

**WRITTEN QUESTION TO THE ATTORNEY GENERAL  
BY DEPUTY M. TADIER OF ST. BRELADE  
QUESTION SUBMITTED ON MONDAY 15th MARCH 2021  
ANSWER TO BE TABLED ON MONDAY 22nd MARCH 2021**

### **Question**

Will H.M. Attorney General advise members how the Law Officers' Department deals with child abduction cases in the Island where one parent has taken a child from the Island to another jurisdiction and remains there; will he explain how the relevant legislation governs such matters; and will he set out the steps that are taken by his Department in such cases to have the child returned to Jersey?

### **Answer**

Child abduction cases may have both a civil and criminal element. The matter will have a civil aspect in respect of the return of the child and a criminal aspect in respect of the prosecution of the parent for removing the child. This answer outlines both areas of the law below.

### **Civil**

#### **International Abductions**

The wrongful removal or retention of a child from Jersey is governed by the Child Abduction and Custody (Jersey) Law 2005 (The Child Abduction Law), and Schedule 1 of the Hague Convention on the Civil Aspects of International Child Abduction (1980) (The Convention). The Convention applies to children under the age of 16 years old. It is a requirement of the Convention for each Contracting State to designate a Central Authority for the purposes of discharging the functions of the Convention. The Attorney General is the designated Central Authority for Jersey (Article 5 Child Abduction Law). There are more than 70 Contracting States to the Convention, the primary purpose of the which is to ensure that Central Authorities co-operate with each other to a) secure the prompt return of children, and b) to ensure that rights of custody (with whom a child should live) and access (with whom a child should have contact) are respected. Article 12 of the Convention provides that where less than one year has elapsed from a wrongful removal, the receiving State should order the return of the child. The exception to this presumption is where the Court in the receiving State is satisfied that the requesting parent was not exercising custody rights at the time of the removal, or there is a grave risk that the child will be exposed to physical or psychological harm.

The removal or retention of a child is considered wrongful where it is in breach of rights of custody under the law of the State from which the child was removed. The Attorney General as Central Authority for Jersey, has an obligation to ensure that applications for the return of a child satisfy the Convention requirements, including ensuring that the factual and legal grounds on which the application for the return of the child is based are clearly stipulated.

The general duties of Central Authorities are set out at Article 7 Schedule 1 of the Convention and relate to children wrongfully removed and to children who are wrongfully brought to or retained in Jersey. In relation to the removal of a child from Jersey those duties include but are not limited to taking all appropriate measures to;

- a) discover the whereabouts of the child,

- b) secure the voluntary return of the child,
- c) exchange information about the child with the relevant Central Authority, and to
- d) provide information to the receiving Central Authority about the law and customs of Jersey so far as they relate to custody rights.

It is for the receiving Central Authority to determine whether the application meets the requirements of the Convention. The Law Officers' Department liaises with the relevant Central Authority to assist them to locate the child. If a voluntary return cannot be agreed the receiving Central Authority assists the applicant parent to obtain legal representation in that jurisdiction to commence proceedings for the return of the child to Jersey. It is the duty of the receiving Central Authority to notify the requesting Central Authority of the progress of the proceedings. Assuming a Return Order is made it is usual for either the abducting parent to return to Jersey with the child, or for the applicant parent to arrange for the child to be returned.

### Domestic Abductions

An abduction between Jersey and the United Kingdom is considered domestic and is not covered by the terms of the Convention. The Child Custody (Jurisdiction) (Jersey) Law 2005 (the Child Custody Law), provides that where there are corresponding statutory provisions in England, Wales, Scotland and Northern Ireland they shall have equivalent effect in Jersey. This means that an order made in the UK can be registered in Jersey and an application can be made for the order to be enforced in Jersey. Proceedings under the Child Custody Law are private proceedings and the Law Officers' Department does not therefore have a role in domestic abductions.

### Criminal

Abduction of a child by a parent taking the child from the Island to another jurisdiction without appropriate consent constitutes an offence under Article 2 of the Criminal Law (Child Abduction) (Jersey) Law 2005 (the "2005 Law").

Article 4 of the 2005 Law specifies that a person guilty of an offence under this Law shall be liable to imprisonment for a term of 7 years and to a fine.

Once a matter has been referred to the Law Officers' Department, the Attorney General is required under Article 4 to provide consent to the prosecution of the parent.

The parent would not be guilty of an offence if there is a residence order in favour of the parent in force with respect to the child and the parent takes the child out of the island for less than one month. The parent would also not be guilty of an offence if the parent takes the child out of the Island in the belief that the other person has consented or would consent if the person were aware of all the relevant circumstances; or the parent has taken all reasonable steps to communicate with the other person but has been unable to communicate with that other person; or the other person has unreasonably refused to consent.