

STORAGE NAME: h1687a.flc

DATE: April 18, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FAMILY LAW & CHILDREN
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1687

RELATING TO: Protection against domestic violence

SPONSOR(S): Representative Villalobos

STATUTE(S) AFFECTED: Sections 44.102, 61.13, 741.28, 741.30, 741.31, 784.046, 784.047, and creating section 741.315, Florida Statutes

COMPANION BILL(S): SB 2300 (identical); CS/HB 0055, SB 1006 (compare)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) FAMILY LAW & CHILDREN YEAS 7 NAYS 1
- (2) CRIMINAL JUSTICE APPROPRIATIONS
- (3)
- (4)
- (5)

I. SUMMARY:

HB 1687 prohibits the court from referring cases to mediation whenever there is a finding of a history of domestic violence. It provides that conviction of a third degree felony or higher involving domestic violence creates a rebuttable presumption of detriment to a child in making a custody determination. It also provides that evidence of spousal or child abuse is evidence of detriment to a child for the purpose of denying shared parental responsibility or restricting visitation rights, regardless of whether an injunction for protection against domestic violence has been entered.

The bill adds kidnaping and false imprisonment to the list of offenses included in the definition of domestic violence and broadens that definition to include family members who have never lived in the same household. It amends the period for which an injunction for protection may be issued to be for at least one year, and indefinitely until further court order.

The bill creates a new section of law to implement federal law requiring states to grant full faith and credit to protection orders issued by other states or Indian tribes. The bill provides that a person need not be a resident of Florida nor register the foreign judgment, as is required for other foreign orders, under section 55.505, F.S. Instead, the bill provides:

- a.an optional procedure for placing a foreign order for protection on the registry for injunctions currently maintained by the Florida Department of Law Enforcement;
- b.an optional procedure for registering a foreign order for protection with local law enforcement agencies;
- c.procedures for law enforcement to follow to enforce an foreign order of protection, including verification of identities and reasonable efforts to verify service;
- d.complete good faith immunity to law enforcement in enforcing a foreign injunction; and
- e.criminal penalties for knowingly attempting to enforce an invalid order or falsely denying service of a valid order.

The bill has an indeterminate fiscal impact.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Mediation

Currently, the court cannot refer a case to mediation if it finds that there has been a "significant history of domestic abuse that would compromise the mediation process," s. 44.104, F.S., 1996 Supplement. According to the Office of the State Courts Administrator, more than half of Florida's twenty judicial circuits have in place some requirement that family law cases involving the custody of children must go to mediation before a trial.

According to the Office of the State Courts Administrator, a large and increasing number of persons who are parties to family law cases are not represented by attorneys. According to the Office of the State Courts Administrator's Dispute Resolution Center, which certifies and monitors the training of mediators in Florida, all family law mediators receive training in domestic violence issues and dynamics. Specifically, the training teaches mediators how to identify the indicators of domestic violence and to understand the impact domestic violence has on the parties and their capacity to participate meaningfully in the mediation process.

Child Custody and Visitation

Paragraph 61.13(2)(b), Florida Statutes, requires the court to order parental responsibility to be shared unless the court finds that shared parental responsibility would be detrimental to the child. The court must consider evidence of spousal abuse or child abuse as evidence of detriment. If the court determines that shared parental responsibility would be detrimental to the child, it may order sole residential responsibility and make visitation arrangements that will best protect the child or abused spouse from further harm.

This section also requires the court to consider evidence that a parent has been convicted of a felony of the second degree or higher involving domestic violence as establishing a rebuttable presumption of detriment to the child. If this presumption is not rebutted, the court may not grant shared parental responsibility to the convicted parent. The convicted parent, however, is not relieved of any obligation to pay child support.

Florida courts have ruled that the provisions of section 61.13 apply to all modifications on child custody, whether or not the parents of the children have been married to one another, see *Arthur v. Anderson*, 681 So.2d 796 (Fla. 3rd DCA 1996).

Injunctions for Protection and their Enforcement

Subsection 741.28(1) defines "domestic violence" as "any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, or any criminal offense resulting in physical injury or death of one family or household member by another who is or was residing in the same single dwelling unit."

