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CHAMBER ACTION

1 The Civil Justice Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to a review under the Open Government
7 Sunset Review Act regarding the offense of interference
8 with custody; amending s. 787.03, F.S.; specifying that
9 the offense of interference with custody applies to the
10 taking of a minor; providing a penalty; revising a defense
11 to the offense of interference with custody for a
12 defendant who is a victim of actual or imminent domestic
13 violence to provide that the defendant's reasonable belief
14 that the interference was necessary to escape from, or
15 protect himself or herself from, domestic violence or to
16 preserve a minor or incompetent person from exposure to
17 domestic violence constitutes a defense; revising a
18 defense to the offense of interference with custody when a
19 minor or incompetent person instigates his or her own
20 taking to require a showing that it was reasonable for the
21 defendant to rely upon the instigating acts; broadening an
22 exception to the offense of interference with custody;
23 specifying that the offense is inapplicable to cases

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

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24 involving certain persons who have a legal right to
 25 custody of a minor or an incompetent person who take the
 26 minor or incompetent person and follow prescribed
 27 procedures; including the taking of an incompetent person
 28 within provisions governing the exception to the offense;
 29 making editorial changes; reenacting s. 61.45(6)(b), F.S.,
 30 relating to a court order of visitation or custody, and s.
 31 933.18(7)(a), F.S., relating to instances in which a
 32 warrant may be issued for search of private dwelling, for
 33 the purpose of incorporating the amendment to s. 787.03,
 34 F.S., in references thereto; reenacting and amending s.
 35 921.0022(3)(d), F.S.; revising a reference to the offense
 36 of interference with custody within the offense severity
 37 ranking chart of the Criminal Punishment Code to conform;
 38 providing an effective date.

39

40 Be It Enacted by the Legislature of the State of Florida:

41

42 Section 1. Subsections (1), (2), (4), and (5) and
 43 paragraphs (a) and (b) of subsection (6) of section 787.03,
 44 Florida Statutes, are amended to read:

45 787.03 Interference with custody.--

46 (1) Whoever, without lawful authority, knowingly or
 47 recklessly takes or entices, or aids, abets, hires, or otherwise
 48 procures another to take or entice, any minor ~~child 17 years of~~
 49 ~~age or under~~ or any incompetent person from the custody of the
 50 minor's ~~child~~ or incompetent person's parent, his or her
 51 guardian, a public agency having the lawful charge of the minor

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52 | ~~child~~ or incompetent person, or any other lawful custodian
 53 | commits the offense of interference with custody and commits a
 54 | felony of the third degree, punishable as provided in s.
 55 | 775.082, s. 775.083, or s. 775.084.

56 | (2) In the absence of a court order determining rights to
 57 | custody or visitation with any minor ~~child 17 years of age or~~
 58 | ~~under~~ or with any incompetent person, any parent of the minor
 59 | ~~child~~ or incompetent person, whether natural or adoptive,
 60 | stepparent, legal guardian, or relative of the minor ~~such child~~
 61 | or incompetent person who has custody thereof and who takes,
 62 | detains, conceals, or entices away that minor ~~child~~ or
 63 | incompetent person within or without the state, with malicious
 64 | intent to deprive another person of his or her right to custody
 65 | of the minor ~~child~~ or incompetent person, commits a felony of
 66 | the third degree, punishable as provided in s. 775.082, s.
 67 | 775.083, or s. 775.084.

68 | (4) It is a defense that:

69 | (a) The defendant had reasonable cause to believe
 70 | ~~reasonably believes~~ that his or her action was necessary to
 71 | preserve the minor ~~child~~ or the incompetent person from danger
 72 | to his or her welfare.

73 | (b) The defendant was the victim of an act of domestic
 74 | violence or had reasonable cause to believe that he or she was
 75 | about to become the victim of his or her action was necessary to
 76 | ~~protect himself or herself from~~ an act of domestic violence as
 77 | defined in s. 741.28, and the defendant had reasonable cause to
 78 | believe that the action was necessary in order for the defendant
 79 | to escape from, or protect himself or herself from, the domestic

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80 | violence or to preserve the minor or incompetent person from
81 | exposure to the domestic violence.

