receiving the report except as otherwise provided pursuant to state law, e.g. domestic violence statutes. In the absence of applicable state law, the information may be released but subject to appropriate judicially or administratively imposed safeguards designed to protect the safety of parent and child.

Furthermore, a fleeing parent must commence an action for custody within 45 days in a court of competent jurisdiction which is exercising jurisdiction consistently with the federal Parental Kidnapping Prevention Act. These requirements ensure that appropriate civil actions begin promptly to establish custody or to remedy a custody violation, that inordinate public and private resources are not invested to locate a "missing child," and that the potential for violent or otherwise destructive "self-help" resolutions are minimized. These requirements also ensure that the potential for misuse of such defenses by those abductors who are not (and whose children are not) victims of family violence is minimized.

See also, "Parental Abduction: Relevant State and Federal Statutes, Court Rules, and Recent Case Law," by Miriam A. Rollins, in OBSTACLES TO THE RECOVERY AND RETURN OF PARENTALLY ABDUCTED CHILDREN, p. 3-52, Linda K. Girdner & Patricia M. Hoff, eds., Office of Juvenile Justice and Delinquency Prevention, Washington, D.C. (1994).

4. The defendant shall also be allowed to assert as an affirmative defense that the complainant has abandoned the family or, for a protracted period of time, failed to exercise his or her rights to custody or visitation, and the defendant and children have lost track of the complainant through no fault of the defendant. Evidence of abandonment or failure to exercise visitation rights may be direct or circumstantial.

5. Consent of the complainant shall constitute a complete defense.

6. Section (d) provides that when a crime has been committed under this Act, a subsequently obtained court order will not constitute a defense to the crime.

7. The content of this section was drawn primarily from Wash. Rev. Code §9A.40.080 (1989) and Cal. Penal Code §277 (1992). See also 720 Ill. Comp. Stat. Ann. § 5/10-5 (1992); Minn. Stat. Ann. §609.26 (1991) and Cal. Assembly Bill 3179 (1994).

Comment to Section 6. Penalties

1. Serious cases of parental kidnapping cause traumatic disruption in the lives of the left-behind parent and of the child. Effective remedies are essential to achieving the dual purposes of the parental kidnapping statutes--detering others from similar conduct and punishing those whose conduct causes such disruption. Felony status affects, not only the



1322 CUSTODIAL INTERFERENCE

In all custodial interference and visitation interference cases to which officers are dispatched, the officer shall make a Multi-Purpose Report and a Runaway/Custodial Interference Supplement. Even if it appears to be a civil matter, a case should also be made. Basically, anytime a parent or guardian reports that someone is preventing the reportee from having parental custody or from visiting their child, the officer shall complete, at a minimum, a Multi-Purpose Report.

All cases should be documented thoroughly, then routed through normal channels to the Dependent Child Unit. All follow-up on felony custodial interference cases shall be investigated by the Dependent Child Unit. The officer making the initial report shall also have the responsibility of contacting the TWX operator with the juvenile's information so that it can be entered into the computer system. Officers will not usually find it necessary to make felony probable cause arrests in custodial interference cases. This does not limit misdemeanor custodial or visitation interference citations or arrests for other offenses that have occurred. When visitation is at issue, the court order is enforceable only when it designates when the visitation is to occur. Officers should review A.R.S. 13-1302.

If the child/children are present and the officer must decide who gets custody, the following guidelines apply:

- The party with the most recent Pima County Superior Court filed custodial paperwork should be given custody, if it is clearly evident according to the document who should have custody of the child at the time.

NOTE: Before taking enforcement action, verify the validity of any court orders you are shown. Specifically, check for a judge's written, not printed, signature and that the documents are certified. Also, ask each party if these are the most recent judicial orders. If in doubt, verify by contacting the Pima County Superior Court, Clerk's Office, by calling 740-3240 during normal business hours, or 740-2868 on weekends and holidays.

- If the child is out of wedlock and no Pima County Superior Court filed custodial or paternity paperwork is available, the mother should be given or retain custody (A.R.S. 13-1302B).
- When paternity has been established by a court and filed in Pima County Superior Court, the party who has had custody for the majority of the past six (6) months should be allowed to retain custody of the child.
- If custody still is not clear, leave the child with the party that had custody prior to your involvement.

Trying to determine the most appropriate course of action in these cases can be very confusing. When necessary, contact the Dependent Child Unit supervisor or the department legal advisor for assistance.

SECTION 1330 - NEGLECTED/ABUSED CHILDREN: CHILD PROTECTIVE SERVICES1331 NEGLECTED/ABUSED CHILDREN

Police officers have the same authority to act in cases of apparent child abuse or neglect that they have in regard to delinquent children. Whenever a police officer becomes aware of a child or children in a situation which falls within the previously mentioned definitions, the officer is obliged to make a complete investigation. Information regarding cases of suspected child abuse can be made by a second or third party. It is not necessary, nor desirable, for the officer to obtain the information directly from the victim. Observations regarding apparent illness of children, sanitary facilities, availability of food, clothing, and proper parental care and supervision are of primary



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Tucson Police Department Procedures:

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severity of the penalty ultimately imposed, but also whether effective investigation and prosecution will occur in the first place. Scarce law enforcement resources will be assigned more readily to felony cases.

Charges can only be brought under this section if the deprivation is substantial. Therefore, all charges will, at least initially, be treated as felony charges. However, it is acknowledged that there can, at times, be a conflict between law and equity. It is important to give prosecutors and judges the flexibility to treat as a misdemeanor those cases which, in the interest of justice, should, ultimately, receive less than felony treatment.

The option of treating the offense as a misdemeanor is provided in order to ensure fairness and equity in charging and sentencing. It is in no way intended to abuse or misuse the assistance of the FBI upon issuance of an Unlawful Flight to Avoid Prosecution (UFAP) warrant.

2. In this section, the sentencing court is given the discretion to enhance or to reduce the penalty of the defendant based upon the circumstances of the crime. Although the court is given the discretion to fashion a just sentence, it is mandatory for the sentencing court to consider the listed aggravating and mitigating factors.

3. Evidence that the child or another person was exposed to harm or the risk of harm constitutes a factor the judge can use to increase the severity of the penalty. Similarly, evidence that the defendant has previously committed the same or similar crimes shall be considered by the judge to increase the severity of the penalty. Evidence that the child has been removed from the country shall also be considered by the judge to increase the severity of the penalty due to the substantially increased difficulties in locating and obtaining the return of the child.

Other factors that may be considered by the sentencing judge as increasing the severity of the sentence include the infliction of psychological trauma to the child, for example, by attempting to polarize the child's affections or to change the child's identity.

The sentencing judge should aggravate the penalty if the child has not been returned to the lawful custodian by the time for sentencing unless extreme circumstances dictate otherwise.

4. Evidence that the child was returned unharmed and at an early stage in the proceedings is a factor that the judge can use to mitigate the severity of the penalty. A defendant who fails to return the child in time to receive a mitigated sentence may avoid an enhanced penalty by returning the child prior to sentencing, and as a policy matter is encouraged to do so. The sentencing judge can also consider the fact that the abductor has no prior criminal record and no prior history of abductions or threats to abduct as factors mitigating the sentence.

Further, the sentencing judge can consider proven acts of abuse or domestic violence not arising to a complete defense in mitigation of the sentence where those acts were causal factors in the commission of the abduction. However, the fact that the defendant provided information leading to the child's safe return is not intended to mitigate the penalty where the defendant provided such information in order to extort an advantage--whether that be an advantage in criminal or civil litigation or a reconciliation of the parties.

In appropriate cases, willingness to participate in a program of mediation if the defendant is amenable and the other parent or lawful custodian consents, is suggested as a possible mitigating factor. However, this rests within the sound discretion of the trial court. It is recognized that mediation may not be appropriate where there is a history of domestic violence or abuse.

5. The suggested factors in aggravation and mitigation are intended to supplement, and not to supersede, the applicable sentencing factors otherwise provided by state law. If any factor listed in this Act duplicates a factor already provided by applicable state law, the factor listed herein may be considered redundant.

6. Factors in aggravation and mitigation should be proven [by the preponderance of the evidence] [by clear and convincing evidence]. The burden of proof should be consistent with the burden of proof applicable in the sentencing of other crimes in the state.

7. In the event that the Court grants a defendant probation, it is recommended that the conditions of probation protect the victim parent and child while the victim parent obtains protective orders or a modification of the custody order from the family court or other court of competent jurisdiction to guard against another abduction. Relevant custody determinations should be provided to the judge prior to sentencing so that appropriate conditions of probation can be set. If feasible, information about the criminal case and sentence should be brought promptly to the family court's attention so that appropriate changes can be made in the custody order to protect the child's welfare and prevent reabduction.

