

# NDAA PARENTAL KIDNAPPING COMPILATION

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## **ALABAMA**

### **ALA. CODE § 13A-6-45 (2010). Interference with custody**

(a) A person commits the crime of interference with custody if he knowingly takes or entices:

(1) Any child under the age of 18 from the lawful custody of its parent, guardian or other lawful custodian, or

(2) Any committed person from the lawful custody of its parent, guardian or other lawful custodian. "Committed person" means, in addition to anyone committed under judicial warrant, any neglected, dependent or delinquent child, mentally defective or insane person or any other incompetent person entrusted to another's custody by authority of law.

(b) A person does not commit a crime under this section if the actor's sole purpose is to assume lawful control of the child.

The burden of injecting the issue is on the defendant, but this does not shift the burden of proof.

(c) Interference with custody is a Class C felony.

## **ALASKA**

### **ALASKA STAT. § 11.41.300 (2010). Kidnapping**

(a) A person commits the crime of kidnapping if

(1) the person restrains another with intent to

(A) hold the restrained person for ransom, reward, or other payment;

(B) use the restrained person as a shield or hostage;

(C) inflict physical injury upon or sexually assault the restrained person or place the restrained person or a third person in apprehension that any person will be subjected to serious physical injury or sexual assault;

(D) interfere with the performance of a governmental or political function;

(E) facilitate the commission of a felony or flight after commission of a felony;

(F) commit an offense in violation of AS 11.41.434 -- 11.41.438 upon the restrained person or place the restrained person or a third person in apprehension that a person will be subject to an offense in violation of AS 11.41.434 -- 11.41.438; or

(2) the person restrains another

(A) by secreting and holding the restrained person in a place where the restrained person is not likely to be found; or

(B) under circumstances which expose the restrained person to a substantial risk of serious physical injury.

(b) In a prosecution under (a)(2)(A) of this section, it is an affirmative defense that

(1) the defendant was a relative of the victim;

(2) the victim was a child under 18 years of age or an incompetent person; and

(3) the primary intent of the defendant was to assume custody of the victim.

(c) Except as provided in (d) of this section, kidnapping is an unclassified felony and is punishable as provided in AS 12.55.

(d) In a prosecution for kidnapping, it is an affirmative defense which reduces the crime to a class A felony that the defendant voluntarily caused the release of the victim alive in a safe place before arrest, or within 24 hours after arrest, without having caused serious physical injury to the victim and without having engaged in conduct described in AS 11.41.410(a), 11.41.420, 11.41.434, or 11.41.436.

**ALASKA STAT. § 11.41.320 (2010). Custodial interference in the first degree**

(a) A person commits the crime of custodial interference in the first degree if the person violates AS 11.41.330 and causes the child or incompetent person to be

(1) removed from the state; or

(2) kept outside the state.

(b) Custodial interference in the first degree is a class C felony.

**ALASKA STAT. § 11.41.330 (2010). Custodial interference in the second degree**

(a) A person commits the crime of custodial interference in the second degree if, being a relative of a child under 18 years of age or a relative of an incompetent person and knowing that the person has no legal right to do so, the person takes, entices, or keeps that child or incompetent person from a lawful custodian with intent to hold the child or incompetent person for a protracted period.

(b) The affirmative defense of necessity under AS 11.81.320 does not apply to a prosecution for custodial interference under (a) of this section if the protracted period for which the person held the child or incompetent person exceeded the shorter of the following:

(1) 24 hours; or

(2) the time necessary to report to a peace officer or social service agency that the child or incompetent person has been abused, neglected, or is in imminent physical danger.

(c) Custodial interference in the second degree is a class A misdemeanor.

**ALASKA STAT. § 11.51.125 (2010). 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**

**ARIZ. REV. STAT. § 13-1302 (2010). Custodial interference; child born out of wedlock; defenses; classification**

A. A person commits custodial interference if, knowing or having reason to know that the person has no legal right to do so, the person does one of the following:

1. Takes, entices or keeps from lawful custody any child, or any person who is incompetent, and who is entrusted by authority of law to the custody of another person or institution.
2. Before the entry of a court order determining custodial rights, takes, entices or withholds any child from the other parent denying that parent access to any child.
3. If the person is one of two persons who have joint legal custody of a child takes, entices or withholds from physical custody the child from the other custodian.
4. At the expiration of access rights outside this state, intentionally fails or refuses to return or impedes the return of a child to the lawful custodian.

B. If a child is born out of wedlock, the mother is the legal custodian of the child for the purposes of this section until paternity is established and custody or access is determined by a court.

C. It is a defense to a prosecution pursuant to subsection A, paragraph 2 if both of the following apply:

1. The defendant has begun the process to obtain an order of protection or files a petition for custody within a reasonable period of time and the order of protection or petition states the defendant's belief that the child was at risk if left with the other parent.
2. The defendant is the child's parent and has the right of custody and the defendant either:
  - (a) Has a good faith and reasonable belief that the taking, enticing or withholding is necessary to protect the child from immediate danger.
  - (b) Is a victim of domestic violence by the other parent and has a good faith and reasonable belief that the child will be in immediate danger if the child is left with the other parent.

D. A violation of this section is:

1. A class 3 felony if committed by a person other than the parent or agent of the parent or custodian or agent of the custodian.
2. Notwithstanding paragraph 3 of this subsection, a class 4 felony if the child or incompetent person is taken, enticed or kept from lawful custody out of this state by the parent or agent of the parent or custodian or the agent of the custodian.
3. A class 6 felony if committed by a parent or agent of the parent or custodian or agent of the custodian.
4. A class 1 misdemeanor if the child or incompetent person is voluntarily returned without physical injury prior to arrest or the issuance of an arrest warrant.

**ARIZ. REV. STAT. § 13-1305 (2010). 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**

### **ARK. CODE ANN. § 5-26-501 (2010). Interference with visitation**

(a) (1) 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.

(2) A person claiming interference with visitation shall provide a copy of the signed court order or decree regarding custody or visitation rights to a law enforcement officer as proof of the interference with visitation.

(b) (1) Interference with visitation is a Class C misdemeanor.

(2) However, interference with visitation is a:

(A) Class D felony for any offense if the minor is taken, enticed, or kept outside of the State of Arkansas; or

(B) Class A misdemeanor for a third or subsequent offense.

(c) It is an affirmative defense to a prosecution that:

(1) A person or lawful guardian committed the act to protect the minor from imminent physical harm if the defendant's:

(A) Belief that physical harm was imminent is reasonable; and

(B) Conduct in withholding visitation rights was a reasonable response to the harm believed to be imminent;

(2) A person or lawful guardian committed the act based on a reasonable belief that the person entitled to visitation would remove the minor from the jurisdiction of the court;

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

(4) The act was otherwise authorized by law.

**ARK. CODE ANN. § 5-26-502 (2010). Interference with court-ordered custody**

(a) A person commits the offense of interference with court-ordered custody if the person:

(1) Knowing that he or she has no lawful right to do so, takes, entices, or keeps any minor from any person entitled by a court decree or order to the right of custody of the minor;

(2) Without lawful authority, knowingly or recklessly takes or entices, or aids, abets, hires, or otherwise procures another person to take or entice, any minor or any incompetent person from the custody of:

(A) The parent of the minor or incompetent person;

(B) The guardian of the minor or incompetent person;

(C) A public agency having lawful charge of the minor or incompetent person;

(D) Any other lawful custodian; or

(E) A person described in subdivisions (a)(2)(A), (B), or (D) of this section while the custodian and minor are being housed at a shelter as defined in § 9-4-102;

(3) (A) Has been awarded custody or granted an adoption or guardianship of a juvenile pursuant to or arising out of a dependency-neglect action pursuant to the Arkansas Juvenile Code of 1989, § 9-27-301 et seq., and subsequently places the juvenile in the care or supervision of any person:

(i) From whom the juvenile was removed; or

(ii) The court has specifically ordered not to have care, supervision, or custody of the juvenile.

(B) Subdivision (a)(3)(A) of this section shall not be construed to prohibit a placement described in subdivision (a)(3)(A) of this section if the person who has been granted custody, adoption, or guardianship obtains a court order to that effect from the juvenile division of circuit court that made the award of custody, adoption, or guardianship; or

(4) Accepts or acquiesces in taking physical custody for any length of time of a juvenile who was removed from the person or if the court has specifically ordered that the person not have care, supervision, or custody of the juvenile pursuant to or arising out of a dependency-neglect action pursuant to the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.

(b) (1) (A) Interference with court-ordered custody under subdivision (a)(1) of this section is a Class A misdemeanor.

(B) However, interference with court-ordered custody under subdivision (a)(1) of this section is a Class D felony if the minor is:

(i) Taken, enticed, or kept outside the State of Arkansas; or

(ii) Taken from any person entitled by a court decree or order to the right of custody of the minor while the custodian and minor are being housed at a shelter as defined in § 9-4-102, even if the minor is not taken outside the State of Arkansas.

(2) Interference with court-ordered custody under subdivision (a)(2) of this section is a Class C felony.

(3) (A) Interference with court-ordered custody under subdivision (a)(3) of this section is a Class A misdemeanor.

(B) However, any subsequent offense of interference with court-ordered custody under subdivision (a)(3) of this section shall constitute a Class C felony.

(4) (A) Interference with court-ordered custody under subdivision (a)(4) of this section is a Class A misdemeanor.

(B) However, any subsequent offense of interference with court-ordered custody under subdivision (a)(4) of this section shall constitute a Class C felony.

(c) (1) In every case prior to serving a warrant for arrest on a person charged with the offense of interference with court-ordered custody, the police officer or other law enforcement officer shall inform the Department of Health and Human Services of the circumstances of any minor named in the information or indictment as having been taken, enticed, or kept from the custodian in a manner constituting interference with court-ordered custody or placed with a person prohibited under subdivision (a)(3) of this section.

(2) A representative of the department shall be present with the arresting police officer or law enforcement officer to take the minor into temporary custody of the department pending further proceedings by a court of competent jurisdiction.

(d) (1) A court of competent jurisdiction shall determine the immediate custodial placement of any minor pursuant to a petition brought by the department or an agency of the department to determine if there is probable cause to believe the minor may be:

(A) Removed from the jurisdiction of the court;

(B) Abandoned; or

(C) Outside the immediate care or supervision of a person lawfully entitled to custody.

(2) Except in a situation arising under subdivisions (a)(3) or (4) of this section, the court shall immediately give custody to the lawful custodian if it finds that the lawful custodian is present before the court.

(e) (1) A petitioner shall comply with the requirements of § 9-27-312 with regard to the giving of a notice and the setting of a hearing.

(2) The petitioner is immune from liability with respect to any conduct undertaken pursuant to this section unless it is determined that the petitioner acted with actual malice.

**ARK. CODE ANN. § 5-26-503 (2010). Interference with custody**

(a) A person commits the offense of interference with custody if without lawful authority he or she knowingly takes or entices, or aids, abets, hires, or otherwise procures another person to take or entice any minor from the custody of:

(1) The parent of the minor including an unmarried woman having legal custody of an illegitimate child under § 9-10-113;

(2) The guardian of the minor;

(3) A public agency having lawful charge of the minor; or

(4) Any other lawful custodian.

(b) Interference with custody is a Class C felony.

(c) (1) In every case prior to serving a warrant for arrest on a person charged with the offense of interference with custody, the police officer or other law enforcement officer shall inform the Department of Human Services of the circumstances of any minor named in the information or indictment as having been taken, enticed, or kept from the parent, guardian, or custodian in a manner constituting interference with custody.

(2) A representative of the department shall be present with the arresting police officer or law enforcement officer to take the minor into temporary custody of the department pending further proceedings by a court of competent jurisdiction.

(d) (1) A court of competent jurisdiction shall determine the immediate custodial placement of any minor taken into custody by the department under subsection (c) of this section pursuant to a petition brought by the department to determine if there is probable cause to believe the minor may be:

(A) Removed from the jurisdiction of the court;

(B) Abandoned; or

(C) Outside the immediate care or supervision of a person lawfully entitled to custody.

(2) The court shall immediately give custody to the lawful custodian if it finds that the lawful custodian is present before the court.

(e) (1) The department shall comply with the requirements of § 9-27-312 with regard to the giving of a notice and the setting of a hearing on a petition filed under subsection (d) of this section.

(2) The department is immune from liability with respect to any conduct undertaken pursuant to this section unless it is determined that the department acted with actual malice.

## **CALIFORNIA**

### **CAL. PENAL CODE § 277 (2009). Definitions**

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.

### **CAL. PENAL CODE § 278 (2009). 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 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.

### **CAL. PENAL CODE § 278.5 (2009). Additional 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 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.

### **CAL. PENAL CODE § 278.6 (2009). Aggravation**

(a) At the sentencing hearing following a conviction for a violation of Section 278 or 278.5, or both, the court shall consider any relevant factors and circumstances in aggravation, including, but not limited to, all of the following:

(1) The child was exposed to a substantial risk of physical injury or illness.

(2) The defendant inflicted or threatened to inflict physical harm on a parent or lawful custodian of the child or on the child at the time of or during the abduction.

(3) The defendant harmed or abandoned the child during the abduction.

(4) The child was taken, enticed away, kept, withheld, or concealed outside the United States.

(5) The child has not been returned to the lawful custodian.

(6) The defendant previously abducted or threatened to abduct the child.

(7) The defendant substantially altered the appearance or the name of the child.

(8) The defendant denied the child appropriate education during the abduction.

(9) The length of the abduction.

(10) The age of the child.

(b) At the sentencing hearing following a conviction for a violation of Section 278 or 278.5, or both, the court shall consider any relevant factors and circumstances in mitigation, including, but not limited to, both of the following:

(1) The defendant returned the child unharmed and prior to arrest or issuance of a warrant for arrest, whichever is first.

(2) The defendant provided information and assistance leading to the child's safe return.

(c) In addition to any other penalties provided for a violation of Section 278 or 278.5, a court shall order the defendant to pay restitution to the district attorney for any costs incurred in locating and returning the child as provided in Section 3134 of the Family Code, and to the victim for those expenses and costs reasonably incurred by, or on behalf of, the victim in locating and recovering the child. An award made pursuant to this section shall constitute a final judgment and shall be enforceable as such.

### **CAL. PENAL CODE § 278.7 (2009). Inapplicability**

(a) Section 278.5 does not apply to a person with a right to custody of a child who, with a good faith and reasonable belief that the child, if left with the other person, will suffer immediate bodily injury or emotional harm, takes, entices away, keeps, withholds, or conceals that child.

(b) Section 278.5 does not apply to a person with a right to custody of a child who has been a victim of domestic violence who, with a good faith and reasonable belief that the child, if left with the other person, will suffer immediate bodily injury or emotional harm, takes, entices away, keeps, withholds, or conceals that child. "Emotional harm" includes having a parent who has committed domestic violence against the parent who is taking, enticing away, keeping, withholding, or concealing the child.

(c) The person who takes, entices away, keeps, withholds, or conceals a child shall do all of the following:

(1) Within a reasonable time from the taking, enticing away, keeping, withholding, or concealing, make a report to the office of the district attorney of the county where the child resided before the action. The report shall include the name of the person, the current address and telephone number of the child and the person, and the reasons the child was taken, enticed away, kept, withheld, or concealed.

(2) Within a reasonable time from the taking, enticing away, keeping, withholding, or concealing, commence a custody proceeding in a court of competent jurisdiction consistent with the federal Parental Kidnapping Prevention Act (Section 1738A, Title 28, United States Code) or the Uniform Child Custody Jurisdiction Act (Part 3 (commencing with Section 3400) of Division 8 of the Family Code).

(3) Inform the district attorney's office of any change of address or telephone number of the person and the child.

(d) For the purposes of this article, a reasonable time within which to make a report to the district attorney's office is at least 10 days and a reasonable time to commence a custody proceeding is at least 30 days. This section shall not preclude a person from making a report to the district attorney's office or commencing a custody proceeding earlier than those specified times.

(e) The address and telephone number of the person and the child provided pursuant to this section shall remain confidential unless released pursuant to state law or by a court order that contains appropriate safeguards to ensure the safety of the person and the child.

#### **CAL. PENAL CODE § 279 (2009). Residence**

A violation of Section 278 or 278.5 by a person who was not a resident of, or present in, this state at the time of the alleged offense is punishable in this state, whether the intent to commit the offense is formed within or outside of this state, if any of the following apply:

(a) The child was a resident of, or present in, this state at the time the child was taken, enticed away, kept, withheld, or concealed.

(b) The child thereafter is found in this state.

(c) A lawful custodian or a person with a right to visitation is a resident of this state at the time the child was taken, enticed away, kept, withheld, or concealed.

#### **CAL. PENAL CODE § 279.1 (2009). Continuous offenses**

The offenses enumerated in Sections 278 and 278.5 are continuous in nature, and continue for as long as the minor child is concealed or detained.

#### **CAL. PENAL CODE § 279.5 (2009). Bail**

When a person is arrested for an alleged violation of Section 278 or 278.5, the court, in setting bail, shall take into consideration whether the child has been returned to the lawful custodian, and if not, shall consider whether there is an increased risk that the child may not be returned, or the defendant may flee the jurisdiction, or, by flight or concealment, evade the authority of the court.

**CAL. PENAL CODE § 279.6 (2009). Law enforcement officer**

(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 of 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 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 adverse to either the prosecution or defense is reviewable by a writ of mandate or prohibition addressed to the appropriate court.

**CAL. PENAL CODE § 280 (2009). Family code offenses**

Every person who willfully causes or permits the removal or concealment of any child in violation of Section 8713, 8803, or 8910 of the Family Code shall be punished as follows:

(a) By imprisonment in a county jail for not more than one year if the child is concealed within the county in which the adoption proceeding is pending or in which the child has been placed for adoption, or is removed from that county to a place within this state.

(b) By imprisonment in the state prison, or by imprisonment in a county jail for not more than one year, if the child is removed from that county to a place outside of this state.

**CAL. FAM. CODE § 8713 (2009). Concealment or removal of child from county**

(a) In no event may a child who has been freed for adoption be removed from the county in which the child was placed, by any person who has not petitioned to adopt the child, without first obtaining the written consent of the department or licensed adoption agency responsible for the child.

(b) During the pendency of an adoption proceeding:

(1) The child proposed to be adopted may not be concealed within the county in which the adoption proceeding is pending.

(2) The child may not be removed from the county in which the adoption proceeding is pending unless the petitioners or other interested persons first obtain permission for the removal from the court, after giving advance written notice of intent to obtain the court's permission to the department or licensed adoption agency responsible for the child. Upon proof of giving notice, permission may be granted by the court if, within a period of 15 days after the date of giving notice, no objections are filed with the court by the department or licensed adoption agency responsible for the child. If the department or licensed adoption agency files objections within the 15-day period, upon the request of the petitioners the court shall immediately set the matter for hearing and give to the objector, the petitioners, and the party or parties requesting permission for the removal reasonable notice of the hearing by certified mail, return receipt requested, to the address of each as shown in the records of the adoption proceeding. Upon a finding that the objections are without good cause, the court may grant the requested permission for removal of the child, subject to any limitations that appear to be in the child's best interest.

(c) This section does not apply in any of the following situations:

(1) Where the child is absent for a period of not more than 30 days from the county in which the adoption proceeding is pending, unless a notice of recommendation of denial of petition has been personally served on the petitioners or the court has issued an order prohibiting the child's removal from the county pending consideration of any of the following:

- (A) The suitability of the petitioners.
- (B) The care provided the child.
- (C) The availability of the legally required agency consents to the adoption.
- (2) Where the child has been returned to and remains in the custody and control of the child's birth parent or parents.
- (3) Where written consent for the removal of the child is obtained from the department or licensed adoption agency responsible for the child.
- (d) A violation of this section is a violation of Section 280 of the Penal Code.
- (e) Neither this section nor Section 280 of the Penal Code may be construed to render lawful any act that is unlawful under any other applicable law.

