

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; National Center for Prosecution of Child Abuse National District Attorneys Association 93

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.