

1 A bill to be entitled
2 An act relating to domestic violence; amending
3 ss. 25.385, 39.902, 741.28, 943.171, F.S.;
4 redefining the terms "domestic violence" and
5 "family or household member"; amending s.
6 90.5036, F.S.; redefining the terms "domestic
7 violence center" and "domestic violence
8 advocate"; specifying the persons to whom
9 confidential communication provisions apply;
10 amending s. 741.30, F.S.; specifying when a
11 person has standing to file a petition for an
12 injunction against domestic violence; providing
13 for incidents that describe violence or threats
14 of violence; providing legislative intent that
15 ex parte temporary injunctions protect a victim
16 as long as he or she is in danger; requesting
17 the Supreme Court to adopt rules to require
18 extensions of temporary injunctions; specifying
19 when a court may grant relief; providing
20 factors for the court to consider in
21 determining imminent danger; requiring the
22 Batterers' Intervention Program to provide
23 notification of discharge; providing that
24 respondents must complete the Batterers'
25 Intervention Program if ordered; providing for
26 the court not to modify or dissolve an
27 injunction unless failure to complete the
28 Batterers' Intervention Program is justified;
29 providing for recording of proceedings;
30 directing the Office of State Court
31 Administrator to examine and develop

1 recommendations concerning certain court
2 practices; providing for a report to the
3 Governor and Legislature; amending s. 61.1825,
4 F.S.; providing for additional circumstances
5 when a family violence indicator must be placed
6 on a record; providing an effective date.

7
8 Be It Enacted by the Legislature of the State of Florida:

9
10 Section 1. Subsection (2) of section 25.385, Florida
11 Statutes, is amended to read:

12 25.385 Standards for instruction of circuit and county
13 court judges in handling domestic violence cases.--

14 (2) As used in this section:

15 (a) The term "domestic violence" means any assault,
16 battery, sexual assault, sexual battery, or any criminal
17 offense resulting in physical injury or death of one family or
18 household member by another, ~~who is or was residing in the~~
19 ~~same single dwelling unit.~~ With the exception of persons who
20 have a child in common, the family or household members must
21 be currently residing or have in the past resided together in
22 the same single dwelling unit.

23 (b) "Family or household member" means spouse, former
24 spouse, persons related by blood or marriage, persons who are
25 presently residing together, as if a family, or who have
26 resided together in the past, as if a family, and persons who
27 have a child in common regardless of whether they have been
28 married ~~or have resided together at any time.~~ With the
29 exception of persons who have a child in common, the family or
30 household members must be currently residing or have in the
31 past resided together in the same single dwelling unit.

1 Section 2. Subsections (1) and (3) of section 39.902,
2 Florida Statutes, are amended to read:

3 39.902 Definitions.--As used in this part, the term:

4 (1) "Domestic violence" means any assault, battery,
5 sexual assault, sexual battery, or any criminal offense
6 resulting in physical injury or death of one family or
7 household member by another ~~who is or was residing in the same~~
8 ~~single dwelling unit.~~ With the exception of persons who have a
9 child in common, the family or household members must be
10 currently residing or have in the past resided together in the
11 same single dwelling unit.

12 (3) "Family or household member" means spouses, former
13 spouses, adults related by blood or marriage, persons who are
14 presently residing together as if a family or who have resided
15 together in the past as if a family, and persons who have a
16 child in common regardless of whether they have been married
17 ~~or have resided together at any time.~~ With the exception of
18 persons who have a child in common, the family or household
19 members must be currently residing or have in the past resided
20 together in the same single dwelling unit.

21 Section 3. Subsection (3) of section 61.1825, Florida
22 Statutes, is amended to read:

23 61.1825 State Case Registry.--

24 (3)(a) For the purpose of this section, a family
25 violence indicator must be placed on a record when:

26 1. A party executes a sworn statement requesting that
27 a family violence indicator be placed on that party's record
28 which states that the party has reason to believe that release
29 of information to the Federal Case Registry may result in
30 physical or emotional harm to the party or the child;—

31

1 2. A temporary or final injunction for protection
2 against domestic violence has been granted pursuant to s.
3 741.30(6), an injunction for protection against domestic
4 violence has been issued by a court of a foreign state
5 pursuant to s. 741.315, or a temporary or final injunction for
6 protection against repeat violence has been granted pursuant
7 to s. 784.046; or

8 3. The department has received information on a Title
9 IV-D case from the Domestic and Repeat Violence Injunction
10 Statewide Verification System, established pursuant to s.
11 784.046(8)(b), that a court has granted a party a
12 domestic-violence or repeat-violence injunction.

