

By the Council for Healthy Communities and Committee on
Fiscal Policy & Resources and Representatives Littlefield,
Fasano, Gannon, Betancourt, Henriquez, Lynn and Harrell

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"; defining the term
6 "dating relationship"; amending s. 28.241,
7 F.S.; deleting reference to limitations on
8 filing fees for domestic violence injunctions
9 to conform to the act; amending s. 39.903,
10 F.S.; providing duty of the Department of
11 Children and Family Services to operate the
12 domestic violence program; amending ss.
13 390.01115, 470.002, 626.9541, 641.3903,
14 985.213, and 985.215, F.S.; correcting cross
15 references; amending s. 741.281, F.S.; deleting
16 requirement that a court order certain
17 defendants to attend a batterers' intervention
18 program; amending s. 741.2902, F.S.; deleting
19 provisions relating to filing fees and costs to
20 conform to the act; amending s. 741.30, F.S.;
21 specifying when a person has standing to file a
22 petition for an injunction against domestic
23 violence; specifying where the petition may be
24 filed; eliminating the filing fee and revising
25 provisions for reimbursement of costs for
26 issuance of such injunctions; providing for
27 incidents that describe violence or threats of
28 violence; specifying when a court may grant
29 relief; providing factors for the court to
30 consider in determining imminent danger;
31 providing for recording of proceedings;

1 providing for the presence of an advocate from
2 a state attorney's office, law enforcement
3 agency, or domestic violence center at
4 injunction proceedings, upon request; amending
5 s. 741.31, F.S.; specifying additional acts
6 that violate an injunction against domestic
7 violence; providing a penalty; amending s.
8 938.01, F.S.; revising provisions relating to
9 distribution of additional court costs assessed
10 in specified circumstances; repealing s. 4(2)
11 of ch. 2001-184, Laws of Florida, and s. 7(2)
12 of ch. 2001-232, Laws of Florida, relating to
13 the transfer of certain funds for
14 administration of the Prevention of Domestic
15 and Sexual Violence Program; repealing s.
16 741.466, F.S., relating to transfer of the
17 Prevention of Domestic and Sexual Violence
18 Program from the Department of Community
19 Affairs to the Department of Children and
20 Family Services; providing effective dates.

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

23
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 s. 741.28 ~~means spouse, former spouse, persons~~
5 ~~related by blood or marriage, persons who are presently~~
6 ~~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.~~

10 Section 2. Subsection (5) of section 28.241, Florida
11 Statutes, is amended to read:

12 28.241 Filing charges for trial and appellate
13 proceedings.--

14 (5) The fees prescribed in this section do not include
15 the service charges required by law for the clerk as provided
16 in s. 28.24 or by other sections of the Florida Statutes.
17 Service charges authorized by this section may not be added to
18 any civil penalty imposed by chapter 316 or chapter 318. ~~Fees~~
19 ~~for injunctions concerning domestic violence shall be limited~~
20 ~~as provided in s. 741.30(2)(a).~~

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

23 39.902 Definitions.--As used in this part, the term:

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

29 (3) "Family or household member" has the meaning set
30 forth in s. 741.28 ~~means spouses, former spouses, adults~~
31 ~~related by blood or marriage, persons who are presently~~

1 ~~residing together as if a family or who have resided together~~
2 ~~in the past as if a family, and persons who have a child in~~
3 ~~common regardless of whether they have been married or have~~
4 ~~resided together at any time.~~

5 Section 4. Subsections (3), (4), (5), and (6) of
6 section 39.903, Florida Statutes, are renumbered as
7 subsections (4), (5), (6), and (7), respectively, and a new
8 subsection (3) is added to said section, to read:

9 39.903 Duties and functions of the department with
10 respect to domestic violence.--

11 (3) The department shall operate the domestic violence
12 program, which provides supervision, direction, coordination,
13 and administration of statewide activities related to the
14 prevention of domestic violence.

