

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND TENTH LEGISLATURE
4

5 Legislative Document

No. 1944

7 H. P. 1969 House of Representatives, February 9, 1982
Approved for introduction by the Legislative Council pursuant to
Joint Rule 26.

Referred to the Committee on Judiciary. Sent up for concurrence
and ordered printed.

8 EDWIN H. PERT, Clerk
Presented by Representative Tarbell of Bangor.

Cosponsors: Representative Lewis of Auburn, Representative
Cahill of Woolwich and Senator Usher of Cumberland.

9
10 STATE OF MAINE
11

12 IN THE YEAR OF OUR LORD
13 NINETEEN HUNDRED AND EIGHTY-TWO
14

15 AN ACT to Clarify the Criminal Restraint
16 by Parent Law.
17

18 Be it enacted by the People of the State of Maine as follows:

19 Sec. 1. 17-A MRSA §303, sub-§1, as enacted by PL 1979,
20 c. 512, §26, is repealed and the following enacted in its
21 place:

22 1. A person is guilty of criminal restraint by parent
23 if, being the parent of a child under the age of 16, and
24 knowing he has no legal right to do so, he:

25 A. Takes, retains or entices the child from the cus-
26 tody of his other parent, guardian or other lawful cus-
27 todian with the intent to remove the child from the
28 State or to secrete him and hold him in a place where
29 he is not likely to be found; or

30 B. Takes, retains or entices the child from the cus-
31 tody of his other parent, guardian or other lawful cus-
32 todian, whose custodial authority was established by a

1 court of this State, in the state in which the child is
2 residing with his legal custodian with the intent to
3 remove the child from that state or to secrete him and
4 hold him in a place where he is not likely to be found.

5 **Sec. 2.** 17-A MRSA §303, sub-§3, as enacted by PL 1979,
6 c. 512, §26, is amended by adding at the end a new para-
7 graph to read:

8 For purposes of this subsection, "reasonable belief a
9 child has been taken, retained or enticed in violation
10 of this section" includes, but is not limited to, a
11 determination by a law enforcement officer, based on
12 his review of the terms of a certified copy of the most
13 recent court decree granting custody of the child, that
14 the parent who is exercising control over the child is
15 not the person authorized to have custody under terms
16 of the decree.

17 **Sec. 3. Legislative findings and intent.** The Legis-
18 lature finds that the criminal restraint of a child outside
19 of this State by a noncustodial parent, in violation of a
20 custody order issued by a Maine court, seriously interferes
21 with the State's interest in the child's welfare. This con-
22 duct, when it occurs in Maine, is already a criminal
23 offense. But existing law needs to more clearly declare
24 this conduct to be criminal when it occurs outside of Maine,
25 so that noncustodial parents cannot violate Maine court cus-
26 tody orders, and thereby interfere with the State's interest
27 in the child's welfare.

28 The Legislature intends, through the Revised Statutes,
29 Title 17-A, section 303, subsection 1, to more clearly make
30 the abduction of a child outside of this State by a
31 noncustodial parent, in violation of a custody order issued
32 by a Maine court, to be a criminal offense in this State and
33 expresses its intent that territorial application be given
34 to this statute pursuant to the Revised Statutes, Title
35 17-A, section 7.

36 STATEMENT OF FACT

37 This bill modifies the criminal restraint by parent
38 statute in several important ways. While section 1, para-
39 graph A is a restatement of existing law, section 1, para-
40 graph B is new. It would clarify current law to make it a
41 Maine criminal violation for a noncustodial parent to take
42 and hide a child from his custodial parent or guardian, even
43 when all of the activities occur outside of Maine, provided

1 that the court decree establishing custody was issued by
2 Maine court. In enacting this law the Legislature is aware
3 of the problems of territorial applicability of criminal
4 statutes to conduct occurring outside of Maine and fully
5 intends that this offense fall within the condition extend-
6 ing coverage found in Title 17-A, section 7, paragraph F.
7 This change in the law goes far to help bring to justice
8 those noncustodial parents who pursue their children and the
9 custodial parent or guardian, whose custody rights were
10 established by a Maine court, to another state and violate
11 the terms of the Maine court there by abducting the chil-
12 dren.

13 Section 2 clarifies one method, but by no means the
14 only method, for police officers to know when their author-
15 ity to intervene in an apparent criminal restraint by parent
16 case is appropriate. This section makes it clear that a
17 determination, based on a review of the most recent court
18 custody order, that the child is under the control of the
19 parent not entitled to custody, is one method of forming a
20 reasonable belief that the child has been "taken, retained
21 or enticed" in violation of the law.