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Section One: International Parental Abduction: New York Law and the Convention on the Rights of the Child

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implemented through state provisions relating to cost, resources, English language proficiency, school discipline, and student decision-making. Jessica M. Vaughn undertakes a federal-state analysis of New York's ability to provide for the physical and psychological recovery of former child soldiers. Finally, Clare Wiseman examines a state party's Article 2 obligation to provide protection against discrimination in opportunity for children as well as to affirmatively prevent disparate outcomes caused by discrimination.

Section One: International Parental Abduction: New York Law and the Convention on the Rights of the Child

*by Maria F. Cadagan*⁴

In New York, one percent of the missing children reported in 2007 were abducted.⁵ Among the abduction cases, the most frequent form of abduction was by family members.⁶ In New York, Schenectady and Albany counties reported the highest number of missing children, with a ratio of 18.0 and 17.6 per 1,000 children reported missing, respectively.⁷ In 2007, there were 161 familial abductions in New York.⁸ These statistics raise the question of whether New York does enough to prevent and prosecute the crime of international parental abduction.

New York law is inconsistent with the CRC regarding the upper age limit marking the time children become adults. The Convention on the Rights of the Child ("CRC") requires that all human beings under the age of eighteen be regarded as "children."⁹ In contrast, New York Penal Law only recognizes those

⁴ J.D. Candidate, Albany Law School, 2010; B.A., University of Florida, 2005.

⁵ N.Y. STATE DIV. OF CRIMINAL JUSTICE SERV., MISSING AND EXPLOITED CHILDREN CLEARINGHOUSE ANNUAL REPORT (2007), <http://criminaljustice.state.ny.us/crimnet/ojsa/mcannual07/annual2007.pdf> [hereinafter MISSING AND EXPLOITED CHILDREN CLEARINGHOUSE ANNUAL REPORT].

⁶ Of children reported missing, 94% were ages thirteen or older, 61% were female, and 48% were white. The single largest group of cases involved white females thirteen years old or older, which constituted 29% of all missing cases. *Id.* at 4.

⁷ *Id.*

⁸ Of these abductees, 120 were children between the ages of one and five, 30 were between the ages of six and twelve, 7 were between the ages of thirteen and fifteen, and, lastly, 4 were between the ages of sixteen and seventeen. Of the total familial abduction cases, 71 children abducted were males and 90 were females. Furthermore, 65 of the abductees were white, while 96 were non-white. *Id.* at 6.

⁹ CRC, *supra* note 2, art 1.

under the age of sixteen as children, leaving sixteen- and seventeen-year olds unprotected by laws punishing parental abduction.¹⁰ This Section will compare New York State laws¹¹ on abduction and kidnapping with the principles of the CRC, and will highlight what New York is doing to combat international parental child abduction by examining the applicable laws of the state.

I. UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

The Committee on the Rights of the Child is the body of independent experts that monitors implementation of the CRC by governments that ratify the CRC.¹² The Committee is one of seven U.N. treaty bodies that monitor implementation of human rights treaties.¹³ All U.N. member states, except Somalia and the United States, have signed and ratified the Convention and are required to submit regular, detailed reports on the national situation of children's rights to the Committee for examination.¹⁴ It is important to note that although the United States has signed the treaty, it has not ratified the Convention and therefore is not bound by the CRC's provisions. It may be argued that this leaves children in the United States at a disadvantage.¹⁵ This Section will also examine CRC articles 1, 2, 3, 11, 12, and 35.

A. Article 1 of the CRC

Article 1 states the definition of a child "as every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."¹⁶ However, New York's Penal Law statute concerning abduction by family members only re-

¹⁰ See N.Y. PENAL LAW §§ 135.45–135.50.

¹¹ It should be noted that the Federal Parental Kidnapping Prevention Act ("FPKPA"), 28 U.S.C. § 1738A (2006), International Child Abduction Remedies Act (ICARA), 42 U.S.C. §§ 11601–11611 (2006), and International Parental Kidnapping Crime Act (IPKCA) of 1993, 18 U.S.C. § 1204 (2006), are federal laws available to protect against and prevent international and domestic child abduction, but will not be discussed in this Section. ICARA was enacted, *inter alia*, to establish procedures to implement the Hague Convention on the Civil Aspects of International Child Abduction, concluded Oct. 25, 1980, 102 Stat. 437 (entered into force in the United States July 1, 1988) [hereinafter Hague Convention].