82 | (c) The minor child or incompetent person was taken away
83 | at his or her own instigation without enticement and without
84 | purpose to commit a criminal offense with or against the minor
85 | child or incompetent person, and the defendant establishes that
86 | it was reasonable to rely on the instigating acts of the minor
87 | or incompetent person.

88 | (5) Proof that a person has not attained the age of 18
89 | years child was 17 years of age or under creates the presumption
90 | that the defendant knew the minor's child's age or acted in
91 | reckless disregard thereof.

92 | (6) (a) The offenses prescribed in subsections (1) and
93 | (2) do ~~This section does not apply in cases in which~~ ~~where~~ a
94 | person having a legal right to custody of a minor or incompetent
95 | person spouse who is the victim of any act of domestic violence,
96 | ~~er who~~ has reasonable cause to believe he or she is about to
97 | become the victim of any act of domestic violence, as defined in
98 | s. 741.28, or believes that his or her action was necessary to
99 | preserve the minor child or the incompetent person from danger
100 | to his or her welfare and seeks shelter from such acts or
101 | possible acts and takes with him or her the minor or incompetent
102 | person ~~any child 17 years of age or younger.~~

103 | (b) In order to gain the exception ~~exemption~~ conferred by
104 | paragraph (a), a person who takes a minor or incompetent person
105 | under child ~~pursuant to~~ this subsection must:

106 | 1. Within 10 days after taking the minor or incompetent
107 | person child, make a report to the sheriff's office or state

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108 attorney's office for the county in which the minor or
109 incompetent person ~~child~~ resided at the time he or she was
110 taken, which report must include the name of the person taking
111 the minor or incompetent person ~~child~~, the current address and
112 telephone number of the person and minor or incompetent person
113 ~~child~~, and the reasons the minor or incompetent person ~~child~~ was
114 taken.

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

120 3. Inform the sheriff's office or state attorney's office
121 for the county in which the minor or incompetent person ~~child~~
122 resided at the time he or she was taken of any change of address
123 or telephone number of the person and the minor or incompetent
124 person ~~child~~.

125 Section 2. For the purpose of incorporating the amendment
126 made by this act to section 787.03, Florida Statutes, in a
127 reference thereto, paragraph (b) of subsection (6) of section
128 61.45, Florida Statutes, is reenacted to read:

129 61.45 Court order of visitation or custody; risk of
130 violation; bond.--

131 (6)

132 (b) This section, including the requirement to post a bond
133 or other security, does not apply to a parent who, in a
134 proceeding to order or modify child custody or visitation, the
135 court determines is a victim of an act of domestic violence or

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136 has reasonable cause to believe he or she is about to become the
137 victim of an act of domestic violence, as defined in s. 741.28.
138 An injunction for protection against domestic violence issued
139 pursuant to s. 741.30 for a parent as the petitioner which is in
140 effect at the time of the court proceeding shall be one means of
141 demonstrating sufficient evidence that the parent is a victim of
142 domestic violence or is about to become the victim of an act of
143 domestic violence, as defined in s. 741.28, and shall exempt the
144 parent from this section, including the requirement to post a
145 bond or other security. A parent who is determined by the court
146 to be exempt from the requirements of this section must meet the
147 requirements of s. 787.03(6) if an offense of interference with
148 custody is committed.

149 Section 3. For the purpose of incorporating the amendment
150 made by this act to section 787.03, Florida Statutes, in a
151 reference thereto, paragraph (a) of subsection (7) of section
152 933.18, Florida Statutes, is reenacted to read:

153 933.18 When warrant may be issued for search of private
154 dwelling.--No search warrant shall issue under this chapter or
155 under any other law of this state to search any private dwelling
156 occupied as such unless:

157 (7) One or more of the following misdemeanor child abuse
158 offenses is being committed there:

159 (a) Interference with custody, in violation of s. 787.03.
160

161 If, during a search pursuant to a warrant issued under this
162 section, a child is discovered and appears to be in imminent
163 danger, the law enforcement officer conducting such search may

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164 remove the child from the private dwelling and take the child
 165 into protective custody pursuant to chapter 39. The term
 166 "private dwelling" shall be construed to include the room or
 167 rooms used and occupied, not transiently but solely as a
 168 residence, in an apartment house, hotel, boardinghouse, or
 169 lodginghouse. No warrant shall be issued for the search of any
 170 private dwelling under any of the conditions hereinabove
 171 mentioned except on sworn proof by affidavit of some creditable
 172 witness that he or she has reason to believe that one of said
 173 conditions exists, which affidavit shall set forth the facts on
 174 which such reason for belief is based.

