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Parental Abduction and the State Intervention Paradox

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PARENTAL ABDUCTION AND THE STATE INTERVENTION PARADOX

Jane K. Stoever^{*}

Abstract: For most of America's history, the common law deemed the family a "private sphere" into which the government did not enter. In recent decades, however, the state has increasingly regulated the family in overprotective and overly punitive ways. Many current state interventions in the family are misdirected, penalizing abuse victims and intervening in undesired ways that create harm while failing to respond to pleas for help.

A prime area in which the state paradoxically remains laissez-faire concerns the phenomenon of parental abduction, a pervasive and devastating problem that has received scant attention due to the socio-legal focus on stranger danger. Law enforcement and civil and criminal justice systems continue to regard a parent's abduction of a child as a private family matter, and abusive abductors are generally not pursued or penalized despite existing laws and the harm children and left-behind parents suffer. This Article exposes the problem of domestically abusive abductors, utilizes social science data to demonstrate the state's failure to implement relevant laws, and features a fifty-state survey that reveals areas for reform. The Article seeks to explain discrepancies in state interventions in the family and the state's bifurcated treatment of the family, particularly surfacing the state's racialized, gendered, and class-based intervention practices. Solutions are offered that avoid the current hyper-criminalization trend, respond to victimized parents' and abducted children's pleas for help, and strive to remedy what many abducted children and left-behind parents experience as the ultimate abuse.

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INTRODUCTION

“Isn’t possession nine-tenths of the law?” the Child Abduction Unit supervisor asked me when I reported that my client’s children had been kidnapped and taken across state lines by their largely absent father. He had come to Maggie’s home, beaten her, and taken their children. As he drove, he texted Maggie that if she ever wanted to see their children again, she would agree to marry him. The family court judge said, “Aw, it sounds like he’s just heartbroken.” The judge questioned whether she had jurisdiction over custody and reluctantly entered a temporary protection order. Police refused to act because there was no permanent custody order, and one officer asked, “What safer place for the children than with their dad?” The father in this case voluntarily returned with the children several days later, but many cases do not reach such a positive resolution.¹

The state has a listening problem when it comes to victimized individuals. The state often intervenes in the family in undesired ways

1. Confidential and identifying information has been omitted.

that create harm, and it frequently fails to respond to pleas for help from those who are traumatized.

Historically, the state refused to intervene in matters involving the family even when individuals sought help, protecting the private sphere of the family from the state's reach and dictating and enforcing gender hierarchy.² For example, a husband had the right to chastise his wife, and as long as a husband did not kill or maim his wife, he could not be prosecuted.³ Husbands were immune from prosecution for marital rape,⁴ and courts granted parental immunity to fathers who raped their daughters.⁵ Although the husband was responsible for providing for his wife and children, this "duty of care" was not enforced in intact families due to the state's aversion to intruding in an ongoing family.⁶ Even in more modern times, the Supreme Court has identified "the private realm of family life which the state cannot enter."⁷ With the presumption being that the state would not intervene in the family, there was no recourse for or protection from harm.

In recent decades, the state has largely taken a more protective and often punitive posture. Although the doctrine of family privacy once

2. *State v. Edens*, 95 N.C. 693 (1886) (deeming the family private and exempt from legal scrutiny); Kimberly D. Bailey, *It's Complicated: Privacy and Domestic Violence*, 49 AM. CRIM. L. REV. 1777, 1781 (2012) ("Influenced by liberal theorists such as John Locke, state actors believed domestic violence was a matter that should be handled within the privacy of the home."); Elaine M. Chiu, *That Guy's a Batterer!: A Scarlet Letter Approach to Domestic Violence in the Information Age*, 44 FAM. L.Q. 255, 286 (2010) ("Family privacy, nonintervention and chauvinistic entitlement effectively isolated domestic abuse from law enforcement for centuries.").

3. Blackstone stated that the husband has the right to "restrain the wife by domestic chastisement, in the same moderation that a man is allowed to correct his apprentice or children." 2 WILLIAM BLACKSTONE, COMMENTARIES *444. *See also* *State v. Rhodes*, 61 N.C. 453 (1868) (holding that the law recognizes family government as complete in itself and will not "invade the domestic forum, or go behind the curtain" in the absence of permanent injury); *State v. Black*, 60 N.C. 262 (1864) (holding that it was the husband's duty to make the wife behave herself and to thrash her, if necessary, to that end).

4. *See* NICOLA GAVEY, JUST SEX? THE CULTURAL SCAFFOLDING OF RAPE 39 (2005) (identifying that several states still condone marital rape under certain circumstances); *see, e.g.*, Matt Pearce, *No Prison Time for Indiana Man Convicted of Drugging, Raping Wife*, L.A. TIMES (May 19, 2014), <http://www.latimes.com/nation/nationnow/la-na-nn-indianapolis-rape-sentence-20140519-story.html> [<http://perma.cc/8GDE-SPMG>] (providing a recent example).

5. *See* *Roller v. Roller*, 37 Wash. 242, 243, 79 P. 788, 788 (1905) (extending parental immunity to a father's rape of his daughter and thereby providing an example of judicial deference to parental authority and the fragile association of parental rights with those of the female child).

6. Franklin E. Zimring, *Legal Perspectives on Family Violence*, 75 CAL. L. REV. 521, 523 (1987) ("The justification for applying the family privacy doctrine . . . is the reluctance of government to intrude on the affairs of an ongoing family . . .").

7. *Smith v. Org. of Foster Families for Equal. & Reform*, 431 U.S. 816, 862–63 (1977); *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944).

trumped state intervention, the pendulum has swung to the other extreme in many areas pertaining to the family; current laws and policies promote hyper-vigilance of the family and criminalization,⁸ often contrary to the victimized individual's wishes.⁹ This Article focuses on an area of stark contrast in which the state paradoxically refuses to intervene even though the victimized individual seeks help: parental abduction. Parental abduction cases generally encompass taking, concealing, withholding, or retaining a child by a parent or the parent's agent in derogation of another person's custody or visitation rights,¹⁰ and this Article particularly concerns domestic violence perpetrators who abduct their children.

Contrary to the dominant pedophile-stranger abduction narrative, nearly all child abductions are perpetrated by family members.¹¹ As many as 350,000 children are parentally abducted each year,¹² yet this phenomenon has received scant attention.¹³ Therefore, the sensationalized focus on pedophile-stranger abductors that has fueled socio-legal constructions of offenders and the corresponding social and legal responses is misplaced. Decades after many family law matters have become criminalized, especially pertaining to low-income families of color and single mothers, parental kidnapping continues to be regarded as a private family matter and is rarely handled criminally,

8. See generally Donald A. Dripps, *Controlling the Damage Done by Crawford v. Washington: Three Constructive Proposals*, 7 OHIO ST. J. CRIM. L. 521, 562 (2010) (noting the criminal justice system's disturbing trend toward overcriminalization); Erik Luna, *The Overcriminalization Phenomenon*, 54 AM. U. L. REV. 703, 714 (2005) (arguing that criminal sanctions should instead "be reserved for specific behaviors and mental states that are so wrongful and harmful to their direct victims or the general public as to justify the official condemnation and denial of freedom that flow from a guilty verdict").

9. See Jane K. Stoeber, *Mirandizing Family Justice*, 39 HARV. J.L. & GENDER 189, 193–94 (2016).

10. See CAL. PENAL CODE § 278.5 (West 2016).

11. Ashli-Jade Douglas, *Child Abductions: Known Relationships are the Greater Danger*, FBI LAW ENF'T BULL. (Aug. 2011), <https://leb.fbi.gov/2011/august/crimes-against-children-spotlight-child-abductions-known-relationships-are-the-greater-danger> [<https://perma.cc/AJG8-52FP>]; see *infra* section II.A.

12. Linda L. Creighton, *Parents Who 'Kidnap': The Hell Moms and Dads Go Through When Ex-Spouses Snatch the Kids*, U.S. NEWS & WORLD REP., Mar. 20, 1995, at 69 (citing Department of Justice statistics).

13. *Infra* section II.A. The most recent data on parental abduction are used throughout this Article. Research has mainly focused on stranger abduction, although parental abduction presents a much more common threat. My recent communications with attorneys across the nation (on file with the Author) confirm the persistent problem of parental abduction committed by domestic abusers and the judicial system's failure to respond. Greater attention to and study of parental abduction are warranted given the complex and expansive harms involved.

despite existing laws and devastating consequences.¹⁴ The majority of parents who commit parental abduction are white,¹⁵ and abusive abductors are typically male.¹⁶ The state largely maintains a laissez-faire approach regarding these abductions.

Parentally abducted children often experience physical, sexual, and psychological abuse and trauma, along with adverse effects of maintaining secrecy, including substandard medical care, housing, and education.¹⁷ Over 75% of children who are abducted to a foreign country by a parent are never returned to the United States, and many thousands of domestically abducted children remain missing.¹⁸ Multiple studies have determined that parental abduction is highly correlated with a history of family violence,¹⁹ but police generally believe that if a child is with another parent, the child is not in danger.²⁰ As identified in Congressional testimony: “the searching parent hears repeated over and over again the myth, ‘at least the child is “safe,” he’s with his own parent’. That is not much consolation to a parent who has been beaten and abused by a violent, temper-prone spouse.”²¹ Nor does it provide comfort to a parent who witnessed or suffered psychological trauma caused by the offending parent. The lack of response is particularly distressing both because the victims of parental abduction are typically

14. See Geoffrey L. Greif, *A Parental Report on the Long-Term Consequences for Children of Abduction by the Other Parent*, 31 CHILD PSYCHIATRY HUM. DEV. 59, 59 (2000) [hereinafter *A Parental Report*] (explaining that parentally abducted children are often severely traumatized and are subjected to physical and sexual abuse); *infra* section II.C.

15. *Infra* note 288 and accompanying text.

16. *Infra* section II.B.

17. See generally GEOFFREY L. GREIF & REBECCA L. HEGAR, *WHEN PARENTS KIDNAP: THE FAMILIES BEHIND THE HEADLINES* (1993) (discussing the effects of kidnapping on children and parents).

18. Laura McCue, *Left Behind: The Failure of the United States to Fight for the Return of Victims of International Child Abduction*, 28 SUFFOLK TRANSNAT'L L. REV. 85, 85 (2004).

19. Monique C. Boudreaux et al., *Child Abduction: An Overview of Current and Historical Perspectives*, 5 CHILD MALTREATMENT 63, 66 (2000); see *infra* section II.A. See generally JANET CHIANCONE & LINDA GIRDNER, A.B.A. CTR. ON CHILDREN & THE LAW, *ISSUES IN RESOLVING CASES OF INTERNATIONAL CHILD ABDUCTION* 2-21 (1998) (surveying parents of parentally abducted children and finding that in 81.4% of cases, the abducting parent had abused the left-behind parent, and in 59.4% of cases, the abducting parent had abused or seriously neglected the child).

20. See *infra* section III.B.

21. *Parental Kidnapping: Hearing Before the Subcomm. on Juvenile Justice of the S. Comm. on the Judiciary*, 98th Cong. 166 (1983) (testimony of Kathy Rosenthal, Executive Director, Children's Rights of Florida, Inc.).

children below age six²² and because many parentally abducted children are never recovered.²³

One prominent recent example of parental abduction is Jessica Lenahan (Gonzales)'s harrowing experience of calling the police five times and going to the police station in person the night her estranged abusive husband illegally absconded with their daughters in violation of a domestic violence restraining order.²⁴ As detailed in *Castle Rock v. Gonzales*, in which the Supreme Court held that there is no property interest in police enforcement of a restraining order, each time Lenahan sought help, the police stalled or rebuked her²⁵ or told her there was nothing they could do because the children were with their father.²⁶ Even when she knew the location of her husband and daughters and gave this information to the police, the police refused to act.²⁷ The Supreme Court noted, "[t]he officer who took the report 'made no reasonable effort to enforce the [Temporary Restraining Order] or locate the three children. Instead, he went to dinner.'"²⁸ Lenahan's pleas for help ended tragically, with her husband coming to the police station and opening fire, at which time the police responded with gunfire.²⁹ At the close of the shootout, Lenahan's daughters were found dead in the truck from gunshot

22. Heather Hammer et al., *Children Abducted by Family Members: National Estimates and Characteristics*, in U.S. DEP'T OF JUSTICE, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, NAT'L INCIDENCE STUD. OF MISSING, ABDUCTED, RUNAWAY, AND THROWNAWAY CHILDREN 9 (Oct. 2002) ("Family abduction is one of the few victimization perils that younger children experience to a greater extent than older children.").

23. *Id.* at 2, 6–7 (noting that the most recent national study showed that over one-fifth of parentally abducted children remain missing for more than a month); see also David Finkelhor et al., *Missing, Abducted, Runaway, and Thrownaway Children in America*, in DEP'T OF JUSTICE, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, NAT'L INCIDENCE STUDIES x–xi (1990) (finding that of the 354,100 children who were parentally abducted in 1988, in 163,000 cases the abducting parent concealed the child, took the child across state lines, or kept the child indefinitely).

24. *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 753–54 (2005); cf. Lindsay Wise, *Court Files Show Abusive Marriage for Slain Children's Mom*, HOUSTON CHRON. (Sept. 26, 2010), <http://www.chron.com/news/houston-texas/article/Court-files-show-abusive-marriage-for-slain-1700202.php> [<https://perma.cc/ZP5Z-NWRE>] (recounting how after abusing his wife for fifteen years, Mohammad Goher abducted their three children to Pakistan. He returned to the United States with the children after a year, at which point his wife initiated custody proceedings and he received visitation. During one of the father's weekend visits, he shot and killed the three children).

25. See *Gonzales*, 545 U.S. at 753.

26. *Lenahan (Gonzales) et al. v. United States*, Case 12.626, Inter-Am. Comm'n H.R., Report No. 80/11, ¶ 26 (2011), <http://www.cidh.org> [<https://perma.cc/ANA4-EW8A>].

27. *Gonzales*, 545 U.S. at 753–54.

28. *Id.* at 754.

29. *Id.*

wounds.³⁰ Though it is unclear exactly when Lenahan's children were killed and by which bullets, what is certain is that police could have responded to any one of Lenahan's multiple pleas for help, but did not.

While the state abjectly fails to assist abused parents whose batterers abduct their children, we know the state can act because it routinely does so in heightened, aggressive ways in other areas concerning the family. These are also areas that are deeply racialized and contextualized by socio-economic distress. Part I identifies numerous areas of hyper-criminalization in the family that are often not desired by the "victim" and reveals the state's bifurcated treatment of the family.³¹

Part II explores the problem of parental abduction and the prevalence of domestically abusive abductors. In examining parental abduction, it is important to distinguish between the very different motives and situations of abusive abductors and those of family violence victims who flee to prevent further harm.

Expeditious response and immediate intervention by law enforcement to parental abduction are necessary to protect at-risk children and are required by law, as identified in section III.A, yet this is an area in which the criminal and civil justice systems routinely refuse to respond, as detailed in section III.B.

Part IV explores possible explanations for the differential treatment of parental abduction, first drawing comparisons to the state's disparate treatment of marital or acquaintance rape and stranger rape and how domestic violence is devalued in child custody decision-making. Section IV.B observes differential responses by the state based primarily on the source of the request for help and problematizes the racialized, gendered, and class-based patterns of the state's intervention. This section links the state's refusal to intervene in parental abduction to the historic distrust of female complainants and disbelief of abuse survivors. It also identifies how the state disproportionately and harmfully intervenes in families of color in contrast to the state's refusal to respond when domestic abusers abduct their children, an act primarily committed by white men.

Naturally, uncritical state intervention that fails to differentiate between abusive abductors and survivor abductors does not cure the currently unaddressed parental abduction problem and can create unanticipated harms, particularly for abuse survivors and their children. When examining possible solutions in Part V, the Article discusses

30. *Id.*

31. See Jill Elaine Hasday, *Parenthood Divided: A Legal History of the Bifurcated Law of Parental Relations*, 90 GEO. L.J. 299, 357 (2002) (discussing the bifurcated treatment of parenthood as evidenced by differences in the administration of Social Security benefits and welfare programs).

normative solutions to police, prosecutorial, and judicial interventions that avoid the over-criminalization tendency that many areas of family law have experienced.

I. OVER-POLICED AND UNDER-PROTECTED

Examples of undesired, detrimental state interventions abound and reveal that the state has a listening problem when it comes to victimized individuals. Abuse survivors often experience the state's protectionist and punitive approaches even when they express that the state action has troubling psychological, economic, safety, or relational effects. Multiple areas of unwanted state intervention are explored in Part I. Section A reveals the state's penalization of abuse survivors through (1) domestic violence mandatory arrest and prosecution policies, and (2) the criminalization of abuse victims who fail to cooperate in prosecution. Section B considers the state's policing of abused parents through (1) "failure to protect" laws, which criminalize abuse survivors and remove children from non-violent parents, (2) the incarceration of non-custodial parents for the non-payment of child support, and (3) expanding definitions of abuse and neglect.

A. *Penalizing Abuse Survivors*

Domestic violence survivors are often penalized when they seek help from abuse, and anti-essentialist and intersectional feminist scholars have questioned the state's autonomy-denying interventions regarding domestic violence arrest and prosecution policies.³² Beginning in the 1990s, mandatory arrest policies, through which police officers are required to make an arrest if they have probable cause to believe domestic violence occurred, produced increased arrest and prosecution of abuse survivors.³³ Domestic violence criminalization resulted in

32. See Deborah Epstein, *Procedural Justice: Tempering the State's Response to Domestic Violence*, 43 WM. & MARY L. REV. 1843, 1856 (2002) (noting that the Violence Against Women Act conditioned federal grant funds on the adoption of mandatory arrest policies). See generally LEIGH GOODMARK, A TROUBLED MARRIAGE: DOMESTIC VIOLENCE AND THE LEGAL SYSTEM (2013); Kimberly D. Bailey, *Lost in Translation: Domestic Violence, "The Personal Is Political," and the Criminal Justice System*, 100 J. CRIM. L. & CRIMINOLOGY 1255 (2010); Leigh Goodmark, *Autonomy Feminism: An Anti-Essentialist Critique of Mandatory Interventions in Domestic Violence Cases*, 37 FLA. ST. U. L. REV. 1 (2009).

33. See Jessica Dayton, *The Silencing of a Woman's Choice: Mandatory Arrest and No Drop Prosecution Policies in Domestic Violence Cases*, 9 CARDOZO WOMEN'S L.J. 281, 287 (2003) (finding that three times as many women were arrested for domestic abuse after a mandatory arrest statute was adopted in Los Angeles); David Hirschel & Eve Buzawa, *Understanding the Context of Dual Arrest with Directions for Future Research*, 8 VIOLENCE AGAINST WOMEN 1449, 1459 (2002)

aggressive prosecution policies under which prosecutors pursued cases regardless of the victim's desire for prosecution or safety concerns about testifying.³⁴ The state's insistence on prosecuting to protect the victim has not provided such benefits, as studies have found that criminal domestic violence interventions fail to deter abuse perpetrators from further victimization and actually increase domestic violence homicides.³⁵

Also problematic, abuse survivors are routinely incarcerated for failing to cooperate with the government's prosecution of domestic

(identifying how gay, lesbian, bisexual, and transgender victims are particularly vulnerable to dual arrests); Simiao Li et al., *Women's Perspectives on the Context of Violence and Role of Police in Their Intimate Partner Violence Arrest Experiences*, 30 J. INTERPERSONAL VIOLENCE 400, 402 (2015) (discussing the implementation of mandatory arrest laws, the subsequent increase of female arrests, and how women's use of violence typically occurs within the context of their own victimization); Susan L. Miller, *The Paradox of Women Arrested for Domestic Violence: Criminal Justice Professionals and Service Providers Respond*, 7 VIOLENCE AGAINST WOMEN 1339, 1343 (2001) (finding that mandatory arrest policies lead to an increase in dual arrests, even in jurisdictions with policies recommending only the arrest of the primary aggressor); Sue Osthoff, *But, Gertrude, I Beg to Differ, a Hit Is Not a Hit Is Not a Hit: When Battered Women Are Arrested for Assaulting Their Partners*, 8 VIOLENCE AGAINST WOMEN 1521, 1533 (2002) ("One of the unintended consequences of intensive arrest policies has been the arrest of large numbers of battered women, especially women of color.").

34. See Bailey, *supra* note 2, at 1784–85 (discussing the prevalence of mandatory arrest and prosecution policies for domestic violence); Donald J. Rebovich, *Prosecution Response to Domestic Violence: Results of a Survey of Large Jurisdictions*, in DO ARRESTS AND RESTRAINING ORDERS WORK? 176, 180, 182–83 (Eve S. Buzawa & Carl G. Buzawa eds., 1996) (reporting that a survey conducted in the early 1990s showed that 66% of prosecutors' offices in major urban areas had adopted no-drop policies).

35. See Donna Coker, *Crime Control and Feminist Law Reform in Domestic Violence Law: A Critical Review*, 4 BUFF. CRIM. L. REV. 801, 852 (2001) (identifying how the criminal justice system often offers no better alternative to a batterer's coercion); Radha Iyengar, *Does the Certainty of Arrest Reduce Domestic Violence? Evidence from Mandatory and Recommended Arrest Laws*, 93 J. PUB. ECON. 85, 85 (2009) (finding that mandatory arrest laws lead to the perverse effect of increasing intimate partner homicides because of the abuser's likelihood of seeking retribution); Linda G. Mills, *Killing Her Softly: Intimate Abuse and the Violence of State Intervention*, 113 HARV. L. REV. 550, 567–68 (1999) (finding that prosecution has no effect on the probability of the batterer's re-arrest during a six-month period, and identifying that the victim's ability to exercise control over the decision to prosecute has been shown to correlate with the reduced risk for subsequent abuse); Lawrence W. Sherman & Heather M. Harris, *Increased Death Rates of Domestic Violence Victims from Arresting vs. Warning Suspects in the Milwaukee Domestic Violence Experiment*, 11 J. EXPERIMENTAL CRIMINOLOGY 1, 1 (2015) (evaluating whether domestic violence arrest deters or increases future domestic homicide by studying death rates of victims of misdemeanor domestic violence twenty-three years after the random assignment of the arrest or warning of the abuser, and concluding that arrests increased the premature death of the victim, particularly for African American abuse victims, and suggesting the repeal or judicial invalidation of mandatory arrest laws); Frank A. Sloan et al., *Deterring Domestic Violence: Do Criminal Sanctions Reduce Repeat Offenses?*, 46 J. RISK & UNCERTAINTY 51 (2013) (finding that criminal penalties for domestic violence, at least at the current levels, do not deter perpetrators from future abuse and recidivism, including further arrests and convictions).

violence. Following recent Supreme Court decisions concerning the Confrontation Clause that make so-called “victimless prosecution” more difficult,³⁶ prosecutors’ offices often engage in highly coercive measures to procure victims’ testimony at trial.³⁷ Prosecutors utilize their subpoena power to compel victims’ testimony, and they seek bench warrants and file contempt charges when victims fail to comply with the state’s prosecution.³⁸ Nationwide, jailing abuse victims on contempt warrants “has resulted in significant numbers of victims being arrested and incarcerated while their abusers have avoided jail time altogether.”³⁹ Jail sentences for defendants in domestic violence cases are typically only several days long, and most offenders receive only probation,⁴⁰ but abuse victims have been jailed for contempt for much lengthier periods

36. See *Davis v. Washington*, 547 U.S. 813 (2006); *Crawford v. Washington*, 541 U.S. 36 (2004).

37. Tamara Kuennen, *Private Relationships and Public Problems: Applying Principles of Relational Contract Theory to Domestic Violence*, 2010 B.Y.U. L. REV. 515, 586 (2010); see, e.g., Tom Dart, *Rape Victim Sues After Being Jailed During Trial for “Mental Breakdown,”* GUARDIAN (July 22, 2016), <https://www.theguardian.com/us-news/2016/jul/22/texas-rape-victim-county-jail-bipolar-disorder-lawsuit> [<http://perma.cc/SRJ4-PM3Z>] (reporting that a rape victim had a mental breakdown while testifying against her attacker, and she was then incarcerated for nearly a month at the prosecutor’s request to ensure she would return to court to conclude her testimony).

38. See Cheryl Hanna, *No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions*, 109 HARV. L. REV. 1849, 1863 (1996) (identifying that prosecutors in Duluth, Minnesota, subpoena all domestic violence victims and that prosecutors in San Diego request bench warrants when victims fail to appear or cooperate with the prosecution); Rebovich, *supra* note 34, at 186 (reporting that 92% of prosecutorial agencies use subpoenas to require victims to testify); Emily J. Sack, *Battered Women and the State: The Struggle for the Future of Domestic Violence Policy*, 2004 WIS. L. REV. 1657, 1681 (2004); see, e.g., VT. R. EVID. 504(d) (West 2016) (identifying that there is no marital privilege when one spouse is charged with committing a crime against the other spouse, thus making domestic violence victims compellable witnesses).

39. Casey G. Gwinn & Anne O’Dell, *Stopping the Violence: The Role of the Police Officer and the Prosecutor*, 20 W. ST. U. L. REV. 297, 313 (1993) (“Our official policy is that we will request arrest warrants for victims who are subpoenaed and fail to appear in court. This is widely publicized in our community.”); see also Martha Neil, *Domestic Violence Victim Put on Stand in Pajamas, Then Jailed Overnight for Refusing to Testify*, A.B.A. J. (June 3, 2014), http://www.abajournal.com/news/article/domestic_violence_victim_is_put_on_stand_in_pajamas_then_jailed_overnight [<http://perma.cc/F4JL-FNCR>]; Bill Nemitz, *I Had “No Choice” But to Jail Victim, Maine DA Says*, PORT. PRESS HERALD (Sept. 25, 2013), http://www.pressherald.com/2013/09/25/da-i-had-no-choice-but-to-jail-victim_2013-09-25/ [<http://perma.cc/HW2R-M76T>].