**CAL. FAM. CODE § 8803 (2009). Concealment or removal of child from county**

- (a) During the pendency of an adoption proceeding:
  - (1) The child proposed to be adopted may not be concealed within the county in which the adoption proceeding is pending.
  - (2) The child may not be removed from the county in which the adoption proceeding is pending unless the petitioners or other interested persons first obtain permission for the removal from the court, after giving advance written notice of intent to obtain the court's permission to the department or delegated county adoption agency responsible for the investigation of the proposed adoption. Upon proof of giving notice, permission may be granted by the court if, within a period of 15 days after the date of giving notice, no objections are filed with the court by the department or delegated county adoption agency. If the department or delegated county adoption agency files objections within the 15-day period, upon the request of the petitioners the court shall immediately set the matter for hearing and give to the objector, the petitioners, and the party or parties requesting permission for the removal reasonable notice of the hearing by certified mail, return receipt requested, to the address of each as shown in the records of the adoption proceeding. Upon a finding that the objections are without good cause, the court may grant the requested permission for removal of the child, subject to any limitations that appear to be in the child's best interest.
- (b) This section does not apply in any of the following situations:
  - (1) Where the child is absent for a period of not more than 30 days from the county in which the adoption proceeding is pending, unless a notice of recommendation of denial of petition has been personally served on the petitioners or the court has issued an order prohibiting the child's removal from the county pending consideration of any of the following:
    - (A) The suitability of the petitioners.

(B) The care provided the child.

(C) The availability of the legally required consents to the adoption.

(2) Where the child has been returned to and remains in the custody and control of the child's birth parent or parents.

(c) A violation of this section is a violation of Section 280 of the Penal Code.

(d) Neither this section nor Section 280 of the Penal Code may be construed to render lawful any act that is unlawful under any other applicable law.

**CAL. FAM. CODE § 8910 (2009). Concealment or removal of child from county**

(a) In no event may a child who has been placed for adoption be removed from the county in which the child was placed, by any person who has not petitioned to adopt the child, without first obtaining the written consent of the licensed adoption agency responsible for the child.

(b) During the pendency of an adoption proceeding:

(1) The child proposed to be adopted may not be concealed within the county in which the adoption proceeding is pending.

(2) The child may not be removed from the county in which the adoption proceeding is pending unless the petitioners or other interested persons first obtain permission for the removal from the court, after giving advance written notice of intent to obtain the court's permission to the licensed adoption agency responsible for the child. Upon proof of giving notice, permission may be granted by the court if, within a period of 15 days after the date of giving notice, no objections are filed with the court by the licensed adoption agency responsible for the child. If the licensed adoption agency files objections within the 15-day period, upon the request of the petitioners the court shall immediately set the matter for hearing and give to the objector, the petitioners, and the party or parties requesting permission for the removal reasonable notice of the hearing by certified mail, return receipt requested, to the address of each as shown in the records of the adoption proceeding. Upon a finding that the objections are without good cause, the court may grant the requested permission for removal of the child, subject to any limitations that appear to be in the child's best interest.

(c) This section does not apply in any of the following situations:

(1) Where the child is absent for a period of not more than 30 days from the county in which the adoption proceeding is pending, unless a notice of recommendation of denial of petition has been personally served on the petitioners or the court has issued an order prohibiting the removal of the child from the county pending consideration of any of the following:

(A) The suitability of the petitioners.

(B) The care provided the child.

(C) The availability of the legally required agency consents to the adoption.

(2) Where the child has been returned to and remains in the custody and control of the child's birth parent or parents.

(3) Where written consent for the removal of the child is obtained from the licensed adoption agency responsible for the child.

(d) A violation of this section is a violation of Section 280 of the Penal Code.

(e) Neither this section nor Section 280 of the Penal Code may be construed to render lawful any act that is unlawful under any other applicable law.

## **COLORADO**

### **COLO. REV. STAT. § 18-3-304 (2009). Violation of custody order or order relating to parental responsibilities**

(1) Except as otherwise provided in subsection (2.5) of this section, any person, including a natural or foster parent, who, knowing that he or she has no privilege to do so or heedless in that regard, takes or entices any child under the age of eighteen years from the custody or care of the child's parents, guardian, or other lawful custodian or person with parental responsibilities with respect to the child commits a class 5 felony.

(2) Except as otherwise provided in subsection (2.5) of this section, any parent or other person who violates an order of any district or juvenile court of this state, granting the custody of a child or parental responsibilities with respect to a child under the age of eighteen years to any person, agency, or institution, with the intent to deprive the lawful custodian or person with parental responsibilities of the custody or care of a child under the age of eighteen years, commits a class 5 felony.

(2.5) Any person who, in the course of committing the offenses described in subsections (1) and (2) of this section, removes a child under the age of eighteen years from this country commits a class 4 felony.

(3) It shall be an affirmative defense either that the offender reasonably believed that his conduct was necessary to preserve the child from danger to his welfare, or that the child, being at the time more than fourteen years old, was taken away at his own instigation without enticement and without purpose to commit a criminal offense with or against the child.

(4) Any criminal action charged pursuant to this section may be tried in either the county where the act is committed or in which the court issuing the orders granting custody or allocating parental responsibilities is located, if such court is within this state.

(5) Repealed.

## **CONNECTICUT**

### **CONN. GEN. STAT. § 53A-97 (2010). Custodial interference in the first degree: Class D felony**

(a) A person is guilty of custodial interference in the first degree when he commits custodial interference in the second degree as provided in section 53a-98: (1) Under circumstances which expose the child or person taken or enticed from lawful custody or the child held after a request by the lawful custodian for his return to a risk that his safety will be endangered or his health materially impaired; or (2) by taking, enticing or detaining the child or person out of this state.

(b) Custodial interference in the first degree is a class D felony.

### **CONN. GEN. STAT. § 53A-98 (2010). Custodial interference in the second degree: Class A felony**

(a) A person is guilty of custodial interference in the second degree when: (1) Being a relative of a child who is less than sixteen years old and intending to hold such child permanently or for a protracted period and knowing that he has no legal right to do so, he takes or entices such child from his lawful custodian; (2) knowing that he has no legal right to do so, he takes or entices from lawful custody any incompetent person or any person entrusted by authority of law to the custody of another person or institution; or (3) knowing that he has no legal right to do so, he holds, keeps or otherwise refuses to return a child who is less than sixteen years old to such child's lawful custodian after a request by such custodian for the return of such child.

(b) Custodial interference in the second degree is a class A misdemeanor.

## **DELAWARE**

### **DEL. CODE ANN. TIT. 11, § 781 (2010). Unlawful imprisonment in the second degree; class A misdemeanor**

A person is guilty of unlawful imprisonment in the second degree when the person knowingly and unlawfully restrains another person.

Unlawful imprisonment in the second degree is a class A misdemeanor.

### **DEL. CODE ANN. TIT. 11, § 782 (2010). Unlawful imprisonment in the first degree; class G felony**

A person is guilty of unlawful imprisonment in the first degree when the person knowingly and unlawfully restrains another person under circumstances which expose that person to the risk of serious physical injury.

Unlawful imprisonment in the first degree is a class G felony.

**DEL. CODE ANN. TIT. 11, § 783 (2010). Kidnapping in the second degree; class C felony**

A person is guilty of kidnapping in the second degree when the person unlawfully restrains another person with any of the following purposes:

- (1) To hold the victim for ransom or reward; or
- (2) To use the victim as a shield or hostage; or
- (3) To facilitate the commission of any felony or flight thereafter; or
- (4) To inflict physical injury upon the victim, or to violate or abuse the victim sexually; or
- (5) To terrorize the victim or a third person; or
- (6) To take or entice any child less than 18 years of age from the custody of the child's parent, guardian or lawful custodian;  
and the actor voluntarily releases the victim alive, unharmed and in a safe place prior to trial.  
Kidnapping in the second degree is a class C felony.

**DEL. CODE ANN. TIT. 11, § 783A (2010). Kidnapping in the first degree; class B felony**

A person is guilty of kidnapping in the first degree when the person unlawfully restrains another person with any of the following purposes:

- (1) To hold the victim for ransom or reward; or
- (2) To use the victim as a shield or hostage; or
- (3) To facilitate the commission of any felony or flight thereafter; or
- (4) To inflict physical injury upon the victim, or to violate or abuse the victim sexually; or
- (5) To terrorize the victim or a third person; or
- (6) To take or entice any child less than 18 years of age from the custody of the child's parent, guardian or lawful custodian;  
and the actor does not voluntarily release the victim alive, unharmed and in a safe place prior to trial.  
Kidnapping in the first degree is a class B felony.

**DEL. CODE ANN. TIT. 11, § 784 (2010). Defense to unlawful imprisonment and kidnapping**

In any prosecution for unlawful imprisonment or kidnapping it is an affirmative defense that the accused was a relative of the victim, and the accused's sole purpose was to assume custody of the victim. In that case, the liability of the accused, if any, is governed by § 785 of this title, and the accused may be convicted under § 785 when indicted for unlawful imprisonment or kidnapping.

**DEL. CODE ANN. TIT. 11, § 785 (2010). 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.

**DEL. CODE ANN. TIT. 11, § 786 (2010). Kidnapping and related offenses; definitions**

(a) "Harm" to a kidnap victim, in addition to its ordinary meaning, includes rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, even if such rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact is not accompanied by physical violence.

(b) "Relative" means a parent, ancestor, brother, sister, uncle or aunt.

(c) "Restrain" means to restrict another person's movements intentionally in such a manner as to interfere substantially with the person's liberty by moving the person from 1 place to another, or by confining the person either in the place where the restriction commences or in a place to which the person has been moved, without consent. A person is moved or confined "without consent" when the movement or confinement is accomplished by physical force, intimidation or deception, or by any means, including acquiescence of the victim, if the victim is a child less than 16 years old or an incompetent person and the parent, guardian or other person or institution having lawful control or custody of the person has not acquiesced in the movement or confinement.

**DISTRICT OF COLUMBIA**

**D.C. Code § 16-1021 (2010). Definitions**

For the purposes of this subchapter, the term:

(1) "Child" means a person under the age of 16 years of age.

(2) "District" means the District of Columbia.

(3) "Lawful custodian" means a person who is authorized to have custody by an order of the Superior Court of the District of Columbia or a court of competent jurisdiction of any state, or a person designated by the lawful custodian temporarily to care for the child.

(4) "Relative" means a parent, other ancestor, brother, sister, uncle, or aunt, or one who has been lawful custodian at some prior time.

**D.C. Code § 16-1022 (2010). Prohibited acts**

(a) No parent, or any person acting pursuant to directions from the parent, may intentionally conceal a child from the child's other parent.

(b) No relative, or any person acting pursuant to directions from the relative, who knows that another person is the lawful custodian of a child may:

(1) Abduct, take, or carry away a child with the intent to prevent a lawful custodian from exercising rights to custody of the child;

(2) Abduct, take, or carry away a child from a person with whom the relative has joint custody pursuant to an order, judgment, or decree of any court, with the intent to prevent a lawful custodian from exercising rights to custody to the child;

(3) Having obtained actual physical control of a child for a limited period of time in the exercise of the right to visit with or to be visited by the child or the right of limited custody of the child, pursuant to an order, judgment, or decree of any court, which grants custody of the child to another or jointly with the relative, with intent to harbor, secrete, detain, or conceal the child or to deprive a lawful custodian of the physical custody of the child, keep the child for more than 48 hours after a lawful custodian demands that the child be returned or makes all reasonable efforts to communicate a demand for the child's return;

(4) Having custody of a child pursuant to an order, judgment, or decree of any court, which grants another person limited rights to custody of the child or the right to visit with or to be visited by the child, conceal, harbor, secrete, or detain the child with intent to deprive the other person of the right of limited custody or visitation;

(5) Conceal, harbor, secrete, or detain the child knowing that physical custody of the child was obtained or retained by another in violation of this subsection with the intent to prevent a lawful custodian from exercising rights to custody to the child;

(6) Act as an aider and abettor, conspirator, or accessory to any of the actions forbidden by this section;

(7) After being served with process in an action affecting the family but prior to the issuance of a temporary or final order determining custody rights to a child, take or entice the child outside of the District for the purpose of depriving a lawful custodian of physical custody of the child; or

(8) After issuance of a temporary or final order specifying joint custody rights, take or entice a child from the other joint custodian in violation of the custody order.

**D.C. Code § 16-1023 (2010). Defense to prosecution; continuous offenses; expenses; jurisdiction**

(a) No person violates this subchapter if the action:

- (1) Is taken to protect the child from imminent physical harm;
- (2) Is taken by a parent fleeing from imminent physical harm to the parent;
- (3) Is consented to by the other parent; or
- (4) Is otherwise authorized by law.

(b) If a person violates § 16-1022 of this subchapter, the person may file a petition in the Superior Court of the District of Columbia that:

(1) States that at the time the act was done, a failure to do the act would have resulted in a clear and present danger to the health, safety, or welfare of the child; and

(2) Seeks to establish custody, to transfer custody, or to revise or to clarify the existing custody order; except that if the Superior Court of the District of Columbia does not have jurisdiction over the custody issue, the person shall seek to establish, transfer, revise, or clarify custody in a court of competent jurisdiction.

(c) If a petition is filed as provided in subsection (b) of this section within 5 days of the action taken, exclusive of Saturdays, Sundays, and legal holidays, a finding by the court that, at the time the act was done, a failure to do the act would have resulted in a clear and present danger to the health, safety, or welfare of the child is a complete defense to prosecution under this subchapter.

(d) A law enforcement officer may take a child into protective custody if it reasonably appears to the officer that any person is in violation of this subchapter and unlawfully will flee the District with the child.

(e) A child who has been detained or concealed shall be returned by a law enforcement officer to the lawful custodian or placed in the custody of another entity authorized by law.

(f) The offenses prohibited by this subchapter are continuous in nature and continue for so long as the child is concealed, harbored, secreted, detained, or otherwise unlawfully physically removed from the lawful custodian.

(g) Any expenses incurred by the District in returning the child shall be reimbursed to the District by any person convicted of a violation of this subchapter. Those expenses and costs reasonably incurred by the lawful custodian and child victim as a result of a violation of this subchapter shall be assessed by the court against any person convicted of the violation.

(h) Any violation of this subchapter is punishable in the District, whether the intent to commit the offense is formed within or without the District, if the child was a resident of the District, present in the District at the time of the taking, or is later found in the District.

**D.C. Code § 16-1024 (2010). Penalties**

(a) A person who violates any provision of § 16-1022 and who takes the child to a place within the District, or detains or conceals the child within the District of Columbia is guilty of a misdemeanor and on conviction is subject to fine not exceeding \$ 250 or performance of community service not exceeding 240 hours, or both.

(b) A person who violates any provision of § 16-1022 and who takes the child to a place outside the District or detains or conceals the child outside the District shall be punished as follows:

(1) If the child is out of the custody of the lawful custodian for not more than 30 days, the person is guilty of a felony and on conviction is subject to a fine not exceeding \$ 1,000 or imprisonment for 6 months, or both, except that if the person releases the child without injury in a safe place prior to arrest, the person is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$ 250, or performance of community service not exceeding 240 hours, or imprisonment not exceeding 30 days, or a combination of all three.

(2) If the child is out of the custody of the lawful custodian for more than 30 days, the person is guilty of a felony and on conviction is subject to a fine not exceeding \$ 5,000 or imprisonment for 1 year, or both, except that if the person releases the child without injury in a safe place prior to arrest, the person is guilty of a misdemeanor and, on conviction, is subject to a fine not exceeding \$ 500 or imprisonment not exceeding 60 days, or both.

#### **D.C. Code § 16-1025 (2010). Prosecution by Attorney General**

Prosecutions under this subchapter shall be brought in the Superior Court of the District of Columbia in name of the District by the Attorney General.

#### **D.C. Code § 16-1026 (2010). Expungement**

Any parent convicted in the Superior Court of the District of Columbia of violating any provision of this subchapter with respect to his or her child may apply to the court for an order to expunge from all official records all records relating to the conviction at such time that the parent's youngest child has reached the age of 18 years, provided that the parent has no more than 1 conviction for a violation of this subchapter at the time that the application for expungement is made. Any other person convicted of violating the provisions of this subchapter may apply to the court for an order to expunge all records relating to the conviction 5 years after the conviction, or at such time as the child has reached the age of 18 years, whichever shall later occur, provided that the person has no more than 1 conviction for violating any provision of this subchapter at the time that the application for expungement is made.

## **FLORIDA**

#### **FLA. STAT. ANN. § 787.03 (2010). 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 minor or any incompetent person from

the custody of the minor's or incompetent person's parent, his or her guardian, a public agency having the lawful charge of the minor or incompetent person, or any other lawful custodian commits the offense of interference with custody and commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) In the absence of a court order determining rights to custody or visitation with any minor or with any incompetent person, any parent of the minor or incompetent person, whether natural or adoptive, stepparent, legal guardian, or relative of the minor or incompetent person who has custody thereof and who takes, detains, conceals, or entices away that minor or incompetent person within or without the state with malicious intent to deprive another person of his or her right to custody of the minor or incompetent person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A subsequently obtained court order for custody or visitation does not affect application of this section.

(4) It is a defense that:

(a) The defendant had reasonable cause to believe that his or her action was necessary to preserve the minor or the incompetent person from danger to his or her welfare.

(b) The defendant was the victim of an act of domestic violence or had reasonable cause to believe that he or she was about to become the victim of an act of domestic violence as defined in s. 741.28, and the defendant had reasonable cause to believe that the action was necessary in order for the defendant to escape from, or protect himself or herself from, the domestic violence or to preserve the minor or incompetent person from exposure to the domestic violence.

(c) The minor or incompetent person was taken away at his or her own instigation without enticement and without purpose to commit a criminal offense with or against the minor or incompetent person, and the defendant establishes that it was reasonable to rely on the instigating acts of the minor or incompetent person.

(5) Proof that a person has not attained the age of 18 years creates the presumption that the defendant knew the minor's age or acted in reckless disregard thereof.

(6) (a) The offenses prescribed in subsections (1) and (2) do not apply in cases in which a person having a legal right to custody of a minor or incompetent person is the victim of any act of domestic violence, has reasonable cause to believe he or she is about to become the victim of any act of domestic violence, as defined in s. 741.28, or believes that his or her action was necessary to preserve the minor or the incompetent person from danger to his or her welfare and seeks shelter from such acts or possible acts and takes with him or her the minor or incompetent person.

(b) In order to gain the exception conferred by paragraph (a), a person who takes a minor or incompetent person under this subsection must:

1. Within 10 days after taking the minor or incompetent person, make a report to the sheriff's office or state attorney's office for the county in which the minor or incompetent person resided at the time he or she was taken, which report must include the name of the person taking the minor or incompetent person, the current address and telephone number of the person and minor or incompetent person, and the reasons the minor or incompetent person was taken.

2. Within a reasonable time after taking a minor, commence a custody proceeding that is consistent with the federal Parental Kidnapping Prevention Act, 28 U.S.C. s. 1738A, or the Uniform Child Custody Jurisdiction and Enforcement Act, ss. 61.501-61.542.

3. Inform the sheriff's office or state attorney's office for the county in which the minor or incompetent person resided at the time he or she was taken of any change of address or telephone number of the person and the minor or incompetent person.

(c) 1. The current address and telephone number of the person and the minor or incompetent person which are contained in the report made to a sheriff or state attorney under paragraph (b) are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. A sheriff or state attorney may allow an agency, as defined in s. 119.011, to inspect and copy records made confidential and exempt under this paragraph in the furtherance of that agency's duties and responsibilities.

3. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and is repealed on October 2, 2011, unless reviewed and saved from repeal through reenactment by the Legislature.

**FLA. STAT. ANN. § 787.04 (2010). Removing minors from state or concealing minors contrary to state agency order or court order**

(1) It is unlawful for any person, in violation of a court order, to lead, take, entice, or remove a minor beyond the limits of this state, or to conceal the location of a minor, with personal knowledge of the order.

(2) It is unlawful for any person, with criminal intent, to lead, take, entice, or remove a minor beyond the limits of this state, or to conceal the location of a minor, during the pendency of any action or proceeding affecting custody of the minor, after having received notice as required by law of the pendency of the action or proceeding, without the permission of the court in which the action or proceeding is pending.

(3) It is unlawful for any person to knowingly and willfully lead, take, entice, or remove a minor beyond the limits of this state, or to knowingly and willfully conceal the location of a minor, during the pendency of a dependency proceeding affecting such minor or during the pendency of any investigation, action, or proceeding concerning the alleged abuse or neglect of such minor, after having received actual or constructive notice of the pendency of such investigation, action, or proceeding and without the permission of the state agency or court in which the investigation, action, or proceeding is pending.

