



domestic violence

CHICAGO POLICE DEPARTMENT

DOMESTIC VIOLENCE IN CHICAGO

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FAQS

Child Abduction By Parents

The Child Abduction statute, 720 ILCS 5/10-5, was created to provide stability for minor children and to protect them from being inappropriately separated from the parent who is providing for their care. To achieve this, the statute is based on the custodial rights of parents. The statute covers children up to the age of 18.

Child abduction is considered to be a form of abuse under the Illinois Domestic Violence Act, whether or not there is an order of protection in place. Officers should keep in mind that the same liability issues for failure to respond to a domestic violence situation can also occur for failure to respond to a child abduction involving allegations of domestic violence.

VIOLATION OF COURT ORDERS

There are two ways to violate the Child Abduction statute by violating court orders relating to the child:

- By intentionally concealing or detaining the child or removing the child from the jurisdiction of the court in violation of a valid court order granting sole or joint custody, care, or possession to another (b)(1); or
- By intentionally violating an order prohibiting the concealing, detaining, or removal of the child from jurisdiction of the court (b)(2).

(Remedy 6) or care and possession to the petitioner (Remedy 5) and prohibit the respondent from concealing the child in the state or removing the child from the state (Remedy 8). For case reporting purposes, classify the primary offense as "Offense Involving Children" and the secondary classification as "Child Abduction" and document the Violation of Order of Protection in the report narrative and in Box 58 (Unusual Characteristics of Offense).

Also keep in mind when a violation of the statute is based on the violation of a court order, the offender must have actual knowledge of the order.

Parents are or have been married and no valid court orders of custody are in effect

Charges can be filed if a person:

- **Conceals or removes the child after he or she petitioned the court or was served with process in an action affecting marriage or paternity (b)(4).** This section is intended to maintain the status quo during divorce or paternity cases before orders are entered giving one parent superior rights over the other. Once a party has filed a divorce or paternity case or the sheriff has served a person with the petition for such a case, the parties cannot conceal the child. Failing to return the child from visitation without concealing the child is a civil matter.



Office of the Superintendent,
Domestic Violence Program

An order of protection can grant legal custody

- **Conceals the child for 15 days** without making reasonable attempts to notify the other parent of the child's specific whereabouts or arranging reasonable visitation or contact with the child (b)(6). A parent who is fleeing domestic violence and is in housing provided by a domestic violence program is not chargeable under this section so long as that parent remains in housing provided by a domestic violence program. Detectives who are seeking battered women who may be in a shelter can contact the city's Help Line to see if their staff can locate her in a shelter. Note this is the only section of the statute that includes a waiting period before charges can be filed.
- **Conceals, detains, or removes the child with physical force or the threat of physical force** (b)(7). The use or threat of physical force eliminates the 15 day waiting period.

WHEN PARENTS ARE UNWED AND THERE ARE NO CUSTODY ORDERS

The Child Abduction statute presumes that an unwed mother has legal custody of the child unless a valid court order states otherwise. (a)(3)

An **unwed father commits Child Abduction when he conceals, detains, or removes the child without the consent of the mother** and either his paternity has not been established or his paternity has been established but no orders of custody were entered. (b)(3) If an order of custody has been issued and violated, refer to the section dealing with violations of court orders.

Despite the fact that an unwed father who has not established parentage does not have rights to the child, an **unwed mother** can be charged with Child Abduction if she **conceals or removes a child**, but only under the following very limited circumstances:

- She had intentionally "abandoned or relinquished custody" of the child to the father (being forced out of the home

by the father; being hospitalized, etc., does not constitute abandonment);

- The father himself (not his family) provided sole, ongoing care and custody of the child in the mother's absence; and
- The father is the complainant (his family members do not have the right to bring charges even if they provided for the care of the child). (b)(3)

OTHER VIOLATIONS

It is also a violation of the Child Abduction statute to:

- Fail or refuse to return a child to the lawful custodian in Illinois following out-of-state visitation (b)(5);
- Conceal, detain, or remove a child for payment or promise of payment on behalf of a parent who has no legal right to custody (b)(8); or
- Retain in Illinois for 30 days a child removed from another state without the consent of the lawful custodian or in violation of a valid court order (b)(9).

