

By Mr. Berry, petition (accompanied by bill, Senate, No. 109) of Frederick E. Berry and Kevin M. Burke for legislation relative to the crime of abduction of children by relatives. Criminal Justice.

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**The Commonwealth of Massachusetts**

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In the Year One Thousand Nine Hundred and Ninety-Two.

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AN ACT RELATIVE TO THE CRIME OF ABDUCTION OF CHILDREN BY RELATIVES.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 Chapter 265, Section 26A of the General Laws is hereby deleted  
2 and replaced by the following section: —

3 (a) Whoever being a relative of a child less than eighteen years  
4 old takes, holds, entices, or conceals such a child from another  
5 person who has rights to physical custody or visitation, whether  
6 by court order, by reason of marriage or otherwise by operation  
7 of law, with the intent to deprive said person of his or her rights  
8 to physical custody or visitation, or takes, holds, entices or  
9 conceals from lawful custody any incompetent person or person  
10 entrusted by authority of law to the custody of another person  
11 or institution with the intent to deprive another person or  
12 institution of their rights to physical custody, shall be punished  
13 by imprisonment in the house of correction for not more than two  
14 and a half years or by a fine of up to one thousand dollars, or  
15 both. Whoever commits any offense described in this section by  
16 taking or enticing said child outside the Commonwealth or under  
17 circumstances which expose the person taken, held, enticed or  
18 concealed from lawful custody to a risk which endangers his safety  
19 shall be punished by a fine of not more than five thousand dollars,  
20 or by imprisonment in the state prison for not more than five  
21 years, or by both such fine and imprisonment.

22 (b) Any expense and costs reasonably incurred by parent, other  
23 person or institution in locating and returning a child taken, held,

24 enticed, or concealed in violation of this section shall be assessed,  
25 by order of court, against any defendant convicted of a violation  
26 of this section, unless the court for good cause waives such  
27 reimbursement.

28 (c) A law enforcement officer shall not be held liable for taking  
29 physical custody of a child or for delivering the child to a person  
30 whom he reasonably believes is the child's lawful custodian or to  
31 any other suitable person or institution, if he has reasonable belief  
32 that a child has been taken, held, enticed or concealed in violation  
33 of this section.

34 For the purposes of this subsection, "reasonable belief" a child  
35 has been taken, held, enticed or concealed in violation of this  
36 section includes but is not limited to, a determination by a law  
37 enforcement officer, based upon his review of the terms of a  
38 certified copy of the most recent decree granting custody or  
39 visitation of the child, that the patient who is exercising control  
40 over the child is not the person authorized to have physical  
41 custody under the terms of the decree. A law enforcement officer  
42 may arrest without a warrant any person who he has probable  
43 cause to believe has violated or is violating this section.