(4) It is unlawful for any person, who has carried beyond the limits of this state any minor whose custody is involved in any action or proceeding pending in this state pursuant to the order of the court in which the action or proceeding is pending or pursuant to the permission of the court, thereafter, to fail to produce the minor in the court or deliver the minor to the person designated by the court.

(5) It is a defense under this section that a person who leads, takes, entices, or removes a minor beyond the limits of the state reasonably believes that his or her action was necessary to protect the minor from child abuse as defined in s. 827.03.

(6) Any person who violates this section is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

## **GEORGIA**

### **GA. CODE ANN. § 16-5-45 (2010). Interference with custody**

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

(1) "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.

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

(3) "Lawful custody" means that custody inherent in the natural parents, that custody awarded by proper authority as provided in Code Section 15-11-45, 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.

## **HAWAII**

### **HAW. REV. STAT. ANN. § 707-726 (2010). Custodial interference in the first degree**

(1) A person commits the offense of custodial interference in the first degree if:

(a) The person:

(i) Intentionally or knowingly violates a court order issued pursuant to chapter 586, or intentionally or knowingly takes, entices, conceals, or detains the minor from any other person who has a right to custody pursuant to a court order, judgment, or decree; and

(ii) Removes the minor from the State;

(b) The person intentionally or knowingly takes, entices, conceals, or detains a minor less than eleven years old from that minor's lawful custodian, knowing that the person had no right to do so; or

(c) The person, in the absence of a court order determining custody or visitation rights, intentionally or knowingly takes, detains, conceals, or entices away a minor with the intent to deprive another person or a public agency of their right to custody, and removes the minor from the State.

(2) It is an affirmative defense to a prosecution under this section that the person had "good cause" for the violation of a court order issued pursuant to chapter 586, for the taking, detaining, concealing, or enticing away of the minor, or for removing the minor from the State; provided that the person asserting the affirmative defense filed a report with the clerk of the family court detailing the whereabouts of the minor, the person who took, enticed, detained, concealed, or removed the minor or child, and the circumstances of the event as soon as the filing of the report

was practicable; and provided further that the person asserting the affirmative defense also filed a request for a custody order as soon as the filing of the request was practicable.

As used in this section, "good cause" means a good faith and reasonable belief that the taking, detaining, concealing, enticing away, or removing of the minor is necessary to protect the minor from immediate bodily injury.

(3) The identity and address of the person reporting under subsection (2) shall remain confidential unless the information is released pursuant to a court order.

(4) Custodial interference in the first degree is a class C felony.

### **HAW. REV. STAT. ANN. § 707-727 (2010). Custodial interference in the second degree**

(1) A person commits the offense of custodial interference in the second degree if:

(a) The person intentionally or knowingly takes, entices, conceals, or detains a minor knowing that the person has no right to do so; or

(b) The person intentionally or knowingly takes, entices, conceals, or detains from lawful custody any incompetent person, or other person entrusted by authority of law to the custody of another person or an institution.

(2) Custodial interference in the second degree is a misdemeanor, if the minor or incompetent person is taken, enticed, concealed, or detained within the State. If the minor or incompetent person is taken, enticed, concealed, or detained outside of the state under this section, custodial interference in the second degree is a class C felony.

## **IDAHO**

### **IDAHO CODE ANN. § 18-4506 (2010). 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.

**IDAHO CODE ANN. § 18-1510 (2010). Providing shelter to runaway children**

(1) A person who knowingly or intentionally provides housing or other accommodations to a child seventeen (17) years of age or younger without the authority of: (a) the custodial parent or guardian of the child; (b) the state of Idaho or a political subdivision thereof; or (c) the one having legal custody of the child shall be guilty of a misdemeanor. Nothing contained in this section shall be construed to prevent the lawful detention of a minor child or the rendering of emergency aid or assistance to a minor child. It shall be an affirmative defense to the provisions of this section that the person providing housing or other accommodations to the child has notified the custodial parent or guardian or the county sheriff or city police of the child's whereabouts. It shall also be an affirmative defense to the provisions of this section that the person providing housing or other accommodations to the child notices reasonable evidence that the child has been abused by the custodial parent or guardian.

(2) A person convicted of a violation of the provisions of this section shall be punished by imprisonment for a period not in excess of six (6) months, a fine not in excess of five thousand dollars (\$ 5,000) or by both such fine and imprisonment. Additionally, any real property utilized in violation of the provisions of this section may be declared a public nuisance pursuant to chapter 1, title 52, Idaho Code.

**ILLINOIS**

**720 ILL. COMP. STAT. 5/10-5 (2010). Child abduction**

Sec. 10-5. Child abduction. (a) For purposes of this Section, the following terms have the following meanings:

(1) "Child" means a person who, at the time the alleged violation occurred, was under the age of 18 or severely or profoundly mentally retarded.

(2) "Detains" means taking or retaining physical custody of a child, whether or not the child resists or objects.

(3) "Lawful custodian" means a person or persons granted legal custody of a child or entitled to physical possession of a child pursuant to a court order. It is presumed that, when the parties have never been married to each other, the mother has legal custody of the child unless a valid court order states otherwise. If an adjudication of paternity has been completed and the father has been assigned support obligations or visitation rights, such a paternity order should, for the purposes of this Section, be considered a valid court order granting custody to the mother.

(4) "Putative father" means a man who has a reasonable belief that he is the father of a child born of a woman who is not his wife.

(b) A person commits the offense of child abduction when he or she does any one of the following:

(1) Intentionally violates any terms of a valid court order granting sole or joint custody, care, or possession to another by concealing or detaining the child or removing the child from the jurisdiction of the court.

(2) Intentionally violates a court order prohibiting the person from concealing or detaining the child or removing the child from the jurisdiction of the court.

(3) Intentionally conceals, detains, or removes the child without the consent of the mother or lawful custodian of the child if the person is a putative father and either: (A) the paternity of the child has not been legally established or (B) the paternity of the child has been legally established but no orders relating to custody have been entered. Notwithstanding the presumption created by paragraph (3) of subsection (a), however, a mother commits child abduction when she intentionally conceals or removes a child, whom she has abandoned or relinquished custody of, from an unadjudicated father who has provided sole ongoing care and custody of the child in her absence.

(4) Intentionally conceals or removes the child from a parent after filing a petition or being served with process in an action affecting marriage or paternity but prior to the issuance of a temporary or final order determining custody.

(5) At the expiration of visitation rights outside the State, intentionally fails or refuses to return or impedes the return of the child to the lawful custodian in Illinois.

(6) Being a parent of the child, and if the parents of that child are or have been married and there has been no court order of custody, knowingly conceals the child for 15 days, and fails to make reasonable attempts within the 15-day period to notify the other parent as to the specific whereabouts of the child, including a means by which to contact the child, or to arrange reasonable visitation or contact with the child. It is not a violation of this Section for a person fleeing domestic violence to take the child with him or her to housing provided by a domestic violence program.

(7) Being a parent of the child, and if the parents of the child are or have been married and there has been no court order of custody, knowingly conceals, detains, or removes the child with physical force or threat of physical force.

(8) Knowingly conceals, detains, or removes the child for payment or promise of payment at the instruction of a person who has no legal right to custody.

(9) Knowingly retains in this State for 30 days a child removed from another state without the consent of the lawful custodian or in violation of a valid court order of custody.

(10) Intentionally lures or attempts to lure a child under the age of 16 into a motor vehicle, building, housetrailer, or dwelling place without the consent of the child's parent or lawful custodian for other than a lawful purpose. For the purposes of this item (10), the luring or attempted luring of a child under the age of 16 into a motor vehicle, building, housetrailer, or dwelling place without the consent of the child's parent or lawful custodian is prima facie evidence of other than a lawful purpose.

(11) With the intent to obstruct or prevent efforts to locate the child victim of a child abduction, knowingly destroys, alters, conceals, or disguises physical evidence or furnishes false information.

(c) It is an affirmative defense to subsections (b)(1) through (b)(10) of this Section that:

(1) the person had custody of the child pursuant to a court order granting legal custody or visitation rights that existed at the time of the alleged violation;

(2) the person had physical custody of the child pursuant to a court order granting legal custody or visitation rights and failed to return the child as a result of circumstances beyond his or her control, and the person notified and disclosed to the other parent or legal custodian the specific whereabouts of the child and a means by which the child could be contacted or made a reasonable attempt to notify the other parent or lawful custodian of the child of those circumstances and made the disclosure within 24 hours after the visitation period had expired and returned the child as soon as possible;

(3) the person was fleeing an incidence or pattern of domestic violence; or

(4) the person lured or attempted to lure a child under the age of 16 into a motor vehicle, building, housetrailer, or dwelling place for a lawful purpose in prosecutions under paragraph (10) of subsection (b).

(d) A person convicted of child abduction under this Section is guilty of a Class 4 felony. A person convicted of a second or subsequent violation of paragraph (10) of subsection (b) of this Section is guilty of a Class 3 felony. It is a factor in aggravation under subsections (b)(1) through (b)(10) of this Section for which a court may impose a more severe sentence under Section 5-8-1 or Article 4.5 of Chapter V of the Unified Code of Corrections [730 ILCS 5/5-8-1 or 730 ILCS 5/5-4.5-5 et seq.] if, upon sentencing, the court finds evidence of any of the following aggravating factors:

- (1) that the defendant abused or neglected the child following the concealment, detention, or removal of the child;
  - (2) that the defendant inflicted or threatened to inflict physical harm on a parent or lawful custodian of the child or on the child with intent to cause that parent or lawful custodian to discontinue criminal prosecution of the defendant under this Section;
  - (3) that the defendant demanded payment in exchange for return of the child or demanded that he or she be relieved of the financial or legal obligation to support the child in exchange for return of the child;
  - (4) that the defendant has previously been convicted of child abduction;
  - (5) that the defendant committed the abduction while armed with a deadly weapon or the taking of the child resulted in serious bodily injury to another; or
  - (6) that the defendant committed the abduction while in a school, regardless of the time of day or time of year; in a playground; on any conveyance owned, leased, or contracted by a school to transport students to or from school or a school related activity; on the real property of a school; or on a public way within 1,000 feet of the real property comprising any school or playground. For purposes of this paragraph (6), "playground" means a piece of land owned or controlled by a unit of local government that is designated by the unit of local government for use solely or primarily for children's recreation; and "school" means a public or private elementary or secondary school, community college, college, or university.
- (e) The court may order the child to be returned to the parent or lawful custodian from whom the child was concealed, detained, or removed. In addition to any sentence imposed, the court may assess any reasonable expense incurred in searching for or returning the child against any person convicted of violating this Section.
- (f) Nothing contained in this Section shall be construed to limit the court's contempt power.
- (g) Every law enforcement officer investigating an alleged incident of child abduction shall make a written police report of any bona fide allegation and the disposition of that investigation. Every police report completed pursuant to this Section shall be compiled and recorded within the meaning of Section 5.1 of the Criminal Identification Act [20 ILCS 2630/5.1].
- (h) Whenever a law enforcement officer has reasons to believe a child abduction has occurred, she or he shall provide the lawful custodian a summary of her or his rights under this Code, including the procedures and relief available to her or him.
- (i) If during the course of an investigation under this Section the child is found in the physical custody of the defendant or another, the law enforcement officer shall return the child to the parent or lawful custodian from whom the child was concealed, detained, or removed, unless there is good cause for the law enforcement officer or the Department of Children and Family Services to retain temporary protective custody of the child pursuant to the Abused and Neglected Child Reporting Act [320 ILCS 5/1 et seq.].

**720 ILL. COMP. STAT. 5/10-5.5 (2010). Unlawful visitation or parenting time interference**

Sec. 10-5.5. Unlawful visitation or parenting time interference. (a) As used in this Section, the terms "child", "detain", and "lawful custodian" have the meanings ascribed to them in Section 10-5 of this Code [720 ILCS 5/10-5].

(b) Every person who, in violation of the visitation, parenting time, or custody time 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, parenting time, or custody time commits the offense of unlawful visitation or parenting time interference.

(c) A person committing unlawful visitation or parenting time interference is guilty of a petty offense. Any person violating this Section after 2 prior convictions of unlawful visitation interference or unlawful visitation or parenting time interference, however, 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 or her 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, parenting time, or custody time 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 parenting time with the child; or

(3) the act was otherwise authorized by law.

**720 ILL. COMP. STAT. 5/10-6 (2010). Harboring a runaway**

Sec. 10-6. Harboring a runaway. (a) Any person, other than an agency or association providing crisis intervention services as defined in Section 3-5 of the Juvenile Court Act of 1987 [705 ILCS 405/3-5], or an operator of a youth emergency shelter as defined in Section 2.21 of the Child Care Act of 1969 [225 ILCS 10/2.21], who, without the knowledge and consent of the minor's parent or guardian, knowingly gives shelter to a minor, other than a mature minor who has been emancipated under the Emancipation of Minors Act [750 ILCS 30/1 et seq.], for more than 48 hours without the consent of the minor's parent or guardian, and without notifying the local law enforcement authorities of the minor's name and the fact that the minor is being provided shelter commits the offense of harboring a runaway.

(b) Any person who commits the offense of harboring a runaway is guilty of a Class A misdemeanor.

### **720 ILL. COMP. STAT. 5/10-7 (2010). Aiding or abetting child abduction**

Sec. 10-7. Aiding or abetting child abduction. (a) A person violates this Section when, before or during the commission of a child abduction as defined in Section 10-5 [720 ILCS 5/10-5] and with the intent to promote or facilitate such offense, he or she intentionally aids or abets another in the planning or commission of child abduction, unless before the commission of the offense he or she makes proper effort to prevent the commission of the offense.

(b) Sentence. A person who violates this Section commits a Class 4 felony.

## **INDIANA**

### **IND. CODE ANN. § 35-42-3-4 (2010). Interference with custody**

(a) A person who, with the intent to deprive another person of child custody rights, 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) violates a child custody order of a court by failing to return a person who is less than eighteen (18) years of age 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 parenting time rights:

(1) knowingly or intentionally takes;

(2) knowingly or intentionally detains; or

(3) knowingly or intentionally 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, concealment, or detention 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 or parenting time 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.

(g) It is a defense to a prosecution under this section that the accused person:

(1) was threatened; or

(2) reasonably believed the child was threatened;

which resulted in the child not being timely returned to the other parent resulting in a violation of a child custody order.

## **IOWA**

### **IOWA CODE § 710.5 (2010). Child stealing**

A person commits a class "C" felony when, knowing that the person has no authority to do so, the person forcibly or fraudulently takes, decoys, or entices away any child with intent to detain or conceal such child from its parents or guardian, or other persons or institution having the lawful custody of such child, unless the person is a relative of such child, and the person's sole purpose is to assume custody of such child.

For purposes of determining whether the person should register as a sex offender pursuant to the provisions of chapter 692A, the fact finder shall make a determination as provided in section 692A.126.

### **IOWA CODE § 710.6 (2010). 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.

**IOWA CODE § 710.8 (2010). Harboring a runaway child prohibited – penalty**

1. As used in this section and section 710.9 unless the context otherwise requires:
  - a. "Criminal act" means the violation of any federal or state law.
  - b. "Harbor" means to provide aid, support, or shelter.
  - c. "Runaway child" means a person under eighteen years of age who is voluntarily absent from the person's home without the consent of the person's parent, guardian, or custodian.
2. A person shall not harbor a runaway child with the intent of committing a criminal act involving the child or with the intent of enticing or forcing the runaway child to commit a criminal act.
3. A person shall not harbor a runaway child with the intent of allowing the runaway child to remain away from home against the wishes of the child's parent, guardian, or custodian. However, the provisions of this subsection do not apply to a shelter care home which is licensed or approved by the department of human services.
4. A person convicted of a violation of this section is guilty of an aggravated misdemeanor.

**IOWA CODE § 710.9 (2010). Civil liability for harboring a runaway child**

A parent, guardian, or custodian of a runaway child has a right of action against a person who harbored the runaway child in violation of section 710.8 for expenses sustained in the search for the child, for damages sustained due to physical or emotional distress due to the absence of the child, and for punitive damages.

## **KANSAS**

**KAN. STAT. ANN. § 21-3422 (2009). Interference with parental custody**

2009 Kan. HB 2668 -- See section 307: REPEALED as of July 1, 2011

(a) Interference with parental custody is leading, taking, carrying away, decoying or enticing away any child under the age of 16 years with the intent to detain or conceal such child from its parent, guardian, or other person having the lawful charge of such child.

(b) It is not a defense to a prosecution under this section that the defendant is a parent entitled to joint custody of the child either on the basis of a court order or by virtue of the absence of a court order.

(c) (1) Interference with parental custody is a class A person misdemeanor if the perpetrator is a parent entitled to joint custody of the child either on the basis of a court order or by virtue of the absence of a court order.

(2) Interference with parental custody is a severity level 10, person felony in all other cases.

**KAN. STAT. ANN. § 21-3422a (2009). Aggravated interference with parental custody**

009 Kan. HB 2668 -- See section 307: REPEALED as of July 1, 2011

(a) Aggravated interference with parental custody is:

(1) Hiring someone to commit the crime of interference with parental custody, as defined by K.S.A. 21-3422 and amendments thereto; or

(2) the commission of interference with parental custody, as defined by K.S.A. 21-3422 and amendments thereto, by a person who:

(A) Has previously been convicted of the crime;

(B) commits the crime for hire;

(C) takes the child outside the state without the consent of either the person having custody or the court;

(D) after lawfully taking the child outside the state while exercising visitation rights or parenting time, refuses to return the child at the expiration of that time;

(E) at the expiration of the exercise of any visitation rights or parenting time outside the state, refuses to return or impedes the return of the child; or

(F) detains or conceals the child in an unknown place, whether inside or outside the state.

(b) Aggravated interference with parental custody is a severity level 7, person felony.

(c) This section shall be a part of and supplemental to the Kansas criminal code.

**KENTUCKY**

**KY. REV. STAT. ANN. § 509.070 (2010). Custodial interference**

(1) A person is guilty of custodial interference when, knowing that he has no legal right to do so, he takes, entices or keeps from lawful custody any mentally disabled or other person entrusted by authority of law to the custody of another person or to an institution.

(2) It is a defense to custodial interference that the person taken from lawful custody was returned by the defendant voluntarily and before arrest or the issuance of a warrant for arrest.

(3) Custodial interference is a Class D felony unless the person taken from lawful custody is returned voluntarily by the defendant.

## **LOUISIANA**

### **LA. REV. STAT. ANN. § 14:45 (2010). Simple kidnapping**

#### A. Simple kidnapping is:

(1) The intentional and forcible seizing and carrying of any person from one place to another without his consent.

(2) The intentional taking, enticing or decoying away, for an unlawful purpose, of any child not his own and under the age of fourteen years, without the consent of its parent or the person charged with its custody.

(3) The intentional taking, enticing or decoying away, without the consent of the proper authority, of any person who has been lawfully committed to any orphan, insane, feeble-minded or other similar institution.

(4) The intentional taking, enticing or decoying away and removing from the state, by any parent of his or her child, from the custody of any person to whom custody has been awarded by any court of competent jurisdiction of any state, without the consent of the legal custodian, with intent to defeat the jurisdiction of the said court over the custody of the child.

(5) The taking, enticing or decoying away and removing from the state, by any person, other than the parent, of a child temporarily placed in his custody by any court of competent jurisdiction in the state, with intent to defeat the jurisdiction of said court over the custody of the child.

B. Whoever commits the crime of simple kidnapping shall be fined not more than five thousand dollars, imprisoned with or without hard labor for not more than five years, or both.

### **LA. REV. STAT. ANN. § 14:45.1 (2010). Interference with the custody of a child**

A. Interference with the custody of a child is the intentional taking, enticing, or decoying away of a minor child by a parent not having a right of custody, with intent to detain or conceal such child from a parent having a right of custody pursuant to a court order or from a person entrusted with the care of the child by a parent having custody pursuant to a court order.

It shall be an affirmative defense that the offender reasonably believed his actions were necessary to protect the welfare of the child.

B. Whoever commits the crime of interference with the custody of a child shall be fined not more than five hundred dollars or be imprisoned for not more than six months, or both. Costs of returning a child to the jurisdiction of the court shall be assessed against any defendant convicted of a violation of this Section, as court costs as provided by the Louisiana Code of Criminal Procedure.

