

7 FAM 1920

CONSULAR OFFICER'S AUTHORITY AND RESPONSIBILITY TO VICTIMS OF SERIOUS CRIMES

(CT:CON-407; 06-29-2012)
(Office of Origin: CA/OCS/L)

7 FAM 1921 AUTHORITIES

(CT:CON-98; 12-13-2004)

- a. State and Federal governments have enacted laws that specify the rights of crime victims and many states have amended their State constitutions to accord rights to victims.
- b. Foreign governments have also recognized the unique problems experienced by victims of crime. See the non-binding U.N. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted by General Assembly resolution 40/34 of November 29, 1985.
- c. Consular authority to provide assistance to U.S. citizen victims of crime abroad and their families in the United States is derived from:
 - (1) Article 5 of the Vienna Convention on Consular Relations;
 - (2) 22 U.S.C. 1731 Protection of Naturalized Citizens Abroad;
 - (3) 22 U.S.C. 2715 Procedures Regarding Major Disasters and Incidents Abroad Affecting United States Citizens;
 - (4) 22 U.S.C. 2715a Provision of Information on Certain Violent Crimes Abroad to Victims and Victims' Families;
 - (5) 22 U.S.C. 3904(1) Functions of Service;
 - (6) 22 CFR 71.1 Protection of Americans Abroad; and
 - (7) 22 CFR 71.6 Services for Distressed Americans.

7 FAM 1922 WHAT IS THE ROLE OF THE CONSULAR OFFICER?

(CT:CON-98; 12-13-2004)

PHYSICAL SAFETY OF THE VICTIM AND HIS OR HER SENSE OF SECURITY ARE YOUR MOST IMPORTANT CONCERNS.

- a. In many serious crime cases abroad, the victims and/or family and friends look to you for assistance because they do not know how things work in a foreign country. You must be empathetic and understanding when helping either the victim or his/her family or friend. They are undoubtedly scared, frustrated and emotionally distraught trying to deal with their problems in an unfamiliar, foreign environment with none of their usual support systems available. See Consular Assistance to Victims of Crime Resource Notebook on the CA/OCS Intranet feature ("Notebook") Tab 7, General Guidelines for Assisting Victims of Crimes. Also see 7 FAM 1930.
- b. The Consular Section should prepare a handout, cleared by CA/OCS/ACS, explaining the criminal justice system in your country. Also include what you can do for the victim so he/she will have written information to review and help him/her make the necessary decisions. Post the handout on your Web site because some victims choose not to report the assault to you, but may still need assistance and information.
- c. See the "Sample Handout Criminal Justice Process" tab in the Consular Assistance to Victims of Crime Resource Notebook on the CA/OCS Intranet feature and the CA/OCS brochure "Help for American Victims of Crime Overseas".
- d. **Quick Reference Checklist:**
 - (1) Establish immediate contact with the victim or in the event the victim dies, the victim's family;
 - (2) Express empathy that the victimization occurred or condolences for the family's loss, and validate their reactions to the traumatic event;
 - (3) Report the incident to CA/OCS/ACS immediately by telephone followed by a cable;
 - (4) Establish a proactive "case-worker approach" in which the victim or family talks primarily to one person who is responsible for communication about the case. An officer in CA/OCS/ACS responsible for the region will facilitate communication with the post

as necessary;

- (5) Assess and address safety issues and immediate emergency medical and physical needs of the victim in coordination with local authorities;
- (6) Assist the victim with immediate basic needs, such as shelter, food and clothing;
- (7) Involve local crime victim assistance specialty programs where available and appropriate, e.g., rape crisis intervention, child protective services, shelters for battered women, and other victim support schemes;
- (8) Consult with CA/OCS/ACS to identify additional services that can be provided, including referral to specialized victim assistance programs and crime victim compensation in the United States;
- (9) Assist the victim with making a police report;
- (10) Ascertain the status of the police investigation into the incident and request a copy of the police report to provide to the victim, with translation if possible;
- (11) Assist the victim with the practical consequences of the crime, such as facilitating contact with family and/or arranging for a prompt return home, etc.;
- (12) Help the victim regain control of his/her life by providing information about what to expect in the immediate future (anticipated treatment, changes in hotel arrangements, law enforcement action and how the return of recovered stolen property is handled, etc.);
- (13) Provide the victim with written information about the host country's criminal justice process and points of contact for additional information about the host government; and
- (14) See 7 FAM 1932 for further guidance regarding specific crimes.

YOU CAN...

- Listen to the citizen's report of what happened and provide information about help in accessing local sources of assistance
- Observe the citizen's behavior, words, and demeanor and offer appropriate assistance.
- Report the case to CA/OCS/ACS in objective terms
- Coordinate with host country authorities, making appropriate representations on behalf of the citizen

- Provide the citizen with written information about resources for crime victims available in the United States
- Relay information to family, friends, Congressional offices, etc., consistent with the Privacy Act. See the CA/OCS Intranet Privacy Act Feature
- Provide financial assistance to citizens through OCS Trust monies sent by family or friends and Repatriation/EMDA loan programs

See 7 FAM 300.

YOU CAN NOT:

- **Act as a social worker, counselor or legal adviser**
- **Pledge the expenditure of U.S. Government funds in payment of expenses for transport or care for a patient beyond what is available under the Repatriation/EMDA programs**

See 7 FAM 300.

7 FAM 1923 WHAT IS THE ROLE OF THE CA/OCS CRIME VICTIM ASSISTANCE UNIT?

(CT:CON-98; 12-13-2004)

- a. Promote consistency in our response to U.S. victims of all serious crimes abroad.
- b. Assist posts in better understanding the impact of crime on victims, the range of services that may be necessary and available and how they may be accessed, key principles of victim assistance and the importance of being proactive in serious crime cases.
- c. Provide posts with information about medical and emotional needs of victims of crime.
- d. Provide posts and CA/OCS/ACS with information and suggestions for appropriate resources in individual cases and serve as liaison with other government agencies.
- e. Promote consistent front-channel reporting of serious crime incidents involving U.S. citizens.
- f. Maintain reference lists of help providers in each state.
- g. Develop and maintain statistics on the number of U.S. citizen victims of crime overseas, including the nature and location of crimes against U.S.

citizens abroad. See 7 FAM 200 (Deaths).

- h. Provide “crime victim assistance training” to posts abroad and keep the Crime Victim Assistance Resource Notebook up to date.

7 FAM 1924 WHAT IS THE ROLE OF CA/OCS/ACS?

(CT:CON-98; 12-13-2004)

- a. Advise family or friends of an incident that may have involved their relative/friend, or advise posts of an inquiry from family, friends, employers, etc. about a U.S. citizen abroad who may have become a victim of a crime.
- b. Coordinate with other government agencies on repatriation of crime victims in the U.S. and refer victims to appropriate services.
- c. Refer victims returning to the United States to appropriate crime victim assistance programs and state crime victim compensation programs that may pay for medical treatment, counseling, funerals, and other expenses when insurance is not available.
- d. Work with family members of child abuse victims and assist in arranging comprehensive multi-disciplinary evaluations and treatment at children’s advocacy centers in the United States, and facilitate contacts with crime victim compensation programs.

7 FAM 1925 ARE THERE LIMITATIONS ON CONSULAR OFFICERS REGARDING VICTIMS OF CRIMES AND DISCLOSURE OF INFORMATION (PRIVACY ACT)?

(CT:CON-98; 12-13-2004)

- a. Information contained in a name-retrievable system of records concerning a U.S. citizen/national victim of a crime may not be disclosed by any means of communication to any person, or to another agency except:
 - (1) By written authorization by the individual who is the subject of the record; and
 - (2) In accordance with the 12 exceptions to the conditions of disclosure in the Privacy Act, as amended (5 U.S.C. 552a(b)(1) - (12)).
- b. In a victim of crime situation, disclosure could be permissible under one

of the following statutory exceptions:

- (1) 5 U.S.C. 552a(b)(3) - “for a routine use” published in the Federal Register; or
 - (2) 5 U.S.C. 552a(b)(8), (health or safety of an individual) “to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual.”
- c. Potentially applicable routine uses are contained in the system description for the “Overseas Citizen Services Records” (STATE-05).
 - d. The health and safety exception of the Privacy Act (5 U.S.C. 552a(b)(8)) makes it possible to release information about the victim of a serious crime without a Privacy Act waiver. The information, however, can only be released to those who can reasonably be expected to assist the U.S. citizen victim and a notification of disclosure must be sent to the last known address of the victim.
 - e. See the CA/OCS Intranet Privacy Act Feature. See also the Privacy Act Tab in the Consular Assistance to Victims of Crime Resource Notebook for other Privacy Act considerations in crime victim cases and 7 FAM 060 (Privacy).
 - f. See 7 FAM 1940 Reporting crime victim cases.

7 FAM 1926 THROUGH 1929 UNASSIGNED

7 FAM 1930

GENERAL GUIDELINES FOR ASSISTING VICTIMS OF CRIMES

(CT:CON-407; 06-29-2012)
(Office of Origin: CA/OCS/L)

7 FAM 1931 BASIC PRINCIPLES OF VICTIM ASSISTANCE

(CT:CON-98; 12-13-2004)

Following are basic principles of victim assistance and guidance for assisting U.S. citizen/national victims of crime who request your help. Crimes differ in severity and sensitivity and therefore the way you assist an individual may vary according to the crime and the victim's reaction. Guidance specific to incidences of homicide, sexual assault, child physical and sexual abuse, and domestic violence follow at 7 FAM 1932. There are three categories of concern that you should understand and address as indicated below: (1) Safety and Security, (2) Ventilate and Validate, and (3) Predict, Prepare and Inform.

7 FAM 1931.1 Safety and Security

(CT:CON-98; 12-13-2004)

- a. Respond expeditiously; be on the scene as soon as possible or be in contact with the victim or his/her family by telephone after verifying the victim is who he/she says he/she is. Let them know you are "sorry that it (crime) happened" to them and you are "here to help" them. If you are unable to go to the scene, and if it is possible, enlist a volunteer from the U. S. citizen community or wardens near the victim to assist.
 - (1) Make the victim feel safe and protected from further harm; assist traumatized U.S. citizen/national crime victims in a compassionate and professional manner;
 - (2) Obtain information about what happened and assess the physical safety and immediate medical needs;
 - (3) Assist in obtaining appropriate medical care for injuries; and
 - (4) Assist with basic needs such as shelter, food, clothing and personal hygiene, as appropriate.

- b. You or the duty officer should stay in touch with the medical facility and police until the situation is stabilized. Remind the medical facility to keep you informed and to authorize consular access if necessary.
- c. Make necessary telephone calls to relatives/friends for the victim especially during the first 24-48 hours following the crime. Relay information to family, friends, Congressional offices, etc. consistent with the Privacy Act.
 - (1) Talk to the victim about what happened and his/her reactions; observe the victim's behavior, words and demeanor. Be aware that his/her traditional ways of coping may be ineffective in dealing with the crisis; and
 - (2) Assist in providing a supportive environment (family, friends, local agencies); provide information about local sources of assistance available; coordinate with host country authorities. See the Foreign Victim Compensation Programs Tab in the "Consular Assistance to Victims of Crime Resource Notebook", on the CA/OCS Intranet feature.
- d. Work with local service providers to identify and address the medical needs of the victim.
 - (1) Is specialized medical treatment or transportation needed?
 - (2) Are specialized services such as rape crisis counseling and medical/forensic examination needed?
- e. Determine the victim's concerns and assist in dealing with immediate practical consequences of the crime. Basic physical needs: shelter, food, clothing, and personal necessities should be identified and addressed. Meeting these needs provides comfort and reassurance to the victim.
 - (1) You can alleviate fear by changing a hotel room or moving the victim to the company of a relative/friend; and
 - (2) Work with local government law enforcement to determine if there is a continuing threat of attack or injury, e.g. has the assailant been identified and/or apprehended; did the assailant threaten to return?
- f. Assist victims of crime abroad and their families in receiving necessary services while still overseas; assist victims in continuing those services in the U.S. if appropriate and desired. Refer him/her to crime victim assistance and compensation programs in his/her home area. Compensation programs often provide funds for medical treatment, burials, loss of support benefits and counseling. See the Foreign Victim Compensation Programs Tab and U.S. Victims Compensation Programs Tab in the "Consular Assistance to Victims of Crime Resource Notebook."
- g. In trying to assist, always keep in mind the limitations on your authority

described in 7 FAM 1922 and 7 FAM 1925.

7 FAM 1931.2 Ventilate and Validate

(CT:CON-98; 12-13-2004)

- a. Listen with empathy and care. The victim may need to tell his/her story over and over again.
- b. Acknowledge his/her traumatic reactions and provide emotional support.
- c. Respond in a nonjudgmental manner and reassure the victim that reactions such as fear, rage, and concerns about safety, are not uncommon, and are a justifiable reaction to a traumatic event. Help to dispel the victim's feeling of self-blame and guilt, which are also common reactions.
- d. Later he/she may experience feelings of helplessness, vulnerability, and/or hopelessness.
- e. Encourage him/her to contact family/friends who can provide ongoing emotional support.
- f. Focus on alleviating the victim's distress and providing reassurance by addressing safety concerns and the practical consequences of the crime. See "Consular Assistance to Victims of Crime Resource Notebook" Tab General Guidelines on Victim Assistance for appropriate language.

7 FAM 1931.3 Predict, Prepare and Inform

(CT:CON-98; 12-13-2004)

- a. What is going to happen next is a major concern of victims. Provide information indicating what is likely to happen next, about the criminal justice process (investigations, arrest, detention/release of defendants, prosecution, sentencing and appeal) and any progress in his/her criminal case. This will help the victim to prepare himself/herself and regain a sense of control.
- b. Help the victim anticipate and prepare for the range of feelings he/she may experience such as anxiety, preoccupation with the traumatic event, concerns about personal safety, or flashbacks when they experience reminders of the crime, such as seeing someone who looks like the assailant.
- c. Provide reassurance that the above reactions are common and help them anticipate them.
- d. Offer to assist in changing reservations to return home.
- e. Coordinate with the Visa Office to expedite any necessary applications for

individuals who may provide family support.

- f. Assist with the return of the remains in death cases (see 7 FAM Chapter 200 Deaths).
- g. Report the case to CA/OCS/ACS in objective terms; do not be disparaging. Avoid using graphic details, but provide enough specific information for them to understand the needs of the victim (see 7 FAM 1940).
- h. Assist victims in filing a police report; if they are reluctant, explain the purpose and usefulness of contacting police so they can make an informed decision.
- i. Assist victims with local enforcement contacts regarding safety issues.
- j. Encourage victims to have a family member or friend accompany them to trials for emotional support (however, they must understand that the cost may not be covered by any compensation program).
- k. If possible, have someone from the post attend trials involving a U.S. citizen/national victim of a serious crime.
- l. Become a point of contact for victims who return to the United States and find it impossible to obtain information from host government law enforcement or prosecution officials. They may require information about the progress of the investigation and prosecution, and/or the scheduling of court proceedings at which they must be present.
- m. Verify and update information about the compensation program in your host country. Focus host government's attention on the principles of international instruments related to the plight of victims of crime, e.g., the U.N. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.
- n. Advocate on behalf of the victim by encouraging the host government to help the victim with travel expenses related to the trial.

7 FAM 1932 VICTIM ASSISTANCE FOR SPECIFIC CRIMES

(CT:CON-98; 12-13-2004)

- a. Crimes differ in severity and sensitivity and each serious crime type has unique issues; therefore, the way you assist an individual may vary according to the crime. Below are four major categories of crimes and how best to respond and to assist the victim. Also listed are things you should do before crimes are committed.
- b. See 7 FAM 300 if repatriation is necessary.

7 FAM 1932.1 Sexual Assault

(CT:CON-98; 12-13-2004)

- a. Rape is generally defined as forced or nonconsensual sexual intercourse.
- b. Sexual assault is generally used to describe a broader range of sexual offenses that involve touching or penetration of an intimate part of a person's body without consent. Sexual assault includes rape, forced sodomy, forced oral copulation, and sexual battery (the unwanted touching of an intimate part of another person for the purpose of sexual arousal or sexual gratification). **Most sexual assaults are committed by someone the victim knows. Be aware that the trauma of sexual assault often results in delayed reporting to authorities and requests for assistance.**

See the "Sexual Assault" Tab in the "Consular Assistance to Victims of Crime Resource Notebook" in the CA/OCS Intranet feature for additional guidance, referral services, background reading and resources and information for consular assistance to victims of sexual assault.

7 FAM 1932.1-1 Before the Sexual Assault Occurs

(CT:CON-98; 12-13-2004)

- a. Become familiar with local laws related to rape and sexual assault.
- b. Gather information about the procedures used in such cases by law enforcement and prosecutors in investigating and prosecuting sexual assaults. Also determine whether forensic examinations are routinely done and by whom.
- c. Develop a list of local resources, including medical facilities, and medical care and mental health providers such as doctors, nurse examiners and counselors, who have training in examining and treating rape or sexual assault victims.
- d. Be familiar with the "Consular Assistance to Victims of Crime Resource Notebook" guidelines.

7 FAM 1932.1-2 How to Assist

(CT:CON-98; 12-13-2004)

- a. Do not blame the alleged victim. The victim may be feeling shame, denial and alienation.
- b. Recognize the nature and seriousness of these crimes; elicit feelings and concerns.

- c. Assist the victim in arranging medical/forensic examinations. To be most effective these examinations should be done within 72 hours.
- d. If acceptable to the victim, assist the victim in making a police report and having a forensic examination as soon as possible.
- e. Assist the victim in addressing immediate medical needs.
 - (1) Facilitate access to medical examination and treatment for acute injuries as well as tests and treatment related to sexually transmitted diseases, HIV exposure, and pregnancy within 72 hours; and
 - (2) Advise the victim that certain rape treatments may induce abortion.
- f. Provide emotional support and most importantly mobilize support from family and/or friends.
- g. Give them information about available local services for sexual assault victims and facilitate their access to these services.
- h. Give them information about state compensation programs and provide a copy of the appropriate State Compensation Program sheet, but never promise compensation.
- i. Give them information about specialized services for sexual assault victims and resources when they return to the United States.
- j. Help them understand local criminal and civil justice systems.
- k. Provide information about the progress of the criminal case.
- l. Develop a single point of contact for the victim. Introduce your successor to victims you have been working with for a long time if your departure will be a loss to them.
- m. Report the crime to CA/OCS/ACS in a front-channel message showing "Crime Victim Assistance" on the subject line (see 7 FAM 1940).
 - (1) Report enough detail to convey the gravity of the alleged crime, without including sensational or graphic details that would be particularly painful or personal for the victim; and
 - (2) While you must take reports of sexual assault very seriously, do not state that a "sexual assault has occurred" or "a crime has been committed" in the absence of a finding by a competent authority.

7 FAM 1932.2 Homicide

(CT:CON-98; 12-13-2004)

- a. Homicide is the taking of another person's life and includes murder and manslaughter. When the death of a family member or loved one is sudden, unexpected and violent, the impact of hearing the news is very

traumatic. Survivors may experience shock, disbelief, emotional numbing, intense emotions, anger and guilt. This is often called “traumatic grief” or “complicated grief” because it includes factors not present in a death by natural causes. For example, there may be additional pain inherent in knowing that the death was caused by another person. The grief may be further complicated by prolonged involvement with the criminal justice process.

- b. You have a unique and critical role in assisting families when a U.S. citizen/national is killed overseas. From the moment of notification, the family or friends often become dependent on you for important information and assistance regarding the disposition of the remains and personal property.

See the Homicide Tab in the “Consular Assistance to Victims of Crime Resource Notebook” on the CA/OCS Intranet feature for additional guidance, referral services, background reading and resources, and information for consular assistance to victims of homicide (see 7 FAM 200 Death and Estates).

7 FAM 1932.2-1 Before Homicide Occurs

(CT:CON-98; 12-13-2004)

- a. The manner in which information and guidance is provided is critical. An understanding of the impact of homicide on surviving family members and basic principles of victim assistance will help you fulfill your responsibilities in the most compassionate and effective manner possible.
- b. Develop and keep updated informational material for relatives or friends and/or victims of homicide regarding the judicial process and other important laws and procedures in your country that they are likely to face or should know. Have the information available in written form and on your Web site. See the “in country crime-related brochure prepared by a post” available on the CA/OCS Intranet.
- c. Develop country specific scenarios and work with the RSO on outreach to the American community particularly in countries with a high volume of serious crime. Address universities, schools, religious group and others via the Overseas Security Advisory Council (OSAC) and the warden system.
- d. Become familiar with local laws related to homicide.
- e. Gather information about the procedures used in such cases by law enforcement and prosecutors in investigating and prosecuting homicide cases.
- f. Be familiar with the “Consular Assistance to Victims of Crime Resource

Notebook” guidelines on homicide (Homicide Tab) on the CA/OCS Intranet feature that also cover compensation programs, emotional support and crisis counseling, and assistance to family members with the criminal justice process.

7 FAM 1932.2-2 How to Assist

(CT:CON-98; 12-13-2004)

- a. Refer to 7 FAM 200 for guidance on death notification and disposition of remains.
- b. Do not state that “a homicide has occurred” or “a crime has been committed” in the absence of a finding by a competent authority.

Sample Notification Call

- **Introduce yourself and state that you are calling from the U.S. embassy/consulate general/consulate in (city/country)**
- **Use the victim’s name. “Are you the parents (husband/wife/relative) of (Name)?**
- **“I’m afraid I have some very bad news for you.” Pause to give them a chance to prepare themselves emotionally**
- **Inform simply and directly with warmth and compassion**
- **“(Name) has been killed and it appears to have been a homicide.” Pause**
- **“I am so sorry.” Adding our condolence is very important because it expresses feelings rather than facts, and invites them to express their own**
- **At this point, offer to call someone else to be with the next of kin if desired. Let them take the lead. They may want details or may just want to be quiet or cry**
- **“My telephone number is (give complete dialing instructions from the United States) “ May I call you back in an hour and get a FAX number where I can send you important information?”**
- **“I am so sorry. I will call you back in an hour” (or an agreed upon time interval)**

- c. Report the crime to CA/OCS/ACS in a front-channel message showing “Crime Victim Assistance” on the subject line (see 7 FAM 1940).

See 7 FAM 200 for additional guidance regarding the FAXED casualty message: letter of condolence, disposition of remains letter, report of death information, and other important procedures regarding the death of a U.S. citizen abroad.

7 FAM 1932.3 Domestic Violence

(CT:CON-98; 12-13-2004)

- a. Domestic violence is a pattern of coercive behavior using intimidating, threatening, harassing, or harmful behavior that occurs between two people in a marriage or other form of intimate relationship.
- b. “Domestic violence” may involve physical, sexual, emotional, psychological abuse and/or financial or economic abuse. Domestic violence may also occur within same sex relationships; children living in an abusive home may also be victims of physical abuse or they may suffer emotional consequences from witnessing violence.
- c. Victims of domestic violence may seek your help at any point in an abusive relationship:
 - (1) When the abuse is primarily emotional;
 - (2) Shortly after the first violent incident; or
 - (3) After a pattern of physical abuse has occurred over time.
- d. See the “Domestic Violence” Tab in the “Consular Assistance to Victims of Crime Resource Notebook” on the CA/OCS Intranet feature for additional guidance, referral services, background reading and resources and information for consular assistance to victims of domestic violence.

