

Guide: When the other parent has taken your child

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Learn your options in and out of court when the other parent or person claiming the right to legal custody has abducted your children.

1. Fast facts

If your children's other parent has taken the children away from you, with or without a court order, and you're sure the other parent has abducted them, you may have options if you act right away.

- Try to talk to a lawyer if you can.
- There are resources you can use and things you can try without going to court or to law enforcement.
- Depending on your situation, you might want or need to go to court to get a custody order or file a motion for contempt. As a last resort, you can file a petition for Writ of Habeas Corpus. This special court order

requires law enforcement to take steps to get your children back.

Try to read this entire guide before you decide what to do. It can be easier, cheaper, faster, and less traumatic for your children if you can get them back on your own. But depending on your situation, it might not be safe for you or for the children for you to try without the help of law enforcement or the court.

()What court order do I need to prove I have custody?

Before you can get help getting your children back, you may have to prove that you have a legal right to custody.

A custody order can mean a temporary or permanent parenting plan or residential schedule, or an order that's part of a parentage, minor guardianship, or protection order case. Custody orders from different states may have different names. What's important is that the court order says that the children live with you most of the time.

()Can my custody order be against a guardian or a stepparent?

Yes. The "other parent" here can also mean a non-parent with court-ordered custody or visitations rights, like a grandparent, other relative, or stepparent.

What if I don't have a custody order?

If you don't already have a court order giving you custody of the children, you'll probably have to ask a court for one. Law enforcement may not be able to help until you get a custody order. You should call them first and make a

report anyway.

If the person who took your child **isn't** the other parent and **doesn't** have legal guardianship, you shouldn't need a court order. Use the child's birth certificate to show that you're a legal parent and the other person isn't. Explain to law enforcement that the other person has no legal authority to keep your child away from you.

If you allowed your child to live with this other person for a long time before they kept your child from you, it can be harder to convince law enforcement to get involved. They still must take your report and investigate.

2. Resources

Even if you don't have a court order giving you custody, here are some options you can use right away besides going to court:

- If you feel comfortable doing so, call the sheriff's department (<https://washeriffs.org/counties/>), or go to your local police department to file a custodial interference report. Make sure you speak to someone who handles child abductions. Ask them to enter information describing your children into the National Crime Information Center (NCIC) (<http://fas.org/irp/agency/doj/fbi/is/ncic.htm>) database.
- If law enforcement doesn't enter information about your children into the NCIC computer, contact a local missing children's clearinghouse (<https://www.missingkids.org/gethelpnow/clearinghouses>). Federal law requires them to make the entry. Entry into the computer may help you

find the children without a court order.

- Call the National Center for Missing and Exploited Children (<https://www.missingkids.org/home>), 1-800-843-5678, to report your children as missing.
- Contact non-profit missing children's organizations. They may be able to help you organize your search or get legal help.
- If you feel comfortable approaching law enforcement, you can ask the police or prosecutor to file criminal charges against the abductor. In most cases, the prosecutor won't file charges unless the abductor is violating an existing custody order. There are exceptions to this. Check with local law enforcement.

If charges are filed, make sure law enforcement enters the state felony warrant into NCIC (<http://fas.org/irp/agency/doj/fbi/is/ncic.htm>).

- **If the abductor has fled the state**, ask the prosecutor to apply for a federal Unlawful Flight to Avoid Prosecution (UFAP) warrant. This will get the FBI and other federal agencies to help.

If there's any risk that the abductor will remove or has **removed your children from the United States**, immediately call the U.S. Department of State, Children's Issues (<https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/abductions/abductions-contact-us.html/>). If they haven't yet left the country, you can ask for a **passport hold**. There's a 1-year limit for filing under the Hague Convention (<https://www.hcch.net/en/faq>), the treaty on international child

abductions. See the Bureau of Consular Affairs (<https://travel.state.gov/content/childabduction/en/from.html>) on international child abduction issues.

3. Things you can do

You can search on your own for your children. Parents very often can find their children on their own and get them back peaceably without involving the courts. You can:

- **Ask your children's schools** to notify you when another school asks for their records. Then you'll know where the other parent is enrolling the children.
- **Have your health care provider** tell you if the child's medical records are requested, and from where. The abducting parent may seek transfer of your child's records, especially if a child has special health problems.
- If you and the abducting parent share **joint credit cards**, information from the company that issued the cards about where the other parent is using them can help you track their movements. A credit reporting agency (<https://www.usa.gov/credit-reports>) might also give you information about the abducting parent's whereabouts.
- Any **other caregivers** your children had may know the child's and abducting parent's location.
- Check with the abducting parent's **employer, friends, and relatives**.
- Check at any of the abducting parent's "**hangouts**."

Be discreet and non-threatening. Don't jeopardize your efforts by alerting the abductor of your intent.

- Consider contacting **Child Protective Services (CPS)** (<https://www.dcyf.wa.gov/services/child-welfare-system/cps>). It can be risky to invite CPS into your life, especially if they may have concerns about your parenting. But if there's any risk that the abductor may harm your children, or if CPS has gotten complaints or reports about the abducting parent in the past, it could be helpful to report the abduction to CPS (<https://www.dcyf.wa.gov/safety/report-abuse>). CPS can look out for other referrals and let you know about them. If they have the abductor's address, they may require a court order before they can release it.