15 Section 5. Paragraphs (b) and (e) of subsection (2) of
16 section 390.01115, Florida Statutes, are amended to read:

17 390.01115 Parental Notice of Abortion Act.--

18 (2) DEFINITIONS.--As used in this section, the term:

19 (b) "Child abuse" has the meaning ascribed in s.
20 39.0015(3) and refers to the acts of child abuse against a
21 minor by a family member as defined in s. 741.28(4)(2).

22 (e) "Sexual abuse" has the meaning ascribed in s.
23 39.01 and refers to the acts of sexual abuse against a minor
24 by a family member as defined in s. 741.28(4)(2).

25 Section 6. Subsection (18) of section 470.002, Florida
26 Statutes, is amended to read:

27 470.002 Definitions.--As used in this chapter:

28 (18) "Legally authorized person" means, in the
29 priority listed, the decedent, when written inter vivos
30 authorizations and directions are provided by the decedent,
31 the surviving spouse, unless the spouse has been arrested for

1 committing against the deceased an act of domestic violence as
2 defined in s. 741.28~~(1)~~, a son or daughter who is 18 years of
3 age or older, a parent, a brother or sister 18 years of age or
4 over, a grandchild who is 18 years of age or older, or a
5 grandparent; or any person in the next degree of kinship. In
6 addition, the term may include, if no family exists or is
7 available, the following: the guardian of the dead person at
8 the time of death; the personal representative of the
9 deceased; the attorney in fact of the dead person at the time
10 of death; the health surrogate of the dead person at the time
11 of death; a public health officer; the medical examiner,
12 county commission or administrator acting under chapter 245,
13 or other public administrator; a representative of a nursing
14 home or other health care institution in charge of final
15 disposition; or a friend or other person not listed in this
16 subsection who is willing to assume the responsibility as
17 authorized person.

18 Section 7. Paragraph (g) of subsection (1) of section
19 626.9541, Florida Statutes, is amended to read:

20 626.9541 Unfair methods of competition and unfair or
21 deceptive acts or practices defined.--

22 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR
23 DECEPTIVE ACTS.--The following are defined as unfair methods
24 of competition and unfair or deceptive acts or practices:

25 (g) Unfair discrimination.--

26 1. Knowingly making or permitting any unfair
27 discrimination between individuals of the same actuarially
28 supportable class and equal expectation of life, in the rates
29 charged for any life insurance or annuity contract, in the
30 dividends or other benefits payable thereon, or in any other
31 of the terms and conditions of such contract.

1 2. Knowingly making or permitting any unfair
2 discrimination between individuals of the same actuarially
3 supportable class and essentially the same hazard, in the
4 amount of premium, policy fees, or rates charged for any
5 policy or contract of accident, disability, or health
6 insurance, in the benefits payable thereunder, in any of the
7 terms or conditions of such contract, or in any other manner
8 whatever.

9 3. For a health insurer, life insurer, disability
10 insurer, property and casualty insurer, automobile insurer, or
11 managed care provider to underwrite a policy, or refuse to
12 issue, reissue, or renew a policy, refuse to pay a claim,
13 cancel or otherwise terminate a policy, or increase rates
14 based upon the fact that an insured or applicant who is also
15 the proposed insured has made a claim or sought or should have
16 sought medical or psychological treatment in the past for
17 abuse, protection from abuse, or shelter from abuse, or that a
18 claim was caused in the past by, or might occur as a result
19 of, any future assault, battery, or sexual assault by a family
20 or household member upon another family or household member as
21 defined in s. 741.28(2). A health insurer, life insurer,
22 disability insurer, or managed care provider may refuse to
23 underwrite, issue, or renew a policy based on the applicant's
24 medical condition, but shall not consider whether such
25 condition was caused by an act of abuse. For purposes of this
26 section, the term "abuse" means the occurrence of one or more
27 of the following acts:

28 a. Attempting or committing assault, battery, sexual
29 assault, or sexual battery;

30 b. Placing another in fear of imminent serious bodily
31 injury by physical menace;

- 1 c. False imprisonment;
2 d. Physically or sexually abusing a minor child; or
3 e. An act of domestic violence as defined in s.
4 741.28.

