The Florida Senate

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Committee on Judiciary Senator Daniel Webster, Chair

REVIEW OF APPLICATION OF DEFENSE IN INTERFERENCE WITH CUSTODY CASES, S. 787.03, F.S., AND ASSOCIATED OPEN GOVERNMENT SUNSET REVIEW

SUMMARY

Under the state's interference-with-custody statute, it is a third-degree felony for certain persons to take or conceal a child or incompetent person from someone with lawful custody. Defenses to a charge of interference with custody include that the action was necessary to protect the child or incompetent person from harm; that the defendant was a domestic violence victim; or that the child or incompetent person was taken at his or her own instigation. Additionally, the statute does not apply when a spouse who is a domestic violence victim or fears for a child's safety seeks shelter with the child but reports their whereabouts to a sheriff or state attorney within 10 days. The name of the spouse who takes the child and the address and telephone number of the spouse and the child contained in such a report to the proper authority are protected from disclosure by a public record exemption included within the same statute.

This statute, s. 787.03, F.S., is scheduled for repeal on October 2, 2006. The purpose of this interim project was to review the interference-with-custody offense and the accompanying public records exemption. Practitioners and law enforcement representatives indicate that, although the offense does not generate significant prosecutorial activity compared to other crimes, it serves as a deterrent, particularly in situations where there are disputes between parents sharing custody of a child.

This interim project report recommends that the Legislature retain the offense of interference with custody, as well as the three defenses, the exception and its required reporting requirement, and the public records exemption. However, noting a number of inconsistencies that may create ambiguity over the scope of the statute, this report further recommends, among other drafting enhancements, that the Legislature clarify that the exception to prosecution applies to the taking of an incompetent person as well as a child. In addition, it is recommended that the Legislature expand the scope of the exception beyond "spouses," to include others who have lawful custody and seek shelter from domestic violence, thereby recognizing that domestic violence can occur in a non-marital relationship.

With respect to the public records exemption, this report recommends that the Legislature add provisions to ensure that the confidential information may be shared with designated officials or entities when necessary. In addition, the Legislature may wish to consider providing for the confidential and exempt status of the records to be lifted when the safety of the parties is no longer at risk.

BACKGROUND

Interference with Custody

The Legislature in 1974 created the offense of interference with custody. Today, there are two variations to the offense. Under one provision, it is a third-degree felony for any person – without legal authority – to knowingly or recklessly take a child 17 years of age or under or any incompetent person from the custody of his or her parent, a guardian, a public agency in charge of the child or incompetent person, or any other lawful custodian.[1] Under the second provision, it is a third-degree felony – in the absence of a court order determining custody or visitation rights – for a parent, stepparent, guardian, or relative who has custody of a child or incompetent person to take or conceal the child or incompetent person with a malicious intent to deprive another person of his or her right to custody.[2]

[1] Section 787.03(1), F.S.
[2] Section 787.03(2), F.S.

The statute prescribes three defenses to the offense of interference with custody:

> (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) 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.[3]

Distinct from the three defenses, the statute further specifies that the statute does 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 … 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.[4]

To avail herself or himself of this spousal exception, a person who takes a child must comply with each of the following requirements:

- Within 10 days of the taking, make a report to the sheriff or state attorney for the county in which the child resided. The report must include the name of the person taking the child, the current address and telephone number of the person and the child, and the reasons the child was taken.
- Within a reasonable time of the taking, commence a custody proceeding consistent with the federal Parental Kidnapping Prevention Act[5] or the Uniform Child Custody Jurisdiction and Enforcement Act.[6]
- Inform the sheriff or state attorney of any address or telephone number changes for the person and the child.[7]

Public Records Exemption

Under an accompanying public records exemption, the name of the person taking the child and the current address and telephone number of that person and the child, contained in the report made to the sheriff or state attorney, are confidential and exempt from public disclosure.[8] As originally enacted in 2000, this exemption applied to "information provided" to a sheriff or state attorney as part of the report filed within 10 days of taking a child. Under the original broader wording, the public records exemption captured not only the name and address information, but also the reasons the child was taken.[9] The public records exemption was scheduled for repeal on October 2, 2005. An Open Government Sunset Review of this exemption, conducted during the 2004-2005 interim legislative period, recommended that the Legislature narrow the exemption to exclude the reason the child was taken.[10]

