

20:13-4

LEGISLATIVE HISTORY CHECKLIST
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NJSA: 20:13-4 et al

(Interference with
custody)

LAWS OF: 1990

CHAPTER: 104

Bill No: A2847

Sponsor(s): Ford & Doyle

Date Introduced: January 16, 1990

Committee: Assembly: Judiciary, Law Public Safety & Defense

Senate: Judiciary

Amended during passage: Yes Amendments during passage
denoted by asterisks.

Date of Passage: Assembly: May 17, 1990

Senate: October 11, 1990

Date of Approval: November 14, 1990

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: Yes

Senate: Yes

Fiscal Note: No

Veto Message: No

Message on signing: Yes

Following were printed:

Reports: Yes

Hearings: No

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(over)

974.90
C536
1985f

New Jersey. Commission on Missing Children.
Final report...December 11, 1985.
(pp. 6-11)

974.90
C536

New Jersey. Commission on Missing Children.
Interim report...May 23, 1985.

974.90
C536
1985a

New Jersey. Commission on Missing Children in New Jersey.
Public hearing, held 1-30-85, 2-27-85,
3-20-85, Elizabeth, Toms River, Camden, 1985.

KBG/SLJ

P.L.1990, CHAPTER 104, approved November 14, 1990

1990 Assembly No. 2847 (First Reprint)

1 AN ACT concerning interference with custody, amending
2 N.J.S.2C:13-4 and supplementing Title 2A of the New Jersey
3 Statutes.

4
5 BE IT ENACTED by the Senate and General Assembly of the
6 State of New Jersey:

7 1. N.J.S.2C:13-4 is amended to read as follows:

8 2C:13-4. Interference with custody. a. Custody of children.

9 [A person commits an offense if he knowingly takes or entices
10 any child under the age of 18 from the custody of the parent,
11 guardian or other lawful custodian of the child, when he has no
12 privilege to do so, or he does so in violation of a court order. It is
13 an affirmative defense that:

14 (1) The actor believed that his action was necessary to
15 preserve the child from danger to his welfare; or

16 (2) The child, being at the time not less than 14 years old, was
17 taken away at his own volition and without purpose to commit a
18 criminal offense with or against the child.

19 Proof that the child was below the critical age gives rise to a
20 presumption that the actor knew the child's age.

21 Interference with custody is a crime of the fourth degree.] A
22 person, including a parent, guardian or other lawful custodian, is
23 guilty of interference with custody if he:

24 (1) Takes or detains a minor child with the purpose of
25 concealing the minor child and thereby depriving the child's
26 other parent of custody or visitation of the minor child; or

27 (2) After being served with process or having actual knowledge
28 of an action affecting marriage or custody but prior to the
29 issuance of a temporary or final order determining custody and
30 visitation rights to a minor child, takes, detains, entices or
31 conceals the child within or outside the State for the purpose of
32 depriving the child's other parent of custody or visitation, or to
33 evade the jurisdiction of the courts of this State;

34 (3) After being served with process or having actual knowledge
35 of an action affecting the protective services needs of a child
36 pursuant to Title 9 of the Revised Statutes in an action affecting
37 custody, but prior to the issuance of a temporary or final order
38 determining custody rights of a minor child, takes, detains,
39 entices or conceals the child within or outside the State for the

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:
Assembly AJL committee amendments adopted April 23, 1990.

1 purpose of evading the ¹[jurisdiction] jurisdiction¹ of the courts
2 of this State; or

3 (4) After the issuance of a temporary or final order specifying
4 custody, visitation or joint custody rights, takes, detains, entices
5 or conceals a minor child from the other parent in violation of
6 the custody or visitation order.

7 Interference with custody is a crime of the third degree ¹but
8 the presumption of non-imprisonment set forth in subsection e. of
9 N.J.S.2C:44-1 for a first offense of a crime of the third degree
10 shall not apply. However, if the child is taken, detained, enticed
11 or concealed outside the United States, interference with custody
12 is a crime of the second degree¹.

13 b. Custody of committed persons. A person is guilty of a
14 crime of the fourth degree if he knowingly takes or entices any
15 committed person away from lawful custody when he is not
16 privileged to do so. "Committed person" means, in addition to
17 anyone committed under judicial warrant, any orphan, neglected
18 or delinquent child, mentally defective or insane person, or other
19 dependent or incompetent person entrusted to another's custody
20 by or through a recognized social agency or otherwise by
21 authority of law.

22 c. It is an affirmative defense to a prosecution under
23 subsection a. of this section, which must be proved by clear and
24 convincing evidence, that:

25 (1) The actor reasonably believed that the action was
26 necessary to preserve the child from imminent danger to his
27 welfare. However, no defense shall be available pursuant to this
28 subsection if the actor does not, as soon as reasonably practicable
29 ¹but in no event more than 24 hours¹ after taking a child under
30 his protection, give notice of the child's location to the police
31 department of the municipality where the child resided, the
32 office of the county prosecutor in the county where the child
33 resided, or the Division of Youth and Family Services in the
34 Department of Human Services;

35 (2) The actor reasonably believed that the taking or detaining
36 of the minor child was consented to by the other parent, or by an
37 authorized State agency; or

38 (3) The child, being at the time of the taking or concealment
39 not less than 14 years old, was taken away at his own volition and
40 without purpose to commit a criminal offense with or against the
41 child.

