

5-02/160.20 - Out-Of-State Child Custody Cases

Custody orders from other states, Canada, and Indian Tribal Nations are generally civil court orders granting custody of a minor child to one person, a parent, or guardian.

Law enforcement may follow any of three options in dealing with these situations. Personnel should always consider the welfare of the child in determining the course of action.

Option 1

- Obtain a certified copy of the out-of-state, Canadian, or Indian Tribal Nation court order:
 - Must be signed by a judge from a court of competent jurisdiction; and
 - The validity of the order should be verified with the issuing court by telephone, if possible.

NOTE: Orders from conciliation courts are unenforceable as they are only a contract.

- Secure a signed statement of facts in complaining party's own words and handwriting. The statement should detail all events prior to, and following, the issuance of the order; and
- If more than one order exists, the most recent order is usually valid.

Once these procedures have been complied with, the Department's role shall be primarily to keep the peace. Personnel may make an arrest for a violation of Penal Code 278.5, but should consider this as a last resort.

NOTE: Arrests of suspected violators shall not be effected, unless the deputy verifies that the person to be arrested has previously been served with the order (see Option 2).

Option 2

In cases where conflicting orders exist, the validity of the order is in question, or proof of service is lacking, deputies should advise the complaining party to respond to the superior court of the county where the child is residing. The court's remedy (warrant, writ, order, etc.) will be to place the child with the proper parent.

Option 3

Personnel should remember that the welfare of the child is paramount.

In child custody disputes where there is the likelihood the child has unlawfully been removed from an out-of-state court jurisdiction, or there is the likelihood the child will be removed from a California court jurisdiction, the child shall be placed in protective custody, pursuant to Penal Code 279.6, and shall be referred to the Department of Children and Family Services for suitable placement. This also applies to orders issued from Canada and the Indian Tribal Nations.

Absent any evidence of physical or sexual abuse, the minor shall not be detained pursuant to a Welfare Institutions Code 300 investigation.

Questions should be directed to the Deputy District Attorney in charge of Special Operations.
