



1999 ASSEMBLY BILL 689

February 1, 2000 – Introduced by Representatives UNDERHEIM, AINSWORTH, KELSO, OWENS, ALBERS and OLSEN, cosponsored by Senators A. LASEE, DARLING and WELCH. Referred to Committee on Family Law.

1 **AN ACT** *to renumber and amend* 948.31 (2) and 948.31 (3) (c); *to amend* 767.23
2 (1n) and 948.31 (1) (b); and *to create* 948.31 (1) (am), 948.31 (2) (a), 948.31 (3m)
3 (a) and 968.077 of the statutes; **relating to:** interference with the custody of a
4 child and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law prohibits a person from interfering with the custody of a child. A person violates the prohibition against interfering with custody by withholding a child for more than 12 hours from his or her parents or from a single parent with legal custody without consent of the parents or the single parent with legal custody. A person who violates the prohibition against interfering with the custody of a child in this manner may be fined not more than \$10,000 or imprisoned for not more than two years or both, if the offense occurs before December 31, 1999, or may be fined not more than \$10,000 or imprisoned for not more than five years or both, if the offense occurs on or after December 31, 1999.

A person also violates the prohibition against interfering with custody by withholding a child from his or her legal custodian for more than 12 hours beyond a court-approved period of physical placement or visitation, if the person withholds the child without the custodian's consent and with the intent to deprive the custodian of his or her custody rights. A person who violates the prohibition against interfering with the custody of a child in this manner may be fined not more than \$10,000 or imprisoned for not more than ten years or both, if the offense occurs before December

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31, 1999, or may be fined not more than \$10,000 or imprisoned for not more than 15 years or both, if the offense occurs on or after December 31, 1999.

This bill provides that a person violates the prohibition against interfering with the custody of a child if he or she withholds the child from his or her parents or from a single parent with legal custody for more than three hours or if he or she withholds a child from his or her legal custodian for more than three hours beyond a court-approved period of physical placement or visitation. A person who violates the prohibition against interfering with the custody of a child by withholding the child for more than three hours may be fined not more than \$10,000 or imprisoned for not more than nine months or both.

The bill also provides that, if a court has ordered that both parents have legal custody and periods of physical placement of a child and one parent takes the child from or causes the child to leave the other parent in violation of the order or withholds the child for more than three hours beyond the court-approved period of physical placement or visitation, the other parent may request a law enforcement agency in the jurisdiction in which the first parent is located to assist in locating and returning the child. A law enforcement agency must assist in locating and returning the child of a parent who makes a request for assistance if the parent provides the law enforcement agency with a certified copy of the court order specifying joint legal custody rights and periods of physical placement.

Finally, under current law a summons in an action affecting the family, such as a divorce, in which the parties have a minor child must include notification of the statute that prohibits interference with the custody of a child. Also under current law, a final judgment in an action affecting the family in which custody of, or physical placement with, a minor child was determined must include notification of the statute that prohibits interference with the custody of a child. Under this bill, if a judge or family court commissioner in an action affecting the family grants legal custody of a minor child or periods of physical placement with a minor child temporarily during the pendency of the action, the temporary order must also include notification of the statute that prohibits interference with the custody of a child.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 767.23 (1n) of the statutes is amended to read:
- 2 767.23 (1n) Before making any temporary order under sub. (1), the court or
- 3 family court commissioner shall consider those factors which the court is required
- 4 by this chapter to consider before entering a final judgment on the same subject

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1 matter. If the court or family court commissioner makes a temporary child support
2 order that deviates from the amount of support that would be required by using the
3 percentage standard established by the department under s. 49.22 (9), the court or
4 family court commissioner shall comply with the requirements of s. 767.25 (1n). A
5 temporary order under sub. (1) may be based upon the written stipulation of the
6 parties, subject to the approval of the court or the family court commissioner.
7 Temporary orders made by the family court commissioner may be reviewed by the
8 court as provided in s. 767.13 (6). A temporary order granting legal custody of a
9 minor child or periods of physical placement with a minor child shall include
10 notification of the contents of s. 948.31.

