

By the Council for Smarter Government and Committee on
 Judicial Oversight and Representatives Littlefield, Cantens,
 Crow, Gannon and Byrd

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 dissolution of
 7 marriage fee; amending s. 61.1825, F.S.;
 8 providing for additional circumstances when a
 9 family violence indicator must be placed on a
 10 record; amending s. 741.281, F.S.; deleting
 11 certain provisions relating to pretrial
 12 diversion programs; amending s. 741.30, F.S.;
 13 specifying when a person has standing to file a
 14 petition for an injunction against domestic
 15 violence; providing for incidents that describe
 16 violence or threats of violence; specifying
 17 when a court may grant relief; providing
 18 factors for the court to consider in
 19 determining imminent danger; providing for
 20 recording of proceedings; providing an
 21 effective date.

22
 23 Be It Enacted by the Legislature of the State of Florida:

24
 25 Section 1. Subsection (2) of section 25.385, Florida
 26 Statutes, is amended to read:

27 25.385 Standards for instruction of circuit and county
 28 court judges in handling domestic violence cases.--

29 (2) As used in this section:

30 (a) The term "domestic violence" has the same meaning
 31 as provided in s. 741.28 ~~means any assault, battery, sexual~~

1 ~~assault, sexual battery, or any criminal offense resulting in~~
2 ~~physical injury or death of one family or household member by~~
3 ~~another, who is or was residing in the same single dwelling~~
4 ~~unit.~~

5 (b) "Family or household member" has the same meaning
6 as provided in s. 741.28 ~~means spouse, former spouse, persons~~
7 ~~related by blood or marriage, persons who are presently~~
8 ~~residing together, as if a family, or who have resided~~
9 ~~together in the past, as if a family, and persons who have a~~
10 ~~child in common regardless of whether they have been married~~
11 ~~or have resided together at any time.~~

12 Section 2. Paragraph (c) of subsection (1) of section
13 28.101, Florida Statutes, is amended to read:

14 28.101 Petitions and records of dissolution of
15 marriage; additional charges.--

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

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

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

27 39.902 Definitions.--As used in this part, the term:

28 (1) "Domestic violence" has the same meaning as
29 provided in s. 741.28 ~~means any assault, battery, sexual~~
30 ~~assault, sexual battery, or any criminal offense resulting in~~
31 ~~physical injury or death of one family or household member by~~

1 ~~another who is or was residing in the same single dwelling~~
2 ~~unit.~~

3 (3) "Family or household member" has the same meaning
4 as provided in s. 741.28 ~~means spouses, former spouses, adults~~
5 ~~related by blood or marriage, persons who are presently~~
6 ~~residing together as if a family or who have resided together~~
7 ~~in the past as if a family, and persons who have a child in~~
8 ~~common regardless of whether they have been married or have~~
9 ~~resided together at any time.~~

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

12 61.1825 State Case Registry.--

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

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

20 2. A temporary or final injunction for protection
21 against domestic violence has been granted pursuant to s.
22 741.30(6), an injunction for protection against domestic
23 violence has been issued by a court of a foreign state
24 pursuant to s. 741.315, or a temporary or final injunction for
25 protection against repeat violence has been granted pursuant
26 to s. 784.046; or

27 3. The department has received information on a Title
28 IV-D case from the Domestic and Repeat Violence Injunction
29 Statewide Verification System, established pursuant to s.
30 784.046(8)(b), that a court has granted a party a domestic
31 violence or repeat violence injunction.

