

8.22

Definition Of Unlawful Visitation Or Parenting Time Interference

A person commits the offense of unlawful visitation or parenting time interference when he, 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 rights to [(visitation) (parenting time) (custody time)].

Committee Note

720 ILCS 5/10-5.5 (West 2020).

Give Instruction 8.23.

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

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

720 ILCS 5/10-5(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. 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 provides 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 the name of that person should be inserted in the appropriate blank 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.*, 173 Ill. 2d at 365, 671 N.E.2d at 709. Persons with joint custody cannot commit the offense of visitation interference. *Id.*, 173 Ill. 2d at 364, 671 N.E.2d at 709.

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.