

By the Committees on Finance and Taxation; Children and Families; and Senator Saunders

314-1874-02

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"; defining the term
6 "dating relationship"; amending s. 28.101,
7 F.S.; increasing an additional charge for a
8 dissolution of marriage petition; amending ss.
9 390.01115, 470.002, 626.9541, 641.3903,
10 985.213, 985.215, F.S.; conforming
11 cross-references; amending s. 741.281, F.S.;
12 eliminating the requirement that a court order
13 certain defendants to attend a batterers'
14 intervention program; amending s. 741.30, F.S.;
15 specifying when a person has standing to file a
16 petition for an injunction against domestic
17 violence; specifying where the petition may be
18 filed; prohibiting a filing fee for such
19 petition; providing for reimbursement to the
20 clerks of the circuit courts, subject to
21 legislative appropriation; providing for
22 incidents that describe violence or threats of
23 violence; specifying when a court may grant
24 relief; prescribing factors for the court to
25 consider in determining imminent danger;
26 providing for recording of proceedings;
27 providing for the presence of an advocate from
28 a state attorney's office, law enforcement
29 agency, or domestic violence center at
30 injunction proceedings, upon request; amending
31 s. 741.31, F.S.; specifying additional acts

1 that violate an injunction against domestic
2 violence; providing a penalty; providing an
3 effective date.

4
5 Be It Enacted by the Legislature of the State of Florida:

6
7 Section 1. Subsection (2) of section 25.385, Florida
8 Statutes, is amended to read:

9 25.385 Standards for instruction of circuit and county
10 court judges in handling domestic violence cases.--

11 (2) As used in this section:

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

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

24 Section 2. Paragraph (c) of subsection (1) of section
25 28.101, Florida Statutes, as amended by section 4 of chapter
26 2001-122, Laws of Florida, is amended to read:

27 28.101 Petitions and records of dissolution of
28 marriage; additional charges.--

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

1 (c) A charge of ~~\$36~~^{\$18}. On a monthly basis, the clerk
2 shall transfer the moneys collected pursuant to this paragraph
3 to the Department of Revenue for deposit in the Domestic
4 Violence Trust Fund. Such funds which are generated shall be
5 directed to the Department of Children and Family Services for
6 the specific purpose of funding domestic violence centers.

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

9 39.902 Definitions.--As used in this part, the term:

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

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

22 Section 4. Paragraphs (b) and (e) of subsection (2) of
23 section 390.01115, Florida Statutes, are amended to read:

24 390.01115 Parental Notice of Abortion Act.--

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

26 (b) "Child abuse" has the meaning ascribed in s.
27 39.0015(3) and refers to the acts of child abuse against a
28 minor by a family member as defined in s. 741.28~~(4)~~⁽²⁾.

29 (e) "Sexual abuse" has the meaning ascribed in s.
30 39.01 and refers to the acts of sexual abuse against a minor
31 by a family member as defined in s. 741.28~~(4)~~⁽²⁾.

1 Section 5. Subsection (18) of section 470.002, Florida
2 Statutes, is amended to read:

3 470.002 Definitions.--As used in this chapter:

4 (18) "Legally authorized person" means, in the
5 priority listed, the decedent, when written inter vivos
6 authorizations and directions are provided by the decedent,
7 the surviving spouse, unless the spouse has been arrested for
8 committing against the deceased an act of domestic violence as
9 defined in s. 741.28~~(1)~~, a son or daughter who is 18 years of
10 age or older, a parent, a brother or sister 18 years of age or
11 over, a grandchild who is 18 years of age or older, or a
12 grandparent; or any person in the next degree of kinship. In
13 addition, the term may include, if no family exists or is
14 available, the following: the guardian of the dead person at
15 the time of death; the personal representative of the
16 deceased; the attorney in fact of the dead person at the time
17 of death; the health surrogate of the dead person at the time
18 of death; a public health officer; the medical examiner,
19 county commission or administrator acting under chapter 245,
20 or other public administrator; a representative of a nursing
21 home or other health care institution in charge of final
22 disposition; or a friend or other person not listed in this
23 subsection who is willing to assume the responsibility as
24 authorized person.

