

SUBJECT: Expanding definition of missing child, interference with child custody

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Gallego, Hartnett, Aliseda, Burkett, Carter, Zedler

0 nays

3 absent — Christian, Y. Davis, Rodriguez

SENATE VOTE: On final passage, April 26 — 31-0

WITNESSES: For — Carlos Salinas

Against — None

BACKGROUND: Code of Criminal Procedure, art. 63 deals with missing children and missing persons. It establishes a Department of Public Safety clearinghouse for information on missing children. The clearinghouse includes a system of intrastate communication about missing children and works with the National Crime Information Center to exchange information on missing children traveling interstate.

Art. 63.001(3) defines a missing child as one whose whereabouts are unknown to the child's legal custodian, the circumstances of whose absence indicate:

- the child did not voluntarily leave the care of the custodian and the taking of the child was not authorized by law;
- the child voluntarily left the care of the custodian without the custodian's consent and without intent to return; or
- the child was taken or kept in violation of a court order for possession or access.

Family Code, ch. 71 covers protective orders and family violence. Sec. 71.004 defines family violence.

Penal Code, sec. 25.03 makes interference with child custody a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000). It is an offense if a person takes or retains a child younger than 18 years old when the person knows that the taking or retention violates a court custody order or if a person who had not been awarded custody knows that a divorce suit, custody suit, or other suit has been filed and takes certain actions, or if a noncustodial parent takes certain actions.

DIGEST:

SB 1551 would expand the definition of missing child to include a child taken or retained without the permission of the child's custodian and with the effect of depriving the custodian of possession of or access to the child, unless the taking of the child was prompted by the commission or attempted commission of family violence as defined by Family Code, sec. 71.004.

The bill would expand the criminal offense of interference with child custody to include taking or retaining a child outside of the U.S. with the intent to deprive a person entitled to possession or access to a child of that possession or access without permission.

It would be an affirmative defense to prosecution if the taking or retention of the child was under a valid court order providing for possession or access to the child, or if the retention of the child was due only to circumstances beyond the person's control and the person promptly provided notice, or made reasonable attempts to provide notice, to the person entitled to possession or access to the child.

SB 1551 would state that under certain circumstances, the expanded offense established by the bill would not apply. It would not apply if, at the time of the offense, the person who took or retained the child was entitled to possession or access and was fleeing the commission or attempted commission of family violence against the child or the person with the child.

The bill would take effect September 1, 2011. The change made to the definition of a missing child would apply only to reports of missing children made under Code of Criminal Procedure, ch. 63 on or after the bill's effective date. The changes to the offense of interference with child custody would apply only to offenses committed on or after the bill's effective date.

SUPPORTERS
SAY:

SB 1551 is needed to fill gaps in current law that prevent some missing children from being included in alert systems and that allow some international parent abductions to fall outside of the current criminal offense of interference with child custody. These changes would help ensure the safety of Texas children.

The current definition of missing child used to trigger alerts is not broad enough to include children taken by a parent without permission of another parent and with the intent to deprive the other parent of the child. In this situation, there is no custody order in place to be violated, and other conditions in the current definition might not be met. SB 1551 would address this problem by broadening the definition of missing child. This would allow missing children fitting this description to be included in alert systems to help with their recovery. Valuable time can be lost in the recovery of missing children. The bill would allow an exception for family violence so that one parent could remove a child from a dangerous situation. Police officers are trained to identify family violence situations and would be able to determine if a situation fit SB 1551.

The crime of interference with child custody currently is not broad enough to cover international abductions of children when there is no custody order or legal proceeding in place. This means that these investigations fall to federal officials, who can be stretched thin. SB 1551 would address this problem by amending the definition of missing child to specifically cover certain takings of children outside of the U.S. The bill could help address cases such as one in which children were taken to Mexico and left with relatives while the abducting parent returned to Texas but could not be prosecuted.

To ensure that SB 1551 would apply only in appropriate cases, the bill would require a specific type of intent. The bill would require children to be taken outside of the U.S. without permission and with the specific intent to deprive a person who was entitled to possession or access. This provision would ensure that the bill was not misused for situations in which there was no intent to take children from their parents and no intent to deprive another parent of access to a child.

The bill would establish a reasonable affirmative defense to cover family violence and would make the new offense not apply in certain family violence situations. Law enforcement authorities are trained for family violence situations and should have no difficulty making the proper

determination about family violence when deciding whether a child was missing and whether alerts should be triggered.

OPPONENTS
SAY:

SB 1551 is drawn so broadly that it could be used to criminalize actions that are within the legal rights of parents. If the goal is to protect children from dangerous abductions, it would be better to narrow the bill to make it clear that it would apply only to situations in which children were in danger and illegal behavior occurred.

OTHER
OPPONENTS
SAY:

The definition of missing child in SB 1551 would allow certain takings prompted by family violence to be excluded from the definition. Because the definition of a missing child under ch. 63 of the Code of Criminal Procedure is used to trigger an alert for a child, the bill could require law enforcement officers to quickly determine if a taking was prompted by family violence. In some cases, it might be too early in the process of investigating a missing child and an incidence of family violence to make this determination accurately.

NOTES:

The companion bill, HB 3439 by Raymond, passed the House by 134-0 on May 13 and was reported favorably, without amendment, by the Senate Jurisprudence Committee on May 21 and recommended for the Local and Uncontested Calendar.