

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 minor child

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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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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.