40. LINDA G. MILLS, *THE HEART OF INTIMATE ABUSE: NEW INTERVENTIONS IN CHILD WELFARE, CRIMINAL JUSTICE, AND HEALTH SETTINGS* 56 (1998) (reporting study results that only 1% of perpetrators of domestic violence received jail sentences beyond the brief time they served at arrest); see Sloan et al., *supra* note 35, at 62 (estimating that “only 0.15 to 0.2% of cases involving [domestic violence] lead to an arrest,” and “the probability of [domestic violence] resulting in a fine or jail is slightly under 0.04”); Erin L. Han, *Mandatory Arrest and No-Drop Policies: Victim Empowerment in Domestic Violence Cases*, 23 B.C. THIRD WORLD L.J. 159, 183 (2003) (“Given the reality that even aggressive prosecution will likely yield only a mild, if any, punishment, there are many reasons why a victim might be far safer by not aligning herself with the state.”).

for refusing to comply with subpoenas to testify.⁴¹ Among the fear tactics prosecutors employ to coerce domestic violence victims' cooperation,⁴² they threaten uncooperative victims that they will refer their cases to Child Protective Services and that the victims could lose their children as a result.⁴³ Abuse survivors have also been charged with perjury and have received lengthy jail sentences for recanting prior statements or for failing to provide truthful testimony about the abuse they experienced.⁴⁴

41. See Andrew Klein, *Locking Up the Victim, the Right Thing to Do?*, in NAT'L BULL. ON DOMESTIC VIOLENCE PREVENTION, at 4–5 (Apr. 2004) (describing law enforcement's inadequate response to this victim's request for help after she was strangled and her incarceration). Across the nation, examples can be found of abuse victims who were jailed when they failed to comply with a subpoena for their testimony. See, e.g., *Commonwealth v. Kirkner*, 805 A.2d 514 (Pa. 2002) (reversing the lower court's quashing of a subpoena ordering the victim to testify); Mackenzie Carpenter, *Wives Forced to Testify in Spousal Abuse Cases*, PITT. POST-GAZETTE, Aug. 30, 2002, at B4 (discussing the Pennsylvania Supreme Court's ruling in the *Kirkner* case and noting the Allegheny County policy of arresting victims who refuse to comply with a subpoena); Colleen O'Connor, *The Law's Double Edge*, DALLAS MORNING NEWS, Mar. 11, 1996, at 1C (noting that only a few jurisdictions do not compel a victim's testimony); Alex Roth, *Jailing the Victim: Courts Force Battered Women to Testify*, DAILY NEWS OF L.A., June 8, 1998 (discussing judges' and prosecutors' aggressive treatment of uncooperative victims); Emily Shugerman, *Rape Survivors Face Jail if They Won't Testify in Louisiana*, INDEP. (Apr. 20, 2017), <http://www.independent.co.uk/news/world/americas/rape-victims-survivors-face-jail-if-dont-testify-court-louisiana-attorney-leon-cannizzaro-a7694061.html> [<https://perma.cc/J67K-HFM5>] (reporting on the New Orleans District Attorney's practice and identifying that six alleged victims of domestic violence or sexual assault were jailed in 2016 to compel their testimony); Jessica Pishko, *She Didn't Want Her Boyfriend to Go to Jail. So They Sent Her to Jail Instead.*, COSMOPOLITAN (Apr. 13, 2017), <http://www.cosmopolitan.com/politics/a9241242/cleopatra-harrison-schr-domestic-violence-victims-fees-no-drop-policy/> [<https://perma.cc/6ZYP-EERP>] (detailing recent instances of abuse survivors being fined or jailed for refusing to participate in the prosecution of their batterers). See generally *Battered Women Must Testify*, WASH. POST, Aug. 8, 1983, at A8; *supra* notes 34 and 36 and accompanying text.

42. Thomas L. Kirsch II, *Problems in Domestic Violence: Should Victims Be Forced to Participate in the Prosecution of Their Abusers?*, 7 WM. & MARY J. WOMEN & L. 383, 402 (2001) (regarding common fear tactics, one prosecutor said that he routinely told victims: "I was going to subpoena her and if she didn't show up I was going to have her thrown in jail with a body attachment. I tried to make them believe that it would be more painful for them to not cooperate than it would be to cooperate.").

43. See Symposium, *Women, Children and Domestic Violence: Current Tensions and Emerging Issues*, 27 FORDHAM URB. L.J. 565, 650 (2000) (including the statement of Michelle Maxian, head of the Criminal Defense Division of the Legal Aid Society of New York).

44. Maureen O'Hagan, *In Baltimore, a Victim Becomes a Criminal*, WASH. POST (Mar. 30, 2001), https://www.washingtonpost.com/archive/politics/2001/03/30/in-baltimore-a-victim-becomes-a-criminal/69e9f6f5-ef03-41dd-9338-aa3d771ff0c0/?utm_term=.bf948f4ecd3c [<https://perma.cc/KK9X-6KM5>] (reporting that a domestic violence victim in Baltimore was arrested to compel her testimony, and she then lied to the grand jury out of fear for her life. She was prosecuted for perjury and was sentenced to thirty months in jail for this crime).

While the state continues to refuse to respond to abuse survivors' pleas for help when their children are parentally abducted, the state increasingly criminalizes abuse victims and polices abuse survivors through mandatory arrest and prosecution policies. Abused parents also experience elevated policing of their parenting, as identified in the next section.

B. Policing Abused Parents

When domestic violence comes to the attention of Child Protective Services, far too often battered mothers are criminally prosecuted or charged with neglect for failing to protect their children from being exposed to domestic violence.⁴⁵ Under "failure to protect" laws, battered women face removal of their children and the possible termination of their parental rights because these mothers are per se assumed to be unfit parents.⁴⁶ Domestic violence shelter advocates and medical professionals are required to report children exposed to domestic violence to child welfare officials,⁴⁷ so paradoxically, abuse survivors can lose custody of their children at the point they seek help escaping violence⁴⁸ and are treated as culpable as batterers.⁴⁹ Family law further imposes the

45. In states with "failure to protect" laws, this practice continues to be commonplace even after the widely publicized class action brought on behalf of battered mothers in New York in 2000, who had been charged with child neglect and had their children removed from their care solely because the mothers had experienced abuse. *See* *Nicholson v. Williams*, 203 F. Supp. 2d 153 (E.D.N.Y. 2002).

46. Justine A. Dunlap, *Sometimes I Feel Like a Motherless Child: The Error of Pursuing Battered Mothers for Failure to Protect*, 50 LOY. L. REV. 565, 601–02 (2004); The "Failure to Protect" Working Group, *Charging Battered Mothers with "Failure to Protect": Still Blaming the Victim*, 27 FORDHAM URB. L.J. 849, 849 (2000); *see, e.g.*, TEX. FAM. CODE ANN. §§ 161.001(b)(1)(D)–(E) (West 2016) ("The court may order termination of the parent-child relationship if the court finds by clear and convincing evidence . . . that the parent has . . . knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child . . . [or has] engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child . . .").

47. Stoever, *supra* note 9, at 192.

48. *See* Evan Stark, *The Battered Mother in the Child Protective Service Caseload: Developing an Appropriate Response*, 23 WOMEN'S RTS. L. REP. 107, 112 (2002); *see, e.g.*, *Nicholson*, 203 F. Supp. 2d at 153, 163–64.

49. *See* The "Failure to Protect" Working Group, *supra* note 46, at 854 ("A battered mother's attempts to protect her children, to seek services or to leave her batterer are rarely considered. There are still strong prejudices against women who do not leave their batterers, and the players in the child welfare system routinely blame the victims of domestic violence for the harm to the children."); Justine A. Dunlap, *The "Pitiless Double Abuse" of Battered Mothers*, 11 AM. U.J. GENDER SOC. POL'Y & L. 523, 523 (2003) (identifying how abused mothers "not only bear the scars of their abuser, but they also shoulder the blame for the harms others cause to their children").

dilemma of requiring abuse survivors to leave their abusers in order to protect their children, but to not interfere with the abusive parent's parental rights or relationship with the children.⁵⁰

"Failure to protect" laws have increased unnecessary state intrusion and the needless removal of children from their non-abusive parent, even as studies show that experiencing abuse does not compromise the abuse survivor's ability to parent⁵¹ and that indirect and direct risks to children in domestic violence cases are typically non-emergent and rarely rise to the level normally associated with abuse and neglect.⁵² Under "failure to protect" regimes, children are frequently removed from the non-abusive parent and placed in foster care, although the harms of separation from a non-abusive parent are well established⁵³ and children often face physical and sexual abuse and neglect in foster care.⁵⁴ These laws operate contrary to all research, which shows that the best ways to keep a child who has been exposed to domestic violence safe are to help the non-offending parent be safe and to support the abused parent's ability to engage in a nurturing relationship with the child.⁵⁵ Indeed, the child's continued relationship with the non-abusive parent is the most critical resiliency factor and predictor of lifetime positive outcomes for a child who has witnessed domestic violence.⁵⁶

Another example of undesired state intervention in families is how the state routinely brings criminal enforcement actions in child support cases

50. Martha A. Fineman, *Fatherhood, Feminism, and Family Law*, 32 MCGEORGE L. REV. 1031, 1034 (2001) (arguing that gender neutrality in family law, where there is an existing unequal distribution of labor and sacrifice, further disadvantages women and children).

51. Stark, *supra* note 48, at 111–12; *see also* Cris M. Sullivan et al., *Beyond Searching for Deficits: Evidence that Physically and Emotionally Abused Women Are Nurturing Parents*, 2 J. EMOTIONAL ABUSE 51, 51 (2000) (reporting on a study of battered women in shelters that used multi-variant techniques and concluding that "mothers' experience of physical and emotional abuse had no direct impact on their level of parenting stress or use of discipline with their children").

52. Stark, *supra* note 48, at 130.

53. *See generally* Therese Zink et al., *What Are Providers' Reporting Requirements for Children Who Witness Domestic Violence?*, 43 CLINICAL PEDIATRICS 449, 457 (2004).

54. Clare Huntington, *Rights Myopia in Child Welfare*, 53 UCLA L. REV. 637, 661–62 (2006) (describing studies finding that children in foster care are 75% more likely to be maltreated and four times more likely to be sexually abused than children who are not in foster care); Stark, *supra* note 48, at 130 (identifying that children from homes with domestic violence are especially vulnerable to the trauma associated with foster care placement); Shana Gruskin, *Advocate Sues State Foster Care Children Put at Risk in System, Suit Contends*, SUN SENTINEL, June 15, 2000, at 1B (reporting on a state class action filed on behalf of over 14,000 children in the Florida child welfare system, alleging beatings, sexual abuse, malnutrition, torture, and neglect).

55. ANN ROSEWATER & KATHY MOORE, ADDRESSING DOMESTIC VIOLENCE, CHILD SAFETY AND WELL-BEING 6 (2010).

56. *Id.*

contrary to the custodial parent's wishes.⁵⁷ The custodial parent often does not wish for the child support case to be initiated or to proceed and plays no role in seeking the non-custodial parent's incarceration.⁵⁸ These custodial parents rightly recognize that incarceration does not aid long-term financial prospects,⁵⁹ and the adversarial cases create relational harms to the parent-child and co-parenting relationships⁶⁰ and especially present danger in the context of domestic violence.⁶¹ Even though Congress created mechanisms to waive child support cooperation

57. See JENNIFER HAMER, WHAT IT MEANS TO BE DADDY: FATHERHOOD FOR BLACK MEN LIVING AWAY FROM THEIR CHILDREN 121, 125 (2001) (finding that African American mothers rarely pursue child support from their children's fathers); Kimberly Seals Allers, *Forgiving \$38,750 in Child Support, for My Kids' Sake*, N.Y. TIMES: MOTHERLODE (Apr. 19, 2015), https://parenting.blogs.nytimes.com/2015/04/19/forgiving-38750-in-child-support-for-my-kids-sake/?_r=0 [<https://perma.cc/8NRA-FCPM>] (one custodial parent who sought the court's permission to forgive her ex-husband's child support arrears of nearly \$40,000 wrote, "[w]hat I could do was to . . . take the words 'arrest warrant' out of the language my children associate with their father. I don't want the father of my children to be criminalized or to live in fear of prison").

58. See ELAINE SORENSEN & MARK TURNER, BARRIERS IN CHILD SUPPORT POLICY 14 (Nat'l Ctr. on Fathers & Families, May 1996) (describing a multitude of reasons custodial mothers may not wish to seek child support enforcement); Jane C. Murphy, *Legal Images of Fatherhood: Welfare Reform, Child Support Enforcement, and Fatherless Children*, 81 NOTRE DAME L. REV. 325, 373 (2005) (noting that although the custodial parent's name appears in the caption of the child support case, the custodial parent is often not aware of the state's case until he or she receives a summons to appear in court).

59. See DEVAH PAGER, MARKED: RACE, CRIME, AND FINDING WORK IN AN ERA OF MASS INCARCERATION (2007); ELAINE SORENSEN ET AL., THE URBAN INST., ASSESSING CHILD SUPPORT ARREARS IN NINE LARGE STATES AND THE NATION 3, 9 (July 11, 2007), http://www.urban.org/research/publication/assessing-child-support-arrears-nine-large-states-and-nation/view/full_report [http://www.urban.org/research/publication/assessing-child-support-arrears-nine-large-states-and-nation/view/full_report] (determining that most unpaid child support is owed by the very poor, with a nine-state study revealing that 70% of child support arrears are owed by individuals with annual incomes of less than \$10,000, and further finding that these parents are ordered to pay an average of 83% of their income in child support); Solangel Maldonado, *Deadbeat or Deadbroke: Redefining Child Support for Poor Fathers*, 39 U.C. DAVIS L. REV. 991, 1010, 1015 (2006); Robert Apel & Gary Sweeten, *The Impact of Incarceration on Employment During the Transition to Adulthood*, 57 SOC. PROBS. 448 (2010); Leslie Kaufman, *When Child Support is Due, Even the Poor Find Little Mercy*, N.Y. TIMES, (Feb. 19, 2005), <http://www.nytimes.com/2005/02/19/nyregion/when-child-support-is-due-even-the-poor-find-little-mercy.html> [<https://perma.cc/XZ7K-RH6M>] (identifying that in 2003, fathers earning more than \$40,000 were responsible for less than 4% of the money owed in back child support nationally).

60. See Murphy, *supra* note 58, at 373 (observing that the adversarial aspect of child support enforcement harms low-income families, stating, "[b]eing forced into repeated court appearances with mother as plaintiff (although the state initiated the case) and father as defendant undermines relationships in these fragile families").

61. See Naomi Stern, *Battered by the System: How Advocates Against Domestic Violence Have Improved Victims' Access to Child Support and TANF*, 14 HASTINGS WOMEN'S L.J. 47, 49 (2003) ("Because of a batterer's desire to control his former partner, his contact with her in a courtroom setting could result in renewed violence against her.").

requirements for domestic violence victims,⁶² these options are rarely presented to custodial parents.⁶³ Instead, state agents at domestic violence intake centers automatically initiate child support cases against abusive non-custodial parents, endangering abuse survivors by involving them in numerous court proceedings as witnesses for the state.⁶⁴

The state's expanding definitions of abuse and neglect also create more opportunities for state intervention in the family, such as through medical child abuse⁶⁵ and childhood obesity⁶⁶ charges. Similar to other

62. Although welfare regulations originally mandated that custodial parents cooperate with the establishment of paternity and collection of child support from the non-custodial parent, when Congress recognized the danger this created for domestic violence victims, it created the "good cause" waiver to the former Aid to Families with Dependent Children program and the Family Violence Option to the Temporary Assistance to Needy Families program to permit state child support agencies to waive the child support cooperation requirements for victims of domestic violence. *See* 45 C.F.R. § 232.40 (1997); U.S. DEP'T OF HEALTH & HUMAN SERVS., TEMPORARY ASSISTANCE FOR NEEDY FAMILIES PROGRAM: EIGHTH ANNUAL REPORT TO CONGRESS 131–32 (2009), <https://www.acf.hhs.gov/ofa/resource/eighth-annual-report-to-congress> [<https://perma.cc/T289-GBAE>] (reporting that thirty-nine states, the District of Columbia, and Puerto Rico have adopted the Family Violence Option).

63. Taryn Lindhorst & Julianna D. Padgett, *Disjunctures for Women and Frontline Workers: Implementation of the Family Violence Option*, 79 SOC. SERV. REV. 405, 407, 409 (2005); Katie Scrivner, *Domestic Violence Victims After Welfare Reform: Looking Beyond the Family Violence Option*, 16 WIS. WOMEN'S L.J. 241, 249–50 (2001).

64. Stoever, *supra* note 9, at 215–16; *see also* Rachel J. Gallagher, *Welfare Reform's Inadequate Implementation of the Family Violence Option: Exploring the Dual Oppression of Poor Domestic Violence Victims*, 19 AM. U. J. GENDER SOC. POL'Y & L. 987, 1002–03 (2011) (identifying that screening for domestic violence is "virtually nonexistent," and abuse victims are rarely offered the Family Violence Option, which would waive their participation in child support actions and enforcement).

65. Parents with ill children are increasingly facing charges from doctors and hospitals of "medical child abuse," a diagnosis coined in the 1990s that has gained traction in the last decade and is now supported by the American Board of Pediatrics, despite critiques. Editorial, *"Medical Child Abuse" Lacks Adequate Standards, Guidelines*, BOSTON GLOBE (Dec. 23, 2013), <https://www.bostonglobe.com/opinion/editorials/2013/12/23/medical-child-abuse-needs-clearer-standards-and-guidelines/m0gf4a07zm4OtQXbXPZCjP/story.html> [<https://perma.cc/P3X4-LHWA>] (referring to "medical child abuse" as an "ill-defined umbrella term," identifying the lack of standards and process that lead to state intervention, even contrary to well-respected doctors' recommendations, and the lack of medical expertise and independent confirmation that occurs prior to the Department of Children and Families acting); *see, e.g.*, Joseph De Avila, *Teen's Care Spurs Wider Fight: Connecticut Couple Heads to Court to Try to Have a Say Over Daughter's Treatment*, WALL ST. J. (Feb. 23, 2014), <https://www.wsj.com/articles/SB10001424052702304834704579401202068231912> (last visited May 27, 2017) (describing the case of Justina Pelletier and how her parents quickly lost custody. After being denied custody for over a year, "[t]he Pelletiers now see their daughter under supervision once a week and for an hour at a time. Mr. Pelletier said he and his wife are worried their daughter isn't receiving the treatment she needs, complaining that she can't sit up, is physically weak and has generally declined in health since they lost custody"); Christy Gutowski, *Fighting to Regain Custody: Lurie Children's Medical Child Abuse Allegations Leave Boy in Foster Home*, CHI. TRIB., May 29, 2014, at 8 (reporting that when a mother sought to transfer hospitals for her son who suffers from neurofibromatosis, he was placed in temporary

areas of state intervention, the medical decisions and parenting of parents of color receive heightened scrutiny and regulation.⁶⁷

The aggressive state activity in the areas identified in this section make the state's refusal to respond to parental abduction all the more alarming. In comparison to jailing abuse victims for failing to cooperate in prosecution, jailing indigent parents for failure to pay child support, or removing children from non-violent parents, jail sentences for parental abduction are extremely rare. Parental abductors are generally incarcerated only when they fail to disclose the abducted child's location.⁶⁸ Even when children report having experienced horrifying acts of sexual and physical abuse during parental abduction, abducting parents have escaped sanction.⁶⁹

II. THE PARENTAL ABDUCTION PROBLEM

*"I have lost all faith in the United States Government, and I will probably never see my children again, because they won't help me."*⁷⁰

protective custody and then in foster care, she was prohibited from having contact with her son, and her medical decision-making power was terminated).

66. States are increasingly characterizing childhood obesity as a form of child neglect, even though removing obese children from their parents' care is ineffective at solving the identified weight problem, adds psychological harms due to separation from one's parents, and is unconstitutional in the absence of an imminent threat of harm. Across the nation, children have been removed from their parents' custody because of obesity, even when parents fully comply with medical and social service orders. *See, e.g., In Interest of L.T.*, 494 N.W.2d 450 (Iowa Ct. App. 1992) (interpreting child obesity as a form of neglect that justifies removal from parental custody); *In re D.K.*, 58 Pa. D. & C.4th 353 (C.P. Northumberland Cty. 2002) (removing D.K. from his parents' custody despite the youth's desire to return home and his parents' willingness to help him lose weight). *See generally* Stacey L. Fabros, *A Cry for Health: State and Federal Measures in the Battle Against Childhood Obesity*, 7 J.L. & FAM. STUD. 447 (2005) (discussing laws intended to target childhood obesity); Cheryl George, *Parents Super-Sizing Their Children: Criminalizing and Prosecuting the Rising Incidence of Childhood Obesity as Child Abuse*, 13 DEPAUL J. HEALTH CARE L. 33 (2010); Deena Patel, *Super-Sized Kids: Using the Law to Combat Morbid Obesity in Children*, 43 FAM. CT. REV. 164, 170 (2005) (discussing unpublished cases from California and Indiana).

67. Elaine M. Chiu, *The Culture Differential in Parental Autonomy*, 41 U.C. DAVIS L. REV. 1773 (2008); Kimberly M. Mutcherson, *No Way to Treat a Woman: Creating an Appropriate Standard for Resolving Medical Treatment Disputes Involving HIV-Positive Children*, 25 HARV. WOMEN'S L.J. 221, 223 (2002) (noting that "much of the current discourse concerning medical neglect fails to address the ways in which patriarchy, racism, classism, and cultural hegemony affect the manner in which medical providers, child welfare workers, and family courts settle disputes concerning parental autonomy and recommended medical treatment for children").

68. *Infra* section II.A.

69. *Id.*

70. Rosemary F. Janvier et al., *Parental Kidnapping: A Survey of Left-Behind Parents*, 41 JUV. & FAM. CT. J. 1, 4 (1990) (quoting a parent whose children were abducted, noting how this parent's

The problem of parental abduction is further elucidated in section II.A and contrasted with society's focus on stranger abduction. This Article particularly targets the phenomenon of abusive parents abducting their children, and the connection between family violence and parental abduction is revealed in section II.B. Section II.C identifies the harms of parental abduction, highlighting the need for state intervention when abusive parents abduct their children.

A. *The Socio-Legal Focus on Stranger Danger*

Popular media portray child abductors as pedophiles, serial killers, profiteers, or other strangers who lure children to danger.⁷¹ Detailed media coverage and cautionary tales of the stranger abduction cases of Charles Lindbergh, Elizabeth Smart, Erica Pratt, Jaycee Dugard, Danielle van Dam, Adam Walsh, Polly Klass, Samantha Runnion, Carlie Brucia, and others fuel parental and societal fears.⁷² Stranger abduction

response is typical of other left-behind parents, and identifying the overwhelming lack of governmental willingness to help obtain the return of children abducted by another parent).

71. See, e.g., Amy Dickinson, *The New Safety Rules for Kids*, TIME (July 21, 2002), <http://content.time.com/time/magazine/article/0,9171,322649,00.html> [http://perma.cc/5GLL-M5BY] (“The experts can tell us that a child’s being snatched by a stranger is rare and that these kinds of kidnappings are not on the increase. But every time it happens—and it happened again last week when Samantha Runnion, 5, playing just outside her apartment, was taken, screaming, and murdered—it strikes at our primal fear that we cannot protect our children against the incidental malice of the universe.”). See generally Noah J. Fritz & David L. Altheide, *The Mass Media and the Social Construction of the Missing Child Problem*, 28 SOC. Q. 473 (1987) (exploring the media’s role in creating the social construction of the “missing child” problem).

72. See, e.g., JAYCEE DUGARD, *A STOLEN LIFE: A MEMOIR* (2012); Yolanne Almanzar, *27 Years Later, Case Is Closed in Slaying of Abducted Child*, N.Y. TIMES (Dec. 17, 2008), <http://www.nytimes.com/2008/12/17/us/17adam.html> [https://perma.cc/79EB-LR9E] (announcing the resolution of the murder investigation of six-year-old Adam Walsh who was kidnapped in 1981 from a mall and whose severed head was found weeks after the abduction); Robert Eckhart, *Florida Girl Abducted on Video Is Found Dead; Mechanic with Criminal Record Is Charged*, N.Y. TIMES (Feb. 7, 2004), http://www.nytimes.com/2004/02/07/us/florida-girl-abducted-video-found-dead-mechanic-with-criminal-record-charged.html?_r=0 [http://perma.cc/37F5-6CTK] (discussing the arrest of the man suspected of kidnapping and killing Carlie Brucia, whose body was found in a wooded area behind a church in the week following her abduction); Jane Gross, *Police Find Body of Girl Kidnapped in California*, N.Y. TIMES (Dec. 5, 1993), <http://www.nytimes.com/1993/12/05/us/police-find-body-of-girl-kidnapped-in-california.html> [http://perma.cc/84SK-JBTE] (describing search for and discovery of twelve-year-old Polly Klaas, who was kidnapped from a slumber party two months before her deceased body was located in the woods approximately thirty miles from her home); Bill Hewitt et al., *Jaycee’s New Life*, PEOPLE, Oct. 26, 2009, at 58–66, <http://people.com/archive/cover-story-jaycees-new-life-vol-72-no-17/> [https://perma.cc/8JMC-DQJV] (recounting the story of Jaycee Dugard, who was abducted by Phillip Garrido in 1991 and found by police in 2009); Richard Lezin Jones, *7-Year-Old Philadelphia Girl, Abducted Monday, Breaks Free*, N.Y. TIMES (July 24, 2002), <http://www.nytimes.com/2002/07/24/us/7-year-old-philadelphia-girl-abducted-monday-breaks-free.html> [https://perma.cc/7V7W-48GY] (describing how seven-year-old Erica Pratt chewed her way through duct tape binding to reach freedom after

“encapsulates some of our most profound fears, combining the sudden and unexplained loss of a child with the fear of the most brutal outcomes, including rape and murder.”⁷³ The public’s fear is manifested in the resulting milk carton and media campaigns and the emerging markets for sentry transmitters, DNA samples, and microchip implantation in children.⁷⁴ Parents warn their children of strangers,⁷⁵ books on “stranger danger” are marketed to parents and children,⁷⁶ and

being abducted from the street and held for ransom); *Looking Back: Lindbergh Baby Kidnapped*, GAZETTE, Mar. 5, 2011, at W8 (originally published on Mar. 2, 1932) (reporting on the kidnapping of nineteen-month-old Charles Lindbergh from his crib); Dean E. Murphy, *Utah Girl, 15, Is Found Alive 9 Months After Kidnapping*, N.Y. TIMES (Mar. 13, 2003), <http://www.nytimes.com/2003/03/13/us/utah-girl-15-is-found-alive-9-months-after-kidnapping.html> [<https://perma.cc/WPG9-SLEF>] (reporting on the safe return of nine-year-old Elizabeth Smart after she was kidnapped in the middle of the night from her family’s Salt Lake City home); Barbara Whitaker, *Neighbor Guilty of Murder of Girl, 7, in San Diego*, N.Y. TIMES (Aug. 22, 2002), <http://www.nytimes.com/2002/08/22/us/neighbor-guilty-of-murder-of-girl-7-in-san-diego.html> [<https://perma.cc/8GYJ-QJC2>] (detailing the guilty verdict following the trial of David A. Westerfield for the kidnapping and first-degree murder of Danielle van Dam); Barbara Whitaker & James Barron, *Sheriff Issues Alert After California Girl Is Found Killed*, N.Y. TIMES (July 18, 2002), <http://www.nytimes.com/2002/07/18/us/sheriff-issues-alert-after-california-girl-is-found-killed.html> [<https://perma.cc/XG9L-3BBR>] (reporting that the desperate search for five-year-old Samantha Runnion was over after her body was located on the side of a highway within a week of being kidnapped from just outside her apartment after being asked to help locate her abductor’s dog).

73. James Oliver Beasley et al., *Patterns of Prior Offending by Child Abductors: A Comparison of Fatal and Non-Fatal Outcomes*, 32 INT’L J. L. & PSYCHIATRY 273, 273–74 (2009).

74. J. Eagle Shutt et al., *Reconsidering the Leading Myths of Stranger Child Abduction*, 17 CRIM. JUST. STUD. 127, 128 (2004).