Subsection 741.28(2) defines "family or household member" as "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 a family, and persons who have a child in common regardless of whether they have been married or have resided together at any time.”

Paragraph 741.30(6)(a) provides that, upon notice and hearing, the court may grant such relief as the court deems proper, including an injunction:

- (1)restraining the respondent from committing any acts of domestic violence.
- (2)awarding to the petitioner the exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner.
- (3)on the same basis as provided in chapter 61, awarding temporary custody of, or temporary visitation rights with regard to, a minor child or children of the parties.
- (4)on the same basis as provided in chapter 61, establishing temporary support for a minor child or children or the petitioner.
- (5)ordering the respondent to participate in treatment, intervention, or counseling services.
- (6)ordering such other relief as the court deems necessary for the protection of a victim of domestic violence, including injunctions or directives to law enforcement agencies.

An injunction for protection against domestic violence or an injunction for protection against repeat violence is granted for a fixed period not to exceed one year, unless upon petition of the victim, the court extends the injunction for successive fixed periods not to exceed one year, ss. 741.30(6)(b) and 784.046, F.S.

An injunction issued under s. 741.30, F.S., must, on its face, indicate that the injunction is valid and enforceable in all counties of the State of Florida and that law enforcement officers may use their arrest powers pursuant to s. 901.15(6) to enforce the terms of the injunction. There is no similar requirement for an injunction for protection against repeat violence.

Injunctions Issued in Other States

1. Federal Law

The Full Faith and Credit Clause of Article IV of the United States Constitution provides as follows:

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State; And the Congress may by general Laws prescribe the Manner in which such Acts, Records, and Proceedings shall be proved and the Effect thereof.

In 1994, Congress enacted the Violence Against Women Act (VAWA), 18, U.S.C. s. 2265 ff, which requires that any protection order issued by a court of one state or Indian tribe which had jurisdiction over the parties and which gave the person against whom the injunction was issued reasonable notice and an opportunity to be heard sufficient to protect that person’s right to due process must be accorded full faith and credit by the court of another state or Indian tribe and enforced as if it were the order of that court, 18 U.S.C. ss. 2265(a) and (b) (1994). If the order sought to be accorded full faith and credit was issued *ex parte*, notice and an opportunity to be heard must be provided within the

time required by state or tribal law, and in any event within a reasonable time after the order is issued, sufficient to protect the right to due process of the person against whom the order is sought.

A "protective order" is defined in 18 U.S.C. s. 2266 as including any injunction or other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person, including temporary and final orders issued by civil or criminal courts (other than support or child custody orders) whether obtained by filing an independent action or as a *pendente lite* order in another proceeding so long as any civil order was issued in response to a complaint, petition, or motion filed by or on behalf a person seeking protection.

Nowhere in VAWA did Congress exercise its authority under the second portion of the Full Faith and Credit Clause of the Constitution. The states, therefore, are left with the authority to determine the manner in which protective orders shall be proven and given effect.

2. Other States

Twelve states have passed specific legislation to extend full faith and credit to foreign protection orders. Of these 12 states, only Alabama does not attach conditions which must be met before the state will enforce foreign protection orders.

3. Florida Law

Sections 55.501-55.509 F.S., are known as the Florida Enforcement of Foreign Judgments Act. These sections make no specific provision for the enforcement of an injunction for protection against domestic violence or an injunction for protection against repeat violence issued outside the state of Florida. As to foreign judgments In general, these sections provide that a copy of any foreign judgment certified in accordance with the laws of the United States or of Florida may be recorded in the office of the clerk of the circuit court of any county, s. 55.503, F.S. The clerk must file, record, and index the foreign judgment in the same manner as a judgment of a circuit or county court of this state. Notice must be provided to the individual against whom the judgment applies, and such judgment is not enforceable for 30 days after the mailing of notice by the clerk, s. 55.505(2) and (3), F.S.