## **MAINE**

### **ME. REV. STAT. ANN. tit. 17-A, § 303 (2009). Criminal restraint by parent**

1. A person is guilty of criminal restraint by a parent if, being the parent of a child and knowing the person has no legal right to do so, the person takes, retains or entices the child:

A. Who has not in fact attained 16 years of age, from the custody of the child's other parent, guardian or other lawful custodian with the intent to remove the child from the State or to secrete the child and hold the child in a place where the child is not likely to be found. Violation of this paragraph is a Class C crime;

B. Who resides in another state and who has not in fact attained 16 years of age, from the custody of the child's other parent, guardian or other lawful custodian, whose custodial authority was established by a court of this State, with the intent to remove the child from that state or to secrete the child and hold the child in a place where the child is not likely to be found. Violation of this paragraph is a Class C crime; or

C. Who is either 16 or 17 years of age, from the custody of the Department of Corrections or the Department of Health and Human Services with the intent to remove the child from the State or to secrete the child and hold the child in a place where the child is not likely to be found. Violation of this paragraph is a Class D crime.

2. Consent by the child taken, enticed or retained is not a defense under this section.

3. A law enforcement officer may not be held liable for taking physical custody of a child who the officer reasonably believes has been taken, retained or enticed in violation of this section and for delivering the child to a person who the officer reasonably believes is the child's lawful custodian or to any other suitable person.

For purposes of this subsection, "reasonable belief a child has been taken, retained or enticed in violation of this section" includes, but is not limited to, a determination by a law enforcement

officer, based on the officer's review of the terms of a certified copy of the most recent court decree granting custody of the child, that the parent who is exercising control over the child is not the person authorized to have custody under terms of the decree.

4. A law enforcement officer may arrest without a warrant any person who the officer has probable cause to believe has violated or is violating this section.

5. DELETED. Laws 2007, c. 96, § 7.

## **MARYLAND**

### **MD. CODE ANN., CRIM. LAW § 3-501 (2010). “Home or usual place of abode” defined**

In this subtitle, "home or usual place of abode" includes the real property appurtenant to the home or place of abode.

### **MD. CODE ANN., CRIM. LAW § 3-502 (2010). Kidnapping**

(a) Prohibited. -- A person may not, by force or fraud, carry or cause a person to be carried in or outside the State with the intent to have the person carried or concealed in or outside the State.

(b) Penalty. -- A person who violates this section is guilty of the felony of kidnapping and on conviction is subject to imprisonment not exceeding 30 years.

(c) Exception. -- Kidnapping does not include the act of a parent in carrying a minor child of that parent in or outside the State.

### **MD. CODE ANN., CRIM. LAW § 3-503 (2010). Child kidnapping**

(a) Prohibited. --

(1) A person may not, without color of right:

(i) forcibly abduct, take, or carry away a child under the age of 12 years from:

1. the home or usual place of abode of the child; or
2. the custody and control of the child's parent or legal guardian;

(ii) without the consent of the child's parent or legal guardian, persuade or entice a child under the age of 12 years from:

1. the child's home or usual place of abode; or
2. the custody and control of the child's parent or legal guardian; or

(iii) with the intent of depriving the child's parent or legal guardian, or any person lawfully possessing the child, of the custody, care, and control of the child, knowingly secrete or harbor a child under the age of 12 years.

(2) In addition to the prohibitions provided under paragraph (1) of this subsection, a person may not, by force or fraud, kidnap, steal, take, or carry away a child under the age of 16 years.

(b) Penalty. --

(1) A person who violates subsection (a)(1) of this section is guilty of a felony and on conviction is subject to imprisonment not exceeding 20 years.

(2) (i) Except as provided under subparagraph (ii) of this paragraph, a person, other than a parent of the child, who violates subsection (a)(2) of this section is guilty of a felony and on conviction is subject to imprisonment not exceeding 30 years.

(ii) 1. If a person convicted under subsection (a)(2) of this section is convicted in the same proceeding of rape or a first degree sexual offense under Subtitle 3 of this title, the person is guilty of a felony and on conviction is subject to imprisonment not exceeding life without the possibility of parole.

2. If the State intends to seek a sentence of imprisonment for life without the possibility of parole under sub-subparagraph 1 of this subparagraph, the State shall notify the person in writing of the State's intent at least 30 days before trial.

## **MD. CODE ANN., FAM. LAW § 9-301 (2010). Definitions**

(a) In general. -- In this subtitle the following words have the meanings indicated.

(b) Lawful custodian. --

(1) "Lawful custodian" means a person who is authorized to have custody of and exercise control over a child who is under the age of 16 years.

(2) "Lawful custodian" includes a person who is authorized to have custody by an order of a court of competent jurisdiction in this State or any other state.

(c) Relative. -- "Relative" means:

(1) a parent;

(2) a grandparent or other ancestor;

(3) a brother;

(4) a sister;

(5) an aunt;

(6) an uncle; or

(7) an individual who was a lawful custodian before the commission of an act that violates § 9-304 or § 9-305 of this subtitle.

**MD. CODE ANN., FAM. LAW § 9-304 (2010). Prohibited acts – In this state**

If a child is under the age of 16 years, a relative who knows that another person is the lawful custodian of the child may not, with the intent to deprive the lawful custodian of the custody of the child:

(1) abduct, take, or carry away the child from the lawful custodian to a place within this State;

(2) having acquired lawful possession of the child, detain the child within this State for more than 48 hours after the lawful custodian demands that the child be returned;

(3) harbor or hide the child within this State, knowing that possession of the child was obtained by another relative in violation of this section; or

(4) act as an accessory to an act prohibited by this section.

**MD. CODE ANN., FAM. LAW § 9-305 (2010). Prohibited acts – Outside of this State**

(a) In general. -- If a child is under the age of 16 years, a relative who knows that another person is the lawful custodian of the child may not, with the intent to deprive the lawful custodian of the custody of the child:

(1) abduct, take, or carry away the child from the lawful custodian to a place in another state;

(2) having acquired lawful possession of the child, detain the child in another state for more than 48 hours after the lawful custodian demands that the child be returned;

(3) harbor or hide the child in another state knowing that possession of the child was obtained by another relative in violation of this section; or

(4) act as an accessory to an act prohibited by this section.

(b) Additional restrictions. -- If a child is under the age of 16 years, a relative who knows that another person is the lawful custodian of the child may not, with the intent to deprive the lawful custodian of the custody of the child:

(1) abduct, take, or carry away the child from the lawful custodian to a place that is outside of the United States or a territory of the United States or the District of Columbia or the Commonwealth of Puerto Rico;

(2) having acquired lawful possession of the child, detain the child in a place that is outside of the United States or a territory of the United States or the District of Columbia or the Commonwealth of Puerto Rico for more than 48 hours after the lawful custodian demands that the child be returned;

(3) harbor or hide the child in a place that is outside of the United States or a territory of the United States or the District of Columbia or the Commonwealth of Puerto Rico knowing that possession of the child was obtained by another relative in violation of this section; or

(4) act as an accessory to an act prohibited by this section.

**MD. CODE ANN., FAM. LAW § 9-306 (2010). Clear and present danger to child**

(a) Petition. -- If an individual violates the provisions of § 9-304 or § 9-305 of this subtitle, the individual may file in an equity court a petition that:

(1) states that, at the time the act was done, a failure to do the act would have resulted in a clear and present danger to the health, safety, or welfare of the child; and

(2) seeks to revise, amend, or clarify the custody order.

(b) Defense. -- If a petition is filed as provided in subsection (a) of this section within 96 hours of the act, a finding by the court that, at the time the act was done, a failure to do the act would have resulted in a clear and present danger to the health, safety, or welfare of the child is a complete defense to any action brought for a violation of § 9-304 or § 9-305 of this subtitle.

**MD. CODE ANN., FAM. LAW § 9-307 (2010). Penalties**

(a) Violation of § 9-304. -- A person who violates any provision of § 9-304 of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$ 250 or imprisonment not exceeding 30 days.

(b) Violation of § 9-305(a) -- Not more than 30 days. -- If the child is out of the custody of the lawful custodian for not more than 30 days, a person who violates any provision of § 9-305(a) of this subtitle is guilty of a felony and on conviction is subject to a fine not exceeding \$ 1,000 or imprisonment not exceeding 1 year, or both.

(c) Violation of § 9-305(a) -- More than 30 days. -- If the child is out of the custody of the lawful custodian for more than 30 days, a person who violates any provision of § 9-305(a) of this subtitle is guilty of a felony and on conviction is subject to a fine not exceeding \$ 2,500 or imprisonment not exceeding 3 years, or both.

(d) Violation of § 9-305(b). -- A person who violates any provision of § 9-305(b) of this subtitle is guilty of a felony and on conviction is subject to a fine not exceeding \$ 5,000 or imprisonment not exceeding 5 years or both.

## **MASSACHUSETTS**

### **MASS. ANN. LAWS CH. 265, § 26A (2010). Custodial interference by relatives**

Whoever, being a relative of a child less than eighteen years old, without lawful authority, holds or intends to hold such a child permanently or for a protracted period, or takes or entices such a child from his lawful custodian, or takes or entices from lawful custody any incompetent person or other person entrusted by authority of law to the custody of another person or institution shall be punished by imprisonment in the house of correction for not more than one year or by a fine of up to one thousand dollars, or both. Whoever commits any offense described in this section by taking or holding said child outside the commonwealth or under circumstances which expose the person taken or enticed from lawful custody to a risk which endangers his safety shall be punished by a fine of not more than five thousand dollars, or by imprisonment in the state prison for not more than five years, or by both such fine and imprisonment.

### **MASS. ANN. LAWS CH. 265, § 26C (2010). Enticement of children**

(a) As used in this section, the term "entice" shall mean to lure, induce, persuade, tempt, incite, solicit, coax or invite.

(b) Any one who entices a child under the age of 16, or someone he believes to be a child under the age of 16, to enter, exit or remain within any vehicle, dwelling, building, or other outdoor space with the intent that he or another person will violate section 13B, 13F, 13H, 22, 22A, 23, 24 or 24B of chapter 265, section 4A, 16, 28, 29, 29A, 29B, 29C, 35A, 53 or 53A of chapter 272, or any offense that has as an element the use or attempted use of force, shall be punished by imprisonment in the state prison for not more than 5 years, or in the house of correction for not more than 2 1/2 years, or by both imprisonment and a fine of not more than \$5,000.

### **MASS. ANN. LAWS CH. 265, § 27A (2010). Venue in cases of custodial interference by relatives**

A crime described in section twenty-six A may be tried in the county where committed or in a county in or to which the person so taken or enticed is held, carried to, or brought.

## **MICHIGAN**

### **MICH. COMP. LAWS § 750.350a (2010). Taking or retaining child by adoptive or natural parent; intent; violation as felony; penalty; restitution for financial expense; effect of pleading or being found guilty; probation; discharge and dismissal; nonpublic record; defense**

Sec. 350a. (1) An adoptive or natural parent of a child shall not take that child, or retain that child for more than 24 hours, with the intent to detain or conceal the child from any other parent or legal guardian of the child who has custody or parenting time rights pursuant to a lawful court

order at the time of the taking or retention, or from the person or persons who have adopted the child, or from any other person having lawful charge of the child at the time of the taking or retention.

(2) A parent who violates subsection (1) is guilty of a felony, punishable by imprisonment for not more than 1 year and 1 day, or a fine of not more than \$2,000.00, or both.

(3) A parent who violates this section, upon conviction, in addition to any other punishment, may be ordered to make restitution to the other parent, legal guardian, the person or persons who have adopted the child, or any other person having lawful charge of the child for any financial expense incurred as a result of attempting to locate and having the child returned.

(4) When a parent who has not been convicted previously of a violation of section 349, 350, or this section, or under any statute of the United States or of any state related to kidnapping, pleads guilty to, or is found guilty of, a violation of this section, the court, without entering a judgment of guilt and with the consent of the accused parent, may defer further proceedings and place the accused parent on probation with lawful terms and conditions. The terms and conditions of probation may include participation in a drug treatment court under chapter 10A of the revised judicature act of 1961, 1961 PA 236, MCL 600.1060 to 600.1082. Upon a violation of a term or condition of probation, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions of probation, the court shall discharge from probation and dismiss the proceedings against the parent. Discharge and dismissal under this subsection shall be without adjudication of guilt and is not a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including any additional penalties imposed for second or subsequent convictions. The department of state police shall retain a nonpublic record of an arrest and discharge and dismissal under this section. This record shall be furnished to either or both of the following:

(a) To a court or police agency upon request for the purpose of showing that a defendant in a criminal action has already availed himself or herself of this subsection.

(b) To a court, police agency, or prosecutor upon request for the purpose of determining whether the defendant in a criminal action is eligible for discharge and dismissal of proceedings by a drug treatment court under section 1076(4) of the revised judicature act of 1961, 1961 PA 236, MCL 600.1076.

(5) It is a complete defense under this section if a parent proves that his or her actions were taken for the purpose of protecting the child from an immediate and actual threat of physical or mental harm, abuse, or neglect.

## **MINNESOTA**

### **MINN. STAT. § 609.26 (2009). Depriving another of custodial or parental rights**

Subdivision 1. Prohibited acts.

Whoever intentionally does any of the following acts may be charged with a felony and, upon conviction, may be sentenced as provided in subdivision 6:

(1) conceals a minor child from the child's parent where the action manifests an intent substantially to deprive that parent of parental rights or conceals a minor child from another person having the right to parenting time or custody where the action manifests an intent to substantially deprive that person of rights to parenting time or custody;

(2) takes, obtains, retains, or fails to return a minor child in violation of a court order which has transferred legal custody under chapter 260, 260B, or 260C to the commissioner of human services, a child-placing agency, or the local social services agency;

(3) takes, obtains, retains, or fails to return a minor child from or to the parent in violation of a court order, where the action manifests an intent substantially to deprive that parent of rights to parenting time or custody;

(4) takes, obtains, retains, or fails to return a minor child from or to a parent after commencement of an action relating to child parenting time or custody but prior to the issuance of an order determining custody or parenting time rights, where the action manifests an intent substantially to deprive that parent of parental rights;

(5) retains a child in this state with the knowledge that the child was removed from another state in violation of any of the above provisions;

(6) refuses to return a minor child to a parent or lawful custodian and is at least 18 years old and more than 24 months older than the child;

(7) causes or contributes to a child being a habitual truant as defined in section 260C.007, subdivision 19, and is at least 18 years old and more than 24 months older than the child;

(8) causes or contributes to a child being a runaway as defined in section 260C.007, subdivision 28, and is at least 18 years old and more than 24 months older than the child; or

(9) is at least 18 years old and resides with a minor under the age of 16 without the consent of the minor's parent or lawful custodian.

#### Subd. 2. Defenses.

It is an affirmative defense if a person charged under subdivision 1 proves that:

(1) the person reasonably believed the action taken was necessary to protect the child from physical or sexual assault or substantial emotional harm;

(2) the person reasonably believed the action taken was necessary to protect the person taking the action from physical or sexual assault;

(3) the action taken is consented to by the parent, stepparent, or legal custodian seeking prosecution, but consent to custody or specific parenting time is not consent to the action of failing to return or concealing a minor child; or

(4) the action taken is otherwise authorized by a court order issued prior to the violation of subdivision 1.

The defenses provided in this subdivision are in addition to and do not limit other defenses available under this chapter or chapter 611.

#### Subd. 2a. Original intent clarified.

To the extent that it states that subdivision 2 creates affirmative defenses to a charge under this section, subdivision 2 clarifies the original intent of the legislature in enacting Laws 1984, chapter 484, section 2, and does not change the substance of this section. Subdivision 2 does not modify or alter any convictions entered under this section before August 1, 1988.

Subd. 3. Venue.

A person who violates this section may be prosecuted and tried either in the county in which the child was taken, concealed, or detained or in the county of lawful residence of the child.

Subd. 4. Return of child; costs.

A child who has been concealed, obtained, or retained in violation of this section shall be returned to the person having lawful custody of the child or shall be taken into custody pursuant to section 260C.175, subdivision 1, clause (2), item (ii). In addition to any sentence imposed, the court may assess any expense incurred in returning the child against any person convicted of violating this section. The court may direct the appropriate county welfare agency to provide counseling services to a child who has been returned pursuant to this subdivision.

Subd. 5. Dismissal of charge.

A felony charge brought under this section shall be dismissed if:

(a) the person voluntarily returns the child within 48 hours after taking, detaining, or failing to return the child in violation of this section; or

(b)(1) the person taking the action and the child have not left the state of Minnesota; and (2) within a period of seven days after taking the action, (i) a motion or proceeding under chapter 518, 518A, 518B, 518C, or 518D is commenced by the person taking the action, or (ii) the attorney representing the person taking the action has consented to service of process by the party whose rights are being deprived, for any motion or action pursuant to chapter 518, 518A, 518B, 518C, or 518D.

Clause (a) does not apply if the person returns the child as a result of being located by law enforcement authorities.

This subdivision does not prohibit the filing of felony charges or an offense report before the expiration of the 48 hours.

Subd. 6. Penalty.

(a) Except as otherwise provided in paragraph (b) and subdivision 5, whoever violates this section may be sentenced as follows:

(1) to imprisonment for not more than two years or to payment of a fine of not more than \$4,000, or both; or

(2) to imprisonment for not more than four years or to payment of a fine of not more than \$8,000, or both, if the court finds that:

- (i) the defendant committed the violation while possessing a dangerous weapon or caused substantial bodily harm to effect the taking;
- (ii) the defendant abused or neglected the child during the concealment, detention, or removal of the child;
- (iii) the defendant inflicted or threatened to inflict physical harm on a parent or lawful custodian of the child or on the child with intent to cause the parent or lawful custodian to discontinue criminal prosecution;
- (iv) the defendant demanded payment in exchange for return of the child or demanded to be relieved of the financial or legal obligation to support the child in exchange for return of the child; or
- (v) the defendant has previously been convicted under this section or a similar statute of another jurisdiction.

(b) A violation of subdivision 1, clause (7), is a gross misdemeanor. The county attorney shall prosecute violations of subdivision 1, clause (7).

Subd. 7. Reporting of deprivation of parental rights.

Any violation of this section shall be reported pursuant to section 626.556, subdivision 3a.

### **MINN. STAT. § 750.138 (2010). Children; legal custody; interference**

Sec. 138. A person who in any manner interferes or attempts to interfere with the custody of any child who has been adjudged to be dependent, neglected, or delinquent pursuant to chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32, after the making of an order of commitment to a state institution or otherwise, in accordance with that act and pending the actual admission and reception of the child as an inmate of the institution, school, or home to which commitment is made; and any person who entices the neglected, dependent, or delinquent child from and out of the custody of the person or persons entitled thereto under the order of the court or who shall in any way interfere or attempt to interfere with the custody; and a person who entices or procures the child committed as aforesaid to leave and depart from any hospital or other place where the child was placed pursuant to the order of the court for the purpose of receiving medical treatment pending admission into the state institution, school, home, or other institution or place to which commitment may have been made, is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00.

## **MISSISSIPPI**

### **MISS. CODE ANN. § 97-3-51 (2010). Interstate removal of child under age fourteen by noncustodial parent or relative**

(1) For the purposes of this section, the following terms shall have the meaning herein ascribed unless the context otherwise clearly requires:

(a) "Child" means a person under the age of fourteen (14) years at the time a violation of this section is alleged to have occurred.

(b) "Court order" means an order, decree or judgment of any court of this state which is competent to decide child custody matters.

(2) It shall be unlawful for any noncustodial parent or relative with intent to violate a court order awarding custody of a child to another to remove the child from this state or to hold the child out of state after the entry of a court order.

(3) Any person convicted of a violation of subsection (2) of this section shall be guilty of a felony and may be punished by a fine of not more than Two Thousand Dollars (\$ 2,000.00), or by imprisonment in the state penitentiary for a term not to exceed three (3) years, or by both such fine and imprisonment.

(4) The provisions of this section shall not be construed to repeal, modify or amend any other criminal statute of this state.

## **MISSOURI**

### **MO. REV. STAT. § 565.115 (2010). Child kidnapping – penalty**

1. A person commits the crime of child kidnapping if such person is not a relative of the child within the third degree and such person:

(1) Unlawfully removes a child under the age of fourteen without the consent of such child's parent or guardian from the place where such child is found; or

(2) Unlawfully confines a child under the age of fourteen without the consent of such child's parent or guardian.

2. In determining whether the child was removed or confined unlawfully, it is an affirmative defense that the person reasonably believed that the person's actions were necessary to preserve the child from danger to his or her welfare.

