

By: Raymond

H.B. No. 3439

A BILL TO BE ENTITLED

1 AN ACT
2 relating to missing children and missing persons; providing a
3 criminal penalty.

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

5 SECTION 1. Article 63.001(4), Code of Criminal Procedure,
6 is amended to read as follows:

7 (4) "Missing child" or "missing person" also includes
8 a person of any age who is missing and:

9 (A) is under proven physical or mental disability
10 or is senile, and because of one or more of these conditions is
11 subject to immediate danger or is a danger to others;

12 (B) is in the company of another person or is in a
13 situation the circumstances of which indicate that the missing
14 child's or missing person's safety is in doubt; ~~or~~

15 (C) is unemancipated as defined by the law of
16 this state; or

17 (D) whose whereabouts or safety cannot be
18 confirmed or ascertained by the reporter or by a law enforcement
19 agency after reasonable inquiries or investigation.

20 SECTION 2. Section 25.03, Penal Code, is amended by
21 amending Subsection (a) and adding Subsection (c-1) to read as
22 follows:

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

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

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

13 (3) outside of the United States with the intent to
14 deprive a person entitled to possession of or access to the child of
15 that possession or access and without the permission of that
16 person.

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

19 (1) the taking or retention of the child was prompted
20 by the commission or attempted commission of family violence, as
21 defined by Section 71.004, Family Code, against the child or the
22 actor by the person otherwise entitled to possession of or access to
23 the child;

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

27 (3) notwithstanding any violation of a valid order

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

6 SECTION 3. The change in law made by this Act in amending
7 Article 63.001(4), Code of Criminal Procedure, applies only to the
8 report of a missing child or a missing person made under Chapter 63,
9 Code of Criminal Procedure, as amended by this Act, on or after the
10 effective date of this Act. The report of a missing child or a
11 missing person made before the effective date of this Act is
12 governed by the law in effect when the report was made, and the
13 former law is continued in effect for that purpose.

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

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