



Jersey

# **CRIMINAL LAW (CHILD ABDUCTION) (JERSEY) LAW 2005**

## **Official Consolidated Version**

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## **CRIMINAL LAW (CHILD ABDUCTION) (JERSEY) LAW 2005**

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Jersey

## CRIMINAL LAW (CHILD ABDUCTION) (JERSEY) LAW 2005

A LAW to amend the criminal law relating to the abduction of children.

Commencement [[see endnotes](#)]

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### 1 Interpretation

- (1) In this Law –  
“care order”, “guardian”, “parental responsibility” and “residence order” have the same meanings as in Article 1(1) of the Children Law;  
“Children Law” means the [Children \(Jersey\) Law 2002](#).
- (2) A person shall be treated under this Law as having custody of a child if there is in force an order of a Jersey court awarding the person (whether solely or jointly with another person) custody, legal custody or care and control of the child.
- (3) For the purposes of this Law a person shall be regarded as –
  - (a) taking a child, if the person causes or induces the child to accompany him or her or any other person or causes the child to be taken;
  - (b) sending a child, if the person causes the child to be sent;
  - (c) detaining a child, if the person causes the child to be detained or induces the child to remain with him or her or any other person.
- (4) References in this Law to a child’s parents and to a child whose parents were (or were not) married to each other at the time of the child’s birth shall be construed in accordance with Article 1 of the Children Law (which extends their meaning).

### 2 Abduction of child by parent etc.

- (1) Subject to paragraphs (4), (5) and (8), a person connected with a child under the age of 16 years commits an offence if the person takes or sends the child out of Jersey without the appropriate consent.

- (2) A person is connected with a child for the purposes of this Article if –
- (a) the person is a parent of the child;
  - (b) in the case of a child whose parents were not married to each other at the time of the child’s birth, there are reasonable grounds for believing that the person is the father of the child;
  - (c) the person is a guardian of the child;
  - (d) the person is a person in whose favour a residence order is in force with respect to the child; or
  - (e) the person has custody of the child.
- (3) In this Article “appropriate consent”, in relation to a child, means –
- (a) the consent of each of the following –
    - (i) the child’s mother,
    - (ii) the child’s father, if he has parental responsibility for the child,
    - (iii) any guardian of the child,
    - (iv) any person in whose favour a residence order is in force with respect to the child;
  - (b) the leave of the court granted under any provision of Part 2 of the Children Law; or
  - (c) if any person has custody of the child, the leave of the court that awarded custody to the person.
- (4) A person does not commit an offence under this Article by taking or sending a child out of Jersey without obtaining the appropriate consent if –
- (a) the person is a person in whose favour there is a residence order in force with respect to the child; and
  - (b) the person takes or sends the child out of Jersey for a period of less than one month,
- unless by so doing the person is in breach of an order under Part 2 of the Children Law.
- (5) A person does not commit an offence under this Article by doing anything without the consent of another person whose consent is required under the foregoing provisions of this Article if –
- (a) the person does it in the belief that the other person –
    - (i) has consented, or
    - (ii) would consent if the person were aware of all the relevant circumstances;
  - (b) the person has taken all reasonable steps to communicate with the other person but has been unable to communicate with that other person; or
  - (c) the other person has unreasonably refused to consent.

- (6) Paragraph (5)(c) does not apply if –
  - (a) the person who refused to consent is a person –
    - (i) in whose favour there is a residence order in force with respect to the child, or
    - (ii) who has custody of the child; or
  - (b) the person taking or sending the child out of Jersey is, by so acting, in breach of an order made by a court in Jersey.
- (7) Where, in proceedings for an offence under this Article, there is sufficient evidence to raise an issue as to the application of paragraph (5), it is for the prosecution to prove that the paragraph does not apply.
- (8) In the case of a child of a description specified in column 1 of the Schedule –
  - (a) the reference in paragraph (1) of this Article to the appropriate consent shall be construed as a reference to the corresponding leave or consent specified in column 2 of the Schedule; and
  - (b) paragraphs (3) to (7) do not apply.
- (9) The States may by Regulations amend the Schedule.

