

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: CS/SB 950

INTRODUCER: Criminal Justice Committee and Senators Simmons and Storms

SUBJECT: Stalking & Aggravated Stalking

DATE: January 19, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Fav/CS
2.	_____	_____	JU	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill amends the stalking statute, s. 784.048, F.S., by revising certain stalking definitions, primarily the definition of “credible threat.” It establishes a cause of action for an injunction for protection against stalking and cyberstalking, provides procedures and protections for obtaining a temporary or final injunction against stalking or cyberstalking (generally the same as exists for a domestic violence or repeat violence injunction), provides a first degree misdemeanor penalty for violating an injunction against stalking or cyberstalking (same as exists for a domestic violence or repeat violence injunction), and requires the court to consider issuing an injunction restraining a defendant from victim contact for up to ten years.

This bill substantially amends section 784.048 and creates sections 784.0485 and 784.0487 of the Florida Statutes.

II. Present Situation:

Stalking

Section 784.048, F.S., criminalizes the offense of stalking and aggravated stalking. Stalking is a first degree misdemeanor, punishable by serving up to one year in county jail and potentially paying up to a \$1,000 fine. Stalking is committed when a person willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person.¹

Aggravated stalking is a third degree felony, punishable by serving up to five years in prison and potentially paying up to a \$5,000 fine. There are four aggravated stalking offenses as follows. Willful, malicious, and repeated following, harassing, or cyberstalking a person while making a credible threat with the intent to place that person in reasonable fear of death or bodily injury for himself, his child, sibling, spouse, parent, or dependent is the first enumerated aggravated stalking offense in the statute.²

The second aggravated stalking offense occurs when a person, after an injunction for protection against repeat violence, sexual violence, dating violence, domestic violence, or any other court imposed prohibition of conduct toward the subject person or his property, knowingly, willfully, maliciously, and repeatedly follows, harasses, or cyberstalks that person.³

The third aggravated stalking offense occurs when a person willfully, maliciously, and repeatedly follows, harasses, or cyberstalks a minor under 16 years of age.⁴ The last enumerated offense occurs when a person has been sentenced for sexual battery, a lewd or lascivious offense, or lewd or lascivious exhibition via computer transmission and has been issued a no contact order under s. 921.244, F.S., willfully, maliciously, and repeatedly follows, harasses, or cyberstalks the victim.⁵

The stalking law provides the following definitions. It defines “harass” as “engaging in a course of conduct directed at a specific person that causes substantial emotional distress and serves no legitimate purpose.”⁶ “Course of conduct” is defined as a “pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose.”⁷

“Credible threat” means it is made with the intent to cause the targeted person to reasonably fear for his or her safety. It must also be made against the life of, or threat to cause bodily injury to a person.”⁸ Lastly, “cyberstalk” is defined to mean engaging in a course of conduct to communicate through words or images by electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose.⁹

¹ Section 784.048(2), F.S.

² Section 784.048(3), F.S.

³ Section 784.048(4), F.S.

⁴ Section 784.048(5), F.S.

⁵ Section 784.048(7), F.S.

⁶ Section 784.048(1), F.S.

⁷ Section 784.048(1)(b), F.S.

⁸ Section 784.048(1)(c), F.S.

⁹ Section 784.048(1)(d), F.S.

In 1995, the constitutionality of Florida's stalking statute was upheld by the Florida Supreme Court against an overbreadth and vagueness challenge.¹⁰

Injunctions for Protection against Domestic Violence, Repeat Violence, Sexual Violence, or Dating Violence

A victim of domestic violence¹¹ or a person who has reasonable cause to believe that he or she is in imminent danger of becoming a victim of domestic violence may seek protective injunctive relief.¹² In seeking protective injunctive relief, a person must file a sworn petition with the court that alleges the existence of domestic violence and includes specific facts and circumstances upon which relief is sought.¹³ The court must set a hearing at the earliest possible time after a petition is filed.¹⁴ The respondent must be personally served with a copy of the petition, financial affidavit, Uniform Child Custody Jurisdiction and Enforcement Act affidavit, if any, notice of hearing, and any temporary injunction that has been issued.¹⁵ The court can enforce a violation of an injunction through a civil or criminal contempt proceeding, or the state attorney may prosecute it as a first degree misdemeanor under s. 741.31, F.S.¹⁶ Either party may move the court to modify or dissolve an injunction at any time.¹⁷

Section 784.046, F.S., governs the issuance of injunctions for protection against repeat violence,¹⁸ dating violence,¹⁹ and sexual violence.²⁰ This statute basically parallels the provisions discussed above in the domestic violence law.

¹⁰ *Bouters v. State*, 659 So.2d 235 (1995), *cert.denied*, 116 S.Ct. 245, 516 U.S. 894, 133 L.Ed.2d 171.

¹¹ **Domestic violence** is defined as “any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, **stalking, aggravated stalking**, kidnapping, false imprisonment, or any criminal offense **resulting in physical injury or death of one family or household member by another family or household member.**” Section 741.28(2), F.S.

¹² Section 741.30(1), F.S.

¹³ Section 741.30(3), F.S.

¹⁴ Section 741.30(4), F.S.

¹⁵ *Id.* When an immediate and present danger of domestic violence exists, the court may grant a temporary injunction ex parte, pending a full hearing. Section 741.30(5), F.S.

¹⁶ Section 741.30(9), F.S.

¹⁷ Section 741.30(10), F.S.

