

A BILL TO BE ENTITLED
AN ACT

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

"16-5-45.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c)(1) A person commits the offense of interstate interference with custody when without 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.