

HOUSE BILL REPORT

HB 1302

As Passed House:
March 2, 2015

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: Representatives Haler, Tarleton and Jinkins.

Brief History:

Committee Activity:

Judiciary: 1/27/15, 2/5/15 [DP].

Floor Activity:

Passed House: 3/2/15, 97-0.

Brief Summary of Bill

- Amends provisions of the crimes of Custodial Interference in the first and second degree to cover any court order making residential provisions for the child, rather than just court-ordered parenting plans.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 13 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Goodman, Haler, Hansen, Kirby, Klippert, Muri, Orwall, Stokesbary and Walkinshaw.

Staff: Edie Adams (786-7180).

Background:

The crime of Custodial Interference generally involves taking, enticing, retaining, detaining, or concealing a child away from a parent or other person who has a lawful right to custody or time with the child, with the intent to deny that person access to the child. There are two

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degrees to the crime of Custodial Interference, and for both degrees, there are different elements to the crime depending on whether the perpetrator is a relative or parent of the child, and whether or not a custody order or parenting plan has been established.

Custodial Interference in the first degree can be committed by a parent if the parent takes 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 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;
- the parent has not complied with the residential provisions of the parenting plan after a finding of contempt; or
- the parent 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 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 the case *State v. Veliz*, the Washington Supreme Court held 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 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.

Summary of Bill:

Custodial Interference in the first degree when committed by a parent applies where the parent from whom the child is taken has the right to time with the child under any court order making residential provisions for the child, not just under a court-ordered parenting plan.

Custodial Interference in the second degree when committed by a parent applies when the parent from whom a child is taken or kept has 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.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This is an important bill that the House of Representatives passed last year, but there was no time to get it out of the Senate. This bill provides a small but important fix to close a dangerous loophole in the law. Parenting plans take time to get entered. Domestic violence victims seek protection orders to protect them and their children until a parenting plan can be entered. Justice Johnson in his dissent in the *State v. Veliz* case noted that the court was prioritizing the rights of the perpetrator over those of the victim. The intent of this legislation is to provide that domestic violence victims and parents should be treated just as fairly as criminal defendants.

(Opposed) None.

Persons Testifying: Representative Haler, prime sponsor; Alex Kory, Legal Voice; Grace Huang, Washington State Coalition Against Domestic Violence; and Arthur West, National Freedom Alliance.

Persons Signed In To Testify But Not Testifying: None.