

STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

SENATE BILL NO. 278

By: Smith

AS INTRODUCED

An Act relating to child custody; making certain violation of child custody order a felony and providing penalty; providing certain affirmative defenses; requiring Department of Human Services to notify certain law enforcement agency upon receipt of certain information relating to location of child; authorizing law enforcement officer to take child into custody under certain circumstances; requiring certain child to be held in protective custody until custody is determined; providing for codification; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 567A of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Any parent or other person who violates an order of any court of this state granting the custody of a child under the age of eighteen (18) years to any person, agency, or institution, with the intent to deprive the lawful custodian of the custody of the child, shall be guilty of a felony. The fine for a violation of this subsection shall not exceed Five Thousand Dollars (\$5,000.00).

B. It shall be an affirmative defense either:

1. That the offender reasonably believes that the act was necessary to preserve the child from physical, mental, or emotional danger to the child's welfare; or

2. That the child, being at the time more than fourteen (14) years old, was taken away at the child's own instigation without enticement and without purpose to commit a criminal offense with or against the child and that the offender had a reasonable belief that

if not taken, the child would run away to a location unknown to either the custodial or noncustodial parent or would otherwise cause serious harm to himself or herself; provided, however, that these defenses shall not apply if the offender committed the act within thirty (30) days of an order of the district court relating to custody of the minor or unless the offender, within seventy-two (72) hours of the taking of the child:

- a. notifies the Department of Human Services of the removal and of the location of the child, and
- b. files an action for modification of the custody order with the court having proper jurisdiction of the case.

Upon receipt of the notification, the Department of Human Services shall immediately notify the local law enforcement agency nearest to the current location of the child of the taking and where the child is located.

C. If a child is removed from the custody of the child's lawful custodian pursuant to the provisions of this section any law enforcement officer may take the child into custody without a court order and, unless there is a specific court order directing a peace officer to take the child into custody and release or return the child to a lawful custodian, the child shall be held in protective custody until the right of custody is determined by the court having proper jurisdiction of the matter.

SECTION 2. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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