

Men's Health Network
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Enforcement of Parenting Time ("Visitation")
Current As of May 1999

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Alaska	Iowa	New Hampshire
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Arkansas	Kentucky	Ohio
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Delaware	Maryland	South Dakota
Florida	Michigan	Tennessee
Georgia	Missouri	Texas
Idaho	Montana	Utah
Illinois	Nebraska	Vermont
Indiana	Nevada	Virginia

Alaska

Alaska Statutes.

Title 11. Criminal Law

Chapter 51. Offenses Against the Family and Vulnerable Adults

Section 125. Failure to Permit Visitation With a Minor

AS 11.51.125. Failure to Permit Visitation With a Minor.

(a) A custodian commits the offense of failure to permit visitation with a minor if the custodian intentionally, and without just excuse, fails to permit visitation with a child under 18 years of age in the custodian's custody in substantial conformance with a court order that is specific as to when the custodian must permit another to have visitation with that child.

(b) The custodian may not be charged under this section with more than one offense in respect to what is, under the court order, a single continuous period of visitation.

(c) In a prosecution under this section, existing provisions of law prohibiting the disclosure of confidential communications between husband and wife do not apply, and both husband and wife are competent to testify for or against each other as to all relevant matters, if a court order has awarded custody to one spouse and visitation to the other.

(d) As used in this section,

(1) "court order" means a decree, judgment, or order issued by a court of competent jurisdiction;

(2) "custodian" means a natural person who has been awarded custody, either temporary or permanent, of a child under 18 years of age;

(3) "just excuse" includes illness of the child which makes it dangerous to the health of the child for visitation to take place in conformance with the court order; "just excuse" does not include the wish of the child not to have visitation with the person entitled to it.

(e) Failure to permit visitation with a minor is a violation.

Arizona

13-1305 . Access interference; classification; definition

A. A person commits access interference if, knowing or having reason to know that the person has no legal right to do so, the person knowingly engages in a pattern of behavior that prevents, obstructs or frustrates the access rights of a person who is entitled to access to a child pursuant to a court order.

B. If the child is removed from this state, access interference is a class 5 felony. Otherwise access interference is a class 2 misdemeanor.

C. The enforcement of this section is not limited by the availability of other remedies for access interference.

D. For the purposes of this section "access order" means a court order that is issued pursuant to title 25 and that allows a person to have direct access to a child or incompetent person.

Arkansas

§ 5-26-501. Interference with visitation.

(a) A person commits the offense of interference with visitation if, knowing that he or she has no lawful right to do so, he or she takes, entices, or keeps any minor from any person entitled by a court decree or order to the right of visitation with the minor.

(b) Interference with visitation is a Class D felony if the minor is taken, enticed, or kept without the State of Arkansas.

Otherwise, it is a Class A misdemeanor.

(c) The provisions of this section shall apply only to those cases in which a contempt citation has been issued by the court which issued the visitation order or decree, and such citation has been ignored or evaded by the person cited for a period of ninety (90) days.

History. Acts 1985, No. 540, § 1; A.S.A. 1947, § 41-2415.

California

PENAL CODE : SECTION 277-280

277. The following definitions apply for the purposes of this chapter:

(a) "Child" means a person under the age of 18 years.

(b) "Court order" or "custody order" means a custody determination decree, judgment, or order issued by a court of competent jurisdiction, whether permanent or temporary, initial or modified, that affects the custody or visitation of a child, issued in the context of a custody proceeding. An order, once made, shall continue in effect until it expires, is modified, is rescinded, or terminates by operation of law.

(c) "Custody proceeding" means a proceeding in which a custody determination is an issue, including, but not limited to, an action for dissolution or separation, dependency, guardianship, termination of parental rights, adoption, paternity, except actions under Section 11350 or 11350.1 of the Welfare and Institutions Code, or protection from domestic violence proceedings, including an emergency protective order pursuant to Part 3 (commencing with Section 6240) of Division 10 of the Family Code.

(d) "Lawful custodian" means a person, guardian, or public agency having a right to custody of a child.

(e) A "right to custody" means the right to the physical care, custody, and control of a child pursuant to a custody order as defined in subdivision (b) or, in the absence of a court order, by operation of law, or pursuant to the Uniform Parentage Act contained in Part 3 (commencing with Section 7600) of Division 12 of the Family Code. Whenever a public agency takes protective custody or jurisdiction of the care, custody, control, or conduct of a child by statutory authority or court order, that agency is a lawful custodian of the child and has a right to physical custody of the child. In any subsequent placement of the child, the public agency continues to be a lawful custodian with a right to physical custody of the child until the public agency's right of custody is terminated by an order of a court of competent jurisdiction or by operation of law.

(f) In the absence of a court order to the contrary, a parent loses his or her right to custody of the child to the other parent if the parent having the right to custody is dead, is unable or refuses to take the custody, or has abandoned his or her family. A natural parent whose parental rights have been terminated by court order is no longer a lawful custodian and no longer has a right to physical custody.

(g) "Keeps" or "withholds" means retains physical possession of a child whether or not the child resists or objects.

(h) "Visitation" means the time for access to the child allotted to any person by court order.

(i) "Person" includes, but is not limited to, a parent or an agent of a parent.

(j) "Domestic violence" means domestic violence as defined in Section 6211 of the Family Code.

(k) "Abduct" means take, entice away, keep, withhold, or conceal.

278. Every person, not having a right to custody, who maliciously takes, entices away, keeps, withholds, or conceals any child with the intent to detain or conceal that child from a lawful custodian shall be punished by imprisonment in a county jail not exceeding one year, a fine not exceeding one thousand dollars (\$1,000), or both that fine and imprisonment, or by imprisonment in the state prison for two, three, or four years, a fine not exceeding ten thousand dollars (\$10,000), or both that fine and imprisonment.

