

STORAGE NAME: h0605.flc

DATE: April 3, 2000

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

BILL #: HB 605

RELATING TO: Injunctions for Protection/Minors

SPONSOR(S): Rep. Fiorentino and others

TIED BILL(S):

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

- (1) FAMILY LAW AND CHILDREN
 - (2) CRIME AND PUNISHMENT
 - (3) CRIMINAL JUSTICE APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

The bill creates section 784.049, Florida Statutes, to provide the parents or legal guardian of a minor with a cause of action, through an injunction for protection, against an adult whose actions present a credible threat to the well-being of the minor. The injunction seeks to prevent sexual activity between the adult and the minor child. The injunction may be requested regardless of other relief or proceedings pending between the parties. The bill directs the clerk of court to assist a parent or guardian in filing for an injunction when the parent or guardian has not retained counsel. The clerk is to provide simplified forms and clerical assistance. Filing fees are to be waived if the parent or guardian does not have the ability to pay.

The bill contains language to be used in the form for petition of an injunction for protection. The form is similar to the form found in section 741.30(3)(b), Florida Statutes, petition for injunction for protection against domestic violence. The bill allows for the court to issue a temporary injunction through an ex parte hearing if the court determines that a threat to the well-being of the minor child exists.

The bill lists several factors the court must consider at the hearing for a permanent injunction for protection. These include the nature of the contact between petitioner and respondent; past convictions of the respondent for relevant crimes; and the outward effect on the minor since the beginning of the sexual activity. The bill also lists the remedies to be issued by the court upon a finding of sufficient evidence to support an injunction for protection. These include a no-contact order; directives to appropriate law enforcement agencies; and enjoining the pursuit of the minor for purposes of sexual activity.

The bill directs service of process by the clerk of court and service by law enforcement agencies. The bill also provides for service to take place within 24 hours of the issuance of the court order. The bill outlines enforcement of the injunction through criminal or civil contempt order of the court. The injunction may also be enforced by law enforcement authorities through power of arrest granted under section 901.15(10), Florida Statutes. The bill gives immunity to the arresting officer and agency upon a showing of good faith under the section.

The bill amends section 901.15(10) to allow an arrest without a warrant based upon an officer's probable cause belief that the respondent has violated an injunction for protection issued under this bill.

The bill takes effect upon becoming law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

The bill allows parents or legal guardian to intervene in a situation in which an adult is engaging in sexual activities with a minor child. The bill provides for a level of protection of the family structure.

B. PRESENT SITUATION:

The Supreme Court of Florida, in Jones v. State, 619 So.2d 418 (Fla. 1994), observed that, "Florida has an obligation and a compelling interest in protecting children from sexual activity and exploitation before their minds and bodies have sufficiently matured to make it appropriate, safe, and healthy for them." See id. at 424.

The United States Supreme Court has said that, "during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them." See Bellotti v. Baird, 443 U.S. 622, 635 (1979).

Several statutes address the issue of sexual activity between adults and minor children. Section 794.05, Florida Statutes, provides:

A person 24 years of age or older who engages in sexual activity with a person 16 or 17 years of age commits a felony of the second degree.

Section 794.011(2)(a), Florida Statutes, provides:

A person 18 years of age or older who commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age commits a capital felony...

Section 800.04, Florida Statutes, outlines what constitutes lewd and lascivious offenses on a minor less than 16 years of age. The statute includes lewd and lascivious battery, lewd and lascivious molestation, lewd and lascivious conduct, and lewd and lascivious exhibitions.

C. EFFECT OF PROPOSED CHANGES:

The bill creates section 784.049, Florida Statutes, which gives the parents or legal guardian of a minor child a cause of action to seek an injunction for protection from an adult who has engaged in, or is pursuing the minor for purposes of, sexual activity. The parents or legal guardian may seek the injunction independent of the cooperation of the minor child and independent of any other proceedings that may be pending between the two parties.

The clerk of court is to provide simplified forms and clerical assistance to parents or legal guardians that do not have the assistance of legal counsel. If the parents or legal guardians are unable to afford the court fees associated with filing the petition, those fees are to be waived.

The bill allows the court to issue a temporary injunction through an ex parte hearing if it is determined that there exists a credible threat to the well-being of the minor child. The court must hold a hearing regarding the issuance of a permanent injunction before the expiration of the temporary injunction. The bill also lists the factors to be weighed by the court in making a determination on the permanent injunction:

1. Whether contacts between the adult and minor child have been numerous, intimate, and persistent over time;
2. Whether the child has been invited into the adult's home or other unsupervised location;
3. Whether the adult has exhibited a pattern of pursuing, stalking, or molesting other minor children;
4. Whether the adult has been convicted of any of the listed crimes in section (7)(d);
5. Whether the adult and child have been observed kissing, embracing, or engaging in other displays of affection;
6. Whether the adult has ignored requests of the parents or legal guardian to end the relationship with the minor child;
7. Whether the minor has suffered changes in his or her personality or has begun using drugs; and
8. Whether the minor has used birth control, has been treated for a sexually transmitted disease, has become pregnant, or has shown other signs of being sexually active.

