

CUBA

International Instrument	Signature	Ratification, Acceptance (A), Approval (AA), Accession (a), Succession (d)	Entry Into Force
UN Convention on the Rights of the Child	26 Jan 1990	21 Aug 1991 ¹	
UN Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography	13 Oct 2000	25 Sep 2001	
Protocol to Prevent, Suppress and Punish Trafficking in Persons		20 Jun 2013 a ²	
UN Optional Protocol on the Involvement of Children in Armed Conflict	13 Oct 2007	9 Feb 2007	
UN Convention for the Protection of All Persons from Enforced Disappearance	6 Feb 2007	2 Feb 2009	
Hague Convention on International Child Abduction			

In Cuba, there are four laws that refer directly or indirectly to missing children:

1. Constitution of the Republic of Cuba of 1976, as amended in 2002;
2. Law No. 62 (Criminal Code of 1987), as amended in 1999;
3. Decree Law No. 175 of 1997 (Criminal Code); and
4. Law No. 87 of 1999 (Criminal Code).

General Child Protection

Cuba ratified the United Nations Convention on the Rights of the Child (CRC) on 21 August 1991. This Convention ensures that Cuba is committed to providing basic rights for all children within its borders. The Constitution of the Republic of Cuba also directly addresses the rights of children as well as protections provided by the State. Article 9 of the Constitution guarantees the right of children to schooling, food, clothing, culture, and sport.³ Article 40 establishes that families, schools, agencies of the State, and organizations have a responsibility to attend to the full development of children.⁴ Children are granted protection by both the State and society.⁵

¹ See Convention on the Rights of the Child, U.N. Treaty Collection Status Chart, at https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-11&chapter=4&lang=en#EndDec (last visited Jan. 25, 2018) (on file with the International Centre for Missing & Exploited Children).

² See Protocol to Prevent, Suppress and Punish Trafficking in Persons, U.N. Treaty Collection Status Chart, at https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=XVIII-12-a&chapter=18&lang=en#EndDec (last visited Feb. 15, 2018).

³ Constitution of the Republic of Cuba of 2002, at http://www.wipo.int/wipolex/en/text.jsp?file_id=241359 (last visited Feb. 20, 2018) (on file with the International Centre for Missing & Exploited Children).

⁴ *Id.*

⁵ *Id.*

Furthermore, Cuba has several provisions within the Criminal Code of 1987 that protect the rights and interests of children. Article 309 of the Criminal Code enumerates several crimes against children that are illegal within the nation including the crimes of child rape, lewd abuse, incest, and bigamy.⁶

Likewise, Article 310 of the Criminal Code of 1987 is dedicated to underscoring what Cuba considers crimes against the normal development of infancy and youth.⁷ This chapter contains several more illegal acts against children not mentioned above, such as prostitution, corruption of minors, and child pornography. Since 1987, Cuba has made modifications to its criminal code pertaining to child protection issues such as Decree Law No. 175 of 1997 and Law No. 87 of 1999.⁸

The Code of Childhood and Youth lays out the rights and duties of children and young people as well as the responsibilities of the state and society to protect children.⁹

General Missing Child Issues

Although there are no specific laws regarding missing children in Cuba, the Civil Code has several provisions that discuss missing persons. Under Article 33 of the Cuban Civil Code, a person is considered absent after being missing for over a year.¹⁰ Article 34 of the Civil Code declares a person legally deceased after 3 years of being missing.¹¹ However, it is illegal for a parent to remove a child from there with the intent to keep the child for an undetermined amount of time, without the consent of the other parent.¹²

Definition of “Missing Child”

Cuba defines the “age of majority” for criminal responsibility and civil majority in its Civil Code as a person less than 18 years of age.¹³ Cuba does not, however, have specific legislation that provides a definition of a “missing child.”