42 d. It is an affirmative defense to a prosecution under
43 subsection a. of this section that a parent having the right of
44 custody reasonably believed he was fleeing from imminent
45 physical danger from the other parent, provided that the parent
46 having custody, as soon as reasonably practicable:

47 (1) Gives notice of the child's location to the police
48 department of the municipality where the child resided, the
49 office of the county prosecutor in the county where the child

1 resided, or the Division of Youth and Family Services¹ in the
2 Department of Human Services¹; or

3 (2) Commences an action affecting custody in an appropriate
4 court.

5 e. The offenses enumerated in this section are continuous in
6 nature and continue for so long as the child is concealed or
7 detained.

8 f. (1) In addition to any other disposition provided by law, a
9 person convicted under subsection a. of this section shall make
10 restitution of all reasonable expenses and costs, including
11 reasonable counsel fees, incurred by the other parent in securing
12 the child's return.

13 (2) In imposing sentence under subsection a. of this section the
14 court shall consider, in addition to the factors enumerated in
15 chapter 44 of Title 2C of the New Jersey Statutes:

16 (a) Whether the person returned the child voluntarily; and

17 (b) The length of time the child was concealed or detained.

18 g. As used in this section, "Parent" means a parent, guardian
19 or other lawful custodian of a minor child.

20 (cf: P.L.1982, c.199, s.1)

21 2. (New section) After the issuance of any temporary or
22 permanent order determining custody or visitation of a minor
23 child, a law enforcement officer having reasonable cause to
24 believe that a person is likely to flee the State with the child or
25 otherwise by flight or concealment evade the jurisdiction of the
26 courts of this State may take a child into protective custody and
27 return the child to the parent having lawful custody, or to a court
28 in which a custody hearing concerning the child is pending.

29 3. (New section) Every order of a court involving custody or
30 visitation shall include a written notice, in both English and
31 Spanish, advising the persons affected as to the penalties
32 provided in N.J.S.2C:13-4 for violating that order.

33 4. This act shall take effect immediately.

34
35
36 **CRIMINAL JUSTICE**

37
38 Revises the law concerning the criminal offense of interfering
39 with custody of a minor child.

ASSEMBLY, No. 2847

STATE OF NEW JERSEY

INTRODUCED JANUARY 16, 1990

By Assemblywoman FORD and Assemblyman DOYLE

1 AN ACT concerning interference with custody, amending
2 N.J.S.2C:13-4 and supplementing Title 2A of the New Jersey
3 Statutes.

4
5 BE IT ENACTED by the Senate and General Assembly of the
6 State of New Jersey:

7 1. N.J.S.2C:13-4 is amended to read as follows:

8 2C:13-4. Interference with custody. a. Custody of children.
9 [A person commits an offense if he knowingly takes or entices
10 any child under the age of 18 from the custody of the parent,
11 guardian or other lawful custodian of the child, when he has no
12 privilege to do so, or he does so in violation of a court order. It is
13 an affirmative defense that:

14 (1) The actor believed that his action was necessary to
15 preserve the child from danger to his welfare; or

16 (2) The child, being at the time not less than 14 years old, was
17 taken away at his own volition and without purpose to commit a
18 criminal offense with or against the child.

19 Proof that the child was below the critical age gives rise to a
20 presumption that the actor knew the child's age.

21 Interference with custody is a crime of the fourth degree.] A
22 person, including a parent, guardian or other lawful custodian, is
23 guilty of interference with custody if he:

24 (1) Takes or detains a minor child with the purpose of
25 concealing the minor child and thereby depriving the child's
26 other parent of custody or visitation of the minor child; or

27 (2) After being served with process or having actual knowledge
28 of an action affecting marriage or custody but prior to the
29 issuance of a temporary or final order determining custody and
30 visitation rights to a minor child, takes, detains, entices or
31 conceals the child within or outside the State for the purpose of
32 depriving the child's other parent of custody or visitation, or to
33 evade the jurisdiction of the courts of this State;

34 (3) After being served with process or having actual knowledge
35 of an action affecting the protective services needs of a child
36 pursuant to Title 9 of the Revised Statutes in an action affecting
37 custody, but prior to the issuance of a temporary or final order
38 determining custody rights of a minor child, takes, detains,

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 entices or conceals the child within or outside the State for the
2 purpose of evading the jurisdiction of the courts of this State; or

3 (4) After the issuance of a temporary or final order specifying
4 custody, visitation or joint custody rights, takes, detains, entices
5 or conceals a minor child from the other parent in violation of
6 the custody or visitation order.

7 Interference with custody is a crime of the third degree.

8 b. Custody of committed persons. A person is guilty of a
9 crime of the fourth degree if he knowingly takes or entices any
10 committed person away from lawful custody when he is not
11 privileged to do so. "Committed person" means, in addition to
12 anyone committed under judicial warrant, any orphan, neglected
13 or delinquent child, mentally defective or insane person, or other
14 dependent or incompetent person entrusted to another's custody
15 by or through a recognized social agency or otherwise by
16 authority of law.

17 c. It is an affirmative defense to a prosecution under
18 subsection a. of this section, which must be proved by clear and
19 convincing evidence, that:

20 (1) The actor reasonably believed that the action was
21 necessary to preserve the child from imminent danger to his
22 welfare. However, no defense shall be available pursuant to this
23 subsection if the actor does not, as soon as reasonably practicable
24 after taking a child under his protection, give notice of the
25 child's location to the police department of the municipality
26 where the child resided, the office of the county prosecutor in
27 the county where the child resided, or the Division of Youth and
28 Family Services in the Department of Human Services;

29 (2) The actor reasonably believed that the taking or detaining
30 of the minor child was consented to by the other parent, or by an
31 authorized State agency; or

32 (3) The child, being at the time of the taking or concealment
33 not less than 14 years old, was taken away at his own volition and
34 without purpose to commit a criminal offense with or against the
35 child.