75. See Dickinson, *supra* note 71.

76. Numerous books target parental fears about stranger abduction. See generally, e.g., CAROLYN MCCRAY & BEN HOPKIN, *AMBER ALERT – PRAY YOUR CHILD IS NOT NEXT (EMPTY CRIB MYSTERIES BOOK 1)* (2014) (advertised on Amazon as a “blockbuster child abduction thriller,” AMAZON, https://www.amazon.com/Amber-Alert-child-Empty-Mysteries-ebook/dp/B00OELC05O/ref=sr_1_1?s=books&ie=UTF8&qid=1493857444&sr=1-1&keywords=PRAY+YOUR+CHILD+IS+NOT+NEXT [<https://perma.cc/G23W-V58A>]); KRISTI PORTER, *STRANGER DANGER: HOW TO TALK TO KIDS ABOUT STRANGERS* (2013); DON RICHARDSON & JOHN BRODIE, *DON’T TAKE MY CHILD: A PARENT’S GUIDE TO KEEPING OUR KIDS SAFE* (2001); ROBERT STUBER, *MISSING! STRANGER ABDUCTION: SMART STRATEGIES TO KEEP YOUR CHILD SAFE* (1996); KENNETH WOODEN, *CHILD LURES: WHAT EVERY PARENT AND CHILD SHOULD KNOW ABOUT PREVENTING SEXUAL ABUSE AND ABDUCTION* (1997); MAURICE WOODSON, *CHILD ABDUCTION: HOW TO PROTECT YOUR CHILDREN* (2002).

Children’s literature also addresses “stranger danger.” See, e.g., STAN BERENSTAIN & JAN BERENSTAIN, *THE BERENSTAIN BEARS LEARN ABOUT STRANGERS* (1985); ANARA GUARD & COLLEEN MADDEN, *WHAT IF A STRANGER APPROACHES YOU? (DANGER ZONE)* (2011); IRMA JOYCE & GEORGE BUCKETT, *NEVER TALK TO STRANGERS* (2009); KAMILA ONIKOSI, *KALIYAH’S LESSON: “STRANGER, DANGER”* (2014); PEGGY PANCELLA, *STRANGER DANGER (BE SAFE!)* (2005).

school curricula increasingly feature lessons to prevent stranger abduction.⁷⁷

Moreover, media outlets advise parents to check sexual offender registries to prevent victimization,⁷⁸ despite the fact that FBI reports show that in fiscal year 2010, a registered sex offender was the abductor in only 1% of child abduction cases,⁷⁹ and there was only one registered sex offender implicated in America's Missing: Broadcast Emergency Response (AMBER) Alert cases in 2009.⁸⁰ Even social science articles disproportionately focus on the threat of stranger abduction.⁸¹ Despite

77. See Brigitte M. Johnson et al., *Evaluation of Behavioral Skills Training for Teaching Abduction-Prevention Skills to Young Children*, 38 J. APPLIED BEHAV. ANALYSIS 67 (2005); see, e.g., *Free Stranger Safety Curriculum*, THE ROSE BRUCIA EDUC. FOUND., <http://rosebrucia.org/downloads/> [<http://perma.cc/CDY8-5PQB>]; *Stranger Danger Lesson Plan*, CREATIVE SAFETY PRODUCTS, <http://www.officerphil.com/lesson-stranger-danger.html> [<http://perma.cc/8J48-ZQN8>]; Kidpower Teenpower Fullpower International, *Stranger Safety and Kidnapping Prevention Skills*, <https://www.kidpower.org/stranger-safety/> [<http://perma.cc/26HD-Z6GU>].

78. Caroline Fountain, *Police Urge Parents to Check Sex Offender Registry Before Trick-or-Treating*, FOX 46 (Oct. 31, 2016), <http://www.fox46charlotte.com/news/local-news/214767565-story> [<https://perma.cc/KWA7-S8HJ>].

Motives for abducting non-relatives are primarily sexual, with other reasons being profit and retribution. See Bernard Gallagher et al., *Attempted and Completed Incidents of Stranger-Perpetrated Child Sexual Abuse and Abduction*, 32 CHILD ABUSE & NEGLECT 517, 518 (2008) (reporting that 46% of victims of non-family abductions are sexually assaulted); David Finkelhor et al., *Nonfamily Abducted Children: National Estimates and Characteristics*, in NATIONAL INCIDENCE STUDIES OF MISSING, ABDUCTED, RUNAWAY, AND THROWN AWAY CHILDREN 2 (Oct. 2002) [hereinafter *Nonfamily Abducted Children*] ("Nearly half of all child victims of stereotypical kidnappings and nonfamily abductions were sexually assaulted by the perpetrator.").

79. DOUGLAS, *supra* note 11, at 8 (in 2009, a registered sex offender was the abductor in 2% of cases); cf. Beasley et al., *supra* note 73, at 276 (studying 750 child abductors and finding 8% of the offenders were registered as sex offenders, and 20% of the abductors had previously committed offenses against children).

80. NAT'L CTR. FOR MISSING AND EXPLOITED CHILDREN, 2009 AMBER ALERT REPORT 34 (2010), www.missingkids.com/en_US/documents/2009AMBERAlertReport.pdf [<https://perma.cc/8KV3-BJTE>].

81. See, e.g., Beasley et al., *supra* note 73; Kristen R. Beyer & James O. Beasley, *Nonfamily Child Abductors Who Murder Their Victims: Offender Demographics from Interviews with Incarcerated Offenders*, 18 J. INTERPERSONAL VIOLENCE 1167 (2003); Ann W. Burgess et al., *Nonfamily Infant Abductions, 1983–2006*, 108 AM. J. NURSING 32 (2008); David Finkelhor et al., *Attempted Non-Family Abductions*, 74 CHILD WELFARE 941 (1995) [hereinafter *Attempted Non-Family Abductions*]; David Finkelhor et al., *Nonfamily Abducted Children*, *supra* note 78; David Finkelhor et al., *The Abduction of Children by Strangers and Non-Family Members: Estimating the Incidence Using Multiple Methods*, 7 J. INTERPERSONAL VIOLENCE 226 (1992) [hereinafter *The Abduction of Children by Strangers and Non-Family Members*]; Gallagher et al., *supra* note 78; Vernon Geberth, *Sex-Related Child Abduction Homicides*, 52 L. & ORDER 32 (2004); Kathleen M. Heide et al., *Sexually Motivated Child Abduction Murders: Synthesis of the Literature and Case Illustration*, 4 VICTIMS & OFFENDERS 58 (2009); Gill Valentine & John McKendrick, *Children's Outdoor Play: Exploring Parental Concerns About Children's Safety and the Changing Nature of Childhood*, 28 GEOFORUM 219 (1997); Janet I. Warren et al., *The Sexually Sadistic Serial Killer*, 41

this public preoccupation, national studies show the “lightning-strike rarity of stereotypical stranger kidnappings.”⁸²

The sensationalized focus on pedophile-stranger abductors has fueled socio-legal constructions of offenders and the corresponding social and legal responses. But while there is “no evidence of a stranger-abduction epidemic,” there is “strong evidence that parental abduction is widespread.”⁸³ Contrary to the dominant narrative, most child abductions are perpetrated by family members.⁸⁴ The U.S. Department of Justice estimates that over 90% of abductions are perpetrated by an offender known to the victim,⁸⁵ and the two National Incidence Studies of Missing, Abducted, Runaway, and Thrownaway Children similarly estimate that between 78 and 95% of child abductions are perpetrated by a family member.⁸⁶ Parental abduction did not begin to be criminalized until the mid-1970s, so law enforcement records or other data about the frequency of the occurrence prior to this time are nonexistent.⁸⁷ It is difficult to quantify the number of annual parental abductions or to judge longitudinal trends because of the scarcity of data and the manner in which studies have employed different child abduction categories, but the Department of Justice and the National Center on Missing and Exploited Children report that approximately 200,000 children are abducted by family members annually.⁸⁸ Other governmental estimates of parental abduction are higher, estimating that more than 350,000

J. FORENSIC SCI. 970 (1996); cf. GREIF & HEGAR, *supra* note 17; Geoffrey L. Greif & Rebecca L. Hegar, *Parents Who Abduct: A Qualitative Study with Implications for Practice*, 43 FAM. REL. 283 (1994) [hereinafter *Parents Who Abduct*]; Rebecca L. Hegar & Geoffrey L. Greif, *Abduction of Children by Their Parents: A Survey of the Problem*, 36 SOC. WORK 421 (1991).

82. Shutt et al., *supra* note 74, at 128.

83. *Id.* at 127.

84. DOUGLAS, *supra* note 11, at 8.

The 1984 Missing Children’s Assistance Act mandated that the Office of Juvenile Justice and Delinquency Prevention conduct periodic national incidence studies to determine the number of missing children in the United States. See 42 U.S.C. § 5771 (2012).

85. Andrea J. Sedlak et al., *National Estimates of Missing Children: An Overview*, NAT’L INCIDENCE STUDIES OF MISSING, ABDUCTED, RUNAWAY, AND THROWNAWAY CHILDREN BULL. 6–7 (Oct. 2002); cf. ASHLI-JADE DOUGLAS, *Child Abduction Rapid Deployment (CARD) Team*, in FBI LAW ENF’T BULL. 8 (Nov. 2011) (providing a FBI estimate that 70% of child abductions occur by someone with a known relationship to the child).

86. J. Mitchell Miller et al., *Examining Child Abduction by Offender Type Patterns*, 25 JUST. Q. 523, 525 (2008).

87. Shutt et al., *supra* note 74, at 129.

88. DOUGLAS, *supra* note 11, at 1; ERIC H. HOLDER ET AL., DEPT. OF JUSTICE, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, *THE CRIME OF FAMILY ABDUCTION*, ix (2010).

children are abducted by parents in divorce custody disputes annually.⁸⁹ In contrast, 105 abductions annually fit the profile of “stereotypical kidnappings,” in which strangers abduct children and hold them for ransom, take them intending to keep them, or kill them.⁹⁰

B. *The Prevalence of Domestically Abusive Abductors*

Parents typically kidnap as part of a larger dynamic of domestic violence, as explained in this section. Parental abduction is most likely to occur during times of discord when children are not living with both parents⁹¹ and when the child is having visitation with the non-custodial parent under lawful circumstances.⁹² The majority of family-abducted children are abducted by their biological fathers.⁹³ Fathers do not commonly abduct babies because they require such high levels of care; instead, children age two to six are the most likely to be abducted.⁹⁴ At such young ages, these children are highly vulnerable and in need of protection from coercion, abuse, and abduction.

Multiple studies have determined that parental abduction is highly correlated with a history of family violence.⁹⁵ Indeed, domestic violence

89. David Finkelhor et al., *supra* note 23, at v; Janet. R. Johnston & Linda K. Girdner, *Family Abductors: Descriptive Profiles and Preventive Interventions*, in JUV. JUST. BULL. 1 (Jan. 2001), <https://www.ncjrs.gov/pdffiles1/ojdp/182788.pdf> [<https://perma.cc/B2FJ-QDKW>]; *see also* Greif & Hegar, *Parents Who Abduct*, *supra* note 81, at 283 (noting that abductions often occur during custody battles, as a marriage is dissolving, or otherwise during times of high family conflict).

90. Janis Wolak et al., *Child Victims of Stereotypical Kidnappings Known to Law Enforcement in 2011*, in U.S. DEP'T OF JUSTICE, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, JUV. JUST. BULL. 1 (June 2016), <https://www.ojdp.gov/pubs/249249.pdf> [<https://perma.cc/72RT-8AF8>]. As a point of comparison, in 1999, 115 stereotypical child abductions occurred. DOUGLAS, *supra* note 11, at 8.

91. *See* Hammer et al., *supra* note 22, at 4.

92. *See id.* at 5–6 (reporting that, of children abducted by a family member, 63% of children were with the abductor under lawful circumstances just prior to the abduction, while 36% were taken from their home or yard).

93. *Id.* at 2.

94. Hammer et al., *supra* note 22, at 4–5 (finding that in 1999, children six years of age and younger constituted 44% of family abductions); Johnston & Girdner, *supra* note 89, at 2; Janet R. Johnston et al., *Developing Profiles of Risk for Parental Abduction of Children from a Comparison of Families Victimized by Abduction with Families Litigating Custody*, 17 BEHAV. SCI. & L. 305, 316 (1999) [hereinafter Johnston et al., *Developing Profiles*] (“As a rule, younger children are easier to abduct: they are less likely to verbally protest or resist, are easier to transport and conceal, and are unable to tell others their history. At the same time, they require less intensive care than do infants and are often more gratifying and comforting to their emotionally needy parents.”).

95. Boudreaux et al., *supra* note 19, at 66; *see also* GREIF & HEGAR, *supra* note 17, at 36 (stating that “family violence[] marks [] relationships [involving parental abduction] to an unusual degree; it was present in 54% of the couples in our sample, with the abductor reportedly the only violent partner 90% of the time”); CHIANCONE & GIRDNER, *supra* note 19, at 21 (finding that in 81.4% of

is the “most commonly cited social interaction characteristic in family abductions.”⁹⁶ In a study of international abductions, researchers found that domestic violence played a role in almost all of the abductions.⁹⁷ Similarly, a recent domestic study found intimate partner violence in two-thirds to three-quarters of families in which children were parentally abducted, and researchers confirmed that corroborating evidence existed to support the majority of the claims of abuse.⁹⁸ Most left-behind parents report pre-abduction threats to their lives or those of other family members and threats of abduction.⁹⁹ Numerous other studies demonstrate the frequent co-offenses of individuals perpetrating domestic violence and parental abduction.¹⁰⁰

parental abduction cases, the abducting parent had previously abused the left-behind parent or child); Johnston et al., *Developing Profiles*, *supra* note 94, at 317–18, 320; Janet R. Johnston et al., *Early Identification of Risk Factors for Parental Abduction*, in U.S. DEP’T OF JUSTICE, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, JUV. JUST. BULL. 5 (Mar. 2001), <https://www.ncjrs.gov/pdffiles1/ojjdp/185026.pdf> [<https://perma.cc/M2FX-2HWB>] [hereinafter Johnston et al., *Risk Factors*] (discussing the high prevalence of family violence perpetrated by parents who abduct their children); Leslie Ellen Shear & Julia C. Shear Kushner, *Taking and Keeping the Children: Family Abduction Risk and Remedies in U.S. Family Courts*, 10 J. CHILD CUSTODY 252, 272 (2013) (“While not all families that experience domestic violence also experience abduction, many families that experience abduction have experienced domestic violence.”); SUBCOMM. ON INT’L CHILD ABDUCTION OF THE FED. AGENCY TASK FORCE ON MISSING & EXPLOITED CHILDREN & THE POLICY GRP. ON INT’L PARENTAL KIDNAPPING, A REPORT TO THE ATTORNEY GENERAL ON INTERNATIONAL PARENTAL KIDNAPPING (1999), <https://www.ncjrs.gov/pdffiles1/ojjdp/189382.pdf> [<https://perma.cc/8UTT-HN78>].

96. Peggy S. Plass et al., *Risk Factors for Family Abduction: Demographic and Family Interaction Characteristics*, 12 J. FAM. VIOLENCE 313, 338 (1997).

97. Janet Chiancone et al., U.S. DEP’T OF JUSTICE, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, *Issues in Resolving Cases of International Child Abduction by Parents*, in JUV. JUST. BULL., 6 (Dec. 2001), <https://www.ncjrs.gov/pdffiles1/ojjdp/190105.pdf> [<https://perma.cc/J2GF-XDBN>] (60% of the left-behind parents reported that the abducting parent threatened their lives, 21% of left-behind parents reported that the abductor had threatened their children’s lives, and 42% of abductors had threatened other peoples’ lives).

98. Janet R. Johnston & Samantha K. Hamilton, *Parental Abduction*, in ENCYCLOPEDIA OF DOMESTIC VIOLENCE 523 (Nicky Ali Jackson ed., 2007) (identifying that the abuse and abduction are most often perpetrated by male partners).

99. Janet Chiancone et al., *Issues in Resolving Cases of International Child Abduction by Parents*, JUV. JUST. BULL. 5–6 (Dec. 2001), <https://www.ncjrs.gov/pdffiles1/ojjdp/190105.pdf> [<https://perma.cc/77HD-AUJM>] (identifying that a majority of parental abductors had previously threatened to kill the left-behind parent); *see, e.g.*, OFFICE OF CHILDREN’S ISSUES AT THE U.S. DEP’T OF STATE, REPORT ON COMPLIANCE WITH THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION 52 (2010), https://travel.state.gov/content/dam/child_abduction/complianceReports/2010.pdf [<https://perma.cc/KVN8-5Q7L>] [hereinafter HAGUE REPORT].

100. *See* GREIF & HEGAR, *supra* note 17, at 36 (surveying nearly 400 searching parents and finding that abductors abused the left-behind parent in over half of the cases); TARYN LINDHORST & JEFFREY L. EDLESON, BATTERED WOMEN, THEIR CHILDREN, AND INTERNATIONAL LAW: THE UNINTENDED CONSEQUENCES OF THE HAGUE CHILD ABDUCTION CONVENTION 105 (2012)

Parental abduction is commonly perpetrated by non-custodial fathers as part of a larger pattern of domestic violence and coercive control.¹⁰¹ Particularly when the victimized parent seeks to end the relationship, abusive partners commit abduction as a way to exert power and control over the abused partner,¹⁰² fulfill their quest for revenge,¹⁰³ or hurt the other parent.¹⁰⁴ Indeed, left-behind victims report that the loss of their children is the ultimate abuse, far exceeding the trauma of the physical, sexual, or psychological abuse they experienced during the relationship.¹⁰⁵ Abusive abductors are also motivated by their fear of losing custody, anticipating that a court will soon deny them custody, or by their desire to gain custody of a child due to dissatisfaction with existing custody or visitation orders.¹⁰⁶

Domestic violence can also be the motivating factor behind parental abduction when an abused parent seeks to protect a child from harm. Abuse survivors who flee with their children tend to do so when the courts and law enforcement have failed to provide needed protection.¹⁰⁷

(“Overall, the majority (54%) of all the marriages in which abductions occurred involved parent-to-parent domestic violence”); Janvier et al., *supra* note 70, at 6 (finding the majority of abducting parents in the study had previously committed physical and mental domestic violence against the left-behind parent); Nicholas Long et al., *Preventing Parental Child Abduction: Analysis of a National Project*, 30 CLINICAL PEDIATRICS 549, 550–53 (1991) (determining that domestic violence was present in half of the marriages prior to the child abduction).

101. See Laurie S. Kohn, *The False Promise of Custody in Domestic Violence Protection Orders*, 65 DEPAUL L. REV. 1001, 1014 (2016) (noting that unlawfully withholding children from victims of domestic violence “is a well-documented tactic of abuse and control exercised by abusive partners”).

102. Plass et al., *supra* note 96, at 338; see also Susan Kreston, *Prosecuting International Parental Kidnapping*, 15 NOTRE DAME J.L. ETHICS & PUB. POL’Y 533, 579 (2001) (“If there was domestic violence or child abuse committed prior to the kidnapping, the kidnapping may have been an attempt to re-exert control over the custodial parent or to force a reconciliation.”).

103. See Inger J. Sagatun & Lin Barrett, *Parental Child Abduction: The Law, Family Dynamics, and Legal System Response*, 18 J. CRIM. JUST. 433, 439–40 (1990) (concluding that parental abductions are motivated by revenge, the desire to be pursued by the other parent, or because of an unhealthy degree of connection with the child).

104. GREIF & HEGAR, *supra* note 17, at 34 (finding revenge or a desire to hurt the left-behind parent to be the motive in 77% of cases); Creighton, *supra* note 12, at 69.

105. Multiple clients have reported this to me. While I normally conceptualize my Domestic Violence Clinic clients as “survivors,” for clients whose children are abducted, the victimization, abuse, and pain continue until we successfully recover their children.

106. Matt Erikson & Caroline Friendship, *A Typology of Child Abduction Events*, 7 LEGAL & CRIMINOLOGICAL PSYCHOL. 115, 115 (2002); Janvier et al., *supra* note 70, at 3.

107. JEFFREY L. EDLESON ET AL., MULTIPLE PERSPECTIVES ON BATTERED MOTHERS AND THEIR CHILDREN FLEEING TO THE UNITED STATES FOR SAFETY: A STUDY OF HAGUE CONVENTION CASES 131 (2010), <https://www.ncjrs.gov/pdffiles1/nij/grants/232624.pdf> [https://perma.cc/7S8T-88JU] (“Across 11 different countries, the experiences of the women who chose to leave were remarkably similar—the police system was not able to protect them and their children from [the father’s] abuse

Researchers have concluded that mothers abducting their children were generally fleeing for their safety from abusive partners, while fathers were “likely using the abduction as part of their coercive control of the left behind parent.”¹⁰⁸

Unfortunately, the narrative that began this Article is not unique. The scenario of domestic violence, child abduction to achieve the ultimate abuse, and authorities’ failure to respond to parental kidnapping turns out to be quite ordinary. For example, similar to Jessica Lenahan (Gonzales)’s experience of parental abduction and authorities’ failure to act, when Carmen Avendaño’s husband kidnapped their children to Mexico, the Mexican Consulate told her there was nothing that could be done.¹⁰⁹ The Texas police also told her they could not help her because a father can take his children wherever he wants.¹¹⁰ As most left-behind parents experience, law enforcement’s first response is to refuse to acknowledge parental abduction as a crime or an act that warrants response, even in the context of domestic violence.

C. *The Harms of Parental Abduction*

While the state intervenes in some areas pertaining to the family in ways that create harm, the state frequently fails to respond to parental abduction, despite the trauma children suffer. Researchers have found heightened physical danger to abducted children exists when the abducting parent has a history of domestic violence, paranoia, delusions,

while they were in that country.”); Greif & Hegar, *Parents Who Abduct*, *supra* note 81, at 286 (recounting the story of a woman whose husband beat her and robbed her on the steps of the courthouse, and who, after the government kept dropping criminal domestic violence charges against him, fled with their son to protect him); Janet R. Johnston & Linda K. Girdner, *Early Identification of Parents at Risk for Custody Violations and Prevention of Child Abduction*, 36 FAM. & CONCILIATION CTS. REV. 392, 404 (1998).

Former President Gerald R. Ford, Jr.’s family history provides one of the more notable examples in American history. *See generally* JOHN ROBERT GREENE, *THE PRESIDENCY OF GERALD R. FORD* (1994) (detailing how Ford was born as Leslie Lynch King, Jr. Just sixteen days after his birth, his father threatened to kill his mother and him with a butcher knife, and Ford’s mother fled with him. She was granted a divorce based on the grounds of extreme cruelty. She married a man named Gerald Rudolf Ford two years later, and they called her son Gerald R. Ford, Jr.).

108. Karen Brown Williams, *Fleeing Domestic Violence: A Proposal to Change the Inadequacies of the Hague Convention on the Civil Aspects of International Child Abduction in Domestic Violence Cases*, 4 J. MARSHALL L.J. 39, 44 (2011) (citing HAGUE REPORT, *supra* note 99, at 24).

109. Alina Simone, *How a Texas Legal Aid Lawyer Is Bringing Kidnapped Children Home from Mexico*, PUB. RADIO INT’L (June 3, 2015), <http://www.pri.org/stories/2015-06-03/how-texas-legal-aid-lawyer-bringing-kidnapped-children-home-mexico> [<http://perma.cc/Z2JZ-UBDV>].

110. *Id.*

or severe psychopathy.¹¹¹ Abducted children often suffer physical, sexual, psychological, and other forms of abuse and neglect at the hands of the abducting parent, with the most severe cases resulting in the child's death.¹¹² A Department of Justice study concluded that one-third of children who experience parental abduction suffer serious sexual, physical, or mental harm, with many other children experiencing other emotional and physical trauma.¹¹³ While some abducting parents return children on their own and some left-behind parents succeed in their self-help efforts, many children are never recovered.¹¹⁴

For children who are recovered, research shows that the length of separation from the left-behind parent typically correlates with the emotional harm to the affected child.¹¹⁵ For example, during long-term abductions, children are typically deceived by the abducting parent and moved frequently to avoid detection, which creates problems with stability, education, and socialization.¹¹⁶ Abducting parents commonly change their children's names and their own, prohibit their children from making friends, and coach their children to lie and be secretive.¹¹⁷ These children "become victims of the fugitive lifestyles their abductor parents lead. Authorities tell of finding children tied to furniture and kept from school or medical attention, their hair dyed and appearances changed to stay hidden."¹¹⁸

The majority of children who are recovered after being abducted exhibit symptoms of emotional distress, such as anxiety, eating disorders, nightmares, uncontrollable crying, mood swings, aggression, fearfulness, guilt, loss of bladder and bowel control, distrust of authority figures and relatives, and fear of personal attachments.¹¹⁹ Abducted

111. Johnston et al., *Risk Factors*, *supra* note 95, at 2–3.

112. Janvier et al., *supra* note 70, at 1, 5.

113. Creighton, *supra* note 12, at 71.

114. See Finkelhor et al., *supra* note 23, at 6 (finding that of the 354,100 children who were parentally abducted in 1988, in 163,000 cases, the abducting parent concealed the child, took the child across state lines, or kept the child indefinitely); Hammer et al., *supra* note 22, at 6–7 (reporting national data showing that over one-fifth of parentally abducted children remain missing for more than a month); McCue, *supra* note 18, at 85 (identifying that over three-quarters of children who are internationally abducted by a parent are never returned).

115. Michael W. Agopian, *The Impact on Children of Abduction by Parents*, 63 CHILD WELFARE 511, 514–16 (1984); Greif, *A Parental Report*, *supra* note 14, at 59.

116. Agopian, *supra* note 115, at 516–17.

117. Janvier et al., *supra* note 70, at 5.

118. Creighton, *supra* note 12, at 71.

119. Creighton, *supra* note 12, at 70; U.S. DEP'T OF JUSTICE, CENTER FOR THE STUDY OF TRAUMA, FAMILIES OF MISSING CHILDREN (FINAL REPORT) I-1 (1992); MARILYN FREEMAN, INT'L CTR. FOR FAMILY LAW, POLICY, AND PRACTICE, PARENTAL CHILD ABDUCTION: THE LONG-TERM

children are often angry at the abductor for taking them and keeping them from their other parent and previous life, and angry at the left-behind parent for failing to rescue them.¹²⁰ Children may suffer additional psychological trauma from the “mental indoctrination” carried out by the abducting parent.¹²¹

Left-behind parents experience sleep disorders, anxiety, depression, sadness, despair, helplessness, and defeat,¹²² along with common psychological and physical effects attendant to experiencing domestic violence.¹²³ They may also feel resentment, bitterness, cynicism, and lack of faith in and frustration with law enforcement and the judicial system.¹²⁴ These parents report feeling further victimized by a legal system that is nonresponsive to their pleas for help and to their loss,¹²⁵ as detailed in section III.B.

Left-behind parents also incur significant financial expense trying to locate and secure the return of their abducted children.¹²⁶ A survey of nearly 100 parents whose children had been abducted internationally by another parent found that the left-behind parents, on average, spent \$33,500 for search and recovery efforts, and one-quarter of the parents spent \$75,000 or more.¹²⁷ Over half of the left-behind parents’ spending exceeded their annual income.¹²⁸ Many other left-behind parents report spending well over \$100,000 on legal fees, private investigators, travel

EFFECTS 29–32, 35–36 (2014), http://childcentre.info/public/PROTECT/Research_report_web_1.12.14_R.pdf [<https://perma.cc/WB2N-9F2D>]; Mary Jo L. Gibbs et al., *The Consequences of Parental Abduction: A Pilot Study with a Retrospective View from the Victim*, 21 FAM. J. 313, 315 (2013).

