

8.22

Definition Of Unlawful Visitation Or Parenting Time Interference

A person commits the offense of unlawful visitation or parenting time interference when he or she, in violation of the [(visitation) (parenting time) (custody time)] provisions of a court order relating to child custody, [(detains) (conceals)] a child with the intent to deprive another person of his or her rights to [(visitation) (parenting time) (custody time)].

Committee Note

Instruction and Note Approved January 18, 2013.

720 ILCS 5/10-5.5 (West 2013).

Give Instruction 8.23.

When applicable, give Instruction 8.13, defining “child”.

When applicable, give Instruction 8.14, defining “detains”.

Chapter 720, Section 10-5(a)(3) provides that the term “lawful custodian” means a person granted legal custody or entitled to physical possession of a child pursuant to a court order. That statute further provides that if the parents of a child have never been married to each other, it is presumed that a mother has legal custody of the child unless a valid court order states otherwise, and that if an adjudication of paternity has been completed and the father has been assigned support obligations or visitation rights, such a paternity order should be considered a valid court order granting custody to the mother.

The Committee believes that application of the above definition involves questions of law to be determined by the court rather than the jury. When a case involves the interference of the visitation, parenting time or custody time of a lawful custodian, the court should determine who the lawful custodian of the child is under 720 ICLS 5/10-5(3), and should insert in the appropriate blank the name of that person in Instruction 8.23.

The Illinois Supreme Court upheld the constitutionality of this statute in *People v. Warren*, 173 Ill.2d 348, 671 N.E.2d 700 (1996).

Only non-custodial parents can be aggrieved by visitation interference. *Id.* at 365. Persons with joint custody cannot commit visitation interference. *Id.* at 364.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.