278.5. (a) Every person who takes, entices away, keeps, withholds, or conceals a child and maliciously deprives a lawful custodian of a right to custody, or a person of a right to visitation, shall be punished by imprisonment in a county jail not exceeding one year, a fine not exceeding one thousand dollars (\$1,000), or both that fine and imprisonment, or by imprisonment in the state prison for 16 months, or two or three years, a fine not exceeding ten thousand dollars (\$10,000), or both that fine and imprisonment.

(b) Nothing contained in this section limits the court's contempt power.

(c) A custody order obtained after the taking, enticing away, keeping, withholding, or concealing of a child does not constitute a defense to a crime charged under this section.

Delaware

§ 785. Interference with custody; class G felony; class A misdemeanor.

A person is guilty of interference with custody when:

- (1) Being a relative of a child less than 16 years old, intending to hold the child permanently or for a prolonged period and knowing that the person has no legal right to do so, the person takes or entices the child from the child's lawful custodian; or
- (2) Knowing that the person has no legal right to do so, the person takes or entices from lawful custody any incompetent person or other person entrusted by authority of law to the custody of another person or an institution. Interference with custody is a class A misdemeanor except that if the person who interferes with the custody of a child thereafter causes the removal of said child from Delaware, it is a class G felony.

(11 Del. C. 1953, § 785; 58 Del. Laws, c. 497, § 1; 63 Del. Laws, c. 268, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

Florida

787.03 Interference with custody.--

(1) Whoever, without lawful authority, knowingly or recklessly takes or entices, or aids, abets, hires, or otherwise procures another to take or entice, any child 17 years of age or under or any incompetent person from the custody of the child or incompetent person's parent, his or her guardian, a public agency having the lawful charge of the child or incompetent person, or any other lawful custodian commits the offense of interference with custody and shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Georgia

16-5-45 G

*** CODE SECTION *** 12/31/98

16-5-45.

(a) As used in this Code section, the term:

(1) "Committed person" means any child or other person whose custody is entrusted to another individual by authority of law.

(2) "Child" means any individual who is under the age of 17 years or any individual who is under the age of 18 years who is alleged to be a deprived child as such is defined in Code Section 15-11-2, relating to juvenile proceedings.

(3) "Lawful custody" means that custody inherent in the natural parents, that custody awarded by proper authority as provided in Code Section 15-11-17, or that custody awarded to a parent, guardian, or other person by a court of competent jurisdiction.

(b)(1) A person commits the offense of interference with custody when without lawful authority to do so the person:

(A) Knowingly or recklessly takes or entices any child or committed person away from the individual who has lawful custody of such child or committed person;

(B) Knowingly harbors any child or committed person who has absconded; or

(C) Intentionally and willfully retains possession within this state of the child or committed person upon the expiration of a lawful period of visitation with the child or committed person.

(2) A person convicted of the offense of interference with custody shall be punished as follows:

(A) Upon conviction of the first offense, the defendant shall be guilty of a misdemeanor and shall be fined not less than \$200.00 nor more than \$500.00 or shall be imprisoned for not less than one month nor more than five months, or both fined and imprisoned;

(B) Upon conviction of the second offense, the defendant shall be guilty of a misdemeanor and shall be fined not less than \$400.00 nor more than \$1,000.00 or shall be imprisoned for not less than three months nor more than 12 months, or both fined and imprisoned; and

(C) Upon the conviction of the third or subsequent offense, the defendant shall be guilty of a felony and shall be punished by imprisonment for not less than one nor more than five years.

(c)(1) A person commits the offense of interstate interference with custody when without lawful authority to do so the person knowingly or recklessly takes or entices any minor or committed person away from the individual who has lawful custody of such minor or committed person and in so doing brings such minor or committed person into this state or removes such minor or committed person from this state.

(2) A person also commits the offense of interstate interference with custody when the person removes a minor or committed person from this state in the lawful exercise of a visitation right and, upon the expiration of the period of lawful visitation, intentionally retains possession of the minor or committed person in another state for the purpose of keeping the minor or committed person away from the individual having lawful custody of the minor or committed person. The offense is deemed to be committed in the county to which the minor or committed person was to have been returned upon expiration of the period of lawful visitation.

(3) A person convicted of the offense of interstate interference with custody shall be guilty of a felony and shall be imprisoned for not less than one year nor more than five years.

Idaho

TITLE 18 CRIMES AND PUNISHMENTS CHAPTER 45 KIDNAPING

18-4506. CHILD CUSTODY INTERFERENCE DEFINED -- DEFENSES -- PUNISHMENT. 1. A person commits child custody interference if the person, whether a parent or other, or agent of that person, intentionally and without lawful authority:

(a) Takes, entices away, keeps or withholds any minor child from a parent or another person or institution having custody, joint custody, visitation or other parental rights, whether such rights arise from temporary or permanent custody order, or from the equal custodial rights of each parent in the absence of a custody order; or

(b) Takes, entices away, keeps or withholds a minor child from a parent after commencement of an action relating to child visitation or custody but prior to the issuance of an order determining custody or visitation rights.

2. It shall be an affirmative defense to a violation of the provisions of subsection 1. of this section that:

- (a) The action is taken to protect the child from imminent physical harm;
- (b) The action is taken by a parent fleeing from imminent physical harm to himself;
- (c) The action is consented to by the lawful custodian of the child; or
- (d) The child is returned within twenty-four (24) hours after expiration of an authorized visitation privilege.

