



**OFFICE OF THE STAFF JUDGE ADVOCATE
501st COMBAT SUPPORT WING
RAF ALCONBURY / RAF CROUGHTON, UK**



INTERNATIONAL CUSTODY, VISITATION, AND CHILD ABDUCTION

1. My ex-husband has legal custody of our daughter. He's planning to take her overseas with him to his next assignment. Can this be done?

Generally, yes. Unless a judge orders him not to take her out of the country, a custodial parent has the right to decide where the child will live. A parent with legal custody can take a child with him/her wherever they live in the absence of a court order. However, some state's laws may prohibit the custodial parent (the one with custody) from removing a child from the state without court permission. This may give the non-custodial parent a little more room to argue. A second point to consider, should the custodial parent remove the child from the country, arguably visitation issues could arise. Consider the possibility of requesting the court to modify the visitation provisions to possibly include more time or have the moving party pay all costs incurred for periods of visitation.

2. Can he get a passport for her? She's only 11.

As of July 2, 2001, as provided by Public Law 106-113, Section 236, the United States implemented a law regarding passport application procedures. Under the Two-Parent Consent Law, as amended in 2008, both parents are required to consent in person to the passport application of a minor child under the age of 16. If both parents cannot be present, then a power of attorney from the absent parent is required. Under U.S. law, U.S. citizens must enter and depart the U.S. with valid U.S. passport. However, each foreign country has its own entry requirements concerning citizenship, passports and visas. Information regarding those requirements may be obtained from the appropriate foreign embassy or consulate.

Passports for minor children are valid for 5 years (as compared to an adult passport which is good for 10 years). If one parent has sole legal authority of the child, then only their consent is required to obtain a passport assuming that they provide the Department of State with a completed court order granting them sole legal custody of the child (such as a divorce decree or other custody order) OR they provide a complete court order specifically permitting them to apply for the child's passport without the other parent's consent. The custodial parent can get a passport for the child as well as a military dependent ID card (the child must be at least 10 years old to acquire a military ID).

3. How do I get a passport for a minor child?

Either parent can apply for a passport for a child who is a U.S. citizen. However, in person parental consent from both parents/guardians is required, unless one parent has sole legal authority, one parent is unable to appear, or the other parent cannot be located. If both parents cannot be present, then a power of attorney from the absent parent is required. The parent who applies does not have to be an American citizen. The application is available at designated Postal Service offices or online at <https://travel.state.gov/content/travel/en/passports.html>. Do not sign your child's application until instructed to do so by the acceptance agent. Once it is issued, the passport's use is not "tracked" or controlled by the State Department. Either parent can request and obtain information as to the issuance of a passport for a child.

Parents interested in obtaining passport records of their child(ren) may submit a NOTARIZED letter to the U.S. Department of State, Office of Law Enforcement Liaison, 44132 Mercure Cir P.O. Box 1227, Sterling, VA 20166. The request must contain the full name, date and place of birth of the child(ren), the mailing address, email address and telephone number for the requesting parent, evidence of parental relationship, the child's passport number if known, and a clear copy of both sides of your valid Government-issued photo ID. If you are requesting a copy of the issued passport application, there is no fee. If an authenticated copy of the passport application is requested the fee is \$50.00 for the first copy. The telephone number for information is 202-955-0447. The Research and Liaison Section does not accept fax requests. Please note that passport records requested from this office can take anywhere from 12-16 weeks to be completed.

For further information regarding the issuance or denial of U.S. passports to minors involved in custody disputes, or about international child abduction, please contact: U.S. Department of State Office of Children's Issues, 2201 C Street, NW, SA-17; 9th Floor, Washington, D.C. 20520, Phone: Toll Free within the U.S. (888) 407-4747 or call (202) 736-9130.

4. I am afraid my son/ daughter will be kidnapped by their mom/dad. Is there any way that I can discover if my child has a passport?

Every year the U.S. Department of State receives nearly 3,000 reports of actual or expected abductions. About 1,000 of these involve children of dual nationality. The State Department has set up a "Namecheck Clearance System" as a lookout system for the denial of U.S. passports. While it's not a passport use tracking system, it does provide information to a parent or court about when a passport application is submitted on behalf of a child. Please see above for more information about how to submit the request to the Department of State.