7 FAM 1932.3-1 Before Domestic Violence Occurs

(CT:CON-98; 12-13-2004)

- a. Develop and keep updated informational material for victims of domestic violence regarding the judicial process and other important laws and procedures in your country that they are likely to face or should know. Have information available in written form and on your Web site. See “Help for American Victims of Crime Overseas” brochure.
- b. Become familiar with local laws related to domestic violence and what will/will not be prosecuted in the host country.
- c. Gather information about the procedures used in such cases by law enforcement and prosecutors in investigating and prosecuting domestic violence.

- d. Develop a list of local resources, including medical facilities, and medical care and mental health providers such as doctors, nurse examiners and counselors, who have training in domestic violence. See 7 FAM 300 for guidance on preparing a list of doctors, hospitals, and air ambulance services.
- e. Be familiar with the “Consular Assistance to Victims of Crime Resource Notebook” guidelines (Domestic Violence Tab) on the CA/OCS Intranet feature and strategies on assisting victims of domestic violence that also cover compensation programs, crisis counseling and shelter programs, and assisting family members with the criminal justice process.

7 FAM 1932.3-2 How to Assist

(CT:CON-98; 12-13-2004)

- a. The safety of the victim who reports the alleged domestic violence (and children if any are in the home) is your first concern.
- b. Don’t blame the alleged victim.
- c. Talk to him/her alone, without the spouse or children present. Do not underestimate the potential danger involved in the victim’s disclosure of domestic violence.
- d. Identify immediate medical needs and assist him/her to receive medical care.
- e. Ask if he/she has any concerns for his/her immediate safety, or that of his/her children. If yes, what are they? Does she have a plan to protect herself in the event of further violence?
- f. Ask questions to obtain specific information about the nature and severity of the abuse he/she is reporting and whether children in the home have been abused or witnessed the reported abuse?
- g. Ask if there have been previous incidents of domestic violence and whether he/she reported these to police or received medical treatment for injuries.
- h. Encourage him/her to report abuse to the police and facilitate his/her contact with police if he/she wishes to report an assault. Identify potential problems or solutions with foreign exit control laws.
- i. Help him/her obtain local law enforcement assistance with matters such as requesting an order of protection or returning to the household for personal property.
- j. Ask if there are family or friends locally who can help?
- k. Provide information about resources that address his/her physical safety and that of his/her children, his/her emotional needs, and basic issues

such as housing, food, clothing, and health.

- l. If the person requests refuge or protection and there appears to be no appropriate local resources to ensure the U.S. citizen's safety, (see 7 FAM 100 and 7 FAM 1700).
- m. If he/she does not have a passport and wants to return to the United States, help with documentation for himself/herself and his/her children, (see 7 FAM 1300).
- n. Alert the RSO about the situation if there are concerns about security at post.
- o. Respect the decision the victim makes about whether to go to local authorities or return to the United States, being mindful that there are risks attached to whatever decision he/she makes.
- p. Assess the situation and coordinate with CA/OCS/ACS about risks and options for assistance. Advise the victim of specialized resources for victims of domestic violence at post, if available, and in the United States if repatriation is planned.
 - (1) The actual departure is often a dangerous time for the victim and those accompanying him/her because the alleged assailant may become angry about their leaving;
 - (2) CA/OCS's crime victim assistance specialists may be able to help identify domestic violence victim assistance and compensation resources that may be available in the state/community if the victim returns to the United States; and
 - (3) Assist him/her to obtain copies of police reports and/or medical documentation of injuries from abuse.
- q. Report the alleged domestic violence to CA/OCS/ACS in a front-channel message showing "Crime Victim Assistance" on the subject line. Provide enough detail to convey the gravity of the situation, including the nature of the injuries and threats, without including sensational details (see 7 FAM 1940).
- r. While you must treat allegations of domestic violence seriously, avoid assuming or saying that "a crime has been committed" in the absence of a finding by a competent authority.

7 FAM 1932.4 Child Abuse

(CT:CON-98; 12-13-2004)

- a. You play an important role in recognizing abuse and responding when U.S. citizen children are abused or victimized overseas. See "Possible Indicators" at Child Abuse tab in the "Consular Assistance to Victims of

Crime Resource Notebook,” on the CA/OCS Intranet feature. In most cases of reported child abuse, you will work with local authorities who will be responsible for determining whether a child has been abused and what protective action will be taken (see 7 FAM 1720).

- b. Because local resources and approaches to child abuse vary significantly in different countries, you should notify CA/OCS/ACS to coordinate your response and assistance. When local authorities are not available to provide protection for an abused U.S. citizen child (see 7 FAM 110 and 7 FAM 1720).
- c. Close coordination with OCS/ACS and International Social Service USA (ISS), the Department of Health and Human Services’ contractor in repatriation and resettlement cases, may also be required if the child is repatriated; CA/OCS/ACS will also consult with a CA/OCS victim assistance specialist for referral to specialized diagnostic and treatment programs in the United States.

7 FAM 1932.4-1 Before Child Abuse Occurs

(CT:CON-98; 12-13-2004)

- a. Develop and keep updated informational material for child abuse victims regarding the judicial process and other important laws and procedures in your country they are likely to face or should know. Have available in written form and on your post Internet page.
- b. Become familiar with the local civil and criminal laws regarding child abuse and neglect.
 - (1) What is the role of law enforcement in investigating child abuse?
 - (2) Are there mandated reporters, i.e., professionals who are required by law to report suspicion or evidence of child maltreatment?
 - (3) What are the procedures for investigating abuse if a U.S. citizen/national child has been reported to be abused?
 - (4) Are there child protection agencies available? Where would a child be placed if he/she were removed from his/her home? If not, identify resources in the U.S. community that could provide assistance on a short-term basis.
 - (5) Do not enter the child’s home without the permission of the parent or guardian, unless you are accompanying a local social services or law enforcement official that has a legal right to enter the premises. If a parent or guardian will not permit access, notify CA/OCS/ACS.
 - (6) Identify local resources that have expertise in handling child victims. What medical resources could be used for the medical examination of the U.S. citizen/national child who has been

physically or sexually abused?

- (7) What mental health resources could be used to assess the mental health needs of the abused child?
- (8) Identify experts in the fields of child abuse, child medical treatment, and child mental health within the U.S. community.

7 FAM 1932.4-2 How to Assist – General Guidelines

(CT:CON-98; 12-13-2004)

- a. The protection of the child from further abuse from the alleged perpetrator is a key issue in child victim cases. In most cases local authorities are responsible for assessing (through interviews and medical examination) whether abuse occurred, who was responsible, and whether the child is in danger of further abuse.
- b. Respond expeditiously to allegations of child abuse.
- c. Contact the family and local child protection agency and/or law enforcement and gather information about the reported abuse.
- d. If no child protection or law enforcement agency is involved, you should consult with CA/OCS/ACS about appropriate action to ensure the protection and safety of the U.S. citizen/national child.
- e. Be alert to conditions that place children at risk of further serious injury and continually convey the interest of the U.S. Government in the protection and welfare of the child to competent local authorities.
- f. Send a front-channel cable (CASC tag) including the following (see 7 FAM 1940):
 - (1) The child's name, and date and place of birth;
 - (2) The parents' names, dates and places of birth;
 - (3) Passport numbers of child and parents if available;
 - (4) The nature of the abuse or neglect allegation (avoid lurid or graphic details);
 - (5) The child's condition and current location and custody;
 - (6) Identify issues related to protection from further abuse, custody, health and mental health needs and law enforcement and/or child protective service actions; and
 - (7) Indicate whether local authorities are available to assess and document the allegation of abuse and/or to protect the child from further abuse (see 7 FAM 1720).
- f. Consult with CA/OCS/ACS regarding actions to be taken and services that may be needed. The ACS officer will coordinate with the OCS victim

assistance specialists about services and assistance that may be appropriate for the child victim and the family.

- g. Monitor the situation closely when a child is placed in foster care. Inquire about the local agency's short-term and long-term plans for the child.
- h. Actively ensure the appropriate planning for and custody of the child if the parents or guardians are prosecuted or incarcerated.
- i. Be alert to practices of local agencies that further traumatize a U.S. citizen/national child victim and notify CA/OCS/ACS if you believe that a child is being physically or psychologically injured through the process.
- j. While you must treat allegations of child abuse seriously, avoid assuming or saying that a "crime" has been committed in the absence of a finding by a competent authority or court.

7 FAM 1932.4-3 Investigations by Child Protective Services

(CT:CON-98; 12-13-2004)

- a. When a local child protective service agency is investigating a child abuse allegation, you should arrange to visit and interview the child as soon as possible and gather the following information from relevant agencies and/or the family.
 - (1) What is the nature of allegation?
 - (2) Who is accused? Are criminal charges pending or filed? If yes, what are the charges and potential penalties? Does the child have the support of a non-accused adult family member?
 - (3) Are there siblings in the home and what is their status? Are they at risk? What is the plan for them?
 - (4) If the sole custodial parent, both parents or legal guardian are accused and may be prosecuted by the host government, what arrangements are in place for the child's temporary placement/longer term placement?
- b. You should work to ensure that:
 - (1) The child is safe from further abuse;
 - (2) A medical examination is performed and treatment needs are identified and addressed;

All victims of child sexual abuse must have a medical examination by a person with training in sexual abuse examination. Physically abused and neglected children must also be examined by a doctor for injuries and to chart physical/mental development. This treatment may not be available in the host country. Referral to a child advocacy center in the United States and crime victim assistance program are particularly important in such cases.

- (3) Appropriate interviews are conducted to determine the nature and extent of the abuse or neglect, and the person responsible;
- (4) The child's mental health needs are being addressed; and
- (5) Both short-term and long-term plans for the child are developed.

7 FAM 1933 THROUGH 1939 UNASSIGNED

7 FAM 1900 CRIME VICTIM ASSISTANCE

7 FAM 1910 INTRODUCTION

*(CT:CON-407; 06-29-2012)
(Office of Origin: CA/OCS/L)*

7 FAM 1911 OCS CRIME VICTIM ASSISTANCE PROGRAM

(CT:CON-98; 12-13-2004)

- a. The OCS Crime Victim Assistance Program began in June 2000, following a 1999 inter-agency agreement with the U.S. Justice Department. The overall goal of the consular victim assistance program is to help U.S. citizen/national victims of crime abroad and their families receive necessary and available services while still in the foreign country, and to continue receiving those services if appropriate and desired, upon return to the United States.
- b. The Bureau of Consular Affairs created the Crime Victim Assistance Program because the needs of victims of serious or violent crimes overseas are notably different from cases involving accidents, illness, or death by natural causes due to the nature of the trauma the victim experiences and involvement in the criminal justice process. You can be involved with victims of violent crime over a long period of time, providing information about progress in the criminal case and facilitating their return to the country for criminal justice proceedings. In addition, Congress and the states have provided hundreds of millions of dollars to support victim assistance and victim compensation throughout the United States and you have an important role in helping U.S. citizen/national victims of crime abroad obtain information about these resources.
- c. In these cases, the word “alleged” is used not to express skepticism, but merely to indicate that there has been no adjudication that a crime has occurred. Nonetheless, this fact should not detract from a sympathetic and helpful attitude towards persons who say they have been victimized. Your assistance is not conditioned upon whether a judicial finding has been made nor is it contingent upon your certainty that the crime did occur. Your role does not require you to satisfy yourself with respect to

the particular elements of what a person asserted happened nor do we require unquestioning belief of victims' statements as a criterion for providing assistance.

- d. The program primarily focuses on assisting victims of serious crimes, including:
- Homicide
 - Sexual assault
 - Child physical and sexual abuse
 - Domestic violence
 - Armed robbery, assault
 - Kidnapping
 - Other crimes in which the victim suffers serious physical injuries and/or emotional trauma
- e. This chapter applies to private U.S. citizens/nationals. For crimes against **official U.S. citizens and dependents**, see 3 FAM 1810 and 7 FAM 1700. 7 FAM 1700 also includes hostage taking and terrorism.

Factors that affect the impact of crime on victims are:

- **Quality and Timeliness of your Response;**
- **The Amount of Support from Family, Friends and Others;**
- **The Number and Quality of Choices and Options Offered.**

7 FAM 1912 THROUGH 1919 UNASSIGNED

7 FAM 1720

CHILD ABUSE OR NEGLECT

(CT:CON-407; 06-29-2012)
(Office of Origin: CA/OCS/L)

7 FAM 1721 SUMMARY

(CT:CON-407; 06-29-2012)

- a. Allegations of child abuse or neglect should be taken seriously. These cases must be approached urgently but dispassionately, and with deliberation and discretion. Consular officers should carefully review this section before taking any action in suspected cases of child abuse or neglect, in which either the alleged perpetrator or victim is a U.S. citizen/national. The Office of American Citizens Services and Crisis Management (CA/OCS/ACS) is the action office in the Department of State for child abuse and neglect issues concerning private U.S. citizens/nationals abroad. CA/OCS/ACS and the Office of Children's Issues (CA/OCS/CI) coordinate closely in parental child abduction cases involving possible child abuse or neglect. The role of consular officers in protecting children is recognized in the Vienna Convention on Consular Relations (VCCR), see 7 FAM 1722 Authorities. For questions about emergency action such as requests for temporary refuge, see 7 FAM 180.
- b. **Privacy Act:** The privacy of any U.S. citizen/national or legal permanent resident should be respected and protected and that any action taken must occur within legally established parameters.

(1) **The Child.**

- (a) The Privacy Act covers all U.S. citizens/nationals and lawful permanent residents (LPR's), including minors. As a general matter, information about a minor may be released to the minor's parent(s). Section (h) of the Privacy Act – Rights of Legal Guardians – provides:

5 U.S.C. 552a(h)

"Rights of legal guardians: For purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared incompetent due to physical or mental incapacity or age by a court of competent

jurisdiction, may act on behalf of the individual."

- (b) Parents, however, do not have an absolute right to the information under the Privacy Act and the wishes of the minor may, in some cases, override those of the parent(s). The OMB Privacy Act Guidelines note that subsection Section (h) of the Privacy Act is "discretionary and that individuals who are minors are authorized to exercise the rights given to them by the Privacy Act or, in the alternative, their parents or those acting **in loco parentis** may exercise them in their behalf." OMB Guidelines, 40 Fed. Reg. at 28,970; see also OMB Guidelines, 40 Fed. Reg. 56,741, 56,742 (1975) (noting that "[t]here is no absolute right of a parent to have access to a record about a child absent a court order or consent").
- (c) In the context of this subchapter, the explicit wishes of minors must also be respected. Normally, if you have been advised by a minor age 14 or older that he or she does not want any information released to parent or guardian, you should honor those wishes absent the presence of compelling circumstances affecting the health or safety of the minor child. Bring the matter to the attention of [CA/OCS/L](#) immediately and we will provide an advisory opinion on a case-by-case basis.
- (d) Department approval is required before disclosure is made to the parent(s) in certain cases, such as where the minor has indicated that the information not be disclosed or where disclosure could jeopardize the safety and well-being of the child. Accordingly, you should obtain prior approval from [CA/OCS/L](#) **before** releasing any information regarding a runaway under the following circumstances:
 - There are signs of abuse, and reason to believe a parent or other household member is the abuser
 - The minor indicates he or she does not want information released to the parent
 - There is credible concern for the minor's safety

(2) **Health and Safety Exception to the Privacy Act.**

- (a) The Privacy Act's "health or safety" condition of disclosure is the one most relevant to U.S. citizen/national minors in overseas Behavior Modification Facilities. It provides ...

5 U.S.C. 552a(b)

"No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior consent of, the individual to whom the record pertains, unless disclosure of the record would be: **to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual.**"

- (b) Before a disclosure can be made, this exception requires a "showing of compelling circumstances affecting the health or safety of an individual...." therefore, information about a U.S. citizen/national may be released to a person who it can be said can reasonably be expected to care for or assist the U.S. citizen/national. This section of the Act may also be invoked to save the life of the U.S. citizen/national, notwithstanding his or her written affirmation of his or her right to privacy.
 - (c) The Privacy Act requires us to notify individuals in writing whenever we invoke the "health or safety" condition of disclosure with respect to information about them that is otherwise safeguarded by the Act. Therefore, posts are requested to advise the Department (a) whenever they avail themselves of this condition of disclosure and (b) any information re the individual's last known address (the minor's address) so that we may attempt to effect the requisite notification. Questions about the Privacy Act may be directed to CA/OCS/ACS or to CA/OCS/L at Ask-OCS-L-Dom-Post@state.gov. This mailbox is monitored daily.
- (3) **U.S. Citizen/National or LPR Alleged Perpetrator:** If the consular officer receives a credible report that a U.S. citizen/national or LPR of the United States is responsible for child abuse or neglect involving a U.S. citizen/national child, you should:
- (a) Immediately report the matter to the regional security officer (RSO);
 - (b) Immediately report the matter to CA/OCS, see 7 FAM 1721(c);
 - (c) Information may be shared with other U.S. Government agencies and U.S. state officials as appropriate, in accordance

with State-05, the Department's Statement of Routine Uses;

- (d) Information may be shared with host country law enforcement authorities in accordance with State-05, the Department's Statement of Routine Uses;
 - (e) Information may be shared with U.S. law enforcement in connection with a law enforcement activity. This requires a letter or memo from the law enforcement agency specifically requesting information about the individual and citing the law enforcement activity. A copy of the agency request and memo regarding the disclosure should be included in post consular file on the case; and
 - (f) Posts do not, as a rule, request the arrest of a U.S. citizen abroad by host country authorities. That is not to say it has never been done. To take such action is extraordinary and requires concurrence of CA and L.
- c. **Reporting Child Abuse or Neglect:** Consular officers should advise the Department (CA/OCS/ACS) as soon as possible when you are confronted with any cases. You may alert CA/OCS/ACS telephonically or by email or fax, as appropriate, and follow with a cable. CA/OCS duty officers and the CA/OCS duty director may be consulted after normal working hours. The reporting cable should include CASC, ASEC AND KOCI tags.
- d. **Crisis Intervention in Child Abuse and Neglect Cases:** Local authorities are responsible for protection of minors in their jurisdiction, including non-residents. (See 7 FAM 1727.) The Department is prepared to make very aggressive representation to host country authorities in cases where child protection is warranted. Determination as to whether a child is the victim of abuse or neglect is something that is done by professionals in this field. Consular officers generally do not take physical custody of children who are victims of child abuse or neglect. This is a responsibility of the host government. In extraordinary cases where no local structure exists to provide that protection, and post believes the child's life is in immediate danger, see 7 FAM 180 for guidance on providing temporary emergency protection to private U.S. citizens in U.S. Department of State posts abroad. Posts must notify and consult with the appropriate offices in the Department immediately when a U.S. citizen requests temporary refuge, detailing the reasons for the citizen's request and advising about relevant local conditions. The Department generally will approve such requests only when the U.S. citizen/national would otherwise be in danger of serious harm. A U.S. citizen/national granted temporary refuge may remain within post facilities only until appropriate arrangements to secure the citizen's safety are in place.

- e. **Official Personnel and Dependents:** Allegations of abuse or neglect relating to a mission employee, official contractor, dependent spouse or child, or U.S. military personnel and/or dependents subject to CM authority should be brought to the immediate attention of the regional security officer (RSO) (or directly to the Bureau of Diplomatic Security (DS) and the regional medical officer (RMO). See 3 FAM 1810 Family Advocacy Program (Child Abuse, Child Neglect and Domestic Violence).
- f. **Parental Rights:** Termination of parental rights is rarely exercised, but we have seen it occur in the most egregious cases where the parent is arrested and prosecuted for child abuse by host country authorities. It is often more likely that the host government will take measures to deport the family or terminate their immigration status rather than make determinations about parental authority, custody, etc. Also see Child Abuse Statutes at a Glance: Grounds for Termination of Parental Rights. (See 7 FAM 1728.)
- g. **U.S. Protective Measures: Reception and Resettlement in the United States:** The host government may ask the consular officer what measures the United States will take for protection of the child when the family returns to the United States. This subchapter summarizes the resettlement assistance available from the Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement (HHS/ACF/ORR) (which handles repatriation issues) and its contractor International Social Services (ISS-USA) in cases involving child abuse and neglect. (See 7 FAM 1729 and 7 FAM 390.) We also cross reference the victim assistance and compensation that may be available in child abuse cases. (See 7 FAM 1932.4.)
- i. **Recognizing Child Abuse and Neglect:** Consular officers are not social workers or law enforcement officers, but you are trained observers and do have considerable experience interviewing people. In this subchapter, we discuss the use of these consular skills in welfare and whereabouts visits with children. (See 7 FAM 1724.2d and 7 FAM 1727.)
- j. **Manipulation of Situation by Perpetrators:** Consular officers should be aware that in cases of long-term child abuse, particularly including child sexual abuse, the perpetrator exercises excessive control over the child and takes pleasure in continuing to do so, even after the individual has been arrested. CA/OCS has seen cases in which the arrestee has tried to use code words or symbols to continue to hurt the child. If a perpetrator, particularly a parent, says that the child must have a particular object, for example, do not assume that this is a benign or kind gesture. We have seen multiple cases in which the introduction of a phrase or object to the child resulted in terror. Similarly, the arrestee may try to exercise control over property, including the child's clothing, even from his or her prison cell. The consular officer should not be a

party to this manipulation and torment and local authorities should be sensitive to this possibility. Consult CA/OCS for guidance as needed. (Also see 7 FAM 1728 Parental Authority.)

- k. **Additional Resources:** See also 7 FAM 1730 regarding child exploitation and 7 FAM 1932.4 Crime Victim Assistance: Child Abuse and see the CA/OCS Intranet Consular Victims of Crime Resource Notebook for Child Abuse Guidelines, Background and Referrals. 7 FAM 1721 Exhibit Child Abuse and Neglect Resources provides links to various sources of assistance and reference materials.

7 FAM 1722 AUTHORITIES

(CT:CON-102; 02-27-2005)

- a. **Consular Authority:** The authority for consular protection of U.S. citizen/national minors is derived from a variety of treaties, laws and regulations. The Department, specifically the Bureau of Consular Affairs, has clear authority to ascertain the welfare of U.S. citizen/national minors who are outside the United States particularly when there is any indication that their health and safety could be at risk. Our responsibilities for U.S. citizen minors are all the greater for their inherent vulnerability and need for protection.
- (1) **TREATIES:** You should be aware of what consular treaties apply in the host country. See Treaties in Force on the Department of State Internet site.
- (a) Vienna Convention on Consular Relations (VCCR). Article 5(h) and of the VCCR provides that consular functions include protection of the interests of minors of the sending State.

Article 5(h) Vienna Convention on Consular Relations

Consular functions include ...

“(h) safeguarding, within the limits imposed by the laws and regulations of the receiving State, the **interests of minors** and other persons lacking full capacity who are nationals of the sending State, particularly where any guardianship or trusteeship is required with respect to such persons.”

Article 37 of the VCCR concerns host country responsibilities in the event cases of guardianship or trusteeship.

Article 37 VCCR

"If the relevant information is available to the competent authorities of the receiving State, such authorities shall have the duty:

(b) to inform the competent consular post without delay of any case where the appointment of a guardian or trustee appears to be in the interests of a minor or other person lacking full capacity who is a national of the sending State. The giving of this information shall, however, be without prejudice to the operation of the laws and regulations of the receiving State concerning such appointments."

- (b) **Bilateral Consular Conventions.** See the CA/OCS Intranet page treaties feature for information about bilateral consular conventions. Check Treaties in Force on the Department of State Internet page to confirm the status of a particular treaty.
- (c) The **U.N. International Covenant on Civil and Political Rights** which is in force for the United States provides ...

