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SB 532/93 - JPR

1997 Regular Session  
7r2271  
CF 7r2071

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**By: Delegate Palumbo**

Introduced and read first time: February 3, 1997

Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Child Custody and Visitation - Child Abduction**

3 FOR the purpose of prohibiting certain individuals who have knowledge that another  
4 individual has certain lawful visitation rights from harboring or hiding a child in a  
5 place within the State or outside the State or acting as an accessory to a prohibited  
6 act under certain circumstances; providing certain penalties; defining a certain  
7 term; altering a certain definition; and generally relating to child abduction by a  
8 certain individual from another individual who has certain lawful visitation rights.

9 BY repealing and reenacting, with amendments,  
10 Article - Family Law  
11 Section 9-301, 9-304, 9-305, 9-306, and 9-307  
12 Annotated Code of Maryland  
13 (1991 Replacement Volume and 1996 Supplement)

14 BY repealing and reenacting, without amendments,  
15 Article - Family Law  
16 Section 9-302 and 9-303  
17 Annotated Code of Maryland  
18 (1991 Replacement Volume and 1996 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
20 MARYLAND, That the Laws of Maryland read as follows:

21 **Article - Family Law**

22 9-301.

23 (a) In this subtitle the following words have the meanings indicated.

24 (b) (1) "Lawful custodian" means a person who is authorized to have custody of  
25 and exercise control over a child who is under the age of 16 years.

26 (2) "Lawful custodian" includes a person who is authorized to have custody  
27 OR JOINT CUSTODY by an order of a court of competent jurisdiction in this State or any  
28 other state.

1 (C) "LAWFUL VISITATION RIGHTS" MEANS THE RIGHT TO HAVE VISITATION  
2 WITH OR ACCESS TO A CHILD WHO IS UNDER THE AGE OF 16 YEARS THAT IS  
3 PROVIDED TO A PARENT OR GRANDPARENT BY AN ORDER OF A COURT OF  
4 COMPETENT JURISDICTION IN THE STATE OR ANY OTHER STATE.

5 [(c)] (D) "Relative" means:

6 (1) a parent;

7 (2) a grandparent or other ancestor;

8 (3) a brother;

9 (4) a sister;

10 (5) an aunt;

11 (6) an uncle; or

12 (7) an individual who was a lawful custodian before the commission of an  
13 act that violates § 9-304 or § 9-305 of this subtitle.

14 9-302.

15 (a) An equity court has jurisdiction over custody and visitation of a child who is  
16 removed from this State by a parent of the child, if:

17 (1) the parents are separated or divorced and this State was:

18 (i) the marital domicile of the parents; or

19 (ii) the domicile in which the marriage contract was last performed;

20 (2) 1 of the parents was a resident of this State when the child was removed  
21 and that parent continues to reside in this State; and

22 (3) the court obtains personal jurisdiction over the parent who removes the  
23 child.

24 (b) This section does not affect any other basis of an equity court's jurisdiction  
25 over custody and visitation of a child.

26 9-303.

27 (a) This section applies if there is a conflict between a custody order of a court of  
28 this State and a custody order of a court of another state.

29 (b) Except as provided in subsection (c) of this section, a custody order of a court  
30 of this State prevails over a custody order of a court of another state.

31 (c) A custody order of a court of another state prevails over a custody order of a  
32 court of this State if the court in the other state passed its custody order:

33 (1) after the custody order was passed by a court of this State; and

34 (2) in proceedings in which the lawful custodian under the custody order of  
35 a court of this State:

3

1 (i) consented to the custody order passed by the court of the other  
2 state; or

3 (ii) participated personally as a party.

4 9-304.

5 (A) If a child is under the age of 16 years, a relative who knows that another  
6 [person] INDIVIDUAL is the lawful custodian of the child may not:

7 (1) abduct, take, or carry away the child from the lawful custodian to a place  
8 within this State;

9 (2) having acquired lawful possession of the child, detain the child within  
10 this State for more than 48 hours after the lawful custodian demands that the child be  
11 returned;

12 (3) harbor or hide the child within this State, knowing that possession of the  
13 child was obtained by another relative in violation of this section; or

14 (4) act as an accessory to an act prohibited by this [section] SUBSECTION.