4. Get children yourself

If you know where the children are, you can try to get them back. **Don't breach the peace or put yourself or the children in harm's way.** If you don't think you can do this peacefully, you should get the appropriate court order and have law enforcement get the children for you.

- **If your children are in school or day care**, you may pick up the children there. If you already have a custody order, show the school or care provider a certified copy. You may ask the police to go with you as a "civil standby." They will keep the peace, but they won't enforce your

order.

This works best if you already know the school staff. In a custody case, the school may have a policy of only returning the children to the parent who placed the children there. The other parent may have told the school not to release the children to you.

- **If friends or relatives of the abducting parent who are sympathetic to you are caring for your children,** you may be able to get them to give you the children or agree to try to get the other parent to return the children.

- **You may be able to convince the other parent to return the children** . A parent who doesn't usually have full-time responsibility for children may return the children when things get too hard. The other parent's friends or family may help you if they get tired of helping the other parent.

If you can go to the other parent's home to try this without the risk of violence, bring a support person (or the police).

Don't break and enter or try a dramatic rescue. This could cause your children more emotional damage, and you could face arrest!

Warning! Call the Superior Court Clerk or check online in the courts where you and the other parent live to see if they've filed a custody case. **If the abducting parent has gotten an immediate**

restraining order (ex parte), you may not be able to pick up the children. You should receive papers notifying you of a hearing date. Go to that hearing to explain why the other parent should return your children to you.

5. Need custody order

If you don't have a court order giving you custody, you must get one. How you get one depends on your relationship with the abductor and your situation.

Answer a few questions on **Get Family and Safety Forms** to get the right forms for your situation.

Domestic violence: If you and the abducting parent had the children together, lived together, or were in a relationship together, and there's been any physical violence or threat of it against you or your children by the abducting parent, you can file for a Protection Order to get custody and keep the abducting parent from bothering or harassing you and/or your children.

You can get a Protection Order without a lawyer. There's no fee to file this type of case. This won't be a permanent custody order. You may still need to get a Parenting Plan later.

If a judge made a temporary parenting plan or custody order very recently and didn't give you custody, try to talk to a lawyer before filing for a Protection Order. You may want to go back to family court to get an order there.

Married parents: If you and the abducting parent are married, you can file for divorce and ask for a temporary order giving you custody. You may be able to get an immediate restraining order.

Unmarried parents: If you and the other parent never married, you must file a petition for the court to decide parentage and ask for a temporary order giving you custody. If you can't get a lawyer or do this yourself, you could ask the prosecuting attorney to file for parentage. They can help, but it won't happen quickly.

The prosecutor represents the state's interest, not yours. They file parentage cases so they can get child support orders. They don't help with custody. You'll need to take part in the case to ask for a custody order. If you can get a lawyer to represent you, that lawyer can probably act faster than the prosecutor.

If you have an acknowledgment of parentage, and the deadline for a parent to rescind (to take back) the acknowledgement of parentage has passed, you can file a Petition for a Parenting Plan and ask for an immediate restraining order.

If you have a court order of parentage that doesn't mention custody, you should file a Petition for a Parenting Plan and ask for an immediate restraining

order.

6. Contempt

If you have a custody order that clearly says the children should be with you, and the other parent is violating that order by keeping the children, you can file for contempt to try to enforce your order.

Contempt is a good option when you know where the other parent is and the children aren't in immediate danger.

To win your motion for contempt, you'll need to prove all of these:

- There's a valid court order giving you custody
- The other person knows about the court order and could have followed it
- The facts show the other person plainly broke or did not follow (violated) the order
- You've given the person notice of the contempt hearing and a chance to be heard

At the contempt hearing, the judge can order the other parent to return the children to you, pay you at least \$100 penalty, and pay for your attorney fees and costs (if any). The judge can also order that you get make-up parenting time. If the other parent still refuses to return the children, you can ask for other penalties or even jail time to convince them to comply with the custody order.

7. Out of state

If you know that the children have been taken to another state, you should contact missing children's agencies. They often have contacts in other states and can get you ready for what may happen once you go to that state.

You should also **be in contact with a lawyer in that state**. Legal services offices for clients with low incomes exist throughout the U.S. (<https://www.lsc.gov/about-lsc/what-legal-aid/i-need-legal-help>) Many handle child abduction cases. They may require a referral from your local office.

An out-of-state lawyer or police officer may just need a certified copy of your custody order to pick up your children. Or they may need a writ from a Washington court. They may need to use your Washington order to get a writ in their state. **Ask a lawyer or advocate in that state what their procedure is.** You must be ready to go to that state at a moment's notice to pick up your children.

8. Writ of Habeas Corpus

A Writ of Habeas Corpus is a court order demanding some action from a sheriff or other person. In family law cases, the court order demands that a parent turn children over to the court.

A writ orders law enforcement to take custody of the children and **bring them to court**. The writ **won't** tell law enforcement to give the children to you. When law enforcement brings the children to court, a judge decides what happens to the children next.

Judges rarely use this powerful and extraordinary tool. It could be traumatic for the children to be taken from the abducting parent by law enforcement. The children could have to spend a night or two in foster care until they can get to court and see a judge.

You should ask for a writ in your custody situation **only as a last resort** when other things you've tried have failed, or if the other parent might disappear with the children if you did anything else. Don't use the writ just to try to get out of a longer court procedure, such as contempt or a petition to change parenting plan.

Go to [File for a Writ of Habeas Corpus](#) for forms and instructions.

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