

## House Bill No. 7111

An act relating to a review under the Open Government Sunset Review Act regarding the offense of interference with custody; amending s. 787.03, F.S.; specifying that the offense of interference with custody applies to the taking of a minor; providing a penalty; revising a defense to the offense of interference with custody for a defendant who is a victim of actual or imminent domestic violence to provide that the defendant's reasonable belief that the interference was necessary to escape from, or protect himself or herself from, domestic violence or to preserve a minor or incompetent person from exposure to domestic violence constitutes a defense; revising a defense to the offense of interference with custody when a minor or incompetent person instigates his or her own taking to require a showing that it was reasonable for the defendant to rely upon the instigating acts; broadening an exception to the offense of interference with custody; specifying that the offense is inapplicable to cases involving certain persons who have a legal right to custody of a minor or an incompetent person who take the minor or incompetent person and follow prescribed procedures; including the taking of an incompetent person within provisions governing the exception to the offense; making editorial changes; reenacting s. 61.45(6)(b), F.S., relating to a court order of visitation or custody, and s. 933.18(7)(a), F.S., relating to instances in which a warrant may be issued for search of private dwelling, for the purpose of incorporating the amendment to s. 787.03, F.S., in references thereto; reenacting and amending s. 921.0022(3)(d), F.S.; revising a reference to the offense of interference with custody within the offense severity ranking chart of the Criminal Punishment Code to conform; providing an effective date.

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

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

787.03 Interference with custody.—

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

(2) In the absence of a court order determining rights to custody or visitation with any ~~minor child 17 years of age or under~~ or with any incompetent person, any parent of the minor child or incompetent person, whether natural or adoptive, stepparent, legal guardian, or relative of the minor such

~~child~~ or incompetent person who has custody thereof and who takes, detains, conceals, or entices away that minor child or incompetent person within or without the state, with malicious intent to deprive another person of his or her right to custody of the minor child or incompetent person, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) It is a defense that:

(a) The defendant ~~had reasonable cause to believe~~ reasonably believes that his or her action was necessary to preserve the minor 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 he or she was about to become the victim of his or her action was necessary to protect himself or herself from an act of domestic violence as defined in s. 741.28, and the defendant had reasonable cause to believe that the action was necessary in order for the defendant to escape from, or protect himself or herself from, the domestic violence or to preserve the minor or incompetent person from exposure to the domestic violence.

(c) The minor 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 minor child or incompetent person, and the defendant establishes that it was reasonable to rely on the instigating acts of the minor or incompetent person.

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

(6)(a) The offenses prescribed in subsections (1) and (2) do ~~This section does not apply in cases in which~~ where a person having a legal right to custody of a minor or incompetent person 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, as defined in s. 741.28, or believes that his or her action was necessary to preserve the minor child or the incompetent person from danger to his or her welfare and seeks shelter from such acts or possible acts and takes with him or her the minor or incompetent person ~~any child 17 years of age or younger.~~

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

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

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

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

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

61.45 Court order of visitation or custody; risk of violation; bond.—

(6)

(b) This section, including the requirement to post a bond or other security, does not apply to a parent who, in a proceeding to order or modify child custody or visitation, the court determines is a victim of an act of domestic violence or has reasonable cause to believe he or she is about to become the victim of an act of domestic violence, as defined in s. 741.28. An injunction for protection against domestic violence issued pursuant to s. 741.30 for a parent as the petitioner which is in effect at the time of the court proceeding shall be one means of demonstrating sufficient evidence that the parent is a victim of domestic violence or is about to become the victim of an act of domestic violence, as defined in s. 741.28, and shall exempt the parent from this section, including the requirement to post a bond or other security. A parent who is determined by the court to be exempt from the requirements of this section must meet the requirements of s. 787.03(6) if an offense of interference with custody is committed.

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

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

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

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

If, during a search pursuant to a warrant issued under this section, a child is discovered and appears to be in imminent danger, the law enforcement officer conducting such search may remove the child from the private dwelling and take the child into protective custody pursuant to chapter 39. The term "private dwelling" shall be construed to include the room or rooms used and occupied, not transiently but solely as a residence, in an apartment house, hotel, boardinghouse, or lodginghouse. No warrant shall be issued for

the search of any private dwelling under any of the conditions hereinabove mentioned except on sworn proof by affidavit of some creditable witness that he or she has reason to believe that one of said conditions exists, which affidavit shall set forth the facts on which such reason for belief is based.

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

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(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.
499.0051(2)	3rd	Failure to authenticate pedigree papers.
499.0051(6)	2nd	Sale or delivery, or possession with intent to sell, contraband legend drugs.
784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, intake officer, etc.
784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
784.075	3rd	Battery on detention or commitment facility staff.
784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
784.081(3)	3rd	Battery on specified official or employee.
784.082(3)	3rd	Battery by detained person on visitor or other detainee.
784.083(3)	3rd	Battery on code inspector.
784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
787.03(1)	3rd	Interference with custody; wrongly takes <u>minor</u> <del>child</del> from appointed guardian.

Florida Statute	Felony Degree	Description
787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
790.115(2)(c)	3rd	Possessing firearm on school property.
800.04(7)(d)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
810.06	3rd	Burglary; possession of tools.
810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
812.014(2)(c)3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
812.014(2)(c)4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen \$300 or more.
817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
817.568(2)(a)	3rd	Fraudulent use of personal identification information.
817.625(2)(a)	3rd	Fraudulent use of scanning device or reencoder.
828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
837.02(1)	3rd	Perjury in official proceedings.
837.021(1)	3rd	Make contradictory statements in official proceedings.

Florida Statute	Felony Degree	Description
838.022	3rd	Official misconduct.
839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
839.13(2)(c)	3rd	Falsifying records of the Department of Children and Family Services.
843.021	3rd	Possession of a concealed handcuff key by a person in custody.
843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreatment or bond jumping).
874.05(1)	3rd	Encouraging or recruiting another to join a criminal street gang.
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).
914.14(2)	3rd	Witnesses accepting bribes.
914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
918.12	3rd	Tampering with jurors.
934.215	3rd	Use of two-way communications device to facilitate commission of a crime.

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

Approved by the Governor June 7, 2006.

Filed in Office Secretary of State June 7, 2006.