3. A violation of the provisions of subsection 1. of this section shall be a felony, unless the defendant did not take the child outside the state, and the child was voluntarily returned unharmed prior to the defendant's arrest in which case the violation shall be reduced to a misdemeanor.

4. Any reasonable expenses incurred by a lawful custodian in locating or attempting to locate a child taken in violation of the provisions of subsection 1. of this section may be assessed against the defendant at the court's discretion in accordance with chapter 53, title 19, Idaho Code.

Illinois

(720 ILCS 5/10-5.5)

Sec. 10-5.5. Unlawful visitation interference.

(a) As used in this Section, the terms "child", "detain", and "lawful custodian" shall have the meanings ascribed to them in Section 10-5 of this Code.

(b) Every person who, in violation of the visitation provisions of a court order relating to child custody, detains or conceals a child with the intent to deprive another person of his or her rights to visitation shall be guilty of unlawful visitation interference.

(c) A person committing unlawful visitation interference is guilty of a petty offense. However, any person violating this Section after 2 prior convictions of unlawful visitation interference is guilty of a Class A misdemeanor.

(d) Any law enforcement officer who has probable cause to believe that a person has committed or is committing an act in violation of this Section shall issue to that person a notice to appear.

(e) The notice shall:

- (1) be in writing;
- (2) state the name of the person and his address, if known;
- (3) set forth the nature of the offense;
- (4) be signed by the officer issuing the notice; and
- (5) request the person to appear before a court at a certain time and place.

(f) Upon failure of the person to appear, a summons or warrant of arrest may be issued.

(g) It is an affirmative defense that:

(1) a person or lawful custodian committed the act to protect the child from imminent physical harm, provided that the defendant's belief that there was physical harm imminent was reasonable and that the defendant's conduct in withholding visitation rights was a reasonable response to the harm believed imminent;

(2) the act was committed with the mutual consent of all parties having a right to custody and visitation of the child; or

(3) the act was otherwise authorized by law.

(h) A person convicted of unlawful visitation interference shall not be subject to a civil contempt citation for the same conduct for violating visitation provisions of a court order issued under the Illinois Marriage and Dissolution of Marriage Act.

(Source: P.A. 88-96.)

Indiana

IC 35-42-3-4

Sec. 4. (a) A person who knowingly or intentionally:

(1) removes another person who is less than eighteen (18) years of age to a place outside Indiana when the removal violates a child custody order of a court; or

(2) removes another person who is less than eighteen (18) years of age to a place outside Indiana and violates a child custody order of a court by failing to return the other person to Indiana; commits interference with custody, a Class D felony. However, the offense is a Class C felony if the other person is less than fourteen (14) years of age and is not the person's child, and a Class B felony if the offense is committed while armed with a deadly weapon or results in serious bodily injury to another person.

(b) A person who with the intent to deprive another person of custody or visitation rights:

(1) knowingly or intentionally takes and conceals; or

(2) knowingly or intentionally detains and conceals;

a person who is less than eighteen (18) years of age commits interference with custody, a Class C misdemeanor. However, the offense is a Class B misdemeanor if the taking and concealment, or the detention and concealment, is in violation of a court order.

(c) With respect to a violation of this section, a court may consider as a mitigating circumstance the accused person's return of the other person in accordance with the child custody order within seven (7) days after the removal.

(d) The offenses described in this section continue as long as the child is concealed or detained, or both.

(e) If a person is convicted of an offense under this section, a court may impose against the defendant reasonable costs incurred by a parent or guardian of the child because of the taking, detention, or concealment of the child.

As added by P.L.49-1989, SEC.22. Amended by P.L.162-1990, SEC.1.

Iowa

710.6 Violating custodial order.

A relative of a child who, acting in violation of an order of any court which fixes, permanently or temporarily, the custody or physical care of the child in another, takes and conceals the child, within or outside the state, from the person having lawful custody or physical care, commits a class "D" felony.

A parent of a child living apart from the other parent who conceals that child or causes that child's whereabouts to be unknown to a parent with visitation rights or parental time in violation of a court order granting visitation rights or parental time and without the other parent's consent, commits a serious misdemeanor.

Section History: Early form

[C79, 81, § 710.6]

Section History: Recent form

85 Acts, ch 132, §1; 86 Acts, ch 1145, § 1

Kansas

60-1616.

Chapter 60.--PROCEDURE, CIVIL

Article 16.--DIVORCE AND MAINTENANCE

60-1616. Visitation orders; enforcement. (a) Parents. A parent not granted custody or residency of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral or emotional health.

(b) Grandparents and stepparents. Grandparents and stepparents may be granted visitation rights.

(c) Modification. The court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child.

(d) Enforcement of rights. An order granting visitation rights to a parent pursuant to this section may be enforced in accordance with K.S.A. 23-701, and amendments thereto.

(e) Repeated denial of rights, effect. Repeated unreasonable denial of or interference with visitation rights granted to a parent pursuant to this section may be considered a material change of circumstances which justifies modification of a prior order of child custody.

(f) Repeated child support misuse, effect. Repeated child support misuse may be considered a material change of circumstances which justifies modification of a prior order of child custody.

(g) Court ordered exchange or visitation at a child exchange and visitation center. (1) The court may order exchange or visitation to take place at a child exchange and visitation center, as established in K.S.A. 75-720.

(2) A parent may petition the court to modify an order granting visitation rights to require that the exchange or transfer of children for visitation or visitation take place at a child exchange and visitation center, as established in K.S.A. 75-720. The court may modify an order granting visitation rights whenever modification would serve the best interests of the child.

Kentucky

See:

.070 Custodial interference

Maine

7. Violation of order concerning parental rights and responsibilities and contact. Either parent may petition the court for a hearing on the issue of noncompliance with the order issued under subsection 2. If the court finds that a parent has violated a part of the order, the court may find that parent in contempt and may:

A. Require additional or more specific terms and conditions consistent with the order; [1995, c. 694, Pt. B, §2 (new); Pt. E, §2 (aff).]

