

STORAGE NAME: h0087.flc

DATE: March 4, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
Family Law and Children
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 87

RELATING TO: Injunctions and Restraining Orders for Domestic Violence

SPONSOR(S): Representative Futch

STATUTE(S) AFFECTED: Sections 28.241, 741.30, Florida Statutes

COMPANION BILL(S): S 0302

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

- (1) Family Law and Children
- (2)
- (3)
- (4)
- (5)

I. SUMMARY:

The bill places a \$50 limit on the total cost and fees for an injunction concerning domestic violence under chapter 741, F.S. or chapter 784, F.S. The fee for law enforcement to serve an injunction or restraining order is not to exceed \$20. The remaining \$30 is only to be applied to the clerk imposed service charge authorized in s. 28.241, F.S.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 28.241 (1), Florida Statutes, provides for a \$40 service charge to be paid to the clerk of court for filing any civil action, suit or proceeding in which there are not more than five defendants. The section also provides for the following additional fees:

1. An additional service charge of \$2 for each defendant in excess of five.
2. An additional service charge of \$10 from each party seeking each severance that is granted.
3. An additional service charge of \$35 for all proceedings of garnishment, attachment, replevin, and distress.
4. An \$8 service charge for each civil action; of the \$8, \$7 is remitted to general revenue, \$1 to the clerk.
5. An additional charge of \$2.50 that is paid into the Court Education Trust Fund.
6. The governing authority of the county may provide, by ordinance or any special local law, for additional charges for law libraries and legal aid.
7. The county may also charge an additional \$10 for each civil action for costs associated with public guardianship.
8. Postal charges may also be included for mailing costs.

The sum of all fees and service charges permitted under this subsection may not exceed \$200.

Section 30.231, Florida Statutes, limits sheriffs fees for service to \$20.

Section 741.30, Florida Statutes, authorizes a court to issue injunctions for protection against domestic violence. Subsection (1)(a) allows persons who are family or household members to seek an injunction when they are the victim of any act of domestic violence or have reasonable cause to believe that they may become the victim of any act of domestic violence. Subsection (2)(a) authorizes the court to waive the costs when a victim has insufficient funds to pay filing fees or service fees. The victim must sign an affidavit declaring indigence.

Section 784.046, Florida Statutes, authorizes a person to obtain an injunction when a victim of repeat violence. Repeat violence, as defined in s. 784.046, F.S., is two incidents of assault, battery, sexual battery, or stalking committed by the respondent, one of which must have occurred within 6 months of the filing of the petition. These acts must have been directed against the petitioner or the petitioner's immediate family member. Section 784.046(3)(b), F.S. also contains a fee waiver provision for indigent victims of repeat violence.

B. EFFECT OF PROPOSED CHANGES:

HB 87 imposes a \$50 limit on the total charge for issuing an injunction concerning domestic violence. The sheriff's service fee is limited to \$20 and the initial \$40 service charge paid to the clerk of the court in s. 28.241 (1)(a), F.S., shall be limited to \$30. No additional fees are allowed.

The bill also preserves the indigence option for domestic violence injunctions as provided in s. 741.30 (2)(a) and s. 784.046(3)(b), F.S.

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?

No.

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

No.

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

No.

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

This section is not applicable to this bill.

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

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

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

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?

The bill places a limit on the amount of fees that may be assessed for issuing injunctions and restraining orders for domestic violence.

- 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?

Individuals seeking injunctions or restraining orders as protection against domestic violence must pay up to \$50 for the injunction or restraining order unless they sign an affidavit attesting to financial hardship.

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:

This section is not applicable to this bill.

(1) Who evaluates the family's needs?

(2) Who makes the decisions?

(3) Are private alternatives permitted?

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

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

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

No.

- 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:

This section is not applicable to this bill.

(1) parents and guardians?

(2) service providers?

(3) government employees/agencies?

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

See fiscal comments.

3. Long Run Effects Other Than Normal Growth:

None

4. Total Revenues and Expenditures:

The fiscal impact is not determinable.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

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:

Individuals seeking injunctions as protection against domestic violence will have their fees capped at \$50. This limitation may serve to allow easier access to the courts to seek these injunctions.

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

None.

D. FISCAL COMMENTS:

The fiscal impact, if any, is not determinable. The \$7 fee to be placed in General Revenue as provided in s. 28.241, F.S. will not be collected under HB 87. In addition, the \$2.50 fee payable to the Court Education Trust Fund, will not be collectable. The Florida Association of Court Clerks and Comptrollers indicates however, that the fiscal impact is insignificant because most persons filing an injunction for domestic violence also file to have the fees waived through the indigence provision of s. 741.30 (2)(a), F.S. and/or s. 784.046(3)(b), F.S., and these petitions of indigence are usually granted. The Office of the State Courts Administrators has verbally estimated a negative impact on the Court Education Trust Fund of approximately \$80,000 - \$120,000.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The 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:

The bill would curtail the ability of courts to charge more than \$50 for domestic violence injunctions. However, since the fiscal impact is less than \$1.4 million, the bill is exempt from the mandate requirement of Art. VII, Section 18, Fla. Const.

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

The bill would curtail the ability of courts to charge more than \$50 for domestic violence injunctions. However, since the fiscal impact is less than \$1.4 million, the bill is exempt from the mandate requirement of Art. VII, Section 18, Fla. Const.

V. COMMENTS:

None.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

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