

Testimony on HB 2603 – What does Aaron’s Law do?

House Judiciary Committee hearing Feb 12, 2015

By Sean Aaron Cruz

“Please tell Sean that I also wish him the best. I have also followed his career and believe his personal experience has given him the wisdom and the moral authority necessary to make a real difference in making Oregon safer for our children.” –Hon. Judge James L. Fun, Washington County Circuit Court, January 24, 2007

Senate Bill 1041(2005), now **ORS 30.868**, sponsored by Senator Avel Gordly, created a civil cause of action for violations of the Custodial Interference statutes, providing abduction victims a way to seek remedies against any and all persons participating in their child’s abduction, and for the child victims themselves to have the option of seeking remedies against their abductor(s) after the child has become an adult and is able to think and act independently.

However, that is only part of what the law does. **ORS 30.868** empowers the victims, in entirely new ways—most especially where law enforcement and/or the family and criminal processes move slowly or not at all—ways that Oregonians are still unaware of ten years after the bill passed into law. **ORS 30.868** exists in a kind of twilight state, where few Oregonians know what the law does, how to find it or how it might help them locate and recover their abducted child.

The statute of limitations for Custodial Interference is only three years. However, under **ORS.30.868**, *the perpetrators’ civil liability to the abducted child extends to six years after the child becomes an adult.*

The Abduction of Kyron Horman

Kyron Horman’s kidnapping is approaching its 5th year. This is the only case I am aware of where a civil suit has been filed under **ORS 30.868**, and it is an example of where the law cannot offer much help to the victims. There is the simple fact of an ongoing criminal investigation. The civil suit filed in Kyron’s case was withdrawn so as not to jeopardize the investigation. But in many cases, there is no criminal investigation to interfere with, and often the parent victim does not want to pursue criminal charges. That is where **ORS 30.868** can make a world’s worth of difference.

Kyron's abduction also illustrates an important point in public perceptions and in how the family law and criminal system deal with child abductions, focusing on the date the abduction began, always receding into the past, as opposed to recognizing the fact that the abduction is still taking place today, and likely tomorrow and next month as well.

Kyron's kidnapping was unusual in several aspects. He was abducted from his school, and no one else in his immediate family was missing, so an unknown stranger was suspected. These facts caught everyone's attention, and the largest search effort in the history of the state was launched, so far, to no avail.

I believe that Kyron is even more abducted today than he was the day he disappeared, and that this is the case in all abductions. The severity of the crime and the resultant trauma only increases with time, unlike other crimes that have a finality to them at the moment they occur.

No Jail Time

ORS 30.868 provides an option if the victim parent's end goal might not be criminal prosecution and jail time for the abducting parent. I never wanted my children's mother to be put in jail. When the Washington County assistant district attorney asked me, three months after my children had disappeared, if I was certain about pressing charges, I replied only if she would not be sent to jail. He assured me that if she was found guilty, we could ask the Court to require counseling but no jail time. It was on that basis that I agreed to move forward, and the case went to the Grand Jury, which returned an indictment for Custodial Interference I.

At the same time, the assistant D.A. told me that his office was aware that my former wife "had a lot of help"; but, he said, a decision had been taken to "not go after those people."

This decision allowed the real perpetrators of the abduction to hide in the shadows, even purport to be objective.

It was never in my best interest or my children's best interest for this to be a criminal case targeting my ex-wife. All I wanted was for my children to be returned and the provisions of the Joint Custody Order and Parenting Plan enforced. The indictment issued in Washington County brought an end to the family court proceedings in Clark County pending the outcome of the criminal case, which would not go to trial for another year. Meanwhile, my children remained in the hands of their abductors.

Emotional Trauma

ORS 30.868 also recognizes the grievous emotional harm that abduction victims suffer where the existing Custodial Interference statutes do not. As we are a mental health parity state, this aspect of the statute needs legislative updating urgently. The completely open-ended cost of treating mental health issues in abducted children and adolescents must be accounted for in the law.

As the Committee is aware, mental health parity was one of Senator Gordly's key legislative initiatives.

ORS 30.868 provides relief to the child victims with court-appointed mental health and legal professionals assigned to protect the child, while authorizing the Court to assign the costs of said professionals to the parties precipitating the lawsuit. This provision is also intended to serve as a deterrent.