The bill provides for certain remedies to be sought in connection with the injunction, including:

1. Enjoin the respondent from engaging in sexual activity with the minor child;
2. Enjoin the respondent from pursuing the minor for purposes of engaging in sexual activity;
3. A no-contact order; and
4. Other terms the court deems necessary for the purpose of protecting the minor child, including directives to law enforcement agencies.

Any injunction will dissolve when the minor reaches the age of 18 or is emancipated by court order, unless the injunction is dissolved by the court or unless the injunction specifies a date for termination.

The bill also outlines the service of process by the clerk of court and by the appropriate law enforcement agencies upon issuance of the injunction by the court. The bill also provides for 24 hour periods of notification of the respondent and communication between the clerk and law enforcement upon both the issuance and termination of the injunction.

The bill allows the court to enforce the terms of the injunction through civil or criminal contempt orders and through the assessment of monetary penalties. The bill provides for law enforcement to arrest the respondent for violation of the injunction without a warrant under section 901.15(10), Florida Statutes and directs the respondent to be brought before the court for enforcement and bail setting purposes.

Finally, the bill amends section 901.15(10) Florida Statutes, to include the violation of an injunction for protection against a credible threat to the well-being of a minor child as an arrestable offense, without a need for a warrant on behalf of law enforcement. The bill also holds law enforcement officers and law enforcement agencies immune from all liability that may arise in exercising the duties outline in the bill.

D. SECTION-BY-SECTION ANALYSIS:

None.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The Florida Department of Law Enforcement indicates that the direct economic impact of the bill on the private sector is unknown at this time.

D. FISCAL COMMENTS:

The duties of the clerk of court and law enforcement set out in the bill are within the current range of employment duties of both groups. While the workload may be increased as a result of this bill, fiscal impact is probably minimal.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This 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:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The bill raises an issue concerning the privacy of the minor child versus the right of parents or guardians to interfere in the child's life. With the parental notification provision in regards to minors obtaining abortions under judicial review, this bill may experience some of the same challenges and arguments focusing on civil liberties.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

Domestic violence judges have indicated several technical problems with the bill. First, in relation to page 4, lines 13 through 15, the judges frequently encounter situations in their courtrooms in which neither party is over 21, such as a male being 18 and the female being 13. The judges question whether the language of the bill intentionally excludes this type of situation. Although the statutory rape charge is available, it does not provide for any protection for the minor child should it happen again.

Second, how does the language on page 4, lines 11 and 12 take into account those females who are under 18 and are married? Is that group purposefully excluded?

Third, the definition of sexual activity on page 4, lines 19 through 20 is too limiting. The definition does not include digital or object penetration. Sections 800.04 (Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of

age) and 794.011 (Sexual battery), Florida Statutes, include the language, "...anal or vaginal penetration of another by any other object" in the definition of sexual activity. In the interest of consistency with other related statutes, this clause should be added to the bill to include instances of both digital and object penetration.

Fourth, regarding the dissolution of an injunction on page 9, lines 8 through 10, the judges question whether marriage of a minor will also dissolve the injunction.

Finally, the judges would like to see a distinction made between civil or criminal contempt as a method of enforcement on page 11, lines 21 through 25. The monetary assessment provision is vague without some direction as to which provision and range of fines can be enforced.

On page 4, line 17, the term "threshold" may be considered too vague. A more precise definition would create a clearer standard as to what behavior is covered under the bill and assist the court in making the injunction determination. Also, a clearer definition would lessen the litigation over language and allow the court to rule on the merits of this type of petition.

The definition of "adult" on page 4, line 14 explicitly excludes parents or legal guardians from this bill. In the case of an estranged parent or guardian engaged in sexual relations with a minor child, the bill could provide the other parent or guardian who has custody of the minor with an additional method of protection for the child that would take effect quicker than a child abuse investigation and would not involve the foster care system.

The language on page 4, lines 26 through 30, allows for the injunction proceeding to take place regardless of other petitions or proceedings pending between the petitioner and respondent. This provision may create some redundancy in the judicial process. The scenario may arise in which two proceedings, the injunction for protection hearing and a proceeding to determine whether any criminal violations have occurred, are progressing simultaneously in the judicial system and which argue the same facts and the same claims. The presiding judge may wish to combine both actions in the interest of judicial efficiency and thus undermine the purpose for seeking a temporary injunction.

On page 5, lines 8 through 13, there may be some question as to whether the type of assistance given to the parents or legal guardian under this provision borders on the unauthorized practice of law.

On page 8, lines 16 through 18, this type of information may not be available for the court's review if it was obtained by the minor and paid for by the minor. The services provided under this provision may fall under doctor/patient confidentiality standards.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

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VII. SIGNATURES:

COMMITTEE ON FAMILY LAW AND CHILDREN:

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