120. Agopian, *supra* note 116, at 517–18.

121. Lenore C. Terr, *Child Snatching: A New Epidemic of an Ancient Malady*, 103 J. PEDIATRICS 151, 153–54 (1983).

122. Janvier et al., *supra* note 70, at 6. *See generally* Sarah Spilman, *Child Abduction, Parents’ Distress, and Social Support*, 21 VIOLENCE & VICTIMS 149 (2006) (examining parents’ grief following child abduction).

123. *See generally* Krim K. Lacey et al., *The Impact of Intimate Partner Violence on the Mental and Physical Health of Women in Different Ethnic Groups*, 28 J. INTERPERSONAL VIOLENCE 359 (2013) (discussing the role of social and demographic factors that further complicate poor mental and physical health resulting from abuse).

124. Janvier et al., *supra* note 70, at 6.

125. *Id.*

126. *See* State v. Maidi, 537 N.W.2d 280 (Minn. 1995) (awarding over \$140,000 for expenses incurred by a mother who “snatched back” her children from Algeria); CHIANCONE & GIRDNER, *supra* note 19, at RS-5 (citing an average figure of \$33,500 for legal and travel expenses alone).

127. Chiancone et al., *supra* note 99, at 6.

128. *Id.*

costs, groups hired to rescue children outside of the legal process, and bribes.¹²⁹

Even though laws have evolved to now criminalize parental abduction, criminal and civil justice systems have failed to implement and enforce these laws, as explored in Part III, and the problem and harms of parental abduction continue.

III. PRESERVATION THROUGH TRANSFORMATION

Reva Siegel's phrase "preservation through transformation"¹³⁰ denotes that legal change often gives the appearance of correcting a wrong, while in fact perpetuating the status quo. Her phrase aptly describes recent decades' treatment of parental abduction. Although the law has developed such that parental abduction is now illegal, as described in section III.A, the refusal to enforce laws preserves the prior regime, as revealed in section III.B, as does the private inaction identified in section III.C.

A. *Legal Developments*

The legal system has been slow to address and remedy parental abduction, akin to the social failure to recognize the prevalence of and to respond appropriately to parental abduction, instead singularly focusing on stranger abduction. When kidnapping was made a federal offense in 1932 under the Federal Kidnapping Act, a congressional committee debated whether to include parental abductors.¹³¹ The law's eventual enactment explicitly excluded parents from prosecution based on the presumption that parents act out of concern for their children, rather than with criminal intent.¹³² State kidnapping laws also historically excluded

129. Creighton, *supra* note 12, at 73.

130. Reva B. Siegel, "The Rule of Love": *Wife Beating as Prerogative and Privacy*, 105 YALE L.J. 2117, 2119 (1996) ("When the legitimacy of a status regime is successfully contested, lawmakers and jurists will both cede and defend status privileges—gradually relinquishing the original rules and justificatory rhetoric of the contested regime and finding new rules and reasons to protect such status privileges as they choose to defend."); Reva Siegel, *Why Equal Protection No Longer Protects: The Evolving Forms of Status-Enforcing State Action*, 49 STAN. L. REV. 1111, 1111 (1997) (identifying how "efforts to dismantle an entrenched system of status regulation can produce changes in its constitutive rules and rhetoric, transforming the status regime without abolishing it").

131. *Kidnaping [sic]*, Hearing Before the Comm. on the Judiciary H.R., 72nd Cong. (1932).

132. Federal Kidnapping Act, 18 U.S.C. § 1201 (2006); 75 CONG. REC. 13,286 (1932).

parents from punishment.¹³³ As child abduction laws developed, judges construed vague statutes in favor of abducting parents; when abduction laws did not specifically identify parents as potentially liable actors, judicial interpretation of statutes typically excepted parents from sanction.¹³⁴

Media attention to missing children spurred political momentum for social policy initiatives in the late 1970s and 1980s and sparked congressional hearings on abduction.¹³⁵ Organizations representing custodial parents initially found it difficult to persuade lawmakers of the problem of parental abduction¹³⁶ and determined to capitalize on sensational tales of stranger abduction to build political momentum for legal responses to parental abduction.¹³⁷ Resulting uniform acts included the Uniform Child Custody Jurisdiction Act,¹³⁸ which made inroads in addressing jurisdictional issues in interstate custody disputes. The Parental Kidnapping Prevention Act of 1980¹³⁹ and the Uniform Child Custody Jurisdiction and Enforcement Act of 1997¹⁴⁰ were intended to

133. Paul Lansing & Gerald M. Sherman, *The Legal Response to Child Snatching*, 7 J. JUV. L. 16, 17 (1983) (discussing that because both parents are legally entitled to possess their children prior to court intervention, courts could not punish parental abduction if a custody order was not already in place).

134. *Id.* at 27 (stating that even when state kidnapping statutes did not immunize abducting parents, “courts often interpreted the statute as exempting parents who, as natural guardians, were merely asserting their claim to the possession of their children;” as a result, state parental kidnapping statutes generally did not affect abducting parents before a custody order was issued).

135. See, e.g., *Proposed Federal Parental Kidnapping Prevention Act: Hearings on S.105 Before the Subcommittee on Child and Human Development of the Senate Comm. on Labor and Human Resources*, 96th Cong., 2d Sess. 5 (1980); Suzanne Reynolds & Ralph Peeples, *When Petitioners Seek Custody in Domestic Violence Court and Why We Should Take Them Seriously*, 47 WAKE FOREST L. REV. 935, 942–43 (2012).

136. See, e.g., Elizabeth Foyster, *The “New World of Children” Reconsidered: Child Abduction in Late Eighteenth- and Early Nineteenth-Century England*, 52 J. BRIT. STUD. 669 (2013) (detailing the historical problem of child abduction).

137. See Joel Best, *Rhetoric in Claims-Making: Constructing the Missing Children Problem*, 34 SOC. PROBS. 101, 103 (1987).

138. ULA CHILD CUST. JUR. ACT (1999). This act addressed jurisdictional issues in interstate custody disputes, strengthened reciprocal recognition of custody orders between states adopting the UCCJA, and provided guidelines for when a state may assume custody jurisdiction, but failed to create a mechanism for locating abductors and children and continued to permit more than one state to assume custody jurisdiction.

139. 28 U.S.C. § 1738A (2012) (clarifying criteria for establishing custody jurisdiction, requiring states to give full faith and credit to existing custody decrees that conform to the PKPA, and supporting the enforcement of custody decrees, including bringing some parental kidnappings under the Fugitive Felon Act).

140. UNIF. CHILD CUST. JUR. & ENF. ACT (NAT’L CONF. OF COMM’RS ON UNIF. STATE LAWS 1997) (observing that in 2015, Massachusetts, the only state yet to adopt a version of the Act, introduced Bill H.36 and Senate No. 746, An Act Relative to the Uniform Child-Custody

provide criteria for exercising custody jurisdiction, prevent forum shopping, preclude concurrent jurisdiction, give exclusive and continuing jurisdiction to modify a custody order to the issuing state, and mandate enforcement of custody and visitation orders issued in other states. The Missing Children Act of 1982 directed local law enforcement or the FBI to enter descriptions of missing children into the National Crime Information Center computer system;¹⁴¹ the Missing Children's Search Assistance Act of 1984 established the Office of Juvenile Justice and Delinquency and later created the National Center for Missing and Exploited Children;¹⁴² and the National Child Search Assistance Act of 1990 prohibited law enforcement agencies from creating waiting periods prior to accepting a missing child's report, regardless of custody status, among other measures.¹⁴³ The Hague Convention and International Child Abduction Remedies Act of 1988 provided mechanisms for children to be returned to their pre-abduction country of residence, with caveats.¹⁴⁴ Finally, the International Parental Kidnapping Crime Act of 1993¹⁴⁵ and the 2006 Uniform Child Abduction Prevention Act were further intended to discourage parental kidnapping.¹⁴⁶

During the 1980s, a majority of states also enacted kidnapping statutes to permit prosecution for at least some forms of parental abduction.¹⁴⁷ Each state now has its own parental kidnapping or

Jurisdiction and Enforcement Act. If enacted, all fifty states and the District of Columbia will have an operational version of the Act).

141. 28 U.S.C. § 534 (2012).

142. 42 U.S.C. § 5771 (2012).

143. *Id.* §§ 5779, 5780.

144. HAGUE CONFERENCE ON PRIVATE INT'L LAW: THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION (Oct. 25, 1980), <http://www.unhcr.org/refworld/docid/3ae6b3951c.html> (last visited May 2, 2017) [hereinafter Hague Convention] (providing mechanisms for children to be returned to their pre-abduction county of residence, with limits on filing times, age of the child, and situations of abuse or persecution, and enacting provisions for enforcing visitation rights across jurisdictions. The home country will then adjudicate custody.).

145. 18 U.S.C. § 1204 (2012) (penalizing the removal of a child from the United States or retention of a child outside the United States with the purpose of obstructing the exercise of parental rights); *see, e.g.*, *United States v. Fazal-ur-Raheman-Fazal*, 355 F.3d 40 (1st Cir. 2004) (holding that an abducting parent can be convicted under the federal International Parental Kidnapping Crime Act for actions that are not considered criminal under state family law).

146. UNIF. CHILD ABDUCT. PREVENT. ACT (UNIF. LAW COMM'N 2006) (providing courts with guidelines to identify children at risk).

147. Michael W. Agopian, *International Abduction of Children: The United States Experience*, 11 INT'L J. COMP. & APPLIED CRIM. JUST. 231, 238 n.1 (1987) (detailing that in 1987, eighteen states had laws "which prescribed a mandatory felony offense for parental child abduction []: Alabama, Colorado, Idaho, Illinois, Indiana, Kentucky, Maine, Minnesota, Mississippi, Montana, New Jersey, New Mexico, North Carolina, North Dakota, Oregon, Rhode Island, Vermont, West

“custodial interference” statute.¹⁴⁸ For these laws to apply and be enforced, parental rights may need to be established in the absence of a legal presumption regarding paternity or a court order establishing parental rights.¹⁴⁹ Some states require the existence of a validly entered custody order to make parental abduction actionable, which prevents many left-behind parents from receiving help.¹⁵⁰ Other states do not require a pre-existing custody order,¹⁵¹ and some states prohibit

Virginia, Wisconsin, and Wyoming.” In the same year, an additional twenty-three states had laws “which prescribe[d] an optional felony or misdemeanor charge for parental child abduction []: Alaska, Arizona, Arkansas, California, Del[a]ware, District of Columbia, Georgia, Hawaii, Kansas, Maryland, Massachusetts, Michigan, Missouri, Nevada, Nebraska, New Hampshire, New York, Ohio, Oklahoma, South Carolina, South Dakota, Utah, and Washington.”).

148. *See* Appendix, Table 1. ALA. CODE § 13A-6-45 (2016); ALASKA STAT. §§ 11.41.320, 11.41.330 (2016); ARIZ. REV. STAT. ANN. §§ 13-1302, 13-1305 (2016); ARK. CODE ANN. § 5-26-502 (2016); CAL. PENAL CODE §§ 278, 278.5 (West 2016); COLO. REV. STAT. § 18-3-304 (2016); CONN. GEN. STAT. §§ 53a-97, 53a-98 (2016); DEL. CODE ANN. tit. 11, § 785 (2016); D.C. CODE § 16-1022 (2016); FLA. STAT. § 787.03 (2016); GA. CODE ANN. § 16-5-45 (2016); HAW. REV. STAT. §§ 707-726, 707-727 (2016); IDAHO CODE § 18-4506 (2016); 720 ILL. COMP. STAT. §§ 5/10-5, 5/10-5.5 (2016); IND. CODE § 35-42-3-4 (2016); IOWA CODE § 710.6 (2016); KAN. STAT. ANN. §§ 21-5408, 21-5409 (2016); KY. REV. STAT. ANN. § 509.070 (West 2016); LA. STAT. ANN. §§ 14:45, 14:45.1 (2016); ME. STAT. tit. 17-A, § 303 (2016); MD. CODE ANN., FAM. LAW §§ 9-304, § 9-305 (West 2016); MASS. GEN. LAWS ch. 265, § 26A (2016); MICH. COMP. LAWS § 750.350a (2016); MINN. STAT. § 609.26 (2016); MISS. CODE ANN. § 97-3-53 (2016); MO. REV. STAT. §§ 565.150, 565.153 (2016); MONT. CODE ANN. §§ 45-5-632, 45-5-634 (2016); NEB. REV. STAT. § 28-316 (2016); NEV. REV. STAT. § 200.359 (2016); N.H. REV. STAT. ANN. § 633:4 (2016); N.J. STAT. ANN. § 2c:13-4 (West 2016); N.M. STAT. ANN. § 30-4-4 (2016); N.Y. PENAL LAW §§ 135.45, 135.50 (McKinney 2016); N.C. GEN. STAT. § 14-320.1 (2016); N.D. CENT. CODE § 12.1-18-05 (2016); OHIO REV. CODE ANN. § 2919.23 (West 2016); OKLA. STAT. tit. 21, § 891 (2016); OR. REV. STAT. §§ 163.245, 163.257 (2016); 18 PA. CONST. STAT. §§ 2904, 2909 (2016); 11 R.I. GEN. LAWS §§ 11-26-1.1, 11-26-1.2 (2016); S.C. CODE ANN. § 16-17-495 (2016); S.D. CODIFIED LAWS §§ 22-19-9, 22-19-10 (2016); TENN. CODE ANN. § 39-13-306 (2016); TEX. PENAL CODE ANN. §§ 25.03, 25.031 (West 2016); UTAH CODE ANN. § 76-5-303 (West 2016); VT. STAT. ANN. tit. 13, §§ 2405, 2451 (2016); VA. CODE ANN. §§ 18.2-47, 18.2-49, 18.2-49.1 (2016); WASH. REV. CODE §§ 9a.40.060, 9a.40.070 (2016); W. VA. CODE § 61-2-14d (2016); WIS. STAT. § 948.31 (2016); WYO. STAT. ANN. § 6-2-204 (2016).

149. *See e.g.*, ARK. CODE ANN. § 5-26-502(b); 720 ILL. COMP. STAT. § 5/10-5(a)(3); TENN. CODE ANN. §§ 39-13-303, 39-13-306(a).

150. *See* Appendix, Table 1; *see, e.g.*, ARIZ. REV. STAT. ANN. §§ 13-1302(A)(1), 13-1305; ARK. CODE ANN. § 5-26-502; DEL. CODE ANN. tit. 11, § 785(2); 720 ILL. COMP. STAT. §§ 5/10-5(b), 5/10-5.5(b); IND. CODE § 35-42-3-4 (Sec. 4(a)) (2016); IOWA CODE § 710.6; LA. STAT. ANN. § 14:45.1(A); MINN. STAT. § 609.26(1); MISS. CODE ANN. § 97-3-51(2); MO. REV. STAT. § 565.150(1); NEV. REV. STAT. § 200.359(1); N.M. STAT. ANN. §§ 30-4-4(B), (C); N.C. GEN. STAT. § 14-320.1; N.D. CENT. CODE 12.1-18-05; 11 R.I. GEN. LAWS § 11-26-1.1(a); S.C. CODE ANN. § 16-17-495(A)(1); S.D. CODIFIED LAWS §§ 22-19-9, 22-19-10; TEX. PENAL CODE ANN. §§ 25.03(a)(1), (a)(2), 25.031(a); UTAH CODE ANN. §§ 76-5-303 (1), (2); VA. CODE ANN. § 18.2-49.1(A); W. VA. CODE ANN. § 61-2-14d.

151. *See, e.g.*, ALASKA STAT. §§ 11.41.320, 11.41.330; ARIZ. REV. STAT. ANN. § 13-1302(A)(2); COLO. REV. STAT. § 18-3-304(a); D.C. CODE § 16-1022; FLA. STAT. § 787.03; GA. CODE ANN. § 16-5-45; HAW. REV. STAT. § 707-726(c); IDAHO CODE § 18-4506; KAN. STAT. ANN. § 21-5408;

interference with joint custody¹⁵² or visitation¹⁵³ absent a court order. Legal shortcomings exist regarding the efficacy of these laws, especially when states require pre-existing custody orders to act. Further compromising the effectiveness of parental abduction laws, other countries are not required to recognize or enforce custody decrees entered in the United States, and other countries can modify the American orders if the child is present in that country.¹⁵⁴ Even with the robust enactment of laws during recent decades, law enforcement in the United States exhibits largely “indifferent” responses and parental abduction cases are rarely charged criminally,¹⁵⁵ as discussed in the following section.

Attention to international abduction and the Hague Abduction Convention is also warranted, as approximately one in five parental abductions involve transporting a child across an international border,¹⁵⁶ and “[c]hildren in international custody cases are at the highest risk of long-term abduction.”¹⁵⁷ With 22% of American children having at least one foreign-born parent, family courts increasingly handle international custody and abduction cases.¹⁵⁸ Furthermore, many issues persist regarding structural problems with the Hague remedy, its lack of uniform application and lack of enforcement mechanisms, the lack of

KY. REV. STAT. ANN. § 509.070; LA. STAT. ANN. § 14:45(2); MASS. GEN. LAWS ch. 265, § 26A; MISS. CODE ANN. § 750.350a(1); MO. REV. STAT. § 565.153; MONT. CODE ANN. §§ 45-5-634(1)(a), 45-5-632(1); N.H. REV. STAT. ANN. § 633:4; N.J. STAT. § 2C:13-491; OHIO REV. CODE ANN. § 2919.23(A); OKLA. STAT. tit. 21, § 891; OR. REV. STAT. § 163.245(1); 18 PA. CONS. STAT. §§ 2904(a), 2909; 11 R.I. GEN. LAWS § 11-26-1.2; VA. CODE ANN. §§ 18.2-47, 18.2-49; WASH. REV. CODE §§ 9A.40.060(2), 9A.40.070(2); WIS. STAT. 948.31(3)(a); WYO. STAT. ANN. § 6-2-204.

152. *See, e.g.*, ARIZ. REV. STAT. ANN. § 13-1302(A)(3); D.C. CODE § 16-1022(b)(2); IDAHO CODE § 18-4506(a); 720 ILL. COMP. STAT. § 5/10-5(b)(1); MONT. CODE ANN. § 45-5-634(1)(b); NEV. REV. STAT. § 200.359(2); N.J. REV. STAT. § 2C:13-4(4); OR. REV. STAT. § 163.245(1), 163.257(1)(a); WIS. STAT. § 948.31(b).

153. *See, e.g.*, CAL. PENAL CODE § 278.5(a); D.C. CODE § 16-1022(b)(4); FLA. STAT. § 787.03(2); IDAHO CODE § 18-4506(a); 720 ILL. COMP. STAT. § 5/10-5.5(b); IOWA CODE § 710.6; MINN. STAT. § 609.26(1); N.J. REV. STAT. § 2C:13-4(1); S.D. CODIFIED LAWS §§ 22-19-9, 22-19-10; UTAH CODE ANN. §§ 76-5-303 (1), (2); VA. CODE ANN. § 18.2-49.1(B); WIS. STAT. § 948.31(b).

154. Shear & Shear Kushner, *supra* note 95, at 255.

155. Creighton, *supra* note 12, at 69 (observing that abducting parents “are almost never charged with the crime of kidnapping, and most cases end up with minimal or no legal charges being filed”).

156. Kreston, *supra* note 102, at 534 (citations omitted).

157. Shear & Shear Kushner, *supra* note 95, at 258.

158. Patrick Parkinson et al., *The Need for Reality Testing in Relocation Cases*, 44 FAM. L.Q. 1, 3 (2010).

data compiled about Hague cases,¹⁵⁹ and the Convention's failure to produce outcomes in many cases.¹⁶⁰ But immediate attention should also focus on local law enforcement response in the direct aftermath of an abduction, as law enforcement's urgent response is most likely to produce the missing child. Instead, "American authorities rarely intercept parentally-abducted children before they are taken out of the country."¹⁶¹

B. *Continued State Inaction*

While many family law matters have been handled criminally for decades,¹⁶² parental kidnapping continues to be regarded as a private family matter instead of being criminalized, despite devastating consequences.¹⁶³ A recent study found that over two-thirds of left-behind parents surveyed encountered individuals and organizations that regarded parental abduction as "a family problem that did not require

159. Brief of Eleven Law Professors as Amici Curiae in Support of Respondent, *Abbott v. Abbott*, __ U.S. __, 130 S. Ct. 1983 (2010) (No. 08-645) (describing how there is no accurate and complete source of statistics regarding Hague Abduction proceedings or their outcomes, particularly as compared to non-Hague countries); Carol S. Bruch & Margaret M. Durkin, *The Hague's Online Child Abduction Materials: A Trap for the Unwary*, 44 FAM. L.Q. 65, 76–78 (2010) (identifying the lack of ability to review the decisions issued in Hague Convention cases).

160. See CHIANCONE & GIRDNER, *supra* note 19, at 19 (reporting dramatic variance in Hague Convention return rates, which range from 95% (Luxembourg) to 5% (Finland)); Thomas A. Johnson, *The Hague Child Abduction Convention: Diminishing Returns and Little to Celebrate for Americans*, 33 N.Y.U. J. INT'L L. & POL. 125, 135–36 (2000) (describing the prospect of recovering a child from a non-common law country as bleak and noting that even when left-behind parents are awarded judicial return orders, many go unenforced, particularly regarding countries with no civil enforcement or contempt of court mechanisms, such as the Scandinavian countries); Shear & Shear Kushner, *supra* note 95, at 259 (identifying that only half of all Hague Abduction Convention return petitions produce orders for return, and only half of those orders are enforced, yielding only a 25% return rate).

161. Shear & Shear Kushner, *supra* note 95, at 260.

162. Jane C. Murphy, *Stop Making Court a First Stop for Many Low Income Parents*, BALT. SUN (June 15, 2015), <http://www.baltimoresun.com/news/opinion/oped/bs-ed-family-court-20150615-story.html> [https://perma.cc/9AGB-BKYM] ("In family court, poor families are undermined by a system that is supposed to strengthen families and protect children. In fact, for poor people, an encounter with the family courts often leads to an encounter with the criminal justice system."); see generally JANE C. MURPHY & JANA B. SINGER, *DIVORCED FROM REALITY: RETHINKING FAMILY DISPUTE RESOLUTION* (2015).

163. Janvier et al., *supra* note 70, at 2 (identifying the physical, sexual, and psychological harms to abducted children, including death). Many children are permanently separated from left-behind parents; in one national study of sixty-five left-behind parents, only 8% of the domestic kidnappings resulted in the recovery of the child, while 19% of the international abductions led to the child's return. *Id.*

legal intervention.”¹⁶⁴ This section details the general refusal to act by police, prosecutors, and judges.

1. *Police*

“I’m sorry, but the police can’t help you. It’s a civil matter,” stated the police dispatcher to a mother who reported her child abducted.¹⁶⁵

Law enforcement personnel frequently view parental abduction as “civil in nature,” “a private family matter best handled outside the realm of the criminal justice system,”¹⁶⁶ and inappropriate for police intervention or criminal responses,¹⁶⁷ sentiments that are identical to prior decades’ handling of domestic violence cases.¹⁶⁸ Police generally believe that if a child is with another parent or relative, the child is not in danger.¹⁶⁹ Police also often think that parents “exaggerate the seriousness of family abductions” to further their custody claims.¹⁷⁰

Lack of law enforcement training contributes to the deficiency of police intervention in parental abduction cases, as police officers are not typically trained in the dynamics of family abductions or appropriate responses.¹⁷¹ The majority of police departments lack written policies or procedures governing parental abduction cases, do not train their officers on how to handle parental abduction cases, and lack helpful computer resources for tracking and intervening in such cases.¹⁷²

The absence of training combined with attitudes pervading police forces preclude police intervention in family abduction cases. Parental

164. Chiancone et al., *supra* note 99, at 6.

165. Creighton, *supra* note 12, at 69.

166. Kathi L. Grasso et al., *The Criminal Justice System’s Response to Parental Abduction*, JUV. JUST. BULL. (Dec. 2001), <https://www.ncjrs.gov/pdffiles1/ojjdp/186160.pdf> [<https://perma.cc/U9K7-SR42>].

167. JAMES J. COLLINS ET AL., OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, LAW ENFORCEMENT POLICIES AND PRACTICES REGARDING MISSING CHILDREN AND HOMELESS YOUTH: RESEARCH SUMMARY 7 (1993); U.S. DEP’T OF JUSTICE, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, NATIONAL STUDY OF LAW ENFORCEMENT POLICIES AND PRACTICES FOR MISSING CHILDREN AND HOMELESS YOUTH: INTEGRATED FINAL REPORT 9, 11 (1988); Peggy S. Plass et al., *Police Response to Family Abduction Episodes*, 41 CRIME & DELINQ. 205, 207 (1995).

168. See LISA A. GOODMAN & DEBORAH EPSTEIN, LISTENING TO BATTERED WOMEN: A SURVIVOR-CENTERED APPROACH TO ADVOCACY, MENTAL HEALTH, AND JUSTICE 71 (2007).

169. Plass et al., *supra* note 167, at 207.

170. *Id.*

171. *Id.*

172. Grasso et al., *supra* note 166, at 4.

abduction cases are given “low” priority,¹⁷³ and “police intervene in only a small percentage of reported family abductions.”¹⁷⁴ In a national survey of law enforcement offices, of the 17,000 responding offices, approximately half of the offices said that they refuse to take a missing-child report for a parentally abducted child, instead viewing this as a civil matter.¹⁷⁵ One study found that many police officers “seemed unaware of their obligation to investigate the whereabouts of the abductor and child,”¹⁷⁶ and thus never initiated investigations upon receiving complaints of parental abduction. In a survey of nearly 100 parents whose children had been abducted internationally by the other parent, over 80% of the left-behind parents contacted law enforcement within twenty-four hours of the abduction, but two-thirds of these parents received little or no initial assistance from law enforcement.¹⁷⁷ Across jurisdictions, officers commonly refuse to take any information from left-behind parents about their cases, instead insisting that parental abductions are family matters.¹⁷⁸

When comparing police handling of parental abduction cases to runaway cases, researchers found that police investigate dramatically higher rates of runaway cases than family abduction cases.¹⁷⁹ While the National Incidence Studies on Missing, Abducted, Runaway, and Thrownaway Children estimate that police receive approximately the same number of reports of runaway children and of family abduction, researchers discovered that the ratio of police filing reports of runaways compared to police filing reports of family abductions was fifty-five to one.¹⁸⁰ Another nationwide survey of 16,000 caretaking adults found that, when comparing parental abduction, runaways, “thrownaway” occurrences, and children who were missing for benign reasons, such as

173. Herbert A. Gliberman, *A Child Is Missing*, 10 BARRISTER 16, 20 (1983) (noting that across jurisdictions, child abductions receive “low priority” from police departments).

