

By Representative Littlefield

1 A bill to be entitled
2 An act relating to domestic violence; amending
3 ss. 25.385, 39.902, 741.28, and 943.171, F.S.;
4 redefining the terms "domestic violence" and
5 "family or household member"; amending s.
6 28.101., F.S.; increasing a charge for certain
7 petitions; amending s. 61.1825, F.S.; providing
8 for additional circumstances when a family
9 violence indicator must be placed on a record;
10 amending s. 741.281, F.S.; deleting certain
11 provisions relating to pretrial diversion
12 programs; amending s. 741.30, F.S.; specifying
13 when a person has standing to file a petition
14 for an injunction against domestic violence;
15 providing for incidents that describe violence
16 or threats of violence; providing legislative
17 intent that ex parte temporary injunctions
18 protect a victim as long as he or she is in
19 danger; requesting the Supreme Court to adopt
20 rules to require extensions of temporary
21 injunctions; specifying when a court may grant
22 relief; providing factors for the court to
23 consider in determining imminent danger;
24 providing for recording of proceedings;
25 directing the Office of State Court
26 Administrator to examine and develop
27 recommendations concerning certain court
28 practices; providing for a report to the
29 Governor and Legislature; providing an
30 effective date.
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1 Be It Enacted by the Legislature of the State of Florida:

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3 Section 1. Subsection (2) of section 25.385, Florida
4 Statutes, is amended to read:

5 25.385 Standards for instruction of circuit and county
6 court judges in handling domestic violence cases.--

7 (2) As used in this section:

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

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

25 Section 2. Paragraph (c) of subsection (1) of section
26 28.101, Florida Statutes, is amended to read:

27 28.101 Petitions and records of dissolution of
28 marriage; additional charges.--

29 (1) When a party petitions for a dissolution of
30 marriage, in addition to the filing charges in s. 28.241, the
31 clerk shall collect and receive:

1 (c) A charge of ~~\$36~~^{\$18}. On a monthly basis, the
2 clerk shall transfer the moneys collected pursuant to this
3 paragraph to the State Treasury for deposit in the Domestic
4 Violence Trust Fund. Such funds which are generated shall be
5 directed to the Department of Children and Family Services for
6 the specific purpose of funding domestic violence centers.

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

9 39.902 Definitions.--As used in this part, the term:

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

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

27 Section 4. Subsection (3) of section 61.1825, Florida
28 Statutes, is amended to read:

29 61.1825 State Case Registry.--

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

1 1. A party executes a sworn statement requesting that
2 a family violence indicator be placed on that party's record
3 which states that the party has reason to believe that release
4 of information to the Federal Case Registry may result in
5 physical or emotional harm to the party or the child;-

6 2. A temporary or final injunction for protection
7 against domestic violence has been granted pursuant to s.
8 741.30(6), an injunction for protection against domestic
9 violence has been issued by a court of a foreign state
10 pursuant to s. 741.315, or a temporary or final injunction for
11 protection against repeat violence has been granted pursuant
12 to s. 784.046; or

13 3. The department has received information on a Title
14 IV-D case from the Domestic and Repeat Violence Injunction
15 Statewide Verification System, established pursuant to s.
16 784.046(8)(b), that a court has granted a party a domestic
17 violence or repeat violence injunction.

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

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

24 741.28 Domestic violence; definitions.--As used in ss.
25 741.28-741.31:

26 (1) "Domestic violence" means any assault, aggravated
27 assault, battery, aggravated battery, sexual assault, sexual
28 battery, stalking, aggravated stalking, kidnapping, false
29 imprisonment, or any criminal offense resulting in physical
30 injury or death of one family or household member by another
31 ~~who is or was residing in the same single dwelling unit.~~ With

1 the exception of persons who have a child in common, the
2 family or household members must be currently residing or have
3 in the past resided together in the same single dwelling unit.

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

13 Section 6. Section 741.281, Florida Statutes, is
14 amended to read:

15 741.281 Court to order batterers' intervention program
16 attendance.--If a person is found guilty of, has had
17 adjudication withheld on, or has pled nolo contendere to a
18 crime of domestic violence, as defined in s. 741.28, that
19 person shall be ordered by the court to a minimum term of 1
20 year's probation and the court shall order that the defendant
21 attend a batterers' intervention program as a condition of
22 probation. ~~If a person is admitted to a pretrial diversion~~
23 ~~program and has been charged with an act of domestic violence,~~
24 ~~as defined in s. 741.28, the court shall order as a condition~~
25 ~~of the program that the defendant attend a batterers'~~
26 ~~intervention program.~~The court must impose the condition of
27 the batterers' intervention program for a defendant placed on
28 probation ~~or pretrial diversion~~ under this section, but the
29 court, in its discretion, may determine not to impose the
30 condition if it states on the record why a batterers'
31 intervention program might be inappropriate. It is preferred,

1 but not mandatory, that such programs be certified under s.
2 741.32. The imposition of probation under this section shall
3 not preclude the court from imposing any sentence of
4 imprisonment authorized by s. 775.082.