¹² See, e.g., Euro-Mediterranean Human Rights Network, <http://en.euromedrights.org/> (follow "EU and HR Glossary" hyperlink; then follow "Committee on the Rights of the Child (CRC)" hyperlink under "UN TERMS") (last visited Mar. 16, 2010).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ CRC, *supra* note 2, art 1.

fers to children as human beings under the age of sixteen.¹⁷ This illustrates a discrepancy between New York's law and the CRC definition of a "child," leaving children ages sixteen and seventeen in New York with no protection under the Penal Law.¹⁸ New York Domestic Relations Law does cover the issue of parental child abduction, but once again fails to include children ages sixteen and seventeen as protected within its provisions.¹⁹

B. Article 2 of the CRC

Article 2 of the CRC protects children from discrimination by stating: "[s]tates shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, color, sex, language, religion, political or other opinion, national ethnic or social origin, property disability, birth or other status." This article also provides that "state parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members."²⁰ If age can be considered a status, then New York might be discriminating against those sixteen- and seventeen-year old children not considered "children" under the Penal Law. Once again, this illustrates the very different definitions of "child" between the CRC and the laws of the State of New York.

C. Article 3 of the CRC

Article 3 states the following:

[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration; and state parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures; and state parties shall ensure that the institutions, services and facilities

¹⁷ N.Y. PENAL LAW § 135.30.

¹⁸ MISSING AND EXPLOITED CHILDREN CLEARINGHOUSE ANNUAL REPORT, *supra* note 5; CRC, *supra* note 2.

¹⁹ N.Y. DOM. REL. LAW § 75 (McKinney 1999).

²⁰ CRC, *supra* note 2, art 2.

responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.²¹

The State of New York must have jurisdiction over the parties in cases involving international abduction or custody issues; if the State does not have jurisdiction over the parties, it cannot reach a determination based on the best interests of the child, and nor does it have the power to enforce any judicial findings. Furthermore, the best interests of sixteen- and seventeen-year olds are not being addressed, according to CRC guidelines, in New York, as those age groups are not considered children under New York law. In order to bridge the evident gap in age for those protected under the law, New York must take steps to include the best interests of sixteen- and seventeen-year old children.

Custody becomes a critical issue in most cases relating to child abduction, and New York will only hear a case if it is the home state of the child.²² The “home state” is the state where the child has resided for a continuous period of six months immediately preceding commencement of the proceeding.²³ New York has adopted a uniform statute, the Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”),²⁴ that governs custody issues. The “home state” definition under UCCJEA²⁵ will be discussed further in this Section. On a positive note, New York does consider the best interest of the child under a definitional exception to the UCCJEA.²⁶ For example, when the child is less than six months old, the court is called to examine the circumstances around the case and how long the child has lived in the state before making a decision.²⁷ This is a good example of when a court takes the child’s best

²¹ CRC, *supra* note 2, art 3.

²² N.Y. DOM. REL. LAW § 76.

²³ N.Y. DOM. REL. LAW § 75-a.

²⁴ *Id.* §§ 75–78-a.

²⁵ *Id.* § 75-a.

²⁶ The only definitional exceptions are: (1) where the child resided in the state for a continuous period of six months, but not with a parent or person acting as a parent (residence in a boarding school, for example); or (2) where the child is less than six months old, in which event the home state is where the child has lived from birth with a parent or a person acting as a parent. *Id.*

²⁷ *See, e.g.,* Joseph M.W. v. Crystal B.R., 275 A.D.2d 998 (N.Y. App. Div. 4th Dep’t 2000) (dismissing custody petition where both parents were New York residents, but mother had given birth to the two-week old child in Michigan); Mazur v. Mazur, 207 A.D.2d 61 (N.Y. App. Div. 4th Dep’t 1994) (exercising jurisdiction in New York where the child was born in New York but soon relocated to California with a person acting as a parent).

interests into account.

