

## CRIMINAL LAWS WHICH MAY IMPACT THOSE WHO LEAVE WITH CHILD(REN)

This document, created by the End Domestic Abuse Wisconsin – Wisconsin Coalition Against Domestic Violence – Legal Department, does not constitute legal advice.

	No Court Order Exists	If Court Order Exists	Married	Unmarried	Lesbian/Gay
<p><b>Wisconsin Statutes that apply:</b></p> <p><b>*940.31 = Kidnapping</b></p> <p><b>948.30 = Abduction of Child</b></p> <p><b>**948.31 = Interference with Custody</b></p>	<p><a href="#">948.30(1)(a)</a> – Any person who takes a child who is not his or her own (by birth or adoption) from the child’s home or custody of legal guardian.</p> <p><a href="#">948.30(1)(b)</a> – Any person who detains a child when child is away from home or custody of legal guardian.</p> <p><a href="#">948.30(2)(a)</a> – Any person who, by force or threat of imminent force, takes a child from the child’s home or custody of legal guardian.</p> <p><a href="#">948.30(2)(b)</a> – Any person who, by force or threat of imminent force, detains a child when child is away from home or custody of legal guardian.</p> <p><b>**948.31(2)</b> – Anyone who causes a child to leave, takes a child away, or withholds a child for more than 12 hours from a parent or legal custodian without consent.</p> <p><b>**948.31(3)(a)</b> – A parent, or person acting under the directions of a parent, intentionally conceals a child from the child’s other parent.</p> <p><b>**948.31(3)(b)</b> – After being served with process in an action affecting the family but prior to final or temporary court order, a parent takes a child with intent to deprive the other parent of physical custody.</p>	<p><b>**948.31(1)(b)</b> – Anyone who intentionally causes a child to leave, takes a child away, or withholds a child for more than 12 hours beyond the court-approved period of physical placement or visitation period from a legal custodian with intent to deprive the custodian of his or her custody rights without the consent of the custodian.</p> <p><b>**948.31(3)(a)</b> – Parent, or person acting under the directions from the parent, intentionally conceals a child from the child's other parent.</p> <p><b>**948.31(3)(c)</b> – Parent, or person acting under the directions of a parent, after a court order is issued, takes a child from or causes a child to leave the other parent or withholds a child for more than 12 hours beyond court appointed visitation.</p>	<p><a href="#">948.30</a> – Abduction of another’s child, if the non-legal (biological or adoptive) parent leaves with the child.</p> <p><b>**948.31(2)</b> – Anyone who takes a child away or withholds a child for more than 12 hours from a parent.</p> <p><b>**948.31(3)(a)</b> – Parent, or person acting under the directions from the parent, who intentionally conceals a child from the child's other parent.</p> <p><b>**948.31(3)(b)</b> – After being served with process in an action affecting the family but prior to final or temporary court order, takes a child with intent to deprive the other parent of physical custody.</p> <p><b>**948.31(3)(c)</b> – After a temporary or final court order is issued, takes a child from or causes a child to leave the other parent or withholds a child for more than 12 hours beyond court appointed visitation.</p>	<p><a href="#">948.30</a> – Abduction of another’s child, if the non-legal (biological or adoptive) parent leaves with the child.</p> <p><b>**948.31(2)</b> – Anyone who takes a child away or withholds a child for more than 12 hours from a parent, the mother, or the father with legal custody, without consent.</p> <p><b>**948.31(3)(a)</b> – Parent, or person acting under the directions from the parent, who intentionally conceals a child from the child's other parent.</p> <p><b>**948.31(3)(b)</b> – After being served with process in an action affecting the family but prior to final or temporary court order, takes a child with intent to deprive the other parent of physical custody.</p> <p><b>**948.31(3)(c)</b> – After a temporary or final court order is issued, takes a child from or causes a child to leave the other parent or withholds a child for more than 12 hours beyond court appointed visitation.</p>	<p><a href="#">948.30</a> – Abduction of another’s child, if the non-legal (biological or adoptive) parent leaves with the child.</p> <p><b>**948.31(1)(b)</b>- Anyone who intentionally causes a child to leave, takes a child away . . . from a legal custodian with intent to deprive the custodian of his or her custody rights without the consent of the custodian.</p> <p><b>**948.31(2)</b> – Anyone who causes a child to leave, takes a child away, or withholds a child for more than 12 hours from a parent or the mother, if she is unmarried, without consent.</p> <p><b>**948.31(3)(a)</b> – Parent, or person acting under the directions from the parent, who intentionally conceals a child from the child's other parent.</p> <p><b>**948.31(3)(c)</b> – After a temporary or final court order is issued, takes a child from or causes a child to leave the other parent or withholds a child for more than 12 hours beyond court appointed visitation.</p>
<p><b>Possible Consequence</b></p> <p><b>Could be charged with:</b></p>	<p><a href="#">948.30(1)</a> - Class E Felony  <a href="#">948.30(2)</a> – Class C Felony  <a href="#">948.31(2)</a> – Class I Felony  <a href="#">948.31(3)(a)</a> – Class F Felony  <a href="#">948.31(3)(b)</a> – Class F Felony</p>	<p><a href="#">948.31(3)(c)</a> - Class F Felony  <b>Note:</b> If a criminal action is filed, a court might also change a family law order such as custody or physical placement.</p>	<p><a href="#">948.30</a> - Class E or C Felony  <a href="#">948.31(2)</a> - Class I Felony  <a href="#">948.31(3)(b)</a> - Class F Felony  <a href="#">948.31(3)(c)</a> - Class F Felony</p>	<p><a href="#">948.30</a> - Class E or C Felony  <a href="#">948.31(2)</a> - Class I Felony  <a href="#">948.31(3)(b)</a> - Class F Felony  <a href="#">948.31(3)(c)</a> - Class F Felony</p>	<p><a href="#">948.30</a> – Class E or C Felony  <a href="#">948.31(2)</a> – Class I Felony  <a href="#">948.31(3)(c)</a> - Class F Felony</p>

