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SENATE BILL 402

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

DEDE FELDMAN

AN ACT

RELATING TO CRIMES; DEFINING "GOOD CAUSE" AS AN AFFIRMATIVE  
DEFENSE FOR PURPOSE OF CUSTODIAL INTERFERENCE CRIMES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 30-4-4 NMSA 1978 (being Laws 1989,  
Chapter 206, Section 1, as amended) is amended to read:

"30-4-4. CUSTODIAL INTERFERENCE-- PENALTIES. --

A. As used in this section:

(1) "child" means an individual who has not  
reached his eighteenth birthday;

(2) "custody determination" means a judgment or  
order of a court of competent jurisdiction providing for the  
custody of a child, including visitation rights;

(3) "good cause" means that the person taking,  
detaining, concealing, enticing away or failing to return a

1 child:

2 (a) reasonably believed the action taken  
3 was necessary to protect the child from physical or sexual  
4 assault or substantial emotional harm; or

5 (b) reasonably believed the action taken  
6 was necessary to protect himself from physical or sexual  
7 assault;

8 [~~(3)~~] (4) "person" means any individual or  
9 legal entity, whether incorporated or unincorporated, including  
10 the United States, the state of New Mexico or any subdivision  
11 thereof;

12 [~~(4)~~] (5) "physical custody" means actual  
13 possession and control of a child; and

14 [~~(5)~~] (6) "right to custody" means the right to  
15 physical custody or visitation of a child arising from:

16 (a) a parent-child relationship between  
17 the child and a natural or adoptive parent absent a custody  
18 determination; or

19 (b) a custody determination.

20 B. Custodial interference consists of any person,  
21 having a right to custody of a child, maliciously taking,  
22 detaining, concealing [~~or~~], enticing away or failing to return  
23 that child without good cause and with the intent to deprive  
24 permanently or for a protracted time another person also having  
25 a right to custody of that child of his right to custody. Good

Underscored material = new  
[bracketed material] = delete

1 cause shall constitute an affirmative defense to custodial  
2 interference.

3       Whoever commits custodial interference is guilty of a  
4 fourth degree felony.

5           C. Unlawful interference with custody consists of  
6 any person, not having a right to custody, maliciously taking,  
7 detaining, concealing or enticing away or failing to return any  
8 child with the intent to detain or conceal permanently or for a  
9 protracted time that child from any person having a right to  
10 custody of that child.

11       Whoever commits unlawful interference with custody is  
12 guilty of a fourth degree felony.

13           D. ~~[Violation of Subsection B or C of this section~~  
14 ~~is unlawful and is a fourth degree felony.]~~

15           E.] A peace officer investigating a report of a  
16 violation of this section may take a child into protective  
17 custody if it reasonably appears to the officer that any person  
18 will flee with the child in violation of Subsection B or C of  
19 this section. The child shall be placed with the person whose  
20 right to custody of the child is being enforced, if available  
21 and appropriate, ~~[and]~~ or, if not, in any of the community-based  
22 shelter care facilities as provided for in Section ~~[32-1-25.1]~~  
23 32A-4-8 NMSA 1978.

24           ~~[F.]~~ E. Upon recovery of a child, a hearing by the  
25 civil court currently having jurisdiction or the court to which

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[bracketed material] = delete

1 the custody proceeding is assigned shall be expeditiously held  
2 to determine continued custody.

3 ~~[G.]~~ E. A felony charge brought under this section  
4 may be dismissed if the person voluntarily returns the child  
5 within fourteen days after taking, detaining or failing to  
6 return the child in violation of this section.

7 ~~[H.]~~ G. The offenses enumerated in this section are  
8 continuous in nature and continue for so long as the child is  
9 concealed or detained.

10 ~~[I.]~~ H. Any defendant convicted of violating the  
11 provisions of this section may be assessed the following  
12 expenses and costs by the court, with payments to be assigned to  
13 the respective person or agency:

14 (1) any expenses and costs reasonably incurred  
15 by the person having a right to custody of the child in seeking  
16 return of that child; and

17 (2) any expenses and costs reasonably incurred  
18 for the care of the child while in the custody of the human  
19 services department.

20 ~~[J.]~~ I. Violation of the provisions of this section  
21 is punishable in New Mexico, whether the intent to commit the  
22 offense is formed within or outside the state, if the child was  
23 present in New Mexico at the time of the taking. "