

- SUBJECT:** Expanding circumstances considered aggravated kidnaping
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 9 ayes — Keel, Riddle, Ellis, Denny, Dunnam, Hodge, P. Moreno, Pena, Talton
0 nays
- WITNESSES:** None
- BACKGROUND:** Under Penal Code, sec. 20.03, a person commits the offense of kidnaping by intentionally or knowingly abducting another person. The offense is a third-degree felony, punishable by two to 10 years in prison and an optional fine of up to \$10,000.
- Under Penal Code, sec. 20.04, a person commits the offense of aggravated kidnaping by intentionally or knowingly abducting another person with the intent to hold the person for ransom or reward; use the person as a shield or hostage; facilitate the commission of a felony or the flight after a felony or attempted felony; inflict bodily injury or sexual abuse; terrorize the person or another person; or interfere with the performance of a government or political function. The offense is a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000) unless the victim was released in a safe place, in which case it is a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000).
- DIGEST:** HB 59 would make it a second-degree felony to kidnap a person if the victim was exposed to a risk of serious bodily injury. The bill also would add new circumstances to the actions considered aggravated kidnaping:
- abducting another person with the intent to coerce a third person to perform some act;
 - holding a kidnap victim in a condition of involuntary servitude; and
 - intentionally or knowingly abducting another person who is younger than 18 years old or is incompetent.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

HB 59 is necessary to ensure that kidnaping and exposing someone to serious bodily injury is punished appropriately and that all serious cases of kidnaping involving vulnerable victims or serious circumstances are considered aggravated and are punished more severely.

The bill would impose a harsher penalty for kidnaping if a victim were exposed to a risk of serious bodily injury because the potential for harm to the victim is higher in this situation. This could help deter offenders from exposing victims to injury and danger and would punish them appropriately if they did. Courts would be the appropriate venue to determine whether a victim had been exposed to a risk of serious bodily injury.

HB 59 also would help protect vulnerable people by making it aggravated kidnaping to abduct people younger than 18 or people who are incompetent. Because of the ease with which children and incompetent people can be abducted, it is proper to give them the extra protections afforded by making their abductions aggravated, thereby punishing them more severely. Many offenses in the Penal Code are punished more severely when committed against an especially vulnerable population.

Because of the seriousness of holding a person in involuntary servitude and abducting someone with the intent of coercing a third person to perform some act, HB 59 would make these crimes aggravated kidnaping. Holding someone in involuntary servitude is akin to slavery and should be viewed and punished severely. Using a kidnaping victim to coerce another person is similar to holding the person for a reward and is so potentially dangerous to the victim that it also should be punished harshly.

**OPPONENTS
SAY:**

The language in HB 59 that would make it second-degree felony kidnaping to expose a victim to a risk of serious bodily injury is too broad. It is unclear what would constitute a "risk" of serious bodily injury. Prosecutors and courts could interpret this to apply to almost any situation, thereby inappropriately enhancing the penalty. For example, releasing the victim in a busy road could be considered risky, although it also could give the victim a good opportunity to be found.

Kidnaping of people younger than 18 or incompetent should not be considered aggravated by definition. Abducting youths and incompetent people should be judged by the same criteria as abducting other people and should be considered aggravated only if the circumstances or intent are dangerous or violent. HB 59 could lead to other groups asking for special protections. The Legislature should avoid enhancing penalties for specific groups of people and specifying different protections for victims exposed to similar harm.

NOTES:

HB 59 as filed would have made it aggravated kidnaping to abduct someone younger than 17 years old. The committee substitute raised the age threshold to 18.

A related bill, HB 1101 by Capelo, which would make it a second-degree felony under the kidnaping offense to abduct someone younger than 17 years, has been referred to the Criminal Jurisprudence Committee.