

Testimony on HB 2601
for the Oregon House Judicial Committee
By Sean Aaron Cruz
February 12, 2015

No Standard Candle

HB 2601 has its roots in the 2004 Senate Task Force on Parental and Family Abductions, which was co-chaired by Senator Avel Gordly and Senator Frank Morse. The Task Force considered proposing this legislation for the 2005 session, but the Oregon State Police testified that it could make the notification requirement administratively, and that was the end of it.

Speaking as the parent of four abducted children, I would like to explain why this legislation is important, necessary and urgent.

How Oregon law enforcement responds to a report of an abducted child in the critical early hours of a kidnapping is of vital importance in both locating and recovering the children after the crime has commenced and in deterring perpetrators from carrying out the crime in the first place.

Oregon has no statewide policy, no standard candle that applies when a child is reported abducted by a family member. What happens when you discover that your child has disappeared, after you call 911 to report the crime, looking for help, is the first place where you fall through the cracks in the system.

With rare exceptions, if a parent is involved in the abduction, the sense of urgency disappears with the report.

My testimony reflects my own experience, but also that of the several dozen Oregon parents who have contacted me since Senate Bill 1041 passed in 2005, all experiencing similar nightmares and encountering some of the same legal and systemic obstacles. They are contacting me in large part because they are aware of Senate Bill 1041, of Aaron's Law, they've read about the law online, but they can't find a practicing lawyer who is. And neither can I, ten years later.

We parents of abducted children have in common these facts: An ex-spouse or someone else closely linked to the family, with or without the assistance of third parties, has disappeared with the victim parent's child; law enforcement—for statutory, policy, attitudinal, budgetary or other reasons—will not or cannot act; the parent cannot afford a

lawyer and cannot find one that will listen, much less take the case; if they do get into family court, there's neither help nor understanding, but the certain loss of immense amounts of time, during all of which the victims continue to suffer permanent, irreparable harm.

And yet there is a child missing, we all have that in common, most likely taken out of state, in unknown circumstances with unknown persons, and a parent.

There is no sense of urgency in the beginning because the child is with a parent, and there is no sense of urgency later in large part because both the criminal justice and family law systems—and the general public—perceive the abduction as something that happened long ago, whenever that was.

But an abduction, a kidnapping, is a *continuing crime*. It continues to take place until it ends. Every minute of every day...of every night...until it ends.

Custodial Interference ORS

163.245 Custodial interference in the second degree. (1) A person commits the crime of custodial interference in the second degree if, knowing or having reason to know that the person has no legal right to do so, the person takes, entices or keeps another person from the other person's lawful custodian or in violation of a valid joint custody order with intent to hold the other person permanently or for a protracted period.

(2) Expenses incurred by a lawful custodial parent or a parent enforcing a valid joint custody order in locating and regaining physical custody of the person taken, enticed or kept in violation of this section are "economic damages" for purposes of restitution under ORS 137.103 to 137.109.

163.257 Custodial interference in the first degree. (1) A person commits the crime of custodial interference in the first degree if the person violates ORS 163.245 and:

- (a) Causes the person taken, enticed or kept from the lawful custodian or in violation of a valid joint custody order to be removed from the state; or
- (b) Exposes that person to a substantial risk of illness or physical injury.

The 2004 Senate Task Force on Parental and Family Abductions heard evidence, including testimony from adults who had been abducted by a parent as a child, and concluded that child abduction by *any* person is as traumatic and as abusive to the child as any other form of abuse. An abduction is *always* emotionally abusive.

The Task Force heard testimony from adults who had been abducted by a parent as a child. They spoke of the trauma of having their appearances altered, boys dressed like girls and vice versa, their names changed. They spoke of never being allowed to show their grief, to mourn the parent and other family members they had lost. They had to embrace whatever stories their abductors wanted them to or suffer real consequences. Some had been abducted and re-abducted, back and forth in short-term high-conflict domestic situations.

