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**Effective: April 30, 2003**

United States Code Annotated [Currentness](#)  
Title 18. Crimes and Criminal Procedure ([Refs & Annos](#))  
 [Part I](#). Crimes ([Refs & Annos](#))  
 [Chapter 55](#). Kidnapping ([Refs & Annos](#))

**→ § 1204. International parental kidnapping**

(a) Whoever removes a child from the United States, or attempts to do so, or retains a child (who has been in the United States) outside the United States with intent to obstruct the lawful exercise of parental rights shall be fined under this title or imprisoned not more than 3 years, or both.

(b) As used in this section--

(1) the term "child" means a person who has not attained the age of 16 years; and

(2) the term "parental rights", with respect to a child, means the right to physical custody of the child--

(A) whether joint or sole (and includes visiting rights); and

(B) whether arising by operation of law, court order, or legally binding agreement of the parties.

(c) It shall be an affirmative defense under this section that--

(1) the defendant acted within the provisions of a valid court order granting the defendant legal custody or visitation rights and that order was obtained pursuant to the Uniform Child Custody Jurisdiction Act or the Uniform Child Custody Jurisdiction and Enforcement Act and was in effect at the time of the offense;

(2) the defendant was fleeing an incidence or pattern of domestic violence; or

(3) the defendant had physical custody of the child pursuant to a court order granting legal custody or visitation rights and failed to return the child as a result of circumstances beyond the defendant's control, and the defendant notified or made reasonable attempts to notify the other parent or lawful custodian of the child of such circumstances within 24 hours after the visitation period had expired and returned the child as soon as possible.

(d) This section does not detract from The Hague Convention on the Civil Aspects of International Parental Child Abduction, done at The Hague on October 25, 1980.

CREDIT(S)

(Added [Pub.L. 103-173](#), § 2(a), Dec. 2, 1993, 107 Stat. 1998, and amended [Pub.L. 108-21, Title I, § 107](#), Apr. 30, 2003, 117 Stat. 655.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1993 Acts. [House Report No. 103-390](#) and Statement by President, see 1993 U.S. Code Cong. and Adm. News, p. 2419.

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2003 Acts. [House Conference Report No. 108-66](#) and Statement by President, see 2003 U.S. Code Cong. and Adm. News, p. 683.

#### References in Text

The official text of the Uniform Child Custody Jurisdiction Act, as approved in 1968 by the National Conference of Commissioners on Uniform State Laws and the American Bar Association, is set out in Uniform Laws Annotated (U.L.A.), Matrimonial, Family and Health Laws, Volume 9, Part I.

The Uniform Child Custody Jurisdiction and Enforcement Act, referred to in subsec. (c)(1), as approved in 1997 by the National Conference of Commissioners on Uniform State Laws, is set out in Uniform Laws Annotated (U.L.A.).

Sense of the Congress Regarding Use of Procedures Under the Hague Convention on the Civil Aspects of International Parental Child Abduction

Section 2(b) of [Pub.L. 103-173](#) provided that: "It is the sense of the Congress that, inasmuch as use of the procedures under the Hague Convention on the Civil Aspects of International Parental Child Abduction has resulted in the return of many children, those procedures, in circumstances in which they are applicable, should be the option of first choice for a parent who seeks the return of a child who has been removed from the parent."

#### Amendments


2003 Amendments. Subsec. (a). [Pub.L. 108-21](#), § 107(1), inserted ", or attempts to do so," before "or retains".

Subsec. (c)(1). [Pub.L. 108-21](#), § 107(2)(A), inserted "or the Uniform Child Custody Jurisdiction and Enforcement Act" before "and was".

Subsec. (c)(2). [Pub.L. 108-21](#), § 107(2)(B), inserted "or" after the semicolon.

#### LIBRARY REFERENCES

##### American Digest System

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#### RESEARCH REFERENCES

##### ALR Library

[199 ALR, Fed. 445](#), Construction and Application of [U.S.S.G. § 2J1.2\(B\)\(2\)](#), Providing for Enhancement for "Substantial Interference With the Administration of Justice".

[167 ALR, Fed. 663](#), What Laws Are Neutral and of General Applicability Within Meaning of [Employment Div., Dept. of Human Resources of Oregon v. Smith](#), 494 U.S. 872, 110 S. Ct. 1595, 108 L. Ed. 2d 876.

[20 ALR 4th 823](#), Kidnapping or Related Offense by Taking or Removing of Child by or Under Authority of Parent or One in Loco Parentis.

##### Encyclopedias

[16 Am. Jur. Proof of Facts 2d 175](#), Matrimonial Dispute: Vexatious Choice of Forum.

[65 Am. Jur. Trials 127](#), Relocation of Children by the Custodial Parent.

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[Am. Jur. 2d Abduction and Kidnapping § 36](#), Federal Kidnapping Statute.