B. Order that additional visitation be provided for a parent to take the place of visitation that was wrongfully denied; or [1995, c. 694, Pt. B, §2 (new); Pt. E, §2 (aff).]

C. Order a parent found in contempt to pay a forfeiture of at least \$100. [1995, c. 694, Pt. B, §2 (new); Pt. E, §2 (aff).]

[1995, c. 694, Pt. B, §2 (new); Pt. E, §2 (aff).]

Maryland

Article - Crimes and Punishments

[Next] [Another Article]

§ 1.

Any person who shall, for purposes of prostitution, fornication or concubinage, forcibly abduct from his or her home or usual place of abode or from the custody and control of his or her parent or parents or guardian any individual under the age of 16,

or be accessory thereto, or who shall for said purpose persuade or entice from his or her usual place of abode, or from the custody and control of his or her parent or parents or guardian, any such individual, or be accessory thereto, or shall knowingly secrete or harbor any such individual so abducted, persuaded or enticed as aforesaid, against the consent of his or her parent or parents or guardian, or the person or persons who may have the temporary care, custody or control of such individual, or be accessory thereto, upon conviction, is guilty of a misdemeanor and shall undergo imprisonment, in the discretion of the court, not exceeding the term of eight years.

Nothing contained in this section shall apply to cases pending nor to violations of the law which have heretofore occurred, but all such cases and violations shall be prosecuted as if the law hereby repealed were still in force.

Michigan

552.645 Finding of contempt for noncompliance with makeup and ongoing parenting time schedule;

suspension of license; agreement;

rescission of suspension order; sending copy to licensing agency;

hearing to show cause; hearing on modification of parenting time.

Sec. 45. (1) If the court enters an order under section 44(2) (g) and the parent fails to comply with the makeup and ongoing parenting time schedule, the court shall find the parent in contempt and, after notice and an opportunity for a hearing, may order suspension of the parent's license or licenses with respect to which the order under section 44(2) (g) was entered and proceed under section 30.

(2) After entry of a suspension order under subsection (1) , a parent may agree to a makeup parenting time schedule. The court may order a makeup parenting time schedule if the parent demonstrates a good faith effort to comply with the parenting time order.

If the court orders a makeup parenting time schedule, the court shall enter an order rescinding the suspension order that is effective as provided in section 4 of the regulated occupation support enforcement act, 1996 PA 236, MCL 338.3434, section 321c of the Michigan vehicle code, 1949 PA 300, MCL 257.321c, or section 43559 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.43559. Within 7 business days after

entry of the order rescinding the suspension order, the office of the friend of the court shall send a copy of the order rescinding the suspension order to the licensing agency.

(3) Within 14 days after the date of the notice under section 44, a parent who is notified of a petition to show cause under section 44 may request a hearing on a proposed modification of parenting time.

The court shall hold the requested hearing unless the parenting time dispute is resolved by other means. The court shall combine the hearing prescribed by this subsection with the hearing on the order to show cause unless the court finds for good cause shown on the record that the hearings should be held separately. If the court finds that the hearings should be held separately, the hearing on a proposed modification of parenting time shall be held before the hearing on the order to show cause.

History: Add. 1996, Act 239, Eff. Jan. 1, 1997;--Am. 1998, Act 334, Imd. Eff. Aug. 10, 1998.

Missouri

Penalties for denial or interference with visitation or custody.

454.1031. All penalties that apply to an obligor in sections 454.1000 to 454.1029 shall also apply to any person who has, without good cause as determined by a court with jurisdiction, denied or interfered with any order for visitation or custody for two or more consecutive periods. Any such penalties shall be imposed by a court with jurisdiction, and may be modified or vacated by the court for good cause shown, and the division shall have no jurisdiction over such matters.

Interference with custody--penalty.
565.150.

1. A person commits the crime of interference with custody if, knowing that he has no legal right to do so, he takes or entices from legal custody any person entrusted by order of a court to the custody of another person or institution.

2. Interference with custody is a class A misdemeanor unless the person taken or enticed away from legal custody is removed from this state, detained in another state or concealed, in which case it is a class D felony.

(L. 1977 S.B. 60, A.L. 1988 H.B. 1272, et al.)

(1984) "Takes...from lawful custody" is construed to include unlawful retention of any person following a period of temporary lawful custody.

State v. Edmisten (Mo.App.), 674 S.W.2d 576.

Montana

45-5-304. Custodial interference.

(1) A person commits the offense of custodial interference if, knowing that the person has no legal right to do so, the person takes, entices, or withholds from lawful custody any child, incompetent person, or other person entrusted by authority of law to the custody of another person or institution.

(2) A person convicted of the offense of custodial interference shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed \$50,000, or both.

(3) With respect to the first alleged commission of the offense only, a person who has not left the state does not commit an offense under this section if the person voluntarily returns the child, incompetent person, or other person to lawful custody before arraignment. With respect to the first alleged commission of the offense only, a person who has left the state does not commit an offense under this section if the person voluntarily returns the child, incompetent person, or other person to lawful custody before arrest.

Nebraska

HEADING Chapter 28. Crimes and Punishments.

CATCHLINE Violation of custody; penalty.

LAW 28-316. (1) Any person, including a natural or foster parent, who, knowing that he has no legal right to do so or, heedless in that regard, takes or entices any child under the age of eighteen years from the custody of its parent having legal custody, guardian, or other lawful custodian commits the offense of violation of custody.

(2) Except as provided in subsection (3) of this section, violation of custody is a Class II misdemeanor.