Conditions of probation may include requiring the defendant to comply with all family court orders or not contact the child until a family court can determine proper visitation. Conditions of probation may also include requiring the defendant to agree to supervised visitation, or post a bond (if available in the jurisdiction) to assure the safe return of the child.

8. The restitution section is intended to supplement, rather than supersede, any other applicable restitution provision in the state law. As a matter of policy, the court should order restitution, rather than a fine, where the financial resources of the defendant are limited.

Comment to Section 7. Recovery of the Child

1. The existing remedies afforded by the criminal law to recover the abducted child are minimal at best and, in some jurisdictions, nonexistent.⁹ A warrant authorizing the arrest of the abductor does not authorize the law enforcement officer to take the child into protective custody. Traditional laws authorizing the child to be placed in protective custody apply only when there is probable cause to believe the child is endangered, abused or neglected.

This section expressly mandates law enforcement officers to take a child into protective custody when the child is in the company, or under the control, of a person who is arrested pursuant to this Act. It also authorizes law enforcement officers to take a child into protective custody whenever it appears the abductor parent or anyone assisting the abductor will flee the jurisdiction with the child or will, by concealment or otherwise, continue to retain or withhold the child from the lawful custodian. It also authorizes law enforcement to pick up abducted children in situations where an officer comes across an abducted child but there is no warrant for the abductor or the abductor is not found.

2. The law enforcement officer is authorized to release the child to the lawful custodian, to the person having visitation rights when violation of the noncustodial parent's visitation is at issue, or to the social services agency responsible for arranging shelter or foster care until the lawful custodian can take custody of the child or until a hearing can be held in a court of competent jurisdiction.

3. The social services agency in the jurisdiction in which the child is recovered is authorized to arrange for temporary shelter or foster care to house the child until arrangements can be made to return the child to the lawful custodian, to the person having visitation rights when violation of the noncustodial parent's visitation is at issue, or to an agent of the court in which the custody proceedings are pending. In order to minimize any psychological trauma the child may experience as a result of separation from family and being housed in foster or shelter care, it is recommended that efforts be made to expedite the hearing on custody.

4. If the child cannot be returned to the lawful custodian or to the person having visitation rights when violation of the noncustodial parent's visitation is at issue or, if good cause exists for the state child protective services agency to retain temporary protective custody of an abused or neglected child, the Officer shall comply with the state statutes applicable to the protection of abused and neglected children.

It is anticipated that state child abuse and neglect laws will suffice to protect a child from potential severe emotional trauma that may result from reunion with an unfamiliar "lawful custodian". In that event, it is anticipated that the child will be housed in foster or shelter care until a court can fashion a less abrupt reunification plan.

9. Parental kidnapping cases result in often costly losses suffered by the victim parent. It is common for victim parents to incur attorney's fees to obtain and enforce custody orders. Victims of parental abduction also commonly lose money due to time taken off work to search for and, ultimately, to recover their missing child.

Many must employ private investigators and nonprofit missing children's organizations to assist in the search and recovery process and to expend funds to facilitate the search. Others expend additional funds in traveling to recover the child once the child has been located. Given the limited financial resources of most families, the losses incurred by the victim parents can be substantial. Government agencies also may incur expenses in parental kidnapping cases. For example, the social services agency will incur the cost of shelter care for housing the minor child pending his or her return to the lawful custodian. It is appropriate that restitution be ordered paid by the offender whose criminal conduct necessitated the expenditure, unless otherwise inappropriate.

10. This section provides that restitution is to be paid by the offender to both the victim parent and to private organizations for expenses incurred in parental kidnapping cases. This Section further provides that restitution is to be paid by the offender to government agencies incurring extraordinary expenses in parental kidnapping cases. To facilitate collection of restitution, orders of restitution made pursuant to this section shall constitute a civil judgment and shall be enforceable as such.

11. The provisions of the penalty sections were drawn from N.J. Rev. Stat. §2C:13-4 (1990); Ohio Rev. Code Ann. §2919.23 (1991); Wash. Rev. Code §9A.40.060 (1994); Ind. Code § 35-42-3-4 (1990); Ky. Rev. Stat. Ann. §509.070 (1984); Minn. Stat. Ann. 609.26 (1991); N.M. Stat. Ann. §30-4-4 (1989); Tenn. Code Ann. §39-13-306 (1990); and Nev. Rev. Stat. § 200.359 (1993); Cal. Penal Code §17(b).

In addition, many of these terms were adapted from the work of Patricia Ann Kelly and the participants in the American Prosecutor's Research Institute "Model Sentencing and Custody Guidelines in Parental Abduction Cases" project.

The language of the restitution section was drawn primarily from Cal. Penal Code §279 (1992); Idaho Code §18-4506 (1987); 720 Ill. Comp. Stat. Ann. §5/10-5 (1992); Mich. Comp. Laws §750.350a (1986); Minn. Stat. §609.26 (1991); Mo. Rev. Stat. §565.169 (1988); Nev. Rev. Stat. §200.359 (1993); N.J. Rev. Stat. §2C:13-4 (1990); N.M. Stat. Ann. §30-4-4 (1989); S.D. Codified Laws Ann. §22-19-12 (1981); Wash. Rev. Code §9A.40.080 (1989); Wis. Stat. §948.31 (1993).

5. For an in-depth discussion of reunification strategies as well as suggested roles and the interrelationship of various agencies, see *RECOVERY AND REUNIFICATION OF MISSING CHILDREN: A TEAM APPROACH*, ed. Kathryn M. Turman, National Center for Missing and Exploited Children, Arlington, VA (1995).

6. The language in this section is drawn primarily from Ark. Code Ann. §5-26-502 (1987); Cal. Penal Code §279 (1992); 720 Ill. Comp.Stat. Ann. § 5/10-5 (1992); N.J. Rev. Stat. Section 2A:34-31.1 (1990); D.C. Code Ann. Section 16-1023 (1989).

Comment to Section 8. Law Enforcement Immunity

1. Parents of abducted children often turn to law enforcement for assistance in recovering their children. Even if they have obtained valid custody orders, the desired help is often not forthcoming. The reluctance to render assistance has many sources, but certainly, the specter of civil liability is a major factor. Police officers have been sued for their roles in conducting criminal investigations as well as for their roles in the civil recoveries of abducted children.¹⁰

When law enforcement officials will not provide assistance, the average victim parent has few options left. Providing immunity for the efforts of law enforcement officers and prosecutors who have acted in good faith consistently with the provisions of this Act will help eliminate one major obstacle to the recovery of parentally abducted children.

2. The language of this section is drawn from Me. Rev. Stat. Ann. tit. 17-A, §303 (1981).

Comment to Section 9. Evidence

1. At common law, the husband and wife were incompetent to testify against each other. Although this disqualification has been abandoned or substantially curtailed in many jurisdictions, some vestiges remain. For those jurisdictions where the privilege still remains, it is specifically made inapplicable to cases brought under this section.

2. The language of this section is drawn from Alaska Stat. §11.51.125 (1978).

ENDNOTES

1. The term parental kidnapping has been defined as "the taking, retention, or concealment of a child or children by a parent, other family member, or their agent, in derogation of the custody rights, including visitation rights, of another parent or family member." *OBSTACLES TO THE RECOVERY AND RETURN OF PARENTALLY ABDUCTED CHILDREN*, Linda K. Girdner and Patricia M. Hoff, eds., Office of Juvenile Justice and Delinquency Prevention, Washington, D.C. (1994).

