

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 631

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending section 350a (MCL 750.350a), as amended by 2004 PA 223.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 350a. (1) An adoptive or natural parent of a child shall
2 not take that child, or retain that child for more than 24 hours,
3 with the intent to detain or conceal the child from any other
4 parent or legal guardian of the child who has custody or parenting
5 time rights ~~pursuant to~~ **UNDER** a lawful court order at the time of
6 the taking or retention, or from the person or persons who have
7 adopted the child, or from any other person having lawful charge of
8 the child at the time of the taking or retention.
9 (2) A parent who violates subsection (1) is guilty of a

1 felony, punishable by imprisonment for not more than 1 year and 1
2 day, or a fine of not more than \$2,000.00, or both.

3 (3) A parent who violates this section, upon conviction, in
4 addition to any other punishment, may be ordered to make
5 restitution to the other parent, legal guardian, the person or
6 persons who have adopted the child, or any other person having
7 lawful charge of the child for any financial expense incurred as a
8 result of attempting to locate and having the child returned.

9 (4) When a parent who has not been convicted previously of a
10 violation of section 349, 350, or this section, or under any
11 statute of the United States or of any state related to kidnapping,
12 pleads guilty to, or is found guilty of, a violation of this
13 section, the court, without entering a judgment of guilt and with
14 the consent of the accused parent, may defer further proceedings
15 and place the accused parent on probation with lawful terms and
16 conditions. The terms and conditions of probation may include
17 participation in a drug treatment court under chapter 10A of the
18 revised judicature act of 1961, 1961 PA 236, MCL 600.1060 to
19 ~~600.1082~~ **600.1084**. Upon a violation of a term or condition of
20 probation, the court may enter an adjudication of guilt and proceed
21 as otherwise provided. Upon fulfillment of the terms and conditions
22 of probation, the court shall discharge from probation and dismiss
23 the proceedings against the parent. Discharge and dismissal under
24 this subsection shall be without adjudication of guilt and is not a
25 conviction for purposes of disqualifications or disabilities
26 imposed by law upon conviction of a crime, including any additional
27 penalties imposed for second or subsequent convictions. The

~~department of state police shall retain a nonpublic record of an arrest and discharge and dismissal under this section. This record shall be furnished to either or both of the following:~~

~~—— (a) To a court or police agency upon request for the purpose of showing that a defendant in a criminal action has already availed himself or herself of this subsection.~~

~~—— (b) To a court, police agency, or prosecutor upon request for the purpose of determining whether the defendant in a criminal action is eligible for discharge and dismissal of proceedings by a drug treatment court under section 1076(4) of the revised~~

~~judicature act of 1961, 1961 PA 236, MCL 600.1076.~~ THERE MAY BE ONLY
1 DISCHARGE AND DISMISSAL UNDER THE SECTION AS TO AN INDIVIDUAL.

(5) ALL COURT PROCEEDINGS UNDER THIS SECTION SHALL BE OPEN TO THE PUBLIC. EXCEPT AS PROVIDED IN SUBSECTION (6), IF THE RECORD OF PROCEEDINGS AS TO THE DEFENDANT IS DEFERRED UNDER THIS SECTION, THE RECORD OF PROCEEDINGS DURING THE PERIOD OF DEFERRAL SHALL BE CLOSED TO PUBLIC INSPECTION.

(6) UNLESS THE COURT ENTERS A JUDGMENT OF GUILT UNDER THIS SECTION, THE DEPARTMENT OF STATE POLICE SHALL RETAIN A NONPUBLIC RECORD OF THE ARREST, COURT PROCEEDINGS, AND DISPOSITION OF THE CRIMINAL CHARGE UNDER THIS SECTION. HOWEVER, THE NONPUBLIC RECORD SHALL BE OPEN TO THE FOLLOWING INDIVIDUALS AND ENTITIES FOR THE PURPOSES NOTED:

(A) THE COURTS OF THIS STATE, LAW ENFORCEMENT PERSONNEL, AND PROSECUTING ATTORNEYS FOR USE ONLY IN THE PERFORMANCE OF THEIR DUTIES.

(B) THE COURTS OF THIS STATE, LAW ENFORCEMENT PERSONNEL, AND

1 PROSECUTING ATTORNEYS FOR THE PURPOSE OF SHOWING EITHER OF THE
2 FOLLOWING:

3 (i) THAT A DEFENDANT HAS ALREADY ONCE AVAILED HIMSELF OR
4 HERSELF OF THIS SECTION.

5 (ii) DETERMINING WHETHER THE DEFENDANT IN A CRIMINAL ACTION IS
6 ELIGIBLE FOR DISCHARGE AND DISMISSAL OF PROCEEDINGS BY A DRUG
7 TREATMENT COURT UNDER SECTION 1076(5) OF THE REVISED JUDICATURE ACT
8 OF 1961, 1961 PA 236, MCL 600.1076.

9 (C) THE DEPARTMENT OF CORRECTIONS FOR ASCERTAINING
10 PREEMPLOYMENT CRIMINAL HISTORY OR TO DETERMINE WHETHER A DEPARTMENT
11 OF CORRECTIONS EMPLOYEE HAS VIOLATED CONDITIONS OF EMPLOYMENT.

12 (D) THE DEPARTMENT OF HUMAN SERVICES FOR ENFORCING CHILD
13 PROTECTION LAWS AND VULNERABLE ADULT PROTECTION LAWS OR
14 ASCERTAINING THE PREEMPLOYMENT CRIMINAL HISTORY OF ANY INDIVIDUAL
15 WHO WILL BE ENGAGED IN THE ENFORCEMENT OF CHILD PROTECTION LAWS OR
16 VULNERABLE ADULT PROTECTION LAWS.

17 (7) ~~(5)~~—It is a complete defense under this section if a
18 parent proves that his or her actions were taken for the purpose of
19 protecting the child from an immediate and actual threat of
20 physical or mental harm, abuse, or neglect.

21 Enacting section 1. This amendatory act takes April 1, 2013.