



Sen. Jacqueline Y. Collins

**Filed: 4/11/2011**

09700SB1038sam001

LRB097 04761 RLC 54299 a

1 AMENDMENT TO SENATE BILL 1038

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 1038 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Criminal Code of 1961 is amended by  
5 changing Section 10-5 as follows:

6 (720 ILCS 5/10-5) (from Ch. 38, par. 10-5)  
7 Sec. 10-5. Child abduction.

8 (a) For purposes of this Section, the following terms have  
9 the following meanings:

10 (1) "Child" means a person who, at the time the alleged  
11 violation occurred, was under the age of 18 or severely or  
12 profoundly mentally retarded.

13 (2) "Detains" means taking or retaining physical  
14 custody of a child, whether or not the child resists or  
15 objects.

16 (2.1) "Express consent" means oral or written

1 permission that is positive, direct, and unequivocal,  
2 requiring no inference or implication to supply its  
3 meaning.

4 (2.2) "Luring" means any knowing act to solicit,  
5 entice, tempt, or attempt to attract the minor.

6 (3) "Lawful custodian" means a person or persons  
7 granted legal custody of a child or entitled to physical  
8 possession of a child pursuant to a court order. It is  
9 presumed that, when the parties have never been married to  
10 each other, the mother has legal custody of the child  
11 unless a valid court order states otherwise. If an  
12 adjudication of paternity has been completed and the father  
13 has been assigned support obligations or visitation  
14 rights, such a paternity order should, for the purposes of  
15 this Section, be considered a valid court order granting  
16 custody to the mother.

17 (4) "Putative father" means a man who has a reasonable  
18 belief that he is the father of a child born of a woman who  
19 is not his wife.

20 (5) "Unlawful purpose" means any misdemeanor or felony  
21 violation of State law or a similar federal or sister state  
22 law or local ordinance.

23 (b) A person commits the offense of child abduction when he  
24 or she does any one of the following:

25 (1) Intentionally violates any terms of a valid court  
26 order granting sole or joint custody, care, or possession

1 to another by concealing or detaining the child or removing  
2 the child from the jurisdiction of the court.

3 (2) Intentionally violates a court order prohibiting  
4 the person from concealing or detaining the child or  
5 removing the child from the jurisdiction of the court.

6 (3) Intentionally conceals, detains, or removes the  
7 child without the consent of the mother or lawful custodian  
8 of the child if the person is a putative father and either:  
9 (A) the paternity of the child has not been legally  
10 established or (B) the paternity of the child has been  
11 legally established but no orders relating to custody have  
12 been entered. Notwithstanding the presumption created by  
13 paragraph (3) of subsection (a), however, a mother commits  
14 child abduction when she intentionally conceals or removes  
15 a child, whom she has abandoned or relinquished custody of,  
16 from an unadjudicated father who has provided sole ongoing  
17 care and custody of the child in her absence.

18 (4) Intentionally conceals or removes the child from a  
19 parent after filing a petition or being served with process  
20 in an action affecting marriage or paternity but prior to  
21 the issuance of a temporary or final order determining  
22 custody.

23 (5) At the expiration of visitation rights outside the  
24 State, intentionally fails or refuses to return or impedes  
25 the return of the child to the lawful custodian in  
26 Illinois.

1           (6) Being a parent of the child, and if the parents of  
2 that child are or have been married and there has been no  
3 court order of custody, knowingly conceals the child for 15  
4 days, and fails to make reasonable attempts within the  
5 15-day period to notify the other parent as to the specific  
6 whereabouts of the child, including a means by which to  
7 contact the child, or to arrange reasonable visitation or  
8 contact with the child. It is not a violation of this  
9 Section for a person fleeing domestic violence to take the  
10 child with him or her to housing provided by a domestic  
11 violence program.

12           (7) Being a parent of the child, and if the parents of  
13 the child are or have been married and there has been no  
14 court order of custody, knowingly conceals, detains, or  
15 removes the child with physical force or threat of physical  
16 force.

17           (8) Knowingly conceals, detains, or removes the child  
18 for payment or promise of payment at the instruction of a  
19 person who has no legal right to custody.

20           (9) Knowingly retains in this State for 30 days a child  
21 removed from another state without the consent of the  
22 lawful custodian or in violation of a valid court order of  
23 custody.

24           (10) Intentionally lures or attempts to lure a child  
25 under the age of 16 into a motor vehicle, building,  
26 housetrailer, or dwelling place without the consent of the

1 child's parent or lawful custodian for other than a lawful  
2 purpose. For the purposes of this item (10), the trier of  
3 fact may infer that luring or attempted luring of a child  
4 under the age of 16 into a motor vehicle, building,  
5 housetrailer, or dwelling place without the express  
6 consent of the child's parent or lawful custodian or with  
7 the intent to avoid the express consent of the child's  
8 parent or lawful custodian was for ~~is prima facie evidence~~  
9 ~~of~~ other than a lawful purpose.

10 (11) With the intent to obstruct or prevent efforts to  
11 locate the child victim of a child abduction, knowingly  
12 destroys, alters, conceals, or disguises physical evidence  
13 or furnishes false information.