25 Section 6. Paragraph (g) of subsection (1) of section
26 626.9541, Florida Statutes, is amended to read:

27 626.9541 Unfair methods of competition and unfair or
28 deceptive acts or practices defined.--

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

1 (g) Unfair discrimination.--

2 1. Knowingly making or permitting any unfair
3 discrimination between individuals of the same actuarially
4 supportable class and equal expectation of life, in the rates
5 charged for any life insurance or annuity contract, in the
6 dividends or other benefits payable thereon, or in any other
7 of the terms and conditions of such contract.

8 2. Knowingly making or permitting any unfair
9 discrimination between individuals of the same actuarially
10 supportable class and essentially the same hazard, in the
11 amount of premium, policy fees, or rates charged for any
12 policy or contract of accident, disability, or health
13 insurance, in the benefits payable thereunder, in any of the
14 terms or conditions of such contract, or in any other manner
15 whatever.

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

1 condition was caused by an act of abuse. For purposes of this
2 section, the term "abuse" means the occurrence of one or more
3 of the following acts:

- 4 a. Attempting or committing assault, battery, sexual
5 assault, or sexual battery;
6 b. Placing another in fear of imminent serious bodily
7 injury by physical menace;
8 c. False imprisonment;
9 d. Physically or sexually abusing a minor child; or
10 e. An act of domestic violence as defined in s.
11 741.28.

12

13 This subparagraph does not prohibit a property and casualty
14 insurer or an automobile insurer from excluding coverage for
15 intentional acts by the insured if such exclusion does not
16 constitute an act of unfair discrimination as defined in this
17 paragraph.

18 Section 7. Paragraph (b) of subsection (12) of section
19 641.3903, Florida Statutes, is amended to read:

20 641.3903 Unfair methods of competition and unfair or
21 deceptive acts or practices defined.--The following are
22 defined as unfair methods of competition and unfair or
23 deceptive acts or practices:

24 (12) PROHIBITED DISCRIMINATORY PRACTICES.--A health
25 maintenance organization may not:

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

1 Section 8. Section 741.28, Florida Statutes, is
2 amended to read:

3 741.28 Domestic violence; definitions.--As used in ss.
4 741.28-741.31, the term:

5 (1) "Dating relationship" means a relationship between
6 individuals who have or have had a continuing relationship of
7 a romantic or intimate nature. The existence of such a
8 relationship shall be determined based on the consideration of
9 the length the relationship, the nature of the relationship,
10 and the frequency and type of interaction between the persons
11 involved in the relationship. However, the term does not
12 include a casual acquaintanceship or ordinary fraternization
13 between persons in a business or social context.

14 (2)(3) "Department" means the Florida Department of
15 Law Enforcement.

16 (3)(1) "Domestic violence" means any assault,
17 aggravated assault, battery, aggravated battery, sexual
18 assault, sexual battery, stalking, aggravated stalking,
19 kidnapping, false imprisonment, or any criminal offense
20 resulting in physical injury or death of one family or
21 household member by another ~~who is or was residing in the same~~
22 single dwelling unit.

23 (4)(2) "Family or household member" means spouses,
24 former spouses, persons who have or have had a dating
25 relationship, persons related by blood or marriage, persons
26 who are presently residing together as if a family or who have
27 resided together in the past as if a family, and persons who
28 are parents of ~~have~~ a child in common regardless of whether
29 they have been married ~~or have resided together at any time.~~
30 With the exception of persons who are parents of a child in
31 common, or who have or have had a dating relationship, the

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

3 (5)(4) "Law enforcement officer" means any person who
4 is elected, appointed, or employed by any municipality or the
5 state or any political subdivision thereof who meets the
6 minimum qualifications established in s. 943.13 and is
7 certified as a law enforcement officer under s. 943.1395.

8 Section 9. Section 741.281, Florida Statutes, is
9 amended to read:

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

1 741.32. The imposition of probation under this section shall
2 not preclude the court from imposing any sentence of
3 imprisonment authorized by s. 775.082.

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

10 741.30 Domestic violence; injunction; powers and
11 duties of court and clerk; petition; notice and hearing;
12 temporary injunction; issuance of injunction; statewide
13 verification system; enforcement.--

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

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

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

27 (c) In the event a subsequent cause of action is filed
28 under chapter 61, any orders entered therein shall take
29 precedence over any inconsistent provisions of an injunction
30 issued under this section which addresses matters governed by
31 chapter 61.