A judgment recorded pursuant to the Florida Enforcement of Foreign Judgments Act has the same effect and is subject to the same rules of civil procedure, legal and equitable defenses, and proceedings for reopening, vacating, or staying judgments, as a judgment entered by a circuit or county court of this state. It may be enforced, released, or satisfied in the same manner as a judgment of a circuit or county court of this state, s. 55.503(2), FIS. The person recording the foreign judgment must pay the clerk of court whatever fee is required for the recording of an original action demanding the relief or judgment granted in the foreign judgment, 55.503(3), F.S. These provisions apply to any foreign judgment that is final and conclusive and enforceable where it was issued, even though an appeal may be pending or the order may be still subject to appeal, s. 55.603, F.S.

On September 12, 1996, the Office of the Attorney General, State of Florida, issued an opinion which clarified the relationship between the Violence Against Women Act and Florida law, AGO 96-71. According to that opinion, VAWA requires that a protection order issued by another State or an Indian tribe in accordance with its provisions be treated and enforced as if it were a protective order issued by a Florida court. Further, "the federal act preempts any registration requirement by mandating that any foreign domestic violence protection order be enforced as if it were an order of the court of the enforcing state. Thus, the provisions of state law such as the Enforcement of Foreign Judgments Act are inapplicable to the enforcement of a foreign protection order issued in compliance with VAWA," p. 2. Finally, according to the opinion, "while legislative action to clarify these issues may be helpful, enforcement of foreign protective orders is not contingent upon the passage of such legislation," *id.*

Law Enforcement Immunity

Law enforcement officers may lawfully arrest a person without a warrant if there is probable cause to believe that the person has committed a criminal act in violation of an injunction against domestic violence or an injunction against repeat violence, over the objection of the petitioner, if necessary, s. 901.15(6), F.S. Further, subsection 901.15(7), F.S. authorizes law enforcement officers to lawfully arrest a person without a warrant if there is probable cause to believe that the person has committed an act of domestic violence as defined in s. 741.28 F.S., child abuse as defined in s. 827.04(2) and (3), F.S., or any battery upon another person as defined in s. 784.03, F.S. This subsection also provides that, with respect to an arrest for domestic violence, the decision to arrest may not require consent of the victim nor consideration of the relationship between the parties.

A law enforcement officer who acts in good faith and exercises due care in making an arrest under this subsection is immune from civil liability that might otherwise result by reason of his or her actions. Finally, section 901.15(8) provides that law enforcement officers may lawfully arrest a person without a warrant if there is probable cause to believe that the person has committed an act of repeat violence in violation of an injunction from repeat violence entered pursuant to s. 784.046.

B. EFFECT OF PROPOSED CHANGES:

Mediation

The bill will prohibit any case in which the court finds there to be a history of domestic violence from being mediated. It will thus end the use of mediation as an alternative to trial for child support and custody and other economic issues regardless of whether the history of domestic violence is sufficiently significant to interfere with the mediation process.

Child Custody and Visitation

The bill requires that the court consider evidence of spousal abuse or child abuse as evidence of detriment to a child in a custody proceeding, regardless of whether an injunction against domestic violence has been entered.

The bill amends the provision that the court must consider evidence that a parent has been convicted of a felony of the second degree or higher involving domestic violence as a rebuttable presumption of detriment to the child to include felonies of the **third** degree or higher. In 1995, the legislature created s. 784.035, F.S., which provides that a third conviction of a misdemeanor involving acts of domestic violence can be prosecuted as a felony of the third degree. This bill would thus allow evidence of a conviction under this "third strike" provision to create a rebuttable presumption of detriment to the child.

Injunctions for Protection and their Enforcement

The bill adds kidnaping and false imprisonment to the list of offenses included in the definition of domestic violence and broadens that definition to include family or household members who have never lived together by deleting the language "who is or was residing in the same single dwelling unit."

The bill expands the relief a court may grant when issuing an injunction to specifically permit the court to also grant any relief the court deems necessary to protect any minor child of a victim of domestic violence.

The bill amends the period for which either an injunction against domestic violence or an injunction against repeat violence may be issued after hearing to be for at least one year and to last indefinitely until further court order. The bill specifies that either party may petition at any time to dissolve an injunction against domestic violence. It does not contain a similar provision as to an injunction against repeat violence.

