

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Judiciary Committee

BILL: SB 710

INTRODUCER: Judiciary Committee

SUBJECT: Review Under the Open Government Sunset Review Act

DATE: January 24, 2006

REVISED: 01/26/06

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Maclure</u>	<u>Maclure</u>	<u>JU</u>	<u>Fav/3 amendments</u>
2.	<u></u>	<u></u>	<u>CJ</u>	<u></u>
3.	<u></u>	<u></u>	<u>GO</u>	<u></u>
4.	<u></u>	<u></u>	<u>RC</u>	<u></u>
5.	<u></u>	<u></u>	<u></u>	<u></u>
6.	<u></u>	<u></u>	<u></u>	<u></u>

## Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

### I. Summary:

Senate Bill 710 stems from Interim Project Report 2006-142 of the Committee on Judiciary relating to the criminal offense of interference with custody. The bill saves from repeal and revises an existing public-records exemption for certain information provided to the sheriff or the state attorney by a person who seeks shelter with a child and wants to utilize an exception afforded by the statute.

Specifically, the bill:

- Expands the public-records exemption to include address and telephone information for an incompetent person who is taken, in addition to the same information for a child.
- Narrows the public-records exemption by no longer providing confidential-and-exempt status for the name of the person who does the taking.
- Provides that the protected information may be released after an investigation is complete – if the sheriff or state attorney determines that the safety of individuals would not be jeopardized.
- Authorizes the confidential information to be shared with an agency in the conduct of official business.
- Provides a statement of public necessity offering a rationale for expansion of the public-records exemption.

The bill's effective date is contingent upon the passage of Senate Bill 708 or similar legislation making changes to the underlying offense of interference with custody.

This bill substantially amends section 787.03, Florida Statutes.

## II. Present Situation:

### Interference with Custody

The Legislature created the offense of interference with custody in 1974 and has enacted multiple revisions to the relevant statute since. Today, there are two variations to the offense. Under one provision, it is a third-degree felony for any person – without legal authority – to knowingly or recklessly take a child 17 years of age or under or any incompetent person from the custody of his or her parent, a guardian, a public agency in charge of the child or incompetent person, or any other lawful custodian.<sup>1</sup> Under the second provision, it is a third-degree felony – in the absence of a court order determining custody or visitation rights – for a parent, stepparent, guardian, or relative who has custody of a child or incompetent person to take or conceal the child or incompetent person with a malicious intent to deprive another person of his or her right to custody.<sup>2</sup>

There are three statutory defenses to the offense of interference with custody:

(a) 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.

(b) The defendant was the victim of an act of domestic violence or had reasonable cause to believe that his or her action was necessary to protect himself or herself from an act of domestic violence as defined in s. 741.28.

(c) 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.<sup>3</sup>

The defense related to the welfare of the person taken and the defense related to instigation by the person taken were part of the original enactment of the inference-with-custody law. The Legislature added the domestic-violence defense in 2000.

Distinct from the three defenses, the Legislature in 1988 specified that the statute does not apply at all:

in cases where a spouse who is the victim of any act of domestic violence or who has reasonable cause to believe he or she is about to become the victim of any act of domestic violence ... or believes that his or her action was

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<sup>1</sup> Section 787.03(1), F.S.

<sup>2</sup> Section 787.03(2), F.S.

<sup>3</sup> Section 787.03(4)(a)-(c), F.S.

necessary to preserve the child or the incompetent person from danger to his or her welfare seeks shelter from such acts or possible acts and takes with him or her any child 17 years of age or younger.<sup>4</sup>

Until 2000, there were no particular requirements associated with this apparent statutory exception. At that time, however, the Legislature further revised the statute to provide that, in order to avail herself or himself of the exception for spouses, a person who takes a child must comply with each of the following requirements:

- Within 10 days of the taking, make a report to the sheriff or state attorney for the county in which the child resided. The report must include the name of the person taking the child, the current address and telephone number of the person and the child, and the reasons the child was taken.
- Within a reasonable time of the taking, commence a custody proceeding consistent with the federal Parental Kidnapping Prevention Act or the Uniform Child Custody Jurisdiction and Enforcement Act.
- Inform the sheriff or state attorney of any address or telephone number changes for the person and the child.<sup>5</sup>

