

Bill No. CS for CS for CS for SB 316

Amendment No. Barcode 501302

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator Saunders moved the following amendment:

Senate Amendment

On page 23, line 15, through page 32, line 21, delete those lines

and insert:

784.046 Action by victim of repeat violence or dating violence for protective injunction; powers and duties of court and clerk of court; filing and form of petition; notice and hearing; temporary injunction; issuance; statewide verification system; enforcement.--

(1) As used in this section, the term:

(a) "Violence" means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, ~~or~~ stalking, aggravated stalking, kidnapping, or false imprisonment, or any criminal offense resulting in physical injury or death by a person against any other person.

(b) "Repeat violence" means two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which

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1 are directed against the petitioner or the petitioner's
2 immediate family member.

3 (c) "Dating violence" means violence between
4 individuals who have or have had a continuing and significant
5 relationship of a romantic or intimate nature. The existence
6 of such a relationship shall be determined based on the
7 consideration of the following factors:

8 1. A substantive dating relationship must have existed
9 within the past 6 months;

10 2. The nature of the relationship must have been
11 characterized by the expectation of affection or sexual
12 involvement between the parties; and

13 3. The frequency and type of interaction between the
14 persons involved in the relationship must have included that
15 the persons have been involved over time and on a continuous
16 basis during the course of the relationship.

17
18 The term does not include violence in a casual
19 acquaintanceship or violence between individuals who only have
20 engaged in ordinary fraternization in a business or social
21 context.

22 (2) There is created a cause of action for an
23 injunction for protection in cases of repeat violence and
24 there is created a separate cause of action for an injunction
25 for protection in cases of dating violence.

26 (a) Any person who is the victim of repeat violence or
27 the parent or legal guardian of any minor child who is living
28 at home and who seeks an injunction for protection against
29 repeat violence on behalf of the minor child has standing in
30 the circuit court to file a sworn petition for an injunction
31 for protection against repeat violence.

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1 (b) Any person, who is the victim of dating violence
2 and has reasonable cause to believe he or she is in imminent
3 danger of becoming the victim of another act of dating
4 violence, or any person who has reasonable cause to believe he
5 or she is in imminent danger of becoming the victim of an act
6 of dating violence, or the parent or legal guardian of any
7 minor child who is living at home and who seeks an injunction
8 for protection against dating violence on behalf of that minor
9 child, has standing in the circuit court to file a sworn
10 petition for an injunction for protection against dating
11 violence.

12 ~~(c)~~(b) This cause of action for an injunction may be
13 sought whether or not any other petition, complaint, or cause
14 of action is currently available or pending between the
15 parties.

16 ~~(d)~~(e) This cause of action for an injunction shall
17 not require that the petitioner be represented by an attorney.

18 (3)(a) The clerk of the court shall provide a copy of
19 this section, simplified forms, and clerical assistance for
20 the preparation and filing of such a petition by any person
21 who is not represented by counsel.

22 (b) In the event the person desiring to file for an
23 injunction pursuant to this section does not have sufficient
24 funds with which to pay filing fees to the clerk of the court
25 or service fees to the sheriff or law enforcement agency and
26 signs an affidavit so stating, the fees shall be waived by the
27 clerk of the court or the sheriff or law enforcement agency to
28 the extent necessary to process the petition and serve the
29 injunction, subject to a subsequent order of the court
30 relative to the payment of such fees.

31 (c) No bond shall be required by the court for the

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1 entry of an injunction.

2 (d) The clerk of the court shall provide the
3 petitioner with a certified copy of any injunction for
4 protection against repeat violence or dating violence entered
5 by the court.

6 (4)(a) The sworn petition shall allege the incidents
7 of repeat violence or dating violence and shall include the
8 specific facts and circumstances which form the basis upon
9 which relief is sought. With respect to a minor child who is
10 living at home, the parent or legal guardian of the minor
11 child must have been an eyewitness to, or have direct physical
12 evidence or affidavits from eyewitnesses of, the specific
13 facts and circumstances which form the basis upon which relief
14 is sought.

