

By Representative Crow

1 A bill to be entitled
2 An act relating to domestic violence; amending
3 s. 741.31, F.S., relating to violation of
4 injunction for protection against domestic
5 violence or of specified foreign protection
6 order; providing for court revocation for a
7 specified period of the driver's license of a
8 person who has used a motor vehicle in the
9 course of violating the injunction or order;
10 providing for forfeiture as contraband of such
11 motor vehicle; providing for vehicle booting or
12 immobilization for a specified period;
13 providing for forfeiture of personal property
14 used in the course of the violation; amending
15 s. 784.047, F.S., relating to penalties for
16 violating protective injunction against repeat
17 violence or specified foreign protection order;
18 providing for court revocation for a specified
19 period of the driver's license of a person who
20 has used a motor vehicle in the course of
21 violating the injunction or order; providing
22 for forfeiture as contraband of such motor
23 vehicle; providing for booting or
24 immobilization of the vehicle for a specified
25 period; providing for forfeiture of personal
26 property used in the course of the violation;
27 amending s. 784.048, F.S., relating to stalking
28 and aggravated stalking offenses; providing for
29 court revocation for a specified period of the
30 driver's license of a person who has used a
31 motor vehicle in the course of committing

1 stalking or aggravated stalking; providing for
2 forfeiture as contraband of such motor vehicle;
3 providing for booting or immobilization of the
4 vehicle for a specified period; providing for
5 forfeiture of personal property used in the
6 course of committing the stalking or aggravated
7 stalking; amending s. 932.701, F.S., relating
8 to definitions with respect to the Florida
9 Contraband Forfeiture Act; redefining the term
10 "contraband article," to conform to changes
11 made by the act; reenacting s. 932.703, F.S.,
12 relating to forfeiture of contraband articles,
13 to incorporate the amendment to s. 932.701,
14 F.S., in references; providing an effective
15 date.

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17 Be It Enacted by the Legislature of the State of Florida:

18
19 Section 1. Subsection (4) of section 741.31, Florida
20 Statutes, is amended to read:

21 741.31 Violation of an injunction for protection
22 against domestic violence.--

23 (4) A person who willfully violates an injunction for
24 protection against domestic violence issued pursuant to s.
25 741.30, or a foreign protection order accorded full faith and
26 credit pursuant to s. 741.315, by:

27 (a) Refusing to vacate the dwelling that the parties
28 share;

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

1 (c) Committing an act of domestic violence against the
2 petitioner;

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

6 (e) Telephoning, contacting, or otherwise
7 communicating with the petitioner directly or indirectly,
8 unless the injunction specifically allows indirect contact
9 through a third party

10
11 ~~commits is guilty of~~ a misdemeanor of the first degree,
12 punishable as provided in s. 775.082 or s. 775.083. If during
13 the course of committing an offense in violation of this
14 section a person is found by the court or a jury to have used
15 a motor vehicle, the court shall revoke the offender's
16 driver's license for 1 year. Upon a finding by the court that
17 the defendant committed an offense in violation of this
18 section and used any personal property, including, but not
19 limited to, any vessel, aircraft, item, object, tool,
20 substance, device, weapon, machine, vehicle of any kind,
21 money, securities, books, records, research, negotiable
22 instruments, or currency during the course of the violation,
23 such property may be forfeited pursuant to ss.
24 932.701-932.707. In lieu of forfeiture, the court may order
25 that the motor vehicle be booted or immobilized for a 30-day
26 period.

27 (5) Whether or not there is a criminal prosecution
28 under subsection (4), the court shall order the respondent to
29 attend a batterers' intervention program if it finds a willful
30 violation of a domestic violence injunction, unless the court
31 makes written factual findings in its judgment or order which

1 are based on substantial evidence, stating why a batterers'
2 intervention program would be inappropriate.