Counseling Provision

The counseling provisions in Senate Bill 1041 stemmed directly from the prior work of the Family Law Task Force, which sought ways to reduce Oregon's high divorce rate.

Under **ORS 30.868**, the Court may require respondents in the civil suit *to undergo counseling directed at educating them as to the harm their behavior is causing the children*. This provision is intended to act as a deterrent as well as a remedy. The Court is authorized to assign the cost of counseling as the Court sees fit, which we thought would also serve to discourage the filing of frivolous civil suits or the attempted misuse of the law as harassment.

Burden of Proof – Access to Justice

ORS 30.868 recognizes that the burden of proof in a criminal procedure offers statutory protections for the perpetrators while hindering the victims' access to justice, particularly when the victim would prefer to resolve the abduction without filing criminal charges.

A criminal conviction requires proof "beyond a reasonable doubt." It can be difficult to eliminate doubt in domestic conflicts. This is a key reason why law enforcement is slow to act although the situation is urgent. It takes time and expense to eliminate doubt.

Months can pass by. Meeting this burden is beyond the capacity of most citizens independently, and a criminal conviction is often not the victim's goal.

Civil court requires proof "by a preponderance of the evidence," a far more reasonable standard given the resources of the average Oregon citizen, and the best interest of all victims is to bring the abduction to an end as quickly as possible, and then begin the work of recovery.

Statute of Limitations – Continuing Crime

An abduction is a continuing crime, taking place over time, unlike a robbery or homicide. The crimes have a beginning, but no real end. Even if the child is recovered successfully, the harm can last a lifetime.

The **2004 Senate Task Force on Parental and Family Abductions** heard testimony from adults who were abducted by a parent as children and other experts, concluding that an abduction of a child by any person is as emotionally harmful as any other form of child abuse, and in many respects similar to sexual abuse in that it may be many years before the victim becomes able to recognize and deal with the trauma.

The statute of limitations for Custodial Interference is only three years, even if the children remain abducted beyond that time. That fact is no benefit to the child, or any other victim of the crime.

*Under **ORS 30.868**, upon reaching adulthood, every child victim can have his or her day in court, and that window stays open for six years. This provision is intended to provide a measure of justice and to serve as a deterrent to participation in the abduction in the first place or at any point thereafter.*

Domestic Violence Exception

***ORS 30.868** provides an exception for private or public entities providing shelter or other services to victims of domestic violence.*

Trafficking

***ORS 30.868** could be used as a tool to deter or resolve or seek justice in cases of trafficking of minors. I hope that somebody will take a look at this.*

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## **Case Study: the Abduction of Aaron Cruz and his siblings**

I would like to explain to the Committee how—had the provisions of **ORS 30.868** been on the books in 1995—I would have used it to bring the abduction of my children to an end.

If my children’s abductors had known in advance that I would use these provisions against them, I believe there would have been a sufficient deterrent to prevent the kidnapping, where a potential five-year prison term in the criminal statute was not.

### **An Abduction is an Ambush**

*Abductions are always ambushes.* Your child has disappeared, probably taken out of state. Most Oregonians do not have ready access to a lawyer, and neither the Yellow Pages nor the Oregon State Bar referral system offer expertise for this particular problem. Divorce lawyers don’t practice criminal law. Law enforcement’s interpretation of “protracted” in the statute is purely subjective, and if you cannot demonstrate that your abducted child is in immediate physical danger, there is no urgency.

Your children have been abducted. You do not know where they are or where they will be next week. Who is going to help you find them? Right! Now! The police and the courts are already busy, and it can take weeks to get an appointment with a lawyer. How will you maintain employment and sanity and find your children?

I received a phone call from my son Aaron’s counselor at JB Thomas Middle School in Hillsboro in the last week of January, 1996. Aaron had been struggling in school since his mother remarried, and Roger and I were giving him the help he needed to stay on track.

Roger told me that my former wife had secretly withdrawn my children from their schools, a direct violation of the joint custody order. I immediately began looking for help, finding a lawyer, paying said lawyer, obtaining a restraining order to prevent the removal of my children from Oregon, but my kids were gone before it could be served.

My four children disappeared on Monday, February 12, 1996, during a major storm and on a day that they should have been in their schools. Their abductors were aware that I was my elderly and medically fragile mother's sole caregiver and was struggling to maintain our 3-generation household. They were aware that I had no effective means to either hire a lawyer or to mount a search for my children. All that I had was an order for joint custody that had been in effect for five years.