174. COLLINS ET AL., *supra* note 167, at 21; *see also* JAMES J. COLLINS, LAW ENFORCEMENT POLICIES AND PRACTICES REGARDING MISSING CHILDREN AND HOMELESS YOUTH: FINAL REPORT 83 (1999) (“Because of the legal ambiguities [uncertainty about whether a custody order has been issued], doubts about their authority to act, and practical difficulties, police are often reluctant to pursue cases.”).

175. Creighton, *supra* note 12, at 69 (also reporting specific instances).

176. Chiancone et al., *supra* note 99, at 8.

177. *Id.* at 6, 8.

178. *Id.* at 6.

179. COLLINS ET AL., *supra* note 167, at 5; *see also* MEDA CHESNEY-LIND & RANDALL G. SHELDEN, *GIRLS, DELINQUENCY, AND JUVENILE JUSTICE* (2014) (discussing the arrest and confinement of juvenile girls).

180. *See supra* note 179.

a miscommunication between the caregiver and child, police are the least likely to write a police report or obtain a photograph of the missing child in parental abduction cases.¹⁸¹ This national survey revealed that police make a written report in only 43% of parental abduction cases and obtain a photograph of the abducted child in 14% of cases,¹⁸² although both of these actions are crucial to further investigations. Furthermore, police often do not keep records of the calls regarding family abductions and may not categorize the complaints as such in their databases.¹⁸³

The failure to respond to complaints of child abduction, much less to initiate investigations, take reports, or obtain photographs, is contrary to national guidelines recommending that police are to be dispatched in response to all missing or abducted child reports to law enforcement.¹⁸⁴ Parents are instead often given misinformation by police, such as being told that the police need evidence that the child has crossed state lines before they can act.¹⁸⁵ Some police also tell parents that the child has to be missing for a specified period of time before the police can respond.¹⁸⁶

The delay in response actually contributes to the success of abductions. Research shows that the first few hours make up the crucial period for locating the abducted child, and the odds of recovering a child who has been parentally abducted are higher when law enforcement takes early action.¹⁸⁷ Research regarding children who are murdered

181. Heather Hammer et al., *Caretaker Satisfaction with Law Enforcement Response to Missing Children*, in NAT'L INCIDENCE STUDIES OF MISSING, ABDUCTED, RUNAWAY, AND THROWN AWAY CHILDREN 3–5 (Aug. 2008), <http://www.unh.edu/ccrc/pdf/CV69.pdf> [<https://perma.cc/BYW4-N9FR>].

182. *Id.* at 4.

183. Hammer et al., *supra* note 22, at 9.

184. NAT'L CTR. FOR MISSING & EXPLOITED CHILDREN, U.S. DEP'T OF JUSTICE, MISSING AND ABDUCTED CHILDREN: A LAW-ENFORCEMENT GUIDE TO CASE INVESTIGATION AND PROGRAM MANAGEMENT 27–28 (Preston Findlay & Robert G. Lowery, Jr. eds., 2011) http://www.missingkids.com/en_US/publications/NC74.pdf [<https://perma.cc/GVM4-J2TN>].

185. Chiancone et al., *supra* note 99, at 6; *see also* Hammer et al., *supra* note 22, at 8; Appendix, Table 1 (identifying states that differentiate criminal penalties based on whether the child is taken across state lines). The Author's clients have also received such police response.

186. *See* NAT'L CTR. FOR MISSING & EXPLOITED CHILDREN, U.S. DEP'T OF JUSTICE, MISSING AND ABDUCTED CHILDREN: A LAW-ENFORCEMENT GUIDE TO CASE INVESTIGATION AND PROGRAM MANAGEMENT 54 (Stephen E. Steidel, ed., 3rd ed. 2006) <https://ncjtc.fvtc.edu/Portals/2/Resources/RS00002449.pdf> [<https://perma.cc/V8D8-43AN>]; Chiancone et al., *supra* note 99, at 6; *see also*, e.g., *Town of Castle Rock v. Gonzales*, 545 U.S. 748 (2005). The Author's clients have also received such police response.

Only Michigan permits parents to conceal a child for twenty-four hours before making parental abduction actionable. MICH. COMP. LAWS § 750.350a (2016).

187. Plass et al., *supra* note 167, at 207–08.

following their abduction shows that three-quarters of these children are killed within the first three hours of their abduction.¹⁸⁸ The Department of Justice instructs: “[t]ime is of the essence in abduction cases. Law enforcement should act immediately to prevent removal of the child from the country and should use all available government resources toward that end.”¹⁸⁹ The failure to intervene and lack of urgency also stand in stark contrast to the National Center for Missing and Exploited Children’s guidance that law enforcement’s initial response is “unquestionably one of the most critical in the entire missing-child investigative process. . . . [I]t is recommended law-enforcement agencies respond to every report of a missing child as if the child is in immediate danger.”¹⁹⁰ Contrary to research and official guidance, police regularly permit that time to pass, instructing the left-behind parent to wait.

Law enforcement failure to intervene in parental abduction cases occurs at both the local and national levels. Even after clear congressional action, the Justice Department refuses to “pursue parental kidnappers as it pursues other felons under the Fugitive Felon Act.”¹⁹¹ As further detailed:

After the passage of the [Parental Kidnapping Prevention Act], the Justice Department decided that it would refuse to issue a warrant in a child-snatching case unless there was independent credible information that the abducted child was in physical danger or then in a condition of abuse or neglect. In all other cases FBI involvement is automatic and a federal warrant is unconditionally issued once the fugitive crosses the state line. Attempting to justify the disparate treatment and the obvious burden now placed on the victimized parent, the Justice Department has maintained that child-snatching cases involve “family” matters that do not warrant the attention and resources

188. Douglas, *supra* note 11, at 1 (“FBI research revealed that 74% of children abducted and murdered were killed within the first 3 hours of their disappearance.”); NAT’L CTR. FOR MISSING & EXPLOITED CHILDREN, *supra* note 186, at 33–34 (detailing that a nationwide study revealed that in cases where children are killed following their abductions, 48.6% of abducted children die in the first hour and 76.2% of abducted children die within three hours of capture, making the initial response in a missing child case the most critical stage in the investigation).

189. Chiancone et al., *supra* note 99, at 12.

190. NAT’L CTR. FOR MISSING & EXPLOITED CHILDREN, *supra* note 186, at 33–34.

191. Gliberman, *supra* note 173, at 18; Susan E. Spangler, *Snatching Legislative Power: The Justice Department’s Refusal to Enforce the Parental Kidnapping Prevention Act*, 73 J. CRIM. L. & CRIMINOLOGY 1176, 1187 (1982) (similarly identifying the “Catch-22” in the Department of Justice’s regulations and how the Department has ignored Congress’s clear mandate).

that other, more serious offenses under the Fugitive Felon Act do.¹⁹²

Despite laws criminalizing parental abduction and directing official response, in an example of preservation through transformation, inaction controls.

2. *Prosecution*

Lack of training and failure to perceive parental abduction as a crime similarly plague prosecutors' offices. As with law enforcement, the vast majority of prosecutors' offices do not train staff on parental abduction, lack policies or written guidelines on how to handle such cases, and do not have special programs to address this crime.¹⁹³ "[F]ew jurisdictions have had much experience in prosecuting such cases."¹⁹⁴ In the few jurisdictions that handle parental abduction cases, such cases are often designated as "low priority,"¹⁹⁵ and investigators are often unaware of resources available to them, such as state clearinghouses that can coordinate agency responses and the FBI's ability to assist.¹⁹⁶

Even when prosecution becomes involved in a case, prosecutors' offices are reluctant to bring charges in domestic and international abduction cases.¹⁹⁷ Multiple supervising attorneys in child abduction units have told me that they prefer to resolve cases without bringing charges. The National Incidence Studies of Missing, Abducted, Runaway, and Thrownaway Children found that while an estimated 155,800 children are victims of "serious" parental abductions each year, nationally, only 30,500 police reports are officially registered, 9,200 cases are officially opened in prosecutors' offices, an estimated 4,500 arrests for parental abduction are made, and only 3,500 criminal

192. Glieberman, *supra* note 173, at 18.

193. Grasso et al., *supra* note 166, at 4.

194. Chiancone et al., *supra* note 99, at 7.

195. *Id.*; Grasso et al., *supra* note 166, at 4.

196. Grasso et al., *supra* note 166, at 5. They often also selectively only use resources about which they are aware, such as many investigators only entering information on child abduction in the National Crime Information Center (NCIC) database when an arrest warrant has already been issued, the abductor has fled the state with the child, or the child's whereabouts are unknown, although federal law requires that state and local law enforcement immediately make a report of any missing child and enter detailed descriptive information into the NCIC database, even when the abduction may not constitute a criminal violation. The National Child Search Assistance Act of 1990, 42 U.S.C. § 5780 (2012).

197. Glieberman, *supra* note 173, at 20 (describing the nationwide trend against prosecuting child abductors); Kreston, *supra* note 102, at 586 (identifying the rarity with which international parental kidnapping is prosecuted).

complaints are actually filed.¹⁹⁸ Rounding up, police reports are made in only 20% of cases of “serious” parental abduction, and criminal charges are brought in only 2% of these cases. Other national and regional studies show that the number of criminal complaints filed for custodial interference is consistently extremely low. In San Diego County, a jurisdiction that is thought to be a model for handling parental abduction cases, the District Attorney’s Office receives approximately 1,500 complaints of custodial interference annually, but only files an average of thirty criminal complaints.¹⁹⁹

Although the crime of parental abduction typically carries a penalty of up to one year in jail and is a felony in most states,²⁰⁰ the majority of

198. Grasso et al., *supra* note 166, at 7.

199. *Id.* at 6.

200. Appendix, Table 1. *See, e.g.*, ALA. CODE § 13A-6-45(c) (2016) (class C felony); ALASKA STAT. § 11.41.320(b) (2016) (class C felony); ARIZ. REV. STAT. ANN. § 13-1302(E)(3) (2016) (class 3 felony); ARK. CODE ANN. § 5-26-502(b) (2016) (felony if the child is transported across state lines); CAL. PENAL CODE § 278.5 (West 2016); CONN. GEN. STAT. § 53A-97 (2016) (class D felony if custodial interference occurs in the first degree); DEL. CODE ANN. tit. 11, § 785 (2016) (felony if the child is taken across state lines); D.C. CODE § 16-1024 (2016); FLA. STAT. § 787.03 (2016) (felony in the third degree); GA. CODE ANN. § 16-5-45 (2016); HAW. REV. STAT. § 707-726 (2016) (felony if custodial interference is in the first degree, which involves taking a child across state lines); IDAHO CODE § 18-4506 (2016) (felony unless the child remained in the state and was returned unharmed prior to abductor’s arrest); 720 ILL. COMP. STAT. 5/10-5 (2016); IND. CODE § 35-42-3-4 (2016) (level 5 or 6 felony depending on age of child); IOWA CODE § 710.6 (2016); KY. REV. STAT. ANN. § 509.070(3) (West 2016) (class D felony, unless the child is voluntarily returned by the defendant); LA. STAT. ANN. § 14:45(B) (2016) (penalty of \$5,000, five years in prison, or both); ME. STAT. tit. 17-A, § 303(1)(A) (2016) (class C crime); MD. CODE ANN., FAM. LAW § 9-307 (West 2016); MASS. GEN. LAWS ch. 265, § 26A (2016) (penalty of \$5,000, five years in prison, or both); MICH. COMP. LAWS § 750.350a(2) (2016) (felony, punishable by up to one year, \$2,000 fine, or both); MINN. STAT. § 609.26(1) (2016) (felony, punishable by two years imprisonment, \$4,000 fine, or both); MISS. CODE ANN. § 97-3-51 (2016); MO. REV. STAT. §§ 565.150, 565.153(2) (2016) (felony only in the absence of a formal custody order; misdemeanor with custody order); MONT. CODE ANN. § 45-5-304 (2016) (punishable by ten years in prison, \$50,000 fine, or both); NEB. REV. STAT. § 28-316(3) (2016) (class IV felony if there is a formal court order of custody); NEV. REV. STAT. § 200.320, 200.359(1) (2016) (category D felony); N.H. REV. STAT. ANN. § 633:4 (2016) (class B felony if child is taken across state lines); N.J. STAT. ANN. § 2C:13-4 (West 2016); N.M. STAT. ANN. § 30-4-4 (2016) (fourth degree felony); N.Y. PENAL LAW § 135.50 (McKinney 2016) (felony if child is taken across state lines); N.C. GEN. STAT. § 14-41 (2016); N.D. CENT. CODE § 12.1-18-05 (2016) (class C felony); OHIO REV. CODE ANN. § 2919.23(D)(2) (West 2016) (felony only if child is taken across state lines); OKLA. STAT. tit. 21, §§ 567A, 891 (2016); OR. REV. STAT. §§ 163.245, 163.257 (2016) (class B felony); 18 PA. CONS. STAT. § 2904 (2016) (third degree felony); 11 R.I. GEN. LAWS § 11-26-1.1 (2016) (felony, punishable by up to two years imprisonment); S.C. CODE ANN. § 16-17-495 (2016); S.D. CODIFIED LAWS § 22-19-10 (2016) (felony if child is taken across state lines); TENN. CODE ANN. § 39-13-306(e) (2016) (felony unless the child is returned voluntarily); TEX. PENAL CODE ANN. § 25.03(d) (West 2016) (state jail felony); VT. STAT. ANN. tit. 13, § 2451(b) (2016) (punishable by five years in prison, \$5,000 fine, or both); VA. CODE ANN. § 18.2-47(D), 49.1 (2016) (felony if child is taken out of state); WASH. REV. CODE § 9A.40.060, 9A.40.070 (2016) (first conviction is a misdemeanor, second conviction is a class C felony); W. VA. CODE § 61-2-14D(a) (2016) (felony, punishable by one to five years in prison,

apprehended parental abductors face “no punishment whatsoever,” leaving the victimized child and parent to fear repeat kidnappings.²⁰¹ Most criminal complaints regarding parental abduction result in dismissals or plea bargains.²⁰² Parents who are convicted of custodial interference or abduction might receive probation with conditions, such as being required to attend parenting skills classes or pay restitution.²⁰³ Jail time is “extremely rare,” with defendants generally being incarcerated only when they fail to disclose the abducted child’s location.²⁰⁴ Abducting parents have escaped sanction even when children report having experienced horrifying acts of sexual and physical abuse during parental abduction.²⁰⁵ In sum, the criminal justice system pays “scant attention” to the crime of parental abduction, with each aspect of the system having a very low response rate.²⁰⁶

3. *Civil Justice System*

Inattention to parental kidnapping also pervades the civil justice system, as family court judges are unlikely to view parental abduction as deserving penalty. Socially, “abduction” continues to be associated with stranger-pedophile kidnappings, and family court judges, custody evaluators, and mental health professionals have been disinclined to recognize and apply laws regarding parental abduction.²⁰⁷ Barring particularly heinous facts, criminal charges and convictions often have no effect on the parental rights of the abductor in the family law and

\$1,000 fine, or both); WIS. STAT. § 948.31(1)(b) (2016) (class C felony); WYO. STAT. ANN. § 6-2-204 (2016).

201. Janvier et al., *supra* note 70, at 7.

202. Grasso et al., *supra* note 166, at 6.

203. *Id.*

204. *Id.*; see also CAL. PENAL CODE § 278.6(a)(4) (identifying aggravating factors that must be considered at sentencing, where international abduction is an aggravating factor); Kreston, *supra* note 102, at 588 (“Realistically, even with an international kidnapping, in the absence of some aggravating circumstance, a judge may not sentence a defendant to prison.”). But see MONT. CODE ANN. § 45-5-634 (allowing for no punishment if the child is returned before arraignment on the first offense).

205. Creighton, *supra* note 12, at 70 (reporting on the sexual, physical, and emotional harm a child named Julian endured while his father held Julian captive for five years, and how his father was found not guilty of custodial interference); see also Kreston, *supra* note 102, at 588 (a prosecutor specializing in abduction and writing on the topic states, “[i]ncarceration is appropriate when the child is still missing, when physical or sexual violence or abuse occurred at any point during the taking or retention, or when there is a history of abduction or other criminal activity,” revealing how enforcement is reserved for select cases).

206. Grasso et al., *supra* note 166, at 7.

207. Shear & Shear Kushner, *supra* note 95, at 253.

custody context.²⁰⁸ In one qualitative study that interviewed parents who abducted their children, nearly half of the abducting parents retained custody post-return.²⁰⁹ Left-behind parents who seek civil sanctions are generally unsuccessful. For example, in *Bruzzi v. Bruzzi*,²¹⁰ a mother brought a civil contempt suit against a father who failed to return the children after visitation. The court held that because the father returned the children prior to the contempt hearing, no contempt remedies could be imposed because the father had eventually complied with the court's order.²¹¹

4. Gendered Enforcement

While enforcement of parental abduction laws does not occur at high rates, the enforcement that occurs appears to be heavily gendered, as women who are arrested for abduction are more likely to be convicted and incarcerated than men.²¹² Even mothers who flee with children to protect them from family violence face sanction.²¹³ The National Clearinghouse on the Defense of Battered Women notes that the criminal justice system does not offer protections to victims fleeing abuse in the way that family law jurisdictional statutes do.²¹⁴ Domestic

208. Kreston, *supra* note 102, at 547.

209. Greif & Hegar, *Parents Who Abduct*, *supra* note 81, at 287 (noting that the custody outcomes illuminate “the difficulty faced by the courts when one parent has been involved with a child for a long time to the exclusion of the other”).

210. 481 A.2d 648 (Pa. Super. Ct. 1984).

211. *Id.* at 652; *see also*, e.g., *Zaharias v. Gammill*, 844 P.2d 137, 149 (Okla. 1992) (refusing to create the tort of intentional interference with custodial rights); *Wood v. Wood*, 338 N.W.2d 123, 127 (Iowa 1983) (noting that “[t]he usefulness of a contempt action is doubtful” in parental abduction cases); *Pereira v. Pereira*, 319 N.E.2d 413 (N.Y. 1974) (reversing the lower court's contempt order against the father when he failed to produce the abducted child, despite corroborating evidence demonstrating his knowledge of her whereabouts).

212. Johnston et al., *Risk Factors*, *supra* note 95 (attributing the disparity to the likelihood that women typically abduct in violation of court orders, whereas men more commonly abduct prior to the entry of a custody order); *see, e.g.*, *Lombard v. Lombard*, 997 So. 2d 1188, 1191 (Fla. Dist. Ct. App. 2008); *c.f.* *Rush v. Rush*, No. 74832, 1999 WL 1044482 (Ohio Ct. App. Nov. 18, 1999) (unpublished) (noting that in a prior case, the court had found the mother in contempt for interfering with the father's visitation rights, sentencing her to thirty days in jail but allowing her to purge by permitting the father to make up for lost visitation).

213. *See, e.g.*, *Retired Professor Charged with 1990 California Abduction of Daughter*, REUTERS (July 29, 2015), <http://www.reuters.com/article/us-usa-kidnapping-california-idUSKCN0Q328I20150729> [<http://perma.cc/V2ZR-RXWP>] (the mother was charged despite allegations that the father had sexually molested their daughter).

214. NAT'L CLEARINGHOUSE FOR THE DEF. OF BATTERED WOMEN, *THE IMPACT OF PARENTAL KIDNAPPING LAWS AND PRACTICE ON DOMESTIC VIOLENCE SURVIVORS* (2005).

violence victims “not only are charged with such crimes, but they often are placed in jail, convicted, and lose contact with their children.”²¹⁵

Family court orders often leave domestic violence survivors vulnerable to continuing abuse, even after the victimized individual has attempted to end the relationship. When abuse victims take their children, “the violent partners may be successful in obscuring the facts about the abuse and in activating abduction laws to regain control of their victims.”²¹⁶ Despite dramatic differences between a parent who abducts as an act of abuse or revenge and one who attempts to protect a child from family violence, “[t]ypically, the response to perpetrators and to victims of domestic violence is the same regardless of the reasons why the parents left with the children.”²¹⁷

C. *Private Inaction*

Private inaction also facilitates, encourages, and condones parental abduction. The abductor’s family is frequently involved in the abduction plan and in maintaining deceit and secrecy.²¹⁸ The abductor’s employer may also have means of tracking the abductor and can play a role in forestalling efforts to intervene in parental abductions.

Abducted children are often hidden behind religion and enrolled in religious schools rather than public schools by the abducting parent.²¹⁹ Children may be internationally abducted to a country that is not a signatory to the Hague Convention and whose religious customs will prevent the return of the child.²²⁰ Indeed, religious law can present significant choice of law and conflicting law issues.²²¹

Despite laws about child abduction and concern surrounding missing children, parental abduction responses are highly underdeveloped. State intervention in parental abduction is often urgently sought by left-behind parents, and quick responses by law enforcement often lead to early

215. *Id.* at 5.

216. Johnston & Girdner, *supra* note 107, at 404.

217. NAT’L CLEARINGHOUSE FOR THE DEF. OF BATTERED WOMEN, *supra* note 214, at 2–3.

218. Johnston et al., *supra* note 94, at 1.

219. See generally Tom Harper, *The Limitations of the Hague Convention and Alternative Remedies for a Parent Including Re-Abduction*, 9 EMORY INT’L L. REV. 257 (1995) (describing religious and cultural motives to abduct children).

220. McCue, *supra* note 18, at 96–97.

221. See generally Melissa A. Kucinski, *Culture in International Parental Kidnapping Mediations*, 9 PEPP. DISP. RESOL. L.J. 555 (2009); Rhona Schuz, *The Relevance of Religious Law and Cultural Considerations in International Child Abduction Disputes*, 12 J.L. & FAM. STUD. 453 (2010).

detection and return of the child.²²² Given current practices, it is not surprising that the majority of parents who seek police help due to parental abduction are dissatisfied with law enforcement response,²²³ yet this is precisely the type of complaint for which law enforcement response is needed.²²⁴ Criminal justice tools, such as criminal warrants, also often need to be employed,²²⁵ and family court judges also need to recognize the harms of parental abduction. Parental abduction can be life threatening or life changing, and while left-behind parents seek the state's help, the state routinely fails to act and private forces further impede children's recovery. The state's refusal to intervene can be contrasted with aggressive state intervention against individuals' wishes in domestic violence, child support, medical child abuse, and other cases involving families.

IV. MAKING SENSE OF DIFFERENTIAL RESPONSES

The identity of the person seeking help and the distinction between stranger and familial violence are predictors of the state's current response to pleas for help and the means of intervention the state employs. Section IV.A draws comparisons between the state's handling of parental abduction, sexual assault, and child custody cases. Section IV.B identifies the racialized, gendered, and class-based patterns of the state's intervention in the family.

A. *Areas of Comparison*

As with the treatment of abduction, violent crimes committed by strangers garner significantly more resources and attention than crimes committed against intimates.²²⁶ Stranger violence is more likely to lead to arrests and convictions than identical crimes perpetrated against family members or intimate partners.²²⁷ The differential treatment of

222. Chiancone et al., *supra* note 99, at 12.

223. Hammer et al., *supra* note 181, at 5 (reporting that caretakers were satisfied with police response in 45% of parental abduction cases, but dissatisfied in 55% of cases); Plass et al., *supra* note 169, at 213 (finding that 62% of left-behind parents were "somewhat" or "very" dissatisfied with the police response to their case).

224. Chiancone et al., *supra* note 99, at 12 ("Law enforcement recovery of abducted children has numerous advantages over self-help recovery by the parent.").

225. *Id.*

226. Carissa Byrne Hessick, *Violence Between Lovers, Strangers, and Friends*, 85 WASH. U. L. REV. 343, 344–45 (2007).

227. *Id.* at 351–53.

stranger and family abductions is similar to disparate responses to stranger and acquaintance rape and the complete exemption from prosecution for marital rape. Courts' refusal to acknowledge the harm and relevance of parental abduction to future parenting is also consistent with judges' continued refusal to acknowledge the harms of domestic violence when making custody decisions.

1. Rape

The historical condonation of marital rape²²⁸ mirrors the state's reluctance to criminalize parental abduction, and husbands continue to escape sanction for marital rape, even when technically illegal.²²⁹ The concentration on stranger-pedophile abduction at the expense of responding to the far-more-common parental abduction is similar to the differential response to stranger versus acquaintance or marital rape. The creation of the law of rape "incorporated the paradigm of a pathological stranger, prototypically a black man, lurking in the shadows, ready to violently assault the presumed-chaste (white) woman."²³⁰ Although rape by an acquaintance presents a much more common threat than rape by a stranger,²³¹ young women are routinely warned about stranger rape and sexual assault.²³²

The justice system's response also differs dramatically depending on whether the victim and perpetrator had prior knowledge of each other.²³³

228. See Jill Elaine Hasday, *Contest and Consent: A Legal History of Marital Rape*, 88 CAL. L. REV. 1373, 1375 (2000) (describing how marital rape was exempt from prosecution at common law, and how states have largely retained exemptions for many forms of marital rape).

229. See, e.g., Pearce, *supra* note 4 (detailing the 2016 case of a husband sentenced to house arrest for multiple instances of drugging and raping his wife, which he videotaped).

230. Aya Gruber, *Rape, Feminism, and the War on Crime*, 84 WASH. L. REV. 581, 587–88 (2009); see also Christina E. Wells & Erin Elliott Motley, *Reinforcing the Myth of the Crazy Rapist: A Feminist Critique of Recent Rape Legislation*, 81 B.U. L. REV. 127, 157 (2001).

231. MICHELE C. BLACK ET AL., NAT'L CTR. FOR INJURY PREVENTION AND CONTROL, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2010 SUMMARY REPORT 1–2 (2011) ("More than half (51.1%) of female victims of rape reported being raped by an intimate partner and 40.8% by an acquaintance; for male victims, more than half (52.4%) reported being raped by an acquaintance and 15.1% by a stranger."); Michelle J. Anderson, *The Legacy of the Prompt Complaint Requirement, Corroboration Requirement, and Cautionary Instructions on Campus Sexual Assault*, 84 B.U. L. REV. 945, 1008 (2004) ("Campus rapes rarely involve strangers; rather, they are committed by acquaintances such as classmates, friends, boyfriends, and fraternity brothers.").

232. Anderson, *supra* note 231, at 1007 n.376 ("Partly as a result of a cultural and media focus on the exceptional, violent, reported cases of black on white rape, fear of stranger rape among college women is much more widespread, although acquaintance rape is much more common.").

233. See David Holleran et al., *Examining Charging Agreement Between Police and Prosecutors in Rape Cases*, 56 CRIME & DELINQ. 385, 407 (2010); Allison West, *Tougher Prosecution When the*

The dominant narrative of stranger rape results in a skewed administration of justice in rape cases, typically giving a “pass” to rape perpetrated by an acquaintance or intimate partner.²³⁴ The acceptance of rape myths by police officers negatively impacts victims by influencing officers’ attitudes toward victims, assessment of victim credibility, and decisions about arrest.²³⁵ Police generally respond more rapidly and readily to complaints of stranger rape, and prosecution is considerably more likely, in part because judges and juries often impute consent in acquaintance rape cases, whereas the question of consent is less likely an issue in stranger rape cases.²³⁶ For poor women of color and transgender women who seek police and prosecutorial response to sexual assault, the state’s response is deeply biased and “grossly inadequate.”²³⁷ While victims of stranger rape are more likely to be believed and to receive sympathy, victims of acquaintance rape are often blamed and disbelieved.²³⁸ Overall, very few rape cases lead to arrest or prosecution, and only six of every 1,000 cases of alleged rape result in any incarceration.²³⁹

Rapist Is Not a Stranger: Suggested Reform to the California Penal Code, 24 GOLDEN GATE U. L. REV. 169, 181–87 (1994) (identifying skepticism by police, prosecution’s increased ambivalence, and the failure of judges and juries to understand the nature of the crime).

