



WYOMING LEGISLATIVE SERVICE OFFICE

# Memorandum

**DATE** April 2023

**TO** Joint Judiciary Committee

**FROM** Katie Adams, Staff Attorney  
Emily Wangen, Legislative Editor

**SUBJECT** Topic Summary: Parental Abductions of Children

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This topic summary addresses the wide variety of criminal and civil laws that may be implicated by parental abductions of their own children. With respect to criminal laws, this topic summary provides an overview of the crime of interference with custody under W.S. 6-2-204 and similar criminal statutes in neighboring states. With respect to civil laws, this topic summary provides an overview of the following: a court's authority to include child abduction prevention measures in a domestic violence protection order; a court's authority to enforce child custody and visitation orders through its contempt power; the Uniform Child Custody Jurisdiction and Enforcement Act (which Wyoming has adopted); and the Uniform Child Abduction Prevention Act (which Wyoming has not adopted).

## **Approved Interim Topic**

### Priority #2—Law Enforcement Issues

*The Committee will study and review issues identified by law enforcement and the Attorney General as needing review, including internet crimes against children, sex offender registry requirements, parental abductions, controlled substances and the revision of the substance types, and unsolved murders.*

## **Criminal Laws**

### **W.S. 6-2-204. Interference with custody**

W.S. 6-2-204 defines the criminal offense of interference with custody. “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.”<sup>1</sup>

The statute identifies two affirmative defenses to prosecution for this offense.<sup>2</sup> First, it is an affirmative defense that the action was necessary to preserve the child from immediate danger to the child’s welfare.<sup>3</sup> Second, it is an affirmative defense that the child was 14 or older and the child was taken away or not returned: (A) at the child’s own instigation; and (B) without intent to commit a criminal offense with or against the child.<sup>4</sup>

Interference with custody is a felony punishable by imprisonment for not more than 5 years if either of the following conditions applies: “(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.”<sup>5</sup> If neither of those conditions applies, then interference with custody is punishable by imprisonment for not more than 2 years.<sup>6</sup> In other words, if the defendant is the child’s parent, the maximum sentence for interference with custody is 2 years.

### **Other States**

In other states, custodial interference generally involves a person, including a parent or foster parent, knowingly or purposely removing a child from the custody of another person who has lawful custody of the child. Many of the states surveyed provide enhanced sentencing penalties if the offender removes the child from the state during the period of custodial interference.

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<sup>1</sup> W.S. 6-2-204(a) (emphasis added). If the child was under 18, there is an inference the person knew the child’s age. W.S. 6-2-204(b).

<sup>2</sup> W.S. 6-2-204(c).

<sup>3</sup> W.S. 6-2-204(c)(i).

<sup>4</sup> W.S. 6-2-204(c)(ii) (emphasis added).

<sup>5</sup> W.S. 6-2-204(d) (emphasis added).

<sup>6</sup> W.S. 6-2-204(e).

- Montana – 45-5-304: Custodial interference

In Montana, a person commits custodial interference if the person knowingly takes, entices, or withholds a child entrusted by authority of law to the custody of another person or institution. With respect to the first alleged commission of this offense only, a person who has not left the state is not guilty if they voluntarily return the child before arraignment; a person who has left the state is not guilty if they voluntarily return the child before arrest.<sup>7</sup>

This offense is a felony punishable by imprisonment for a term not exceeding 10 years, a fine not exceeding \$50,000, or both.<sup>8</sup>

- Montana – 45-5-631: Interference with parent-child contact

In Montana, a person who has been granted parent-child contact under a parenting plan commits 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.<sup>9</sup>

This offense is a misdemeanor punishable by imprisonment for a term not exceeding 5 days, a fine not exceeding \$500, or both.<sup>10</sup>

- Montana – 45-5-632: Aggravated interference with parent-child contact

In Montana, a person commits aggravated interference with parent-child contact by changing a minor child's residence to another state without proper notice to or written consent from the person entitled to parent-child contact pursuant to an existing court order.<sup>11</sup>

This offense is a felony punishable by imprisonment not exceeding 18 months, a fine not exceeding \$1,000, or both.<sup>12</sup>

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<sup>7</sup> Mont. Code Ann. § 45-5-304.

