

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 Committee on Judiciary

BILL: SB 86

INTRODUCER: Senator Book and Senator Polsky

SUBJECT: Hope Cards for Persons Issued Orders of Protection

DATE: January 8, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	Pre-meeting
2.			ACJ	
3.			FP	

I. Summary:

SB 86 creates the Hope Card program for persons issued orders of protection, such as a domestic violence injunction or an injunction against the exploitation of a vulnerable adult. The program issues a Hope Card, a credit-card sized laminated card, which identifies and describes the person who is restrained by an order of protection, identifies those protected by the order, and lists pertinent details about the order. Displaying the card is expected to facilitate the law enforcement response to a violation of the order.

The bill is effective July 1, 2024.

II. Present Situation:

Injunctions for Protection

Florida has created many forms of injunctive relief protecting persons from harm:

Domestic Violence Injunction

The first injunction against violence was codified in s. 741.30, F.S. It authorizes a family or household member¹ who is either the victim of domestic violence or has reasonable cause to believe he or she is in imminent danger of becoming the victim of any act of domestic violence to file in the circuit court a petition for an injunction against domestic violence. The term “domestic violence” means “any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any

¹ “Family or household member” means 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. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit. Section 741.28(3), F.S.

criminal offense resulting in physical injury or death of one family or household member by another family or household member.”

Because the injunction is limited to family or household members, similar injunctions have been developed to protect other persons from harm.

Injunction for Protection Against Repeat Violence, Sexual Violence, or Dating Violence

Section 784.046, F.S., provides that a petition for an injunction for protection against repeat violence may be filed in the circuit court by a person who is the victim of repeat violence² or the parent or legal guardian of any minor child who is living at home. The statute also provides that a petition for an injunction for protection against dating violence may be filed in the circuit court by a person who is the victim of dating violence³ and has reasonable cause to believe he or she is in imminent danger of becoming the victim of another act of dating violence; a person who has reasonable cause to believe he or she is in imminent danger of becoming the victim of an act of dating violence; or the parent or legal guardian of any minor child who is living at home and who seeks an injunction for protection against dating violence on behalf of that minor child.

Section 784.086, F.S., also provides that a petition for an injunction for protection against sexual violence may be filed in the circuit court by a person who is the victim of sexual violence⁴ or the parent or legal guardian of a minor child who is living at home who is the victim of sexual violence on his or her own behalf or on behalf of the minor child.

Injunction Against Stalking

Section 784.0485, F.S., authorizes a person who is the victim of stalking⁵ or the parent or legal guardian of a minor child who is a victim and living at home to file in the circuit court a petition for an injunction for protection against stalking. For the purposes of injunctions for protection against stalking, the offense of stalking includes the offense of cyberstalking.⁶

² “Repeat violence” means 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. Section 784.046(1)(b), F.S.

³ “Dating violence” is violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. This relationship is determined based on specified factors. Section 784.046(1)(d), F.S.

⁴ “Sexual violence” means any one incident of sexual battery; a lewd or lascivious act committed upon or in the presence of a person younger than 16 years of age; luring or enticing a child; sexual performance by a child; or any other forcible felony wherein a sexual act is committed or attempted, regardless of whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney. Section 784.046(1)(c), F.S.

⁵ The offense of stalking is committed by a person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person. Section 784.048(2), F.S.

⁶ “Cyberstalk” means to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person; or to access, or attempt to access, the online accounts or Internet-connected home electronic systems of another person without that person’s permission, causing substantial emotional distress to that person and serving no legitimate purpose. Section 784.048(1)(d), F.S.

Injunction for Protection Against Exploitation of a Vulnerable Adult

Section 825.1035, F.S., creates a cause of action for an injunction for protection against exploitation⁷ of a vulnerable adult.⁸ This injunction may be sought by a vulnerable adult in imminent danger of being exploited; the guardian of a vulnerable adult in imminent danger of being exploited; a person or organization acting on behalf of the vulnerable adult with the consent of the vulnerable adult or his or her guardian; an agent under a valid durable power of attorney with the authority specifically granted in the power of attorney; or a person who simultaneously files a petition for determination of incapacity and appointment of an emergency temporary guardian with respect to the vulnerable adult.⁹

Legal Standard for a Protective Injunction

The procedures for the issuance of a protective injunction issued under ss. 741.30, 784.046, 784.0485 and s. 825.1035, F.S., are similar. As to domestic violence, a person who is the victim of domestic violence or has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence has standing to file a sworn petition for an injunction.¹⁰ Based on this initial petition, a court may issue a *temporary* injunction ex-parte.¹¹ During an ex-parte proceeding, a court is generally not required to review a response from the accused and may base a temporary injunction on hearsay evidence.^{12,13} Additional evidence may be considered, however, if an accused appears at the ex-parte proceeding or has received reasonable notice of the hearing.¹⁴ This ex-parte proceeding is often necessary because “the existence of a true emergency . . . may sometimes require immediate action that will not permit the movant to verify each allegation made.”¹⁵

