



RON FREITAS

District Attorney, San Joaquin County

PROTECTING OUR COMMUNITY SINCE 1850

Parental Child Abduction

Child abduction occurs when a parent or other person maliciously takes, entices away, keeps, withholds, or conceals any child with the intent to detain or conceal that child from a lawful custodian. See PC§278 and §278.5. There does NOT necessarily need to be a court order in place for a person to violate these sections.

When responding to a call for service regarding this type of case, verify any court order that is presented to you (if you can and via dispatch), then proceed pursuant to your training and experience. It is imperative you ensure any lawful court orders are followed. But remember, just because there is NO court order doesn't mean there hasn't been parental child abduction.

Mandate

All District Attorney's Offices are tasked by State Law to assist Courts in the enforcement of Family Law orders regarding custody and visitation of children. See FC§3130 et seq.

Responsibilities of District Attorney Child Abduction Unit

- Prosecute child abduction crimes pursuant to PC§§278/278.5
- Locate and recover abducted children within the United States.
- Seek to return children abducted internationally to their country of habitual residence pursuant to the Hague Convention on the Civil Aspects of International Child Abduction.

Responsibilities/Duties of Law Enforcement

-PC§ 14205(a):

All local police and sheriff departments *shall* accept **any** report, including any telephonic report, of a missing person including runaways, *without delay* and *shall give priority* to the handling of these reports over the handling of reports relating to crimes involving property.

-PC§ 14205(c):

Law enforcement must forward the missing report to the department having jurisdiction of the child's residence and the department where the child was last seen (if missing report taken by another department) within 24 hours.

-PC§14210(a):

The legislature finds and declares that it is the duty of all law enforcement agencies to *immediately* assist any person who is attempting to make a report of a missing person or runaway.

-PC§14213(a):

“Missing person” includes a child who has been taken, detained, concealed, enticed away, or retained by a parent in violation of the child abduction codes.

-PC§14213(b):

Evidence that a person is “at risk” includes “the person missing *may* be a victim of parental abduction.”

-When placing children in **MUPS**, be sure to include the **Taking Parent** as missing too!

-Jurisdiction: Take a report! Forward your courtesy report to agency where victim lives.

Penal Code Sections

§166(a)(4) Contempts of Court Constituting Misdemeanors; Victim Contact by Person Previously Convicted of Stalking; Violation of Protective or Stay-Away Order; Possession of Firearms.

- (a) Except as provided in subdivisions (b), (c), and (d), a person guilty of any of the following contempt of court is guilty of a misdemeanor:

Willful disobedience of the terms as written of any process or court order or out-of-state court order, lawfully issued by a court, including orders pending trial.

§207. Kidnapping.

- (a) Every person who forcibly, or by any other means of instilling fear, steals, or takes, or holds, detains, or arrests any person in this state, and carries a person into another country, state, or county, or into another part of the same county, is guilty of kidnapping.
- (b) Every person, who for the purpose of committing any act defined in Section 288, hires, persuades, entices, decoys, or seduces by false promises, misrepresentations, or the like, any child under the age of 14 years to go out of this country, state, or county, or into another part of the same country, is guilty of kidnapping.
- (c) Every person who forcibly, or by any other means of instilling fear, takes or holds, detains, or arrests any person, with a design to take the person out of this state, without having established a claim, according to the laws, of the United States, or of this state, or who hires, persuades, entices, decoys, or seduces by false promises, misrepresentations, or the like, any person to go out of this state, or to be taken or removed therefrom, for the purpose and with the intent to sell that person into slavery or involuntary servitude, or otherwise to employ that person for his or her own use, or to the use of another, without the free will and consent of that persuaded person, is guilty of kidnapping.
- (d) Every person who, being out of this state, abducts or takes by force or fraud any person contrary to the law of the place where that act is committed, and brings, sends, or conveys that person within the limits of this state, and is afterwards found within the limits thereof, is guilty of kidnapping.

- (e) For purpose of those types of kidnapping requiring force, the amount of force required to kidnap an unresisting infant or child is the amount of physical force required to take and carry the child away a substantial distance for an illegal purpose or with an illegal intent.

§278. Noncustodial Persons; Detainment or Concealment of Child from Legal Custodian.

Punishment:

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 pursuant to subdivision (h) of Section 1170 for two, three, or four years, a fine not exceeding ten thousand dollars (\$10,000), or both that fine and imprisonment.

§278.5 Deprivation of Custody of Child or Right to Visitation.

Punishment:

- (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 pursuant to subdivision (h) of Section 1170 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.

§279.6 Circumstance for Protective Custody; Return to Lawful Custodian.