During the 2005 Regular Session, the Legislature re-enacted the public records exemption and saved it from then-imminent repeal. The Legislature, consistent with the Open Government Sunset Review report, also narrowed the exemption, removing the reason the child was taken from the protection from public disclosure afforded by the public records exemption.[11]

Purpose of Interim Project Report

The process of reviewing the public records exemption during the 2004-2005 interim drew attention to a number of statutory inconsistencies and ambiguities in the underlying interference-with-custody offense, as well as with respect to interplay between the offense and the public records exemption. These issues posed challenges in fully evaluating the exemption. For example, the offense generally applies to the taking of a child or an incompetent person, while the public

[3] Section 787.03(4)(a)-(c), F.S.
[4] Section 787.03(6)(a), F.S. (emphasis added).
[5] 28 U.S.C. s. 1738A.
[6] Sections 61.501-61.542, F.S.
[7] Section 787.03(6)(b), F.S.
[8] Section 787.03(6)(c), F.S.
[9] See s. 787.03(6)(c), F.S. (2000)
[10] The Florida Senate, Committee on Judiciary, *Review of Public Records Exemption for Certain Sheriff and State Attorney Records Relating to Interference with Custody, s. 787.03, F.S.* (Interim Project Report 2005-217) (November 2004).
[11] Chapter 2005-89, L.O.F. (House Bill 1699).

records exemption appears to apply solely to the taking of a child. As a consequence, the 2005 legislation re-enacted the public records exemption for one year only – scheduling it for repeal again on October 2, 2006. Further, the legislation provided for the repeal of the entire interference-with-custody statute on that date unless it is reviewed and saved from repeal through re-enactment.[12]

Thus, the purpose of this interim project report is to analyze the interference-with-custody statute and to recommend whether changes are needed to substantive law, as well as to review the accompanying public records exemption, in accordance with the Open Government Sunset Review Act.

Open Government Sunset Review

The Open Government Sunset Review Act, s. 119.15, F.S., establishes a review and repeal process for public records exemptions. An exemption may be maintained only if it serves an identifiable public purpose, and it may be no broader than necessary to meet that purpose. A public purpose is served if the exemption meets one of the following purposes and the Legislature finds that the purpose is sufficiently compelling to override the policy of open government and cannot be accomplished without the exemption:

- The exemption "[a]llows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption."
- The exemption "[p]rotects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals."
- The exemption "[p]rotects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace."[13]

[12] See s. 787.03(7), F.S.; s. 1, ch. 2005-89, L.O.F.
[13] Section 119.15(4)(b), F.S. (2004).

METHODOLOGY

As part of the research for this project, committee staff reviewed the history of legislative changes to the interference-with-custody statute; issued a survey to sheriffs, prosecuting attorneys, public defenders, private criminal defense attorneys, the courts, domestic violence authorities, and the First Amendment Foundation, as well as to other interested persons; and analyzed the statutory provisions in cooperation with staff of the House of Representatives and individuals familiar with the operation of the statute.

FINDINGS

Support for Retention of the Offense

Law enforcement representatives, defense attorneys, and other practitioners responding to the survey on interference with custody reported that charges and prosecutions under the statute occur on an infrequent-to-rare basis. Data supplied by the Legislature's Office of Economic and Demographic Research indicates approximately 72 individuals sentenced under s. 787.03, F.S., during calendar year 2004, with six of those receiving time in prison.

Despite the low activity level under the interference-with-custody statute, as compared to other types of crimes,[14] most survey respondents recommended that the Legislature retain the offense. Some noted that the statute plays an important role, in particular, in deterring parents involved in disputes and disagreements from interfering with each other's custodial rights. For example, one respondent noted, the existence of the offense deters a parent from refusing to return a child after a weekend visit.