D. Article 11 of the CRC: Illicit Transfer and Non-return of Children

If New York followed the principles in the CRC, Article 11 would be the key article in addressing international parental child abduction. This article states the following: “1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad,” and “2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.”²⁸ The Hague Convention on the Civil Aspects of International Child Abduction (“Hague Convention”) has been signed and ratified by the United States and provides a definition for wrongful removal of a child that constitutes child abduction.²⁹ New York’s preventative and educational methods in combating the illicit transfer and non-return of children abroad will be discussed in the following section along with the main treaty governing this subject area within international and New York law—the Hague Convention.³⁰

E. Article 12 of the CRC

Article 12 provides that the views of the child are to be taken into account by:

1. [assuring] to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. [f]or this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.³¹

Since the United States is not legally bound by the CRC, we must look at what laws are in force in the United States and New York to address the child’s right to be heard. Currently, the United States and New York State rely heavily on the Hague Convention in deter-

²⁸ CRC, *supra* note 2, art. 11.

²⁹ The removal or retention of a child is “wrongful” whenever: a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention. Hague Convention, *supra* note 11, art 3.

³⁰ See generally *id.*

³¹ See CRC, *supra* note 2, art. 12.

mining how to approach international abduction cases.³² The Hague Convention ensures the prompt return of children who have been abducted from their country of habitual residence or wrongfully retained in a contracting state that is not their country of habitual residence.³³ Article 13 of the Hague Convention is dedicated to the child's wishes and objections, providing that "the judicial or administrative authority may refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views."³⁴

II. NEW YORK LAW AND THE CRC

New York relies upon the Hague Convention when addressing matters of international child abduction, and has adapted most of its laws to fit the Hague Convention's guidelines. New York has a statute, entitled "custodial interference," providing protection to children abducted by family members.³⁵ New York has split up custodial interference into the first and second degrees.³⁶ In New York, the crime of custodial interference is essentially the crime of kidnapping among family members. Conduct that would normally amount to kidnapping is reduced to custodial interference when it occurs among family members. Under New York Penal Law, it is an affirmative defense to a charge of kidnapping that the defendant was a relative of the abducted person and the defendant's sole purpose was to assume control of the person.³⁷ Therefore, relatives who remove children under the age of sixteen from the custody of a lawful guardian for a protracted period, knowing they have no legal right to do so, are guilty of custodial interference in the second degree, which is a class A misdemeanor under New York law.³⁸ Under this statute, sixteen- and seventeen-year olds are not considered children and therefore are left with no protection under the law.

³² The Convention is a multilateral treaty developed by the Hague Conference on Private International Law that provides a method to return a child taken from one member nation to another. Hague Convention, *supra* note 11.

³³ *See id.*, arts. 1, 3.

³⁴ Furthermore, under subdivision b of this Section, a return may also be refused if "there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation." *Id.* art. 13(b).

³⁵ N.Y. PENAL LAW §§ 135.45, 135.50.

³⁶ *Id.*

³⁷ *Id.* § 135.30.

³⁸ *Id.* § 135.45.

A. *New York Penal Law: Custodial Interference*

Custodial interference in the first degree is defined as removing a child under the age of sixteen permanently from the state or removing the child from lawful custody under circumstances that risk the child's safety or health.³⁹ Usually, such prosecutions are brought against non-custodial parents who take their own children away from the custodial parents in violation of a court order.⁴⁰ This is a class E felony in New York State.⁴¹

An affirmative defense to this offense is that the victim had been abandoned or that the taking was necessary in an emergency to protect the victim because he had been subjected to or threatened with mistreatment or abuse.⁴² Unfortunately, New York's statute has a flaw because, in the absence of a custody order, a parent is normally not guilty of custodial interference for removing the child from the residence of the other parent to some other location, even a distant one.⁴³ In fact, the burden of proof is on the state to prove that the kidnapping parent was aware of a court order awarding custody to the other parent in order to obtain a conviction under the custodial interference statute.⁴⁴ Furthermore, children sixteen- and seventeen-years old are not covered under the Penal Law and are left with no protection from parental child abduction.

