

## Unlawful Visitation Interference

Illinois law provides avenues in both criminal court and family court for divorced parents (and parents who were never married) to enforce their rights regarding visitation. The laws apply to both the non-custodial parent who may be denied visitation and the custodial parent who may have to deal with a former spouse who refuses to drop the children off timely.

**Civil Enforcement vs. Criminal Prosecution:** Where court-ordered visitation is withheld, Illinois law provides for both civil and criminal prosecution for visitation interference. In other words, a parent who detains or conceals a child in an effort to thwart court-ordered visitation may be punished by the family law court judge or prosecuted by the State's Attorney in a criminal trial. It is possible for a trouble-making parent to be punished by the family law court and also criminally prosecuted for visitation interference.<sup>1</sup> This is the only instance we know of in American law where a defendant can be subjected to double-jeopardy – seemingly in violation of the U.S. Constitution. If you decide to go back to (or are taken to) the family law court, work with an experienced and knowledgeable attorney. If, however, you decide to go to criminal court, as a complaining witness you'll work with the State's Attorney – as a defendant, you should hire your own defense attorney (call our office).

Civil remedies in family law court typically result in a modification of the parenting schedule (more time or "make-up time" with the kids for the injured parent and less time for the offending parent, the shifting of a holiday, etc.). Family law judges, however, have sent obstreperous visitation violators to jail – like the mother was sentenced to 180 days in jail merely for thwarting a weekend visit between the father and the children.<sup>2</sup> Civil actions are brought as "contempt of court" charges. To prove contempt, you must show that the offending party acted willfully and "contumaciously." Contumacious conduct is that which is "calculated to embarrass, hinder, or obstruct a court in its administration of justice or lessening the authority and dignity of the court."<sup>3</sup>

Under the criminal law,<sup>4</sup> visitation interference is a "petty offence" (like a traffic ticket) for the first two violations. After that, however, the stakes are raised and the charge becomes a Class A misdemeanor which means punishment may be in the form of imprisonment for up to one year or a fine of up to \$2,500.

**Visitation Interference vs. "Dance Card Booking:"** In its simplest form, visitation interference is easy to recognize: the non-custodial parent goes to pick up the children but they're not where they're supposed to be at the prescribed time. Visitation interference can, however, come in disguises. The most common ploy is to "book the child's dance card." The custodial parent registers the child for every conceivable extracurricular activity, lesson, or social event that, not so coincidentally, falls during the time scheduled for the non-custodial parent's visitation. Although "dance card booking" has not been found to violate the (criminal) visitation interference law, it has been used as the basis for contempt citations in (civil) family court. Cases come down both ways, though: sometimes the court will tell the non-custodial parent to take the child to scheduled extracurricular activities during visitation time, and other times the court will declare that "visitation time is visitation time and is not to be infringed upon by extracurricular activities."

When in doubt, obey court orders in letter and spirit. One mother thought extracurricular activities should take priority over visitation. In the case that ultimately found her unilateral decisions to have been willful and contumacious, the court said "In the event that the children's extracurricular activities unduly interfered with [the custodial parent]'s ability to comply with the court-ordered visitation schedule, then the appropriate action [she] should have taken was to seek modification of the... visitation order rather than to ignore its provision."

If you have concerns about dance card booking, call our attorneys to learn how your case stacks up – they have the experience to help guide you to a favorable resolution.

**When Children Refuse to Visit:** Occasionally a parent will claim that the kids "just don't want to spend time with the other parent." Illinois courts look upon such claims with GREAT suspicion. If you are a custodial parent whose child objects to visitation, call our office immediately to seek a court-approved modification, or termination, of the visitation schedule. **DON'T TAKE THE LAW INTO YOUR OWN HANDS BY DENYING VISITATION!** Call our office – no charge, no obligation.

Illinois courts have held that a custodial parent may not disregard visitation requirements merely because the children do not desire to visit the non-custodial parent. One court said: "the custodial parent cannot escape his or her duty to comply with the visitation provisions by attempting to shift this burden to the discretion of [his or] her children." Another court said "[a] parent must comply with court-ordered visitation even where the child has expressed hostility toward the other parent." That court went on to explain that the experience of visitation affords the children and the non-custodial parent the opportunity to communicate and, thus, diminish hostilities and foster an atmosphere in which a renewal of affection may take place.

Technically, the court has jurisdiction over the children. Where children petulantly demand that they be excused from visitation, and the custodial parent fails to either motivate them or seek to modify or terminate the visitation schedule, the court may order the children to go on visitation and may even cite them for contempt. In one notorious case, a Will County judge sent two sisters to jail for refusing to visit with their father.

**Joint Custody Negates Criminal Interference:** Illinois' criminal visitation interference law doesn't apply to divorced parents who enjoy joint custody. The law itself doesn't say so. In fact, the plain language of the law says that it applies to "every person" and, logically, to every court order – regardless of whether the custody award is "sole" or "joint." Nevertheless, an Illinois Supreme Court ruling in a criminal prosecution case has been interpreted by many police departments to mean that the law cannot be applied to parents who have joint custody. Indeed, in light of the ruling, many police departments don't even bother writing up a citation if the parents have an award of joint custody.

If you've been cited for "visitation interference," call our office for a solid defense. If you have joint custody, and are having visitation problems, you can try calling the police... then call our office to protect, and enforce, your rights.

### **The Criminal Law:**

720 ILCS 5/10-5.5

#### **§§ 10-5.5 Unlawful visitation interference**

**(a)** As used in this Section, the terms "child", "detain", and "lawful custodian" shall have the meanings ascribed to them in Section 10-5 of this Code.

**(b)** Every person who, in violation of the visitation provisions of a court order relating to child custody, detains or conceals a child with the intent to deprive another person of his or her rights to visitation shall be guilty of unlawful visitation interference.

**(c)** A person committing unlawful visitation interference is guilty of a petty offense. However, any person violating this Section after 2 prior convictions of unlawful visitation interference is guilty of a Class A misdemeanor.

**(d)** Any law enforcement officer who has probable cause to believe that a person has committed or is committing an act in violation of this Section shall issue to that person a notice to appear.

**(e)** The notice shall:

1. be in writing;
2. state the name of the person and his address, if known;
3. set forth the nature of the offense;
4. be signed by the officer issuing the notice; and
5. request to the person to appear before a court at a certain time and place.

**(f)** Upon failure of the person to appear, a summons or warrant of arrest may be issued.

**(g)** It is an affirmative defense that:

1. a person or lawful custodian committed the act to protect the child from imminent physical harm, provided that the defendant's belief that there was physical harm imminent was reasonable and that the defendant's conduct in withholding visitation rights was a reasonable response to the harm believed imminent;

2. the act was committed with the mutual consent of all parties having a right to custody and visitation of the child; or
3. the act was otherwise authorized by law.

**(h)** A person convicted of unlawful visitation interference shall not be subject to a civil contempt citation for the same conduct for violating visitation provisions of a court order issued under the Illinois Marriage and Dissolution of Marriage Act.

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This article was written by the law office of Cowell Taradash, P.C., whose attorneys are familiar with the latest court decisions, recent changes in the law and even the tendencies of many judges. We can help. Contact us at 866.987.6723 or [info@illinoisdivorce.com](mailto:info@illinoisdivorce.com).