2. Ala. Code 13A-6-45 (1983); Alaska Stat. § 11.41.320 (1978); Alaska Stat. § 11.41.330 (1978); Alaska Stat. § 11.51.125 (1978); Ariz. Rev. Stat. Ann. § 13-1302 (1994); Ariz. Rev. Stat. Ann. § 13-1305 (1994); Ark. Code Ann. § 5-26-501 (1985); Ark. Code Ann. § 5-26-502 (1987); Cal. Penal Code § 277 (1992); Cal. Penal Code § 278 (1984); Cal. Penal Code § 278.5 (1989); Cal. Penal Code § 279 (1992); Colo. Rev. Stat. § 18-3-304 (1986); Conn. Gen. Stat. § 53a-97 (1992); Conn. Gen. Stat. § 53a-98 (1981); Del. Code Ann. tit. 11, § 785 (1989); D. C. Code Ann. § 16-1021 (1989); D.C. Code Ann. § 16-1022 (1989); D.C. Code Ann. § 16-1023 (1989); Fla. Stat. ch. 787.03 (1994); Fla. Stat. ch. 787.04 (1988); Ga. Code Ann. § 16-5-45 (1987); Haw. Rev. Stat. § 707-726 (1994); Haw. Rev. Stat. § 707-727 (1994); Idaho Code § 18-4506 (1987); 720 Ill. Comp. Stat. Ann. § 5/10-5 (1992); 720 Ill. Comp. Stat. Ann. § 5/10-5.5 (1993); 720 Ill. Comp. Stat. Ann. § 5/10-7 (1992); Ind. Code § 35-42-3-4 (1990); Iowa Code § 710.6 (1986); Kan. Stat. Ann. § 21-3422 (1993); Kan. Stat. Ann. § 21-3422a (1993); Ky. Rev. Stat. Ann. § 509.070 (1984); La. Rev. Stat. Ann. § 14:45 (1980); La. Rev. Stat. Ann. § 14:45.1 (1981); Me. Rev. Stat. Ann. tit. 17-A, § 303 (1981); Md. Code Ann., Fam. Law § 9-301 (1995); Md. Code Ann., Fam. Law § 9-304 (1995); Md. Code Ann., Fam. Law § 9-305 (1995); Md. Code Ann., Fam. Law § 9-306 (1984); Md. Code Ann., Fam. Law § 9-307 (1984); Mass. Gen. L. ch. 265, § 26A (1983); Mass. Gen. L. ch. 265, § 27A (1979); Mich. Comp. Laws § 750.350a (1986); Minn. Stat. § 609.26 (1991); Minn. Code Ann. § 97-3-51 (1984); Mo. Rev. Stat. § 565.149 (1988); Mo. Rev. Stat. § 565.150 (1988); Mo. Rev. Stat. § 565.153 (1988); Mo. Rev. Stat. § 565.156 (1988); Mo. Rev. Stat. § 565.160 (1988); Mo. Rev. Stat. § 565.163 (1988); Mo. Rev. Stat. § 565.165 (1988); Mo. Rev. Stat. § 565.167 (1988); Mo. Rev. Stat. § 565.169 (1988); Mont. Code Ann. § 45-5-304 (1995); Mont. Code Ann. § 45-5-631 (1987); Mont. Code Ann. § 45-5-632 (1987); Mont. Code Ann. § 45-5-633 (1987); Neb. Rev. Stat. § 28-316 (1977); Nev. Rev. Stat. § 200.357 (1991); Nev. Rev. Stat. § 200.359 (1993); N.H. Rev. Stat. Ann. § 633:4 (1983); N.J. Rev. Stat. § 2C:13-4 (1990); N.J. Rev. Stat. § 2A:34-31.1 (1990); N.M. Stat. Ann. § 30-4-4 (1989); N.Y. Penal Law § 135.45 (1965); N.Y. Penal Law § 135.50 (1981); N.C. Gen. Stat. § 14-320.1 (1993); N.D. Cent. Code § 14-14-22.1 (1979); Ohio Rev. Code Ann. § 2905.04 (1985); Ohio Rev. Code Ann. § 2919.23 (1991); Okla. Stat. Ann. tit. 43, § 527 (1994); Or. Rev. Stat. § 163.245 (1987); Or. Rev. Stat. § 163.257 (1987); 18 Pa. Cons. Stat. § 2904 (1984); 18 Pa. Cons. Stat. § 2909 (1990); R.I. Gen. Laws § 11-26-1.1 (1989); R.I. Gen. Laws § 11-26-1.2 (1989); S.C. Code Ann. § 16-17-495 (1990); S.D. Codified Laws Ann., § 22-19-9 (1985); S.D. Codified Laws Ann. § 22-19-10 (1985); S.D. Codified Laws Ann. § 22-19-11 (1980); S.D. Codified Laws Ann. § 22-19-12 (1981); Tenn. Code Ann. § 39-13-306 (1990); Tex. Penal Code Ann. § 25.03 (1993); Tex. Penal Code Ann. § 25.031 (1993); Utah Code Ann. § 76-5-303 (1984); Vt. Stat. Ann. tit. 13 § 2451 (1979); Va. Code Ann. § 18.2-49.1 (1994); Va. Code Ann. § 18.2-50 (1975); Wash. Rev. Code § 9A.40.010 (1975); Wash. Rev. Code § 9A.40.060 (1994); Wash. Rev. Code § 9A.40.070 (1989); Wash. Rev. Code § 9A.40.080 (1989); W.Va. Code § 61-2-14d (1984); W.Va. Code § 61-2-14e (1984); Wis. Stat. § 948.31 (1993); Wyo. Stat. § 6-2-204 (1984). (A compilation of these statutes is available as "State Parental Kidnapping Statutes," American Prosecutors Research Institute, Alexandria, VA (1995).)

3. Often these statutes also prohibit parents from interfering with the custody rights of governmental agencies to whose care abused or neglected children have been entrusted.

4. *OBSTACLES TO THE RECOVERY AND RETURN OF PARENTALLY ABDUCTED CHILDREN*, pp. 9-22 to 9-24. Linda K. Girdner & Patricia M. Hoff, eds., Office of Juvenile Justice and Delinquency Prevention, Washington, D.C. (1994). See also, J. Collins, M. McCalla, L. Powers, and E. Stutts, "The Police and Missing Children: Findings from a National Survey," 133 *Research Triangle Institute* (1989).

5. *State ex. Rel. Gilpin & Armell v. Stokes*, 483 N.E. 2d 179 (Ohio Ct. App. 1984).

6. Several states have enacted statutes to govern the custody rights of children born out-of-wedlock in the absence of a custody order. The following states automatically award custody of children born out-of-wedlock to the mother in the absence of a contrary custody order: Arizona, Arkansas (until paternity established), Florida, Georgia, Indiana (if common law marriage requirements are met), Minnesota (until paternity established), Oklahoma, South Carolina, South Dakota, and Vermont. Other states have enacted the Uniform Parentage Act. The Uniform Parentage Act provides that, "The parent and child

relationship extends equally to every child and to every parent, regardless of the marital status of the parents."The Uniform Parentage Act also establishes circumstances under which a man is presumed to be the natural father of a child born out-of-wedlock. These circumstances include an attempted, though invalid marriage, a previous or subsequent marriage of the parents accompanied by acknowledgment of the child, the father receives the child into his home and openly acknowledges the child as his natural child, and acknowledgment of paternity of foreign born children in immigration proceedings pursuant to the Orderly Departure (or successor) programs.

The following states have enacted the Uniform Parentage Act: Alabama, California, Colorado, Delaware, Hawaii, Illinois, Kansas, Kentucky, Maine, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Ohio, Rhode Island, Utah, Washington, and Wyoming.

7. *Wheat v. State*, 734 P.2d 1007 (Alaska App. 1987); *State v. Chapman*, 702 P. 2nd 819 (Idaho App. 1985); *State v. Doyle*, 828 P. 2d 1316 (Idaho App. 1985); *People v. Caruso*, 519 N.E.2d 440 (Ill. 1987); *State v. Costa*, 558 So.2d 525 (Fla. App. 1 Dist. 1990); *People v. Harvey*, 435 N.W.2d 456 (Mich. App. 1989); *State v. Rathjen*, 455 N.W.2d 845 (N.D. 1990); *Roberts v. State*, 619 S.W.2d 862 (Tex. Cr. App. 1981); and *Rios v. State*, 733 P.2d 242 (Wyo. 1987).

8. *People v. Bormann*,* 6 Cal. App.3d 292, 85 Cal. Rptr. 638 (Cal. App. 2 Dist. 1970); *People v. Gerchberg*,* 131 Cal. App.3d 618, 181 Cal. Rptr. 505 (Cal. App. 2 Dist. 1982); *State v. Cochran*, 538 P.2d 791 (Idaho 1975); *State v. McCormick*,* 273 N.W.2d 624 (Minn. 1978); and *State v. Musumeci*, 355 A.2d 434 (N.H. 1976) Dicta. (*Note: Subsequently enacted statute would change the result.)

9. For additional remedies, see OBSTACLES TO THE RECOVERY AND RETURN OF THE PARENTALLY ABDUCTED CHILDREN, Chapter 6, Linda K. Girdner & Patricia M. Hoff, eds., Office of Juvenile Justice and Delinquency Prevention, Washington, D.C. (1994).

10. For further information on civil liability of law enforcement officials for their actions in parental kidnapping cases, see OBSTACLES TO THE RECOVERY AND RETURN OF THE PARENTALLY ABDUCTED CHILDREN, Chapter 8, Linda K. Girdner and Patricia M. Hoff, eds., Office of Juvenile Justice and Delinquency Prevention, Washington, D.C. (1994).