Abandonment

Article 275 of Cuba’s Criminal Code¹⁴ states, amongst other things, that whoever abandons a person because of their age, and is legally responsible for their care and well-being, will be guilty of a crime and may be imprisoned for three months to a year, or will receive a fine of 100 to 300 cuotas.¹⁵ Moreover, if as a result of this abandonment the person’s life is put in danger, or they receive a serious injury or illness, then the guilty party shall be imprisoned for two to five years.¹⁶ If the abandonment leads to or causes the death of that person, then the penalty is increased to five to twelve years in

⁶ Criminal Code of Cuba - Ley No. 62 of 1987 (amended 1999), Article 309, at <http://www.warnathgroup.com/wp-content/uploads/2015/03/Cuba-Penal-Code-Lawyers-Without-Borders-2009.pdf> (last visited on Feb. 20, 2018) (on file with the International Centre for Missing & Exploited Children).

⁷ *Id.* at Article 310.

⁸ Child Rights International Network – CRIN, *Cuba: National Laws*, at <https://www.crin.org/en/library/publications/cuba-national-laws> (last visited Feb. 15, 2018).

⁹ Ley No. 16 Code of Childhood and Youth, at <http://www.parlamentocubano.cu/index.php/documento/codigo-de-la-ninez-y-la-juventud/> (last visited Feb. 21, 2018).

¹⁰ Civil Code of Cuba, Article 33, at <http://www.wipo.int/edocs/lexdocs/laws/es/cu/cu005es.pdf> (on file with the International Centre for Missing & Exploited Children).

¹¹ *Id.* at Article 34.

¹² International Parental Abduction, Cuba, Passports USA, at http://www.passportsusa.com/family/abduction/country/country_487.html (last visited Feb. 15, 2018) (on file with the International Centre for Missing & Exploited Children).

¹³ Civil Code of Cuba, *supra* note 10, at Article 29.1.

¹⁴ Criminal Code of Cuba, *supra* note 6, at Article 275.

¹⁵ A cuota is equivalent to one day’s minimum wage. See, *Cuba Since the Revolution of 1959: A Critical Assessment* 214, at https://books.google.com/books?id=9zmYNo-AascC&pg=PA214&lpg=PA214&dq=cuban+cuotas&source=bl&ots=yTjlrXEXhe&sig=JsJdbXniO6ywr4Y5BXu9u9Bsubg&hl=en&sa=X&ved=0ahUKewjUt_bx8qXZAhWsrFkKHbSnBCM06AEIPDAE#v=onepage&q=cuban%20cuotas&f=false (last visited Feb. 20, 2018).

¹⁶ Criminal Code of Cuba, *supra* note 6, at Article 275.

prison.¹⁷ The Criminal Code also provides an accessory sanction if it is a father or mother who abandons a child under their custody. As a result, their parental rights can be suspended or revoked.¹⁸

Kidnapping and Abduction

Cuba has several provisions within its Criminal Code concerning child abduction and kidnapping. Article 308 of the Criminal Code notes that whoever takes a child that is not their own, or who substitutes one child for another will be deprived of their liberty for six months to three years.¹⁹ If this act was done with the purpose of receiving financial gain, or other malicious purposes, the penalty shall be the deprivation of liberty for two to five years.²⁰ Article 316 states that anyone who sells or transfers in adoption anyone under the age of 16 to another person, in exchange for a reward, cash, or any other sort of compensation, will be imprisoned for two to five years and will receive a fine of 300 to 1,000 cuotas.²¹ The sanctions are raised to three to eight years imprisonment under the following circumstances:

- A) If the guilty party committed a fraudulent act related to the above-mentioned crime, in order to deceive authorities.
- B) If this act is committed by a person or institution responsible for the care and guardianship of the minor.
- C) If the purpose of the abduction is to transfer the minor outside of the Cuban National Territory.²²

Furthermore, the penalty is 15 years imprisonment for the guilty party if the purpose of the abduction was to use the minor in any form of international trafficking related to child pornography, child prostitution, commercial organ harvesting, forced labor, activities related to the trafficking of drugs, or the consumption of illicit drugs.²³

Parental Abduction

While Cuba is not signatory to the Hague Convention on International Child Abduction, Article 316 of the Criminal Code provides penalties for a parent who participates in the abduction or kidnapping of a minor who is under their care or guardianship.²⁴

The Family Code of Cuba explains that in the case of divorce the court will determine who takes custody of minor children based on the children's best interests. The court will lay out in the divorce decree which of the parents will have primary custody for the care of the minor children and make arrangements for the children to maintain adequate communication with the other parent.²⁵

In addition, Articles 137 and 138 of the Family Code state that guardianship will be determined by the court for minors not under parental authority and care.²⁶

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Criminal Code of Cuba, *supra* note 6, at Article 308.