Parties to an injunction are entitled to a full hearing and a temporary injunction is effective for a maximum of 15 days.¹⁶ A full hearing is required prior to the expiration of the temporary injunction. At the full hearing, the accused must have a reasonable opportunity to prove or disprove the allegations made in the complaint and is entitled to introduce evidence and cross-exam witnesses.¹⁷ Based upon the full hearing, a court “must consider the current allegations, the parties’ behavior within the relationship, and the history of the relationship as a whole” to

⁷ Exploitation means exploitation of an elderly person or disabled adult under s. 825.103(1), F.S. Section 825.101(6), F.S.

⁸ See discussion of the definition of “vulnerable adult,” *supra*.

⁹ Section 825.1035(2), F.S.

¹⁰ Section 741.30(1)(a), F.S.

¹¹ Section 741.30(5)(c), F.S.

¹² *Parrish v. Price*, 71 So. 3d 132, 134 (Fla. 2d DCA 2011) (holding that a temporary injunction may be based solely on the petition filed, even if it is almost entirely based on hearsay statements).

¹³ Additionally, when a “parent files a sworn petition and has reasonable cause to believe the minor child is a victim of sexual violence by a nonparent, the sworn petition is a *presumptively sufficient* basis for an injunction.” (emphasis added) *Berthiaume v. B.S. ex rel. A.K.*, 85 So. 3d 1117, 1119 (Fla. 1st DCA 2012).

¹⁴ Section 741.30(5)(b), F.S.

¹⁵ *Smith v. Crider*, 932 So. 2d 393, 399 n. 4 (Fla. 2d DCA 2006).

¹⁶ A court may, however, grant a continuance for good cause as requested by either party. The temporary injunction may be extended to include the continuance. Section 741.30(5)(c), F.S.

¹⁷ *Furry v. Rickles*, 68 So. 3d 389, 390 (Fla. 1st DCA 2011) (citing *Ohrn v. Wright*, 963 So. 2d 298 (Fla. 5th DCA 2007)).

determine if a permanent injunction is warranted based on the petitioner's belief that he or she is in imminent danger of becoming a victim of domestic violence.¹⁸

Enforcement of a Protective Injunction

Just as filing and issuance of protective injunctions are similar, so is enforcement. A person who willfully violates an injunction for protection commits a misdemeanor of the first degree.¹⁹ A third offense related to the same protected person is a third degree felony.²⁰ Similarly, a warrantless arrest can be made for violation of an injunction if a law enforcement officer has probable cause to believe that the person has violated an injunction.²¹ The general rule requiring a law enforcement officer to witness the offense before making a misdemeanor arrest does not apply to arrests for violation of an injunction.

Statewide Record of Injunctions

The Florida Department of Law Enforcement is required to create and maintain the Domestic and Repeat Violence Injunction Statewide Verification System.²² The system is a statewide communication system capable of electronically transmitting information to and between criminal justice agencies relating to domestic violence injunctions and repeat violence injunctions issued by the courts throughout the state. The information must include, but is not limited to, information as to the existence and status of any injunction for verification purposes. The system must be notified according to the following requirements:

- Within 24 hours after the court issues an injunction for protection against domestic violence or changes, continues, extends, or vacates an injunction for protection against domestic violence, the clerk of the court must electronically transmit a certified copy of the injunction for service to the sheriff having jurisdiction over the residence of the petitioner.
- Within 24 hours after service of process of an injunction for protection against domestic violence upon a respondent, the law enforcement officer must electronically transmit the written proof of service of process to the sheriff having jurisdiction over the residence of the petitioner.
- Within 24 hours after the sheriff receives a certified copy of the injunction for protection against domestic violence, the sheriff must make information relating to the injunction available to other law enforcement agencies by electronically transmitting the information to the department.
- Within 24 hours after the sheriff or other law enforcement officer has made service upon the respondent and the sheriff has been so notified, the sheriff must make information relating to the service available to other law enforcement agencies by electronically transmitting the information to the department.

¹⁸ *Giallanza v. Giallanza*, 787 So.2d 162, 164 (Fla. 2d DCA 2001) (citing *Gustafson v. Mauck*, 743 So. 2d 614, 616 (Fla. 1st DCA 1999)).

¹⁹ Section 741.31(4)(a), F.S. (domestic violence); s. 784.047(1), F.S. (repeat violence, sexual violence, or dating violence), and s. 825.1036(4)(a), F.S. (exploitation of vulnerable adult).