Most respondents also recommended that the Legislature retain the two distinct variations to the offense: subsection (1) which makes it a third-degree felony for any person – without legal authority – to knowingly or recklessly take a child 17 years of age or under or any incompetent person from the custody of his or her parent, a guardian, a public agency in charge of the child or incompetent person, or any other lawful custodian; and subsection (2), which makes it a third-degree felony – in the absence of a court order determining rights to custody or visitation – for a

[14] For example, the Department of Corrections reports 2,168 inmate admissions for fiscal year 2003-2004 for robbery-related offenses.

parent, stepparent, guardian, or relative who has custody of a child or incompetent person to take or conceal the child or incompetent person with a malicious intent to deprive another person of his or her custody rights.[15] The majority of respondents recommended that the Legislature keep the offense a third-degree felony.

Statutory Inconsistencies/Ambiguities

An analysis of s. 787.03, F.S., reveals a number of inconsistencies or ambiguities in its language. Research for this report has not clarified whether the inconsistencies are the intentional result of policy choices by the Legislature or are the unintentional result of piecemeal changes to a statute over time.

Defense Nexus to Person Taken

One of the defenses to a charge of interference with custody is 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 to protect himself or herself from an act of domestic violence.[16] This provision appears to be designed to address a situation, for example, in which a mother is subject to domestic violence and leaves the home to escape the violence, taking a child from the same home with her. Although the child may not be a direct victim of domestic violence, the action by the mother removes the child from a violent environment and thus can be justified from a policy standpoint. As currently written, however, the statute does not specify a nexus between the child or incompetent person who is taken and exposure to violence. As a result, this defense creates the possibility that a mother could be subject to domestic violence in home "A," for example, at the hands of her current husband and could remove her child from home "B," where the child lives in safety with the former spouse and father who is not the abuser, thus interfering with his custody rights. Although it is possible a court or trier of fact could determine that the factual scenario is not within the intent of the defense, and thus negate its application in evaluating the defendant's guilt, the Legislature may wish to clarify this defense.

Statutory Exception & Incompetent Persons

In paragraph (6)(a) of s. 787.03, F.S., the interference-with-custody statute provides a specific exception for a spouse who is the victim of domestic violence, or reasonably believes he or she is about to be a victim of domestic violence, or who believes that his or her action is necessary to preserve a child or *incompetent person* from danger.[17] Further wording of this provision, however, explains that the exception applies when the spouse seeks shelter from these acts "and takes with him or her any *child* 17 years of age or younger."[18] The specific reference to seeking shelter and taking a child does not include a reference to taking an incompetent person, creating ambiguities about the application of the statutory exception to the taking of an incompetent person. Further, the statutory language in paragraph (6)(b) requiring a person to file a report with the sheriff or state attorney in order to avail himself or herself of this exception refers solely to information about the child and includes no references to an incompetent person.[19]

Multiple respondents to the survey reported that this exception should apply equally to situations in which a child is taken or an incompetent person is taken. The Legislature may wish to revise this portion of the statute to clarify whether it intends for the exception to apply to the taking of an incompetent person.

Statutory Exception & Spouses

The exception provided in paragraph (6)(a) of the statute applies to cases in which a *spouse* is the victim of domestic violence or in which a spouse believes his or her action is necessary to preserve a child from danger. Subsequent references in this subsection refer to a "person" who takes a child. A plain reading of the first sentence of paragraph (6)(a), however, suggests that the entire exception applies solely to spouses. The term "spouse" is not defined in this specific statute. Florida's statute providing that the state shall not recognize marriages between persons of the same sex specifies that references to the term "spouse" in the Florida Statutes apply only to a member of a legal union between one man and one woman as husband and wife. [20] *Black's Law Dictionary* defines the term

[15] Some respondents recommended that the Legislature collapse the two provisions into one encompassing offense.
[16] Section 787.03(4)(b), F.S.
[17] Section 787.03(6)(a), F.S. (emphasis added).
[18] *Id*. (emphasis added).
[19] See s. 787.03(6)(b), F.S.
[20] See s. 741.212(3), F.S.

"spouse" as "[o]ne's husband or wife by lawful marriage; a married person."[21]

Due to the statute's use of "spouse," it does not appear that a woman cohabitating in an unmarried relationship with the father of her child could utilize the safe harbor of reporting her whereabouts to the sheriff or state attorney in order to avoid prosecution, as provided by the exception, because she is not a "spouse." Because, however, the defenses prescribed in s. 787.03(4), F.S., are available to any "defendant," a woman in this situation could raise the domestic violence defense if she were prosecuted for interference with custody.