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

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

7 741.28 Domestic violence; definitions.--As used in ss.
8 741.28-741.31:

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

19 (2) "Family or household member" means spouses, former
20 spouses, persons related by blood or marriage, persons who are
21 presently residing together as if a family or who have resided
22 together in the past as if a family, and persons who have a
23 child in common regardless of whether they have been married
24 ~~or have resided together at any time.~~ With the exception of
25 persons who are parents of 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 6. Section 741.281, Florida Statutes, is
29 amended to read:

30 741.281 Court to order batterers' intervention program
31 attendance.--If a person is found guilty of, has had

1 adjudication withheld on, or has pled nolo contendere to a
2 crime of domestic violence, as defined in s. 741.28, that
3 person shall be ordered by the court to a minimum term of 1
4 year's probation and the court shall order that the defendant
5 attend a batterers' intervention program as a condition of
6 probation. ~~If a person is admitted to a pretrial diversion~~
7 ~~program and has been charged with an act of domestic violence,~~
8 ~~as defined in s. 741.28, the court shall order as a condition~~
9 ~~of the program that the defendant attend a batterers'~~
10 ~~intervention program.~~The court must impose the condition of
11 the batterers' intervention program for a defendant placed on
12 probation ~~or pretrial diversion~~ under this section, but the
13 court, in its discretion, may determine not to impose the
14 condition if it states on the record why a batterers'
15 intervention program might be inappropriate. It is preferred,
16 but not mandatory, that such programs be certified under s.
17 741.32. The imposition of probation under this section shall
18 not preclude the court from imposing any sentence of
19 imprisonment authorized by s. 775.082.

20 Section 7. Subsections (1), (3), and (6) of section
21 741.30, Florida Statutes, are amended to read:

22 741.30 Domestic violence; injunction; powers and
23 duties of court and clerk; petition; notice and hearing;
24 temporary injunction; issuance of injunction; statewide
25 verification system; enforcement.--

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

28 (a) Any person described in paragraph (e), who is
29 either the victim of ~~any act of~~ domestic violence, as defined
30 in s. 741.28, or has reasonable cause to believe he or she is
31 in imminent danger of becoming the victim of ~~any act of~~

1 domestic violence, has standing in the circuit court to file a
2 sworn petition for an injunction for protection against
3 domestic violence.

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

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

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

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

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

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

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

30 (i) The court is prohibited from issuing mutual orders
31 of protection. This does not preclude the court from issuing

1 separate injunctions for protection against domestic violence
2 where each party has complied with the provisions of this
3 section. Compliance with the provisions of this section cannot
4 be waived.

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

8 (b) The sworn petition shall be in substantially the
9 following form:

10

11

PETITION FOR

12

INJUNCTION FOR PROTECTION

13

AGAINST DOMESTIC VIOLENCE

14

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

18

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

19

(Petitioner may furnish address to the court in a
20 separate confidential filing if, for safety reasons, the
21 petitioner requires the location of the current residence to
22 be confidential.)

23

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

24

(c) Respondent's last known place of employment:

25

...(name of business and address)...

26

(d) Physical description of respondent:

27

Race....

28

Sex....

29

Date of birth....

30

Height....

31

Weight....

1 Eye color....
2 Hair color....
3 Distinguishing marks or scars....
4 (e) Aliases of respondent:
5 (f) Respondent is the spouse or former spouse of the
6 petitioner or is any other person related by blood or marriage
7 to the petitioner or is any other person who is or was
8 residing within a single dwelling unit with the petitioner, as
9 if a family, or is a person with whom the petitioner has a
10 child in common, regardless of whether the petitioner and
11 respondent are or were married or residing together, as if a
12 family.
13 (g) The following describes any other cause of action
14 currently pending between the petitioner and respondent:
15
16 The petitioner should also describe any previous or
17 pending attempts by the petitioner to obtain an injunction for
18 protection against domestic violence in this or any other
19 circuit, and the results of that attempt.....
20
21 Case numbers should be included if available.
22 (h) Petitioner is a victim of domestic violence ~~has~~
23 ~~suffered~~ or has reasonable cause to fear imminent domestic
24 violence because respondent has (check off all that apply and
25 describe in the space(s) below the incidents of violence or
26 threats of violence, specifying when and where they occurred,
27 including, but not limited to, locations such as home, school,
28 or place of employment or visitation exchange):
29 ...committed or threatened to commit domestic
30 violence, defined in s. 741.28 as any assault, aggravated
31 assault, battery, aggravated battery, sexual assault, sexual