Article 24

"Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State."

(2) **Laws and Regulations on Consular Protection.**

- 22 CFR 71.1 Protection of Americans Abroad
- 22 CFR 71.6 Services for Distressed Americans
- 22 U.S.C. 1731 Protection to Naturalized Citizens Abroad
- See 7 FAM 1730 for U.S. laws and regulations concerning exploitation of children.

b. **Federal Laws Governing Reporting Child Abuse**

- 42 U.S.C. 5119 - Reporting Child Abuse Crime Information

- 42 U.S.C. 13031 - Child Abuse Reporting
- 18 U.S.C. 1169 – Reporting of Child Abuse
- 18 U.S.C. 2258 – Failure to Report Child Abuse

The Child Abuse Act of 1990 (42 U.S.C. 13031) requires that certain professionals in federal facilities report allegations of child abuse whenever any such professional “learns of facts that give reason to suspect that a child has suffered an incident of child abuse.” The provisions of the Act require eight broad categories of professionals to report:

- (1) All health care personnel, including physicians and nurses;
- (2) Psychologists, psychiatrists and mental health professionals;
- (3) Social workers and counselors;
- (4) Teachers and other school professionals;
- (5) Child care workers and administrators;
- (6) Law enforcement personnel;
- (7) Foster parents; and
- (8) Commercial film and photo processors.

In the Department and most posts, individuals in the following positions have a statutory duty to report: RMO, RMO/P, FSNP, RSO, CLO, LEGATT, contract physicians and nurses as well as anyone else who falls within the eight categories listed above. The Child Abuse Act requires reporting whenever covered professionals learn of suspected child abuse “while engaged in a professional capacity on federal land or in a federally operated or contracted facility. Thus, for example, a health care provider treating a person at a health unit who learns of possible abuse against any child must report, no matter where or by whom the abuse allegedly occurred. In any case of uncertainty about whether a situation requires reporting, the covered professional should report. Consular sections should confer with regional medical officers (RMOs) and regional security officers (RSOs) accordingly.

c. **Selected Criminal Law and Child Abuse and Neglect**

- 18 U.S.C. 3509 Child Victims’ and Child Witnesses’ Rights

7 FAM 1723 DEFINITIONS

(CT:CON-102; 02-27-2005)

Note: The following definitions are based on U.S. law. Local laws of foreign countries may provide different standards of behavior. Some countries may tolerate corporate punishment or even severe beatings of minors. Consular officers should bring allegations of child abuse or neglect to the immediate attention of the Department, which will provide guidance.

FYI ... Child abuse does not include discipline administered by a parent or legal guardian to his or her child provided it is reasonable in manner and moderate in degree and otherwise does not constitute cruelty.

Child. Any person below the age of eighteen.

Child Abuse. The National Clearinghouse on Child Abuse and Neglect Information provides the following operational definitions for the three main types of child maltreatment. Although any of the forms of child abuse may be found separately, they often occur in combination. Emotional abuse, for example, is almost always present when other forms are identified.

Child Neglect. Characterized by failure to provide for the child's basic needs. The assessment of child neglect requires consideration of cultural values and standards of care as well as recognition that the failure to provide the necessities of life may be related to poverty.

Educational Neglect. Includes the allowance of chronic truancy, failure to enroll a child of mandatory school age in school, and failure to attend to a special educational need.

Emotional Abuse. This includes psychological, verbal, or mental injury such as acts or omissions by the parents or other caregivers that have caused, or could cause, serious behavioral, cognitive, emotional, or mental disorders. In some cases of emotional abuse, the acts of parents or caregivers alone, without any harm evident in the child's behavior or condition, are sufficient to warrant child protective services intervention. For example, practices such as confinement of a child to a dark closet or a cage can be considered emotional abuse.

Emotional Neglect. Includes such actions as marked inattention to the child's needs for affection, refusal of or failure to provide needed psychological care, inadequate supervision, spouse abuse in the child's presence, and tolerance of drug or alcohol use by the child.

Physical Abuse. The infliction of physical injury as a result of punching, beating, kicking, biting, burning, shaking, or otherwise harming a child. The

parent or caretaker may not have intended to hurt the child; rather the injury may have resulted from excessive discipline or physical punishment.

Sexual Abuse. This includes fondling a child's genitals, intercourse, incest, rape, sodomy, exhibitionism, and commercial exploitation through prostitution or the production of pornographic materials (See 7 FAM 1730). Many experts believe that child sexual abuse is the most under-reported form of child maltreatment because of the "conspiracy of secrecy" that so often characterizes these cases.

7 FAM 1724 POST RESPONSIBILITIES

7 FAM 1724.1 Allegations of Child Abuse

(CT:CON-102; 02-27-2005)

Reports of child abuse that involve a U.S. citizen/national may come to the post's attention through a variety of channels and from a number of sources, including:

- (1) A parent, who may or may not also be a victim of abuse;
- (2) A parent, who may be involved in a parental abduction or custody dispute;
- (3) Local authorities;
- (4) A teacher;
- (5) A cleric;
- (6) A doctor, local hospital, or clinic;
- (7) Another mission employee;
- (8) A concerned neighbor;
- (9) A sibling or other family member; and
- (10) The child.

All allegations of child abuse or neglect should be taken seriously, but it is important to understand that such allegations are not always true.

7 FAM 1724.2 Consular Response to Allegations

(CT:CON-102; 02-27-2005)

- a. Except in a situation involving imminent danger to the child, a consular officer who learns that a U.S. citizen/national child is possibly being abused or neglected should take the following actions:
- (1) **Ascertain Citizenship Status:** Confirm through post records or other means whether the child is, in fact, a private U.S. citizen/national;
 - (2) **Assess Immediate Course of Action:** Depending on the circumstances, you may conclude that there is no time to consult the Department and that you must act, with the help of local authorities. If so, see 7 FAM 1726 Emergency Actions. Alternatively, you may decide that a welfare and whereabouts check is in order. If so, see 7 FAM 1727, but remember that a visit to a household where abuse is occurring can result in more danger to the child or the fleeing of the perpetrator with the child. Consult with the regional security officer (RSO) and regional medical officer (RMO) and other as appropriate; and.
 - (3) **Report to the Department:** Initial consultation with the Department about a child abuse or neglect case may be done by phone, email or fax, but should be followed up with a front channel cable. Prepare an immediate cable to CA/OCS/ACS, and include as much factual information as possible. Avoid language that assumes the truth of the allegations or attaches diagnostic labels to any individuals in the case unless there is already credible evidence at hand. Reporting cable should include CASC, ASEC and KOCI tags. Include:
 - (a) Full name, date, and place of birth (DPOB) of child;
 - (b) Passport record or other citizenship information;
 - (c) Names, DPOB'S and citizenship of parents or guardians;
 - (d) Name, Date and Place of Birth and citizenship of the alleged abuser if he or she is not a parent or guardian;
 - (e) Source of allegations of abuse;
 - (f) Brief description of the alleged abuse (Avoid lurid or graphic details);
 - (g) Any medical or psychological treatment provided the child, including names, profession, address & phone numbers, etc.; and

- (h) Current information on social services and child protective services generally available to foreigners in the host country.
- b. **Recommended Course of Action:** In the same or a follow-up cable, recommend possible courses of actions based on your knowledge of the case and your experience with local officials, etc. Your proposed actions should include a recommended timetable, and could include:
 - (1) Perform a welfare/whereabouts check at the child's home or school. (See 7 FAM 1728 and 7 FAM 100);
 - (2) Inform all appropriate local authorities, such as social workers, emergency medical personnel, and law enforcement agencies of the allegations. See 7 FAM 1721 regarding Privacy Act implications;
 - (3) Obtain all possible documentation of the abuse such as statements from persons who have observed abuse or injury to the child, police reports, medical records, photographs, etc.;
 - (4) Assist in finding temporary accommodations; and
 - (5) Assist in repatriation to the United States.
- c. Remember that all actions you propose must be consistent with local law.
- d. **Recognizing Risk Factors For Child Abuse:** Child abuse or neglect can be a single event, but more often, it occurs as a pattern of activity that takes place over time. While no definitive set of characteristics is available to identify all children who are maltreated, the three tables at 7 FAM 1720 Exhibit 1 may be helpful. They are drawn from a matrix of risk indicators (parent behavior and stressors, and child physical characteristics and behavior) created by the State of New York. These tables may help you recognize some of the signs that a child is at risk for various types of maltreatment. You must understand, however, that these factors can exist in families where there is no abuse and that abuse can occur in families without these factors. In the final analysis, competent local authorities, such as physicians, social workers, mental health professionals, teachers and child advocacy experts, must make the determination of whether a child is abused or neglected. The Department recognizes, of course, that in some countries the availability of such resources can be scarce. Also see the U.S. Justice Department publication, **Recognizing When a Child's Injury or Illness Is Caused by Abuse: Portable Guides to Investigating Child Abuse.**

7 FAM 1725 DEPARTMENT'S ROLE IN CHILD

ABUSE AND NEGLECT CASES

(CT:CON-102; 02-27-2005)

The Department (CA/OCS, CA/VO, CA/PPT, L/CA and other offices) can assist posts in a number of ways in cases of suspected child abuse or neglect. Such assistance includes, but is not limited to:

- (1) Locating family members in the United States who may be able to help with a victimized U.S. citizen child abroad;
- (2) Providing advisory opinions on post's recommended actions;
- (3) Coordinating repatriation of a child to another family member or for placement by the Department of Health and Human Services (HHS/ACF/ORR) or its contractor, International Social Services (ISS-USA);
- (4) Determining, through the U.S. National Crime Information Computer (NCIC) or other law enforcement sources, whether there are any outstanding warrants against an alleged child abuser
- (5) Obtaining copies of outstanding warrants, indictments, and court orders which may assist a post in persuading local authorities to take action to protect the child;
- (6) Directing foreign officials to authorities in the United States with expertise on child abuse and neglect. This may be particularly helpful to countries that have no or limited social services or domestic protection programs; and
- (7) Escalating action: if a competent local authority fails to take measures to protect a child who is the victim of serious documented abuse, raise the issue at higher levels of the foreign government. Should highest-level action become necessary, the Department will guide the post in taking coordinated action.

7 FAM 1726 EMERGENCY ACTIONS

(CT:CON-407; 06-29-2012)

- a. **Department Authorization:** Because of the sensitivity, privacy concerns and the possible notoriety inherent in alleged abuse cases, and the expertise available in CA/OCS, post actions and recommendations must usually be reviewed and approved in advance by the Department. In the rare case in which the allegations reported lead you to reasonably conclude that the child is in imminent danger of serious physical or

emotional harm, you should, after reviewing these guidelines and with the concurrence of the chief of the consular section, immediately inform local authorities, and take whatever other steps are necessary to protect the safety of the child. See 7 FAM 1721 for Privacy Act guidance.

- b. **Medical Attention:** Posts should facilitate putting the family in touch with available local emergency medical facilities, including any specialized programs for child abuse. (See 7 FAM 300.) If the U.S. citizen/national minor appears at post and is visibly injured, emergency first aid may be provided by embassy/consulate personnel as directed by the Chief of Mission. Embassy/consulate personnel should not/not conduct physical examinations related to allegations by the U.S. citizen of physical abuse (including sexual abuse), unless instructed to do so in explicit guidance from the Department.
- c. **Documenting Injury:** Post should describe the nature and extent of the injury or illness, with as much detail as possible through simple observation and by speaking with the U.S. citizen/national, in the initial report to the Department. Obtain written statements from parent reporting the injury, and the child if possible. Post should take photographs documenting the injury if feasible.
- d. **Physical Custody of the Child:** You may take NOT a child into your physical custody even if another parent requests it, except in a case of extreme necessity as described in 7 FAM 180 and 1727(g).
- e. **At the Scene:** If approved by the Department, you may and should remain at the home or school with the child until appropriate local social services or law enforcement officials arrive on the scene, provided circumstances allow you to do so safely. Accompany the parent and child to the safe haven, if you can do so safely.
- f. **Temporary Accommodations:** You may assist a parent who is attempting to remove the child from the presence of the abusing parent by arranging for accommodations at a government or private charity shelter, or at an appropriate hotel. You may also arrange for transportation to such safe haven.
- g. **Expenses:** If costs are incurred and the family is destitute, see 7 FAM 380 for guidance about Emergency Medical and Dietary Assistance and Repatriation loans. Food and basic toiletries should be provided to a U.S. citizen/national upon request, using EMDA funds. In appropriate circumstances, *CA/OCS/L* will help determine whether and to what extent funds may be available to assist the U.S. citizen/national from U.S. state or federal crime victim compensation programs, from the National Center for Missing and Exploited Children, or through the U.S. Department of Justice OJJDP grant program.

- g. **Temporary Refuge in U.S. Department of State Facilities:** In a case of extreme necessity where no other shelter is available, consider bringing the child and parent to the post, in accordance with the guidelines in 7 FAM 180. On the basis of the information provided by the U.S. citizen and post, the appropriate Department offices (to include CA/OCS/ACS, L, and the relevant regional bureau) will consult, involving Department principals as appropriate, to ensure a Department decision concerning whether or not the circumstances warrant affording temporary refuge to the U.S. citizen. CA/OCS/ACS will have the lead. The Deputy Secretary or an official designated by him normally will clear the decision. (See 7 FAM 180.)

7 FAM 1727 WELFARE/WHEREABOUTS CHECK IN CHILD ABUSE AND NEGLECT CASES

(CT:CON-102; 02-27-2005)

- a. Once approved by the Department (CA/OCS/ACS), you should normally perform a welfare/whereabouts check at the child's home and/or school. The visit should conform to the following guidelines:
- (1) If the visit is to the child's home you should:
 - (a) Inform the parent or guardian of the allegation;
 - (b) Do not reveal the source of the allegations, nor go into more detail than absolutely necessary;
 - (c) Explain that when such allegations are received the consular officer needs to ascertain the well being of the child, and that allowing the visit may also be in the best interest of the custodial parent; and
 - (d) You should not enter a private residence without the permission of a person entitled to consent to access under local law, unless you are accompanying a local social services or law enforcement official that has a legal right to enter the premises. If you cannot get consent, notify the Department.
 - (2) If The Visit Is To The Child's School- You should:
 - (a) Advise the principal or other appropriate official that you are concerned about the welfare of the child;
 - (b) Provide only as much detail of the allegation as is necessary to enlist cooperation; and

- (c) Use the opportunity to discuss with the child's teachers, school counselor or other school officials any signs of possible abuse they may have noted.
- b. **If There Is A Threat Of Violence**, under no circumstances should you attempt to perform a welfare/whereabouts check in cases where information suggests that the alleged abuser might direct violence toward the child, you or others.
- c. **Indication of Imminent Violence or Danger:** As soon as information indicates that violence might result from or during a visit cease any visible welfare/whereabouts activities. If there appears to be a reasonable risk of imminent danger to the child, inform the local authorities immediately. Advise the Department CA/OCS/ACS and provide recommendations for further action.
- d. **Evidence of Abuse:** If you determine during your visit that there are clear signs of abuse you should immediately inform the Department and request authorization to advise local law enforcement or social services of the case. If you believe the child is in immediate danger of physical or emotional harm, inform local authorities before notifying the Department. If the child has been hurt and given no medical attention, or a young child has been left alone with no indication as to when a responsible adult will return, seek assistance from local social services or police immediately. If at all possible, alert the Department to the situation. Remain with the child until appropriate professionals arrive.
- e. **Follow Up:** Check back to ensure that the local authorities have taken appropriate action to deal with the situation, including, if necessary, removing the child from the home. If local social services are non-responsive, inadequate or unavailable to foreigners, you should seek immediate guidance from the Department.

7 FAM 1728 PARENTAL AUTHORITY

7 FAM 1728.1 Parent(s) Under Arrest

(CT:CON-102; 02-27-2005)

- a. If the child's parent or parents are arrested by local authorities, the child may be taken into temporary foster care or the care of social services. The host country authorities may act under local child protection laws, may make the child a ward of the court or appoint a guardian ad litem for the child. In countries party to the Vienna Convention on Consular Relations (VCCR), the host country must notify the U.S. embassy or

consulate when this action is taken. You can verify whether the VCCR is in force in the host country by checking Treaties in Force on the Department of State Internet page.

Article 37 of the Vienna Convention on Consular Relations provides ...

If the relevant information is available to the competent authorities of the receiving State, such authorities shall have the duty: (b) to inform the competent consular post without delay of any case where the appointment of a guardian or trustee appears to be in the interests of a minor or other person lacking full capacity who is a national of the sending State. The giving of this information shall, however, be without prejudice to the operation of the laws and regulations of the receiving State concerning such appointments."

- b. If the arrested parent(s) are U.S. citizens/nationals, post should proceed with normal arrest case action as outlined in 7 FAM 400. If possible, one consular officer should handle the arrest aspects of the case and another consular officer should handle the child protection aspects of the case. If a consular officer has already established some rapport with the child, that officer should continue to be responsible for the consular protection activities on behalf of the child so the child, using the single point of contact case officer approach.
- c. Post should provide CA/OCS/ACS with specific information regarding the parent(s)' alleged crimes, including copies of pertinent documents. This instruction also applies if the offending parent(s) is not a U.S. citizen/national.

7 FAM 1728.2 One Parent Arrested, One Parent at Liberty

(CT:CON-102; 02-27-2005)

- a. If one parent is arrested and the other remains at liberty, host country authorities may intercede and follow up with a home study and provide medical care, counseling, shelter, or other services to the remaining parent and child(ren). The consular officer should report such activity to CA/OCS/ACS. This may be done initially by phone, email or fax, but should be followed by cable. Even if the host country provides these services, a consular officer should visit the remaining parent and child(ren).
- b. If the host country does not voluntarily provide these services, the consular officer should make inquiries on behalf of the parent at liberty

and the child as appropriate, and put them in contact with whatever services exist locally. If no local social services of this nature, the consular officer should make appropriate representations to local authorities regarding immediate medical treatment, as needed, shelter, etc. If necessary, post may need to contact the local American community, missionaries, etc., to see if anyone is available to provide temporary assistance pending repatriation of the child.

- c. The consular officer should help contact relatives or friends in the United States who can receive the child and the parent at liberty.

7 FAM 1728.3 Parent(s) Arrested, Child Alone

(CT:CON-407; 06-29-2012)

- a. If one parent is under arrest and the other parent's whereabouts are unknown and cannot be determined, or the other parent has disavowed any interest in the child, the child is in essence de facto abandoned. Consistent with the Vienna Convention on Consular Relations (VCCR), with respect to special consular responsibilities for minors (Article 5,h), post should take action to facilitate the child's repatriation to the United States. When a child comes within the purview of consular authority under Article 5(h) of the VCCR, aggressive efforts should be made to afford the child consular services.
- b. The consular officer should immediately visit the child in the place where the child is being cared for by local authorities or foster family and report to the Department (CA/OCS/ACS) regarding the welfare of the child. An initial report by phone, email or fax should be followed by cable.
- c. CA/OCS/ACS will assist post in trying to locate relatives in the United States who may be able to receive the child. We will also enlist the help of HHS/ACF/ORR and ISS-USA, HHS's contractor to ensure that placement with the relatives is appropriate. Local social services in the United States may require that a home study be conducted under the circumstances. *CA/OCS/L's* Victim Assistance Specialists can also assist in identifying crime victim assistance and compensation available, including multi-disciplinary children's advocacy centers near the repatriation location. (See 7 FAM 1900.)
- d. The consular officer should also make appropriate inquiries to ensure that the child receives medical attention as necessary. See 7 FAM 300 regarding Emergency Medical and Dietary Assistance (EMDA) and 7 FAM 1900 regarding crime victim compensation and assistance. Remember that crime victim monetary compensation for medical expenses, if available from the victim's last state of residence, is usually provided in

the form of reimbursement, not an up front payment.

- e. Confirm with local authorities that the child's continued or immediate presence is not needed in connection with the criminal case against the child's parent(s) and that local authorities have no objections to the child leaving the host country. Confirmation should be reported to the Department by cable. If the host country requires transmittal of diplomatic notes on the subject, fax or scan and email copies to CA/OCS/ACS. *CA/OCS/L's* Victim Assistance Specialists can provide detailed guidance about child witnesses as needed if the child's continuing presence or testimony is required.
- f. Post should also request to facilitate retrieval of the child's belongings. Permission of the parent under arrest is not/not required or appropriate. Post should take possession of the child's U.S. passport. If the passport cannot be located, then post may issue a replacement passport. If there are other important documents related to the child, the consular officer should take appropriate steps to safeguard them.

7 FAM 1729 REPATRIATION AND RESETTLEMENT

(CT:CON-102; 02-27-2005)

- a. Post and CA/OCS/ACS can assist in repatriation and resettlement of the child, and parent at liberty. This may include:
 - (1) Locating family members;
 - (2) Assisting in the transfer of private funds through commercial means or OCS Trust (see 7 FAM 300);
 - (3) Requesting expedited repatriation authority and funds from the Department if private funds are not available (see 7 FAM 300);
 - (4) Assisting with transportation arrangements, including transportation to the airport or other points of departure;
 - (5) Locating appropriate escort, as necessary;
 - (6) Arranging HHS/ACF/ORR/ISS-USA reception at Port of Entry, if necessary. This service is available even if family members pay for the transportation;
 - (7) Providing crime victim assistance and compensation information and referral services; and

- (8) Providing assistance if/when child/parent must return to the host country to testify.
- b. For the purposes of resettlement and continued care for the child in the United States, HHS/ACF/ORR and ISS-USA advise that they need specific information regarding the crime(s), including:
 - (1) Copies of pertinent documents, including photographs and other evidence of abuse; and
 - (2) Child's medical and school records and copies of any reports/recommendations completed by therapists, physicians, etc. These should include a copy of any psychological, psychiatric and social assessment evaluations.

