

By the Committees on Judiciary; Children and Families; and
 Senator Saunders

308-1517-01

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

21
 22 Be It Enacted by the Legislature of the State of Florida:

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 24 Section 1. Subsection (2) of section 25.385, Florida
 25 Statutes, is amended to read:
 26 25.385 Standards for instruction of circuit and county
 27 court judges in handling domestic violence cases.--
 28 (2) As used in this section:
 29 (a) The term "domestic violence" has the meaning set
 30 forth in s. 741.28 ~~means any assault, battery, sexual assault,~~
 31 ~~sexual battery, or any criminal offense resulting in physical~~

1 ~~injury or death of one family or household member by another,~~
2 ~~who is or was residing in the same single dwelling unit.~~

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

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

12 39.902 Definitions.--As used in this part, the term:

13 (1) "Domestic violence" has the meaning as set forth
14 in s. 741.28 ~~means any assault, battery, sexual assault,~~
15 ~~sexual battery, or any criminal offense resulting in physical~~
16 ~~injury or death of one family or household member by another~~
17 ~~who is or was residing in the same single dwelling unit.~~

18 (3) "Family or household member" has the meaning set
19 forth in s. 741.28 ~~means spouses, former spouses, adults~~
20 ~~related by blood or marriage, persons who are presently~~
21 ~~residing together as if a family or who have resided together~~
22 ~~in the past as if a family, and persons who have a child in~~
23 ~~common regardless of whether they have been married or have~~
24 ~~resided together at any time.~~

25 Section 3. Subsections (1) and (2) of section 741.28,
26 Florida Statutes, are amended to read:

27 741.28 Domestic violence; definitions.--As used in ss.
28 741.28-741.31:

29 (1) "Domestic violence" means any assault, aggravated
30 assault, battery, aggravated battery, sexual assault, sexual
31 battery, stalking, aggravated stalking, kidnapping, false

1 imprisonment, or any criminal offense resulting in physical
2 injury or death of one family or household member by another
3 ~~who is or was residing in the same single dwelling unit. With~~
4 the exception of persons who have a child in common, the
5 family or household members must be currently residing or have
6 in the past resided together in the same single dwelling unit.

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

16 Section 4. Subsection (2) of section 943.171, Florida
17 Statutes, is amended to read:

18 943.171 Basic skills training in handling domestic
19 violence cases.--

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

21 (a) "Domestic violence" has the meaning set forth in
22 s. 741.28 means any assault, battery, sexual assault, sexual
23 battery, or any criminal offense resulting in the physical
24 injury or death of one family or household member by another
25 who is or was residing in the same single dwelling unit.

26 (b) "Household member" has the meaning set forth in s.
27 741.28 means spouse, former spouse, persons related by blood
28 or marriage, persons who are presently residing together, as
29 if a family, or who have resided together in the past, as if a
30 family, and persons who have a child in common regardless of
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1 ~~whether they have been married or have resided together at any~~
2 ~~time.~~

3 Section 5. 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
24 domestic-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 6. Section 741.281, Florida Statutes, is
30 amended to read:

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1 741.281 Court to order batterers' intervention program
2 attendance.--If a person is found guilty of, has had
3 adjudication withheld on, or has pled nolo contendere to a
4 crime of domestic violence, as defined in s. 741.28, that
5 person shall be ordered by the court to a minimum term of 1
6 year's probation and the court shall order that the defendant
7 attend a batterers' intervention program as a condition of
8 probation. ~~If a person is admitted to a pretrial diversion~~
9 ~~program and has been charged with an act of domestic violence,~~
10 ~~as defined in s. 741.28, the court shall order as a condition~~
11 ~~of the program that the defendant attend a batterers'~~
12 ~~intervention program.~~The court must impose the condition of
13 the batterers' intervention program for a defendant placed on
14 probation ~~or pretrial diversion~~ under this section, but the
15 court, in its discretion, may determine not to impose the
16 condition if it states on the record why a batterers'
17 intervention program might be inappropriate. It is preferred,
18 but not mandatory, that such programs be certified under s.
19 741.32. The imposition of probation under this section shall
20 not preclude the court from imposing any sentence of
21 imprisonment authorized by s. 775.082.