Custodial interference in the second degree, a class A misdemeanor, is defined in section 135.45 of the New York Penal Law.⁴⁵ A person is guilty of custodial interference in the second degree when:

1. [b]eing a relative of a child less than sixteen years old, intending to hold such child permanently or for a protracted period, and knowing that he has no legal right to do so, he takes or entices such child from his lawful custodian; or
2. [k]nowing that he has no legal right to do so, he takes or entices from lawful custody any incompetent person or other person entrusted by authority of law to the custody of another person or institution.⁴⁶

Although the Penal Law attempts to protect children from parental

³⁹ *Id.* § 135.50.

⁴⁰ RICHARD A. GREENBERG, *NEW YORK CRIMINAL LAW* § 8:10 (3d ed. 2007).

⁴¹ N.Y. PENAL LAW § 135.50.

⁴² *Id.*

⁴³ Greenberg, *supra* note 40.

⁴⁴ *Id.*

⁴⁵ N.Y. PENAL LAW §135.45.

⁴⁶ *Id.*

child abduction, it does not address two major problems. The first problem with the Penal Law is that it does not address international parental child abduction and, second, it only includes children under the age of sixteen.

B. The Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”)

In 2001, New York adopted into law the UCCJEA, which is a uniform state law that gives the court jurisdiction to modify a child custody determination made by a court of another state if New York is the “home state” of the child.⁴⁷ A state is considered to be the child’s “home state” if the child has been wrongfully removed from it to another jurisdiction.⁴⁸ In such instances, the child’s stay outside of New York is considered merely a period of temporary absence; the fact that a custodial parent flees in the middle of custody litigation commenced properly in New York simply does not deprive the New York courts of subject matter jurisdiction to issue an order concerning custody, visitation, and related issues.⁴⁹

Moreover, the UCCJEA can be applied internationally because the intent of the legislation was “to provide an effective mechanism to obtain and enforce orders of custody and visitation across state lines.”⁵⁰ Although the definition of “state” does not include foreign nations, the UCCJEA has an international application article.⁵¹ Section 75-d of the UCCJEA can be interpreted to mean that every one of the 200 nations in the world is considered a “state” under the Act.⁵² This may be interpreted to mean that the UCCJEA gives the State of New York the power to interpret custody orders of other

⁴⁷ Moreover, New York courts maintain exclusive jurisdiction until a determination is made that neither the child, nor the child and one parent, have a significant connection with the state, or where the court determines that neither of the child’s parents reside in the state. The UCCJEA governs jurisdiction in interstate custody and visitation cases, requires interstate enforcement and non-modification of sister-state custody orders, and authorizes public officials to play a role in civil child custody enforcement and cases involving the Hague Convention. N.Y. DOM. REL. LAW § 75.

⁴⁸ *Id.* § 75-a(7).

⁴⁹ N.Y. PENAL LAW §135.30.

⁵⁰ N.Y. DOM. REL. LAW § 75.

⁵¹ N.Y. DOM. REL. LAW §§ 75-a(15), 75-d.

⁵² The Domestic Relations Law states: 1. A court of this state shall treat a foreign country as if it were a state of the United States for the purpose of applying this title and title two of this article. 2. Except as otherwise provided in subdivision three of this section, a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this article must be recognized and enforced under title three of this article. 3. A court of this state need not apply this article if the child custody law of a foreign country as written or as applied violates fundamental principles of human rights. *Id.* § 75-d.

nations and, in some cases, even interfere with these custody orders. This might be in accordance with CRC articles 2 and 11 if done to protect the best interests of the child and to prevent international abduction.