7 FAM EXHIBIT 1721

CHILD ABUSE AND NEGLECT RESOURCES

(CT:CON-102; 02-27-2005)

U.S. Department of Health and Human Services

National Clearinghouse on Child Abuse and Neglect

Child Abuse and Neglect State Statute Series

Child Abuse Statutes at a Glance: Grounds for Termination of Parental Rights

The Role of Law Enforcement in Response to Child Abuse and Neglect

Crisis Intervention in Child Abuse and Neglect

U.S. Department of Justice

Office for Victims of Crime – Child Abuse

Law Enforcement Response to Child Abuse

Battered Child Syndrome, Investigating Physical Abuse and Homicide

Photo Documentation in the Investigation of Child Abuse

Forming a Multidisciplinary Team to Investigate Child Abuse

Support Resources for Victims of Child Abuse

Child Abuse Reported to the Police

Violent Offenders: Child Victimiziers and Their Victims

Child Sexual Molestation

Recognizing When a Child's Injury or Illness Is Caused by Abuse: Portable Guides to Investigating Child Abuse

What You Should Know About Child Abuse (For Children 6-11)

Child Abuse Victimization

International

Child Abuse - World Health Organization

Child Abuse and Neglect – World Health Organization

International Society for Prevention of Child Abuse and Neglect

NGOs

National Center for Missing and Exploited Children (NCMEC)

National Foundation for Abused and Neglected Children

Regional Child Advocacy Centers, National Children's Alliance

7 FAM EXHIBIT 1723(A) NEGLECT AND MALTREATMENT POSSIBLE INDICATORS

(CT:CON-407; 06-29-2012)

Parent		Child	
Behavior	Stressors	Physical Characteristics	Behavior
Leaves child unsupervised, especially in dangerous activities for long periods of time	Experienced neglect or maltreatment as a child	Appears malnourished	Begs or steals food
Routinely severely criticizes or threatens child	Unfamiliarity with normal child development and disciplinary techniques	Untreated physical problems: medical, dental, etc.	Constant fatigue, listlessness, falls asleep
Home appears excessively dirty, dangerous, barren, or chaotic	Mental or physical health problems	Clothing is inappropriate for the season	Frequent lateness or absence <i>from</i> school
Isolates child for long periods	Cognitive disability	Appears chronically dirty and unkempt	Child reports not caretaker at home
Gives children inappropriate drink, medicine or other substances	Loss of employment	Developmental lags	Uses alcohol or drugs
Denies child medical treatment	Unable to obtain adequate food, medical care	Failure to thrive	Sucking, biting or rocking beyond toddler hood
Ignores child's bids for affection and attention	Little or no contact with extended family or other adults		Behavior extremes: Compliant, passive, overly shy, needy <i>or</i>
Appears intoxicated or high	Poor housing		Aggressive, demanding,

Fails to provide supervision and guidance of child's behavior	Multiple relocations or changes in household membership		destructive
Keeps child out of sight			

7 FAM EXHIBIT 1723(B) PHYSICAL ABUSE: POSSIBLE INDICATORS

(CT:CON-102; 02-27-2005)

Parent		Child	
Behavior	Stressors	Physical Characteristics	Behavior
Refuses consent for medical examination/diagnostic testing	Experienced neglect or abuse as a child	Bruises and welts: <i>Appear most often on the face, mouth, lips, thighs, buttocks.</i>	Reports being injured to teachers or others
Fails to obtain medical care for child	Unfamiliarity with normal child development or disciplinary techniques	<i>Caused by slaps, lashes from belts, buckles, branches, rulers</i>	Blames self for abuse: "I was bad and upset Mommy."
Conceals child injuries	Social isolation	Bites: <i>Appear as facing half-circles</i>	Child's explanation of injury is inconsistent
Uses discipline that is extreme or inappropriate for the child's age, sex, or behavior	Family member with chronic physical or mental illness or alcohol problems	Choke marks and abrasions: <i>Appear on neck, wrists, ankles</i>	Wears long sleeves or other concealing clothing (not appropriate for the season.)
Discipline is often cruel	Divorce, separation, remarriage	Burns: <i>Appear as circular marks on palms, soles of feet, buttocks, genital area.</i>	Fears going home or runs away
Unrealistic expectations for child	Multiple changes in household	<i>Caused by</i>	Overly passive or extremely aggressive and angry

Keeps child confined for long periods	Alienation from extended family network	cigarettes and cigars <i>Appear as blistered areas. Caused by immersion in scalding water</i>	Seems to feel no pain with injury or exaggerates small injuries
Discourages social contacts	Overcrowded or inadequate housing	<i>Appear as splatter pattern on face, arms, and torso. Caused by hot substances thrown</i>	Low self esteem
Keeps child out of sight	Loss of employment or other source of income	Fractures	
	Recent immigration or relocation	Unexplained or vaguely explained injuries	

7 FAM EXHIBIT 1723(c) SEXUAL ABUSE: Possible Indicators

(CT:CON-102; 02-27-2005)

Parent		Child	
Behavior	Stressors	Physical Characteristics	Behavior
History of sexual abuse offense	Experienced sexual abuse as a child or adolescent	Difficulty in walking or sitting	Extreme interest in his or her sexual organs, or those of others
Hypervigilance and repressive about issues related to sexuality	Family member with mental illness	Pain or itching in genital area	Exhibits seductive or promiscuous behavior
Takes child to many different medical facilities	Family member with drug/alcohol problem	Bruises or bleeding in genital or anal area	Overly suspicious, watchful, or fearful of physical exam
Physically intrusive with child	Family member with chronic illness or physical	Venereal disease	Avoids being touched or is overly desirous of physical contact

	handicap		
Acts as though child is much older or younger than age	Social isolation	Wetting or soiling after toilet training has been achieved	Withdraws into fantasy or unusual behavior
Discourages social contacts	Divorced, separated, remarried	Distressing dreams, nightmares, or sleep disturbances	Exhibits regressive behavior
Keeps child confined to home for long periods of time	Little or no contact with extended family members or other supportive adults		Poor academic functioning
Views child as possession			Poor relations with other children
			Pseudo maturity

7 FAM 1700 SAFETY AND PROTECTION OF MINORS

7 FAM 1710 INTERNATIONAL PARENTAL CHILD ABDUCTION

*(CT:CON-411; 07-09-2012)
(Office Of Origin: CA/OCS/L)*

7 FAM 1711 INTRODUCTION, AUTHORITIES, DEFINITIONS

7 FAM 1711.1 Policy

(CT:CON-395; 02-09-2012)

- a. The policy of the United States is that a child who is habitually resident in one country and wrongfully removed from or retained outside of that country shall be promptly returned to that country. Once the child has been returned, any custody dispute can be resolved, if necessary, in the competent court of the country of habitual residence. This policy does not address who should have custody of the child; it addresses where the custody case should be heard (venue).
- b. International parental child abduction is a serious problem worldwide. International parental child abduction has received much attention from the Congress, the media, state and federal governments, and the legal and law enforcement communities. Individual cases of international parental child abduction can become highly visible, attracting attention at the highest levels of government and affecting bilateral relationships. You must approach each case carefully and professionally, recognizing the Department's overarching interest in the protection of minor U.S. citizens/nationals abroad and promoting the principles and compliance with the obligations found in The Hague Convention on the Civil Aspects of International Child Abduction (Hague Abduction Convention). It is also important to consider the potential public and diplomatic ramifications of

any action a consular officer takes to assist in returning children to their habitual residences.

- c. The Department is also responsible for implementation of the Hague Abduction Convention within the United States. The Office of Children's Issues, acting as U.S. Central Authority (USCA) for the Hague Abduction Convention, cooperates with foreign central authorities to facilitate return of children abducted from a foreign country and believed to be in the United States. Consular authority for carrying out these duties in the United States comes from the Hague Abduction Convention and its implementing legislation, the International Child Abduction Remedies Act, 42 U.S.C. 11601 et. Seq., and Title 22, Section 94 of the Code of Federal Regulations.

Related Topics:

For a full discussion of how to respond to requests from U.S. citizens/nationals for temporary emergency protection/emergency refuge at post, see 7 FAM 180.

7 FAM 1700 includes subchapters on related topics which may also be useful in child abduction matters. These include:

7 FAM 1720 Child Abuse or Neglect;

7 FAM 1730 Child Exploitation. This includes a discussion of the Protect Act and reporting requirements;

7 FAM 1740 Forced Marriage of Minors;

7 FAM 1750 International Child Support Enforcement;

7 FAM 1760 Runaways, Abandoned Children and Unaccompanied Minors;

7 FAM 1770 Return of Children; and

7 FAM 1780 Behavior Modification Facilities.

Questions about Passports for Minors are addressed in 7 FAM 1350 and 7 FAM 1300 Appendix Q Children's Passport Issuance Alert Program (under development).

7 FAM 1711.2 Authorities

(CT:CON-395; 02-09-2012)

- a. Authority to provide consular services in international parental child abduction cases derives from a variety of treaties, laws, regulations, and Executive Orders.
- b. **Treaties:** You should be aware of which treaties apply in the host country. See Treaties in Force on the Department of State Internet site.

- (1) The Vienna Convention on Consular Relations (VCCR) provides the basic authority for consular protection of nationals. The United States and over 150 other nations are parties to the VCCR, which is among the basic sources of international legal authority for the consular officer's engagement on behalf of U.S. citizen/national children abroad. If the VCCR is in force in the host country, you should be familiar with the provisions of the treaty related to consular protection of nationals. See Treaties in Force on the Department of State Internet home page to confirm whether or not the host country is a party to the VCCR. While consular officers perform functions relating to the welfare of all U.S. citizens/nationals, the VCCR accords special recognition to the protection of minors because of their vulnerability. You have a special obligation to be proactive and creative when dealing with children's issues in general, and with abduction and custody issues in particular. Your authority under the VCCR is particularly important in international parental child abduction cases to countries not party to the Hague Abduction Convention.

Article 5 of the VCCR provides that consular functions include

“(h) **Safeguarding** within the limits imposed by the laws and regulations of the receiving State [host country], **the interests of minors** and other persons lacking full capacity who are nationals of the sending State [the United States], particularly where any guardianship or trusteeship is required with respect to such persons”

- The VCCR addresses not only your authority as consular officers, but also the responsibilities of the host country. Article 37 of the VCCR concerns host country responsibilities when it is apparent that a minor may be subject to appointment of a guardian or trustee.

Article 37 VCCR provides ...

“If the relevant information is available to the competent authorities of the receiving State, such authorities shall have the duty:

- (b) to inform the competent consular post without delay of any case where the appointment of a guardian or trustee appears to be in the interests of a minor or other person lacking full capacity who is a national of the sending State. The giving of this information shall, however, be without prejudice to the operation of the laws and regulations of the receiving State concerning such appointments.”

- Even if the VCCR is not in force between the United States and the receiving country, consular officers would still be able to provide welfare services under customary international law.
- **Bilateral Consular Conventions:** See the CA/OCS Internet bilateral consular conventions section. Check Treaties in Force on the Department of State Internet page to confirm the status of a particular treaty.

(2) **The Hague Convention on the Civil Aspects of International Child Abduction.** This treaty entered into force for the United States in 1988. The Hague Abduction Convention is a useful tool in resolving those parental abduction cases in treaty partner countries and provides a conceptual framework for addressing non-Hague cases as well. In general, the purpose of the Hague Abduction Convention is to secure the prompt return of children wrongfully removed to or retained in one contracting state to the contracting state in which the child is habitually resident.

- c. **U.S. Laws, Regulations And Executive Orders:** Several laws have been enacted to combat international parental child abduction in the United States in addition to many more relevant state laws. While these laws are often enforceable only within the United States, they may have impact on the status of a child and a taking parent outside the United States.

(1) General

- 22 U.S.C. 1731 Protection of Naturalized Citizens
- 22 U.S.C. 3904(1) Functions of Service
- 22 CFR 71.1 Protection of Americans Abroad

(2) Uniform Laws on Child Custody

What are Uniform Laws?

The phrase "Uniform Laws" can be misleading. Upon approval by the Uniform Law Commission (ULC) a Uniform Law is not law anywhere in the United States. The Uniform Law Commission drafts model laws with the intent of proposing their adoption by state legislatures. Many states adopt the model law and others pass an amended version of the law while others may not adopt it at all. The purpose of creating model laws is to increase consistency in the law among the states.

- The Uniform Child Custody Jurisdiction Act (UCCJA) facilitates the mutual recognition and adjudication of child custody determinations by state courts. NCCUSL proposed the UCCJA in 1968 and all 50 States

have adopted the UCCJA in some form. See also Uniform Matrimonial and Family Laws Locator.

- The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) enhances the UCCJA by granting exclusive continuing jurisdiction to the state making the original custody determination (child's "home state"), clarifying the limits of emergency jurisdiction, and providing for direct enforcement of custody orders as well as Hague Abduction Convention return orders. The UCCJEA also provides for recognition of custody orders issued by courts outside the United States. To date, 49 states, the District of Columbia, and the U.S. Virgin Islands have adopted the UCCJEA model.

NOTE:

As of July 25, 2011 the only U.S. state that has not adopted the UCCJEA is Massachusetts, although a bill to enact it is presently pending in its Legislature. Puerto Rico has also not adopted the Act, although a bill to enact it is pending in its Legislature.

- (3) **U.S. Federal Law and Parental Child Abduction International Parental Kidnapping Crime Act (IPKCA)**, (18 U.S.C. 1204) makes it a felony to remove or attempt to remove a child younger than 16 from the United States, or to retain the child outside the United States, with the intent to obstruct the lawful exercise of parental rights.
- **National Child Search Assistance Act of 1990** (NCSA) (42 U.S.C. 5779 (Reporting Requirement) and 42 U.S.C. 5780 (State Requirements): The NCSA requires local, state and federal law enforcement agencies, when informed of an abduction of a child, to immediately enter the appropriate data into the National Crime Information Center (NCIC) database without requiring a waiting period.
 - **Parental Kidnapping Prevention Act (PKPA)** (1980), 18 U.S.C. 1073, authorizes the issuance of Federal Fugitive Felony Warrants (i.e.: Unlawful Flight to Avoid Prosecution (UFAP)) in parental kidnapping cases when the abductor has fled the state or the United States to avoid prosecution. It also authorizes the use of the Federal Parent Locator Service of the Department of Health and Human Services to locate abducted children and abducting parents.
 - **International Child Abduction Remedies Act (ICARA)** (1988), 42 U.S.C. 11601 implements the Hague Abduction Convention in the United States in accordance with federal regulations found at 22 CFR 94, International Child Abduction.

- **The Reid Amendment (“Two Parent Signature Law”):** Section 236 of The Admiral James W. Nance And Meg Donovan Foreign Relations Authorization Act, Public Law 106-113, 113 STAT. 1501A-420 (22 U.S.C. 213 and 22 U.S.C. 213 Notes). This law originally required that both parents or legal guardians execute the U.S. passport application for a child under the age of 14. 22 CFR 51.28(a) now requires two parent consent for minors under the age of 16. There are, however, exceptions to this requirement. See 7 FAM 1300 Passport Services, specifically 7 FAM 1350 Passports for Minors.

(4) Delegations of Authority:

- Delegation of Authority No. 172: Delegation of Authority with Respect to Performance of the Functions of Central Authority under the Hague Convention on the Civil Aspects of International Child Abduction. (From the Secretary to CA)
- Delegation of Authority No. 173: Delegation to the Director of the Office of Citizens Consular Services - Hague Convention on the Civil Aspects of International Child Abduction and the International Child Abduction Remedies Act. (From CA to CA/OCS)

- (5) Memorandum of Understanding: U.S. Department of Health and Human Services, Office of Child Support Enforcement and U.S. Department of State, Bureau of Consular Affairs – Requests for Information From the Federal Parent Locator Service in International Child Abduction Cases for children abducted to the United States (incoming cases) (November 2011).

7 FAM 1711.3 Definitions

(CT:CON-395; 02-09-2012)

The following definitions may be useful in implementing the procedures in this subchapter.

Child. In general, this means an unmarried person under the age of 18. For purposes of providing consular services in the context of international parental child abduction, other factors may affect a child’s status.

- (1) **Hague Abduction Convention:** The remedies created by the Hague Abduction Convention are only available with respect to children under the age of 16.
- (2) **The Reid Amendment (“Two Parent Signature Law”):** Section 236 of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Public Law 106-113, 113 STAT. 1501A-420 (22 U.S.C. 213 and 22 U.S.C. 213 Notes). This law requires that both parents or legal guardians execute the U.S. passport application for a child under the age of 14, but the Department applies it to

children under the age of 16 in accordance with 22 CFR 51.28. There are, however, exceptions to this requirement (see 7 FAM 1350).

- (3) **Foreign Military Service:** Some countries treat a child serving in the armed forces of that country, whether enlistee or inductee, as an adult. In general, the U.S. does not consider such persons to be adults. We must, however, recognize it as a fact, and as a possible hindrance to providing certain consular services to or on behalf of a child. See also the Optional Protocol Children in Armed Conflict to the U.N. Convention on the Rights of the Child. The United States is a party to this optional protocol, but is not party to the U.N. Convention on the Rights of the Child. See Treaties in Force on the Department of State Internet page.
- (4) **Marriage:** Although a married person is generally considered an adult, regardless of age, the Department is aware of cases involving abducted children whose taking parents have arranged marriages for them in the foreign country while the children are still very young. In such circumstances, we generally treat them as children for the purposes of this chapter. See 7 FAM 1740 Forced Marriage of Minors.

Children's Passport Issuance Alert Program (CPIAP). Through the CPIAP program, a parent or legal guardian (other than a parent whose parental rights have been terminated by a court order) may request that his or her minor child's or ward's name be placed in the Department's Consular Lookout and Support System (CLASS), so that the parent or legal guardian will be notified if a passport application is received for the child. Additionally, any child who is reported to the Department as an alleged victim of international parental child abduction must be entered into CLASS via CPIAP. The hold remains in place until the child reaches age 18. (22 CFR (c)). See 7 FAM 1300 Appendix Q (under development). The hold can be overcome if a parent presents evidence that justifies issuance of a passport without the other parent's consent.

Parent. For the purposes of this chapter, the term "parent" refers to a biological parent, adoptive parent, stepparent, foster parent or other person acting "in loco parentis" or any person or competent authority who has legal right of custody to a child.

- (1) **Left Behind Parent (LBP):** The person fitting the definition of "Parent" who is not able to exercise custodial rights (real or alleged) as a result of the other parent's removal or alleged retention of the child outside the child's habitual residence.

NOTE:

Under the Hague Convention, an institution, such as a child welfare authority, may be the applicant for return of a child.

- (2) **Alleged Taking Parent (TP):** The person fitting the definition of "Parent" who has removed, or plans to remove, a child from the country of habitual residence resulting in the interference with the other parent's rights of custody. This definition also applies to a parent who may have taken the child with the other parent's consent, but who then retains the child abroad in violation of the other parent's rights of custody ("wrongful retention").

Central Authority. Each state party to the Hague Abduction Convention designates an entity to be responsible for coordinating the implementation of the Hague Abduction Convention in that country and to serve as the primary point of contact for communication with foreign Central Authorities. The Department of State is the U.S. Central Authority. The Office of Children's Issues in the Consular Affairs Bureau (CA/OCS/CI) has been designated as the action office, and performs the functions required of the Central Authority under the Hague Abduction Convention.

Hague Abduction Convention. For the purposes of this chapter, this term, or simply the word "Convention", is shorthand for the Hague Convention on the Civil Aspects of International Child Abduction.

IPCA Database. The International Parental Child Abduction computer application (IPCA) is the database that the Office of Children's Issues (CA/OCS/CI) uses to record and monitor child abduction, access, and prevention cases. Posts currently have read-only access to IPCA through the Consular Consolidated Database (CCD) but will have the ability to record case notes directly into the database when it is moved to an Internet-based platform.

National Center for Missing and Exploited Children. NCMEC is a private, nonprofit 501(c)(3) organization that provides services nationwide for families and professionals in the protection of abducted, endangered, and sexually exploited children. NCMEC is an important resource to children and families, providing a wide range of services including:

- Producing and distributing missing children posters. NCMEC has agreed to produce posters for those children that CA/OCS/CI has not been able to locate through its own searches. Contact the appropriate CA/OCS/CI if you think a missing children poster should be created for a particular case.
- Providing a Web site with valuable resources for families, law enforcement, attorneys, and other child welfare professions;
- Counseling parents and referring the LBP to other mental health services; and

- Overseeing and distributing funds to LBPs for travel to participate in hearings abroad or to arrange return of their children, with funding from the U.S. Department of Justice Office for Victims of Crime.
- Assisting with identifying and retaining counsel for parents.
- Assisting parents with interactions with local and federal law enforcement officers.

7 FAM 1712 CONSULAR ROLES AND RESPONSIBILITIES IN CHILD ABDUCTION MATTERS

7 FAM 1712.1 Role of the Bureau of Consular Affairs (CA)

(CT:CON-407; 06-29-2012)

- a. The Office of Children's Issues, Directorate of Overseas Citizens Services, Bureau of Consular Affairs (CA/OCS/CI) is the U.S. Central Authority for the Hague Abduction Convention. CA/OCS/CI also handles international parental child abduction cases to and from non-Convention countries. The Office's duties are summarized at 1 FAM 255.1-2. CA/OCS/CI works to strengthen treaty compliance in the United States and abroad and to expand participation in the Hague Abduction Convention. CA/OCS/CI provides information to left-behind parents on their options and in non-Hague Convention countries collaborates with consular officers on strategies to return abducted children to the United States. CA/OCS/CI also administers the Children's Passport Issuance Alert Program (see 7 FAM 1300 Appendix Q (under development)).
- b. On May 25, 2010, the Secretary of State appointed a Special Advisor for Children's Issues to address intercountry adoption and international parental child abduction. The Special Adviser engages with foreign government officials to support the Department's policy goals on international parental child abduction and international adoption.
- c. CA/OCS/CI chairs the Inter-Agency Coordinating Group authorized by 42 U.S.C. 11609. The Inter-Agency Coordinating Group monitors the operation of the Convention and provides advice on its implementation to the United States Central Authority and other Federal agencies.
- d. The Office of Legal Affairs, Directorate of Overseas Citizens Services Bureau of Consular Affairs (CA/OCS/L) (Ask-OCS-L-Dom-Post@state.gov), provides law and policy guidance on international parental child abduction related matters to CA/OCS/CI, CA/OCS/ACS and

posts abroad. CA/OCS/L provides treaty interpretation, in coordination with the Office of the Legal Adviser for Consular Affairs (L/CA). CA/OCS/L also provides guidance on law and policy for child abuse, neglect, exploitation and international child support enforcement and two parent consent issues regarding passports for minors.

- e. The Office of American Citizen Services and Crisis Management, Directorate of Overseas Citizens Services, Bureau of Consular Affairs (CA/OCS/ACS) is responsible for American Citizen Services (ACS) functions attendant to international parental child abduction cases such as repatriation, child abuse and neglect, and refuge, as well as custody cases related to children who are not involved in international parental child abduction.

7 FAM 1712.2 Role of Posts Abroad

(CT:CON-407; 06-29-2012)

- a. It is both important and instructive to understand that the role of consular officers in international parental child abduction cases when the child is located abroad is drawn from the broader function of protecting U.S. citizens abroad, with additional emphasis on the protection of a child. Your goal in most abduction cases is facilitating the return of the child through lawful means to his or her country of habitual residence. Even in those countries that do not have a treaty relationship with the United States under the Hague Abduction Convention, your actions should be in keeping with the principles behind the Convention.
- b. When the child is allegedly abducted to the United States, the role of the consular officer is drawn either: 1) from the Hague Abduction Convention, if the child was removed from a country that is a partner with the United States under the Hague Abduction Convention; or 2) from CA's policy approving the use of resources to assist in cases where the child is removed from a country with which the United States is not/not a partner under the Hague Abduction Convention. Consular officers may exchange information as necessary and appropriate with the relevant foreign Central authority, foreign governments, or INTERPOL, in coordination with CA/OCS/CI.
- c. The Department's objective to return children to their country of habitual residence derives from the basic premise of the Hague Abduction Convention, which states the appropriate venue for a custody determination is the court in the child's habitual residence. The consular officer's role is to facilitate communication with the alleged taking parent, the alleged taking parent's family, and the host government. The consular officer's role is not to insert him/herself in the family dynamic by making judgments about how the parent and child should interact, in the

absence of indications of danger to the child.

- d. The basic principle of international law--that a person residing or traveling abroad is subject to the laws of the host country and the jurisdiction of its courts--applies to children as well as to adults. The laws of the country where the child is present physically, even though perhaps temporarily, are normally controlling. As a consular officer you may not violate, or assist others in violating, the host country's law. Nonetheless, it is usually possible for you to provide significant assistance to parents and others seeking the lawful return of an abducted or wrongfully retained child to the United States. To do so effectively and within the law, you should:

- (1) Learn and understand the implications of local law in abduction, wrongful retention, custody, and access matters;
- (2) Develop contacts with resource personnel in the host country who can provide direct assistance, suggest guidance, or provide detailed information in specific cases;
- (3) Be able to outline the steps in the relevant local judicial, immigration and social welfare processes for parents; and
- (4) If the host country has a treaty relationship with the United States under the Hague Abduction Convention, be familiar with the provisions of the Convention, understand the process by which the host government fulfills its obligations under the Convention, and be aware of any problems with host government compliance with the Convention.