15 (b) The sworn petition shall be in substantially the
16 following form:

17
18 PETITION FOR INJUNCTION FOR
19 PROTECTION AGAINST REPEAT VIOLENCE OR DATING VIOLENCE
20

21 Before me, the undersigned authority, personally
22 appeared Petitioner ...(Name)..., who has been sworn and says
23 that the following statements are true:
24

- 25 1. Petitioner resides at ...(address)...
- 26 2. Respondent resides at ...(address)...
- 27 3.a. Petitioner has suffered repeat violence as
28 demonstrated by the fact that the respondent has:
29 ...(enumerate incidents of violence)...

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b. Petitioner is a victim of dating violence and has reasonable cause to believe that he or she is in imminent danger of becoming the victim of another act of dating violence or has reasonable cause to believe that he or she is in imminent danger of becoming a victim of dating violence as demonstrated by the fact that the respondent has: ...(list the specific incident or incidents of violence and describe the length of time of the relationship, whether it has been in existence during the last 6 months, the nature of the relationship of a romantic or intimate nature, the frequency and type of interaction, and any other facts that characterize the relationship.)...

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4. Petitioner genuinely fears repeat violence by the respondent.

5. Petitioner seeks: an immediate injunction against the respondent, enjoining him or her from committing any further acts of ~~repeat~~ violence; an injunction enjoining the respondent from committing any further acts of ~~repeat~~ violence; and an injunction providing any terms the court deems necessary for the protection of the petitioner and the petitioner's immediate family, including any injunctions or directives to law enforcement agencies.

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1 (5) Upon the filing of the petition, the court shall
2 set a hearing to be held at the earliest possible time. The
3 respondent shall be personally served with a copy of the
4 petition, notice of hearing, and temporary injunction, if any,
5 prior to the hearing.

6 (6)(a) When it appears to the court that an immediate
7 and present danger of ~~repeat~~ violence exists, the court may
8 grant a temporary injunction which may be granted in an ex
9 parte hearing, pending a full hearing, and may grant such
10 relief as the court deems proper, including an injunction
11 enjoining the respondent from committing any acts of ~~repeat~~
12 violence.

13 (b) In a hearing ex parte for the purpose of obtaining
14 such temporary injunction, no evidence other than the verified
15 pleading or affidavit shall be used as evidence, unless the
16 respondent appears at the hearing or has received reasonable
17 notice of the hearing.

18 (c) Any such ex parte temporary injunction shall be
19 effective for a fixed period not to exceed 15 days. A full
20 hearing, as provided by this section, shall be set for a date
21 no later than the date when the temporary injunction ceases to
22 be effective. The court may grant a continuance of the ex
23 parte injunction and the full hearing before or during a
24 hearing, for good cause shown by any party.

25 (7) Upon notice and hearing, the court may grant such
26 relief as the court deems proper, including an injunction:

27 (a) Enjoining the respondent from committing any acts
28 of violence.

29 (b) Ordering such other relief as the court deems
30 necessary for the protection of the petitioner, including
31 injunctions or directives to law enforcement agencies, as

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1 provided in this section.

2 (c) The terms of the injunction shall remain in full
3 force and effect until modified or dissolved. Either party may
4 move at any time to modify or dissolve the injunction. Such
5 relief may be granted in addition to other civil or criminal
6 remedies.

7 (d) A temporary or final judgment on injunction for
8 protection against repeat violence or dating violence entered
9 pursuant to this 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 that the respondent was served with the
21 temporary or final order, if obtainable.

22 (8)(a)1. The clerk of the court shall furnish a copy
23 of the petition, notice of hearing, and temporary injunction,
24 if any, to the sheriff or a law enforcement agency of the
25 county where the respondent resides or can be found, who shall
26 serve it upon the respondent as soon thereafter as possible on
27 any day of the week and at any time of the day or night. The
28 clerk of the court shall be responsible for furnishing to the
29 sheriff such information on the respondent's physical
30 description and location as is required by the department to
31 comply with the verification procedures set forth in this

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1 section. Notwithstanding any other provision of law to the
2 contrary, the chief judge of each circuit, in consultation
3 with the appropriate sheriff, may authorize a law enforcement
4 agency within the chief judge's jurisdiction to effect this
5 type of service and to receive a portion of the service fee.
6 No person shall be authorized or permitted to serve or execute
7 an injunction issued under this section unless the person is a
8 law enforcement officer as defined in chapter 943.