III. PREVENTATIVE METHODS ADMINISTERED BY NEW YORK STATE

New York has established preventative programs in order to educate parents and law enforcement about international parental child abduction. The New York State Division of Criminal Justice Services (“DCJS”) and the Missing and Exploited Children Clearinghouse (“MECC”) provide services established by statute in 1987 which generally fall into three categories: support services for law enforcement, assistance provided to left-behind family members, and community education programs.⁵³ An example of an urgent service offered by the MECC is a hotline named 1-800-FIND-KID, which operates year-round, twenty-four hours a day.⁵⁴ New York has also established LOCATER (“Law Child Alert Technology Resource”), a system that allows for rapid electronic dissemination of high-quality photographic images and biographical information.⁵⁵ Also, New York places missing children’s photographs and biographical information on both the DCJS and National Center for Missing and Exploited Children (“NCMEC”) websites.⁵⁶ New York also uses the Federal Parent Locator Service (“FPLS”), which helps in developing leads and information by conducting database searches.⁵⁷

In light of New York State’s programs to combat and prevent the illicit transfer and non-return of children, the state is meeting the requirements of CRC Article 11. Nevertheless, most of these programs exclude children ages sixteen and seventeen, indicating that the needs of these children have been left unprotected by statute. One positive development is that two of New York State’s most important missing child resources—AMBER Alert and DCJS Miss-

⁵³ New York State Division of Criminal Justice Services, New York State Missing and Exploited Children Clearinghouse, <http://www.criminaljustice.state.ny.us./missing/> (last visited Mar. 16, 2010).

⁵⁴ All information from this hotline is disseminated to investigating law enforcement agencies. MECC also assists parents in searching for their missing children. *Id.*

⁵⁵ When a child is deemed to be endangered, information can be conveyed within minutes via broadcast fax to virtually all law enforcement agencies, New York State Thruway service areas and tollbooths, airports, Amtrak train stations, bus stations, and other entities across New York State. *Id.*

⁵⁶ The NCMEC website has been very successful in the past years. Eight missing children have been recovered as a direct result. *Id.*

⁵⁷ *Id.*

ing Child/College Student Alert (“MCCSA”) programs—do include children up to the age of eighteen.⁵⁸

A. *AMBER Alert Program*

The New York State AMBER Alert program is a voluntary partnership between law enforcement, broadcasters, and others to immediately involve the public in the search for an abducted child.⁵⁹ Any child under the age of eighteen is eligible for the AMBER Alert.⁶⁰ The AMBER Alert comes into play after law enforcement has been notified about an abduction of a child, but there are criteria for the program.⁶¹ The program works by using investigative agencies to submit information directly to the New York State Police Communications Section (“COMSEC”) in Albany.⁶² This information can be seen or heard on television, radio, and highway variable message signs, as well as in lottery in-store ticket terminals, New York State Thruway Authority service areas, Department of Motor Vehicles message boards, and New York State Police, DCJS, and MECC websites.⁶³

New York has incorporated electronic highway billboards in their AMBER plans, and the billboards are typically used to dissem-

⁵⁸ New York State Police, What is the AMBER Alert System?, <http://amber.ny.gov> (last visited Mar. 16, 2010). The AMBER Alert program was established in January 2000 through the efforts of the DCJS and MECC, New York State Police, New York State Broadcasters Association, and other partners. The AMBER Alert program was created in 1996 after a stranger kidnapped and murdered a nine-year old girl named Amber Hagerman in Texas. The AMBER Alert program, or America’s Missing: Broadcast Emergency Response Plan, is a program in which broadcasters and transportation authorities immediately distribute information about recent child abductions to the public, enabling the entire community to assist in the search for and safe recovery of the child. *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Office of Justice Programs, U.S. Dep’t of Justice, Guidance on Criteria for Issuing AMBER Alerts (Apr. 2004), http://www.ncmec.org/en_US/documents/AMBER_Criteria_Apr04.pdf. The U.S. Department of Justice recommends the following criteria: 1) there is reasonable belief by law enforcement an abduction has occurred; 2) the abduction is of a child age 17 years or younger; 3) the law enforcement agency believes the child is in imminent danger of serious bodily injury or death; 4) there is enough descriptive information about the victim and abduction for law enforcement to issue an AMBER Alert to assist in the recovery of the child; and 5) the child’s name and other critical data elements, including the Child Abduction flag, have been entered into the National Crime Information Center (NCIC) database. *Id.*

⁶² COMSEC uses technology such as high-speed broadcast fax, email, and other systems capable of rapidly disseminating information. Details are sent to broadcasters and law enforcement agencies in the area of the abduction. New York State Police, *supra* note 58.