11 **SECTION 2.** 948.31 (1) (am) of the statutes is created to read:

12 948.31 (1) (am) Except as provided under chs. 48 and 938, whoever
13 intentionally causes a child to leave, takes a child away or withholds a child for more
14 than 3 hours beyond the court-approved period of physical placement or visitation
15 period from a legal custodian with intent to deprive the custodian of his or her
16 custody rights without the consent of the custodian is guilty of a Class A
17 misdemeanor. This paragraph is not applicable if the court has entered an order
18 authorizing the person to so take or withhold the child.

19 **SECTION 3.** 948.31 (1) (b) of the statutes is amended to read:

20 948.31 (1) (b) Except as provided under chs. 48 and 938, whoever intentionally
21 causes a child to leave, takes a child away or withholds a child for more than 12 hours
22 beyond the court-approved period of physical placement or visitation period from a
23 legal custodian with intent to deprive the custodian of his or her custody rights
24 without the consent of the custodian is guilty of a Class C felony. This paragraph is

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1 not applicable if the court has entered an order authorizing the person to so take or
2 withhold the child.

3 (c) The fact that joint legal custody has been awarded to both parents by a court
4 does not preclude a court from finding that one parent has committed a violation of
5 ~~this paragraph~~ par. (am) or (b).

6 **SECTION 4.** 948.31 (2) of the statutes is renumbered 948.31 (2) (b) and amended
7 to read:

8 948.31 (2) (b) Whoever causes a child to leave, takes a child away or withholds
9 a child for more than 12 hours from the child's parents or, in the case of a nonmarital
10 child whose parents do not subsequently intermarry under s. 767.60, from the child's
11 mother or, if he has been granted legal custody, the child's father, without the consent
12 of the parents, the mother or the father with legal custody, is guilty of a Class E
13 felony. ~~This subsection~~ paragraph is not applicable if legal custody has been granted
14 by court order to the person taking or withholding the child.

15 **SECTION 5.** 948.31 (2) (a) of the statutes is created to read:

16 948.31 (2) (a) Whoever causes a child to leave, takes a child away or withholds
17 a child for more than 3 hours from the child's parents or, in the case of a nonmarital
18 child whose parents do not subsequently intermarry under s. 767.60, from the child's
19 mother or, if he has been granted legal custody, the child's father, without the consent
20 of the parents, the mother or the father with legal custody, is guilty of a Class A
21 misdemeanor. This paragraph is not applicable if legal custody has been granted by
22 court order to the person taking or withholding the child.

23 **SECTION 6.** 948.31 (3) (c) of the statutes is renumbered 948.31 (3m) (b) and
24 amended to read:

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1 948.31 (3m) (b) ~~After~~ Any parent, or any person acting pursuant to directions
2 from the parent, who, after issuance of a temporary or final order specifying joint
3 legal custody rights and periods of physical placement, takes a child from or causes
4 a child to leave the other parent in violation of the order or withholds a child for more
5 than 12 hours beyond the court-approved period of physical placement or visitation
6 period is guilty of a Class C felony.

7 **SECTION 7.** 948.31 (3m) (a) of the statutes is created to read:

8 948.31 (3m) (a) Any parent, or any person acting pursuant to directions from
9 the parent, who, after issuance of a temporary or final order specifying joint legal
10 custody rights and periods of physical placement, takes a child from or causes a child
11 to leave the other parent in violation of the order or withholds a child for more than
12 3 hours beyond the court-approved period of physical placement or visitation period
13 is guilty of a Class A misdemeanor.

14 **SECTION 8.** 968.077 of the statutes is created to read:

15 **968.077 Interference with child custody or physical placement;**
16 **assistance to parent.** If a parent of a child alleges that his or her legal custody or
17 period of physical placement of the child is being interfered with by the other parent
18 of the child in violation of s. 948.31 (3m), the parent may request a law enforcement
19 agency in the jurisdiction in which the other parent is present to assist in locating
20 and returning the child. A law enforcement agency shall assist in locating and
21 returning the child of a parent who makes a request under this section if the parent
22 provides the law enforcement agency with a certified copy of the temporary or final
23 order specifying joint legal custody rights and periods of physical placement that is
24 allegedly being violated by the other parent.

25 **SECTION 9. Initial applicability.**

