



CHILD ABDUCTION T.I.P.S. NEWSLETTER

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RESOURCES

Child Abduction First Responder Mobile Site



The Child Abduction First Responder Mobile Site, developed by The California Child Abduction Task Force is a resource intended to assist First Responding Officers for child abduction cases.

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FROM THE CHILD ABDUCTION TASK FORCE

A Lesson in Determining a Child's Habitual Residence

by Bridget Billeter

Supervising Deputy Attorney General, California Department of Justice, Office of the Attorney General

The goal of the Hague Convention on the Civil Aspects of International Child Abduction is to return wrongfully-removed children to their country of habitual residence. But what if the parents and children have moved frequently and have lived in multiple countries? When does one location become the "habitual residence?"

Actress Sophie Turner and pop star Joe Jonas are not only going through a high-profile divorce, but in September 2023, Turner filed a Hague petition in New York alleging that their children should be returned to their habitual residence in England. Their two children were born in the United States in 2020 and 2022, respectively. Turner alleges in her petition that although the parties had moved frequently due to their careers, the parties made England their permanent home in April 2023. According to Turner, the parties often discussed their desire to raise their children in England, and just months before the divorce proceedings began, the parties had relocated to England and entered into contract to buy their "forever home."

Has Turner alleged a prima facie case that the children's habitual residence was in England? Surely Jonas may dispute some of Turner's allegations. The lesson for investigators and deputy district attorneys working on Hague cases in California is that "habitual residence" is often not clear-cut, and is usually a factual determination best made by the superior court.

Although most Hague cases in California do not involve jet-setting entertainers moving from place to place, many cases involve situations where parents are transitory, and have lived or worked in different countries in the years prior to the wrongful removal. California's proximity to Mexico makes it all the more likely that one or both parents have moved back and forth across the border for work or other opportunities.

All this can make the determination of habitual residence complicated. The United States Supreme Court recently weighed in with guidance for trial courts faced with this factual question. In *Monasky v. Taglieri* (2020) 140 S.Ct. 719, 727, the court held that habitual residence is "a fact-driven inquiry" and must be informed by the "unique circumstances of the case" and "common sense." For older children, important factors include whether the child is in school, involved in extracurricular activities, has social networks, has language proficiency, and has other meaningful connections with the country. (Id. at p. 727, fn. 3.) For infants and toddlers, "the intentions and circumstances of caregiving parents" might be given more weight. (Id. at p. 727.) However, the "bottom line: There are no categorical requirements for establishing a child's habitual residence." (Id. at p. 728.)

In sum, for investigators and deputy district attorneys acting as friends of the court in Hague proceedings, the best practice is to provide all relevant circumstances to the superior court, which is in the best position to make the necessary factual determinations regarding the child's habitual residence.

Cell Phone Tracking in an Abduction or Missing Child Case

by Stephen Lagorio

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In the current connected world, technology is taking a larger and larger role every day. Remember, technology is here to help us, even though some portray it as evil. Children are being exposed to cell phones earlier in life, which allows us the opportunity to track them as needed. The cell phone itself is a great tool for parents to keep track of their children. Unfortunately, this technology can also expose children to the dangers of life via unsupervised communications with those wishing to do harm to them. When speaking to any parent who is pondering giving their child a cell phone, I recommend installing some type of tracking app. Apps like Find My iPhone and Life360 are examples of apps that give parents a little piece of mind and tracking ability.

The word "tracking" is a broad word and can take many different forms when discussing cell phone tracking. Cell phones offer a glimpse into a person's life at a very personal level. A person's thoughts, beliefs, communications, and location are captured in a single device. For the purpose of this newsletter, I will be discussing tracking for the purpose of finding the phone's location, which hopefully is with the child. For an instance of a child abduction, there are three basic types of tracking, exigent via a 9-1-1 call center, follow-up by a detective, and tracking of the device by intercepting its signal.

Emergency Pings are the first form of tracking a cell phone and the quickest. Typically, a call for service regarding a missing or abducted child will be received by a 9-1-1 call center. This call is then dispatched to an officer, who will respond to the scene. Simultaneously, the dispatch center will begin the process of pinging the cell phone. A ping will provide the location of the phone, which may be very accurate or very wide. Some cell phones and service providers can access the phone's location down to three feet, while others only give ranges, which can be upwards of 10,000 meters. Unfortunately, this wide range is not something the service providers can narrow down in a time of emergency. We must work with what we get. These emergency pings are typically updated every fifteen minutes, which puts law enforcement a step behind with this built-in delay. Most often these emergency pings offer enough information to assist in finding the missing child when combined with good investigative work. A ping will let law enforcement know if the child is in the same city or is miles away. Known locations, such as a relative, friend, or potential suspect can be searched in areas within a ping. A child's phone is typically owned by the parent or guardian, which allows for consent. Remember that emergency pings must be followed up within three days with a court order by sworn personnel.

Detective follow-up is the next step of cell phone tracking. Beyond the physical tracking of the cellular device, other nuggets of information can be gained via the cell phone. Historical breadcrumbs are located within text messages, call records, and historical device pings. These types of historical information can be obtained but take longer even with exigency. All information sought must be obtained via a search warrant. Previous text messages can potentially give clues to acquaintances or meetings with new people who are unknown to the parents or guardians. Historical call records will provide the detective with a complete list of calls received and dialed. This has the potential to provide new leads and individuals associated with the phone numbers. Last is the historical ping data, which when overlaid on a map of cell towers will provide the last locations or direction of travel of the device. Social media can help to find clues and communications with friends or potential suspects.

Efforts should be made to obtain passwords that a parent may have for the device, social media accounts, and tracking apps. With the ability to track apps, it may be discovered that Wi-Fi networks are being accessed to post updates on social media, or to text associates. At this point, you would need to begin the process of obtaining IP addresses and following up on those.

Last is cell phone tracking with devices connected to the network, which some local, state, and federal agencies have. These devices have historically gone by the names of Triggerfish, and Stingray. These devices allow law enforcement to track a phone by intercepting its signal. Devices like these can give a glimpse of what the device is doing, such as activity regarding phone calls, texting, and location that can be accessed in near real-time. By combining known associates and potential suspects, detectives can pair that with cell phone pings and narrow down the location of the missing child. The cell phone tracking device can then pinpoint the location of the cell phone utilizing its robust technology. Utilizing this type of technology requires its own special search warrants.

There are four basic categories of accessing a device's information, which are Judicial Authorization, Custodial Situations, Consent, and Exigency/Emergency. It is a tricky and ever-evolving world when it comes to cell phone access and real-time tracking. It is best to keep apprised of legal updates when attempting to track and access a person's phone, even when it is for their own good in an emergency. For a better understanding of laws pertaining to cell phone tracking, research CalECPA (California Electronic Communications Privacy Act), SB 741, SB 178, and PC 1546. Remember to abide by all legal requirements when accessing a person's personal device, or we as Law Enforcement may lose our right to actively track and find the missing and endangered.

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