

MESA POLICE Department Policy Manual	Custodial & Access Interference	DPM 3.1.40 Effective 04/06/2012 Reviewed 02/27/2018
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1. PURPOSE

This policy provides Mesa Police Department (MPD) members with guidelines for investigating custodial and access interference incidents.

2. CUSTODIAL INTERFERENCE

- A. A person commits Custodial Interference if, knowing or having reasons to know that the person has no legal right to do so, the person does one of the following:
 1. Takes, entices, or keeps from lawful custody any child who is incompetent and who is entrusted by authority of law to the custody of another person or institution.
 2. Before the entry of a court order determining custodial rights, takes, entices, or withholds any child from the other parent denying that parent access to any child.
 3. If the person is one of two persons who have joint legal custody of a child, takes, entices, or withholds from physical custody the child from the other custodian.
 4. At the expiration of access rights outside this state, intentionally fails or refuses to return or impedes the return of a child to the lawful custodian.
- B. If a child is born out of wedlock, the mother is the legal custodian of the child for the purposes of this section until paternity is established and a court order determines custody or access.

2.1 Defense to Prosecution

- A. It is a defense to prosecution pursuant to A.2 above if **both** of the following apply:
 1. The defendant has begun the process to obtain an Order of Protection (OOP) or files a petition for custody within a reasonable period of time and the OOP or petition states the defendant's belief that the child was at risk if left with the other parent.
 2. The defendant is the child's parent and has the right of custody and the defendant either:
 - a. Has a good faith and reasonable belief that the taking, enticing, or withholding is necessary to protect the child from immediate danger.
 - b. Is a victim of domestic violence by the other parent and has a good faith and reasonable belief that the child will be in immediate danger if the child is left with the other parent.

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2.2 Penalties

- A. Penalties vary from a Class 3 to a Class 6 felony depending on who the person is and whether the incident occurred in-state or out-of-state.
- B. It is a Class 1 misdemeanor if the child or incompetent person is voluntarily returned without physical injury prior to arrest or the issuance of an arrest warrant.

2.3 Considerations

- A. Child custody cases are often complicated and volatile. Emotions are high and allegations of abuse are frequently made.
 1. One or both parties may produce court documents granting permanent or temporary custody of the child.
 2. The officer will usually not be able to verify the validity of court documents and it is often difficult to determine if there is a custodial interference violation.
 3. **Do not** make arrests at the scene for custodial interference unless exigent circumstances exist.
- B. Exigent circumstances may include, but are not limited to:
 1. Stranger abductions.
 2. Non-custodial parents who are attempting to flee out-of-state with the child.
 3. Any person who had not established custodial rights to the child.
 4. Consult a supervisor prior to making an arrest.

2.4 Procedures

- A. Perform a civil standby while the complaining party makes a demand for the child.
- B. Investigate allegations of physical or sexual abuse; check the welfare of the child and document.
- C. If the alleged non-custodial parent refuses to surrender the child:
 1. Explain the custodial interference statute and advise the parent that they may be prosecuted if they do not comply with the law.
- D. If the child cannot be located, enter the child into NCIC/ACIC as "involuntary missing."
- E. **If an arrest is necessary** (e.g., a stranger abduction, the non-custodial parent is in the process of fleeing with the child out-of-state, person who has not established custodial rights to the child) the following will apply:
 1. Book the suspect into the MPD Holding Facility and transport to the Maricopa County Jail.

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2. Write and forward a department report (GO) to the Family Violence Unit at the Mesa Family Advocacy Center following current felony arrest procedures.
3. Place the child with the custodial parent or Arizona Department of Child Safety as appropriate.

2.5 Documentation Report

- A. All custodial interference cases are a DC-1 unless the child was returned prior to or during initial contact by MPD.
- B. If the child was returned prior to or during initial MPD contact:
 1. DC5 with comments the child was returned.
- C. If a departmental report is to be written, it should contain the following information:
 1. Names and birth dates of the children involved.
 2. Written statements made by all parties, if possible.
 3. Names and phone numbers of attorneys for the parties involved.
 4. Any history of previous relevant violations.
 5. Attach copies of all appropriate court orders pertaining to custody/access.
 6. If the parties involved are unwilling to give the officer their certified court order, attach a copy of the court order and note in report that a certified copy of the court order of the involved parties was observed.

3. ACCESS INTERFERENCE

- A. **Access Interference:** If, knowing or having reason to know that the person has no legal right to do so, the person knowingly engages in a pattern of behavior that prevents, obstructs or frustrates the access rights of a person who is entitled access to a child pursuant to a court order.
- B. **Access Order:** A court order that is issued pursuant to Title 25 and allows a person to have direct access to a child or incompetent person.

3.1 Distinction Between “Custodial Interference” and “Access Interference”

- A. Example:
 1. A husband and wife divorce.
 2. The wife has been granted custody of the children by the court and has appropriate documentation.
 3. If the husband comes to pick up the children at his court ordered specified time, day, or place and the wife refuses, then she is violation of Access Interference ([ARS 13-1305](#)).

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4. On the other hand, if the non-custodial parent (husband) refuses to return the children to the wife (custodial parent) at the end of his visitation time, this is Custodial Interference ([ARS 13-1302](#)).

3.2 Penalties

- A. If the child is removed from this state, Access Interference is a Class 5 felony.
- B. Otherwise, Access Interference is a Class 2 misdemeanor.

3.3 Procedures

- A. The enforcement of this section is not limited by the availability of other remedies for Access Interference.
- B. In all cases where an arrest might be made, consult a supervisor first.

3.4 Documentation Report

- A. All Access Interference cases are a DC1 unless the child was returned prior to or during initial contact by MPD.
 1. DC5 with comments the child was returned.
- B. If a departmental report is to be written, it should contain the following information:
 1. Names and birth dates of the children involved.
 2. Written statements made by all parties, if possible.
 3. Names and phone numbers of attorneys for the parties involved.
 4. Any history of previous relevant violations.
 5. Attach copies of all appropriate court orders pertaining to custody/access.
 6. If the parties involved are unwilling to give the officer their certified court order, attach a copy of the court order and note in report that a certified copy of the court order of the involved parties was observed.

REFERENCES

- [ARS 13-1302](#)
- [ARS 13-1305](#)