

STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012

Introduced by Senators Schuitmaker, Jones, Gleason, Marleau, Bieda, Proos and Pappageorge

ENROLLED SENATE BILL No. 631

AN ACT to amend 1931 PA 328, entitled "An act to revise, consolidate, codify, and add to the statutes relating to crimes; to define crimes and prescribe the penalties and remedies; to provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at criminal trials; to provide for liability for damages; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act," by amending section 350a (MCL 750.350a), as amended by 2004 PA 223.

The People of the State of Michigan enact:

Sec. 350a. (1) An adoptive or natural parent of a child shall not take that child, or retain that child for more than 24 hours, with the intent to detain or conceal the child from any other parent or legal guardian of the child who has custody or parenting time rights under a lawful court order at the time of the taking or retention, or from the person or persons who have adopted the child, or from any other person having lawful charge of the child at the time of the taking or retention.

(2) A parent who violates subsection (1) is guilty of a felony, punishable by imprisonment for not more than 1 year and 1 day, or a fine of not more than \$2,000.00, or both.

(3) A parent who violates this section, upon conviction, in addition to any other punishment, may be ordered to make restitution to the other parent, legal guardian, the person or persons who have adopted the child, or any other person having lawful charge of the child for any financial expense incurred as a result of attempting to locate and having the child returned.

(4) When a parent who has not been convicted previously of a violation of section 349, 350, or this section, or under any statute of the United States or of any state related to kidnapping, pleads guilty to, or is found guilty of, a violation of this section, the court, without entering a judgment of guilt and with the consent of the accused parent, may defer further proceedings and place the accused parent on probation with lawful terms and conditions. The terms and conditions of probation may include participation in a drug treatment court under chapter 10A of the revised judiciary act of 1961, 1961 PA 236, MCL 600.1060 to 600.1084. Upon a violation of a term or condition of probation, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions of probation, the court shall discharge from probation and dismiss the proceedings against the parent. Discharge and dismissal under this subsection shall be without adjudication of guilt and is not a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including any additional penalties imposed for second or subsequent convictions. There may be only 1 discharge and dismissal under the section as to an individual.

(5) All court proceedings under this section shall be open to the public. Except as provided in subsection (6), if the record of proceedings as to the defendant is deferred under this section, the record of proceedings during the period of deferral shall be closed to public inspection.

(6) Unless the court enters a judgment of guilt under this section, the department of state police shall retain a nonpublic record of the arrest, court proceedings, and disposition of the criminal charge under this section. However, the nonpublic record shall be open to the following individuals and entities for the purposes noted:

(a) The courts of this state, law enforcement personnel, and prosecuting attorneys for use only in the performance of their duties.

(b) The courts of this state, law enforcement personnel, and prosecuting attorneys for the purpose of showing either of the following:

(i) That a defendant has already once availed himself or herself of this section.

(ii) Determining whether the defendant in a criminal action is eligible for discharge and dismissal of proceedings by a drug treatment court under section 1076(5) of the revised judicature act of 1961, 1961 PA 236, MCL 600.1076.

(c) The department of corrections for ascertaining preemployment criminal history or to determine whether a department of corrections employee has violated conditions of employment.

(d) The department of human services for enforcing child protection laws and vulnerable adult protection laws or ascertaining the preemployment criminal history of any individual who will be engaged in the enforcement of child protection laws or vulnerable adult protection laws.

(7) It is a complete defense under this section if a parent proves that his or her actions were taken for the purpose of protecting the child from an immediate and actual threat of physical or mental harm, abuse, or neglect.

Enacting section 1. This amendatory act takes effect April 1, 2013.

Carol Morey Viventi

Secretary of the Senate

Ray E. Randall

Clerk of the House of Representatives

Approved

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Governor