5. How does the Namecheck Clearance System work?

It works in two ways. If the State Department has on file a court order that prohibits travel outside the U.S., grants custody to the parent who isn't applying for a passport, or grants joint custody to both parents, then the passport will be denied. If the State Department has on file a written request for information for a parent, guardian or court, then the Department will notify that parent, guardian or court if a passport application has been submitted for a child. The

Namecheck Clearance System remains effective until the child turns 18 or a written request is made to end it. Changes in address, phone number or name should be made in writing.

6. I'm concerned that my children might be taken away from me while they're overseas. What are my rights?

Since the late 1970s, the Bureau of Consular Affairs has taken action in over 8,000 cases of international parental child abduction. They have also provided information in response to thousands of additional inquiries pertaining to international child abduction, enforcement of visitation rights and abduction prevention techniques. The Office of Children's Issues works closely with parents, attorneys, other government agencies and private organizations in the United States to prevent international abductions. The Office of Children's Issues in the U.S. Department of State serves as the U.S. Central Authority for the Hague Convention on the Civil Aspects of International Child Abduction ("Convention"). The Convention provides a civil mechanism for securing the prompt return of *wrongfully removed* and *wrongfully retained* children to their countries of habitual residence. It also addresses *access rights*. Federal implementing legislation, the International Child Abduction Remedies Act ("ICARA"), sets forth procedures for litigating Convention cases in U.S. courts.

One-hundred-and-one countries (including the United States) have joined the Hague Convention on the Civil Aspects of International Child Abduction. The Convention discourages abduction as a means of resolving a custody matter, by requiring (with few exceptions) that the abducted child be returned to the country where he/she resided prior to the abduction. Historically, the office received ~700 applications under the Hague Convention. About half involved children abducted from the United States to other countries such as: Mexico, Canada, the United Kingdom, Germany and France.

There are still many countries, however, where the Hague Convention has not been accepted. In the event of an abduction to a non-Hague country one option for a left-behind parent is to obtain legal assistance in the country of the abduction and follow through a court action. Of non-Hague countries, the largest number of cases involved children abducted to Saudi Arabia.

7. What can the State Department do?

In cases where the Hague Convention on the Civil Aspects of International Child Abduction applies, assist parents in filing an application with foreign authorities for return of the child. In other cases, through our Embassies and Consulates abroad, attempt to locate, visit and report on the child's general welfare. The State Department may also provide the left-behind parent with information on the country to which the child was abducted, including its legal system, family laws, and a list of attorneys there willing to accept American clients. In all cases, provide a point of contact for the left-behind parent at a difficult time; monitor judicial or administrative proceedings overseas; assist parents in contacting local officials in foreign countries or contact them on the parents behalf; list the child in a passport look-out database to alert the custodial parent to an application for a U.S. passport and; alert foreign authorities to any evidence of child abuse or neglect.

The State Department Cannot:

- Reabduct the child
- Help a parent to violate host country laws
- Pay legal expenses or court fees
- Act as a lawyer or represent parents in court
- Give refuge to a parent involved in a re-abduction

If you would like more information, please call Toll Free within the U.S. (888) 407-4747 or call (202) 736-9130 for information and instructions on how to obtain our publications, or write: U.S. Department of State, Office of Children's Issues, SA-29, 2201 C Street, NW, Washington, D.C. 20520

Resources

- <https://www.justice.gov/criminal-ceos/international-parental-kidnapping>
- <https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction.html>
- www.missingkids.org

Conclusion

If you are facing issues related to international custody, visitation or child abduction, a legal assistance attorney can speak with you on your specific situation to hopefully help you brainstorm on the most effective resource to resolve the issue.

RAF Alconbury and RAF Croughton Legal Office Hours

All Services by Appointment Only (email 501cswja@us.af.mil)

Tuesdays and Thursdays 1000-1200 & 1300-1400

Current as of May 2022