MISSING CHILDREN RECORD FLAGGING ACT

I. INTRODUCTION

More than 354,100 children were abducted by parents or other family members in the United States in 1988.¹ Most of these children were two to eleven years of age.² In approximately half of these cases, the left-behind parent did not know the child's location.³ To assist in locating parentally abducted children, a number of states have enacted "flagging" statutes requiring that law enforcement be notified whenever a request for a missing child's school record or birth certificate, or both, is made.⁴ Some states also require that day care records be flagged.⁵

Locating and recovering a parentally abducted child is generally a difficult and frustrating process. "Flagging" statutes can greatly aid location efforts by requiring certain information, *e.g.*, requests for missing children's birth certificates and school and day care records, to be shared with law enforcement. As the New York State Senate noted in passing a school record flagging provision:

[T]he abductor frequently attempts to obtain a birth certificate or school records from the child's former locality in order to enroll the child in school or day care. Flagging records can provide a useful lead to the child's location without imposing any burden on the record-keeping agency.⁶

A study regarding obstacles to the recovery and return of parentally abducted children recommended that states pass record-flagging statutes in order to facilitate location and recovery of an abducted child.⁷ Moreover, the National Center for Missing and Exploited Children also has recommended that flagging statutes be enacted.⁸

States are encouraged to enact the sample statute or, if a flagging statute has already been enacted, to review the guidelines, sample statute and commentary for amendments that will produce a more effective flagging system. The guidelines, which are presented in Section II, set forth the major issues to consider in drafting or revising a flagging statute. The sample flagging statute found in section III incorporates the guidelines to establish an effective framework for flagging missing children's birth certificates, and school and day care records. The sample statute covers details not highlighted in the guidelines; a discussion of these details is included in the commentary to the sample statute found in section IV.

The statute and commentary were drafted by Noy Davis, project attorney on the Parental Abduction Training and Dissemination Project at the ABA Center on Children and the Law. Co-editors were Linda K. Girdner, project director, and Patricia M. Hoff, legal director. This project was supported by Grant No. 93-MC-CX-0002 from the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice. The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

Records to Be Flagged: Birth Certificates, School Records and Day Care Records

For maximum effectiveness, the statute should require flagging a missing child's birth certificate, school records and day care records. Since research indicates that children aged two to eleven are the primary victims of family abductions, flagging school and day care records is critical. Moreover, since birth certificates are often necessary to obtain passports and to enroll in school, flagging birth certificates of missing children is very important.

Provisions that require the flagging of all of these records are included in the sample statute that follows. States may wish to enact these requirements separately (*e.g.*, in statutory provisions affecting the Department of Vital Statistics (for birth certificate flagging), or those on Education (for school record flagging) or those involving Child or Day Care (for day care record flagging).

Directives to Law Enforcement, Schools, Day Care Facilities, Other Agencies

The statute should clearly delineate the responsibilities of law enforcement, schools, day care facilities and agencies maintaining birth certificates.

- *Law Enforcement.* Law enforcement should be directed to notify the specific entities holding the missing child's records (*e.g.*, agencies maintaining birth certificates, schools, day care facilities) immediately after receiving a report about a missing child who attended or was enrolled in day care or school in the state or who was born in the state.

- *Schools, Day Care, Birth Certificate Agencies.* The agencies maintaining birth certificates ("Birth Certificate Agencies") and schools and day care facilities having records pertaining to the missing child must be directed to flag those records upon receiving notification from law enforcement.

- *Missing and Exploited Children Clearinghouse.* The role that the state's missing and exploited children clearinghouse plays in flagging notification should be clearly set forth. In the sample statute that follows, the clearinghouse functions as a safety net, having authority to notify entities to flag records with respect to a missing child should law enforcement fail to do so. Although most states have a missing and exploited children clearinghouse as part of a law enforcement agency, the specific functions of the clearinghouses vary from state to state.⁹ Thus, a state may determine that its missing and exploited children clearinghouse should have primary record flagging responsibilities (*e.g.*, providing notification to schools and others to flag missing child's records).

Information to Be Provided to Law Enforcement by Schools, etc.

■ *Type of Information.* Schools, day care facilities, and agencies maintaining birth records which receive requests for information should be required to report relevant information such as the requesting person's name, description, address, telephone number, and relationship to the child, as well as the name, address, date of birth and social security number of the child. In addition, if possible, obtaining a copy of a driver's license or other photographic identification of the requesting party should be required. The sample statute (part 4(2)) requires this information and documentation.

■ *Not Alerting Requesting Parties of Missing Child Status.* The agencies maintaining birth certificates, schools, and day care facilities must be required to flag missing children's records and respond to requests involving missing children without alerting those requesting information or records that the records have been flagged or that law enforcement will be notified of the request. A proviso to this effect can be included in the flagging statute or included in regulations implementing the flagging statute.

Statute Must Contemplate Mobility

In today's mobile society, it is not unusual for a child to be born in one state and to move one or more times, attending schools or day care facilities in different states. This is particularly true where a child is abducted by a parent or other family member. Thus, an effective flagging statute must take this movement into account and foster cooperation among the states.

The following sample statute takes this mobility into account in several ways:

■ The definition of "missing child" is not limited to a child who is reported missing in that state and specifically includes a child who is reported as missing by any state law enforcement agency or missing and exploited children clearinghouse or has been entered as missing into the National Crime Information Center (NCIC) computer. (*See Sample Flagging Statute, section 1(8).*)

■ Upon receiving a report of a missing child (from within the state or from another state's law enforcement agency or clearinghouse or the NCIC), law enforcement within the state is required to immediately notify the relevant entities within the state to flag the missing child's records, and these entities are required to do so. (*See Sample Flagging Statute, section 3(1).*)

■ If the missing child report was received from someone within the state, but the child was born in or attended school or day care in other states, the state law enforcement agency is required to notify law enforcement in the other states and request that it contact the schools, day care facilities, agencies maintaining birth certificates in those states to flag the missing child's records. (*See Sample Flagging Statute, section 3(b).* If the other state has a similar flagging statute, those entities would be required to flag the requested records.)

Records Required for School Enrollment

Many schools require that previous school records be obtained as well as proof of the student's identity and age (*e.g.* birth certificate) when a child registers for the first time at a school. In a number of states this requirement is pursuant to a statutory mandate, which often is part of a missing children's record flagging statute.¹⁰ Such a requirement assists in making school record flagging more effective. The sample flagging statute that follows includes such a provision, with additional details to close off possible loopholes (*e.g.*, schools to obtain verification of prior records when the parent has provided copies of such records, schools to notify law enforcement when a parent cannot or will not provide prior school information or birth certificate).

States also should consider expanding the use of flagging to locate abducted children by having day care facilities require copies of birth certificates or other reliable identification when a child is first enrolled.

Non-Liability for Compliance with Statute

States should encourage compliance with flagging statutes by providing that actions taken in good faith under the flagging statute are immune from liability. The sample statute that follows includes such a provision. (*See Sample Flagging Statute, section 5*).

MISSING CHILDREN RECORD FLAGGING ACT

Section 1. Definitions

For the purposes of this Act:

- (1) "Act" means the Missing Children Record Flagging Act.
- (2) "Birth certificate agency" and "agency" means the state agency maintaining birth certificates, [insert the name of the state agency that maintains birth certificates, e.g., Bureau of Vital Statistics] and any county agency recording and maintaining birth certificates.
- (3) "Child" means any person under the age of 18.
- (4) "Clearinghouse" means the state missing and exploited children clearinghouse.
- (5) "Day care facility" means any licensed day care facility within the state, whether public, private or parochial.
- (6) "Flagged record" means any school or day care facility record, or birth certificate, regarding a missing child.
- (7) "Law enforcement" refers to [insert names of state and local law enforcement agencies], which receive and investigate missing child reports.
- (8) "Missing child" refers to a child whose whereabouts cannot be determined by a person responsible for the child's care, including any child who has been taken, enticed or concealed in derogation of the custody rights, including visitation rights, of a parent, guardian, or other person whether these rights arise by custody order, agreement of the parties, or operation of law. "Missing child" includes a child reported as missing to any state or local law enforcement agency or missing and exploited children clearinghouse or who has been entered as missing into the National Crime Information Center (NCIC) computer.
- (9) "School" means any public, private, parochial or home school within the state.

Section 2. Schools to Require Proof of Student Identity and Age

(1) Public and Private School Systems. Upon enrollment of a student for the first time in a school, the school of enrollment shall:

(a) request information from the person enrolling the child as to the previous schools attended by the child;

(b) request the school records for the child from any and all previous schools attended by the child, and if the parent or person enrolling the child provides copies of previous school records, shall request verification from the prior school of the child's name, address, birth date, grade(s) attended and month(s) and year(s) attended; and

1 (c) notify the person enrolling the student that within thirty days (ninety days, if
2 the student was not born in this country), he or she must provide either (i) a certified copy of the
3 student's birth certificate or (ii) other reliable proof of the student's identity and age accompanied
4 by a signed statement explaining the inability to produce a copy of the birth certificate.