Several of the respondents to the committee's survey recommended that the Legislature broaden the application of the statutory exception to prosecution beyond its current application to "spouses," in order to include a victim of domestic violence who is not married but nonetheless leaves a home to seek shelter from an abuser and in the process takes a child or incompetent person and wishes to report to law enforcement as provided in the safe harbor provisions.

The exception under the interference-with-custody statute uses the definition of domestic violence prescribed in the state's domestic violence statute. That definition of domestic violence refers to acts of violence by a "family or household member." The phrase "family or household member," in turn, is defined broadly to include:

> spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and *persons who are parents of a child in common regardless of whether they have been married*.[22]

One option available to the Legislature is to similarly make the exception available to any family or household member who is a victim of domestic violence. Alternatively, in light of the fact that the defenses in the statute already apply broadly, the Legislature may wish to keep the outright exception to prosecution more narrow for use in limited cases. Thus, a second option is to broaden the exception beyond spouses but only to include persons with lawful custody of the child or incompetent person.

[21] *Black's Law Dictionary* 1410 (7th ed. 1999).
[22] Section 741.28(3), F.S. (emphasis added).

Parameters Governing Age of the Child

The interference-with-custody statute applies to the taking of a "child 17 years of age or under." This wording arguably may create a question of whether the statute captures, for example, a child who is 17 years and six months of age. In construing the Florida Statutes, the word "minor" refers to a "person who has not attained the age of 18 years."[23] Committee staff raised the issue in its interim-project survey, and a number of respondents recommended that the statute apply to a child under 18 years of age.[24] The Legislature may wish to specify that the offense of interference with custody applies to the taking of a minor, by replacing the phrase "child 17 years of age or under" with the phrase "minor" or "child who has not attained the age of 18 years."

Other Issues Raised by Survey Respondents

Instigation by Minor/Incompetent Person

The three existing defenses to interference with custody generated mixed reactions from respondents. In general, it appears that the defenses are supported as reasonable situations in which it may not be suitable to convict a person for interference with custody.

Some respondents expressed concern, in particular, about the statute's third defense: that 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. The concern expressed, in essence, is that a child or incompetent person is not in a position to instigate the taking and that the onus should be on the defendant to exercise more reasoned judgment. A counter argument may be that the defense protects a person who, for example, is not reasonably aware that the child is a minor or a person who reasonably believes that the child or incompetent person informed the lawful custodian. Research for this report has not identified specific problems with administration of the defense, beyond the concerns raised by survey respondents. If a defendant does raise this defense, the trier of fact is able to weigh the evidence presented in support of the defense.

[23] Section 1.01(13), F.S.
[24] A lower number of respondents recommended that the Legislature not change the existing age parameter. One respondent recommended the Legislature change the age to under 16 years of age.

10-Day Window under the Exception

In order to gain the exception provided for a spouse fleeing domestic violence or seeking to protect a child, the spouse must file a report on their whereabouts with the sheriff or state attorney within 10 days after taking the child. Some survey respondents expressed concern that the 10-day period was too long. One sheriff office representative explained that a law enforcement agency may receive a report immediately from the parent whose custody is affected. Law enforcement may spend the subsequent days investigating the disappearance of the child without the benefit of knowing that the child is in the company of the other parent.

Open Government Sunset Review Analysis

The Open Government Sunset Review Act requires consideration of the following questions:

> 1. What specific records or meetings are affected by the exemption?
> 2. Whom does the exemption uniquely affect, as opposed to the general public?
> 3. What is the identifiable public purpose or goal of the exemption?
> 4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?[25]

Records Affected

Although inconsistent statutory language ("spouse" versus "person") creates ambiguity about its full scope, the public records exemption does apply to reports submitted to a sheriff or state attorney by a spouse who takes a child in order to seek shelter from domestic violence or preserve the child from harm. The report must be submitted to gain the exception under the statute. The particular records within those reports which are confidential and exempt are: the name of the person taking the child and the current address and telephone number of the person and the child.

