

By Representative Villalobos

1 A bill to be entitled
2 An act relating to protection against domestic
3 violence; amending s. 44.102, F.S.; providing
4 that a case is not referable to family
5 mediation if the court finds there has been a
6 history of domestic violence; amending s.
7 61.13, F.S., relating to child custody and
8 support; providing for creation of a rebuttable
9 presumption of detriment to a child upon
10 evidence of a parent's conviction of a felony
11 involving domestic violence; providing for
12 evidence of spousal or child abuse to be
13 considered by the court as evidence of
14 detriment to the child; amending s. 741.28,
15 F.S.; redefining "domestic violence" to include
16 kidnapping and false imprisonment and other
17 specified criminal offenses resulting in
18 physical injury or death of one family or
19 household member by another, regardless of
20 whether the perpetrator was or is residing in
21 the same dwelling unit; amending s. 741.30,
22 F.S.; providing for court orders to protect the
23 children of the domestic violence victim's
24 minor children; revising the period during
25 which injunctive relief remains effective;
26 providing for motion to modify or dissolve
27 injunction by either party; providing for
28 indication of specified information on the face
29 of a temporary or final judgment for protection
30 against domestic violence; amending s. 741.31,
31 F.S.; defining the offense of willfully

1 violating a foreign protection order accorded
2 full faith and credit by specified acts;
3 providing penalties; creating s. 741.315, F.S.;
4 requiring that an injunction for protection
5 against domestic violence issued by a "court of
6 a foreign state," as defined, be accorded full
7 faith and credit; providing exceptions;
8 providing for availability of a registration
9 procedure to protected persons; providing
10 duties of the Florida Department of Law
11 Enforcement and sheriffs and other local law
12 enforcement officers with respect to
13 registration and enforcement of foreign
14 protection order; providing certain immunity
15 from civil and criminal liability to law
16 enforcement officer and officer's employing
17 agency; defining the offense of intentionally
18 providing a law enforcement officer with a copy
19 of protection order known to be invalid or
20 denying having been served with protection
21 order when served; providing penalties;
22 amending s. 784.046, F.S., relating to action
23 by victim of repeat violence for protective
24 injunction; providing certain immunity from
25 civil and criminal liability to law enforcement
26 officer and officer's employing agency;
27 revising period of duration of injunctive
28 relief; amending s. 784.047, F.S., relating to
29 penalties for violating protective injunction
30 against repeat violators; defining offenses of
31 willfully violating a foreign protection order

1 accorded full faith and credit by committing
2 specified acts; providing penalties; amending
3 s. 901.15, F.S., relating to circumstances when
4 arrest by officer without warrant is lawful;
5 providing conforming terminology and cross
6 references; providing certain immunity from
7 civil liability to law enforcement officer;
8 providing an effective date.

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Paragraph (b) of subsection (2) of section
13 44.102, Florida Statutes, 1996 Supplement, is amended to read:

14 44.102 Court-ordered mediation.--

15 (2) A court, under rules adopted by the Supreme Court:

16 (b) In circuits in which a family mediation program
17 has been established and upon a court finding of a dispute,
18 shall refer to mediation all or part of custody, visitation,
19 or other parental responsibility issues as defined in s.
20 61.13. A court shall not refer any case to mediation if it
21 finds there has been a ~~significant~~ history of domestic
22 violence ~~abuse that would compromise the mediation process.~~

23 Section 2. Paragraph (b) of subsection (2) of section
24 61.13, Florida Statutes, 1996 Supplement, is amended to read:

25 61.13 Custody and support of children; visitation
26 rights; power of court in making orders.--

27 (2)

28 (b)1. The court shall determine all matters relating
29 to custody of each minor child of the parties in accordance
30 with the best interests of the child and in accordance with
31 the Uniform Child Custody Jurisdiction Act. It is the public

1 policy of this state to assure that each minor child has
2 frequent and continuing contact with both parents after the
3 parents separate or the marriage of the parties is dissolved
4 and to encourage parents to share the rights and
5 responsibilities, and joys, of childrearing. After considering
6 all relevant facts, the father of the child shall be given the
7 same consideration as the mother in determining the primary
8 residence of a child irrespective of the age or sex of the
9 child.