5 Section 7. Subsections (1), (3), (5), and (6) of
6 section 741.30, Florida Statutes, are amended and subsection
7 (10) is added to that section to read:

8 741.30 Domestic violence; injunction; powers and
9 duties of court and clerk; petition; notice and hearing;
10 temporary injunction; issuance of injunction; statewide
11 verification system; enforcement.--

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

14 (a) Any person described in paragraph (e), who is
15 either the victim of ~~any act of~~ domestic violence, as defined
16 in s. 741.28, or has reasonable cause to believe he or she is
17 in imminent danger of becoming the victim of ~~any act of~~
18 domestic violence, has standing in the circuit court to file a
19 sworn petition for an injunction for protection against
20 domestic violence.

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

25 (c) In the event a subsequent cause of action is filed
26 under chapter 61, any orders entered therein shall take
27 precedence over any inconsistent provisions of an injunction
28 issued under this section which addresses matters governed by
29 chapter 61.

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

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

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

10 (g) Any person, including an officer of the court, who
11 offers evidence or recommendations relating to the cause of
12 action must either present the evidence or recommendations in
13 writing to the court with copies to each party and their
14 attorney, or must present the evidence under oath at a hearing
15 at which all parties are present.

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

18 (i) The court is prohibited from issuing mutual orders
19 of protection. This does not preclude the court from issuing
20 separate injunctions for protection against domestic violence
21 where each party has complied with the provisions of this
22 section. Compliance with the provisions of this section cannot
23 be waived.

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

27 (b) The sworn petition shall be in substantially the
28 following form:

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PETITION FOR
INJUNCTION FOR PROTECTION

1 (g) The following describes any other cause of action
2 currently pending between the petitioner and respondent:
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4 The petitioner should also describe any previous or
5 pending attempts by the petitioner to obtain an injunction for
6 protection against domestic violence in this or any other
7 circuit, and the results of that attempt.....
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9 Case numbers should be included if available.

10 (h) Petitioner is a victim of domestic violence ~~has~~
11 ~~suffered~~ or has reasonable cause to fear imminent domestic
12 violence because respondent has (check off all that apply and
13 describe in the space(s) below the incidents of violence or
14 threats of violence, specifying when and where they occurred,
15 including, but not limited to, locations such as home, school,
16 or place of employment or visitation exchange):
17 committed or threatened to commit domestic
18 violence, defined in s. 741.28 as any assault, aggravated
19 assault, battery, aggravated battery, sexual assault, sexual
20 battery, stalking, aggravated stalking, kidnapping, or false
21 imprisonment, or any criminal offense resulting in physical
22 injury or death of one family or household member by another
23 who is or was residing in the same single dwelling unit;
24 previously threatened, harassed, stalked, or
25 physically abused the petitioner;
26 attempted to harm the petitioner or family members
27 or individuals associated with the petitioner;
28 threatened to conceal, kidnap, or harm petitioner's
29 child(ren);
30 intentionally injured or killed a family pet;
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1 used, or has threatened to use, against the
2 petitioner any weapons such as guns or knives;
3 physically restrained the petitioner from leaving
4 the home or calling law enforcement;
5 a criminal history involving violence or the threat
6 of violence (if known);
7 another order of protection issued against him or
8 her previously or from another jurisdiction (if known);
9 engaged in any other behavior or conduct that leads
10 the petitioner to believe he or she is in danger of becoming a
11 victim of domestic violence.
12 (i) Petitioner alleges the following additional
13 specific facts: (mark appropriate sections)
14 Petitioner is the custodian of a minor child or
15 children whose names and ages are as follows:
16 Petitioner needs the exclusive use and possession
17 of the dwelling that the parties share.
18 Petitioner is unable to obtain safe alternative
19 housing because:
20 Petitioner genuinely fears that respondent
21 imminently will abuse, remove, or hide the minor child or
22 children from petitioner because:
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24 (j) Petitioner genuinely fears imminent domestic
25 violence by respondent.
26 (k) Petitioner seeks an injunction: (mark appropriate
27 section or sections)
28 Immediately restraining the respondent from
29 committing any acts of domestic violence.
30 Restraining the respondent from committing any acts
31 of domestic violence.