3. Child kidnapping is a class A felony.

### **MO. REV. STAT. § 565.149 (2010). Definitions**

As used in sections 565.149 to 565.169, the following words and phrases mean:

(1) "Child", a person under seventeen years of age;

(2) "Legal custody", the right to the care, custody and control of a child;

(3) "Parent", either a biological parent or a parent by adoption;

(4) "Person having a right of custody", a parent or legal guardian of the child.

**MO. REV. STAT. § 565.150 (2010). Interference with custody – penalty**

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.

**MO. REV. STAT. § 565.153 (2010). Parental kidnapping – penalty**

1. In the absence of a court order determining rights of custody or visitation to a child, a person having a right of custody of the child commits the crime of parental kidnapping if he removes, takes, detains, conceals, or entices away that child within or without the state, without good cause, and with the intent to deprive the custody right of another person or a public agency also having a custody right to that child.

2. Parental kidnapping is a class D felony, unless committed by detaining or concealing the whereabouts of the child for:

(1) Not less than sixty days but not longer than one hundred nineteen days, in which case, the crime is a class C felony;

(2) Not less than one hundred twenty days, in which case, the crime is a class B felony.

3. A subsequently obtained court order for custody or visitation shall not affect the application of this section.

**MO. REV. STAT. § 565.156 (2010). Child abduction – penalty**

1. A person commits the crime of child abduction if he or she:

(1) Intentionally takes, detains, entices, conceals or removes a child from a parent after being served with process in an action affecting marriage or paternity but prior to the issuance of a temporary or final order determining custody;

(2) At the expiration of visitation rights outside the state, intentionally fails or refuses to return or impedes the return of the child to the legal custodian in Missouri;

(3) Conceals, detains, or removes the child for payment or promise of payment at the instruction of a person who has no legal right to custody;

(4) Retains in this state for thirty days a child removed from another state without the consent of the legal custodian or in violation of a valid court order of custody; or

(5) Having legal custody of the child pursuant to a valid court order, removes, takes, detains, conceals or entices away that child within or without the state, without good cause, and with the intent to deprive the custody or visitation rights of another person, without obtaining written consent as is provided under section 452.377, RSMo.

2. Child abduction is a class D felony.

**MO. REV. STAT. § 565.160 (2010). Defenses to parental kidnapping and child abduction**

It shall be an absolute defense to the crimes of parental kidnapping and child abduction that:

(1) The person had custody of the child pursuant to a valid court order granting legal custody or visitation rights which existed at the time of the alleged violation, except that this defense is not available to persons charged with child abduction under subdivision (5) of subsection 1 of section 565.156;

(2) The person had physical custody of the child pursuant to a court order granting legal custody or visitation rights and failed to return the child as a result of circumstances beyond his or her control, and the person notified or made a reasonable attempt to notify the other parent or legal custodian of the child of such circumstances within twenty-four hours after the visitation period had expired and returned the child as soon as possible; or

(3) The person was fleeing an incident or pattern of domestic violence.

**MO. REV. STAT. § 565.163 (2010). Venue**

Persons accused of committing the crime of interference with custody, parental kidnapping or child abduction shall be prosecuted by the prosecuting attorney or circuit attorney:

(1) In the county in which the child was taken or enticed away from legal custody;

(2) In any county in which the child who was taken or enticed away from legal custody was taken or held by the defendant;

(3) The county in which lawful custody of the child taken or enticed away was granted; or

(4) The county in which the defendant is found.

**MO. REV. STAT. § 565.165 (2010). Assisting in child abduction or parental kidnapping – penalty**

1. A person commits the crime of assisting in child abduction or parental kidnapping if he:

(1) Before or during the commission of a child abduction or parental kidnapping as defined in section 565.153 or 565.156 and with the intent to promote or facilitate such offense, intentionally assists another in the planning or commission of child abduction or parental kidnapping, unless before the commission of the offense he makes proper efforts to prevent the commission of the offense; or

(2) With the intent to prevent the apprehension of a person known to have committed the offense of child abduction or parental kidnapping, or with the intent to obstruct or prevent efforts to locate the child victim of a child abduction, knowingly destroys, alters, conceals or disguises physical evidence or furnishes false information.

2. Assisting in child abduction or parental kidnapping is a class A misdemeanor.

**MO. REV. STAT. § 565.167 (2010). Custody of child – peace officer to take child into protective custody, when**

1. A peace officer investigating a report of a violation of section 565.150, or section 565.153 or 565.156, may take the child into temporary protective custody if it reasonably appears to the officer that any person unlawfully will flee the jurisdictional territory with the child.

2. If during the course of an investigation under section 565.150, or section 565.153 or 565.156, the child is found in the physical custody of the defendant or another, the law enforcement officer shall return the child to the parent or legal custodian from whom the child was concealed, detained or removed, unless there is good cause for the law enforcement officer to retain temporary protective custody of the child pursuant to section 210.125, RSMo.

**MO. REV. STAT. § 565.169 (2010). Restitution, expenses of custodial parent granted, when**

Upon conviction or guilty plea of a person under section 565.150, or section 565.153 or 565.156, the court may, in addition to or in lieu of any sentence or fine imposed, assess as restitution against the defendant and in favor of the legal custodian or parent any reasonable expenses incurred by the legal custodian or parent in searching for or returning the child.

**MO. REV. STAT. § 455.538 (2010). Law enforcement agencies response to violation of order – arrest for violation, penalties – custody to be returned to rightful party, when**

1. When a law enforcement officer has probable cause to believe that a party, against whom a protective order for a child has been entered, has committed an act of abuse in violation of that order, he shall have the authority to arrest the respondent whether or not the violation occurred in the presence of the arresting officer.

2. When a person, against whom an order of protection for a child has been entered, fails to surrender custody of minor children to the person to whom custody was awarded in an order of protection, the law enforcement officer shall arrest the respondent, and shall turn the minor children over to the care and custody of the party to whom such care and custody was awarded.

3. The same procedures, including those designed to protect constitutional rights, shall be applied to the respondent as those applied to any individual detained in police custody.

4. (1) Violation of the terms and conditions of an ex parte order of protection with regard to abuse, child custody, or entrance upon the premises of the victim's dwelling unit, of which the respondent has notice, shall be a class A misdemeanor. Violation of the terms and conditions of a full order of protection for a child regarding abuse, child custody, or entrance upon the premises of the petitioner's dwelling unit, shall be a class A misdemeanor.

(2) For purposes of this subsection, in addition to the notice provided by actual service of the order, a party is deemed to have notice of an order of protection for a child if the law enforcement officer responding to a call of a reported incident of abuse or violation of an order of protection for a child presents a copy of the order of protection to the respondent.

5. The fact that an act by a respondent is a violation of a valid order of protection for a child shall not preclude prosecution of the respondent for other crimes arising out of the incident in which the protection order is alleged to have been violated.

## **MONTANA**

### **MONT. CODE ANN. § 45-5-304 (2010). 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.

### **MONT. CODE ANN. § 45-5-631 (2010). Interference with parent-child contact**

(1) A person who has been granted parent-child contact under a parenting plan commits the offense of interference with parent-child contact if the person knowingly or purposely prevents, obstructs, or frustrates the rights of another person entitled to parent-child contact under an existing court order.

(2) A person convicted of the offense of interference with parent-child contact shall be fined an amount not to exceed \$ 500 or be imprisoned in the county jail for a term not to exceed 5 days, or both.

**MONT. CODE ANN. § 45-5-632 (2010). Aggravated interference with parent-child contact**

(1) A person who commits the offense of interference with parent-child contact by changing the residence of the minor child to another state without giving written notice as required in 40-4-217, unless the notice requirement has been precluded under 40-4-234, or without written consent of the person entitled to parent-child contact pursuant to an existing court order commits the offense of aggravated interference with parent-child contact.

(2) A person convicted of the offense of aggravated interference with parent-child contact shall be fined an amount not to exceed \$ 1,000 or be imprisoned in the state prison for a term not to exceed 18 months, or both.

**MONT. CODE ANN. § 45-5-633 (2010). Defenses to interference with parent-child contact and aggravated interference with parent-child contact**

(1) A person does not commit the offense of interference with parent-child contact or aggravated interference with parent-child contact if the person acts:

- (a) with the consent of the person entitled to parent-child contact;
- (b) under an existing court order; or
- (c) with reasonable cause.

(2) Return of the child before arrest is a defense only with respect to the first commission of interference with parent-child contact or aggravated interference with parent-child contact.

**MONT. CODE ANN. § 45-5-634 (2010). Parenting interference**

(1) A person commits the offense of parenting interference if, knowing that the person has no legal right to do so, the person:

- (a) before the entry of a court order determining parenting rights, takes, entices, or withholds a child from the other parent when the action manifests a purpose to substantially deprive that parent of parenting rights; or
- (b) is one of two persons who has parenting authority of a child under a court order and takes, entices, or withholds the child from the other when the action manifests a purpose to substantially deprive the other parent of parenting rights.

(2) A person convicted of the offense of parenting 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 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 before arrest.

## **NEBRASKA**

### **NEB. REV. STAT. ANN. § 28-316 (2010). Violation of custody; penalty**

(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**

### **NEV. REV. STAT. ANN. § 200.310 (2009). Degrees**

1. A person who willfully seizes, confines, inveigles, entices, decoys, abducts, conceals, kidnaps or carries away a person by any means whatsoever with the intent to hold or detain, or who holds or detains, the person for ransom, or reward, or for the purpose of committing sexual assault, extortion or robbery upon or from the person, or for the purpose of killing the person or inflicting substantial bodily harm upon him, or to exact from relatives, friends, or any other person any money or valuable thing for the return or disposition of the kidnaped person, and a person who leads, takes, entices, or carries away or detains any minor with the intent to keep, imprison, or confine him from his parents, guardians, or any other person having lawful custody of the minor, or with the intent to hold the minor to unlawful service, or perpetrate upon the person of the minor any unlawful act is guilty of kidnaping in the first degree which is a category A felony.

2. A person who willfully and without authority of law seizes, inveigles, takes, carries away or kidnaps another person with the intent to keep the person secretly imprisoned within the state, or for the purpose of conveying the person out of the state without authority of law, or in any manner held to service or detained against his will, is guilty of kidnaping in the second degree which is a category B felony.

**NEV. REV. STAT. ANN. § 200.320 (2009). Kidnapping in first degree: Penalties**

A person convicted of kidnapping in the first degree is guilty of a category A felony and shall be punished:

1. Where the kidnaped person suffers substantial bodily harm during the act of kidnapping or the subsequent detention and confinement or in attempted escape or escape therefrom, by imprisonment in the state prison:

(a) For life without the possibility of parole;

(b) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 15 years has been served; or

(c) For a definite term of 40 years, with eligibility for parole beginning when a minimum of 15 years has been served.

2. Where the kidnaped person suffers no substantial bodily harm as a result of the kidnapping, by imprisonment in the state prison:

(a) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 5 years has been served; or

(b) For a definite term of 15 years, with eligibility for parole beginning when a minimum of 5 years has been served.

**NEV. REV. STAT. ANN. § 200.330 (2009). Kidnapping in second degree: Penalties**

A person convicted of kidnapping in the second degree is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years, and may be further punished by a fine of not more than \$15,000.

**NEV. REV. STAT. ANN. § 200.340 (2009). Penalty for aiding or abetting**

1. A person who aids and abets kidnapping in the first degree is guilty of a category A felony and shall be punished for kidnapping in the first degree as provided in NRS 200.320.

2. A person who aids and abets kidnapping in the second degree is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years.

**NEV. REV. STAT. ANN. § 200.350 (2009). Where proceedings may be instituted; consent is not defense**

1. Any proceedings for kidnapping may be instituted either in the county where the offense was committed or in any county through or in which the person kidnaped or confined was taken or kept while under confinement or restraint.

2. Upon the trial for violation of NRS 200.310 to 200.350, inclusive, the consent thereto of the person kidnaped or confined shall not be a defense unless it appears satisfactorily to the jury that such person was above the age of 18 years and that his consent was not extorted by threats, duress or fraud.

**NEV. REV. STAT. ANN. § 200.357 (2009). Law enforcement officer required to take child into protective custody if child in danger of being removed from jurisdiction**

A law enforcement officer who is conducting an investigation or making an arrest concerning the abduction of a child shall take the child into protective custody if he reasonably believes that the child is in danger of being removed from the jurisdiction.

**NEV. REV. STAT. ANN. § 200.359 (2009). Detention, concealment or removal of child from person having lawful custody or from jurisdiction of court: Penalties; limitation on issuance of arrest warrant; restitution; exceptions**

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 NRS 125A.085; and

(b) There is cause to believe that the entry of a court order in a civil proceeding brought pursuant to chapter 125, 125A or 125C 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.

7. A person who aids or abets any other person to violate this section shall be punished as provided in subsection 1.

8. This section does not apply to a person who detains, conceals or removes a child to protect the child from the imminent danger of abuse or neglect or to protect himself from imminent physical harm, and reported the detention, concealment or removal to a law enforcement agency or an agency which provides child welfare services within 24 hours after detaining, concealing or removing the child, or as soon as the circumstances allowed. As used in this subsection:

(a) "Abuse or neglect" has the meaning ascribed to it in paragraph (a) of subsection 4 of NRS 200.508.

(b) "Agency which provides child welfare services" has the meaning ascribed to it in NRS 432B.030.

## **NEW HAMPSHIRE**

### **N.H. REV. STAT. ANN. § 633: 4 (2010). Interference with custody**

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 parental rights and responsibilities as described in RSA 461-A.

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 parental rights and responsibilities as described in RSA 461-A.

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 JERSEY**

### **N.J. STAT. ANN. § 2C:13-4 (2010). Interference with custody**

a. Custody of children. A person, including a parent, guardian or other lawful custodian, is guilty of interference with custody if he:

(1) Takes or detains a minor child with the purpose of concealing the minor child and thereby depriving the child's other parent of custody or parenting time with the minor child; or

(2) After being served with process or having actual knowledge of an action affecting marriage or custody but prior to the issuance of a temporary or final order determining custody and parenting time rights to a minor child, takes, detains, entices or conceals the child within or outside the State for the purpose of depriving the child's other parent of custody or parenting time, or to evade the jurisdiction of the courts of this State; or

(3) After being served with process or having actual knowledge of an action affecting the protective services needs of a child pursuant to Title 9 of the Revised Statutes in an action affecting custody, but prior to the issuance of a temporary or final order determining custody rights of a minor child, takes, detains, entices or conceals the child within or outside the State for the purpose of evading the jurisdiction of the courts of this State; or

(4) After the issuance of a temporary or final order specifying custody, joint custody rights or parenting time, takes, detains, entices or conceals a minor child from the other parent in violation of the custody or parenting time order.

Interference with custody is a crime of the second degree if the child is taken, detained, enticed or concealed: (i) outside the United States or (ii) for more than 24 hours. Otherwise, interference with custody is a crime of the third degree but the presumption of non-imprisonment set forth in subsection e. of N.J.S.2C:44-1 for a first offense of a crime of the third degree shall not apply.

b. Custody of committed persons. A person is guilty of a crime of the fourth degree if he knowingly takes or entices any committed person away from lawful custody when he is not privileged to do so. "Committed person" means, in addition to anyone committed under judicial warrant, any orphan, neglected or delinquent child, mentally defective or insane person, or other dependent or incompetent person entrusted to another's custody by or through a recognized social agency or otherwise by authority of law.

c. It is an affirmative defense to a prosecution under subsection a. of this section, which must be proved by clear and convincing evidence, that:

(1) The actor reasonably believed that the action was necessary to preserve the child from imminent danger to his welfare. However, no defense shall be available pursuant to this subsection if the actor does not, as soon as reasonably practicable but in no event more than 24 hours after taking a child under his protection, give notice of the child's location to the police department of the municipality where the child resided, the office of the county prosecutor in the county where the child resided, or the Division of Youth and Family Services in the Department of Children and Families;

(2) The actor reasonably believed that the taking or detaining of the minor child was consented to by the other parent, or by an authorized State agency; or

(3) The child, being at the time of the taking or concealment not less than 14 years old, was taken away at his own volition and without purpose to commit a criminal offense with or against the child.

d. It is an affirmative defense to a prosecution under subsection a. of this section that a parent having the right of custody reasonably believed he was fleeing from imminent physical danger from the other parent, provided that the parent having custody, as soon as reasonably practicable:

(1) Gives notice of the child's location to the police department of the municipality where the child resided, the office of the county prosecutor in the county where the child resided, or the Division of Youth and Family Services in the Department of Children and Families; or

(2) Commences an action affecting custody in an appropriate court.

e. The offenses enumerated in this section are continuous in nature and continue for so long as the child is concealed or detained.

f. (1) In addition to any other disposition provided by law, a person convicted under subsection a. of this section shall make restitution of all reasonable expenses and costs, including reasonable counsel fees, incurred by the other parent in securing the child's return.

(2) In imposing sentence under subsection a. of this section the court shall consider, in addition to the factors enumerated in chapter 44 of Title 2C of the New Jersey Statutes:

(a) Whether the person returned the child voluntarily; and

(b) The length of time the child was concealed or detained.

g. As used in this section, "parent" means a parent, guardian or other lawful custodian of a minor child.

**N.J. STAT. ANN. § 2A:34-31.1 (2010).**

§ 2A:34-31.1. Repealed by L. 2004, c. 147, § 44, effective December 13, 2004

# **NEW MEXICO**

## **N.M. STAT. ANN. § 30-4-4 (2010). Custodial interference; penalties**

A. As used in this section:

(1) "child" means an individual who has not reached his eighteenth birthday;

(2) "custody determination" means a judgment or order of a court of competent jurisdiction providing for the custody of a child, including visitation rights;

(3) "person" means any individual or legal entity, whether incorporated or unincorporated, including the United States, the state of New Mexico or any subdivision thereof;

(4) "physical custody" means actual possession and control of a child; and

(5) "right to custody" means the right to physical custody or visitation of a child arising from:

(a) a parent-child relationship between the child and a natural or adoptive parent absent a custody determination; or

(b) a custody determination.

B. Custodial interference consists of any person, having a right to custody of a child, maliciously taking, detaining, concealing or enticing away or failing to return that child without good cause and with the intent to deprive permanently or for a protracted time another person also having a right to custody of that child of his right to custody. Whoever commits custodial interference is guilty of a fourth degree felony.

C. Unlawful interference with custody consists of any person, not having a right to custody, maliciously taking, detaining, concealing or enticing away or failing to return any child with the intent to detain or conceal permanently or for a protracted time that child from any person having a right to custody of that child. Whoever commits unlawful interference with custody is guilty of a fourth degree felony.

D. Violation of Subsection B or C of this section is unlawful and is a fourth degree felony.

E. A peace officer investigating a report of a violation of this section may take a child into protective custody if it reasonably appears to the officer that any person will flee with the child in violation of Subsection B or C of this section. The child shall be placed with the person whose right to custody of the child is being enforced, if available and appropriate, and, if not, in any of the community-based shelter care facilities as provided for in Section 32-1-25.1 NMSA 1978.

F. Upon recovery of a child a hearing by the civil court currently having jurisdiction or the court to which the custody proceeding is assigned, shall be expeditiously held to determine continued custody.

G. A felony charge brought under this section may be dismissed if the person voluntarily returns the child within fourteen days after taking, detaining or failing to return the child in violation of this section.

H. The offenses enumerated in this section are continuous in nature and continue for so long as the child is concealed or detained.

I. Any defendant convicted of violating the provisions of this section may be assessed the following expenses and costs by the court, with payments to be assigned to the respective person or agency:

(1) any expenses and costs reasonably incurred by the person having a right to custody of the child in seeking return of that child; and

(2) any expenses and costs reasonably incurred for the care of the child while in the custody of the human services department.

J. Violation of the provisions of this section is punishable in New Mexico, whether the intent to commit the offense is formed within or outside the state, if the child was present in New Mexico at the time of the taking.

**N.M. STAT. ANN. § 32A-3B-3 (2010). Protective custody; interference with protective custody; penalty**

A. A child may be taken into protective custody by a law enforcement officer without a court order when the officer has reasonable grounds to believe that:

(1) the child has run away from the child's parent, guardian or custodian;

(2) the child without parental supervision is suffering from illness or injury;

(3) the child has been abandoned; or

(4) the child is endangered by his surroundings and removal from those surroundings is necessary to ensure the child's safety.

