

By: Wise

H.B. No. 63

A BILL TO BE ENTITLED

AN ACT

relating to the prosecution of, the punishment for, and venue in the prosecution of certain offenses involving the abduction of or interference with the custody of children.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 13, Code of Criminal Procedure, is amended by adding Article 13.28 to read as follows:

Art. 13.28. OFFENSES INVOLVING CHILD CUSTODY. An offense under Section 25.03, 25.031, or 25.04, Penal Code, may be prosecuted in the county in which:

(1) the offense was committed;

(2) the child was found;

(3) the parent, guardian, or other person having lawful custody or physical possession of the child resides; or

(4) the governmental agency having custody or physical possession of the child under court order is located.

SECTION 2. Article 42.0371(a), Code of Criminal Procedure, is amended to read as follows:

(a) The court shall order a defendant convicted of an offense under Chapter 20, Penal Code, or Section 25.03, 25.031, or 25.04, Penal Code, to pay restitution:

(1) to the victim of the offense in an amount equal to:

(A) the cost of necessary rehabilitation for the victim, including medical, psychiatric, and psychological care and

1 treatment;

2 (B) the cost incurred in returning the victim to  
3 the parent, guardian, or other person having lawful custody or  
4 physical possession of the victim; and

5 (C) any other cost reasonably incurred by the  
6 victim as a result of the defendant committing the offense; and

7 (2) to a private entity that provided uncompensated  
8 victim assistance services to the victim in an amount equal to the  
9 reasonable cost of those services [~~for the victim of the offense~~  
10 ~~if the victim is younger than 17 years of age~~].

11 SECTION 3. Sections 25.03(c) and (d), Penal Code, are  
12 amended to read as follows:

13 (c) [~~It is a defense to prosecution under Subsection (a)(2)~~  
14 ~~that the actor returned the child to the geographic area of the~~  
15 ~~counties composing the judicial district if the court is a district~~  
16 ~~court or the county if the court is a statutory county court, within~~  
17 ~~three days after the date of the commission of the offense.~~

18 [(~~d~~)] An offense under this section is a [~~state jail~~] felony  
19 of the third degree.

20 SECTION 4. Section 25.031(b), Penal Code, is amended to  
21 read as follows:

22 (b) An offense under this section is a [~~state jail~~] felony  
23 of the third degree.

24 SECTION 5. Section 25.04(b), Penal Code, is amended to  
25 read as follows:

26 (b) An offense under this section is a state jail felony  
27 [~~Class B misdemeanor~~], unless it is shown on the trial of the

1 offense that the actor intended to commit a felony against the  
2 child, in which event an offense under this section is a felony of  
3 the third degree.

4 SECTION 6. Chapter 25, Penal Code, is amended by adding  
5 Sections 25.10 and 25.11 to read as follows:

6 Sec. 25.10. SUBSEQUENT CUSTODY OR VISITATION ORDER NO  
7 DEFENSE. Except as provided by Section 25.11, it is not a defense to  
8 prosecution under Section 25.03, 25.031, or 25.04 that the actor,  
9 after committing the offense, is awarded custody or visitation of  
10 the child by a court of competent jurisdiction.

11 Sec. 25.11. NECESSITY DEFENSE FOR OFFENSES INVOLVING CHILD  
12 CUSTODY. (a) It is a defense to prosecution under Section 25.03,  
13 25.031, or 25.04, that the actor:

14 (1) believed in good faith that the actor's conduct was  
15 immediately necessary to avoid imminent harm to the child; and

16 (2) filed, not later than 72 hours after committing  
17 the offense, a suit for modification of the child's custody or  
18 possession order in the court with continuing, exclusive  
19 jurisdiction.

20 (b) A petition requesting modification of a custody or  
21 possession order under Subsection (a)(2) must include  
22 documentation of the harm that the actor sought to avoid by  
23 committing the offense.

24 SECTION 7. (a) The change in law made by this Act applies  
25 only to an offense, or the venue for the trial of an offense,  
26 committed on or after the effective date of this Act. For purposes  
27 of this section, an offense is committed before the effective date

1 of this Act if any element of the offense occurs before that date.

2 (b) An offense, or the venue for the trial of an offense,  
3 committed before the effective date of this Act is covered by the  
4 law in effect when the offense was committed, and the former law is  
5 continued in effect for that purpose.

6 SECTION 8. This Act takes effect September 1, 2003.