

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:
 - a class B misdemeanor, punishable by a fine of at least \$500, but not more than \$1,000, and a suspended term of imprisonment;
 - a class B misdemeanor, punishable by a fine of at least \$750, but not more than \$1,000, and a suspended term of imprisonment, if the actor was previously convicted of custodial interference in the two-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 two-year period preceding the latest commission; and
 - a felony of the third degree if, during the course of the custodial interference, the



- 26 actor removes, causes the removal, or directs the removal of the child from the state;
- 27 ▶ creates affirmative defenses to the crime of custodial interference; and
- 28 ▶ creates a civil action for custodial interference.

29 **Monies Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 REPEALS AND REENACTS:

35 **76-5-303**, as last amended by Laws of Utah 2001, Chapter 255

36 ENACTS:

37 **78B-8-701**, Utah Code Annotated 1953

38 **78B-8-702**, Utah Code Annotated 1953

39 **78B-8-703**, Utah Code Annotated 1953



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

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 Section **76-5-303** is repealed and reenacted to read:

43 **76-5-303. Custodial interference.**

44 (1) As used in this section:

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

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

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

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

54 (b) A person who is entitled to visitation of a child is guilty of custodial interference if,
55 during a period of time when the person is not entitled to visitation of the child, the person
56 takes, entices, conceals, detains, or withholds the child from a person who is entitled to custody

57 of the child, with the intent to interfere with the custody of the child.

58 (3) Except as provided in Subsection (4), (5), or (6), custodial interference is a class B
59 misdemeanor, punishable by:

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

61 (b) a term of imprisonment, not exceeding six months, which term shall be suspended
62 at the time of sentencing, but may be imposed upon a probation violation.

63 (4) Except as provided in Subsection (5) or (6), if the actor described in Subsection (2)
64 commits custodial interference within two years after the day on which the actor was
65 previously convicted of custodial interference, custodial interference is a class B misdemeanor,
66 punishable by:

67 (a) a fine of at least \$750, but not more than \$1,000; and

68 (b) a term of imprisonment, not exceeding six months, which term shall be suspended
69 at the time of sentencing, but may be imposed upon a probation violation.

70 (5) Except as provided in Subsection (6), the actor described in Subsection (2) is guilty
71 of a class B misdemeanor, punishable by a fine of at least \$300, but not more than \$1,000, and
72 a term of imprisonment not exceeding six months if the actor:

73 (a) commits custodial interference; and

74 (b) has been convicted of custodial interference at least twice in the two-year period
75 immediately preceding the day on which the commission of custodial interference described in
76 Subsection (5)(a) occurs.

77 (6) Custodial interference is a felony of the third degree if, during the course of the
78 custodial interference, the actor described in Subsection (2) removes, causes the removal, or
79 directs the removal of the child from the state.

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

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

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

86 (ii) before engaging in the action, the person reports the person's intention to engage in
87 the action, and the basis for the belief described in Subsection (7)(b)(i), to the Division of

88 Child and Family Services or law enforcement.

89 Section 2. Section **78B-8-701** is enacted to read:

90 **Part 7. Civil Action for Child Custody Interference**

91 **78B-8-701. Title.**

92 This part is known as "Civil Action for Child Custody Interference."

93 Section 3. Section **78B-8-702** is enacted to read:

94 **78B-8-702. Definitions.**

95 As used in this part:

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

97 (2) "Custody" is as defined in Subsection 76-5-303(1).

98 (3) "Visitation" is as defined in Subsection 76-5-303(1).

99 Section 4. Section **78B-8-703** is enacted to read:

100 **78B-8-703. Civil action for child custody interference.**

101 (1) Except as provided in Subsection (3), a person who is entitled to visitation of a
102 child may bring an action against a person who is entitled to custody of the child if, during a
103 period of time when the person is entitled to visitation of the child, the person who is entitled
104 to custody of the child intentionally takes, entices, conceals, detains, or withholds the child
105 from the person who is entitled to visitation of the child.

106 (2) Except as provided in Subsection (3), a person who is entitled to custody of a child
107 may bring an action against a person who is entitled to visitation of the child if, during a period
108 of time when the person is entitled to custody of the child, the person who is entitled to
109 visitation of the child intentionally takes, entices, conceals, detains, or withholds the child from
110 the person who is entitled to custody of the child.

111 (3) A person is not liable under Subsection (1) and (2) if:

112 (a) the person intentionally takes, entices, conceals, detains, or withholds the child
113 based on a reasonable belief that:

114 (i) the conduct was necessary to protect any person from imminent bodily injury or
115 death; or

116 (ii) (A) the conduct was necessary to protect a child from abuse, including sexual
117 abuse; and

118 (B) before engaging in the conduct, the person reports the person's intention to engage

119 in the action, and the basis for the belief described in Subsection (3)(a)(ii)(A) to the Division of
120 Child and Family Services or law enforcement.

121 (b) the detention was authorized by law; or

122 (c) the conduct is consented to by the person whose custody or visitation was interfered
123 with.

124 (4) A person who brings an action described in Subsection (1) or (2) is entitled to
125 recover from a person found liable under Subsection (1) or (2):

126 (a) actual damages;

127 (b) punitive damages in an amount not less than \$1,000 and not more than \$10,000;

128 and

129 (c) reasonable costs and attorney fees.

130 (5) The remedies provided for in this section are in addition to any other remedies or
131 penalties provided for by law.