

Memorandum



Subject Report to Congress on Implementation of the Parental Kidnaping Prevention Act of 1980	Date November 23, 1981
To The Attorney General	From John Roberts <i>JR</i> Special Assistant to the Attorney General

Lowell Jensen has presented for approval the second report on implementation of the Parental Kidnaping Prevention Act of 1980, Pub. L. 96-611, 94 Stat. 3568. Section 10(a) of the Act expresses the intent of Congress that the Fugitive Felon Act, 18 U.S.C. §1073, apply to cases involving parental kidnaping and interstate flight to avoid prosecution. The problem involved arises when one parent in a custody battle takes the children and leaves the jurisdiction. Section 10(b) of the Act requires the Attorney General, at six month intervals, to report to Congress with respect to the steps taken to comply with the intent of Congress set forth in §10(a).

There is some tension between the Department of Justice and the Congress concerning the use of the Fugitive Felon Act in cases of parental kidnaping. The Department is concerned that the investigative resources of the FBI and federal criminal process under the Fugitive Felon Act are employed consistent with the intent of that Act, i.e., in those cases where extradition is not readily available to the state and the state intends to prosecute the underlying felony. This is frequently not the case in situations of parental kidnaping during the course of custody battles. In such cases the complaining party and state often know the whereabouts of the "fugitive" parent and seek to use the Fugitive Felon Act as a less cumbersome alternative to extradition. In other cases there is no intent to prosecute the underlying felony, and the Fugitive Felon Act is simply being used as a pretext for enforcing civil custody obligations. As an exercise of prosecutorial discretion, therefore, the Department has utilized the Fugitive Felon Act in response to complaints of parental kidnaping only when serious criminal activity appears to exist, such as when there is credible and independent information of a danger to the child or abuse or neglect of the child.

The report to Congress explains the application of prosecutorial discretion in this area, and also notes that by extending involvement to cases involving abuse or neglect, the Department was increasing the level of assistance to the states in parental kidnaping cases. The report presents data on the complaints under the Fugitive Felon Act involving parental kidnaping, as required by the Act, and also details the circumstances under which the Department will invoke the Fugitive Felon Act in a case of parental kidnaping. The report concludes that the exercise of prosecutorial discretion in cases of parental kidnaping is consistent with the general exercise of prosecutorial discretion under the Fugitive Felon Act. The report nonetheless notes that the involvement of the FBI has actually been increased in response to the intent of Congress.

I recommend approval. Your signature is required on letters of transmittal to the Speaker of the House and Vice President.