15 (B) IF A CHILD IS UNDER THE AGE OF 16 YEARS, A RELATIVE WHO KNOWS  
16 THAT ANOTHER INDIVIDUAL HAS LAWFUL VISITATION RIGHTS WITH THE CHILD  
17 MAY NOT:

18 (1) HARBOR OR HIDE THE CHILD WITHIN THE STATE WITH THE INTENT  
19 OF KEEPING THE WHEREABOUTS OF THE CHILD UNKNOWN TO AN INDIVIDUAL  
20 WITH LAWFUL VISITATION RIGHTS; OR

21 (2) ACT AS AN ACCESSORY TO AN ACT PROHIBITED BY THIS  
22 SUBSECTION.

23 9-305.

24 (A) If a child is under the age of 16 years, a relative who knows that another  
25 person is the lawful custodian of the child may not:

26 (1) abduct, take, or carry away the child from the lawful custodian to a place  
27 outside of this State;

28 (2) having acquired lawful possession of the child, detain the child outside  
29 of this State for more than 48 hours after the lawful custodian demands that the child be  
30 returned;

31 (3) harbor or hide the child outside of this State knowing that possession of  
32 the child was obtained by another relative in violation of this section; or

33 (4) act as an accessory to an act prohibited by this [section] SUBSECTION.

34 (B) IF A CHILD IS UNDER THE AGE OF 16 YEARS, A RELATIVE WHO KNOWS  
35 THAT ANOTHER INDIVIDUAL HAS LAWFUL VISITATION RIGHTS WITH THE CHILD  
36 MAY NOT:

4

1 (1) HARBOR OR HIDE THE CHILD OUTSIDE THE STATE WITH THE  
2 INTENT OF KEEPING THE WHEREABOUTS OF THE CHILD UNKNOWN TO THE  
3 INDIVIDUAL WITH LAWFUL RIGHTS OF VISITATION; OR

4 (2) ACT AS AN ACCESSORY TO AN ACT PROHIBITED BY THIS  
5 SUBSECTION.

6 9-306.

7 (a) If an individual violates the provisions of § 9-304 or § 9-305 of this subtitle,  
8 the individual may file in an equity court a petition that:

9 (1) states that, at the time the act was done, a failure to do the act would  
10 have resulted in a clear and present danger to the health, safety, or welfare of the child;  
11 and

12 (2) seeks to revise, amend, or clarify the custody order.

13 (b) (1) If a petition is filed as provided in subsection (a) of this section within  
14 [96 hours] 7 DAYS of the act, a finding by the court that, at the time the act was done,  
15 a failure to do the act would have resulted in a clear and present danger to the health,  
16 safety, or welfare of the child is a complete defense to any action brought for a violation  
17 of § 9-304 or § 9-305 of this subtitle.

18 (2) IT SHALL BE A COMPLETE DEFENSE TO ANY ACTION BROUGHT FOR  
19 A VIOLATION OF § 9-304(B) OR § 9-305(B) OF THIS SUBTITLE THAT A NOTIFICATION  
20 DIVULGING THE WHEREABOUTS OF THE CHILD WAS MADE TO THE INDIVIDUAL  
21 WITH LAWFUL VISITATION RIGHTS WITHIN 30 DAYS OF THE ACT CONSTITUTING THE  
22 VIOLATION.

23 9-307.

24 (a) A person who violates any provision of § 9-304 of this subtitle is guilty of a  
25 misdemeanor and on conviction is subject to a fine not exceeding \$250 or imprisonment  
26 not exceeding 30 days.

27 (b) If the child is out of the custody of the lawful custodian for not more than 30  
28 days OR IF THE WHEREABOUTS OF THE CHILD IS UNKNOWN TO THE INDIVIDUAL  
29 WITH LAWFUL VISITATION RIGHTS FOR NOT MORE THAN 30DAYS, a person who  
30 violates any provision of § 9-305 of this subtitle is guilty of a felony and on conviction is  
31 subject to a fine not exceeding \$250 or imprisonment not exceeding 30 days, or both.

32 (c) If the child is out of the custody of the lawful custodian for more than 30 days  
33 OR IF THE WHEREABOUTS OF THE CHILD IS UNKNOWN TO THE INDIVIDUAL WITH  
34 LAWFUL VISITATION RIGHTS FOR MORE THAN 30 DAYS, a person who violates any  
35 provision of § 9-305 of this subtitle is guilty of a felony and on conviction is subject to a  
36 fine not exceeding \$1,000 or imprisonment not exceeding 1 year, or both.

37 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
38 October 1, 1997.