NOTE: Always keep in mind, and stress whenever appropriate, that an abducted or wrongfully retained child may be present in the foreign country as the result of an act that could be a **criminal offense** in the United States.

- e. Consular officers have no legal authority to obtain physical custody of children or to return them to requesting parents. See 7 FAM 1772. Where a foreign court has ordered a child returned to the United States under the Hague Abduction Convention, consular officers should monitor the child's welfare and assist with return arrangements if necessary. Consular officers may issue new passports without two parent signature based upon the court return order, with specific guidance from CA/OCS/L (Ask-OCS-L-Dom-Post@state.gov). See 7 FAM 1350 Passports for Minors and 22 CFR 51.28. In addition, you may be asked to assist in obtaining a significant benefit parole visa for the taking or left behind parent, in coordination with CA/OCS/CI, to permit that parent's participation in Hague Abduction Convention proceedings in the United States. Consular officers are encouraged to use their discretion and knowledge of the

sensitivities of the case to issue a visa when legal and appropriate. Awareness of IPCA should generate consideration of assessing 214(b) in the proper context. See 9 FAM 42.1 N4, Parole. For detailed instructions on return of a child to the United States, especially those abducted in non-Hague countries, see 7 FAM 1770 Return of Children. 7 FAM 180 provides guidance on the granting of temporary emergency protection.

- f. Consular officers may not offer legal advice to parents or others. However, you may (and should) provide a range of information and procedural guidance, and direct parents to those who can provide assistance and more specific advice, including legal counsel. Consular officers should also have country specific information about international parental child abduction available for parents. This information is posted on the CA Internet Child Abduction page – child abduction country information.
- g. Lists of Attorneys: See 7 FAM 900 for general guidance on development of triennial lists of attorneys. Note: In many Hague Abduction Convention countries, the Central Authority provides legal assistance for the Hague proceedings. It is therefore important to refer parents to CA/OCS/CI and notify CA/OCS/CI as soon as possible if the post is the first to learn of an abduction case.
- h. Conversations with parents in international parental child abduction cases can be highly emotional and frustrating for parents. Whether the parent contacts CA/OCS/CI or a post initially, consular officers must clearly explain what the post and the Department can and cannot do to assist in returning a child to the United States. See the CA Internet Abduction page for more information and resources. CA/OCS/CI and CA/OCS/L stand ready to assist posts to ensure discussions with parents productive and informative.
- i. Posts must maintain contacts with foreign authorities responsible for international parental child abduction matters. In countries party to the Hague Abduction Convention, this would be the host country's central authority. In countries not party to the Hague Abduction Convention or countries with which the United States does not have a treaty relationship, these contacts may be in the Ministry of Foreign Affairs, Ministry of Justice or other appropriate entity. These contacts facilitate cooperation in abduction cases. Where countries have not yet joined the Convention, consular officers can play an important part in reporting on existing laws and infrastructure to facilitate the Department's country-specific strategy for working bilaterally to encourage accession to this important and effective Convention. CA/OCS/CI is specifically charged with central authority to central authority communication, and welcomes post involvement in dialogues with the host country provided they do not exclude CA/OCS/CI.

- j. When necessary and appropriate, help convey U.S. Government interest in cases by attending or monitoring custody or related court proceedings for both Hague and non-Hague Convention cases when a U.S. citizen child is involved. If a Hague Abduction Convention return application is pending in a host country, custody proceedings should be stayed until the Hague petition has been judicially reviewed and it is clear that the child will not be returning to the United States under the Convention. CA/OCS/CI routinely notifies the foreign Central Authority when a new application has been filed and requests notification to the court in order to stay any active custody proceedings. If a Hague Abduction Convention application is pending in the United States, and CA/OCS/CI learns of a custody proceeding in a U.S. state court, CA/OCS/CI will send a letter to the court reminding the court of its obligations under Article 16 of the Hague Abduction Convention.
- k. Encourage Dialogue: Consular officers at post and in CA/OCS/CI should encourage communication between the parents when possible to encourage a voluntary return of a child. CA/OCS/CI can provide guidance on how to facilitate voluntary return of a child. While Article 7 of the Hague Abduction Convention authorizes the central authority to take all appropriate measures to encourage a voluntary resolution in international parental child abduction cases, it is important to remember that consular officers are not professional social workers, counselors, mediators or family law experts. Consular officers may not facilitate efforts by the left behind parent to physically recover the child through surreptitious means, or in violation of local law. Consular officers may suggest or arrange a neutral meeting place where parents involved in a custody or abduction-related dispute can attempt to resolve their differences. Be careful to maintain impartiality in arranging meetings and facilitating communications, regardless of the perceived relative merits of the case. Avoid influencing the decisions or actions of either parent.
- l. Questionable Family Messages and Letters: Consular officers are often asked to pass a message to the child from the left behind parent and should generally refrain from judging whether or not it is a good message. Consular officers should never deliver a message without reading it. Additionally, where a consular officer, based on objective facts and conditions, and subject to the concurrence by the supervising consular officer, believes that a statement in the message could put the U.S. citizen child in harm, for example by triggering ill treatment or a breakdown in consular access, the officer must consult CA/OCS/CI and CA/OCS/L for guidance.
- m. Professional Mediation:
 - (1) Mediation of international family disputes is a relatively new field that is largely unregulated in some countries, like the United States, but

in which there is much interest. Mediation may be very effective for facilitating access to an abducted child. If a parent or government official expresses an interest in mediating a custody dispute in a case involving a parent in the United States, you can refer them to CI's website or check with the CI country officer to see if s/he knows of any resources that may be available.

Note:

CA/OCS/CI and CA/OCS/L (Ask-OCS-L-Dom-Post@state.gov) are members of a working group of the Hague Conference on Private International Law regarding mediation and international parental child abduction. Information about the progress of the working group is available on the Hague Conference Web page.

- (2) Provide information on any available mediation resources or organizations that parents might use to help resolve their differences. This could be prepared as a resource on post's home page similar to the list of attorneys and list of doctors provided it includes the required disclaimer. Posts should also discuss with CA/OCS/CI options for mediation in the United States.

DISCLAIMER: The U.S. Embassy (Consulate) (City, Country) assumes no responsibility or liability for the professional ability or reputation of, or the quality of services provided by, the following persons or firms. Inclusion on this list is in no way an endorsement by the Department of State or the U.S. Embassy/Consulate. Names are listed alphabetically, and the order in which they appear has no other significance. The information in the list on professional credentials, areas of expertise and language ability are provided directly by the mediators; the Embassy is not in a position to confirm such information. You may receive additional information about the individuals on the list by contacting the local licensing authorities.

- n. Force and Deception: Consular officers and staff may **not** assist a parent to gain physical custody of a child by force or deception or otherwise in violation of a host country's law. You should:
 - (1) Inform a parent contemplating such action of the dangers involved, including the possibility of criminal prosecution and/or civil consequences such as those available under the Hague Abduction Convention; and
 - (2) Explain that obtaining the services of professional "recovery experts" might involve risk to the child and others, including the left-behind parent.

Note: Normally, you are under no obligation to report a parent's possible plans to gain physical custody of a child in violation of host country laws to either local authorities or the other parent. However, if a parent has threatened violence or appears to pose a threat to the safety of the child or the other parent, you should inform the other parent or local authorities.. You should also inform the CA/OCS/CI case officer for the relevant country. Threats to consular officers must be reported to the regional security officer.

- o. Working with Parents: Interacting with parents in an international parental child abduction can be challenging and complex, and requires considerable tact, diplomacy and strong interpersonal skills.
 - (1) Custody disputes are often bitter and international parental child abduction is often an extreme response in a custody dispute. The parents often accuse each other of behavior harmful to the child or to the other parent. They may allege, for example, that the other parent is an alcoholic, drug addict, criminal, sexual deviate, or child abuser.
 - (2) You should never disregard such statements, or any claims that the child may suffer from serious diseases or health conditions, but you should always be mindful that mutual recriminations may be rooted in a bitter parental dispute and may not be supported by the facts. See 7 FAM 1720 – Child Abuse and Neglect.
 - (3) Be mindful of each parent's citizenship status and be cautious about potential privacy violation. 7 FAM 060 provides guidance about the Privacy Act. CA/OCS/L (Ask-OCS-L-Dom-Post@state.gov) is available to provide posts with case specific privacy guidance. Posts must protect a U.S. citizen or LPR's or LPR parent's personally identifiable information, address and contact information.
- p. General Guidelines:
 - (1) Review each active case thoroughly to ensure you are familiar and current with all the relevant facts.
 - (2) When speaking to either parent, personalize the case by using the child's name as much as possible.
 - (3) Pull the case up in the IPCA Database immediately so you can refer to people by name, as well as take detailed notes of each conversation. Posts can always ask CI to provide an updated summary of the case. Posts currently have read-only access through the Consular Consolidated Database (CCD).

- (4) Be polite and try very hard not to seem rushed. Bring your most compassionate and professional demeanor to bear.
- (5) Try to treat each parent as if this is the only case you have to work on. If you are in the middle of an urgent task, ask if you can call back or meet again when you have time to give the parent your full attention.
- (6) Return telephone calls and e-mails promptly.
- (7) If you sense that the parent needs more emotional support than you should or are qualified to provide, explain that there may be resources available where she/he lives to share expertise and provide support. Among them are:
 - (a) **State Victims of Crime programs:** CA/OCS can assist in locating local points of contact. (see 7 FAM 1900); and
 - (b) **NCMEC:** Particularly when the LBP is calling you from the United States, you may refer them to the NCMEC counseling services at 703-837-6304.
- (8) Avoid inaccurate use of the term "child custody case." You should always refer to the case as "your child's case."
- (9) Do not provide your personal contact information or details about your own life. Be clear about the limits of your role and authority. Posts can also ask CI for support as needed.
- (10) Avoid using acronyms as much as possible. Not only can they be confusing to the listener, but also they can be misinterpreted.

Note: The parent will form his or her impression of you -- and the Department -- based on his or her initial contact with you, often over the telephone. Even though you may be under significant pressure from other work, interacting with the parent with courtesy and compassion will help you build a relationship of trust, which will aid you as you work with him/her.

7 FAM 1712.3 Child Abduction and Criminal Law

(CT:CON-407; 06-29-2012)

Consular officers should not speculate or engage in dialogue with the host country officials, parents or their representatives regarding child abduction and extradition, mutual legal assistance treaties or prosecution in general absent specific guidance from the Department (CA/OCS/L and the Office of the Legal Adviser for Law Enforcement and Intelligence (L/LEI), and/or L/CA. Parental child abduction is a felony in every U.S. state and a federal crime under the International Parental Kidnapping Act, 18 U.S.C. 1204, (IPKA).

Nevertheless, a perpetrator must be charged with a crime and a warrant issued before any action by U.S. law enforcement will be taken against him/her. Therefore, absent a conviction, you should not say, "the taking parent is a criminal", since there has been no criminal finding by a court of competent jurisdiction. Rather, you may say, parental child abduction is a crime in the United States, citing 18 U.S.C. 1204 and/or state felony laws. See also Using the Criminal Justice System on the Consular Affairs Internet page and 7 FAM 1647 Extradition and Parental Child Abduction.

7 FAM 1713 THE HAGUE CHILD ABDUCTION CONVENTION

7 FAM 1713.1 Background

(CT:CON-395; 02-09-2012)

Twenty-three nations, meeting at the Hague Conference on Private International Law in 1976, agreed to negotiate a treaty aimed at deterring international child abduction. Between 1976 and 1980, the United States was a major force in preparing and negotiating the 1980 Hague Convention on the Civil Aspects of International Child Abduction. The Convention came into force for the United States on July 1, 1988, and applies to abductions or wrongful retentions that occurred on or after that date, or to requests for access to a child filed after that date. See the Hague Conference Child Abduction Home Page on the Internet.

7 FAM 1713.2 Purpose

(CT:CON-395; 02-09-2012)

Countries party to the Convention have agreed (subject to certain limited exceptions) that a child wrongfully removed to or retained in one country shall promptly be returned to the other member country where the child was habitually resident before the abduction or wrongful retention. The Convention also calls on partner countries to facilitate the exercise of visitation ("access") rights between party countries.

7 FAM 1713.3 General Provisions

7 FAM 1713.3-1 Return Of Child

(CT:CON-407; 06-29-2012)

- a. The Office of Children's Issues (CA/OCS/CI) is responsible for forwarding outgoing return and access cases to the relevant foreign Central

Authority. CA/OCS/CI screens outgoing cases only for the most basic criteria before accepting and submitting to the foreign central authority an applicant's request under The Hague Abduction Convention for return of or access to an abducted or wrongfully retained child. Under the premise that the Department should not decline to provide requested assistance to U.S. citizens and should instead defer to the foreign central authority to accept or reject a Convention application, the U.S. Central Authority (USCA) will forward petitions that involve:

- (1) A child under the age of 16;
 - (2) Abducted from or retained outside of the United States;
 - (3) In a country that ratified or acceded to the Convention prior to the date of the alleged abduction or the beginning of the retention and, for an acceding state, the United States accepted the accession and such acceptance took effect before the application was submitted to the USCA; and
 - (4) A person or competent authority gives a reasonable assertion that he/she/it has custodial rights.
- b. CA/OCS/CI does not forward "in utero" cases, which are defined as cases in which the child was in utero at the time of the alleged wrongful removal or beginning of the alleged unlawful retention.
- c. Some other central authorities apply higher levels of discretion in reviewing Hague petitions to determine whether or not they meet the criteria of the Convention sufficiently to warrant invocation of the treaty. Some of our Convention partners have complained that the USCA too often forwards petitions that are, in their view, clearly insufficient, thus wasting valuable time and resources of our foreign counterparts.
- d. Outgoing country officers will refer to the outgoing Branch and Division Chiefs any petition that fits into the following categories. In concurrence with OCS/CI management and CA/OCS/L attorney advisors, consulting with L/CA as appropriate, cases falling into one of the following categories may be considered for possible rejection under Article 27:
- (1) An outgoing application that does not meet the requirements for completion under Article 8 of the Convention, where the applicant does not cure the deficiencies within six months of submitting the application to the USCA after being notified of such deficiencies by the USCA, unless the receiving foreign central authority has agreed to accept the case with pending documentation; or
 - (2) An outgoing application where the child who is the subject of the application was previously the subject of an incoming Hague case before a court in the United States, and a court in the United States has ruled on the question of the child's habitual residence during an

action filed pursuant to the Hague Abduction Convention.

- (3) In concurrence with the OCS Managing Director, the CA/OCS/L Director, OCS/CI management, and L/CA, any other case that raises significant policy concerns may be considered for possible rejection under Article 27. This criterion should be used sparingly, and only in the most egregious cases.

See the Hague Conference on Private International Law acceptance of accessions page for the list of countries with which the United States has a treaty relationship under the Hague Abduction Convention.

- b. Under the Hague Abduction Convention the competent authority in a member nation must return an abducted or wrongfully retained child if:
 - (1) The child is below the age of 16;
 - (2) The child was "habitually resident" in a Convention country prior to the wrongful removal or retention;
 - (3) The applicant had and was exercising rights of custody under the law of the child's country of habitual residence at the time of the wrongful removal or retention, or would have been exercising those rights but for the removal or retention; and
 - (4)

FYI: After one year, a court or other competent authority is still obligated to order the child returned **unless** the person resisting return successfully demonstrates that the child is settled in the new environment.

- c. There are, however, several important exceptions to the requirement to return a child under the Convention. See below at 7 FAM 1713.3-3.

7 FAM 1713.3-2 The Hague Convention Is Nationality-Neutral

(CT:CON-395; 02-09-2012)

If a child habitually resident in one Convention country is abducted to or wrongfully retained in another, the Convention's return and other remedies are available regardless of the child's nationality or the nationality of either parent.

- (1) For example, the United States is obligated to return to Italy a U.S. citizen child habitually resident in Italy, even if the taking parent is a U.S. citizen and the applying LBP is a citizen of Russia (which does not have a treaty relationship with the United States under the

Convention).

- (2) The Convention also applies in cases where the child is not a U.S. citizen but was habitually resident in the United States prior to an abduction or wrongful retention.

7 FAM 1713.3-3 Reasons a Return Application May Be Denied

(CT:CON-395; 02-09-2012)

A court or other competent authority may (but is not required to) refuse to order a child returned under the Convention if it determines that one or more of the following defenses to an application for return apply:

- (1) There is a grave risk that the child would be exposed to physical or psychological harm or otherwise placed in an intolerable situation;
- (2) The left-behind parent consented to or acquiesced in the child's removal or retention;
- (3) The child objects to being returned and has reached an age and degree of maturity at which the court can take account of the child's views;
- (4) The application was filed more than one year after the abduction or wrongful retention AND the person resisting return demonstrates that the child is well settled in the new environment; and/or
- (5) The return of the child would violate the fundamental principles of human rights and freedoms of the country where the child is located.

7 FAM 1713.3-4 Access

(CT:CON-395; 02-09-2012)

Article 21 of the Hague Abduction Convention calls on states party to make arrangements for organizing or securing the effective exercise of rights of access, and to "remove all obstacles" to the exercise of access rights. The Convention does not specify how this is to be achieved. See 7 FAM 1713.4.

Note: Parents seeking **ACCESS** under the Convention, as opposed to **RETURN** of the child, may invoke the Convention even if the child's removal predates the Convention's entry into force between the U.S. and the host country.

7 FAM 1713.3-5 Central Authority

(CT:CON-395; 02-09-2012)

- a. Each country with which the United States has a treaty relationship under the Convention has designated a Central Authority to carry out specific duties under the Convention.
- b. A person seeking the return of a child to the United States under the Convention may submit an application to the U.S. Central Authority, directly to the Central Authority of the country where the child is believed to be located, or (in many countries including the United States) directly to the appropriate court or other adjudicative authority.
- c. The Central Authority for the United States is the Department of State, specifically:

Office of Children's Issues

Overseas Citizens Services (CA/OCS/CI)

Department of State

Washington, D.C. 20520-2818

You can also call 1-888-407-4747 toll-free within the United States and Canada, or by calling a regular toll line, 1-202-501-4444, from other countries. These numbers are available from 8:00 a.m. to 8:00 p.m. Eastern Time, Monday through Friday (except U.S. Federal holidays).

Posts abroad can reach the CA/OCS Child Abduction Duty Officer after hours through the Department of State Operations Center.

7 FAM 1713.3-6 State Party Countries

(CT:CON-395; 02-09-2012)

The United States has a treaty relationship with only some of the acceding countries. It is important to understand this because the United States does not have a treaty relationship with all countries party to the Convention as listed on the Hague Conference Child Abduction status page. It is also important to understand that just because a country is a "signatory" to the Convention does not mean that the treaty is in force for that country. Signing a Convention is a signal of interest, but does not mean that the country has acceded to or ratified the treaty. In addition, under the terms of the treaty, countries "party" to the Convention may have the right to refrain from entering into a treaty relationship with other countries "party" to the Convention. The U.S. evaluates a country's preparedness for Hague Abduction Convention duties before it accepts that country as a treaty partner. See Treaties in Force on the Department of State Internet page, 11 FAM 744.1 and CA/OCS Intranet treaties feature.

7 FAM 1713.4 Department's Responsibilities In Hague Convention Cases

(CT:CON-395; 02-09-2012)

As the designated U.S. Central Authority, the Department, through CA/OCS/CI, handles inquiries and correspondence from parents, their attorneys, and other interested parties concerning children abducted to or from Hague Convention countries

- (1) In cases involving abduction from a Hague country **to the United States** ("incoming"), CA/OCS/CI, provides the following services:
 - (a) Accept applications for return or access from Foreign Central Authorities;
 - (b) Assist in locating the children who are the subject of a Hague Abduction Convention Application within the United States;
 - (c) Attempt to facilitate voluntary returns or access where possible;
 - (d) Assist left-behind parents with locating attorneys, including attorneys willing to work on a pro bono or reduced-fee basis for qualified parents; and
 - (e) Facilitate return of children to their habitual residence. See 73 FR 65539, October 30, 2008 which Amended 22 CFR 94.6 to reflect the role of CA/OCS in handling incoming abduction cases.
- (2) In cases involving abduction **from the United States** ("outgoing") to another Hague Abduction Convention country, CA/OCS/CI is responsible for processing applications under the Convention, communications with foreign central authorities, and coordinating with posts.

FYI: For information about processing inquiries, correspondence, and applications concerning children abducted to or from non-Hague Convention countries, see 7 FAM 1714.

7 FAM 1713.5 Consular Officer Responsibility In Hague Convention Cases

(CT:CON-395; 02-09-2012)

Consular officers in countries with which the United States has a treaty relationship under the Hague Abduction Convention are responsible for supporting the Department's efforts to ensure that cases are handled consistently with the Convention. In some Hague Abduction Convention countries with highly developed administrative and legal systems and experience with the Convention, your involvement in individual return and

access cases may be relatively limited. It is always important to remember, however, that even in Convention countries, a left-behind parent may choose, generally in consultation with legal counsel, to pursue remedies alongside or instead of those created by the Convention and that may require significant consular assistance. Furthermore, posts may need to assist parents or foreign governments in facilitating a child's return to the his/her country of habitual residence pursuant to a return order.

7 FAM 1713.5-1 Hague Abduction Convention Cases filed with the Department

(CT:CON-395; 02-09-2012)

The Department will advise posts for information purposes that a Hague case is ongoing in their district, and may call upon a post to conduct a welfare/whereabouts search, attempt to visit the child, make a formal protest, confirm communication, or take other actions on the Department's behalf.

7 FAM 1713.5-2 Cases Originating At Post

(CT:CON-395; 02-09-2012)

On occasion, your post will be the first to learn of an abduction case that may qualify as a Hague case, generally when the LBP contacts the post directly. In such cases, you should take the following actions:

- (1) **Assist parents in making the initial contact with CA/OCS/CI** and/or the host country central authority, after making clear that the parties should deal directly with the central authorities of the United States and the foreign country concerned;
- (2) **If the LBP is located in the United States**, and the case appears to qualify as a Hague case;
 - (a) Enter the facts of the case into the ACS system; and
 - (b) Refer the caller to CA/OCS/CI.
- (3) **If the LBP or other caller is physically located in the consular district**, whether the inquirer is a U.S. citizen parent or a foreign national, you should refer them to the host country central authority and notify CA/OCS/CI; and
- (4) **Explain to the caller** that the appropriate authorities (e.g., the relevant Central Authority or courts) must make the official decision on the applicability of the Hague Abduction Convention to a specific case.

Child abduction, wrongful retention, and access cases arising in
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countries with which the United States **DOES NOT** have a treaty relationship under the Convention, or cases in which the child's abduction or wrongful retention took place **PRIOR** to the Convention's entry into force between the United States and the host country, should be handled in accordance with 7 FAM 1714.