3 Section 2. Section 784.047, Florida Statutes, is
4 amended to read:

5 784.047 Penalties for violating protective injunction
6 against repeat violators.--A person who willfully violates an
7 injunction for protection against repeat violence, issued
8 pursuant to s. 784.046, or a foreign protection order accorded
9 full faith and credit pursuant to s. 741.315 by:

10 (1) Refusing to vacate the dwelling that the parties
11 share;

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

15 (3) Committing an act of repeat violence against the
16 petitioner;

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

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

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25 commits a misdemeanor of the first degree, punishable as
26 provided in s. 775.082 or s. 775.083. If during the course of
27 committing an offense in violation of this section a person is
28 found by the court or a jury to have used a motor vehicle, the
29 court shall revoke the offender's driver's license for 1 year.
30 Upon a finding by the court that the defendant committed an
31 offense in violation of this section and used any personal

1 property, including, but not limited to, any vessel, aircraft,
2 item, object, tool, substance, device, weapon, machine,
3 vehicle of any kind, money, securities, books, records,
4 research, negotiable instruments, or currency, during the
5 course of the violation, such property may be forfeited
6 pursuant to ss. 932.701-932.707. In lieu of forfeiture, the
7 court may order that the motor vehicle be booted or
8 immobilized for a 30-day period.

9 Section 3. Section 784.048, Florida Statutes, is
10 amended to read:

11 784.048 Stalking; definitions; penalties.--

12 (1) As used in this section, the term:

13 (a) "Harass" means to engage in a course of conduct
14 directed at a specific person that causes substantial
15 emotional distress in such person and serves no legitimate
16 purpose.

17 (b) "Course of conduct" means a pattern of conduct
18 composed of a series of acts over a period of time, however
19 short, evidencing a continuity of purpose. Constitutionally
20 protected activity is not included within the meaning of
21 "course of conduct." Such constitutionally protected activity
22 includes picketing or other organized protests.

23 (c) "Credible threat" means a threat made with the
24 intent to cause the person who is the target of the threat to
25 reasonably fear for his or her safety. The threat must be
26 against the life of, or a threat to cause bodily injury to, a
27 person.

28 (2) Any person who willfully, maliciously, and
29 repeatedly follows or harasses another person commits the
30 offense of stalking, a misdemeanor of the first degree,
31 punishable as provided in s. 775.082 or s. 775.083.

1 (3) Any person who willfully, maliciously, and
2 repeatedly follows or harasses another person, and makes a
3 credible threat with the intent to place that person in
4 reasonable fear of death or bodily injury, commits the offense
5 of aggravated stalking, a felony of the third degree,
6 punishable as provided in s. 775.082, s. 775.083, or s.
7 775.084.

8 (4) Any person who, after an injunction for protection
9 against repeat violence pursuant to s. 784.046, or an
10 injunction for protection against domestic violence pursuant
11 to s. 741.30, or after any other court-imposed prohibition of
12 conduct toward the subject person or that person's property,
13 knowingly, willfully, maliciously, and repeatedly follows or
14 harasses another person commits the offense of aggravated
15 stalking, a felony of the third degree, punishable as provided
16 in s. 775.082, s. 775.083, or s. 775.084.

17 (5) Any person who willfully, maliciously, and
18 repeatedly follows or harasses a minor under 16 years of age
19 commits the offense of aggravated stalking, a felony of the
20 third degree, punishable as provided in s. 775.082, s.
21 775.083, or s. 775.084.

22 (6) If during the course of committing an offense in
23 violation of this section a person is found by the court or a
24 jury to have used a motor vehicle, the court shall revoke the
25 offender's driver's license for 1 year. Upon a finding by the
26 court that the defendant committed an offense in violation of
27 this section and used any personal property, including, but
28 not limited to, any vessel, aircraft, item, object, tool,
29 substance, device, weapon, machine, vehicle of any kind,
30 money, securities, books, records, research, negotiable
31 instruments, or currency, during the course of the violation,

1 such property may be forfeited pursuant to ss.

2 932.701-932.707. In lieu of forfeiture, the court may order
3 that the motor vehicle be booted or immobilized for a 30-day
4 period.

5 (7)~~(6)~~ Any law enforcement officer may arrest, without
6 a warrant, any person he or she has probable cause to believe
7 has violated the provisions of this section.