234. Deborah Tuerkheimer, *Slutwalking in the Shadow of the Law*, 98 MINN. L. REV. 1453, 1509 (2014); cf. Leslie D. Robinson, *It Is What It Is: Legal Recognition of Acquaintance Rape*, 6 AVE MARIA L. REV. 627, 627–28 (2008) (identifying that most rape victims do not report the crime, and that as a general rule, “[t]he closer the relationship between victim and assailant, the less likely the woman [will] report” (citing Shannan M. Catalano, *National Crime Victimization Survey: Criminal Victimization, 2005 5*, in U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS BULL. (2006))).

235. Molly Smith et al., *Rape Myth Adherence Among Campus Law Enforcement Officers*, 43 CRIM. JUST. & BEHAV. 539, 540 (2016).

236. See Courtney Fraser, Comment, *From “Ladies First” to “Asking for It”: Benevolent Sexism in the Maintenance of Rape Culture*, 103 CAL. L. REV. 141, 168 (2015) (identifying how consent is imputed for women who knew their attackers, and providing the example of a Texas county in which from 2008 to 2012, grand juries “failed to return an indictment in 51% of acquaintance rape cases, even when there was photographic evidence of the assault or when the defendant confessed to the rape”).

237. Sheryl Gay Stolberg & Jess Bidgood, *Baltimore Police Fostered a Bias Against Women*, N.Y. TIMES (Aug. 12, 2016), <https://www.nytimes.com/2016/08/12/us/baltimore-police-sexual-assault-gender-bias.html> [http://perma.cc/PMC9-93KL] (describing the Department of Justice’s investigative report on the Baltimore City Police Department and recent investigations across the country revealing gender bias in policing of sex crimes).

238. See Holleran et al., *supra* note 233, at 407. Cf. Theresa L. Lennon et al., *Is Clothing Probative of Attitude or Intent? Implications for Rape and Sexual Harassment Cases*, 11 LAW & INEQ. 391 (1993) (discussing a Florida case in which a jury acquitted a stranger-rape defendant of kidnapping and sexual assault on the grounds that the victim’s attire indicated that “she asked for it”).

239. *The Criminal Justice System: Statistics*, RAINN, <https://www.rainn.org/statistics/criminal-justice-system> [https://perma.cc/K5BH-TP99] (citing DEPT. OF JUSTICE, BUREAU OF JUSTICE

2. *Custody to Batterers*

Similar to judges' pattern of disregarding abduction by domestic abusers, judges award abusive parents custody of their children at surprisingly high rates, even following the enactment of laws that require judges to consider domestic violence as relevant to child custody.

Fathers who commit domestic violence are more than twice as likely to pursue sole custody of their children, as compared to nonviolent fathers,²⁴⁰ and they are awarded for doing so. Abusive parents are statistically more successful at receiving child custody than abuse survivors, as "the research bears that in contested custody cases, the batterer is 70% more likely to prevail."²⁴¹

Although many states have rebuttable presumptions in favor of joint custody, some states have adopted rebuttable presumptions against a parent who perpetrates domestic violence receiving sole or joint custody in an effort to protect children and prioritize the question of abuse.²⁴² Even with these protective statutory efforts, parents who are determined to have committed domestic violence commonly receive custody.²⁴³ For example, in a study of custody outcomes involving female victims of domestic violence in Massachusetts, abusive partners were awarded custody or custody was recommended to the abuser in over half of the

STATISTICS, FELONY DEFENDANTS IN LARGE URBAN COUNTIES, 2009 - STATISTICAL TABLES (2013); DEPT. OF JUSTICE, BUREAU OF JUSTICE STATISTICS, NATIONAL CRIME VICTIMIZATION SURVEY, 2010–2014 (2015); FEDERAL BUREAU OF INVESTIGATION, NATIONAL INCIDENT-BASED REPORTING SYSTEM, 2012–2014 (2015). In comparison, out of every 1,000 robberies that occur, twenty defendants will be incarcerated, and out of 1,000 assault and battery crimes, thirty-three individuals are incarcerated. *Id.*

240. Rita Smith & Pamela Coukos, *Fairness and Accuracy in Evaluations of Domestic Violence and Child Abuse in Custody Determinations*, 36 JUDGES' J. 38, 40 (1997).

241. Elayne E. Greenberg, *Beyond the Polemics: Realistic Options to Help Divorcing Families Manage Domestic Violence*, 24 ST. JOHN'S J. LEGAL COMMENT. 603, 610 (2010) (citing LUNDY BANCROFT, WHY DOES HE DO THAT? INSIDE THE MINDS OF ANGRY AND CONTROLLING MEN 257–66 (2002)); Joan Meier, *Rates At Which Batterers Receive Custody*, STOPFAMILYVIOLENCE.ORG (Nov. 30, 2005) [<http://perma.cc/24XB-LAKG>].

242. See generally Judith G. Greenberg, *Domestic Violence and the Danger of Joint Custody Presumptions*, 25 N. ILL. U. L. REV. 403 (2005).

243. Mary A. Kernic et al., *Children in the Crossfire: Child Custody Determinations Among Couples with a History of Intimate Partner Violence*, 11 VIOLENCE AGAINST WOMEN 991, 1014 (2005) (in a study of 800 couples in Washington, mothers with an abusive partner were not more likely to receive custody than in cases without allegations of domestic violence); see also Margaret F. Brinig et al., *Perspectives on Joint Custody Parenting as Applied to Domestic Violence Cases*, 52 FAM. CT. REV. 271 (2014).

cases.²⁴⁴ Nationwide, in states with statutory presumptions against granting custody to abusive parents, 40% of fathers found to have committed domestic violence against the mothers were awarded joint custody.²⁴⁵ In states with presumptions in favor of joint custody and provisions favoring the parent perceived as being open to shared parenting, sole custody was awarded to abusive fathers more often than to victimized mothers.²⁴⁶ Regardless of the statutory scheme, courts continue to overlook domestic violence in child custody cases.²⁴⁷

Courts frequently fail to recognize abuse survivors' good parenting in bad situations and instead award custody to abuse perpetrators.²⁴⁸ The legal profession's failure "to allow battered women to leave their batterers without sacrificing custody of their children is rooted deeply in misconceptions about domestic violence and the underlying belief that women lie about abuse."²⁴⁹ Even abusive parents who have murdered the victimized parent have received custody of their children.²⁵⁰ Despite this extreme violence, these courts determined that the fathers' acts of femicide were not targeted at the children and did not represent the fathers' parenting abilities.²⁵¹

Judges remain reluctant to deny custody or visitation to abusive parents, similar to courts' refusal to penalize abusive abductors. This can be contrasted with abused parents being penalized through "failure to protect" laws or held in contempt and incarcerated for failing to testify against their batterers.

244. Jay G. Silverman et al., *Child Custody Determinations in Cases Involving Intimate Partner Violence: A Human Rights Analysis*, 94 AM. J. PUB. HEALTH 951, 953 (2004).

245. Allison C. Morrill et al., *Child Custody and Visitation Decisions When the Father Has Perpetrated Violence Against the Mother*, 11 VIOLENCE AGAINST WOMEN 1076, 1101 (2005).

246. *Id.*

247. Nancy K. D. Lemon, *Statutes Creating Rebuttable Presumptions Against Custody to Batterers: How Effective Are They?*, 28 WM. MITCHELL L. REV. 601, 609–10 (2001).

248. See Megan Shipley, Note, *Reveiled Mothers: Custody Modification Cases Involving Domestic Violence*, 86 IND. L.J. 1587, 1607 (2011) (listing multiple cases in which batterers were awarded custody).

249. Deborah M. Goelman, *Shelter from the Storm: Using Jurisdictional Statutes to Protect Victims of Domestic Violence After the Violence Against Women Act of 2000*, 13 COLUM. J. GENDER & L. 101, 167 (2004).

250. Joan S. Meier, *Domestic Violence, Child Custody, and Child Protection: Understanding Judicial Resistance and Imagining the Solutions*, 11 AM. U. J. GENDER SOC. POL'Y & L. 657, 703 (2003).

251. *Id.*

B. *In Search of Explanations*

The state's reluctance to intervene in parental abduction can be attributed to several possible causes. First, a deep societal longing for parental involvement, and particularly fathers' engagement, contributes to the lack of response in parental abduction scenarios.²⁵² Fathers' involvement in their children's lives is seen as "rare and very important,"²⁵³ and judges tend to reward any efforts by fathers to secure custody, even when the actions infringe on the other parent's access to the child and occur within a history of abuse.²⁵⁴

Second, civil and criminal justice actors presume that the majority of parental abduction cases will resolve themselves without expending state resources. The following sentiment expressed by FBI researchers is representative: "[t]hese types of events, while upsetting and frightening to those who are involved, generally end in some type of resolution that does not cause serious harm to the child who has disappeared for a limited period of time."²⁵⁵ Indeed, in four-fifths of parental abduction cases, children are returned within a month of the initial abduction.²⁵⁶ However, 20% of children remain missing for lengthy periods of time—some never to be found—and 20% of children parentally abducted are transported across international borders.²⁵⁷ The missing children and harms detailed in section II.C warrant alarm and immediate action, rather than dismissal as inconsequential.

252. See Ross A. Thompson & Deborah J. Laible, *Noncustodial Parents*, in PARENTING AND CHILD DEVELOPMENT IN "NONTRADITIONAL" FAMILIES 108 (Michael E. Lamb ed., 1999) (citing numerous studies finding that children intensely desire continuing contact with both parents and are dismayed when the visiting parent sees them inconsistently or not at all); Janice Laakso, *Key Determinants of Mothers' Decisions to Allow Visits with Noncustodial Fathers*, 2 FATHERING 131, 133, 141–43 (2004) (discussing never-married mothers who felt the loss of their own fathers as children and as a result, desire the presence of fathers in their own children's lives); Maldonado, *supra* note 59, at 998 ("Although millions of children grow up having little contact with their fathers, almost all express a desire for a father and feel rejected when their fathers are not involved in their lives.").

253. Meier, *supra* note 250, at 680 (explaining that fathers' claims and requests often carry great weight with fact finders because their involvement in their children's lives is perceived as "rare and very important").

254. Amy Barasch, *Gender Bias Analysis Version 2.0: Shifting the Focus to Outcomes and Legitimacy*, 36 N.Y.U. REV. L. & SOC. CHANGE 529, 549 (2012) ("Preconceptions that fathers are typically less engaged parents may cause judges to see the effort of fighting for custody as an unexpectedly welcome sign of engagement by a father, instead of a possible continuation of a history of exercising control.").

255. Beasley et al., *supra* note 73, at 273.

256. Hammer et al., *supra* note 22, at 6–7.

257. Kreston, *supra* note 102, at 534 (citations omitted).

Third, state intervention largely turns on who is seeking help. The state acts on its own initiative in many other areas concerning children and intimate partners and has created systems that trigger action in child support, child abuse, and domestic violence cases. Reports by prosecutors, doctors, social workers, child support officials, teachers, and other mandatory reporters prompt aggressive action, irrespective of whether the “victimized” person feels wronged and regardless of the victim’s wishes.²⁵⁸ These aggressive and immediate interventions stand in stark contrast with the left-behind parent’s plea for help in parental abduction cases.

Regarding gender, the lack of response to abused parents’ pleas for help regarding parental abduction can be viewed in the context of the historic “judicial and societal distrust of female complainants.”²⁵⁹ Women are disbelieved solely because of their gender, with fact finders typically viewing women to be less credible than men and prone to exaggerate claims, especially as related to family violence and their children.²⁶⁰ A review of multiple states’ Gender Bias Task Force reports concluded: “[w]omen receive unfavorable substantive outcomes in cases because of their gender, and men do not. Women’s complaints are trivialized and their circumstances misconstrued more often than men’s, and women more often than men are victims of demeaning and openly hostile behavior in court proceedings.”²⁶¹ Domestic violence is trivialized by “all reaches of the justice system, from police through prosecutors and judges,”²⁶² and a woman’s character is often attacked when she makes a complaint of abuse or sexual assault.²⁶³

258. See generally Michele Goodwin, *Prosecuting the Womb*, 76 GEO. WASH. L. REV. 1657 (2008); Stoeber, *supra* note 9.

259. Francine Banner, *Honest Victim Scripting in the Twitterverse*, 22 WM. & MARY J. WOMEN & L. 495, 543 (2016); cf. Aya Gruber, *The Feminist War on Crime*, 92 IOWA L. REV. 741, 828 (2007) (discussing reasons that many abuse victims distrust law enforcement and judges).

260. Dana Harrington Conner, *Abuse and Discretion: Evaluating Judicial Discretion in Custody Cases Involving Violence Against Women*, 17 AM. U. J. GENDER SOC. POL’Y & L. 163, 176, 178 (2009).

261. Jeannette F. Swent, *Gender Bias at the Heart of Justice: An Empirical Study of State Task Forces*, 6 S. CAL. REV. L. & WOMEN’S STUD. 1, 55 (1996). A 2015 survey which yielded over 900 responses reported similar findings about police hostility, blame, and disbelief of abuse victims. AM. CIVIL LIBERTIES UNION, CITY UNIV. OF N.Y. SCH. OF LAW & UNIV. OF MIAMI SCH. OF LAW, RESPONSES FROM THE FIELD: SEXUAL ASSAULT, DOMESTIC VIOLENCE, AND POLICING 12 (2015), <https://www.aclu.org/feature/responses-field?redirect=responsesfromthefield> [<https://perma.cc/6P5V-9RGW>].

262. Swent, *supra* note 261, at 55.

263. Banner, *supra* note 259, at 495 (describing how on social media sites, “terms such as ‘gold digger,’ ‘slut,’ and ‘ho’ are engaged with regularity to describe those who come forward alleging an assault by a public figure”); Karen Czapanskiy, *Domestic Violence, the Family, and the Lawyering*

Mothers who make claims of domestic violence during divorce or custody proceedings are often denied protection and accused of making false claims to gain an advantage in the custody or property dispute.²⁶⁴ Mothers are held to higher standards of parenting than fathers,²⁶⁵ and mothers who seek state aid are met with suspicion, distrust, and surveillance.²⁶⁶ Specter surrounding the “welfare queen” image reflects the distrust of the women that this rhetoric purports to describe.²⁶⁷ Child Protective Services caseworkers hold mothers culpable when children are sexually abused and “fiercely believe mothers share the blame for abuse,” even though the vast majority of mothers are entirely unaware of the abuse and would otherwise protect their children.²⁶⁸ In the reproductive context, the state often renders the rights of women irrelevant and their decision-making capacity suspect.²⁶⁹ During pregnancy and through childbirth, mothers are blamed for any difficulties that occur.²⁷⁰ Following birth, mothers are cast as “either

Process: Lessons from Studies on Gender Bias in the Courts, 27 FAM. L.Q. 247, 254–55 n.19 (1993) (“In cases involving domestic violence and rape, female victims must often defend themselves against suggestions and accusations that they themselves provoked the act or are exaggerating the extent of the violence.” (citing *Gender and Justice in the Courts: A Report to the Supreme Court of Georgia by the Commission on Gender Bias in the Judicial System*, 8 GA. ST. L. REV. 539, 706 (1992))).

264. Goelman, *supra* note 249, at 167.

265. Swent, *supra* note 261, at 60 (identifying how working mothers are criticized for spending time away for their children, rather than being praised for providing financial resources for the family).

266. Khiara M. Bridges, *Towards A Theory of State Visibility: Race, Poverty, and Equal Protection*, 19 COLUM. J. GENDER & L. 965, 968 (2010) (identifying how the administration of public benefits and the information women must cede to the state is “premised on a profound distrust of poor people and poor mothers”); *see also* Hasday, *supra* note 31, at 355–56 (discussing mothers’ pension laws).

267. *See* Martha L. Fineman, *Images of Mothers in Poverty Discourses*, 1991 DUKE L.J. 274; Thomas Ross, *The Rhetoric of Poverty: Their Immorality, Our Helplessness*, 79 GEO. L.J. 1499 (1991).

268. Robin Fretwell Wilson, *Removing Violent Parents from the Home: A Test Case for the Public Health Approach*, 12 VA. J. SOC. POL’Y & L. 638, 658–59 (2005).

269. *See* Paula Abrams, *The Tradition of Reproduction*, 37 ARIZ. L. REV. 453, 487–88 (1995) (discussing the state’s paternalism in instituting a waiting period prior to an abortion as an example of how the “traditional distrust of women’s judgment infuses modern doctrine” and reflecting on *City of Akron v. Akron Center for Reproductive Health*, 462 U.S. 416, 474 (1983)); Ruthann Robson, *Lesbians and Abortion*, 35 N.Y.U. REV. L. & SOC. CHANGE 247, 277 (2011) (identifying that “an interrogation of a woman’s ‘reason’ for having an abortion demonstrates a distrust of women similar to the distrust apparent in other abortion restrictions that treat women [who] have abortions quite differently than ungendered patients providing informed consent for other medical procedures”).

270. Ruth Colker, *Blaming Mothers: A Disability Perspective*, 95 B.U. L. REV. 1205, 1206 (2015) (identifying the state’s distrust of women’s decision-making throughout pregnancy and

negligent for failing to do enough to assist her child or overly aggressive for advocating on her child's behalf."²⁷¹

In domestic violence litigation, abuse survivors' credibility is questioned if they did not immediately leave an abusive situation in the classic challenge: "Why didn't she leave?"²⁷² Child Protective Services workers and guardians ad litem expect abuse survivors to leave abusive relationships and to protect their children, but abuse victims are not permitted to go too far. When an abuse survivor departs with her children, she is penalized and treated as culpable as an abusive abductor. While state mechanisms immediately respond to doctors, social workers, and teachers, they are often nonresponsive to mothers' complaints of harm and requests for help. Motherhood and womanhood present barriers to receiving help, along with the pervasive and persistent disbelief of abuse survivors.

The racialized nature of the state's interventions in families can also explain the state's refusal to intervene in parental abduction cases. Scholars have detailed how the state disproportionately and harmfully targets, regulates, and intrudes in families of color.²⁷³ Significantly, the child welfare system has operated in troubling racial and class-based ways, cataloging and monitoring poor parents and frequently terminating women of color's parental rights under "failure to protect" laws.²⁷⁴ Visibility through benefits programs also make the poor more likely to

motherhood); see also Dorothy E. Roberts, *Privatization and Punishment in the New Age of Reprogenetics*, 54 EMORY L.J. 1343, 1346 (2005) (describing the "rush to punish poor, substance-abusing mothers for their reproductive failures").

271. Colker, *supra* note 270, at 1206 (recounting the challenges mothers have faced when trying to obtain an appropriate public school education for their children).

272. See Jane K. Stoever, *Transforming Domestic Violence Representation*, 101 KY. L.J. 483, 515 (2013). Of course, if an abuse survivor successfully leaves the relationship before the violence is acute and attempts to raise a claim of domestic violence, the allegation is deemed insignificant and an overreaction.

273. See Goodwin, *supra* note 258, at 1664. See generally DOROTHY ROBERTS, *SHATTERED BONDS: THE COLOR OF CHILD WELFARE* (2002); Annette R. Appell, *Protecting Children or Punishing Mothers: Gender, Race, and Class in the Child Protection System*, 48 S.C. L. REV. 577, 580 (1997); Wendy Bach, *The Hyperregulatory State: Women, Race, Poverty, and Support*, 25 YALE J.L. & FEMINISM 317, 319–20 (2014); Joanne E. Brosh & Monica K. Miller, *Regulating Pregnancy Behaviors: How the Constitutional Rights of Minority Women Are Disproportionately Compromised*, 16 AM. U. J. GENDER SOC. POL'Y & L. 437, 438–39 (2008); Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1242 (1991); Priscilla A. Ocen, *The New Racially Restrictive Covenant: Race, Welfare, and the Policing of Black Women in Subsidized Housing*, 59 UCLA L. REV. 1540 (2012); Stoever, *supra* note 9.

274. See generally ROBERTS, *supra* note 273 (discussing the child welfare system's disruptive, controlling influence on black families); Appell, *supra* note 273, at 580 (describing the state's targeted and often punitive intrusion into families of color).

“come within the regulatory and punitive arms of the state.”²⁷⁵ Mandatory arrest and prosecution policies have resulted in the increased arrest of abuse survivors, with women of color being more likely to be arrested and charged with serious crimes than white women.²⁷⁶ Additionally, most unpaid child support is owed by the very poor, with a nine-state study determining that 70% of child support arrears are owed by individuals with annual incomes of less than \$10,000.²⁷⁷ These parents are ordered by judges to pay a stunning average of 83% of their income in child support²⁷⁸ and are often trapped in cycles of debt, underemployment, unemployment, and imprisonment,²⁷⁹ even following the Supreme Court decision in *Turner v. Rogers*.²⁸⁰ Child support enforcement penalties fall disproportionately on persons of color,²⁸¹

275. Bridges, *supra* note 266, at 968.

276. Sack, *supra* note 38, 1680–81.

277. Sorensen et al., *supra* note 58, at 3; *see also* Elaine Sorensen & Chava Zibman, *A Look at Poor Dads Who Don't Pay Child Support*, in *ASSESSING THE NEW FEDERALISM* 13 (2000), <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/409646-A-Look-at-Poor-Dads-Who-Don-t-Pay-Child-Support.PDF> [<https://perma.cc/6QDW-YA36>] (citing the 1997 *National Survey of America's Families* that determined that 2.6 million nonresident fathers have incomes below the poverty line, or less than \$6,000 per year); *cf.* Leslie Kaufman, *Tough Child Support Laws Put Poor Fathers in a Bind*, N.Y. TIMES (Feb. 19, 2005), <http://query.nytimes.com/gst/fullpage.html?res=9402E7D9113AF93AA25751C0A9639C8B63> [<http://perma.cc/S3TW-2FJP>] (identifying that in 2003, fathers earning more than \$40,000 were responsible for less than 4% of the money owed in back child support nationally).

278. Sorensen et al., *supra* note 58, at 9.

279. Frances Robles & Shaila Dewan, *Skip Child Support. Go to Jail. Lose Job. Repeat.*, N.Y. TIMES (Apr. 20, 2015), https://www.nytimes.com/2015/04/20/us/skip-child-support-go-to-jail-lose-job-repeat.html?_r=0 [<http://perma.cc/FSP8-N7BE>].

280. 564 U.S. 431 (2011) (holding that courts are not supposed to jail defendants without finding they have the ability to pay).

The Child Support Recovery Act (“CSRA”), 18 U.S.C. § 228(a) (2012), which provides for federal criminal prosecution of parents who owe \$5,000 or more in child support obligations or have arrears dating one year or longer, remains in effect. Courts are split as to the constitutionality of the CSRA. *See* *United States v. Fasse*, 265 F.3d 475, 485–86 (6th Cir. 2001) (finding that Congress did not exceed its constitutional power in enacting CSRA); *United States v. Bongiorno*, 106 F.3d 1027, 1029 (1st Cir. 1997) (same); *United States v. Hampshire*, 95 F.3d 999, 1003–04 (10th Cir. 1996) (same). *But see* *United States v. Pillor*, 387 F. Supp. 2d 1053, 1057 (N.D. Cal. 2005) (holding that CSRA is unconstitutional).

281. Shaila Dewan, *Driver's License Suspensions Create Cycle of Debt*, N.Y. TIMES (Apr. 15, 2015), https://www.nytimes.com/2015/04/15/us/with-drivers-license-suspensions-a-cycle-of-debt.html?mtref=www.google.com&assetType=nyt_now [<http://perma.cc/V2ZR-RXWP>] (finding that of the Tennessee driver's license suspensions, African American drivers comprise over 40% of suspensions, although 16% of the state population is black).

consistent with racialized disparities that pervade the criminal justice system.²⁸²

The majority of parental abductions are perpetrated by white parents. Of the 203,900 children included in the most recent National Incidence Studies of Missing, Abducted, Runaway, and Thrownaway Children, 119,400 (or 59%) of the children were categorized as white, 23,900 (or 12%) were identified as black, and 40,600 (or 20%) were categorized as Hispanic.²⁸³ The state remains laissez-faire in the realm of parental abduction, in which offenders are most often white.²⁸⁴ In contrast, state systems display a “profound distrust of poor people and poor mothers,”²⁸⁵ and poor families of color are routinely aggressively regulated.²⁸⁶

Finally, we are socialized to believe in the danger that lurks outside of the home and not to think of harm as occurring within a family or in intimate relationships. The “specter of violence at the hands of a stranger” dominates our construction of crime and is what people fear.²⁸⁷ Although violence by an intimate partner occurs much more commonly than stranger violence, research shows that people believe they are significantly more likely to be badly hurt or shot by a stranger than hit by their intimate partner.²⁸⁸ Similarly, parental abduction is not

282. See generally DAVID COLE, NO EQUAL JUSTICE: RACE AND CLASS IN THE AMERICAN CRIMINAL JUSTICE SYSTEM (1999) (detailing fundamental inequalities across the criminal justice system); Jamie J. Fader et al., *The Color of Juvenile Justice: Racial Disparities in Dispositional Decisions*, 44 SOC. SCI. RES. 126 (2014) (studying court actors’ racialized treatment of juvenile offenders and finding that court actors attribute greater blame and less potential to reform to non-white youth); Besiki L. Kutateladze et al., *Cumulative Disadvantage: Examining Racial and Ethnic Disparity in Prosecution and Sentencing*, 52 CRIMINOLOGY 514 (2014) (identifying that black and Latino defendants are more likely than white defendants to be detained and incarcerated, and discussing racial bias and cumulative disadvantage in the criminal justice system).

283. Hammer et al., *supra* note 22, at 5 (additionally noting that 8% of children (16,200) were categorized as “other,” and no information about race or ethnicity was available for 3800 children (2%)).

284. *Id.*

285. Bridges, *supra* note 266, at 968.

286. See *supra* notes 273–82.

287. U.S. PRESIDENT’S COMM’N ON LAW ENF’T & ADMIN. OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY 52–53 (1967) (“[T]he fear of crimes of violence is not a simple fear of injury or death or even of all crimes of violence, but, at bottom, a fear of strangers.”); Hessick, *supra* note 226, at 345–46; see also Leonore M.J. Simon, *Sex Offender Legislation and the Antitherapeutic Effects on Victims*, 41 ARIZ. L. REV. 485, 487 (1999) (“The fear of the stranger fuels the majority of criminal legislation . . .”).

288. *Health Policy*, POLLINGREPORT.COM, <http://www.pollingreport.com/health.htm> [http://perma.cc/3HCP-8HY6].

conceptualized as an area for concern. After all, what safer place for a child than with his or her parent?