7 FAM 1714 NON-HAGUE CONVENTION CASES

(CT:CON-395; 02-09-2012)

The Hague Abduction Convention may not apply to a particular case of international parental child abduction/wrongful retention for any one of several reasons. Some of the most common include:

- (1) The host country does not have a treaty relationship with the United States under the Convention;
- (2) The child is age 16 or older;
- (3) The abduction or wrongful retention took place before the date on which the United States accepted the host country's accession to the Hague Convention

7 FAM 1714.1 Department's Actions In Non-Hague Convention Abduction Cases

(CT:CON-395; 02-09-2012)

- a. The Department provides services to U.S. citizen children in cases of international child abduction or wrongful retention to which The Hague Abduction Convention is not applicable on the basis of its general responsibility for the welfare of private U.S. citizens abroad (for outgoing cases), and as a senior-level policy decision involving, among other issues, concerns for reciprocity (incoming cases).

Note: For outgoing cases, unlike in Hague Abduction Convention cases, the child **MUST** be a U.S. citizen/national, or the child of a U.S. citizen/national, in order for the Department or the consular officer to provide consular services in a non-Hague case.

For incoming cases, CA/OCS/CI opens a case if the LBP has either a 1) custody order granting him/her custodial rights, or 2) an INTERPOL yellow notice for the child, or CA/OCS/CI believes that accepting the case would further policy objectives to encourage assistance in returning abducted or wrongfully retained children to the United States.

- b. For Outgoing cases, consular officers in CA/OCS/CI collaborate with posts to develop strategies for each case taking into consideration the judicial and administrative practices and cultural norms of the country involved and the wishes of the left-behind parent.
- c. CA/OCS/CI controls the International Parental Child Abduction (IPCA) database, making the entries and creating a variety of management reports, public relations data, and background for congressionally mandated reports. IPCA is available at post on a read-only basis through the Consular Consolidated Database (CCD). When working with a possible abduction cases, please run a check of IPCA as well as a check of ACS to view the current case history.
- d. Recognizing the strong media and public attention these cases can generate, CA/OCS/CI works closely with the geographic bureaus, Public Affairs, and Congressional Relations, to generate press guidance, briefing papers, talking points and recommendations for political and diplomatic approaches to specific cases.

7 FAM 1714.2 Consular Officer Role In (Outgoing) Non-Hague Abduction Cases

(CT:CON-395; 02-09-2012)

Non-Hague abduction cases tend to be particularly complex and difficult, and require considerable effort, expertise, and creativity on the part of consular officers both in the Department and at post in a coordinated effort to achieve the return of an abducted or wrongfully retained child to the United States. In such cases, simultaneously pursuing consular and parental access to the child is a related goal. It is important to understand the left-behind parent's specific goals and request for assistance. Occasionally, left-behind parents may only want the Department to help the parent gain access, not the child's return.

Note: CA normally relies more heavily on the consular officers in the field in outgoing non-Hague cases, both as experienced sources of information and as action officers.

7 FAM 1714.2-1 Locate Child And Ascertain Welfare

(CT:CON-395; 02-09-2012)

Often the first step in responding to an abduction/wrongful retention case is to confirm the child's welfare and whereabouts. In situations where the taking parent is uncooperative, this may require host government assistance (see 7 FAM 1716).

7 FAM 1714.2-2 Coordinate With Host Government And Department

(CT:CON-395; 02-09-2012)

Responding to abduction/wrongful retention cases often requires the involvement of host government authorities. Some posts have found it useful to establish regular meetings with key host government officials to review outstanding cases and identify potential remedies. Posts can also formally request assistance from the host government via diplomatic note.

7 FAM 1714.2-3 Information On Options And Resources

(CT:CON-395; 02-09-2012)

As a consular officer at a U.S. embassy or consulate abroad, you are a source of information and experience for the Department and for the individuals involved in the dispute concerning the child. As such, it is vital that you develop a core of information and contacts that includes:

- (1) Background on the judicial system of the host country, with emphasis on the law (including judicial opinions), regulations, and law enforcement and administrative practices relevant to custody and related disputes;
- (2) An understanding of any laws, traditions or cultural mores that might affect the parents or the child on the basis of gender, age, nationality, or religion;
- (3) A working knowledge of local nationality laws, particularly as they might affect a United States citizen spouse or child;
- (4) Information on social welfare services and benefits available to children and parents, including access to free or reduced fee legal aid;
- (5) Information on any domestic violence shelters or similar social service organizations or facilities that might assist a parent and/or child;
- (6) A list of other private or quasi-government organizations that may be able to provide support and assistance; and
- (7) A range of contacts within the public and private sector that you can call upon for assistance and information in specific cases.

7 FAM 1714.3 Cases Originating At Post

(CT:CON-395; 02-09-2012)

Normally, inquiries from the LPB or their representative will be directed to the Office of Children's Issues (CA/OCS/CI). Some inquirers may contact the post directly, either because they are unaware of the existence of the Office of Children's Issues and their role, or because they are already in country. Whenever the post is contacted directly, the consular officer should:

- (1) Obtain all available information from the requesting party;
- (2) Request that CA/OCS/CI initiate a new case in the IPCA database;
- (3) Notify the appropriate case officer in CA/OCS/CI of the case immediately by email, telephone, or cable. A list of case officers and their portfolios is available to posts on the CA/OCS/CI Intranet website or post can send an email to AbductionUSCA@state.gov; and
- (4) Advise the caller, particularly if in the United States, to contact CA/OCS/CI directly.

1-888-407-4747 toll-free within the United States and Canada, or by calling a regular toll line, 1-202-501-4444, from other countries. These numbers are available from 8:00 a.m. to 8:00 p.m. Eastern Time, Monday through Friday (except U.S. Federal holidays).

7 FAM 1715 WELFARE AND WHEREABOUTS VISITS TO ABDUCTED OR WRONGFULLY RETAINED CHILDREN IN NON-HAGUE CASES

7 FAM 1715.1 Locating An Abducted Or Wrongfully Retained Child

(CT:CON-395; 02-09-2012)

Whether as a result of a request from CA/OCS/CI, a phone call or a visit from an left behind parent (LBP), often one of your first actions in a specific case will be to locate the child and, in most cases, the taking parent (TP). Possible resources include:

7 FAM 1715.1-1 Available Records

(CT:CON-395; 02-09-2012)

- a. **Post Records:** Check your own records, including the Passport Issuance

Electronic Record System (PIERS), for any recent or previous information on the child and/or the TP.

- b. **Immigration Records:** Assuming records are reliable, and that you can gain access to them, often the best and fastest method of locating the child, or at least confirming their entry into the country, is through host government immigration sources.
- c. **School Records:** If the child is school age, school officials may be a useful source.

7 FAM 1715.1-2 Family Members

(CT:CON-395; 02-09-2012)

Often the LBP can provide the names, addresses, and phone numbers of various members of the TP's family. Whether these inquiries can be made by phone or require a personal visit will depend on the circumstances of the case. When contacting the TP's family the consular officer should state clearly that the purpose of the call is to confirm the child's welfare. This will help avoid the family's fear that the U.S. Government is going to "snatch" the child and facilitate consular access.

- (1) You may wish to have an FSN or other individual with language capability at a high proficiency level to make the initial call, if the TP is a national of the host country.
- (2) When making "cold" calls on family members, it is generally best to try and contact every person in quick succession, to minimize the possibility of one family member alerting another that you are looking for the child, which may cause them to help to conceal the child's whereabouts.
- (3) It is often best to simply ask to speak to the taking parent, rather than immediately ask about the child. If he or she does answer, the circumstances of the individual case will dictate whether you should disconnect at that point, or begin a dialogue with the TP.
- (4) Occasionally, the LBP will provide the contact information for an in-law or family friend who may be sympathetic to the LBP, and therefore an excellent source of information for the consular officer.
- (5) It is conceivable that the abducted child might answer the phone. While the circumstances of the case will dictate your actions, in most instances it is probably not best to identify yourself at that point to the child or begin questioning the child. Instead, consider asking for the Taking Parent or simply ending the call.

7 FAM 1715.1-3 Visual Identification

(CT:CON-395; 02-09-2012)

On occasion, the only way to confirm definitively the location of the child or the taking parent may be for the consular officer to see them personally or to enlist the help of others in the community who may have seen the child or TP.

- (1) Whenever possible, CA/OCS/CI will obtain photographs of the child and the TP and provide them to post.
- (2) Consider utilizing the expertise of your anti-fraud investigators to circulate the photos in neighborhoods, shops, schools, churches, synagogues, mosques, etc. where the child or TP may spend time.
- (3) Children who have been abducted or wrongfully retained are often the subjects of Interpol missing persons ("yellow") notices. These are disseminated through law enforcement channels. CA/OCS/CI can assist in confirming that local law enforcement has received copies of "yellow notices" for children in a particular country.
- (4) Once a child is located, the consular officer should make every effort to interview or visit the child personally. If unusual circumstances prohibit a personal visit by the consular officer, post should arrange for an appropriate local official or consular agent to make the visit. See sections 7 FAM 1715.3 through 1715.6 for detailed instructions about how to conduct and report on these "welfare and whereabouts" visits.

7 FAM 1715.2 Objection To Visit By LBP

(CT:CON-395; 02-09-2012)

CA conducts "welfare and whereabouts" visits with abducted or wrongfully retained children when LBPs have no meaningful access to their children in order to provide information about the child, to facilitate communication, and to encourage parents to voluntarily return children to the United States. While most LBPs are eager to have the visit take place and anxious to hear the results, at times an LBP will specifically ask that no visit be made. This is usually out of concern that the TP might be alarmed and take the children to another, more secret, and location. Sometimes, however the LBP believes that the child will soon be back in her/his physical custody, and does not want to involve U.S. and/or host government officials. In these cases:

Note: Remember that our first concern is for the welfare of the child. While we normally want to respect the wishes of a parent, there are rare

circumstances, such as when credible evidence or allegations of abuse exist, in which the visit should take place notwithstanding objections from the LBP. See 7 FAM 100 for guidance about welfare and the whereabouts function and authorities.

- (1) Determine the LBP's reasons for objecting to the visit;
- (2) Assess the child's circumstances;
- (3) If you believe that a visit is necessary, consult with CA/OCS/CI before conducting the visit, if circumstances permit; and
- (4) If the urgency of the circumstances requires it, take action immediately to protect the child and consult with CA/OCS/CI as soon as possible thereafter.

7 FAM 1715.3 Preparation For Visit

(CT:CON-395; 02-09-2012)

You should carefully plan and execute consular welfare visits in abduction cases. These visits are extremely important for a number of reasons:

- (1) To confirm the health and welfare of the child;
- (2) To provide some measure of comfort or reassurance to the LBP, as well as information about the child. (Note, however, that any person with parental rights to a child has the right to information about that child. Therefore, w/w reports can and should be made available to both parents, with 3rd party PII redacted, upon request);
- (3) To assist with direct communications between the LBP and child, if possible and appropriate; and
- (4) To facilitate communication between the LBP and TP to encourage a voluntary return.

7 FAM 1715.3-1 Consent Of The TP Or Other Custodian

(CT:CON-395; 02-09-2012)

While a "cold" visit may be appropriate to locate or confirm the whereabouts of the child, in-depth consular visits normally will be possible and successful only with the cooperation, or at least the consent, of the TP or the other person supervising the child. You should be as persuasive as possible in trying to obtain this cooperation or permission. Some TPs may only agree to a meeting if held in a neutral or public space.

7 FAM 1715.3-2 List Key Issues

(CT:CON-395; 02-09-2012)

Establish in advance the points you wish to observe and questions you want to ask during the visit.

Note – Child Abuse: An important part of this is to be aware of the signs of CHILD ABUSE, whether or not it has been alleged by the LBP. See 7 FAM 1720 Child Abuse or Neglect for further information.

7 FAM 1715.3-3 Input From Left Behind Parent (LBP)

(CT:CON-395; 02-09-2012)

Make it clear to LBPs that a consular officer may not be able to ask all of their questions. It is not appropriate to use a welfare and whereabouts visit to help either parent with their custody dispute. We conduct welfare and whereabouts visits pursuant to our consular authority under the VCCR. While this is a service we provide to LBPs who have no access to their children, we are not agents of the LBP. Your welfare and whereabouts visit report should include:

- (1) A description of the general appearance of the child(ren) the last time they saw them;
- (2) Photographs of the child(ren), if available;
- (3) Any long term or chronic medical conditions that mandate continued use of medication;
- (4) Any existing learning disabilities or issues, and how they should be addressed in school; and
- (5) Any allegations or history of abuse or mistreatment (see above).

7 FAM 1715.3-4 Equipment

(CT:CON-395; 02-09-2012)

You may find it useful to take along:

- (1) A camera, preferably digital;
- (2) Cellular telephone; and
- (3) Portable audio recording device. Only use if legal in the host country. and if TP does not object

7 FAM 1715.3-5 Items From Left Behind Parent

(CT:CON-395; 02-09-2012)

You may be asked by the LBP to provide certain things to the child, or even to the TP. While you should carry out the LBP's wishes if possible, you should also exercise a reasonable degree of caution:

- (1) **Letters or Messages to the child:** Advise the LBP that you can only pass on open correspondence that you have the opportunity to read in advance. See 7 FAM 1712.2 paragraph I for guidance regarding questionable letters or messages. This also pertains to gifts for the child which may be wrapped.

Note: You do not want to unknowingly aid in an illegal "rescue" plan. Nor do you want to unnecessarily damage any potentially useful relationship between you and the Taking Parent.

- (2) **Photographs** of the LBP and other family members
- (3) **School Records:** Advise the LBP that you may give them to the TP, or the school authorities, but normally not directly to the child.
- (4) **Medical and Dental Records:** Again, generally you should give these documents to the TP.

7 FAM 1715.4 Conducting The Visit

(CT:CON-395; 02-09-2012)

While the exact logistics and circumstances of the visit will depend on the specific case and your own judgment and experience, there are some standard issues you should try to address:

7 FAM 1715.4-1 Visit the Home

(CT:CON-395; 02-09-2012)

The visit should take place in the home where the child is actually living if at all possible. If the TP brings the child to the consulate, ask if a follow-up home visit can be scheduled.

7 FAM 1715.4-2 Keep It Informal

(CT:CON-395; 02-09-2012)

The information on child abuse at 7 FAM 1720 and 7 FAM 1900 (Crime Victim Assistance) are intended to assist you in organizing the visit. Taking informal notes during the visit is recommended.

Note: Avoid obviously ticking off a paper checklist in front of the child and TP. You may seem overly intrusive and bureaucratic.

7 FAM 1715.4-3 Private Conversation

(CT:CON-395; 02-09-2012)

If the child is old enough to converse, ask if it is possible to meet alone with the child for a portion of the visit.

7 FAM 1715.4-4 Be Observant

(CT:CON-395; 02-09-2012)

- a. Note the abducting parent's demeanor or conduct toward the abducted child, and towards the consular officer. Take care to note details about the child that may seem minor but will likely be of great importance to the LBP. Examples include mannerisms, style of clothing or hair, activity level during the visit, toys or other personal items that the child holds or keeps nearby, and topics discussed. Avoid making subjective and/or vague judgments, such as "the child appeared happy." Instead, state more objective criteria, such as "the child interacted with the conoff in an animated manner; the child appeared to be clean and appropriately clothed for the weather."
- b. Stick to personal observations. Write down what you saw and heard, but avoid your own conclusions. For example, it is good to note how many bedrooms the house had, whether there were age-appropriate toys, etc. It is not good to say – house looked like good place for a 5 year old.

7 FAM 1715.4-5 Medical Needs

(CT:CON-395; 02-09-2012)

Make a specific inquiry about any special care required by the child, such as the continued use of necessary medication, and whether the child has had any recent illness, injury, or hospitalization. Ask to see any medicine the child is taking and request details about prognosis, plans for ongoing treatment, and long term implications, if any.

7 FAM 1715.4-6 Camera

(CT:CON-395; 02-09-2012)

Offer to take photographs of the child and surroundings to share with the LBP, if the tenor of the visit permits. With younger children, ask if you may take photographs or artwork or writing samples to share with the LBP. If possible, take photographs of outdoor space as well, including parks, shops,

sidewalks, or other aspects of the surrounding area that will inform the LBP about the child's living environment.

7 FAM 1715.4-7 Contact With The LBP

(CT:CON-395; 02-09-2012)

Offer to let the child use your cell phone to communicate directly with the LBP if the tenor of the visit permits. If this is not feasible, ask if the child may make a voice recording to be given to the LBP. When age-appropriate, ask if the child would like to communicate with the LBP directly by e-mail, Facebook, Skype or other social media, or telephone, and facilitate the exchange of contact information.

7 FAM 1715.4-8 Arrange Future Communications

(CT:CON-395; 02-09-2012)

Ask if the LBP may communicate directly with the child after the visit by telephone, mail, or the Internet, as appropriate.

7 FAM 1715.4-9 Maintain A Compassionate But Professional Demeanor

(CT:CON-395; 02-09-2012)

As you interact with the TP and the child, keep in mind that feelings between the TP and the LBP often run very high and the TP may seek to influence you by making prejudicial claims against the LBP (and vice versa). Focus on the purpose of the visit—to observe the welfare of the child and make a report. As you interact with the TP over time, it will be important to maintain this professional demeanor and avoid taking sides in the details of the parental conflict.

7 FAM 1715.5 Frequency Of Visits

7 FAM 1715.5-1 Follow-Up Visits

(CT:CON-395; 02-09-2012)

After the initial visit, you may have to make follow-up visits depending on whether there are concerns about the well-being of a child. Circumstances such as serious or prolonged illness of the child or a change of residence may also require follow-up visits.

7 FAM 1715.5-2 Routine Visits

(CT:CON-395; 02-09-2012)

If there is no need for more frequent visits and if the LBP has no meaningful access to a child, consular officers should attempt to visit an abducted/wrongfully retained child every six months.

7 FAM 1715.5-3 Ending Routine Visits

(CT:CON-395; 02-09-2012)

One of the purposes of conducting welfare visits is to encourage meaningful access by the LBP to his or her child. If post believes that an LBP has meaningful access and routine visits are no longer appropriate per 7 FAM 1715.5-2, post should notify CA/OCS/CI. If post believes routine visits are inappropriate for any other reason, post should consult CA/OCS/CI before ending routine visits.

7 FAM 1715.6 Reporting On Child Visits

(CT:CON-395; 02-09-2012)

It is essential that a concise, factual report be made of each visit and submitted to CA/OCS/CI as quickly as possible. You can expect these reports to be of great interest to both parents, and to be scrutinized in great detail. You should also bear in mind that they will often reach a wider audience, including attorneys, congressional offices, courts, the media, and occasionally, courts.

7 FAM 1715.6-1 Transmitting the Report

(CT:CON-411; 07-09-2012)

Send a report of the visit *via record* email to the *CA/OCS/CI* country officer in a form that can be directly converted to a letter addressed to the LBP or other requester. *A cable may be appropriate for certain sensitive or high-profile cases.*

- (1) The *report* should be informative, but factual. Include your direct observations, without interpretation or comment.
- (2) Avoid direct quotes if possible; if you do *choose to* include them, *however*, make certain *the quotes* are accurate - word for word – and *provide* the context of the conversation.
- (3) *We take no position on the truthfulness or accuracy of statements made by taking parents or others. When reporting the statements made by others during the visit, make sure it is clear who spoke the words. You should not state opinions about other people's*

statements (such as whether those words are likely true or not). You may, however, include any direct observations you made that may contradict what someone has said.

- (4) Address any specific questions or topics provided by the LBP in advance of the visit if possible.*
- (5) Any information gathered during a welfare and whereabouts visit that does not address the welfare of the child but which post believes is important for CA to know is to be reported by a separate email or cable. Post is not to include information in the welfare and whereabouts report that pertains to the underlying custody dispute.*
- (6) Do not make prejudicial or judgmental statements that might undermine the report's character as an objective and evenhanded statement of facts and/or observation.*

7 FAM 1716 PARENTAL ACCESS TO THE ABDUCTED OR WRONGFULLY RETAINED CHILD

(CT:CON-395; 02-09-2012)

Your objective in abduction and wrongful retention cases is normally the lawful, prompt, and safe return of the child to his/his or her country of habitual residence. Some parents, however, prefer to seek access instead of return. Others may prefer to seek **access simultaneously** with efforts to achieve return. Action to promote access often presents issues similar to those discussed in 7 FAM 1715 on seeking welfare and whereabouts visits.

NOTE: In addition to aiding parents or legal guardians in abduction and wrongful retention cases, you should also assist parents or legal guardians to exercise their legal rights of access to children who were NEITHER abducted NOR wrongfully retained.

7 FAM 1716.1 Policy On Access

(CT:CON-395; 02-09-2012)

The Hague Abduction Convention is based on the premise that governments should assist persons with access rights to a child to enforce those rights. Our efforts to assist the TP to permit access to the LBP under reasonable conditions serve this general principle.

7 FAM 1716.2 Negotiating Access

(CT:CON-395; 02-09-2012)

Assisting parents and their representatives to arrive at reasonable access arrangements may require the coordinated efforts of the Department, law enforcement, local police and social welfare authorities, consular officers, private attorneys, mediators and others. Some parties are able to make these arrangements with no intervention on the part of consular officers. Many require additional assistance. Consular officers may assist by providing parents useful information or contacts with these various other agencies or experts. Consular officers should not assume a direct role in attempting to negotiate access for parents.

7 FAM 1716.2-1 The Consular Role In Access When the Child is Located Overseas

(CT:CON-395; 02-09-2012)

As a consular officer, you provide a critical interface with the taking parent and host country officials who often make or break a request for access to an abduction/wrongfully retained child. You may also be called upon to interact with both Taking and Left Behind parents. The consular officer should not negotiate the access with the parties directly, but can facilitate communication and encourage meaningful access.

7 FAM 1716.2-2 Meaningful Access

(CT:CON-395; 02-09-2012)

Meaningful access can take many forms. The following are common methods of access that may be acceptable to parents:

- (1) **Telephone calls:** Regular or periodic scheduled calls or calls at the child's initiation on a cell phone or calling card provided by the LBP.
 - (a) In some countries, with the consent of the TP, schools are willing to have LBPs call a child while at school.
 - (b) Social service agencies in some countries will facilitate phone contact, as well.
- (2) **International Mail:** Initially, many TP's are unwilling to permit any form of interaction between the LBP and the abducted or wrongfully retained child. Access in the form of letters may be a first step to re-establish contact.
 - (a) Some TP's will insist on screening all letters.
 - (b) Some may permit packages as well as letters.

- (c) Some parents prefer letters and packages not be sent directly to their home, but will permit use of a post office box.
- (d) Some TP's will permit mail to be sent through third parties such as attorneys, relatives, friends, or church leaders.
- (3) **Mail Through the Post:** If no direct or neutral third party contact is possible, you may accept and deliver opened mail, e-mail and fax messages on behalf of either party. Advise the LBP that you must be able to read the contents of any such mail in order to accept and deliver it. See 7 FAM 1712.2 paragraph I for guidance regarding possibly questionable messages and letters.

Note: The acceptance and delivery of any such mail must, of course, take place in compliance with Departmental rules regarding pouch and mail services.

- (4) **Visits By The LBP:** In-country visits by the LBP are a frequent request. If unsupervised visits are not possible, supervised visits at a visitation facility or other neutral location, including the U.S. Mission may be an option.
- (5) **Video:** Some parents have been successful preparing a "home video" about their life, surroundings, and interests to share with the abducted or wrongfully retained child. You may deliver such a video to the child once you have viewed it. If you do not think the video is appropriate to deliver, send it via pouch to CA/OCS/CI with an explanation.
- (6) **Email/Skype:** Internet access is common in many countries, in homes, schools, or Internet cafés. Arranging for email and or Skype communication may be as easy as providing the child or LBP, an email or Skype address.

