

Senate Bill 487

Sponsored by Senator GORDLY

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Provides that civil action for custodial interference may be brought if person is unlawfully removed from custodian, or if person is in violation of valid joint custody order, for more than 72 hours.

Directs State Commission on Children and Families to maintain list of guardians ad litem and counselors who are available for appointment in civil action for custodial interference. Requires court to appoint guardians ad litem and counselors from list. Permits state commission to apply for grants for purpose of training guardians ad litem and counselors.

A BILL FOR AN ACT

1
2 Relating to custodial interference; creating new provisions; and amending ORS 30.868.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 30.868 is amended to read:

5 30.868. (1) Any of the following persons may bring a civil action to secure damages against any
6 and all persons whose actions are unlawful under ORS 163.257 (1)(a):

7 (a) A person who is 18 years of age or older and who has been taken, enticed or kept in vio-
8 lation of ORS 163.257 (1)(a); or

9 (b) A person whose custodial rights have been interfered with if, by reason of the interference:

10 (A) The person has reasonably and in good faith reported a person missing to any city, county
11 or state police agency; or

12 (B) A defendant in the action has been charged with a violation of ORS 163.257 (1)(a).

13 **(2) An action may be brought under this section if a person is unlawfully removed from**
14 **the person's custodian, or if a person is in violation of a valid joint custody order, for more**
15 **than 72 hours.**

16 [(2)] **(3)** An entry of judgment or a certified copy of a judgment against the defendant for a vi-
17 olation of ORS 163.257 (1)(a) is prima facie evidence of liability if the plaintiff was injured by the
18 defendant's unlawful action under the conviction.

19 [(3)(a)] **(4)(a)** For purposes of this section, a public or private entity that provides counseling
20 and shelter services to victims of domestic violence is not considered to have violated ORS 163.257
21 (1)(a) if the entity provides counseling or shelter services to a person who violates ORS 163.257
22 (1)(a).

23 (b) As used in this subsection, "victim of domestic violence" means an individual against whom
24 domestic violence, as defined in ORS 135.230, 181.610, 411.117 or 657.176, has been committed.

25 [(4)] **(5)** Bringing an action under this section does not prevent the prosecution of any criminal
26 action under ORS 163.257.

27 [(5)] **(6)** A person bringing an action under this section must establish by a preponderance of the
28 evidence that a violation of ORS 163.257 (1)(a) has occurred.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 [(6)] (7) It is an affirmative defense to civil liability for an action under this section that the
 2 defendant reasonably and in good faith believed that the defendant's violation of ORS 163.257 (1)(a)
 3 was necessary to preserve the physical safety of:

4 (a) The defendant;

5 (b) The person who was taken, enticed or kept in violation of ORS 163.257 (1)(a); or

6 (c) The parent or guardian of the person who was taken, enticed or kept in violation of ORS
 7 163.257 (1)(a).

8 [(7)(a)] (8)(a) If the person taken, enticed or kept in violation of ORS 163.257 (1)(a) is under 18
 9 years of age at the time an action is brought under this section, the court may:

10 (A) Appoint an attorney who is licensed to practice law in Oregon to act as guardian ad litem
 11 for the person; and

12 (B) Appoint one of the following persons to provide counseling services to the person:

13 (i) A psychiatrist.

14 (ii) A psychologist licensed under ORS 675.010 to 675.150.

15 (iii) A clinical social worker licensed under ORS 675.510 to 675.600.

16 (iv) A professional counselor or marriage and family therapist licensed under ORS 675.715.

17 (b) The court may assess against the parties all costs of the attorney or person providing
 18 counseling services appointed under this subsection.

19 [(8)] (9) If an action is brought under this section by a person described under subsection (1)(b)
 20 of this section and a party shows good cause that it is appropriate to do so, the court may order
 21 the parties to obtain counseling directed toward educating the parties on the impact that the par-
 22 ties' conflict has on the person taken, enticed or kept in violation of ORS 163.257 (1)(a). The court
 23 may assess against the parties all costs of obtaining counseling ordered under this subsection.

24 [(9)] (10) Upon prevailing in an action under this section, the plaintiff may recover:

25 (a) Special and general damages, including damages for emotional distress; and

26 (b) Punitive damages.

27 [(10)] (11) The court may award reasonable attorney fees to the prevailing party in an action
 28 under this section.

29 [(11)(a)] (12)(a) Notwithstanding ORS 12.110, 12.115, 12.117 or 12.160, an action under this sec-
 30 tion must be commenced within six years after the violation of ORS 163.257 (1)(a). An action under
 31 this section accruing while the person who is entitled to bring the action is under 18 years of age
 32 must be commenced not more than six years after that person attains 18 years of age.

33 (b) The period of limitation does not run during any time when the person taken, enticed or kept
 34 in violation of ORS 163.257 (1)(a) is removed from this state as a result of the defendant's actions
 35 in violation of ORS 163.257 (1)(a).

36 **SECTION 2. Section 3 of this 2007 Act is added to and made a part of ORS 417.705 to**
 37 **417.801.**

38 **SECTION 3. (1) The State Commission on Children and Families shall maintain a list of**
 39 **guardians ad litem and counselors as described in ORS 30.868 (8) who are available for ap-**
 40 **pointment in actions under ORS 30.868. A court shall appoint guardians ad litem and coun-**
 41 **sors from the list maintained by the commission in any action under ORS 30.868.**

42 **(2) The state commission may apply for grants for the purpose of training and making**
 43 **available guardians ad litem and counselors in actions under ORS 30.868.**