8 Section 4. Paragraph (a) of subsection (2) of section
9 932.701, Florida Statutes, is amended to read:

10 932.701 Short title; definitions.--

11 (2) As used in the Florida Contraband Forfeiture Act:

12 (a) "Contraband article" means:

13 1. Any controlled substance as defined in chapter 893
14 or any substance, device, paraphernalia, or currency or other
15 means of exchange that was used, was attempted to be used, or
16 was intended to be used in violation of any provision of
17 chapter 893, if the totality of the facts presented by the
18 state is clearly sufficient to meet the state's burden of
19 establishing probable cause to believe that a nexus exists
20 between the article seized and the narcotics activity, whether
21 or not the use of the contraband article can be traced to a
22 specific narcotics transaction.

23 2. Any gambling paraphernalia, lottery tickets, money,
24 currency, or other means of exchange which was used, was
25 attempted, or intended to be used in violation of the gambling
26 laws of the state.

27 3. Any equipment, liquid or solid, which was being
28 used, is being used, was attempted to be used, or intended to
29 be used in violation of the beverage or tobacco laws of the
30 state.

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1 4. Any motor fuel upon which the motor fuel tax has
2 not been paid as required by law.

3 5. Any personal property, including, but not limited
4 to, any vessel, aircraft, item, object, tool, substance,
5 device, weapon, machine, vehicle of any kind, money,
6 securities, books, records, research, negotiable instruments,
7 or currency, which was used or was attempted to be used as an
8 instrumentality in the commission of, or in aiding or abetting
9 in the commission of, any felony, whether or not comprising an
10 element of the felony, or which is acquired by proceeds
11 obtained as a result of a violation of the Florida Contraband
12 Forfeiture Act.

13 6. Any real property, including any right, title,
14 leasehold, or other interest in the whole of any lot or tract
15 of land, which was used, is being used, or was attempted to be
16 used as an instrumentality in the commission of, or in aiding
17 or abetting in the commission of, any felony, or which is
18 acquired by proceeds obtained as a result of a violation of
19 the Florida Contraband Forfeiture Act.

20 7. Any personal property, including, but not limited
21 to, equipment, money, securities, books, records, research,
22 negotiable instruments, currency, or any vessel, aircraft,
23 item, object, tool, substance, device, weapon, machine, or
24 vehicle of any kind in the possession of or belonging to any
25 person who takes aquaculture products in violation of s.
26 812.014(2)(c).

27 8. Any personal property, including, but not limited
28 to, any vessel, aircraft, item, object, tool, substance,
29 device, weapon, machine, vehicle of any kind, money,
30 securities, books, records, research, negotiable instruments,
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1 or currency, used during the course of committing an offense
2 in violation of s. 741.31(4), s. 784.047, or s. 784.048.

3 Section 5. For the purpose of incorporating the
4 amendment to s. 932.701, Florida Statutes, in references
5 thereto, section 932.703, Florida Statutes, is reenacted to
6 read:

7 932.703 Forfeiture of contraband article;
8 exceptions.--

9 (1)(a) Any contraband article, vessel, motor vehicle,
10 aircraft, other personal property, or real property used in
11 violation of any provision of the Florida Contraband
12 Forfeiture Act, or in, upon, or by means of which any
13 violation of the Florida Contraband Forfeiture Act has taken
14 or is taking place, may be seized and shall be forfeited
15 subject to the provisions of the Florida Contraband Forfeiture
16 Act.

17 (b) Notwithstanding any other provision of the Florida
18 Contraband Forfeiture Act, except the provisions of paragraph
19 (a), contraband articles set forth in s. 932.701(2)(a)7. used
20 in violation of any provision of the Florida Contraband
21 Forfeiture Act, or in, upon, or by means of which any
22 violation of the Florida Contraband Forfeiture Act has taken
23 or is taking place, shall be seized and shall be forfeited
24 subject to the provisions of the Florida Contraband Forfeiture
25 Act.

26 (c) All rights to, interest in, and title to
27 contraband articles used in violation of s. 932.702 shall
28 immediately vest in the seizing law enforcement agency upon
29 seizure.

30 (d) The seizing agency may not use the seized property
31 for any purpose until the rights to, interest in, and title to

1 the seized property are perfected in accordance with the
2 Florida Contraband Forfeiture Act. This section does not
3 prohibit use or operation necessary for reasonable maintenance
4 of seized property. Reasonable efforts shall be made to
5 maintain seized property in such a manner as to minimize loss
6 of value.