### **Accompanying Public-Records Exemption**

Under an accompanying public-records exemption, the name of the person taking the child and the current address and telephone number of that person and the child, contained in the report made to the sheriff or state attorney, are confidential and exempt from public disclosure.<sup>6</sup> As originally enacted in 2000, this exemption applied to “information provided” to a sheriff or state attorney as part of the report filed within 10 days of taking a child. Under the original broader wording, the public-records exemption captured not only the name and address information, but also the reasons the child was taken.<sup>7</sup> The public-records exemption was scheduled for repeal on October 2, 2005. An Open Government Sunset Review of this exemption, conducted during the 2004-2005 interim legislative period, recommended that the Legislature narrow the exemption to exclude the reason the child was taken.<sup>8</sup>

During the 2005 Regular Session, the Legislature saved the public-records exemption from then-imminent repeal. The Legislature, consistent with the Open Government Sunset Review report, also narrowed the exemption, removing the reason the child was taken from the protection from public disclosure afforded by the public-records exemption.<sup>9</sup>

### **Senate Interim Project**

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<sup>4</sup> Section 787.03(6)(a), F.S.

<sup>5</sup> Section 787.03(6)(b), F.S.

<sup>6</sup> Section 787.03(6)(c), F.S.

<sup>7</sup> See s. 787.03(6)(c), F.S. (2000)

<sup>8</sup> The Florida Senate, Committee on Judiciary, *Review of Public Records Exemption for Certain Sheriff and State Attorney Records Relating to Interference with Custody*, s. 787.03, F.S. (Interim Project Report 2005-217) (November 2004).

<sup>9</sup> Chapter 2005-89, L.O.F. (House Bill 1699).

The process of reviewing the public-records exemption during the 2004-2005 interim drew attention to a number of statutory inconsistencies and ambiguities in the underlying interference-with-custody offense, as well as with respect to interplay between the offense and the public-records exemption. These issues posed challenges in fully evaluating the exemption. For example, the offense generally applies to the taking of a child or an incompetent person, while the public-records exemption appears to apply solely to the taking of a child. As a consequence, the 2005 legislation saved the public-records exemption for one year only – scheduling it for repeal again on October 2, 2006. Further, the legislation provided for the repeal of the entire interference-with-custody statute on that date unless it is reviewed and saved from repeal through re-enactment.<sup>10</sup>

The Senate Committee on Judiciary conducted an interim project during the summer of 2005 in order to analyze the interference-with-custody statute and to recommend whether changes are needed to substantive law, as well as to review the accompanying public-records exemption, in accordance with the Open Government Sunset Review Act.<sup>11</sup>

The report recommended that the Legislature retain the offense of interference, as well as the accompanying three defenses to a charge of interference with custody and the exception for those who flee actual or potential domestic violence and who report their whereabouts to the sheriff or state attorney. The report, however, also recommended a number of drafting enhancements to address the statutory inconsistencies and ambiguities cited in the report.

With respect to the public-records exemption, the report recommend that the Legislature retain the exemption and revise it to:

- Include the taking of an incompetent person within the coverage of the public-records exemption – if the Legislature adopts a recommendation in the report to clarify that the statutory exception, and the accompanying reporting procedures, apply to the taking of an incompetent person as well as a child. Currently the public-records exemption refers solely to the taking of a child.
- Include provisions for information made confidential under the statute to be shared when necessary in the performance of official duties.
- Consider providing for the confidential-and-exempt status of the information to be lifted once the safety of the parties is no longer at risk.<sup>12</sup>

### **Open Government Sunset Review**

The Open Government Sunset Review Act, s. 119.15, F.S., establishes a review and repeal process for public-records exemptions. An exemption may be maintained only if it serves an identifiable public purpose, and it may be no broader than necessary to meet that purpose. A public purpose is served if the exemption meets one of the following purposes and the

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<sup>10</sup> See s. 787.03(7), F.S.; s. 1, ch. 2005-89, L.O.F.

<sup>11</sup> The Florida Senate, Committee on Judiciary, *Review of Application of Defense in Interference with Custody Cases, s. 787.03, F.S., and Associated Open Government Sunset Review* (Interim Project Report 2006-142) (September 2005).

<sup>12</sup> *Id.* at 8.