<sup>8</sup> Id.

<sup>9</sup> Mont. Code Ann. § 45-5-631.

<sup>10</sup> Id.

<sup>11</sup> Mont. Code Ann. § 45-5-632.

<sup>12</sup> Id.

- North Dakota – 12.1-18-05: Removal of child from state in violation of custody decree

In North Dakota, a person commits a class C felony if the person intentionally removes, causes the removal of, or detains the person's own child outside of the state with the intent to deny another person's rights, in violation of a custody decree. Detaining the child outside the state in violation of a custody decree for more than 72 hours is prima facie evidence the person intended to violate the decree.<sup>13</sup>

A class C felony in North Dakota carries a maximum penalty of 5 years of imprisonment, a \$10,000 fine, or both.<sup>14</sup>

- South Dakota – 22-19-9: Violation of custody order by parent

A parent is guilty of a Class 1 misdemeanor if, without prior consent, the parent takes, entices away, or keeps the parent's unmarried minor child from the custody or visitation of the other parent or other person having lawful custody or right of visitation, in violation of an enforceable order. Any subsequent commission of this offense is a Class 6 felony.<sup>15</sup>

A Class 1 misdemeanor in South Dakota carries a maximum penalty of 1 year of imprisonment, a \$2,000 fine, or both.<sup>16</sup> A Class 6 felony carries a maximum penalty of 2 years of imprisonment, a \$4,000 fine, or both.<sup>17</sup>

- Colorado – 18-3-304: Violation of custody order or order relating to parental responsibilities

In Colorado, a person, including a natural or foster parent, commits a class 5 felony if the person knowingly takes or entices any child from the custody or care of the child's parents, guardian, or other lawful custodian or person with parental responsibility for the child. It is also a class 5 felony for a parent or other person to violate a Colorado custody order with the intent to deprive the lawful custodian or person with parental responsibility

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<sup>13</sup> N.D. Cent. Code § 12.1-18-05.

<sup>14</sup> N.D. Cent. Code § 12.1-32-01.

<sup>15</sup> S.D. Codified Laws § 22-19-9.

<sup>16</sup> S.D. Codified Laws § 22-6-2.

<sup>17</sup> S.D. Codified Laws § 22-6-1.

of the custody or care of a child. If a person removes a child from the country while committing either offense, the person commits a class 4 felony.<sup>18</sup>

A class 5 felony committed in Colorado on and after July 1, 2020, is generally punishable by 1 to 3 years of imprisonment and 2 years of mandatory parole, and/or a \$1,000 to \$100,000 fine.<sup>19</sup> A class 4 felony is generally punishable by 2 to 6 years of imprisonment and 3 years of mandatory parole, and/or a \$2,000 to \$500,000 fine.<sup>20</sup>

- Utah – 76-5-303: Custodial interference

In Utah, a person entitled to custody commits custodial interference if, with the intent to interfere with visitation, the person takes, entices, conceals, detains, or withholds the child from the individual entitled to visitation. Conversely, a person entitled to visitation commits custodial interference if, with the intent to interfere with the custody of the child, the person takes, entices, conceals, detains, or withholds the child from the individual entitled to custody.<sup>21</sup>

A violation of this section is generally a class B misdemeanor. The offense is elevated to a class A misdemeanor if a person has been convicted of custodial interference at least twice in the previous 2 years. And a person commits a third-degree felony if the person removes, causes the removal, or directs the child's removal from the state during the custodial interference.<sup>22</sup>

The terms of imprisonment for class A and class B misdemeanors in Utah are not to exceed 364 days and 6 months, respectively.<sup>23</sup> The term of imprisonment for a third-degree felony is not to exceed 5 years.<sup>24</sup> Additionally, or in lieu of other punishment, individuals may be subject to fines not to exceed: \$1,000 for a class B misdemeanor; \$2,500 for a class A misdemeanor; and \$5,000 for a third-degree felony.<sup>25</sup>

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<sup>18</sup> C.R.S. 18-3-304.