(3) Violation of custody in contravention of an order of any district or juvenile court of this state granting the custody of a child under the age of eighteen years to any person, agency, or institution, with the intent to deprive the lawful custodian of the custody of such child, is a Class IV felony.

Nevada

NRS 200.359 Detention, concealment or removal of child from person having lawful custody or from jurisdiction of court: Penalties; exceptions; limitation on issuance of arrest warrant; restitution.

1. A person having a limited right of custody to a child by operation of law or pursuant to an order, judgment or decree of any court, including a judgment or decree which grants another person rights to custody or visitation of the child, or any parent having no right of custody to the child, who:

(a) In violation of an order, judgment or decree of any court willfully detains, conceals or removes the child from a parent, guardian or other person having lawful custody or a right of visitation of the child; or

(b) In the case of an order, judgment or decree of any court that does not specify when the right to physical custody or visitation is to be exercised, removes the child from the jurisdiction of the court without the consent of either the court or all persons who have the right to custody or visitation, is guilty of a category D felony and shall be punished as provided in NRS 193.130.

2. A parent who has joint legal custody of a child pursuant to NRS 125.465 shall not willfully conceal or remove the child from the custody of the other parent with the specific intent to deprive the other parent of the parent and child relationship. A person who violates this subsection shall be punished as provided in subsection 1.

3. If the mother of a child has primary physical custody pursuant to subsection 2 of NRS 126.031, the father of the child shall not willfully conceal or remove the child from the physical

custody of the mother. If the father of a child has primary physical custody pursuant to subsection 2 of NRS 126.031, the mother of the child shall not willfully conceal or remove the child from the physical custody of the father. A person who violates this subsection shall be punished as provided in subsection 1.

4. Before an arrest warrant may be issued for a violation of this section, the court must find that:

(a) This is the home state of the child, as defined in subsection 5 of NRS 125A.040; and

(b) There is cause to believe that the entry of a court order in a civil proceeding brought pursuant to chapter 125 or 125A of NRS will not be effective to enforce the rights of the parties and would not be in the best interests of the child.

5. Upon conviction for a violation of this section, the court shall order the defendant to pay restitution for any expenses incurred in locating or recovering the child.

6. The prosecuting attorney may recommend to the judge that the defendant be sentenced as for a misdemeanor and the judge may impose such a sentence if he finds that:

(a) The defendant has no prior conviction for this offense and the child has suffered no substantial harm as a result of the offense; or

(b) The interests of justice require that the defendant be punished as for a misdemeanor.

New Hampshire

§ 633:4 Interference with Custody. - I. A person is guilty of a class B felony if:

(a) He knowingly takes from this state or entices away from this state any child under the age of 18, or causes any such child to be taken from this state or enticed away from this state, with the intent to detain or conceal such child from a parent, guardian or other person having lawful charge of such child; and

(b) He does not have a right of custody with respect to such child.

I. A person is guilty of a class B felony if such person knowingly takes from this state or entices away from this state any child under the age of 18, or causes any such child to be taken from this state or enticed away from this state, with the intent to detain or conceal such child from a parent, guardian or other person having lawful physical custody or physical custodial rights as described in RSA 458:17, IV.

II. A person is guilty of a misdemeanor if:

(a) He knowingly takes, entices away, detains or conceals any child under the age of 18, or causes any such child to be taken, enticed away, detained or concealed, with the intent to detain or conceal such child from a parent, guardian or other person having lawful charge of such child; and

(b) He does not have a right of custody with respect to such child.

II. A person is guilty of a misdemeanor if such person knowingly takes, entices away, detains or conceals any child under the age of 18, or causes any such child to be taken, enticed away, detained or concealed, with the intent to detain or conceal such child from a parent, guardian or

other person having lawful physical custody or physical custodial rights as described in RSA 458:17.

III. It shall be an affirmative defense to a charge under paragraph I or II that the person so charged was acting in good faith to protect the child from real and imminent physical danger. Evidence of good faith shall include but shall not be limited to the filing of a nonfrivolous petition documenting such danger and seeking to modify the custody decree in a court of competent jurisdiction within this state. Such petition must be filed within 72 hours of termination of visitation rights.

IV. The affirmative defense set forth in paragraph III shall not be available if the person charged with the offense has left this state with the child.

New York

§ 241. Interference with or withholding of visitation rights; alimony or maintenance suspension. When it appears to the satisfaction of the court that a custodial parent receiving alimony or maintenance pursuant to an order, judgment or decree of a court of competent jurisdiction has wrongfully interfered with or withheld visitation rights provided by such order, judgment or decree, the court, in its discretion, may suspend such payments or cancel any arrears that may have accrued during the time that visitation rights have been or are being interfered with or withheld. Nothing in this section shall constitute a defense in any court to an application to enforce payment of child support or grounds for the cancellation of arrears for child support.

Ohio

Section 2919.23

General Assembly: 121

Bill Number: Amended. Sub. S.B. 2

Effective Date: 07/01/96

(A) No person, knowing the person is without privilege to do so or being reckless in that regard, shall entice, take, keep, or harbor a person identified in division (A)(1), (2), or (3) of this section from the parent, guardian, or custodian of the person identified in division (A)(1), (2), or (3) of this section:

(1) A child under the age of eighteen, or a mentally or physically handicapped child under the age of twenty-one;

(2) A person committed by law to an institution for delinquent, unruly, neglected, abused, or dependent children;

(3) A person committed by law to an institution for the mentally ill or mentally retarded.

(B) No person shall aid, abet, induce, cause, or encourage a child or a ward of the juvenile court who has been committed to the custody of any person, department, or public or private institution to leave the custody of that person, department, or institution without legal consent.