The bill adds the requirements for facial validity presently in effect for injunctions against domestic violence to injunctions against repeat violence. However, it adds new requirements for injunctions against domestic violence and does not add these same requirements to injunctions against repeat violence. These new requirements are that the person against whom the injunction is issued had notice and an opportunity to be heard sufficient to protect that person's right to due process and, if obtainable, the date that person was served with the temporary or final order.

Injunctions Issued in Other States

The bill exempts foreign orders of protection from the requirement for registration with the clerk of the court. It requires law enforcement officers, upon being presented with a copy of a foreign injunction, to enforce all its terms, except those related to child custody or support, as though the injunction had been issued in Florida. It specifically eliminates the need for a true or certified copy of an order for enforcement.

The bill creates a new misdemeanor offense of intentionally providing to a law enforcement officer a copy of an order of protection known by that person to be false or invalid or of falsely denying that service of a protective order has occurred.

The bill creates a voluntary registration process for foreign orders of protection. This process permits a person to present a certified copy of a foreign order of protection to any sheriff in Florida and, after swearing out an affidavit that the order as presented is currently in effect and has not been superseded, to request that the order be registered in the injunction registry. The Florida Department of Law Enforcement is directed to

develop a special notation for foreign orders of protection. The sheriff must use best efforts to ascertain whether the order was served on the respondent, if this information is not apparent on the face of the document. The sheriff is required to assign a case number to the order and to give the protected person a receipt showing registration of the foreign order. Fees for registration are prohibited.

Law Enforcement Immunity

The bill provides that any law enforcement officer acting in good faith, and the officer's employing agency, will be immune from all liability, civil and criminal, that might otherwise be incurred or imposed by reason of the officer's or agencies actions in carrying out the provisions relating to foreign protective orders.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

The bill gives Florida courts additional authority to enforce foreign orders of protection.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

The bill requires law enforcement to register and enforce foreign orders of protection, if requested to do so by a person who is a party to an order.

(3) any entitlement to a government service or benefit?

The bill allows persons holding foreign orders of protection clear access to the enforcement services of the State of Florida in order to enforce such orders.

b. If an agency or program is eliminated or reduced:

No agency or program is eliminated or reduced by this bill.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

(2) what is the cost of such responsibility at the new level/agency?

Not applicable.

(3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

The courts of another jurisdiction.

- (2) Who makes the decisions?

The courts.

- (3) Are private alternatives permitted?

No.

- (4) Are families required to participate in a program?

Yes, if orders of protection are entered.

- (5) Are families penalized for not participating in a program?

Yes, if orders of protection are entered. Violation of such orders constitutes contempt of court and may result in penalties.

- b. Does the bill directly affect the legal rights and obligations between family members?

Yes.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

Parents may choose to seek enforcement of foreign orders of protection from law enforcement.

(2) service providers?

No

(3) government employees/agencies?

Law enforcement agencies will be required to enforce foreign orders of protection.

D. SECTION-BY-SECTION RESEARCH:

Section 1. Amends paragraph 44.102(2)(b) to remove the discretion of the court to refer a case to mediation when there has been a history of domestic violence.

Section 2. Amends paragraph 61.13(2)(b) to clarify that the court must consider evidence of spousal or child abuse as evidence of detriment to a child, regardless of whether there has been a conviction for any offense or whether an injunction for protection against domestic violence has been entered, in determining whether shared parental responsibility should be ordered in a dissolution of marriage case.

Section 3. Amends subsection 741.28(1) to add kidnaping and false imprisonment to the list of offenses constituting domestic violence. Removes qualifier that the person committing the domestic violence must currently be or formerly have resided in the same single dwelling unit as the victim.

Section 4. Amends section 741.30 to expand the scope of an injunction for protection to include minor children of a victim. Adds provision allowing either party to move at any time to modify or dissolve the injunction. Adds requirements to be added to the injunction, including that the court issuing the injunction had the authority to do so, and that the person against whom the injunction was served was given reasonable notice and opportunity to be heard.