### **3 Abduction of child by other persons**

- (1) Subject to the following provisions of this Article, a person commits an offence if, without lawful authority or excuse, the person takes or detains a child under the age of 16 years –
  - (a) so as to remove the child from the lawful control of any person having lawful control of the child; or
  - (b) so as to keep the child out of the lawful control of any person entitled to lawful control of the child.
- (2) The offence in paragraph (1) does not apply to –
  - (a) the child's father and mother, where they were married to each other at the time of the child's birth;
  - (b) the child's mother, where she was not married to the child's father at the time of the child's birth;
  - (c) a guardian of the child;
  - (d) a person in whose favour a residence order is in force with respect to the child; or
  - (e) a person who has custody of the child.
- (3) A person does not commit an offence under this Article if –
  - (a) where the father and mother of the child in question were not married to each other at the time of the child's birth –
    - (i) he is the child's father, or
    - (ii) at the time of the alleged offence, he believed, on reasonable grounds, that he was the child's father; or

- (b) at the time of the alleged offence, the person believed that the child had attained the age of 16.

#### **4 Penalties and prosecutions**

- (1) A person guilty of an offence under this Law shall be liable to imprisonment for a term of 7 years and to a fine.
- (2) No prosecution for an offence under Article 2 shall be instituted except by or with the consent of the Attorney General.

#### **5 Citation**

This Law may be cited as the Criminal Law (Child Abduction) (Jersey) Law 2005.

**SCHEDULE<sup>1</sup>**

(Article 2(8))

**MODIFICATIONS OF “APPROPRIATE CONSENT” FOR THE PURPOSES OF  
ARTICLE 2**

	<i>Description of child</i>	<i>Appropriate leave or consent</i>
1.	A child who is the subject of a care order (except a child falling within entry 5 below).	The consent of the Minister for Children and Education.
2.	A child who is the subject of a warrant issued under Article 10(1) of the Children (Jersey) Law 1969.	The leave of the Bailiff.
3.	A child who is the subject of an order under Article 36 of the Children (Jersey) Law 1969 or Article 37 of the <a href="#">Adoption (Jersey) Law 1961</a> .	The leave of the Bailiff or the Royal Court as the case may be.
4.	A child who is remanded in accordance with Article 16 of the <a href="#">Criminal Justice (Young Offenders) (Jersey) Law 2014</a> .	The leave of the court making the order.
5.	A child who is the subject of – (a) an order under Article 12 of the <a href="#">Adoption (Jersey) Law 1961</a> declaring him or her free for adoption, or a pending application for such an order; or (b) a pending application for an adoption order under Article 10 of that Law.	The leave of the Royal Court.

## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement
Criminal Law (Child Abduction) (Jersey) Law 2005	<a href="#">L.27/2005</a>	8 November 2005 ( <a href="#">R&amp;O.148/2005</a> )
Criminal Justice (Young Offenders) (Consequential Provisions) (Jersey) Regulations 2016	<a href="#">R&amp;O.115/2016</a>	23 November 2016
States of Jersey (Transfer of Responsibilities and Functions) (Health and Social Services to Children and Housing) Order 2019	<a href="#">R&amp;O.100/2019</a>	9 October 2019
States of Jersey (Minister for Children and Education, Minister for Housing and Communities and Minister for External Relations and Financial Services) (Jersey) Order 2021	<a href="#">R&amp;O.29/2021</a>	2 March 2021

### Table of Renumbered Provisions

Original	Current
5	Spent, omitted
6(1)	5
6(2)	Spent, omitted

### Table of Endnote References

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<sup>1</sup> *Schedule* amended by *R&O.115/2016, R&O.100/2019, R&O.29/2021*