

1-1 By: Rodriguez S.B. No. 1551
1-2 (In the Senate - Filed March 10, 2011; March 23, 2011, read
1-3 first time and referred to Committee on Jurisprudence;
1-4 April 18, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 7, Nays 0; April 18, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1551 By: Harris
1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to missing children; providing a criminal penalty.
1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-12 SECTION 1. Subdivision (3), Article 63.001, Code of
1-13 Criminal Procedure, is amended to read as follows:

1-14 (3) "Missing child" means a child whose whereabouts
1-15 are unknown to the child's legal custodian, the circumstances of
1-16 whose absence indicate that:

1-17 (A) the child did not voluntarily leave the care
1-18 and control of the custodian, and the taking of the child was not
1-19 authorized by law;

1-20 (B) the child voluntarily left the care and
1-21 control of the ~~[his legal]~~ custodian without the custodian's
1-22 consent and without intent to return; ~~[or]~~

1-23 (C) the child was taken or retained in violation
1-24 of the terms of a court order for possession of or access to the
1-25 child; or

1-26 (D) the child was taken or retained without the
1-27 permission of the custodian and with the effect of depriving the
1-28 custodian of possession of or access to the child unless the taking
1-29 or retention of the child was prompted by the commission or
1-30 attempted commission of family violence, as defined by Section
1-31 71.004, Family Code, against the child or the actor.

1-32 SECTION 2. Section 25.03, Penal Code, is amended by
1-33 amending Subsection (a) and adding Subsections (c-1) and (c-2) to
1-34 read as follows:

1-35 (a) A person commits an offense if the person takes or
1-36 retains a child younger than 18 years of age ~~[when the person]:~~

1-37 (1) when the person knows that the person's taking or
1-38 retention violates the express terms of a judgment or order,
1-39 including a temporary order, of a court disposing of the child's
1-40 custody; ~~[or]~~

1-41 (2) when the person has not been awarded custody of the
1-42 child by a court of competent jurisdiction, knows that a suit for
1-43 divorce or a civil suit or application for habeas corpus to dispose
1-44 of the child's custody has been filed, and takes the child out of
1-45 the geographic area of the counties composing the judicial district
1-46 if the court is a district court or the county if the court is a
1-47 statutory county court, without the permission of the court and
1-48 with the intent to deprive the court of authority over the child; or

1-49 (3) outside the United States with the intent to
1-50 deprive a person entitled to possession of or access to the child of
1-51 that possession or access and without the permission of that
1-52 person.

1-53 (c-1) It is an affirmative defense to prosecution under
1-54 Subsection (a)(3) that:

1-55 (1) the taking or retention of the child was pursuant
1-56 to a valid order providing for possession of or access to the child;
1-57 or

1-58 (2) notwithstanding any violation of a valid order
1-59 providing for possession of or access to the child, the actor's
1-60 retention of the child was due only to circumstances beyond the
1-61 actor's control and the actor promptly provided notice or made
1-62 reasonable attempts to provide notice of those circumstances to the
1-63 other person entitled to possession of or access to the child.

2-1 (c-2) Subsection (a)(3) does not apply if, at the time of
2-2 the offense, the person taking or retaining the child:

2-3 (1) was entitled to possession of or access to the
2-4 child; and

2-5 (2) was fleeing the commission or attempted commission
2-6 of family violence, as defined by Section 71.004, Family Code,
2-7 against the child or the person.

2-8 SECTION 3. The change in law made by this Act in amending
2-9 Subdivision (3), Article 63.001, Code of Criminal Procedure,
2-10 applies only to the report of a missing child made under Chapter 63,
2-11 Code of Criminal Procedure, as amended by this Act, on or after the
2-12 effective date of this Act. The report of a missing child made
2-13 before the effective date of this Act is governed by the law in
2-14 effect when the report was made, and the former law is continued in
2-15 effect for that purpose.

2-16 SECTION 4. The change in law made by this Act in amending
2-17 Section 25.03, Penal Code, applies only to an offense committed on
2-18 or after the effective date of this Act. An offense committed
2-19 before the effective date of this Act is governed by the law in
2-20 effect on the date the offense was committed, and the former law is
2-21 continued in effect for that purpose. For purposes of this section,
2-22 an offense was committed before the effective date of this Act if
2-23 any element of the offense occurred before that date.

2-24 SECTION 5. This Act takes effect September 1, 2011.

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