

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 1475

6
7 H.P. 1117

House of Representatives, April 14, 1983

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

10 EDWIN H. PERT, Clerk

11 Presented by Representative Scarpino of St. George.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-THREE
16

17 AN ACT to Prohibit Parents from Interfering
18 with the Parental Rights of the Other Parent.
19

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

22 17-A MRSA §304 is enacted to read:

23 §304. Interference with parental rights

24 1. A person is guilty of interference with
25 parental rights if, being the parent of a child under
26 the age of 16 or any person acting pursuant to direc-
27 tions from that parent, he:

28 A. Takes, retains or entices the child from the
29 other parent with the intent to secrete him and
30 hold him in a place where he is not likely to be
31 found by his other parent; or

1 B. Takes, retains or entices the child from the
2 other parent, after being served with process in
3 an action affecting marriage, but prior to the
4 issuance of a temporary or final order determin-
5 ing custody rights to that child, with the
6 intent to remove the child from the State.

7 2. Consent by the person taken, enticed or
8 retained is not a defense under this section.

9 3. It is a defense to a prosecution under this
10 section that the action:

11 A. Is taken to protect the child from imminent
12 physical harm;

13 B. Is taken by a parent fleeing from imminent
14 physical harm to himself;

15 C. Is consented to by the other parent; or

16 D. Is otherwise authorized by law.

17 4. A law enforcement officer shall not be held
18 liable for taking physical custody of a child whom he
19 reasonably believes has been taken, retained or
20 enticed in violation of this section and for deliver-
21 ing the child to a person whom he reasonably believes
22 is the child's lawful custodian or to any other suit-
23 able person.

24 5. A law enforcement officer may arrest without
25 a warrant any person who he has probable cause to
26 believe has violated or is violating this section.

27 6. Interference with parental rights is a Class
28 E crime for violation of subsection 1, paragraph A
29 and a Class C crime for violation of subsection 1,
30 paragraph B.

31 STATEMENT OF FACT

32 Countless children are the innocent victims of
33 disputes between divorced or divorcing parents. It
34 is estimated that there are between 25,000 to 100,000
35 annual cases of child snatching, the nonconsensual

1 removal or retention of a child by a parent or
2 parent's agent in violation of a court order, or in
3 violation of the rights of the other joint custodian
4 where no custody decree has yet been rendered. The
5 state law provides criminal penalties when there has
6 been a court ordered decree of custody; but provides
7 no penalties for cases prior to the awarding of cus-
8 tody.

9 Traditionally, both parents have an equal right
10 to the custody of the child, they share joint cus-
11 tody, when there has been no court decree of custody
12 in connection with divorce or separation. There is
13 no protection for "child snatching" in these cases.
14 This bill makes it a Class E crime to attempt to
15 thwart that shared custody arrangement by depriving
16 one parent of their natural joint custodial rights.
17 When a divorce or separation decree is pending and
18 one parent attempts to thwart the jurisdiction of the
19 court by removing the child from the State or retain-
20 ing him out of state, it becomes a Class C crime.
21 This permits the State to avail itself of federal
22 resources in attempting to apprehend a person who has
23 committed this crime and left the State to avoid
24 prosecution. Current federal guidelines permit
25 assistance when the child is in physical danger or in
26 a condition of abuse or neglect.

27 It is not a crime to take the child if there is a
28 threat of physical harm to the child or the parent,
29 if the parent consents, or if otherwise authorized by
30 law.

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