

2598

2011-2012 Regular Sessions

I N   S E N A T E

January 26, 2011

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Introduced by Sen. SALAND -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to custodial interference and repealing certain provisions of such law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Section 135.45 of the penal law is amended to read as  
2 follows:  
3 S 135.45 Custodial interference in the second degree.  
4     A person is guilty of custodial interference in the second degree  
5 when:  
6     1. Being a relative of a child less than sixteen years old, [intend-  
7 ing to hold such child permanently or for a protracted period,] and  
8 knowing that he OR SHE has no legal right to do so, he OR SHE takes or  
9 entices such child from his OR HER lawful custodian; or  
10     2. IN THE ABSENCE OF A COURT ORDER DETERMINING THE RIGHTS OF CUSTODY  
11 OR VISITATION TO A CHILD LESS THAN SIXTEEN YEARS OLD, A RELATIVE OF SUCH  
12 CHILD TAKES OR ENTICES SUCH CHILD WITH INTENT TO DENY ACCESS FROM,  
13 CUSTODY OR VISITATION RIGHTS OF, ANOTHER TO THAT CHILD OR FOR THE  
14 PURPOSE OF EVADING THE JURISDICTION OF THE COURTS OF THIS STATE; OR  
15     3. HE OR SHE RETAINS A CHILD LESS THAN SIXTEEN YEARS OLD OR AN INCOM-  
16 PETENT PERSON AFTER EXPIRATION OF ANY AUTHORIZED VISITATION PERIOD WITH  
17 INTENT TO EITHER INTIMIDATE OR HARASS ANOTHER WHO HAS LAWFUL CUSTODY OR  
18 TO PREVENT THE OTHER PERSON FROM REGAINING CUSTODY; OR  
19     4. Knowing that he OR SHE has no legal right to do so, he OR SHE takes  
20 or entices from lawful custody any incompetent person or other person  
21 entrusted by authority of law to the custody of another person or insti-  
22 tution.  
23     Custodial interference in the second degree is a class A misdemeanor.  
24     S 2. Section 135.50 of the penal law is REPEALED and a new section  
25 135.50 is added to read as follows:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 S 135.50 CUSTODIAL INTERFERENCE IN THE FIRST DEGREE.

2 A PERSON IS GUILTY OF CUSTODIAL INTERFERENCE IN THE FIRST DEGREE WHEN  
3 HE OR SHE COMMITS THE CRIME OF CUSTODIAL INTERFERENCE IN THE SECOND  
4 DEGREE AND:

5 1. DETAINS OR CONCEALS THE CHILD OR INCOMPETENT PERSON FROM HIS OR HER  
6 LAWFUL CUSTODIAN WITH INTENT TO HOLD THE CHILD OR INCOMPETENT PERSON  
7 PERMANENTLY OR FOR A PROTRACTED PERIOD OF TIME; OR

8 2. EXPOSES THE CHILD OR INCOMPETENT PERSON TO A RISK THAT HIS OR HER  
9 SAFETY WILL BE ENDANGERED OR HIS OR HER HEALTH MATERIALLY IMPAIRED; OR

10 3. REMOVES THE CHILD OR INCOMPETENT PERSON FROM THE STATE.

11 CUSTODIAL INTERFERENCE IN THE FIRST DEGREE IS A CLASS E FELONY.

12 S 3. The penal law is amended by adding three new sections 135.51,  
13 135.52 and 135.53 to read as follows:

14 S 135.51 AFFIRMATIVE DEFENSE.

15 IT SHALL BE AN AFFIRMATIVE DEFENSE TO A PROSECUTION UNDER SECTION  
16 135.45 OR UNDER SUBDIVISION ONE OR THREE OF SECTION 135.50 OF THIS ARTI-  
17 CLE THAT THE VICTIM HAD BEEN ABANDONED OR THAT THE TAKING WAS NECESSARY  
18 IN AN EMERGENCY TO PROTECT THE VICTIM BECAUSE HE OR SHE HAS BEEN  
19 SUBJECTED TO OR THREATENED WITH MISTREATMENT OR ABUSE OR THE PERSON WAS  
20 FLEEING AN INCIDENCE OR PATTERN OF DOMESTIC VIOLENCE.

21 S 135.52 SPECIAL PROVISIONS RELATING TO SENTENCING.

22 1. IN ADDITION TO ANY SENTENCE IMPOSED AGAINST ANY PERSON CONVICTED OF  
23 VIOLATING SECTION 135.45 OR 135.50 OF THIS ARTICLE, THE COURT MAY ASSESS  
24 ANY REASONABLE EXPENSES INCURRED BY THE LAWFUL CUSTODIAN AND/OR STATE OR  
25 OTHER UNIT OF GOVERNMENT IN SEARCHING FOR AND/OR RECOVERING THE CHILD OR  
26 INCOMPETENT PERSON.

27 2. AS A CONDITION OF ANY SENTENCE IMPOSED AGAINST ANY PERSON CONVICTED  
28 OF VIOLATING SECTION 135.45 OR 135.50 OF THIS ARTICLE, THE COURT MAY IN  
29 ADDITION, REQUIRE THE DEFENDANT TO RECEIVE COUNSELING AT THE EXPENSE OF  
30 THE DEFENDANT, BASED ON HIS OR HER ABILITY TO PAY.

31 S 135.53 DUTIES OF LAW ENFORCEMENT OFFICERS.

32 1. A LAW ENFORCEMENT OFFICER WHO IS CONDUCTING AN INVESTIGATION FOR A  
33 VIOLATION OF SECTION 135.45 OR 135.50 OF THIS ARTICLE SHALL ENTER SUCH  
34 CASE IN THE FEDERAL NATIONAL CRIME INFORMATION CENTER COMPUTER OR ANY  
35 SIMILAR SUCCESSOR COMPILATION.

36 2. A LAW ENFORCEMENT OFFICER WHO IS CONDUCTING AN INVESTIGATION OR  
37 MAKING AN ARREST FOR A VIOLATION OF SECTION 135.45 OR 135.50 OF THIS  
38 ARTICLE SHALL TAKE THE CHILD OR INCOMPETENT PERSON INTO PROTECTIVE  
39 CUSTODY. SUCH OFFICER SHALL RETURN SUCH CHILD OR INCOMPETENT PERSON  
40 TAKEN INTO PROTECTIVE CUSTODY TO HIS OR HER LAWFUL CUSTODIAN OR TO THE  
41 INSTITUTION FROM WHICH HE OR SHE IS ENTRUSTED OR TO THE COURT IN WHICH A  
42 CUSTODY PROCEEDING IS PENDING.

43 S 4. This act shall take effect on the first of November next succeed-  
44 ing the date on which it shall have become a law.