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

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

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

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

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

18 (i) The court is prohibited from issuing mutual orders
19 of protection. This does not preclude the court from issuing
20 separate injunctions for protection against domestic violence
21 where each party has complied with the provisions of this
22 section. Compliance with the provisions of this section cannot
23 be waived.

24 (j) Notwithstanding any provision of chapter 47, a
25 petition for an injunction for protection against domestic
26 violence may be filed in the circuit where the petitioner
27 currently or temporarily resides, where the respondent
28 resides, or where the domestic violence occurred. There is no
29 minimum requirement of residency to petition for an injunction
30 for protection.

31

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

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

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

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

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

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

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

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

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

19 (d) Physical description of respondent:

20 Race....

21 Sex....

22 Date of birth....

23 Height....

24 Weight....

25 Eye color....

26 Hair color....

27 Distinguishing marks or scars....

28 (e) Aliases of respondent:

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

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

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

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

15 (h) Petitioner is either a victim of domestic violence
16 ~~has suffered~~ or has reasonable cause to believe he or she is
17 in imminent danger of becoming a victim of ~~fear imminent~~
18 domestic violence because respondent has....(mark all
19 sections that apply and describe in the spaces below the
20 incidents of violence or threats of violence, specifying when
21 and where they occurred, including, but not limited to,
22 locations such as a home, school, place of employment, or
23 visitation exchange)....:

24committed or threatened to commit domestic violence
25 defined in s. 741.28, Florida Statutes, as any assault,
26 aggravated assault, battery, aggravated battery, sexual
27 assault, sexual battery, stalking, aggravated stalking,
28 kidnapping, false imprisonment, or any criminal offense
29 resulting in physical injury or death of one family or
30 household member by another. With the exception of persons who
31 are parents of a child in common and those in a dating

1 relationship, the family or household members must be
2 currently residing or have in the past resided together in the
3 same single dwelling unit.
4previously threatened, harassed, stalked, or
5 physically abused the petitioner.
6attempted to harm the petitioner or family members
7 or individuals closely associated with the petitioner.
8threatened to conceal, kidnap, or harm the
9 petitioner's child or children.
10intentionally injured or killed a family pet.
11used, or has threatened to use, against the
12 petitioner any weapons such as guns or knives.
13physically restrained the petitioner from leaving
14 the home or calling law enforcement.
15a criminal history involving violence or the threat
16 of violence (if known).
17another order of protection issued against him or
18 her previously or from another jurisdiction (if known).
19destroyed personal property, including, but not
20 limited to, telephones or other communication equipment,
21 clothing, or other items belonging to the petitioner.
22engaged in any other behavior or conduct that leads
23 the petitioner to have reasonable cause to believe he or she
24 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, Florida Statutes.
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

31

- 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 or children.
 - 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.
 - 23 9. Whether the respondent has destroyed personal
24 property, including, but not limited to, telephones or other
25 communications equipment, clothing, or other items belonging
26 to the petitioner.
 - 27 10. Whether the respondent engaged in any other
28 behavior or conduct that leads the petitioner to have
29 reasonable cause to believe that he or she is in imminent
30 danger of becoming a victim of domestic violence.
31

1 In making its determination under this paragraph, the court is
2 not limited to those factors enumerated in subparagraphs
3 1.-10.

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)~~(c)~~ 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.

14

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 shall be
28 recorded. Recording may be by electronic means as provided by
29 the Rules of Judicial Administration.

30 (7) The court shall allow an advocate from a state
31 attorney's office, an advocate from a law enforcement agency,

1 or an advocate from a certified domestic violence center who
2 is registered under s. 39.905 to be present with the
3 petitioner or respondent during any court proceedings or
4 hearings related to the injunction for protection, provided
5 the petitioner or respondent has made such a request and the
6 advocate is able to be present.