10 2. The court shall order that the parental
11 responsibility for a minor child be shared by both parents
12 unless the court finds that shared parental responsibility
13 would be detrimental to the child. ~~The court shall consider~~
14 ~~evidence of spousal or child abuse as evidence of detriment to~~
15 ~~the child. The court shall consider~~ Evidence that a parent has
16 been convicted of a felony of the third ~~second~~ degree or
17 higher involving domestic violence, as defined in s. 741.28
18 and chapter 775, creates ~~as~~ a rebuttable presumption of
19 detriment to the child. If the presumption is not rebutted,
20 shared parental responsibility, including visitation,
21 residence of the child, and decisions made regarding the
22 child, shall not be granted to the convicted parent. However,
23 the convicted parent shall not be relieved of any obligation
24 to provide financial support. If the court determines that
25 shared parental responsibility would be detrimental to the
26 child, it may order sole parental responsibility and make such
27 arrangements for visitation as will best protect the child or
28 abused spouse from further harm. Irrespective of a conviction
29 of any offense or the existence of an injunction for
30 protection against domestic violence, the court shall consider
31

1 evidence of spousal or child abuse as evidence of detriment to
2 the child.

3 a. In ordering shared parental responsibility, the
4 court may consider the expressed desires of the parents and
5 may grant to one party the ultimate responsibility over
6 specific aspects of the child's welfare or may divide those
7 responsibilities between the parties based on the best
8 interests of the child. Areas of responsibility may include
9 primary residence, education, medical and dental care, and any
10 other responsibilities which the court finds unique to a
11 particular family.

12 b. The court shall order "sole parental
13 responsibility, with or without visitation rights, to the
14 other parent when it is in the best interests of" the minor
15 child.

16 c. The court may award the grandparents visitation
17 rights of a minor child if it is in the child's best interest.
18 Grandparents shall have legal standing to seek judicial
19 enforcement of such an award. Nothing in this section shall
20 require that grandparents be made parties or given notice of
21 dissolution pleadings or proceedings, nor shall grandparents
22 have legal standing as "contestants" as defined in s. 61.1306.
23 No court shall order that a child be kept within the state or
24 jurisdiction of the court solely for the purpose of permitting
25 visitation by the grandparents.

26 3. Access to records and information pertaining to a
27 minor child, including, but not limited to, medical, dental,
28 and school records, shall not be denied to a parent because
29 such parent is not the child's primary residential parent.

30 Section 3. Subsection (1) of section 741.28, Florida
31 Statutes, is amended to read:

1 741.28 Domestic violence; definitions.--As used in ss.
2 741.28-741.31:

3 (1) "Domestic violence" means any assault, aggravated
4 assault, battery, aggravated battery, sexual assault, sexual
5 battery, stalking, aggravated stalking, kidnapping, false
6 imprisonment, or any criminal offense resulting in physical
7 injury or death of one family or household member by another
8 ~~who is or was residing in the same single dwelling unit.~~

9 Section 4. Paragraphs (a), (b), and (c) of subsection
10 (6) of section 741.30, Florida Statutes, 1996 Supplement, are
11 amended to read:

12 741.30 Domestic violence; injunction; powers and
13 duties of court and clerk; petition; notice and hearing;
14 temporary injunction; issuance of injunction; statewide
15 verification system; enforcement.--

16 (6)(a) Upon notice and hearing, the court may grant
17 such relief as the court deems proper, including an
18 injunction:

19 1. Restraining the respondent from committing any acts
20 of domestic violence.

21 2. Awarding to the petitioner the exclusive use and
22 possession of the dwelling that the parties share or excluding
23 the respondent from the residence of the petitioner.

24 3. On the same basis as provided in chapter 61,
25 awarding temporary custody of, or temporary visitation rights
26 with regard to, a minor child or children of the parties.

27 4. On the same basis as provided in chapter 61,
28 establishing temporary support for a minor child or children
29 or the petitioner.

30 5. Ordering the respondent to participate in
31 treatment, intervention, or counseling services.

1 6. Ordering such other relief as the court deems
2 necessary for the protection of a victim of domestic violence,
3 or any minor children of the victim,including injunctions or
4 directives to law enforcement agencies, as provided in this
5 section.

6 (b) Any relief granted by the injunction is effective
7 for a term of not less than 1 year and until further order of
8 the court.~~shall be granted for a fixed period not to exceed 1~~
9 ~~year, unless upon petition of the victim the court extends the~~
10 ~~injunction for successive fixed periods not to exceed 1 year.~~
11 ~~Broad discretion resides with the court to grant an extension~~
12 ~~after considering the circumstances.~~Either party may move at
13 any time to modify or dissolve the injunction.No specific
14 allegations are required. Such relief may be granted in
15 addition to other civil or criminal remedies.