36 d. It is an affirmative defense to a prosecution under
37 subsection a. of this section that a parent having the right of
38 custody reasonably believed he was fleeing from imminent
39 physical danger from the other parent, provided that the parent
40 having custody, as soon as reasonably practicable:

41 (1) Gives notice of the child's location to the police
42 department of the municipality where the child resided, the
43 office of the county prosecutor in the county where the child
44 resided, or the Division of Youth and Family Services; or

45 (2) Commences an action affecting custody in an appropriate
46 court.

47 e. The offenses enumerated in this section are continuous in
48 nature and continue for so long as the child is concealed or

1 detained.

2 f. (1) In addition to any other disposition provided by law, a
3 person convicted under subsection a. of this section shall make
4 restitution of all reasonable expenses and costs, including
5 reasonable counsel fees, incurred by the other parent in securing
6 the child's return.

7 (2) In imposing sentence under subsection a. of this section the
8 court shall consider, in addition to the factors enumerated in
9 chapter 44 of Title 2C of the New Jersey Statutes:

10 (a) Whether the person returned the child voluntarily; and

11 (b) The length of time the child was concealed or detained.

12 g. As used in this section, "Parent" means a parent, guardian
13 or other lawful custodian of a minor child.

14 (cf: P.L.1982, c.199, s.1)

15 2. (New section) After the issuance of any temporary or
16 permanent order determining custody or visitation of a minor
17 child, a law enforcement officer having reasonable cause to
18 believe that a person is likely to flee the State with the child or
19 otherwise by flight or concealment evade the jurisdiction of the
20 courts of this State may take a child into protective custody and
21 return the child to the parent having lawful custody, or to a court
22 in which a custody hearing concerning the child is pending.

23 3. (New section) Every order of a court involving custody or
24 visitation shall include a written notice, in both English and
25 Spanish, advising the persons affected as to the penalties
26 provided in N.J.S.2C:13-4 for violating that order.

27 4. This act shall take effect immediately.

28
29
30 STATEMENT

31
32 This bill would revise the law concerning the criminal offense
33 of interfering with custody of a minor child.

34 Currently, N.J.S.2C:13-4 provides that a person commits a
35 crime of the fourth degree if he knowingly takes or entices a
36 child under the age of 18 from the custody of the parent,
37 guardian or other lawful custodian of the child, when the person
38 has no privilege to do so, or when he does so in violation of a
39 court order. However, this provision only protects the custody
40 rights of a parent who has obtained custody pursuant to a court
41 order. It does not deal with the problem of parental kidnappings
42 which take place before a formal order is entered.

43 This bill would address the issue by providing that a person,
44 including a parent, guardian, or other lawful custodian, commits
45 the crime of interfering with custody if he:

46 (1) Takes or detains a minor child in order to conceal him and
47 thereby deprive the child's parent, guardian, or lawful custodian
48 of custody or visitation; or

1 (2) After being served with process or having actual knowledge
2 of an action affecting marriage or custody but prior to the
3 issuance of a temporary or final order determining custody or
4 visitation rights to a minor child, takes or conceals the child for
5 the purpose of depriving the other parent, guardian or lawful
6 custodian of custody or visitation, or to evade the court's
7 jurisdiction; or

8 (3) After being served with process or having actual knowledge
9 of an action affecting the protective services needs of a minor
10 child pursuant to Title 9 of the New Jersey Statutes in an action
11 affecting custody, but prior to a final order determining custody
12 rights, takes or conceals the child to evade the court's
13 jurisdiction; or

14 (4) After the issuance of a temporary or final order specifying
15 custody or visitation rights, takes or conceals a minor child from
16 the other parent, guardian or lawful custodian in violation of the
17 order.

18 The bill would also upgrade the crime of interfering with
19 custody, making it a crime of the third degree. A crime of the
20 third degree is punishable by term of imprisonment of three to
21 five years, or a fine up to \$7,500, or both. In addition to these
22 penalties, a person convicted of violating the law would be
23 required to make restitution of all reasonable expenses and costs,
24 including reasonable counsel fees, incurred by the other parent in
25 securing the child's return.

26
27

28 CRIMINAL JUSTICE

29

30 Revises the law concerning the criminal offense of interfering
31 with custody of a minor child.

ASSEMBLY JUDICIARY LAW AND PUBLIC SAFETY
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2847

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: APRIL 5, 1990

The Assembly Judiciary, Law and Public Safety Committee reports favorably and with committee amendments Assembly Bill No. 2847.

This bill would revise the law concerning the criminal offense of interfering with custody of a minor child.

Currently, N.J.S.2C:13-4 provides that a person commits a crime of the fourth degree if he knowingly takes or entices a child under the age of 18 from the custody of the parent, guardian or other lawful custodian of the child, when the person has no privilege to do so, or when he does so in violation of a court order. However, this provision only protects the custody rights of a parent who has obtained custody pursuant to a court order. It does not deal with the problem of parental kidnappings which take place before a formal order is entered.