²⁰ *Id.*

²¹ *Id.* at Article 316.

²² *Id.*

²³ *Id.*

²⁴ Criminal Code of Cuba, *supra* note 6, at Article 316.

²⁵ Ley No. 1289 Family Code of Cuba, 2015, Articles 57 and 58, at <http://www.onbc.cu/uploads/media/page/0001/01/69f10a9e7e2dcca9b2558480e6d4c750b8fe4eef.pdf> (last visited Feb. 21, 2018).

²⁶ *Id.* at Articles 137 and 138.

Cuba has established entry and exit checkpoints in an effort to prevent child abductions.²⁷ At these checkpoints the parent or guardian must provide documentation of his or her relationship to the child.²⁸ This is not an official requirement of entry into Cuba, but it is recommended that travelers have these documents on hand for an easier entry or departure, and to avoid potential problems.²⁹ There is a strict exit requirement, however, requiring all citizens to obtain an exit visa prior to leaving Cuba for any length of time.³⁰

Decree No. 305 of 2012, requires that Cuban citizens requesting a passport for a minor under the age of 18 must provide an authorization signed before a Notary Public by the parents or legal representatives.³¹ In addition to the authorization, a passport application, official birth certificate or identity document, and photos must be submitted.³²

Reporting Mechanism

Cuba does not have a specific hotline or mechanism to report missing children. However, any crime can be reported, or police assistance requested through the emergency number 106.³³

Investigation of Missing Child Cases

Although Cuba does not have any specific procedures in place for the investigation of missing children cases, the disappearance of any person is investigated through the National Revolutionary Police Force.³⁴ Further, the Civil Code of Cuba has distinct categories for individuals who have been missing for a certain period of time. Article 33.1 of the Civil Code states that a natural person, who disappeared from their domicile without anyone having traces of their whereabouts for over a year, will be declared absent; and Article 34.1 states that after three years, the individual will be presumed dead.³⁵ Additionally, with help from the International Commission on Missing Persons, Cuban authorities have been able to utilize various forms of identification mechanisms – including DNA analysis – to successfully identify missing persons.³⁶

National Database

Cuba does not have a national database in place for tracking missing and/or unidentified children. Cuba does, however, collaborate with INTERPOL, which includes missing Cubans in their database.³⁷

Cuban law enforcement, under the Ministry of Interior, has a general criminal database – Registro Central de Sancionados (Central Registry of Punished Individuals) – where information about criminal

²⁷ Cuba Entry Requirements, *Traveling to Cuba with minors*, at <http://www.anywherecuba.com/travel-guide/entry-requirements> (last visited Feb. 15, 2018).

²⁸ *Id.*

²⁹ *Id.*

³⁰ Human Rights Watch, *Families Torn Apart The High Cost of U.S. and Cuban Travel Restrictions*, Oct. 2005, at <https://www.hrw.org/sites/default/files/reports/cuba1005.pdf> (last visited Feb. 15, 2018) (on file with the International Centre for Missing & Exploited Children).

³¹ Decree Law 305 of 2012, Amendment to Decree No. 26 Regulation of the Migration Law of 1978, Articles 21 and 23, at <http://www.cubalegalinfo.com/decreto-no-305-modificativo-del-decreto-no-26-%E2%80%9CReglamento-de-la-ley-de-migraci%C3%B3n%E2%80%9D> (last visited Feb. 20, 2018) (on file with the International Centre for Missing & Exploited Children). See also, Diplomatic Representatives of Cuba Abroad, *Consular Services*, at http://misiones.minrex.gob.cu/en/usa/consular-servicios#escritura_autorizacion_confeccion_pasaporte (last visited Feb. 20, 2018) (on file with the International Centre for Missing & Exploited Children).

³² *Id.*

³³ U.S. Embassy in Cuba, *Emergency Assistance*, at <https://cu.usembassy.gov/u-s-citizen-services/local-resources-of-u-s-citizens/emergency-assistance/> (last visited Feb. 20, 2018).

