

By: Raymond

H.B. No. 3439

Substitute the following for H.B. No. 3439:

By: Gallego

C.S.H.B. No. 3439

A BILL TO BE ENTITLED

AN ACT

relating to missing children; providing a criminal penalty.

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

SECTION 1. Article 63.001(3), Code of Criminal Procedure, is amended to read as follows:

(3) "Missing child" means a child whose whereabouts are unknown to the child's legal custodian, the circumstances of whose absence indicate that:

(A) the child did not voluntarily leave the care and control of the custodian, and the taking of the child was not authorized by law;

(B) the child voluntarily left the care and control of the [~~his legal~~] custodian without the custodian's consent and without intent to return; [~~or~~]

(C) the child was taken or retained in violation of the terms of a court order for possession of or access to the child; or

(D) 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, as defined by Section 71.004, Family Code, against the child or the actor.

SECTION 2. Section 25.03, Penal Code, is amended by

1 amending Subsection (a) and adding Subsections (c-1) and (c-2) to
2 read as follows:

3 (a) A person commits an offense if the person takes or
4 retains a child younger than 18 years of age [~~when the person~~]:

5 (1) when the person knows that the person's taking or
6 retention violates the express terms of a judgment or order,
7 including a temporary order, of a court disposing of the child's
8 custody; [~~or~~]

9 (2) when the person has not been awarded custody of
10 the child by a court of competent jurisdiction, knows that a suit
11 for divorce or a civil suit or application for habeas corpus to
12 dispose of the child's custody has been filed, and takes the child
13 out of the geographic area of the counties composing the judicial
14 district if the court is a district court or the county if the court
15 is a statutory county court, without the permission of the court and
16 with the intent to deprive the court of authority over the child; or

17 (3) outside of the United States with the intent to
18 deprive a person entitled to possession of or access to the child of
19 that possession or access and without the permission of that
20 person.

21 (c-1) It is an affirmative defense to prosecution under
22 Subsection (a)(3) that:

23 (1) the taking or retention of the child was pursuant
24 to a valid order providing for possession of or access to the child;
25 or

26 (2) notwithstanding any violation of a valid order
27 providing for possession of or access to the child, the actor's

1 retention of the child was due only to circumstances beyond the
2 actor's control, and the actor promptly provided notice or made
3 reasonable attempts to provide notice of those circumstances to the
4 other person entitled to possession of or access to the child.

5 (c-2) It is an exception to the application of Subsection
6 (a)(3) that, at the time of the offense, the person taking or
7 retaining the child:

8 (1) was entitled to possession of or access to the
9 child; and

10 (2) was fleeing the commission or attempted commission
11 of family violence, as defined by Section 71.004, Family Code,
12 against the child or the person.

13 SECTION 3. The change in law made by this Act in amending
14 Article 63.001(3), Code of Criminal Procedure, applies only to the
15 report of a missing child made under Chapter 63, Code of Criminal
16 Procedure, as amended by this Act, on or after the effective date of
17 this Act. The report of a missing child made before the effective
18 date of this Act is governed by the law in effect when the report was
19 made, and the former law is continued in effect for that purpose.

20 SECTION 4. The change in law made by this Act in amending
21 Section 25.03, Penal Code, applies only to an offense committed on
22 or after the effective date of this Act. An offense committed
23 before the effective date of this Act is governed by the law in
24 effect on the date the offense was committed, and the former law is
25 continued in effect for that purpose. For purposes of this section,
26 an offense was committed before the effective date of this Act if
27 any element of the offense occurred before that date.

1 SECTION 5. This Act takes effect September 1, 2011.