This bill would address the issue by providing that a person, including a parent, guardian, or other lawful custodian, commits the crime of interfering with custody if he:

(1) Takes or detains a minor child in order to conceal him and thereby deprive the child's parent, guardian, or lawful custodian of custody or visitation; or

(2) After being served with process or having actual knowledge of an action affecting marriage or custody but prior to the issuance of a temporary or final order determining custody or visitation rights to a minor child, takes or conceals the child for the purpose of depriving the other parent, guardian or lawful custodian of custody or visitation, or to evade the court's jurisdiction; or

(3) After being served with process or having actual knowledge of an action affecting the protective services needs of a minor child pursuant to Title 9 of the New Jersey Statutes in an action affecting custody, but prior to a final order determining custody rights, takes or conceals the child to evade the court's jurisdiction; or

(4) After the issuance of a temporary or final order specifying custody or visitation rights, takes or conceals a minor child from the other parent, guardian or lawful custodian in violation of the order.

The bill would also upgrade the crime of interfering with custody, making it a crime of the third degree. A crime of the third degree is punishable by term of imprisonment of three to five years, or a fine up to \$7,500, or both. In addition to these penalties, a

person convicted of violating the law would be required to make restitution of all reasonable expenses and costs, including reasonable counsel fees, incurred by the other parent in securing the child's return.

The committee amended the bill to provide that the presumption of non-imprisonment for a first offender who commits a crime of the third degree shall not apply to the third degree crime of interference with custody. If the child is taken, detained, enticed or concealed outside the United States then the crime is increased to a crime of the second degree. The committee also set an outside limit of 24 hours as a "reasonably practicable" time for the time in which a parent must act by giving notification to the proper authorities in order for the affirmative defense in subsection c. of N.J.S.2C:13-4 to be available.

ADOPTED
APR 23 1990

Assembly ALL COMMITTEE

AMENDMENTS

to

Assembly, No. 2847

(Sponsored by Assemblywoman Ford and Assemblyman Doyle)

REPLACE SECTION 1 TO READ:

1. N.J.S.2C:13-4 is amended to read as follows:

2C:13-4. Interference with custody. a. Custody of children. [A person commits an offense if he knowingly takes or entices any child under the age of 18 from the custody of the parent, guardian or other lawful custodian of the child, when he has no privilege to do so, or he does so in violation of a court order. It is an affirmative defense that:

- (1) The actor believed that his action was necessary to preserve the child from danger to his welfare; or
- (2) The child, being at the time not less than 14 years old, was taken away at his own volition and without purpose to commit a criminal offense with or against the child.

Proof that the child was below the critical age gives rise to a presumption that the actor knew the child's age.

Interference with custody is a crime of the fourth degree.] A person, including a parent, guardian or other lawful custodian, is guilty of interference with custody if he:

- (1) Takes or detains a minor child with the purpose of concealing the minor child and thereby depriving the child's other parent of custody or visitation of the minor child; or
- (2) After being served with process or having actual knowledge of an action affecting marriage or custody but prior to the issuance of a temporary or final order determining custody and visitation rights to a minor child, takes, detains, entices or conceals the child within or outside the State for the purpose of depriving the child's other parent of custody or visitation, or to evade the jurisdiction of the courts of this State;
- (3) After being served with process or having actual knowledge of an action affecting the protective services needs of a child pursuant to Title 9 of the Revised Statutes in an action affecting custody, but prior to the issuance of a temporary or final order determining custody rights of a minor child, takes, detains, entices or conceals the child within or outside the State for the purpose of evading the ¹[jurisdiction] jurisdiction¹ of the courts of this State; or
- (4) After the issuance of a temporary or final order specifying custody, visitation or joint custody rights, takes, detains, entices or conceals a minor child from the other parent in violation of the custody or visitation order.

Interference with custody is a crime of the third degree¹ but the presumption of non-imprisonment set forth in subsection e. of N.J.S. 2C:44-1 for a first offense of a crime of the third degree shall not apply. However, if the child is taken, detained, enticed or concealed outside the United States, interference with custody is a crime of the second degree¹.

b. Custody of committed persons. A person is guilty of a crime of the fourth degree if he knowingly takes or entices any committed person away from lawful custody when he is not privileged to do so. "Committed person" means, in addition to anyone committed under judicial warrant, any orphan, neglected or delinquent child, mentally defective or insane person, or other dependent or incompetent person entrusted to another's custody by or through a recognized social agency or otherwise by authority of law.

c. It is an affirmative defense to a prosecution under subsection a. of this section, which must be proved by clear and convincing evidence, that:

(1) The actor reasonably believed that the action was necessary to preserve the child from imminent danger to his welfare. However, no defense shall be available pursuant to this subsection if the actor does not, as soon as reasonably practicable¹ but in no event more than 24 hours¹ after taking a child under his protection, give notice of the child's location to the police department of the municipality where the child resided, the office of the county prosecutor in the county where the child resided, or the Division of Youth and Family Services in the Department of Human Services;

(2) The actor reasonably believed that the taking or detaining of the minor child was consented to by the other parent, or by an authorized State agency; or

(3) The child, being at the time of the taking or concealment not less than 14 years old, was taken away at his own volition and without purpose to commit a criminal offense with or against the child.

d. It is an affirmative defense to a prosecution under subsection a. of this section that a parent having the right of custody reasonably believed he was fleeing from imminent physical danger from the other parent, provided that the parent having custody, as soon as reasonably practicable:

(1) Gives notice of the child's location to the police department of the municipality where the child resided, the office of the county prosecutor in the county where the child resided, or the Division of Youth and Family Services¹ in the Department of Human Services¹; or

(2) Commences an action affecting custody in an appropriate court.

e. The offenses enumerated in this section are continuous in nature and continue for so long as the child is concealed or detained.

f. (1) In addition to any other disposition provided by law, a person convicted under subsection a. of this section shall make restitution of all reasonable expenses and costs, including reasonable counsel fees, incurred by the other parent in securing the child's return.