⁶³ *Id.*

inate traffic information to drivers to alert the public of an abducted child by displaying pertinent information about the child and suspected abductor.⁶⁴ Article 11 of the CRC requires that states take preventive measures to combat child abduction, and the AMBER Alert is only effective in locating children after they have been abducted. To ensure consistency with the CRC, New York should establish additional programs to prevent the abduction of children. An example of a preventative program would be parental classes informing parents of the dangers of international parental child abduction, especially teaching parents skills to spot warning signs that the other parent might be contemplating abduction.

B. Missing Child/College Student Alert Programs

The second program New York State offers in the aid and recovery of missing children is the MCCSA program.⁶⁵ When AMBER Alert activation criteria is not met, but a missing child or college student is deemed to be endangered, this alternative alert system is available.⁶⁶ With the MCCSA program, information can be distributed electronically to every police agency in New York State, New York State Thruway travel plazas and toll barriers, broadcasters, airports, bus terminals, Alert subscribers, and others within minutes.⁶⁷

Unlike the AMBER Alert system, station managers decide if and when to broadcast MCCSA information, and parents or family members must make requests for a MCCSA alert to the MECC.⁶⁸ The New York State police may also request this type of alert to the MECC whenever an AMBER Alert request has been rejected.⁶⁹ Although these programs are in place in New York to prevent abduction and aid in the safe recovery of abducted children, virtually no program is available for internationally abducted children. Without programs to combat international parental child abduction in New York, state law is inconsistent with the CRC. Once a child is removed from the country both of these programs do not assist with locating the child. Once again, the Hague Convention is the only law in New York that is effective in aiding in the return of children

⁶⁴ *Id.*

⁶⁵ New York State Division of Criminal Justice Services, Missing Child/College Student Alert Program, http://criminaljustice.state.ny.us/missing/aware/amber.htm#mecc_alert (last visited Mar. 16, 2010).

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

once they have been internationally abducted.⁷⁰

C. Operation SAFE CHILD

A third program New York actively uses is Operation SAFE CHILD. Operation SAFE CHILD was launched to heighten awareness about child safety.⁷¹ Operation SAFE CHILD promotes the importance of parents or guardians carrying specific identifying information about their children for immediate use in the first few hours a child goes missing.⁷² Through Operation SAFE CHILD, parents and caregivers can obtain a free card, the size of a credit card, containing their child's photograph, biographical information, and two fingerprint impressions.⁷³ Also, when authorized in writing by a parent or guardian, that information can be stored in a secure database at DCJS.⁷⁴ This feature of the program allows the stored information to be accessed and disseminated instantly in the critical first few hours in the case of a reported missing child.⁷⁵ This program is closer to adhering to CRC Article 11 because it takes an active approach to combating abduction before it happens rather than after.

D. Education Methods Administered by New York State

New York has special training for law enforcement agencies and school boards about parental abductions and child kidnapping. New York has allocated funding to instruct teachers, students, and parents in the school system through MECC.⁷⁶ MECC presents missing and abducted child training programs for law enforcement officers, including the five-day Responding to Missing and Ab-

⁷⁰ Hague Convention, *supra* note 11.

⁷¹ Since announcing the program in June 2005, the DCJS Operation SAFE CHILD program has established partnerships with fifty-eight law enforcement agencies across New York State to produce, free of charge, SAFE CHILD cards for families at various venues, including fairs, community-based events, and at schools. New York Division of Criminal Justice Services, Operation SAFE CHILD, <http://criminaljustice.state.ny.us/pio/safechild.htm> (last visited Mar. 16, 2010).

