1527
111·2·697

UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

PERSONNEL AND
READINESS

10 AUG -3 PM 1:12

AUG 2 2010

The Honorable Carl Levin
Chairman
Committee on Armed Services
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The Department of Defense appreciates the opportunity to provide Congress with the attached report on international intrafamilial abduction of children of members of the Armed Forces. This report was requested by section 570 of the National Defense Authorization Act for FY 2010, Public Law 111-84.

I am providing a similar letter to the House Committee on Armed Services.

Thank you for your continued support.

Sincerely,

Clifford L. Stanley

Clifford L. Stanley

Attachment:
As stated

cc:
The Honorable John McCain
Ranking Member

RECEIVED
SENATE/ARMED SERVICES
10 AUG -9 PM 3:21

REPORT TO THE

SENATE ARMED SERVICES COMMITTEE
HOUSE ARMED SERVICES COMMITTEE

FROM THE DEPARTMENT OF DEFENSE

REPORT ON INTERNATIONAL INTRAFAMILIAL ABDUCTION OF CHILDREN OF MEMBERS OF THE ARMED FORCES

RESPONDING TO SECTION 570, PUBLIC LAW 111-84 (NATIONAL DEFENSE AUTHORIZATION ACT -- FY 2010)

REPORT ON INTERNATIONAL INTRAFAMILIAL ABDUCTION OF CHILDREN OF MEMBERS OF THE ARMED FORCES

1. Introduction

This Report is submitted pursuant to Section 570 of the National Defense Authorization Act for Fiscal Year 2010, Public Law 111-84 (NDAA for FY 2010), Report on International Intrafamilial Abduction of Children of Members of the Armed Forces.

2. Background and Methodology

a. Unique Nature of International Child Abduction

The Department of State (DoS) has a portion of its Web site devoted to this subject, which extensively details this extremely difficult problem, along with recommended solutions: www.travel.state.gov/childabduction. The following appears on the Web site:

> Parental child abduction is a Federal crime. It is also a tragedy that jeopardizes children and has substantial long-term consequences for the left-behind parent, the child, the family, and society. Children who are abducted by their parents are often suddenly isolated from their extended families, friends, and classmates. They are at risk of serious emotional and psychological problems. Similarly, left-behind parents experience a wide range of emotions including betrayal, loss, anger, and depression. In international cases, they often face unfamiliar legal, cultural, and linguistic barriers that compound these emotions.

Other potential challenges detailed by the Web site include obtaining U.S. and/or foreign attorneys and securing financial assistance to pay for counsel and other costs.

b. Department of Defense coordination with the Department of State

Representatives of the Office of Legal Policy, Under Secretary of Defense for Personnel & Readiness, met with representatives of the DoS Office of Children's Issues (OCI) on several occasions, both in person and by telephone conference call. The statistical data called for by Section 570 of the NDAA for FY2010 was available only from OCI. Because there had been no prior tasking for OCI to specifically track cases of international intrafamilial abductions of children of members of the Armed Forces, gathering the statistical data included below in this Report required a hand search of hundreds of case files by OCI case officers.

c. Informal discussions with the Military *Pro Bono* Project of the American Bar Association

The American Bar Association has established a Military *Pro Bono* Project to assist in providing free legal counsel in appropriate cases to members of the Armed

Forces (generally those serving in the pay grades of E-6 and below). The Director of that program, Jason Vail at the ABA's headquarters in Chicago, confirms that among the attorneys who have volunteered to take these *pro bono* cases are firms and attorneys who have indicated they have experience in handling cases involving international intrafamilial child abduction cases. To date, there have been no requests to the Military *Pro Bono* Project from any member of the Armed Forces for assistance in any such case.

d. Internal DoD discussions with the Chiefs of Legal Assistance of the Military Services

The Legal Assistance Chiefs for each of the Services were queried as to their knowledge of any specific cases that met the criteria for inclusion in this Report and the nature of resources currently available to their legal assistance attorneys on international intrafamilial child abductions. The information they provided in their responses is included in this Report.

e. Background Statistics

- As of April 30, 2010, there were 1,457,493 individuals on active duty in the Armed Forces.
    - 565,600 were married with children.
    - 77,596 were single (divorced, widowed, or never married) with children.

- As of April 30, 2010, there were 861,195 individuals in the Reserves (Reserve + Guard).
    - 289,566 were married with children.
    - 78,470 were single (divorced, widowed, or never married) with children.

