

## INFORMATION PAPER

SUBJECT: Virginia laws regarding parental kidnapping and custodial interference  
DATE: 25 April 2012

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According to VCA § 18.2-47, it is unlawful for “[a]ny person who, by force, intimidation or deception, and without legal justification or excuse, seizes, takes, transports, detains or secretes another person with the intent to deprive such other person of his personal liberty or to withhold or conceal him from any person, authority or institution lawfully entitled to his charge”. This statute can apply to a parent who takes his child away from the child’s custodial parent in violation of a court order regarding custody or visitation rights. See also VCA § 18.2-49. When a child is removed from the jurisdiction of Virginia, the abduction becomes a felony and is subject to the provisions of the Parental Kidnapping Prevention Act, a federal law that applies the full faith and credit clause of the U.S. Constitution to state child custody determinations. (VA PRAC FAMILY LAW § 15:6 2011).

Absent a court order, Virginia will not prosecute a parent under Section 18.2-47. *Taylor v. Commonwealth*, 507 S.E.2d 89, 92 (Ct. App. 1998) (stating that a natural parent is “legally justified” to take custody of his child to the exclusion of the other parent when there is not a valid custody order in effect). In *Taylor*, the court based its decision on the rules of statutory construction. Section 18.2-47 does not provide a punishment for a parental abduction when a custody order is not in effect, meaning that if it was intended to apply in those situations the punishment would default to a Class 5 felony. Comparatively, the statute provides that a parent who violates a custody order would be guilty of a Class 1 misdemeanor or Class 6 felony. The court stated that “[t]o conclude that the legislature intended to punish parental abduction during the pendency of a custody proceeding as a lesser crime than the same act committed when no custody proceeding had been initiated defies logic.” *Id.* at 93.

Virginia does recognize a common law action for tortious interference with parental rights when a party interferes with a parent’s custodial or parental relationship with his/her minor child resulting in harm and damages. See *Wyatt v. McDermott*, 2012 WL 1377362 at \*3, \*7 (VA 2012) (holding that a father has a cause-of-action against an attorney and others who contributed to the unauthorized adoption of his child). Nevertheless, one of the affirmative defenses provided by the court includes the “substantially equal rights” defense. *Id.* at \*9 (noting that several states have refused to recognize this tort because of the fear that “intra-family warfare” could be escalated in divorce proceedings and custody disputes).

### Other Sources:

- 20 ALR 4th 823
- [http://www.missingkids.com/en\\_US/documents/CriminalCustodialInterference.pdf](http://www.missingkids.com/en_US/documents/CriminalCustodialInterference.pdf) (7/2006).