5 (2) Home Schools. The parent or guardian of a child who is receiving his or her
6 education in a home school shall, not later than October 1 of the first year of the child's
7 attendance at the home school, provide to the State Department of Education either:

8 (a) a certified copy of the child's birth certificate, or
9 (b) other proof of the child's identity and age accompanied by a signed statement
10 explaining the inability to produce a certified copy of the birth certificate.

11 (3) Non-Compliance. If the parent, guardian, or person enrolling the child in
12 school does not provide valid, prior school information or documentation as requested by this
13 Section, the school (for lack of information under subsections 2(1)(a) or 2(1)(c)) or the State
14 Department of Education (for lack of information under subsection 2(2)) shall so notify law
15 enforcement within 30 days. Upon receipt of such notification, law enforcement shall
16 immediately check the NCIC to determine if such child has been reported as missing. If so, law
17 enforcement shall immediately notify law enforcement agencies in other states that the missing
18 child has been located.

19 **Section 3. Law Enforcement/Clearinghouse to Notify Schools,**
20 **Day Care Facilities, Agencies to Flag Missing Children's Records**

21 (1) When a report concerning a missing child is received from within or without
22 this State, law enforcement shall immediately notify any and all schools and/or day care facilities
23 that the child attended or in which the child was enrolled as well as all birth certificate agencies
24 (if the child was born in the state) that such child is missing, and the school, day care facility or
25 agency shall flag that child's records in accordance with this Act and any regulations
26 promulgated hereunder. Law enforcement also shall alert the clearinghouse that the notification
27 required under this section has been made. In the event that law enforcement does not provide
28 the notification required hereunder within fifteen days, the clearinghouse is directed to provide
29 such notification to the appropriate schools, day care facilities and birth certificate agencies.

30 (2) If a missing child, who was the subject of a missing child report by someone in
31 this state, was born in or attended or was enrolled in a school or licensed day care facility in
32 another state, law enforcement also shall notify law enforcement or the missing and exploited
33 children clearinghouse in the appropriate states regarding such missing child and request such
34 law enforcement agency or clearinghouse to contact the state and county agencies maintaining
35 birth certificates as well as any schools or licensed day care facilities which the missing child
36 attended or in which the missing child was enrolled to flag the missing child's records.

1 **Section 4. System for Flagging Records**

2 (1) Schools/Day Care Facilities/Agencies Shall Flag Records. Upon notification by
3 law enforcement or the clearinghouse regarding a missing child, any school and/or day care
4 facility in which the missing child is currently or was previously enrolled and any birth
5 certificate agency shall maintain the school or day care records and birth certificate in its
6 possession in such a manner that immediately upon receipt of a request regarding a missing
7 child's school or day care record or birth certificate, the school, day care facility or agency shall
8 notify law enforcement or the clearinghouse that a request for a flagged record has been made.

9 (2) Information to Convey to Law Enforcement

10 (a) When a request concerning a flagged record is made in person, the school,
11 day care facility, or agency shall NOT advise the requesting party that the request concerns a
12 missing child, and shall:

13 (i) require the person requesting the flagged record to complete a form
14 requesting such person's name, address, telephone number, social security number and
15 relationship to the child whose birth certificate is being requested, and the name, address, birth
16 date and social security number of the child whose flagged record is being requested;

17 (ii) if possible, obtain a copy of the driver's license of the requesting party.
18 or other photographic identification;

19 (iii) inform the requesting party that a copy of a certificate will be mailed to
20 him or her;

21 (iv) immediately after providing the information under subsection (2)(a)(iii)
22 notify law enforcement that a request has been made concerning a flagged record, including a
23 physical description of the requesting party, the identity, address of the requesting party, and a
24 copy of the requesting party's driver's license or other photographic identification. After such
25 notification, the school, day care facility, or agency shall mail a copy of the requested record to
26 the requesting party no sooner than 21 days later.

27 (b) When a request concerning a flagged record is made in writing, the
28 school, day care facility, or agency shall immediately notify law enforcement that a request has
29 been made concerning a flagged record and provide a copy of the written request. After such
30 notification, the school, day care facility, or agency shall mail a copy of the requested record to
31 the requesting party no sooner than 21 days later.

32 (3) Removal of Flag. Upon recovery of a missing child, law enforcement shall so
33 notify any school, day care facility, and/or birth certificate agency that has maintained flagged
34 records. Law enforcement shall also alert the clearinghouse that such notification has been
35 made. In the event that such notification is not made within 30 days of the missing child's
36 recovery, the clearinghouse is authorized to notify any school, day care facility, and/or birth
37 certificate agency that has maintained flagged records that the missing child has been recovered.

1 Upon notification by law enforcement or the clearinghouse that a missing child has been
2 recovered, any school, day care facility, and/or birth certificate agency that has maintained
3 flagged records shall remove the flag from the records. If a school, day care facility and/or birth
4 certificate agency has reason to believe that a missing child may have been recovered, it may
5 request confirmation that the missing child has been recovered from law enforcement or the
6 clearinghouse. If after 45 days from the initial request for confirmation, no response is received,
7 then the school, day care facility and/or birth certificate agency may remove the flag from the
8 record and so inform law enforcement or the clearinghouse.

9 **Section 5. Immunity from Liability**

10 Any law enforcement agency, clearinghouse, school, day care facility or birth certificate
11 agency and any person acting on behalf of any such entity shall be immune from civil and
12 criminal liability for any acts taken in good faith pursuant to this Act.

1 COMMENTARY TO THE SAMPLE FLAGGING STATUTE

2 Comments to Section 1: Definitions

- 3 1. "Child" is defined to include all those under the age of 18 because most states define
4 child in this way.
- 5 2. A definition for "clearinghouse" -- the state missing and exploited children clearinghouse
6 -- is set forth because most states have such a clearinghouse. States not having such a
7 clearinghouse are encouraged to consider creating one. Clearinghouses can serve an
8 important function in coordinating efforts to locate missing and exploited children.¹¹
- 9 3. "Day care facility" is defined to include all licensed day care facilities. As the National
10 Center for Missing and Exploited Children has pointed out, "[m]any children who are
11 missing due to parental abduction are enrolled in schools and day care centers in new
12 localities, frequently under their legal names."¹² Only licensed facilities were included in
13 the definition in recognition of the practical inability to regulate daycare facilities that do
14 not fall within the state licensing laws. However, to ensure that the broadest feasible
15 definition is used, individual states seeking to adopt flagging statutes are urged to review
16 their licensing/regulatory framework and appropriately substitute the proper terminology
17 to encompass the greatest number of day care facilities, including any family day care
18 homes, that may be regulated.
- 19 4. "Missing child" is defined to include a child who is missing and whose whereabouts
20 cannot be determined as well as a child "who has been taken, enticed, kept, or concealed
21 in derogation of the custodial rights, including visitation rights, of a parent, guardian, or
22 other person whether these rights arise by custody order, agreement of the parties or
23 operation of law." Thus, records will be flagged for a child who has been abducted by a
24 parent or other family member, even when the left-behind parent does not have sole
25 custody, but enjoys joint custody or visitation rights. Further, records will be flagged if a
26 child is abducted before there is a custody or visitation decree.

1 **Comment to Section 2: Schools to Require Proof of Student Identity and Age**

2 1. Subsection 2(1)(a) requires schools to request records from the schools previously
3 attended by the child, or if the parent provides the new/current school with records from the prior
4 school, requires the school to request verification of their authenticity from the prior school.
5 This requirement is included to ensure that prior schools that have flagged a missing child's
6 records are contacted even if the abducting parent provides the records to the new/current school.
7 The prior school would then notify law enforcement that a request concerning a flagged record
8 has been made.

9 Subsection 2(1)(c) requires schools to notify a person enrolling a child in school that he
10 or she must provide a certified copy of the student's birth certificate, or other proof of the
11 student's identity and age as well as a statement explaining why a copy of the birth certificate
12 could not be provided. This subpart recognizes that there are legitimate instances where a birth
13 certificate cannot be produced; however, schools should scrutinize any document(s) proffered as
14 "other proof as to student's identity" to ensure that such documents in fact constitute proof as to
15 identity and age. Passports would appear to be proof. This provision makes the use of aliases
16 more difficult and, consequently, can facilitate identifying a missing child.

17 2. Subsection 2(2) requires the parent or guardian of a child in a home school to
18 provide to the Department of Education a certified copy of the child's birth certificate or other
19 reliable proof as to the child's identity and age accompanied by a signed statement explaining
20 why the birth certificate could not be produced. By requiring parents or guardians to provide
21 proof as to their child's age and identity, regardless of whether the child attends a public, private
22 or home school, the state is seeking to increase the likelihood that a missing child who is
23 attending such a school is located.

24 3. If the state does not already do so, it is encouraged to keep a register of children
25 attending school in the state (whether public, private or home). Such a register would facilitate
26 the location of missing children.