5
6 This subparagraph does not prohibit a property and casualty
7 insurer or an automobile insurer from excluding coverage for
8 intentional acts by the insured if such exclusion does not
9 constitute an act of unfair discrimination as defined in this
10 paragraph.

11 Section 8. Paragraph (b) of subsection (12) of section
12 641.3903, Florida Statutes, is amended to read:

13 641.3903 Unfair methods of competition and unfair or
14 deceptive acts or practices defined.--The following are
15 defined as unfair methods of competition and unfair or
16 deceptive acts or practices:

17 (12) PROHIBITED DISCRIMINATORY PRACTICES.--A health
18 maintenance organization may not:

19 (b) Refuse to provide services or care to a subscriber
20 solely because medical services may be or have been sought for
21 injuries resulting from an assault, battery, sexual assault,
22 sexual battery, or any other offense by a family or household
23 member, as defined in s. 741.28(2), or by another who is or
24 was residing in the same dwelling unit.

25 Section 9. Section 741.28, Florida Statutes, is
26 amended to read:

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

29 (1) "Dating relationship" means a relationship between
30 individuals who have or have had a continuing relationship of
31 a romantic or intimate nature. The existence of such a

1 relationship shall be determined based on the consideration of
2 the length the relationship, the nature of the relationship,
3 and the frequency and type of interaction between the persons
4 involved in the relationship, but does not include a casual
5 acquaintanceship or ordinary fraternization between persons in
6 a business or social context.

7 (2)~~(3)~~ "Department" means the Florida Department of
8 Law Enforcement.

9 (3)~~(1)~~ "Domestic violence" means any assault,
10 aggravated assault, battery, aggravated battery, sexual
11 assault, sexual battery, stalking, aggravated stalking,
12 kidnapping, false imprisonment, or any criminal offense
13 resulting in 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.~~

16 (4)~~(2)~~ "Family or household member" means spouses,
17 former spouses, persons who have or have had a dating
18 relationship, persons related by blood or marriage, persons
19 who are presently residing together as if a family or who have
20 resided together in the past as if a family, and persons who
21 have a child in common regardless of whether they have been
22 married ~~or have resided together at any time.~~ With the
23 exception of persons who have a child in common, or who have
24 or have had a dating relationship, 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 (5)~~(4)~~ "Law enforcement officer" means any person who
28 is elected, appointed, or employed by any municipality or the
29 state or any political subdivision thereof who meets the
30 minimum qualifications established in s. 943.13 and is
31 certified as a law enforcement officer under s. 943.1395.

1 Section 10. Section 741.281, Florida Statutes, is
2 amended to read:

3 741.281 Court to order batterers' intervention program
4 attendance.--If a person is found guilty of, has had
5 adjudication withheld on, or has pled nolo contendere to a
6 crime of domestic violence, as defined in s. 741.28, that
7 person shall be ordered by the court to a minimum term of 1
8 year's probation and the court shall order that the defendant
9 attend a batterers' intervention program as a condition of
10 probation. ~~If a person is admitted to a pretrial diversion~~
11 ~~program and has been charged with an act of domestic violence,~~
12 ~~as defined in s. 741.28, the court shall order as a condition~~
13 ~~of the program that the defendant attend a batterers'~~
14 ~~intervention program.~~The court must impose the condition of
15 the batterers' intervention program for a defendant admitted
16 ~~to pretrial diversion~~ under this section, but the court, in
17 its discretion, may determine not to impose the condition if
18 it states on the record why a batterers' intervention program
19 might be inappropriate. The court must impose the condition
20 of the batterers' intervention program for a defendant placed
21 on probation unless the court determines that the person does
22 not qualify for the batterers' intervention program pursuant
23 to s. 741.325. Effective July 1, 2002, the batterers'
24 intervention program must be a certified program under s.
25 741.32. The imposition of probation under this section shall
26 not preclude the court from imposing any sentence of
27 imprisonment authorized by s. 775.082.