22 Section 7. Subsections (1), (3), and (6) of section
23 741.30, Florida Statutes, are amended and subsection (10) is
24 added to that section to read:

25 741.30 Domestic violence; injunction; powers and
26 duties of court and clerk; petition; notice and hearing;
27 temporary injunction; issuance of injunction; statewide
28 verification system; enforcement.--

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

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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 is either a victim of domestic violence
27 ~~has suffered~~ or has reasonable cause to fear imminent domestic
28 violence because respondent has(check off all that apply and
29 describe in the spaces below the incidents of violence or
30 threats of violence, specifying when and where they occurred,
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1 including locations such as a home, school, place of
2 employment, or visitation exchange):
3committed or threatened to commit domestic violence
4 defined in s. 741.28 as any assault, aggravated assault,
5 battery, aggravated battery, sexual assault, sexual battery,
6 stalking, aggravated stalking, kidnapping, false imprisonment,
7 or any criminal offense resulting in physical injury or death
8 of one family or household member by another. With the
9 exception of persons who have a child in common, the family or
10 household members must be currently residing or have in the
11 past resided together in the same dwelling unit;
12previously threatened, harassed, stalked, or
13 physically abused the petitioner;
14attempted to harm the petitioner or family members
15 or individuals associated with the petitioner;
16threatened to conceal, kidnap, or harm the
17 petitioner's child(ren);
18intentionally injured or killed a family pet;
19used, or has threatened to use against the
20 petitioner any weapons such as guns or knives;
21physically restrained the petitioner from leaving
22 the home or calling law enforcement;
23a criminal history involving violence or the threat
24 of violence (if known);
25another order of protection issued against him or
26 her previously or from another jurisdiction (if known);
27engaged in any other behavior or conduct that leads
28 the petitioner to have reasonable cause to believe he or she
29 is in imminent danger of becoming a victim of domestic
30 violence.
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1 (i) Petitioner alleges the following additional
2 specific facts: (mark appropriate sections)
3 Petitioner is the custodian of a minor child or
4 children whose names and ages are as follows:
5 Petitioner needs the exclusive use and possession
6 of the dwelling that the parties share.
7 Petitioner is unable to obtain safe alternative
8 housing because:
9 Petitioner genuinely fears that respondent
10 imminently will abuse, remove, or hide the minor child or
11 children from petitioner because:
12
13 (j) Petitioner genuinely fears imminent domestic
14 violence by respondent.
15 (k) Petitioner seeks an injunction: (mark appropriate
16 section or sections)
17 Immediately restraining the respondent from
18 committing any acts of domestic violence.
19 Restraining the respondent from committing any acts
20 of domestic violence.
21 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 Awarding temporary custody of, or temporary
25 visitation rights with regard to, the minor child or children
26 of the parties, or prohibiting or limiting visitation to that
27 which is supervised by a third party.
28 Establishing temporary support for the minor child
29 or children or the petitioner.
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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 closely associated
13 with the petitioner;

14 3. Whether the respondent has threatened to conceal,
15 kidnap, or harm the petitioner's child or children;

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. Whether the respondent engaged in any other
29 behavior or conduct that leads the petitioner to have
30 reasonable cause to believe that he or she is in imminent
31 danger of becoming a victim of domestic violence.

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2 In making its determination under this section, the court is
3 not limited to those 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. Such relief
10 may be granted in addition to other civil or criminal
11 remedies.

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

15 1. The injunction is valid and enforceable in all
16 counties of the State of Florida.

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

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

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

27 (e)~~(d)~~ An injunction for protection against domestic
28 violence entered pursuant to this section, on its face, may
29 order that the respondent attend a batterers' intervention
30 program as a condition of the injunction. Unless the court
31 makes written factual findings in its judgment or order which

1 are based on substantial evidence, stating why batterers'
2 intervention programs would be inappropriate, the court shall
3 order the respondent to attend a batterers' intervention
4 program if:

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

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

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

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15 It is mandatory that such programs be certified under s.
16 741.32.

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

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

27 (h) All proceedings under this subsection are to be
28 recorded if the court chooses to provide for the recording and
29 has adequate existing court resources for any associated
30 costs. Recording may be by electronic means as provided by the
31 Rules of Judicial Administration. If the means to record the

1 proceedings are not available, the parties must be notified
2 prior to the full hearing.

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

4
5 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
6 COMMITTEE SUBSTITUTE FOR
7 CS/SB 248

8 Clarifies that for purposes of judicial and law enforcement
9 training, and for securing a domestic violence injunction, the
10 terms "domestic violence" and "family or household member" as
11 contained in sections 25.385, 39.902, and 943.171, shall be
12 defined by cross-reference to the corresponding definitions in
13 s. 741.28, F.S., as amended by the bill.

14 Clarifies that the reasonable cause-to-believe standard is
15 "imminent danger" for purposes of a domestic violence
16 injunction.
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