Section 5. Amends subsection 742.31(4) to include the violation of a foreign protection order accorded full faith and credit pursuant to section 741.305 as a violation of an injunction for protection against domestic violence.

Section 6. Creates section 741.315 to provide for the recognition of foreign protection orders which meet the criteria of 18 U.S.C. 2265. Provides that, notwithstanding the provisions of s. 55.505 or any other section, neither residence in this state nor registration of foreign injunctions for protection will be required for enforcement of such injunctions. In order to assist law enforcement and the courts in enforcing the orders, sets up a procedure for registering the foreign injunctions. Precludes law enforcement, the judiciary, and the clerks of court from disclosing the location of a petitioner seeking to enforce or register a foreign order. Requires law enforcement officers to enforce foreign orders of protection as though they were entered by a court of this state, except

as the orders relate to child custody, visitation, and support. As to those matters only, provides that enforcement may be obtained upon domestication of the foreign order pursuant to Chapter 55, F.S., unless the foreign order is a "pickup order" or "order of bodily attachment," requiring the immediate return of a child. Requires that before enforcing the foreign order, the law enforcement officer confirm the identity of the parties present and review the order to make sure that, on its face, it has not expired. Provides that a certified or true copy of the order shall not be required, so long as a conflicting copy is not presented. Requires law enforcement to use reasonable efforts to verify service of process. Sets forth means by which service of process may be verified. Provides that any person who intentionally provides a law enforcement officer with a copy of an order of protection known by that person to be false or invalid, or who denies having been served with an order of protection when that person has been served with such order, is guilty of a misdemeanor of the first degree. Provides that if 18 U.S.C. s. 2265 is held to be unconstitutional, this section shall be null and void.

Section 7. Amends subsection 784.046(7) to require that any temporary or final judgment on an injunction for protection against repeat violence issued pursuant to this section contain on its face, the statement that the injunction is valid and enforceable in all counties in the State of Florida and that law enforcement officers may use their arrest powers to enforce the terms of the injunction. Grants immunity to law enforcement officers and their employing agencies in carrying out the provisions of this section when the officer is acting in good faith.

Section 8. Amends section 784.047 to include the violation of a foreign injunction for protection as the basis for criminal penalties.

Section 9. Amends subsections 901.15(6), (7), and (8) to conform these subsections to those described above regarding foreign protection orders.

Section 10. Provides an effective date of October 1, 1997.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See fiscal comments.

2. Recurring Effects:

See fiscal comments.

3. Long Run Effects Other Than Normal Growth:

None

4. Total Revenues and Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See fiscal comments.

2. Recurring Effects:

See fiscal comments.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

Persons who have secured orders for protection in other jurisdictions will have direction as to how they may be enforced in Florida.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

Local law enforcement agencies will required to set up and maintain registries of the foreign orders of protection. In addition, the Florida Department of Law Enforcement will be required to make a special notation regarding these orders on the current registry of injunctions. The cost of these added duties is indeterminate.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

On page 8, line 8, there appears to be an incorrect reference. The correct reference would appear to be "s. 741.315," rather than "s. 741.305."

On page 9, lines 8 and 9, the reference to s. 901.15(6) - (8) appears to be in error and should be deleted.

On page 10, lines 21 through 23, the provision relating to revealing the location of a victim is not limited to giving information to other parties named in the injunction and does not recognize circumstances when the location of a petitioner might need to be revealed, such as to medical personnel when law enforcement officers request their assistance. Unless required by federal law, this provision appears to create a public records exception and may require placement in a separate bill.

On page 14, line 29, and page 15, line 21, the new language appears to have been inserted at a confusing point in the sentence, and does not contain the language "pursuant to s. 741.315."

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

At its meeting of April 17, 1997, the Committee on Family Law and Children adopted a strike-everything amendment to the bill. This amendment made technical changes, including changes designed to address the technical problems described above, to the original bill. In addition, the strike-everything amendment added language based on the provisions of CS/SBs 302, 910, 2300 and 1006, all relating to domestic violence, to the bill.

VII. SIGNATURES:

COMMITTEE ON FAMILY LAW & CHILDREN:

Prepared by:

Legislative Research Director:

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