

By: White

H.B. No. 3883

A BILL TO BE ENTITLED

AN ACT

1
2 relating to interference with possession of or access to a child;
3 providing penalties.

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

5 SECTION 1. Section 157.001, Family Code, is amended by
6 amending Subsections (a) and (b) and adding Subsections (f) and (g)
7 to read as follows:

8 (a) A motion for enforcement as provided in this chapter may
9 be filed to enforce any provision of a temporary or final order
10 rendered in a suit or an agreement under Rule 11, Texas Rules of
11 Civil Procedure.

12 (b) The court may enforce by contempt any provision of a
13 temporary or final order or an agreement under Rule 11, Texas Rules
14 of Civil Procedure.

15 (f) The court may render a temporary order for possession of
16 or access to a child for the purpose of enforcing an order
17 previously rendered by the court without a party initiating a
18 modification proceeding.

19 (g) A parent or conservator who interferes with or denies a
20 parent or conservator possession of or access to a child to which
21 the parent or conservator is entitled under a court order is subject
22 to:

23 (1) prosecution under Section 25.03, Penal Code, if
24 the conduct of the parent or conservator violates that section; and

1 (2) liability to the party who was deprived of
2 possession of or access to the child.

3 SECTION 2. Subchapter A, Chapter 157, Family Code, is
4 amended by adding Section 157.0021 to read as follows:

5 Sec. 157.0021. MOTION TO EXPEDITE ENFORCEMENT OF POSSESSION
6 ORDER. (a) If a party alleges that the other party has engaged in
7 conduct that violates Section 25.03, Penal Code, such that the
8 petitioner was deprived of possession of or access to the child, the
9 party may file a motion to expedite enforcement under this section.

10 (b) A motion under this section must be in substantially the
11 following form:

12 IN THE DISTRICT COURT OF _____ COUNTY

13 STATE OF TEXAS

14 _____, Petitioner/Plaintiff,

15 v.

16 _____, Respondent, Defendant.

17 Case No. _____

18 Assigned Judge _____

19 MOTION FOR EXPEDITED ENFORCEMENT OF POSSESSION ORDER

20 The undersigned conservator in the above case moves the
21 court, pursuant to the provisions of Chapter 157, Family Code, to
22 enforce possession or access time and rights, to which the
23 petitioner is entitled under a court order, that have been denied or
24 otherwise interfered with by the respondent. The name(s) and age(s)
25 of the child(ren) to which my possession or access time and rights
26 have been denied or interfered with are:

27 Name of Child: _____

1 Date of Birth:

2 Name of Child:

3 Date of Birth:

4 (Attach additional pages as necessary).

5 The first date of denial or interference with my
6 possession or access time with the child(ren) was:
7 _____.

8 I attempted to take possession of or have access to the
9 child(ren) by:_____ according to my
10 order as stated as follows:_____.

11 The next date of denial or interference with my
12 possession or access time with the child(ren) was:
13 _____.

14 I attempted to take possession of or have access to the
15 child(ren) by:_____ according to my
16 order as stated as follows:_____.

17 (Attach additional pages as necessary).

18 The total number of times that my possession or access time
19 was denied or interfered with was:_____.

20 I am moving the court to enforce my order dated _____
21 and signed by _____ and filed on
22 _____.

23 I am asking the court for the following remedies, (select the
24 remedies the petitioner is seeking):

25 (1) A specific enforceable time schedule compensating
26 possession or access time for the time denied or otherwise
27 interfered with, which time shall be of the same type (e.g.,

1 holiday, weekday, weekend, summer) or as otherwise agreed on by the
2 deprived conservator, and shall be at the convenience of the
3 deprived conservator.

4 (2) Awarding of reasonable enforcement costs to the
5 deprived conservator, including attorney's fees, costs of court,
6 and costs for bringing this action.

7 (3) A specific possession or access time schedule,
8 enforceable by contempt of court.

9 (4) A fine not to exceed \$500 per incident.

10 And further the petitioner requests the court to order one or
11 more of the following (select requested actions by court):

12 (1) Posting of a bond of cash or with sufficient
13 sureties, conditioned on compliance with the order specifying
14 possession or access.

15 (2) Attendance of counseling or educational sessions
16 that focus on the impact of possession or access disputes on
17 children and costs charged to the violating conservator.

18 (3) Supervised visitation.

19 (4) Any other remedy the court considers appropriate
20 (specify) _____.

21 Final disposition of a motion filed pursuant to this section
22 shall take place no later than 45 days after filing of the motion.

23 I have attached an affidavit stating the specific details as
24 to how and when my possession or access time and rights with the
25 child(ren) was denied.