9 2. When an injunction is issued, if the petitioner
10 requests the assistance of a law enforcement agency, the court
11 may order that an officer from the appropriate law enforcement
12 agency accompany the petitioner and assist in the execution or
13 service of the injunction. A law enforcement officer shall
14 accept a copy of an injunction for protection against repeat
15 violence or dating violence, certified by the clerk of the
16 court, from the petitioner and immediately serve it upon a
17 respondent who has been located but not yet served.

18 (b) There shall be created a Domestic, Dating, and
19 Repeat Violence Injunction Statewide Verification System
20 within the Department of Law Enforcement. The department shall
21 establish, implement, and maintain a statewide communication
22 system capable of electronically transmitting information to
23 and between criminal justice agencies relating to domestic
24 violence injunctions, dating violence injunctions, and repeat
25 violence injunctions issued by the courts throughout the state.
26 Such information must include, but is not limited to,
27 information as to the existence and status of any injunction
28 for verification purposes.

29 (c)1. Within 24 hours after the court issues an
30 injunction for protection against repeat violence or dating
31 violence or changes or vacates an injunction for protection

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1 against repeat violence or dating violence, the clerk of the
2 court must forward a copy of the injunction to the sheriff
3 with jurisdiction over the residence of the petitioner.

4 2. Within 24 hours after service of process of an
5 injunction for protection against repeat violence or dating
6 violence upon a respondent, the law enforcement officer must
7 forward the written proof of service of process to the sheriff
8 with jurisdiction over the residence of the petitioner.

9 3. Within 24 hours after the sheriff receives a
10 certified copy of the injunction for protection against repeat
11 violence or dating violence, the sheriff must make information
12 relating to the injunction available to other law enforcement
13 agencies by electronically transmitting such information to
14 the department.

15 4. Within 24 hours after the sheriff or other law
16 enforcement officer has made service upon the respondent and
17 the sheriff has been so notified, the sheriff must make
18 information relating to the service available to other law
19 enforcement agencies by electronically transmitting such
20 information to the department.

21 5. Within 24 hours after an injunction for protection
22 against repeat violence or dating violence is lifted,
23 terminated, or otherwise rendered no longer effective by
24 ruling of the court, the clerk of the court must notify the
25 sheriff or local law enforcement agency receiving original
26 notification of the injunction as provided in subparagraph 2.
27 That agency shall, within 24 hours after receiving such
28 notification from the clerk of the court, notify the
29 department of such action of the court.

30 (9)(a) The court shall enforce, through a civil or
31 criminal contempt proceeding, a violation of an injunction for

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1 protection. The court may enforce the respondent's compliance
 2 with the injunction by imposing a monetary assessment. The
 3 clerk of the court shall collect and receive such assessments.
 4 On a monthly basis, the clerk shall transfer the moneys
 5 collected pursuant to this paragraph to the State Treasury for
 6 deposit in the Crimes Compensation Trust Fund established in
 7 s. 960.21.

8 (b) If the respondent is arrested by a law enforcement
 9 officer under s. 901.15(10) for committing an act of repeat
 10 violence or dating violence in violation of a repeat or dating
 11 violence injunction for protection, the respondent shall be
 12 held in custody until brought before the court as
 13 expeditiously as possible for the purpose of enforcing the
 14 injunction and for admittance to bail in accordance with
 15 chapter 903 and the applicable rules of criminal procedure,
 16 pending a hearing.

17 (10) The petitioner or the respondent may move the
 18 court to modify or dissolve an injunction at any time.

19 (11) A law enforcement officer acting in good faith
 20 under this section and the officer's employing agency shall be
 21 immune from all liability, civil or criminal, that might
 22 otherwise be incurred or imposed by reason of the officer's or
 23 agency's actions in carrying out the provisions of this
 24 section.

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