**NOTE:** \*Kidnapping applies to all individuals who leave with children as defined in [Wis. Stats. Sec. 940.31](#): By force or threat of imminent force carries, seizes or confines another without his or her consent and with the intent to cause him or her to be secretly confined or imprisoned or to be carried out of this state or to be held to service against his or her will. This is a Class C Felony – a fine not to exceed \$100,000 or imprisonment not to exceed 40 years, or both.

**\*\*Affirmative Defense** for [Wis. Stats. Sec. 948.31](#): If a charge is filed, the law provides an Affirmative Defense. This means the party has a legally acceptable reason for taking the action. [Sec. 948.31\(4\)\(a\)](#) provides an affirmative defense if the child is taken by a parent to protect his or her child in a situation in which the parent *reasonably believes* that there is a threat of physical harm or sexual assault to the child or him or herself, or consent is given by the other parent or legal custodian, or otherwise authorized by law.

**Felony Sentencing:** Class C Felony - a fine not to exceed \$100,000 or imprisonment not to exceed 40 years, or both.  
Class E Felony - a fine not to exceed \$50,000 or imprisonment not to exceed 15 years, or both.  
Class F Felony - a fine not to exceed \$25,000 or imprisonment not to exceed 12 years and 6 months, or both.  
Class I Felony - a fine not to exceed \$10,000 or imprisonment not to exceed 3 years and 6 months, or both.

NOTE: The mother of a nonmarital child has legal custody of the child unless the court grants custody to another person or transfers custody to an agency. [Wis. Stat. Sec. 48.435](#).

**CIVIL LAWS WHICH MAY IMPACT THOSE WHO LEAVE WITH CHILD(REN)**

This document, created by the End Domestic Abuse Wisconsin – Wisconsin Coalition Against Domestic Violence – Legal Department, does not constitute legal advice.