1 battery, stalking, aggravated stalking, kidnapping, or false
2 imprisonment, or any criminal offense resulting in physical
3 injury or death of one family or household member by another,
4 provided, except persons who are parents of a child in common,
5 the family or household members must be currently residing or
6 have in the past resided together in the same dwelling unit;
7previously threatened, harassed, stalked, or
8 physically abused the petitioner;
9attempted to harm the petitioner or family members
10 or individuals associated with the petitioner;
11threatened to conceal, kidnap, or harm the
12 petitioner's child(ren);
13intentionally injured or killed a family pet;
14used, or has threatened to use, against the
15 petitioner any weapons such as guns or knives;
16physically restrained the petitioner from leaving
17 the home or calling law enforcement;
18a criminal history involving violence or the threat
19 of violence (if known);
20another order of protection issued against him or
21 her previously or from another jurisdiction (if known);
22engaged in any other behavior or conduct that leads
23 the petitioner to have reasonable cause to believe that he or
24 she is in imminent danger of becoming a victim of domestic
25 violence.
26 (i) Petitioner alleges the following additional
27 specific facts: (mark appropriate sections)
28Petitioner is the custodian of a minor child or
29 children whose names and ages are as follows:
30Petitioner needs the exclusive use and possession
31 of the dwelling that the parties share.

1 Petitioner is unable to obtain safe alternative
2 housing because:

3 Petitioner genuinely fears that respondent
4 imminently will abuse, remove, or hide the minor child or
5 children from petitioner because:

6

7 (j) Petitioner genuinely fears imminent domestic
8 violence by respondent.

9 (k) Petitioner seeks an injunction: (mark appropriate
10 section or sections)

11 Immediately restraining the respondent from
12 committing any acts of domestic violence.

13 Restraining the respondent from committing any acts
14 of domestic violence.

15 Awarding to the petitioner the temporary exclusive
16 use and possession of the dwelling that the parties share or
17 excluding the respondent from the residence of the petitioner.

18 Awarding temporary custody of, or temporary
19 visitation rights with regard to, the minor child or children
20 of the parties, or prohibiting or limiting visitation to that
21 which is supervised by a third party.

22 Establishing temporary support for the minor child
23 or children or the petitioner.

24 Directing the respondent to participate in a
25 batterers' intervention program or other treatment pursuant to
26 s. 39.901.

27 Providing any terms the court deems necessary for
28 the protection of a victim of domestic violence, or any minor
29 children of the victim, including any injunctions or
30 directives to law enforcement agencies.

31

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

5
6 I HAVE READ EVERY STATEMENT MADE IN THIS
7 PETITION AND EACH STATEMENT IS TRUE AND
8 CORRECT. I UNDERSTAND THAT THE STATEMENTS MADE
9 IN THIS PETITION ARE BEING MADE UNDER PENALTY
10 OF PERJURY, PUNISHABLE AS PROVIDED IN SECTION
11 837.02, FLORIDA STATUTES.

12 ... (initials) ...
13

14 (d) If the sworn petition seeks to determine issues of
15 custody or visitation with regard to the minor child or
16 children of the parties, the sworn petition shall be
17 accompanied by or shall incorporate the allegations required
18 by s. 61.132 of the Uniform Child Custody Jurisdiction Act.

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

25 1. Restraining the respondent from committing any acts
26 of domestic violence.

