



# The Hague Convention

on the Civil Aspects of International Child Abduction




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## The Convention

- The United States Assisted in drafting the treaty and became a signatory in 1981
- Currently 93 countries are Hague signatories- 80 “partner countries” with the United States




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## Justice Partners



- The litigation of cases under the Hague Convention involves the participation of numerous justice agencies including the Department of State, Attorney General’s Office and the District Attorney’s Office.



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## The Convention

- Two types of cases under the Hague Convention:

- Return -



- Access -



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## Establishing a *Prima Facie* Case for Return

- The Hague Convention provides that if a petitioner proves a *prima facie* case, the child must be returned unless the respondent can prove an affirmative defense.
- Petitioner's burden of proof:
  - Preponderance of the evidence
- Respondent's burden of proof: re affirmative defenses:
  - Clear and convincing evidence.



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## Definitions

- *Prima facie* case:
  - Sufficient evidence to support to reasonably support the allegations.
- Preponderance of evidence:
  - A party must persuade the trier of fact, by the evidence presented in court, that what he or she is required to prove is more likely to be true than not true.
- Clear and convincing evidence:
  - This is a higher burden of proof. A party must persuade the trier of fact that it is highly probable that the fact is true.



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### Prima facie Case

To prove a *prima facie* case, Petitioner must prove three elements:

- (1) prior to removal or wrongful retention, the child was habitually resident in a foreign country;
- (2) the removal or retention was in breach of custody rights under the foreign country's law; and
- (3) the petitioner actually was exercising custody rights at the time of the removal or wrongful retention

**\*The child must be under 16 years old**



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### Habitual Residence

- For the Convention to apply, the child must have been "habitually resident in a Contracting State immediately before any breach of custody or access rights."
- To support an action under the Convention, the cases must involve international child abduction and retention issues, and the involved countries must be recognized by the United States as signatories to the Convention.



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### Habitual Residence

- The habitual residence is determined at the point in time "immediately before the removal or retention."
- The Convention does not define.
- Factors courts consider:
  - changes in physical location,
  - the location of possessions,
  - the passage of time,
  - did the family change or sell residence prior to move,
  - the child's status in school,
  - the parents' intentions at the time of a move,
  - the child's relationships in the new location.



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### Wrongful Removal or Retention

- A petition must allege that removal or retention of the child was wrongful.
- The Petitioner must prove this by a preponderance of the evidence.



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### Wrongful Removal or Retention

- Article 3 provides that removal or retention of the child is wrongful where it is in breach of custody rights attributed to a person, an institution, or another entity, either jointly or alone, under the law of the country in which the child was habitually resident immediately before the removal or retention.
- Article 5(a) provides that “rights of custody” are “rights relating to the care of the person of the child and, in particular, the right to determine the child’s place of residence.”



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### Exercising custody rights at the time of removal.

- The Petitioner must have custody rights in the country where the child habitually resides and,
- The petitioner also must exercise those rights.
- *The determination of whether a parent has exercised custody rights is a factual analysis.*



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### Age

- The children subject to a petition under the Hague Convention must be under 16 years of age.



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### The affirmative defenses

- The five affirmative defenses are set forth in Articles 12, 13, and 20 of the Hague Convention.



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### The affirmative defenses

- The well settled defense
  - Length of time child has been in current country is important-defense cannot be raised if petition filed w/in one year of removal.
- The consent or acquiescence defense,
- The grave risk defense,
- The mature child's objection defense,
- Public policy defense.



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### The affirmative defenses

- Burden of preponderance of the evidence:
  - The well settled defense
  - The consent or acquiescence defense
  - The mature child's objection defense,
- Burden of clear and convincing evidence:
  - The grave risk defense,
  - Public policy defense.



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### Other issues.....

- Custody and visitation during hearing.
- Undertakings.
- Exchange.



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