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HOUSE BILL 1302

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State of Washington                      64th Legislature                      2015 Regular Session

By Representatives Halper, Tarleton, and Jenkins

Read first time 01/16/15. Referred to Committee on Judiciary.

1            AN ACT Relating to clarifying the applicability of child  
2 abduction statutes to residential provisions ordered by a court;  
3 amending RCW 9A.40.060 and 9A.40.070; creating a new section; and  
4 prescribing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6            NEW SECTION.    **Sec. 1.** It is the intent of the legislature to  
7 address the Washington supreme court's decision in *State v. Veliz*,  
8 176 Wn.2d 849 (2013). The court held that a parent cannot be charged  
9 with custodial interference under RCW 9A.40.060(2) if a parent  
10 withholds the other parent from having access to the child in  
11 violation of residential provisions of a domestic violence protection  
12 order. The legislature intends that the provisions of RCW  
13 9A.40.060(2) and 9A.40.070(2) be applicable in cases in which a court  
14 has entered any order making residential provisions for a child  
15 including, but not limited to, domestic violence protection orders  
16 that include such residential provisions.

17            **Sec. 2.** RCW 9A.40.060 and 1998 c 55 s 1 are each amended to read  
18 as follows:

19            (1) A relative of a child under the age of eighteen or of an  
20 incompetent person is guilty of custodial interference in the first

1 degree if, with the intent to deny access to the child or incompetent  
2 person by a parent, guardian, institution, agency, or other person  
3 having a lawful right to physical custody of such person, the  
4 relative takes, entices, retains, detains, or conceals the child or  
5 incompetent person from a parent, guardian, institution, agency, or  
6 other person having a lawful right to physical custody of such person  
7 and:

8 (a) Intends to hold the child or incompetent person permanently  
9 or for a protracted period; or

10 (b) Exposes the child or incompetent person to a substantial risk  
11 of illness or physical injury; or

12 (c) Causes the child or incompetent person to be removed from the  
13 state of usual residence; or

14 (d) Retains, detains, or conceals the child or incompetent person  
15 in another state after expiration of any authorized visitation period  
16 with intent to intimidate or harass a parent, guardian, institution,  
17 agency, or other person having lawful right to physical custody or to  
18 prevent a parent, guardian, institution, agency, or other person with  
19 lawful right to physical custody from regaining custody.

20 (2) A parent of a child is guilty of custodial interference in  
21 the first degree if the parent takes, entices, retains, detains, or  
22 conceals the child, with the intent to deny access, from the other  
23 parent having the lawful right to time with the child pursuant to a  
24 (~~court-ordered parenting plan~~) court order making residential  
25 provisions for the child, and:

26 (a) Intends to hold the child permanently or for a protracted  
27 period; or

28 (b) Exposes the child to a substantial risk of illness or  
29 physical injury; or

30 (c) Causes the child to be removed from the state of usual  
31 residence.

32 (3) A parent or other person acting under the directions of the  
33 parent is guilty of custodial interference in the first degree if the  
34 parent or other person intentionally takes, entices, retains, or  
35 conceals a child, under the age of eighteen years and for whom no  
36 lawful custody order or (~~parenting plan~~) order making residential  
37 provisions for the child has been entered by a court of competent  
38 jurisdiction, from the other parent with intent to deprive the other  
39 parent from access to the child permanently or for a protracted  
40 period.

1 (4) Custodial interference in the first degree is a class C  
2 felony.

3 **Sec. 3.** RCW 9A.40.070 and 2003 c 53 s 66 are each amended to  
4 read as follows:

5 (1) A relative of a person is guilty of custodial interference in  
6 the second degree if, with the intent to deny access to such person  
7 by a parent, guardian, institution, agency, or other person having a  
8 lawful right to physical custody of such person, the relative takes,  
9 entices, retains, detains, or conceals the person from a parent,  
10 guardian, institution, agency, or other person having a lawful right  
11 to physical custody of such person. This subsection shall not apply  
12 to a parent's noncompliance with a ~~((court-ordered parenting plan))~~  
13 court order making residential provisions for the child.

14 (2) A parent of a child is guilty of custodial interference in  
15 the second degree if: (a) The parent takes, entices, retains,  
16 detains, or conceals the child, with the intent to deny access, from  
17 the other parent having the lawful right to time with the child  
18 pursuant to a ~~((court-ordered parenting plan))~~ court order making  
19 residential provisions for the child; or (b) the parent has not  
20 complied with the residential provisions of a court-ordered parenting  
21 plan after a finding of contempt under RCW 26.09.160(3); or (c) if  
22 the court finds that the parent has engaged in a pattern of willful  
23 violations of ~~((the court-ordered))~~ a court order making residential  
24 provisions for the child.

25 (3) Nothing in subsection (2)(b) of this section prohibits  
26 conviction of custodial interference in the second degree under  
27 subsection (2)(a) or (c) of this section in absence of findings of  
28 contempt.

29 (4)(a) The first conviction of custodial interference in the  
30 second degree is a gross misdemeanor.

31 (b) The second or subsequent conviction of custodial interference  
32 in the second degree is a class C felony.

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