Because state actors do not view parental abduction as a crime, they do not see the need to act. Child support nonpayment and domestic violence have been pitched as crimes against the state, so the state takes interest and has created mechanisms for immediate, automatic action.²⁸⁹ While police typically pursue nonfamily abductions aggressively, for parental abductions, left-behind parents are typically dismayed by the lack of police response.²⁹⁰ Contrary to enacted laws, parental abduction continues to be treated as a private family matter.

V. FORESTALLING THE ULTIMATE ABUSE

Certain state actions are desired and needed, whereas others create more harm and dissuade individuals from seeking help, such as incarcerating abuse survivors for failing to testify for the state or charging abused individuals with “failure to protect.” Currently, negative, damaging state enforcement is preventing positive, helpful state intervention from occurring in many arenas. Part V identifies a vision for how appropriate state intervention could occur.

A. *Judicial Intervention*

Approximately half of reported parental abductions occur during a court-ordered visitation between the child and abducting parent,²⁹¹ which means that these families are already court-involved. Because histories of violence and threats of abduction commonly precede parental abduction, judges presented with these facts could enter more restrictive visitation or custody orders, which would prevent many abductions. In a survey of almost 100 parents whose children had been abducted internationally by the other parent, prior to the abduction, 80% of the abductors had threatened the left-behind parent that they would never see their children again, a majority of the abductors had threatened to kill the left-behind parent, and 20% of abductors had threatened the life

289. *Supra* Part I.

290. COLLINS ET AL., *supra* note 167, at 6–7.

291. Chiancone et al., *supra* note 99, at 5; *see also* Hammer et al., *supra* note 22, at 5–6 (finding that 63% of family abductions begin under lawful circumstances when the child is lawfully with the abducting parent for visitation); Janvier et al., *supra* note 70, at 7 (reporting that in 41% of domestic abductions and 42% of international abductions in one survey, the kidnapping occurred during visitation with the non-custodial parent. In half of these cases, the abductor made prior threats of kidnapping).

of the abducted child.²⁹² Based on the threats, over half of the left-behind parents had attempted to prevent abduction by seeking supervised visitation for the other parent, a custody order prohibiting the child's removal from the jurisdiction, or denial of or restrictions on passports.²⁹³ In a national study of sixty-five parents whose children were abducted domestically or internationally by the other parent, half of the abductors had previously threatened to abduct the children.²⁹⁴ When the threatened parents reported the threats of abduction and their resultant concerns to law enforcement and judges, the vast majority of law enforcement and judicial officers were unresponsive.²⁹⁵ Other potentially responsive groups, such as the U.S. Department of State, social service agencies, immigration officials, and clergy, were also viewed by parents who attempted to utilize these services as generally not helpful.²⁹⁶

Judges routinely receive information about risk factors for abduction and are in a position to order preventive relief in cases with prior threats or a history of violence or abduction. California's abduction prevention statute can be considered a model for other states. The Synclair-Cannon Child Abduction Prevention Act of 2002 requires courts to make jurisdictional findings in every custody or visitation order, to identify specific abduction risk factors that were derived from a series of studies,²⁹⁷ to make findings about abduction risk and obstacles to recovery, and to provide abduction-prevention orders.²⁹⁸ Some other

292. Chiancone et al., *supra* note 99, at 6.

293. *Id.*

294. Janvier et al., *supra* note 70, at 3–4, 7 (finding prior threats of abduction in nearly half of the parentally abducted cases studied and noting that 42% of respondents had restraining orders and less than one-quarter had bonds, and recommending that judges issue more restraining orders and bonds to prevent potential cases of parental abduction); *see also* Greif & Hegar, *Parents Who Abduct*, *supra* note 81, at 284 (finding that almost half of parental abductors had conveyed their intentions by making prior threats of abduction).

295. Janvier et al., *supra* note 70, at 4 (68% of left-behind parents in international abductions characterized responses from local police as unhelpful).

296. *Id.*

297. CAL. FAM. CODE § 3048(b)(1) (2016).

Acts of preparation that may indicate intentions to parentally abduct a child include visiting the destination country, having relatives or friends from the destination country visit to assist with the abduction, liquidating assets, closing bank accounts, applying for a visa or passport for the child, selling a home or ending a lease, destroying legal documents or records, and gathering documents related to the child, such as the birth certificate, medical records, and school records. *See* Chiancone et al., *supra* note 99, at 5–6; Johnston & Girdner, *supra* note 107, at 396.

298. CAL. FAM. CODE § 3048(b)(1) (“In cases in which the court becomes aware of facts which may indicate that there is a risk of abduction of a child, the court shall, either on its own motion or at the request of a party, determine whether measures are needed to prevent the abduction of the child by one parent. To make that determination, the court shall consider the risk of abduction of the

states have adopted versions of the Uniform Child Abduction Prevention Act (“UCAPA”), which requires courts to issue an abduction prevention order upon finding a “credible risk” of abduction,²⁹⁹ or their own abduction prevention statutes.³⁰⁰

Parental abductions that occur during visitation almost always happen during unsupervised visitation, but past threats of abduction, histories of domestic violence, or other risk factors provide grounds to order supervised visitation, and courts should order such protections more frequently.³⁰¹ If circumstances do not appear to necessitate supervision, yet there are some concerns, judges can prohibit overnight visitation to reduce flight risk. Some state statutes explicitly permit judges to specify that the child cannot be removed from a geographic area—whether the county, several-county area, or state—without authorization by the other

child, obstacles to location, recovery and return if the child is abducted, and potential harm to the child if he or she is abducted.”); *cf.* TEX. FAM. CODE ANN. § 153.501 (West 2016) (“In a suit, if credible evidence is presented to the court indicating a potential risk of the international abduction of a child by a parent of the child, the court, on its own motion or at the request of a party to the suit, shall determine . . . whether it is necessary for the court to take one or more of the measures described by Section . . . to protect the child from the risk of abduction by the parent.”).

299. UNIF. CHILD ABDUCT. PREVENT. ACT § 8(b) (UNIF. LAW COMM’N 2006) (“If, at a hearing on a petition under this [act] or on the court’s own motion, the court after reviewing the evidence finds a *credible risk* of abduction of the child, the court shall enter an abduction prevention order.”); *see also* Patricia M. Hoff, “UU” UCAPA: *Understanding and Using UCAPA to Prevent Child Abduction*, 41 FAM. L.Q. 1, 12–13 n.53 (2007).

300. *See, e.g.*, ALA. CODE §§ 30-3C-1–30-3C-13 (2016); ARK. STAT. ANN. §§ 9-13-401–9-13-407 (2016); CAL. FAM. CODE § 3048; COLO. REV. STAT. §§ 14-13.5-101–14-13.5-112 (2016); D.C. CODE §§ 16-4604.01–16.4604.10 (2016); FLA. STAT. § 61.45 (2016); KAN. STAT. ANN. §§ 38-13a01–38-13a01 (2016); LA. STAT. ANN. §§ 13:1851–13:1862 (2016); MISS. CODE ANN. §§ 93-29-1–93-29-23 (2016); NEB. REV. STAT. §§ 43-3901–43-3912 (2016); NEV. REV. STAT. §§ 125D.010–125D.230 (2016); OR. REV. STAT. § 109.035 (2016); S.D. CODIFIED LAWS §§ 26-18-1–26-18-12 (2016); TENN. CODE ANN. §§ 36-6-601–36-6-612 (2016); TEX. FAM. CODE ANN. §§ 153.501–153.503; UTAH CODE ANN. §§ 78B-16-101–78B-16-112 (West 2016).

301. *See, e.g.*, ARIZ. REV. STAT. ANN. § 25-403.03(F) (2016); DEL. CODE ANN. tit. 13, § 705A (2016); LA. STAT. ANN. § 9:364(C); MD. CODE ANN., FAM. LAW § 9-101 (2016); N.H. DOM. VIOLENCE PROTOCOL 16-4 (2016); TEX. FAM. CODE ANN. § 153.004(e); WASH. REV. CODE § 26.10.160 (2016); *see also* Johnston & Girdner, *supra* note 107, at 405 (proposing that courts utilize more restrictive custody measures to prevent possible abductions in certain circumstances: “(1) when the risks for abduction are higher as indicated by prior custody violations, clear evidence of plans to abduct, and overt threats to take the child [and] (2) when obstacles to the location and return of the child are greater, as they are from uncooperative jurisdictions in some states and abroad, especially in countries not party to the Hague Convention”); Nancy Ver Steegh, *Differentiating Types of Domestic Violence: Implications for Child Custody*, 65 LA. L. REV. 1379, 1411, 1427 (2005) (stating, “[t]he American Law Institute recommends that in cases involving domestic violence, the court ‘should impose limits that are reasonably calculated to protect the child, child’s parent, or other member of the household from harm.’ This includes reduced and supervised visitation,” and recommending that parents who commit “intimate terrorism” be restricted to supervised visitation).

parent or judge.³⁰² Judges can order a parent who seems likely to commit abduction to post a bond that would be released to the left-behind parent if an abduction occurs.³⁰³ The monetary amount obviously does not guarantee the prevention of abduction and it cannot compensate for the loss of a child,³⁰⁴ but it might act as a deterrent to a parent inclined to abduct a child, prompt greater law enforcement attention to the case, and cover the expense of a private investigator and attorney. Parents can be ordered to surrender children's passports—a measure that is most effective when the parents and children do not have dual citizenship—and judges can prevent the issuance of a child's passport to the threatening parent.³⁰⁵ Finally, if a parent at risk for abduction is permitted to travel to another country with the child, a United States judge could require the parent to obtain an identical order from the foreign court that mirrors the custody provisions ordered by the American court.³⁰⁶ This can be effective when the other country will enforce and decline to modify the mirror order.

Left-behind parents and courts may not be aware that Section 9 of UCAPA permits courts to issue a Section 9 warrant pre- or post-custody decree based on allegations in the parent's UCAPA petition.³⁰⁷ This section also authorizes courts to search state and federal databases regarding histories of domestic violence, stalking, child abuse, or neglect.³⁰⁸

302. See, e.g., CAL. FAM. CODE § 3048(b)(2).

303. See, e.g., CAL. FAM. CODE § 3048(b)(2)(B); COLO. REV. STAT. § 14-13.5-108(f)(4)(b); TEX. FAM. CODE ANN. § 153.503(6); see also *Tischendorf v. Tischendorf*, 321 N.W.2d 405, 412 (Minn. 1982) (remanding to the lower court in part to increase the amount of bond imposed against the non-custodial parent above the originally ordered \$10,000 as a condition for the non-custodial parent to take the child out of the country); *Dennis W. v. Alice W.*, 579 N.Y.S.2d 154 (N.Y. App. Div. 1992) (affirming the trial court's order directing the father to establish a \$15,000 escrow account to ensure the prompt return of the children to their mother following visitation, in a case in which the father had fled the country with the youngest child for multiple months); *Rayford v. Rayford*, 456 So.2d 833 (Ala. Civ. App. 1984) (affirming a trial court order requiring the noncustodial father to post \$5,000 bond to insure his compliance with visitation orders. The father had previously violated court orders and concealed the parties' children for three years); Hoff, *supra* note 299, at 15 (suggesting the implementation of a bond against a traveling parent as an example of a preventative measure allowed under Section 8 of UCAPA).

304. Maryl Sattler, *The Problem of Parental Relocation: Closing the Loophole in the Law of International Child Abduction*, 67 WASH. & LEE L. REV. 1709, 1723 (2010) ("Many parents would give up large sums of money to gain complete control of their children.").

305. See, e.g., MICH. COMP. LAWS § 722.1528(3)(d) (2016); N.M. STAT. ANN. § 40-10C-8(C)(4) (2016); 18 PA. CONS. STAT. § 5208(c)(4) (2016); UTAH CODE ANN. § 78B-16-108(3)(d).

306. Chiancone et al., *supra* note 99, at 14.

307. UNIF. CHILD ABDUCT. PREVENT. ACT § 9 (UNIF. LAW COMM'N 2006).

308. *Id.*

Numerous legal provisions exist to carry out the investigation of abduction, issuance of necessary court orders, enforcement of orders, and prosecution for custodial interference or child abduction,³⁰⁹ although laws could be improved. An initial challenge is to effectuate these laws, and both judicial orders and the enforcement of orders are key.

Areas for reform include expanding criteria for the issuance of AMBER Alerts, which are wireless emergency alerts that are issued when an abducted child is in “imminent danger of serious bodily injury or death.”³¹⁰ AMBER Alert guidelines reflect the belief that parental abduction is not cause for heightened concern, stating, “[c]learly, stranger abductions are the most dangerous for children and thus are primary to the mission of an AMBER Alert.”³¹¹ Law enforcement officers have complete discretion as to whether an abduction warrants the issuance of an AMBER Alert.³¹² With many parental abductions originating during lawful visitation and law enforcement officers already disinclined to view parental abduction as a crime, left-behind parents have difficulty prompting law enforcement to respond. If they eventually succeed in generating a police report, officers typically do not categorize the missing children as facing imminent danger.³¹³

Current statutory requirements impose burdens on the left-behind parent’s access to legal remedies. In states that require a formal custody order before parental abduction is actionable,³¹⁴ receiving such an order

309. *See, e.g.*, UNIF. CHILD CUSTODY JUR. & ENF’T ACT § 315 (NAT’L CONF. OF COMM’RS ON UNIF. STATE LAWS 1999) (authorizing prosecutors to investigate and prosecute custodial interference and to recover the missing child through civil or criminal mechanisms); CAL. FAM. CODE §§ 3130–3135 (West 2016) (regarding the District Attorney’s duties and options in locating a missing child).

310. *Guidelines for Issuing AMBER Alerts*, U.S. DEP’T OF JUST., <http://www.amberalert.gov/guidelines.htm> [<http://perma.cc/8J48-ZQN8>].

311. *Id.*

312. *See id.*

313. *See* Hammer et al., *supra* note 22, at 9 (“In contrast to the image created by the word ‘abduction,’ most of the children abducted by a family member were already in the lawful custody of the perpetrator when the episode started.”).

314. *See, e.g.*, ARIZ. REV. STAT. ANN. §§ 13-1302(A)(1), 13-1305 (2016); ARK. CODE ANN. § 5-26-502 (2016); DEL. CODE ANN. tit. 11, § 785(2) (2016); 720 ILL. COMP. STAT. §§ 5/10-5(b), 5/10-5.5(b) (2016); IND. CODE § 35-42-3-4 (Sec. 4(a)) (2016); IOWA CODE § 710.6 (2016); LA. STAT. ANN. § 14:45.1(A) (2016); MINN. STAT. § 609.26(1) (2016); MISS. CODE ANN. § 97-3-51(2) (2016); MO. REV. STAT. § 565.150(1) (2016); NEV. REV. STAT. § 200.359(1) (2016); N.M. STAT. ANN. §§ 30-4-4(B), (C) (2016); N.C. GEN. STAT. § 14-320.1 (2016); N.D. CENT. CODE § 12.1-18-05 (2016); 11 R.I. GEN. LAWS § 11-26-1.1(a) (2016); S.C. CODE ANN. § 16-17-495(A)(1) (2016); S.D. CODIFIED LAWS § 22-19-9 (2016); TEX. PENAL CODE ANN. §§ 25.03(a)(1), (a)(2) (West 2016); UTAH CODE ANN. §§ 76-5-303 (1), (2) (West 2016); VA. CODE ANN. § 18.2-49.1(A) (2016); W. VA. CODE § 61-2-14d (2016).

may be impossible if the parent is unable to obtain personal jurisdiction to establish paternity over the parent who has fled.³¹⁵ Furthermore, the family court process can be lengthy, and the success of the abduction is often solidified during the time involved in obtaining a custody order.³¹⁶ Most individuals are unrepresented by counsel in family law matters and are not able to navigate the court system in a swift and efficient manner, which presents further challenges to a victimized parent.³¹⁷

315. See *Ex Parte* W.C.R., 98 So.3d 1144 (Ala. Civ. App. 2012) (holding that the court does not have personal jurisdiction over an out-of-state father in a paternity action); *Hickerson v. Finchum*, No. 02A01-9511-JV-00249, 1997 WL 21189 (Tenn. Ct. App. 1997) (dismissing a paternity action due to lack of personal jurisdiction over the father); Jessica Miles, *We Are Never Ever Getting Back Together: Domestic Violence Victims, Defendants, and Due Process*, 35 CARDOZO L. REV. 141, 171 (2013) (“In the plurality opinion in *May v. Anderson*, the Court seemed to reject the status exception [in the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)] and require personal jurisdiction in custody cases in order for judgments to be entitled to full faith and credit.”); Michael G. Ruppert & Joseph W. Ruppert, *Recent Developments: Indiana Family Law*, 38 IND. L. REV. 1085, 1100 (2005) (“In *Paternity of A.B.*, Mother filed a petition to establish paternity, child support, and parenting time in Indiana The trial court determined that it lacked personal jurisdiction over the alleged Father and dismissed Mother’s petition.”); Ellen K. Solender, *Family Law: Parent and Child*, 40 SW. L.J. 53, 57 (1986) (“[A] mother tried twice in the New York courts to establish paternity, but was unsuccessful each time because the New York courts lacked personal jurisdiction over the alleged father.”).

316. See Goelman, *supra* note 249, at 113 (“Under domestic relations statutes, it may take an average of six months to one year to issue a permanent custody order”); Pamela A. Gordon, *Child Custody: The Right Choice at the Right Price*, 26 COLO. LAW. 67, 67 (1997) (“If custody is litigated within a highly adversarial context, the damage is magnified. Long delays for court docket time prolong the agony for parents and children.”); Merle H. Weiner, *International Child Abduction and the Escape from Domestic Violence*, 69 FORDHAM L. REV. 593, 626 (2000) (identifying that domestic violence victims may fear that involving the legal process will cause imminent danger to the victim and child).

317. ELKINS FAMILY LAW TASK FORCE, FINAL REPORT AND RECOMMENDATIONS 7 (2010) (“[M]ore than 75 percent of family law cases . . . have at least one self-represented party.”); BONNIE ROSE HOUGH, DESCRIPTION OF CALIFORNIA COURTS’ PROGRAMS FOR SELF-REPRESENTED LITIGANTS 47–48 (Jun. 2003), <http://www.courts.ca.gov/partners/documents/harvard.pdf> [<https://perma.cc/6QXE-GPVD>] (finding that litigants in domestic violence cases in California are unrepresented 90% of the time); JANE C. MURPHY & ROBERT RUBINSON, FAMILY MEDIATION: THEORY AND PRACTICE 161 (2009) (reporting that approximately 80% of family law litigants who technically qualify as indigent and are eligible for free legal assistance are unable to obtain representation); Deborah J. Chase, *Pro Se Justice and Unified Family Courts*, 37 FAM. L.Q. 403, 420 (2003) (“Even when there has been no response filed, a default or uncontested judgment may be very difficult for a pro se litigant to accomplish.”); Jona Goldschmidt, *The Pro Se Litigant’s Struggle for Access to Justice*, 40 FAM. CT. REV. 36, 36–37 (2002) (“The surge in pro se litigation, particularly in the family courts of every common law country, is reported in official reports and anecdotally by judges and court managers and in systematic studies The result is not unexpected: The represented party usually wins.”); Margo Lindauer, *Damned If You Do, Damned If You Don’t: Why Multi-Court-Involved Battered Mothers Just Can’t Win*, 20 AM. U. J. GENDER SOC. POL’Y & L. 797, 808 (2012) (identifying that the number of pro se litigants in family law cases is rapidly increasing); cf. Linda F. Smith & Barry Stratford, *DIY in Family Law: A Case Study of a Brief Advice Clinic for Pro Se Litigants*, 14 J.L. & FAM. STUD. 167, 174 (2012) (discussing how, on average, parties with lawyers increased their odds of winning by 72% as compared with pro se

B. Training, Response, and Oversight

Training across all areas of the justice system on the interrelationship of parental abduction and family violence is warranted and could be included in a comprehensive, inclusive curriculum on child endangerment and offender and victim behaviors.³¹⁸ Law enforcement, prosecutors, and judges are often unaware of the laws in place, with many systems' actors expressing the lack of awareness that parental abduction is a crime.³¹⁹

Law enforcement personnel are first responders, as left-behind parents first report their child missing to the police, and many of these unrepresented, left-behind parents turn to law enforcement for guidance on the law. When police provide misinformation, such as stating that a parent needs to first obtain a divorce before the police can take a child abduction report,³²⁰ the pro se individual may rely on the officer's proclamation of the law. When a parent retains a child beyond that parent's visitation time, if police do respond, they are more likely to direct parents to make a "visitation violation" report to submit to family court than to make an actual police report.³²¹ Custodial parents are left to engage in self-help, which can prompt violence by the retaining parent against—or increase the risk that the offending parent will flee with—the child.³²² Training is needed so that police officers have an accurate

parties); Michele N. Struffolino, *Taking Limited Representation to the Limits: The Efficacy of Using Unbundled Legal Services in Domestic-Relations Matters Involving Litigation*, 2 ST. MARY'S J. LEGAL MALPRACTICE & ETHICS 166, 197 (2012) (identifying how the pro se phenomenon in family law produces results that are "devastating to domestic-relations litigants").

318. See MICHAEL L. YODER & WAYNE R. KOKA, INTERDICTION FOR THE PROTECTION OF CHILDREN 1 (2015) (recommending a training curriculum that includes knowledge of "physical abuse and neglect, sexual assault, sexual molestation, Internet sexual exploitation, dangers posed by sex travelers, grooming methods, child pornography, and child trafficking" regarding abducted children).

319. *Supra* section III.B.

320. One of my clients received this advice.

321. See, e.g., *Child Custody and Visitation Frequently Asked Questions*, SUPERIOR CT. OF CAL., COUNTY OF SAN DIEGO, http://www.sdcourt.ca.gov/portal/page?_pageid=55,1524383&_dad=portal&_schema=PORTAL [http://perma.cc/2KND-BPPB] (explaining how parents may file visitation violations without contacting law enforcement). But see Celia Guzaldo Gamrath, *Visitation Abuse v Unlawful Visitation Interference—Is There Comfort for Noncustodial Parents?*, 91 ILL. B.J. 450, 450 (2003) ("[T]here is no mechanism for immediate police enforcement of a visitation order under the criminal visitation interference statute.").

322. Grasso et al., *supra* note 166, at 11.

understanding of the law, are aware of their obligations, and provide correct information to those seeking police help.³²³

Certainly, temporary, minor violations of a visitation order typically do not merit criminal handling, such as a parent returning a child twenty minutes late.³²⁴ Uncritical, aggressive handling of these situations could create trauma for the child. However, in most cases of serious parental abduction, the abducting parent has perpetrated domestic violence or has threatened to take the child.³²⁵ Police thus need to listen more acutely to the left-behind parent for warning signs of parental abduction. In all cases of parental abduction complaints, police should file reports, as mandated by state and federal laws and policies.³²⁶ Time truly is of the essence, so the current practices of delaying response and refusing to report complaints of parental abduction should cease.

Both law enforcement and prosecutors' offices typically lack policies for responding appropriately to parental abduction,³²⁷ although model protocols have been promulgated.³²⁸ These offices should promptly adopt policies and train their agents on parental abduction at both the outset of agents' duties and through routine in-service trainings to reinforce procedures and their underlying value.³²⁹ To overcome resistance to intervening in historically private issues of parental abduction, training curriculum should include information on the harms of parental abduction, particularly when perpetrated by domestic abusers; the negative effects of officers' and prosecutors' failure to respond; and the positive difference that immediate intervention makes, along with giving law enforcement tools to properly respond.

The immense implementation gap between officers' actions and police policies and laws that direct officers to act can be attributed to

323. See David A. Klinger, *Police Training as an Instrument of Accountability*, 32 ST. LOUIS U. PUB. L. REV. 111, 120 (2012) (noting that there is very little empirical research on the effectiveness of training for law enforcement and scant research that examines the impact of training on police officers' actions in the field, but that support for training exists in social theory).

324. Michigan uniquely makes it permissible for a parent to conceal a child from the other parent for up to twenty-four hours. MICH. COMP. LAWS § 750.350a (2016).

325. *Supra* sections II.B and V.A.

326. *Supra* section III.A.

327. Grasso et al., *supra* note 166, at 4.

328. THE NAT'L CTR. FOR MISSING & EXPLOITED CHILDREN, LAW-ENFORCEMENT POLICY AND PROCEDURES FOR REPORTS OF MISSING AND ABDUCTED CHILDREN (2011), http://www.missingkids.com/en_US/documents/Model_Policy_Child.pdf [<https://perma.cc/U9H7-6QCT>].

329. See Samuel Walker, *Institutionalizing Police Accountability Reforms: The Problem of Making Police Reforms Endure*, 32 ST. LOUIS U. PUB. L. REV. 57, 81–83 (2012).

social, cultural, political, and economic factors.³³⁰ Police departments have not been pressured to implement parental abduction protocol and procedures, so laws remain only on the books.³³¹ The family dynamics at play and the fact that a portion of abduction cases resolve themselves through the passage of time can lead police to feel that their interventions are merely “social work,” rather than “real police work.”³³² Considering the example of domestic violence, mandatory policy reforms “did not speak to the pervasive view among police officers that domestic violence was acceptable, private, or the woman’s fault,” and police and prosecutors implemented and enforced policies in ways that actually punished victims for seeking state intervention.³³³ Reforms aimed at shifting law enforcement subculture are therefore necessary to enhance responses to domestically abusive abductors and other situations of parental abduction.

Many judges are also unfamiliar with parental abduction statutes. Although federal laws prevent forum shopping and the inconsistent entry of child custody orders, “federal officials say up to 40% of the judges handling custody cases are unfamiliar with those laws, and many do not check for previous custody orders. Even if made aware, they often override another state’s custody ruling.”³³⁴ Because of the interrelationship among domestic violence, child abuse, and parental abduction, specialized training on abduction should be added to existing training and guidelines.

Trainings should include modules on the prevalence of abusive abductors and how parental abduction can be a domestic violence abuser’s ultimate act of abuse. Systems’ actors also should receive training about how some abuse survivors flee with their children in a quest to escape family violence.³³⁵ Further education about the

330. See CTR. FOR INT’L PRIVATE ENTER. & GLOBAL INTEGRITY, IMPROVING PUBLIC GOVERNANCE: CLOSING THE IMPLEMENTATION GAP BETWEEN LAW AND PRACTICE 14 (2012) (identifying an “implementation gap” to be the difference between laws on the books and laws in practice, and identifying various spheres that contribute to such gaps).

331. *Id.* at 15–16 (finding that even when laws aimed at police reform are passed, “the attention (or lack thereof) it receives from interest groups, civil society, and the citizenry at large is a key determinant of whether and how that law is carried out”).

332. Wesley G. Skogan, *Why Reforms Fail*, 18 POLICING & SOC’Y 23, 28 (2008).

333. Gruber, *supra* note 259, at 804.

334. Creighton, *supra* note 12, at 73.

335. See Merle H. Weiner, *The Potential and Challenges of Transnational Litigation for Feminists Concerned About Domestic Violence Here and Abroad*, 11 AM. U. J. GENDER SOC. POL’Y & L. 749, 785 (2003) (identifying that abuse victims who flee with their children are challenged to answer why they did not remain in the child’s habitual residence to litigate custody).

rationality of abuse survivors' actions, including initially remaining in an abusive relationship and later departing with the children, is warranted because courts currently penalize abuse survivors for staying and leaving.³³⁶ Law enforcement, prosecutors, and judges need training in how to distinguish between the very different motives and situations of abusive abductors and survivor abductors.

