

The Other Parent has Taken My Child

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- ❖ Read this only if you live in the state of Washington.
 - ❖ You can find all the fact sheets we link to here at WashingtonLawHelp.org.
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Should I read this?

Yes, if the other parent or person claiming the right to legal custody has taken your children away from you (with or without a court order). It is always best to talk to a lawyer. This publication is no substitute for legal advice. It does have

- Resources and suggestions.
- Some information about whether and how to get a **writ of habeas corpus**, a special order requiring the police to take steps to get your child back.

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- ❖ Read to the end before deciding what to do.
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I have a court order granting me custody. The other parent has taken my child. What should I do?

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- ❖ “Custody order” here can mean a temporary or permanent parenting plan or residential schedule, or a custody order that is part of a Parentage, Nonparent Custody, or Order of Protection case.
 - ❖ “The other parent” here can also mean a non-parent with court-ordered custody or visitations rights, like a grandparent.
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If you are **sure** the other parent has abducted your child, do these right away:

- Call the Sheriff's Department. Here is an [online list](http://washeriffs.org/counties.htm) (<http://washeriffs.org/counties.htm>) of sheriff's departments in the state of Washington.
- Go to your local police department to file a custodial interference report. Insist on speaking to someone who handles child abductions. Ask them to enter the descriptive information about your child into the [National Crime Information Center \(NCIC\)](#) computer.
- If law enforcement does not enter information about your child into the NCIC computer, contact a local missing children's clearinghouse (<http://www.missingkids.com/Clearinghouses> has a list). Federal law requires them to make the entry.

❖ Entry into the computer may help you find the child but without a court order. It will not require the cops or sheriff to pick up your child. Wait until after you have the needed court orders before insisting on this computer entry.

- Call the National Center for Missing and Exploited Children, 1-800-843-5678, to report your child as missing.
- Contact non-profit missing children's organizations (such as [Operation Lookout](#), (425)-771-7335). They may be able to help you organize your search or get legal help.
- You can ask the police or prosecutor to file criminal charges against the abductor. In most cases, the abductor must be violating (breaking) an existing custody order. There are exceptions to this. Check with local law enforcement.
- If charges are filed, make sure law enforcement enters the state felony warrant in the NCIC computer. If the abductor has fled the state, ask the prosecutor to apply for a federal Unlawful Flight to Avoid Prosecution (UFAP) warrant. This will get the FBI and other federal agencies to help.

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- ❖ If there is any risk the abductor will remove or has removed your child from the United States, immediately call the U.S. Department of State, Children’s Issues at 1-202-501-4444 or 888-407-4747. If they have not yet left the country, you can ask for a passport hold. There is a 1-year limit for filing under the Hague Convention, the treaty on international child abductions. See the State Department’s [website](https://travel.state.gov/content/childabduction/en/from.html) on international child abduction issues,
<https://travel.state.gov/content/childabduction/en/from.html>.
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- **You should search on your own for your child.** Parents very often can find their children on their own and get them back peaceably without involving the courts. You can:
 - Call [Operation Lookout](#) at (425) -771-7335 for advice, help, and referrals.
 - If your children are school age, **ask the school** to notify you when another school asks for their records. Then you will know where the other parent is enrolling the child.
 - **Have your health care provider** tell you if the child’s medical records are requested and from where. The abducting parent may seek transfer of your child’s records, especially if the child has special health problems.
 - If you and the abducting parent share **joint credit cards**, information from the company that issued the cards about where the other parent is using them can help you track their movements. A credit reporting agency might also give you information about the abducting parent’s whereabouts.
 - If you know where the abducting parent has a **bank account**, the bank may be able to tell you where the account was transferred or where withdrawals or deposits are being made.

- Check with the abducting parent's **employer**.
- Check with the other parent's **friends and/or relatives**.
- Check at any of the abducting parent's "**hangouts**."
- Any **other caregivers** your child had may know the child's and abducting parent's location.
- If **Child Protective Services (CPS)** has ever gotten complaints or reports about the abducting parent, you should report the abduction to CPS. Even if there are no prior complaints, you should make a report to CPS now if there is any risk of harm to your child now. CPS can look out for other referrals and let you know about them. If they have the abductor's address, they may require a court order before they can release it.

❖ **Be discreet and non-threatening.** Do not jeopardize your efforts by alerting the abductor of your intent.

What if I do not have a custody order?

Get one! The police may not be able to help until you get a custody order. You must call them first and make a report anyway.

❖ The rest of this section explains what to do right away to get a custody order.

If you and the abducting parent are married, you can file for divorce and ask for a temporary order giving you custody. You must file a motion for temporary orders, schedule a court hearing, and give the other parent notice. You may be able to get an emergency temporary custody order.

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- ❖ You can file for divorce and temporary orders on your own. Visit www.washingtonlawhelp.org for packets with forms and instructions, or for online interviews that will create the court forms you need. It is better if you can afford a lawyer.
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If there has been any physical violence or threat of it against you/your child by the abducting parent, you can apply for a domestic violence protection order (DVPO) to keep the abducting parent from bothering or harassing you and/or your children. It can also give you custody.

Even if you and the abducting parent were not married, you can get a DVPO if you had the child, lived, or were in a relationship together. Read [Domestic Violence: Can the System Help Me](#) to learn more.

You can get a DVPO without a lawyer. There is no filing fee. You first get a two-week temporary order (an *ex parte* order). Then the sheriff tries to serve the abducting parent before you return to court for a "permanent" (one year) Protection Order. At that return hearing, you should offer all the evidence you can about abuse. This might include police reports, medical records, and witnesses' written statements.

