

BILL ANALYSIS

Senate Research Center
76R2122 JMC-D

H.B. 1428
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Criminal Justice
5/13/1999
Engrossed

DIGEST

Currently, in some cases parents can take a child and be prosecuted for a third degree felony, Interference with Child Custody, while a stranger can take a child and be prosecuted only for a Class B misdemeanor. Texas law enforcement officers will not extradite across state lines for a misdemeanor charge nor can misdemeanor charges be entered on the National Crime Information Center, which makes it virtually impossible for other states to even know there is a warrant on a subject. The punishment for a Class B misdemeanor is a relatively small fine and requires minimal or no jail time. Impressionable teens are often coerced to follow an adult away from home by promises of a better life. The willingness of the teen to go diminishes the violation on the part of the adult, resulting in few prosecutions. H.B. 1428 modifies the definition of unlawful restraint of children at least 14 and under 17 years of age who willingly are taken outside the state and outside a 120-mile radius from the victim's residence, and the parent, guardian, or person or institution acting in loco parentis has not acquiesced in the movement. This bill also provides an affirmative defense if the adult transporting the child is not more than three years older than the child, did not restrain the child by force, intimidation, or deception, and the child being restrained is at least 14 and under 17 years of age.

PURPOSE

As proposed, H.B. 1428 establishes provisions regarding the prosecution of and the punishment for the offense of unlawful restraint.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 20.01(1), Penal Code, to expand the definition of restraint without consent to include acquiescence of a victim if the victim is a child who is at least 14 and under 17 years of age, the victim is taken outside of the state and outside a 120-mile radius from the victim's residence, and the parent, guardian, or person or institution acting in loco parentis has not acquiesced in the movement. Makes nonsubstantive changes.

SECTION 2. Amends Section 20.02, Penal Code, by amending Subsection (c) and adding Subsection (e), to provide that it is an affirmative defense to prosecution under this section that the person restrained was a child who is 14 years of age or older and younger than 17 years of age, the actor does not restrain the child by force, intimidation, or deception, and the actor is not more than three years older than the child. Makes a violation of this section (Unlawful Restraint) a Class A misdemeanor, rather than a Class B misdemeanor, unless the person restrained was younger than 17 years of age, rather than 14, in which event the offense is a state jail felony, rather than a Class A misdemeanor. Makes conforming changes.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 1999.

SECTION 5. Emergency clause.