

76-5-303 Custodial interference.

- (1) As used in this section:
 - (a) "Child" means a person under the age of 18.
 - (b) "Custody" means court-ordered physical custody entered by a court of competent jurisdiction.
 - (c) "Visitation" means court-ordered parent-time or visitation entered by a court of competent jurisdiction.
- (2)
 - (a) A person who is entitled to custody of a child is guilty of custodial interference if, during a period of time when another person is entitled to visitation of the child, the person takes, entices, conceals, detains, or withholds the child from the person entitled to visitation of the child, with the intent to interfere with the visitation of the child.
 - (b) A person who is entitled to visitation of a child is guilty of custodial interference if, during a period of time when the person is not entitled to visitation of the child, the person takes, entices, conceals, detains, or withholds the child from a person who is entitled to custody of the child, with the intent to interfere with the custody of the child.
- (3) Except as provided in Subsection (4) or (5), custodial interference is a class B misdemeanor.
- (4) Except as provided in Subsection (5), the actor described in Subsection (2) is guilty of a class A misdemeanor if the actor:
 - (a) commits custodial interference; and
 - (b) has been convicted of custodial interference at least twice in the two-year period immediately preceding the day on which the commission of custodial interference described in Subsection (4)(a) occurs.
- (5) Custodial interference is a felony of the third degree if, during the course of the custodial interference, the actor described in Subsection (2) removes, causes the removal, or directs the removal of the child from the state.
- (6) In addition to the affirmative defenses described in Section 76-5-305, it is an affirmative defense to the crime of custodial interference that:
 - (a) the action is consented to by the person whose custody or visitation of the child was interfered with; or
 - (b)
 - (i) the action is based on a reasonable belief that the action is necessary to protect a child from abuse, including sexual abuse; and
 - (ii) before engaging in the action, the person reports the person's intention to engage in the action, and the basis for the belief described in Subsection (6)(b)(i), to the Division of Child and Family Services or law enforcement.
- (7) In addition to the other penalties described in this section, a person who is convicted of custodial interference is subject to the driver license suspension provisions of Subsection 53-3-220(1)(a)(xviii).

Repealed and Re-enacted by Chapter 374, 2010 General Session