- As of April 30, 2010, 191,586 Armed Forces personnel (active + reserve) were stationed overseas.

- The following number of Armed Forces personnel went from unmarried status to married status during the time periods stated below while they were assigned to an overseas location. (Note: some members included within these statistics married other U.S. Citizens and some married foreign nationals.):

    - FY 08: 9,642
    - FY 09: 10,014
    - FY 10 through March 31, 2010: 4315

3. **Number of New Cases Reported to DoS OCI of Children of Members of the Armed Forces Who Were the Subject of an International Parental Child Abduction during Fiscal Years 2007 through 2009**

Outgoing Cases

COUNTRY	FY 2009	FY 2008	FY 2007
*Argentina	1 (1)	0 (0)	0 (0)
*Brazil	2 (2)	1 (1)	0 (0)
Cambodia	0 (0)	1 (1)	0 (0)
*Dominican Republic	1 (1)	1 (1)	0 (0)
Ethiopia	1 (1)	0 (0)	0 (0)
*Germany	10 (10)	0 (0)	0 (0)
*Italy	1 (1)	1 (1)	2 (2)
Jamaica	3 (8)	1 (1)	0 (0)
Japan	6 (10)	3 (6)	1 (1)
*Mexico	1 (1)	1 (1)	1 (1)
*Panama	1 (1)	2 (4)	0 (0)
Philippines	1 (2)	0 (0)	0 (0)
*Turkey	1 (1)	0 (0)	0 (0)
*United Kingdom	5 (8)	3 (3)	4 (5)
TOTALS	**34 (47)**	**14 (19)**	**8 (9)**

** - Countries party to the Hague Convention on the Civil Aspects of International Child Abduction*
( ) - Indicates the number of children involved in the cases

Incoming Cases

COUNTRY	FY 2009	FY 2008	FY 2007
*Germany	3 (4)	0 (0)	0 (0)
*Israel	0 (0)	0 (0)	1 (1)
*Mexico	1 (1)	0 (0)	0 (0)
TOTALS	**4 (5)**	**0 (0)**	**1 (1)**

** - Countries party to the Hague Convention on the Civil Aspects of International Child Abduction*
( ) - Indicates the number of children involved in the cases

NOTES:

1. Statistics for "Outgoing Cases" include cases involving children wrongfully removed from the United States or wrongfully retained outside the United States. Statistics for "Incoming Cases" include cases involving children wrongfully removed from another country to the United States or wrongfully retained inside the United States.

2. The Department of State did not specifically track cases involving the children of members of the Armed Forces before July 1, 2010. Thus, the figures above may not reflect the total number reported to the Department.

Expressed as a percentage of the total number of new outgoing international intrafamilial abduction cases opened by OCI in FY2007 – FY2009, the number of those cases involving children of members of the Armed Forces is relatively low:

FY2007: 1.0% (8/774) (the 774 cases involved 1,154 children)

FY2008: 1.3% (14/1,082) (the 1,082 cases involved 1,615 children)

FY2009: 2.9% (34/1,135) (the 1,135 cases involved 1,621 children)

The caveat in the note above with regard to the accuracy of the statistical data also applies to this comparison.

4. Number of Children Returned to Members of the Armed Forces in International Intrafamilial Abduction Cases During Fiscal Years 2007 through 2009

COUNTRY	FY 2009	FY 2008	FY 2007
Ethiopia	**1 (1)**	**0 (0)**	**0 (0)**
***Germany**	**2 (2)**	**0** (0)	1 (1)
South Korea	0 (0)	0 (0)	0 (0)
*Turkey	0 (0)	1 (1)	0 (0)
*United Kingdom	3 (3)	1 (1)	0 (0)
TOTALS	**6 (6)**	**2(2)**	**1 (1)**

** - Countries party to the Hague Convention on the Civil Aspects of International Child Abduction*
( ) - Indicates the number of children involved in the cases

Expressed as percentages of the total number of cases reported to OCI for returned children in the years covered by this Report, the number of children returned to members of the Armed Forces accounted for:

FY2009:	6 cases (involving 6 children), or 1.63% of the 366 total cases involving 490 children returned during that year
FY2008:	2 cases (involving 2 children), or 0.69% of the 289 total cases involving 409 children returned during that year
FY2007:	1 case (involving 1 child), or 0.39% of the 252 cases involving 367 children returned during that year

NOTE: The same *caveat* with regard to the accuracy of the data that was noted above in Section 3 also applies to this comparison. Prior to the request for data for compilation of this Report, OCI did not specifically track the numbers of new cases of returned children who were children of members of the Armed Forces.

