

8.23

Issues In Unlawful Visitation Or Parenting Time Interference

To sustain the charge of unlawful visitation or parenting time interference, the State must prove the following propositions:

First Proposition: That there was a court order relating to child custody [(visitation) (parenting time) (custody time)].

Second Proposition: That the defendant detained or concealed _____ with the
(child)
intent to deprive _____ of [(his) (her)] rights to
(parent or other person granted custody)
[(visitation) (parenting time) (custody time)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Note Approved January 18, 2013.

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

Give instruction 8.22

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.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in the Second Proposition.