



Sen. John J. Millner

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1 AMENDMENT TO SENATE BILL 1228

2 AMENDMENT NO. _____. Amend Senate Bill 1228 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Criminal Code of 1961 is amended by
5 changing Sections 8-4 and 10-5 as follows:

6 (720 ILCS 5/8-4) (from Ch. 38, par. 8-4)

7 Sec. 8-4. Attempt.

8 (a) Elements of the offense.

9 A person commits the offense of attempt when, with intent
10 to commit a specific offense, he or she does any act that
11 constitutes a substantial step toward the commission of that
12 offense.

13 (b) Impossibility.

14 It is not a defense to a charge of attempt that because of
15 a misapprehension of the circumstances it would have been
16 impossible for the accused to commit the offense attempted.

1 (c) Sentence.

2 A person convicted of attempt may be fined or imprisoned or
3 both not to exceed the maximum provided for the offense
4 attempted but, except for an attempt to commit the offense
5 defined in Section 33A-2 of this Code:

6 (1) the sentence for attempt to commit first degree
7 murder is the sentence for a Class X felony, except that

8 (A) an attempt to commit first degree murder when
9 at least one of the aggravating factors specified in
10 paragraphs (1), (2), and (12) of subsection (b) of
11 Section 9-1 is present is a Class X felony for which
12 the sentence shall be a term of imprisonment of not
13 less than 20 years and not more than 80 years;

14 (B) an attempt to commit first degree murder while
15 armed with a firearm is a Class X felony for which 15
16 years shall be added to the term of imprisonment
17 imposed by the court;

18 (C) an attempt to commit first degree murder during
19 which the person personally discharged a firearm is a
20 Class X felony for which 20 years shall be added to the
21 term of imprisonment imposed by the court;

22 (D) an attempt to commit first degree murder during
23 which the person personally discharged a firearm that
24 proximately caused great bodily harm, permanent
25 disability, permanent disfigurement, or death to
26 another person is a Class X felony for which 25 years

1 or up to a term of natural life shall be added to the
2 term of imprisonment imposed by the court; and

3 (E) if the defendant proves by a preponderance of
4 the evidence at sentencing that, at the time of the
5 attempted murder, he or she was acting under a sudden
6 and intense passion resulting from serious provocation
7 by the individual whom the defendant endeavored to
8 kill, or another, and, had the individual the defendant
9 endeavored to kill died, the defendant would have
10 negligently or accidentally caused that death, then
11 the sentence for the attempted murder is the sentence
12 for a Class 1 felony;

13 (1.5) the sentence for attempt to commit child
14 abduction under paragraph (10) of subsection (b) of Section
15 10-5 of this Code is the sentence for a Class 4 felony;

16 (2) the sentence for attempt to commit a Class X felony
17 is the sentence for a Class 1 felony;

18 (3) the sentence for attempt to commit a Class 1 felony
19 is the sentence for a Class 2 felony;

20 (4) the sentence for attempt to commit a Class 2 felony
21 is the sentence for a Class 3 felony; and

22 (5) the sentence for attempt to commit any felony other
23 than those specified in items (1), (1.5), (2), (3), and (4)
24 of this subsection (c) is the sentence for a Class A
25 misdemeanor.

26 (Source: P.A. 96-710, eff. 1-1-10.)

1 (720 ILCS 5/10-5) (from Ch. 38, par. 10-5)

2 Sec. 10-5. Child abduction.

3 (a) For purposes of this Section, the following terms have
4 the following meanings:

5 (1) "Child" means a person who, at the time the alleged
6 violation occurred, was under the age of 18 or severely or
7 profoundly mentally retarded.

8 (2) "Detains" means taking or retaining physical
9 custody of a child, whether or not the child resists or
10 objects.

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

22 (4) "Putative father" means a man who has a reasonable
23 belief that he is the father of a child born of a woman who
24 is not his wife.

25 (b) A person commits the offense of child abduction when he

1 or she does any one of the following:

2 (1) Intentionally violates any terms of a valid court
3 order granting sole or joint custody, care, or possession
4 to another by concealing or detaining the child or removing
5 the child from the jurisdiction of the court.

6 (2) Intentionally violates a court order prohibiting
7 the person from concealing or detaining the child or
8 removing the child from the jurisdiction of the court.

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

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

26 (5) At the expiration of visitation rights outside the

1 State, intentionally fails or refuses to return or impedes
2 the return of the child to the lawful custodian in
3 Illinois.

4 (6) Being a parent of the child, and if the parents of
5 that child are or have been married and there has been no
6 court order of custody, knowingly conceals the child for 15
7 days, and fails to make reasonable attempts within the
8 15-day period to notify the other parent as to the specific
9 whereabouts of the child, including a means by which to
10 contact the child, or to arrange reasonable visitation or
11 contact with the child. It is not a violation of this
12 Section for a person fleeing domestic violence to take the
13 child with him or her to housing provided by a domestic
14 violence program.