5. Additional Report Elements Required by Section 570 of the NDAA for FY2010

a. Current Availability of, and the Additional Need for, Assistance Provided by the Military Departments for Left-Behind Members of the Armed Forces Involved in the Intrafamilial Child Abductions

(1) General Information

Representatives from DoS OCI and the Department of Defense (DoD) met several times to discuss ways to disseminate the necessary information about international intrafamilial abduction of children to elements within DoD. The critical pieces of information are to recognize that an abduction has or may occur, to read the excellent DoS Web site, and to consult promptly with DoS OCI.

We have agreed to specifically target the legal assistance community and the family support community within DoD to receive more information on this subject. DoS OCI will develop information sheets and produce a webinar that will be provided to each of the Services' Judge Advocate General's Schools and be made available to legal assistance officers world-wide. Information sheets will also be provided to the family support community for internal dissemination. In addition, DoS in consultation with DoD will develop appropriate information to be placed on Military OneSource, a DoD Web site that both Service members and their families can access.

On January 20-21, 2010, The Department of State facilitated a conference on "Countering International Parental Child Abduction" held at Camp Foster, a Marine Corps Base on Okinawa, Japan. Participants included embassy personnel from Japan, Hong Kong, China, Taiwan, Korea, and the Philippines, as well as legal assistance

officers, military law enforcement personnel, and a representative of U.S. Customs and Border Protection.

The conference allowed DoS and DoD personnel the opportunity to learn techniques to combat international parental child abduction. It emphasized ways to counter and prevent abductions, while highlighting the need to work together.

Prior to the conference, representatives from OCI met with family services personnel from all the Services to discuss the role of DoS in child abduction cases and to urge prompt referrals to DoS.

DoD and DoS will look for opportunities for similar conferences and presentations by OCI representatives.

(2) Psychological Counseling

Military members on active duty and some not on active duty under certain circumstances are entitled to free medical care (*see*: chapter 55 of title 10, United States Code). Thus, to the extent that the emotional impact of being a left-behind parent creates a medical condition (including a mental health condition), the member could receive treatment from an appropriate practitioner.

(3) Financial Assistance

The Department of Defense is not authorized to provide direct financial assistance to victims of intrafamilial international child abduction. However, several organizations may provide emergency assistance in the form of loans or grants (or part loan and part grant). Such organizations include Army Emergency Relief, Air Force Aid Society, Navy – Marine Corps Relief Society, Coast Guard Mutual Assistance, and American Red Cross Chapters. Most military installations will have at least one of these organizations available on post.

(4) Leave for Travel

Military members normally earn 30 days leave per year and may earn more under certain circumstances. Except under mission essential conditions, members are encouraged and expected to take leave. Thus, in the absence of mission-essential conditions preventing leave, a member who requested leave to resolve an international intrafamilial child abduction, would be granted the requested leave. The applicable DoD issuance, DODI 1327.06, sets forth leave policy and establishes the parameters for advanced leave, emergency leave, and non-chargeable emergency leave. Enclosure 2, paragraph 1.j.(3), states,

> Commanders may authorize up to 30 days emergency leave. Requests for leave in excess of 30 days must be authorized by the Secretary

concerned. Emergency leave is chargeable leave. Emergency leave and extensions thereto shall normally be granted to Service members for family emergencies involving members of their household, their immediate family, or a sole surviving relative whenever circumstances warrant and the military situation permits. Swift and sensitive action on emergency leave requests is essential. Nevertheless, care must be taken to ensure that an emergency does exist and that the Service member's presence can resolve or alleviate the situation.

Emergency leave travel at Government expense is authorized in accordance with the Joint Federal Travel Regulations (JFTR) (*see* paragraph U7205). Service members not authorized emergency leave travel may be authorized space-available travel on Government owned or controlled aircraft in accordance with DoD 4515.13-R. Emergency leave shall not be granted solely to increase the Service member's travel priority or to offset travel costs.

(5) Legal Services

Military Legal Services

The Secretaries of the Military Departments are authorized by 10 U.S.C. § 1044, subject to the availability of legal staff resources, to provide legal assistance in connection with their personal civil legal affairs to active duty members and their dependents, retirees and their dependents, and enumerated others. Each of the Services has a legal assistance program. Access to the program is limited by other legal mission demands and by the expertise of the attorney staff. Mission demand and legal expertise varies by installation and varies at any given installation over time. Service regulations would not generally permit a legal assistance officer to fully represent a Service member who was a left-behind parent in an international child abduction case.

