

By the Committees on Criminal Justice; and Judiciary

591-1722-06

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; clarifying which offenses  
21          may be covered by the exception; providing an  
22          effective date.

23  
24 Be It Enacted by the Legislature of the State of Florida:

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26           Section 1. Subsections (1), (2), (3), (4), and (5),  
27 and paragraphs (a) and (b) of subsection (6) of section  
28 787.03, Florida Statutes, are amended to read:

29           787.03 Interference with custody.--

30           (1) Whoever, without lawful authority, knowingly or  
31 recklessly takes or entices, or aids, abets, hires, or

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

9 (2) In the absence of a court order determining rights  
10 to custody or visitation with any minor child ~~17 years of age~~  
11 ~~or under~~ or with any incompetent person, any parent of the  
12 minor child or incompetent person, whether natural or  
13 adoptive, stepparent, legal guardian, or relative of the minor  
14 ~~such child~~ or incompetent person who has custody thereof and  
15 who takes, detains, conceals, or entices away that minor child  
16 or incompetent person within or without the state, with  
17 malicious intent to deprive another person of his or her right  
18 to custody of the minor child or incompetent person, commits a  
19 felony of the third degree, punishable as provided in s.  
20 775.082, s. 775.083, or s. 775.084.

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

23 (4) It is a defense that:

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

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

1 as defined in s. 741.28, and the defendant had reasonable  
2 cause to believe that the action was necessary in order for  
3 the defendant to escape from, or protect himself or herself  
4 from, the domestic violence or to preserve the minor or  
5 incompetent person from exposure to the domestic violence.

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

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

16 (6)(a) The offenses prescribed in subsections (1) and  
17 (2) do ~~This section does not apply in cases in which~~ where a  
18 person having a legal right to custody of a minor or  
19 incompetent person ~~spouse who~~ is the victim of any act of  
20 domestic violence, ~~or who~~ has reasonable cause to believe he  
21 or she is about to become the victim of any act of domestic  
22 violence, as defined in s. 741.28, or believes that his or her  
23 action was necessary to preserve the minor ~~child~~ or the  
24 incompetent person from danger to his or her welfare and seeks  
25 shelter from such acts or possible acts and takes with him or  
26 her the minor or incompetent person ~~any child 17 years of age~~  
27 ~~or younger.~~

28 (b) In order to gain the exception ~~exemption~~ conferred  
29 by paragraph (a), a person who takes a minor or incompetent  
30 person under ~~child pursuant to~~ this subsection must:  
31

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

10           2. Within a reasonable time after taking a minor ~~the~~  
11 ~~child~~, commence a custody proceeding that is consistent with  
12 the federal Parental Kidnapping Prevention Act, 28 U.S.C. s.  
13 1738A, or the Uniform Child Custody Jurisdiction and  
14 Enforcement Act, ss. 61.501-61.542.

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

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

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22                           STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
23   COMMITTEE SUBSTITUTE FOR  
24   Senate Bill 708

25 Clarifies existing language in s. 787.03(6)(a), F.S., to  
26 specify that the exception to prosecution provided in the  
27 statute applies to the specific offenses of interference with  
28 custody. (As currently worded, the statute provides that "this  
29 section does not apply" in certain circumstances, which  
30 creates ambiguity about the effect of this provision on the  
31 application of related provisions in s. 787.03, F.S., such as  
the public records exemption.)