26 Signed under penalties of perjury this _____ day
27 of _____, 20_____.

1 My Signature:_____

2 My Full Name:_____

3 My Mailing Address:_____

4 My Telephone Numbers:_____

5 The last four digits of my social security
6 number:_____

7 The last four digits of my driver's license:_____

8 The last four digits of the social security number of the
9 respondent, if known:_____

10 The last known address of the
11 respondent:_____

12 Subscribed and sworn to before me this _____ day of
13 _____, 20_____.

14 Notary Public (or Clerk or Judge) Name and Signature
15 _____.

16 My Commission Expires:_____.

17 (c) A respondent's order to appear following a motion under
18 this section must be in substantially the following form:

19 ORDER TO APPEAR

20 The State of Texas, to the within-named respondent: You are
21 hereby directed to appear and answer the foregoing claim and to have
22 with you all books, papers, and witnesses needed by you to establish
23 your defense to the claim.

24 This matter shall be heard at _____ (name or
25 address of building), in _____, County of _____,
26 State of Texas, at _____ (time) of the _____ day of
27 _____, 20_____.

1 And you are further notified that in case you do not so appear
2 judgment may be entered against you as follows:

3 For the enforcement or modification of possession of or
4 access to a child as requested by the petitioner.

5 And, in addition, for costs of the action (including
6 attorney's fees where provided by law), including costs of service
7 of the order.

8 A fine of up to \$500 for each incident of violation.

9 Dated this _____ day of _____, 20_____.

10 Clerk of the Court (or Judge) _____.

11 A copy of this order must be mailed by certified mail, return
12 receipt requested, to the respondent and return of service brought
13 to the hearing.

14 A FINDING OF CONTEMPT MAY BE PUNISHED BY CONFINEMENT IN JAIL
15 FOR UP TO SIX MONTHS, A FINE OF UP TO \$500 FOR EACH VIOLATION, AND A
16 MONEY JUDGMENT FOR PAYMENT OF ATTORNEY'S FEES AND COURT COSTS.

17 SECTION 3. Section 157.061(b), Family Code, is amended to
18 read as follows:

19 (b) If the motion for enforcement does not request contempt,
20 the court shall set the motion for hearing on the request of a party
21 not later than the 14th day after the date the party makes the
22 request.

23 SECTION 4. Section 157.062(c), Family Code, is amended to
24 read as follows:

25 (c) Notice of hearing on a motion for enforcement of a final
26 order, temporary order, or agreement under Rule 11, Texas Rules of
27 Civil Procedure, providing for child support or possession of or

1 access to a child, any provision of a final order rendered against a
2 party who has already appeared in a suit under this title, or any
3 provision of a temporary order shall be given to the respondent not
4 later than the 10th day before the date of the hearing by personal
5 service of a copy of the motion and notice or through certified mail
6 to the last known address of the respondent as recorded by the court
7 [~~not later than the 10th day before the date of the hearing~~]. For
8 purposes of this subsection, "temporary order" includes a temporary
9 restraining order, standing order, injunction, and any other
10 temporary order rendered by a court.

11 SECTION 5. Section [157.166](#), Family Code, is amended by
12 adding Subsection (d) to read as follows:

13 (d) An order granted under this section must contain the
14 following statement:

15 WARNING TO PARTIES: FAILURE TO OBEY A COURT ORDER FOR
16 POSSESSION OF OR ACCESS TO A CHILD MAY RESULT IN FURTHER LITIGATION
17 TO ENFORCE THE ORDER, INCLUDING CONTEMPT OF COURT. A FINDING OF ANY
18 VIOLATION OF THIS ORDER SHALL BE PUNISHED.

19 SECTION 6. Subchapter D, Chapter [157](#), Family Code, is
20 amended by adding Section 157.169 to read as follows:

21 Sec. 157.169. ADDITIONAL REMEDIES. If the court finds that
22 a party has engaged in conduct described by Section [25.03](#), Penal
23 Code, a court may order one or more of the following remedies:

24 (1) a fine not to exceed \$500 for each incident of
25 interference or denial of possession or access time;

26 (2) a specific possession or access schedule,
27 enforceable by contempt;

1 (3) posting of a bond by cash or with sufficient
2 sureties, conditioned on compliance with the order specifying
3 possession or access;

4 (4) attendance of counseling or educational sessions
5 that focus on the impact of possession and access disputes on
6 children;

7 (5) supervised visitation; or

8 (6) any other remedy the court considers appropriate,
9 which may include an order which modifies a prior order specifying
10 possession of or access to the child.