³⁴ National Revolutionary Police, at <http://www.globalsecurity.org/intell/world/cuba/pnr.htm> (last visited Feb. 15, 2018).

³⁵ Civil Code of Cuba, *supra* note 10, at Articles 33.1 and 34.1.

³⁶ International Commission on Missing Persons, *Cuba*, at <https://www.icmp.int/where-we-work/the-americas/latin-america-and-the-caribbean/cuba/> (last visited Feb. 20, 2018).

³⁷ INTERPOL, *Cuba*, at <https://www.interpol.int/en/Member-countries/Americas/Cuba> (Last visited Feb. 20, 2018)

convictions is stored.³⁸ Inquiries regarding the stored data can be made, for a fee. It is unclear whether the data specifically addresses crimes committed against children.

Case Management System

Cuba does not have a case management system in place to organize and record information about cases of missing children.

Alert Mechanism

Cuba does not have an alert mechanism or a rapid notification system for warning the public about missing children. It is unclear if Cuban media is used to assist with missing child cases.

Awareness-Raising Initiatives

While there are no current awareness campaigns in Cuba focused specifically on missing children, UNICEF Cuba works with various partners to raise awareness among children about their rights under the CRC.³⁹

Trafficking

Cuba is a source and destination country for adults and children subjected to forced labor and sex trafficking.⁴⁰ According to Cuban authorities, individuals between the ages of 13 and 20 are the most vulnerable to human trafficking within the country, but also may be trafficked to South America, the Caribbean, and the United States.⁴¹

According to the 2017 U.S. State Department Trafficking in Persons (TIP) Report, Cuban citizens are often recruited into trafficking situations through the promise of work abroad as well as fraudulent contracts and immigration documents provided for a fee. These individuals then are coerced into prostitution as a method of paying off their debts.⁴²

Article 316 of the Criminal Code addresses the trafficking and exploitation of children under the age of 16.⁴³ Someone selling a child under age 16 to another person, in exchange for financial or other compensation, can be convicted for two to five years or receive a fine of 300 to 1,000 cuotas or both. The penalty is increased to three to eight years if fraudulent acts to deceive the authorities were committed, or the offense was committed by an individual with custody of the child.⁴⁴ There also is a penalty of 15 years in prison for anyone who abducts a minor with the purpose of trafficking them internationally.⁴⁵ The trafficking of persons generally is addressed in Articles 347 and 348.⁴⁶

Cuba has bilateral cooperation and extradition agreements in place with over 15 countries for criminal investigations. They are not specific to trafficking, but through them the Cuban government has cooperated with foreign law enforcement in investigations of foreign citizens suspected of sexual crimes against children, including child sex trafficking.⁴⁷

³⁸ Ministry of Justice of the Republic of Cuba, *Central Registry of Punished Individuals*, at https://www.minjus.gob.cu/viewpage.php?page_id=19 (last visited Feb. 21, 2018).

³⁹ UNICEF, *UNICEF Annual Report 2016 – Cuba*, at https://www.unicef.org/about/annualreport/files/Cuba_2016_COAR.pdf (last visited Feb. 15, 2018) (on file with the International Centre for Missing & Exploited Children).

⁴⁰ U.S. Department of State, *2017 Trafficking in Persons Report – Cuba* 144, at <https://www.state.gov/documents/organization/271339.pdf> (last visited Feb. 15, 2018) (on file with the International Centre for Missing & Exploited Children).

⁴¹ *Id.*

⁴² *Id.*

⁴³ Criminal Code of Cuba, *supra* note 6, at Article 316.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at Articles 347 and 348.

⁴⁷ U.S. Department of State, *supra* note 40.

The Ministry of Tourism works to combat sex trafficking by addressing the demand for commercial sex acts. In addition, the Ministry trains law enforcement assigned to the tourism sector on indicators of human trafficking.⁴⁸ The Cuban government and the Federation of Cuban Women also operate a 24-hour hotline for individuals, including sex trafficking victims, in need of legal assistance.⁴⁹ In order to increase public awareness, state media produces newspaper articles, television programs, and radio programs about sex trafficking.⁵⁰

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*