

By Senator Rossin

35-288-00

1 A bill to be entitled
2 An act relating to interference with custody;
3 amending s. 787.03, F.S.; providing that it is
4 an additional defense to the offense of
5 interference with custody to be a victim of
6 domestic violence or believe that interference
7 with custody is necessary to protect a person
8 from domestic violence; prescribing duties of
9 any person who takes a minor child when fleeing
10 from situations of actual or threatened
11 domestic violence; providing an effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Section 787.03, Florida Statutes, is
16 amended to read:

17 787.03 Interference with custody.--

18 (1) Whoever, without lawful authority, knowingly or
19 recklessly takes or entices, or aids, abets, hires, or
20 otherwise procures another to take or entice, any child 17
21 years of age or under or any incompetent person from the
22 custody of the child or incompetent person's parent, his or
23 her guardian, a public agency having the lawful charge of the
24 child or incompetent person, or any other lawful custodian
25 commits the offense of interference with custody and commits
26 ~~shall be guilty of~~ a felony of the third degree, punishable as
27 provided in s. 775.082, s. 775.083, or s. 775.084.

28 (2) In the absence of a court order determining rights
29 to custody or visitation with any child 17 years of age or
30 under or with any incompetent person, any parent of the child
31 or incompetent person, whether natural or adoptive,

1 stepparent, legal guardian, or relative of such child or
2 incompetent person who has custody thereof and who takes,
3 detains, conceals, or entices away that child or incompetent
4 person within or without the state, with malicious intent to
5 deprive another person of his or her right to custody of the
6 child or incompetent person, commits ~~shall be guilty of~~ a
7 felony of the third degree, punishable as provided in s.
8 775.082, s. 775.083, or s. 775.084.

9 (3) A subsequently obtained court order for custody or
10 visitation does ~~shall~~ not affect application of this section.

11 (4) It is a defense that:

12 (a) The defendant reasonably believes that his or her
13 action was necessary to preserve the child or the incompetent
14 person from danger to his or her welfare.

15 (b) The defendant was the victim of an act of domestic
16 violence or had reasonable cause to believe that his or her
17 action was necessary to protect himself or herself from an act
18 of domestic violence as defined in s. 741.28.

19 (c)~~(b)~~ The child or incompetent person was taken away
20 at his or her own instigation without enticement and without
21 purpose to commit a criminal offense with or against the child
22 or incompetent person.

23 (5) Proof that a child was 17 years of age or under
24 creates the presumption that the defendant knew the child's
25 age or acted in reckless disregard thereof.

26 (6)(a) This section does ~~shall~~ not apply in cases
27 where a spouse who is the victim of any act of domestic
28 violence or who has reasonable cause to believe he or she is
29 about to become the victim of any act of domestic violence, as
30 defined in s. 741.28, or believes that his or her action was
31 necessary to preserve the child or the incompetent person from

1 danger to his or her welfare seeks shelter from such acts or
2 possible acts and takes with him or her any child 17 years of
3 age or younger.

4 (b) In order to gain the exemption conferred by
5 paragraph (a), a person who takes a child pursuant to this
6 subsection must:

7 1. Within 10 days after taking the child, make a
8 report to the sheriff's office or state attorney's office for
9 the county in which the child resided at the time he or she
10 was taken, which report must include the name of the person
11 taking the child, the current address and telephone number of
12 the person and child, and the reasons the child was taken.

13 2. Within a reasonable time after taking the child,
14 commence a custody proceeding that is consistent with the
15 federal Parental Kidnapping Prevention Act, 28 U.S.C. s.
16 1738A, or the Uniform Child Custody Jurisdiction Act, ss.
17 61.1302-61.1348.

18 3. Inform the sheriff's office or state attorney's
19 office for the county in which the child resided at the time
20 he or she was taken of any change of address or telephone
21 number of the person and child.

22 Section 2. This act shall take effect July 1, 2000.

23
24 *****

25 SENATE SUMMARY

26 Provides that it is a defense to the offense of
27 interference with custody if the person who takes the
28 minor child is a victim of domestic violence or believes
29 that interference with custody is necessary to protect
30 him or her from domestic violence. Provides that the
31 defense does not apply unless the person who takes the
child reports to the office of the sheriff or state
attorney in the county in which the child resided and
commences a custody proceeding within a reasonable time.