

313.6 CHILD CUSTODY DISPUTES

- I. Discussion: Police officers are frequently called upon to investigate cases involving disputed custody of a child. These types of cases are commonly referred to as *parental kidnapping* or *child snatching* cases.

Child custody cases are often not clear cut criminally and are mired in civil paperwork. The potential for civil liability being imposed on the officer and the agency for wrongly removing the child can be great. It is very important that the officer remember that the welfare and security of the child must be in the forefront of all decisions that are not clearly defined by state law or current civil orders.

II. Statutory References and Guidelines:

A. F.S. §744.301(1) Natural Guardians:

1. The mother and father are the natural guardians of their own children and of their adoptive children, during minority. If one parent dies, the natural guardianship shall pass to the surviving parent, and the right shall continue even though the surviving parent remarries. If the marriage between parents is dissolved, the natural guardianship shall belong to the parent to whom the custody of the child is awarded. If the parents are given joint custody, then both shall continue as natural guardians.
2. If the marriage is dissolved and neither the mother nor the father is awarded custody of the child by the courts, neither shall act as natural guardian of the child.
3. If a father has not established paternity, the mother of a child born out of wedlock is the natural guardian of the child. That means she has sole custody rights and responsibilities against all other people including the father. This remains true regardless of the listing of the father on the birth certificate. If the father wants legal rights with the child he must go to court and obtain custody orders establishing paternity and visitation/custody rights. If the alleged father (in the absence of custody papers) takes the child from the mother and refuses to return the child, an Interference with Child Custody case shall be initiated.

- B. Custody Orders: When retaking a child on the power of custody papers only, the officers must be certain they are dealing with the most recent custody order filed in the case before removing a child from the custody of the other party. Deal with originals or certified copies of orders and not photostatic copies. The Clerk of the Circuit Court can provide a letter to

the person requesting that we retake the child certifying that the order is the most recent custody order on file (this is even a good idea when recent custody orders are presented). On requests that come from outside Hillsborough County it is **mandatory** that the person requesting the retake of a child register with the Clerk of the Circuit Court and have an emergency hearing scheduled with the judge. The judge will review the custody papers and issue a pick-up order from Hillsborough County allowing an officer to legally (without liability) retake a child.

1. F.S. §61.503(3): *Child Custody determination* means a court decision and court orders and instructions providing for the custody of a child, including visitation rights, including permanent, temporary and initial determinations as well as modification orders.
2. F.S. §61.503(8): *Initial decree* means the first custody decree concerning a particular child.
3. F.S. §61.503(11): *Modification order* means a custody decree which modifies or replaces a prior decree, whether made by a court which rendered the first decree, or by another court.
4. F.S. §61.503(13): *Person acting as a parent* means a person, other than the parent, who has physical custody of the child and who has either been awarded custody by a court or claims a right to custody. Claims of custody often come from grandparents, relatives, or friends who were “given” the child for extended periods of time and have been serving as caretaker and provider in the parents’ absence. Sometimes they have a notarized paper from the parent giving power of attorney for the child. Officers are called in when the parent returns to claim the child from person acting as a parent. In the absence of specific court papers, the determination of where the child should be placed is a very gray area that is often a judgement call for the responding officer based on the fitness of the parent that has reappeared to reclaim the child and the fitness of the person acting as a parent. Preference should be given to the biological parent, unless the officer can show that they are clearly unfit. If the person acting as a parent is desiring to seek legal temporary custody then they would be advised to get legal advice and file for custody. **Certain relatives may obtain temporary formal custody under Florida Statutes Chapter 751.**
5. F.S. §61.503(14): *Physical custody* means actual possession and control of the child.

