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Senate Judiciary Committee

Memo Addressing Questions from House Judiciary
3/26/14

Custodial Interference (Sections 1-3)

Why is this section needed?

These sections were added through an amendment in the Senate Judiciary Committee. The issue was brought to the committee's attention after hearing testimony from an Anchorage resident.

The scenario: a man walked into a school and represented himself as the lawful parent of a child in an attempt to (probably) kidnap that child. The program employees knew he wasn't the lawful custodian and sent him away. The man then returned and tried to do the exact same thing with another child. He was charged with criminal mischief in the 4th degree.

Are there "attempted kidnapping" statutes?

There are no "attempted kidnapping" statutes, but you can prosecute an attempted kidnapping under the general "attempt" statutes (AS 11.31.100).

Under the scenario, why couldn't the Department of Law prosecute that person with attempted kidnapping?

The type of facts in the scenario made it impossible for the Department of Law to charge attempted kidnapping. They did not feel they could successfully prove the attempt.

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Simply representing yourself as a parent does not constitute a "substantial step" toward commission of kidnapping, which involves restraining another person with intent to hold the person.

To be prosecuted for custodial interference in the 2nd degree (as proposed in SB 64), all the person has to do is 'represent' to the lawful custodian that they have a legal right, and that would not amount to an "attempt" because all they are doing is making a verbal statement. The Department of Law needs evidence that the man intended to restrain another person, and they just didn't have that evidence, thus they could not meet the threshold of attempt under our statutes. *That's why it requires a separate statute.*

Sec. 11.31.100. Attempt.
(a) A person is guilty of an attempt to commit a crime if, with intent to commit a crime, the person engages in conduct which constitutes a substantial step toward the commission of that crime.
(b) In a prosecution under this section, it is not a defense that it was factually or legally impossible to commit the crime which was the object of the attempt if the conduct engaged in by the defendant would be a crime had the circumstances been as the defendant believed them to be.
(c) In a prosecution under this section, it is an affirmative defense that the defendant, under circumstances manifesting a voluntary and complete renunciation of the defendant's criminal intent, prevented the commission of the attempted crime.
(d) An attempt is
(1) an unclassified felony if the crime attempted is murder in the first degree;
(2) a class A felony if the crime attempted is an unclassified felony other than murder in the first degree;
(3) a class B felony if the crime attempted is a class A felony;
(4) a class C felony if the crime attempted is a class B felony;
(5) a class A misdemeanor if the crime attempted is a class C felony;
(6) a class B misdemeanor if the crime attempted is a class A or class B misdemeanor.
(e) If the crime attempted is an unclassified crime described in a state law which is not part of this title and no provision for punishment of an attempt to commit the crime is specified, the punishment for the attempt is imprisonment for a term of not more than half the maximum period prescribed as punishment for the unclassified crime, or a fine of not more than half the amount of the maximum fine prescribed as punishment for the unclassified crime, or both. If the crime attempted is punishable by an indeterminate or life term, the attempt is a class A felony.

Sec. 11.41.300. Kidnapping.

(a) A person commits the crime of kidnapping if

(1) the person restrains another with intent to

(A) hold the restrained person for ransom, reward, or other payment;

(B) use the restrained person as a shield or hostage;

(C) inflict physical injury upon or sexually assault the restrained person or place the restrained person or a third person in apprehension that any person will be subjected to serious physical injury or sexual assault;

(D) interfere with the performance of a governmental or political function;

(E) facilitate the commission of a felony or flight after commission of a felony;

(F) commit an offense in violation of AS 11.41.434 - 11.41.438 upon the restrained person or place the restrained person or a third person in apprehension that a person will be subject to an offense in violation of AS 11.41.434 - 11.41.438; or

(2) the person restrains another

(A) by secreting and holding the restrained person in a place where the restrained person is not likely to be found; or

(B) under circumstances which expose the restrained person to a substantial risk of serious physical injury.

(b) In a prosecution under (a)(2)(A) of this section, it is an affirmative defense that

(1) the defendant was a relative of the victim;

(2) the victim was a child under 18 years of age or an incompetent person; and

(3) the primary intent of the defendant was to assume custody of the victim.

(c) Except as provided in (d) of this section, kidnapping is an unclassified felony and is punishable as provided in AS 12.55.

(d) In a prosecution for kidnapping, it is an affirmative defense which reduces the crime to a class A felony that the defendant voluntarily caused the release of the victim alive in a safe place before arrest, or within 24 hours after arrest, without having caused serious physical injury to the victim and without having engaged in conduct described in AS 11.41.410(a), 11.41.420, 11.41.434, or 11.41.436.

Would this concept be more appropriate in the kidnapping statutes, rather than the custodial interference statutes?

Truthfully, it doesn't fit nicely into either one.

So, why the CI statutes? Because, although this crime is committed by a non-relative, the offender is attempting to portray themselves as a relative – portraying themselves as a custodian. They are saying they have a right to custody, so that's why the decision was made to put it into the custodial interference statutes.

24/7 Sobriety

How does the swift response work with electronic monitoring?

Half of the counties in South Dakota are rural, and many of the smaller ones do not have a local jail or sufficient personnel to administer the breath tests. This means that the nearest test site could be up to 50 miles away, so some offenders would have to drive significant distance twice a day to be tested. Also, some offenders have unusual employment responsibilities that made attendance at regular testing times very difficult.

Alaska is also predominately rural, so in order for 24/7 Sobriety to work, there will need to be an electronic/remote monitoring component.

It's true that that by using SCRAM the response is less immediate when compared to in-person testing. However, many people who violate (consume alcohol) will actually skip the appointment, so an officer would have to seek out and arrest that individual anyway. States with established 24/7 Sobriety programs (SD, ND, and MT) have about 15% of program participants on E.M. *According to the data, using electronic monitoring for 24/7 Sobriety is successful at keeping participants sober and reducing recidivism.*

SCRAM statistics (Nov 2006 – Apr 2008)

- 490 offenders monitored
- Average duration of 80 days
- 83% of people on SCRAM are program compliant.

Since 2007, has there been legislation regarding Nygren Credit?

No. Since 2007, there has been no legislation affecting AS 12.55.027 – Credit for time spent toward service of a sentence of imprisonment.