



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB1228

Introduced 2/8/2011, by Sen. Martin A. Sandoval

SYNOPSIS AS INTRODUCED:

720 ILCS 5/8-4
720 ILCS 5/10-5

from Ch. 38, par. 8-4
from Ch. 38, par. 10-5

Amends the Criminal Code of 1961. Provides that the penalty for attempted child abduction is a Class 3 felony (rather than a Class A misdemeanor). Provides that the penalty for child abduction is a Class X (rather than a Class 4) felony. Eliminates provision that a second or subsequent violation for child abduction by intentionally luring or attempting to lure a child under the age of 16 into a motor vehicle, building, housetrailer, or dwelling place without the consent of the child's parent or lawful custodian for other than a lawful purpose is a Class 3 felony.

LRB097 06225 RLC 46300 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Criminal Code of 1961 is amended by changing
5 Sections 8-4 and 10-5 as follows:

6 (720 ILCS 5/8-4) (from Ch. 38, par. 8-4)
7 Sec. 8-4. Attempt.

8 (a) Elements of the offense.

9 A person commits the offense of attempt when, with intent
10 to commit a specific offense, he or she does any act that
11 constitutes a substantial step toward the commission of that
12 offense.

13 (b) Impossibility.

14 It is not a defense to a charge of attempt that because of
15 a misapprehension of the circumstances it would have been
16 impossible for the accused to commit the offense attempted.

17 (c) Sentence.

18 A person convicted of attempt may be fined or imprisoned or
19 both not to exceed the maximum provided for the offense
20 attempted but, except for an attempt to commit the offense
21 defined in Section 33A-2 of this Code:

22 (1) the sentence for attempt to commit first degree
23 murder is the sentence for a Class X felony, except that

1 (A) an attempt to commit first degree murder when
2 at least one of the aggravating factors specified in
3 paragraphs (1), (2), and (12) of subsection (b) of
4 Section 9-1 is present is a Class X felony for which
5 the sentence shall be a term of imprisonment of not
6 less than 20 years and not more than 80 years;

7 (B) an attempt to commit first degree murder while
8 armed with a firearm is a Class X felony for which 15
9 years shall be added to the term of imprisonment
10 imposed by the court;

11 (C) an attempt to commit first degree murder during
12 which the person personally discharged a firearm is a
13 Class X felony for which 20 years shall be added to the
14 term of imprisonment imposed by the court;

15 (D) an attempt to commit first degree murder during
16 which the person personally discharged a firearm that
17 proximately caused great bodily harm, permanent
18 disability, permanent disfigurement, or death to
19 another person is a Class X felony for which 25 years
20 or up to a term of natural life shall be added to the
21 term of imprisonment imposed by the court; and

22 (E) if the defendant proves by a preponderance of
23 the evidence at sentencing that, at the time of the
24 attempted murder, he or she was acting under a sudden
25 and intense passion resulting from serious provocation
26 by the individual whom the defendant endeavored to

1 kill, or another, and, had the individual the defendant
2 endeavored to kill died, the defendant would have
3 negligently or accidentally caused that death, then
4 the sentence for the attempted murder is the sentence
5 for a Class 1 felony;

6 (1.5) the sentence for attempt to commit child
7 abduction is the sentence for a Class 3 felony;

8 (2) the sentence for attempt to commit a Class X felony
9 is the sentence for a Class 1 felony;

10 (3) the sentence for attempt to commit a Class 1 felony
11 is the sentence for a Class 2 felony;

12 (4) the sentence for attempt to commit a Class 2 felony
13 is the sentence for a Class 3 felony; and

14 (5) the sentence for attempt to commit any felony other
15 than those specified in items (1), (1.5), (2), (3), and (4)
16 of this subsection (c) is the sentence for a Class A
17 misdemeanor.

18 (Source: P.A. 96-710, eff. 1-1-10.)

19 (720 ILCS 5/10-5) (from Ch. 38, par. 10-5)

20 Sec. 10-5. Child abduction.

21 (a) For purposes of this Section, the following terms have
22 the following meanings:

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

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

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

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

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

20 (1) Intentionally violates any terms of a valid court
21 order granting sole or joint custody, care, or possession
22 to another by concealing or detaining the child or removing
23 the child from the jurisdiction of the court.

24 (2) Intentionally violates a court order prohibiting
25 the person from concealing or detaining the child or
26 removing the child from the jurisdiction of the court.

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

13 (4) Intentionally conceals or removes the child from a
14 parent after filing a petition or being served with process
15 in an action affecting marriage or paternity but prior to
16 the issuance of a temporary or final order determining
17 custody.

18 (5) At the expiration of visitation rights outside the
19 State, intentionally fails or refuses to return or impedes
20 the return of the child to the lawful custodian in
21 Illinois.

22 (6) Being a parent of the child, and if the parents of
23 that child are or have been married and there has been no
24 court order of custody, knowingly conceals the child for 15
25 days, and fails to make reasonable attempts within the
26 15-day period to notify the other parent as to the specific

1 whereabouts of the child, including a means by which to
2 contact the child, or to arrange reasonable visitation or
3 contact with the child. It is not a violation of this
4 Section for a person fleeing domestic violence to take the
5 child with him or her to housing provided by a domestic
6 violence program.