### **Multiple Perpetrators – Missing Children**

Senate Bill 1041 recognizes that—unlike stranger abductions—most parental and family abductions involve more than one perpetrator. They know where your children are, and you do not. *Senate Bill 1041 provides a lever to pry that information out of them.*

It was immediately apparent to me that the abduction of my children was organized by members of my former wife's church, and that their motivation was to impose a "no contact" shunning against me and separate me permanently from my children. They were partly motivated by revenge related to my rejection of their church in the past, partly by racism, partly by rigid ideology, and partly by the culture of their church system.

At the time of the abduction, I had no idea that church members in Utah were involved, arranging for housing and employment, and access to the amenities of a ski resort in the mountains east of Ogden to entice my children, the first place they were concealed. My former wife had no family members there. I had no idea where to begin to look. I-5 near Tacoma and I-84 in the Columbia Gorge were both closed due to flooding.

In the last months leading up to the kidnapping, several members of my former wife's church in both the Oregon and Washington congregations took a peculiar interest in my children, giving them extra attention, gifts, rides to school in the morning, a free trip to Disneyland in December. In the last few days, it became clear to me in my children's behavior that there was some kind of Big Secret going on.

The first place I would have looked for information would have been these church members. Had **ORS 30.868** been on the books, I would have immediately filed a civil suit against them, alleging *enticement*. I would have subpoenaed their phone records and emails, and obtained a history of their contacts with my children. If the civil suit had turned up evidence of criminal culpability, I would have wanted to make an example of them.

In mid-April, I learned that five of these church members living in Washington and Utah had all signed sworn affidavits attesting to their support of the abduction (and implicating themselves in the crime) on March 2, six weeks before my lawyer was able to obtain a physical address for my children.

Months later, I learned that mail addressed to my children at their mother's last known address was being forwarded to the home of Evelyn (sp) Taylor, LDS Relief Society President in Hillsboro, the same person who was providing rides and other special attention to my children in the runup to the kidnapping.

### **An Abducted Child Calls Collect**

My children disappeared 10 days after my youngest daughter's 8<sup>th</sup> birthday. Several weeks later my mom and I received a collect phone call from her. She had been left alone and she was following the instructions I had given her before she was abducted. I made all of my children memorize their addresses, and taught them how to make a collect phone call if they ever got lost.

Allie did not know exactly where they were living, but it was in a condominium at a ski resort. She wanted to know when she would be with my mom and I again, and I did not know what to tell her. She had no idea what was going on. This was the only phone call she would ever make.

### **Aaron Cruz**

Aaron Cruz was born on March 21, 1982. Although I was close to all four of my children, Aaron was the most like me in personality and appearance. The divorce and separation from me hurt him, and his grades suffered. The chaos that ensued with his mother's short-term remarriage and subsequent divorce magnified the problems.

When Aaron's 14<sup>th</sup> birthday arrived six weeks after the abduction began, the only people who knew where he was were the people who were keeping him in Utah and the people who took him there. My lawyer was able to obtain a post office box address on March 18, but it wasn't until April 16 that he was able to drag a physical address out of the Clark County lawyer providing cover for the abduction.

From the beginning of the abduction until the present day, there has been no mail in or out of Utah, and no contact of any kind on any birthday, holiday or other special day. My children's abductors made certain of this. They were intent on destroying every

emotional bond between my children and I, and Aaron paid the ultimate price, but not without enduring terrible suffering first.

I was able to obtain only two medical reports regarding my children after the day they disappeared, both for Aaron. Nothing at all for my other children.

The first was an inpatient admission report dated December 18, 1997, nearly two years after the beginning of his abduction. He was 15 years old and he was hospitalized for suicidal ideation and severe depression. The report notes that he was cutting himself, that both of his upper arms were covered with numerous large scars from self-inflicted knife wounds. He was quoted as saying. "I am very depressed, I want to die, I want to commit suicide, I cut on myself."

The report states that Aaron's intellectual functioning was normal, and that is the way he was when I was able to reach him in the hospital by phone. He was not agitated, and we had a good conversation despite the circumstances. His kidnappers had not broken the emotional bond between us.

