

1 AN ACT in relation to 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  
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  
9 shall have the following meanings:

10 (1) "Child" means a person under the age of 18 or  
11 an institutionalized severely or profoundly mentally  
12 retarded person at the time the alleged violation  
13 occurred; and

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

17 (3) "Lawful custodian" means a person or persons  
18 granted legal custody of a child or entitled to physical  
19 possession of a child pursuant to a court order. It is  
20 presumed that, when the parties have never been married  
21 to each other, the mother has legal custody of the child  
22 unless a valid court order states otherwise. If an  
23 adjudication of paternity has been completed and the  
24 father has been assigned support obligations or  
25 visitation rights, such a paternity order should, for the  
26 purposes of this Section be considered a valid court  
27 order granting custody to the mother.

28 (b) A person commits child abduction when he or she:

29 (1) Intentionally violates any terms of a valid  
30 court order granting sole or joint custody, care or  
31 possession to another, by concealing or detaining the

1 child or removing the child from the jurisdiction of the  
2 court; or

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

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

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

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

29 (6) Being a parent of the child, and where the  
30 parents of such child are or have been married and there  
31 has been no court order of custody, conceals the child  
32 for 15 days, and fails to make reasonable attempts within  
33 the 15 day period to notify the other parent as to the  
34 specific whereabouts of the child, including a means by

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

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

11 (8) Conceals, detains, or removes the child for  
12 payment or promise of payment at the instruction of a  
13 person who has no legal right to custody; or

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

18 (10) (A) Is an adult stranger and each of the  
19 following circumstances is present:

20 (i) the adult stranger knowingly contacts or  
21 communicates with a child under 16 years of age, and

22 (ii) the adult stranger knows or reasonably  
23 should have known that the child is under 16 years  
24 of age, and

25 (iii) the adult stranger persuades and lures,  
26 or transports, or attempts to persuade and lure, or  
27 transport, that child away from the child's home or  
28 from any location known by the child's parent, legal  
29 guardian, or custodian, to be a place where the  
30 child is located, for any purpose, without the  
31 express consent of the child's parent or legal  
32 guardian, and with the intent to avoid the consent  
33 of the child's parent or legal guardian.

34 (B) This paragraph (10) does not apply in an

1 emergency situation.

2 (C) As used in this paragraph (10):

3 "Emergency situation" means a situation in which the  
4 child is threatened with imminent bodily harm, emotional  
5 harm, or psychological harm.

6 "Contact" or "communication" includes, but is not limited  
7 to, the use of a telephone or the Internet.

8 "Adult stranger" means a person 21 years of age or older  
9 of casual acquaintance with whom no substantial relationship  
10 exists, or a person 21 years of age or older with whom a  
11 relationship has been established or promoted for the primary  
12 purpose of victimization.

13 "Express consent" means oral or written permission that  
14 is positive, direct, and unequivocal, requiring no inference  
15 or implication to supply its meaning.

16 (D) This paragraph (10) may not be interpreted to  
17 criminalize acts of persons contacting children within  
18 the scope and course of their employment or status as  
19 volunteers of recognized civic or charitable  
20 organizations.

21 (E) This paragraph (10) is intended to protect  
22 children and to help parents and legal guardians exercise  
23 reasonable care, supervision, protection, and control  
24 over those children. Intentionally-lures-or--attempts--to  
25 lure--a--child--under-the-age-of-16-into-a-motor-vehicle,  
26 building,-housetrailer,-or--dwelling--place--without--the  
27 consent--of--the--parent-or-lawful-custodian-of-the-child  
28 for-other-than-a-lawful-purpose.

29 For-the-purposes-of-this-subsection-(b),-paragraph--(10),  
30 the-luring-or-attempted-luring-of-a-child-under-the-age-of-16  
31 into--a--motor--vehicle,-building,-housetrailer,-or-dwelling  
32 place-without-the-consent-of-the-parent-or--lawful--custodian  
33 of--the--child--shall-be-prima-facie-evidence-of-other-than-a  
34 lawful-purpose.

1 (c) It shall be an affirmative defense that:

2 (1) The person had custody of the child pursuant to  
3 a court order granting legal custody or visitation rights  
4 which existed at the time of the alleged violation; or

5 (2) The person had physical custody of the child  
6 pursuant to a court order granting legal custody or  
7 visitation rights and failed to return the child as a  
8 result of circumstances beyond his or her control, and  
9 the person notified and disclosed to the other parent or  
10 legal custodian the specific whereabouts of the child and  
11 a means by which such child can be contacted or made a  
12 reasonable attempt to notify the other parent or lawful  
13 custodian of the child of such circumstances and make  
14 such disclosure within 24 hours after the visitation  
15 period had expired and returned the child as soon as  
16 possible; or

17 (3) The person was fleeing an incidence or pattern  
18 of domestic violence.

19 (4) ~~(Blank) The person lured or attempted to lure a~~  
20 ~~child under the age of 16 into a motor vehicle, building,~~  
21 ~~housetrailer, or dwelling place for a lawful purpose in~~  
22 ~~prosecutions under subsection (b), paragraph (10).~~

23 (d) A person convicted of child abduction under this  
24 Section is guilty of a Class 4 felony. A person convicted of  
25 a second or subsequent violation of paragraph (10) of  
26 subsection (b) of this Section is guilty of a Class 3 felony.  
27 It shall be a factor in aggravation for which a court may  
28 impose a more severe sentence under Section 5-8-1 of the  
29 Unified Code of Corrections, if upon sentencing the court  
30 finds evidence of any of the following aggravating factors:

31 (1) that the defendant abused or neglected the  
32 child following the concealment, detention or removal of  
33 the child; or

34 (2) that the defendant inflicted or threatened to

1 inflict physical harm on a parent or lawful custodian of  
2 the child or on the child with intent to cause such  
3 parent or lawful custodian to discontinue criminal  
4 prosecution of the defendant under this Section; or

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

9 (4) that the defendant has previously been  
10 convicted of child abduction; or

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

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

28 (e) The court may order the child to be returned to the  
29 parent or lawful custodian from whom the child was concealed,  
30 detained or removed. In addition to any sentence imposed,  
31 the court may assess any reasonable expense incurred in  
32 searching for or returning the child against any person  
33 convicted of violating this Section.

34 (f) Nothing contained in this Section shall be construed

1 to limit the court's contempt power.

2 (g) Every law enforcement officer investigating an  
3 alleged incident of child abduction shall make a written  
4 police report of any bona fide allegation and the disposition  
5 of such investigation. Every police report completed  
6 pursuant to this Section shall be compiled and recorded  
7 within the meaning of Section 5.1 of "An Act in relation to  
8 criminal identification and investigation", approved July 2,  
9 1931, as now or hereafter amended.

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

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

24 (Source: P.A. 90-494, eff. 1-1-98.)

25 Section 99. Effective date. This Act takes effect upon  
26 becoming law.