

By the Committee on Judicial Oversight and Representative Littlefield

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A bill to be entitled
An act relating to domestic violence; amending
ss. 25.385, 39.902, 741.28, and 943.171, F.S.;
redefining the terms "domestic violence" and
"family or household member"; amending s.
61.1825, F.S.; providing for additional
circumstances when a family violence indicator
must be placed on a record; amending s.
741.281, F.S.; deleting certain provisions
relating to pretrial diversion programs;
amending s. 741.30, F.S.; specifying when a
person has standing to file a petition for an
injunction against domestic violence; providing
for incidents that describe violence or threats
of violence; specifying when a court may grant
relief; providing factors for the court to
consider in determining imminent danger;
providing for recording of proceedings;
providing an effective date.

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

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

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

(2) As used in this section:

(a) The term "domestic violence" means any assault, battery, sexual assault, sexual battery, or any criminal offense resulting in physical injury or death of one family or household member by another, ~~who is or was residing in the~~

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

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

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

16 39.902 Definitions.--As used in this part, the term:

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

25 (3) "Family or household member" means spouses, former
26 spouses, adults related by blood or marriage, persons who are
27 presently residing together as if a family or who have resided
28 together in the past as if a family, and persons who have a
29 child in common regardless of whether they have been married
30 ~~or have resided together at any time.~~ With the exception of
31 persons who have a child in common, the family or household

1 members must be currently residing or have in the past resided
2 together in the same single dwelling unit.

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

5 61.1825 State Case Registry.--

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

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

13 2. A temporary or final injunction for protection
14 against domestic violence has been granted pursuant to s.
15 741.30(6), an injunction for protection against domestic
16 violence has been issued by a court of a foreign state
17 pursuant to s. 741.315, or a temporary or final injunction for
18 protection against repeat violence has been granted pursuant
19 to s. 784.046; or

20 3. The department has received information on a Title
21 IV-D case from the Domestic and Repeat Violence Injunction
22 Statewide Verification System, established pursuant to s.
23 784.046(8)(b), that a court has granted a party a domestic
24 violence or repeat violence injunction.

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

29 Section 4. Subsections (1) and (2) of section 741.28,
30 Florida Statutes, are amended to read:

31

1 741.28 Domestic violence; definitions.--As used in ss.
2 741.28-741.31:

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

12 (2) "Family or household member" means spouses, former
13 spouses, persons 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 5. Section 741.281, Florida Statutes, is
22 amended to read:

23 741.281 Court to order batterers' intervention program
24 attendance.--If a person is found guilty of, has had
25 adjudication withheld on, or has pled nolo contendere to a
26 crime of domestic violence, as defined in s. 741.28, that
27 person shall be ordered by the court to a minimum term of 1
28 year's probation and the court shall order that the defendant
29 attend a batterers' intervention program as a condition of
30 probation. ~~If a person is admitted to a pretrial diversion~~
31 ~~program and has been charged with an act of domestic violence,~~

1 ~~as defined in s. 741.28, the court shall order as a condition~~
2 ~~of the program that the defendant attend a batterers'~~
3 ~~intervention program.~~The court must impose the condition of
4 the batterers' intervention program for a defendant placed on
5 probation ~~or pretrial diversion~~ under this section, but the
6 court, in its discretion, may determine not to impose the
7 condition if it states on the record why a batterers'
8 intervention program might be inappropriate. It is preferred,
9 but not mandatory, that such programs be certified under s.
10 741.32. The imposition of probation under this section shall
11 not preclude the court from imposing any sentence of
12 imprisonment authorized by s. 775.082.

13 Section 6. Subsections (1), (3), and (6) of section
14 741.30, Florida Statutes, are amended to read:

15 741.30 Domestic violence; injunction; powers and
16 duties of court and clerk; petition; notice and hearing;
17 temporary injunction; issuance of injunction; statewide
18 verification system; enforcement.--

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

21 (a) Any person described in paragraph (e), who is
22 either the victim of any act of domestic violence, as defined
23 in s. 741.28, or has reasonable cause to believe he or she is
24 in imminent danger of becoming the victim of ~~any act of~~
25 domestic violence, has standing in the circuit court to file a
26 sworn petition for an injunction for protection against
27 domestic violence.

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

1 (c) In the event a subsequent cause of action is filed
2 under chapter 61, any orders entered therein shall take
3 precedence over any inconsistent provisions of an injunction
4 issued under this section which addresses matters governed by
5 chapter 61.

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

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

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

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

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

23 (i) The court is prohibited from issuing mutual orders
24 of protection. This does not preclude the court from issuing
25 separate injunctions for protection against domestic violence
26 where each party has complied with the provisions of this
27 section. Compliance with the provisions of this section cannot
28 be waived.

