

A-Engrossed
Senate Bill 1041

Ordered by the Senate July 30
Including Senate Amendments dated July 30

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.

Creates civil action for custodial interference in [*any*] **first degree under specified circumstances**. Allows for recovery of special and general damages and reasonable attorney fees.
Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to custodial interference; and declaring an emergency.

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

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

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

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

10 (A) The person has reasonably and in good faith reported a person missing to any city,
11 county 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 entry of judgment or a certified copy of a judgment against the defendant for a
14 violation of ORS 163.257 (1)(a) is prima facie evidence of liability if the plaintiff was injured
15 by the defendant's unlawful action under the conviction.

16 (3)(a) For purposes of this section, a public or private entity that provides counseling and
17 shelter services to victims of domestic violence is not considered to have violated ORS
18 163.257 (1)(a) if the entity provides counseling or shelter services to a person who violates
19 ORS 163.257 (1)(a).

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

23 (4) Bringing an action under this section does not prevent the prosecution of any crimi-
24 nal action under ORS 163.257.

25 (5) A person bringing an action under this section must establish by a preponderance of
26 the evidence that a violation of ORS 163.257 (1)(a) has occurred.

27 (6) It is an affirmative defense to civil liability for an action under this section that the
28 defendant reasonably and in good faith believed that the defendant's violation of ORS 163.257

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 (1)(a) was necessary to preserve the physical safety of:

2 (a) The defendant;

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

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

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

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

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

11 (i) A psychiatrist.

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

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

14 (iv) A professional counselor or marriage and family therapist licensed under ORS
15 675.715.

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

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

24 (9) 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) The court may award reasonable attorney fees to the prevailing party in an action
28 under this section.

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

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

37 **SECTION 2.** Section 1 of this 2005 Act applies to causes of action arising on or after the
38 effective date of this 2005 Act.

39 **SECTION 3.** This 2005 Act being necessary for the immediate preservation of the public
40 peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect
41 on its passage.

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