²⁰ Sections 741.31(4)(c), 784.047(2), and 825.1036(4)(b), F.S.

²¹ Section 901.15(6)-(7), F.S.

²² Section 741.30(8)(b), F.S.

The apparent purpose of the statewide verification system is to allow any law enforcement agency in the state access to injunctions in order to facilitate their enforcement.

III. Effect of Proposed Changes:

The bill requires the Office of the State Courts Administrator (OSCA) to develop the Hope Card Program, and requires the court system to implement the program. The purpose of the program is to issue a Hope Card to any person who has been issued an order of protection by a court in this state or a court of another state, territory, or possession of the United States. OSCA may consult with the Attorney General, the Secretary of State, and the clerks of court to develop and implement the program. The bill also authorizes OSCA to adopt rules to implement the Hope Card Program.

Beginning July 1, 2024, a person who has been issued a final judgment on injunction for protection against domestic violence, repeat violence, sexual violence, dating violence, or exploitation of a vulnerable adult may apply for a Hope Card with the clerk of the court of the circuit where the petition for an injunction for protection was initially filed. A person protected by an order of protection issued by another state, territory, or possession of the United States may submit an application for a Hope Card to any clerk of the court in this state. A person may apply for a Hope Card at the time the final judgment on injunction for protection is issued or at any other time before the expiration of the order of protection.

Hope Card applications must be available on the website of each clerk of the court and paper applications must also be available at the clerk's office. After the court has issued an injunction for protection and within 24 hours after receipt of an application, the clerk of the court shall mail the Hope Card to the petitioner by certified mail.

The clerk of the court may not assess a fee for the issuance of a Hope Card.

A Hope Card issued under the program must be a durable, laminated, wallet-sized card containing all of the following information:

- The respondent's name, date of birth, height, weight, sex, race, eye color, hair color, and any other distinguishing features or characteristics of the respondent.
- The petitioner's name and date of birth and the names and dates of birth of any minor children protected under the order.
- The name and date of birth, if applicable, of any other person or animal protected under the order.
- Pertinent information about the order of protection, including, but not limited to, the issuing court; the case number; the date the order of protection was issued; the expiration date, if any, of the order of protection; the locations from which the respondent is restrained; and any other relevant details of the order.

The bill is effective July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The bill authorizes OSCA to implement the Hope Card Program and adopt rules as if it were an executive branch agency. The need for rulemaking, moreover, is not readily apparent, and statutory grants of rulemaking authority may only be given to executive branch agencies. Rulemaking by the court system is reserved to the Supreme Court.²³ Accordingly, the Legislature may wish to consider revising the bill to specify an executive branch agency to implement and administer the bill.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The fiscal impact of the bill depends on how it is interpreted and implemented. As written, it requires a clerk to issue a Hope Card to an eligible person within 24 hours after the person applies for it. If every county clerk buys a machine to locally and quickly manufacture cards, each clerk will expend a minimum of \$1,500 for the machine, plus programming costs and supplies. Nothing in the bill prohibits clerks from joining together to share a machine, they could voluntarily develop regional partnerships or a statewide system to produce cards and mail them. The cost per card (production and employee costs) is unknown.

²³ Art. V, s. 2(a), FLA. CONST.

Alternatively, the bill could be interpreted to provide that the clerk accepts the application and then simply forwards it to the State Courts Administrator for production of the card and mailing at state expense. The Office of the State Courts Administrator, however, reports that it does not have sufficient data to calculate the cost.²⁴

The bill requires the card to be mailed using certified mail service. Currently, postage on a one ounce or less certified mail piece is \$4.98.²⁵

In the 2022-2023 fiscal year, there were 80,159 petitions filed for one of the forms of injunction against violence.²⁶ There is no record of how many cases resulted in a final order of protection, although experience indicates that most filings result in a permanent injunction. The program also requires a card to be issued to an eligible person moving to Florida who is covered by an order of protection issued by another state or territory; the number of persons moving to the state and who may qualify is unknown.

The bill does not identify a revenue source or create any fees or any other source of income.

VI. Technical Deficiencies:

The bill contemplates that orders of protection are entered by district courts of appeal, county courts, and circuit courts. However, these orders are entered only by circuit courts. The Legislature, accordingly, should revise the bill for consistency with related laws.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 741.30, 741.315, 784.046, 784.0485, and 825.1035.

This bill creates section 741.311 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

²⁴ Office of the State Courts Administrator, *2024 Judicial Impact State for SB 86* (December 4, 2023).

²⁵ First class mail metered mail is \$0.63 for the first ounce, plus \$4.35 for certified mail service.

²⁶ *Florida's Trial Courts Statistical Reference Guide for FY 2022-23*, page 5-2 (December 2023).

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
