

Senator Mark B. Madsen proposes the following substitute bill:

CUSTODIAL INTERFERENCE AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carl Wimmer

Senate Sponsor: Mark B. Madsen

LONG TITLE

General Description:

This bill amends Utah Criminal Code provisions relating to the crime of custodial interference and creates a civil cause of action for custodial interference.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ enacts a modified version of the crime of custodial interference;
- ▶ provides that custodial interference is:
 - except as otherwise provided in this bill, a class B misdemeanor;
 - a class A misdemeanor if the actor was previously convicted of custodial

interference at least twice in the two-year period preceding the latest commission; or

- a felony of the third degree if, during the course of the custodial interference, the actor removes, causes the removal, or directs the removal of the child from the state; and

- ▶ creates affirmative defenses to the crime of custodial interference.

Monies Appropriated in this Bill:

None



26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 REPEALS AND REENACTS:

30 **76-5-303**, as last amended by Laws of Utah 2001, Chapter 255

31

32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section **76-5-303** is repealed and reenacted to read:

34 **76-5-303. Custodial interference.**

35 (1) As used in this section:

36 (a) "Child" means a person under the age of 18.

37 (b) "Custody" means court-ordered physical custody, entered by a court of competent
38 jurisdiction.

39 (c) "Visitation" means court-ordered parent-time or visitation, entered by a court of
40 competent jurisdiction.

41 (2) (a) A person who is entitled to custody of a child is guilty of custodial interference
42 if, during a period of time when another person is entitled to visitation of the child, the person
43 takes, entices, conceals, detains, or withholds the child from the person entitled to visitation of
44 the child, with the intent to interfere with the visitation of the child.

45 (b) A person who is entitled to visitation of a child is guilty of custodial interference if,
46 during a period of time when the person is not entitled to visitation of the child, the person
47 takes, entices, conceals, detains, or withholds the child from a person who is entitled to custody
48 of the child, with the intent to interfere with the custody of the child.

49 (3) Except as provided in Subsection (4) or (5), custodial interference is a class B
50 misdemeanor.

51 (4) Except as provided in Subsection (5), the actor described in Subsection (2) is guilty
52 of a class A misdemeanor if the actor:

53 (a) commits custodial interference; and

54 (b) has been convicted of custodial interference at least twice in the two-year period
55 immediately preceding the day on which the commission of custodial interference described in
56 Subsection (4)(a) occurs.

57 (5) Custodial interference is a felony of the third degree if, during the course of the
58 custodial interference, the actor described in Subsection (2) removes, causes the removal, or
59 directs the removal of the child from the state.

60 (6) In addition to the affirmative defenses described in Section 76-5-305, it is an
61 affirmative defense to the crime of custodial interference that:

62 (a) the action is consented to by the person whose custody or visitation of the child was
63 interfered with; or

64 (b) (i) the action is based on a reasonable belief that the action is necessary to protect a
65 child from abuse, including sexual abuse; and

66 (ii) before engaging in the action, the person reports the person's intention to engage in
67 the action, and the basis for the belief described in Subsection (6)(b)(i), to the Division of
68 Child and Family Services or law enforcement.

H.B. 197 4th Sub. (Green) - Custodial Interference Amendments

Fiscal Note

2010 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
