

**SUBJECT:** Expanding definition of missing child, interference with child custody

**COMMITTEE:** Criminal Jurisprudence — committee substitute recommended

**VOTE:** 5 ayes — Gallego, Aliseda, Burkett, Carter, Zedler  
0 nays  
4 absent — Hartnett, Christian, Y. Davis, Rodriguez

**WITNESSES:** For — Carlos Salinas  
Against — None

**BACKGROUND:** Code of Criminal Procedure Art. 63 deals with missing children and missing persons. It establishes a Department of Public Safety clearinghouse for information on missing children. The clearinghouse includes a system of intrastate communication about missing children and works with the national crime information center to exchange information on missing children traveling interstate.

Art. 63.001 (3) defines a missing child as one whose whereabouts are unknown to the child’s legal custodian, the circumstances of whose absence indicate:

- the child did not voluntarily leave the care of the custodian and the taking of the child was not authorized bylaw;
- the child voluntarily left the care of the custodian without the custodian’s consent and without intent to return; or
- the child was taken or kept in violation of a court order for possession or access.

Family Code Chapter 71 covers protective orders and family violence. Sec. 71.004 defines family violence.

Penal Code sec. 25.03 makes interference with child custody a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) criminal offense. It is an offense if a person takes or retains a child younger than 18 years old when the person knows that the taking or

retention violates a court custody order or if a person who had not been awarded custody knows that a divorce suit, custody suit, or other suit has been filed and takes certain actions, or if a noncustodial parent takes certain actions.

**DIGEST:**

CSHB 3439 would expand the definition of missing child to include a child taken or retained without the permission of the child's custodian and with the effect of depriving the custodian of possession of or access to the child, unless the taking of the child was prompted by the commission or attempted commission of family violence as defined by Family Code, sec. 71.004.

The bill would expand the criminal offense of interference with child custody to include taking or retaining a child outside of the United States with the intent to deprive a person entitled to possession or access to a child of that possession or access without permission.

It would be an affirmative defense to prosecution in that the taking or retention of the child was under a valid court order providing for possession or access or to the child, the retention of the child was due only to circumstances beyond the person's control, and the person promptly provided notice, or made reasonable attempts to provide notice, to the person entitled to possession or access to the child.

It would be an exception to the expanded offense in CSHB 3439 that, at the time of the offense, the person who took or retained the child was entitled to possession or access and was fleeing the commission or attempted commission of family violence against the child or the person with the child.

The bill would take effect September 1, 2011. The change made to the definition of a missing child would apply only to reports of missing children made under Code of Criminal Procedure, ch. 63 on or after the bill's effective date. The changes to the offense of interference with child custody would apply only to offenses committed on or after the bill's effective date.

**SUPPORTERS  
SAY:**

CSHB 3439 is needed to fill gaps in current law that prevent some missing children from being included in alert systems and that allow some international parent abductions to fall outside of the current criminal

offense of interference with child custody. These changes would help ensure the safety of Texas children.

The current definition of missing child used to trigger alerts is not broad enough to include children taken by a parent without permission of another parent and with the intent to deprive the other parent of the child. In this situation, there is no custody order in place to be violated, and other conditions in the current definition might not be met. CSHB 3439 would address this problem by broadening the definition of missing child. This would allow missing children fitting this description to be included in alert systems to help with their recovery. Valuable time can be lost in the recovery of missing children. The bill would allow an exception for family violence so that one parent could remove a child from a dangerous situation. Police officers are trained to identify family violence situations and would be able to determine if a situation fit CSHB 3439

Currently, the crime of interference with child custody is not broad enough to cover international abductions of children when there is no custody order or legal proceeding in place. This means that these investigations fall to federal officials, who can be stretched thin. CSHB 3439 would address this problem by amending the definition of missing child to specifically cover certain takings of children outside of the United States. The bill could help address cases such as one in which children were taken to Mexico and left with relatives while the abducting parent returned to Texas but could not be prosecuted.

To ensure that CSHB 3439 would apply only in appropriate cases, the bill would require a specific type of intent. The bill would require children to be taken outside of the United States without permission and with the specific intent to deprive a person who was entitled to possession or access. This provision would ensure that the bill was not misused for situations in which there was no intent to take children from their parents and no intent to deprive another parent of access to a child.

The bill would establish a reasonable affirmative defense and exception to prosecution to cover family violence. Law enforcement authorities are used to working under affirmative defenses and exceptions, so CSHB 3439 would not burden them.

OPPONENTS  
SAY:

CSHB 3439 is drawn so broadly that it could be used to make a crime out of actions that are within the legal rights of parents. If the goal is to protect children from dangerous abductions, it would be better to narrow CSHB 3439 to make it clear that it would apply only to situations in which children were in danger and illegal behavior occurred.

OTHER  
OPPONENTS  
SAY:

Rather than make certain actions relating to family violence exceptions to the application of the offense of interference with child custody, it would be better for CSHB 3489 to state that certain actions did not apply to the offense. Exceptions must be disproved by prosecutors in each case, something that is unnecessary in many cases.

The definition of missing child in CSHB 3439 would allow certain takings prompted by family violence to be excluded from the definition. Because the definition of a missing child under ch. 63 of the Code of Criminal Procedure is used to trigger an alert for a child, the bill could require law enforcement officers to quickly determine if a taking was prompted by family violence. In some cases, it would be too early in the process of investigating a missing child and an incidence of family violence to make this determination accurately.

NOTES:

The committee substitute changed the definition of missing child in the bill and added the exception to prosecution for interference with child custody.

The companion bill, SB 1551 by Rodriguez, passed the Senate by 31-0 on April 26 and was referred to the House Criminal Jurisprudence Committee on April 28.