

## **STOLEN CHILDREN**

STOLEN CHILDREN

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## STOLEN CHILDREN

The Uniform Child Custody and Jurisdiction Act is an agreement between states who have passed this legislation. It provides procedures that shall be followed in cases coming before the court which involve child custody disputes that extend beyond one or more state jurisdictions. It provides for the court where the matter is brought to make a determination of that court's authority to make decisions regarding its jurisdiction to hear the matter and to determine custody.

The Iowa Juvenile Code provides procedures for the court to follow when a child comes to its attention is without proper parental care and protection.

Children found in Iowa who have been stolen or who are with a noncustodial parent without the custodian's permission have the legal protection provided in the Iowa Code. Iowa children who are found in like circumstances in another state should be afforded the legal protection of that state's statutes.

Policy and procedures are set forth by the Department to assure legal protection for the child as provided in the Iowa Juvenile Code and the Uniform Child Custody and Jurisdiction Act.

### LEGAL BASIS

The legal basis for the policies in this chapter is Iowa Code Chapter 598A, "Uniform Custody Jurisdiction," and Iowa Code Chapter 232, "Juvenile Justice."

### IOWA CHILDREN FOUND OUTSIDE IOWA'S JURISDICTION

#### **Policy**

If the Department of Human Services has knowledge of the whereabouts of a child who is under Department guardianship or custody, or for whom the Department has supervision, and who has been removed from Iowa's jurisdiction without the Department's or the court's consent, immediate steps shall be taken to return the child to Iowa.

#### **Procedure**

The Department has three options for returning stolen children to Iowa:

- A. The worker can request the local law enforcement agency to issue a teletype to the law enforcement agency where the child is thought to be located. The following information must be provided in the teletype:
  1. The name, age, sex, race, and physical description of the child.

## STOLEN CHILDREN

IOWA CHILDREN FOUND OUTSIDE IOWA'S JURISDICTION (Cont.)**Procedure** (Cont.)

2. The legal status of the child; date of court order giving the Department custody, guardianship, or supervision; name of the Iowa judge; location of the court; name and address of the Department local office; and name and telephone number of the worker.
  3. The specific address of the child; name of the person whom the child is with, if known; and any specific information or concerns that the other jurisdiction should know about the child.
  4. A request that the child be taken into custody, the name of the person who should be notified when child is in custody, and the name of the person to whom the child can be released for return to Iowa.
- B. The Department worker can request the Iowa court to issue an arrest warrant on the person who has removed the child from Iowa. The arrest warrant is then transmitted by teletype to the law enforcement agency in the asylum state.
- C. Legal action (motion to enforce an Iowa custody decree in the asylum state, writ of habeas corpus, contempt) may be initiated in the asylum state.

**Comment**

If for some reason option A is not effective in returning the child, it will be necessary to use option B or C. However, option A is preferred for the following reasons:

- A. Option A is voluntary between state agencies and may not require any court action in the asylum state.
- B. Action taken in option C will require the use of attorneys, and more likely than not, will require hiring attorneys licensed to practice in the asylum state. When an arrest warrant is needed, the county attorney would then be in charge of transmitting the information and warrant to the out-of-state authorities.
- C. If A or C is used, an arrest warrant could easily be obtained at a later date on kidnapping or child stealing charges or violating a custodial order if requested by the asylum state.
- D. Case law indicates that the actions in option C will generally require a hearing, at which the absconding party may challenge the jurisdiction of the Iowa court, and perhaps challenge the order itself.

## STOLEN CHILDREN

IOWA CHILDREN FOUND OUTSIDE IOWA'S JURISDICTION (Cont.)**Comment** (Cont.)

- E. If option B or C is used the procedures in A will still be needed to get the child back to Iowa.

**Enforcement of Custody Decrees****Policy**

Upon basis of a custody decree, the Department shall not go after the child for return to Iowa until notified by the authorities having jurisdiction of the child in the asylum state that all necessary legal procedures required by the asylum state have been met and the child can be released to the Department.

**Comment**

While an Iowa arrest warrant can be enforced out of state without legal proceedings, the same cannot be said for Iowa custody decrees. Custody decrees, along with Iowa contempt citations or Iowa writs of habeas corpus do not have independent extraterritorial effect. Nor do "orders directing the child be placed in custody." Although officials in other states may comply with these orders, they are not required to do so.

Child abductors generally have a right to hearing in the asylum state. Children usually will not be returned on the basis of an out-of-state custody decree until the hearing is held. It is the court's duty in the asylum state to ascertain whether the out-of-state custody decree is valid. This applies primarily to option C on page 2.

