STATE OF NEW YORK

2105

2017-2018 Regular Sessions

IN ASSEMBLY

January 17, 2017

Introduced by M. of A. MAYER, BARRETT, PAULIN, OTIS, MOSLEY, JAFFEE, STECK, GALEF, CROUCH, GRAF, HOOPER, DINOWITZ, WEPRIN, BICHOTTE, GUNTHER -- Multi-Sponsored by -- M. of A. ABBATE, ARROYO, COOK, HIKIND, PERRY, RIVERA -- read once and referred 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:

Section 1. Section 135.45 of the penal law is amended to read as follows:

§ 135.45 Custodial interference in the second degree.

A person is guilty of custodial interference in the second degree when:

1. Being a relative of a child less than sixteen years old, [~~intending to hold such child permanently or for a protracted period,~~] and knowing that he **or she** has no legal right to do so, he **or she** takes or entices such child from his **or her** lawful custodian; or

2. In the absence of a court order determining the rights of custody or visitation to a child less than sixteen years old, a relative of such child takes or entices such child with intent to deny access from, custody or visitation rights of, another to that child or for the purpose of evading the jurisdiction of the courts of this state; or

3. He or she retains a child less than sixteen years old or an incompetent person after expiration of any authorized visitation period with intent to either intimidate or harass another who has lawful custody or to prevent the other person from regaining custody; or

4. Knowing that he **or she** has no legal right to do so, he **or she** takes or entices from lawful custody any incompetent person or other person entrusted by authority of law to the custody of another person or institution.

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

LBD02501-01-7

Custodial interference in the second degree is a class A misdemeanor.

§ 2. Section 135.50 of the penal law is REPEALED and a new section 135.50 is added to read as follows:

§ 135.50 Custodial interference in the first degree.

A person is guilty of custodial interference in the first degree when he or she commits the crime of custodial interference in the second degree and:

1. detains or conceals the child or incompetent person from his or her lawful custodian with intent to hold the child or incompetent person permanently or for a protracted period of time; or

2. exposes the child or incompetent person to a risk that his or her safety will be endangered or his or her health materially impaired; or

3. removes the child or incompetent person from the state.

Custodial interference in the first degree is a class E felony.

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

§ 135.51 Affirmative defense.

It shall be an affirmative defense to a prosecution under section 135.45 or under subdivision one or three of section 135.50 of this article that the victim had been abandoned or that the taking was necessary in an emergency to protect the victim because he or she has been subjected to or threatened with mistreatment or abuse or the person was fleeing an incidence or pattern of domestic violence.

§ 135.52 Special provisions relating to sentencing.

1. In addition to any sentence imposed against any person convicted of violating section 135.45 or 135.50 of this article, the court may assess any reasonable expenses incurred by the lawful custodian and/or state or other unit of government in searching for and/or recovering the child or incompetent person.

2. As a condition of any sentence imposed against any person convicted of violating section 135.45 or 135.50 of this article, the court may in addition, require the defendant to receive counseling at the expense of the defendant, based on his or her ability to pay.

§ 135.53 Duties of law enforcement officers.

1. A law enforcement officer who is conducting an investigation for a violation of section 135.45 or 135.50 of this article shall enter such case in the federal National Crime Information Center Computer or any similar successor compilation.

2. A law enforcement officer who is conducting an investigation or making an arrest for a violation of section 135.45 or 135.50 of this article shall take the child or incompetent person into protective custody. Such officer shall return such child or incompetent person taken into protective custody to his or her lawful custodian or to the institution from which he or she is entrusted or to the court in which a custody proceeding is pending.

§ 4. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.