

SENATE, No. 915

STATE OF NEW JERSEY

INTRODUCED MARCH 7, 1996

By Senator LIPMAN

1 AN ACT concerning child custody and amending N.J.S.2C:13-4.

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3 **BE IT ENACTED** by the Senate and General Assembly of the State
4 of New Jersey:

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6 1. N.J.S.2C:13-4 is amended to read as follows:

7 2C:13-4. Interference with custody. a. Custody of children. A
8 person, including a parent, grandparent, guardian or other lawful
9 custodian, is guilty of interference with custody if he:

10 (1) Takes or detains a minor child with the purpose of concealing
11 the minor child and thereby depriving the child's other parent of
12 custody [or visitation] of the minor child; or

13 (2) After being served with process or having actual knowledge of
14 an action affecting marriage or custody but prior to the issuance of a
15 temporary or final order determining custody and visitation rights to
16 a minor child, takes, detains, entices or conceals the child within or
17 outside the State for the purpose of depriving the child's other parent
18 of custody[or visitation], or to evade the jurisdiction of the courts of
19 this State;

20 (3) After being served with process or having actual knowledge of
21 an action affecting the protective services needs of a child pursuant to
22 Title 9 of the Revised Statutes in an action affecting custody, but prior
23 to the issuance of a temporary or final order determining custody
24 rights of a minor child, takes, detains, entices or conceals the child
25 within or outside the State for the purpose of evading the jurisdiction
26 of the courts of this State; or

27 (4) After the issuance of a temporary or final order specifying
28 custody, visitation or joint custody rights, takes, detains, entices or
29 conceals a minor child from the other parent in violation of the
30 custody [or visitation] order.

31 Interference with custody is a crime of the third degree but the
32 presumption of non-imprisonment set forth in subsection e. of
33 N.J.S.2C:44-1 for a first offense of a crime of the third degree shall
34 not apply. However, if the child is taken, detained, enticed or

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 concealed outside the United States, interference with custody is a
2 crime of the second degree.

3 b. Custody of committed persons. A person is guilty of a crime of
4 the fourth degree if he knowingly takes or entices any committed
5 person away from lawful custody when he is not privileged to do so.
6 "Committed person" means, in addition to anyone committed under
7 judicial warrant, any orphan, neglected or delinquent child, mentally
8 defective or insane person, or other dependent or incompetent person
9 entrusted to another's custody by or through a recognized social
10 agency or otherwise by authority of law.

11 c. It is an affirmative defense to a prosecution under subsection a.
12 of this section, which must be proved by clear and convincing
13 evidence, that:

14 (1) The actor reasonably believed that the action was necessary to
15 preserve the child from imminent danger to his welfare. However, no
16 defense shall be available pursuant to this subsection if the actor does
17 not, as soon as reasonably practicable but in no event more than 24
18 hours after taking a child under his protection, give notice of the
19 child's location to the police department of the municipality where the
20 child resided, the office of the county prosecutor in the county where
21 the child resided, [or] the Division of Youth and Family Services in the
22 Department of Human Services, or an agency that contracts with the
23 Department of Human Services to provide family crisis services;

24 (2) The actor reasonably believed that the taking or detaining of
25 the minor child was consented to by the other parent, or by an
26 authorized State agency; or

27 (3) The child, being at the time of the taking or concealment not
28 less than 14 years old, was taken away at his own volition and without
29 purpose to commit a criminal offense with or against the child.

30 d. It is an affirmative defense to a prosecution under subsection a.
31 of this section that a parent [having the right of custody] reasonably
32 believed he was fleeing from imminent physical danger from the other
33 parent, provided that the parent [having custody], as soon as
34 reasonably practicable:

35 (1) Gives notice of the child's location to the police department of
36 the municipality where the child resided, the office of the county
37 prosecutor in the county where the child resided, [or] the Division of
38 Youth and Family Services in the Department of Human Services, or
39 an agency that contracts with the Department of Human Services to
40 provide family crisis services; or

41 (2) Commences an action affecting custody in an appropriate court.

42 e. The offenses enumerated in this section are continuous in nature
43 and continue for so long as the child is concealed or detained.

44 f. (1) In addition to any other disposition provided by law, a
45 person convicted under subsection a. of this section shall make
46 restitution of all reasonable expenses and costs, including reasonable

1 counsel fees, incurred by the other parent in securing the child's return.

2 (2) In imposing sentence under subsection a. of this section the
3 court shall consider, in addition to the factors enumerated in chapter
4 44 of Title 2C of the New Jersey Statutes:

5 (a) Whether the person returned the child voluntarily; and

6 (b) The length of time the child was concealed or detained.

7 g. As used in this section, "parent" means a parent, guardian or
8 other lawful custodian of a minor child.

9 (cf: P.L.1990, c.104, s.1)

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11 2. This act shall take effect immediately.

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STATEMENT

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16 This bill revises the portion of N.J.S.A.2C:13-4 pertaining to
17 interference with custody of a minor child, by eliminating the provision
18 which effectively permits a custodial parent to be charged with the
19 offense.

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24 Revises statute pertaining to custody of a child.