27 **Comment to Section 3: Law Enforcement/Clearinghouse to Notify Schools,**
28 **Agencies to Flag Missing Children's Records**

29 Subsection 3(1) requires the state law enforcement agency to notify the schools and
30 licensed day care facilities that the child attended as well as the state agency maintaining birth
31 certificates to flag records pertaining to the missing child. The state missing and exploited
32 children clearinghouse generally acts as a safety net, having authority to notify entities to flag
33 records should law enforcement fail to do so. In any given state, however, the primary
34 responsibility for record flagging could be shifted to the clearinghouse. The statute would have
35 to be altered accordingly. Pursuant to subsection 3(2), law enforcement may contact law
36 enforcement or the clearinghouse in another state for assistance in flagging a missing child's
37 records.

1 **Comment to Section 4: System for Flagging Records**

2 1. This section requires schools, licensed day care facilities and birth certificate agencies
3 to maintain their records so as to ensure that they can immediately notify law enforcement or the
4 missing and exploited children clearinghouse, as the state enacting the law determines, whenever
5 a request is made about a missing child's records.

6 2. This section details the information that schools, day care facilities and birth
7 certificate agencies should obtain from the party requesting a missing child's records and be
8 provided to the law enforcement agency. It would be advisable that regulations implementing
9 this section to specify that this notification to law enforcement be made outside the presence of
10 the requesting party so as to reduce the risk that the requesting party will flee with the missing
11 child.

12 3. This section requires that flags shall be removed from a child's records when law
13 enforcement or the state missing and exploited children clearinghouse, as the state enacting the
14 law determines, notifies the school, licensed day care facility, or birth certificate agencies that the
15 child has been recovered.

16 **Comment to Section 5: Immunity from Liability**

17 This section provides immunity from civil and criminal liability to certain entities and
18 persons (any law enforcement agency, missing and exploited children clearinghouse, school, day
19 care facility, birth certificate agencies as well as any person acting on behalf of such an entity)
20 for acts which occur as a result of the requirements of the Act.

ENDNOTES

1. DAVID FINKELHOR, GERALD HOTALING & ANDREA SEDLAK, U.S. DEPT. OF JUSTICE, NATIONAL INCIDENCE STUDIES, MISSING, ABDUCTED, RUNAWAY, AND THROWN AWAY CHILDREN IN AMERICA, EXECUTIVE SUMMARY (1990). This number reflects the "Broad Scope" Family Abduction estimate, which was defined to include situations where a family member took a child in violation of a custody agreement or decree.
2. *Id.* See also Chris Hatcher & Loren Brooks, *Perspectives from Left-Behind Parents and their Helpers in Specific Cases* in OBSTACLES TO THE RECOVERY AND RETURN OF PARENTALLY ABDUCTED CHILDREN, ch. 12 Linda K. Girdner & Patricia M. Hoff, eds., Office of Juvenile Justice and Delinquency Prevention (1994) (children in kindergarten and elementary school are the primary victims of parental abduction).
3. The other half involved a caretaker who knew where the child was most of the time, but had difficulty in securing the child's return.
4. As of August 31, 1994, approximately half of the states have statutes requiring a missing child's school records and/or birth certificates be flagged. Five states require flagging of school records only. See KAN. STAT. ANN. §72-53, 106 (1991); MASS. GEN. LAWS ANN. ch 22A §9 (West 1985); MINN. STAT. ANN. §123.751 (West 1993); MONT. CODE ANN. §44-2-511(4a) (1993); N.C. GEN. STAT. §115V-403 (1993); OHIO REV. CODE §3319.321; ORE. §336.195. Six involve birth certificates only. See FLA. STAT. ANN. §937.024 (West 1991); KY. REV. STAT. ANN. §213-061 (Baldwin 1991); MICH. REV. STAT. ANN. §14.15 (Callahan 1993); N.M. STAT. ANN. §32-8-4 (Michie 1985); OKLA. STAT. tit. 63 §1-323.1 (1991); W.VA. CODE §16-5-12b (1991). Fourteen states require flagging of both school records and birth certificates (many states use separate statutes to require that both types of records be flagged). See ALASKA STAT. §14.30-700 (1991); ALASKA STAT. §18.50-315 (1991); ARIZ. REV. STAT. ANN. §15-829 (1991); ARIZ. REV. STAT. ANN. §36-326.02 (1993); ARK. CODE ANN. §12-12-802-803 (1993); IDAHO CODE §18-4510-4511 (1993); ILL. REV. STAT. ch. 23, para. 2273-2275 (1988); IND. CODE ANN. §31-6-13-6 (Burns 1991); IND. CODE ANN. §10-1-7-8 (Burns 1991); MO. ANN. STAT. §43.407-43.408 (Vernon 1992); NEB. REV. STAT. §43-2005 (1943); NEB. REV. STAT. §43-2007 (1943); NEV. REV. STAT. §432.305 (1991); N.D. CENT. CODE §54-23.2-04.2 (1988); PA. STAT. ANN. tit. 35 §450.403A (1930); R.I. GEN. LAWS §43-28.8-7-8-8 (1993); UTAH CODE ANN. §53A-11-502 (1992); UTAH CODE ANN. §26-2-27 (1992); VA. CODE ANN. §22.1-288.1 (Michie 1950).
5. See, e.g., IND. CODE §§ 12-17.2-5-18.6, 31-6-13-4 (1994), N.D. REV. STAT. §54-23.2-04.2 (1991).
6. Senate, State of New York, Bill No. S6523 (passed by Senate January 24, 1994)(codified at N.Y. EXEC. LAW §837-e (1994)).
7. OBSTACLES TO THE RECOVERY AND RETURN OF PARENTALLY ABDUCTED CHILDREN (Linda K. Girdner and Patricia M. Hoff, eds., Office of Juvenile Justice and Delinquency Prevention 1994).
8. See NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN, SELECTED STATE LEGISLATION 7 (1994).
9. See Linda K. Girdner, *The View from State Missing Children Clearinghouses* in Obstacles to the Recovery and Return of Parentally Abducted Children, ch. 9 (Linda K. Girdner & Patricia M. Hoff, eds., Office of Juvenile Justice and Delinquency Prevention 1994).
10. See, e.g., IND. CODE §20.8.1-3-17.1 (1994), N.D. REV. STAT. §54-23.2-.4.2 (1994).
11. For a discussion of state missing and exploited children's clearinghouses, see Linda K. Girdner, *The View from State Missing Children Clearinghouses*, in OBSTACLES TO THE RECOVERY OF PARENTALLY ABDUCTED CHILDREN, (Linda K. Girdner & Patricia M. Hoff, eds., Office of Juvenile Justice and Delinquency Prevention 1993).
12. NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN, SELECTED STATE LEGISLATION 6 (1994).

TORTIOUS INTERFERENCE WITH CHILD CUSTODY AND VISITATION ACT

INTRODUCTION

Each year, thousands of children are abducted and/or concealed by parents or other caretakers.¹ A left-behind parent's best efforts to locate and recover an abducted child are often frustrated by friends, relatives or lawyers of abductors.² Some states have enacted laws permitting tort suits against these helpers as well as the abducting parent.³ In numerous other states, courts have allowed lawsuits based on common law against abductors and their helpers for the harm they have caused abducted children and left-behind parents.⁴ Only a few state courts have rejected "child snatching" lawsuits.

A study of obstacles to the recovery and return of parentally abducted children recommended that states adopt statutes for tortious interference with child custody and visitation.⁵ In addition, the National Center for Missing and Exploited Children has recommended that states establish such a cause of action.⁶

A tort statute authorizing civil suits for interference with child custody and visitation would serve several purposes. Primarily, it permits compensation to the injured parent and/or child. It also may deter those who might play a part in abducting or concealing a child. Lastly, discovery under such a statute may result in locating abducted children.

A proposed statute for tortious interference with child custody and visitation follows.

The statute and commentary were drafted by Noy Davis, project attorney on the Parental Abduction Training and Dissemination Project at the ABA Center on Children and the Law. Co-editors were Linda K. Girdner, project director, and Patricia M. Hoff, legal director. This project was supported by Grant No. 93-MC-CX-0002 from the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice. Points of view or opinions in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice. The views expressed herein have not been approved by the House of Delegates of the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

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**TORTIOUS INTERFERENCE WITH CHILD CUSTODY
AND VISITATION ACT**

Section 1. Definitions

For the purposes of this chapter:

(1) "Abduct" means to take, entice away, keep, withhold or conceal. A child is considered to have been abducted under this chapter regardless of whether the child resists, objects or acquiesces.

(2) "Child" means a person under the age of 18 who has not been legally emancipated.