1 children of the parties, the sworn petition shall be
2 accompanied by or shall incorporate the allegations required
3 by s. 61.132 of the Uniform Child Custody Jurisdiction Act.
4 (5)(a) When it appears to the court that a petitioner
5 is a victim ~~an immediate and present danger~~ of domestic
6 violence or has reasonable cause to believe that he or she is
7 in imminent danger of becoming the victim of any act of
8 domestic violence ~~exists~~, the court may grant a temporary
9 injunction ex parte, pending a full hearing, and may grant
10 such relief as the court deems proper, including an
11 injunction:
12 1. Restraining the respondent from committing any acts
13 of domestic violence.
14 2. Awarding to the petitioner the temporary exclusive
15 use and possession of the dwelling that the parties share or
16 excluding the respondent from the residence of the petitioner.
17 3. On the same basis as provided in s. 61.13(2), (3),
18 (4), and (5), granting to the petitioner temporary custody of
19 a minor child or children.
20 (b) In a hearing ex parte for the purpose of obtaining
21 such ex parte temporary injunction, no evidence other than
22 verified pleadings or affidavits shall be used as evidence,
23 unless the respondent appears at the hearing or has received
24 reasonable notice of the hearing. A denial of a petition for
25 an ex parte injunction shall be by written order noting the
26 legal grounds for denial. When the only ground for denial is
27 no appearance of an immediate and present danger of domestic
28 violence, the court shall set a full hearing on the petition
29 for injunction with notice at the earliest possible time.
30 Nothing herein affects a petitioner's right to promptly amend
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1 any petition, or otherwise be heard in person on any petition
2 consistent with the Florida Rules of Civil Procedure.

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

21 (d) Prior to a full hearing or upon a motion or
22 request of a party after a full hearing, a court or its
23 representatives shall not refer any case to mediation or any
24 alternative dispute resolution.

25 (6)(a) Upon notice and hearing, when it appears to the
26 court that the petitioner is either the victim of domestic
27 violence, as defined by s. 741.28, or has reasonable cause to
28 believe he or she is in imminent danger of becoming a victim
29 of domestic violence, the court may grant such relief as the
30 court deems proper, including an injunction:
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- 1 1. Restraining the respondent from committing any acts
2 of domestic violence.
- 3 2. Awarding to the petitioner the exclusive use and
4 possession of the dwelling that the parties share or excluding
5 the respondent from the residence of the petitioner.
- 6 3. On the same basis as provided in chapter 61,
7 awarding temporary custody of, or temporary visitation rights
8 with regard to, a minor child or children of the parties.
- 9 4. On the same basis as provided in chapter 61,
10 establishing temporary support for a minor child or children
11 or the petitioner.
- 12 5. Ordering the respondent to participate in
13 treatment, intervention, or counseling services to be paid for
14 by the respondent. When the court orders the respondent to
15 participate in a batterers' intervention program, the court,
16 or any entity designated by the court, must provide the
17 respondent with a list of all certified batterers'
18 intervention programs and all programs which have submitted an
19 application to the Department of Corrections to become
20 certified under s. 741.325, from which the respondent must
21 choose a program in which to participate. If there are no
22 certified batterers' intervention programs in the circuit, the
23 court shall provide a list of acceptable programs from which
24 the respondent must choose a program in which to participate.
- 25 6. Referring a petitioner to a certified domestic
26 violence center. The court must provide the petitioner with a
27 list of certified domestic violence centers in the circuit
28 which the petitioner may contact.
- 29 7. Ordering such other relief as the court deems
30 necessary for the protection of a victim of domestic violence,
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1 including injunctions or directives to law enforcement
2 agencies, as provided in this section.
3 (b) In determining whether a petitioner has reasonable
4 cause to believe he or she is in imminent danger of becoming a
5 victim of domestic violence, the court shall consider and
6 evaluate all relevant factors alleged in the petition,
7 including, but not limited to:
8 1. The history between the petitioner and the
9 respondent, including threats, harassment, stalking, and
10 physical abuse;
11 2. Whether the respondent has attempted to harm the
12 petitioner or family members or individuals associated with
13 the petitioner;
14 3. Whether the respondent has threatened to conceal,
15 kidnap, or harm petitioner's child(ren);
16 4. Whether the respondent has intentionally injured or
17 killed a family pet;
18 5. Whether the respondent has used, or has threatened
19 to use, against the petitioner any weapons such as guns or
20 knives;
21 6. Whether the respondent has physically restrained
22 the petitioner from leaving the home or calling law
23 enforcement;
24 7. Whether the respondent has a criminal history
25 involving violence or the threat of violence;
26 8. The existence of a verifiable order of protection
27 issued previously or from another jurisdiction; and
28 9. Any other behavior or conduct that leads the court
29 to believe that the petitioner is in danger of becoming a
30 victim of domestic violence.
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1 In making its determination under this section, the court may
2 not deny relief based solely on the absence of any or all of
3 the factors enumerated in subparagraphs 1.-9.

