

By Senator Grant

13-1638-00

See HB 605

1 A bill to be entitled
2 An act relating to injunctions for protection;
3 creating s. 784.049, F.S.; providing
4 definitions; establishing a cause of action
5 through which a parent or legal guardian may
6 obtain an injunction for protection against an
7 adult whose actions threaten the well-being of
8 a minor child; providing guidelines and
9 limitations; requiring the clerk of the court
10 to provide assistance under certain
11 circumstances; requiring waiver of fees under
12 certain circumstances; providing a form for a
13 sworn petition; permitting the court to grant a
14 temporary injunction under certain
15 circumstances; providing for an ex parte
16 hearing; restricting the introduction of
17 evidence during an ex parte hearing; limiting
18 the duration of temporary injunctions;
19 providing for a hearing; requiring the court to
20 conduct the hearing within a specific time
21 limit; requiring service on the respondent;
22 providing for a continuance upon a showing of
23 good cause; providing evidentiary guidelines;
24 permitting the court to grant such relief as
25 the court deems proper; permitting the court to
26 enjoin specific activities; providing
27 guidelines for modifying or dissolving an
28 injunction for protection; permitting the court
29 to summarily dismiss a respondent's motion to
30 dissolve an injunction for protection under
31 certain circumstances; providing for

1 termination of an injunction for protection;
2 requiring that specific items appear on an
3 injunction for protection; requiring the clerk
4 of the court to provide certain information to
5 the sheriff or a law enforcement agency;
6 providing for service upon the respondent;
7 establishing time limitations; permitting the
8 chief judge, in consultation with the sheriff,
9 to authorize a law enforcement agency to effect
10 service and receive a portion of the service
11 fee; requiring the clerk of the court to
12 forward a copy of the injunction to the sheriff
13 within a specific time period; requiring the
14 law enforcement officer who served the
15 respondent to forward written proof of service
16 to the sheriff within a specific time period;
17 requiring the sheriff to make information
18 relating to the injunction available to other
19 law enforcement agencies within a specific time
20 period; requiring the clerk of the court to
21 notify the sheriff or local law enforcement
22 agency within a specific time period following
23 certain occurrences; requiring the law
24 enforcement agency to notify the Department of
25 Law Enforcement within a specific time period
26 following certain occurrences; requiring the
27 court to enforce injunctions for protection
28 through contempt proceedings; permitting
29 monetary assessments; requiring the clerk of
30 the court to transfer monetary assessments to
31 the State Treasury for deposit in the Crimes

1 Compensation Trust Fund; providing that the
2 respondent shall be held in custody for
3 violating an injunction for protection;
4 providing immunity for law enforcement officers
5 under certain circumstances; amending s.
6 901.15(10), F.S.; permitting law enforcement
7 officers to make an arrest without a warrant
8 under certain circumstances; providing an
9 effective date.

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11 WHEREAS, the State of Florida has criminalized sexual
12 activity between adults and minor children under various
13 circumstances, and

14 WHEREAS, the Supreme Court of the State of Florida, in
15 Jones v. State, 619 So.2d 418, 424 (Fla. 1994), noted
16 that: "Florida has an obligation and a compelling interest in
17 protecting children from sexual activity and exploitation
18 before their minds and bodies have sufficiently matured to
19 make it appropriate, safe, and healthy for them," and

20 WHEREAS, the Supreme Court of the United States in
21 Bellotti v. Baird, 443 U.S. 622, 635 (1979), noted that,
22 "during the formative years of childhood and adolescence,
23 minors often lack the experience, perspective, and judgment to
24 recognize and avoid choices that could be detrimental to
25 them," and

26 WHEREAS, sexual activity between adults and minor
27 children may result in the spread of sexually transmitted
28 disease, unwanted pregnancy, and a diminution in the self
29 worth of the minor child, and

30 WHEREAS, the right of parents to raise their children
31 and to make fundamental decisions regarding the welfare of

1 their children is protected by the Federal Constitution and by
2 s. 23, Art. I of the State Constitution, NOW THEREFORE,

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

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6 Section 1. Section 784.049, Florida Statutes, is
7 created to read:

8 784.049 Action by parent or guardian of unemancipated
9 minor child for protective injunction against adult.--

10 (1) Definitions.--As used in this section, the term:

11 (a) "Minor child" means any person under 18 years of
12 age who has not been emancipated by a court order.