13 (b) Before the family violence indicator can be
14 removed from a record, the protected person must be afforded
15 notice and an opportunity to appear before the court on the
16 issue of whether the disclosure will result in harm.

17 Section 4. Paragraphs (a) and (b) of subsection (1) of
18 section 90.5036, Florida Statutes, are amended to read:

19 90.5036 Domestic violence advocate-victim privilege.--

20 (1) For purposes of this section:

21 (a) A "domestic violence center" is any public or
22 private agency that offers assistance to victims of domestic
23 violence, as defined in s. 741.28, and their families, as its
24 primary mission, and is providing all the services mandated
25 under s. 39.905(1)(c).

26 (b) A "domestic violence advocate" means any employee
27 or volunteer who has 30 hours of training in assisting victims
28 of domestic violence and is an employee of or volunteer for a
29 ~~program for victims of domestic violence center whose primary~~
30 ~~purpose is the rendering of advice, counseling, or assistance~~
31 ~~to victims of domestic violence.~~

1 Section 5. Subsections (1) and (2) of section 741.28,
2 Florida Statutes, are amended to read:

3 741.28 Domestic violence; definitions.--As used in ss.
4 741.28-741.31:

5 (1) "Domestic violence" means any assault, aggravated
6 assault, battery, aggravated battery, sexual assault, sexual
7 battery, stalking, aggravated stalking, kidnapping, false
8 imprisonment, or any criminal offense resulting in physical
9 injury or death of one family or household member by another
10 ~~who is or was residing in the same single dwelling unit.~~ With
11 the exception of persons who have a child in common, the
12 family or household members must be currently residing or have
13 in the past resided together in the same single dwelling unit.

14 (2) "Family or household member" means spouses, former
15 spouses, persons related by blood or marriage, persons who are
16 presently residing together as if a family or who have resided
17 together in the past as if a family, and persons who have a
18 child in common regardless of whether they have been married
19 ~~or have resided together at any time.~~ With the exception of
20 persons who have a child in common, the family or household
21 members must be currently residing or have in the past resided
22 together in the same single dwelling unit.

23 Section 6. Subsections (1), (3), (5), and (6) of
24 section 741.30, Florida Statutes, are amended and subsection
25 (10) is added to that section to read:

26 741.30 Domestic violence; injunction; powers and
27 duties of court and clerk; petition; notice and hearing;
28 temporary injunction; issuance of injunction; statewide
29 verification system; enforcement.--

30 (1) There is created a cause of action for an
31 injunction for protection against domestic violence.

1 (a) Any person described in paragraph (e), who is
2 either the victim of ~~any act of~~ domestic violence as defined
3 in s. 741.28, or has reasonable cause to believe he or she is
4 in imminent danger of becoming the victim of ~~any act of~~
5 domestic violence, has standing in the circuit court to file a
6 sworn petition for an injunction for protection against
7 domestic violence.

8 (b) This cause of action for an injunction may be
9 sought whether or not any other cause of action is currently
10 pending between the parties. However, the pendency of any such
11 cause of action shall be alleged in the petition.

12 (c) In the event a subsequent cause of action is filed
13 under chapter 61, any orders entered therein shall take
14 precedence over any inconsistent provisions of an injunction
15 issued under this section which addresses matters governed by
16 chapter 61.

17 (d) A person's right to petition for an injunction
18 shall not be affected by such person having left a residence
19 or household to avoid domestic violence.

20 (e) This cause of action for an injunction may be
21 sought by family or household members. No person shall be
22 precluded from seeking injunctive relief pursuant to this
23 chapter solely on the basis that such person is not a spouse.

24 (f) This cause of action for an injunction shall not
25 require that either party be represented by an attorney.

26 (g) Any person, including an officer of the court, who
27 offers evidence or recommendations relating to the cause of
28 action must either present the evidence or recommendations in
29 writing to the court with copies to each party and their
30 attorney, or must present the evidence under oath at a hearing
31 at which all parties are present.