(3) "Custody order/custody determination" means any decree, judgment or order, whether permanent or temporary, initial or modification, issued consistently with the Parental Kidnapping Prevention Act, 28 U.S.C. 1738A, by a court of competent jurisdiction of this state or of another state or nation, which affects the custody or visitation of a child. A custody order, once made, shall continue in effect until it expires, is modified, is rescinded, or terminates by operation of law.

(4) "Lawful custodian" means a parent, guardian, or other natural person having a "right of physical custody or visitation" of a child. A parent whose parental rights have been terminated by a final court order is no longer a "lawful custodian" and no longer has a "right of physical custody or visitation."

(5) A "right of physical custody or visitation" means the right to physical possession of a child which may arise by: (1) order of a court of competent jurisdiction, including an order of sole physical custody, joint or shared physical custody, or visitation; or (2) by operation of law when there is no court order.

(6) "Person" includes a natural person or an entity, such as a partnership or corporation.

Section 2. Liability

(1) A person who abducts a child from its lawful custodian may be liable for damages to the child, and to the lawful custodian who has been substantially deprived of his or her right of physical custody or visitation.

(2) A person who knowingly violates the terms of a custody order prohibiting the removal of a child from the jurisdiction may be liable for damages to the lawful custodian who has been substantially deprived of his or her right of physical custody or visitation.

1 3) Any person who aids or assists in conduct for which a cause of action is authorized by
2 this section may be held jointly and severally liable for damages to the lawful custodian who has
3 been deprived of his or her right of physical custody or visitation in accordance with those
4 sections.

5 **Section 3. Affirmative Defenses**

6 (1) Affirmative defenses under this chapter include, but are not limited to, the following:

7 (A) The lawful custodian consented to the respondent's conduct.

8 (B) The respondent acted to protect the child, the child's sibling or himself or herself
9 from imminent harm, or the respondent was fleeing a pattern of domestic violence or child abuse.

10 (C) The respondent acted in accordance with a custody order made in compliance with
11 the Parental Kidnapping Prevention Act, 28 U.S.C 1738A.

12 **Section 4. Damages**

13 (1) Damages under this chapter may be recovered for:

14 (A) the costs and expenses incurred by or on behalf of the petitioner in locating and
15 recovering a child who has been abducted, and facilitating and reintegrating the child into the
16 family. "Costs and expenses" may include, but are not limited to, court costs, attorneys' fees in
17 connection with this action, private investigator's fees, reimbursement for lost wages, travel, long
18 distance telephone charges, and mental health counseling as needed.

19 (B) the mental suffering and anguish of the child and/or the petitioner resulting from the
20 tortious conduct for the child, the petitioner, or other member(s) of the immediate household.

21 (2) Punitive damages may be awarded if the person held liable under this chapter: (1) acted
22 with malice or with reckless disregard for the child's physical or emotional health, safety or
23 welfare; or (2) the child has not been returned. In assessing whether or not to award punitive
24 damages or the amount thereof, the trier of fact may consider whether the respondent promptly
25 and fully complied with the custody order upon receipt of notice of suit under this chapter.

26 **Section 5. Statute of Limitations**

27 In cases of concealment, the statute of limitations shall begin to run when the abducted
28 child's whereabouts are discovered by the lawful custodian from whom the child has been
29 removed.

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Section 6. Venue

A suit under this chapter may be brought in any county where the petitioner or the respondent resides or does business or in which a proceeding for a custody determination may be brought consistently with the Parental Kidnapping Prevention Act, 28 U.S.C. 1738A.

Section 7. Remedies Not Affected

This chapter does not affect any other civil or criminal remedies available to anyone, including the child, for interference with child custody, nor does it affect the power of a parent or legal guardian to represent the interest of a child in any suit brought on behalf of the child.

Section 8. Notice

If a petitioner cannot, after due diligence, determine a current address for the respondent, as in the case of a parent who has gone into hiding with the child, plaintiff shall give notice of actions under this chapter by publication, and by certified mail to the respondent at his or her last known address.

Section 9. Immunity

Nothing in this chapter constitutes a waiver of sovereign immunity.

COMMENTARY

Comment to Section 1: Definitions

"Abduct" is broadly defined under this section. Notably, whether or not a child resists, objects or acquiesces in the "abduction" is not relevant.

"Custody order/custody determination" is defined to include decrees, judgments or orders made consistently with the Parental Kidnapping Prevention Act, 28 U.S.C. 1738A ("PKPA"). This would include custody orders that are part of civil protection orders issued to protect against domestic violence. The broad phrase "by a court . . . of this state or another state or nation" is intentionally expansive to cover decrees made by other states, tribal courts and foreign countries.

Comment to Section 2: Liability

The liability provisions permit suit based upon a "substantial" deprivation of custody or visitation rights. Thus, not every violation of custody or visitation rights is actionable. Whether a deprivation is "substantial" is a question for the trier of fact. The case law, however, may be instructive as to the range of situations that may constitute a "substantial" deprivation and the facts and circumstances that may be relevant in making the determination. See *Hixon v. Buchberger*, 507 A.2d 607 (Md. 1986) (no cause of action under Maryland law for parent or parent's ally who speaks harsh words during a visit, which was not prevented by the harsh words); *Wood v. Wood*, 338 N.W.2d 123 (Iowa 1983) (claim for damages may be asserted against a parent who refused to return a child within the time provided in the dissolution decree resulting in child's not being in plaintiff's care from December 25, 1981 to January 21, 1982).

Comment to Section 4: Damages

The damages provisions are generally broad. They do not include recovery of expenditures in connection with an action for enforcement of a custody decree. Those items are more appropriately recovered as part of the enforcement action itself. The punitive damages provision has been drafted to encourage the return of the child.

Comment to Section 7: Notice

Since it is common for an abductor parent to have removed himself or herself from contact, provisions permitting the case to proceed, despite a respondent's concealing his or her whereabouts, are important. Permitting notice in such cases avoids awarding the abductor for his or her elusiveness. The U.S. Court of Appeals for the Seventh Circuit employed a similar rationale in determining the domicile for diversity purposes. See *Lloyd v. Loeffler*, 694 F.2d 489 (7th Cir. 1982) (domicile for diversity purposes is last domicile prior to flight). Comparable state statutes and rules governing notice in civil tort actions may obviate the need for inclusion of this provision.

ENDNOTES

1. An estimated 354,100 children were abducted by parents or other family members in the United States in 1988. See DAVID FINKELHOR, GERALD HOTALING & ANDREA SEDLAK, U.S. DEPT. OF JUSTICE, NATIONAL INCIDENCE STUDIES, MISSING, ABDUCTED, RUNAWAY, AND THROWN AWAY CHILDREN IN AMERICA, EXECUTIVE SUMMARY (1990).
2. See Patricia M. Hoff, When Friends, Relatives and Lawyers are Part of the Problem, Ch.5 in OBSTACLES TO THE RECOVERY AND RETURN OF PARENTALLY ABDUCTED CHILDREN (Linda K. Girdner and Patricia M. Hoff, eds., Office of Juvenile Justice and Delinquency Prevention, Washington, D.C., 1994).
3. See CAL. CIV. CODE §49; OHIO REV. CODE ANN §2307.50; S.D. COD. LAWS §20-9-7 (MICHIE 1987); R.I. GEN. LAWS §9-1-43; TEX.FAM. CODE §§36.01-36.08 (1986). See also S. CAR. CODE §21-21-45 (1989)(custodian may maintain action for recovery of children and damages). See generally, REST. 2D TORTS §700.
4. See *Kunz v. Deitch*, 660 F. Supp. 679 (N.D. Ill. 1987) (tortious deprivation of right of custody); *Plant v. Engel*, 469 A.2d 1299 (N.H. 1983) (intentionally aiding and abetting in interference with custody rights); *Pankratz v. Willis*, 744 P.2d 1182 (Ariz. App. 1982) (intentional infliction of emotional distress); *Kramer v. Lieneweber*, 642 S.W. 2d 864 (Mo.App. 1982) (interference with custody rights).
5. OBSTACLES TO THE RECOVERY AND RETURN OF PARENTALLY ABDUCTED CHILDREN (Linda K. Girdner and Patricia M. Hoff, eds., Office of Juvenile Justice and Delinquency Prevention, Washington, D.C., 1994).
6. See NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN, SELECTED STATE LEGISLATION 22 (1994).

APPENDIX VIII:

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Investigation and Prosecution Manual

County of San Diego
District Attorney's Office
Child Abduction Unit



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APPENDIX X:

Form Parenting Plan

Superior Court of Washington
County of Snohomish



II. BASIS FOR RESTRICTIONS

2.1 PARENTAL CONDUCT (RCW 26.09.191(1), (2)).

- Does not apply.
- The father's mother's residential time with the children shall be limited, and mutual decision-making and designation of a dispute resolution process other than court action shall not be required because this parent has engaged in the conduct which follows.
 - Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions.
 - Physical, sexual or a pattern of emotional abuse of a child.
 - A history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm.