15 (7) Being a parent of the child, and if the parents of
16 the child are or have been married and there has been no
17 court order of custody, knowingly conceals, detains, or
18 removes the child with physical force or threat of physical
19 force.

20 (8) Knowingly conceals, detains, or removes the child
21 for payment or promise of payment at the instruction of a
22 person who has no legal right to custody.

23 (9) Knowingly retains in this State for 30 days a child
24 removed from another state without the consent of the
25 lawful custodian or in violation of a valid court order of
26 custody.

1 (10) Intentionally lures or attempts to lure a child
2 under the age of 16 into a motor vehicle, building,
3 housetrailer, or dwelling place without the consent of the
4 child's parent or lawful custodian for other than a lawful
5 purpose. For the purposes of this item (10), the luring or
6 attempted luring of a child under the age of 16 into a
7 motor vehicle, building, housetrailer, or dwelling place
8 without the consent of the child's parent or lawful
9 custodian is prima facie evidence of other than a lawful
10 purpose.

11 (11) With the intent to obstruct or prevent efforts to
12 locate the child victim of a child abduction, knowingly
13 destroys, alters, conceals, or disguises physical evidence
14 or furnishes false information.

15 (c) It is an affirmative defense to subsections (b) (1)
16 through (b) (10) of this Section that:

17 (1) the person had custody of the child pursuant to a
18 court order granting legal custody or visitation rights
19 that existed at the time of the alleged violation;

20 (2) the person had physical custody of the child
21 pursuant to a court order granting legal custody or
22 visitation rights and failed to return the child as a
23 result of circumstances beyond his or her control, and the
24 person notified and disclosed to the other parent or legal
25 custodian the specific whereabouts of the child and a means
26 by which the child could be contacted or made a reasonable

1 attempt to notify the other parent or lawful custodian of
2 the child of those circumstances and made the disclosure
3 within 24 hours after the visitation period had expired and
4 returned the child as soon as possible;

5 (3) the person was fleeing an incidence or pattern of
6 domestic violence; or

7 (4) the person lured or attempted to lure a child under
8 the age of 16 into a motor vehicle, building, housetrailer,
9 or dwelling place for a lawful purpose in prosecutions
10 under paragraph (10) of subsection (b).

11 (d) Other than a person convicted for a violation of
12 paragraph (10) of subsection (b), a ~~A~~ person convicted of child
13 abduction under this Section is guilty of a Class 4 felony. A
14 person convicted of a violation of paragraph (10) of subsection
15 (b) of this Section is guilty of a Class 3 felony. A person
16 convicted of a second or subsequent violation of paragraph (10)
17 of subsection (b) of this Section is guilty of a Class 2 ~~3~~
18 felony. It is a factor in aggravation under subsections (b)(1)
19 through (b)(10) of this Section for which a court may impose a
20 more severe sentence under Section 5-8-1 (730 ILCS 5/5-8-1) or
21 Article 4.5 of Chapter V of the Unified Code of Corrections if,
22 upon sentencing, the court finds evidence of any of the
23 following aggravating factors:

24 (1) that the defendant abused or neglected the child
25 following the concealment, detention, or removal of the
26 child;

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

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

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

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

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

1 school, community college, college, or university.

2 (e) The court may order the child to be returned to the
3 parent or lawful custodian from whom the child was concealed,
4 detained, or removed. In addition to any sentence imposed, the
5 court may assess any reasonable expense incurred in searching
6 for or returning the child against any person convicted of
7 violating this Section.

8 (f) Nothing contained in this Section shall be construed to
9 limit the court's contempt power.

10 (g) Every law enforcement officer investigating an alleged
11 incident of child abduction shall make a written police report
12 of any bona fide allegation and the disposition of that
13 investigation. Every police report completed pursuant to this
14 Section shall be compiled and recorded within the meaning of
15 Section 5.1 of the Criminal Identification Act.

16 (h) Whenever a law enforcement officer has reasons to
17 believe a child abduction has occurred, she or he shall provide
18 the lawful custodian a summary of her or his rights under this
19 Code, including the procedures and relief available to her or
20 him.

21 (i) If during the course of an investigation under this
22 Section the child is found in the physical custody of the
23 defendant or another, the law enforcement officer shall return
24 the child to the parent or lawful custodian from whom the child
25 was concealed, detained, or removed, unless there is good cause
26 for the law enforcement officer or the Department of Children

1 and Family Services to retain temporary protective custody of
2 the child pursuant to the Abused and Neglected Child Reporting
3 Act.

4 (Source: P.A. 95-1052, eff. 7-1-09; 96-710, eff. 1-1-10;
5 96-1000, eff. 7-2-10.)".