
By: **Delegate O'Donnell**

Introduced and read first time: February 13, 2004

Assigned to: Judiciary

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
5 in a place within the State or outside the State or acting as an accessory to a
6 prohibited act under certain circumstances; applying certain penalties; defining
7 a certain term; and generally relating to child abduction by a certain individual
8 from another individual who has certain lawful visitation rights.

9 BY repealing and reenacting, with amendments,
10 Article - Family Law
11 Section 9-301 and 9-304 through 9-307
12 Annotated Code of Maryland
13 (1999 Replacement Volume and 2003 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 (1999 Replacement Volume and 2003 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
25 of and exercise control over a child who is under the age of 16 years.

1 (2) "Lawful custodian" includes a person who is authorized to have
2 custody by an order of a court of competent jurisdiction in this State or any other
3 state.

4 (c) "LAWFUL VISITATION RIGHTS" MEANS THE RIGHT TO HAVE VISITATION
5 WITH A CHILD BY AN ORDER OF A COURT OF COMPETENT JURISDICTION IN THE
6 STATE OR ANY OTHER STATE.

7 (D) "Relative" means:

8 (1) a parent;

9 (2) a grandparent or other ancestor;

10 (3) a brother;

11 (4) a sister;

12 (5) an aunt;

13 (6) an uncle; or

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

16 9-302.

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

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

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

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

22 (2) 1 of the parents was a resident of this State when the child was
23 removed and that parent continues to reside in this State; and

24 (3) the court obtains personal jurisdiction over the parent who removes
25 the child.

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

28 9-303.

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

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

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

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

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

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

10 (ii) participated personally as a party.

11 9-304.

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

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

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

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

21 (4) act as an accessory to an act prohibited by this section.

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

25 (1) HARBOR OR HIDE THE CHILD WITHIN THE STATE WITH THE INTENT
26 OF KEEPING THE WHEREABOUTS OF THE CHILD UNKNOWN TO AN INDIVIDUAL WITH
27 LAWFUL VISITATION RIGHTS; OR

28 (2) ACT AS AN ACCESSORY TO AN ACT PROHIBITED BY THIS SECTION.

29 9-305.

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

32 (1) abduct, take, or carry away the child from the lawful custodian to a
33 place in another state;

1 (2) having acquired lawful possession of the child, detain the child in
2 another state for more than 48 hours after the lawful custodian demands that the
3 child be returned;

4 (3) harbor or hide the child in another state knowing that possession of
5 the child was obtained by another relative in violation of this section; or

6 (4) act as an accessory to an act prohibited by this section.

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

9 (1) abduct, take, or carry away the child from the lawful custodian to a
10 place that is outside of the United States or a territory of the United States or the
11 District of Columbia or the Commonwealth of Puerto Rico;

12 (2) having acquired lawful possession of the child, detain the child in a
13 place that is outside of the United States or a territory of the United States or the
14 District of Columbia or the Commonwealth of Puerto Rico for more than 48 hours
15 after the lawful custodian demands that the child be returned;

16 (3) harbor or hide the child in a place that is outside of the United States
17 or a territory of the United States or the District of Columbia or the Commonwealth
18 of Puerto Rico knowing that possession of the child was obtained by another relative
19 in violation of this section; or

20 (4) act as an accessory to an act prohibited by this section.

21 (C) IF A CHILD IS UNDER THE AGE OF 16 YEARS, A RELATIVE WHO KNOWS
22 THAT ANOTHER INDIVIDUAL HAS LAWFUL VISITATION RIGHTS WITH THE CHILD MAY
23 NOT:

24 (1) HARBOR OR HIDE THE CHILD OUTSIDE THE STATE WITH THE INTENT
25 OF KEEPING THE WHEREABOUTS OF THE CHILD UNKNOWN TO AN INDIVIDUAL WITH
26 LAWFUL VISITATION RIGHTS; OR

27 (2) ACT AS AN ACCESSORY TO AN ACT PROHIBITED BY THIS SECTION.

28 9-306.

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

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

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

35 (b) (1) If a petition is filed as provided in subsection (a) of this section within
36 96 hours of the act, a finding by the court that, at the time the act was done, a failure

1 to do the act would have resulted in a clear and present danger to the health, safety,
2 or welfare of the child is a complete defense to any action brought for a violation of §
3 9-304 or § 9-305 of this subtitle.

4 (2) IT IS A COMPLETE DEFENSE TO ANY ACTION BROUGHT FOR A
5 VIOLATION OF § 9-304(B) OR § 9-305(C) OF THIS SUBTITLE THAT A NOTIFICATION
6 DIVULGING THE WHEREABOUTS OF THE CHILD WAS MADE TO THE INDIVIDUAL WITH
7 LAWFUL VISITATION RIGHTS WITHIN 30 DAYS OF THE ACT CONSTITUTING THE
8 VIOLATION.

9 9-307.

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

13 (b) If the child is out of the custody of the lawful custodian for not more than
14 30 days OR IF THE WHEREABOUTS OF THE CHILD ARE UNKNOWN TO THE
15 INDIVIDUAL WITH LAWFUL VISITATION RIGHTS FOR NOT MORE THAN 30 DAYS, a
16 person who violates any provision of § 9-305(a) OR (C) of this subtitle is guilty of a
17 felony and on conviction is subject to a fine not exceeding \$250 or imprisonment not
18 exceeding 30 days, or both.

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

25 (d) A person who violates any provision of § 9-305(b) of this subtitle is guilty of
26 a felony and on conviction is subject to a fine not exceeding \$5,000 or imprisonment
27 not exceeding 3 years or both.

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
29 October 1, 2004.