

SENATE BILL REPORT

SHB 2624

As of February 27, 2014

Title: An act relating to clarifying the applicability of child abduction statutes to residential provisions ordered by a court.

Brief Description: Clarifying the applicability of child abduction statutes to residential provisions ordered by a court.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Haler, Tarleton, Klippert and Freeman).

Brief History: Passed House: 2/17/14, 96-0.

Committee Activity: Law & Justice: 2/26/14.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Kelly Walsh (786-7755)

Background: Custodial interference in the first degree can be committed by a parent if the parent takes or keeps a child with the intent to deny access to the other parent who has the right to time with the child under a court-ordered parenting plan, and the parent intends to hold the child permanently or for a protracted period, exposes the child to a substantial risk of illness or physical injury, or causes the child to be removed from the state of usual residence.

Custodial interference in the second degree can be committed by a parent if the parent takes or keeps a child with the intent to deny access to the other parent who has the right to time with the child under a court-ordered parenting plan, has not complied with the residential provisions of the parenting plan after a finding of contempt, or has engaged in a pattern of willful violations of the court-ordered residential provisions.

Under both first degree and second degree custodial interference committed by a parent, one element of the offense that the government must prove is that the parent from whom the child is taken must have a lawful right to time with the child under a court-ordered parenting plan.

In 2013 the Supreme Court of Washington held in *State v. Veliz* that a domestic violence protection order containing residential provisions for a child does not constitute a court-ordered parenting plan for the purposes of custodial interference in the first degree. The

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Court found that the Legislature used the term parenting plan as a term of art referring only to parenting plans established pursuant to a proceeding for the dissolution or legal separation of a marriage or domestic partnership. The Court held that because the evidence showed that Mr. Veliz violated the residential terms of a domestic violence protection order, the state had insufficient evidence to show that he violated the terms of a parenting plan, a necessary element of the crime. The case was remanded for dismissal of the charge.

Summary of Bill: Under custodial interference in the first degree committed by a parent, the parent from whom a child is taken or kept must have a lawful right to time with the child pursuant to any court order making residential provisions for the child, not necessarily a parenting plan.

Under custodial interference in the second degree committed by a parent, the parent from whom a child is taken or kept must have a lawful right to time with the child pursuant to any court order making residential provisions for the child, unless the factual basis for the charge is that the parent has not complied with the residential provisions of a parenting plan after a finding of contempt.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: This bill closes a gap in our child abduction statutes that has recently arisen. In the *Veliz* case, a four-year-old girl whose father only had weekend day-time visitation with her pursuant to a domestic violence protection order was taken to Mexico for four months in violation of the domestic violence protection order. This bill will keep children safer and help domestic violence survivors protect their children. Survivors should be able to rely on protection orders. There is an expectation that the system will act on the survivor's behalf when an order is granted by the court. A protection order is only effective if it is enforceable.

Persons Testifying: PRO: Representative Haler, prime sponsor; David Ward, Legal Voice; Rachel Bryant, WA State Coalition Against Domestic Violence.