7 (2)(a) Personal property may be seized at the time of
8 the violation or subsequent to the violation, if the person
9 entitled to notice is notified at the time of the seizure or
10 by certified mail, return receipt requested, that there is a
11 right to an adversarial preliminary hearing after the seizure
12 to determine whether probable cause exists to believe that
13 such property has been or is being used in violation of the
14 Florida Contraband Forfeiture Act. Seizing agencies shall make
15 a diligent effort to notify the person entitled to notice of
16 the seizure. Notice provided by certified mail must be mailed
17 within 5 working days after the seizure and must state that a
18 person entitled to notice may request an adversarial
19 preliminary hearing within 15 days after receiving such
20 notice. When a postseizure, adversarial preliminary hearing
21 as provided in this section is desired, a request must be made
22 in writing by certified mail, return receipt requested, to the
23 seizing agency. The seizing agency shall set and notice the
24 hearing, which must be held within 10 days after the request
25 is received or as soon as practicable thereafter.

26 (b) Real property may not be seized or restrained,
27 other than by lis pendens, subsequent to a violation of the
28 Florida Contraband Forfeiture Act until the persons entitled
29 to notice are afforded the opportunity to attend the
30 pre-seizure adversarial preliminary hearing. A lis pendens may
31 be obtained by any method authorized by law. Notice of the

1 adversarial preliminary hearing shall be by certified mail,
2 return receipt requested. The purpose of the adversarial
3 preliminary hearing is to determine whether probable cause
4 exists to believe that such property has been used in
5 violation of the Florida Contraband Forfeiture Act. The
6 seizing agency shall make a diligent effort to notify any
7 person entitled to notice of the seizure. The preseizure
8 adversarial preliminary hearing provided herein shall be held
9 within 10 days of the filing of the lis pendens or as soon as
10 practicable.

11 (c) When an adversarial preliminary hearing is held,
12 the court shall review the verified affidavit and any other
13 supporting documents and take any testimony to determine
14 whether there is probable cause to believe that the property
15 was used, is being used, was attempted to be used, or was
16 intended to be used in violation of the Florida Contraband
17 Forfeiture Act. If probable cause is established, the court
18 shall authorize the seizure or continued seizure of the
19 subject contraband. A copy of the findings of the court shall
20 be provided to any person entitled to notice.

21 (d) If the court determines that probable cause exists
22 to believe that such property was used in violation of the
23 Florida Contraband Forfeiture Act, the court shall order the
24 property restrained by the least restrictive means to protect
25 against disposal, waste, or continued illegal use of such
26 property pending disposition of the forfeiture proceeding.
27 The court may order the claimant to post a bond or other
28 adequate security equivalent to the value of the property.

29 (3) Neither replevin nor any other action to recover
30 any interest in such property shall be maintained in any
31 court, except as provided in this act; however, such action

1 may be maintained if forfeiture proceedings are not initiated
2 within 45 days after the date of seizure. However, if good
3 cause is shown, the court may extend the aforementioned
4 prohibition to 60 days.

5 (4) In any incident in which possession of any
6 contraband article defined in s. 932.701(2)(a) constitutes a
7 felony, the vessel, motor vehicle, aircraft, other personal
8 property, or real property in or on which such contraband
9 article is located at the time of seizure shall be contraband
10 subject to forfeiture. It shall be presumed in the manner
11 provided in s. 90.302(2) that the vessel, motor vehicle,
12 aircraft, other personal property, or real property in which
13 or on which such contraband article is located at the time of
14 seizure is being used or was attempted or intended to be used
15 in a manner to facilitate the transportation, carriage,
16 conveyance, concealment, receipt, possession, purchase, sale,
17 barter, exchange, or giving away of a contraband article
18 defined in s. 932.701(2).

19 (5) The court shall order the forfeiture of any other
20 property of a claimant, excluding lienholders, up to the value
21 of any property subject to forfeiture under this section if
22 any of the property described in this section:

23 (a) Cannot be located;

24 (b) Has been transferred to, sold to, or deposited
25 with, a third party;

26 (c) Has been placed beyond the jurisdiction of the
27 court;

28 (d) Has been substantially diminished in value by any
29 act or omission of the person in possession of the property;
30 or
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1 (e) Has been commingled with any property which cannot
2 be divided without difficulty.