7 FAM 1716.2-3 Discussing Access With The LBP

(CT:CON-395; 02-09-2012)

In most cases, the LBP sees the return of the child to his or her custody as the only satisfactory resolution of an abduction case. Some parents, however, are willing to work simultaneously on return and access. You should broach the subject with them early on, offering to seek access as you work to achieve return. In discussing access with the LBP, consider the following:

- (1) Are there local resources to assist with access? Do social service agencies provide neutral, controlled settings for parents to meet children? Can the agency assist the parents with dispute resolution?
- (2) Can local courts assist to encourage or compel access?

- (3) The LBP's legal counsel may be concerned that seeking access will prejudice or delay a return. Relating your prior experiences in access cases may help legal counsel make an informed recommendation to the LBP.
- (4) Discussions or interim access agreements do not necessarily preclude continuing efforts to obtain return of the abducted or wrongfully retained child. This would be a question for the LBP to discuss with his or her legal counsel.
- (5) Some parents seeking return may ultimately settle for access if it is reasonable and frequent enough. Helping to facilitate an access agreement may lead to resolution of the case. The LBP should discuss these issues with his or her lawyer.
- (6) Developing meaningful access may lead to the possibility of the child's eventual travel to the U.S.

7 FAM 1716.2-4 Discussing Access With The Taking Parent

(CT:CON-395; 02-09-2012)

It is helpful to consider the perspective of the taking parent as you work with them to facilitate access arrangements. Often the TP believes that he or she has the upper hand, and sees no advantage to permitting access, much less to entering into a dialogue with the consular officer or LBP. To the extent possible and appropriate, you may inform the TP of some potential benefits of agreeing to access, including:

- (1) Appeal to the TP's concern for the best interests of the child by allowing access in order to achieve a reduction in hostilities with the LBP; and
- (2) Children benefit from having a relationship with both of their parents.

7 FAM 1716.2-5 Promoting a Voluntary Resolution

(CT:CON-395; 02-09-2012)

Except perhaps in those situations in which dialogue seems impossible or even potentially counter-productive, such as cases with a pattern of domestic violence or other abuse, you should make a reasonable effort to facilitate communication between parents. Although consular officers provide an essential coordinating service, they are not trained social workers or therapists and should avoid taking on that role. With that in mind, consider providing the following types of assistance:

- (1) If the parents do not have attorneys, offer to pass messages to help start communication, while encouraging them to find a more appropriate means to communicate;

- (2) Facilitate the logistics for a meeting or place for a visit; and
 - (a) Identify and offer a neutral meeting point that will provide the maximum amount of reassurance and security to both parties:
 - (b) It is often helpful to arrange for these meetings to take place in a professional family care environment – offices of a family therapist, counselor, psychologist, etc.
 - (c) Post facilities may be an appropriate venue in some cases, particularly if there is some concern for the welfare or safety of the LBP.
 - (d) A meeting spot controlled by the host government can sometimes provide assurances of safety to both sides.
- (3) Provide a list of family care professionals that could possibly facilitate a meeting. As a consular officer, you should never attempt to take on that role, even if you have some prior social work experience. As with attorneys and medical care providers, consular staff should not recommend a professional for parents to use. Refer inquirers to post's lists for the parents to make their own selection.

NOTE: Avoid participating in the meeting yourself, if possible. If your presence seems necessary or desirable, make certain all parties understand you are there only as an observer.

7 FAM 1716.3 Assistance Of Local Authorities

(CT:CON-395; 02-09-2012)

The point at which you approach local authorities for assistance in gaining consular access will vary from country to country and perhaps from case to case. In some countries, you may find it more expedient to work through cooperative local authorities from the beginning.

7 FAM 1716.3-1 Explaining Your Involvement

(CT:CON-395; 02-09-2012)

Point out to local authorities the interest that the U.S. Government has in ascertaining the health and welfare of its citizens, an internationally recognized function of any nation's consular officers. If necessary, refer local officials to Articles 5(h) and 37(b) of the Vienna Convention on Consular Relations (VCCR) or the similar provisions of a bilateral convention, if applicable. See Treaties in Force on the Department of State Internet home page to confirm if there is a consular convention in force between the United States and the host country. See also the CA/OCS Intranet Treaties feature for texts of bilateral consular conventions.

7 FAM 1716.3-2 Locating The Child

(CT:CON-395; 02-09-2012)

Local authorities are often the best source of information to help locate the child or to verify a child's presence in the country. You should stress that you are not representing the LBP in his or her efforts to locate the child, but that you have an independent authority under the VCCR and/or the Hague Abduction Convention to find the child and determine his or her health and safety as a part of your official responsibilities.

7 FAM 1716.3-3 Visiting The Child

(CT:CON-395; 02-09-2012)

Local authorities can sometimes be useful in arranging a consular welfare or access visit, by persuading the TP of the merits, or by providing an appropriate neutral venue.

7 FAM 1716.3-4 Confronting Abuse

(CT:CON-395; 02-09-2012)

If there is evidence of child abuse, neglect or potential danger or harm to the child, you must make strong representations to local authorities for an investigation and, if warranted, for appropriate action to protect the child. See 7 FAM 1720 for further information on handling cases involving child abuse or neglect. See also 7 FAM 1730 for guidance on child exploitation.

7 FAM 1717 U.S. PASSPORT AND VISA ISSUANCE AND DENIAL

7 FAM 1717.1 Passports

(CT:CON-395; 02-09-2012)

- a. U.S. law and regulations governing passport issuance and denial, as provided in 7 FAM 1300 Passport Services, are often involved in international custody or abduction cases. The primary examples are:
 - (1) To protect against a non-custodial parent or other obtaining a passport for minors with the intent to abduct them; and
 - (2) To provide a basis for determining that a parent has committed fraud in obtaining a passport for a minor.
- b. For specific guidance on passport issuance and denial, see 7 FAM 1300 Passport Services, specifically 7 FAM 1350 Passport for Minors; 7 FAM

1300 Appendix Q Children's Passport Issuance Alert Program (CPIAP) (under development) and 7 FAM 1380, Passport Denial.

7 FAM 1717.2 Visa Denials And Revocations Under INA 212(a)(10)(C)

(CT:CON-395; 02-09-2012)

Complete guidance on this ineligibility is provided at 9 FAM 40.103 Notes.

DO NOT ISSUE A U.S. VISA TO A PERSON WITH ANY KNOWN INVOLVEMENT IN A CHILD ABDUCTION CASE UNTIL YOU CONSULT 9 FAM AND CONFER WITH CA/VO and CA/OCS/CI AS APPROPRIATE.

7 FAM 1718 INCOMING ABDUCTION CASES - WHEN THE ABDUCTED CHILD IS IN THE UNITED STATES

(CT:CON-411; 07-09-2012)

Periodically, posts may receive requests for assistance from persons in the host country who are anxious to ascertain the welfare or whereabouts of their children who are, or who they believe are, in the United States. While in some circumstances assisting such a person may not appear to fall directly within the purview of your consular responsibilities, you should provide, as appropriate, reasonable assistance.

- (1) **Foreign Consuls in the United States:** Foreign nationals abroad who are concerned about the welfare and whereabouts of children who may be in the United States should be advised to contact their embassy in the United States or their country's consular official responsible for the region in which the child is thought to be physically located. The foreign consul may be able to conduct a welfare and whereabouts inquiry. This is a function of consular officers under the VCCR and applicable bilateral consular conventions.
- (2) **Hague Child Abduction Convention Countries:** If the parent claims that a child habitually resident in a Hague Abduction Convention country has been abducted to or is being wrongfully retained in the United States, you should:
 - (a) Refer the parent to the Central Authority for the Hague Abduction Convention in the host country that will assist the parent to pursue the return of or access to the child; and

- (b) You may also advise the parent that s/he may pursue the return of or access to a child by filing a Hague Abduction Convention application directly with the U.S. Central Authority or by filing an appropriate action in the appropriate U.S. court.
- (3) **Countries not party to the Hague Child Abduction Convention:** You may direct inquirers to several sources of assistance in child custody cases, and in locating children within the United States, including, but not limited to:
 - (a) CA/OCS/CI if the requesting person has a court order granting him/her custodial rights to the child, or there is an INTERPOL yellow notice in the child's name;
 - (b) NCMEC;
 - (c) Attorney general's office of the State where the child is believed to be located. See the Internet page for the National Association of Attorneys General and NAAG Contact page.
 - (d) Local law enforcement. They may be able to work with Interpol to request location assistance in the United States.
- (4) **Enforcement and Recognition of Foreign Custody Orders:** You may advise inquirers that information concerning recognition and enforcement of custody decrees and other aspects of child custody law may be obtained from the attorney general's office of the state where the child is believed to be located. See general flyer on Enforcement of Judgments on the CA Internet page. In addition, the inquirer may be referred to information on the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA), and the Consular Affairs Child Abduction Internet feature U.S. Legal System Frequently Asked Questions which provides an enforcement mechanism for existing custody orders.
- (5) **Requests for Legal Counsel:** If inquirers are seeking private legal counsel in the United States, contact the relevant country officer in the CA/OCS/CI Incoming Branch. The CI country officer may forward the parent's request for legal counsel to CA/OCS/L's Legal Assistance Coordinator (LAC), who may provide a full fee attorney list. In addition to the assistance provided by CA/OCS/L's LAC, there are a variety of other sources parents may use to help with their search for legal services, including:
 - (a) Martindale-Hubbell Law Directory. This is often available in local foreign libraries and online.
 - (b) American Bar Association: American Bar Association Consumer's Guide to Legal Help; ABA Directory of Lawyer Referral Services and ABA Family Law Section;

State bar association where the child is believed to be located. See the ABA State and Local Bar Association Directory; and International Academy of Matrimonial Lawyers Directory (IAML).

- (6) **Judicial Assistance Treaties and Child Abduction:** *The U.S. Department of Justice, Civil Division, Office of Foreign Litigation, which is the U.S. Central Authority for the Hague Conventions on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters, the Inter-American Convention on Letters Rogatory and Additional Protocol to the Convention on Letters Rogatory (Service of Process) and the Hague Convention on the Taking of Evidence Abroad advises that it is receiving numbers of more requests under the service and evidence conventions pertaining to home studies, compulsion of visitation by social service experts and other matters related to child abduction work. Questions regarding the use of these treaties should be directed to CA/OCS/L at Ask-OCS-L-Dom-Post@state.gov, which will coordinate with the Justice Department. See 7 FAM 900 Judicial Assistance. Country specific information about judicial assistance is available on the CA Internet page.*

7 FAM 1719 RELEASE OF INFORMATION TO PARENTS

7 FAM 1719.1 Privacy Act Guidelines

(CT:CON-407; 06-29-2012)

- a. Under the Privacy Act of 1974, (5 U.S.C. 552a) subsection (h) both parents, regardless of which parent has legal custody, have the right to request their minor child's records. The parents have this right regardless of whether they have legal custody and regardless of the citizenship or immigration status of the parent. The right is based on the child being a U.S. citizen or LPR and the parents step into the shoes of their minor child for the purposes of the Privacy Act.

Note:

See State-05 (Overseas Citizens Services Records), State-26 (Passport Records) and the Department Prefatory Statement of Routine Uses, available on the Internet at the Department of State FOIA page, Privacy Act Issuances Index

- b. There is no Federal statute defining the age of a "minor" for all purposes. In most cases, the Department considers any unmarried U.S.

citizen/national or lawfully admitted permanent resident alien under the age of 18 to be a "minor". This definition differs from that of "child" for visa purposes.

- c. The Privacy Act, in Sec. 3, defines an individual as "a citizen of the United States or an alien lawfully admitted for permanent residence". This means that the Privacy Act does not apply to an alien who is not a legal permanent resident.
- d. The Privacy Act does not protect records pertaining to deceased individuals, however, next-of-kin may have a "common law" privacy interest in not having information about the deceased released, e.g., if it could embarrass, endanger or cause emotional distress to them (see 7 FAM 061 e).
- e. The Privacy Act makes no distinction between married and unmarried parents.
- f. You must consider the wishes of a minor of sufficient age and maturity (generally around 14) concerning the release of Privacy Act protected information about him or her if you know them. A minor's rights under the Privacy Act should generally be respected, but must be weighed against the parents' right to the information as well as the need to ensure the health or safety of the minor.

NOTE:

If a child of sufficient age and maturity objects to the release of Privacy Act protected information concerning him or herself, it should not be released, even to a parent, before consulting with the Department (CA/OCS/CI and CA/OCS/L) to determine whether disclosure is permissible under the circumstances.

- g. You may not release information concerning the minor to any relatives (other than the minor's parents or legal guardians), to the press, to members of Congress, or to others, **UNLESS**
 - (1) You have a written Privacy Act waiver concerning only the minor that is signed by one of the minor's parents or legal guardians authorizing such disclosure, **OR**
 - (2) One of the exceptions to the bar on disclosures (e.g., health and safety exception, routine use exception) is established.

7 FAM 1719.2 Refusing the Release of Information To A Parent About the Location of a Minor

(CT:CON-395; 02-09-2012)

You should refuse to release information about the location of a minor when:

- (1) In your judgment, based on a history of violence or current threats of violence doing so could endanger the minor or other people (ie., there is a protective order against one of the parents or allegations of child abuse or domestic violence).
- (2) Disclosing the location of the minor will violate the privacy of a U.S. citizen or legal permanent residence parent who has physical custody of the minor (5 U.S.C. 552a(a)(2)).
- (3) The minor is of sufficient age and maturity and asserts his/her own rights under the Privacy Act and objects to the release of the information.
- (4) The parent requesting the information has had his or her parental rights terminated in an earlier judicial or administrative proceeding by a competent authority.

7 FAM 1719.3 Protecting Information Protected by the Privacy Act

(CT:CON-407; 06-29-2012)

Often during a child abduction, retention, or custody case, you will come to know certain information regarding the Taking Parent (TP) (location, workplace, telephone number, etc.). You may also learn information about other U.S. citizens or LPRs (such as grandparents, new husbands, or other children). The Left Behind Parent (LBP) may ask you to divulge this information. The factors to consider before sharing information about the TP with others are the nationality and immigration status of the TP, and the safety of the parents and child.

- (1) If the parent with physical custody of the child is a U.S. citizen or lawful permanent resident alien (LPR), the Privacy Act protects the parent's right to privacy relating to records about him or her.

NOTE: In such cases, you need to obtain a written Privacy Act waiver from the Taking Parent **BEFORE** information about the Taking Parent, or information that relates to both the child and the Taking Parent, can be disclosed.

- (2) If the LBP requests information from his child's records, you may release the information, but you should redact information that is protected by the Privacy Act, including information about any other U.S. citizens or LPRs (such as the TP).
- (3) If the TP is not a U.S. citizen/national or LPR, you may release information about the TP to the LBP or others, as necessary and appropriate. You may also release information about the child even

when doing so would also result in releasing information about the TP, unless you determine that such release:

- (a) Could endanger the child or other people; and/ or
 - (b) Is contrary to the child's own wishes concerning the release of information about him or her and the child is of sufficient age and maturity.
- (3) If the LBP requests information about the child and obtains an order from a court of competent jurisdiction requiring the release of such information, forward any such requests and orders to CA/OCS/L (Ask-OCS-L-Dom-Post@state.gov) which will determine whether or not to release the information.

7 FAM 1719.4 Releasing Information About the Left-Behind Parent (LBP) to the Taking Parent (TP)

(CT:CON-407; 06-29-2012)

Sometimes the TP will ask for information regarding the LBP. In most circumstances, it is not appropriate to release such information.

- (1) If the LBP is not a U.S. citizen or Lawful Permanent Resident Alien (LPR), you may release the information as long as you have no reason to believe the child, or anyone else would be harmed as a result of the disclosure. If you have questions about what is appropriate for release, please contact CA/OCS/L (Ask-OCS-L-Dom-Post@state.gov) for guidance.
- (2) If the LBP is a U.S. Citizen or LPR, you must obtain a written Privacy Act Waiver before releasing information about the LBP to the TP.

7 FAM 1719.5 Passport Records

(CT:CON-395; 02-09-2012)

The Department maintains United States passport information on individuals for the period from 1925 to the present. These records normally consist of applications for U.S. passports and supporting evidence of U.S. citizenship, and are protected by the Privacy Act.

7 FAM 1719.5-1 Obtaining Copies Of Passport Records

(CT:CON-395; 02-09-2012)

- a. The Privacy Act allows individuals to obtain copies of records relating to themselves.
- b. Either of a child's parents may also obtain from the Department of State

copies of the United States passport records relating to their child.

- c. Either parent may request information about their child's U.S. passport, unless their parental rights have been legally terminated. To request information about a child's passport, the parent should submit:
 - (1) A typed or clearly printed and notarized request, providing the child's full name, date and place of birth, current address, and the reason for the request; and
 - (2) The estimated date of the passport's issuance and any additional passport information that will enable the Department to conduct a full search.
- d. If the parent would like an authenticated copy of the child's passport records, refer them to the guidance on the Department of State, Bureau of Consular Affairs Internet home page about Obtaining Copies of Passport Records. See 7 FAM 1300 Appendix J Release of Information From Passport Files.

NOTE:

Passport Services Law Enforcement Liaison Division (CA/PPT/L/LE) processes requests for passport records from the general public, law enforcement, state and local agencies, as well as formal requests for passport files made under the Freedom of Information Act (FOIA - 5 U.S.C. 552) and the Privacy Act (PA - 5 U.S.C. 552a) upon referral from A/GIS.

7 FAM 1719.5-2 Cautioning Parents

(CT:CON-395; 02-09-2012)

When assisting parents with requests for information about their children's passports or passport records, posts should also advise them that:

- (1) Passport records do not include evidence of travel such as entrance/exit stamps, visas, residence permits, etc., since this information is entered into the passport book after issuance; and
- (2) This process does not apply to foreign passports. A child who has or may have the citizenship of another country (which is often the case if one parent has a foreign nationality) may be eligible to hold, or be included in, a foreign passport in addition to a U.S. passport. The concerned parent may contact the embassy of the other nationality for information and assistance.

7 FAM 1719.6 Visa Records

(CT:CON-407; 06-29-2012)

The Department's policies relating to release of visa information are contained in 9 FAM 40.4 Notes.

DO NOT RELEASE VISA RECORDS OR INFORMATION UNTIL YOU HAVE CHECKED 9 FAM AND CONFERRED WITH CA/VO and CA/OCS/L (Ask-OCS-L-Dom-Post@state.gov) AS APPROPRIATE.

7 FAM 1719.7 Requests for Department or Post Testimony or Other Records

(CT:CON-407; 06-29-2012)

- a. Refer inquirers to 22 CFR 172 Service of Process; Production or Disclosure of Official Information in Response to Court Orders, Subpoenas, Notices of Depositions, Requests for Admissions, Interrogatories, or Similar Requests or Demands in Connection With Federal or State Litigation; Expert Testimony (see 2 FAM 500, Legal Affairs).
- b. CA/OCS officers and posts must consult CA/OCS/L (Ask-OCS-L-Dom-Post@state.gov) for guidance concerning any U.S. or foreign subpoenas. Do not respond to subpoena demands directly. CA/OCS/L will coordinate with the Office of the Legal Adviser as appropriate and provide an advisory opinion on how to proceed.

7 FAM Exhibit 1713

Outgoing Hague Case Worksheet

(CT:CON-395; 02-09-2012)

Before you provide any LBP with specific information, and outline possible courses of action, you should first determine whether the case appears to be a Hague Case, Possible Hague Case or a Non-Hague Case. Often these factors require information not available at the initial inquiry, and will be made later in the history of the case.

Hague Return Case

CI in its role as U.S. Central Authority will normally accept a Hague application for return when all of the following questions are answered **affirmatively**:

- The child is under the age of sixteen.
- The child is known or presumed to have been taken to a Hague country.
- The Hague Treaty was in force between the United States and that country on or before the date of the abduction.
- The LBP wishes to file for return under the Hague Convention.

The Foreign Central Authority may require the applicant parent to provide evidence of the following:

- The child was habitually resident in the U.S. prior to the removal.
- **The LBP had some form of rights of custody at the time of the removal beyond mere visitation rights.**
- **The LBP was apparently exercising those rights of custody at the time of removal.**
- **The abduction took place less than one year ago (with some exceptions), or LBP offers reasonable explanation for failure to apply under the Convention within one year.**

Evidence that May be Required by the Receiving Foreign Central Authority

- a. **Right of Custody:** The LBP may demonstrate rights of custody under the Convention with either a court order or by operation of law in the country of habitual residence. If the LBP does not have a court order clearly establishing custody, the case may still qualify as a Hague case under the following

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conditions:

The LBP can show that he/she has custody rights under the laws of the state of habitual residence of the child. LBPs often provide a copy of the relevant statute and a copy of a birth certificate and/or marriage certificate if required.

OR

The court document awards sole or joint custody to the TP, but specifically prohibits removal of the child from the United States, or the state in the United States, or the Court's jurisdiction. The LBP petitions for and receives an affirmative determination under Article 15 of the Hague Convention.

- b. **Exercising Right of Custody:** If the LBP was NOT exercising his or her right to custody at the time of the removal, the case may still qualify as a Hague case provided:

The LBP can show he/she would have exercised custody rights but for the removal.

(**Note:** Deciding actual exercise or any other element of a Hague case is ultimately a judicial decision. When in doubt, assume that a case is provable.)

- c. **U.S. is the child's Habitual Residence:** If the LBP cannot provide convincing evidence of the child's U.S. residence prior to the removal or wrongful retention, the case may still qualify as a Hague case provided:

The LBP files for and a court grants a positive determination under Article 15 of the Hague Convention that the child's habitual residence was the United States

Note:

Deciding any element of a Hague case is ultimately a judicial decision. When in doubt, assume that a case is provable.

- d. **Date of Removal:** Even if the date of removal was more than one year from the date a parent files a Hague application, a court may hear the case and order a return under the Hague Convention. However, it is important to advise the LBP that there may be a court may deny return under Article 12 of the Hague Convention.

7 FAM 900 INTERNATIONAL JUDICIAL ASSISTANCE

7 FAM 910 INTRODUCTION AND AUTHORITIES

(CT:CON-407; 06-29-2012)
(Office of Origin: CA/OCS/L)

7 FAM 911 CONSULAR ROLE

(CT:CON-407; 06-29-2012)

- a. Due to the growth in international trade, travel, cultural exchange, private international law, and crime, the demand for and complexity of consular judicial assistance is growing and is often of critical importance with respect to a broad range of U.S. policies and interests as diverse as narcotics intervention, prosecution of terrorists, child adoption and abduction, and international banking.
- b. Judicial assistance is one of the many consular functions that may demand rapid action and close attention to detail. It may relate to litigation, investigation, evidence gathering, and legal discovery on behalf of parties in the United States and in the host country.
- c. Consular Officers are often called upon to provide information on the local availability of attorneys, translators, and other specialists who may be needed.
- d. When providing judicial assistance abroad, a consular officer must observe U.S. and host country legal procedures and sensitivities in rendering such assistance. When in doubt about how to perform unfamiliar judicial functions not described in this chapter, you should consult with the Department (CA/OCS/ACS). Legal questions may be addressed to CA/OCS/L at Ask-OCS-L-Dom-Post@state.gov. CA/OCS/L will consult with the Office of the Legal Adviser and the U.S. Department of Justice as appropriate.