7 Section 11. Paragraph (a) of subsection (4) of section
8 741.31, Florida Statutes, is amended to read:

9 741.31 Violation of an injunction for protection
10 against domestic violence.--

11 (4)(a) A person who willfully violates an injunction
12 for protection against domestic violence issued pursuant to s.
13 741.30, or a foreign protection order accorded full faith and
14 credit pursuant to s. 741.315, by:

15 1. Refusing to vacate the dwelling that the parties
16 share;

17 2. Going to, or being within 500 feet of, the
18 petitioner's residence, school, place of employment, or a
19 specified place frequented regularly by the petitioner and any
20 named family or household member;

21 3. Committing an act of domestic violence against the
22 petitioner;

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

26 5. Telephoning, contacting, or otherwise communicating
27 with the petitioner directly or indirectly, unless the
28 injunction specifically allows indirect contact through a
29 third party;

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

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

6 8. Refusing to surrender firearms or ammunition if
7 ordered to do so by the court

8
9 commits a misdemeanor of the first degree, punishable as
10 provided in s. 775.082 or s. 775.083.

11 Section 12. Subsection (2) of section 943.171, Florida
12 Statutes, is amended to read:

13 943.171 Basic skills training in handling domestic
14 violence cases.--

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

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

21 (b) "Household member" has the meaning set forth in s.
22 741.28(4) ~~means spouse, former spouse, persons related by~~
23 ~~blood or marriage, persons who are presently residing~~
24 ~~together, as if a family, or who have resided together in the~~
25 ~~past, as if a family, and persons who have a child in common~~
26 ~~regardless of whether they have been married or have resided~~
27 ~~together at any time.~~

28 Section 13. Paragraph (b) of subsection (2) of section
29 985.213, Florida Statutes, is amended to read:

30 985.213 Use of detention.--

31 (2)

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

28 2. If, at the detention hearing, the court finds a
29 material error in the scoring of the risk assessment
30 instrument, the court may amend the score to reflect factual
31 accuracy.

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

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

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

8
9 The child may not be held in secure detention under this
10 subparagraph for more than 48 hours unless ordered by the
11 court. After 48 hours, the court shall hold a hearing if the
12 state attorney or victim requests that secure detention be
13 continued. The child may continue to be held in detention care
14 if the court makes a specific, written finding that detention
15 care is necessary to protect the victim from injury. However,
16 the child may not be held in detention care beyond the time
17 limits set forth in s. 985.215.

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

25 Section 14. Paragraph (d) of subsection (2) of section
26 985.215, Florida Statutes, is amended to read:

27 985.215 Detention.--

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

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

4
5 A child who meets any of these criteria and who is ordered to
6 be detained pursuant to this subsection shall be given a
7 hearing within 24 hours after being taken into custody. The
8 purpose of the detention hearing is to determine the existence
9 of probable cause that the child has committed the delinquent
10 act or violation of law with which he or she is charged and
11 the need for continued detention. Unless a child is detained
12 under paragraph (d) or paragraph (e), the court shall utilize
13 the results of the risk assessment performed by the juvenile
14 probation officer and, based on the criteria in this
15 subsection, shall determine the need for continued detention.
16 A child placed into secure, nonsecure, or home detention care
17 may continue to be so detained by the court pursuant to this
18 subsection. If the court orders a placement more restrictive
19 than indicated by the results of the risk assessment
20 instrument, the court shall state, in writing, clear and
21 convincing reasons for such placement. Except as provided in
22 s. 790.22(8) or in subparagraph (10)(a)2., paragraph (10)(b),
23 paragraph (10)(c), or paragraph (10)(d), when a child is
24 placed into secure or nonsecure detention care, or into a
25 respite home or other placement pursuant to a court order
26 following a hearing, the court order must include specific
27 instructions that direct the release of the child from such
28 placement no later than 5 p.m. on the last day of the
29 detention period specified in paragraph (5)(b) or paragraph
30 (5)(c), or subparagraph (10)(a)1., whichever is applicable,
31 unless the requirements of such applicable provision have been

1 met or an order of continuance has been granted pursuant to
2 paragraph (5)(f).

3 Section 15. This act shall take effect October 1,
4 2002.

5

6 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
7 COMMITTEE SUBSTITUTE FOR
8 CS/SB 316

9 This committee substitute prohibits the assessment of a fee
10 for filing a petition for injunction for protection against
11 domestic violence. It provides that the clerks of the court
12 may apply for reimbursement at a rate of \$40 per petition, and
13 from this reimbursement the clerk shall pay any law
14 enforcement agency serving the injunction a fee not to exceed
15 \$20. Funds are made available for reimbursement by
16 legislative appropriation.

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