27 2. Awarding to the petitioner the exclusive use and
28 possession of the dwelling that the parties share or excluding
29 the respondent from the residence of the petitioner.
30
31

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

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

7 5. Ordering the respondent to participate in
8 treatment, intervention, or counseling services to be paid for
9 by the respondent. When the court orders the respondent to
10 participate in a batterers' intervention program, the court,
11 or any entity designated by the court, must provide the
12 respondent with a list of all certified batterers'
13 intervention programs and all programs which have submitted an
14 application to the Department of Corrections to become
15 certified under s. 741.325, from which the respondent must
16 choose a program in which to participate. If there are no
17 certified batterers' intervention programs in the circuit, the
18 court shall provide a list of acceptable programs from which
19 the respondent must choose a program in which to participate.

20 6. Referring a petitioner to a certified domestic
21 violence center. The court must provide the petitioner with a
22 list of certified domestic violence centers in the circuit
23 which the petitioner may contact.

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

28 (b) In determining whether a petitioner has reasonable
29 cause to believe he or she is in imminent danger of becoming a
30 victim of domestic violence, the court shall consider and

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- 1 evaluate all relevant factors alleged in the petition,
2 including, but not limited to:
- 3 1. The history between the petitioner and the
4 respondent, including threats, harassment, stalking, and
5 physical abuse;
 - 6 2. Whether the respondent has attempted to harm the
7 petitioner or family members or individuals closely associated
8 with the petitioner;
 - 9 3. Whether the respondent has threatened to conceal,
10 kidnap, or harm the petitioner's child(ren);
 - 11 4. Whether the respondent has intentionally injured or
12 killed a family pet;
 - 13 5. Whether the respondent has used, or has threatened
14 to use, against the petitioner any weapons such as guns or
15 knives;
 - 16 6. Whether the respondent has physically restrained
17 the petitioner from leaving the home or calling law
18 enforcement;
 - 19 7. Whether the respondent has a criminal history
20 involving violence or the threat of violence;
 - 21 8. The existence of a verifiable order of protection
22 issued previously or from another jurisdiction; and
 - 23 9. Whether the respondent engaged in any other
24 behavior or conduct that leads the petitioner to have
25 reasonable cause to believe that he or she is in imminent
26 danger of becoming a victim of domestic violence.

27
28 In making its determination under this section, the court is
29 not limited to the factors enumerated in subparagraphs 1.-9.

30 (c)(b) The terms of an injunction restraining the
31 respondent under subparagraph (a)1. or ordering other relief

1 for the protection of the victim under subparagraph (a)7.
2 shall remain in effect until modified or dissolved. Either
3 party may move at any time to modify or dissolve the
4 injunction. No specific allegations are required. Such
5 relief may be granted in addition to other civil or criminal
6 remedies.

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

10 1. The injunction is valid and enforceable in all
11 counties of the State of Florida.

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

15 3. The court had jurisdiction over the parties and
16 matter under the laws of Florida and that reasonable notice
17 and opportunity to be heard was given to the person against
18 whom the order is sought sufficient to protect that person's
19 right to due process.

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

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

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

3 2. The respondent, in this state or any other state,
4 has been convicted of, had adjudication withheld on, or pled
5 nolo contendere to a crime involving violence or a threat of
6 violence; or

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

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11 It is mandatory that such programs be certified under s.
12 741.32.

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

17 ~~(g)(f)~~ A final judgment on injunction for protection
18 against domestic violence entered pursuant to this section
19 must, on its face, indicate that it is a violation of s.
20 790.233, and a first degree misdemeanor, for the respondent to
21 have in his or her care, custody, possession, or control any
22 firearm or ammunition.

23 (h) If the court chooses to provide for recording
24 proceedings under this subsection and has adequate existing
25 court resources for any associated costs of such recording,
26 such proceedings shall be recorded. Recording may be by
27 electronic means, as provided by the Florida Rules of Judicial
28 Administration. If the means to record the proceedings are not
29 available, the parties shall be notified prior to the full
30 hearing.

31

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

3 943.171 Basic skills training in handling domestic
4 violence cases.--

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

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

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

23 Section 9. This act shall take effect July 1, 2001.
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