7 FAM 912 AUTHORITY TO PERFORM

JUDICIAL SERVICES

7 FAM 912.1 Depositions

(CT:CON-126; 01-25-2006)

- a. **Federal Authority:** Federal authority for consular officers to take depositions is established in:
 - (1) 22 U.S.C. 4215 (notarial acts, oaths, affirmations, affidavits, and depositions; fees) and 22 U.S.C. 4221 (depositions and notarial acts; perjury);
 - (2) Rules 28-31, Federal Rules of Civil Procedure (F.R. Civ. P., Rule 28(b)), expressly provide that depositions may be taken in foreign countries by any of the following methods: on notice, by commission, or pursuant to letters rogatory; and
 - (3) Rules 15 and 17, Federal Rules of Criminal Procedure (F.R. Crim. P.).
- b. **State Authority:** State laws pertaining to the role of consular officers in taking depositions for state court proceedings can be found in the Law Digest volumes of the Martindale-Hubbell Law Directory.
- c. **Restrictions:**
 - (1) Procedures for obtaining evidence by deposition abroad may vary in civil, criminal, and administrative cases. Many countries do not permit pre-trial discovery of documents. Some countries, for example, China, prohibit the taking of voluntary depositions. In order to avoid violating principals of judicial sovereignty, evidence obtained abroad must not be gathered in contradiction of the laws of foreign jurisdiction; and
 - (2) In cases where a deposition abroad is to be taken before a U.S. consular officer on notice or pursuant to a Commission (see 7 FAM 920), reasonable written advance notice must be given by the requesting authority to the deponent and opposing counsel as well as to the consular officer concerned.

7 FAM 912.2 Service of Process on Persons in Foreign Countries

(CT:CON-126; 01-25-2006)

- a. Federal authority pertaining to the service of civil process abroad is found in:
 - (1) 28 U.S.C. 1783 (subpoenas of persons in foreign countries); and

- (2) 28 U.S.C. 1784 (contempt). (See 7 FAM 950).
- b. Information about service of process upon the U.S. Government, any of its agencies, or any of its employees may be found in 28 U.S.C. 1346 and 28 U.S.C. 2671 - 2680 (Tort Claims).
 - c. Service of process in U.S. Federal or State litigation involving official activities of the Department of State or its employees must be made in accordance with 22 CFR, Part 172. These provide that only L/EX is authorized to accept service of process. 7 FAM 970 provides information regarding litigation against the United States and 7 FAM 980 provides information regarding subpoena for consular testimony or records.

7 FAM 912.3 Service of Process Upon Foreign State

(CT:CON-126; 01-25-2006)

Pertinent Federal authority relating to service of process upon foreign states or political subdivisions thereof is located in 28 U.S.C. 1330, 1602-1611, and in 22 CFR, Part 93.

7 FAM 912.4 Privacy Act

(CT:CON-126; 01-25-2006)

The Privacy Act of 1974, 5 U.S.C 552a, places certain restrictions on the release of personal information about U.S. citizens or U.S. resident aliens to other parties. When considering the release of information to foreign law enforcement officials, consular officers should comply with appropriate provisions of the Privacy Act. See 22 CFR 171.30ff, Chapter 5 of the Publication on Consular Management, and 5 FAM 480. For additional guidance, consult the Department (CA/OCS) as appropriate. (See 7 FAM 060).

7 FAM 912.5 International Treaties and Conventions

(CT:CON-126; 01-25-2006)

- a. The 1970 Hague Convention on the "Taking of Evidence Abroad in Civil or Commercial Matters" provides for the taking of depositions in countries that are parties thereto. This convention came into force for the United States on October 7, 1972. The official sources/citations for the Convention are 23 UST 2555; TIAS 7444. For a full discussion of the convention, see 7 FAM 935.1.
- b. Also applicable to the taking of depositions by consular officers is the Vienna Convention on Consular Relations, Article 5, Paragraphs (f), (i),

and (j)

7 FAM 912.6 Selected Bilateral Agreements

(CT:CON-126; 01-25-2006)

- a. Many bilateral consular conventions include provisions regarding taking testimony, transmitting letters rogatory and service of process. See Treaties in Force, the CA/OCS Intranet treaties feature and the Departments internet travel site, bilateral consular conventions database.
- b. Selected bilateral agreements provide special arrangements for taking depositions. These agreements normally take the form of an exchange of diplomatic notes. Such agreements are in force, for example, between the United States and the Federal Republic of Germany (FRG), and between the United States and each of the twelve successor states of the former USSR, that remain bound by an agreement done between the United States and the former USSR.

7 FAM 912.7 Other International Agreement

(CT:CON-126; 01-25-2006)

Article 7 of the 1988 United Nations Convention Against Illicit Traffic in Narcotics Drugs and Psychotropic Substances, Vienna, December 20, 1988, permits evidence to be obtained from the countries party to it without the need for letters rogatory.

7 FAM 912.8 Mutual Legal Assistance Treaties

(CT:CON-126; 01-25-2006)

7 FAM 960 provides guidance about Mutual Legal Assistance (MLAT) treaties.

7 FAM 912.9 Where No Applicable Treaty Exists

(CT:CON-126; 01-25-2006)

In countries where the right to take depositions is not secured by treaty, consular officers may take depositions only if the laws or authorities of the receiving state do not prohibit them from doing so. For example, consular officers may not take depositions in Russia, even if the witness is willing to be deposed.

7 FAM 913 DEFINITIONS

(CT:CON-126; 01-25-2006)

These terms are commonly used in judicial assistance.

Action. A law suit or other proceeding pending before a court or a quasi-judicial body or a body acting in such a capacity.

Affidavit. A written statement made voluntarily and confirmed either by (1) the oath or affirmation of the party making it, taken before an officer having the authority to administer such oaths (See 22 CFR 92.22), or (2) by conforming to the rules of a particular court for signing an affidavit without the use of a notary or equivalent (e.g., declaring a statement to be true under penalty of perjury; see 7 FAM 856).

Affirmation. A solemn and formal declaration that an affidavit is true or that the witness will tell the truth; this declaration may usually be substituted for an oath in proceedings in U.S. courts. (See 22 CFR 92.18(b)).

Commission. A written authorization issued by a court of justice or a quasi-judicial body, or by a body acting in such a capacity, giving power to take the testimony of witnesses who cannot appear personally to be examined in the court or before the body issuing the commission. (See 22 CFR 92.53).

Counsel or legal counsel. A person licensed or otherwise authorized to practice law in a particular jurisdiction, by handling the trial or management of a case in court and/or advising and representing an individual or corporate client in legal matters.

Declaration under penalty of perjury. A simple declaration used instead of a notarized oath or affirmation which, when permitted, eliminates the need for an oath before the consular officer. (See 7 FAM 856).

Default judgment. A judgment rendered in consequence of the nonappearance of the defendant or for failure to take some required step to defend against the charges or claim in a specific action.

Deposition. The testimony of a person, whether a party or not (often referred to as a deponent), given under oath or affirmation before a designated or appointed individual other than the judge, jury, or other body that will adjudicate the claim, in response to questions, oral or written, by a party to the litigation, and recorded for later use. A deposition is usually recorded in writing but is sometimes videotaped or tape recorded, where not prohibited by host country law. (See 22 CFR 92.49).

Discovery. Pretrial procedures that can be used by one party to obtain facts and information about the case from the other party or from third parties in order to assist the party's preparation for trial.

Disinterested party. A person with no stake in the outcome of the action for which the testimony is sought, and unconnected with the parties or witnesses.

Interrogatories. Questions posed to a person or entity. Normally, in connection with litigation, the term means written questions given to one party to an action by another party that require response in writing under oath. **Cross-interrogatories** are questions posed by the opposing party or the attorney of the opposing party.

Letter rogatory. A formal request for judicial assistance from a court in one country to a court in another country. (See 22 CFR 92.54).

Notice. A written declaration by a party to a lawsuit to the opposing party of intent to take some action in connection with the litigation, such as a notice to take a deposition. (See 22 CFR 92.52).

Oath. Broadly, any form of attestation by which persons signify that they are bound in conscience to perform an act faithfully and truthfully. (See 22 CFR 92.18 (a)). With respect to testimony and statements in connection with litigation, it is an affirmation of the truth of a statement that renders one punishable for perjury if one willfully makes untrue statements.

Order to show cause. A court order to present reasons why a person who failed to comply with a prior court directive should not be held in contempt of that court, and/or why an earlier directive should not be confirmed or take effect.

Party. For purposes of this chapter, one who is engaged in a legal proceeding: a plaintiff or defendant in a lawsuit, or the counsel of record. A party may be an individual or an organization.

Service of Process. The delivery or legal equivalent of delivery of a complaint, summons, or subpoena, upon a person or entity with the result that the person must respond. Service of process frequently refers to the legal effective delivery of the complaint and summons, commencing a lawsuit to the defendant.

Subpoena. A written command issued under the authority of a court, requiring the attendance of a person or the production of specified documents before the court or grand jury, with potential penalties for failure to comply.

Summons. A document by which a party is summoned to answer a complaint filed with a court.

Testimony. The oral statements of a witness under oath or affirmation, usually in court proceedings.

Tort claim. A claim of one person against another person alleging an injury, offense, or wrongful act, not including breach of contract, for which the claimant is entitled to compensation.

7 FAM 914 THROUGH 919 UNASSIGNED

7 FAM 450

TRIALS, APPEALS, SENTENCES, POST SENTENCING

(CT:CON-435; 01-24-2013)
(Office of Origin: CA/OCS/L)

7 FAM 451 POLICY ON ATTENDANCE

(CT:CON-379; 06-09-2011)

The Department encourages consular observance of the trial process as a general rule, but also understands that consular attendance at trials or hearings in some judicial systems is neither necessary nor useful, and in a few instances could actually be counter-productive. Also, we understand that your presence at a ten or twenty-minute hearing may sometimes require sitting in a courtroom for all or a significant part of a day, idle time that you can little afford. For this reason, the Department generally leaves it up to posts to determine the degree to which a consular officer will attend the trial of a U.S. citizen or national prisoner.

7 FAM 451.1 Advantages To Attending Trials And Hearings

(CT:CON-379; 06-09-2011)

As a consular officer, you may not actively participate in the judicial process. However, the single fact of your presence often accomplishes several things, including:

- (1) Helps ensure that there is no discrimination against the U.S. citizen or national arrestee on the basis of U.S. nationality, either in procedure or sentence;
- (2) Shows the U.S. citizen or national arrestee, and the local government, that the United States has a legitimate interest in the case;
- (3) Enables you to accurately report proceedings first-hand, not only to the Department, but to family members, Congressional representatives, and others, consistent with the Privacy Act;
- (4) Improves your own knowledge of the judicial system in the host country; and
- (5) Allows you to monitor the conduct and capabilities of local attorneys; and
- (6) Facilitates contacts with host government authorities.

7 FAM 451.2 When Consular Attendance Is Mandatory

(CT:CON-379; 06-09-2011)

There are certain circumstances when consular officer attendance at hearings is mandatory. These circumstances include:

- (1) There are indications of discrimination against the U.S. citizen or national on the basis of U.S. nationality, race, religion, or ethnicity either in procedure or sentence. Such indications could include, but are not limited to:
 - (a) Past history of discriminatory treatment of other U.S. citizen or national prisoners;
 - (b) Treating an U.S. citizen or national prisoner of one race, religious or ethnic background differently than an U.S. citizen or national prisoner of another racial, religious, or ethnic background;
 - (c) Refusal to provide the U.S. citizen or national with translation facilities when proceedings are in a language the prisoner does not understand;
 - (d) Slanted pre-trial publicity, particularly where the press is government-controlled, or it is clear the host government is "leaking" the information;
 - (e) Proposed sentences or fines that clearly exceed those normally accorded local nationals or third country nationals convicted of similar crimes;
- (2) The charges are political in nature, or the trial is expected to have political overtones;
- (3) The charges and/or the trial are a pertinent factor in the bilateral relationship with the host government;
- (4) The prisoner or his family has specifically requested your presence at the trial, and it is reasonably feasible for you to do so; and
- (5) You are instructed to do so by the Department.

7 FAM 451.3 Attendance By Local Employee

(CT:CON-379; 06-09-2011)

You may find it helpful in some cases to have a Locally Employed Staff (LE Staff) attend the trial:

- (1) To accompany a consular officer in order to translate or to explain local procedure;
- (2) In circumstances where a consular presence is not necessary, but it is useful to have a first-hand report on the proceedings;

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- (3) In those few cases where the known presence of a consular officer would be disruptive and perhaps detrimental to the U.S. citizen or national prisoner.

Note: The LE Staff's attendance cannot substitute for that of the consular officer when the circumstances in 7 FAM 451.2 are present.

7 FAM 452 BAIL, BOND AND PAROLE ISSUES

(CT:CON-092; 10-28-2004)

It is common practice in many countries to release prisoners pending completion of their trial or judicial process, either on bail or some other type of conditional liberty. This can sometimes create problems, which you must address carefully.

7 FAM 452.1 Guarantees

(CT:CON-092; 10-28-2004)

Consular officers may not, under any circumstances, provide a written or oral guarantee to a court or detaining official stating that the arrested U.S. citizen or national will appear for a hearing or trial.

7 FAM 452.2 Bail Fees

(CT:CON-379; 06-09-2011)

- a. There are no programs or provisions that allow consular officers to loan funds to an U.S. citizen or national arrestee for the purposes of posting bail. There are no government funds available for such payment.
- b. You may advise family members or others in the private sector to utilize the OCS TRUST procedures for transmission of sufficient funds to post bail or pay fines (see 7 FAM 435.2).

Note: In such cases, it is preferable for payment from OCS Trust to be made to the prisoner's attorney, or the prisoner, rather than deal directly with the court or the bail bondsmen. Your direct payment could be misinterpreted as a U.S. Government guarantee.

7 FAM 452.3 Denied Bail

(CT:CON-379; 06-09-2011)

Often U.S. citizen or national prisoners will allege discrimination because bail is common for host country nationals facing similar charges, but has been denied in their case. In such cases:

- (1) You should satisfy yourself that the denial is based on non-discriminatory reasons such as the increased likelihood of a non-resident to flee the country, and that other third-country nationals are treated similarly; and
- (2) If, once your review is finished, you believe the bail was denied for non-discriminatory reasons, you should make an effort to explain the factors behind the decision to the U.S. citizen or national prisoner and his family.
- (3) If you feel discrimination may be present, follow the procedures in 7 FAM 453.1.

7 FAM 452.4 Consuls Cannot Be Parole Officers

(CT:CON-092; 10-28-2004)

At times, foreign government officials, particularly court officials not familiar with immunity concepts, will request you to serve as the parole officer for an U.S. citizen or national arrestee. You must explain that you are explicitly forbidden by the Department, as well as by international law and practice, to serve in such a capacity.

7 FAM 453 PROTESTING JUDICIAL DISCRIMINATION

(CT:CON-435; 01-24-2013)

Whenever you encounter discrimination against U.S. citizen or national prisoners in the judicial system, you should notify CA/OCS immediately. CA/OCS/ACS will coordinate with the regional bureau and CA/OCS/L (ASK-OCS-L@state.gov) with coordinate with the Office of the Legal Adviser to provide the post with guidance to enable you to take appropriate action to counter this discrimination at whatever level appears most effective.

7 FAM 453.1 Reporting Discrimination

(CT:CON-379; 06-09-2011)

- a. Immediately, brief your senior management on the incident, and develop an appropriate post strategy for dealing with the issue.
- b. Immediately, advise the Department (CA/OCS/ACS) by cable using CASC and

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other appropriate tags, detailing the incident and outlining post's proposed plans to protest. This will enable CA/OCS/ACS to better coordinate guidance to post with offices that do not have access to the ACS automated system . In urgent cases this could also be done by e-mail.

7 FAM 453.2 Evidence Of Discrimination

(CT:CON-092; 10-28-2004)

When protesting an instance of discrimination, you should develop the strongest case possible, and provide specific evidence supporting the claim of discrimination to the appropriate host government officials. Such evidence might include information contained in the following sub sections.

7 FAM 453.2-1 Transcript of Trial or Hearing

(CT:CON-092; 10-28-2004)

If the discrimination is based on oral statements or slurs made during a judicial hearing, obtain an official transcript if possible, and highlight the significant portions in your protest.

7 FAM 453.2-2 Prior Case Records

(CT:CON-092; 10-28-2004)

Excerpt from your own records, or whatever prior court records are available, information to statistically document your case whenever:

- (1) The discrimination is based on treatment of an U.S. citizen or national prisoner that is obviously different that treatment accorded a local national; and
- (2) Treatment of an U.S. citizen or national prisoner is different from other U.S. citizen or national prisoners of different race, religion or ethnic background.

7 FAM 453.2-3 Host Country Law Or Regulation

(CT:CON-092; 10-28-2004)

You should know what laws or regulations the host country may have against discrimination in the judicial process, and cite the appropriate statutes or regulations in your protest.

FYI: Your post may wish to hire a local private attorney who can research this issue. Department funds may be available in such cases. Contact CA/OCS/ACS for possible assistance.

7 FAM 453.3 Level Of Protests

(CT:CON-435; 01-24-2013)

Together with post leadership, you should carefully develop a post strategy that determines the type of protest; level of protesting official, and to whom the protest should be made. The text of the protest should be cleared by CA/OCS/L (ASK-OCS-L@state.gov) which will coordinate clearance with L/CA. CA/OCS/ACS will coordinate clearance with the regional bureau.

7 FAM 453.3-1 If The Trial Is Still Ongoing

(CT:CON-379; 06-09-2011)

- a. An informal protest to the appropriate judicial authority may be the fastest and most efficient method to eliminate the bias.
- b. For example, if the discrimination springs from a particular judge or prosecutor, an unofficial approach to a Chief Judge or similar judicial official requesting a change in trial judge or prosecutor may be the best action for you to take.
- c. A timely formal protest remains a possibility if circumstances warrant.

7 FAM 453.3-2 If The Trial Is Concluded

(CT:CON-092; 10-28-2004)

- a. Determine whether the discrimination protest can be a part of a sentence hearing or an appeal. It is usually helpful to work with the U.S. citizen or national's attorney in these instances.
- b. If this is not feasible, a formal protest, such as a diplomatic note and/or a formal call on the Foreign Minister or Justice Minister may be the most appropriate action

7 FAM 454 APPEALS

(CT:CON-092; 10-28-2004)

When a convicted U.S. citizen or national decides to appeal the verdict or the sentence, you should:

- (1) Continue to provide appropriate consular services, including visits and attending hearings;
- (2) Be available to perform liaison services with the prisoner's lawyer and judicial authorities; and
- (3) Scrupulously avoid offering advice to a convicted prisoner or attorney on whether the prisoner should file an appeal. You may, however provide general information on the appeal process.

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Note: In cases where the prisoner may be eligible for a transfer to the U.S. under a bilateral or multilateral treaty, you should make certain the prisoner understands that he or she cannot be processed for transfer while any appeals are still pending

7 FAM 455 REPORTING

(CT:CON-379; 06-09-2011)

You must promptly record in the ACS system and report to the Department each step in the judicial process. Significant decisions or actions may also be reported by e-mail to your CA/OCS/ACS desk officer.

7 FAM 455.1 Interim Hearings

(CT:CON-379; 06-09-2011)

Record promptly in the ACS system. Significant decisions or actions may also be reported by e-mail. Actions include:

- (1) Date;
- (2) Purpose;
- (3) Any changes or additions to charges;
- (4) Whether consul or LE Staff attended;
- (5) Any significant outcome of hearing; and
- (6) Whether accused and/or attorney appeared.

7 FAM 455.2 Delayed Or Cancelled Hearings

(CT:CON-379; 06-09-2011)

Record promptly in the ACS system. Significant decisions or actions may also be reported by e-mail. Actions include:

- (1) Reason for delay, postponement, or cancellation; and
- (2) Expected date of rescheduling.

7 FAM 455.3 Judgment Or Determination

(CT:CON-379; 06-09-2011)

It is critical to report the outcome of a trial to the Department (CA/OCS/ACS) as quickly as possible, since a verdict, particularly a guilty verdict, will often generate immediate family, congressional, and media inquiries. Record this information promptly in the ACS system and notify your CA/OCS/ACS desk officer by e-mail.

7 FAM 455.3-1 If Acquitted

(CT:CON-379; 06-09-2011)

Record promptly in the ACS system. Alert your CA/OCS/ACS desk officer by e-mail. Include:

- (1) Date and time of release or expected release;
- (2) Reasons for acquittal as stated in judicial proceedings;
- (3) Further consular services to be provided (passport issuance; repatriation loan, etc); and
- (4) Persons to notify at U.S. citizen or national's request.

7 FAM 455.3-2 If Convicted

(CT:CON-379; 06-09-2011)

Record promptly in the ACS system. Alert your CA/OCS/ACS desk officer by e-mail. Include:

- (1) Exact charges;
- (2) Sentence if known;
- (3) Sentencing date, if this is a separate process or hearing;
- (4) Decision to appeal, if known;
- (5) Conduct or emotional state of U.S. citizen or national;
- (6) Persons to notify;
- (7) Name and address of new detention facility, if prisoner is to be moved; and

Note: If the new detention site is outside of your consular district, transfer your post's file to the U.S. consular office in that district and notify the Department (CA/OCS/ACS).

- (8) Any overall observations or comments on the judicial process you consider useful or significant.

7 FAM 456 POST SENTENCING ISSUES

7 FAM 456.1 Corporal Punishment

(CT:CON-435; 01-24-2013)

- a. Corporal punishment is the infliction of physical pain upon a person's body as punishment for a crime or infraction. Corporal punishments include, but are not limited to, flogging, beating, branding, and mutilation.

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- b. Posts must immediately inform your CA/OCS/ACS desk officer of any sentence including corporal punishment of a U.S. citizen. CA/OCS/ACS will work expeditiously with CA/OCS/L (ASK-OCS-L@state.gov), the regional bureau, and the Office of the Legal Adviser to provide guidance to post.
- c. Country Specific Information sheets should include language about mandatory corporal punishment.

7 FAM 456.2 Death Penalty

(CT:CON-435; 01-24-2013)

- a. Posts must immediately inform your CA/OCS/ACS desk officer of a U.S. citizen sentenced to death. CA/OCS/ACS will work expeditiously with CA/OCS/L (ASK-OCS-L@state.gov), the regional bureau, and the Office of the Legal Adviser to provide guidance to post.
- b. Country Specific Information sheets should include language about mandatory or permissive death penalty.

7 FAM 456.3 Clemency and Pardons

(CT:CON-435; 01-24-2013)

- a. Posts may receive inquiries from prisoners, their families, attorneys, or Congressional representatives requesting post assistance in conveying requests to the host country for clemency or pardons.
- b. Posts may assist by delivering to the host government requests from families and members of Congress. Alternatively, members of Congress may elect to deliver the entreaty to the foreign embassy in Washington.
- c. Consular officers may provide prisoners with information available from the host government about pardon procedures.
- d. Requests for the U.S. Government to make a request on humanitarian grounds based on health of the prisoner or health of a family member should be conveyed to your CA/OCS/ACS desk officer. The request will be coordinated with CA/OCS/L (ASK-OCS-L@state.gov), the regional desk, and the Office of the Legal Adviser. It is unusual for such a request to be granted

7 FAM 457 THROUGH 459 UNASSIGNED