16 (c) A temporary or final judgment on injunction for
17 protection against domestic violence entered pursuant to this
18 section shall, on its face, indicate that:

19 1. The injunction is valid and enforceable in all
20 counties of the State of Florida.

21 2. Law enforcement officers may use their arrest
22 powers pursuant to s. 901.15(6) to enforce the terms of the
23 injunction.

24 3. The court had jurisdiction over the parties and
25 matter under the laws of Florida and that reasonable notice
26 and opportunity to be heard was given to the person against
27 whom the order is sought sufficient to protect that person's
28 right to due process.

29 4. The date respondent was served with the temporary
30 or final order, if obtainable.

31

1 Section 5. Subsection (4) of section 741.31, Florida
2 Statutes, 1996 Supplement, is amended to read:

3 741.31 Violation of an injunction for protection
4 against domestic violence.--

5 (4) A person who willfully violates an injunction for
6 protection against domestic violence~~;~~issued pursuant to s.
7 741.30, or a foreign protection order accorded full faith and
8 credit pursuant to s. 741.305,by:

9 (a) Refusing to vacate the dwelling that the parties
10 share;

11 (b) Going to the petitioner's residence, school, place
12 of employment, or a specified place frequented regularly by
13 the petitioner and any named family or household member;

14 (c) Committing an act of domestic violence against the
15 petitioner;

16 (d) Committing any other violation of the injunction
17 through an intentional unlawful threat, word, or act to do
18 violence to the petitioner; or

19 (e) Telephoning, contacting, or otherwise
20 communicating with the petitioner directly or indirectly,
21 unless the injunction specifically allows indirect contact
22 through a third party

23
24 is guilty of a misdemeanor of the first degree, punishable as
25 provided in s. 775.082 or s. 775.083.

26 Section 6. Section 741.315, Florida Statutes, is
27 created to read:

28 741.315 Recognition of foreign protection orders.--

29 (1) As used in this section, the term "court of a
30 foreign state" means a court of competent jurisdiction of a
31 state of the United States, other than Florida; the District

1 of Columbia; an Indian tribe; or a commonwealth, territory, or
2 possession of the United States.

3 (2) Pursuant to 18 U.S.C. s. 2265, an injunction for
4 protection against domestic violence issued by a court of a
5 foreign state must be accorded full faith and credit by the
6 courts of this state and enforced by a law enforcement agency
7 as if it were the order of a Florida court issued under s.
8 741.30, s. 741.31, s. 784.046, s. 784.047, or s.
9 901.15(6)-(8). Ex parte foreign injunctions for protection are
10 not eligible for enforcement under this section unless notice
11 and opportunity to be heard have been provided within the time
12 required by the foreign state or tribal law, and in any event
13 within a reasonable time after the order is issued, sufficient
14 to protect the respondent's due process rights.

15 (3) Notwithstanding s. 55.505 or any other provision
16 to the contrary, neither residence in this state nor
17 registration of foreign injunctions for protection shall be
18 required for enforcement of this order by this state and
19 failure to register the foreign order shall not be an
20 impediment to its enforcement. However, in order to assist law
21 enforcement and the courts in enforcement of foreign
22 injunctions for protection, the following registration
23 procedure shall be available to protected persons who hold
24 orders from a court of a foreign state.

25 (a) A protected person may present a certified copy of
26 a foreign order of protection to any sheriff in this state and
27 request that the same be registered in the injunction
28 registry. It is not necessary that the protected person
29 register the foreign order in the protected person's county of
30 residence. Venue is proper throughout the state. The protected
31 person must swear by affidavit, that to the best of the

1 protected person's knowledge and belief, the attached
2 certified copy of the foreign order, docket number
3, issued in the state of on
4 is currently in effect as written and has not
5 been superseded by any other order.

6 (b) The sheriff shall examine the certified copy of
7 the foreign order and register the order in the injunction
8 registry, noting that it is a foreign order of protection. If
9 not apparent from the face of the certified copy of the
10 foreign order, the sheriff shall use best efforts to ascertain
11 whether the order was served on the respondent. The Florida
12 Department of Law Enforcement shall develop a special notation
13 for foreign orders of protection. The sheriff shall assign a
14 case number and give the protected person a receipt showing
15 registration of the foreign order in this state. There shall
16 be no fee for registration of a foreign order.

17 (c) The foreign order may also be registered by local
18 law enforcement agencies upon receipt of the foreign order and
19 any accompanying affidavits in the same manner described in
20 paragraphs (a) and (b).

21 (d) Law enforcement, the judiciary, and the clerks of
22 court are prohibited from disclosing the location of a
23 petitioner seeking to enforce or register a foreign order.