B. A child may be taken into protective custody pursuant to a court order issued after an agency legally charged with the supervision of the child has notified a law enforcement agency that the child has run away from a placement.

C. When a child is taken into protective custody, the department shall make a reasonable effort to determine whether the child is an Indian child.

D. Any person, other than the child taken into protective custody, who interferes with placing the child in protective custody is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

## **NEW YORK**

### **N.Y. PENAL LAW § 135.20 (2010). Kidnapping in the second degree**

A person is guilty of kidnapping in the second degree when he abducts another person.

Kidnapping in the second degree is a class B felony.

### **N.Y. PENAL LAW § 135.25 (2010). Kidnapping in the first degree**

A person is guilty of kidnapping in the first degree when he abducts another person and when:

1. His intent is to compel a third person to pay or deliver money or property as ransom, or to engage in other particular conduct, or to refrain from engaging in particular conduct; or
2. He restrains the person abducted for a period of more than twelve hours with intent to:
  - (a) Inflict physical injury upon him or violate or abuse him sexually; or
  - (b) Accomplish or advance the commission of a felony; or
  - (c) Terrorize him or a third person; or
  - (d) Interfere with the performance of a governmental or political function; or
3. The person abducted dies during the abduction or before he is able to return or to be returned to safety. Such death shall be presumed, in a case where such person was less than sixteen years old or an incompetent person at the time of the abduction, from evidence that his parents, guardians or other lawful custodians did not see or hear from him following the termination of the abduction and prior to trial and received no reliable information during such period persuasively indicating that he was alive. In all other cases, such death shall be presumed from evidence that a person whom the person abducted would have been extremely likely to visit or communicate with during the specified period were he alive and free to do so did not see or hear from him during such period and received no reliable information during such period persuasively indicating that he was alive.

Kidnapping in the first degree is a class A-I felony.

### **N.Y. PENAL LAW § 135.30 (2010). Kidnapping; defense**

In any prosecution for kidnapping, it is an affirmative defense that (a) the defendant was a relative of the person abducted, and (b) his sole purpose was to assume control of such person.

### **N.Y. PENAL LAW § 135.45 (2010). Custodial interference in the second degree**

A person is guilty of custodial interference in the second degree when:

1. Being a relative of a child less than sixteen years old, intending to hold such child permanently or for a protracted period, and knowing that he has no legal right to do so, he takes or entices such child from his lawful custodian; or

2. Knowing that he has no legal right to do so, he takes or entices from lawful custody any incompetent person or other person entrusted by authority of law to the custody of another person or institution.

Custodial interference in the second degree is a class A misdemeanor.

**N.Y. PENAL LAW § 135.50 (2010). Custodial interference in the first degree**

A person is guilty of custodial interference in the first degree when he commits the crime of custodial interference in the second degree:

1. With intent to permanently remove the victim from this state, he removes such person from the state; or
2. Under circumstances which expose the victim to a risk that his safety will be endangered or his health materially impaired.

It shall be an affirmative defense to a prosecution under subdivision one of this section that the victim had been abandoned or that the taking was necessary in an emergency to protect the victim because he has been subjected to or threatened with mistreatment or abuse. Custodial interference in the first degree is a class E felony.

## **NORTH CAROLINA**

**N.C. GEN. STAT. § 14-320.1 (2010). Transporting child outside the State with intent to violate custody order**

When any federal court or state court in the United States shall have awarded custody of a child under the age of 16 years, it shall be a felony for any person with the intent to violate the court order to take or transport, or cause to be taken or transported, any such child from any point within this State to any point outside the limits of this State or to keep any such child outside the limits of this State. Such crime shall be punishable as a Class I felony. Provided that keeping a child outside the limits of the State in violation of a court order for a period in excess of 72 hours shall be prima facie evidence that the person charged intended to violate the order at the time of taking.

**N.C. GEN. STAT. § 14-41 (2010). Abduction of children**

(a) Any person who, without legal justification or defense, abducts or induces any minor child who is at least four years younger than the person to leave any person, agency, or institution lawfully entitled to the child's custody, placement, or care shall be guilty of a Class F felony.

(b) The provisions of this section shall not apply to any public officer or employee in the performance of his or her duty.

# **NORTH DAKOTA**

## **N.D. CENT. CODE § 12.1-18-01 (2010). Kidnapping**

1. A person is guilty of kidnapping if he abducts another or, having abducted another, continues to restrain him with intent to do the following:

- a. Hold him for ransom or reward;
- b. Use him as a shield or hostage;
- c. Hold him in a condition of involuntary servitude;
- d. Terrorize him or a third person;
- e. Commit a felony or attempt to commit a felony; or
- f. Interfere with the performance of any governmental or political function.

2. Kidnapping is a class A felony unless the actor voluntarily releases the victim alive and in a safe place prior to trial, in which case it is a class B felony.

## **N.D. CENT. CODE § 12.1-18-05 (2010). Removal of child from state in violation of custody decree – Penalty**

Any person who intentionally removes, causes the removal of, or detains the person's own child under the age of eighteen years outside this state with the intent to deny another person's rights in violation of an existing custody decree is guilty of a class C felony. Detaining the child outside this state in violation of the custody decree for more than seventy-two hours is prima facie evidence that the person charged intended to violate the custody decree at the time of removal.

# **OHIO**

## **OHIO REV. CODE ANN. § 2905.05 (2010). Criminal child enticement**

(A) No person, by any means and without privilege to do so, shall knowingly solicit, coax, entice, or lure any child under fourteen years of age to accompany the person in any manner, including entering into any vehicle or onto any vessel, whether or not the offender knows the age of the child, if both of the following apply:

(1) The actor does not have the express or implied permission of the parent, guardian, or other legal custodian of the child in undertaking the activity.

(2) The actor is not a law enforcement officer, medic, firefighter, or other person who regularly provides emergency services, and is not an employee or agent of, or a volunteer acting under the

direction of, any board of education, or the actor is any of such persons, but, at the time the actor undertakes the activity, the actor is not acting within the scope of the actor's lawful duties in that capacity.

(B) No person, with a sexual motivation, shall violate division (A) of this section.

(C) It is an affirmative defense to a charge under division (A) of this section that the actor undertook the activity in response to a bona fide emergency situation or that the actor undertook the activity in a reasonable belief that it was necessary to preserve the health, safety, or welfare of the child.

(D) Whoever violates this section is guilty of criminal child enticement, a misdemeanor of the first degree. If the offender previously has been convicted of a violation of this section, section 2907.02 or 2907.03 or former section 2907.12 of the Revised Code, or section 2905.01 or 2907.05 of the Revised Code when the victim of that prior offense was under seventeen years of age at the time of the offense, criminal child enticement is a felony of the fifth degree.

(E) As used in this section:

- (1) "Sexual motivation" has the same meaning as in section 2971.01 of the Revised Code.
- (2) "Vehicle" has the same meaning as in section 4501.01 of the Revised Code.
- (3) "Vessel" has the same meaning as in section 1547.01 of the Revised Code.

### **OHIO REV. CODE ANN. § 2919.23 (2010). Interference with custody**

(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.

## **OKLAHOMA**

### **OKLA. STAT. ANN. TIT. 21, § 567A (2010). Violation of child custody order – Affirmative defense – Emergency or protective custody**

A. Any parent or other person who violates an order of any court of this state granting the custody of a child under the age of eighteen (18) years to any person, agency, institution, or other facility, with the intent to deprive the lawful custodian of the custody of the child, shall be guilty of a felony. The fine for a violation of this subsection shall not exceed Five Thousand Dollars (\$ 5,000.00).

B. The offender shall have an affirmative defense if the offender reasonably believes that the act was necessary to preserve the child from physical, mental, or emotional danger to the child's welfare and the offender notifies the local law enforcement agency nearest to the location where the custodian of the child resides.

C. If a child is removed from the custody of the child's lawful custodian pursuant to the provisions of this section any law enforcement officer may take the child into custody without a court order and, unless there is a specific court order directing a law enforcement officer to take the child into custody and release or return the child to a lawful custodian, the child shall be held in emergency or protective custody pursuant to the provisions of Section 1-4-201 of Title 10A of the Oklahoma Statutes.

### **OKLA. STAT. ANN. TIT. 21, § 891 (2010). Child stealing – Penalty**

Whoever maliciously, forcibly or fraudulently takes or entices away any child under the age of sixteen (16) years, with intent to detain or conceal such child from its parent, guardian or other person having the lawful charge of such child or to transport such child from the jurisdiction of

this state or the United States without the consent of the person having lawful charge of such child shall, upon conviction, be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections not exceeding ten (10) years.

Except for persons sentenced to life or life without parole, any person sentenced to imprisonment for two (2) years or more for a violation of this section and the offense involved sexual abuse or sexual exploitation, shall be required to serve a term of post-imprisonment supervision pursuant to subparagraph f of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes under conditions determined by the Department of Corrections. The jury shall be advised that the mandatory post-imprisonment supervision shall be in addition to the actual imprisonment.

## **OREGON**

### **OR. REV. STAT. § 163.245 (2010). Custodial interference in the second degree**

(1) A person commits the crime of custodial interference in the second degree if, knowing or having reason to know that the person has no legal right to do so, the person takes, entices or keeps another person from the other person's lawful custodian or in violation of a valid joint custody order with intent to hold the other person permanently or for a protracted period.

(2) Expenses incurred by a lawful custodial parent or a parent enforcing a valid joint custody order in locating and regaining physical custody of the person taken, enticed or kept in violation of this section are "economic damages" for purposes of restitution under ORS 137.103 to 137.109.

(3) Custodial interference in the second degree is a Class C felony.

### **OR. REV. STAT. § 163.257 (2010). Custodial interference in the first degree**

(1) A person commits the crime of custodial interference in the first degree if the person violates ORS 163.245 and:

(a) Causes the person taken, enticed or kept from the lawful custodian or in violation of a valid joint custody order to be removed from the state; or

(b) Exposes that person to a substantial risk of illness or physical injury.

(2) Expenses incurred by a lawful custodial parent or a parent enforcing a valid joint custody order in locating and regaining physical custody of the person taken, enticed or kept in violation of this section are "economic damages" for purposes of restitution under ORS 137.103 to 137.109.

(3) Custodial interference in the first degree is a Class B felony.

**OR. REV. STAT. § 107.437 (2010). Order of assistance to obtain custody of child held in violation of custody order**

(1) A person entitled to physical custody of a child may make an ex parte application for an order of assistance to a court of any county:

(a) In which a child is located if the person is entitled to the physical custody of the child under a valid and current order issued in this state; or

(b) In which a valid and current foreign custody order has been filed with a petition as provided in subsection (3) of this section.

(2) The application must include a certified copy of the custody order. The order of assistance may direct a law enforcement agency having jurisdiction where the child is located to use any reasonable means and force to deliver the child as directed by the court, including directing forcible entry into specified premises. The court may issue an order of assistance upon the sworn affidavit of the applicant and a finding of the court that:

(a) The applicant is entitled to physical custody of the child under a valid and current custody order; and

(b) The child is being held by another person in substantial violation of the custody order.

(3) When the application for an order of assistance is made to a court in which the custody order has been entered or registered, the applicant shall make the application in the form of a motion. In all other cases, the applicant shall make the application in the form of a petition. The court may not charge a filing fee for a motion or petition filed under this section.

(4) The law enforcement agency to which an order of assistance is directed shall make a return to the court specifying whether the order was executed, and if so, a statement reflecting the date on which the order was executed and any other information required by the court in the order of assistance.

(5) A court may not issue an order of assistance for the purpose of enforcing parenting time or visitation rights.

(6) Except for intentional torts committed outside the scope of the peace officer's duties, a peace officer is not civilly or criminally liable for any action taken in recovering the custody of a child pursuant to an order issued under this section.

**PENNSYLVANIA**

**18 PA. CONS. STAT. ANN. § 2904 (2010). 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.

### **18 PA. CONS. STAT. ANN. § 2909 (2010). Concealment of whereabouts of a child**

(a) OFFENSE DEFINED.-- A person who removes a child from the child's known place of residence with the intent to conceal the child's whereabouts from the child's parent or guardian, unless concealment is authorized by court order or is a reasonable response to domestic violence or child abuse, commits a felony of the third degree. For purposes of this subsection, the term "removes" includes personally removing the child from the child's known place of residence, causing the child to be removed from the child's known place of residence, preventing the child from returning or being returned to the child's known place of residence and, when the child's parent or guardian has a reasonable expectation that the person will return the child, failing to return the child to the child's known place of residence.

(b) APPLICATION.-- A person may be convicted under subsection (a) if either of the following apply:

(1) The acts that initiated the concealment occurred in this Commonwealth.

(2) The offender or the parent or guardian from whom the child is being concealed resides in this Commonwealth.

## **RHODE ISLAND**

### **R.I. GEN. LAWS § 11-26-1.1 (2010). Childsnatching**

(a) Any person who intentionally removes, causes the removal of, or detains any child under the age of eighteen (18) years, whether within or without the state of Rhode Island, with intent to deny another person's right of custody under an existing decree or order of the family court, shall be guilty of a felony, and, upon conviction, shall be punished by imprisonment for a term not more than two (2) years, or a fine of not more than ten thousand dollars (\$ 10,000), or both.

(b) It shall be an affirmative defense that:

(1) The person at the time of the alleged violation had lawful custody of the child pursuant to a court order granting legal custody or visitation rights;

(2) The person had physical custody of the child pursuant to a court order granting legal custody or visitation rights and failed to return the child as a result of circumstances beyond his or her control, and the person notified and disclosed to the other parent or legal custodian the specific whereabouts of the child and a means by which the child could be contacted or made a reasonable attempt to notify the other parent or lawful custodian of the child of the circumstances and made that disclosure within twenty-four (24) hours after the visitation period had expired and returned the child as soon as possible; or

(3) The person was fleeing an incidence or pattern of domestic violence.

### **R.I. GEN. LAWS § 11-26-1.2 (2010). Abduction of child prior to court order**

(a) Any parent, or any person acting pursuant to directions from the parent, who shall, after being served with process in an action affecting the family, but prior to the issuance of a temporary or final order determining custody of a minor child, take or entice a child away from the family unit, whether within or without the state of Rhode Island, for the purpose of depriving the other parent of physical custody of the child for a period greater than fifteen (15) days, shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for a term up to two (2) years, or a fine of not more than ten thousand dollars (\$ 10,000), or both.

(b) No person shall be deemed to have violated this section if the action:

- (1) Is taken to protect the child from imminent physical harm;
- (2) Is taken by a parent fleeing from imminent physical harm to himself or herself;
- (3) Is consented to by both parents; or
- (4) Is otherwise authorized by law.

**R.I. GEN. LAWS § 11-26-1.4 (2010). Kidnapping of a minor**

Whoever, without lawful authority, forcibly or secretly confines or imprisons any child under the age of sixteen (16) years within this state against the child's will, or forcibly carries or sends the child out of this state, or forcibly seizes, confines, inveigles, or kidnaps the child with intent either to cause the child to be secretly confined or imprisoned within this state against his or her will, or with the intent of sexually assaulting or molesting the child as defined in chapter 37 of this title, or with the intent to abuse the child as defined in chapter 9 of this title, shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for life or for any term not less than twenty (20) years. However, nothing contained in this section shall be deemed to make the reasonable lawful acts of a parent in caring for his or her child a violation of this section.

## **SOUTH CAROLINA**

**S.C. CODE ANN. § 16-17-495 (2009). Custodial interference**

(A)(1) When a court of competent jurisdiction in this State or another state has awarded custody of a child under the age of sixteen years or when custody of a child under the age of sixteen years is established pursuant to Section 63-17-20(B), it is unlawful for a person with the intent to violate the court order or Section 63-17-20(B) to take or transport, or cause to be taken or transported, the child from the legal custodian for the purpose of concealing the child, or circumventing or avoiding the custody order or statute.

(2) When a pleading has been filed and served seeking a determination of custody of a child under the age of sixteen, it is unlawful for a person with the intent to circumvent or avoid the custody proceeding to take or transport, or cause to be taken or transported, the child for the purpose of concealing the child, or circumventing or avoiding the custody proceeding. It is permissible to infer that a person keeping a child outside the limits of this State for more than seventy-two hours without notice to a legal custodian intended to violate this subsection.

(B) A person who violates subsection (A)(1) or (2) is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both.

(C) If a person who violates subsection (A)(1) or (2) returns the child to the legal custodian or to the jurisdiction of the court in which the custody petition was filed within three days of the violation, the person is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than three years, or both.

(D) Notwithstanding the provisions of this section, if the taking or transporting of a child in violation of subsections (A)(1) or (2), is by physical force or the threat of physical force, the person is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both.

(E) A person who violates the provisions of this section may be required by the court to pay necessary travel and other reasonable expenses including, but not limited to, attorney's fees incurred by the party entitled to the custody or by a witness or law enforcement.

## **SOUTH DAKOTA**

### **S.D. CODIFIED LAWS § 22-19-1 (2009). Kidnapping – Penalty**

Any person who, either unlawfully removes another person from the other's place of residence or employment, or who unlawfully removes another person a substantial distance from the vicinity where the other was at the commencement of the removal, or who unlawfully confines another person for a substantial period of time, with any of the following purposes:

- (1) To hold for ransom or reward, or as a shield or hostage; or
- (2) To facilitate the commission of any felony or flight thereafter; or
- (3) To inflict bodily injury on or to terrorize the victim or another; or
- (4) To interfere with the performance of any governmental or political function; or
- (5) To take or entice away a child under the age of fourteen years with intent to detain and conceal such child;

is guilty of kidnapping in the first degree. Kidnapping in the first degree is a Class C felony, unless the person has inflicted serious bodily injury on the victim, in which case it is aggravated kidnapping in the first degree and is a Class B felony.

### **S.D. CODIFIED LAWS § 22-19-1.1 (2009). Kidnapping in the second degree – Felony**

Any person who unlawfully holds or retains another person with any of the following purposes:

- (1) To hold for ransom or reward, or as a shield or hostage; or
- (2) To facilitate the commission of any felony or flight thereafter; or
- (3) To inflict bodily injury on or to terrorize the victim or another; or
- (4) To interfere with the performance of any governmental or political function; or

(5) To take or entice away a child under the age of fourteen years with intent to detain and conceal such child;

is guilty of kidnapping in the second degree. Kidnapping in the second degree is a Class 3 felony, unless the person has inflicted serious bodily injury on the victim in which case it is aggravated kidnapping in the second degree and is a Class 1 felony.

**S.D. CODIFIED LAWS § 22-19-9 (2009). Violation of custody order by parent – Penalty**

Any parent who takes, entices away, or keeps his or her unmarried minor child from the custody or visitation of the other parent, or any other person having lawful custody or right of visitation, in violation of a custody or visitation determination entitled to enforcement by the courts of this state, without prior consent is guilty of a Class 1 misdemeanor. Any subsequent violation of this section is a Class 6 felony.

**S.D. CODIFIED LAWS § 22-19-10 (2009). Violation of custody order by parent – Child removal from state – Penalty**

Any parent who violates § 22-19-9 and causes the unmarried minor child, taken, enticed, or kept from the child's lawful custodian, to be removed from the state is guilty of a Class 5 felony.

**S.D. CODIFIED LAWS § 22-19-11 (2009). Violation of custody order by parent – Defense**

It is a complete defense to a prosecution for a violation of §§ 22-19-9 and 22-19-10 that the person having lawful custody or right of visitation failed to report the offense to law enforcement authorities within ninety days of the offense.

**S.D. CODIFIED LAWS § 22-19-12 (2009). Reimbursement of expenses for return of child**

The state or any other unit of government incurring financial expense for the return of the child may charge that cost against the person extradited if that person is found guilty of a violation of § 22-19-10. Such expense may be charged against the person filing the charge if the person extradited is found not guilty of a violation of § 22-19-10.

## **TENNESSEE**

**TENN. CODE ANN. § 39-13-306 (2010). Custodial interference**

(a) It is the offense of custodial interference for a natural or adoptive parent, step-parent, grandparent, brother, sister, aunt, uncle, niece, or nephew of a child younger than eighteen (18) years of age to:

(1) Remove the child from this state knowing that the removal violates a child custody determination as defined in § 36-6-205(3), the rightful custody of a mother as defined in § 36-2-303, or a temporary or permanent judgment or court order regarding the custody or care of the child;

(2) Detain the child within this state or remove the child from this state after the expiration of the noncustodial natural or adoptive parent or guardian's lawful period of visitation, with the intent to violate the rightful custody of a mother as defined in § 36-2-303, or a temporary or permanent judgment or a court order regarding the custody or care of the child;

(3) Harbor or hide the child within or outside this state, knowing that possession of the child was unlawfully obtained by another person in violation of the rightful custody of a mother as defined in § 36-2-303, or a temporary or permanent judgment or a court order; or

(4) Act as an accessory to any act prohibited by this section.