<sup>19</sup> C.R.S. 18-1.3-401.

<sup>20</sup> Id.

<sup>21</sup> Utah Code Ann. § 76-5-303.

<sup>22</sup> Id.

<sup>23</sup> Utah Code Ann. § 76-3-204.

<sup>24</sup> Utah Code Ann. § 76-3-203.

<sup>25</sup> Utah Code Ann. § 76-3-301.

- Idaho – 18-4506: Child custody interference

In Idaho, a person commits child custody interference if the person intentionally and without lawful authority takes, entices away, keeps, or withholds a child: (a) from a parent or other person or institution with custody or visitation rights; or (b) from a parent after commencement of an action related to custody or visitation but before issuance of an order determining those rights. A violation of this section is a felony unless the defendant did not remove the child from the state and voluntarily returned the child unharmed before arrest. Any reasonable expenses incurred by a lawful custodian in locating or attempting to locate the child may be assessed against the defendant at the court's discretion.<sup>26</sup>

- Nebraska – 28-316: Violation of custody

In Nebraska, a person, including a natural or foster parent, commits a Class II misdemeanor if the person knowingly takes or entices a child from the custody of the child's parent, guardian, or lawful custodian. Violation of a custody order with the intent to deprive the lawful custodian of custody is a Class IV felony.<sup>27</sup>

A Class II misdemeanor in Nebraska generally carries a maximum sentence of 6 months in jail, a \$1,000 fine, or both.<sup>28</sup> A Class IV felony generally carries a maximum sentence of 2 years imprisonment and 12 months post-release supervision, a \$10,000 fine, or both.<sup>29</sup>

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<sup>26</sup> Idaho Code § 18-4506.

<sup>27</sup> R.R.S. Neb. § 28-316.

<sup>28</sup> R.R.S. Neb. § 28-106.

<sup>29</sup> R.R.S. Neb. § 28-105.

## Civil Laws

Parental abductions of children may implicate various civil laws, including those on domestic violence and child custody and visitation.

### **Domestic violence protection orders**

The Domestic Violence Protection Act (W.S. 35-21-101 through 35-21-112) provides that, as part of any domestic violence protection order, the court may “[p]rohibit the respondent from abducting, removing or concealing any child in the custody of the petitioner[.]”<sup>30</sup> The court may also award temporary custody of any children to the petitioner and provide for visitation with the respondent only if adequate provision can be made for the safety of the children and the petitioner.<sup>31</sup> To provide for the safety of the children and the petitioner, the court may, among other things, order the children to be exchanged in a protected setting; order supervised visitation; order the respondent to attend and complete an intervention program or counseling; prohibit overnight visitation; and require the respondent to post a bond to secure the child’s return and safety.<sup>32</sup>

Willful violation of a domestic violence protection order is a misdemeanor punishable by imprisonment for not more than 6 months, a fine of not more than \$750, or both.<sup>33</sup>

### **Enforcement of custody and visitation orders (contempt)**

W.S. 20-2-204 provides that either parent may petition the court to enforce a custody and visitation order.<sup>34</sup> In addition, a court with jurisdiction may, upon appropriate motion of a party, require a parent to appear before the court and show just cause why the parent should not be held in contempt for willfully violating an order concerning the care, custody, and visitation of the child.<sup>35</sup> To enforce and require future compliance with an order, the court may find the parent in contempt of court.<sup>36</sup> The court may also award attorney’s fees and costs to the aggrieved party.<sup>37</sup>

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<sup>30</sup> W.S. 35-21-105(a)(iv).

<sup>31</sup> W.S. 35-21-105(b)(i).

<sup>32</sup> Id.

<sup>33</sup> W.S. 6-4-404(a).

<sup>34</sup> W.S. 20-2-204(a).

