

HOUSE BILL REPORT

SHB 2624

As Passed House:
February 17, 2014

Title: An act relating to clarifying the applicability of child abduction statutes to residential provisions ordered by a court.

Brief Description: Clarifying the applicability of child abduction statutes to residential provisions ordered by a court.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Haler, Tarleton, Klippert and Freeman).

Brief History:

Committee Activity:

Judiciary: 2/4/14, 2/5/14 [DPS].

Floor Activity:

Passed House: 2/17/14, 96-0.

Brief Summary of Substitute Bill

- Amends provisions of the crimes of Custodial Interference in the first and second degree to cover any court order making residential provisions for the child, rather than just court-ordered parenting plans.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Jinkins, Chair; Hansen, Vice Chair; Rodne, Ranking Minority Member; Nealey, Assistant Ranking Minority Member; Goodman, Haler, Kirby, Klippert, Muri, Orwall, Roberts, Shea and Walkinshaw.

Staff: Edie Adams (786-7180).

Background:

The crime of Custodial Interference generally involves taking, enticing, retaining, detaining, or concealing a child away from a parent or other person who has a lawful right to custody or

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

time with the child, with the intent to deny that person access to the child. There are two degrees to the crime of Custodial Interference, and for both degrees, there are different elements to the crime depending on whether the perpetrator is a relative or parent of the child, and whether or not a custody order or parenting plan has been established.

Custodial Interference in the first degree can be committed by a parent if the parent takes a child with the intent to deny access to the other parent who has the right to time with the child under a court-ordered parenting plan, and the parent:

- intends to hold the child permanently or for a protracted period;
- exposes the child to a substantial risk of illness or physical injury; or
- causes the child to be removed from the state of usual residence.

Custodial Interference in the second degree can be committed by a parent if:

- the parent takes a child with the intent to deny access to the other parent who has the right to time with the child under a court-ordered parenting plan;
- the parent has not complied with the residential provisions of the parenting plan after a finding of contempt; or
- the parent has engaged in a pattern of willful violations of the court-ordered residential provisions.

Under both first degree and second degree Custodial Interference committed by a parent, one element of the offense is that the parent from whom the child is taken must have a lawful right to time with the child under a court-ordered "parenting plan." In a recent Washington Supreme Court (Court) case, *State v. Veliz* (*Veliz case*), the Court held that a domestic violence protection order containing residential provisions for a child does not constitute a court-ordered "parenting plan" for the purposes of Custodial Interference in the first degree. The Court found that the Legislature used the term "parenting plan" as a term of art referring only to parenting plans established pursuant to a proceeding for the dissolution or legal separation of a marriage or domestic partnership.

Summary of Substitute Bill:

The crimes of Custodial Interference in the first degree and second degree, when committed by a parent, are amended to apply where the parent from whom the child is taken has the right to time with the child under any court order making residential provisions for the child, not just under a court-ordered parenting plan.

Custodial Interference in the second degree, when committed by a parent who has engaged in a pattern of willful violations of court-ordered residential provisions applies to any court order making residential provisions for the child.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This is an important bill to protect children who cannot protect themselves and who are often used as a weapon in these cases. The bill also respects the rights of parents to have their time with their children. A domestic violence protection order is not entered lightly by the courts. It is potentially a life and death situation, and that does not change just because there is not a parenting plan in place. In reality, the need to protect victims and children is more important before the parenting plan is established, because the most dangerous time for them is when starting the process of leaving the abuser.

In the *Veliz* case, which was a 5-4 decision, the majority improperly entangled the criminal code with the domestic relations code. They are separate laws and should be analyzed separately. Justice Johnson in his dissent noted that the court was prioritizing the rights of the perpetrator over those of the victim. This bill is necessary to clarify the legislative intent of the law and to make clear that a parent subject to a domestic violence protection order can be charged with first degree Custodial Interference.

There are many challenges for survivors trying to navigate the system. They do not know their options, they do not have the resources to hire an attorney, and they have to figure out on their own what documents to file. It is not unreasonable for victims who file these cases without an attorney to believe that the court order establishing residential provisions is a parenting plan. These orders will not be effective if they are not enforceable.

(Opposed) None.

Persons Testifying: Representative Haler, prime sponsor; Carissa Daniels; Maureen Lorinez, Franklin County Prosecutor's Office; Rachel Bryant, Washington State Coalition Against Domestic Violence; and David Ward, Legal Voice.

Persons Signed In To Testify But Not Testifying: None.