However, assuming availability of legal assistance at an installation, significant legal assistance in cases of actual or potential international intrafamilial child abductions could be provided. Legal assistance might take the form, for example, of the following: accessing and aiding the left-behind Service member parent to use the DoS Web site, assisting a Service member to fill out the Hague Application (DoS Form DS3013) for assistance, contacting DoS personnel, assisting a Service member to find a civilian attorney (paid or *pro bono*) to obtain local court orders or draft agreements, finding an attorney with expertise in international parental child abduction (paid or *pro bono*), assisting the Service member to draft and obtain affidavits, assisting the Service member to obtain criminal warrants against the abductor, and assisting the Service member to request emergency leave to attend hearings and mediation overseas.

Department of State Assistance in Obtaining Legal Services

The Hague Convention on the Civil Aspects of International Child Abduction ("the Convention") contains a provision that calls for free legal representation for left-

behind parents. If the left-behind parent seeks return from a Convention country, the parent may be provided an attorney by that country's Central Authority. Some countries have agreed to provide attorneys, while others have not. The United States, for example, made the following reservation when it ratified the Convention:

> The United States declares that it will not be bound to assume any costs or expenses resulting from the participation of legal counsel or advisors or from court or legal proceedings in connection with efforts to return children from the United States pursuant to the Convention except insofar as those costs or expenses are covered by a legal aid program.

Unfortunately problems may arise even in those countries that provide legal representation, including significant delays in having counsel appointed or having an appointed counsel whose other commitments leave scarce time for the left-behind parent's case. As a result, retaining private counsel is often the best, albeit an expensive solution.

To help left-behind parents find an attorney abroad, the DoS instructs its embassies and consulates to maintain lists of attorneys at http://travel.state.gov/law/judicial/judicial_2519.html on their Web site. These attorneys have expressed a willingness to work with American citizens, are proficient in English, but are not screened for competence by DoS. That is left for the potential client to vet. Some Central Authorities only provide reciprocal legal assistance, that is, they only provide counsel to nationals of countries who would provide legal assistance to their citizens.

American Bar Association (ABA) Military* Pro Bono *Project

The DoD liaison to the ABA Military *Pro Bono* Project inquired about the Project's ability to provide attorneys to left-behind military parents. We were informed that several of the Project's participating family law attorneys have experience in international parental abduction cases, both under the Hague Convention and cases involving countries that are not signatories to the Hague Convention. One participating firm has offices all around the world and has taken some cases of left-behind military parents although not as part of the Military *Pro Bono* project. The ABA Military *Pro Bono* project imposes income ceilings that may exclude some Service members from eligibility.

b. The measures taken by the Department of Defense and the military departments, including any written policy guidelines, to prevent the abduction of children of members of the Armed Forces.

International parental child abduction is a Federal crime under the International Parental Kidnapping Crime Act of 1993 (IPKCA) (18 USC §1204). IPKCA, at section 1204 (a) – (b) of title 18, United States Code, provides in part:

Whosoever removes a child from the United States or retains a child (who has been in the United States) with intent to obstruct the lawful exercise of parental rights shall be fined under this title or imprisoned not more than three years, or both. The term child means a person who has not attained the age of 16 years; "parental rights" with respect to a child, means the right to physical custody of the child – whether joint or sole and includes visiting rights, arising by operation of law, court order, or legally binding agreement of the parties.

Although the Department of Defense has not issued specific guidelines on any Federal felony crime, DoD Installation Commanders are responsible for maintaining good order and discipline on the installation, which includes deterring and responding to crimes.

DoD Instruction 5525.11, Criminal Jurisdiction Over Civilians Employed By or Accompanying the Armed Forces Outside the United States, Certain Service Members, and Former Service Members, March 3, 2005, at paragraph 3 states: "It is DoD policy that the requirement for order and discipline of the Armed Forces outside the United States extends to civilians employed by or accompanying the Armed Forces, and that such persons who engage in conduct constituting criminal offenses shall be held accountable for their actions as appropriate."

Similarly, for Installation Commanders to maintain good order and discipline on stateside installations, their authority permits the apprehension and detention of those who commit or attempt crimes on the installation, or those who are wanted by law enforcement agencies and who are on the installation. Those detained individuals are turned over to appropriate Federal, state, or local law enforcement authorities.

