

1                   A bill to be entitled  
2           An act relating to a review under the Open Government  
3           Sunset Review Act regarding the offense of interference  
4           with custody; amending s. 787.03, F.S.; specifying that  
5           the offense of interference with custody applies to the  
6           taking of a minor; providing a penalty; revising a defense  
7           to the offense of interference with custody for a  
8           defendant who is a victim of actual or imminent domestic  
9           violence to provide that the defendant's reasonable belief  
10          that the interference was necessary to escape from, or  
11          protect himself or herself from, domestic violence or to  
12          preserve a minor or incompetent person from exposure to  
13          domestic violence constitutes a defense; revising a  
14          defense to the offense of interference with custody when a  
15          minor or incompetent person instigates his or her own  
16          taking to require a showing that it was reasonable for the  
17          defendant to rely upon the instigating acts; broadening an  
18          exception to the offense of interference with custody;  
19          specifying that the offense is inapplicable to cases  
20          involving certain persons who have a legal right to  
21          custody of a minor or an incompetent person who take the  
22          minor or incompetent person and follow prescribed  
23          procedures; including the taking of an incompetent person  
24          within provisions governing the exception to the offense;  
25          making editorial changes; reenacting s. 61.45(6)(b), F.S.,  
26          relating to a court order of visitation or custody, and s.  
27          933.18(7)(a), F.S., relating to instances in which a

28 warrant may be issued for search of private dwelling, for  
 29 the purpose of incorporating the amendment to s. 787.03,  
 30 F.S., in references thereto; reenacting and amending s.  
 31 921.0022(3)(d), F.S.; revising a reference to the offense  
 32 of interference with custody within the offense severity  
 33 ranking chart of the Criminal Punishment Code to conform;  
 34 providing an effective date.

35

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

37

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

41 787.03 Interference with custody.--

42 (1) Whoever, without lawful authority, knowingly or  
 43 recklessly takes or entices, or aids, abets, hires, or otherwise  
 44 procures another to take or entice, any minor ~~child 17 years of~~  
 45 ~~age or under~~ or any incompetent person from the custody of the  
 46 minor's ~~child~~ or incompetent person's parent, his or her  
 47 guardian, a public agency having the lawful charge of the minor  
 48 ~~child~~ or incompetent person, or any other lawful custodian  
 49 commits the offense of interference with custody and commits a  
 50 felony of the third degree, punishable as provided in s.  
 51 775.082, s. 775.083, or s. 775.084.

52 (2) In the absence of a court order determining rights to  
 53 custody or visitation with any minor ~~child 17 years of age or~~  
 54 ~~under~~ or with any incompetent person, any parent of the minor

55 ~~child~~ or incompetent person, whether natural or adoptive,  
56 stepparent, legal guardian, or relative of the minor ~~such child~~  
57 or incompetent person who has custody thereof and who takes,  
58 detains, conceals, or entices away that minor ~~child~~ or  
59 incompetent person within or without the state, with malicious  
60 intent to deprive another person of his or her right to custody  
61 of the minor ~~child~~ or incompetent person, commits a felony of  
62 the third degree, punishable as provided in s. 775.082, s.  
63 775.083, or s. 775.084.

64 (4) It is a defense that:

65 (a) The defendant had reasonable cause to believe  
66 ~~reasonably believes~~ that his or her action was necessary to  
67 preserve the minor ~~child~~ or the incompetent person from danger  
68 to his or her welfare.

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

78 (c) The minor ~~child~~ or incompetent person was taken away  
79 at his or her own instigation without enticement and without  
80 purpose to commit a criminal offense with or against the minor  
81 child or incompetent person, and the defendant establishes that

82 it was reasonable to rely on the instigating acts of the minor  
 83 or incompetent person.

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

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

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

102 1. Within 10 days after taking the minor or incompetent  
 103 person ~~child~~, make a report to the sheriff's office or state  
 104 attorney's office for the county in which the minor or  
 105 incompetent person ~~child~~ resided at the time he or she was  
 106 taken, which report must include the name of the person taking  
 107 the minor or incompetent person ~~child~~, the current address and  
 108 telephone number of the person and minor or incompetent person

109 ~~child~~, and the reasons the minor or incompetent person ~~child~~ was  
110 taken.

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

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

121 Section 2. For the purpose of incorporating the amendment  
122 made by this act to section 787.03, Florida Statutes, in a  
123 reference thereto, paragraph (b) of subsection (6) of section  
124 61.45, Florida Statutes, is reenacted to read:

125 61.45 Court order of visitation or custody; risk of  
126 violation; bond.--

127 (6)

128 (b) This section, including the requirement to post a bond  
129 or other security, does not apply to a parent who, in a  
130 proceeding to order or modify child custody or visitation, the  
131 court determines is a victim of an act of domestic violence or  
132 has reasonable cause to believe he or she is about to become the  
133 victim of an act of domestic violence, as defined in s. 741.28.  
134 An injunction for protection against domestic violence issued  
135 pursuant to s. 741.30 for a parent as the petitioner which is in

136 effect at the time of the court proceeding shall be one means of  
 137 demonstrating sufficient evidence that the parent is a victim of  
 138 domestic violence or is about to become the victim of an act of  
 139 domestic violence, as defined in s. 741.28, and shall exempt the  
 140 parent from this section, including the requirement to post a  
 141 bond or other security. A parent who is determined by the court  
 142 to be exempt from the requirements of this section must meet the  
 143 requirements of s. 787.03(6) if an offense of interference with  
 144 custody is committed.

