

HOUSE BILL No. 4966

September 12, 2013, Introduced by Reps. Nesbitt, Heise, O'Brien and Cotter and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending section 350a (MCL 750.350a), as amended by 2012 PA 548.

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 under a lawful court order at the time of the taking or
6 retention, or from the person or persons who have adopted the
7 child, or from any other person having lawful charge of the child
8 at the time of the taking or retention.

9 (2) A parent who violates subsection (1) is guilty of a
10 felony, punishable by imprisonment for not more than 1 year and 1
11 day, or a fine of not more than \$2,000.00, or both.

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

7 (4) When a parent who has not been convicted previously of a
8 violation of section 349, 350, or this section, or under any
9 statute of the United States or of any state related to kidnapping,
10 pleads guilty to, or is found guilty of, a violation of this
11 section, the court, without entering a judgment of guilt and with
12 the consent of the accused parent, may defer further proceedings
13 and place the accused parent on probation with lawful terms and
14 conditions. The terms and conditions of probation may include
15 participation in a drug treatment court under chapter 10A of the
16 revised judicature act of 1961, 1961 PA 236, MCL 600.1060 to
17 600.1084. Upon a violation of a term or condition of probation, the
18 court may enter an adjudication of guilt and proceed as otherwise
19 provided. Upon fulfillment of the terms and conditions of
20 probation, the court shall discharge from probation and dismiss the
21 proceedings against the parent. Discharge and dismissal under this
22 subsection shall be without adjudication of guilt and is not a
23 conviction for purposes of disqualifications or disabilities
24 imposed by law upon conviction of a crime, including any additional
25 penalties imposed for second or subsequent convictions. There may
26 be only 1 discharge and dismissal under ~~the~~**THIS** section as to an
27 individual.

1 (5) All court proceedings under this section shall be open to
2 the public. Except as provided in subsection (6), if the record of
3 proceedings as to the defendant is deferred under this section, the
4 record of proceedings during the period of deferral shall be closed
5 to public inspection.

6 (6) Unless the court enters a judgment of guilt under this
7 section, the department of state police shall retain a nonpublic
8 record of the arrest, court proceedings, and disposition of the
9 criminal charge under this section. However, the nonpublic record
10 shall be open to the following individuals and entities for the
11 purposes noted:

12 (a) The courts of this state, law enforcement personnel, **THE**
13 **DEPARTMENT OF CORRECTIONS**, and prosecuting attorneys for use only
14 in the performance of their duties.

15 (b) The courts of this state, law enforcement personnel, and
16 prosecuting attorneys for the purpose of showing either of the
17 following:

18 (i) That a defendant has already once availed himself or
19 herself of this section.

20 (ii) Determining whether the defendant in a criminal action is
21 eligible for discharge and dismissal of proceedings by a drug
22 treatment court under section 1076(5) of the revised judicature act
23 of 1961, 1961 PA 236, MCL 600.1076.

24 ~~— (c) The department of corrections for ascertaining~~
25 ~~preemployment criminal history or to determine whether a department~~
26 ~~of corrections employee has violated conditions of employment.~~

27 (C) ~~(d)~~ The department of human services for enforcing child

1 protection laws and vulnerable adult protection laws or
2 ascertaining the preemployment criminal history of any individual
3 who will be engaged in the enforcement of child protection laws or
4 vulnerable adult protection laws.

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