

Representative Carl Wimmer 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.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ enacts a modified version of the crime of custodial interference;
- ▶ provides that custodial interference is:
 - a class B misdemeanor, punishable by a fine of at least \$500, but not more than \$1,000;
 - a class B misdemeanor, punishable by a fine of at least \$750, but not more than \$1,000, if the actor was previously convicted of custodial interference in the ~~H~~→ [three] two ←~~H~~ -year period preceding the latest commission;
 - a class B misdemeanor, punishable by a fine and imprisonment, if the actor was previously convicted of custodial interference at least twice in the ~~H~~→ [three] two ←~~H~~ -year period preceding the latest commission; and
 - 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



26 state; and

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

28 **Monies Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 REPEALS AND REENACTS:

34 **76-5-303**, as last amended by Laws of Utah 2001, Chapter 255



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

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 Section **76-5-303** is repealed and reenacted to read:

38 **76-5-303. Custodial interference.**

39 (1) As used in this section:

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

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

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

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

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

53 (3) Except as provided in Subsection (4), (5), or (6), custodial interference is a class B
54 misdemeanor:

55 (a) punishable by a fine of at least \$500, but not more than \$1,000; and

56 (b) notwithstanding Section 76-3-204, not punishable by a term of imprisonment.

57 (4) Except as provided in Subsection (5) or (6), if the actor described in Subsection (2)
58 commits custodial interference within $\hat{H} \rightarrow$ [three] two $\leftarrow \hat{H}$ years after the day on which the actor
58a was
59 previously convicted of custodial interference, custodial interference is a class B misdemeanor:
60 (a) punishable by a fine of at least \$750, but not more than \$1,000; and
61 (b) notwithstanding Section 76-3-204, not punishable by a term of imprisonment.
62 (5) Except as provided in Subsection (6), the actor described in Subsection (2) is guilty
63 of a class B misdemeanor, punishable by a fine of at least \$300, but not more than \$1,000, and
64 a term of imprisonment not exceeding six months if the actor:
65 (a) commits custodial interference; and
66 (b) has been convicted of custodial interference at least twice in the
66a $\hat{H} \rightarrow$ [three] two $\leftarrow \hat{H}$ -year period
67 immediately preceding the day on which the commission of custodial interference described in
68 Subsection (5)(a) occurs.
69 (6) Custodial interference is a felony of the third degree if, during the course of the
70 custodial interference, the actor described in Subsection (2) removes, causes the removal, or
71 directs the removal of the child from the state.
72 (7) In addition to the affirmative defenses described in Section 76-5-305, it is an
73 affirmative defense to the crime of custodial interference that:
74 (a) the action is consented to by the person whose custody or visitation of the child was
75 interfered with; or
76 (b) (i) the action is based on a reasonable belief that the action is necessary to protect a
77 child from abuse, including sexual abuse; and
78 (ii) before engaging in the action, the person reports the person's intention to engage in
79 the action, and the basis for the belief described in Subsection (7)(b)(i), to the Division of
80 Child and Family Services or law enforcement.

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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.