⁷² Statistics show that 34% of parents in the United States do not know their child's exact height, weight, and eye color. *Id.*

⁷³ The photograph, biographical data, and fingerprints of a child are all captured using state-of-the-art digital fingerprinting technology and high-resolution photo imaging equipment. *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ MECC continually interacts and collaborates with NCMEC and other state clearinghouses. MECC develops and distributes educational programs and printed literature concerning child safety. MISSING AND EXPLOITED CHILDREN CLEARINGHOUSE ANNUAL REPORT, *supra* note 5, at 14.

ducted Children (“REMAC”) Course.⁷⁷ Also, MECC works with the U.S. Department of State and the NCMEC International Child Abduction Unit to locate and return internationally abducted children to their countries of origin in accordance with the Hague Convention.⁷⁸ These preventative programs are in accordance with Article 11 because they teach ways for law enforcement, parents, and children to be informed about abduction.

E. Successes and Failures of New York State Programs

On October 19, 2007, an AMBER Alert was issued by the Yonkers Police Department based upon a confirmed child abduction involving a six-year old male who was taken by his stepfather.⁷⁹ The child was located in thirty-nine minutes as a result of New York’s child locator systems.⁸⁰ On July 16, 2007, a MCCSA was issued by a county sheriff’s office for a three-year old girl taken by her father after he was denied custody.⁸¹ A statewide alert was immediately issued, but it was later confirmed that the child had been taken out of the country to London, England.⁸² The alert was canceled and the child remains an active missing child.⁸³ The Federal Bureau of Investigation is currently assisting in investigating that case.⁸⁴

Sufficient preventative measures are not being taken to ensure that children are not abducted internationally. The CRC requires that all children be protected from illicit transfer and non-return, whether by a parent or by a stranger.⁸⁵ If the United States ratifies the CRC, New York will have to take steps to implement programs to protect and inform parents and children about international parental child abduction. Although programs regarding child abduction are available in New York, these programs would not be sufficient under the CRC because there are no successful preventative programs in place.

In conclusion, New York has many programs to combat child abduction but no programs specific to international parental child abduction. Furthermore, New York Penal Law does not include

⁷⁷ REMAC is conducted through the cooperative efforts of MECC and Fox Valley Technical College. *Id.* at 13.

⁷⁸ *Id.* at 14.

⁷⁹ *Id.* at 17.

⁸⁰ *Id.*

⁸¹ *Id.* at 18.

⁸² MISSING AND EXPLOITED CHILDREN CLEARINGHOUSE ANNUAL REPORT, *supra* note 5, at 18.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ CRC, *supra* note 2, art. 11, ¶ 1.

children ages sixteen and seventeen in its custodial interference statutes, which leaves this group of children unprotected. It is important to note that, consistent with the Hague Convention, New York has adopted the definition of a child as a human being under the age of sixteen. If the United States ratifies the CRC, New York will have to address the disparity between the CRC's definition of a child and New York's definition under its Penal Laws. Even though New York has preventative and educational methods available to combat child abductions, the State should concentrate more resources into the specific crime of international parental abduction. More awareness of this issue would be appropriate and helpful for New York and its children under the age of eighteen.

Section Two: Article 6 of the CRC and New York State Law

by *Chantima Chokloikaew*⁸⁶

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.⁸⁷

The U.N. Convention on the Rights of the Child ("CRC") was adopted by a unanimous vote of the United Nations General Assembly.⁸⁸ States Parties to the CRC undertake to submit reports on the implementation of the CRC to the United Nations Committee on the Rights of the Child ("U.N. Committee").⁸⁹ These reports provide information on the measures adopted by States Parties to give effect to the rights set forth in the CRC and indicate progress and difficulties that may affect the degree of fulfillment of State Party obligations under the CRC.⁹⁰ The purpose of these reports is to provide the U.N. Committee with a comprehensive understanding of the implementation of the CRC by the State Party concerned. This Section attempts to simulate such a report under New York State law. Accordingly, this Section outlines different areas of

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⁸⁷ CRC, *supra* note 2, art. 6(2).

⁸⁸ *See id.*

⁸⁹ RACHEL HODGKIN & PETER NEWELL, IMPLEMENTATION HANDBOOK FOR THE CONVENTION ON THE RIGHTS OF THE CHILD 604 (UNICEF 1998) [hereinafter UNICEF IMPLEMENTATION HANDBOOK].

⁹⁰ *Id.*