The following day, Aaron was released into the custody of his Utah stepdad, and contact between us was once again severed. I had no idea where they had taken him, and no one would help me find out.

The other medical report I received was his death certificate in April, 2005, which stated that the cause of death was "undetermined."

I believe that he died because his anti-seizure meds had run out, and there was no one there for him; that he died from long-term medical neglect, severe emotional abuse, heartbreak and abandonment.

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CASA

During the years that my children remained minors in Utah, a series of five CASA guardians ad litem were assigned to the case, ostensibly to protect the interests of my children, but more interested in helping enforce the "no contact" element of the shunning.

All of my children were healthy and on a college-bound track when they were taken from Oregon. Under CASA supervision, from the time he was 15 years old, Aaron was

medicated with Ritalin, Adderal, Prozac, Zoloft, Paxil, Xanax, Welbutrin, Valium and Oxycontin. He became addicted to Oxycontin, and when access was cut off, he turned to heroin. Aaron disclosed this history to me himself, when I rescued him in 2003.

In 2002, Aaron put himself into a methadone program in Provo, Utah, attempting to break the addiction without any family or other supports.

After Aaron's death in 2005, I was able to use his death certificate to obtain his school records from Payson High School and learned that both he and his brother had dropped out of school years before, both with academic GPAs of 0.0.

I was never able to get any educational or health information about my children out of the guardians ad litem.

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### **Rescuing Aaron**

In February 2002, I was able to smuggle a cell phone to Aaron and for the first time since they disappeared seven years prior was able to have regular, unmonitored communication with one of my abducted children. He wanted to leave Utah permanently and come to live with me again, but there were some barriers. Aaron and his younger brother Tyler had both enlisted in the Utah Army National Guard, and their unit was on alert for deployment to Iraq.

We obtained permission from his unit for Aaron to leave the state and come to Oregon, and during the 2003 legislative session, I drove to Utah and brought my son home, along with two of his friends, who also needed rescuing from Payson. All three had addictions to prescription drugs, and they had prescriptions for those drugs. None had any kind of job skills or any ideas of what their futures might be like. They were throwaway kids.

From the moment I laid eyes on Aaron, I could see that he was ill, and that he needed medical care desperately, had needed it for years.

Abducted children lose access to medical care. Kidnappers don't want doctors nosing around.

From the moment Aaron arrived in Oregon until his death, my focus shifted to a daily struggle to get him the medical care he needed. Every morning, I started the day by

driving him to the methadone clinic. I enrolled him in the Oregon Health Plan and got him into see doctors at Providence and at Cascadia Behavioral Healthcare.

Just as the doctors were starting to get a picture of his problems, however, we abruptly ran out of time.

There was a war in Iraq....

### **Call of Duty**

Aaron received orders deploying his Utah Army National Guard unit to Iraq in mid November, 2003.

He said to me “Dad, I want to stay here with you, I don’t ever want to go back to Utah, but I have to join my unit. I have to look out for my brother.”

On Thanksgiving Day, I watched him pack, and the next day he started driving to Utah, wearing his full dress Army uniform.

The following Monday, I opened what I thought was a medical bill and found a letter from his doctor warning him that his seizure disorder was such that if he slipped on his meds he could go into a coma that he would not come out of.

Aaron concealed his medical condition from Army doctors in Utah and was initially cleared for deployment.

The Army sent Tyler on to Iraq with his unit, deployed as a .50 caliber machine gunner riding an unarmored Humvee, escorting convoys, but held Aaron back for medical review.

I came to learn that “medical review” did not include delivering any actual medical care, and since he was not on active duty, they weren’t going to pay him either.

I supported him, paying all his bills, through 2003, 2004 and until he died in April, 2005.

*To be continued....*

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The Passage of Senate Bill 1041

Monday, August 1, 2005: Senate Bill 1041 passed the Oregon Senate 27-3 as the legislative session entered its final week.

Tuesday, August 2: The House State and Federal Affairs Committee heard the bill at 6:00 p.m. and voted the bill to the floor with a DO PASS recommendation.

The first time Senate Bill 1041 was referred to as "Aaron's Law" was as we walked through the Capitol after the hearing.

Wednesday, August 3: The Oregon House of Representatives passed Senate Bill 1041 on a unanimous vote, 59-0.

Thursday, August 4: The 73rd assembly of the Oregon legislature adjourned.