

SB3704



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB3704

Introduced 2/10/2012, by Sen. John J. Millner

SYNOPSIS AS INTRODUCED:

720 ILCS 5/10-5

from Ch. 38, par. 10-5

Amends the Criminal Code of 1961. Redefines child abduction by luring. Provides that the offense consists of intentionally luring or attempting to lure a child: (1) under the age of 17 (rather than under the age of 16) or (2) while traveling to or from a primary or secondary school 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.

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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 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 intellectually disabled.

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
17 permission that is positive, direct, and unequivocal,
18 requiring no inference or implication to supply its
19 meaning.

20 (2.2) "Luring" means any knowing act to solicit,
21 entice, tempt, or attempt to attract the minor.

22 (3) "Lawful custodian" means a person or persons
23 granted legal custody of a child or entitled to physical

1 possession of a child pursuant to a court order. It is
2 presumed that, when the parties have never been married to
3 each other, the mother has legal custody of the child
4 unless a valid court order states otherwise. If an
5 adjudication of paternity has been completed and the father
6 has been assigned support obligations or visitation
7 rights, such a paternity order should, for the purposes of
8 this Section, be considered a valid court order granting
9 custody to the mother.

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

13 (5) "Unlawful purpose" means any misdemeanor or felony
14 violation of State law or a similar federal or sister state
15 law or local ordinance.

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

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

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

25 (3) Intentionally conceals, detains, or removes the
26 child without the consent of the mother or lawful custodian

1 of the child if the person is a putative father and either:
2 (A) the paternity of the child has not been legally
3 established or (B) the paternity of the child has been
4 legally established but no orders relating to custody have
5 been entered. Notwithstanding the presumption created by
6 paragraph (3) of subsection (a), however, a mother commits
7 child abduction when she intentionally conceals or removes
8 a child, whom she has abandoned or relinquished custody of,
9 from an unadjudicated father who has provided sole ongoing
10 care and custody of the child in her absence.

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

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

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

1 contact with the child. It is not a violation of this
2 Section for a person fleeing domestic violence to take the
3 child with him or her to housing provided by a domestic
4 violence program.

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

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

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

17 (10) Intentionally lures or attempts to lure a child:
18 (A) under the age of 17 or (B) while traveling to or from a
19 primary or secondary school ~~16~~ into a motor vehicle,
20 building, housetrailer, or dwelling place without the
21 consent of the child's parent or lawful custodian for other
22 than a lawful purpose. For the purposes of this item (10),
23 the trier of fact may infer that luring or attempted luring
24 of a child under the age of 17 ~~16~~ into a motor vehicle,
25 building, housetrailer, or dwelling place without the
26 express consent of the child's parent or lawful custodian

1 or with the intent to avoid the express consent of the
2 child's parent or lawful custodian was for other than a
3 lawful purpose.

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

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

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

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

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

26 (4) the person lured or attempted to lure a child under

1 the age of 17 ~~16~~ into a motor vehicle, building,
2 housetrailer, or dwelling place for a lawful purpose in
3 prosecutions under paragraph (10) of subsection (b).

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

21 (1) that the defendant abused or neglected the child
22 following the concealment, detention, or removal of the
23 child;

24 (2) that the defendant inflicted or threatened to
25 inflict physical harm on a parent or lawful custodian of
26 the child or on the child with intent to cause that parent

1 or lawful custodian to discontinue criminal prosecution of
2 the defendant under this Section;

3 (3) that the defendant demanded payment in exchange for
4 return of the child or demanded that he or she be relieved
5 of the financial or legal obligation to support the child
6 in exchange for return of the child;

7 (4) that the defendant has previously been convicted of
8 child abduction;

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

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

25 (e) The court may order the child to be returned to the
26 parent or lawful custodian from whom the child was concealed,

1 detained, or removed. In addition to any sentence imposed, the
2 court may assess any reasonable expense incurred in searching
3 for or returning the child against any person convicted of
4 violating this Section.

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

7 (g) Every law enforcement officer investigating an alleged
8 incident of child abduction shall make a written police report
9 of any bona fide allegation and the disposition of that
10 investigation. Every police report completed pursuant to this
11 Section shall be compiled and recorded within the meaning of
12 Section 5.1 of the Criminal Identification Act.

13 (h) Whenever a law enforcement officer has reasons to
14 believe a child abduction has occurred, she or he shall provide
15 the lawful custodian a summary of her or his rights under this
16 Code, including the procedures and relief available to her or
17 him.

18 (i) If during the course of an investigation under this
19 Section the child is found in the physical custody of the
20 defendant or another, the law enforcement officer shall return
21 the child to the parent or lawful custodian from whom the child
22 was concealed, detained, or removed, unless there is good cause
23 for the law enforcement officer or the Department of Children
24 and Family Services to retain temporary protective custody of
25 the child pursuant to the Abused and Neglected Child Reporting
26 Act.

1 (Source: P.A. 96-710, eff. 1-1-10; 96-1000, eff. 7-2-10;
2 97-160, eff. 1-1-12; 97-227, eff. 1-1-12; revised 9-12-11.)