28 Section 11. Paragraph (f) of subsection (2) of section
29 741.2902, Florida Statutes, is amended to read:

30 741.2902 Domestic violence; legislative intent with
31 respect to judiciary's role.--

1 (2) It is the intent of the Legislature, with respect
2 to injunctions for protection against domestic violence,
3 issued pursuant to s. 741.30, that the court shall:

4 ~~(f) Consider requiring the respondent to pay, to the~~
5 ~~clerk of the court and sheriff, filing fees and costs waived~~
6 ~~pursuant to s. 741.30(2)(a), or to reimburse the petitioner~~
7 ~~for filing fees and costs paid by the petitioner.~~

8 Section 12. Subsection (1), paragraph (a) of
9 subsection (2), and subsections (3) and (6) of section 741.30,
10 Florida Statutes, are amended, subsections (7), (8), and (9)
11 are renumbered as subsections (8), (9), and (10),
12 respectively, and a new subsection (7) is added to said
13 section, to read:

14 741.30 Domestic violence; injunction; powers and
15 duties of court and clerk; petition; notice and hearing;
16 temporary injunction; issuance of injunction; statewide
17 verification system; enforcement.--

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

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

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

31

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 (j) Notwithstanding any provision of chapter 47, a
30 petition for an injunction for protection against domestic
31 violence may be filed in the circuit where the petitioner

1 currently or temporarily resides, where the respondent
2 resides, or where the domestic violence occurred. There is no
3 minimum requirement of residency to petition for an injunction
4 for protection.

5 (2)(a) Notwithstanding any other provision of law, the
6 assessment of a filing fee for a petition for protection
7 against domestic violence is prohibited. However, subject to
8 legislative appropriation, the clerk of the circuit court may,
9 on a quarterly basis, submit to the Office of the State Courts
10 Administrator a certified request for reimbursement for
11 petitions for protection against domestic violence issued by
12 the court, at the rate of \$40 per petition. The request for
13 reimbursement shall be submitted in the form and manner
14 prescribed by the Office of the State Courts Administrator.
15 From this reimbursement, the clerk shall pay any law
16 enforcement agency serving the injunction the fee requested by
17 the law enforcement agency; however, this fee shall not exceed
18 ~~\$20. Notwithstanding any other provision of law, the total~~
19 ~~charge, including any administration fees, law enforcement~~
20 ~~agency charges, and court costs or service charges, for any~~
21 ~~court to issue an injunction concerning domestic violence~~
22 ~~under chapter 741 or chapter 784 shall not exceed \$50. The~~
23 ~~total charge by any law enforcement agency to serve an~~
24 ~~injunction or restraining order concerning violence shall not~~
25 ~~exceed \$20. The remaining \$30 fee collected for an injunction~~
26 ~~under chapter 741 shall only be applied to the initial \$40~~
27 ~~service charge collected by the clerk of the court as provided~~
28 ~~in s. 28.241(1). In the event the victim does not have~~
29 ~~sufficient funds with which to pay filing fees to the clerk of~~
30 ~~the court or service fees to the sheriff or law enforcement~~
31 ~~agency and signs an affidavit stating so, the fees shall be~~

1 ~~waived by the clerk of the court or the sheriff or law~~
2 ~~enforcement agency to the extent necessary to process the~~
3 ~~petition and serve the injunction, subject to a subsequent~~
4 ~~order of the court relative to the payment of such fees.~~

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 either a victim of domestic violence
23 ~~has suffered~~ or has reasonable cause to believe he or she is
24 in imminent danger of becoming a victim of fear imminent
25 domestic violence because respondent has....(mark all
26 sections that apply and describe in the spaces below the
27 incidents of violence or threats of violence, specifying when
28 and where they occurred, including, but not limited to,
29 locations such as a home, school, place of employment, or
30 visitation exchange)....:

1 committed or threatened to commit domestic violence
2 defined in s. 741.28, Florida Statutes, as any assault,
3 aggravated assault, battery, aggravated battery, sexual
4 assault, sexual battery, stalking, aggravated stalking,
5 kidnapping, false imprisonment, or any criminal offense
6 resulting in physical injury or death of one family or
7 household member by another. With the exception of persons who
8 are parents of a child in common, the family or household
9 members must be currently residing or have in the past resided
10 together in the same single dwelling unit.