(C) It is an affirmative defense to a charge of enticing or taking under division (A)(1) of this section, that the actor reasonably believed that the actor's conduct was necessary to preserve the child's health or safety. It is an affirmative defense to a charge of keeping or harboring under division (A) of this section, that the actor in good faith gave notice to law enforcement or judicial authorities within a reasonable time after the child or committed person came under the actor's shelter, protection, or influence.

(D)(1) Whoever violates this section is guilty of interference with custody.

(2) Except as otherwise provided in this division, a violation of division (A)(1) of this section is a misdemeanor of the first degree. If the child who is the subject of a violation of division (A)(1) of this section is removed from the state or if the offender previously has been convicted of an offense under this section, a violation of division (A)(1) of this section is a felony of the fifth degree. If the child who is the subject of a violation of division (A)(1) of this section suffers physical harm as a result of the violation, a violation of division (A)(1) of this section is a felony of the fourth degree.

(3) A violation of division (A)(2) or (3) of this section is a misdemeanor of the third degree.

(4) A violation of division (B) of this section is a misdemeanor of the first degree. Each day of violation of division (B) of this section is a separate offense.

Pennsylvania

§4346. Contempt for noncompliance with visitation or partial custody order.

(a) General rule.--A party who willfully fails to comply with any visitation or partial custody order may, as prescribed by general rule, be adjudged in contempt.

Contempt shall be punishable by any one or more of the following:

- 1.Imprisonment for a period not to exceed six months.
- 2.A fine not to exceed \$500.
- 3.Probation for a period not to exceed six months.

(b) Condition for release.--An order committing a person to jail under this section shall specify the condition which, when fulfilled, will result in the release of the obligor.

§ 2904. Interference with custody of children.

(a) Offense defined.--A person commits an offense if he knowingly or recklessly takes or entices any child under the age of 18 years from the custody of its parent, guardian or other lawful custodian, when he has no privilege to do so.

(b) Defenses.--It is a defense that:

- 1.the actor believed that his action was necessary to preserve the child from danger to its welfare; or
- 2.the child, being at the time not less than 14 years old, was taken away at its own instigation without enticement and without purpose to commit a criminal offense with or against the child; or
- 3.the actor is the child's parent or guardian or other lawful custodian and is not acting contrary to an order entered by a court of competent jurisdiction.

(c) Grading.--The offense is a felony of the third degree unless:

1.the actor, not being a parent or person in equivalent relation to the child, acted with knowledge that his conduct would cause serious alarm for the safety of the child, or in reckless disregard of a likelihood of causing such alarm. In such cases, the offense shall be a felony of the second degree; or

2.the actor acted with good cause for a period of time not in excess of 24 hours; and

(i) the victim child is the subject of a valid order of custody issued by a court of this Commonwealth;

(ii) the actor has been given either partial custody or visitation rights under said order; and

(iii) the actor is a resident of this Commonwealth and does not remove the child from the Commonwealth. In such cases, the offense shall be a misdemeanor of the second degree.

South Dakota

25-4A-5. Violation of custody or visitation decree -- Punishment. Each violation of the custody or visitation provisions of a court decree may be punished by imprisonment in jail not to exceed three days, by fine not to exceed one thousand dollars, or both.

Tennessee

39-13-306. Custodial interference.

(a) It is the offense of custodial interference for a natural or adoptive parent, stepparent, grandparent, brother, sister, aunt, uncle, niece, or nephew of a child younger than eighteen (18) years of age, or an individual adjudged to be incompetent to knowingly detain or move the child or individual adjudged to be incompetent from the vicinity where the child or person adjudged to be incompetent is found when the person knows that the detention or moving of the child or person adjudged to be incompetent violates a temporary or permanent judgment or court order regarding the child's or incompetent's custody or care.

(b) It is a defense to custodial interference that the individual detained or moved in contravention of the order of custody or care was returned by the defendant voluntarily and before arrest or the issuance of a warrant for arrest.

(c) If an aggravating factor found in § 39-13-304 or § 39-13-305 is present, except for the factor found in § 39-13-305(a)(2), the offense may be prosecuted under § 39-13-304 or § 39-13-305, but otherwise prosecution shall be under this section.

(d) Custodial interference shall be a Class E felony unless the person taken from lawful custody is returned voluntarily by the defendant, in which case custodial interference is a Class A misdemeanor.

Texas

Texas is unique in that it has minimum parenting time statutes which provide the child with a minimum of time with the noncustodial parent. The court can award more time, but not less. Similar to Michigan, Texas also provides for one-to-one make-up time if a parent is denied "visitation."

In addition to the remedies listed below, Texas Rules of Court (308(a)) also allow a judge to appoint a lawyer to file whatever actions are necessary to enforce a parenting time order. The attorney's fees are to be paid by the parent who denied "visitation." The Texas Family Code also provides, upon motion of one of the parties or of the court, for a "Friend of the Court" to be appointed to try to solve almost any problems with plague a separated family.

Denial of "Visitation" is a State Jail Felony, and Can Be Expensive

In Texas, denial of "possession of or access to a child" ("visitation") is a "state jail felony" as defined in the Texas Penal Code.

In order to eliminate any confusion about the purpose and use of 25.03, Representative Susan Combs wrote a letter dated November 23, 1993, explaining that the 73rd Legislature, which ended September 1, 1993, intended for this section to be used to prosecute instances of denial of access:

(The 73rd Legislature)

"...provided clarification to the changes made to Section 25.03 of the Penal Code...to apply to order establishing 'visitation.'

"The legislative intent is that Section 25.03 of the Penal Code be applied when a parent is denied 'visitation'..."