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

1 (b) The sworn petition shall be in substantially the
2 following form:

3
4 PETITION FOR
5 INJUNCTION FOR PROTECTION
6 AGAINST DOMESTIC VIOLENCE
7

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

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

12 (Petitioner may furnish address to the court in a
13 separate confidential filing if, for safety reasons, the
14 petitioner requires the location of the current residence to
15 be confidential.)

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

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

19 (d) Physical description of respondent:

20 Race....

21 Sex....

22 Date of birth....

23 Height....

24 Weight....

25 Eye color....

26 Hair color....

27 Distinguishing marks or scars....

28 (e) Aliases of respondent:

29 (f) Respondent is the spouse or former spouse of the
30 petitioner or is any other person related by blood or marriage
31 to the petitioner or is any other person who is or was

1 residing within a single dwelling unit with the petitioner, as
2 if a family, or is a person with whom the petitioner has a
3 child in common, regardless of whether the petitioner and
4 respondent are or were married or residing together, as if a
5 family.

6 (g) The following describes any other cause of action
7 currently pending between the petitioner and respondent:
8

9 The petitioner should also describe any previous or
10 pending attempts by the petitioner to obtain an injunction for
11 protection against domestic violence in this or any other
12 circuit, and the results of that attempt.....
13
14 Case numbers should be included if available.

15 (h) Petitioner is a victim of domestic violence ~~has~~
16 ~~suffered~~ or has reasonable cause to fear imminent domestic
17 violence because respondent has (check off all that apply and
18 describe in the space(s) below the incidents of violence or
19 threats of violence, specifying when and where they occurred,
20 including, but not limited to, locations such as home, school,
21 or place of employment or visitation exchange):

22 ...committed or threatened to commit domestic
23 violence, defined in s. 741.28 as any assault, aggravated
24 assault, battery, aggravated battery, sexual assault, sexual
25 battery, stalking, aggravated stalking, kidnapping, or false
26 imprisonment, or any criminal offense resulting in physical
27 injury or death of one family or household member by another,
28 provided, except persons who have a child in common, the
29 family or household members must be currently residing or have
30 in the past resided together in the same dwelling unit;
31

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

19 (i) Petitioner alleges the following additional
20 specific facts: (mark appropriate sections)

21 Petitioner is the custodian of a minor child or
22 children whose names and ages are as follows:

23 Petitioner needs the exclusive use and possession
24 of the dwelling that the parties share.

25 Petitioner is unable to obtain safe alternative
26 housing because:

27 Petitioner genuinely fears that respondent
28 imminently will abuse, remove, or hide the minor child or
29 children from petitioner because:

30

31

1 (j) Petitioner genuinely fears imminent domestic
2 violence by respondent.

3 (k) Petitioner seeks an injunction: (mark appropriate
4 section or sections)

5 Immediately restraining the respondent from
6 committing any acts of domestic violence.

7 Restraining the respondent from committing any acts
8 of domestic violence.

9 Awarding to the petitioner the temporary exclusive
10 use and possession of the dwelling that the parties share or
11 excluding the respondent from the residence of the petitioner.

12 Awarding temporary custody of, or temporary
13 visitation rights with regard to, the minor child or children
14 of the parties, or prohibiting or limiting visitation to that
15 which is supervised by a third party.

16 Establishing temporary support for the minor child
17 or children or the petitioner.

18 Directing the respondent to participate in a
19 batterers' intervention program or other treatment pursuant to
20 s. 39.901.

21 Providing any terms the court deems necessary for
22 the protection of a victim of domestic violence, or any minor
23 children of the victim, including any injunctions or
24 directives to law enforcement agencies.

25 (c) Every petition for an injunction against domestic
26 violence shall contain, directly above the signature line, a
27 statement in all capital letters and bold type not smaller
28 than the surrounding text, as follows:

29

30 I HAVE READ EVERY STATEMENT MADE IN THIS
31 PETITION AND EACH STATEMENT IS TRUE AND

1 CORRECT. I UNDERSTAND THAT THE STATEMENTS MADE
2 IN THIS PETITION ARE BEING MADE UNDER PENALTY
3 OF PERJURY, PUNISHABLE AS PROVIDED IN SECTION
4 837.02, FLORIDA STATUTES.

5 ... (initials) ...

6
7 (d) If the sworn petition seeks to determine issues of
8 custody or visitation with regard to the minor child or
9 children of the parties, the sworn petition shall be
10 accompanied by or shall incorporate the allegations required
11 by s. 61.132 of the Uniform Child Custody Jurisdiction Act.

12 (6)(a) Upon notice and hearing, when it appears to the
13 court that the petitioner is either the victim of domestic
14 violence, as defined by s. 741.28, or has reasonable cause to
15 believe he or she is in imminent danger of becoming a victim
16 of domestic violence, the court may grant such relief as the
17 court deems proper, including an injunction:

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

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

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

26 4. On the same basis as provided in chapter 61,
27 establishing temporary support for a minor child or children
28 or the petitioner.