11 previously threatened, harassed, stalked, or
12 physically abused the petitioner.

13 attempted to harm the petitioner or family members
14 or individuals closely associated with the petitioner.

15 threatened to conceal, kidnap, or harm the
16 petitioner's child or children.

17 intentionally injured or killed a family pet.

18 used, or has threatened to use, against the
19 petitioner any weapons such as guns or knives.

20 physically restrained the petitioner from leaving
21 the home or calling law enforcement.

22 a criminal history involving violence or the threat
23 of violence (if known).

24 another order of protection issued against him or
25 her previously or from another jurisdiction (if known).

26 destroyed personal property, including, but not
27 limited to, telephones or other communication equipment,
28 clothing, or other items belonging to the petitioner.

29 engaged in any other behavior or conduct that leads
30 the petitioner to have reasonable cause to believe he or she
31

1 is in imminent danger of becoming a victim of domestic
2 violence.
3 (i) Petitioner alleges the following additional
4 specific facts: (mark appropriate sections)
5Petitioner is the custodian of a minor child or
6 children whose names and ages are as follows:
7Petitioner needs the exclusive use and possession
8 of the dwelling that the parties share.
9Petitioner is unable to obtain safe alternative
10 housing because:
11Petitioner genuinely fears that respondent
12 imminently will abuse, remove, or hide the minor child or
13 children from petitioner because:
14
15 (j) Petitioner genuinely fears imminent domestic
16 violence by respondent.
17 (k) Petitioner seeks an injunction: (mark appropriate
18 section or sections)
19Immediately restraining the respondent from
20 committing any acts of domestic violence.
21Restraining the respondent from committing any acts
22 of domestic violence.
23Awarding to the petitioner the temporary exclusive
24 use and possession of the dwelling that the parties share or
25 excluding the respondent from the residence of the petitioner.
26Awarding temporary custody of, or temporary
27 visitation rights with regard to, the minor child or children
28 of the parties, or prohibiting or limiting visitation to that
29 which is supervised by a third party.
30Establishing temporary support for the minor child
31 or children or the petitioner.

1 Directing the respondent to participate in a
2 batterers' intervention program or other treatment pursuant to
3 s. 39.901, Florida Statutes.

4 Providing any terms the court deems necessary for
5 the protection of a victim of domestic violence, or any minor
6 children of the victim, including any injunctions or
7 directives to law enforcement agencies.

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

12
13 I HAVE READ EVERY STATEMENT MADE IN THIS
14 PETITION AND EACH STATEMENT IS TRUE AND
15 CORRECT. I UNDERSTAND THAT THE STATEMENTS MADE
16 IN THIS PETITION ARE BEING MADE UNDER PENALTY
17 OF PERJURY, PUNISHABLE AS PROVIDED IN SECTION
18 837.02, FLORIDA STATUTES.

19 ...(initials)...

20
21 (d) If the sworn petition seeks to determine issues of
22 custody or visitation with regard to the minor child or
23 children of the parties, the sworn petition shall be
24 accompanied by or shall incorporate the allegations required
25 by s. 61.132 of the Uniform Child Custody Jurisdiction Act.

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

- 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,
31

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.

28 9. Whether the respondent has destroyed personal
29 property, including, but not limited to, telephones or other
30 communications equipment, clothing, or other items belonging
31 to the petitioner.

1 10. Whether the respondent engaged in any other
2 behavior or conduct that leads the petitioner to have
3 reasonable cause to believe that he or she is in imminent
4 danger of becoming a victim of domestic violence.