24 (4)(a) Law enforcement officers shall enforce foreign
25 orders of protection as if they were entered by a court of
26 this state. Upon presentation of a foreign protection order by
27 a protected person, a law enforcement officer shall assist in
28 enforcement of all of its terms, pursuant to federal law,
29 except matters related to child custody, visitation, and
30 support. As to those provisions only, enforcement may be
31 obtained upon domestication of the foreign order pursuant to

1 ss. 55.501-55.509 unless the foreign order is a "pickup order"
2 or "order of bodily attachment" requiring the immediate return
3 of a child.

4 (b) Before enforcing a foreign protection order, a law
5 enforcement officer should confirm the identity of the parties
6 present and review the order to determine that, on its face,
7 it has not expired. Presentation of a certified or true copy
8 of the protection order shall not be required as a condition
9 of enforcement, provided that a conflicting certified copy is
10 not presented by the respondent or the individual against whom
11 enforcement is sought.

12 (c) A law enforcement officer shall use reasonable
13 efforts to verify service of process.

14 (d) In order to assist enforcement, service may be
15 verified as follows:

16 1. By petitioner: Petitioner may swear that to the
17 best of petitioner's knowledge, respondent was served with the
18 order of protection because petitioner was present at time of
19 service; respondent told petitioner he was served; another
20 named person told petitioner respondent was served; or
21 respondent told petitioner he knows of the content of the
22 order and date of the return hearing.

23 2. By respondent: Respondent swears that he was or
24 was not served with the order.

25 (e) Enforcement and arrest for violation of a foreign
26 protection order shall be consistent with the enforcement of
27 orders issued in this state.

28 (f) A law enforcement officer acting in good faith
29 under this section and the officer's employing agency shall be
30 immune from all liability, civil or criminal, that might
31 otherwise be incurred or imposed by reason of the officer's or

1 agency's actions in carrying out the provisions of this
2 section.

3 (g) Law enforcement shall not require petitioner to
4 sign a registration affidavit as a condition of enforcement.

5 (h) A foreign order of protection shall remain in
6 effect until the date of expiration on its face; or, if there
7 is no expiration date on its face, a foreign order of
8 protection shall remain in effect until expiration. If the
9 order of protection states on its face that it is a permanent
10 order, then there is no date of expiration.

11 (5) Any person who acts under this section and
12 intentionally provides a law enforcement officer with a copy
13 of an order of protection known by that person to be false or
14 invalid, or who denies having been served with an order of
15 protection when that person has been served with such order,
16 commits a misdemeanor of the first degree, punishable as
17 provided in s. 775.082 or s. 775.083.

18 (6) In the event 18 U.S.C. s. 2265 is held to be
19 unconstitutional, this section shall be null and void.

20 Section 7. Subsection (7) of section 784.046, Florida
21 Statutes, is amended, and subsection (11) is added to said
22 section, to read:

23 784.046 Action by victim of repeat violence for
24 protective injunction; powers and duties of court and clerk of
25 court; filing and form of petition; notice and hearing;
26 temporary injunction; issuance; statewide verification system;
27 enforcement.--

28 (7) Upon notice and hearing, the court may grant such
29 relief as the court deems proper, including an injunction:

30 (a) Enjoining the respondent from committing any acts
31 of violence.

1 (b) Ordering such other relief as the court deems
2 necessary for the protection of the petitioner, including
3 injunctions or directives to law enforcement agencies, as
4 provided in this section.

5
6 ~~(c) Any relief granted by the injunction is effective for a~~
7 ~~term of not less than 1 year and until further order of the~~
8 ~~court shall be granted for a fixed period not to exceed 1~~
9 ~~year, unless upon petition of the victim the court extends the~~
10 ~~injunction for successive fixed periods not to exceed 1 year.~~
11 Such relief may be granted in addition to other civil or
12 criminal remedies.

13 (c) A temporary or final judgment on injunction for
14 protection against repeat violence entered pursuant to this
15 section shall, on its face, indicate that:

16 1. The injunction is valid and enforceable in all
17 counties of the State of Florida.

18 2. Law enforcement officers may use their arrest
19 powers pursuant to s. 901.15(6) to enforce the terms of the
20 injunction.

21 (11) A law enforcement officer acting in good faith
22 under this section and the officer's employing agency shall be
23 immune from all liability, civil or criminal, that might
24 otherwise be incurred or imposed by reason of the officer's or
25 agency's actions in carrying out the provisions of this
26 section.