(b) It is also the offense of custodial interference for a natural or adoptive parent, step-parent, grandparent, brother, sister, aunt, uncle, niece, or nephew of an incompetent person to:

(1) Remove the incompetent person from this state knowing that the removal violates a temporary or permanent judgment or a court order regarding the custody or care of the incompetent person;

(2) Harbor or hide the incompetent person within or outside this state, knowing that possession of the incompetent person was unlawfully obtained by another person in violation of a temporary or permanent judgment or a court order; or

(3) Act as an accessory to any act prohibited by this section.

(c) It is a defense to custodial interference:

(1) That the person who removed the child or incompetent person reasonably believed that, at the time the child or incompetent was removed, the failure to remove the child or incompetent person would have resulted in a clear and present danger to the health, safety, or welfare of the child or incompetent person; or

(2) That the individual detained or moved in contravention of the rightful custody of a mother as defined in § 36-2-303, or of the order of custody or care, was returned by the defendant voluntarily and before arrest or the issuance of a warrant for arrest.

(d) If conduct that is in violation of this section is also a violation of § 39-13-304 or § 39-13-305(a)(1), (a)(3), or (a)(4), the offense may be prosecuted under any of the applicable statutes.

(e) Custodial interference is 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.

**TENN. CODE ANN. § 36-1-123 (2010). Biological parents illegally obtaining custody of a child – Custodial interference**

Any biological or prior legal parents or guardian whose rights to a child have been terminated by order of any court under this part or any other title or by the laws of any other state or territory, or foreign country, or by a surrender, parental consent, or waiver of interest, and who shall, otherwise than by legal process, obtain custody of the child shall be in violation of and shall be subject to prosecution pursuant to the provisions of § 39-13-306.

**TEXAS**

**TEX. PENAL CODE ANN. § 25.03 (2010). Interference with child custody**

(a) A person commits an offense if the person takes or retains a child younger than 18 years when the person:

(1) knows that the person's taking or retention violates the express terms of a judgment or order, including a temporary order, of a court disposing of the child's custody; or

(2) has not been awarded custody of the child by a court of competent jurisdiction, knows that a suit for divorce or a civil suit or application for habeas corpus to dispose of the child's custody has been filed, and takes the child out of the geographic area of the counties composing the judicial district if the court is a district court or the county if the court is a statutory county court, without the permission of the court and with the intent to deprive the court of authority over the child.

(b) A noncustodial parent commits an offense if, with the intent to interfere with the lawful custody of a child younger than 18 years, the noncustodial parent knowingly entices or persuades the child to leave the custody of the custodial parent, guardian, or person standing in the stead of the custodial parent or guardian of the child.

(c) It is a defense to prosecution under Subsection (a)(2) that the actor returned the child to the geographic area of the counties composing the judicial district if the court is a district court or the county if the court is a statutory county court, within three days after the date of the commission of the offense.

(d) An offense under this section is a state jail felony.

**TEX. PENAL CODE ANN. § 25.031 (2010). Agreement to abduct from custody**

(a) A person commits an offense if the person agrees, for remuneration or the promise of remuneration, to abduct a child younger than 18 years of age by force, threat of force, misrepresentation, stealth, or unlawful entry, knowing that the child is under the care and control of a person having custody or physical possession of the child under a court order, including a temporary order, or under the care and control of another person who is exercising care and

control with the consent of a person having custody or physical possession under a court order, including a temporary order.

(b) An offense under this section is a state jail felony.

**TEX. PENAL CODE ANN. § 25.06 (2010). Harboring Runaway Child**

(a) A person commits an offense if he knowingly harbors a child and he is criminally negligent about whether the child:

(1) is younger than 18 years; and

(2) has escaped from the custody of a peace officer, a probation officer, the Texas Youth Council, or a detention facility for children, or is voluntarily absent from the child's home without the consent of the child's parent or guardian for a substantial length of time or without the intent to return.

(b) It is a defense to prosecution under this section that the actor was related to the child within the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code.

(c) It is a defense to prosecution under this section that the actor notified:

(1) the person or agency from which the child escaped or a law enforcement agency of the presence of the child within 24 hours after discovering that the child had escaped from custody; or

(2) a law enforcement agency or a person at the child's home of the presence of the child within 24 hours after discovering that the child was voluntarily absent from home without the consent of the child's parent or guardian.

(d) An offense under this section is a Class A misdemeanor.

(e) On the receipt of a report from a peace officer, probation officer, the Texas Youth Council, a foster home, or a detention facility for children that a child has escaped its custody or upon receipt of a report from a parent, guardian, conservator, or legal custodian that a child is missing, a law enforcement agency shall immediately enter a record of the child into the National Crime Information Center.

**TEX. PENAL CODE ANN. § 25.10 (2010). Interference with Rights of Guardian of the Person**

(a) In this section:

(1) "Possessory right" means the right of a guardian of the person to have physical possession of a ward and to establish the ward's legal domicile, as provided by Section 767(1), Texas Probate Code.

(2) "Ward" has the meaning assigned by Section 601, Texas Probate Code.

(b) A person commits an offense if the person takes, retains, or conceals a ward when the person knows that the person's taking, retention, or concealment interferes with a possessory right with respect to the ward.

(c) An offense under this section is a state jail felony.

(d) This section does not apply to a governmental entity where the taking, retention, or concealment of the ward was authorized by Subtitle E, Title 5, Family Code, or Chapter 48, Human Resources Code.

## **UTAH**

### **UTAH CODE ANN. § 76-5-301.1 (2010). Child kidnapping**

(1) An actor commits child kidnapping if the actor intentionally or knowingly, without authority of law, and by any means and in any manner, seizes, confines, detains, or transports a child under the age of 14 without the consent of the victim's parent or guardian, or the consent of a person acting in loco parentis.

(2) Violation of Section 76-5-303 is not a violation of this section.

(3) Child kidnapping is a first degree felony punishable by a term of imprisonment of:

(a) except as provided in Subsection (3)(b), (3)(c), or (4), not less than 15 years and which may be for life;

(b) except as provided in Subsection (3)(c) or (4), life without parole, if the trier of fact finds that during the course of the commission of the child kidnapping the defendant caused serious bodily injury to another; or

(c) life without parole, if the trier of fact finds that at the time of the commission of the child kidnapping the defendant was previously convicted of a grievous sexual offense.

(4) If, when imposing a sentence under Subsection (3)(a) or (b), a court finds that a lesser term than the term described in Subsection (3)(a) or (b) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:

(a) for purposes of Subsection (3)(b), 15 years and which may be for life; or

(b) for purposes of Subsection (3)(a) or (b):

(i) ten years and which may be for life; or

(ii) six years and which may be for life.

(5) The provisions of Subsection (4) do not apply when a person is sentenced under Subsection (3)(c).

(6) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

**UTAH CODE ANN. § 76-5-303 (2010). Custodial interference**

LEXSEE 2010 Ut. ALS 374 -- See section 2.

[A> (XVIII) CUSTODIAL INTERFERENCE, UNDER: <A]

[A> (A) SUBSECTION 76-5-303 (3), WHICH SUSPENSION SHALL BE FOR A PERIOD OF 30 DAYS, UNLESS THE COURT PROVIDES THE DIVISION WITH AN ORDER OF SUSPENSION FOR A SHORTER PERIOD OF TIME; <A]

[A> (B) SUBSECTION 76-5-303 (4), WHICH SUSPENSION SHALL BE FOR A PERIOD OF 90 DAYS, UNLESS THE COURT PROVIDES THE DIVISION WITH AN ORDER OF SUSPENSION FOR A SHORTER PERIOD OF TIME; OR <A]

[A> (C) SUBSECTION 76-5-303 (5), WHICH SUSPENSION SHALL BE FOR A PERIOD OF 180 DAYS, UNLESS THE COURT PROVIDES THE DIVISION WITH AN ORDER OF SUSPENSION FOR A SHORTER PERIOD OF TIME. <A]

Section 2. Section 76-5-303 is repealed and reenacted to read:

[A> 76-5-303. <A] Custodial interference.

[A> (1) AS USED IN THIS SECTION: <A]

[A> (A) "CHILD" MEANS A PERSON UNDER THE AGE OF 18. <A]

[A> (B) "CUSTODY" MEANS COURT-ORDERED PHYSICAL CUSTODY ENTERED BY A COURT OF COMPETENT JURISDICTION. <A]

[A> (C) "VISITATION" MEANS COURT-ORDERED PARENT-TIME OR VISITATION ENTERED BY A COURT OF COMPETENT JURISDICTION. <A]

[A> (2) (A) A PERSON WHO IS ENTITLED TO CUSTODY OF A CHILD IS GUILTY OF CUSTODIAL INTERFERENCE IF, DURING A PERIOD OF TIME WHEN ANOTHER PERSON IS ENTITLED TO VISITATION OF THE CHILD, THE PERSON TAKES, ENTICES, CONCEALS, DETAINS, OR WITHHOLDS THE CHILD FROM THE PERSON ENTITLED TO VISITATION OF THE CHILD, WITH THE INTENT TO INTERFERE WITH THE VISITATION OF THE CHILD. <A]

[A> (B) A PERSON WHO IS ENTITLED TO VISITATION OF A CHILD IS GUILTY OF CUSTODIAL INTERFERENCE IF, DURING A PERIOD OF TIME WHEN THE PERSON IS NOT ENTITLED TO VISITATION OF THE CHILD, THE PERSON TAKES, ENTICES, CONCEALS, DETAINS, OR WITHHOLDS THE CHILD FROM A PERSON WHO IS ENTITLED TO CUSTODY OF THE CHILD, WITH THE INTENT TO INTERFERE WITH THE CUSTODY OF THE CHILD. <A]

[A> (3) EXCEPT AS PROVIDED IN SUBSECTION (4) OR (5), CUSTODIAL INTERFERENCE IS A CLASS B MISDEMEANOR. <A]

[A> (4) EXCEPT AS PROVIDED IN SUBSECTION (5), THE ACTOR DESCRIBED IN SUBSECTION (2) IS GUILTY OF A CLASS A MISDEMEANOR IF THE ACTOR: <A]

[A> (A) COMMITS CUSTODIAL INTERFERENCE; AND <A]

[A> (B) HAS BEEN CONVICTED OF CUSTODIAL INTERFERENCE AT LEAST TWICE IN THE TWO-YEAR PERIOD IMMEDIATELY PRECEDING THE DAY ON WHICH THE COMMISSION OF CUSTODIAL INTERFERENCE DESCRIBED IN SUBSECTION (4)(A) OCCURS. <A]

[A> (5) CUSTODIAL INTERFERENCE IS A FELONY OF THE THIRD DEGREE IF, DURING THE COURSE OF THE CUSTODIAL INTERFERENCE, THE ACTOR DESCRIBED IN SUBSECTION (2) REMOVES, CAUSES THE REMOVAL, OR DIRECTS THE REMOVAL OF THE CHILD FROM THE STATE. <A]

[A> (6) IN ADDITION TO THE AFFIRMATIVE DEFENSES DESCRIBED IN SECTION 76-5-305, IT IS AN AFFIRMATIVE DEFENSE TO THE CRIME OF CUSTODIAL INTERFERENCE THAT: <A]

[A> (A) THE ACTION IS CONSENTED TO BY THE PERSON WHOSE CUSTODY OR VISITATION OF THE CHILD WAS INTERFERED WITH; OR <A]

[A> (B) (I) THE ACTION IS BASED ON A REASONABLE BELIEF THAT THE ACTION IS NECESSARY TO PROTECT A CHILD FROM ABUSE, INCLUDING SEXUAL ABUSE; AND <A]

[A> (II) BEFORE ENGAGING IN THE ACTION, THE PERSON REPORTS THE PERSON'S INTENTION TO ENGAGE IN THE ACTION, AND THE BASIS FOR THE BELIEF DESCRIBED IN SUBSECTION (6)(B)(I), TO THE DIVISION OF CHILD AND FAMILY SERVICES OR LAW ENFORCEMENT. <A]

[A> (7) IN ADDITION TO THE OTHER PENALTIES DESCRIBED IN THIS SECTION, A PERSON WHO IS CONVICTED OF CUSTODIAL INTERFERENCE IS SUBJECT TO THE DRIVER LICENSE SUSPENSION PROVISIONS OF SUBSECTION 53-3-220 (1)(A)(XVIII). <A]

(1) A person, whether a parent or other, is guilty of custodial interference if, without good cause, the actor takes, entices, conceals, or detains a child under the age of 16 from its parent, guardian, or other lawful custodian:

(a) knowing the actor has no legal right to do so; and

(b) with intent to hold the child for a period substantially longer than the parent-time or custody period previously awarded by a court of competent jurisdiction.

(2) A person, whether a parent or other, is guilty of custodial interference if, having actual physical custody of a child under the age of 16 pursuant to a judicial award of any court of competent jurisdiction which grants to another person parent-time, visitation, or custody rights, and without good cause the actor conceals or detains the child with intent to deprive the other person of lawful parent-time, visitation, or custody rights.

(3) Custodial interference is a class A misdemeanor unless the child is removed and taken from one state to another, in which case it is a felony of the third degree.

## **VERMONT**

### **Vt. STAT. ANN. tit. 13, § 2451 (2010). 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 18 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**

### **VA. CODE ANN. § 18.2-47 (2010). Abduction and kidnappings defined; punishment**

A. Any person who, by force, intimidation or deception, and without legal justification or excuse, seizes, takes, transports, detains or secretes another person with the intent to deprive such other person of his personal liberty or to withhold or conceal him from any person, authority or institution lawfully entitled to his charge, shall be deemed guilty of "abduction."

B. Any person who, by force, intimidation or deception, and without legal justification or excuse, seizes, takes, transports, detains or secretes another person with the intent to subject him to forced labor or services shall be deemed guilty of "abduction." For purposes of this subsection, the term "intimidation" shall include destroying, concealing, confiscating, withholding, or threatening to withhold a passport, immigration document, or other governmental identification or threatening to report another as being illegally present in the United States.

C. The provisions of this section shall not apply to any law-enforcement officer in the performance of his duty. The terms "abduction" and "kidnapping" shall be synonymous in this Code. Abduction for which no punishment is otherwise prescribed shall be punished as a Class 5 felony.

D. If an offense under subsection A is committed by the parent of the person abducted and punishable as contempt of court in any proceeding then pending, the offense shall be a Class 1 misdemeanor in addition to being punishable as contempt of court. However, such offense, if committed by the parent of the person abducted and punishable as contempt of court in any proceeding then pending and the person abducted is removed from the Commonwealth by the abducting parent, shall be a Class 6 felony in addition to being punishable as contempt of court.

**VA. CODE ANN. § 18.2-49.1 (2010). Violation of court order regarding custody and visitation; penalty**

A. Any person who knowingly, wrongfully and intentionally withholds a child from either of a child's parents or other legal guardian 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, is guilty of a Class 6 felony.

B. Any person who knowingly, wrongfully and intentionally engages in conduct that constitutes a clear and significant violation of a court order respecting the custody or visitation of a child is guilty of a Class 3 misdemeanor upon conviction of a first offense. Any person who commits a second violation of this section within 12 months of a first conviction is guilty of a Class 2 misdemeanor, and any person who commits a third violation occurring within 24 months of the first conviction is guilty of a Class 1 misdemeanor.

**VA. CODE ANN. § 18.2-50 (2010). Disclosure of information and assistance to law-enforcement officers required**

Whenever it is brought to the attention of the members of the immediate family of any person that such person has been abducted, or that threats or attempts have been made to abduct any such person, such members shall make immediate report thereof to the police or other law-enforcement officers of the county, city or town where such person resides, and shall render all such possible assistance to such officers in the capture and conviction of the person or persons guilty of the alleged offense. Any person violating any of the provisions of this section shall be guilty of a Class 2 misdemeanor.

## **WASHINGTON**

**WASH. REV. CODE ANN. § 9A.40.010 (2010). Definitions**

The following definitions apply in this chapter:

(1) "Restrain" means to restrict a person's movements without consent and without legal authority in a manner which interferes substantially with his liberty. Restraint is "without consent" if it is accomplished by (a) physical force, intimidation, or deception, or (b) any means including acquiescence of the victim, if he is a child less than sixteen years old or an incompetent person and if the parent, guardian, or other person or institution having lawful control or custody of him has not acquiesced.

(2) "Abduct" means to restrain a person by either (a) secreting or holding him in a place where he is not likely to be found, or (b) using or threatening to use deadly force;

(3) "Relative" means an ancestor, descendant, or sibling, including a relative of the same degree through marriage or adoption, or a spouse.

**WASH. REV. CODE ANN. § 9A.40.060 (2010). Custodial interference in the first degree**

(1) A relative of a child under the age of eighteen or of an incompetent person is guilty of custodial interference in the first degree if, with the intent to deny access to the child or incompetent person by a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person, the relative takes, entices, retains, detains, or conceals the child or incompetent person from a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person and:

(a) Intends to hold the child or incompetent person permanently or for a protracted period; or

(b) Exposes the child or incompetent person to a substantial risk of illness or physical injury; or

(c) Causes the child or incompetent person to be removed from the state of usual residence; or

(d) Retains, detains, or conceals the child or incompetent person in another state after expiration of any authorized visitation period with intent to intimidate or harass a parent, guardian, institution, agency, or other person having lawful right to physical custody or to prevent a parent, guardian, institution, agency, or other person with lawful right to physical custody from regaining custody.

(2) A parent of a child is guilty of custodial interference in the first degree if the parent takes, entices, retains, detains, or conceals the child, with the intent to deny access, from the other parent having the lawful right to time with the child pursuant to a court-ordered parenting plan, and:

(a) Intends to hold the child permanently or for a protracted period; or

(b) Exposes the child to a substantial risk of illness or physical injury; or

(c) Causes the child to be removed from the state of usual residence.

(3) A parent or other person acting under the directions of the parent is guilty of custodial interference in the first degree if the parent or other person intentionally takes, entices, retains, or conceals a child, under the age of eighteen years and for whom no lawful custody order or

parenting plan has been entered by a court of competent jurisdiction, from the other parent with intent to deprive the other parent from access to the child permanently or for a protracted period.

(4) Custodial interference in the first degree is a class C felony.

**WASH. REV. CODE ANN. § 9A.40.070 (2010). Custodial interference in the second degree**

(1) A relative of a person is guilty of custodial interference in the second degree if, with the intent to deny access to such person by a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person, the relative takes, entices, retains, detains, or conceals the person from a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person. This subsection shall not apply to a parent's noncompliance with a court-ordered parenting plan.

(2) A parent of a child is guilty of custodial interference in the second degree if: (a) The parent takes, entices, retains, detains, or conceals the child, with the intent to deny access, from the other parent having the lawful right to time with the child pursuant to a court-ordered parenting plan; or (b) the parent has not complied with the residential provisions of a court-ordered parenting plan after a finding of contempt under RCW 26.09.160(3); or (c) if the court finds that the parent has engaged in a pattern of willful violations of the court-ordered residential provisions.

(3) Nothing in subsection (2)(b) of this section prohibits conviction of custodial interference in the second degree under subsection (2)(a) or (c) of this section in absence of findings of contempt.

(4) (a) The first conviction of custodial interference in the second degree is a gross misdemeanor.

(b) The second or subsequent conviction of custodial interference in the second degree is a class C felony.

**WASH. REV. CODE ANN. § 9A.40.080 (2010). Custodial interference – Assessment of costs – Defense – Consent defense, restricted**

(1) Any reasonable expenses incurred in locating or returning a child or incompetent person shall be assessed against a defendant convicted under RCW 9A.40.060 or 9A.40.070.