4 (c)~~(b)~~ The terms of an injunction restraining the
5 respondent under subparagraph (a)1. or ordering other relief
6 for the protection of the victim under subparagraph (a)7.
7 shall remain in effect until modified or dissolved. Either
8 party may move at any time to modify or dissolve the
9 injunction. No specific allegations are required. A party may
10 not seek de novo review of the domestic violence allegations
11 considered by the court at the hearing on the final judgment
12 of injunction.Such relief may be granted in addition to other
13 civil or criminal remedies.

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

17 1. The injunction is valid and enforceable in all
18 counties of the State of Florida.

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

22 3. The court had jurisdiction over the parties and
23 matter under the laws of Florida and that reasonable notice
24 and opportunity to be heard was given to the person against
25 whom the order is sought sufficient to protect that person's
26 right to due process.

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

29 (e)~~(d)~~ An injunction for protection against domestic
30 violence entered pursuant to this section, on its face, may
31 order that the respondent attend a batterers' intervention

1 program as a condition of the injunction. Unless the court
2 makes written factual findings in its judgment or order which
3 are based on substantial evidence, stating why batterers'
4 intervention programs would be inappropriate, the court shall
5 order the respondent to attend a batterers' intervention
6 program if:

7 1. It finds that the respondent willfully violated the
8 ex parte injunction;

9 2. The respondent, in this state or any other state,
10 has been convicted of, had adjudication withheld on, or pled
11 nolo contendere to a crime involving violence or a threat of
12 violence; or

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

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17 It is mandatory that such programs be certified under s.
18 741.32.

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

23 (g)~~(f)~~ A final judgment on injunction for protection
24 against domestic violence entered pursuant to this section
25 must, on its face, indicate that it is a violation of s.
26 790.233, and a first degree misdemeanor, for the respondent to
27 have in his or her care, custody, possession, or control any
28 firearm or ammunition.

29 (h) If the court chooses to provide for recording
30 proceedings under this subsection and has adequate existing
31 court resources for any associated costs of such recording,

1 such proceedings shall be recorded. Recording may be by
2 electronic means, as provided by the Florida Rules of Judicial
3 Administration. If the means to record the proceedings are not
4 available, the parties shall be notified prior to the full
5 hearing.

6 Section 8. Subsection (2) of section 943.171, Florida
7 Statutes, is amended to read:

8 943.171 Basic skills training in handling domestic
9 violence cases.--

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

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

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

28 Section 9. The Office of State Court Administrator
29 shall examine the current practice of the courts with respect
30 to the determination of visitation and custody and the terms
31 of visitation and custody when an injunction for protection

1 has been ordered; the consideration of custody and visitation
2 in the injunction hearings; and the issuing of injunctions for
3 protection during a dissolution of marriage or paternity
4 proceeding. Based on the findings of this examination, the
5 Office of State Court Administrator shall develop
6 recommendations for ensuring the most appropriate
7 consideration of custody and visitation issues during the
8 injunction process and of injunction for protection issues
9 during the dissolution of marriage or paternity process. This
10 examination and development of recommendations must be
11 conducted in collaboration with the Department of Children and
12 Family Services, the Department of Community Affairs, the
13 Department of Revenue, the Florida Sheriffs Association, the
14 Florida Coalition Against Domestic Violence, the Family Law
15 Section of The Florida Bar, and any other interested
16 organizations identified by the Office of State Court
17 Administrator. All participants in this process shall attend
18 meetings at their own expense. A report of the recommendations
19 shall be submitted to the Governor, the President of the
20 Senate, and the Speaker of the House of Representatives by
21 January 1, 2002.

22 Section 10. This act shall take effect July 1, 2001.
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HOUSE SUMMARY

Redefines the terms "domestic violence," and "family or household member." Provides legislative intent that ex parte temporary injunctions protect a victim as long as he or she is in danger. Requests the Supreme Court to adopt rules to require extensions of temporary injunctions. Requests the Supreme Court to prescribe a standard process for determining enrollment and attendance. Requires the Office of State Court Administrator to examine specified court practices relating to domestic violence and make recommendations to the Governor and Legislature. Provides penalties for a respondent who fails to participate in a batterer's intervention program.