	No Court Order Exists	If Court Order Exists	Married	Unmarried	Lesbian/Gay
<p><b>Wisconsin Statutes that apply:</b></p> <p><a href="#">767.117</a> = <b>150-mile rule; 90-day rule; Concealing a child</b></p> <p><a href="#">767.43</a> = <b>Visitation Rights</b></p> <p><a href="#">767.481</a> = <b>Moving Child’s Residence</b></p>	<p>If an action affecting the family has been started (other than for maintenance or property division), <a href="#">767.117(1)(c)</a> prohibits (without consent or court order): Establishing a residence with a minor child of the parties outside the state or more than 150 miles from the residence of the other party within the state, removing a minor child of the parties from the state for more than 90 consecutive days, or concealing a minor child of the parties from the other party.</p>	<p>If visitation rights have been granted under <a href="#">767.43(1)</a> or <a href="#">767.43(3)</a> to someone such as a grandparent, <a href="#">767.43(5)</a> prohibits interference with those visitation rights.</p> <p><a href="#">767.481</a> Requires that a parent with legal custody of and physical placement rights to a child provide the other parent (as long as that other parent has not been denied periods of physical placement) with 60 days written notice of the parent’s intent move the child to another state, to move the child within this state and 150 miles or more from the other parent, or to remove the child from this state for more than 90 days.</p>	<p>If an action affecting the family has been started (other than for maintenance or property division), <a href="#">767.117(1)(c)</a> prohibits (without consent or court order): Establishing a residence with a minor child of the parties outside the state or more than 150 miles from the residence of the other party within the state, removing a minor child of the parties from the state for more than 90 consecutive days, or concealing a minor child of the parties from the other party.</p>	<p>If an action affecting the family has been started (other than for maintenance or property division), <a href="#">767.117(1)(c)</a> prohibits (without consent or court order): Establishing a residence with a minor child of the parties outside the state or more than 150 miles from the residence of the other party within the state, removing a minor child of the parties from the state for more than 90 consecutive days, or concealing a minor child of the parties from the other party.</p>	<p>If an action affecting the family has been started (other than for maintenance or property division), <a href="#">767.117(1)(c)</a> prohibits (without consent or court order): Establishing a residence with a minor child of the parties outside the state or more than 150 miles from the residence of the other party within the state, removing a minor child of the parties from the state for more than 90 consecutive days, or concealing a minor child of the parties from the other party.</p>
<p><b>Possible Consequence</b></p> <p><b>The following action(s) could be filed against a person:</b></p>	<p>For violation of <a href="#">767.117(1)(c)</a>-contempt of court may be ordered under <a href="#">785.04(1)(a)</a> - <a href="#">(e)</a>.*</p>	<p>For violation of <a href="#">767.43(5)</a> - contempt of court may be ordered under <a href="#">785.04(1)(a)</a> and/or <a href="#">(c)</a>.*</p> <p>Under <a href="#">767.451</a>, a court may modify a legal custody and physical placement order if there is substantial evidence that the current custodial conditions (care and control of minor child) are physically or emotionally harmful to the best interest of the child.</p> <p>If an action is filed under <a href="#">767.481</a>, the nonmoving parent may object in writing within 15 days of notice. To avoid the move, the nonmoving parent must show that the move is unreasonable and not in the best interest of the child.</p>	<p>For violation of <a href="#">767.117(1)(c)</a> – contempt of court may be ordered under <a href="#">785.04(1)(a)</a> - <a href="#">(e)</a>.*</p>	<p>For violation of <a href="#">767.117(1)(c)</a> – contempt of court may be ordered under <a href="#">785.04(1)(a)</a> - <a href="#">(e)</a>.*</p>	<p>For violation of <a href="#">767.117(1)(c)</a> – contempt of court under <a href="#">785.04(1)(a)</a> - <a href="#">(e)</a>.*</p>

NOTE: \* **Contempt of Court Sanctions**, Wis. Stats. Sec. [785.04\(1\)](#):

- (a) Payment of a sum of money sufficient to compensate a party for a loss or injury suffered by the party as the result of a contempt of court.
- (b) Imprisonment may extend only so long as the person is committing the contempt of court or 6 months, whichever is the shorter period.
- (c) A forfeiture not to exceed \$2,000 for each day the contempt of court continues.
- (d) An order designed to ensure compliance with the prior order of the court.
- (e) Another form of sanction if (a) - (d) are deemed ineffective by the court.

**Exemption from contempt proceeding**, [Wis. Stats. Sec. 767.117\(3\)\(b\)](#):

- a) Fleeing was necessary to protect against physical abuse from the other party, and

b) Circumstances afforded no reasonable opportunity to obtain the court's prior permission.