HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #:   HB 7111   PCB GO 06-22   OGSR Interference with Custody
SPONSOR(S): Governmental Operations Committee, Rivera
TIED BILLS: HB 7113   **IDEN./SIM. BILLS:** CS/SB 708

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee	6 Y, 0 N	Williamson	Williamson
1) Civil Justice Committee		Bond	Bond
2) State Administration Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

During the 2005 Regular Session, the Legislature reenacted and saved from repeal the public records exemption that accompanies the interference with custody statute. Because the statute contained substantive language inconsistencies, the repeal date was extended from October 2, 2005, to October 2, 2006, in order to trigger an additional review of the substantive language.

The bill revises the interference with custody statute. It broadens an existing exception to the statute making the exception available to any person having a legal right to custody of a minor, rather than simply to a spouse. The exception is applicable not only to the taking of a child but also to the taking of an incompetent person.

The bill also revises an existing defense under the statute. In order to utilize a defense based on being a victim of domestic violence, a defendant must establish that he or she reasonably believed the action of taking the minor or incompetent person was necessary in order to escape from the violence or preserve the minor or incompetent person from exposure to the violence. It revises a second defense, to require that, in order to utilize the defense that the child or incompetent person instigated his or her own taking, a defendant must establish that it was reasonable to rely on the instigating actions of the minor or incompetent person.

The bill clarifies existing language to specify that the exception to prosecution applies to the specific offenses of interference with custody.

The interference with custody statute will repeal on October 2, 2006, if this bill does not become law.

The bill does not appear to create, modify, or eliminate rulemaking authority.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.
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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty – The bill broadens the exception to the interference with custody statute making it available to *any person* having a legal right to custody of a minor, rather than simply to spouses. The exception is applicable not only to the taking of a child but also to the taking of an incompetent person.

Empower Families – The bill broadens the exception to the interference with custody statute making it available to *any person* having a legal right to custody of a minor, rather than simply to spouses. The exception also applies to the taking of an incompetent person.

B. EFFECT OF PROPOSED CHANGES:

Background

Interference with Custody

In 1974, the Legislature created the offense of interference with custody. At present, there are two variations to the offense:

- 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, guardian, a public agency in charge of the child or incompetent person, or any other lawful custodian.[1]
- 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.[2]

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

- The defendant reasonably believes that his or her action was necessary to protect the child or incompetent person from danger to his or her welfare.
- 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.
- The child or incompetent person was taken at his or her own instigation without enticement and without purpose to commit a criminal offense with or against the child or incompetent person.[3]

The statute does not apply if a spouse flees with a child or incompetent person because he or she:

- Is the victim of domestic violence or reasonably believes that he or she is about to become a victim of such violence; or
- Believes the welfare of the child or incompetent person is in danger.[4]

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[1] Section 787.03(1), F.S.
[2] Section 787.03(2), F.S.
[3] Section 787.03(4)(a)-(c), F.S.
[4] Section 787.03(6)(a), F.S.

This exception to the statute does not apply to a person fleeing with an incompetent person for the aforementioned reasons.

In order to avail himself or herself of the exception for spouses, a person who takes a child must file a report with the sheriff's office or the state attorney's office of the county where the child resided at the time he or she was taken. Within 10 days of taking the child, the report must be filed and must contain the name of the person taking the child, the current address and telephone number of the person and child, and the reasons the child was taken.[5] Within a reasonable time, the person also must commence a custody proceeding consistent with the federal Parental Kidnapping Prevention Act or the Uniform Child Custody Jurisdiction and Enforcement Act.[6]

Public Records Exemption

The name of the person taking the child and the current address and telephone number of that person and the child, which are contained in the report made to the sheriff or state attorney, are confidential and exempt from public records requirements.[7] The public records exemption was scheduled for repeal on October 2, 2005, because of the Open Government Sunset Review Act. During the 2005 Regular Session, the Legislature reenacted the public records exemption and saved it from repeal. Because the interference with custody statute contained substantive language inconsistencies, the repeal date was extended from October 2, 2005, to October 2, 2006, in order to trigger an additional review of the substantive language.[8]

Effect of Bill

The bill revises the interference with custody statute to broaden an existing exception for a spouse who takes a minor during the course of fleeing domestic violence or protecting the welfare of the minor and reports their whereabouts to the sheriff or state attorney. The bill broadens the exception by making it available to *any person* having a legal right to custody of a minor, rather than simply to a spouse. The exception is applicable not only to the taking of a minor but also to the taking of an incompetent person.

The bill revises an existing defense under the statute. In order to utilize a defense based on being a victim of domestic violence, a defendant must establish that he or she reasonably believed the action of taking the minor or incompetent person was necessary in order to escape from the violence or preserve the minor or incompetent person from exposure to the violence. It revises a second defense, to require that, in order to utilize the defense that the minor or incompetent person instigated his or her own taking, a defendant must establish that it was reasonable to rely on the instigating actions of the minor or incompetent person.

The bill makes the offense of interference with custody applicable to the taking of a minor, replacing the term "child 17 years of age of under" with the term "minor," in order to avoid ambiguity over whether the law covers the taking of a child in the months between his or her 17th and 18th birthdays.

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

C. SECTION DIRECTORY:

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[5] The sheriff or state attorney must be informed of any change of address or telephone number. Section 787.03(6)(b)3., F.S.
[6] Section 787.03(6)(b), F.S.
[7] Section 787.03(6)(c), F.S.
[8] House of Representatives Staff Analysis of HB 1699, March 11, 2005, at 3.

Section 1 amends s. 787.03, F.S., regarding the interference with custody.

Section 2 provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

This bill does not create, modify, amend, or eliminate a state expenditure.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

This bill does not create, modify, amend, or eliminate a local expenditure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create, modify, or eliminate rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

HB 7113 addresses the public records exemption that accompanies the interference with custody statute.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.