

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE
Revised

House Bill 675

(Delegate King, *et al.*)

Judiciary

Judicial Proceedings

Criminal Law - Child Abduction by Relative

This bill adds as a required element for the crime of child abduction by a relative that the relative abduct, detain, or harbor the child with the intent to deprive the lawful custodian of custody of the child. The bill also increases the penalties for the crime.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill's penalty provisions.

Local Effect: Potential minimal increase in revenues and expenditures due to the bill's penalty provisions.

Small Business Effect: None.

Analysis

Bill Summary: Under this bill, the penalty for abducting a child to another state or harboring, hiding, or detaining a child in another state for not more than 30 days increases from a maximum of 30 days imprisonment and/or a \$250 fine to a maximum of one year imprisonment and/or a \$1,000 fine. If the child is in another state for more than 30 days, the penalties are increased from a maximum of one year imprisonment and/or a \$1,000 fine to a maximum of three years imprisonment and/or a fine of \$2,500. If the child is taken or detained outside of the United States, the maximum term of imprisonment is increased from three years to five years.

Current Law: “Lawful custodian” means a person who is authorized to have custody and exercise control over a child who is less than age 16, and includes a person who is authorized to have custody by court order. “Relative” means a parent, grandparent, brother, sister, aunt, uncle, or an individual who was a lawful custodian before an unlawful abduction or taking away of a child.

If a child is less than age 16, a relative who knows that another person is the child’s lawful custodian may not abduct, take, or carry away the child from the lawful custodian to another place. If a relative acquires lawful possession of a child, the relative may not detain the child for more than 48 hours after the lawful custodian demands the return of the child. A relative may not harbor or hide a child, knowing that possession was obtained by another relative unlawfully, or act as an accessory.

If an individual commits an unlawful abduction or taking away of a child from the lawful custodian, that individual may file a petition in an equity court that: (1) states that at the time the act was done, a failure to do so would have resulted in a clear and present danger to the health, safety, or welfare of the child; and (2) seeks to revise, amend, or clarify the custody order. If the petition is filed within 96 hours of the act, a finding by the court that failure to do the act would have resulted in a clear and present danger to the health, safety, or welfare of the child is a complete defense to any action that alleges an unlawful abduction or taking away of the child from the lawful custodian.

An individual who abducts, takes, or carries away a child less than age 16 from the lawful custodian to another place in Maryland is guilty of a misdemeanor and is subject to maximum penalties of a fine of \$250 or imprisonment for up to 30 days. If an individual abducts, takes, or carries away a child less than age 16 from the lawful custodian to another state for not more than 30 days, the individual is guilty of a felony and is subject to a maximum fine of \$250, and/or imprisonment not exceeding 30 days. An individual who abducts, takes, or carries away a child to another state for more than 30 days is guilty of a felony and is subject to a maximum fine of \$1,000 and/or imprisonment for up to one year. An individual who abducts, takes, or carries away a child to a place outside the United States or its territories, the District of Columbia, or the Commonwealth of Puerto Rico, is guilty of a felony and is subject to a maximum fine of \$5,000 and/or imprisonment for up to three years.

Background: Abduction of a child by a parent or other relative was traditionally considered a family matter rather than a criminal matter. A parent who abducted or hid a child in violation of a lawful custody order could be cited for contempt of court, but any penalties imposed were usually not severe.

In the 1960s and 1970s, a rapidly increasing divorce rate led to a correspondingly higher number of children who were subject to custody orders and also led to an increasing number of parental abductions, or “custodial interference” cases. The federal Parental Kidnapping Prevention Act was enacted in 1980 to help custodial parents whose children had been taken across state lines regain custody of those children.

According to The Children’s Rights Council of Maryland, in the majority of states, penalties apply when either parent or another covered relative hides a child, whether or not that person has lawful custody

Prosecutors have indicated that the current penalties for abduction of a child by a relative are inadequate. An example of a recent abduction case presented to the committee was a father who was not awarded the custody he felt he deserved by the courts and abducted his child from the child’s mother to a location out of state and started a new life with the child under false names. After a nationwide manhunt, the defendant was located and arrested 28 days later in another state. He was extradited by the State’s Attorney back to Maryland and served well over twice the 30-day maximum penalty while awaiting his trial date.

With no potential for further incarceration, there was nothing to “hold over the head” of the defendant to ensure future compliance with conditions of probation. In fact, many judges would not impose any conditions of probation such as a requirement for counseling or drug treatment where necessary if there is no possible “back up time.”

State Revenues: General fund revenues could increase minimally as a result of the bill’s monetary penalty provisions from cases heard in the District Court.

State Expenditures: General fund expenditures could increase minimally as a result of the bill’s incarceration penalties due to more people being committed to Division of Correction (DOC) facilities for longer periods of time and increased payments to counties for reimbursement of inmate costs. The number of people convicted under the enhanced penalties and for the proposed crime are expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,600 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$526 per month. Excluding medical care, the average variable costs total \$148 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2009 are estimated to range from \$19 to \$71 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Revenues could increase minimally as a result of the bill's monetary penalty provisions from cases heard in the circuit courts.

Local Expenditures: Expenditures could increase minimally as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$40 to \$129 per inmate in fiscal 2009.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Public Safety and Correctional Services, The Children's Rights Council, Department of Legislative Services

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