

STORAGE NAME: h1665a.flc

DATE: March 31, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FAMILY LAW AND CHILDREN
ANALYSIS**

BILL #: HB 1665

RELATING TO: Domestic Violence Injunctions and Children

SPONSOR(S): Representative C. Smith

COMPANION BILL(S): SB 160

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

- (1) Family Law and Children YEAS 5 NAYS 1
 - (2) Criminal Justice Appropriations
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

HB 1665 provides that, in order for a child to obtain an injunction for protection against domestic violence on acts by a family or household member against that child, those acts must constitute harm or child abuse or neglect as defined in s. 39.01(30), Florida Statutes, 1998 Supplement. This provision would not apply when the injunction for protection against domestic violence is granted to protect an adult petitioner who has included a child or children in that adult's petition for an injunction.

The bill has no fiscal impact.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 741.28(1), Florida Statutes, defines "domestic violence" as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, 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.

Section 741.28(2), Florida Statutes, defines "family or household member" to mean 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 have a child in common regardless of whether they have been married or have resided together at any time.

Section 741.30(1), Florida Statutes, 1998 Supplement, creates a cause of action for an injunction for protection against domestic violence. Any family or household member who is a victim of any act of domestic violence, or has reasonable cause to believe that he or she is in imminent danger of becoming a victim of domestic violence, has the right to file a petition for protection. This section also provides that no person is prohibited from seeking relief in the form of an injunction solely because he or she is not a spouse. The statute does not expressly provide, however, that if a child, on his or her own or through a parent or guardian on the child's behalf, seeks an injunction for protection based on acts committed by a family member against the child, those acts must constitute "harm" or "child abuse or neglect" in order for the court to grant the injunction.

According to the Executive Director of the Governor's Task Force on Domestic Violence, it is unusual for a child, on his or her own or through a parent, to petition the court for a protective injunction based on acts committed against the child. Typically, the parent-petitioner asks the court for protection from acts committed against the petitioner personally, and also asks the court to take into consideration protection for the children.

Section 39.01, Florida Statutes, 1998 Supplement, defines the terms "abuse" and "neglect" to require the parent or other person responsible for the child to harm or threaten harm to a child's physical or mental health or welfare. "Harm" is defined as inflicting or allowing to be inflicted on a child physical, mental or emotional injury, including, but not limited to, the following: committing or allowing to be committed sexual battery; allowing or encouraging sexual exploitation; exploitation of a child; abandonment of a child; exposing the child to a controlled substance or alcohol; using mechanical devices, unreasonable restraint, or extended period of isolation to control a child; engaging in violent behavior that demonstrate a wanton disregard to the presence of a child; negligently failing to protect a child; and allowing a child's sibling to die as a result of abuse, abandonment, or neglect.

B. EFFECT OF PROPOSED CHANGES:

The bill provides that a child, on his or her own or through a parent or legal guardian, may not obtain an injunction for protection against domestic violence based on acts committed by a family or household member unless those acts are found by the court to constitute "harm" or "child abuse or neglect" as defined in chapter 39, Florida Statutes. This provision will not apply when the injunction for protection against domestic violence is granted to protect an adult petitioner who has included a child or children in that adult's petition for an injunction for protection.

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?

N/A

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

N/A

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

N/A

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

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

N/A

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

N/A

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

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

N/A

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

N/A

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

N/A

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

N/A

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

N/A

3. Personal Responsibility:

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

N/A

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

N/A

4. Individual Freedom:

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

N/A

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

N/A

5. Family Empowerment:

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

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

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

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

N/A

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

N/A

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

The bill provides that a child may not obtain an injunction for protection against domestic violence based on acts committed by a family or household member unless those acts are found by the court to constitute abuse or neglect or harm as defined in chapter 39, Florida Statutes, 1998 Supplement.

- 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?

N/A

- (2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 741.30, Florida Statutes.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 741.30, Florida Statutes, 1998 Supplement, to provide that a child, on his or her own or through a parent or legal guardian, may not obtain an injunction for protection against domestic violence based on acts committed by a family or household member unless those acts are found by the court to constitute "harm" or "child abuse or neglect" as defined in s. 39.01(30), Florida Statutes, 1998 Supplement. This provision will not apply when the injunction for protection against domestic violence is granted to protect an adult petitioner who has included a child or children in that adult's petition for an injunction for protection.

Section 2. Provides for an effective date of July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

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

N/A

D. FISCAL COMMENTS:

None.

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 does not reduce the authority that municipalities or counties have to raise revenues.

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

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

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The **Committee on Family Law and Children** adopted one technical amendment during the March 30, 1999 committee meeting.

VII. SIGNATURES:

COMMITTEE ON Family Law and Children:

Prepared by:

Staff Director:

Carol E. Preston

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