(2) In imposing sentence under subsection a. of this section the court shall consider, in addition to the factors enumerated in chapter 44 of Title 2C of the New Jersey Statutes:

(a) Whether the person returned the child voluntarily; and

(b) The length of time the child was concealed or detained.

g. As used in this section, "Parent" means a parent, guardian or other lawful custodian of a minor child.

(cf: P.L.1982, c.199, s.1)

SENATE JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2847

STATE OF NEW JERSEY

DATED: JUNE 4, 1990

The Senate Judiciary Committee reports favorably Assembly Bill No. 2847.

This bill would revise the present law prohibiting interference with custody (N.J.S.2C:13-4). The major provisions of A-2847 are as follows:

DEFINITION OF THE OFFENSE

Currently, N.J.S.2C:13-4 provides that a person is guilty of interference with custody if he knowingly takes or entices a child under the age of 18 from the custody of the parent, guardian or other lawful custodian of the child, when the person has no privilege to do so, or when he does so in violation of a court order. However, this provision only protects the custody rights of a parent who has obtained custody pursuant to a court order. It does not deal with the problem of parental kidnappings which take place before a formal order is entered. This bill would address the issue by providing that a person, including parent, guardian, or other lawful custodian, commits the crime of interfering with custody if the person:

(1) Takes or detains a minor child in order to conceal the child and thereby deprive the child's parent, guardian, or lawful custodian of custody or visitation; or

(2) After being served with process or having actual knowledge of an action affecting marriage or custody but prior to the issuance of a temporary or final order determining custody or visitation rights to a minor child, takes or conceals the child for the purpose of depriving the other parent, guardian or lawful custodian of custody or visitation, or to evade the court's jurisdiction; or

(3) After being served with process or having actual knowledge of an action affecting the protective services needs of a minor child pursuant to Title 9 of the New Jersey Statutes in an action affecting custody, but prior to a final order determining custody rights, takes or conceals the child to evade the court's jurisdiction; or

(4) After the issuance of a temporary or final order specifying custody or visitation rights, takes or conceals a minor child from the other parent, guardian or lawful custodian in violation of the order.

SENTENCING

Presently, interference with custody is graded as a crime of the fourth degree (up to 18 months imprisonment, a fine of up to \$7,500 or both). This bill upgrades interference with custody to a crime of the third degree (3 to 5 years imprisonment, a fine of up to \$7,500 or

both) except when the child is taken outside the United States in which case, the offense would be graded as a crime of the second degree (5 to 10 years imprisonment, a fine of up to \$100,000 or both).

The bill further provides that the presumption of nonincarceration for first offender convicted of crimes of the third or fourth degree not apply to interference with custody and that the sentencing court is to consider the length of time the child was concealed and whether the child was returned voluntarily in imposing sentence.

In addition to these penalties, a person convicted of interference with custody would be required to make restitution of all reasonable expenses and costs, including reasonable counsel fees, incurred by the other parent in securing the child's return.

AFFIRMATIVE DEFENSES

A-2847 establishes several affirmative defenses to a charge of interference with custody. Those defenses are:

(1) That the person reasonably believed that the taking was consented to by the other parent or by an authorized State agency;

(2) That the child was at least 14 and was taken away at his own volition without purpose to commit a criminal offense;

(3) That the person reasonably believed that the child was in imminent danger provided that the person notifies, within 24 hours, law enforcement authorities or DYFS of the child's location;

(4) That a parent having custody of the child reasonably believes he was fleeing from imminent physical danger from the other parent, provided that the parent notifies law enforcement authorities of the child's location or commences a legal action affecting custody.

[CORRECTED COPY]

SENATE JUDICIARY COMMITTEE

STATEMENT TO

[FIRST REPRINT]

ASSEMBLY, No. 2847

STATE OF NEW JERSEY

DATED: JUNE 4, 1990

The Senate Judiciary Committee reports favorably Assembly Bill No. 2847 [1R].

This bill would revise the present law prohibiting interference with custody (N.J.S.2C:13-4). The major provisions of A-2847 [1R] are as follows:

DEFINITION OF THE OFFENSE

Currently, N.J.S.2C:13-4 provides that a person is guilty of interference with custody if he knowingly takes or entices a child under the age of 18 from the custody of the parent, guardian or other lawful custodian of the child, when the person has no privilege to do so, or when he does so in violation of a court order. However, this provision only protects the custody rights of a parent who has obtained custody pursuant to a court order. It does not deal with the problem of parental kidnappings which take place before a formal order is entered. This bill would address the issue by providing that a person, including parent, guardian, or other lawful custodian, commits the crime of interfering with custody if the person:

(1) Takes or detains a minor child in order to conceal the child and thereby deprive the child's parent, guardian, or lawful custodian of custody or visitation; or

(2) After being served with process or having actual knowledge of an action affecting marriage or custody but prior to the issuance of a temporary or final order determining custody or visitation rights to a minor child, takes or conceals the child for the purpose of depriving the other parent, guardian or lawful custodian of custody or visitation, or to evade the court's jurisdiction; or

(3) After being served with process or having actual knowledge of an action affecting the protective services needs of a minor child pursuant to Title 9 of the New Jersey Statutes in an action affecting custody, but prior to a final order determining custody rights, takes or conceals the child to evade the court's jurisdiction; or

(4) After the issuance of a temporary or final order specifying custody or visitation rights, takes or conceals a minor child from the other parent, guardian or lawful custodian in violation of the order.

