

## 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)] pertaining to [(child)]; and

*Second Proposition:* That the defendant [(detained) (concealed)] [(child)] with the intent to deprive \_\_\_\_\_ of his right to [(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

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

Give instruction 8.22.

Give Instruction 8.13, defining “child”.

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

Replace the word “child” with the name of the child or the person with a severe or profound intellectual disability.

In the second proposition, insert in the blank the name of the person whose rights were allegedly interfered with by the defendant.

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 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 the name of that person should be inserted in the appropriate blank in the Second Proposition.

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.

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.

If an affirmative defense is raised, give Instructions 8.24 and 8.24A.