14 (c) It is an affirmative defense to subsections (b) (1)  
15 through (b) (10) of this Section that:

16 (1) the person had custody of the child pursuant to a  
17 court order granting legal custody or visitation rights  
18 that existed at the time of the alleged violation;

19 (2) the person had physical custody of the child  
20 pursuant to a court order granting legal custody or  
21 visitation rights and failed to return the child as a  
22 result of circumstances beyond his or her control, and the  
23 person notified and disclosed to the other parent or legal  
24 custodian the specific whereabouts of the child and a means  
25 by which the child could be contacted or made a reasonable  
26 attempt to notify the other parent or lawful custodian of

1 the child of those circumstances and made the disclosure  
2 within 24 hours after the visitation period had expired and  
3 returned the child as soon as possible;

4 (3) the person was fleeing an incidence or pattern of  
5 domestic violence; or

6 (4) the person lured or attempted to lure a child under  
7 the age of 16 into a motor vehicle, building, housetrailer,  
8 or dwelling place for a lawful purpose in prosecutions  
9 under paragraph (10) of subsection (b).

10 (d) A person convicted of child abduction under this  
11 Section is guilty of a Class 4 felony. A person convicted of  
12 child abduction under subsection (b)(10) shall undergo a sex  
13 offender evaluation prior to a sentence being imposed. A person  
14 convicted of a second or subsequent violation of paragraph (10)  
15 of subsection (b) of this Section is guilty of a Class 3  
16 felony. A person convicted of child abduction under subsection  
17 (b)(10) when the person has a prior conviction of a sex offense  
18 as defined in the Sex Offender Registration Act or any  
19 substantially similar federal, Uniform Code of Military  
20 Justice, sister state, or foreign government offense is guilty  
21 of a Class 2 felony. It is a factor in aggravation under  
22 subsections (b)(1) through (b)(10) of this Section for which a  
23 court may impose a more severe sentence under Section 5-8-1  
24 (730 ILCS 5/5-8-1) or Article 4.5 of Chapter V of the Unified  
25 Code of Corrections if, upon sentencing, the court finds  
26 evidence of any of the following aggravating factors:

1           (1) that the defendant abused or neglected the child  
2 following the concealment, detention, or removal of the  
3 child;

4           (2) that the defendant inflicted or threatened to  
5 inflict physical harm on a parent or lawful custodian of  
6 the child or on the child with intent to cause that parent  
7 or lawful custodian to discontinue criminal prosecution of  
8 the defendant under this Section;

9           (3) that the defendant demanded payment in exchange for  
10 return of the child or demanded that he or she be relieved  
11 of the financial or legal obligation to support the child  
12 in exchange for return of the child;

13           (4) that the defendant has previously been convicted of  
14 child abduction;

15           (5) that the defendant committed the abduction while  
16 armed with a deadly weapon or the taking of the child  
17 resulted in serious bodily injury to another; or

18           (6) that the defendant committed the abduction while in  
19 a school, regardless of the time of day or time of year; in  
20 a playground; on any conveyance owned, leased, or  
21 contracted by a school to transport students to or from  
22 school or a school related activity; on the real property  
23 of a school; or on a public way within 1,000 feet of the  
24 real property comprising any school or playground. For  
25 purposes of this paragraph (6), "playground" means a piece  
26 of land owned or controlled by a unit of local government

1           that is designated by the unit of local government for use  
2           solely or primarily for children's recreation; and  
3           "school" means a public or private elementary or secondary  
4           school, community college, college, or university.

5           (e) The court may order the child to be returned to the  
6           parent or lawful custodian from whom the child was concealed,  
7           detained, or removed. In addition to any sentence imposed, the  
8           court may assess any reasonable expense incurred in searching  
9           for or returning the child against any person convicted of  
10          violating this Section.

11          (f) Nothing contained in this Section shall be construed to  
12          limit the court's contempt power.

13          (g) Every law enforcement officer investigating an alleged  
14          incident of child abduction shall make a written police report  
15          of any bona fide allegation and the disposition of that  
16          investigation. Every police report completed pursuant to this  
17          Section shall be compiled and recorded within the meaning of  
18          Section 5.1 of the Criminal Identification Act.

19          (h) Whenever a law enforcement officer has reasons to  
20          believe a child abduction has occurred, she or he shall provide  
21          the lawful custodian a summary of her or his rights under this  
22          Code, including the procedures and relief available to her or  
23          him.

24          (i) If during the course of an investigation under this  
25          Section the child is found in the physical custody of the  
26          defendant or another, the law enforcement officer shall return

1 the child to the parent or lawful custodian from whom the child  
2 was concealed, detained, or removed, unless there is good cause  
3 for the law enforcement officer or the Department of Children  
4 and Family Services to retain temporary protective custody of  
5 the child pursuant to the Abused and Neglected Child Reporting  
6 Act.

7 (Source: P.A. 95-1052, eff. 7-1-09; 96-710, eff. 1-1-10;  
8 96-1000, eff. 7-2-10.)".