Finally, police departments must begin recording, collecting, and sharing data about complaints of parental abduction, primarily to expeditiously resolve cases, but also to better manage and evaluate police responsiveness.³³⁷ Independent oversight committees could also ensure the implementation of law enforcement accountability policies. In the parental abduction context, these committees could receive complaints from left-behind parents who did not receive adequate police help and they would provide a mechanism for ongoing monitoring of the implementation of and compliance with reforms.³³⁸

C. *Nuanced Responses and Further Law Reform*

The criminalization of domestic violence can serve as a cautionary tale for other areas concerning the family.³³⁹ When interventions become

336. See *id.* at 783 (describing how “domestic violence victims who abduct encounter a double bias against them: they are both parents who abduct and battered women. Mothers who suffer domestic violence and who abduct are literally ‘damned if they do and damned if they don’t.’ They are blamed for abducting because that harms children and they are blamed for staying because that harms children. Since many women stay for a while before they abduct, they face society’s and the courts’ most severe condemnation.”). This double bind also highlights the need for changes in mandatory reporting laws and governing custody standards.

337. Matthew R. Segal & Carol Rose, *Race, Technology, And Policing*, 59 BOS. B.J. 27, 29 (2015) (“Collecting and analyzing data—as a routine, consistent, accepted professional practice—can identify ‘problem areas’ and serve as a foundation for fair policing practices. The premise behind all of these [reforms] is that police departments cannot manage what they do not measure.”).

338. Walker, *supra* note 329, at 81–89 (identifying that independent citizen oversight of law enforcement agencies can be crucial to implementing policing reforms, as “citizen oversight can provide a form of continuous auditing and monitoring that is likely to ensure that police departments continue to maintain accountability-related reforms” and also recommending police auditors because of their ability to broadly investigate and publicly report their findings); see also David M. Jaros, *Preempting the Police*, 55 B.C. L. REV. 1149, 1156 (2014) (discussing how “independent agencies, such as civilian complaint review boards, have been moderately successful in identifying and punishing police conduct that violates accepted standards of policing”).

339. Bailey, *supra* note 2, at 1785–86 (noting that although feminists advocated for state intervention, they did not consider that many victims did not engage the state precisely to protect their privacy); Laurie S. Kohn, *The Justice System and Domestic Violence: Engaging the Case but Divorcing the Victim*, 32 N.Y.U. REV. L. & SOC. CHANGE 191, 194 (2008) (arguing that having the state consider domestic violence to be a crime like any other crime compromises the agency of victims in the system).

mandatory and the victimized individual's perspective and wishes are negated, this denies the victimized person agency and voice about the relational, safety, and economic harms of state intervention. While most left-behind parents desire police help and prosecution, it bears emphasizing that others fear that involving the criminal justice system will create further harm or make it more difficult to locate the missing child. With the enactment of laws against parental kidnapping, abductors who previously would have sought legal custody in another jurisdiction may be driven underground and engage in elaborate ruses to change their and their children's identities.³⁴⁰ Some left-behind parents attempt to engage in self-help rather than calling the police because they fear their child will be harmed to a greater degree with police involvement, they do not believe law enforcement will help them, or they have had unsatisfactory prior experiences with police response to similar prior occurrences.³⁴¹

When child abduction laws were being enacted during the 1980s, there was not recognition of the connection between domestic violence and abduction or the possibility that someone experiencing domestic violence might need to escape abuse with the children. For situations in which a parent flees with a child for the child or parent's protection from an abusive family member, affirmative defenses should be available and utilized.³⁴²

In response to domestic violence criminalization, scholars have similarly called for more nuanced interventions. Amy M. Zelcer, *Battling Domestic Violence: Replacing Mandatory Arrest Laws with a Trifecta of Preferential Arrest, Officer Education, and Batterer Treatment Programs*, 51 AM. CRIM. L. REV. 541, 541 (2014).

340. Rebecca L. Hegar, *Parental Kidnapping and U.S. Social Policy*, 64 SOC. SERV. REV. 407, 415 (1990).

341. Hammer et al., *supra* note 22, at 7.

342. See e.g., ALA. CODE § 13A-6-45(b) (2016); ALASKA STAT. §§ 11.41.300(b), 11.81.320 (2016); ARIZ. REV. STAT. ANN. § 13-1302(c) (2016); ARK. CODE ANN. § 5-26-501(c) (2016); CAL. PENAL CODE §§ 278.7(a), (b) (West 2016); COLO. REV. STAT. § 18-3-304(c) (2016); DEL. CODE ANN. tit. 11, § 784 (2016); D.C. CODE §§ 16-1023 (a), (b) (2016); FLA. STAT. § 787.03(4) (2016); GA. CODE ANN. § 16-5-45(b)(1)(B) (2016); HAW. REV. STAT. § 707-726(2) (2016); IDAHO CODE § 18-4506(2) (2016); 720 ILL. COMP. STAT. §§ 5/10-5(c), 5/10-5.5(g) (2016); IND. CODE § 35-42-3-4(f) (2016); KY. REV. STAT. ANN. §§ 509.060, 509.070(2) (West 2016); ME. STAT. tit. 17-A, § 302(2) (2016); MD. CODE ANN., FAM. LAW § 9-306(b) (West 2016); MINN. STAT. § 609.26 (Subd. 2) (2016); MISS. CODE ANN. § 750.350(a)(7) (2016); MO. REV. STAT. § 565.160 (2016); MONT. CODE ANN. § 45-5-633 (2016); NEV. REV. STAT. § 200.359(11) (2016); N.H. REV. STAT. ANN. § 633:4(III) (2016); N.J. STAT. § 2C:13-4(c) (West 2016); N.Y. PENAL LAW § 135.50 (McKinney 2016); N.D. CENT. CODE § 12.1-18-03(2) (2016); OHIO REV. CODE ANN. § 2919.23(C) (West 2016); OR. REV. STAT. § 163.225(2) (2016); 11 R.I. GEN. LAWS §§ 11-26-1.1(b), 11-26-1.2(b) (2016); S.D. CODIFIED LAWS § 22-19-11 (2016); TENN. CODE ANN. § 39-13-306(c) (2016); TEX. PENAL CODE ANN. §§ 25.03(c), (c-1), (c-2) (West 2016); UTAH CODE ANN. §§ 76-5-303(6), 76-5-305 (West 2016); VT. STAT. ANN. tit. 13, §§ 2451(c), 2406(b) (2016); WASH. REV. CODE

Alongside efforts to strengthen law enforcement and judicial responses to parental abduction, robust exemptions or defenses for parents who undertake good faith efforts to protect their children from harm are needed.³⁴³ Many states have adopted the affirmative defenses suggested in the International Parental Kidnapping Act.³⁴⁴ California's penal code, for example, states that the child abduction section does not apply to someone who, with a "good faith and reasonable belief," took, kept, withheld, or concealed a child to protect the child from "immediate bodily injury or emotional harm" from the other parent,³⁴⁵ or when the taking parent has experienced domestic violence from the other parent.³⁴⁶ To utilize these defenses, within ten days of the taking, the taking parent must file a report with the District Attorney's Office in the jurisdiction where the child originally resided that includes his or her identity, the child's current address, and the reason the child was taken and concealed, and must commence a custody proceeding within thirty days.³⁴⁷ However, many parents in distress who are seeking to protect their children from abuse will not know about these provisions, the tight timeframe in which they must act, or other terms they must satisfy. For example, in some states, the defense is not available to a parent who takes the child out of state.³⁴⁸

Significantly, several states provide exemptions to family violence survivors, explicitly stating that the parental abduction statute does not apply to a parent who removes a child to protect the child or the abused parent from "imminent physical harm"³⁴⁹ or if a parent "was fleeing an incident or pattern of domestic violence."³⁵⁰ Parents who flee to safety

§§ 9A.40.030(2), 9A.40.090(2) (2016); W. VA. CODE § 61-2-14d(c) (2016); WIS. STAT. § 948.31(4) (2016); WYO. STAT. ANN. § 6-2-204(c) (2016).

343. See Kreston, *supra* note 102, at 556–57 (stating that forum choices should consider that some affirmative defenses are more difficult to assert under state law than federal law); Weiner, *supra* note 316, at 601 (proposing recommendations for Hague Convention cases in the domestic violence context, recommending a complete defense to return for battered women who flee domestic violence with their children, and suggesting that abuse victims be allowed to litigate custody from the country to which they fled, with the return of the children stayed pending the outcome of the litigation).

344. 18 U.S.C. § 1204(c) (2012).

345. CAL. PENAL CODE § 278.7(a) (West 2016).

346. *Id.* § 278.7(b).

347. *Id.* § 278.7(c)–(d).

348. See, e.g., N.H. REV. STAT. ANN. § 633:4(IV) (2016); VT. STAT. ANN. tit. 13, § 2451(c) (2016).

349. D.C. CODE § 16-1023(a)(1)–(2) (2016).

350. 11 R.I. GEN. LAWS § 11-26-1.1(b)(3) (2016); see also MO. REV. STAT. §§ 565.153, 565.156 (2016); TEX. PENAL CODE ANN. § 25.03(c-2)(2) (West 2016).

should avoid arrest, prosecution, and sanction altogether under these statutes, which importantly differentiate the motives and situations of abuse survivors from abusive abductors.

Despite the existence of affirmative defenses and exemptions in the law, many abuse victims are not identified or protected under the defenses or exemptions.³⁵¹ Gender bias studies have shown that courts often penalize mothers who cross state lines with their children and judges refuse to exercise emergency jurisdiction in cases with documented histories of domestic violence.³⁵² Further measures to eradicate gender bias are warranted, and providing legal counsel to both parents in child abduction cases would greatly aid the resolution of matters and facilitate evidence of abuse being brought before the court in a timely manner, ultimately protecting children.³⁵³

For international abductions, the Hague Convention provides an affirmative defense and reason to deny the child's return to the original country when "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."³⁵⁴ Because "grave risk" and "intolerable harm" are not defined by the Convention, contracting states' courts are left to define these terms.³⁵⁵ Courts in the United States have determined that sexual abuse³⁵⁶ and physical abuse³⁵⁷ to the child qualify under the "grave risk exception." The Hague Convention does not mention

351. See Johnston et al., *Risk Factors*, *supra* note 95, at 5.

352. Goelman, *supra* note 249, at 167.

353. See Noah L. Browne, *Relevance and Fairness: Protecting the Rights of Domestic-Violence Victims and Left-Behind Fathers Under the Hague Convention on International Child Abduction*, 60 DUKE L.J. 1193, 1218 (2011) (discussing challenges left-behind parents face when attempting to litigate international child abduction cases in the United States); Weiner, *supra* note 335, at 794 (discussing the situation of battered women who flee with their children and the women's inability to obtain legal representation in Hague Convention cases).

354. Hague Convention on the Civil Aspects of International Child Abduction, Art. 13(b), Oct. 25, 1980, 1343 U.N.T.S. 49.

355. See Merle H. Weiner, *Half-Truths, Mistakes, and Embarrassments: The United States Goes to the Fifth Meeting of the Special Commission to Review the Operation of the Hague Convention on the Civil Aspects of International Child Abduction*, 2008 UTAH L. REV. 221, 284–85 (observing that U.S. courts frequently narrowly construe the Article 13(b) exception, which, "can render irrelevant the domestic violence perpetrated against an abductor").

356. Hague International Child Abduction Convention: Text and Legal Analysis, 51 Fed. Reg. 10494, 10510 (Mar. 26, 1996).

357. See *Ostevoll v. Ostevoll*, No. C-1-99-961, 2000 WL 1611123, at *17 (S.D. Ohio Aug. 16, 2000) (unpublished).

domestic violence,³⁵⁸ and U.S. courts are divided as to whether a child witnessing domestic violence qualifies as a grave risk of harm to the child, with some finding that the resulting psychological harm qualifies,³⁵⁹ while others determining that this harm does not rise to the requisite level of harm.³⁶⁰ Scholars and practitioners have proposed reforms to the Hague Convention in light of the needs of domestic violence survivors and their children.³⁶¹

There are noble arguments made in the wake of some mothers' abductions, but some abductions by women are just as pernicious as when fathers kidnap, and considerations of motivations and context should occur regardless of gender. Naturally, aggressive and uncritical state intervention does not provide the cure, and more nuanced approaches are needed across the areas discussed in this Article that take account of the victimized individual's wishes and actual threat of harm.

CONCLUSION

Whereas matters concerning the family were once held in a separate sphere apart from the reach of the law and the state refused to intervene even when the victimized individual sought help, family law has become increasingly criminalized. Examples of the hyper-regulation and

358. Hague Report, *supra* note 99, at 3; *see, e.g.*, EDITH PALMER, HAGUE CONVENTION ON INTERNATIONAL CHILD ABDUCTION: SWITZERLAND 331 (2004) (Switzerland has determined that domestic violence constitutes "grave risk").

359. *Blondin v. Dubois*, 78 F. Supp. 2d 283, 295 (S.D.N.Y. 2000); *Wright v. Gueriel*, Tribunal de grande instance [TGI] [ordinary court of original jurisdiction] Abbeville, Oct. 6, 1993, 506/931; *see also* James Alfieri, *Trauma, Recovery, and Transnational Child Abduction: Posttraumatic Stress Disorder as Psychological Harm Under the Hague Convention on the Civil Aspects of International Child Abduction*, 5 OR. REV. INT'L L. 40, 49 (2003) (arguing that posttraumatic stress disorder that results from witnessing domestic violence should constitute a grave risk of psychological harm under Article 13(b) of the Convention).

360. *Nunez-Escudero v. Tice-Menley*, 58 F.3d 374, 377 (8th Cir. 1995).

361. *See, e.g.*, Carol S. Bruch, *The Unmet Needs of Domestic Violence Victims and Their Children in Hague Child Abduction Convention Cases*, 38 FAM. L.Q. 529 (2004); Miranda Kaye, *The Hague Convention and the Flight from Domestic Violence: How Women and Children Are Being Returned by Coach and Four*, 13 INT'L J.L. POL'Y & FAM. 191 (1999); Sudha Shetty & Jeffrey L. Edleson, *Adult Domestic Violence in Cases of International Parental Child Abduction*, 11 VIOLENCE AGAINST WOMEN 115 (2005) (discussing the prevalence of domestic violence in parental abductions and case examples of battered mothers objecting to their children's return to abusive partners); Weiner, *supra* note 316, at 698–703 (highlighting problems applying the Hague Convention to primary caregivers, often women, who take their children across international borders to escape domestic violence, and making normative recommendations); Merle H. Weiner, *Strengthening Article 20*, 38 U.S.F. L. REV. 701 (2004) (recommending that the Hague Convention's Article 20 defense be strengthened to achieve more just results for domestic violence victims who flee their home countries with their children); Williams, *supra* note 108, at 83.

criminalization of the family are seen in the incarceration of abuse victims for failing to cooperate with the state's prosecution, contempt charges and jail sentences against non-custodial parents who have failed to meet child support obligations, the prosecution of parents whose children were in the home when they experienced domestic violence, and the mandatory criminal law responses to domestic violence. These exercises of state action and intervention are often contrary to a victimized parent's wishes, such as when the custodial parent does not want the other parent jailed for nonpayment of child support or when an abuse survivor believes criminal justice involvement will increase the abuse or carry other undesired consequences, such as employment and immigration consequences.

The pendulum, however, has not fully swung from a policy of nonintervention in the family to aggressive state responses, as areas remain in which individuals seek help but the state routinely refuses to respond. Paradoxically, it is the situations in which victims seek help and the state provides the only means of redress that the state fails to act.

Although state intervention is unwarranted and unwanted in some areas of the family, it is desperately needed to prevent and respond to abusive abductors.³⁶² Fortunately, laws and mechanisms can be implemented to prevent or expeditiously redress parental abductions, thereby saving abuse survivors and their children from the ultimate abuse. Indeed, possession is not nine-tenths of the law when it comes to abducted children.

362. See Morgan Lee Woolley, *Marital Rape: A Unique Blend of Domestic Violence and Non-Marital Rape Issues*, 18 HASTINGS WOMEN'S L.J. 269, 275 (2007) ("The problem is that law enforcement and the courts withhold protection when it is most crucially needed out of respect for family privacy.").

APPENDIX

Table 1:
State Statutes Criminalizing Parental Abduction

Jurisdiction	Formal custody order required for parental abduction to be actionable?	Maximum criminal penalties	Imminent harm defense available?
Alabama ALA. CODE § 13A-6-45 (2016)	No	Class C felony	No applicable statute
Alaska ALASKA STAT. § 11.41.320 (2016)	No	Class C felony if child is taken across state lines; class A misdemeanor if child stays within the state	No applicable statute
Arizona ARIZ. REV. STAT. ANN. § 13-1302 (2016)	No	Class 6 felony if child remains in state; Class 4 felony if child is taken out of state	ARIZ. REV. STAT. ANN. § 13-1302(C)
Arkansas ARK. CODE ANN. § 5-262-503 (2016)	Yes	If there is a formal custody order, penalty ranges from Class A misdemeanor to Class C felony	Yes, as a defense to Visitation Interference, not explicitly for Custodial Interference, ARK. CODE ANN. § 5-262-501(C)
California CAL. PENAL CODE § 278-278.5 (West 2016)	No	Up to 4 years imprisonment, \$10,000 fine, or both	CAL. PENAL CODE § 278-278.7
Colorado COLO. REV. STAT. § 18-3-304 (2016)	Yes	Class 5 felony	COLO. REV. STAT. § 18-3-304(3)

Jurisdiction	Formal custody order required for parental abduction to be actionable?	Maximum criminal penalties	Imminent harm defense available?
Connecticut CONN. GEN. STAT. § 53a-97 (2016)	No	Class D felony for First Degree Custodial Interference; class A misdemeanor if child is not endangered by the interference and is not taken across state lines	No applicable statute
Delaware DEL. CODE ANN. tit. 11, § 785 (2016)	No	Class G felony if child is taken across state lines; class A misdemeanor if child stays within the state	No applicable statute
District of Columbia D.C. CODE § 16-1022 (2016)	No	Felony if child is taken out of the District of Columbia; if child is concealed for less than 30 days, punishable by 6 months in jail, \$1,000 fine, or both; if child is concealed for more than 30 days, punishable by 1 year imprisonment, \$2,500 fine, or both; misdemeanor if child remains within the District of Columbia, punishable by \$250 fine, 240 hours community service, or both; also misdemeanor if child is released uninjured in a safe place before parent's arrest	D.C. CODE § 16-1023(A) (1)–(2)
Florida FLA. STAT. § 787.03 (2016)	No	Felony in the third degree	FLA. STAT. § 787.03(4)(A)

Jurisdiction	Formal custody order required for parental abduction to be actionable?	Maximum criminal penalties	Imminent harm defense available?
Georgia GA. CODE ANN. § 16-5-45 (2016)	No	Felony if child is taken out of state, with imprisonment from 1 to 5 years; misdemeanor for first 2 offenses if child stays within the state	No applicable statute
Hawaii HAW. REV. STAT. § 707-726 (2016)	No	Class C felony if child is taken out of state; misdemeanor if child remains in state	HAW. REV. STAT. § 707-726(2)
Idaho IDAHO CODE § 18-4506 (2016)	No	Not a felony if the child remained in the state and was returned unharmed before abducting parent's arrest	IDAHO CODE ANN. § 18-4506(2)
Illinois 720 ILL. COMP. STAT. 5/10-5 (2016)	No	Class 2 to 4 felony	720 ILL. COMP. STAT. 5/10-5(C)
Indiana IND. CODE § 35-42-3-4 (2016)	No	Level 5 or 6 felony depending on the age of the child if there is a child custody order; class B or C misdemeanor if there is no custody order	No applicable statute
Iowa IOWA CODE § 710.6 (2016)	Yes	Class D felony	No applicable statute
Kansas KAN. STAT. ANN. § 21-5409 (2016)	No	Severity level 10, person felony; class A person misdemeanor if there is joint custody	No applicable statute

Jurisdiction	Formal custody order required for parental abduction to be actionable?	Maximum criminal penalties	Imminent harm defense available?
Kentucky KY. REV. STAT. ANN § 509.070 (West 2016)	Yes	Class D felony, unless child is voluntarily returned	No applicable statute
Louisiana LA. STAT. ANN. § 14:45.1 (2016)	Yes	6 months imprisonment, \$500 fine, or both	LA. STAT. ANN. § 14:45.1(A)
Maine ME. STAT. tit. 17-A, § 303 (2016)	No	Class C crime; applies to children under age 16	No applicable statute
Maryland MD. CODE ANN., FAM. LAW § 9-304 (West 2016)	No	Felony, punishable by imprisonment up to 1 year, \$1,000 fine, or both if child is kept less than 30 days; punishable by imprisonment up to 3 years, \$2,5000 fine, or both if child is kept more than 30 days; applies to children under age 16	MD. CODE ANN., FAM. LAW § 9-306
Massachusetts MASS. GEN. LAWS ch. 265, § 26A (2016)	Yes	Punishable by 1 year imprisonment, \$1,000 fine, or both if child remains in state; punishable by 5 years imprisonment, \$5,000 fine, or both if child is taken out of state	No applicable statute

Jurisdiction	Formal custody order required for parental abduction to be actionable?	Maximum criminal penalties	Imminent harm defense available?
Michigan MICH. COMP. LAWS § 750.350a (2016)	Yes	Felony, up to 1 year and 1 day in prison and/or a fine of up to \$2,000; only actionable once a parent has kept a child for more than 24 hours with the intent to conceal	MICH. COMP. LAWS § 750.350a(5)
Minnesota MINN. STAT. § 609.26 (2016)	No	Felony punishable by 2 years imprisonment, \$4,000 fine, or both	MINN. STAT. § 609.26 (SUBD. 2)
Mississippi MISS. CODE ANN. § 97-3-51 (2016)	Yes	Felony, punishable by 3 years imprisonment, \$2,000 fine, or both	No applicable statute
Missouri MO. REV. STAT. § 565.153 (2016)	No	Class D felony	MO. REV. STAT. § 565.160(3)
Montana MONT. CODE ANN. § 45-5-634 (2016)	No	Punishable by up to 10 years imprisonment, \$50,000 fine, or both; no punishment if child is returned before arraignment on first offense	MONT. CODE ANN. § 45-5-633
Nebraska NEB. REV. STAT. § 28-316 (2016)	No	Class II misdemeanor without a formal court order; class IV felony if in violation of a court order	No applicable statute
Nevada NEV. REV. STAT. § 200.359 (2016)	No	Category D felony; prosecutor may recommend misdemeanor	NEV. REV. STAT. § 200.359(8)

Jurisdiction	Formal custody order required for parental abduction to be actionable?	Maximum criminal penalties	Imminent harm defense available?
New Hampshire N.H. REV. STAT. ANN. § 633:4 (2016)	Yes	Class B felony if child is taken out of state; misdemeanor if child remains in state	N.H. REV. STAT. § 633:4(III)
New Jersey N.J. STAT. ANN. § 2C:13-4 (West 2016)	No	Second degree crime of second if child is taken out of the U.S. or kept for more than 24 hours; third degree crime if child is kept in the U.S. for less than 24 hours	N.J. STAT. ANN. § 2C:13-4(C)–(D)
New Mexico N.M. STAT. ANN. § 30-4-4 (2016)	No	Fourth degree felony	No applicable statute
New York N.Y. PENAL LAW § 135.50 (McKinney 2016)	No	Felony only if child is taken out of state	Yes, but only if child is removed from the state
North Carolina N.C. GEN. STAT. § 14-320.1 (2016)	Yes	Class 1 felony	No applicable statute
North Dakota N.D. CENT. CODE § 12.1-18-05 (2016)	Yes	Class C felony	No applicable statute

Jurisdiction	Formal custody order required for parental abduction to be actionable?	Maximum criminal penalties	Imminent harm defense available?
Ohio OHIO REV. CODE ANN. § 2919.23 (West 2016)	No	Felony of the fifth degree, only if child is taken out of state or in cases of repeat offenses; first degree misdemeanor if child remains in state and it is a first offense	OHIO REV. CODE ANN. § 2919.23(C)
Oklahoma OKLA. STAT. tit. 21, § 891 (2016)	No	Felony, punishable by 10 years imprisonment; applies to children under 16	No applicable statute
Oregon OR. REV. STAT. § 163.245 (2016)	No	Class B felony	No applicable statute
Pennsylvania 18 PA. CONS. STAT. § 2904 (2016)	Yes	Third degree felony	18 PA. STAT. AND CONS. STAT. ANN. § 2904(B)(1)
Rhode Island 11 R.I. GEN. LAWS § 11-26-1.1 (2016)	No, but child must be taken for more than 15 days in cases with no formal custody order	Felony, punishable by 2 years imprisonment, \$10,000 fine, or both	11 R.I. GEN. LAWS § 11-26-1.1(B)(3)
South Carolina S.C. CODE ANN. § 16-17-495 (2016)	No, but a pleading seeking custody must be at least filed and served	Felony	No applicable statute

Jurisdiction	Formal custody order required for parental abduction to be actionable?	Maximum criminal penalties	Imminent harm defense available?
South Dakota S.D. CODIFIED LAWS § 22-19-9 (2016)	Yes	Class 5 felony only if child is taken across state lines; class 1 misdemeanor if child remains in state	No applicable statute
Tennessee TENN. CODE ANN. § 39-13-306 (2016)	Yes	Class E felony; misdemeanor if child is returned voluntarily	TENN. CODE ANN. § 39-13-306(C)
Texas TEX. PENAL CODE ANN. § 25.03 (West 2016)	No, but child must taken outside U.S. or a civil suit must be filed	State jail felony	No applicable statute
Utah UTAH CODE ANN. § 76-5-303 (West 2016)	Yes	Third degree felony if child is taken out of state; class A or B misdemeanor if child remains in state	UTAH CODE ANN. § 76-5-305(1)(A)
Vermont VT. STAT. ANN. tit. 13, § 2451 (2016)	No	Felony, punishable by up to 5 years in prison, \$5,000 fine, or both	VT. STAT. ANN. tit. 13, § 2451(C)
Virginia VA. CODE ANN. § 18.2-47 (2016)	Yes	Class 5 felony	No applicable statute
Washington WASH. REV. CODE § 9A.40.060 (2016)	No	Misdemeanor if first conviction; Class C felony if second conviction	WASH. REV. CODE § 9A.40.080 (2)(A)

Jurisdiction	Formal custody order required for parental abduction to be actionable?	Maximum criminal penalties	Imminent harm defense available?
West Virginia W. VA. CODE § 61-2-14d (2016)	Yes	Felony, punishable by up to 5 years in prison, \$1,000 fine, or both	W. VA. CODE § 61-2-14D(C)
Wisconsin WIS. STAT. § 948.31 (2016)	No	Class F or I felony	WIS. STAT. § 948.31(4) (A)(1)–(2)
Wyoming WYO. STAT. ANN. § 6-2-204 (2016)	No	Felony, punishable by up to 5 years imprisonment	WYO. STAT. ANN. § 6-2-204(C)(I)