Section 25.03 of the Penal Code reads, in part (emphasis added):

25.03. Interference with Child Custody.

(a) *A person commits an offense if he takes or retains a child younger than 18 years of age when he:*

(1) *knows that his taking or retention violates the express terms of a judgment or order of a court disposing of the child's custody;...*

Civil Liability for Denial of "Visitation"

CHAPTER 42. CIVIL LIABILITY FOR INTERFERENCE WITH POSSESSORY INTEREST IN CHILD

Sec. 42.001. Definitions.

In this chapter:

(1) "Order" means a temporary or final order of a court of this state or another state or nation.

(2) "Possessory right" means a court-ordered right of possession of or access to a child, including conservatorship, custody, and visitation.

Sec. 42.002. Liability for Interference with Possessory Right.

(a) A person who takes or retains possession of a child or who conceals the whereabouts of a child in violation of a possessory right of another person may be liable for damages to that person.

(b) A possessory right is violated by the taking, retention, or concealment of a child at a time when another person is entitled to possession of or access to the child.

Sec. 42.003. Aiding or Assisting Interference with Possessory Right.

(a) A person who aids or assists in conduct for which a cause of action is authorized by this chapter is jointly and severally liable for damages.

(b) A person who was not a party to the suit in which an order was rendered providing for a possessory right is not liable unless the person at the time of the violation:

(1) had actual notice of the existence and contents of the order; or

(2) had reasonable cause to believe that the child was the subject of an order and that the person's actions were likely to violate the order.

Sec. 42.004. Notice.

(a) As a prerequisite to the filing of suit, a person who has been denied a possessory right shall give written notice of the specific violation alleged to the person alleged to be in violation of the order.

(b) The notice shall be by certified or registered mail, return receipt requested, to the last known address of the person alleged to be in violation of the order.

(c) The person giving notice shall include a statement of intention to file suit unless the person alleged to have violated the order promptly and fully complies with the order.

(d) A suit may not be filed until the 31st day after the date on which the notice is mailed.

(e) Notice need not be given to a person aiding or assisting conduct denying a possessory right.

(f) A party may introduce evidence that notice has been given as provided by this section.

Sec. 42.005. Venue.

A suit may be filed in a county in which:

(1) the plaintiff resides;

(2) the defendant resides;

(3) a suit affecting the parent-child relationship as provided by Chapter 102 may be brought, concerning the child who is the subject of the court order; or

(4) a court has continuing, exclusive jurisdiction as provided by Chapter 155.

Sec. 42.006. Damages.

(a) Damages may include:

(1) the actual costs and expenses incurred, including attorney's fees, in:

(A) locating a child who is the subject of the order;

(B) recovering possession of the child if the petitioner is entitled to possession; and

(C) enforcing the order and prosecuting the suit; and

(2) mental suffering and anguish incurred by the plaintiff because of a violation of the order.

(b) A person liable for damages who acted with malice or with an intent to cause harm to the plaintiff may be liable for exemplary damages.

Sec. 42.007. Affirmative Defense.

The defendant may plead as an affirmative defense that:

(1) the defendant acted in violation of the order with the express consent of the plaintiff; or

(2) after receiving notice of an alleged violation, the defendant promptly and fully complied with the order.

Sec. 42.008. Remedies Not Affected.

This chapter does not affect any other civil or criminal remedy available to any person, including the child, for interference with a possessory right, nor does it affect the power of a parent to represent the interest of a child in a suit filed on behalf of the child.

Sec. 42.009. Frivolous Suit.

A person sued for damages as provided by this chapter is entitled to recover attorney's fees and court costs if:

(1) the claim for damages is dismissed or judgment is awarded to the defendant; and

(2) the court or jury finds that the claim for damages is frivolous, unreasonable, or without foundation.

Utah

78-32-12.2. Definitions -- Sanctions.

(1) For purposes of this section:

(a) "Make up visitation" means visitation which is:

(i) of the same type and duration of visitation as that which was denied, including visitation during weekdays, weekends, holidays, and during extended visitation periods;

(ii) to be made up within one year after the court has entered its order of make up visitation; and

(iii) in the manner chosen by the aggrieved parent if it is in the best interest of the child.

(b) "Petition" means a petition brought by a parent, a grandparent as provided in Section 30-5-2, by other immediate family members, or upon the court's own motion alleging that a parent is not complying with a visitation order in a decree of divorce or a subsequent visitation enforcement order which may be brought at different stages in the alleged pattern of noncompliance:

(i) a first petition is a petition to enforce an original order of visitation or a petition filed after three years from the last visitation enforcement order;

(ii) a second petition is a petition filed within three years following entry of the first visitation enforcement order; and

(iii) a third petition is a petition filed within three years following entry of the second visitation enforcement order.

(c) "Substantial noncompliance" means conduct which:

(i) substantially interferes with a court ordered visitation schedule;

or

(ii) interferes with parent's right to frequent, meaningful, and continuing access with his child and which substantially impairs that parent-child relationship.

(d) "Visitation enforcement order" means an order to enforce compliance with an original visitation order through the use of sanctions.

(2) Upon a first petition, the court shall order:

(a) if the first petition is uncontested, by default:

(i) a permanent injunction enjoining the noncompliance with the court's visitation order;

(ii) make up visitation for the aggrieved parent and child; and

(iii) participation in workshops, classes, or individual counseling to educate the parent about the importance of complying with the court order and providing the child with a continuing relationship with both parents as provided in Subsection 78-32-12.1 (1)(b); or

(b) if the first petition is contested, the court shall hold a hearing to determine by a preponderance of the evidence whether there has been a substantial noncompliance with the visitation order.

