

BILL ANALYSIS

Senate Research Center

H.B. 3439
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Jurisprudence
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Law enforcement officers have acknowledged an ambiguity or loophole in interpreting the current missing child statute. This is particularly problematic in parental abductions where no custody orders are in place. H.B. 3439 clarifies the definitions of "missing child." The bill seeks to address those circumstances when a child may be with a parent whose whereabouts are unknown. For example, when a parent abducts a child prior to the initiation of custody proceedings or the entry of a custody order, or when a parent unilaterally removes a child and hides him or her from the other parent. Clarification of the definition will enable law enforcement officers to enter the child in the National Crime Information Computer so that the child's whereabouts and welfare can be ascertained, and both parents can proceed to resolve custody disputes in the courts.

H.B. 3439 also makes it a state crime to remove a child from the United States or to retain a child outside the United States with the intent to obstruct a parent's custodial rights. The bill is patterned after the federal International Parental Kidnapping Act. The crime is punishable by up to three years in prison. The federal law provides an affirmative defense where the abducting parent acted pursuant to a valid court order obtained under the Uniform Child Custody Jurisdiction and Enforcement Act, or where the abducting parent was fleeing domestic violence, or where the failure to return the child resulted from circumstances beyond the parent's control and the parent made reasonable efforts to notify the other parent within 24 hours and returned the child as soon as possible.

H.B. 3439 amends current law relating to missing children and provides a criminal penalty.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 63.001(3), Code of Criminal Procedure, to redefine "missing child."

SECTION 2. Amends Section 25.03, Penal Code, by amending Subsection (a) and adding Subsections (c-1) and (c-2), as follows:

(a) Provides that a person commits an offense if the person takes or retains a child younger than 18 years of age:

(1) when the person knows that the person's taking or retention violates the express terms of a judgment or order, including a temporary order, of a court disposing of the child's custody;

(2) when the person has not been awarded custody of the child by a court of competent jurisdiction, knows that a suit for divorce or a civil suit or application for habeas corpus to dispose of the child's custody has been filed, and takes the child out of the geographic area of the counties composing the judicial district if

the court is a district court or the county if the court is a statutory county court, without the permission of the court and with the intent to deprive the court of authority over the child; or

(3) outside of the United States with the intent to deprive a person entitled to possession of or access to the child of that possession or access and without the permission of that person.

(c-1) Provides that it is an affirmative defense to prosecution under Subsection (a)(3) that:

(1) the taking or retention of the child was pursuant to a valid order providing for possession of or access to the child; or

(2) notwithstanding any violation of a valid order providing for possession of or access to the child, the actor's retention of the child was due only to circumstances beyond the actor's control, and the actor promptly provided notice or made reasonable attempts to provide notice of those circumstances to the other person entitled to possession of or access to the child.

(c-2) Provides that Subsection (a)(3) does not apply if, at the time of the offense, the person taking or retaining the child:

(1) was entitled to possession of or access to the child; and

(2) was fleeing the commission or attempted commission of family violence, as defined by Section 71.004, Family Code, against the child or person.

SECTION 3. Provides that the change in law made by this Act in amending Article 63.001(3), Code of Criminal Procedure, applies only to the report of a missing child or a missing person made under Chapter 63 (Missing Children and Missing Persons), Code of Criminal Procedure, as amended by this Act, on or after the effective date of this Act. Provides that the report of a missing child made before the effective date of this Act is governed by the law in effect when the report was made, and the former law is continued in effect for that purpose.

SECTION 4. Provides that the change in law made by this Act in amending Section 25.03, Penal Code, applies only to an offense committed on or after the effective date of this Act. Provides that an offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. Provides that, for purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 5. Effective date: September 1, 2011.