13 (b) "Adult" means any person who is 21 years of age or
14 older and who is not a parent or legal guardian of the minor
15 child.

16 (c) "Credible threat" means that the minor has engaged
17 in or is on the threshold of engaging in sexual activity with
18 the adult.

19 (d) "Sexual activity" means oral, anal, or vaginal
20 penetration by, or union with, the sexual organ of another.
21 However, sexual activity does not include an act done for a
22 bona fide medical purpose.

23 (2) Cause of action.--A parent or legal guardian of a
24 minor child has a cause of action for an injunction for
25 protection against an adult whose actions present a credible
26 threat to the well-being of the minor child. The parent or
27 legal guardian may seek such injunction with or without
28 representation by an attorney and notwithstanding the
29 availability or pendency of any other petition, complaint, or
30 cause of action between the parties. In addition, the parent
31 or legal guardian may seek such injunction with or without the

1 cooperation of the minor child on whose behalf the injunction
2 is sought. Only a credible threat to the well-being of the
3 minor child whose parent or legal guardian seeks an injunction
4 for protection gives rise to a cause of action under this
5 section. An abstract or generalized threat to minor children
6 within the community, standing alone, does not give rise to a
7 cause of action under this section.

8 (3) Assistance.--If the parent or legal guardian of a
9 minor child is not represented by an attorney, the clerk of
10 the court shall provide a copy of this section, simplified
11 forms, and clerical assistance for the preparation and filing
12 of a petition against an adult whose actions present a
13 credible threat to the well-being of the minor child. The
14 clerk of the court shall provide the parent or legal guardian
15 with a certified copy of any injunction entered by the court
16 pursuant to this section.

17 (4) Waiver of fees.--If the parent or legal guardian
18 lacks the ability to pay filing fees to the clerk of the court
19 or service fees to the sheriff or law enforcement agency and
20 signs an affidavit so stating, such fees shall be waived to
21 the extent necessary to process the petition and serve the
22 injunction, subject to a subsequent order of the court
23 relative to the payment of such fees. The court shall not
24 require any bond for the entry of an injunction pursuant to
25 this section.

26 (5) Form of petition.--The sworn petition shall be in
27 substantially the following form:

28 PETITION FOR AN INJUNCTION
29 FOR PROTECTION AGAINST A
30 CREDIBLE THREAT
31 TO A MINOR CHILD'S WELL-BEING

1 Before me, the undersigned authority, personally
2 appeared Petitioner ...(name)..., who has been sworn and says
3 that the following statements are true:
4 1. Petitioner resides at ...(address)....
5 2. Respondent ...(name)... resides at ...(address, if
6 known)....
7 3. Physical description of Respondent ...(include
8 race, sex, age, height, weight, eye color, hair color, and
9 distinguishing marks or scars, if known)....
10 4. Petitioner is the parent or legal guardian of
11 ...(name of minor child)....
12 5. Petitioner genuinely fears that the Respondent's
13 actions present a credible threat of harm to the minor child
14 on whose behalf this injunction is sought, as demonstrated by:
15 ...(enumerate incidents between the Respondent and the minor
16 child and other factors supporting the issuance of an
17 injunction)....
18 6. Petitioner seeks: an immediate injunction against
19 the Respondent, enjoining the Respondent from engaging in
20 sexual activity with the minor child or from pursuing the
21 minor child for the purpose of engaging in sexual activity.
22 The injunction may provide any terms the court deems necessary
23 for the protection of the minor child, including directives to
24 law enforcement agencies and no-contact orders.
25 (6) Temporary injunction.--Upon the filing of the
26 petition, if the court determines the existence of an
27 immediate credible threat to the well-being of the minor
28 child, the court may grant a temporary injunction through an
29 ex parte hearing, pending a full hearing. In such an ex parte
30 hearing the court shall not allow the introduction of
31 evidence, other than the verified pleading or affidavit,

1 unless the respondent appears at the hearing or has received
2 reasonable notice of the hearing. A temporary injunction
3 granted pursuant to this section shall be effective for a
4 fixed period not to exceed 15 days.