1 (h) Nothing in this section shall affect the title to
2 any real estate.

3 (i) The court is prohibited from issuing mutual orders
4 of protection. This does not preclude the court from issuing
5 separate injunctions for protection against domestic violence
6 where each party has complied with the provisions of this
7 section. Compliance with the provisions of this section cannot
8 be waived.

9 (3)(a) The sworn petition shall allege the existence
10 of such domestic violence and shall include the specific facts
11 and circumstances upon the basis of which relief is sought.

12 (b) The sworn petition shall be in substantially the
13 following form:

14
15 PETITION FOR
16 INJUNCTION FOR PROTECTION
17 AGAINST DOMESTIC VIOLENCE
18

19 Before me, the undersigned authority, personally appeared
20 Petitioner ...(Name)..., who has been sworn and says that the
21 following statements are true:

22 (a) Petitioner resides at: ...(address)...

23 (Petitioner may furnish address to the court in a
24 separate confidential filing if, for safety reasons, the
25 petitioner requires the location of the current residence to
26 be confidential.)

27 (b) Respondent resides at: ...(last known address)...

28 (c) Respondent's last known place of employment:
29 ...(name of business and address)...

30 (d) Physical description of respondent:
31 Race....

1 Sex....

2 Date of birth....

3 Height....

4 Weight....

5 Eye color....

6 Hair color....

7 Distinguishing marks or scars....

8 (e) Aliases of respondent:

9 (f) Respondent is the spouse or former spouse of the

10 petitioner or is any other person related by blood or marriage

11 to the petitioner or is any other person who is or was

12 residing within a single dwelling unit with the petitioner, as

13 if a family, or is a person with whom the petitioner has a

14 child in common, regardless of whether the petitioner and

15 respondent are or were married or residing together, as if a

16 family.

17 (g) The following describes any other cause of action

18 currently pending between the petitioner and respondent:

19

20 The petitioner should also describe any previous or

21 pending attempts by the petitioner to obtain an injunction for

22 protection against domestic violence in this or any other

23 circuit, and the results of that attempt.....

24

25 Case numbers should be included if available.

26 (h) Petitioner has suffered or has reasonable cause to

27 fear imminent domestic violence because respondent has~~(check~~

28 off all that apply and describe in the space(s) below the

29 incidents of violence or threats of violence, including when

30 and where they occurred):

31

- 1 committed or threatened to commit domestic violence
- 2 as defined in s. 741.28;
- 3 previously threatened, harassed, stalked, or
- 4 physically abused the petitioner;
- 5 attempted to harm the petitioner or family members
- 6 or individuals associated with the petitioner;
- 7 threatened to conceal, kidnap, or harm the
- 8 child(ren);
- 9 intentionally injured or killed a family pet;
- 10 used, or has threatened to use against the
- 11 petitioner any weapons such as guns or knives;
- 12 physically restrained the petitioner from leaving
- 13 the home or calling law enforcement;
- 14 a criminal history involving violence or the threat
- 15 of violence (if known);
- 16 another order of protection issued against him or
- 17 her previously or from another jurisdiction (if known);
- 18 engaged in any other behavior or conduct that leads
- 19 the petitioner to believe he or she is in danger of becoming a
- 20 victim of domestic violence.

21 (i) Petitioner alleges the following additional

22 specific facts: (mark appropriate sections)

23 Petitioner is the custodian of a minor child or

24 children whose names and ages are as follows:

25 Petitioner needs the exclusive use and possession

26 of the dwelling that the parties share.

