

047669204

HOUSE BILL NO. 568

Offered January 14, 2004

Prefiled January 13, 2004

A BILL to amend and reenact § 18.2-49.1 of the Code of Virginia, relating to violation of court order regarding custody and visitation; penalty.

Patron—Albo

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-49.1 of the Code of Virginia is amended and reenacted as follows:

§ 18.2-49.1. Violation of court order regarding custody and visitation; penalty.

A. Any person who knowingly, wrongfully and intentionally withholds a child from either of a child's parents or other legal guardian in a clear and significant violation of a court order respecting the custody or visitation of such child, provided such child is withheld outside of the Commonwealth, is guilty of a Class 6 felony.

B. Any person who knowingly, wrongfully and intentionally engages in conduct that constitutes a clear and significant violation of a court order respecting the custody or visitation of a child is guilty of a Class 32 misdemeanor upon conviction of a first offense. Any person who commits a second violation of this section within 12 months of a first conviction is guilty of a Class 21 misdemeanor, and any person who commits a third violation occurring within 24 months of the first conviction is guilty of a Class 4 misdemeanor or 6 felony.

C. *It shall be an affirmative defense to a violation of this section that (i) the person committed the act based upon his reasonable belief that the child was in danger of imminent physical harm and the violation was a reasonable response to the harm believed imminent, (ii) the act was committed with the consent of all parties having a right to custody or visitation of the child, or (iii) the act was otherwise authorized by law.*

D. *A person convicted of a violation of this section shall not be subject to a judicial finding of contempt for the same conduct.*

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

INTRODUCED

HB568