

Policy:

**Abduction of Children by Parent/Guardian**

Policy Code:

**ABD 1**

Effective Date:

March 1, 2018

Cross-references:

[ALT 1](#) [CHA 1](#) [EXT 1](#)

To prevent one parent from unilaterally taking exclusive possession of a child, the *Criminal Code* contains two offences: one for parental abduction of a child in contravention of a custody order (section 282), and one for depriving a person, who has the lawful care or custody of a child, of the possession of that child whether or not there is a custody order (section 283).

Administrative Crown Counsel should be consulted before concluding charge assessment for an alleged offence under section 282 of the *Criminal Code*.

The *Criminal Code* requires the consent of the Attorney General for a prosecution under section 283, and that may be given by an Administrative Crown Counsel, or by a Regional Crown Counsel, Director, or their respective deputy.

Whenever a Report to Crown Counsel contains information that the location of the child is unknown, or there is a possibility the child may be removed from the province, time is of the essence in completing a charge assessment. If a charge is approved, a warrant should be requested as soon as possible so safeguards may be initiated to locate the child and prevent their removal.

Under *Alternatives to Prosecutions – Adults* ([ALT 1](#)), for child abduction offences, a Regional Crown Counsel, Director, or their respective deputy must approve any referral of a person for alternative measures consideration and 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 meets the public interest test in *Charge Assessment Guidelines* ([CHA 1](#)), include:

### Factors in Favour of Prosecution

- 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
- the offending parent has taken the child while there are outstanding court proceedings
- the offending parent has taken the child surreptitiously and disappeared
- the person is attempting to take, or has taken, the child out of the province
- there are reasonable and probable grounds to believe the child has been taken in contravention of a foreign custody order
- the offending party has previously breached section 282 or 283
- there is a possibility the child is in danger and the provisions of the *Child, Family and Community Service Act* are either inadequate or inappropriate to alleviate that danger
- 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

- 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 is expected to be resolved by agreement, through counsel or in family court
- the offending parent is merely late in returning a child from an access visit
- there are conflicting court orders
- 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*
- a less onerous civil remedy is available and would be more appropriate in the circumstances
- in a case of international parental child abduction, the commencement of a prosecution could prevent the return of the child through the Hague Convention on the Civil Aspects of International Child Abduction process

## International Parental Child Abduction

### Extradition

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 (*Extradition and Mutual Legal Assistance* ([EXT 1](#))).

### Consulting Legal Services Branch about Civil Proceedings through the Hague Convention

Crown Counsel may advise the complainant parent to consider the use of civil procedures through the Hague Convention, which relate to all of the types of international child abduction covered by sections 280, 281, 282 and 283 of the *Criminal Code*. Crown Counsel may advise the complainant to contact the appropriate lawyer at the Legal Services Branch in Victoria (see BC Ministry of Attorney General website on [International Child Abduction](#)).

When considering a charge assessment for an alleged offence involving international parental child abduction, Crown Counsel should liaise with the central authority at the Legal Services Branch to obtain their assistance in determining whether, in consideration of the public interest test, the prosecution of a *Criminal Code* offence would support or undermine the most effective means of returning the child to the parent in Canada.

The Legal Services Branch may be able to assist by advising whether the civil procedures through the Hague Convention process are available as an optional or concurrent approach: for example, whether the country to which the child has been taken is bound by the Hague Convention, or whether it has a history of not returning children despite applying the Convention.

In some cases, a decision to prosecute under the *Criminal Code* could prevent the return of the child through the Hague Convention process. This issue generally only arises in Hague Convention cases where the child is very young and has been in the sole or primary care of the taking parent for a significant period of time. When considering a case against the taking parent in these circumstances, a foreign court may be concerned about an outstanding or contemplated criminal charge against that parent in British Columbia. If the taking parent faces arrest and incarceration upon returning to B.C., the foreign court may find that it is not in the child's best interests to be suddenly removed from that parent's possession and handed over to another person or parent in B.C. In such a case, the foreign court may either decline to make a return order, or make the order but stay enforcement, pending confirmation that the taking parent will not be arrested on returning to B.C. with the child.