5
6 In making its determination under this paragraph, the court is
7 not limited to those factors enumerated in subparagraphs
8 1.-10.

9 ~~(c)(b)~~ The terms of an injunction restraining the
10 respondent under subparagraph (a)1. or ordering other relief
11 for the protection of the victim under subparagraph (a)7.
12 shall remain in effect until modified or dissolved. Either
13 party may move at any time to modify or dissolve the
14 injunction. No specific allegations are required. Such relief
15 may be granted in addition to other civil or criminal
16 remedies.

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

20 1. The injunction is valid and enforceable in all
21 counties of the State of Florida.

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

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

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

1 (e)~~(d)~~ An injunction for protection against domestic
2 violence entered pursuant to this section, on its face, may
3 order that the respondent attend a batterers' intervention
4 program as a condition of the injunction. Unless the court
5 makes written factual findings in its judgment or order which
6 are based on substantial evidence, stating why batterers'
7 intervention programs would be inappropriate, the court shall
8 order the respondent to attend a batterers' intervention
9 program if:

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

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

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

19
20 It is mandatory that such programs be certified under s.
21 741.32.

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

26 (g)~~(f)~~ A final judgment on injunction for protection
27 against domestic violence entered pursuant to this section
28 must, on its face, indicate that it is a violation of s.
29 790.233, and a first degree misdemeanor, for the respondent to
30 have in his or her care, custody, possession, or control any
31 firearm or ammunition.

1 (h) All proceedings under this subsection shall be
2 recorded. Recording may be by electronic means as provided by
3 the Rules of Judicial Administration.

4 (7) The court shall allow an advocate from a state
5 attorney's office, an advocate from a law enforcement agency,
6 or an advocate from a certified domestic violence center who
7 is registered under s. 39.905 to be present with the
8 petitioner or respondent during any court proceedings or
9 hearings related to the injunction for protection, provided
10 the petitioner or respondent has made such a request and the
11 advocate is able to be present.

12 Section 13. Paragraph (a) of subsection (4) of section
13 741.31, Florida Statutes, is amended to read:

14 741.31 Violation of an injunction for protection
15 against domestic violence.--

16 (4)(a) A person who willfully violates an injunction
17 for protection against domestic violence issued pursuant to s.
18 741.30, or a foreign protection order accorded full faith and
19 credit pursuant to s. 741.315, by:

20 1. Refusing to vacate the dwelling that the parties
21 share;

22 2. Going to, or being within 500 feet of, the
23 petitioner's residence, school, place of employment, or a
24 specified place frequented regularly by the petitioner and any
25 named family or household member;

26 3. Committing an act of domestic violence against the
27 petitioner;

28 4. Committing any other violation of the injunction
29 through an intentional unlawful threat, word, or act to do
30 violence to the petitioner; ~~or~~

31

1 5. Telephoning, contacting, or otherwise communicating
2 with the petitioner directly or indirectly, unless the
3 injunction specifically allows indirect contact through a
4 third party;

5 6. Knowingly and intentionally coming within 100 feet
6 of the petitioner's motor vehicle, whether or not that vehicle
7 is occupied;

8 7. Defacing or destroying the petitioner's personal
9 property, including the petitioner's motor vehicle; or

10 8. Refusing to surrender firearms or ammunition if
11 ordered to do so by the court

12
13 commits a misdemeanor of the first degree, punishable as
14 provided in s. 775.082 or s. 775.083.

15 Section 14. Subsection (2) of section 943.171, Florida
16 Statutes, is amended to read:

17 943.171 Basic skills training in handling domestic
18 violence cases.--

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

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

25 (b) "Household member" has the meaning set forth in s.
26 741.28(4) ~~means spouse, former spouse, persons related by~~
27 ~~blood or marriage, persons who are presently residing~~
28 ~~together, as if a family, or who have resided together in the~~
29 ~~past, as if a family, and persons who have a child in common~~
30 ~~regardless of whether they have been married or have resided~~
31 ~~together at any time.~~