27 Petitioner is unable to obtain safe alternative

28 housing because:

29 Petitioner genuinely fears that respondent

30 imminently will abuse, remove, or hide the minor child or

31 children from petitioner because:

1
2 (j) Petitioner genuinely fears imminent domestic
3 violence by respondent.
4 (k) Petitioner seeks an injunction: (mark appropriate
5 section or sections)
6Immediately restraining the respondent from
7 committing any acts of domestic violence.
8Restraining the respondent from committing any acts
9 of domestic violence.
10Awarding to the petitioner the temporary exclusive
11 use and possession of the dwelling that the parties share or
12 excluding the respondent from the residence of the petitioner.
13Awarding temporary custody of, or temporary
14 visitation rights with regard to, the minor child or children
15 of the parties, or prohibiting or limiting visitation to that
16 which is supervised by a third party.
17Establishing temporary support for the minor child
18 or children or the petitioner.
19Directing the respondent to participate in a
20 batterers' intervention program or other treatment pursuant to
21 s. 39.901.
22Providing any terms the court deems necessary for
23 the protection of a victim of domestic violence, or any minor
24 children of the victim, including any injunctions or
25 directives to law enforcement agencies.
26 (c) Every petition for an injunction against domestic
27 violence shall contain, directly above the signature line, a
28 statement in all capital letters and bold type not smaller
29 than the surrounding text, as follows:
30
31

1 I HAVE READ EVERY STATEMENT MADE IN THIS
2 PETITION AND EACH STATEMENT IS TRUE AND
3 CORRECT. I UNDERSTAND THAT THE STATEMENTS MADE
4 IN THIS PETITION ARE BEING MADE UNDER PENALTY
5 OF PERJURY, PUNISHABLE AS PROVIDED IN SECTION
6 837.02, FLORIDA STATUTES.

7 ... (initials) ...
8

9 (d) If the sworn petition seeks to determine issues of
10 custody or visitation with regard to the minor child or
11 children of the parties, the sworn petition shall be
12 accompanied by or shall incorporate the allegations required
13 by s. 61.132 of the Uniform Child Custody Jurisdiction Act.

14 (5)(a) When it appears to the court that an immediate
15 and present danger of domestic violence exists, the court may
16 grant a temporary injunction ex parte, pending a full hearing,
17 and may grant such relief as the court deems proper, including
18 an injunction:

19 1. Restraining the respondent from committing any acts
20 of domestic violence.

21 2. Awarding to the petitioner the temporary exclusive
22 use and possession of the dwelling that the parties share or
23 excluding the respondent from the residence of the petitioner.

24 3. On the same basis as provided in s. 61.13(2), (3),
25 (4), and (5), granting to the petitioner temporary custody of
26 a minor child or children.

27 (b) In a hearing ex parte for the purpose of obtaining
28 such ex parte temporary injunction, no evidence other than
29 verified pleadings or affidavits shall be used as evidence,
30 unless the respondent appears at the hearing or has received
31 reasonable notice of the hearing. A denial of a petition for

1 an ex parte injunction shall be by written order noting the
2 legal grounds for denial. When the only ground for denial is
3 no appearance of an immediate and present danger of domestic
4 violence, the court shall set a full hearing on the petition
5 for injunction with notice at the earliest possible time.
6 Nothing herein affects a petitioner's right to promptly amend
7 any petition, or otherwise be heard in person on any petition
8 consistent with the Florida Rules of Civil Procedure.

9 (c) Any such ex parte temporary injunction shall be
10 effective for a fixed period not to exceed 15 days. A full
11 hearing, as provided by this section, shall be set for a date
12 no later than the date when the temporary injunction ceases to
13 be effective. The court may grant a continuance of the hearing
14 before or during a hearing for good cause shown by any party,
15 which shall include a continuance to obtain service of
16 process. Any injunction shall be extended if necessary to
17 remain in full force and effect during any period of
18 continuance. It is the intent of the Legislature that the
19 process of granting ex parte temporary injunctions protect
20 victims of domestic violence for as long as the victim is in
21 danger. Therefore, the Supreme Court is requested to adopt
22 rules to require extensions of an ex parte temporary
23 injunction in situations which include, but are not limited
24 to, those instances in which the petitioner has returned for
25 the full hearing, when the only basis for denying an extension
26 is the lack of service process.

27 (6)(a) Upon notice and hearing, when it appears to the
28 court that the petitioner is either the victim of domestic
29 violence as defined by section 741.28, or has reasonable cause
30 to believe he or she is in imminent danger of becoming a
31

1 victim of domestic violence, the court may grant such relief
2 as the court deems proper, including an injunction:

3 1. Restraining the respondent from committing any acts
4 of domestic violence.

5 2. Awarding to the petitioner the exclusive use and
6 possession of the dwelling that the parties share or excluding
7 the respondent from the residence of the petitioner.