(2) In any prosecution of custodial interference in the first or second degree, it is a complete defense, if established by the defendant by a preponderance of the evidence, that:

(a) The defendant's purpose was to protect the child, incompetent person, or himself or herself from imminent physical harm, that the belief in the existence of the imminent physical harm was reasonable, and that the defendant sought the assistance of the police, sheriff's office, protective agencies, or the court of any state before committing the acts giving rise to the charges or within a reasonable time thereafter;

(b) The complainant had, prior to the defendant committing the acts giving rise to the crime, for a protracted period of time, failed to exercise his or her rights to physical custody or access to

the child under a court-ordered parenting plan or order granting visitation rights, provided that such failure was not the direct result of the defendant's denial of access to such person;

(c) The acts giving rise to the charges were consented to by the complainant; or

(d) The offender, after providing or making a good faith effort to provide notice to the person entitled to access to the child, failed to provide access to the child due to reasons that a reasonable person would believe were directly related to the welfare of the child, and allowed access to the child in accordance with the court order within a reasonable period of time. The burden of proof that the denial of access was reasonable is upon the person denying access to the child.

(3) Consent of a child less than sixteen years of age or of an incompetent person does not constitute a defense to an action under RCW 9A.40.060 or 9A.40.070.

## **WEST VIRGINIA**

### **W. VA. CODE ANN. § 61-2-14D (2010). Concealment or removal of minor child from custodian or from person entitled to visitation; penalties; defenses**

(a) Any person who conceals, takes or removes a minor child in violation of any court order and with the intent to deprive another person of lawful custody or visitation rights shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one nor more than five years, or in the discretion of the court, shall be imprisoned in the county jail not more than one year or fined not more than one thousand dollars, or both fined and imprisoned.

(b) Any person who violates this section and in so doing removes the minor child from this State or conceals the minor child in another state shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one nor more than five years or fined not more than one thousand dollars, or both fined and imprisoned.

(c) It shall be a defense under this section that the accused reasonably believed such action was necessary to preserve the welfare of the minor child. The mere failure to return a minor child at the expiration of any lawful custody or visitation period without the intent to deprive another person of lawful custody or visitation rights shall not constitute an offense under this section.

### **W. VA. CODE ANN. § 61-2-14E (2010). One aiding or abetting in offenses under § 61-2-14, § 61-2-14a, § 61-2-14c, § 61-2-14d guilty as principal ; venue**

If any person in any way knowingly aid or abet any other person in the commission of any offense described in section fourteen [§ 61-2-14], fourteen-a [§ 61-2-14a], fourteen-c [§ 61-2-14c], or fourteen-d [§ 61-2-14d] of this article, either as accessory before or an accessory after the fact, such person so aiding and abetting shall be guilty as a principal in the commission of such offense and shall be punished in the same manner and to the same extent as is provided in said sections for the person who committed the offense. The venue of any offense committed in violation of the provisions of this section shall be as provided in section seven [§ 61-11-7], article eleven of this chapter.

# **WISCONSIN**

## **WIS. STAT. ANN. § 948.31 (2010). Interference with custody by parent or others**

(1) (a) In this subsection, "legal custodian of a child" means:

1. A parent or other person having legal custody of the child under an order or judgment in an action for divorce, legal separation, annulment, child custody, paternity, guardianship or habeas corpus.
2. The department of children and families or the department of corrections or any person, county department under s. 46.215, 46.22, or 46.23, or licensed child welfare agency, if custody or supervision of the child has been transferred under ch. 48 or 938 to that department, person, or agency.

(b) Except as provided under chs. 48 and 938, whoever intentionally causes a child to leave, takes a child away or withholds a child for more than 12 hours beyond the court-approved period of physical placement or visitation period from a legal custodian with intent to deprive the custodian of his or her custody rights without the consent of the custodian is guilty of a Class F felony. This paragraph is not applicable if the court has entered an order authorizing the person to so take or withhold the child. The fact that joint legal custody has been awarded to both parents by a court does not preclude a court from finding that one parent has committed a violation of this paragraph.

(2) Whoever causes a child to leave, takes a child away or withholds a child for more than 12 hours from the child's parents or, in the case of a nonmarital child whose parents do not subsequently intermarry under s. 767.803, from the child's mother or, if he has been granted legal custody, the child's father, without the consent of the parents, the mother or the father with legal custody, is guilty of a Class I felony. This subsection is not applicable if legal custody has been granted by court order to the person taking or withholding the child.

(3) Any parent, or any person acting pursuant to directions from the parent, who does any of the following is guilty of a Class F felony:

(a) Intentionally conceals a child from the child's other parent.

(b) After being served with process in an action affecting the family but prior to the issuance of a temporary or final order determining child custody rights, takes the child or causes the child to leave with intent to deprive the other parent of physical custody as defined in s. 822.02 (14) (c) After issuance of a temporary or final order specifying joint legal custody rights and periods of physical placement, takes a child from or causes a child to leave the other parent in violation of the order or withholds a child for more than 12 hours beyond the court-approved period of physical placement or visitation period.

(4) (a) It is an affirmative defense to prosecution for violation of this section if the action:

1. Is taken by a parent or by a person authorized by a parent to protect his or her child in a situation in which the parent or authorized person reasonably believes that there is a threat of physical harm or sexual assault to the child;

2. Is taken by a parent fleeing in a situation in which the parent reasonably believes that there is a threat of physical harm or sexual assault to himself or herself;
3. Is consented to by the other parent or any other person or agency having legal custody of the child; or
4. Is otherwise authorized by law.

(b) A defendant who raises an affirmative defense has the burden of proving the defense by a preponderance of the evidence.

(5) The venue of an action under this section is prescribed in s. 971.19 (8)

(6) In addition to any other penalties provided for violation of this section, a court may order a violator to pay restitution, regardless of whether the violator is placed on probation under s. 973.09, to provide reimbursement for any reasonable expenses incurred by any person or any governmental entity in locating and returning the child. Any such amounts paid by the violator shall be paid to the person or governmental entity which incurred the expense on a prorated basis. Upon the application of any interested party, the court shall hold an evidentiary hearing to determine the amount of reasonable expenses.

## **WYOMING**

### **WYO. STAT. ANN. § 6-2-204 (2010). Interference with custody; presumption of knowledge of child's age; affirmative defenses; penalties**

(a) A person is guilty of interference with custody if, having no privilege to do so, he knowingly:

(i) Takes or entices a minor from the custody of the minor's parent, guardian or other lawful custodian; or

(ii) Fails or refuses to return a minor to the person entitled to custody.

(b) Proof that the child was under the age of majority gives rise to an inference that the person knew the child's age.

(c) It is an affirmative defense to a prosecution under this section that:

(i) The action was necessary to preserve the child from an immediate danger to his welfare; or

(ii) The child was not less than fourteen (14) years old and the child was taken away or was not returned:

(A) At his own instigation; and

- (B) Without intent to commit a criminal offense with or against the child.
- (d) Interference with custody is a felony punishable by imprisonment for not more than five (5) years if:
- (i) The defendant is not a parent or person in equivalent relation to the child; or
  - (ii) The defendant knowingly conceals and harbors the child or refuses to reveal the location of the child to the parent, guardian or lawful custodian.
- (e) Interference with custody which is not punishable under subsection (d) of this section is a felony punishable by imprisonment for not more than two (2) years.

# **FEDERAL LEGISLATION/ U.S. TERRITORIES**

## **FEDERAL LEGISLATION**

### **18 U.S.C.S. § 1204 (2010). International parental kidnapping**

- (a) Whoever removes a child from the United States, or attempts to do so, or retains a child (who has been in the United States) outside the United States with intent to obstruct the lawful exercise of parental rights shall be fined under this title or imprisoned not more than 3 years, or both.
- (b) As used in this section--
- (1) the term "child" means a person who has not attained the age of 16 years; and
  - (2) the term "parental rights", with respect to a child, means the right to physical custody of the child--
    - (A) whether joint or sole (and includes visiting rights); and
    - (B) whether arising by operation of law, court order, or legally binding agreement of the parties.
- (c) It shall be an affirmative defense under this section that--
- (1) the defendant acted within the provisions of a valid court order granting the defendant legal custody or visitation rights and that order was obtained pursuant to the Uniform Child Custody Jurisdiction Act or the Uniform Child Custody Jurisdiction and Enforcement Act and was in effect at the time of the offense;
  - (2) the defendant was fleeing an incidence or pattern of domestic violence; or
  - (3) the defendant had physical custody of the child pursuant to a court order granting legal custody or visitation rights and failed to return the child as a result of circumstances beyond the defendant's control, and the defendant notified or made reasonable attempts to notify the other parent or lawful custodian of the child of such circumstances within 24 hours after the visitation period had expired and returned the child as soon as possible.

(d) This section does not detract from The Hague Convention on the Civil Aspects of International Parental Child Abduction, done at The Hague on October 25, 1980.

**28 U.S.C.S. § 1738A (2010). Full faith and credit given to child custody determinations**

(a) The appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in subsections (f), (g), and (h) of this section, any custody determination or visitation determination made consistently with the provisions of this section by a court of another State.

(b) As used in this section, the term--

(1) "child" means a person under the age of eighteen;

(2) "contestant" means a person, including a parent or grandparent, who claims a right to custody or visitation of a child;

(3) "custody determination" means a judgment, decree, or other order of a court providing for the custody of a child, and includes permanent and temporary orders, and initial orders and modifications;

(4) "home State" means the State in which, immediately preceding the time involved, the child lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old, the State in which the child lived from birth with any of such persons. Periods of temporary absence of any of such persons are counted as part of the six-month or other period;

(5) "modification" and "modify" refer to a custody or visitation determination which modifies, replaces, supersedes, or otherwise is made subsequent to, a prior custody or visitation determination concerning the same child, whether made by the same court or not;

(6) "person acting as a parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody;

(7) "physical custody" means actual possession and control of a child;

(8) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States; and

(9) "visitation determination" means a judgment, decree, or other order of a court providing for the visitation of a child and includes permanent and temporary orders and initial orders and modifications.

(c) A child custody or visitation determination made by a court of a State is consistent with the provisions of this section only if--

(1) such court has jurisdiction under the law of such State; and

(2) one of the following conditions is met:

(A) such State (i) is the home State of the child on the date of the commencement of the proceeding, or (ii) had been the child's home State within six months before the date of the commencement of the proceeding and the child is absent from such State because of his removal or retention by a contestant or for other reasons, and a contestant continues to live in such State;

(B) (i) it appears that no other State would have jurisdiction under subparagraph (A), and (ii) it is in the best interest of the child that a court of such State assume jurisdiction because (I) the child and his parents, or the child and at least one contestant, have a significant connection with such State other than mere physical presence in such State, and (II) there is available in such State

substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

(C) the child is physically present in such State and (i) the child has been abandoned, or (ii) it is necessary in an emergency to protect the child because the child, a sibling, or parent of the child has been subjected to or threatened with mistreatment or abuse;

(D) (i) it appears that no other State would have jurisdiction under subparagraph (A), (B), (C), or (E), or another State has declined to exercise jurisdiction on the ground that the State whose jurisdiction is in issue is the more appropriate forum to determine the custody or visitation of the child, and (ii) it is in the best interest of the child that such court assume jurisdiction; or

(E) the court has continuing jurisdiction pursuant to subsection (d) of this section.

(d) The jurisdiction of a court of a State which has made a child custody or visitation determination consistently with the provisions of this section continues as long as the requirement of subsection (c)(1) of this section continues to be met and such State remains the residence of the child or of any contestant.

(e) Before a child custody or visitation determination is made, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated and any person who has physical custody of a child.

(f) A court of a State may modify a determination of the custody of the same child made by a court of another State, if--

(1) it has jurisdiction to make such a child custody determination; and

(2) the court of the other State no longer has jurisdiction, or it has declined to exercise such jurisdiction to modify such determination.

(g) A court of a State shall not exercise jurisdiction in any proceeding for a custody or visitation determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody determination.

(h) A court of a State may not modify a visitation determination made by a court of another State unless the court of the other State no longer has jurisdiction to modify such determination or has declined to exercise jurisdiction to modify such determination.

Other provisions:

Congressional findings and declaration of purposes. Act Dec. 28, 1980, P.L. 96-611, § 7, 94 Stat. 3568, effective on and applicable to services furnished on or after July 1, 1981, as provided by § 2 of such Act, which appears as 42 USCS § 13951 note, provides:

"(a) The Congress finds that--

"(1) there is a large and growing number of cases annually involving disputes between persons claiming rights of custody and visitation of children under the laws, and in the courts, of different States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States;

"(2) the laws and practices by which the courts of those jurisdictions determine their jurisdiction to decide such disputes, and the effect to be given the decisions of such disputes by the courts of other jurisdictions, are often inconsistent and conflicting;

"(3) those characteristics of the law and practice in such cases, along with the limits imposed by a Federal system on the authority of each such jurisdiction to conduct investigations and take other actions outside its own boundaries, contribute to a tendency of parties involved in such

disputes to frequently resort to the seizure, restraint, concealment, and interstate transportation of children, the disregard of court orders, excessive relitigation of cases, obtaining of conflicting orders by the courts of various jurisdictions, and interstate travel and communication that is so expensive and time consuming as to disrupt their occupations and commercial activities; and

"(4) among the results of those conditions and activities are the failure of the courts of such jurisdictions to give full faith and credit to the judicial proceedings of the other jurisdictions, the deprivation of rights of liberty and property without due process of law, burdens on commerce among such jurisdictions and with foreign nations, and harm to the welfare of children and their parents and other custodians.

"(b) For those reasons it is necessary to establish a national system for locating parents and children who travel from one such jurisdiction to another and are concealed in connection with such disputes, and to establish national standards under which the courts of such jurisdictions will determine their jurisdiction to decide such disputes and the effect to be given by each such jurisdiction to such decisions by the courts of other such jurisdictions.

"(c) The general purposes of sections 6 to 10 of this Act [which, among other things, enacted this note; for full classification, consult USCS Tables volumes] are to--

"(1) promote cooperation between State courts to the end that a determination of custody and visitation is rendered in the State which can best decide the case in the interest of the child;

"(2) promote and expand the exchange of information and other forms of mutual assistance between States which are concerned with the same child;

"(3) facilitate the enforcement of custody and visitation decrees of sister States;

"(4) discourage continuing interstate controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;

"(5) avoid jurisdictional competition and conflict between State courts in matters of child custody and visitation which have in the past resulted in the shifting of children from State to State with harmful effects on their well-being; and

"(6) deter interstate abductions and other unilateral removals of children undertaken to obtain custody and visitation awards."

States encouraged to give priority to custody proceedings; award of expenses, fees and costs. Act Dec. 28, 1980, P.L. 96-611, § 8(c), 94 Stat. 3571, effective on and applicable to services furnished on or after July 1, 1981, provides:

"In furtherance of the purposes of section 1738A of title 28, United States Code, as added by subsection (a) of this section [this section], State courts are encouraged to--

"(1) afford priority to proceedings for custody determinations; and

"(2) award to the person entitled to custody or visitation pursuant to a custody determination which is consistent with the provisions of such section 1738A [this section], necessary travel expenses, attorneys' fees, costs of private investigations, witness fees or expenses, and other expenses incurred in connection with such custody determination in any case in which--

"(A) a contestant has, without the consent of the person entitled to custody or visitation pursuant to a custody determination which is consistent with the provisions of such section 1738A [this section], (i) wrongfully removed the child from the physical custody of such person, or (ii) wrongfully retained the child after a visit or other temporary relinquishment of physical custody; or

"(B) the court determines it is appropriate."

Report on effects of parental kidnapping laws in domestic violence cases. Act Oct. 28, 2000, P.L. 106-386, Div B, Title III, § 1303(a)-(c), 114 Stat. 1512, provides:

"(a) In general. The Attorney General shall--

"(1) conduct a study of Federal and State laws relating to child custody, including custody provisions in protection orders, the Uniform Child Custody Jurisdiction and Enforcement Act adopted by the National Conference of Commissioners on Uniform State Laws in July 1997, the

Parental Kidnaping Prevention Act of 1980 and the amendments made by that Act [for full classification, consult USCS Tables volumes], and the effect of those laws on child custody cases in which domestic violence is a factor; and

"(2) submit to Congress a report describing the results of that study, including the effects of implementing or applying model State laws, and the recommendations of the Attorney General to reduce the incidence or pattern of violence against women or of sexual assault of the child.

"(b) Sufficiency of defenses. In carrying out subsection (a) with respect to the Parental Kidnaping Prevention Act of 1980 and the amendments made by that Act [for full classification, consult USCS Tables volumes], the Attorney General shall examine the sufficiency of defenses to parental abduction charges available in cases involving domestic violence, and the burdens and risks encountered by victims of domestic violence arising from jurisdictional requirements of that Act and the amendments made by that Act.

"(c) Authorization of appropriations. There is authorized to be appropriated to carry out this section \$ 200,000 for fiscal year 2001."

## **AMERICAN SAMOA**

### **AM. SAMOA CODE ANN. §46.3535. Interference with custody**

(a) 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 lawful custody any person entrusted by order of a court to the custody of another person or institution.

(b) Interference with custody is a class A misdemeanor unless the person taken or enticed away from legal custody is removed from the territory, then it is a class D felony.

## **GUAM**

### **GUAM CODE ANN. TIT. 9, § 22.40 (2010). Child stealing; defined & punished**

(a) A person is guilty of child stealing when he takes or keeps a child who is less than fourteen (14) years old and who is not his natural or adopted child with intent to conceal that child from his parent, legal guardian or other person having that child in his care or custody or under his control.

(b) This Section shall not apply to a relative of a child who believes that taking or keeping that child is necessary to protect him from physical or emotional harm.

(c) Child stealing is a felony of the third degree.

### **GUAM CODE ANN. TIT. 9, § 22.50 (2010). Custodial interference; defined & punished**

(a) A person is guilty of custodial interference in the first degree if:

(1) being a relative of the person, he knowingly takes or entices a person less than eighteen (18) years old from his lawful custody knowing that he has no right to do so and during the taking, subjects the person to serious bodily injury.

(b) A person is guilty of custodial interference in the second degree if:

(1) not being a relative of the person, he knowingly takes or entices a person less than eighteen (18) years old from his lawful custodian, knowing that he has no right to do so; or

(2) he knowingly 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.

(c) A person is guilty of custodial interference in the third degree if being a parent of a child and with knowledge of court order relating to the custody of that child, violates the court order and takes or keeps the child with intent to conceal him from his legal guardian or other person having that child in his care or custody or under his control.

(d) Custodial interference in the first degree is a felony of the second degree; custodial interference in the second degree is a felony of the third degree and custodial interference in the third degree is a misdemeanor.

## **PUERTO RICO**

### **P.R. LAWS ANN. TIT. 33, § 4243 (2009). Child stealing**

Any person who maliciously, violently or fraudulently steals a child under twelve (12) years of age, with the purpose of retaining and concealing him/her from the parents, guardian or other person legally in charge of said minor, shall be punished by imprisonment for a fixed term of twenty-four (24) years. If there were aggravating circumstances, the fixed penalty thus established may be increased to a maximum of forty (40) years; if there were mitigating circumstances, it may be reduced to a minimum of sixteen (16) years.

Any person who commits this crime shall be punished by imprisonment for a fixed term of sixty (60) years, when it takes place in any of the following circumstances:

- (a) In any public or private hospital institution;
- (b) in any public or private elementary, intermediate or high school;
- (c) in a house, building or inhabited structure;
- (d) in a child care center, or
- (e) in parks, recreational areas, or commercial centers.

In any of the above circumstances, if there were aggravating circumstances the fixed penalty thus established, may be increased to a maximum of ninety-nine (99) years; if there were extenuating circumstances, it may be reduced to a minimum of forty (40) years.

### **P.R. LAWS ANN. TIT. 33, § 4244 (2009). Unlawful deprivation of custody**

Any person who, without having a right thereto, deprives a parent or another person of the lawful custody of a minor, or a disabled person, shall be punished by imprisonment which shall

not exceed six (6) months, or a fine that does not exceed five hundred dollars (\$500), or both penalties, at the discretion of the court.

It shall be deemed to be felony with a penalty of imprisonment for a fixed term of three (3) years, when the minor is taken outside the jurisdiction of the Commonwealth of Puerto Rico, or when a parent not awarded legal custody who resides outside of Puerto Rico, keeps a child bound to return to the home of the parent or other person awarded legal custody, outside of the jurisdiction of Puerto Rico without authorization. Should there be aggravating circumstances, the fixed penalty established may be increased to a maximum of five (5) years; if there should be extenuating circumstances, it may be reduced to a minimum of one year.