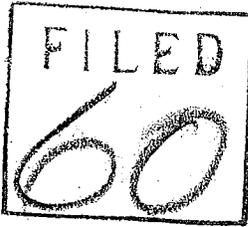


KIDNAPPING:

Parent forcibly taking its child against will of person to whose custody child has been awarded by decree of court of competent jurisdiction is guilty of kidnapping under Sec. 559.240, RSMo 1949.



August 29, 1955

Honorable Charles W. Medley  
Prosecuting Attorney  
St. Francois County  
Farmington, Missouri

Dear Sir:

The following opinion is rendered in reply to your inquiry reading as follows:

"Could you please give me your opinion based on the following facts.

"On the 22nd day of September, 1952, the City Court of Aurora, Illinois, entered an order declaring that a minor child by the name of Sandra Lee Jump, was a neglected child and that Cora Wann be given temporary custody. This order was never changed and on May 26, 1955, Sandra Lee was living with Cora Wann here in St. Francois County when Sandra Lee's mother, Charlene Shyvers, picked the child up off of the street and forced her into an automobile and drove away to Spokane, Washington.

"Based on these facts could you tell me whether or not Charlene Shyvers is guilty of kidnapping.

"I have checked with the clerk in the City Court of Aurora, Illinois, and he has advised me that their City Court has concurrent jurisdiction with the Circuit Court, however, I have not verified this fact."

Honorable Charles W. Medley

Section 559.240, RSMo 1949 provides:

"1. If any person shall, willfully and without lawful authority, forcibly seize, confine, inveigle, decoy or kidnap any person, with intent to cause such person to be sent or taken out of this state, or to be secretly confined within the same against his will, or shall forcibly carry or send such person out of this state against his will, he shall, upon conviction, be punished by imprisonment in the penitentiary not exceeding ten years.

"2. Any person charged with such offense may be tried in any county into or through which the person so seized, inveigled, decoyed or kidnaped shall have been taken, carried or brought."

For the purpose of this opinion we will assume that the temporary custody of Sandra Lee Jump was lawfully awarded to Cora Wann, and that the order giving such custody was in full force and effect at the time the child was forcibly taken by her mother.

No decision of our Missouri courts deciding this question has been discovered. The following statement of the law is found in 31 Am. Jur., Kidnapping, Sec. 6:

"\* \* \* a parent, or one assisting such parent, commits the crime of kidnapping by taking a child from another to whom its custody has been awarded by a decree of the court."

At 51 C.J.S., Kidnapping, Sec. 4, we find the following rule stated:

"The offense of kidnapping a child cannot be committed by the person having the right to the custody of such child, such as the father or the mother, or the guardian of a child. On the other hand, the crime may be committed if a parent takes his child without the consent and against the will of a person to whose custody the child has been committed by the decree of a court of competent jurisdiction."

Honorable Charles W. Medley

In the case of State v. Huhn, 142 S.W. (2d) 1064, l.c. 1067, the Supreme Court of Missouri spoke as follows:

"Although we have no decision on the point involved in this State, the rule is established throughout the United States that where the father and mother <sup>a</sup>are equally entitled to the custody of their minor child the father does not commit the crime of kidnapping by taking exclusive possession of it. State v. Elliott, 171 La. 306, 131 So. 28, 77 A.L.R. 314; Hard v. Splain, 45 App. D.C. 1; Commonwealth v. Myers, 146 Pa. 24, 23 A. 164; Hunt v. Hunt, 94 Ga. 257, 21 S.E. 515; State v. Angel, 42 Kan. 216, 21 P. 1075; State v. Powe, 107 Miss. 770, 66 So. 207, L.R.A. 1915B, 189. Where the custody has been established by the decree of a competent court or by statute, the rule is otherwise. See Annotations in 32 L.R.A., N.S., 845 and 77 A.L.R. 317."  
(Emphasis supplied)

#### CONCLUSION

It is the opinion of this office that the crime of kidnapping defined by Section 559.240, RSMo 1949, is committed by a parent who forcibly takes his child against the will of a person to whose custody the child has been committed by the decree of a court of competent jurisdiction.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Julian L. O'Malley.

Yours very truly,

JOHN M. DALTON  
Attorney General

JEO'M:gm