

SNOHOMISH COUNTY PROSECUTOR'S OFFICE INVESTIGATIVE CHECKLIST

SECOND DEGREE CUSTODIAL INTERFERENCE

RCW 9A.40.070

ELEMENTS

1. Victim is a parent, guardian, institution, agency or other person having a “lawful right to physical custody” of a person (but there is no court-ordered parenting plan); AND
2. Suspect is a relative of that person; AND
3. Suspect intends to deny the victim access to such person; AND
4. Suspect takes, entices, retains, detains, or conceals the person from the victim; AND
5. To be a felony, this must be the second or subsequent Custodial Interference crime for which the suspect is convicted.

OR

1. Victim is a parent 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. a) Suspect takes, entices, retains, detains, or conceals the child with the intent of denying the victim access to the child; OR
b) Suspect has not complied with the residential provisions of a court-ordered parenting plan after a finding of contempt under RCW 26.09.160; OR
c) Suspect has engaged in a pattern of willful violations of the court –ordered residential provisions; AND
4. To be a felony, this must be the second or subsequent Custodial Interference crime for which the suspect is convicted.

Defenses:

1. Suspect’s intent was to protect the child/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 adult ward of the victim.
- [] 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/person.
- [] 6. Determine and detail the evidence to prove/disprove the suspect took, enticed, retained, detained or concealed the child/person from the victim.
- [] 7. Establish whether the child/person has been exposed to a substantial risk of illness or physical injury due to the custodial interference.
- [] 8. If the allegation is that the suspect has not complied with the residential provisions of a court-ordered parenting plan after a finding of contempt under RCW 26.09.160, obtain a copy of the contempt order and the findings of fact and conclusions of law supporting that order.
- [] 9. If the allegation is that the suspect has engaged in a pattern of willful violations of the court – ordered residential provisions, determine and detail what evidence there is to prove/disprove the specific violations.
- [] 10. Determine whether the suspect was motivated by a belief that the child/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.
- [] 16. Indicate whether the suspect has a previous conviction for Custodial Interference.