

BILL ANALYSIS

C.S.H.B. 79
By: Wise
Juvenile Justice & Family Issues
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The abduction of children by family members is becoming more prevalent across the U.S. Interference with custody and visitation rights compounds the problem. Family abduction, parental kidnapping, or custodial interference occurs when a parent or family member unlawfully abducts, restrains, or conceals a child from the custodial parent or guardian. This situation is a difficult problem for both the criminal and civil justice systems. These abducted children are clearly at risk and are often the victims of emotional trauma and neglect.

C.S.H.B.79 would strengthen current law, particularly in the civil justice system, involving the abduction of children by family members. This substitute amends the Family Code as well as the Code of Criminal Procedure to make it easier to prosecute such cases and to provide proper compensation for victims. In short, this substitute provides added protection and guarantees to the child victim in cases involving child custody matters.

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.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter A, Chapter 153, Family Code by adding Section 153.0035 to read as follows: **EXCLUSIVE RIGHT TO POSSESSION PRESUMED.** This section provides that it is presumed that the mother of a child is entitled to exclusive physical possession of the child if: (1) the mother was not married at the time of the child's birth; (2) paternity of the child has not been established; (3) there is no court order that provides for possession of or access to the child; and (4) the child lives with the mother.

SECTION 2. Amends Subchapter B, Chapter 56, Code of Criminal Procedure, by adding Article 56.545 entitled **COMPENSATION FOR VICTIMS OF INTERFERENCE WITH CHILD CUSTODY.** This section defines "victim" as a parent of a child taken or retained in violation of Section 25.03, Penal Code, or a child taken or retained in violation of Section 25.03, Penal Code. The term does not include the parent who is prosecuted for violating Section 25.03, Penal Code. Additionally, it states that the attorney general shall award compensation for a loss arising from the commission of an offense under Section 25.03, Penal Code, in substantially the same manner as the attorney general is required to award compensation under this subchapter for a pecuniary loss arising from criminally injurious conduct.

SECTION 3. This Act takes effect September 1, 2003. Prospective provisions

EFFECTIVE DATE

September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B.79 modifies the original H.B.79 by striking Sections 1, 2, 3, 4, 5 and 7. Section 151.006 is now provided in Section 153.0035, Family Code, of the substitute. Section 6 in the original bill is now in Section 2 of the substitute.