2.2 OTHER FACTORS (RCW 26.09.191(3)).

- Does not apply.
- The mother's father's involvement or conduct may have an adverse effect on the child's best interests because of the existence of the factors which follow.
 - Neglect or substantial non-performance of parenting functions.
 - A long-term emotional or physical impairment which interferes with the performance of parenting functions as defined in RCW 26.09.004.
 - A long-term impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of parenting functions.
 - The absence or substantial impairment of emotional ties between the parent and child.
 - The abusive use of conflict by the parent which creates the danger of serious damage to the child's psychological development.
 - A parent has withheld from the other parent access to the child for a protracted period without good cause.
 - Other:

III. RESIDENTIAL SCHEDULE

These provisions set forth where the child(ren) shall reside each day of the year and what contact the child(ren) shall have with each parent.

3.1 --PRE-SCHOOL SCHEDULE.

- There are no children of pre-school age.
- Prior to enrollment in school, the child(ren) shall reside with the mother father, except for the following days and times when the child(ren) will reside with or be with the other parent.

from _____ to _____
(Day and Time) (Day and Time)

- every week every other week the first and third week of the month the second and fourth week of the month other:

3.2 SCHOOL SCHEDULE.

upon enrollment in school, the child(ren) shall reside with the mother father, except for the following days and times when the child(ren) will reside with or be with the other parent:

from _____ to _____
(Day and Time) (Day and Time)

- every week every other week the first and third week of the month the second and fourth week of the month other:

from _____ to _____
(Day and Time) (Day and Time)

- every week every other week the first and third week of the month the second and fourth week of the month other:

- The school schedule will start when each child begins kindergarten first grade other:

3.3 SCHEDULE FOR WINTER VACATION.

The child(ren) shall reside with the mother
 father during winter vacation, except for the
following days and times when the child(ren) will
reside with or be with the other parent:

3.4 SCHEDULE FOR SPRING VACATION.

The child(ren) shall reside with the mother
 father, during spring vacation, except for the
following days and times when the child(ren) will
reside with or be with the other parent:

3.5 SUMMER SCHEDULE.

Upon completion of the school year, the child(ren)
shall reside with the mother father, except for
the following days and times when the child(ren) will
reside with or be with the other parent:

- Same as school year schedule.
- Other:

3.6 VACATION WITH PARENTS.

- Does not apply.
- The schedule for vacation with parents is as
follows:

3.7 SCHEDULE FOR HOLIDAYS.

The residential schedule for the child(ren) for the holidays listed below is as follows:

	With Mother (Specify Year <u>Odd/Even/Every</u>)	With Father (Specify Year <u>Odd/Even/Every</u>)
New Year's Day	_____	_____
Martin Luther King Day	_____	_____
Presidents Day	_____	_____
Memorial Day	_____	_____
July 4th	_____	_____
Labor Day	_____	_____
Veterans Day	_____	_____
Thanksgiving Day	_____	_____
Christmas Eve	_____	_____
Christmas Day	_____	_____
_____	_____	_____
_____	_____	_____

- For purposes of this parenting plan, a holiday shall begin and end as follows (set forth times):

- Holidays which fall on a Friday or a Monday shall include Saturday and Sunday.
- Other:

3.8 SCHEDULE FOR SPECIAL OCCASIONS.

The residential schedule for the child(ren) for the following special occasions (i.e., birthdays) is as follows:

	With Mother (Specify Whether <u>Odd/Even/Every</u>)	With Father (Specify Whether <u>Odd/Even/Every</u>)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

- Other:

3.9 PRIORITIES UNDER THE RESIDENTIAL SCHEDULE.

- Does not apply.
- For purposes of this parenting plan the following days shall have priority:
 - Parent's vacations have priority over holidays. Holidays have priority over other special occasions. Special occasions have priority over school vacations.
 - Other:

3.10 RESTRICTIONS.

- Does not apply because there are no limiting factors in paragraphs 2.1 or 2.2.
- The father's mother's residential time with the child(ren) shall be limited because there are limiting factors in paragraphs 2.1 and 2.2. The following restrictions shall apply when the children spend time with this parent:
 - There are limiting factors in paragraph 2.2, but there are no restrictions on the father's mother's residential time with the children for the following reasons:

3.11 TRANSPORTATION ARRANGEMENTS.

Transportation arrangements for the child(ren), other than costs, between parents shall be as follows:

3.12 DESIGNATION OF CUSTODIAN.

The children named in this parenting plan are scheduled to reside the majority of the time with the mother father. This parent is designated the custodian of the child(ren) solely for purposes of all other state and federal statutes which require a designation or determination of custody. This designation shall not affect either parent's rights and responsibilities under this parenting plan.

3.13 OTHER:

IV. DECISION MAKING

4.1 DAY TO DAY DECISIONS.

Each parent shall make decisions regarding the day-to-day care and control of each child while the child is residing with that parent. Regardless of the allocation of decision making in this parenting plan, either parent may make emergency decisions affecting the health or safety of the children.

4.2 MAJOR DECISIONS.

Major decisions regarding each child shall be made as follows:

- Education decisions mother father joint
- Non-emergency health mother father joint
- care
- Religious upbringing mother father joint
- _____ mother father joint
- _____ mother father joint
- _____ mother father joint
- _____ mother father joint
- _____ mother father joint
- _____ mother father joint

4.3 RESTRICTIONS ON DECISION MAKING.

- Does not apply because there are no limiting factors in paragraphs 2.1 and 2.2. above.
- Sole decision making shall be ordered to the mother father for the following reasons:
 - A limitation on the other parent's decision-making authority is mandated by RCW 26.09.191. (See paragraph 2.1).
 - Both parents are opposed to mutual decision making.
 - One parent is opposed to mutual decision making, and such opposition is reasonably based on the following criteria:

- (a) The existence of a limitation under RCW 26.09.191;
- (b) The history of participation of each parent in decision making in each of the areas in RCW 26.09.184(4)(a);
- (c) Whether the parents have demonstrated ability and desire to cooperate with one another in decision making in each of the areas in RCW 26.09.184(4)(a); and
- (d) The parents' geographic proximity to one another, to the extent that it affects their ability to make timely mutual decisions.

There are limiting factors in paragraph 2.2, but there are no restrictions on mutual decision making for the following reasons:

V. DISPUTE RESOLUTION

Disputes between the parties, other than child support disputes, shall be submitted to (list person or agency):

- counseling by _____, or
- mediation by _____, or
- arbitration by _____.

The cost of this process shall be allocated between the parties as follows:

- _____ % mother _____ % father.
- based on each party's proportional share of income from line 6 of the child support worksheets.
- as determined in the dispute resolution process.

The counseling, mediation or arbitration process shall be commenced by notifying the other party by written request certified mail other:

In the dispute resolution process:

- (a) Preference shall be given to carrying out this Parenting Plan.
- (b) Unless an emergency exists, the parents shall use the designated process to resolve disputes relating to implementation of the plan, except those related to financial support.
- (c) A written record shall be prepared of any agreement reached in counseling or mediation and of each arbitration award and shall be provided to each party.
- (d) If the court finds that a parent has used or frustrated the dispute resolution process without good reason, the court shall award attorneys' fees and financial sanctions to the other parent.
- (e) The parties have the right of review from the dispute resolution process to the superior court.

No dispute resolution process, except court action, shall be ordered, because a limiting factor under RCW 26.09.191 applies or one parent is unable to afford the cost of the proposed dispute resolution process.

VI. OTHER PROVISIONS

- There are no other provisions.
- There are the following other provisions:

VII. DECLARATION

[] Does not apply.
(Only sign if this is a proposed parenting plan) I declare under penalty of perjury under the laws of the State of Washington that this plan has been proposed in good faith and that the statements in Part II of this Plan are true and correct.

Mother Date and Place of Signature

Father Date and Place of Signature

VIII. ORDER BY THE COURT

- [] Does not apply.
- [] It is ordered, adjudged and decreed that the parenting plan set forth above is adopted and approved as an order of this court.

WARNING: Violation of residential provisions of this order with actual knowledge of its terms is punishable by contempt of court and may be a criminal offense under RCW 9A.40.070(2). Violation of this order may subject a violator to arrest.

When mutual decision making is designated but can not be achieved, the parties shall make a good faith effort to resolve the issue through the dispute resolution process.

If a parent fails to comply with a provision of this plan, the other parent's obligations under the plan are not affected.

Dated: _____
Judge/Commissioner

Presented by: _____ Approved for entry: _____

Signature Signature

Print or Type Name Print or Type Name