(3) Upon a finding of substantial noncompliance, the court shall order:

(a) actual costs including actual attorney fees and court costs to the prevailing party;

(b) make up visitation for the aggrieved parent and child;

(c) a minimum of ten hours of compensatory service as provided in Subsection 78-32-12.1

(1) (a); and

(d) a permanent injunction enjoining the noncompliance with the court's visitation order.

(4) Upon a finding of substantial noncompliance, the court may order:

(a) mediation with the requirement to report back to the court on the results of mediation within 30 days;

(b) participation in workshops, classes, or individual counseling to educate the parent about the importance of complying with the court order and providing the child with a continuing relationship with both parents as provided in Subsection 78-32-12.1 (1)(b); or

(c) a fine or jail sentence or other appropriate sanctions as provided under contempt of court in Section 78-32-10.

(5) Upon a second petition, the court shall order:

(a) if the second petition is uncontested, by default:

(i) actual costs including actual attorney fees and court costs;

(ii) make up visitation to be provided for the aggrieved parent and child;

(iii) a minimum of ten hours of compensatory service as provided in Subsection 78-32-12.1(1)(a); and

(iv) impose a fine or jail sentence or other appropriate sanctions as provided under contempt of court in Section 78-32-10; or

(b) if the second petition is contested, the court shall hold a hearing to determine by a preponderance of the evidence whether there has been a substantial noncompliance with the visitation orders.

(6) Upon a finding of a substantial noncompliance, the court shall order:

(a) actual costs including actual attorney fees and court costs to the prevailing party;

(b) make up visitation to be provided for the aggrieved party and child at twice the amount of time previously wrongfully denied and under the same conditions as provided in Subsections 78-32-12.2(3)(a) through (c);

(c) a minimum of 20 hours of compensatory service as provided in Subsection 78-32-12.1(1)(a);

(d) a contempt order which imposes a fine or jail sentence as provided in Section 78-32-10; and

(e) the violator to post bond or security in the amount determined by the court to insure future compliance.

- (7) The court may impose additional sanctions which may include any additional remedies, terms, or conditions which are consistent with the court's previous order.
- (8) Upon a third petition, the court shall order:
- (a) if the third petition is uncontested, by default:
 - (i) actual costs including actual attorney fees and court costs;
 - (ii) make up visitation to be provided for the aggrieved party and child at twice the amount of time previously denied and under the same conditions as provided in Subsections 78-32-12.2(3)(a) through (c);
 - (iii) a minimum of ten hours of compensatory service as provided in Subsection 78-32-12.1(1)(a); and
 - (iv) impose a fine or jail sentence or other appropriate sanctions as provided under contempt of court in Section 78-32-10; or
 - (b) if the third petition is contested, the court shall hold a hearing to determine by a preponderance of the evidence whether there has been a substantial noncompliance with the visitation orders.
- (9) Upon a finding of substantial noncompliance, the court shall order:
- (a) actual costs including actual attorney fees and court costs to the prevailing party;
 - (b) a finding that there has been a prima facie showing of a substantial change of circumstances which is against the best interest of the child for purposes of modification of custody and order a temporary change of custody for a duration to be determined by the court; and
 - (c) a finding that there has been a probable cause showing of custodial interference as provided in Section 76-5-303 and order the case to be referred to the county attorney for prosecution.
- (10) The court may decline to issue an order with the alternative sanctions as provided in Subsections 78-32-12.2(2) through (9) although the petitioner has met his burden of proof if the court provides findings on the record explaining why a sanction or sanctions were not imposed.
- (11) The noncustodial parent shall give the court and the custodial parent written notice of his intention to exercise the make up visitation at least seven days before the proposed visit if it is to be on a weekday or weekend, and at least 30 days before the proposed visit if it is to be on a holiday or an extended visitation period.
- (12) The court shall suspend any proceedings under Section 78-32-12.2 if substantial allegations of child abuse or child sexual abuse are under investigation or a case is pending in the courts on the allegations.
- (13) The filing of any petition under this section which is found to be without merit and not asserted or defended against in good faith shall be subject to sanctions as determined by the court.
- (14) This section shall be implemented only as a pilot program in the first judicial district as provided in Section 78-32-12.3.

Vermont

§ 2451. CUSTODIAL INTERFERENCE

- (a) A person commits custodial interference by taking, enticing or keeping a child from the child's lawful custodian, knowingly, without a legal right to do so, when the person is a relative of the child and the child is less than eighteen years old.
- (b) A person who commits custodial interference shall be imprisoned not more than five years or fined not more than \$5,000.00, or both.
- (c) It shall be a defense to a charge of keeping a child from the child's lawful custodian that the person charged with the offense was acting in good faith to protect the child from real and imminent physical danger. Evidence of good faith shall include, but is not limited to, the filing of

a non-frivolous petition documenting that danger and seeking to modify the custodial decree in a Vermont court of competent jurisdiction. This petition must be filed within 72 hours of the termination of visitation rights. This defense shall not be available if the person charged with the offense has left the state with the child.

Virginia

§ 18.2-49.1

Violation of court order regarding custody and visitation; penalty

A. Any person who knowingly, wrongfully and intentionally withholds a child from the child's custodial parent in a clear and significant violation of a court order respecting the custody or visitation of such child, provided such child is withheld outside of the Commonwealth, shall be guilty of a Class 6 felony.

B. Any person who knowingly, wrongfully and intentionally engages in conduct which constitutes a clear and significant violation of a court order respecting the custody or visitation of a child shall be guilty of a Class 4 misdemeanor upon conviction of a first offense. A second conviction for a violation of this section within twelve months of a first conviction shall be a Class 3 misdemeanor, and a third conviction occurring within twenty-four months of the first conviction shall be a Class 2 misdemeanor.