

SUBJECT: Increasing penalty for interference with child custody

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Talton, Dunnam, Galloway, Hinojosa, Keel, Nixon, A. Reyna
0 nays
2 absent — Place, Farrar

WITNESSES: None

DIGEST: HB 1259 would increase the penalty for interference with child custody from a state jail felony (six months to two years in a state jail and an optional fine of up to \$10,000) to a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) or a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000). The offense would be a second-degree felony if: (1) committed for remuneration or the promise of remuneration or (2) if the child was removed from Texas during the commission of the offense.

The bill also would make it offense for a person to *retain* a child out of the geographic area of a court's jurisdiction if the person did not have custody of the child or if a suit for divorce or other suit concerning the child's custody had been filed, if done with intent to deprive the court of authority over the child. Currently, it is an offense to *take* the child out of the court's jurisdiction with intent to deprive the court of authority over the child.

HB 1259 would take effect September 1, 1997.

SUPPORTERS SAY: HB 1259 is necessary to adequately punish persons who interfere with child custody and to deter others from committing the crime. Before the Penal Code was revised in 1993, interference with child custody was a third-degree felony. The 1993 revisions went too far by making this offense a state jail felony, which carries only jail time that in some circumstances must be suspended and the offender placed on community supervision (probation). Interfering with child custody is a serious crime that violates an explicit court order and can affect the well being of children and should be

punished as a third-degree felony. If the offense is done for profit or if the child is taken out of state, the crime should carry the even harsher penalty of a second-degree felony.

HB 1259 would close a loophole in current law by making it an offense to *retain* a child out of the geographic area of a court's jurisdiction. This would ensure that persons who are keeping a child in violation of a custody agreement would be committing an offense even if they are not the person who took the child out of the area. The offense would have to be done with intent to deprive the court of its authority over the child, ensuring that someone who did not know a child was being held in violation of a custody agreement would not be committing an offense.

The state has ample prison capacity to deal with offenders sentenced to prison for interference with child custody. The criminal justice policy impact statement estimates that the demand for resources that would result from HB 1259 would probably not be substantial.

OPPONENTS
SAY:

When the Penal Code was revised in 1993, offenses and punishments were carefully ranked according to severity. Interference with child custody was made a state jail felony because it is a nonviolent offense that should carry a punishment lower than the violent or invasive crimes that were ranked as first-, second- and third-degree felonies. HB 1259 would upset this ranking of offenses by making interference with child custody a third- or second-degree felony. These punishments should be reserved for serious, violent crimes that affect public safety. It would be an unwise use of the state's resources to use prison space for persons who interfere with child custody.

NOTES:

The companion bill, SB 1140 by Ellis, has been referred to the Senate Criminal Justice Committee. HB 1241 by Wilson and HB 1382 by Janek are identical to HB 1259 and have been referred to the House Criminal Jurisprudence Committee.