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- ❖ **Protection order forms are available from** the court clerk or your local domestic violence program, or call the National Domestic Violence Hotline 1.800.799.7233. Or use our do-it-yourself interview program, [Get a Domestic Violence Protection Order](#), to fill out the forms at WashingtonLawHelp.org.
 - ❖ Talk to a lawyer before filing for an Order for Protection if the court has entered a temporary parenting plan or custody order very recently.
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If you cannot get the other parent personally served, you may be able to get court permission to serve by certified mail at their last known address. Then the court will enter your permanent order if the other parent does not show up at the hearing. The permanent protection order acts as a custody order.

If you and the other parent are not married and you do not need a protection order, you must file a petition for the court to decide parentage and a motion for a temporary custody order. [Filing a Petition to Decide Parentage](#) has forms and instructions. You can also hire a lawyer or ask the prosecuting attorney to file for you. **The prosecutor represents the state's interest, not yours**, but can help you get a temporary custody order.

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- ❖ It will take time before the prosecutor can file all the needed papers. You should get a private lawyer to do this for you if possible.
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We were never married. The child's birth certificate has both our names. Is that like a custody order?

No. Unmarried parents do not have legal custody, no matter what the birth certificate says. If there is no custody order, you must file for parentage.

We were never married. We do not have a custody order. Does having an acknowledgment of parentage help me?

Probably not. The parents sign an Acknowledgment of Parentage and file it with Vital Records. **It is not a court order.** If the deadline for a parent to rescind (take back) the acknowledgement has passed, you can file a Petition for a Parenting Plan and get a temporary custody order. Use [Petition for a Parenting Plan, Residential Schedule and/or Child Support: Parentage Cases](#).

We have a court order of parentage. It does not talk about custody. What can I do?

You should file a Petition for a Parenting Plan and a motion for a temporary custody order. Use [Petition for a Parenting Plan, Residential Schedule and/or Child Support: Parentage Cases](#).

I have a custody order now. What next?

Do everything listed above in *I have a court order granting me custody. The other parent has taken my child. What can I do.* You can do some things at the same time.

Example: you should still file a custodial interference report right away.

I have just filed (for a DVPO, parenting plan, or other). I do not have a custody order yet. What can I do until I get an order?

You can be doing everything else listed above, such as contacting missing children's organizations and searching for your child through various records.

What if I already know where my child is?

If your children are still in the immediate area or you know **exactly** where they are, you can try to get them back. Do not breach the peace or put yourself or the children in harm's way.

1. **If your child is in school or day care, you may pick up the child there.** If you already have a custody order, you must show the school or care provider a certified copy. You may ask the police to go with you to keep the peace. They will not enforce your order.

❖ This works best if you already know the school staff. In a custody case, the school may have a policy of only returning the child to the parent who placed the child there. The other parent may have told the school not to release the child to you.

2. **If friends or relatives of the abducting parent who are sympathetic to you are caring for your child,** you may be able to get them to give you the child or agree to try to get the other parent to return the child.
3. **You may be able to convince the other parent to return the child.** A parent who does not usually have full-time responsibility for a child may return the child when things get too hard. The other parent's friends or family may help you if

they get tired of helping the other parent. If you can go to the other parent's home to try this without the risk of violence, bring a support person (or the police).

4. **Do not break and enter or try a dramatic rescue.** This could cause your child more emotional damage and you could face arrest!

❖ **WARNING:** Check the courts where you and the other parent live. See if the other parent has filed a custody action. **If the abducting parent has gotten an ex parte (emergency) custody order, you may not be able to pick up the child.** You should receive papers notifying you of a hearing date. Go to that hearing to explain why the other parent should return your child to you.

What if the child is out of state?

- You should **contact missing children's agencies.** They often have contacts in other states and can get you ready for what may happen once you go to that state.
- You should **be in contact with a lawyer in that state.** Legal services offices for clients with low incomes exist throughout the U.S. Many handle child abduction cases. They may require a referral from your local office. See contact info below.

❖ An out-of-state lawyer or police officer may just need a certified copy of your custody order to pick up your child. OR they may need a writ from a Washington court. They may need to use your Washington order to get a writ in their state. **Ask a lawyer or advocate in that state what their procedure is.** You must be ready to go to that state at a moment's notice to pick up your child.

What is a Writ of Habeas Corpus?

It is a court order demanding some action from a sheriff or other person. In family law cases, the court demands that one parent turn a child over to the court.

Courts use this powerful tool and extraordinary measure rarely. You should ask for a writ in your custody situation only when other measures have failed. A writ gives law enforcement the power to

- break and enter to find your child
- arrest anyone who stands in the way of getting the child back

❖ Law enforcement charges for service of a writ. The court does not waive (excuse) this fee.

How do I get a writ?

It depends on the county. Generally, you file a petition with a copy of the order giving you custody. The court will decide whether to give you a writ and whether to give law enforcement the power to use forcible entry or arrest to get the children back.

The following counties have their own forms and procedures (you must talk to their clerk or family law facilitator to learn for more):

- Chelan
- Clark
- Cowlitz
- King
- Klickitat
- Pend Oreille
- Snohomish

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- ❖ Use our [Filing a Petition for a Writ of Habeas Corpus](#) packet if your county does not have its own forms.
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Get Legal Help

Outside King County, call the CLEAR Hotline at 1-888-201-1014 weekdays between 9:15 am - 12:15 pm.

In King County, call 2-1-1 weekdays between 8:00 am - 6:00 pm. They will refer you to a legal aid provider.

Seniors (age 60 and over) can also call CLEAR*Sr at 1-888-387-7111 (statewide).

You can also apply **online** with CLEAR*Online: nwjustice.org/get-legal-help.

This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice.

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