- (a) A law enforcement officer may take a child into protective custody under any of the following circumstances:
- (1) It reasonably appears to the officer that a person is likely to conceal the child, flee the jurisdiction with the child, or, by flight or concealment, evade the authority of the court.
 - (2) There is no lawful custodian available to take custody of the child.
 - (3) There are conflicting custody orders or conflicting claims to custody and the parties cannot agree which party should take custody of the child.
 - (4) The child is an abducted child.
- (b) When a law enforcement officer takes a child into protective custody pursuant to this section, the officer shall do one of the following:

- (1) Release the child to the lawful custodian of the child, unless it reasonably appears that the release would cause the child to be endangered, abducted, or removed from the jurisdiction.
 - (2) Obtain an emergency protective order pursuant to Part 3 (commencing with Section 6240) of Division 10 of the Family Code ordering placement of the child with an interim custodian who agrees in writing to accept interim custody.
 - (3) Release the child to the social services agency responsible for arranging shelter or foster care.
 - (4) Return the child as ordered by a court competent jurisdiction.
- (c) Upon the arrest of a person for a violation of Section 278 or 278.5, a law enforcement officer shall take possession of an abducted child who is found in the company of, or under the control of, the arrested person and deliver the child as directed in subdivision (b).
- (d) Notwithstanding any other law, when a person is arrested for an alleged violation of Section 278 or 278.5, the court shall, at the time of the arraignment or thereafter, order that the child shall be returned to the lawful custodian by or on a specific date, or that the person show cause on that date why the child has not been returned as ordered. If conflicting custodial orders exist within this state, or between this state and a foreign state, the court shall set a hearing within five court days to determine which court has jurisdiction under the laws of this state and determine which state has subject matter jurisdiction to issue a custodial order under the laws of this state, the Uniform Child Custody Jurisdiction Act (Part 3 (commencing with Section 3400) of Division 8 of the Family Code), or the federal law, if applicable. At the conclusion of the hearing or if the child has not been returned as ordered by the court at the time of arraignment, the court shall enter an order as to which custody order is valid and is to be enforced. If the child has not been returned at the conclusion of the hearing, the court shall set a date within a reasonable time by which the child shall be returned to the lawful custodian, and order the defendant to comply by this date, or to show cause on that date why he or she has not returned the child as directed. The court shall only enforce its order, or any subsequent orders for the return of the child, under subdivision (a) of Section 1219 of the Code of Civil Procedure, to ensure that the child is promptly placed with the lawful custodian. An order averse to either the prosecution or defense is reviewable by a writ of mandate or prohibition addressed to the appropriate court.

Resources

Child Abduction Task Force
NECMEC
CA DOJ

<http://www.childabductions.org/>
<http://www.missingkids.com/>
<http://oag.ca.gov/ca-mexico/child-abduction>

California Education Code Section:

§49076.5 Article 5. Privacy of Pupil Records

- (a) Notwithstanding Section 49076, each school district shall release the information it has specific to a particular pupil's identity and location that relates to the transfer of that pupil's identity and location that relates to the transfer of that pupil's records to another school district within this state or any other state or to a private school in this state to a designated peace officer, upon his or her request, when a proper police purpose exists for the use of that information. As permitted by Part 99 (commencing with Section 99.1) of Title 34 of the Code of Federal Regulations, the designated peace officer or law enforcement agency shall show the school district that the peace officer or law enforcement agency has obtained prior written consent from one parent or provide information indicating that there is an emergency in which the information is necessary to protect the health or safety of the pupil or other individuals, or that the peace officer or law enforcement agency has obtained a lawfully issued subpoena or a court order.
- (b) In order to protect the privacy interests of the pupil, a request to a school district for pupil record information pursuant to this section shall meet the following requirements:
- (1) For purposes of this section, "proper police purpose" means that probable cause exists that the pupil has been kidnapped and that his or her abductor may have enrolled the pupil in a school and that the agency has begun an active investigation.
 - (2) Only designated peace officers and federal criminal investigators and federal law enforcement officers, as defined in Section 830.1 of the Penal Code, whose names have been submitted to the school district in writing by a law enforcement agency, may request and receive the information specified in subdivision (a). Each law enforcement agency shall ensure that each school district has at all times a current list of the names of designated peace officers authorized to request pupil record information.
 - (3) This section does not authorize designated peace officers to obtain any pupil record information other than that authorized by this section.
 - (4) The law enforcement agency requesting the information shall ensure that at no time shall information obtained pursuant to this section be disclosed or used for a purpose other than to assist in the investigation of suspected criminal conduct or kidnapping. A violation of this paragraph shall be punishable as a misdemeanor.
 - (5) The designated peace officer requesting information authorized for release by this section shall make a record on a form created and maintained by the law enforcement agency that shall include the name of the pupil about whom the inquiry was made, the consent of a parent having legal custody of the pupil or a legal guardian, the name of the officer making the inquiry, the date of the inquiry, the name of the school district, the school district employee to whom the request was made, and the information that was requested.
 - (6) Whenever the designated peace officer requesting information authorized for release by this section does so in person, by telephone, or by some means other than in writing, the officer shall provide the school district with a letter

confirming the request for pupil record information before any release of information.

- (7) A school district, or officer or employee of the school district, shall not be subject to criminal or civil liability for the release of pupil record information in good faith as authorized by this section.