8 3. On the same basis as provided in chapter 61,
9 awarding temporary custody of, or temporary visitation rights
10 with regard to, a minor child or children of the parties.

11 4. On the same basis as provided in chapter 61,
12 establishing temporary support for a minor child or children
13 or the petitioner.

14 5. Ordering the respondent to participate in
15 treatment, intervention, or counseling services to be paid for
16 by the respondent. When the court orders the respondent to
17 participate in a batterers' intervention program, the court,
18 or any entity designated by the court, must provide the
19 respondent with a list of all certified batterers'
20 intervention programs and all programs which have submitted an
21 application to the Department of Corrections to become
22 certified under s. 741.325, from which the respondent must
23 choose a program in which to participate. If there are no
24 certified batterers' intervention programs in the circuit, the
25 court shall provide a list of acceptable programs from which
26 the respondent must choose a program in which to participate.
27 The Batterers' Intervention Program shall provide to the court
28 to be placed in the case file a notification of the
29 respondent's enrollment and discharge from the program. The
30 notification of discharge shall specify one of the following
31 categories for discharge and reason for discharge if other

1 than completion: completion of the program, rejection of
2 services, or termination from the program.

3 6. Referring a petitioner to a certified domestic
4 violence center. The court must provide the petitioner with a
5 list of certified domestic violence centers in the circuit
6 which the petitioner may contact.

7 7. Ordering such other relief as the court deems
8 necessary for the protection of a victim of domestic violence,
9 including injunctions or directives to law enforcement
10 agencies, as provided in this section.

11 (b) In determining whether a petitioner has reasonable
12 cause to believe he or she is in imminent danger of becoming a
13 victim of domestic violence, the court shall consider and
14 evaluate all relevant factors alleged in the petition,
15 including, but not limited to:

16 1. The history between the petitioner and the
17 respondent, including threats, harassment, stalking, and
18 physical abuse;

19 2. Whether the respondent has attempted to harm the
20 petitioner or family members or individuals associated with
21 the petitioner;

22 3. Whether the respondent has threatened to conceal,
23 kidnap, or harm the child(ren);

24 4. Whether the respondent has intentionally injured or
25 killed a family pet;

26 5. Whether the respondent has used, or has threatened
27 to use, against the petitioner any weapons such as guns or
28 knives;

29 6. Whether the respondent has physically restrained
30 the petitioner from leaving the home or calling law
31 enforcement;

1 7. Whether the respondent has a criminal history
2 involving violence or the threat of violence;

3 8. The existence of a verifiable order of protection
4 issued previously or from another jurisdiction; and

5 9. Any other behavior or conduct that leads the court
6 to believe that the petitioner is in danger of becoming a
7 victim of domestic violence.

8
9 In making its determination under this section, the court may
10 not deny relief based solely on the absence of any or all of
11 the factors enumerated in subparagraphs 1.-9.

12 ~~(c)(b)~~ The terms of an injunction restraining the
13 respondent under subparagraph (a)1. or ordering other relief
14 for the protection of the victim under subparagraph (a)7.
15 shall remain in effect until modified or dissolved. Either
16 party may move at any time to modify or dissolve the
17 injunction. No specific allegations are required. Such relief
18 may be granted in addition to other civil or criminal
19 remedies. Respondents who are requesting to modify or dissolve
20 an injunction must have completed the Batterers' Intervention
21 Program if ordered as a condition of their injunction, unless
22 the court finds that there is substantial justification for
23 the respondent's failure to complete the program. The court
24 shall not grant the respondent's request to dissolve the
25 injunction unless there is substantial justification for the
26 respondent's failure to complete the program. Further, the
27 court shall not grant a respondent's request to modify the
28 injunction unless there is substantial justification for the
29 respondent's failure to complete the program or significant
30 overriding circumstances necessitating an immediate remedy.

31

1 (d)~~(c)~~ A temporary or final judgment on injunction for
2 protection against domestic violence entered pursuant to this
3 section shall, on its face, indicate that:

4 1. The injunction is valid and enforceable in all
5 counties of the State of Florida.

6 2. Law enforcement officers may use their arrest
7 powers pursuant to s. 901.15(6) to enforce the terms of the
8 injunction.