3 (6)(a) Property may not be forfeited under the Florida
4 Contraband Forfeiture Act unless the seizing agency
5 establishes by a preponderance of the evidence that the owner
6 either knew, or should have known after a reasonable inquiry,
7 that the property was being employed or was likely to be
8 employed in criminal activity.

9 (b) A bona fide lienholder's interest that has been
10 perfected in the manner prescribed by law prior to the seizure
11 may not be forfeited under the Florida Contraband Forfeiture
12 Act unless the seizing agency establishes by a preponderance
13 of the evidence that the lienholder had actual knowledge, at
14 the time the lien was made, that the property was being
15 employed or was likely to be employed in criminal activity.
16 If a lienholder's interest is not subject to forfeiture under
17 the requirements of this section, such interest shall be
18 preserved by the court by ordering the lienholder's interest
19 to be paid as provided in s. 932.7055.

20 (c) Property titled or registered between husband and
21 wife jointly by the use of the conjunctives "and," "and/or,"
22 or "or," in the manner prescribed by law prior to the seizure,
23 may not be forfeited under the Florida Contraband Forfeiture
24 Act unless the seizing agency establishes by a preponderance
25 of the evidence that the coowner either knew or had reason to
26 know, after reasonable inquiry, that such property was
27 employed or was likely to be employed in criminal activity.

28 (d) A vehicle that is rented or leased from a company
29 engaged in the business of renting or leasing vehicles, which
30 vehicle was rented or leased in the manner prescribed by law
31 prior to the seizure, may not be forfeited under the Florida

1 Contraband Forfeiture Act unless the seizing agency
2 establishes by preponderance of the evidence that the renter
3 or lessor had actual knowledge, at the time the vehicle was
4 rented or leased, that the vehicle was being employed or was
5 likely to be employed in criminal activity. When a vehicle
6 that is rented or leased from a company engaged in the
7 business of renting or leasing vehicles is seized under the
8 Florida Contraband Forfeiture Act, upon learning the address
9 or phone number of the company, the seizing law enforcement
10 agency shall, as soon as practicable, inform the company that
11 the vehicle has been seized and is available for the company
12 to take possession.

13 (7) Any interest in, title to, or right to property
14 titled or registered jointly by the use of the conjunctives
15 "and," "and/or," or "or" held by a coowner, other than
16 property held jointly between husband and wife, may not be
17 forfeited unless the seizing agency establishes by a
18 preponderance of the evidence that the coowner either knew, or
19 had reason to know, after reasonable inquiry, that the
20 property was employed or was likely to be employed in criminal
21 activity. When the interests of each culpable coowner are
22 forfeited, any remaining coowners shall be afforded the
23 opportunity to purchase the forfeited interest in, title to,
24 or right to the property from the seizing law enforcement
25 agency. If any remaining coowner does not purchase such
26 interest, the seizing agency may hold the property in
27 coownership, sell its interest in the property, liquidate its
28 interest in the property, or dispose of its interest in the
29 property in any other reasonable manner.

30 (8) It is an affirmative defense to a forfeiture
31 proceeding that the nexus between the property sought to be

1 forfeited and the commission of any underlying violation was
2 incidental or entirely accidental. The value of the property
3 sought to be forfeited in proportion to any other factors must
4 not be considered in any determination as to this affirmative
5 defense.

6 Section 6. This act shall take effect October 1 of the
7 year in which enacted.

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HOUSE SUMMARY

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Provides for court revocation for a specified period of the driver's license of a person who has used a motor vehicle in the course of committing stalking or aggravated stalking or violating an injunction for protection against domestic violence or repeat violence or specified foreign protection order. Provides for forfeiture as contraband of such motor vehicle. Provides for booting or immobilization of the vehicle for a specified period. Provides for forfeiture of personal property used in the course of the violation. Redefines the term "contraband article" with respect to the Florida Contraband Forfeiture Act to conform to changes made by the act.