7 (7) Being a parent of the child, and if the parents of
8 the child are or have been married and there has been no
9 court order of custody, knowingly conceals, detains, or
10 removes the child with physical force or threat of physical
11 force.

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

15 (9) Knowingly retains in this State for 30 days a child
16 removed from another state without the consent of the
17 lawful custodian or in violation of a valid court order of
18 custody.

19 (10) Intentionally lures or attempts to lure a child
20 under the age of 16 into a motor vehicle, building,
21 housetrailer, or dwelling place without the consent of the
22 child's parent or lawful custodian for other than a lawful
23 purpose. For the purposes of this item (10), the luring or
24 attempted luring of a child under the age of 16 into a
25 motor vehicle, building, housetrailer, or dwelling place
26 without the consent of the child's parent or lawful

1 custodian is prima facie evidence of other than a lawful
2 purpose.

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

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

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

12 (2) the person had physical custody of the child
13 pursuant to a court order granting legal custody or
14 visitation rights and failed to return the child as a
15 result of circumstances beyond his or her control, and the
16 person notified and disclosed to the other parent or legal
17 custodian the specific whereabouts of the child and a means
18 by which the child could be contacted or made a reasonable
19 attempt to notify the other parent or lawful custodian of
20 the child of those circumstances and made the disclosure
21 within 24 hours after the visitation period had expired and
22 returned the child as soon as possible;

23 (3) the person was fleeing an incidence or pattern of
24 domestic violence; or

25 (4) the person lured or attempted to lure a child under
26 the age of 16 into a motor vehicle, building, housetrailer,

1 or dwelling place for a lawful purpose in prosecutions
2 under paragraph (10) of subsection (b).

3 (d) A person convicted of child abduction under this
4 Section is guilty of a Class X 4 felony. ~~A person convicted of~~
5 ~~a second or subsequent violation of paragraph (10) of~~
6 ~~subsection (b) of this Section is guilty of a Class 3 felony.~~
7 It is a factor in aggravation under subsections (b) (1) through
8 (b) (10) of this Section for which a court may impose a more
9 severe sentence under Section 5-8-1 (730 ILCS 5/5-8-1) or
10 Article 4.5 of Chapter V of the Unified Code of Corrections if,
11 upon sentencing, the court finds evidence of any of the
12 following aggravating factors:

13 (1) that the defendant abused or neglected the child
14 following the concealment, detention, or removal of the
15 child;

16 (2) that the defendant inflicted or threatened to
17 inflict physical harm on a parent or lawful custodian of
18 the child or on the child with intent to cause that parent
19 or lawful custodian to discontinue criminal prosecution of
20 the defendant under this Section;

21 (3) that the defendant demanded payment in exchange for
22 return of the child or demanded that he or she be relieved
23 of the financial or legal obligation to support the child
24 in exchange for return of the child;

25 (4) that the defendant has previously been convicted of
26 child abduction;

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

4 (6) that the defendant committed the abduction while in
5 a school, regardless of the time of day or time of year; in
6 a playground; on any conveyance owned, leased, or
7 contracted by a school to transport students to or from
8 school or a school related activity; on the real property
9 of a school; or on a public way within 1,000 feet of the
10 real property comprising any school or playground. For
11 purposes of this paragraph (6), "playground" means a piece
12 of land owned or controlled by a unit of local government
13 that is designated by the unit of local government for use
14 solely or primarily for children's recreation; and
15 "school" means a public or private elementary or secondary
16 school, community college, college, or university.

17 (e) The court may order the child to be returned to the
18 parent or lawful custodian from whom the child was concealed,
19 detained, or removed. In addition to any sentence imposed, the
20 court may assess any reasonable expense incurred in searching
21 for or returning the child against any person convicted of
22 violating this Section.

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

25 (g) Every law enforcement officer investigating an alleged
26 incident of child abduction shall make a written police report

1 of any bona fide allegation and the disposition of that
2 investigation. Every police report completed pursuant to this
3 Section shall be compiled and recorded within the meaning of
4 Section 5.1 of the Criminal Identification Act.

5 (h) Whenever a law enforcement officer has reasons to
6 believe a child abduction has occurred, she or he shall provide
7 the lawful custodian a summary of her or his rights under this
8 Code, including the procedures and relief available to her or
9 him.

10 (i) If during the course of an investigation under this
11 Section the child is found in the physical custody of the
12 defendant or another, the law enforcement officer shall return
13 the child to the parent or lawful custodian from whom the child
14 was concealed, detained, or removed, unless there is good cause
15 for the law enforcement officer or the Department of Children
16 and Family Services to retain temporary protective custody of
17 the child pursuant to the Abused and Neglected Child Reporting
18 Act.

19 (Source: P.A. 95-1052, eff. 7-1-09; 96-710, eff. 1-1-10;
20 96-1000, eff. 7-2-10.)