1 Section 15. Paragraph (b) of subsection (2) of section
2 985.213, Florida Statutes, is amended to read:

3 985.213 Use of detention.--

4 (2)

5 (b)1. The risk assessment instrument for detention
6 care placement determinations and orders shall be developed by
7 the Department of Juvenile Justice in agreement with
8 representatives appointed by the following associations: the
9 Conference of Circuit Judges of Florida, the Prosecuting
10 Attorneys Association, the Public Defenders Association, the
11 Florida Sheriffs Association, and the Florida Association of
12 Chiefs of Police. Each association shall appoint two
13 individuals, one representing an urban area and one
14 representing a rural area. The parties involved shall
15 evaluate and revise the risk assessment instrument as is
16 considered necessary using the method for revision as agreed
17 by the parties. The risk assessment instrument shall take into
18 consideration, but need not be limited to, prior history of
19 failure to appear, prior offenses, offenses committed pending
20 adjudication, any unlawful possession of a firearm, theft of a
21 motor vehicle or possession of a stolen motor vehicle, and
22 probation status at the time the child is taken into custody.
23 The risk assessment instrument shall also take into
24 consideration appropriate aggravating and mitigating
25 circumstances, and shall be designed to target a narrower
26 population of children than s. 985.215(2). The risk assessment
27 instrument shall also include any information concerning the
28 child's history of abuse and neglect. The risk assessment
29 shall indicate whether detention care is warranted, and, if
30 detention care is warranted, whether the child should be
31 placed into secure, nonsecure, or home detention care.

1 2. If, at the detention hearing, the court finds a
2 material error in the scoring of the risk assessment
3 instrument, the court may amend the score to reflect factual
4 accuracy.

5 3. A child who is charged with committing an offense
6 of domestic violence as defined in s. 741.28(1) and who does
7 not meet detention criteria may be held in secure detention if
8 the court makes specific written findings that:

9 a. Respite care for the child is not available; and

10 b. It is necessary to place the child in secure
11 detention in order to protect the victim from injury.

12
13 The child may not be held in secure detention under this
14 subparagraph for more than 48 hours unless ordered by the
15 court. After 48 hours, the court shall hold a hearing if the
16 state attorney or victim requests that secure detention be
17 continued. The child may continue to be held in detention care
18 if the court makes a specific, written finding that detention
19 care is necessary to protect the victim from injury. However,
20 the child may not be held in detention care beyond the time
21 limits set forth in s. 985.215.

22 4. For a child who is under the supervision of the
23 department through probation, home detention, nonsecure
24 detention, conditional release, postcommitment probation, or
25 commitment and who is charged with committing a new offense,
26 the risk assessment instrument may be completed and scored
27 based on the underlying charge for which the child was placed
28 under the supervision of the department and the new offense.

29 Section 16. Paragraph (d) of subsection (2) of section
30 985.215, Florida Statutes, is amended to read:

31 985.215 Detention.--

1 (2) Subject to the provisions of subsection (1), a
2 child taken into custody and placed into nonsecure or home
3 detention care or detained in secure detention care prior to a
4 detention hearing may continue to be detained by the court if:

5 (d) The child is charged with committing an offense of
6 domestic violence as defined in s. 741.28~~(1)~~and is detained
7 as provided in s. 985.213(2)(b)3.

8
9 A child who meets any of these criteria and who is ordered to
10 be detained pursuant to this subsection shall be given a
11 hearing within 24 hours after being taken into custody. The
12 purpose of the detention hearing is to determine the existence
13 of probable cause that the child has committed the delinquent
14 act or violation of law with which he or she is charged and
15 the need for continued detention. Unless a child is detained
16 under paragraph (d) or paragraph (e), the court shall utilize
17 the results of the risk assessment performed by the juvenile
18 probation officer and, based on the criteria in this
19 subsection, shall determine the need for continued detention.
20 A child placed into secure, nonsecure, or home detention care
21 may continue to be so detained by the court pursuant to this
22 subsection. If the court orders a placement more restrictive
23 than indicated by the results of the risk assessment
24 instrument, the court shall state, in writing, clear and
25 convincing reasons for such placement. Except as provided in
26 s. 790.22(8) or in subparagraph (10)(a)2., paragraph (10)(b),
27 paragraph (10)(c), or paragraph (10)(d), when a child is
28 placed into secure or nonsecure detention care, or into a
29 respite home or other placement pursuant to a court order
30 following a hearing, the court order must include specific
31 instructions that direct the release of the child from such