Legislature finds that the purpose is sufficiently compelling to override the policy of open government and cannot be accomplished without the exemption:

- The exemption “[a]llows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.”
- The exemption “[p]rotects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals.”
- The exemption “[p]rotects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.”<sup>13</sup>

### III. Effect of Proposed Changes:

Senate Bill 710 revises an existing public-records exemption for certain information provided to law enforcement by a person who is utilizing an exception under the criminal interference-with-custody statute for those who take a child while seeking shelter from domestic violence or seeking to preserve the child’s welfare. The bill expands the coverage of the public-records exemption to include the address and telephone information for an incompetent person who is taken – in addition to such information for a child under current law – which is contained in the report that must be submitted to a sheriff or state attorney in order for the statutory exception to apply.

The bill narrows the public-records exemption by no longer affording confidential-and-exempt status to the name of the person who takes a child or, under the bill, an incompetent person. In addition, the bill revises the public-records exemption to provide that the confidential and exempt address and telephone information may be released after the investigation is complete – if the sheriff or state attorney determines that releasing the information would not jeopardize the safety of the individuals. The bill also specifically authorizes confidential information to be shared with an agency in the transaction of official business, provided the confidentiality is maintained by the recipient agency.

The bill, which stems from an interim project of the Senate Committee on Judiciary,<sup>14</sup> has an effective date of October 1, 2006, one day before the currently scheduled expiration of the public-records exemption. The bill saves the exemption from repeal but provides for its future review and expiration in 2011, in accordance with the Open Government Sunset Review Act. Because this bill makes changes to the public-records exemption which complement changes made to the underlying inference-with-custody statute in another bill, the effective date of this bill is contingent upon the other bill becoming a law. See Senate Bill 708.

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<sup>13</sup> Section 119.15(6)(b)1.-3., F.S.

<sup>14</sup> See note 11, *supra*.

Consistent with Senate Bill 708, this public-records bill clarifies that the law applies to the taking of a minor, by replacing the term “child” with the term “minor.”

The bill provides a statement of public necessity which offers a rationale for expanding the public-records exemption.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

This bill expands an existing public-records exemption. The bill complies with the requirement of Section 24 of Article I of the State Constitution that the Legislature address public-records exemptions in separate legislation from other substantive-law changes. It also provides a statement of necessity justifying the expanded exemption.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

None.

##### **C. Government Sector Impact:**

The bill specifically authorizes a sheriff or state attorney to share information made confidential under the relevant public-records exemption with another agency in the conduct of official business. The bill also expands the existing public-records exemption to include protection for address and telephone information for an incompetent person who is taken (in addition to such information for a child who is taken, as provided in current law). The costs associated with the information-sharing and the potential increase in the volume of records for which confidentiality must be maintained are not anticipated to be significant.

#### **VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The interim project from which Senate Bill 710 stems also recommended revisions to the underlying offense of interference with custody under s. 787.03, F.S. Section 24 of Article I of the State Constitution requires the Legislature to address public-records exemptions in separate bills from other substantive-law changes. Senate Bill 708 addresses the substantive-law changes to the interference-with-custody statute. The effective date of Senate Bill 710 is contingent upon Senate Bill 708 or similar legislation becoming a law.

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This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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## VIII. Summary of Amendments:

### **Barcode 054046 by Judiciary:**

Removes from the bill new language that would have authorized the sheriff or state attorney to release the confidential and exempt address and telephone information once the investigation was complete and the sheriff or state attorney determined that releasing the information would not jeopardize individuals' safety. The amendment has the effect of retaining current law, under which the confidential and exempt information remains so indefinitely. (WITH TITLE AMENDMENT)

### **Barcode 532234 by Judiciary:**

Clarifies the statement of public necessity for the revised public records exemption, to account for the fact that the exception to prosecution provided in the interference-with-custody statute applies only when specific procedures are satisfied. The amendment also conforms to an amendment recommended for the companion bill (SB 708), clarifying that the exception applies to the specific offense of interference with custody as enumerated in s. 787.03(1) and (2), F.S., rather than applying to the entire statute. (See description of **Barcode 664164** for Senate Bill 708.)

### **Barcode 122938 by Judiciary:**

Adds, to the contingent effective date, the specific bill number for the companion legislation to which this bill's effective date is linked. (See Senate Bill 708.)