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S.B. No. 1551

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. Subdivision (3), Article 63.001, 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 the
10 child by a court of competent jurisdiction, knows that a suit for
11 divorce or a civil suit or application for habeas corpus to dispose
12 of the child's custody has been filed, and takes the child out of
13 the geographic area of the counties composing the judicial district
14 if the court is a district court or the county if the court is a
15 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 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) Subsection (a)(3) does not apply if, at the time of
6 the offense, the person taking or retaining the child:

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

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

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