1 placement no later than 5 p.m. on the last day of the
2 detention period specified in paragraph (5)(b) or paragraph
3 (5)(c), or subparagraph (10)(a)1., whichever is applicable,
4 unless the requirements of such applicable provision have been
5 met or an order of continuance has been granted pursuant to
6 paragraph (5)(f).

7 Section 17. Effective July 1, 2002, subsection (1) of
8 section 938.01, Florida Statutes, as amended by section 29 of
9 chapter 2001-254, Laws of Florida, section 19 of chapter
10 2001-122, Laws of Florida, section 1 of chapter 2001-184, Laws
11 of Florida, section 3 of chapter 2001-232, Laws of Florida,
12 and section 30 of chapter 2001-254, Laws of Florida, is
13 amended to read:

14 938.01 Additional Court Cost Clearing Trust Fund.--
15 (Substantial rewording of subsection. See
16 s. 938.01(1), F.S., for present text.)

17 (1) All courts created by Art. V of the State
18 Constitution shall, in addition to any fine or other penalty,
19 assess \$3 as a court cost against every person convicted for
20 violation of a state penal or criminal statute or convicted
21 for violation of a municipal or county ordinance. Any person
22 whose adjudication is withheld pursuant to the provisions of
23 s. 318.14(9) or (10) shall also be assessed such cost. In
24 addition, \$3 from every bond estreature or forfeited bail bond
25 related to such penal statutes or penal ordinances shall be
26 remitted to the Department of Revenue as described in this
27 subsection. However, no such assessment may be made against
28 any person convicted for violation of any state statute,
29 municipal ordinance, or county ordinance relating to the
30 parking of vehicles.

31

1 (a) All costs collected by the courts pursuant to this
2 subsection shall be remitted to the Department of Revenue in
3 accordance with administrative rules adopted by the executive
4 director of the Department of Revenue for deposit in the
5 Additional Court Cost Clearing Trust Fund. These funds and the
6 funds deposited in the Additional Court Cost Clearing Trust
7 Fund pursuant to s. 318.21(2)(c) shall be distributed as
8 follows:

9 1. Ninety-two percent to the Department of Law
10 Enforcement Criminal Justice Standards and Training Trust
11 Fund.

12 2. Six and three-tenths percent to the Department of
13 Law Enforcement Operating Trust Fund for the Criminal Justice
14 Grant Program.

15 3. One and seven-tenths percent to the Department of
16 Children and Family Services Domestic Violence Trust Fund for
17 the domestic violence program pursuant to s. 39.903(3).

18 (b) The funds deposited in the Department of Law
19 Enforcement Criminal Justice Standards and Training Trust
20 Fund, the Department of Law Enforcement Operating Trust Fund,
21 and the Department of Children and Family Services Domestic
22 Violence Trust Fund may be invested. Any interest earned from
23 investing such funds and any unencumbered funds remaining at
24 the end of the budget cycle shall remain in the respective
25 trust fund.

26 (c) All funds in the Department of Law Enforcement
27 Criminal Justice Standards and Training Trust Fund shall be
28 disbursed only in compliance with s. 943.25(9).

29 Section 18. Subsection (2) of section 4 of chapter
30 2001-184, Laws of Florida, and subsection (2) of section 7 of
31 chapter 2001-232, Laws of Florida, are repealed.

1 Section 19. Section 741.466, Florida Statutes, is
2 repealed.
3 Section 20. Except as otherwise provided herein, this
4 act shall take effect October 1, 2002.
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