

# One Minute Brief

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TOPIC: Parental Child Abduction Reports

## **ISSUE: What are law enforcement's duties when a parent reports that the other parent has taken, concealed, or withheld a child?**

Parental child abductions may mistakenly be treated as "family court matters" rather than criminal matters. California law imposes affirmative duties on law enforcement to accept reports of, and investigate, these incidents, regardless of the existence of family court proceedings or custody orders.

Penal Code section 14214 requires law enforcement to "immediately assist any person who is attempting to make a report of a missing person or runaway." A "missing person" includes "[a] child who has been taken, detained, concealed, enticed away, or retained by a parent," including when "[t]he person missing may be the victim of parental abduction." (Pen. Code, §§ 14214, 14215.)

## **Jurisdiction**

Primary investigative jurisdiction lies with the agency where the victim parent currently resides—not where a court order originated, where the taking parent resides, or where an exchange occurred. However, Penal Code section 14211 states that "[a]ll local police and sheriffs' departments shall accept any report, by any party." A reporting parent should not be turned away or told to report the matter elsewhere simply because another agency has primary investigative jurisdiction. The agency receiving the report must accept the report and promptly forward it to the appropriate agency for investigation.

## **Penal Code section 14211 requires law enforcement to:**

- Accept any report, by any party, of a missing person without delay.
- Give priority to the handling of these reports over those relating to property crimes.
- Immediately take the report and assess the reasonable steps necessary to locate the person using the forms, [checklists](#), and guidelines required by Penal Code section 13519.07.
- For missing persons under 21 years of age, or where there is evidence that the person is at risk:
  - Broadcast a "BOLO" without delay.
  - Within two hours, electronically transmit the report to the DOJ via CLETS for inclusion in the VCIC and NCIC databases.

## Custody Rights

Absent a court order, each parent has equal custodial rights by operation of law. (Fam. Code, § 3010.) The absence of a custody order does not preclude a criminal investigation.

## Investigation

When a parent reports that the other parent has wrongfully retained or concealed a child beyond an agreed exchange or without consent, law enforcement officers should generally prepare both:

- a Missing Person Report; and
- a Child Concealment Report.

The fact that a dispute may also be addressed in family court does not preclude a criminal investigation or criminal prosecution if the statutory elements are satisfied. Nor does the existence of a family court proceeding eliminate law enforcement's independent duty to investigate potential criminal violations.

## Applicable Crimes

Depending on the circumstances, parental child abduction may constitute a violation of:

- **Penal Code § 278:** A person *without lawful custody* maliciously takes, conceals, or withholds a child from the lawful custodian.
- **Penal Code § 278.5:** A parent or other person *with lawful custody* maliciously takes, conceals, or withholds a child from another lawful custodian, depriving that person of custody or visitation.
- **Penal Code § 207(a):** A person commits kidnapping of a child under the age of 14, which requires only the amount of force necessary to move an unresisting child or infant. (Pen. Code, § 207(e).)

## Civil Liability

Agencies should consult their legal counsel regarding potential civil liability arising from failure to comply with the statutory duties imposed by Penal Code sections 14211 and 14214.

**BOTTOM LINE:** A report of parental child abduction is not a "family court matter." California law requires law enforcement to accept and investigate reports that a child has been taken, concealed, detained, or withheld by a parent, even when the child's location is known, no custody order exists, or family court proceedings are pending. The agency receiving the report must accept it without delay and take the required investigative steps, including, if necessary, forwarding it to the agency with primary jurisdiction.

*This information was current as of the publication date. It is not intended as legal advice. It is recommended that readers check for subsequent developments and consult legal advisors to ensure currency after publication. Local policies and procedures regarding application should be observed.*