AFFIRMATIVE DEFENSE FOR DOMESTIC VIOLENCE

The Child Abduction statute includes an affirmative defense when victims of domestic violence are fleeing an incident or pattern of abuse. (c)(1) No time frames are given in the statute, allowing for a case-by-case determination of the level of risk the victim was fleeing and the need for concealment.

Aiding and Abetting Child Abduction—720 ILCS 5/10-7

In many cases of child abduction, others are involved, whether it is a family member who helped in the snatching of the child or in the parent's flight or a family member who conceals or destroys evidence. Generally, aiding and abetting statutes deal only with participation in the planning of the act or actual participation in the act. The Aiding and Abetting Child Abduction statute was created to apply pressure to those who help make it possible for an abducting parent to continue to conceal or detain a child, penalizing conduct that

occurs after the abduction itself is complete as well as aiding in the planning or commission of the abduction.

A person commits the crime of Aiding and Abetting Child Abduction, a Class 4 felony, when the person:

- Either before or during the commission of a child abduction, intentionally aids or abets another in the planning or commission of a child abduction; or
- With the intent to prevent apprehension of the abductor or to obstruct or prevent efforts to locate the child victim, knowingly destroys, alters, conceals, or disguises physical evidence or furnishes false information.

JURISDICTIONAL ISSUES INVOLVING CHILD ABDUCTION

A person who commits the offense of Child Abduction may be tried in any county in which the victim has traveled, been detained, or been concealed or to which the victim has been removed during the course of the offense. The preferred place of trial should be the county of residence of the lawful custodian. 720 ILCS 5/1-6(o).

An offender can also be charged with Child Abduction even though he or she was not in the state at any relevant time. An offense which is based upon an omission to perform a duty, such as complying with a custody order entered in Illinois is considered to have been committed within Illinois, regardless of the location of the offender at the time of the omission. 720 ILCS 5/1-5(c).

CONTINUING OFFENSE

Unlike other offenses, such as theft, in which the offense occurs at a particular moment and is over, child abduction is a "continuing violation"; that is, the crime continues to be committed each day the child is detained or concealed. Removal, however, is a one-time event. Occasionally, when the abductor is taken into custody, the child is not recovered, and

the defendant refuses to disclose the location of the child. If the defendant is charged with concealing or detaining the child and continues to do so, the defendant is still in violation of the law. The Assistant State's Attorney (ASA) may argue that the defendant be denied bond until the child is produced by the defendant.

ENTERING A MISSING CHILD INTO LAW ENFORCEMENT AGENCIES DATA SYSTEM (LEADS)

The Parental Kidnapping Prevention Act allows missing children to be entered into the National Crime Information Center's (NCIC) Missing Persons File as soon as a law enforcement agency determines the child is missing, regardless of whether or not a warrant is issued for the abducting parent. If a warrant is issued for the parent, it should be entered into the wanted file and cross-referenced with the missing file.

RECOVERING AN ABDUCTED CHILD

A police officer investigating a child abduction incident has the authority to recover a child and return that child to the parent from whom the child was abducted. 720 ILCS 5/10-5 (i) Note the Child Abduction statute declares that an unwed mother has legal custody of the child unless a court order grants custody to another. 720 ILCS 5/10-5 (a)(3)

For additional information regarding domestic violence issues or topics to be discussed, contact Sergeant Maude Noflin of the **Domestic Violence Program at: 312-745-6340**. If you or someone you know needs immediate assistance, call 911.

*The City of Chicago Domestic Violence Help Line
number is:
1-877-863-6338 or 1-877-863-6339 (TTY)*