29 5. Ordering the respondent to participate in
30 treatment, intervention, or counseling services to be paid for
31 by the respondent. When the court orders the respondent to

1 participate in a batterers' intervention program, the court,
2 or any entity designated by the court, must provide the
3 respondent with a list of all certified batterers'
4 intervention programs and all programs which have submitted an
5 application to the Department of Corrections to become
6 certified under s. 741.325, from which the respondent must
7 choose a program in which to participate. If there are no
8 certified batterers' intervention programs in the circuit, the
9 court shall provide a list of acceptable programs from which
10 the respondent must choose a program in which to participate.

11 6. Referring a petitioner to a certified domestic
12 violence center. The court must provide the petitioner with a
13 list of certified domestic violence centers in the circuit
14 which the petitioner may contact.

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

19 **(b) In determining whether a petitioner has reasonable**
20 **cause to believe he or she is in imminent danger of becoming a**
21 **victim of domestic violence, the court shall consider and**
22 **evaluate all relevant factors alleged in the petition,**
23 **including, but not limited to:**

24 **1. The history between the petitioner and the**
25 **respondent, including threats, harassment, stalking, and**
26 **physical abuse;**

27 **2. Whether the respondent has attempted to harm the**
28 **petitioner or family members or individuals closely associated**
29 **with the petitioner;**

30 **3. Whether the respondent has threatened to conceal,**
31 **kidnap, or harm the petitioner's child(ren);**

1 4. Whether the respondent has intentionally injured or
2 killed a family pet;
3 5. Whether the respondent has used, or has threatened
4 to use, against the petitioner any weapons such as guns or
5 knives;
6 6. Whether the respondent has physically restrained
7 the petitioner from leaving the home or calling law
8 enforcement;
9 7. Whether the respondent has a criminal history
10 involving violence or the threat of violence;
11 8. The existence of a verifiable order of protection
12 issued previously or from another jurisdiction; and
13 9. Any other behavior or conduct that leads the court
14 to believe that the petitioner is in danger of becoming a
15 victim of domestic violence.
16
17 In making its determination under this section, the court is
18 not limited to the factors enumerated in subparagraphs 1.-9.
19 ~~(c)(b)~~ The terms of an injunction restraining the
20 respondent under subparagraph (a)1. or ordering other relief
21 for the protection of the victim under subparagraph (a)7.
22 shall remain in effect until modified or dissolved. Either
23 party may move at any time to modify or dissolve the
24 injunction. No specific allegations are required. Such
25 relief may be granted in addition to other civil or criminal
26 remedies.
27 ~~(d)(e)~~ A temporary or final judgment on injunction for
28 protection against domestic violence entered pursuant to this
29 section shall, on its face, indicate that:
30 1. The injunction is valid and enforceable in all
31 counties of the State of Florida.

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

4 3. The court had jurisdiction over the parties and
5 matter under the laws of Florida and that reasonable notice
6 and opportunity to be heard was given to the person against
7 whom the order is sought sufficient to protect that person's
8 right to due process.

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

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

20 1. It finds that the respondent willfully violated the
21 ex parte injunction;

22 2. The respondent, in this state or any other state,
23 has been convicted of, had adjudication withheld on, or pled
24 nolo contendere to a crime involving violence or a threat of
25 violence; or

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

29
30 It is mandatory that such programs be certified under s.
31 741.32.

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

5 (g)~~(f)~~ A final judgment on injunction for protection
6 against domestic violence entered pursuant to this section
7 must, on its face, indicate that it is a violation of s.
8 790.233, and a first degree misdemeanor, for the respondent to
9 have in his or her care, custody, possession, or control any
10 firearm or ammunition.

11 (h) If the court chooses to provide for recording
12 proceedings under this subsection and has adequate existing
13 court resources for any associated costs of such recording,
14 such proceedings shall be recorded. Recording may be by
15 electronic means, as provided by the Florida Rules of Judicial
16 Administration. If the means to record the proceedings are not
17 available, the parties shall be notified prior to the full
18 hearing.

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

21 943.171 Basic skills training in handling domestic
22 violence cases.--

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

24 (a) "Domestic violence" means any assault, battery,
25 sexual assault, sexual battery, or any criminal offense
26 resulting in the physical injury or death of one family or
27 household member by another ~~who is or was residing in the same~~
28 ~~single dwelling unit.~~ With the exception of persons who have a
29 child in common, the family or household members must be
30 currently residing or have in the past resided together in the
31 same single dwelling unit.

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

10 Section 8. This act shall take effect July 1, 2001.