They spoke of the trauma of discovering one day that a parent they loved and trusted had betrayed them, convincing them that the other parent didn't love them anymore or had died. Some were milk carton children; one described discovering her own true identity when confronted with the carton and a police officer in her school principal's office. Her mother had been taken to jail and she was being transported to a father she could not remember and who she thought was dead.

Some spoke of the additional trauma they endured when they were rescued in a police action. The Task Force was especially concerned about recovery trauma.

The Task Force learned that the US Department of Justice counts more than 200,000 cases of parental and family abduction taking place across the nation annually, but no one knew the Oregon numbers because the information is not collected or reported anywhere. Some 6% of parental and family- abducted children, such as my four children, are never recovered.

I will cite two cases to illustrate why HB 2601 is necessary now.

Corbett

In 2006, while serving as Senator Avel Gordly's chief of staff, I went on a ride-along with the Oregon State Police on a Friday night at the beginning of Labor Day weekend. While I was waiting for my ride in the OSP lobby, I saw a poster on the bulletin board about two children from Corbett who had been abducted by their mother the previous February.

I was very surprised to see that these kids had been missing for more than six months, and that I was just now hearing about it, because as part of my job for Senator Gordly, I scanned every major Oregon newspaper and several daily news broadcasts every day, and child abduction cases were always on my radar screen.

After the ride-along, I went online to the OSP Missing Children Clearinghouse to learn what more I could about the Corbett children, and was even more surprised to see that they weren't listed. But I'd just seen the poster. In the OSP lobby. So I went to the website of the National Center for Missing and Exploited Children, and found them there.

While I was on the National Center site, I compared their list of children reported abducted from Oregon with the OSP list and found one other discrepancy, an abducted girl some 9 or 10 years old that was not on the OSP list.

The following day, I looked up the Corbett father in the phone book and called him. I identified myself, told him that I had seen the poster, and asked him if he had recovered his children.

He had not. His son and daughter were still missing. He had called 911, a deputy had come out and taken a police report, and pretty much nothing had happened since. He had gone to family court and obtained full custody, but had no idea where his kids were. As far as he knew, no one was actively looking for them. There was no sense of urgency in either the criminal or family law systems, because the children had disappeared with a parent.

I contacted the manager of the OSP Clearinghouse as soon as her office opened, wanting to know why these three abducted children weren't on the Clearinghouse list. I have not located my notes on what she said regarding the Corbett children, but I do recall what she said about the other child. She said that they were aware that the little girl was missing, but that—technically—she was abducted from Vancouver, across the River, so she didn't qualify.

Parenthetically, I'd like to propose adding a page to the Clearinghouse website listing children abducted from other states that may have been brought to Oregon.

A few days later, the Corbett father contacted me to tell me that a Portland police detective had at long last agreed to meet with him, and *only* because he happened to own some property in the city. The father asked me to accompany him to the interview, and so I did.

The detective heard the victim parent's story, but told us that there was nothing that the police could do at this time due to the way the custodial interference statute is written. The person must intend to take the child "permanently or for a protracted period of time", and there is no definition of "protracted," he explained. He told us that they did not know the mother's intentions and that she may not know that the father has obtained sole custody.

I asked the detective if he was aware of the work of the Abduction Task Force, and he was, mentioning the name of the person representing district attorneys who sat on the panel. But, he said, he had not read the report itself.

I said that this man from Corbett has full custody of his children. Oregon law requires them to be educated, yet he doesn't even know where they are. I asked him what more has to happen to reach the "protracted" threshold? Where is the urgency?

The meeting concluded at that point with no promises of further action, the Corbett father and I walked out of there deeply disappointed. Several days later, however, he called me to say that the Portland police had decided to act, had found his children and ex-wife somewhere in New Mexico. The police had taken the ex-wife into custody, and were sending the children back.

I spoke with the father shortly after he had recovered his children and then followed up the following year. He said that the children were still suffering from the experience.

Time is absolutely critical in an abduction, yet the trigger is completely subjective. There is no standard candle, no statutory length of time that triggers a police response, even though a child's welfare and a family's ruin is at immediate risk.

