

House Bill 968

By: Representatives Heard of the 104<sup>th</sup>, Ehrhart of the 36<sup>th</sup>, Ralston of the 7<sup>th</sup>, and Fleming of the 117<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 3 of Chapter 5 of Title 16 of the Official Code of Georgia Annotated,  
2 relating to kidnapping, false imprisonment, and related criminal offenses, so as to change  
3 provisions relating to the crimes of interference with custody and interstate interference with  
4 custody; to redefine the elements of such offenses and add circumstances constituting such  
5 offenses, including but not limited to interference with custody where there has been no  
6 custody order and interference with visitation rights; to require certain reimbursement by  
7 certain offenders; to provide that a law enforcement agency which does not report to the state  
8 a missing person report made to it may be subject to a civil penalty; to provide for other  
9 related matters; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Article 3 of Chapter 5 of Title 16 of the Official Code of Georgia Annotated, relating to  
13 kidnapping, false imprisonment, and related criminal offenses, is amended by striking Code  
14 Section 16-5-45, relating to criminal interference with custody, and inserting in its place a  
15 new Code section to read as follows:

16 "16-5-45.

17 (a) As used in this Code section, the term:

18 (1) 'Child' means any individual who is under the age of 17 years or any individual who  
19 is under the age of 18 years who is alleged to be a deprived child as such is defined in  
20 Code Section 15-11-2, relating to juvenile proceedings.

21 (2) 'Committed person' means any child or other person whose custody is entrusted to  
22 another individual by authority of law.

23 (3) 'Lawful custody' means that custody inherent in the natural parents, that custody  
24 awarded by proper authority as provided in Code Section 15-11-45, or that custody  
25 awarded to a parent, guardian, or other person by a court of competent jurisdiction.

1 (b)(1) A person commits the offense of interference with custody when without lawful  
2 authority to do so the person:

3 (A) Knowingly or recklessly takes or entices any child or committed person away from  
4 another person having equal or greater rights to the child or committed person when  
5 there has been no award of custody between the parties by a court of competent  
6 jurisdiction;

7 (B) Knowingly or recklessly takes or entices any child or committed person away from  
8 the individual who has lawful custody of such child or committed person as awarded  
9 by a court of competent jurisdiction;

10 (C) Intentionally and willfully denies to a parent or other person such person's exercise  
11 of visitation rights with a child or committed person where such rights have been  
12 awarded by a court of competent jurisdiction;

13 ~~(B)~~(D) Knowingly harbors any child or committed person who has absconded; or

14 ~~(C)~~(E) Intentionally and willfully retains possession within this state of the child or  
15 committed person upon the expiration of a lawful period of visitation with the child or  
16 committed person.

17 (2) A person convicted of the offense of interference with custody shall be punished as  
18 follows:

19 (A) Upon conviction of the first offense, the defendant shall be guilty of a  
20 misdemeanor and shall be fined not less than \$200.00 nor more than \$500.00 or shall  
21 be imprisoned for not less than one month nor more than five months, or both fined and  
22 imprisoned;

23 (B) Upon conviction of the second offense, the defendant shall be guilty of a  
24 misdemeanor and shall be fined not less than \$400.00 nor more than \$1,000.00 or shall  
25 be imprisoned for not less than three months nor more than 12 months, or both fined  
26 and imprisoned; and

27 (C) Upon the conviction of the third or subsequent offense, the defendant shall be  
28 guilty of a felony and shall be punished by imprisonment for not less than one nor more  
29 than five years.

30 (3) Upon conviction of a second or subsequent offense, the party shall be required to  
31 reimburse the parent or other person from whose custody the child or committed person  
32 was taken for any expenses incurred in searching for the child or committed person and  
33 any attorney's fees incurred in seeking the return of the child or committed person. Such  
34 amounts shall be determined as provided in Article 1 of Chapter 14 of Title 17, relating  
35 to restitution to victims in criminal cases.

36 (c)(1) A person commits the offense of interstate interference with custody when without  
37 lawful authority to do so the person knowingly or recklessly takes or entices any minor

1 or committed person away from the individual who has lawful custody of such minor or  
 2 committed person and in so doing brings such minor or committed person into this state  
 3 or removes such minor or committed person from this state.

4 (2) A person also commits the offense of interstate interference with custody when the  
 5 person removes a minor or committed person from this state in the lawful exercise of a  
 6 visitation right and, upon the expiration of the period of lawful visitation, intentionally  
 7 retains possession of the minor or committed person in another state for the purpose of  
 8 keeping the minor or committed person away from the individual having lawful custody  
 9 of the minor or committed person. The offense is deemed to be committed in the county  
 10 to which the minor or committed person was to have been returned upon expiration of the  
 11 period of lawful visitation.

12 (3) A person also commits the offense of interstate interference with custody when the  
 13 person removes a minor or committed person from this state and thereby denies to a  
 14 parent or other person such person's exercise of visitation rights with a minor or  
 15 committed person where such rights have been awarded by a court of competent  
 16 jurisdiction.

17 (4) A person also commits the offense of interstate interference with custody when the  
 18 person removes a minor or committed person from this state and from another person  
 19 having equal or greater rights to the minor or committed person when there has been no  
 20 award of custody between the parties by a court of competent jurisdiction.

21 ~~(3)~~(5) A person convicted of the offense of interstate interference with custody shall be  
 22 guilty of a felony and shall be imprisoned for not less than one year nor more than five  
 23 years.

24 (d) If a law enforcement agency willfully fails to make a report to the Georgia Bureau of  
 25 Investigation when a child is reported missing to the law enforcement agency under any  
 26 provision of this Code section, the law enforcement agency shall be subject to a civil  
 27 penalty not to exceed \$1,000.00 to be imposed by the Georgia Peace Officers Standards  
 28 and Training Council in proceedings subject to Chapter 13 of Title 50, the 'Georgia  
 29 Administrative Procedure Act.'

## 30 SECTION 2.

31 All laws and parts of laws in conflict with this Act are repealed.