C. Interference with Child Custody:

1. F.S. §787.03(1): Whoever, without lawful authority, knowingly, or recklessly takes or entices any child seventeen years of age or under or any incompetent person from the custody of his parent, guardian, or other lawful custodian commits the offense of interference with custody and shall be guilty of a felony of the third degree. This paragraph is used for parents in violation of custody orders within the state; cases of adults harboring known runaways; or an adult boyfriend or girlfriend concealing a child girlfriend or boyfriend from the parents or legal guardian.
 2. In the case of the parents' separation, with legal papers, where custody of their children has not been determined by the court or in an unofficial separation of parents – both parents have the same legal rights to the child and the officer should not take the child from the parent having present physical custody unless the child is endangered. Interference with Child Custody 787.03(2) would become an issue here only if one parent, “takes, detains, conceals, or entices that child or incompetent person within or without the state, with malicious intent to deprive another person of his right of custody. Paragraph #2 is only used if there are no papers determining custody with parents. Commonly this is used when one parent takes and conceals the child and refuses to tell the other parent and/or law enforcement where the child is staying, thus depriving the other parent of the right to custody.
 3. Interference with Child Custody shall not apply in cases where a spouse who is a victim or reasonably believes he or she is about to become a victim of domestic violence, as defined in 741.30, or believes that his or her actions were necessary to protect the child or incompetent person from danger to his or her welfare seeks shelter from such acts and takes the child or incompetent person with him or her, but only if:
 - a. The sheriff or state attorney is notified within 10 days after taking the child;
 - b. The taking parent commences a custody case in court; and
 - c. The sheriff or state attorney is kept informed of any address or phone number change for the child.
- D. Violation of Visitation Agreement in Custody Orders: This is a civil matter, unless the offending parent “knowingly or recklessly takes,” per 787.03(1), the child away from the other parent contrary to the court order. If the offending parent is just late in returning the child from visitation and

there is no attempt to conceal or deprive the other parent of custody, the officers will refer the aggrieved party back to the court that issued the custody decree for the issuing judge to decide contempt. **Except where the safety of the child is immediately in question, officers should endeavor to stay out of custody disputes involving the interpretation of court orders.**

E. Removing Minors from the State or Concealing Minors Contrary to Court Order:

1. F.S. §787.04(1): It is unlawful for any person, in violation of a court order, to lead, take, entice or remove a child beyond the limits of this state, or to conceal the location of a child, with personal knowledge of the order (Felony of the third degree).
2. F.S. §787.04(2): It is unlawful for any person, with criminal intent, to lead, take, entice, or remove a child beyond the limits of the state, or to conceal the location of a child, during the pendency of any action or proceeding affecting custody of the child, after having received notice as required by law of the pendency of the action or proceeding, without permission of the court in which the action or proceeding is pending (Felony of the third degree).

F. F.S. §39.401: Taking a Child Alleged to be Dependent into Custody: A child may be taken into custody:

1. Pursuant to an order of the Circuit Court, or
2. By a law enforcement officer, or an authorized agent of DCF, (a.) if the officer or agent has probable cause to believe that the child has been abandoned, abused, or neglected, is suffering from illness or injury, or is in immediate danger from his surroundings and that his removal is necessary to protect the child.; (b.) the parent or legal custodian has materially violated a condition of placement imposed by the court; or (c.) the child has no parent, legal custodian or responsible adult relative immediately available to provide supervision and care.

(Refer to SOP 313 – Juvenile Procedures regarding the taking of a dependent child into custody.)

III. Procedure:

- A. Officers investigating reports of missing children will handle the case as outlined in SOP 333 – Missing Persons and SOP 313 – Juvenile

Procedures until such time as a determination is made that the child is the subject of a custody dispute.

- B. The investigating officer will immediately attempt to make a determination that the child involved in the custody dispute is safe and which person has legal custody of the child.
- C. If the issue of legal custody is not questionable, the child will be left in the physical custody of the person having legal custody.
- D. If the issue of legal custody is questionable, the child will be left in the physical custody of the person claiming legal custody who had physical custody of the child prior to police involvement, if a reasonable probability exists that the child could belong with that person and the safety and welfare of the child are assured.
- E. If legal custody has been determined and a person not having legal custody has fled with the child contrary to Florida State Statute, pick-up orders will be placed on both the suspect and the child.
- F. If in the determination of the investigating officer there is some indication that the child taken contrary to Florida State Statute might be in danger then his supervisor will be notified and the Special Victims Unit Sergeant will be contacted.
- G. All cases in which legal custody cannot be determined or any pick-up orders were placed will be referred to the Criminal Investigations Division.
- H. The Department of Children and Families Services will be notified by telephone of all disputed custody cases.
- I. Officers involved in any custody dispute will fully document the incident and, if possible, obtain copies of applicable court orders. Alternatively, court orders or other documents shall be identified by title in the report. However, where any police actions is taken based upon a court order, a copy of the order **must** be obtained.

Supersedes SOP 313.6, dated 8/23.