27 Section 8. Section 784.047, Florida Statutes, is
28 amended to read:

29 784.047 Penalties for violating protective injunction
30 against repeat violators.--A person who willfully violates an
31 injunction for protection against repeat violence, or a

1 foreign protection order accorded full faith and credit,
2 issued pursuant to s. 784.046, by:

3 (1) Refusing to vacate the dwelling that the parties
4 share;

5 (2) Going to the petitioner's residence, school, place
6 of employment, or a specified place frequented regularly by
7 the petitioner and any named family or household member;

8 (3) Committing an act of repeat violence against the
9 petitioner;

10 (4) Committing any other violation of the injunction
11 through an intentional unlawful threat, word, or act to do
12 violence to the petitioner; or

13 (5) Telephoning, contacting, or otherwise
14 communicating with the petitioner directly or indirectly,
15 unless the injunction specifically allows indirect contact
16 through a third party;

17

18 commits ~~is guilty of~~ a misdemeanor of the first degree,
19 punishable as provided in s. 775.082 or s. 775.083.

20 Section 9. Subsections (6), (7), and (8) of section
21 901.15, Florida Statutes, 1996 Supplement, are amended to
22 read:

23 901.15 When arrest by officer without warrant is
24 lawful.--A law enforcement officer may arrest a person without
25 a warrant when:

26 (6) There is probable cause to believe that the person
27 has committed a criminal act according to s. 741.31 or s.
28 784.047 which violates an injunction for protection entered,
29 or a foreign protection order accorded full faith and credit,
30 pursuant to s. 741.30 or s. 784.046, over the objection of the
31 petitioner, if necessary.

1 (7) There is probable cause to believe that the person
2 has committed:

3 (a) An act of domestic violence, as defined in s.
4 741.28;

5 (b) Child abuse, as defined in s. 827.04(2) and (3);
6 or

7 (c) Any battery upon another person, as defined in s.
8 784.03.

9

10 With respect to an arrest for an act of domestic violence, the
11 decision to arrest shall not require consent of the victim or
12 consideration of the relationship of the parties. A law
13 enforcement officer who acts in good faith and exercises due
14 care in making an arrest under this subsection, under s.
15 741.31(4) or s. 784.047, or pursuant to a foreign order of
16 protection is immune from civil liability that otherwise might
17 result by reason of his or her action.

18 (8) He has probable cause to believe that the person
19 has knowingly committed an act of repeat violence in violation
20 of an injunction for protection from repeat violence entered,
21 or a foreign protection order accorded full faith and credit,
22 pursuant to s. 784.046.

23 Section 10. This act shall take effect October 1,
24 1997.

25

26

27

28

29

30

31

509-147A-97

HOUSE SUMMARY

Provides that a case is not referable to family mediation if the court finds there has been a history of domestic violence. Provides for creation of a rebuttable presumption of detriment to a child upon evidence of a parent's conviction of a felony involving domestic violence. Provides for evidence of spousal or child abuse as evidence to be considered by the court as evidence of detriment to the child.

Redefines "domestic violence" to include kidnapping and false imprisonment and other specified criminal offenses resulting in physical injury or death of one family or household member by another, regardless of whether the perpetrator was or is residing in the same dwelling unit. Provides for court orders to protect the children of the domestic violence victim's minor children. Revises the period during which injunctive relief remains effective. Provides for motion to modify or dissolve injunction by either party. Provides for indication of specified information on the face of a temporary or final judgment for protection against domestic violence. Defines the offense of willfully violating a foreign protection order accorded full faith and credit by committing specified acts. Provides penalties. Requires that an injunction for protection against domestic violence issued by a "court of a foreign state," as defined, be accorded full faith and credit. Provides exceptions. Provides for availability of a registration procedure to protected persons. Provides duties of the Florida Department of Law Enforcement and sheriffs and other local law enforcement officers with respect to registration and enforcement of foreign protection order. Provides certain immunity from civil and criminal liability to law enforcement officer and officer's employing agency. Defines the offense of intentionally providing a law enforcement officer with a copy of protection order known to be invalid or denying having been served with protection order when served. Provides penalties.

Revises specified provisions relating to action by victim of repeat violence for protective injunction. Defines offenses of willfully violating a foreign protection order accorded full faith and credit by committing specified acts. Provides penalties. Provides certain immunity from civil and criminal liability to law enforcement officer and officer's employing agency. Revises period of duration of injunctive relief.

Revises provisions relating to circumstances when arrest by officer without warrant is lawful to provide conforming terminology and cross references. Provides certain immunity from civil liability to law enforcement officer.