SENTENCING

Presently, interference with custody is graded as a crime of the fourth degree (up to 18 months imprisonment, a fine of up to \$7,500 or both). This bill upgrades interference with custody to a crime of the third degree (3 to 5 years imprisonment, a fine of up to \$7,500 or

both) except when the child is taken outside the United States in which case, the offense would be graded as a crime of the second degree (5 to 10 years imprisonment, a fine of up to \$100,000 or both).

The bill further provides that the presumption of nonincarceration for first offender convicted of crimes of the third or fourth degree not apply to interference with custody and that the sentencing court is to consider the length of time the child was concealed and whether the child was returned voluntarily in imposing sentence.

In addition to these penalties, a person convicted of interference with custody would be required to make restitution of all reasonable expenses and costs, including reasonable counsel fees, incurred by the other parent in securing the child's return.

AFFIRMATIVE DEFENSES

A-2847 [1R] establishes several affirmative defenses to a charge of interference with custody. Those defenses are:

(1) That the person reasonably believed that the taking was consented to by the other parent or by an authorized State agency;

(2) That the child was at least 14 and was taken away at his own volition without purpose to commit a criminal offense;

(3) That the person reasonably believed that the child was in imminent danger provided that the person notifies, within 24 hours, law enforcement authorities or DYFS of the child's location;

(4) That a parent having custody of the child reasonably believes he was fleeing from imminent physical danger from the other parent, provided that the parent notifies law enforcement authorities of the child's location or commences a legal action affecting custody.

[FIRST REPRINT]
ASSEMBLY, No. 2847

STATE OF NEW JERSEY

INTRODUCED JANUARY 16, 1990

By Assemblywoman FORD and Assemblyman DOYLE

1 AN ACT concerning interference with custody, amending
2 N.J.S.2C:13-4 and supplementing Title 2A of the New Jersey
3 Statutes.

4
5 BE IT ENACTED *by the Senate and General Assembly of the*
6 *State of New Jersey:*

7 1. N.J.S.2C:13-4 is amended to read as follows:
8 2C:13-4. Interference with custody. a. Custody of children.
9 [A person commits an offense if he knowingly takes or entices
10 any child under the age of 18 from the custody of the parent,
11 guardian or other lawful custodian of the child, when he has no
12 privilege to do so, or he does so in violation of a court order. It is
13 an affirmative defense that:

14 (1) The actor believed that his action was necessary to
15 preserve the child from danger to his welfare; or

16 (2) The child, being at the time not less than 14 years old, was
17 taken away at his own volition and without purpose to commit a
18 criminal offense with or against the child.

19 Proof that the child was below the critical age gives rise to a
20 presumption that the actor knew the child's age.

21 Interference with custody is a crime of the fourth degree.] A
22 person, including a parent, guardian or other lawful custodian, is
23 guilty of interference with custody if he:

24 (1) Takes or detains a minor child with the purpose of
25 concealing the minor child and thereby depriving the child's
26 other parent of custody or visitation of the minor child; or

27 (2) After being served with process or having actual knowledge
28 of an action affecting marriage or custody but prior to the
29 issuance of a temporary or final order determining custody and
30 visitation rights to a minor child, takes, detains, entices or
31 conceals the child within or outside the State for the purpose of
32 depriving the child's other parent of custody or visitation, or to
33 evade the jurisdiction of the courts of this State;

34 (3) After being served with process or having actual knowledge
35 of an action affecting the protective services needs of a child
36 pursuant to Title 9 of the Revised Statutes in an action affecting
37 custody, but prior to the issuance of a temporary or final order
38 determining custody rights of a minor child, takes, detains,
39 entices or conceals the child within or outside the State for the

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:
Assembly AJL committee amendments adopted April 23, 1990.

1 purpose of evading the ¹[jurisdiction] jurisdiction¹ of the courts
2 of this State; or

3 (4) After the issuance of a temporary or final order specifying
4 custody, visitation or joint custody rights, takes, detains, entices
5 or conceals a minor child from the other parent in violation of
6 the custody or visitation order.

7 Interference with custody is a crime of the third degree ¹but
8 the presumption of non-imprisonment set forth in subsection e. of
9 N.J.S.2C:44-1 for a first offense of a crime of the third degree
10 shall not apply. However, if the child is taken, detained, enticed
11 or concealed outside the United States, interference with custody
12 is a crime of the second degree¹.

13 b. Custody of committed persons. A person is guilty of a
14 crime of the fourth degree if he knowingly takes or entices any
15 committed person away from lawful custody when he is not
16 privileged to do so. "Committed person" means, in addition to
17 anyone committed under judicial warrant, any orphan, neglected
18 or delinquent child, mentally defective or insane person, or other
19 dependent or incompetent person entrusted to another's custody
20 by or through a recognized social agency or otherwise by
21 authority of law.

22 c. It is an affirmative defense to a prosecution under
23 subsection a. of this section, which must be proved by clear and
24 convincing evidence, that:

25 (1) The actor reasonably believed that the action was
26 necessary to preserve the child from imminent danger to his
27 welfare. However, no defense shall be available pursuant to this
28 subsection if the actor does not, as soon as reasonably practicable
29 ¹but in no event more than 24 hours¹ after taking a child under
30 his protection, give notice of the child's location to the police
31 department of the municipality where the child resided, the
32 office of the county prosecutor in the county where the child
33 resided, or the Division of Youth and Family Services in the
34 Department of Human Services;

35 (2) The actor reasonably believed that the taking or detaining
36 of the minor child was consented to by the other parent, or by an
37 authorized State agency; or

38 (3) The child, being at the time of the taking or concealment
39 not less than 14 years old, was taken away at his own volition and
40 without purpose to commit a criminal offense with or against the
41 child.

