

SNOHOMISH COUNTY PROSECUTOR'S OFFICE INVESTIGATIVE CHECKLIST

FIRST DEGREE CUSTODIAL INTERFERENCE

RCW 9A.40.060

ELEMENTS

1. Victim is a parent/guardian/institution/agency/other person who has a "lawful right to physical custody" of a child under 18/incompetent person; AND
2. Suspect is a relative of the child/incompetent person; AND
3. Suspect intends to deny the victim access to the child/incompetent person; AND
4. Suspect takes, entices, retains, detains, or conceals the child/incompetent person; AND
5. a) Intends to hold the child/incompetent person permanently OR for a protracted period*; OR
b) Exposes the child/incompetent person to a substantial risk of illness or physical injury; OR
c) Causes the child/incompetent person to be removed from the state of usual residence; OR
d) Retains, detains, or conceals the child/incompetent person in another state after expiration of any authorized visitation period with intent to intimidate or harass the victim or to prevent the victim from regaining custody.

OR

1. Victim is a parent of a child who has the "lawful right to time with the child pursuant to a court-ordered parenting plan"; AND
2. Suspect is a parent of the child; AND
3. Suspect takes, entices, retains, detains, or conceals the child; AND
4. Suspect intends to deny the victim access to the child; AND
5. 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.

OR

1. Victim is a parent of a child under 18; AND
2. There is no valid court-approved custody order or parenting plan; AND
3. Suspect is a parent of the child or a person acting under the direction of the suspect parent; AND
4. Suspect intentionally takes, entices, retains, or conceals the child from the victim; AND
5. Suspect intends to deprive the victim from access to the child permanently or for a protracted period*.

*There is no statutory definition of "protracted period". What is a protracted period will depend upon the totality of the circumstances. Typically, two weeks or less would not be a protracted period.

Defenses:

1. Suspect's intent was to protect the child/incompetent person/suspect from imminent physical harm, the belief in the existence of imminent physical harm was reasonable, AND suspect sought the assistance of police, a protective agency, or a court before committing the above acts or within a reasonable time after committing the above acts.

OR

2. Victim failed to exercise his/her rights to physical custody or access to the child under a court-ordered parenting plan or court-ordered visitation order for a protracted period*, AND that failure was not due to the suspect's denial of access to the child.

OR

3. Victim consented to the suspect's actions.

OR

4. Suspect's motive for denying access was maintaining the child's welfare; suspect gave notice or tried to give notice to the victim, AND allowed the victim access to the child within a "reasonable period" of time.

OR

5. If the child is 16 or older, and consents to the suspect's actions, that may be a defense.

SPECIFIC CONSIDERATIONS

- [] 1. Establish date of birth of child who is the subject of the custodial interference, or establish the basis for concluding the subject of the custodial interference is an incompetent person.
- [] 2. Establish relationship of victim and suspect to the person who is the subject of the custodial interference.
- [] 3. If there has been a violation of a court order – parenting plan or visitation order – provide a copy of that order.
- [] 4. If there has been a violation of a court order, establish evidence to prove/disprove that suspect had notice of that order.
- [] 5. Determine and detail the evidence to prove/disprove the suspect's intent was to deny the victim access to the child/incompetent person, and for what period of time. For example, school records indicating the child has been withdrawn from school, suspect has quit job and moved out of local residence, and suspect gave victim no notice.
- [] 6. Determine and detail the evidence to prove/disprove the suspect took, enticed, retained, detained or concealed the child/incompetent person from the victim.
- [] 7. Establish whether the child/incompetent person has been exposed to a substantial risk of illness or physical injury due to the custodial interference.
- [] 8. Establish whether the child/incompetent person has been removed from the state of usual residence by the suspect.
- [] 9. Establish whether the child/incompetent person has been retained, detained, or concealed in another state after expiration of an authorized visitation period, and if so, the suspect's purpose for doing this.
- [] 10. Determine whether the suspect was motivated by a belief that the child/incompetent person/suspect was in danger of imminent physical harm, and if so, whether that belief was reasonable, and whether the suspect sought timely assistance from police, a protective agency or a court before acting to deny the victim access to the child.

- [] 11. Determine whether the victim failed to exercise his/her rights to court-ordered physical custody or access to the child for a protracted period, and if so, whether that failure was due to suspect's denial of access to the child.
- [] 12. Determine whether victim consented to the suspect's actions, or whether there has been a past pattern of victim consenting in similar situations.
- [] 13. Determine whether the suspect's motive for denying access was to maintain the child's welfare, and if so, whether the suspect gave notice or tried to give notice to the victim, and whether the suspect allowed the victim access to the child within a "reasonable period" of time.
- [] 14. If the child is 16 or older, determine whether the child instigated or consented to the suspect's actions.
- [] 15. If the suspect is an accomplice, determine and detail what evidence exists to prove/disprove that the suspect knew his/her aid would facilitate the crime.