

Senate Bill No. 320

An act relating to interference with custody; amending s. 787.03, F.S.; providing that it is an additional defense to the offense of interference with custody to be a victim of domestic violence or believe that interference with custody is necessary to protect a person from domestic violence; prescribing duties of any person who takes a minor child when fleeing from situations of actual or threatened domestic violence; providing an effective date.

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

Section 1. Section 787.03, Florida Statutes, is 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 child 17 years of age or under or any incompetent person from the custody of the child or incompetent person's parent, his or her guardian, a public agency having the lawful charge of the child or incompetent person, or any other lawful custodian commits the offense of interference with custody and ~~commits shall be guilty of~~ 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 child 17 years of age or under or with any incompetent person, any parent of the child or incompetent person, whether natural or adoptive, stepparent, legal guardian, or relative of such child or incompetent person who has custody thereof and who takes, detains, conceals, or entices away that 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 child or incompetent person, ~~commits shall be guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A subsequently obtained court order for custody or visitation does ~~shall~~ not affect application of this section.

(4) It is a defense that:

(a) The defendant reasonably believes that his or her action was necessary to preserve the 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 his or her action was necessary to protect himself or herself from an act of domestic violence as defined in s. 741.28.

~~(c)(b)~~ The 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 child or incompetent person.

(5) Proof that a child was 17 years of age or under creates the presumption that the defendant knew the child's age or acted in reckless disregard thereof.

(6)(a) This section ~~does shall~~ not apply in cases where a 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 child or the incompetent person from danger to his or her welfare seeks shelter from such acts or possible acts and takes with him or her any child 17 years of age or younger.

(b) In order to gain the exemption conferred by paragraph (a), a person who takes a child pursuant to this subsection must:

1. Within 10 days after taking the child, make a report to the sheriff's office or state attorney's office for the county in which the child resided at the time he or she was taken, which report must include 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.

2. Within a reasonable time after taking 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 Act, ss. 61.1302-61.1348.

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

Section 2. This act shall take effect July 1, 2000.

Approved by the Governor June 7, 2000.

Filed in Office Secretary of State June 7, 2000.