5 (7) Hearing.--Upon the filing of the petition, the
6 court shall set a hearing to be held at the earliest possible
7 time and no later than the expiration of a temporary
8 injunction, if a temporary injunction has been granted. The
9 respondent shall be personally served with a copy of the
10 petition, notice of hearing, and temporary injunction, if any,
11 prior to the hearing. The court may grant a continuance of
12 the hearing for good cause shown by any party. When
13 considering whether to issue an injunction, the court shall
14 consider evidence related to the overall course of conduct
15 between the adult and the minor, including:

16 (a) Whether contacts, including meetings, telephone
17 conversations, Internet communications, written
18 correspondence, and other forms of association between the
19 adult and the minor, have been frequent, numerous, intimate in
20 nature, or have persisted over time;

21 (b) Whether the minor has met with, or has been
22 invited to meet with, the adult in the adult's home or in
23 other unsupervised locations;

24 (c) Whether the adult has exhibited a pattern of
25 pursuing, stalking, or molesting other minors;

26 (d) Whether the adult has ever been convicted of
27 stalking under s. 784.048, kidnapping under s. 787.01, luring
28 or enticing a child under s. 787.025, removing minors from the
29 state or concealing minors under s. 787.04, exposure of sexual
30 organs under s. 800.03, lewd or lascivious offenses committed
31 upon or in the presence of persons less than 16 years of age

1 under s. 800.04, sexual battery under s. 794.011, unlawful
2 sexual activity with certain minors under s. 794.05, exposing
3 a child to obscene material under s. 847.013 or s. 847.0133,
4 or any other criminal offense which could indicate that the
5 adult represents a threat to the well-being of the minor
6 child;

7 (e) Whether the adult and the minor have been observed
8 kissing, embracing, making other displays of physical
9 affection, or simulating an act involving sexual activity;

10 (f) Whether the adult has disregarded a request by the
11 minor's parent or legal guardian to terminate the relationship
12 between the adult and the minor child;

13 (g) Whether the minor has undergone a change in
14 personality, a decline in self esteem, a decline in academic
15 performance, or has begun using alcohol or illegal drugs; and

16 (h) Whether the minor has used birth control, has been
17 treated for a sexually transmitted disease, has become
18 pregnant, or has exhibited other signs of sexual activity.

19 (8) Remedy.--Upon notice and hearing, the court may
20 grant such relief as the court deems proper, including an
21 injunction for protection, if the court determines that a
22 credible threat exists to the well-being of the minor child.
23 The injunction for protection may enjoin the respondent from
24 engaging in sexual activity with the minor child, enjoin the
25 respondent from pursuing the minor for the purpose of engaging
26 in sexual activity, include a no-contact order, and provide
27 such other terms as the court deems necessary for the
28 protection of the minor child, including directives to law
29 enforcement agencies. The terms of an injunction granted under
30 this section shall remain in full force and effect unless
31 modified or dissolved. The petitioner or respondent may move

1 the court to modify or dissolve an injunction granted under
2 this section due to a change in circumstances. The court may
3 summarily deny the respondent's motion to dissolve an
4 injunction granted under this section upon determining that
5 such motion is facially insufficient. Unless the court
6 dissolves an injunction for protection granted under this
7 section or, unless the injunction specifies a date for
8 termination, the injunction shall dissolve when the minor
9 child reaches 18 years of age or is emancipated by a court
10 order. A temporary or final judgement on an injunction for
11 protection granted pursuant to this section shall, on its
12 face, indicate that:

13 (a) The injunction is valid and enforceable in all
14 counties of the state.

15 (b) Law enforcement officers may use their arrest
16 powers pursuant to s. 901.15(10) to enforce the terms of the
17 injunction.

18 (c) The court had jurisdiction over the parties and
19 the matter under the laws of Florida and that the respondent's
20 due process rights were protected through reasonable notice
21 and an opportunity to be heard.

22 (d) The date that the respondent was served with the
23 temporary or final order, if reasonably obtainable.

