

## **BILL ANALYSIS**

C.S.H.B. 3439  
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Criminal Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties express concern that certain provisions in state law do not specifically address circumstances under which a parent abducts a child prior to the initiation of custody proceedings or the entry of a custody order or unilaterally removes a child and hides the child from the other parent. Observers suggest that clarifying the definition of a missing child in state law relating to missing children and missing persons and making it a state crime to take or retain a child outside of the United States with the intent to obstruct a parent's custodial rights without the parent's permission will enable law enforcement to enter the child in the national crime information center to ascertain the child's whereabouts and welfare and resolve custody disputes in the courts. C.S.H.B. 3439 seeks to make these statutory revisions.

### **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.

### **ANALYSIS**

C.S.H.B. 3439 amends the Code of Criminal Procedure to include in the definition of "missing child," for purposes of provisions of law relating to missing children and missing persons, a child whose whereabouts are unknown to the child's legal custodian, the circumstances of whose absence indicate that the child was taken or retained without the permission of the custodian and with the effect of depriving the custodian of possession of or access to the child unless the taking or retention of the child was prompted by the commission or attempted commission of family violence against the child or the actor.

C.S.H.B. 3439 amends the Penal Code to expand the conditions that constitute the offense of interference with child custody to include taking or retaining a child younger than 18 years of age outside of the United States with the intent to deprive a person entitled to possession of or access to the child of that possession or access and without the permission of that person. The bill establishes an affirmative defense to prosecution for an offense of interference with child custody involving that conduct if one of the following occurred: the taking or retention of the child was pursuant to a valid order providing for possession of or access to the child; or, notwithstanding any violation of a valid order providing for possession of or access to the child, the actor's retention of the child was due only to circumstances beyond the actor's control, and the actor promptly provided notice or made reasonable attempts to provide notice of those circumstances to the other person entitled to possession of or access to the child. The bill creates an exception to the application of the interference with child custody offense involving taking or retaining a child outside the United States in that manner if, at the time of the offense, the person taking or retaining the child was entitled to possession of or access to the child and was fleeing the commission or attempted commission of family violence against the child or the person.

**EFFECTIVE DATE**

September 1, 2011.

**COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 3439 differs from the original by redefining "missing child" to include a child whose whereabouts are unknown to the child's legal custodian, the circumstances of whose absence indicate that the child was taken or retained without the permission of the custodian and with the effect of depriving the custodian of possession of or access to the child unless prompted by the commission or attempted commission of family violence, whereas the original includes in the definition of "missing child" or "missing person" a person of any age who is missing and whose whereabouts or safety cannot be confirmed or ascertained by the reporter or by a law enforcement agency after reasonable inquiries or investigation.

C.S.H.B. 3439 differs from the original by creating an exception to the application of the offense of interference with child custody involving the taking or retention of a child outside of the United States with the intent to deprive a person entitled to possession of or access to the child of that possession or access and without the permission of that person if the actor was entitled to possession of or access to the child and was fleeing the commission or attempted commission of family violence, whereas the original establishes substantially the same circumstances as an affirmative defense to prosecution for the offense. The substitute differs from the original in nonsubstantive ways.