Persons Uniquely Affected

Principally and uniquely affected by the exemption are persons who file reports with the expectation that their names and whereabouts will not be revealed to abusers from whom they are fleeing and with whose custody they are interfering. In addition, to the extent it promotes the safety of children who are removed from domestic violence situations; the exemption also uniquely affects those children by preventing abusers, for example, from finding them.

Affected in a different manner, however, is the custodian from whom a child is taken. Upon contacting law enforcement to report the child missing, he or she may learn that the child has been taken under the statute but will not be able to establish, through the report, by whom or where. An investigation may ultimately establish that this custodian of the child was not a perpetrator of domestic violence.

Identifiable Public Purpose

In creating the public records exemption in 2000, the Legislature expressed an intention to keep victims of domestic violence safe from abusers. Specifically, the Legislature found that:

> exempting information provided to sheriffs and state attorneys … by persons fleeing from domestic violence or the threat of it is a public necessity. The information is of a sensitive, personal nature and concerns individuals who are under threat of physical and psychological harm if their whereabouts is revealed.[26]

Many of the respondents to the survey issued in connection with this interim project recommended that the Legislature retain the public records exemption in order to protect victims of domestic violence from further abuse by the perpetrators.

Obtaining Records by Alternative Means

It does not appear that the information protected by this public records exemption can be readily obtained by other means. The Open Government Sunset Review of the exemption conducted during the 2004-2005 interim legislative period, in fact, noted that there are additional statutory safeguards aimed at ensuring the protection of location information contained in other typically public documents relating to victims of domestic violence.[27] The report also noted that,

[25] Section 119.15(4)(a), F.S. (2004). For reviews started after October 1, 2005, two additional questions will apply: 1) Is the record protected by another exemption? 2) Are there multiple exemptions for the same type of record or meeting that would be appropriate to merge?

[26] Section 2, ch. 2000-357, L.O.F.

[27] The Florida Senate, Committee on Judiciary, *supra* note 10, at 4-5 (noting, for example, than an injunction petitioner may furnish information in a separate,

although the Uniform Child Custody Jurisdiction and Enforcement Act generally requires address information to be provided in certain filings, there is a provision in the uniform act that allows local confidentiality provisions to govern, and Florida has such a provision.[28]

Retention of the Public Records Exemption

Under the Open Government Sunset Review Act, a public records exemption may be maintained only if it serves an identifiable public purpose, and an exemption may be no broader than necessary to meet that purpose. One of the satisfactory purposes recognized in the act is that the exemption "[p]rotects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals."[29]

Based upon the insights shared by law enforcement, defense attorneys, court representatives, and others with experience in domestic violence issues, the public records exemption under review principally serves the public purpose of protecting sensitive information concerning individuals which, if released, could expose them to harm. A spouse who removes a child from a home in order to flee or avoid acts of domestic violence could be at risk for further harm if the alleged perpetrator were able to obtain information leading to the spouse's whereabouts. Similarly, a child removed by a spouse in order to preserve the child's welfare could be at risk if the perpetrator were able to obtain information identifying the child's location.

With respect to the breadth of the public records exemption, the First Amendment Foundation opined that the Legislature should narrow the exemption to no longer include the name of the person who takes the child within its coverage. Specifically, the foundation stated in its response:

> The name of the spouse taking the child should be subject to public disclosure. This information, which is critical to the public's opportunity to oversee the application of the interference with custody statute, is not sensitive and cannot be used to locate the spouse or child. Therefore, the exemption for the name of the spouse cannot be justified as required by Article I, section 24, of the Florida Constitution.[30]

A representative of a law enforcement agency noted that being able to release the name of the person who took the child would potentially help defuse tension when the person whose custody has been interfered with contacts law enforcement to report the child missing. Currently, having to tell a parent, for example, that his or her child has indeed been taken, but not being able to reveal by whom, can generate anxiety or a hostile response. On the other hand, the representative noted that, with today's Internet technology, having the name of a person who took a child may open the door to establishing the location information. Survey respondents reported, however, that interference-with-custody situations often arise in disputes between the parents of a child (e.g., one parent does not return the child after visitation). To the extent this assessment is accurate, there is an argument that in most cases the person who reports a child missing, and who learns from the sheriff that the child has been taken under the authority of the statute, will already have a very strong idea of who actually took the child.[31]

There is a comparable public records exemption for address and telephone information of participants in the "Address Confidentiality Program for Victims of Domestic Violence."[32] This exemption does not protect the name of the program participant, except in the case of voter registration records. Neither this exemption nor the exemption currently under review provides for confidentiality to be lifted after a prescribed period of time. As an alternative to no longer protecting the name of the individual taking the child, the Legislature could consider providing for the expiration of confidentiality once the safety of the parties is no longer at issue.