¹⁸ Section 784.046(1)(a), F.S., defines **violence** as “any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, **stalking, aggravated stalking**, kidnapping, or false imprisonment, or any criminal offense **resulting in physical injury or death**, by a person against any other person.” Section 784.046(1)(b), F.S., defines **repeat violence** as “**two incidents of violence or stalking** committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner’s immediate family member.”

¹⁹ Dating violence is defined as “violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature.” The following factors come into play when determining the existence of such a relationship: (1) a dating relationship must have existed within the past six months; (2) the nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and (3) the persons involved in the relationship must have been involved over time and on a continuous basis during the course of the relationship. Dating violence does not include violence in a casual acquaintanceship or between individuals who have only engaged in ordinary fraternization. Section 784.046(1)(d), F.S.

²⁰ Sexual violence is defined as any one incident of “1. Sexual battery, as defined in chapter 794; 2. A lewd or lascivious act, as defined in chapter 800, committed upon or in the presence of a person younger than 16 years of age; 3. Luring or enticing a child, as described in chapter 787; 4. Sexual performance by a child, as described in chapter 827; or 5. Any other forcible felony wherein a sexual act is committed or attempted.” For purposes of this definition, it does not matter whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney. Section 784.046(1)(c), F.S.

Currently, a statutory cause of action does not exist specifically for an injunction for protection against stalking or cyberstalking. A person desiring such an injunction must pursue injunction relief through the domestic violence injunction statute or the repeat violence injunction statute as outlined above. The domestic violence definition requires "...stalking or aggravated stalking resulting in physical injury or death of one family or household member by another member."²¹ Similarly, the violence definition in the repeat violence statute requires "...stalking or aggravated stalking resulting in physical injury or death by one person against any other person."²² The repeat violence definition requires "...two incidents of stalking, one being within six months of the petition's filing, which are directed against the petitioner or an immediate family member."²³

III. Effect of Proposed Changes:

The bill amends the stalking statute, s. 784.048, F.S., by revising some of the stalking definitions, primarily the definition of "credible threat." It establishes a cause of action for an injunction for protection against stalking and cyberstalking, provides procedures and protections for obtaining a temporary or final injunction against stalking or cyberstalking (generally the same as exists for a domestic violence or repeat violence injunction), provides a first degree misdemeanor penalty for violating an injunction against stalking or cyberstalking (same as exists for a domestic violence or repeat violence injunction), and requires the court to consider issuing an injunction restraining a defendant from victim contact for up to ten years.

Stalking

The substantive changes to the definitions in the stalking statute largely consist of the revised definition of "credible threat." Under the bill, it means a "verbal or nonverbal threat (including one delivered by electronic communication), which places the targeted person in reasonable fear of his safety or that of his immediate family or household member, and made with the apparent ability to carry it out." However, it is not necessary to prove that the person making the threat had the intent to actually carry it out.

Additionally, the bill deletes the current language requiring that the credible threat be against the life of, or a threat to cause bodily injury to, a person. These changes should make it easier to establish aggravated stalking when a person willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another and makes a credible threat against that person.

The bill also provides a definition of "immediate family" to include a person's spouse, parent, child, grandparent, or sibling. "Household member" is defined as provided in the domestic violence statute to include spouses, former spouses, persons related by blood or marriage, persons presently residing together (or have in the past), or persons who have a child in common.

Injunctions for No Contact and for Protection Against Stalking and Cyberstalking

The bill requires the sentencing court to consider issuing an injunction restraining the defendant from any victim contact for up to ten years. The length of this restraining injunction is intended

²¹ See *supra* note 11.

²² See *supra* note 18.

²³ *Id.*

to be based upon the seriousness of the case facts, the probability of future violations, and the victim's safety. The court may issue the injunction regardless of whether the defendant is in prison, county jail, or on probation.

The bill also creates a statutory cause of action for an injunction for protection against stalking and cyberstalking, similar to the current causes of action for injunctions against domestic violence, repeat violence, sexual violence, and dating violence. The new cause of action, however, does not include a requirement that physical injury or death be involved. The bill allows a stalking victim to file a sworn petition for an injunction for protection against stalking or cyberstalking in circuit court.

The petition for protection must allege the incidents of stalking or cyberstalking and include specific facts and circumstances upon which relief is sought. The court may not require the petitioner to file a bond upon the issuance of the injunction, nor pay a filing fee. The clerk of the court must provide the petitioner with a certified copy of any protective injunction against stalking entered by the court.

Generally speaking, the bill provides procedures and protections for obtaining a temporary or final injunction against stalking or cyberstalking as currently exists for a domestic violence or repeat violence injunction. It also provides a first degree misdemeanor penalty for violating an injunction against stalking or cyberstalking, similar to the current criminal penalty that exists for violating a domestic violence or repeat violence injunction.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Violating an injunction against stalking or cyberstalking could potentially subject a person to a first degree misdemeanor penalty of serving up to one year in jail and paying up to \$1,000 in a fine.

C. Government Sector Impact:

Although there is no prison bed impact under the CS because the enhanced criminal penalties for aggravated stalking were deleted, there may be some fiscal impact upon local jails because violators of stalking injunctions can be incarcerated for up to one year in jail.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on January 19, 2012:

- Deletes the enhanced criminal penalties for aggravated stalking and the conforming changes to the Criminal Punishment Code;
- Deletes mandatory attendance at a batterers' intervention program;
- Provides procedures and protections for obtaining a temporary or final injunction against stalking or cyberstalking (generally the same as exists for a domestic violence or repeat violence injunction); and
- Provides a first degree misdemeanor penalty for violating an injunction against stalking or cyberstalking (same as exists for a domestic violence or repeat violence injunction).

- B. **Amendments:**

None.