In addition, Installation Commanders, both abroad and in the United States, may issue military orders in support of civil court orders. For example, court orders forbidding the removal of a child from an installation by a visiting non-custodial parent (who is a Service member) could be enforced through a military order. However, each case would have to be resolved on its own unique facts.

We note that the DoS web site has a section devoted to the prevention of international parental child abduction. *See* *http://travel.state.gov/abduction/abduction_580.html*. The preventive guidance on that Web site centers on custody decrees, posting bonds, and the requirement that two parents consent for issuance of a passport to a child. The responsibility for taking preventive measures falls on the potential left-behind parent and that parent's civilian attorney.

We also note that some authorities state that the current options for left-behind parents whose children have been abducted to non-Hague Convention countries are inadequate and often of little value (*see* 2 Northwestern University Journal of Human Rights 7 at *http://www.law.northwestern.edu/journals/jihr/v2/7*. However, DoS has had some successes in compelling returns from non-Hague Convention countries through the use of potential criminal remedies.

c. **The means by which members of the Armed Forces are educated on the risks of international interfamilial child abduction, particularly when they first arrive at a military installation or when the Armed Forces receive notice that a member is considering marriage or divorce overseas.**

(1) **New Arrivals Overseas**

Overseas installations normally provide new arrivals with orientation programs designed to educate the member about the local and national customs and laws and about restrictions imposed by the local command. Such an orientation might mention the requirement for Service members to get command permission to marry overseas. Also, normally included would be an explanation of the various services available on the installation, including the services available (*e.g.*, counseling and legal assistance) to a married Service member and the member's spouse in the event marital issues arise in the future.

(2) **Overseas Marriages**

The Navy and the Air Force have issued regulations governing marriages by military members in overseas commands (*see, for example*, Navy MILPERSMAN 5352-030, Marriage of Naval Personnel to Foreign Nationals; Air Force Instruction 36-2609, Marriage in Overseas Commands). In addition, overseas commands issue regulations on this subject (*see, for example*, United States Forces Korea Regulation 600-240). Each overseas Installation Commander may also supplement these regulations with local procedures.

All of these regulations require that the military member obtain command permission to get married overseas. The purpose of these regulations is not to prevent marriages, but to make both aliens and U.S. citizens aware of the rights and restrictions imposed by the immigration laws of the United States, and to assist in identifying and precluding the creation of military dependents not eligible for immigration to the United States. Approval to marry is given in all instances unless the pre-marriage application process discloses that an intended alien spouse would likely be barred entry into the United States due to the inability to meet statutory physical, mental, or character standards, or the pre-marriage application process discloses that the applicant does not have the financial ability to prevent the alien spouse from becoming a public charge. In the case of a disapproval, a subsequent change in circumstances may result in approval.

In addition, Service members are advised to seek pre-marital counseling on the subjects of spiritual and religious matters, adjustments that may be required as a result of language and environmental background differences, and the moral and financial obligations of marriage and family life.

(3) Divorce

All of the Services make marriage counseling available to Service members and their spouses. Also available are legal assistance attorneys who may counsel either party about separation and/or divorce. The legal assistance attorneys can also assist clients in exploring other alternatives before advising on divorce. The parties to divorce actions in a civilian court system are almost always represented by civilian (non-DoD) attorneys.

DoD is currently working with DoS OCI to provide specific information to legal assistance officers and family services personnel about international intrafamilial child abduction. These materials will be designed by DoS and distributed by DoD personnel. The upgraded information is intended to reach potential left-behind military parents and inform them about preventive measures and about working with DoS and their attorney to achieve equitable resolutions.

6. Conclusion

Although Armed Forces personnel cases are numerically small in the context of all outgoing cases received by OCI during the past three years, any international intrafamilial abduction of a child is a traumatic event for the left-behind parent. When that left-behind parent is a member of the Armed Forces – and especially when the marriage took place overseas while the member was there pursuant to military orders – DoD is and should be concerned about the status of both the abducted child or children, and the left-behind Service member parent. To further complicate matters, there are cases in OCI that involved Service members as the taking parent, which under certain circumstances may constitute a violation of Federal law. There are also instances in which both the left-behind parent and the taking parent are Service members.

Increased emphasis on prevention of (and response to) international intrafamilial child abductions through Legal Assistance channels, Family Services counselors, chaplains, and health care professionals will raise awareness and aid DoD personnel who become involved in such cases.