<sup>35</sup> W.S. 20-2-204(b).

<sup>36</sup> Id.

<sup>37</sup> Id.



**The Uniform Child Custody Jurisdiction and Enforcement Act (W.S. 20-5-201 through 20-5-502)**

In 2005, the Wyoming Legislature adopted the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).<sup>38</sup> 48 additional states, as well as the District of Columbia and the U.S. Virgin Islands, have adopted the UCCJEA.<sup>39</sup>

The UCCJEA “controls jurisdiction over child custody and visitation disputes.”<sup>40</sup> The Act specifies when a state has jurisdiction to make an initial custody determination and then provides that court with exclusive, continuing jurisdiction over the custody determination until it becomes more appropriate for another state to exercise jurisdiction.<sup>41</sup>

The UCCJEA generally requires a court of this state to recognize and enforce a child custody determination of another state court.<sup>42</sup> With respect to enforcement, the UCCJEA specifies circumstances when:

- The court with jurisdiction may grant expedited enforcement of a child custody determination.<sup>43</sup>
- The court may issue a warrant directing law enforcement to take physical custody of a child who is immediately likely to suffer serious physical harm or be removed from the state.<sup>44</sup>
- A prosecutor or other appropriate public official may take any lawful action to locate a child, obtain the return of a child or enforce a child custody determination, including requesting assistance from law enforcement.<sup>45</sup>

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<sup>38</sup> 2005 Wyo. Session Laws, Ch. 11, § 1.

<sup>39</sup> Uniform Law Commission, Child Custody Jurisdiction and Enforcement Act, Enactment History, <https://www.uniformlaws.org/committees/community-home?CommunityKey=4cc1b0be-d6c5-4bc2-b157-16b0baf2c56d> (last visited Mar. 27, 2023). Massachusetts and Puerto Rico have not adopted the UCCJEA. *Id.*

<sup>40</sup> *Ruiz v. Fribourg*, 2022 WY 157, ¶ 11, 521 P.3d 329, 332 (Wyo. 2022) (citations omitted).

<sup>41</sup> W.S. 20-5-301; 20-5-302.

<sup>42</sup> W.S. 20-5-403.

<sup>43</sup> W.S. 20-5-408.

<sup>44</sup> W.S. 20-5-411.

<sup>45</sup> W.S. 20-5-415; 20-5-416. In addition, the Child Support Enforcement Act (W.S. 20-6-101 through 20-6-112) requires the Department of Family Services to act as a state parent locator service to assist in: the location of persons, upon the request of law enforcement agencies, in cases of parental kidnapping or child custody violations under the UCCJEA;



## **The Uniform Child Abduction Prevention Act**

In 2006, the Uniform Law Commission drafted the Uniform Child Abduction Prevention Act (UCAPA) to provide states with a tool to deter domestic and international child abductions by parents and persons acting on their behalf.<sup>46</sup> The UCAPA is intended to complement the UCCJEA.<sup>47</sup> As of March 2023, 14 states and the District of Columbia have adopted the UCAPA.<sup>48</sup> In addition, four states introduced legislation to adopt this uniform act during their most recent session.<sup>49</sup> Wyoming has not adopted the UCAPA nor does it appear (after brief research) to have previously considered adopting this uniform act.

Under the UCAPA as the uniform act was drafted, a party to a child-custody determination (or other specified person or entity) may file a petition seeking abduction prevention measures.<sup>50</sup> Or a court, on its own motion, may order abduction prevention measures in a child-custody proceeding if it finds the evidence establishes a credible risk of child abduction.<sup>51</sup>

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and the location of persons, upon request of the noncustodial parent, in cases of denial or interference with court ordered visitation or in cases in which the custodial parent has removed the child from the state and failed to give notice of change of address in violation of a court order. W.S. 20-6-108.

<sup>46</sup> Uniform Law Commission, The Uniform Child Abduction Prevention Act: Summary, available at <https://www.uniformlaws.org/viewdocument/enactment-kit-10?CommunityKey=c8a53ebd-d5aa-4805-95b2-5d6f2a648b2a&tab=librarydocuments> (last visited Mar. 27, 2023).

