

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 320

SPONSOR: Senator Rossin

SUBJECT: Interference with Custody

DATE: April 18, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dowds</u>	<u>Whiddon</u>	<u>CF</u>	<u>Favorable</u>
2.	_____	_____	<u>CJ</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Currently, s. 787.03, F.S., provides that a person commits a 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 for the purpose of seeking shelter from domestic violence or to protect the child from danger is exempt from liability for this offense.

SB 320 amends s. 787.03, F.S., to add that in order for a spouse who takes a child due to domestic violence to fall within the exemption to liability, the spouse must report the taking to police or the state attorney within a specified period of time and commence custody proceedings.

The bill amends section 787.03 of Florida Statute.

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 is a victim of domestic violence or has reasonable cause to believe he or she will become a victim of domestic violence, as defined in s. 741.28, F.S., and takes the child for the purpose of seeking shelter from the domestic violence.

There is no criminal offense designated as “domestic violence.” Instead, “domestic violence” is a term which encompasses a variety of criminal acts committed against a family or household member. Section 741.28(1), F.S., provides that such acts may include assault, aggravated assault, sexual battery, aggravated battery, sexual assault, stalking, aggravated stalking, kidnaping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another. In Florida, 133,345 police reports were filed in 1998 for domestic violence offenses and 64,446 arrests were made.

III. Effect of Proposed Changes:

SB 320 amends s. 787.03, F.S., as it pertains to victims of domestic violence. First, the bill adds as a defense to the crime of interference with custody that the defendant was the victim of an act of domestic violence or had reasonable cause to believe that his or her action was necessary for protection against an act of domestic violence, as defined in s. 741.28, F.S. Second, the bill amends subsection (6) which exempts spouses in certain domestic violence cases from felony liability under the section. A new paragraph is created that sets forth certain actions that a person who takes a child in order to seek shelter from domestic violence must take in order to gain the exemption provided in subsection (6). These actions are as follows:

- Make a report to the sheriff’s office or state attorney’s office for the county where the child resided within 10 days after taking the child. This report must include the name of the person taking the child, the current address and telephone number of the person and child, and the reason the child was taken.
- Begin a custody proceeding within a reasonable period of time after the child is taken. The custody proceeding needs to be consistent with the federal Parental Kidnaping Prevention Act or the Uniform Child Custody Jurisdiction Act.
- Inform the sheriff’s office or state attorney’s office for the county where the child resided at the time the child was taken of any change of address or telephone number of the person or child.

Subsections (1) and (2) of section 787.03, F.S., are also amended to correct statutory language that persons who take a child or incompetent adult or any parent who takes a child or incompetent adult have “committed,” instead of are “guilty of,” a felony of the third degree. This change in terminology more accurately reflects the commission of a crime, not the determination of guilt.

The bill provides that the act takes effect on July 1, 2000.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of State Courts Administrator reports that the requirement to commence the custody proceeding may result in additional custody filings that would not have otherwise been filed but the net impact on the courts would be minor and indeterminable.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Current law provides that the interference with custody offense does not apply to victims of domestic violence who flee with their children in order to provide for their own safety and the safety of their children. The law does not, however, provide a mechanism to determine if there was domestic violence and therefore if this waiver should apply. This provision is intended to protect victims of domestic violence from the liability of this criminal offense when fleeing from their home is necessary to protect themselves and their children. However, it also provides a legal

loophole for spouses fleeing with their children where no domestic violence exists. In many cases, a spouse who has fled with their child is not located until years later, at which time abuse may be asserted. Whether or not such abuse actually occurred is difficult to prove. This bill is attempting to provide a mechanism to determine whether the taking of the child is due to domestic violence by requiring the spouse who fled with the child to immediately report to the sheriff or state attorneys their location and to commence custody proceedings.

While the custody proceedings could provide an avenue to determine if domestic violence existed and therefore whether this waiver of the interference with custody offense applies, for spouses who are actual victims of domestic violence, this mechanism places requirements on a victim that may not be feasible or may reintroduce them to the danger from which they were fleeing. First, the 10 day time frame to report to the sheriff or state attorney their location may not be adequate for victims who have moved any great distance or had difficulty finding a place to live or had to recover from the violence experienced. Second, the stipulation that a custody proceeding be initiated also requires that this proceeding be consistent with the federal Parental Kidnaping Prevention Act or the Uniform Child Custody Jurisdiction Act. Both of these acts deal, in part, with which states have jurisdiction in child custody proceedings. Under either one of these acts, the likelihood is high that jurisdiction will be established in the home state which would return an actual victim of domestic violence to the danger from which the individual was fleeing. The need to allow for emergency jurisdiction in another state in instances where there is domestic violence has been recognized and in turn incorporated into the new Uniform Child Custody Jurisdiction and Enforcement Act developed by the National Conference of Commissioners on Uniform State Laws which has only been enacted in 17 states to date and has not been adopted in Florida. Third, the bill does not prevent an arrest on the charge of interference with custody of the spouse who has reported his or her location prior to completion of the custody proceedings.

A mechanism to document that domestic violence did exist and in turn to apply the waiver of the interference with custody offense would strengthen current law. However, the mechanism developed should balance to the extent possible the identification of child abductors who are presenting false allegations of abuse with the protection of true victims of domestic violence.

VIII. Amendments:

None.