[Am. Jur. 2d Abduction and Kidnapping § 59](#), Federal Kidnapping Statute.

Treatises and Practice Aids

[Federal Procedure, Lawyers Edition § 22:250](#), Offenses for Which Interception May be Authorized.

## NOTES OF DECISIONS

**Constitutionality [1](#)**

**Knowledge and intent [3b](#)**



**Parental fitness [3a](#)**



**Parental rights [2](#)**



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**Weight and sufficiency of evidence [3](#)**

### [1](#). Constitutionality

The International Parental Kidnapping Crime Act (IPKCA), prohibiting removal of a child from the United States or retention of a child who has been in the United States outside the United States with intent to obstruct the lawful exercise of parental rights, was validly enacted within Congress's authority under the Commerce Clause, as wrongfully-removed children must have traveled in the channels of foreign commerce, and wrongful retention of a child in a foreign country was an impediment to travel back to America via the channels of commerce. [U.S. v. Cummings, C.A.9 \(Wash.\) 2002, 281 F.3d 1046](#), certiorari denied [123 S.Ct. 179, 537 U.S. 895, 154 L.Ed.2d 162](#). Commerce  82.6; Kidnapping  13



International Parental Kidnapping Crime Act (IPKCA) did not violate equal protection as applied to father who was convicted thereunder for interfering with maternal grandmother's visitation rights, even if father could be prosecuted under IPKCA only because both child's mother and grandmother enjoyed visitation rights, whereas similarly situated parent who shared visitation rights only with grandmother could not be so prosecuted due to Colorado statute precluding court from restricting movement of child if such restriction were solely for purpose of allowing exercise of grandchild visitation rights; state had rational basis to protect shared visitation rights of parents and grandparents more forcefully than visitation rights of grandparents alone. [U.S. v. Alahmad, C.A.10 \(Colo.\) 2000, 211 F.3d 538](#), certiorari denied [121 S.Ct. 782, 531 U.S. 1080, 148 L.Ed.2d 679](#). Constitutional Law  3781; Kidnapping  13

Conviction under International Parental Kidnapping Crime Act (IPKCA) did not violate defendant's free exercise rights, notwithstanding defendant's claim on appeal that he removed his children from United States for religious reasons, given that defendant did not allege that IPKCA targeted religious beliefs or was designed to prohibit parental kidnappings motivated by parents' religious concerns, and given that IPKCA punished parental kidnappings solely for harm caused. [U.S. v. Amer, C.A.2 \(N.Y.\) 1997, 110 F.3d 873](#), certiorari denied [118 S.Ct. 258, 522 U.S. 904, 139 L.Ed.2d 185](#). Constitutional Law  1414; Kidnapping  13



The International Parental Kidnapping Crime Act (IPKCA), prohibiting removal of a child from the United States or retention of a child who has been in the United States outside the United States with intent to obstruct the lawful exercise of parental rights, was validly enacted within Congress's authority under the Commerce Clause, as wrongful retention of a child in a foreign country was an impediment to travel back to the United States through the channels of commerce. [U.S. v. Shahani-Jahromi, E.D.Va.2003, 286 F.Supp.2d 723](#). Commerce  82.6; Kidnapping  13


International Parental Kidnapping Crime Act (IPKCA) was rational tool for fulfilling "enforcement-gap-closing" function, and therefore equal protection rights of Indian citizen were not violated by his indictment under IPKCA,


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where India was not a signatory to Hague Convention on the Civil Aspects of International Parental Child Abduction, such that an international civil remedy was not available. [U.S. v. Fazal, D.Mass.2002, 203 F.Supp.2d 33](#). Constitutional Law  3781; Kidnapping  13

## 2. Parental rights


Application of International Parental Kidnapping Crime Act (IPKCA) to defendant's retention of his child in Iran in violation of the mother's custody rights was not arbitrary or fundamentally unfair, so as to violate defendant's Fifth Amendment due process rights; defendant was American citizen, married his Iranian wife in United States before their child was born as an American citizen, and violated court order granting full custody of child to mother by following his wife and child to Iran, physically removing child from mother's custody, relocating permanently to Iran without giving notice to court, and keeping child in Iran. [U.S. v. Shahani-Jahromi, E.D.Va.2003, 286 F.Supp.2d 723](#). Constitutional Law  4509(16); Kidnapping  13


Colorado state court order of visitation rights vested maternal grandmother with "parental rights" under plain language of International Parental Kidnapping Crime Act (IPKCA). [U.S. v. Alahmad, D.Colo.1998, 28 F.Supp.2d 1273](#). Kidnapping  24

