



CRIMINAL JUSTICE BRANCH, MINISTRY OF JUSTICE
CROWN COUNSEL POLICY MANUAL

ARCS/ORCS FILE NUMBER: 56560-00	EFFECTIVE DATE: March 18, 2013	POLICY CODE: ABD 1
SUBJECT: Abduction of Children – Sections 282 and 283 <i>Criminal Code</i>		CROSS-REFERENCE: ALT 1 EXT 1 Practice Directive

POLICY

Children have the right to security, stability and continuity in their lives.

The purpose of these *Criminal Code* provisions is to prevent one parent from unilaterally taking exclusive possession of a child. The legislation is designed to ensure that parents obtain the Court’s permission before one parent’s right to possession is made paramount over the other parent’s rights.

The *Criminal Code* requires the consent of the Attorney General for a prosecution under section 283 (child abduction whether or not there is a custody order), and that may be given by Administrative Crown Counsel, Deputy Regional Crown Counsel or Regional Crown Counsel (see the Practice Directive entitled Consent of the Attorney General).

Administrative Crown Counsel should be consulted on charge assessment for an alleged offence under section 282 of the *Criminal Code* (child abduction in contravention of a custody order).

Under the policy on Alternative Measures for Adult Offenders - ALT 1, for child abduction offences, Regional or Deputy Regional Crown Counsel must approve any referral of a person for alternative measures consideration and also the specific alternative measures recommended in any Alternative Measures Report.

On charge assessment for alleged offences under section 282 or section 283, factors to be considered in deciding whether a prosecution is in the public interest include:

Factors in Favour of Prosecution

- 1. A child has been taken from a situation where there has been some degree of permanency, contrary to a settled (written or otherwise), ongoing arrangement.**

2. The offending parent has taken the child while there are outstanding court proceedings.
3. The offending parent has taken the child surreptitiously and disappeared.
4. The person is attempting to take, or has taken, the child out of the province.
5. There are reasonable and probable grounds to believe the child has been taken in contravention of a foreign custody order.
6. The offending party has repeatedly breached this section 282 or 283.
7. There is a possibility the child is in danger and the provisions of the *Child, Family and Community Service Act* intended to alleviate that danger are either inadequate or inappropriate.
8. There are reasonable grounds to believe that the offending party is incapable of looking after the child (for example, due to substance abuse or diminished capacity).

Factors Against Prosecution

1. A parent has taken a child away from the matrimonial home during the course of a recent marital breakup or separation, and the issue of custody should be resolved by agreement, through counsel or in family court.
2. The offending parent is merely late in returning a child from an access visit.
3. There are conflicting court orders.
4. The guardianship, parenthood, possession or charge of the child may be subject to applicable legislation such as: section 30 *Youth Justice Act*, sections 39 and 40 *Family Law Act*, section 32 *Child, Family and Community Service Act*.
5. A less onerous civil remedy is available and would be more appropriate in the circumstances.

DISCUSSION

The purpose of these provisions of the *Criminal Code* is to prevent one parent from unilaterally taking exclusive possession of the child and to encourage the parties to attend court and abide by court orders to resolve initial and ongoing custody and access issues.

An offence lies under section 282 where a parent has been deprived of a right of access by which the lawful care or charge of the child was temporarily transferred to that parent. (R. v. Petropoulos (1990) 59 CCC (3d) 393 BCCA)

Extradition of a parent may be possible from some countries, but an extradition order will not in itself result in the return of the child. Therefore, any consideration of extradition proceedings must involve an analysis of the public interest factors in prosecuting the parent and the effect on the welfare of the child. See policy EXT 1.

Crown Counsel can advise the complainant parent to consider the use of civil procedures through the Hague Convention relating to international child abduction. The complainant may be advised to contact the appropriate lawyer at the Legal Services Branch in Victoria. It should be noted that, for certain countries, a decision to prosecute under the *Criminal Code* could prevent the return of the child through Hague Convention procedures.