145 Section 3. For the purpose of incorporating the amendment  
 146 made by this act to section 787.03, Florida Statutes, in a  
 147 reference thereto, paragraph (a) of subsection (7) of section  
 148 933.18, Florida Statutes, is reenacted to read:

149 933.18 When warrant may be issued for search of private  
 150 dwelling.--No search warrant shall issue under this chapter or  
 151 under any other law of this state to search any private dwelling  
 152 occupied as such unless:

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

155 (a) Interference with custody, in violation of s. 787.03.  
 156

157 If, during a search pursuant to a warrant issued under this  
 158 section, a child is discovered and appears to be in imminent  
 159 danger, the law enforcement officer conducting such search may  
 160 remove the child from the private dwelling and take the child  
 161 into protective custody pursuant to chapter 39. The term  
 162 "private dwelling" shall be construed to include the room or

163 rooms used and occupied, not transiently but solely as a  
 164 residence, in an apartment house, hotel, boardinghouse, or  
 165 lodginghouse. No warrant shall be issued for the search of any  
 166 private dwelling under any of the conditions hereinabove  
 167 mentioned except on sworn proof by affidavit of some creditable  
 168 witness that he or she has reason to believe that one of said  
 169 conditions exists, which affidavit shall set forth the facts on  
 170 which such reason for belief is based.

171 Section 4. Paragraph (d) of subsection (3) of section  
 172 921.0022, Florida Statutes, is reenacted and amended to read:

173 921.0022 Criminal Punishment Code; offense severity  
 174 ranking chart.--

175 (3) OFFENSE SEVERITY RANKING CHART

Florida	Felony	Description
Statute	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.
499.0051(1)	3rd	Failure to maintain or deliver pedigree papers.

180	499.0051 (2)	3rd	Failure to authenticate pedigree papers.
181	499.0051 (6)	2nd	Sale or delivery, or possession with intent to sell, contraband legend drugs.
182	784.07 (2) (b)	3rd	Battery of law enforcement officer, firefighter, intake officer, etc.
183	784.074 (1) (c)	3rd	Battery of sexually violent predators facility staff.
184	784.075	3rd	Battery on detention or commitment facility staff.
185	784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
186	784.08 (2) (c)	3rd	Battery on a person 65 years of age or older.
187	784.081 (3)	3rd	Battery on specified official or employee.
188	784.082 (3)	3rd	Battery by detained person on visitor or other detainee.
	784.083 (3)	3rd	Battery on code inspector.



189	784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
190	787.03 (1)	3rd	Interference with custody; wrongly takes <u>minor</u> <del>child</del> from appointed guardian.
191	787.04 (2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
192	787.04 (3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
193	790.115 (1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
194	790.115 (2) (b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
195	790.115 (2) (c)	3rd	Possessing firearm on school property.
196	800.04 (7) (d)	3rd	Lewd or lascivious exhibition; offender less than 18 years.

197	810.02 (4) (a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
198	810.02 (4) (b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
199	810.06	3rd	Burglary; possession of tools.
200	810.08 (2) (c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
201	812.014 (2) (c) 3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
202	812.014 (2) (c) 4. -10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
203	812.0195 (2)	3rd	Dealing in stolen property by use of the Internet; property stolen \$300 or more.
204	817.563 (1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03 (5) drugs.
205	817.568 (2) (a)	3rd	Fraudulent use of personal

identification information.

206 817.625 (2) (a) 3rd Fraudulent use of scanning device or  
reencoder.

207 828.125 (1) 2nd Kill, maim, or cause great bodily  
harm or permanent breeding disability  
to any registered horse or cattle.

208 837.02 (1) 3rd Perjury in official proceedings.

209 837.021 (1) 3rd Make contradictory statements in  
official proceedings.

210 838.022 3rd Official misconduct.

211 839.13 (2) (a) 3rd Falsifying records of an individual  
in the care and custody of a state  
agency.

212 839.13 (2) (c) 3rd Falsifying records of the Department  
of Children and Family Services.

213 843.021 3rd Possession of a concealed handcuff  
key by a person in custody.

214 843.025 3rd Deprive law enforcement,  
correctional, or correctional  
probation officer of means of  
protection or communication.

215	843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
216	874.05(1)	3rd	Encouraging or recruiting another to join a criminal street gang.
217	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).
218	914.14(2)	3rd	Witnesses accepting bribes.
219	914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
220	914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
221	918.12	3rd	Tampering with jurors.
222	934.215	3rd	Use of two-way communications device to facilitate commission of a crime.
223			
224	Section 5. This act shall take effect October 1, 2006.		