<sup>47</sup> Id.

<sup>48</sup> Uniform Law Commission, Child Abduction Prevention Act, Enactment History, available at <https://www.uniformlaws.org/committees/community-home?CommunityKey=c8a53ebd-d5aa-4805-95b2-5d6f2a648b2a#:~:text=The%20Uniform%20Child%20Abduction%20Prevention,pr event%20the%20abduction%20of%20children> (last visited Mar. 27, 2023). The states are Alabama, Colorado, Florida, Kansas, Louisiana, Michigan, Mississippi, Nebraska, Nevada, New Mexico, Pennsylvania, South Dakota, Tennessee, and Utah. Id.

<sup>49</sup> Id. The states are Maryland, Missouri, South Carolina, and Washington. Id.

<sup>50</sup> Uniform Law Commission, Uniform Child Abduction Prevention Act with Prefatory Note and Comments, Section 4(b), available at <https://www.uniformlaws.org/viewdocument/enactment-kit-10?CommunityKey=c8a53ebd-d5aa-4805-95b2-5d6f2a648b2a&tab=librarydocuments> (last visited Mar. 27, 2023).

<sup>51</sup> Id. at Section 4(a).

In determining whether there is a credible risk of child abduction, the court must consider specified risk factors, including evidence that the respondent:

- (1) has previously abducted or attempted to abduct the child;
- (2) has threatened to abduct the child;
- (3) has recently engaged in activities that may indicate a planned abduction;
- (4) has engaged in domestic violence, stalking, child abuse, or child neglect;
- (5) has refused to follow a child-custody determination;
- (6) lacks strong ties to the state or the United States;
- (7) has strong ties to another state or country;
- (8) is likely to take the child to a specified country that, for example, does not provide for the extradition of an abducting parent or the return of an abducted child;
- (9) is undergoing a change in immigration or citizenship status that would adversely affect the respondent's ability to remain in the United States legally;
- (10) has had an application for United States citizenship denied;
- (11) has forged or presented misleading or false evidence on specified government documents or to the United States government;
- (12) has used multiple names to attempt to mislead or defraud; or
- (13) has engaged in any other conduct the court considers relevant.<sup>52</sup>

If, after an evidentiary hearing, the court finds there is a credible risk of abduction, it must enter an abduction prevention order that includes measures and conditions that are reasonably calculated to prevent abduction of the child while giving due consideration to the parties' custody and visitation rights.<sup>53</sup> The court may, for example:

- Require a party traveling outside a specified geographic area to provide the other party with information about the child's location and contact information.
- Impose travel restrictions prohibiting the respondent from leaving the United States or a specified geographic area.
- Impose passport restrictions and require the respondent to provide assurances and safeguards as a condition to traveling with the child.
- Impose restrictions on custody and visitation, such as requiring supervised visitation until the court decides the threat of abduction has passed.
- Require the respondent to post a bond sufficient to serve as a deterrent and as a source of funds for the cost of the child's return.

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<sup>52</sup> Id. at Section 7(a).

<sup>53</sup> Id. at Section 8(b).

- Order a perpetrator of domestic violence to obtain education, obtain counseling, or attend an intervention and prevention program.<sup>54</sup>

An abduction prevention order remains in effect until the earliest of: (1) the time stated in the order; (2) the emancipation of the child; (3) the child's attaining 18 years of age; or (4) the time the order is modified, revoked, vacated, or superseded.<sup>55</sup> Abduction prevention orders should be enforceable in other states pursuant to the UCCJEA.<sup>56</sup>

### **Conclusion**

This topic summary addresses criminal and civil laws that may be implicated by parental abductions of children. Please let me know if you have any questions or need further information.

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<sup>54</sup> Id. at Section 8(c).

<sup>55</sup> Id. at Section 10.

<sup>56</sup> Id. at Section 8, Comment.