



2001 ASSEMBLY BILL 627

November 8, 2001 - Introduced by Representatives UNDERHEIM, McCORMICK, PETTIS, MUSSER, KRAWCZYK, RYBA, GRONEMUS, OWENS, BIES, AINSWORTH, OTT and GUNDERSON, cosponsored by Senator 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), 767.51 (3) (b), 767.62 (4) (a) and 948.31 (1) (b); and **to create** 948.31 (1)
3 (am), 948.31 (2) (a), 948.31 (3m) (a) and 968.077 of the statutes; **relating to:**
4 interference with the custody of a 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 five years or both.

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. The fact that a court has awarded the parents joint legal custody of the child does not preclude a court from finding that one parent has violated the prohibition in this way. Moreover, a parent, or a person acting at a parent's direction, violates this prohibition if he or she withholds a child for more than 12 hours beyond the time authorized by a court in a temporary or final joint legal custody order. A person who violates the prohibition against interfering with

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the custody of a child in either of these ways may be fined not more than \$10,000 or imprisoned for not more than 15 years or both.

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 six hours or if he or she withholds a child from his or her legal custodian for more than six 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 six 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 either one or both parents have legal custody 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 any other order regarding periods of physical placement or withholds the child for more than six hours beyond what is authorized by any such order, 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 being violated.

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 that the court is required by
4 this chapter to consider before entering a final judgment on the same subject matter.

5 In making a determination under sub. (1) (a) or (am), the court or family court

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1 commissioner shall consider the factors under s. 767.24 (5). If the court or family
2 court commissioner makes a temporary child support order that deviates from the
3 amount of support that would be required by using the percentage standard
4 established by the department under s. 49.22 (9), the court or family court
5 commissioner shall comply with the requirements of s. 767.25 (1n). A temporary
6 order under sub. (1) may be based upon the written stipulation of the parties, subject
7 to the approval of the court or the family court commissioner. Temporary orders
8 made by the family court commissioner may be reviewed by the court as provided in
9 s. 767.13 (6). A temporary order granting legal custody of a minor child or periods
10 of physical placement with a minor child shall include notification of the contents of
11 s. 948.31.

12 **SECTION 2.** 767.51 (3) (b) of the statutes is amended to read:

13 767.51 (3) (b) Orders for the legal custody of and periods of physical placement
14 with the child, determined in accordance with, and otherwise in compliance with, s.
15 767.24.

16 **SECTION 3.** 767.62 (4) (a) of the statutes is amended to read:

17 767.62 (4) (a) Orders for the legal custody of and periods of physical placement
18 with the child, determined in accordance with, and otherwise in compliance with, s.
19 767.24.

20 **SECTION 4.** 948.31 (1) (am) of the statutes is created to read:

21 948.31 (1) (am) Except as provided under chs. 48 and 938, whoever
22 intentionally causes a child to leave, takes a child away, or withholds a child for more
23 than 6 hours beyond the court-approved period of physical placement or visitation
24 period from a legal custodian with intent to deprive the custodian of his or her
25 custody rights without the consent of the custodian is guilty of a Class A

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

3 **SECTION 5.** 948.31 (1) (b) of the statutes is amended to read:

4 948.31 (1) (b) Except as provided under chs. 48 and 938, whoever intentionally
5 causes a child to leave, takes a child away, or withholds a child for more than 12 hours
6 beyond the court-approved period of physical placement or visitation period from a
7 legal custodian with intent to deprive the custodian of his or her custody rights
8 without the consent of the custodian is guilty of a Class C felony. This paragraph is
9 not applicable if the court has entered an order authorizing the person to so take or
10 withhold the child.

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

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

16 948.31 (2) (b) Whoever causes a child to leave, takes a child away, or withholds
17 a child for more than 12 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 E
21 felony. This ~~subsection~~ paragraph is not applicable if legal custody has been granted
22 by court order to the person taking or withholding the child.

23 **SECTION 7.** 948.31 (2) (a) of the statutes is created to read:

24 948.31 (2) (a) Whoever causes a child to leave, takes a child away, or withholds
25 a child for more than 6 hours from the child's parents or, in the case of a nonmarital

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1 child whose parents do not subsequently intermarry under s. 767.60, from the child's
2 mother or, if he has been granted legal custody, the child's father, without the consent
3 of the parents, the mother, or the father with legal custody, is guilty of a Class A
4 misdemeanor. This paragraph is not applicable if legal custody has been granted by
5 court order to the person taking or withholding the child.

6 **SECTION 8.** 948.31 (3) (c) of the statutes is renumbered 948.31 (3m) (b) and
7 amended to read:

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

14 **SECTION 9.** 948.31 (3m) (a) of the statutes is created to read:

15 948.31 **(3m)** (a) Any parent, or any person acting pursuant to directions from
16 the parent, who, after issuance of a temporary or final order specifying joint legal
17 custody rights and periods of physical placement, takes a child from or causes a child
18 to leave the other parent in violation of the order or withholds a child for more than
19 6 hours beyond the court-approved period of physical placement or visitation period
20 is guilty of a Class A misdemeanor.

21 **SECTION 10.** 968.077 of the statutes is created to read:

22 **968.077 Interference with child custody or physical placement;**
23 **assistance to parent.** If a court has entered an order granting one or both parents
24 legal custody of a child and a parent of the child alleges that his or her legal custody
25 or period of physical placement of the child is being interfered with by the child's

ASSEMBLY BILL 627**SECTION 10**

1 other parent in violation of s. 948.31 (1) (am) or (b), (2), or (3m), the parent may
2 request a law enforcement agency in the jurisdiction in which the other parent is
3 present to assist in locating and returning the child. A law enforcement agency shall
4 assist in locating and returning the child of a parent who makes a request under this
5 section if the parent provides the law enforcement agency with a certified copy of the
6 order that is allegedly being violated by the other parent.

7 **SECTION 11. Initial applicability.**

8 (1) INTERFERENCE WITH CUSTODY. The treatment of section 948.31 (1) (am) and
9 (b), (3) (c), and (3m) (a) of the statutes, the renumbering and amendment of section
10 948.31 (2) of the statutes, and the creation of section 948.31 (2) (a) of the statutes first
11 apply to offenses committed on the effective date of this subsection.

12 (2) TEMPORARY ORDERS GRANTING LEGAL CUSTODY OR PHYSICAL PLACEMENT. The
13 treatment of section 767.23 (1n) of the statutes first applies to temporary orders
14 made on the effective date of this subsection.

15 (END)