9 3. The court had jurisdiction over the parties and
10 matter under the laws of Florida and that reasonable notice
11 and opportunity to be heard was given to the person against
12 whom the order is sought sufficient to protect that person's
13 right to due process.

14 4. The date respondent was served with the temporary
15 or final order, if obtainable.

16 (e)~~(d)~~ An injunction for protection against domestic
17 violence entered pursuant to this section, on its face, may
18 order that the respondent attend a batterers' intervention
19 program as a condition of the injunction. Unless the court
20 makes written factual findings in its judgment or order which
21 are based on substantial evidence, stating why batterers'
22 intervention programs would be inappropriate, the court shall
23 order the respondent to attend a batterers' intervention
24 program if:

25 1. It finds that the respondent willfully violated the
26 ex parte injunction;

27 2. The respondent, in this state or any other state,
28 has been convicted of, had adjudication withheld on, or pled
29 nolo contendere to a crime involving violence or a threat of
30 violence; or
31

1 3. The respondent, in this state or any other state,
2 has had at any time a prior injunction for protection entered
3 against the respondent after a hearing with notice.

4
5 It is mandatory that such programs be certified under s.
6 741.32.

7 ~~(f)(e)~~ The fact that a separate order of protection is
8 granted to each opposing party shall not be legally sufficient
9 to deny any remedy to either party or to prove that the
10 parties are equally at fault or equally endangered.

11 ~~(g)(f)~~ A final judgment on injunction for protection
12 against domestic violence entered pursuant to this section
13 must, on its face, indicate that it is a violation of s.
14 790.233, and a first degree misdemeanor, for the respondent to
15 have in his or her care, custody, possession, or control any
16 firearm or ammunition.

17 (h) All proceedings under this subsection are to be
18 recorded, if the court chooses to provide for the recording
19 and has adequate existing court resources for any associated
20 costs. Recording may be by electronic means, as provided by
21 the Rules of Judicial Administration. If the means to record
22 the proceedings are not available, the parties must be
23 notified, prior to the full hearing.

24 Section 7. Subsection (2) of section 943.171, Florida
25 Statutes, is amended to read:

26 943.171 Basic skills training in handling domestic
27 violence cases.--

28 (2) As used in this section, the term:

29 (a) "Domestic violence" means any assault, battery,
30 sexual assault, sexual battery, or any criminal offense
31 resulting in the physical injury or death of one family or

1 household member by another ~~who is or was residing in the same~~
2 ~~single dwelling unit.~~ With the exception of persons who have a
3 child in common, the family or household members must be
4 currently residing or have in the past resided together in the
5 same single dwelling unit.

6 (b) "Household member" means spouse, former spouse,
7 persons related by blood or marriage, persons who are
8 presently residing together, as if a family, or who have
9 resided together in the past, as if a family, and persons who
10 have a child in common regardless of whether they have been
11 ~~married or have resided together at any time.~~ With the
12 exception of persons who have a child in common, the family or
13 household members must be currently residing or have in the
14 past resided together in the same single dwelling unit.

15 Section 8. The Office of State Court Administrator
16 shall examine the current practice of the courts with respect
17 to the determination of visitation and custody and the terms
18 of visitation and custody when an injunction for protection
19 has been ordered; the consideration of custody and visitation
20 in the injunction hearings; and the issuing of injunctions for
21 protection during a dissolution-of-marriage proceeding. Based
22 on the findings of this examination, the Office of State Court
23 Administrator shall develop recommendations for ensuring the
24 most appropriate consideration of custody and visitation
25 issues during the injunction process and of
26 injunction-for-protection issues during the
27 dissolution-of-marriage process. This examination and
28 development of recommendations must be conducted in
29 collaboration with the Department of Children and Family
30 Services, the Department of Community Affairs, the Department
31 of Revenue, the Florida Sheriffs Association, the Florida

1 Coalition Against Domestic Violence, the Family Law Section of
2 The Florida Bar, and any other interested organizations
3 identified by the Office of State Court Administrator. All
4 participants in this process shall attend meetings at their
5 own expense. A report of the recommendations shall be
6 submitted to the Governor, the President of the Senate, and
7 the Speaker of the House of Representatives by January 1,
8 2001.

9 Section 9. This act shall take effect July 1, 2000.

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