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HB 7111, Engrossed 1

2006 Legislature

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

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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

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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

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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

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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

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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

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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 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.
499.0051(1)	3rd	Failure to maintain or deliver pedigree papers.

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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.

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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> child 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.

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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

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			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.

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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.		