

BILL ANALYSIS

Senate Research Center
87R8455 EAS-F

S.B. 2011
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State Affairs
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Background:

Custodial interference occurs when a parent disrupts the standard custodial rights of the other parent to a degree that the disruption causes denial of access. Oftentimes, the interference of retaining the child impacts the parent-child relationship. Interference with child custody in Texas is not just a family or civil matter, it is a crime. In fact, it is a felony to take or keep your child against visitation or custody orders. Interfering between a parent and child bond is detrimental and often leads to alienating behaviors.

Solution:

S.B. 2011 would amend the Texas Penal Code Section 25.03 to state that a person commits an offense if the person takes or retains a child younger than 18 years of age 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.

As proposed, S.B. 2011 amends current law relating to the criminal offense of interference with child custody and a peace officer's duties with respect to that offense and increases 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 Chapter 2, Code of Criminal Procedure, by adding Article 2.274, as follows:

Art. 2.274. INTERFERENCE WITH CHILD CUSTODY REPORT. (a) Requires a peace officer, on receiving a report of a violation of Section 25.03 (Interference with Child Custody), Penal Code, to attempt to determine the whereabouts of the child and, if the child's whereabouts are known, make contact with the alleged offender and locate and return the child to the person entitled to possession of or access to the child or, if the child's whereabouts are unknown, submit a missing child report under Chapter 63 (Missing Children and Missing Persons).

(b) Requires a peace officer to make a written report regarding an incident under this article that includes:

(1) the date, time, and location of the alleged offense;

(2) the names of the alleged offender, the complainant, and each child who is the subject of the offense;

(3) whether a court order disposing of the child's custody has been rendered;

(4) if applicable, the name of each party and each child subject to the court order described by Subdivision (3); and

(5) if applicable, whether the court order described by Subdivision (3) has been filed with local law enforcement.

SECTION 2. Amends Section 25.03, Penal Code, by amending Subsections (c) and (d) and adding Subsections (c-3) and (c-4), as follows:

(c) Provides that it is a defense to prosecution under Subsection (a)(2) (relating to the offense of taking a child when the person has not been awarded custody) that the actor returned the child to 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, within one day, rather than three days, after the date of the commission of the offense.

(c-3) Provides that it is an affirmative defense to prosecution under Subsection (a)(1) (relating to the offense of taking a child when the person knows that it violates a judgment or order) that:

(1) the actor's retention of the child was due to circumstances beyond the actor's control;

(2) the actor promptly provided notice or made other reasonable attempts to provide notice of the circumstances described by Subdivision (1) to the other person entitled to possession of or access to the child;

(3) the child was returned immediately to the other person entitled to possession of or access to the child when the circumstances described by Subdivision (1) no longer applied; and

(4) the circumstances described by Subdivision (1) are not foreseeable and regularly recurring.

(c-4) Provides that, for purposes of Subsection (c-3)(4), it is presumed that the circumstances described by Subsection (c-3)(1) are foreseeable and regularly occurring if those circumstances have prevented the timely return of the child on three or more occasions in the 12-month period preceding the offense.

(d) Provides that an offense under Section 25.03 is a state jail felony, except the offense is a felony of the third degree if it is shown on the trial of the offense that the actor has previously been convicted three or more times of an offense under Section 25.03.

SECTION 3. Repealer: Section 25.03(b) (relating to the offense by a noncustodial parent of enticing or persuading the child to leave the custody of the custodial parent), Penal Code.

SECTION 4. (a) Provides that Article 2.274, Code of Criminal Procedure, as added by this Act, applies only to a report of a violation of Section 25.03, Penal Code, received by a peace officer on or after the effective date of this Act.

(b) Makes application of Section 25.03, Penal Code, as amended by this Act, prospective.

SECTION 5. Effective date: September 1, 2021.