

sum of twenty-five thousand dollars, or so much thereof as may be necessary, to carry out the purpose of developing an environmental profile as required by this act.

Passed the House February 3, 1984.

Passed the Senate February 23, 1984.

Approved by the Governor March 2, 1984.

Filed in Office of Secretary of State March 2, 1984.

CHAPTER 95

[Engrossed Substitute House Bill No. 1687]

CUSTODIAL INTERFERENCE

AN ACT Relating to custodial interference; amending section 34, chapter 291, Laws of 1977 ex. sess. as last amended by section 1, chapter 246, Laws of 1983 and RCW 13.34.060; adding new sections to chapter 9A.40 RCW; adding a new section to chapter 13.34 RCW; adding a new section to chapter 26.09 RCW; repealing section 9A.40.050, chapter 260, Laws of 1975 1st ex. sess. and RCW 9A.40.050; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. There is added to chapter 9A.40 RCW a new section to read as follows:

(1) A relative of a child under the age of eighteen or of an incompetent person is guilty of custodial interference in the first degree if, with the intent to deny access to the child or incompetent person by a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person, the relative takes, entices, retains, detains, or conceals the child or incompetent person from a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person and:

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

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

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

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

(2) A parent or other person acting under the directions of the parent is guilty of custodial interference in the first degree if the parent or other person intentionally takes, entices, retains, or conceals a child, under the age of eighteen years and for whom no lawful custody order has been entered by

a court of competent jurisdiction, from the other parent with intent to deprive the other parent from access to the child permanently or for a protracted period.

(3) Custodial interference in the first degree is a class C felony.

NEW SECTION. Sec. 2. There is added to chapter 9A.40 RCW a new section to read as follows:

(1) A relative of a person is guilty of custodial interference in the second degree if, with the intent to deny access to such person by a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person, the relative takes, entices, retains, detains, or conceals the person from a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person.

(2) The first conviction of custodial interference in the second degree is a gross misdemeanor. The second or subsequent conviction of custodial interference in the second degree is a class C felony.

NEW SECTION. Sec. 3. There is added to chapter 9A.40 RCW a new section to read as follows:

(1) Any reasonable expenses incurred in locating or returning a child or incompetent person shall be assessed against a defendant convicted under section 1 or 2 of this act.

(2) In any prosecution of custodial interference in the first or second degree, it is a complete defense, if established by the defendant by a preponderance of the evidence, that the defendant's purpose was to protect the child, incompetent person, or himself or herself from imminent physical harm, and that the belief in the existence of the imminent physical harm was reasonable.

(3) Consent of a child less than sixteen years of age or of an incompetent person does not constitute a defense to an action under section 1 or 2 of this act.

NEW SECTION. Sec. 4. There is added to chapter 13.34 RCW a new section to read as follows

(1) A law enforcement officer shall take into custody a child taken in violation of section 1 or 2 of this act. The law enforcement officer shall make every reasonable effort to avoid placing additional trauma on the child by obtaining such custody at times and in a manner least disruptive to the child. The law enforcement officer shall return the child to the person or agency having the right to physical custody unless the officer has reasonable grounds to believe the child should be taken into custody under RCW 13.34.050 or 26.44.050. If there is no person or agency having the right to physical custody available to take custody of the child, the officer may place the child in shelter care as provided in RCW 13.34.060.

(2) A law enforcement officer or public employee acting reasonably and in good faith shall not be held liable in any civil action for returning the child to a person having the apparent right to physical custody.

Sec. 5. Section 34, chapter 291, Laws of 1977 ex. sess. as last amended by section 1, chapter 246, Laws of 1983 and RCW 13.34.060 are each amended to read as follows:

(1) A child taken into custody pursuant to RCW 13.34.050 or 26.44.050 shall be immediately placed in shelter care. A child taken by a relative of the child in violation of section 1 or 2 of this 1984 act shall be placed in shelter care only when permitted under section 4 of this 1984 act. "Shelter care" means temporary physical care in a facility licensed pursuant to RCW 74.15.030 or in a home not required to be licensed pursuant to that section. Whenever a child is taken into such custody pursuant to this section, the supervising agency may authorize routine medical and dental examination and care and all necessary emergency care. In no case may a child who is taken into custody pursuant to section 4 of this 1984 act, RCW 13.34.050, or 26.44.050 be detained in a secure detention facility. No child may be held longer than seventy-two hours, excluding Sundays and holidays, after such child is taken into custody unless a court order has been entered for continued shelter care. The child and his or her parent, guardian, or custodian shall be informed that they have a right to a shelter care hearing. The court shall hold a shelter care hearing if one is requested.

(2) The juvenile court counselor assigned to the matter shall make all reasonable efforts to advise the parents, guardian, or legal custodian of the time and place of any shelter care hearing, request that they be present, and inform them of their basic rights as provided in RCW 13.34.090.

(3) At the commencement of the shelter care hearing the court shall advise the parties of their basic rights as provided in RCW 13.34.090 and shall appoint counsel pursuant to RCW 13.34.090 if counsel has not been retained by the parent or guardian and if the parent or guardian is indigent, unless the court finds that the right to counsel has been expressly and voluntarily waived.

(4) The court shall examine the need for shelter care. All parties have the right to present testimony to the court regarding the need or lack of need for shelter care.

(5) The juvenile court probation counselor shall submit a recommendation to the court as to the further need for shelter care, except that such recommendation shall be submitted by the department of social and health services in cases where the petition alleging dependency has been filed by the department of social and health services, unless otherwise ordered by the court.

(6) The court shall release a child alleged to be dependent to the care, custody, and control of the child's parent, guardian, or legal custodian unless the court finds there is reasonable cause to believe that:

(a) The child has no parent, guardian, or legal custodian to provide supervision and care for such child; ((or))

(b) The release of such child would present a serious threat of substantial harm to such child; or

(c) The parent, guardian, or custodian to whom the child could be released is alleged to have violated section 1 or 2 of this 1984 act.

If the court does not release the child to his or her parent, guardian, or legal custodian, the court shall order continued shelter care or order placement with another suitable person, and the court shall set forth its reasons for the order.

(7) An order releasing the child on any conditions specified in this section may at any time be amended, with notice and hearing thereon, so as to return the child to shelter care for failure of the parties to conform to the conditions originally imposed.

(8) A shelter care order issued pursuant to this section may be amended at any time with notice and hearing thereon. The shelter care decision of placement shall be modified only upon a showing of change in circumstances. No child may be detained for longer than thirty days without an order, signed by the judge, authorizing continued shelter care.

NEW SECTION. Sec. 6. There is added to chapter 26.09 RCW a new section to read as follows:

A relative, as defined in RCW 9A.40.010, may bring civil action against any other relative who, with intent to deny access to a child by another relative of the child who has a right to physical custody of the child, takes, entices, or conceals the child from that relative. The plaintiff may be awarded, in addition to any damages awarded by the court, the reasonable expenses incurred by the plaintiff in locating the child, including, but not limited to, investigative services and reasonable attorneys' fees.

NEW SECTION. Sec. 7. Section 9A.40.050, chapter 260, Laws of 1975 1st ex. sess. and RCW 9A.40.050 are each repealed.

NEW SECTION. Sec. 8. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the House February 6, 1984.

Passed the Senate February 24, 1984.

Approved by the Governor March 2, 1984.

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