Liberal visitation rights granted to maternal grandparent, as party with whom out-of-wedlock child had resided before father successfully sued to establish his paternity under the Uniform Parentage Act, did not rise to level of "parental rights," under federal statute prohibiting the removal or retention of child outside the United States with intention of obstructing the lawful exercise of parental rights; accordingly, father could not be charged with international parental kidnapping based on his removal of child from the United States in violation of maternal grandparent's visitation rights. [U.S. v. Al-Ahmad, D.Colo.1998, 996 F.Supp. 1055](#). Kidnapping  24

Under New York law, biological mother enjoyed right to physical custody of her child unless and until that right was terminated by law, and thus government was not obliged to offer proof of court custody order granting mother parental rights in order to secure father's conviction for violating International Parental Kidnapping Crime Act (IPKCA). [U.S. v. Sardana, C.A.2 \(N.Y.\) 2004, 101 Fed.Appx. 851, 2004 WL 1340298](#), Unreported, certiorari denied [125 S.Ct. 436, 543 U.S. 959, 160 L.Ed.2d 324](#). Kidnapping  24

## 3. Weight and sufficiency of evidence

While father could not be charged with international parental kidnapping based on his removal of child from the United States in violation of maternal grandparent's visitation rights, his continued retention of child outside the United States, after state domestic relations court had entered order, based on child's unauthorized removal, transferring custody from the father to maternal grandparent, was sufficient to support international parental kidnapping charge on theory that father, by continuing to retain child outside the United States, was obstructing maternal grandparent's lawful exercise of her "parental rights" as child's legal custodian. [U.S. v. Al-Ahmad, D.Colo.1998, 996 F.Supp. 1055](#). Kidnapping  36


Evidence in prosecution for intentional parental kidnapping was sufficient to support sentencing court's conclusion that defendant had not demonstrated any intention of returning subject children to the United States, where sentencing court as trier of fact was permitted to infer that defendant intended natural and probable consequences of his knowing acts, and defendant admitted that he took subject children with intent to keep them permanently in Syria, did not contest statement in presentence report (PSR) that he wrote letter to his wife stating that he would not be affected by any legal proceeding in the United States, and initiated legal proceedings in Syria to render unenforceable any order of American court seeking children's return. [U.S. v. Dallah, C.A.10 \(Okla.\) 2006, 192 Fed.Appx. 725, 2006 WL 2294848](#), Unreported. Sentencing And Punishment  819

There was sufficient evidence of father's obstructive intent to support his conviction for father's conviction for violating International Parental Kidnapping Crime Act (IPKCA), where father admitted that his reason for surreptitiously taking his daughter to India was expectation that courts of that country would accord his wife fewer parental rights than courts of New York. [U.S. v. Sardana, C.A.2 \(N.Y.\) 2004, 101 Fed.Appx. 851, 2004 WL](#)



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[1340298](#), Unreported, certiorari denied [125 S.Ct. 436, 543 U.S. 959, 160 L.Ed.2d 324](#). Kidnapping  36



### [3A](#). Parental fitness

Evidence that mother was unfit to be custodial parent did not justify father's removal of their child from United States to India in order to obstruct his wife's exercise of parental rights, and thus district court did not abuse its discretion in excluding such evidence in father's prosecution for violating International Parental Kidnapping Crime Act (IPKCA). [U.S. v. Sardana, C.A.2 \(N.Y.\) 2004, 101 Fed.Appx. 851, 2004 WL 1340298](#), Unreported, certiorari denied [125 S.Ct. 436, 543 U.S. 959, 160 L.Ed.2d 324](#). Kidnapping  29

### [3B](#). Knowledge and intent

International Parental Kidnapping Crime Act (IPKCA) did not require proof that defendant knew his conduct was against law, only that defendant removed child from United States with intent to obstruct proper exercise of parental rights, and thus district court did not abuse its discretion in prosecution under IPKCA in refusing to allow defendant to testify to responses he may have received from Indian attorney about bringing his daughter to India to pursue custody action, where defendant admitted that he removed daughter to India because he believed courts of that country would accord his wife fewer parental rights than courts of New York. [U.S. v. Sardana, C.A.2 \(N.Y.\) 2004, 101 Fed.Appx. 851, 2004 WL 1340298](#), Unreported, certiorari denied [125 S.Ct. 436, 543 U.S. 959, 160 L.Ed.2d 324](#). Kidnapping  24; Kidnapping  29

### [4](#). Sentence

Sentence of 36 months' imprisonment, imposed upon defendant convicted of intentional parental kidnapping, was reasonable, where sentence did not exceed statutory maximum, sufficient evidence supported upward departure from advisory guidelines sentence based upon defendant's obstruction of justice, and sentencing court considered statutory factors. [U.S. v. Dallah, C.A.10 \(Okla.\) 2006, 192 Fed.Appx. 725, 2006 WL 2294848](#), Unreported. Kidnapping  41; Sentencing And Punishment  819

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