175 Section 4. Paragraph (d) of subsection (3) of section
 176 921.0022, Florida Statutes, is reenacted and amended to read:

177 921.0022 Criminal Punishment Code; offense severity
 178 ranking chart.--

179 (3) OFFENSE SEVERITY RANKING CHART

Florida Statute	Felony Degree	Description
	(d)	
	LEVEL 4	
316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.

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183	499.0051 (1)	3rd	Failure to maintain or deliver pedigree papers.
184	499.0051 (2)	3rd	Failure to authenticate pedigree papers.
185	499.0051 (6)	2nd	Sale or delivery, or possession with intent to sell, contraband legend drugs.
186	784.07 (2) (b)	3rd	Battery of law enforcement officer, firefighter, intake officer, etc.
187	784.074 (1) (c)	3rd	Battery of sexually violent predators facility staff.
188	784.075	3rd	Battery on detention or commitment facility staff.
189	784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
190	784.08 (2) (c)	3rd	Battery on a person 65 years of age or older.
191	784.081 (3)	3rd	Battery on specified official or employee.
	784.082 (3)	3rd	Battery by detained person on visitor

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or other detainee.

192

784.083 (3) 3rd Battery on code inspector.

193

784.085 3rd Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.

194

787.03 (1) 3rd Interference with custody; wrongly takes minor ~~child~~ from appointed guardian.

195

787.04 (2) 3rd Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.

196

787.04 (3) 3rd Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.

197

790.115 (1) 3rd Exhibiting firearm or weapon within 1,000 feet of a school.

198

790.115 (2) (b) 3rd Possessing electric weapon or device, destructive device, or other weapon on school property.

199

790.115 (2) (c) 3rd Possessing firearm on school property.

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200	800.04 (7) (d)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
201	810.02 (4) (a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
202	810.02 (4) (b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
203	810.06	3rd	Burglary; possession of tools.
204	810.08 (2) (c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
205	812.014 (2) (c) 3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
206	812.014 (2) (c) 4. -10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
207	812.0195 (2)	3rd	Dealing in stolen property by use of the Internet; property stolen \$300 or more.
208	817.563 (1)	3rd	Sell or deliver substance other than controlled substance agreed upon,

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excluding s. 893.03(5) drugs.

209

817.568(2)(a) 3rd

Fraudulent use of personal
identification information.

210

817.625(2)(a) 3rd

Fraudulent use of scanning device or
reencoder.

211

828.125(1) 2nd

Kill, maim, or cause great bodily
harm or permanent breeding disability
to any registered horse or cattle.

212

837.02(1) 3rd

Perjury in official proceedings.

213

837.021(1) 3rd

Make contradictory statements in
official proceedings.

214

838.022 3rd

Official misconduct.

215

839.13(2)(a) 3rd

Falsifying records of an individual
in the care and custody of a state
agency.

216

839.13(2)(c) 3rd

Falsifying records of the Department
of Children and Family Services.

217

843.021 3rd

Possession of a concealed handcuff
key by a person in custody.

218

843.025 3rd

Deprive law enforcement,
correctional, or correctional

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probation officer of means of
protection or communication.

219 843.15 (1) (a) 3rd Failure to appear while on bail for
felony (bond estreature or bond
jumping).

220 874.05 (1) 3rd Encouraging or recruiting another to
join a criminal street gang.

221 893.13 (2) (a) 1. 2nd Purchase of cocaine (or other s.
893.03 (1) (a), (b), or (d), (2) (a),
(2) (b), or (2) (c) 4. drugs).

222 914.14 (2) 3rd Witnesses accepting bribes.

223 914.22 (1) 3rd Force, threaten, etc., witness,
victim, or informant.

224 914.23 (2) 3rd Retaliation against a witness,
victim, or informant, no bodily
injury.

225 918.12 3rd Tampering with jurors.

226 934.215 3rd Use of two-way communications device
to facilitate commission of a crime.

227
228 Section 5. This act shall take effect October 1, 2006.