Confidential v. Exempt Status

Public records law recognizes a distinction between records that are made exempt and records made confidential. If a record is made exempt only, an agency is not prohibited from disclosing the document

confidential filing).
[28] *Id.*
[29] Section 119.15(6)(b)2., F.S.

[30] Letter from the First Amendment Foundation (July 12, 2005) (on file with the Senate Committee on Judiciary).
[31] Further, if the exception under the interference-with-custody statute applies solely to fleeing "spouses," as the wording currently suggests, there may be a strong argument for no longer protecting the name of the person taking the child (i.e., the spouse), because spouses' identities are already known to one another.
[32] Section 741.465, F.S.

in all circumstances. If the Legislature makes certain information confidential and exempt, however, such information may not be released to anyone other than to the persons or entities designated in statute.[33] The exemption under review applies a "confidential and exempt" status. The exemption, however, does not specify any entities with which the sheriff or state attorney may share confidential information contained in the location report submitted by a fleeing spouse. If it wishes to retain the confidential status of this information, the Legislature may wish to designate entities with whom the sheriff or state attorney may share the information when necessary in the course of the performance of official functions.

RECOMMENDATIONS

This report recommends that the Legislature retain the offense of interference with custody prescribed in s. 787.03, F.S. Although research indicates that prosecutions under the statute occur comparatively infrequently to other crimes, the statute plays an important role in deterring an individual from taking a child or incompetent person from someone else's custody without justification relating to his or her own safety or the safety of the child or incompetent person.

This report also recommends that the Legislature retain the accompanying three defenses to a charge of interference with custody; the exception for those who flee actual or potential violence and who report their whereabouts to the sheriff or state attorney; and the public records exemption for the name of the person who takes the child and the current address and telephone number of the person and the child contained in a report to the sheriff or state attorney.

However, this report further recommends that the Legislature make the following revisions to the interference-with-custody statute:

- Clarify the defense that currently authorizes a defendant to argue that the action of taking the child or incompetent person was necessary to protect the defendant from domestic violence. This report recommends that the Legislature require a nexus between the domestic violence from which the defendant is fleeing and the child or incompetent person, such as that the child or incompetent person is living in the same household or is otherwise exposed to the violence.

- Broaden the exception currently provided for "spouses" who take a child in the course of fleeing actual or potential domestic violence, or out of concern for the child's welfare, and report their whereabouts to law enforcement. It is recommended that the Legislature broaden this exception beyond "spouses" to include a person who has lawful custody of the child, recognizing that such a person may be exposed to domestic violence in a relationship other than a marriage. In this manner, the exception would be available, for example, to a woman who is living with the father of her child but is not married to him, and who flees with the child in order to escape domestic violence at the hands of the child's father.

- Clarify that the statutory exception, and the accompanying reporting procedures, apply to the taking of an incompetent person as well as a child. Currently the statutory process for reporting ones whereabouts to the sheriff or state attorney refers solely to the taking of a child.

- Revise the age parameter for a child covered by the statute to specify that the offense applies to the taking of a minor – replacing the phrase "child 17 years of age or under" with "minor" or "child who has not attained the age of 18 years."

With respect to the public records exemption, this report recommends that the Legislature:

- Include the taking of an incompetent person within the coverage of the public records exemption – if the Legislature adopts the recommendation above to clarify that the statutory exception, and the accompanying reporting procedures, apply to the taking of an incompetent person as well as a child. Currently the public records exemption refers solely to the taking of a child.

- Include provisions for information made confidential under the statute to be shared when necessary in the performance of official duties.

- Consider providing for the confidential and exempt status of the information to be lifted once the safety of the parties is no longer at risk.

[33] Off. of Att'y Gen. & First Amend. Found., *Gov't- in-the-Sunshine Manual*, vol. 27 (2005 ed.), 117-118.