

STORAGE NAME: h0447a.cp

DATE: April 5, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
ANALYSIS**

BILL #: HB 447

RELATING TO: Interference With Custody

SPONSOR(S): Representative A. Greene

TIED BILL(S): HB 449

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME AND PUNISHMENT YEAS 6 NAYS 0
 - (2) FAMILY LAW AND CHILDREN
 - (3) GOVERNMENTAL OPERATIONS
 - (4) CRIMINAL JUSTICE APPROPRIATIONS
 - (5)
-

I. SUMMARY:

Currently s. 787.03, F.S., provides that a person commits the third degree felony offense of interference with custody if he or she: (1) does not have custody and knowingly or recklessly takes an incompetent person or child from his or her custodial guardian; or (2) has custody and with a malicious intent takes the incompetent person or child away for the purpose of depriving another person of his or her right to custody. However, a spouse who takes a child is exempted from criminal liability for these offenses if the purpose of the taking is to seek shelter from domestic violence, or to protect the child from danger.

HB 447 amends s. 787.03(4), F.S., to specifically create a defense to a charge of interference with child custody if the defendant was the victim of domestic violence or had reasonable cause to believe that his or her actions were necessary to protect himself or herself from an act of domestic violence.

HB 447 also amends s. 787.03, F.S., by adding that in order for a spouse who takes a child to fall within the exemption from criminal liability, the spouse must, within 10 days, report the taking to the sheriff's office or the state attorney, and commence custody proceedings.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

1. Less Government: to the extent this bill would require persons to pursue a child custody proceeding in order to qualify for the defense provided in this bill, it could be viewed as increasing the demand for government action under these circumstances.

B. PRESENT SITUATION:

Section 787.03, F.S., addresses interference with custody. Under subsection (1), it is a third degree felony for a person, who does not have custody, to knowingly or recklessly take or entice an incompetent person or child, or to aid, abet, hire or procure another to take or entice an incompetent person or child from the custody of his or her parent, guardian, lawful custodian, or the agency having charge of that person. Under subsection (2), it is a third degree felony for a person, who has custody of an incompetent person or child, to take, detain, conceal or entice the incompetent person or child away, with the malicious intent to deprive another person of his or her right to custody. A child is defined as a person under 17 years of age.

Subsection (4) provides that the following constitutes a defense to the aforementioned offenses:

- ▶ The defendant reasonably believes that his or her action was necessary to preserve the child or the incompetent person from danger to his or her welfare.
- ▶ The child or incompetent person was taken away at his or her own instigation without enticement and without purpose to commit a criminal offense with or against the child or incompetent person.

Moreover, subsection (6) specifically exempts a spouse from criminal liability for the interference with custody offenses if the spouse takes a child for the purpose of seeking shelter from actual or threatened domestic violence, or to protect the child from danger.

C. EFFECT OF PROPOSED CHANGES:

HB 447 amends s. 787.03(4), F.S., to specifically create a defense to a charge of interference with child custody if the defendant was the victim of domestic violence or had reasonable cause to believe that his or her actions were necessary to protect himself or herself from an act of domestic violence.

The also bill amends s. 787.03(6), F.S., the subsection which exempts spouses in domestic violence cases from criminal liability under the section, to create a new paragraph (b). This new paragraph will require that a person taking a child pursuant to subsection (6) must:

- ▶ report, within 10 days, to the sheriff's or the state attorney's office for the county in which the child resided, the name of the person taking the child, the child's name, address, telephone number, and the reason for taking the child;
- ▶ commence a custody proceeding, within a reasonable time; and
- ▶ inform the relevant sheriff's or state attorney's office of any change in the address or telephone number of the person and the child.

D. SECTION-BY-SECTION ANALYSIS:

See, Effects of Proposed Changes.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See, Fiscal Comments.

2. Expenditures:

See, Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

No fiscal impact is foreseen with this bill since the reporting process should be achievable with current resources.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

Under current law, a spouse, who takes a child, may avoid liability for the interference with custody offenses by asserting that the taking was due to domestic violence or for the protection of the child. In some cases, it is extremely difficult for the state to disprove a spouse's assertion that the taking was caused by domestic violence when this assertion is not made until years after the taking. In many cases, a spouse who has unlawfully taken a child is not located until years after the taking. Accordingly, the bill's amendment to s. 787.03(6), F.S., should have the effect of mitigating this problem by requiring the taking spouse to report the taking within 10 days, and to initiate custody proceedings within a reasonable time before the statutory liability exemption can apply.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

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VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

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