

August 5, 2010

Custodial Interference

What happens if parties to a divorce or paternity case have gone through all of the mediation and court hearings required to reach a parenting plan that establishes child custody, but one parent just won't comply with the Court's order? In New Mexico, the non-complaint party may be charged with the crimes of custodial interference or unlawful interference with custody.

These crimes are similar and both are fourth degree felonies which means that a person found to be guilty of either crime, may be imprisoned for up to 18 months and fined up to \$5000. In addition, the offending parent may suffer additional consequences in the family law court with awards of attorneys fees and costs. The crime of custodial interference is committed when one parent maliciously takes, detains, conceals or fails to return a child to the other parent by the terms of the parenting plan or custody orders without good cause and with the intent to deprive the other party of custody for a protracted period of time or permanently.

In contrast, the crime of unlawful interference with custody is committed when a party who does NOT have a right to custody of a child maliciously takes, detains, conceals or fails to return the child to the party who rightfully has custody. Any law enforcement officer that is called upon to investigate a charge of custodial interference or unlawful interference with custody may take a child into protective custody, if that officer believe that a person may flee with the child. The child may then be returned to the custodial parent or may be held in a community-based shelter until a civil court can hold a hearing to determine or enforce custody.

While law enforcement has the authority to investigate and take action in both types of custodial interference cases, it can be very difficult to track a child down once a parent or other party has taken them. Thus, any person faced with such a situation should call law enforcement immediately and should also consult an experienced child custody attorney to make sure that their custodial rights are protected once the child is recovered.

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