42 d. It is an affirmative defense to a prosecution under
43 subsection a. of this section that a parent having the right of
44 custody reasonably believed he was fleeing from imminent
45 physical danger from the other parent, provided that the parent
46 having custody, as soon as reasonably practicable:

47 (1) Gives notice of the child's location to the police
48 department of the municipality where the child resided, the
49 office of the county prosecutor in the county where the child

1 resided, or the Division of Youth and Family Services ¹in the
2 Department of Human Services¹; or

3 (2) Commences an action affecting custody in an appropriate
4 court.

5 e. The offenses enumerated in this section are continuous in
6 nature and continue for so long as the child is concealed or
7 detained.

8 f. (1) In addition to any other disposition provided by law, a
9 person convicted under subsection a. of this section shall make
10 restitution of all reasonable expenses and costs, including
11 reasonable counsel fees, incurred by the other parent in securing
12 the child's return.

13 (2) In imposing sentence under subsection a. of this section the
14 court shall consider, in addition to the factors enumerated in
15 chapter 44 of Title 2C of the New Jersey Statutes:

16 (a) Whether the person returned the child voluntarily; and

17 (b) The length of time the child was concealed or detained.

18 g. As used in this section, "Parent" means a parent, guardian
19 or other lawful custodian of a minor child.

20 (cf: P.L.1982, c.199, s.1)

21 2. (New section) After the issuance of any temporary or
22 permanent order determining custody or visitation of a minor
23 child, a law enforcement officer having reasonable cause to
24 believe that a person is likely to flee the State with the child or
25 otherwise by flight or concealment evade the jurisdiction of the
26 courts of this State may take a child into protective custody and
27 return the child to the parent having lawful custody, or to a court
28 in which a custody hearing concerning the child is pending.

29 3. (New section) Every order of a court involving custody or
30 visitation shall include a written notice, in both English and
31 Spanish, advising the persons affected as to the penalties
32 provided in N.J.S.2C:13-4 for violating that order.

33 4. This act shall take effect immediately.

34
35
36 CRIMINAL JUSTICE

37
38 Revises the law concerning the criminal offense of interfering
39 with custody of a minor child.



OFFICE OF THE GOVERNOR

NEWS RELEASE

CN-001

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Release: WEDNESDAY
NOVEMBER 14, 1990

GOVERNOR FLORIO SIGNS TOUGH CHILD CUSTODY LAW

Governor Jim Florio today signed into law a bill to combat parental kidnapping and toughen child custody laws in New Jersey by closing a major loophole in the current law.

The law is directed at cases where, in the midst of a divorce or custody dispute, one parent flees with a child.

"We love our children. We read them stories of fairy tale places. We protect them as best we can," said Governor Florio, "from the harshness of the real world."

"But sometimes, the real world takes over in a bad way, particularly when parents make the decision to divorce. Sometimes, people don't wait for the courts. Or worse, they sometimes only want to strike back at their spouse through the children. So they take the law into their own hands," he said.

Currently, the court may not charge a parent with kidnapping if the custody issue is still being considered by the court. This circumstance most often occurs before a divorce proceeding is finalized and custody is awarded. The Governor cited a recent case where a father kidnapped his daughter and sent her out of the country to live with his sister.

"In all that time, the mother had no idea where her child was. She was completely cut off," said the Governor, noting that the law prevented the courts from taking action.

"That's the loophole. Today, we're going to close it. No parent has the right to completely cut off another parent from their child. We're making those laws a lot clearer today, because we want what's best for the children in this state."

The bill was sponsored by Assemblywoman Marlene Lynch Ford (D-Ocean) and Assemblyman John Paul Doyle (D-Ocean).

-more-

"The children of New Jersey are very fortunate that they have a strong, tough advocate in Assemblywoman Marlene Lynch Ford. She's worked to protect them -- to step in on their behalf to remember what their parents sometimes forget," said Governor Florio. "I am proud to be here today with Assemblywoman Ford and Assemblyman Doyle. Their co-sponsorship of this bill is a sign that they care enough to do something about the values we all talk about, but don't always practice."

In addition to allowing the court to intercede prior to a formal custody order, the law upgrades the crime of interference with custody to a crime of the third degree punishable by up to five years in prison and a \$7,500 fine. Further, if the child is taken, detained or concealed outside of the United States, the offense is increased to a crime of the second degree.

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NEW JERSEY CHILD CUSTODY LAW

Fact Sheet

KEY PROVISIONS

* A-2847 amends the current statute and provides that the crime of interference with custody has been committed by a person including a parent, guardian or other lawful custodian who:

- * Takes or detains a minor child (18 and under) in order to conceal him and thereby deprive a parent, guardian or lawful custodian of custody or visitation.
- * Extends the current statute to include interference in custody prior to the issuance of a custody order.
- * Strengthens the penalties for interference with custody by:
 - * increasing the offense from a fourth degree crime to a third degree crime.
 - * increasing the maximum sentence from 18 months to 3-5 years.
 - * authorizing a penalty of 5-10 years for parents who take a child out of the country.
- * It authorizes police under certain circumstances to take a child into protective custody if there is reasonable cause to believe that a person is likely to flee the State with the child.
- * It requires the person convicted of this offense to pay all costs incurred in securing the child's return, including attorney's fees.

REMARKS PREPARED FOR DELIVERY BY GOVERNOR JIM FLORIO
CHILD CUSTODY PRESS CONFERENCE
TOMS RIVER, NEW JERSEY
WEDNESDAY, NOVEMBER 14, 1990

I'M PLEASED TO BE HERE TODAY TO CLOSE A LOOPHOLE IN OUR CHILD CUSTODY LAWS. IT'S NEEDED. IT'S RIGHT. AND IT WILL HELP PROTECT OUR CHILDREN.

