HOUSE BILL REPORT

HB 2333

As Passed House
February 14, 1994

Title: An act relating to custodial interference.

Brief Description: Preventing custodial interference.

Sponsors: Representatives Eide, Johanson, H. Myers, Heavey, Wineberry, Karahalios, Brough and Kessler.

Brief History:
Reported by House Committee on:
Judiciary, February 2, 1994, DP;
Passed House, February 14, 1994, 95-0.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 15 members: Representatives Appelwick, Chair; Johanson, Vice Chair; Padden, Ranking Minority Member; Ballasiotes, Assistant Ranking Minority Member; Campbell; Chappell; Eide; Forner; J. Kohl; Long; Morris; H. Myers; Schmidt; Scott and Tate.

Staff: Pat Shelledy (786-7149).

Background: The custodial interference statutes were adopted in 1984, when the family law provisions referred to parents' "lawful right to custody" of their children. After the custodial interference statutes were adopted, the Legislature revised the domestic relations statutes, replacing the term "custody" with "residential time" as determined by "parenting plans." Custodial interference in the second degree has been amended to reflect the change in terminology. Custodial interference in the first degree has not been amended.

A parent is guilty of custodial interference in the first degree if the parent takes a child "for whom no lawful custody order" has been entered from the other parent with intent to deprive the other parent from the child permanently or for a protracted period.

Custodial interference in the second degree applies if a parent takes a child with intent to deny the other parent access to the child and (a) the other parent has a lawful right to time with the child pursuant to a court ordered

parenting plan, (b) the parent taking the child has not complied with the residential provisions of a parenting plan after a finding of contempt, or (c) the court finds that the parent taking the child has engaged in a pattern of willful violations of the residential provisions. The domestic relations statutes warn parents that if they violate the terms of the parenting plan they may be charged with custodial interference in the second degree.

The effect of just amending custodial interference in the second degree to reflect the updated terminology of the parenting plan is that a parent who denies access to a child by the other parent when a parenting plan is in effect is guilty only of a gross misdemeanor regardless of the extent or nature of the denial. If a parent removes the child from the state with the intent to go underground, capturing the parent and returning the child may be very difficult, because law enforcement agencies in other states do not act on misdemeanor warrants from other states.

Summary of Bill: Custodial interference in the first degree is amended to provide that a parent of a child commits the offense if the parent takes the child from the other parent having the lawful right to time with the child pursuant to a court ordered parenting plan with the intent to deny the other parent access to the child and the parent (1) intends to hold the child permanently or for a protracted period, (2) exposes the child to a substantial risk of illness or injury, or (3) removes the child from the state.

The domestic relations warning provision is amended to provide that violation of the residential provisions of the parenting plan may constitute custodial interference in the first or second degree.

Fiscal Note: Requested January 24, 1994.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Even if a parent deliberately conceals a child from the other parent and moves out of the state with the intention of hiding the child from the parent, that parent can only be charged with a gross misdemeanor. Other states do not enforce out-of-state warrants for gross misdemeanors, so it is very difficult to enforce return of the child. A change in the law will solve the current problem created by passage of the parenting act.

Testimony Against: Many people do not have orders that expressly tell them that they cannot move out of the state, or that they may be subject to prosecution for a felony if

they do move out of state. Consequently, many innocent people may be subject to arrest and extradition if this law is passed. A better resolution is to allow these cases to be handled as civil matters in divorce courts. In the alternative, the law should only apply prospectively to those court orders which contain an express warning about the consequences of moving out of state. Other exceptions should also apply.

Witnesses: Cory Nelson, Washington Association of Prosecuting Attorneys (pro); Mary Pontarolo, Washington State Coalition Against Domestic Violence (con); Elizabeth McNagny, Puget Sound Legal Assistance Foundation (con); and Bob Hoyden, Washington Families for Noncustodial Rights (pro).