Marenco

The 2nd case is self-explanatory, a May 2012 press release issued by the Beaverton Police Department describing the recovery of a child who had been abducted from Beaverton and taken to New Zealand by the child's father.

"The following agencies/organizations have assisted the Beaverton Police Department with the Marenco case:

"Interpol
US Department of State
US Customs and Border Protection
US Marshals Service
US Federal Air Marshals Service
US DHS-ICE Homeland Security Investigations
National Center for Missing and Exploited Children
Washington County District Attorney's Office
Washington County Sheriff's Office
Forest Grove Police Department
Government Agencies in New Zealand, Australia and Canada
San Francisco Police Department
San Mateo County Sheriff's Office"

The Marenco child was not listed on the OSP Clearinghouse site.

I cross-checked the National Center and OSP lists the day the Marenco story appeared, and turned up a list of 17 Oregon children that were on the National but were not identified on the OSP site.

As I prepared this testimony, I saw that there were 44 Oregon children listed on the National Center site and an even 40 at the Oregon Clearinghouse.

The Cruz abduction

I often wonder how differently law enforcement and the family courts would have treated the case if my children's abductors had stolen my car along with my children. In other words, if they had taken something of value....

Since nobody brings back stolen cars voluntarily, law enforcement would have automatically assumed that the intent was permanent. The concept of "a protracted period of time" would have no relevance.

My own four children disappeared on February 12, 1996, on a school day, during the Great Storm of that year, while roads were washed out and flooded all over the Northwest. I reported the crime to the Washington County Sheriff's office; a deputy filled out a report.

I have no idea if any other police agency was notified of the kidnapping. My children were never listed on the OSP website, and I was never interviewed by a police detective.

The perpetrators, members of a church congregation in three states imposing a shunning against me, caused my four children to vanish from Oregon. They had been planning and organizing the kidnapping for months.

I knew immediately that they intended to keep my children forever, but I could not convince anyone that this was the case.

My son Aaron Cruz died, from "undetermined causes" in Payson, Utah, as a consequence of his abduction.

I believe that he died because his anti-seizure meds had run out, and there was no one there for him; that he died from long-term medical neglect, severe emotional abuse, heartbreak and abandonment.

My surviving three children remain incommunicado, in the cocoon created and maintained by the church congregations that participated in their abduction, a crime that continues to this day.

Abductions create limitless, irreparable harm to children and families. They are always ambushes, devastating and ruinous in every way. This is why it is so important to deter people from acting on any wild kidnapping ideas in the first place. If they knew—because it is standard practice in Oregon to do so—that the notification would go statewide, that maybe even neighboring states would be notified of the report—then maybe HB 2601 could play a key role in saving some child’s life.

Thank you.

Sean Aaron Cruz

HB 2601 (requiring law enforcement to notify the Oregon State Police of an abducted child within 24 hours of receiving the report) emerges from work begun more than ten years ago at Senator Avel Gordly’s request, as the 2004 Senate President’s Task Force on Parental and Family Abductions explored issues related to how law enforcement responds when a child is reported abducted.

The 2004 Task Force became aware that there is no uniform length of time set for reporting an abducted child to OSP or for determining that a violation of the custodial interference statutes has occurred. These decisions are made arbitrarily at the local level. The time could be days, weeks or not at all, which is frequently the case when a parent or family member has taken the child.

House Bill 2601

Sponsored by Representative SMITH WARNER; Representatives FAGAN, KENY-GUYER (Presession filed.)

SUMMARY

Requires member of law enforcement agency who receives report of abducted child to notify Oregon State Police Missing Children Clearinghouse within 24 hours of receiving report.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to missing children; and declaring an emergency.

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

SECTION 1. A member of a law enforcement agency who receives a report of the abduction of a child shall notify the Oregon State Police missing children clearinghouse within 24 hours of receiving the report.

SECTION 2. Section 1 of this 2015 Act and ORS 181.505 and 181.506 are added to and made a part of ORS 181.010 to 181.560.

SECTION 3. This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.