

November 4, 1997

**LEGAL BULLETIN NO. 97-11** (Rescinds Legal Bulletins 93-1 and 97-10)

SUBJECT: Child Custody Disputes

Some of the most difficult situations that confront police officers involve child custody matters. These disputes frequently arise when one parent fails to surrender a child for the other parent's court ordered visitation or custody privilege. Officers are often confronted with an arguing parent waiving a divorce decree and demanding that the officer seize the child from the other parent. There are a number of facts and circumstances that may exist which may influence the action the officer should take.

The following represent the five (5) types of situations that most often confront officers.

**1. No child custody or divorce decree exists.**

A. Parents have never been married.

- (1) An officer generally should not become involved in transferring custody of any children in this situation.
- (2) Parties should be advised to seek legal advice from an attorney.
- (3) As an exception to (1) above, the officer should take action only if it appears to the officer that the child is in danger. Refer to Procedural Instruction 95-10, Annex C if the child appears to be in danger. The officer should contact the Juvenile Section as soon as possible.
- (4) If the officer feels there are circumstances which need explanation or possible follow-up investigation, the officer may complete a Form 189 P.D., Child Custody Violation, setting out the circumstances. For example, even a parent who has never been married to the other parent may commit the crime known as Parental Kidnapping. The officer should contact the Juvenile Section for guidance and a copy of any report taken should be forwarded to the Juvenile Section.

B. Parents are married and living together.

- (1) In this situation, each parent has a legal right to custody. A parent's legal right to custody cannot be transferred to a third party in order to prevent the other parent from obtaining custody. For example, if a mother leaves a child with a babysitter and the child's father goes to pick the child up, the father has a legal right to custody, not the babysitter.
- (2) In these situations, the officer should follow the guidelines under A. above. An officer should not become involved in transferring custody in these situations except as detailed in Section A.

C. Parents are married, living apart and there is a petition for dissolution of marriage filed but no child custody order or divorce decree exists.

- (1) In Missouri, a divorce is known as a dissolution of marriage. The parent who has physical custody of the child at the time of the filing of a petition for dissolution of marriage retains custody until the court enters a custody order.
- (2) If possible, the officer should request a copy of the petition which has been filed from the parent who has filed for dissolution. That person is known as the "Petitioner." The other parent is known as the "Respondent."
- (3) The Juvenile Section should be contacted as soon as possible for specific instructions. If the child is in the custody of the Respondent, a child custody violation may be occurring and a Child Custody Violation report may be appropriate. Copies of the petition of dissolution, if available, should be attached to the report whenever possible.
- (4) No transfer of custody should take place in this situation until review and specific instructions to do so by the Juvenile Section.

D. Situations not covered above.

There may be other situations which arise which may not fall into the categories above. An officer should contact the Juvenile Section for guidance in other situations which arise.

2. **Child custody orders or decrees issued by Missouri Courts.**

A. An officer who is presented a custody order or divorce decree containing child custody provisions issued by a Missouri court should examine the decree carefully in order to determine whether one parent is in violation of the Court Order.

(1) Decrees which only specify "every other weekend" or "reasonable visitation rights" are not specific enough for an officer to enforce.

(2) The officer should look for specific dates that can be verified and attempt to confer with both parents to determine whether or not they have entered into any informal agreement to modify the visitation terms.

B. The officer should attempt to determine from the parties whether or not any other order may exist that has been more recently obtained by the other parent.

C. If an officer determines that a valid court order exists and the parent with the children has violated that court order, the officer should initiate a report including all of the details known to the officer and entitle the report "Child Custody Violation."

(1) The Juvenile Section should be contacted as soon as possible for specific instructions. An officer should not transfer custody unless an emergency exists or unless specifically instructed to do so by the Juvenile Section.

(2) Copies of any court orders should be attached to the report whenever possible.

**3. Custody Orders or Divorce Decrees Issued by Courts in States other than Missouri.**

- A. An officer presented with a custody order or divorce decree from another state which contains specific direction as to which parent is entitled to custody should examine the decree to determine whether or not it is a certified copy from a state other than Missouri.
- (1) A certified copy will generally have an original signature and the initials of a court clerk and a court seal or stamp.
  - (2) Examine the order or decree to determine if it has been filed with the Clerk of any Circuit Court in the State of Missouri.
    - (a) This can be determined by examining the document for a stamp that reads "Filed" or "Certified Copy" or for a signature or the initials of a Missouri Circuit Court Clerk.
  - (3) If the order or decree has not been filed in Missouri, the officer should direct the parties to the Clerk's Office of the Circuit Court.
    - (a) Jackson County - Jackson County Courthouse, 415 East 12th Street, 3rd Floor, Kansas City, Missouri, 881-3911.
    - (b) Clay County - Clay County Courthouse, 11 South Water, Liberty, Missouri, 792-7706.
    - (c) Platte County - Platte County Courthouse, 328 Main Street, Platte City, Missouri, 858-2232.
    - (d) Cass County - Cass County Courthouse, 102 E. Wall, Harrisonville, Missouri, 380-5100.
- B. Once the out of state order or decree is certified filed in Missouri, it is enforceable and officers are directed to the rules governing decrees or orders of Missouri Courts as set out above.

4. **Situations Involving Custody Orders Contained in Orders of Protection.**

- A. If an ex parte order of protection or a full order of protection is in effect, the officer should consult the written directive entitled "Domestic Violence, Orders of Protection, Child Abuse, and Custody Violations", for the appropriate action to take if a violation of a child custody order set out in an order of protection occurs.
- B. The Juvenile Section and the Domestic Violence Section should be contacted as soon as possible.

5. **Temporary Protective Custody.**

Taking a child into temporary protective custody may be desirable if an officer reasonably believes that a child is suffering from illness or injury or is in danger of harm because of his surroundings and that a case of child abuse or neglect exists. The officer should contact the Juvenile Section directly before attempting to take a child into temporary protective custody.

Specific questions should be directed to the Legal Advisor's Office or the Juvenile Section.

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