**Additional Requirements****Policy**

The Department shall cooperate with the asylum state in complying with any requests to expedite the child's return to Iowa.

**Comment**

The asylum state may have other requirements that must be met before a child may be released from that state's jurisdiction. These requests may include a bench warrant on the person who has removed the child, a court order directing the child be placed in protective custody, or a writ of habeas corpus.

## STOLEN CHILDREN

IOWA CHILDREN FOUND OUTSIDE IOWA'S JURISDICTION (Cont.)Additional Requirements (Cont.)**Procedure**

The Department shall immediately request the Iowa court to issue orders requested by the asylum state.

**Comment**

The Iowa court may be limited by statute in its ability to comply with the asylum state's request. It is the county attorney's responsibility to assist with legal issues with the authorities in the asylum state.

Return of the Child to Iowa**Policy**

Arrangements to return the child to Iowa are the responsibility of the local office of the Department, with assistance from the district office. The expense for the transportation of the child and any escort is the responsibility of the district. Out-of-state travel approval for a Department employee shall be obtained by the district from the Division of Community Services.

**Procedure**

When notice is received from the asylum state that the child is ready to return to Iowa, arrangements shall be made immediately to return the child to Iowa.

The person going after the child shall have an identification card, a certified copy of the court order of custody, guardianship or protective supervision and copies of any other orders the Iowa court has issued for return of the child. The local office should request the authorities in the asylum state to have available for the escort upon arrival copies of any enforcement orders entered in the asylum state.

**Comment**

It may be possible for the child to be brought to the terminal for the escort, if return is by air, so that the trip can be made in one day. If transportation is by car, the authorities in the asylum state may be willing to drive halfway with the child to save on time and distance. These arrangements shall be made between the Department's local office and the agency caring for the child in the asylum state.

## STOLEN CHILDREN

**STOLEN CHILDREN FOUND IN IOWA****Policy**

The Department cannot intervene in a situation involving a stolen child unless an Iowa court orders the Department to take temporary custody. In the absence of court guidance, children shall not be turned over to people on the basis of an out-of-state custody decree.

Stolen children found in Iowa from another state and brought to the attention of the Department by law enforcement, a public agency in another state, or an individual must be afforded the legal protection provided for them by the Code of Iowa.

Voluntary placement agreements shall not be considered a viable option in a contested custody matter, since the person having physical custody of the child is not the legal custodian. Therefore, a stolen child should never be placed into foster care on the basis of a voluntary placement agreement.

**Procedure**

If the local office of the Department is contacted by a public or private agency in another state about a child in their legal custody located within Iowa's jurisdiction, the out-of-state agency should be advised to send a teletype to the local law enforcement agency in the county where the child is reported to be located. (See "Procedures" under IOWA CHILDREN FOUND OUTSIDE OF IOWA'S JURISDICTION for required contents of the teletype.)

The out-of-state agency should also be advised of our willingness to provide care for the child upon order of the Iowa court. The local office of the Department shall notify law enforcement of the impending teletype and the need for a temporary custody order from the Iowa court before we will be able to place the child in shelter or foster care.

**Comment**

It is the Iowa court's duty to ascertain whether an out-of-state custody decree should be honored in Iowa.

When issuing a temporary custody order to the Department in cases of stolen children, the Iowa court has an option to:

- A. Include direction for the Department to release the child to the legal custodian.
- B. Set a time for a hearing to show cause why the out-of-state custody order should, or should not, be enforced.

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**STOLEN CHILD FOUND IN IOWA** (Cont.)**Comment** (Cont.)

- C. Set a time for a hearing on adjudication as a child in need of assistance.

**Responsibility of the Department in Custody Disputes****Policy**

The Department shall not turn a child over to the custodial parent if the noncustodial parent has brought the child into Iowa.

**Procedure**

In any contested custody dispute in which the Department is providing care for the child by order of the court, the court shall immediately be apprised of the situation if the custodial parent is demanding possession of the child. The court, not the Department, must make the decision whether to release the child.

**Comment**

The Department cannot evaluate competing custody claims. This is the court's responsibility. The Department shall take all these cases to the juvenile court for resolution prior to releasing a child on the basis of a teletype of an out-of-state custody decree.

Uniform Child Custody and Jurisdiction Act cases indicate that out-of-state custody decrees are not to be enforced without a hearing in the asylum state. Court action may not be necessary, however, if there is no real dispute as to custody, i.e., where the person absconding with the child is a stranger to the child and would have no conceivable basis for challenging any existing custody decrees. Even in this situation, however, there will probably be a court order, as the absconding party will probably be picked up pursuant to an arrest warrant, and the local court will probably provide for the disposition of the child.