

AMENDED IN ASSEMBLY MARCH 22, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 395

Introduced by Assembly Member Swanson

February 15, 2007

An act to amend ~~Section~~ *Sections 278 and 278.5* of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 395, as amended, Swanson. Child abduction.

Existing law makes it a crime for a person *who does not have a right to custody to maliciously take, entice away, keep, withhold, or conceal a child and with the intent to detain or conceal that child from a lawful custodian. Under existing law, this crime is punishable by imprisonment in a county jail not exceeding one year, a fine not exceeding \$1,000, or both that fine and imprisonment, or by imprisonment in the state prison for 2, 3, or 4 years, a fine not exceeding \$10,000, or both that fine and imprisonment. Existing law also makes it a crime for a person to take, entice away, keep, withhold, or conceal a child and maliciously deprive a lawful custodian of a right to custody, or a person of a right to visitation. Existing law makes these acts punishable by imprisonment in a county jail not exceeding one year, a fine not exceeding \$1,000, or both that fine and imprisonment, or by imprisonment in the state prison for 16 months, or 2 or 3 years, a fine not exceeding \$10,000, or both that fine and imprisonment.*

This bill would provide greater penalties for a person who commits a violation *of either of the crimes* described above, where the abduction continues for more than one year. In particular, the bill would punish ~~such~~ a violation, *where a person does not have a right to custody and*

maliciously acts with the intent to detain or conceal the child from a lawful custodian, by imprisonment in a county jail not exceeding one year, a fine not exceeding \$1,000, or both that fine and imprisonment, or by imprisonment in the state prison for 4, 6, or 9 years, a fine not exceeding \$10,000, or both that fine and imprisonment. The bill would also punish a violation, where a person maliciously deprives a lawful custodian of custody or visitation, by imprisonment in a county jail not exceeding one year, a fine not exceeding \$1,000, or both that fine and imprisonment, or by imprisonment in the state prison for 2, 4, or 6 years, a fine not exceeding \$10,000, or both that fine and imprisonment, if specified conditions are satisfied. By increasing the penalties for a crime crimes, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 278 of the Penal Code is amended to
2 read:
3 278. (a) Every person, not having a right to custody, who
4 maliciously takes, entices away, keeps, withholds, or conceals any
5 child with the intent to detain or conceal that child from a lawful
6 custodian shall be punished by imprisonment in a county jail not
7 exceeding one year, a fine not exceeding one thousand dollars
8 (\$1,000), or both that fine and imprisonment, or by imprisonment
9 in the state prison for two, three, or four years, a fine not exceeding
10 ten thousand dollars (\$10,000), or both that fine and imprisonment.
11 (b) Every person who commits a violation of subdivision (a)
12 where the abduction continues without interruption for a period
13 exceeding one year shall be punished by imprisonment in a county
14 jail not exceeding one year, a fine not exceeding one thousand
15 dollars (\$1,000), or both that fine and imprisonment, or by
16 imprisonment in the state prison for four, six, or nine years, a fine
17 not exceeding ten thousand dollars (\$10,000), or both that fine
18 and imprisonment.

1 (c) *The greater penalties provided under subdivision (b) shall*
2 *not be imposed unless the facts of the abduction that bring it within*
3 *that subdivision are charged in the accusatory pleading and*
4 *admitted or found to be true by the trier of fact.*

5 (d) *Notwithstanding Section 1385 or any other provision, the*
6 *court shall not strike an allegation under this section or a finding*
7 *bringing a person within the provisions of this section.*

8 ~~SECTION 1.~~

9 *SEC. 2.* Section 278.5 of the Penal Code is amended to read:

10 278.5. (a) Every person who takes, entices away, keeps,
11 withholds, or conceals a child and maliciously deprives a lawful
12 custodian of a right to custody, or a person of a right to visitation,
13 shall be punished by imprisonment in a county jail not exceeding
14 one year, a fine not exceeding one thousand dollars (\$1,000), or
15 both that fine and imprisonment, or by imprisonment in the state
16 prison for 16 months, or two or three years, a fine not exceeding
17 ten thousand dollars (\$10,000), or both that fine and imprisonment.

18 (b) Every person who commits a violation of subdivision (a)
19 where the abduction continues without interruption for a period
20 exceeding one year shall be punished by imprisonment in a county
21 jail not exceeding one year, a fine not exceeding one thousand
22 dollars (\$1,000), or both that fine and imprisonment, or by
23 imprisonment in the state prison for two, four, or six years, a fine
24 not exceeding ten thousand dollars (\$10,000), or both that fine and
25 imprisonment.

26 (c) *The greater penalties provided under subdivision (b) shall*
27 *not be imposed unless the facts of the abduction that bring it within*
28 *that subdivision are charged in the accusatory pleading and*
29 *admitted or found to be true by the trier of fact.*

30 (d) *Notwithstanding Section 1385 or any other provision, the*
31 *court shall not strike an allegation under this section or a finding*
32 *bringing a person within the provisions of this section.*

33 (e) Nothing contained in this section limits the court's contempt
34 power.

35 (f) A custody order obtained after the taking, enticing away,
36 keeping, withholding, or concealing of a child does not constitute
37 a defense to a crime charged under this section.

38 ~~SEC. 2.~~

39 *SEC. 3.* No reimbursement is required by this act pursuant to
40 Section 6 of Article XIII B of the California Constitution because

1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section 17556 of
5 the Government Code, or changes the definition of a crime within
6 the meaning of Section 6 of Article XIII B of the California
7 Constitution.

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