

8.15

Definition Of Lawful Custodian--Child Abduction

Committee Note

The Committee believes that application of the definition of the term “lawful custodian” involves questions of law to be determined by the court rather than the jury. When a case involves a subsection of the child abduction statute that uses the term “lawful custodian,” the court should determine who is the lawful custodian of the child under 720 ILCS 5/10-5(a)(3), and should insert in the appropriate blank the name of that person or persons in Instruction 8.16.

720 ILCS 5/10-5(a)(3) provides that the term “lawful custodian” means a person or persons granted legal custody or entitled to physical possession of a child pursuant to a court order. This 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.