



1 ~~17 years of age or under~~ or any incompetent person from the  
2 custody of the minor's child or incompetent person's parent,  
3 his or her guardian, a public agency having the lawful charge  
4 of the minor child or incompetent person, or any other lawful  
5 custodian commits the offense of interference with custody and  
6 commits a felony of the third degree, punishable as provided  
7 in s. 775.082, s. 775.083, or s. 775.084.

8 (2) In the absence of a court order determining rights  
9 to custody or visitation with any minor child ~~17 years of age~~  
10 ~~or under~~ or with any incompetent person, any parent of the  
11 minor child or incompetent person, whether natural or  
12 adoptive, stepparent, legal guardian, or relative of the minor  
13 ~~such child~~ or incompetent person who has custody thereof and  
14 who takes, detains, conceals, or entices away that minor child  
15 or incompetent person within or without the state, with  
16 malicious intent to deprive another person of his or her right  
17 to custody of the minor child or incompetent person, commits a  
18 felony of the third degree, punishable as provided in s.  
19 775.082, s. 775.083, or s. 775.084.

20 (3) A subsequently obtained court order for custody or  
21 visitation does not affect application of this section.

22 (4) It is a defense that:

23 (a) The defendant had reasonable cause to believe  
24 ~~reasonably believes~~ that his or her action was necessary to  
25 preserve the minor child or the incompetent person from danger  
26 to his or her welfare.

27 (b) The defendant was the victim of an act of domestic  
28 violence or had reasonable cause to believe that he or she was  
29 about to become the victim of his or her action was necessary  
30 ~~to protect himself or herself from~~ an act of domestic violence  
31 as defined in s. 741.28, and the defendant had reasonable

1 cause to believe that the action was necessary in order for  
2 the defendant to escape from, or protect himself or herself  
3 from, the domestic violence or to preserve the minor or  
4 incompetent person from exposure to the domestic violence.

5 (c) The minor child or incompetent person was taken  
6 away at his or her own instigation without enticement and  
7 without purpose to commit a criminal offense with or against  
8 the minor child or incompetent person, and the defendant  
9 establishes that it was reasonable to rely on the instigating  
10 acts of the minor or incompetent person.

11 (5) Proof that a person has not attained the age of 18  
12 years child was 17 years of age or under creates the  
13 presumption that the defendant knew the minor's child's age or  
14 acted in reckless disregard thereof.

15 (6)(a) This section does not apply in cases in which  
16 where a person having a legal right to custody of a minor or  
17 incompetent person spouse who is the victim of any act of  
18 domestic violence, or who has reasonable cause to believe he  
19 or she is about to become the victim of any act of domestic  
20 violence, as defined in s. 741.28, or believes that his or her  
21 action was necessary to preserve the minor child or the  
22 incompetent person from danger to his or her welfare and seeks  
23 shelter from such acts or possible acts and takes with him or  
24 her the minor or incompetent person any child 17 years of age  
25 or younger.

26 (b) In order to gain the exception exemption conferred  
27 by paragraph (a), a person who takes a minor or incompetent  
28 person under child pursuant to this subsection must:

29 1. Within 10 days after taking the minor or  
30 incompetent person child, make a report to the sheriff's  
31 office or state attorney's office for the county in which the

1 minor or incompetent person ~~child~~ resided at the time he or  
2 she was taken, which report must include the name of the  
3 person taking the minor or incompetent person ~~child~~, the  
4 current address and telephone number of the person and minor  
5 or incompetent person ~~child~~, and the reasons the minor or  
6 incompetent person ~~child~~ was taken.

7 2. Within a reasonable time after taking a minor ~~the~~  
8 ~~child~~, commence a custody proceeding that is consistent with  
9 the federal Parental Kidnapping Prevention Act, 28 U.S.C. s.  
10 1738A, or the Uniform Child Custody Jurisdiction and  
11 Enforcement Act, ss. 61.501-61.542.

12 3. Inform the sheriff's office or state attorney's  
13 office for the county in which the minor or incompetent person  
14 ~~child~~ resided at the time he or she was taken of any change of  
15 address or telephone number of the person and the minor or  
16 incompetent person ~~child~~.

17 Section 2. This act shall take effect October 1, 2006.

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19 \*\*\*\*\*

20 SENATE SUMMARY

21 Revises various elements of the offense of interference  
22 with custody to clarify that the offense applies to the  
23 taking of a minor as well as an incompetent person.  
24 Provides that domestic violence, the threat of domestic  
25 violence, and a reasonable reliance upon an instigating  
26 act of the minor or incompetent person are defenses to  
27 the offense of interference with custody. Provides that a  
28 taking by a person having the legal right to custody of  
29 the minor or incompetent person does not constitute  
30 interference with custody. Requires that a person  
31 lawfully taking an incompetent person follow the same  
procedures required following the lawful taking of a  
minor.