

By: Wise

H.B. No. 79

A BILL TO BE ENTITLED

AN ACT

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relating to possession of or access to a child.

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

SECTION 1. Section 105.001(a), Family Code, is amended to read as follows:

(a) In a suit, the court may make a temporary order, including the modification of a prior temporary order, for the safety and welfare of the child, including an order:

(1) for the temporary conservatorship of the child;

(2) for the temporary support of the child;

(3) restraining a party from molesting or disturbing the peace of the child or another party;

(4) prohibiting a person from removing the child beyond a geographical area identified by the court; ~~or~~

(5) for payment of reasonable attorney's fees and expenses; or

(6) to take possession of the child under Section 157.009.

SECTION 2. Sections 107.001(a) and (c), Family Code, are amended to read as follows:

(a) In a suit affecting the parent-child relationship ~~[in which termination of the parent-child relationship is requested]~~, the court or an associate judge shall appoint a guardian ad litem to represent the interests of the child immediately after the filing

1 of the petition but before the full adversary hearing to ensure  
2 adequate representation of the child, unless:

3 (1) the child is a petitioner; or

4 (2) an attorney ad litem has been appointed for the  
5 child[~~, or~~

6 ~~[(3) the court or an associate judge finds that the~~  
7 ~~interests of the child will be represented adequately by a party to~~  
8 ~~the suit and are not adverse to that party].~~

9 (c) The [~~In any other suit, the~~] court or an associate judge  
10 may appoint a guardian ad litem in a suit in which the appointment  
11 is not required by Subsection (a) or (b).

12 SECTION 3. Subchapter A, Chapter 151, Family Code, is  
13 amended by adding Section 151.006 to read as follows:

14 Sec. 151.006. EXCLUSIVE RIGHT TO POSSESSION PRESUMED. It  
15 is presumed that the mother of a child is entitled to exclusive  
16 physical possession of the child if:

17 (1) the mother was not married at the time of the  
18 child's birth;

19 (2) paternity of the child has not been established;

20 (3) there is no court order that provides for  
21 possession of or access to the child; and

22 (4) the child lives with the mother.

23 SECTION 4. Subchapter A, Chapter 157, Family Code, is  
24 amended by adding Section 157.009 to read as follows:

25 Sec. 157.009. EMERGENCY POSSESSION OF CHILD. (a) A person  
26 filing a motion to enforce a final order that provides for  
27 possession of or access to a child may seek a temporary order under

1 which a law enforcement officer may take possession of the child and  
2 deliver the child to the court. The court shall render the order  
3 if:

4 (1) a person is violating an order that provides for  
5 possession of or access to a child;

6 (2) the court has reason to believe that the person  
7 violating the order may remove the child from the state; and

8 (3) the person requesting the order knows the location  
9 of the child.

10 (b) The court may authorize temporary placement of the child  
11 until a hearing on the motion for enforcement with:

12 (1) a person entitled to possession of the child under  
13 the final order; or

14 (2) a local social services agency.

15 SECTION 5. Subchapter D, Chapter 157, Family Code, is  
16 amended by adding Section 157.169 to read as follows:

17 Sec. 157.169. REIMBURSEMENT OF COSTS. The court may  
18 require a person violating an order that provides for possession of  
19 or access to a child to pay to the appropriate person:

20 (1) the costs to locate and recover the child incurred  
21 by the person entitled to possession of the child;

22 (2) the costs incurred by an agency assisting the  
23 person entitled to possession of the child in locating and  
24 recovering the child;

25 (3) the costs of medical and mental health services  
26 incurred by the person entitled to possession of the child to  
27 reestablish a relationship with the child; and

1           (4) the amount of money paid from the crime victims  
2 compensation fund to the child or the person entitled to possession  
3 of the child as a result of the wrongful taking or retention of the  
4 child.

5           SECTION 6. Subchapter B, Chapter 56, Code of Criminal  
6 Procedure, is amended by adding Article 56.545 to read as follows:

7           Art. 56.545. COMPENSATION FOR VICTIMS OF INTERFERENCE WITH  
8 CHILD CUSTODY. (a) In this article, "victim" means a parent of a  
9 child taken or retained in violation of Section 25.03, Penal Code,  
10 or a child taken or retained in violation of Section 25.03, Penal  
11 Code. The term does not include the parent who is prosecuted for  
12 violating Section 25.03, Penal Code.

13           (b) The attorney general shall award compensation for a loss  
14 arising from the commission of an offense under Section 25.03,  
15 Penal Code, in substantially the same manner as the attorney  
16 general is required to award compensation under this subchapter for  
17 a pecuniary loss arising from criminally injurious conduct.

18           SECTION 7. (a) This Act takes effect September 1, 2003.

19           (b) The change in law made by Sections 1-4 of this Act  
20 applies to a pending suit affecting the parent-child relationship  
21 without regard to whether the suit was filed before, on, or after  
22 the effective date of this Act.

23           (c) The change in law made by Section 157.169, Family Code,  
24 as added by this Act, applies only to a violation of an order that  
25 provides for possession of or access to a child that occurs on or  
26 after the effective date of this Act.

27           (d) The change in law made by Article 56.545, Code of

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1 Criminal Procedure, as added by this Act, applies only to a  
2 violation of Section 25.03, Penal Code, that occurs on or after the  
3 effective date of this Act.