24 (9) Service and execution.--The clerk of the court
25 shall furnish a copy of the petition, notice of hearing, and
26 temporary injunction, if any, to the sheriff or a law
27 enforcement agency of the county where the respondent resides
28 or can be found, who shall serve it upon the respondent as
29 soon thereafter as possible on any day of the week and at any
30 time of the day or night. The clerk of the court shall be
31 responsible for furnishing to the sheriff such information

1 related to the respondent's physical description and location
2 as is required by the Department of Law Enforcement to comply
3 with verification procedures. Notwithstanding any other
4 provision of law, the chief judge of each circuit, in
5 consultation with the appropriate sheriff, may authorize a law
6 enforcement agency within the chief judge's jurisdiction to
7 affect this type of service and to receive a portion of the
8 service fee. No person shall be authorized or permitted to
9 serve or execute an injunction issued under this section
10 unless the person is a law enforcement officer as defined in
11 chapter 943. When an injunction is issued, if the petitioner
12 requests the assistance of a law enforcement agency, the court
13 may order that an officer from the appropriate law enforcement
14 agency accompany the petitioner and assist in the execution or
15 service of the injunction. A law enforcement officer shall
16 accept a copy of an injunction for protection from the
17 petitioner, which has been certified by the clerk of the
18 court. The law enforcement officer shall immediately serve
19 the injunction upon a respondent who has been located but not
20 yet served.

21 (a) Within 24 hours after the court issues an
22 injunction for protection pursuant to this section or changes
23 or vacates an injunction for protection pursuant to this
24 section, the clerk of the court must forward a copy of the
25 injunction to the sheriff with jurisdiction over the residence
26 of the petitioner.

27 (b) Within 24 hours after service of process of an
28 injunction for protection upon a respondent, the law
29 enforcement officer must forward the written proof of service
30 of process to the sheriff with jurisdiction over the residence
31 of the petitioner.

1 (c) Within 24 hours after the sheriff receives a
2 certified copy of the injunction for protection, the sheriff
3 must make information relating to the injunction available to
4 other law enforcement agencies by electronically transmitting
5 such information to the Department of Law Enforcement.

6 (d) Within 24 hours after the sheriff or other law
7 enforcement officer has made service upon the respondent and
8 the sheriff has been so notified, the sheriff must make
9 information relating to the service available to other law
10 enforcement agencies by electronically transmitting such
11 information to the Department of Law Enforcement.

12 (e) Within 24 hours after an injunction for protection
13 is lifted, terminated, or otherwise rendered no longer
14 effective by ruling of the court, the clerk of the court must
15 notify the sheriff or local law enforcement agency receiving
16 original notification of the injunction. That agency shall,
17 within 24 hours after receiving such notification from the
18 clerk of the court, notify the Department of Law Enforcement
19 of such action of the court.

20 (10) Enforcement.--

21 (a) The court shall enforce, through a civil or
22 criminal contempt proceeding, a violation of an injunction for
23 protection granted pursuant to this section. The court may
24 enforce the respondent's compliance with the injunction by
25 imposing a monetary assessment. The clerk of the court shall
26 collect and receive such assessments. On a monthly basis, the
27 clerk shall transfer the moneys collected pursuant to this
28 paragraph to the State Treasury for deposit in the Crimes
29 Compensation Trust Fund established in s. 960.21.

30 (b) If the respondent is arrested by a law enforcement
31 officer under s. 901.15(10) for violating an injunction for

1 protection granted pursuant to this section, the respondent
2 shall be held in custody until brought before the court as
3 expeditiously as possible for the purpose of enforcing the
4 injunction and for admittance to bail in accordance with
5 chapter 903 and the applicable rules of criminal procedure,
6 pending a hearing.

7 (c) A law enforcement officer acting in good faith
8 under this section and the officer's employing agency shall be
9 immune from all liability, civil or criminal, that might
10 otherwise be incurred or imposed by reason of the officer's or
11 agency's actions in carrying out the provisions of this
12 section.

13 Section 2. Subsection (10) of section 901.15, Florida
14 Statutes, is amended to read:

15 901.15 When arrest by officer without warrant is
16 lawful.--A law enforcement officer may arrest a person without
17 a warrant when:

18 (10) The officer has probable cause to believe that
19 the person has knowingly committed an act of repeat violence
20 in violation of an injunction for protection from repeat
21 violence entered pursuant to s. 784.046 or a foreign
22 protection order accorded full faith and credit pursuant to s.
23 741.315, or if the officer has probable cause to believe that
24 the person has knowingly violated an injunction for protection
25 against a credible threat to a minor child's well-being
26 entered pursuant to s. 784.049.

27 Section 3. This act shall take effect upon becoming
28 law.

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HOUSE SUMMARY

Establishes a cause of action through which a parent or legal guardian may obtain an injunction for protection against an adult whose actions threaten the well-being of a minor child. See bill for details.