

8.17

Affirmative Defenses To Child Abduction

It is a defense to the charge of child abduction

[1] that at the time of the alleged violation, the defendant had custody of ____ pursuant to a court order granting legal custody or visitation rights.

[or]

[2] that prior to the time of the alleged violation, the defendant had physical custody of ____ pursuant to a court order granting legal custody or visitation rights; that defendant failed to return ____ as a result of circumstances beyond his control; and that the defendant [(notified and disclosed to the other parent or legal custodian the specific whereabouts of ____ and a means by which ____ could be contacted) (within 24 hours after the custody or visitation period had expired, made a reasonable attempt to notify the other parent or lawful custodian of such circumstances and returned the child as soon as possible)].

[or]

[3] that the defendant was fleeing an incidence or pattern of domestic violence.

Committee Note

720 ILCS 5/10-5(c) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §10-5(c) (1991)).

Whenever this instruction is given, it will be necessary to add a proposition to the issues instruction. For example, if the defendant asserts as an affirmative defense that he had custody pursuant to a court order at the time of the alleged visitation, the following proposition should be added to Instruction 8.16:

See Chapter 720, Section 3-2, and the Introduction to Chapter 24-25.00.

Section 10-5(c)(4) states what is designated as a fourth affirmative defense to child abduction, but only to Section 10-5(b)(10). Section 10-5(b)(10) makes it an offense to lure or attempt to lure a child under 16 into certain vehicles or structures “for other than a lawful purpose.” Section 10-5(c)(4) merely provides that it is an affirmative defense to that particular subsection if the defendant lured or attempted to lure the child “for a lawful purpose.” Since the jury must find, under Instructions 8.11 and 8.16, that the defendant's purpose was unlawful, the Committee believes that no purpose would be served by a further instruction on Section 10-5(c)(4).

Insert in the blanks the name of the child.

Use applicable paragraphs and bracketed material.

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