

BILL ANALYSIS

C.S.H.B. 1223
By: VanDeaver
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Concerns have been raised that law enforcement officers have limited jurisdiction to take action with regard to interference with child custody and that this may place the child at risk for abuse and human trafficking. C.S.H.B. 1223 seeks to ensure that no child is unaccounted for by requiring law enforcement officers to locate and return a child or file a missing child report, as applicable, on receiving a report of certain interference with child custody.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1223 amends the Penal Code to create a state jail felony offense for a person who, when there is no judgment or order of a court disposing of the applicable child's custody:

- takes or retains a child younger than 18 years of age;
- is not a parent of the child who is listed on the child's birth certificate or is a parent of the child whose parental rights have been terminated; and
- knows that the taking or retaining of the child is without the effective consent of or against the expressed wishes of such a listed parent whose parental rights have not been terminated.

The bill authorizes the prosecution of an actor for conduct that constitutes an offense of interference with child custody and that also constitutes another Penal Code offense to be under either offense provision or both offense provisions.

C.S.H.B. 1223 amends the Code of Criminal Procedure to require a peace officer, on receipt of a report of an offense under the bill's provisions, to attempt to determine the whereabouts of the child and take one of the following actions, as applicable:

- if the child's whereabouts are known, locate the child and either:
 - return the child to a parent of the child who is listed on the child's birth certificate and whose parental rights have not been terminated; or
 - if the child is the subject of an ongoing investigation by the Department of Family and Protective Services (DFPS) of a report of child abuse or neglect, return the child

to or allow the child to remain with the caregiver designated in a parental child safety placement agreement approved by DFPS; or

- if the child's whereabouts are unknown, submit a missing child report.

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1223 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes as a required element for the commission of an offense under the bill's provisions that the actor is not a parent of the child who is listed on the child's birth certificate or is a parent of the child whose parental rights have been terminated.

The substitute narrows the scope of the required report from a report on an interference with child custody offense in general to a report on the specific offense created by the bill.

The substitute changes the persons to whom the peace officer is required to return a located child from the person entitled to the custody or possession of the child according to the terms of a judgment or order of a court disposing of the child's custody or, if there is no such judgment or court order, a parent listed on the child's birth certificate, to such a listed parent whose parental rights have not been terminated or, if the child is the subject of a certain DFPS investigation, the caregiver designated in an approved parental child safety placement agreement.