11 SECTION 7. Section 25.03, Penal Code, is amended by
12 amending Subsections (a), (b), (c), (c-1), and (c-2) and adding
13 Subsections (b-1) and (b-2) to read as follows:

14 (a) A person commits an offense if the person takes or
15 retains a child younger than 18 years of age:

16 (1) when the person knows that the person's taking or
17 retention violates the express terms of a judgment or order,
18 including a temporary order, of a court disposing of the child's
19 custody;

20 (2) when the person has not been awarded custody of the
21 child by a court of competent jurisdiction, knows that a suit for
22 divorce or a civil suit or application for habeas corpus to dispose
23 of the child's custody has been filed, and takes the child out of
24 the geographic area of the counties composing the judicial district
25 if the court is a district court or the county if the court is a
26 statutory county court:

27 (A) [7] without the permission of the court and

1 with the intent to deprive the court of authority over the child; or

2 (B) without the permission of each parent,
3 managing conservator, or guardian of the child;

4 (3) outside of the United States with the intent to
5 deprive a person entitled to possession of or access to the child of
6 that possession or access and without the permission of that
7 person; or

8 (4) during a period of possession or access granted by
9 the court under a judgment or order to a parent, conservator, or
10 guardian of the child with the intent to:

11 (A) violate a court judgment or order; and

12 (B) prevent the parent, conservator, or guardian
13 of the child from having custody of the child during the period of
14 possession of or access to the child granted by the court.

15 (b) A person [~~noncustodial parent~~] commits an offense if,
16 with the intent to interfere with the lawful custody of a child
17 younger than 18 years, the person [~~noncustodial parent~~] knowingly
18 entices or persuades the child to leave the custody of the person
19 who is entitled to custody of the child at the time of the offense,
20 including the [~~custodial~~] parent, guardian, or person standing in
21 the stead of the [~~custodial~~] parent or guardian of the child.

22 (b-1) It is not a defense to prosecution under Subsection
23 (a)(4) that at the time of the offense the child refused to go with
24 the person who is entitled to custody of the child at that time.

25 (b-2) It is not a defense to prosecution under Subsection
26 (b) that the person entitled to custody of the child is the
27 noncustodial parent of the child.

1 (c) It is a defense to prosecution under Subsection (a)(2)
2 that the actor returned the child to the geographic area of the
3 counties composing the judicial district if the court is a district
4 court or the county if the court is a statutory county court, within
5 24 hours [~~three days~~] after the time [~~date~~] of the commission of the
6 offense.

7 (c-1) It is an affirmative defense to prosecution under
8 Subsection (a)(3) or (a)(4) that:

9 (1) the taking or retention of the child was pursuant
10 to a valid order providing for possession of or access to the child;
11 or

12 (2) notwithstanding any violation of a valid order
13 providing for possession of or access to the child, the actor's
14 retention of the child was due only to circumstances beyond the
15 actor's control and:

16 (A) the actor promptly provided notice or made
17 reasonable attempts to provide notice of those circumstances to the
18 other person entitled to possession of or access to the child and to
19 local law enforcement in the municipality or county in which the
20 other person resides; and

21 (B) not later than 24 hours after the time the
22 violation of Subsection (a)(3) or (a)(4) occurred:

23 (i) the actor delivers the child to the
24 person entitled to custody or to local law enforcement; or

25 (ii) a court has issued an emergency order
26 authorizing the actor to retain possession of the child.

27 (c-2) Subsection (a)(3) or (a)(4) does not apply if, at the

1 time of the offense, the actor [~~person taking or retaining the~~
2 ~~child~~]:

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

5 (2) was fleeing the commission or attempted commission
6 of family violence, as defined by Section 71.004, Family Code,
7 against the child or the actor, provided that:

8 (A) a protective order under Title 4, Family
9 Code, or a magistrate's order for emergency protection under
10 Article 17.292, Code of Criminal Procedure, is in effect;

11 (B) an application for a protective order has
12 been filed under Title 4, Family Code; or

13 (C) not later than the 14th day after the date the
14 actor took or retained the child in violation of this section, the
15 actor filed an application for a protective order under Title 4,
16 Family Code [~~person~~].

17 SECTION 8. Chapter 157, Family Code, as amended by this Act,
18 applies only to an enforcement action commenced on or after the
19 effective date of this Act.

20 SECTION 9. Section 25.03, Penal Code, as amended by this
21 Act, applies only to an offense committed on or after the effective
22 date of this Act. An offense committed before the effective date of
23 this Act is governed by the law in effect on the date the offense was
24 committed, and the former law is continued in effect for that
25 purpose. For purposes of this section, an offense was committed
26 before the effective date of this Act if any element of the offense
27 occurred before that date.

1 SECTION 10. This Act takes effect September 1, 2017.