

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1174

SPONSOR: Senator Rossin

SUBJECT: Interference with Custody

DATE: March 30, 1999

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosby	Whiddon	CF	Favorable
2.	White	Cannon	CJ	Favorable
3.				
4.				
5.				

## I. Summary:

Currently s. 787.03, F.S., provides that a person commits the third degree felony offense of interference with custody if he or she: (1) does not have custody and knowingly or recklessly takes an incompetent person or child from his or her custodial guardian; or (2) has custody and with a malicious intent takes the incompetent person or child away for the purpose of depriving another person of his or her right to custody. However, a spouse who takes a child is exempted from liability for these offenses if the purpose of the taking is to seek shelter from domestic violence, or to protect the child from danger.

Senate Bill 1174 would amend s. 787.03, F.S., by adding that in order for a spouse who takes a child to fall within the exemption to liability, the spouse must, within a reasonable time, report the taking to police or the state attorney, and commence custody proceedings.

This bill amends the following section of the Florida Statutes: 787.03.

## II. Present Situation:

Section 787.03, F.S., addresses interference with custody. Under subsection (1), it is a third degree felony for a person, who does not have custody, to knowingly or recklessly take or entice an incompetent person or child, or to aid, abet, hire or procure another to take or entice an incompetent person or child from the custody of his or her parent, guardian, lawful custodian, or the agency having charge of that person. Under subsection (2), it is a third degree felony for a person, who has custody of an incompetent person or child, to take, detain, conceal or entice the incompetent person or child away, with the malicious intent to deprive another person of his or her right to custody. A child is defined as a person under 17 years of age.

Subsection (4) provides that the following constitutes a defense to the aforementioned offenses:

- ▶ 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.
- ▶ 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.

Moreover, subsection (6) specifically exempts a spouse from liability for the interference with custody offenses if the spouse takes a child for the purpose of seeking shelter from actual or threatened domestic violence, or to protect the child from danger.

### **III. Effect of Proposed Changes:**

The bill amends s. 787.03(6), F.S., the subsection which exempts spouses in certain domestic violence cases from felony liability under the section, to create a new paragraph (b). This new paragraph will require that a person taking a child pursuant to subsection (6) must:

- ▶ report, within a reasonable time, to the sheriff's or the state attorney's office for the county in which the child resided, the child's and his or her name, address and telephone number, along with the reason for taking the child;
- ▶ commence a custody proceeding, within a reasonable time; and
- ▶ inform the relevant sheriff's or state attorney's office of any change in the address or telephone number of the person and the child.

The bill further provides that a period of 10 days for making the required report, and a period of 30 days to commence the custody proceedings is not unreasonable.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

Companion bill, SB 1172, would exempt from public review the information required to be provided to the state attorney or sheriff under s. 787.03(6)(b), F.S.

#### **C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The responsibility to report this information is on the party alleging the abuse. Cases otherwise seen as parental kidnaping may be avoided by compliance with this law.

**C. Government Sector Impact:**

There should be no fiscal impact associated with this bill. The reporting process should be achievable with current resources.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Under current law, a spouse, who takes a child, may avoid liability for the interference with custody offenses by asserting that the taking was due to domestic violence or for the protection of the child. In some cases, this provision has provided a legal loophole for avoiding liability for unlawful takings, because it is extremely difficult for the state to disprove a spouse's assertion that the taking was caused by domestic violence when this assertion is not made until years after the taking. In many cases, a spouse who has unlawfully taken a child is not located until years after the taking. Accordingly, the bill's amendment to s. 787.03(6), F.S., should have the effect of mitigating this legal loophole by requiring the taking spouse to report the taking and to initiate custody proceedings within a reasonable time before the statutory liability exemption can apply.

**VIII. Amendments:**

None.