BECAUSE IF THERE'S A GOAL WE ALL SHARE, IT'S TO MAKE NEW JERSEY A GOOD, SAFE PLACE FOR CHILDREN. WE WANT THEM TO GROW AND PROSPER, AND MOST OF ALL, TO FEEL SECURE.

WE LOVE OUR CHILDREN. WE READ THEM STORIES OF FAIRY TALE PLACES. WE PROTECT THEM AS BEST WE CAN FROM THE HARSHNESS OF THE REAL WORLD.

BUT SOMETIMES, THE REAL WORLD TAKES OVER IN A BAD WAY, PARTICULARLY WHEN PARENTS MAKE THE DECISION TO DIVORCE. SO OFTEN, CHILDREN ARE PART OF THE TUG OF WAR BETWEEN TWO PEOPLE TRYING TO SORT OUT THEIR OWN LIVES, AND SOMETIMES FORGETTING ABOUT THE LOVE AND KINDNESS THAT LITTLE ONES NEED SO DEARLY.

IT'S A PAINFUL PROCESS, AND OUR COURTS FACE THE MONUMENTAL TASK OF SORTING OUT THE CLAIMS OF EACH PARTY, AS WELL AS ACTING IN THE BEST INTERESTS OF THE CHILDREN.

SOMETIMES, PEOPLE DON'T WAIT FOR THE COURTS. OR WORSE, THEY SOMETIMES ONLY WANT TO STRIKE BACK AT THEIR SPOUSE THROUGH THE CHILDREN. SO THEY TAKE THE LAW INTO THEIR OWN HANDS.

THE RESULT HAS SOMETIMES BEEN THAT A PARENT LITERALLY "KIDNAPS" A CHILD -- FLEEING THE STATE, OR EVEN THE COUNTRY, AND LEAVING BEHIND DEVASTATION.

WHO CAN IMAGINE THE ANGUISH OF A MOTHER, OR A FATHER, CUT OFF COMPLETELY FROM THEIR CHILD, OR CHILDREN -- NOT KNOWING WHERE THEY ARE?

I'M SURE THAT MANY OF YOU HAVE READ, OR HEARD ABOUT, A RECENT CASE IN NORTH JERSEY WHERE A FATHER KIDNAPPED HIS LITTLE GIRL AND SENT HER OUT OF THE COUNTRY FOR A NUMBER OF YEARS TO LIVE WITH HIS SISTER.

IN ALL THAT TIME, THE MOTHER HAD NO IDEA WHERE HER CHILD WAS. SHE WAS COMPLETELY CUT OFF. SHE MISSED A SUBSTANTIAL PART OF HER DAUGHTER'S YOUNG LIFE, AND HER DAUGHTER LOST THE LOVE AND CARE OF HER MOTHER.

NEW JERSEY HAS LAWS AGAINST SUCH ACTIONS, BUT THERE IS A LOOPHOLE. BECAUSE WHILE THE PENALTIES ARE STIFF FOR KIDNAPPING A CHILD AFTER THE COURT DECIDES THE CUSTODY ISSUE, SOME PARENTS TAKE THEIR CHILDREN BEFORE THE COURT HAS A CHANCE TO ACT. IN THOSE CASES, THE PENALTIES ARE LESS SEVERE.

THAT'S THE LOOPHOLE. TODAY, WE'RE GOING TO CLOSE IT.

THIS BILL STIFFENS THE PENALTIES FOR INTERFERING WITH A CHILD CUSTODY MATTER BEFORE OUR COURTS HAVE MADE A DECISION.

I'M A FATHER, AND A GRANDFATHER. I UNDERSTAND HOW DIFFICULT IT IS SOMETIMES FOR PARENTS TO BE RATIONAL WHEN IT COMES TO THEIR CHILDREN.

BUT WHAT'S AT STAKE IS NOT JUST WHO HAS A LEGITIMATE CLAIM TO THE CHILDREN. WHAT'S AT STAKE IS THE WELL-BEING OF THE CHILD -- A FACT THAT IS SOMETIMES OVERLOOKED WHEN PARENTS ARE INVOLVED IN A BITTER DIVORCE.

OUR LAWS ARE CLEAR. NO PARENT HAS THE RIGHT TO COMPLETELY CUT OFF ANOTHER PARENT FROM THEIR CHILD, OR CHILDREN.

WE'RE MAKING THOSE LAWS A LOT CLEARER TODAY, BECAUSE WE WANT WHAT'S BEST FOR THE CHILDREN IN THIS STATE.

THE CHILDREN OF NEW JERSEY ARE VERY FORTUNATE THAT THEY HAVE A STRONG, TOUGH ADVOCATE IN ASSEMBLYWOMAN MARLENE LYNCH FORD. SHE'S WORKED HARD TO PROTECT THEM -- TO STEP IN ON THEIR BEHALF TO REMEMBER WHAT THEIR PARENTS SOMETIMES FORGET.

I'M VERY PROUD TO COME INTO MARLENE'S DISTRICT AND SIGN THIS BILL. IT'S A STEP FORWARD FOR OUR CHILDREN, AND FOR US AS A CARING PEOPLE. AND IT'S A TRIBUTE TO HER BELIEF IN THE VALUES WE ALL TALK ABOUT, BUT DON'T ALWAYS PRACTICE.

THANK YOU VERY MUCH.