## Florida Senate - 2006 (PROPOSED COMMITTEE BILL)SPB 7040FOR CONSIDERATION By the Committee on Judiciary

590-597B-06

1	A bill to be entitled
2	An act relating to interference with custody;
3	amending s. 787.03, F.S.; specifying that the
4	offense of interference with custody applies to
5	the taking of a minor; revising a defense for a
6	person who is a victim of domestic violence to
7	require that interference with custody is
8	necessary to escape the violence or to preserve
9	the minor or incompetent person from exposure
10	to the violence; revising a defense when a
11	minor or incompetent person instigates his or
12	her taking to require a showing that it was
13	reasonable for the defendant to rely upon the
14	instigating acts; broadening an exception from
15	the statute beyond a spouse to include certain
16	other persons who take a minor or incompetent
17	person and follow prescribed procedures;
18	including the taking of an incompetent person
19	within those procedures required under the
20	statutory exception; providing an effective
21	date.
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23	Be It Enacted by the Legislature of the State of Florida:
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25	Section 1. Subsections (1), (2), (3), (4), and (5),
26	and paragraphs (a) and (b) of subsection (6) of section
27	787.03, Florida Statutes, are amended to read:
28	787.03 Interference with custody
29	(1) Whoever, without lawful authority, knowingly or
30	recklessly takes or entices, or aids, abets, hires, or
31	otherwise procures another to take or entice, any <u>minor</u> <del>child</del>
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1 17 years of age or under or any incompetent person from the custody of the minor's child or incompetent person's parent, 2 3 his or her guardian, a public agency having the lawful charge of the minor child or incompetent person, or any other lawful 4 custodian commits the offense of interference with custody and 5 б 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 or under or with any incompetent person, any parent of the 10 minor child or incompetent person, whether natural or 11 12 adoptive, stepparent, legal guardian, or relative of the minor 13 such child or incompetent person who has custody thereof and who takes, detains, conceals, or entices away that minor child 14 or incompetent person within or without the state, with 15 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. 775.082, s. 775.083, or s. 775.084. 19 (3) A subsequently obtained court order for custody or 20 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 2.4 reasonably believes that his or her action was necessary to preserve the minor child or the incompetent person from danger 25 26 to his or her welfare. 27 (b) The defendant was the victim of an act of domestic 2.8 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 to protect himself or herself from an act of domestic violence 30 as defined in s. 741.28, and the defendant had reasonable 31

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1 cause to believe that the action was necessary in order for 2 the defendant to escape from, or protect himself or herself from, the domestic violence or to preserve the minor or 3 4 incompetent person from exposure to the domestic violence. 5 (c) The minor child or incompetent person was taken б 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 establishes that it was reasonable to rely on the instigating 9 acts of the minor or incompetent person. 10 (5) Proof that a person has not attained the age of 18 11 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 acted in reckless disregard thereof. 14 (6)(a) This section does not apply in cases in which 15 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 or she is about to become the victim of any act of domestic 19 violence, as defined in s. 741.28, or believes that his or her 20 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 2.4 her the minor or incompetent person any child 17 years of age 25 <del>or younger</del>. 26 (b) In order to gain the <u>exception</u> conferred 27 by paragraph (a), a person who takes a minor or incompetent 2.8 person under child pursuant to this subsection must: 29 1. Within 10 days after taking the minor or incompetent person child, make a report to the sheriff's 30 office or state attorney's office for the county in which the 31 3

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1 minor or incompetent person <del>child</del> 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 <del>child</del>, and the reasons the minor or 6 incompetent person child was taken. 7 2. Within a reasonable time after taking <u>a minor</u> the 8 child, commence a custody proceeding that is consistent with 9 the federal Parental Kidnapping Prevention Act, 28 U.S.C. s. 1738A, or the Uniform Child Custody Jurisdiction and 10 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 child resided at the time he or she was taken of any change of 14 address or telephone number of the person and the minor or 15 16 incompetent person child. 17 Section 2. This act shall take effect October 1, 2006. 18 19 SENATE SUMMARY 20 21 Revises various elements of the offense of interference with custody to clarify that the offense applies to the taking of a minor as well as an incompetent person. Provides that domestic violence, the threat of domestic 2.2 23 violence, and a reasonable reliance upon an instigating act of the minor or incompetent person are defenses to 2.4 the offense of interference with custody. Provides that a taking by a person having the legal right to custody of 25 the minor or incompetent person does not constitute interference with custody. Requires that a person lawfully taking an incompetent person follow the same 26 procedures required following the lawful taking of a 27 minor. 2.8 29 30 31 4

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