

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SBs 108 and 110

SPONSOR: Committee on Judiciary and Senators Saunders and Campbell

SUBJECT: Protective Injunctions

DATE: January 22, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matthews</u>	<u>Roberts</u>	<u>JU</u>	<u>Favorable/CS</u>
2.	<u> </u>	<u> </u>	<u>CJ</u>	<u> </u>
3.	<u> </u>	<u> </u>	<u>CF</u>	<u> </u>
4.	<u> </u>	<u> </u>	<u>ACJ</u>	<u> </u>
5.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>
6.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

I. Summary:

This bill expands the law on protective injunctive relief in cases of all violence as follows:

- The person must be a victim of violence and have reasonable belief that he or she is in imminent danger of being re-victimized, or
- the person must have reasonable cause to believe that he or she is in imminent danger of becoming a victim of violence.

Additionally, the bill makes conforming changes to provisions governing the grounds for the petition, the form of the petition, penalties for violations of injunction, the family violence indicator in the State Case Registry, the underlying elements of the offense of stalking, the issuance or suspension of weapons license, the authority to arrest without a warrant, and the input of injunction orders into the statewide verification system within the Criminal Justice Information Program. The statewide verification system is redesignated as the “Violence Injunction Statewide Verification System.”

This bill substantially amends the following sections of the Florida Statutes: 61.1825, 741.2901, 741.30, 775.084, 784.046, 784.047, 784.048, 790.06, 790.065, 901.15, 921.0022, and 943.05.

II. Present Situation:

Florida law currently recognizes three separate causes of action for protective injunction against violence. There appears to be a loophole in the law that precludes a person from seeking protective injunctive relief unless he or she qualifies as a victim of *domestic violence*, *dating violence*, or *repeat violence* as follows:

- a) *Domestic violence*: In order to seek protective injunctive relief against domestic violence, the person must be a victim of *domestic violence* or the person must have reasonable cause to believe that he or she is in imminent danger of becoming a victim of domestic violence. *See* s. 741.30, F.S. This injunctive relief is available to family or household members. Family or household member includes spouses, former spouses, persons related by blood or marriage, familial co-residents, and married or unmarried persons who share a child together. *See* s. 741.28, F.S. With the exception of persons who share a child together, all other persons have had to have resided together or must currently reside together.
- b) *Dating violence*: Subsequent to enactment of legislation in 2002 (ch. 2002-55, L.O.F.), a person may seek protective injunctive relief against *dating violence* if the person is the victim of *dating violence* and has reasonable cause to believe he or she is in imminent danger of becoming the victim of another act of *dating violence*, or any person who has reasonable cause to believe he or she is in imminent danger of becoming the victim of an act of *dating violence*. A parent or legal guardian may also seek a protective injunction against dating violence on behalf of a minor child living at home. “*Dating violence*” means violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on the consideration of the following factors:
1. A dating relationship must have existed within the past 6 months;
 2. The nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and
 3. The frequency and type of interaction between the persons involved in the relationship must have included that the persons have been involved over time and on a continuous basis during the course of the relationship.

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

- c) *Repeat Violence*: In order to seek protective injunctive relief against *repeat violence*, the person must be a victim of *repeat violence* who has reasonable cause to believe he or she is in imminent danger of re-victimization by violence. A parent or legal guardian may also seek a protective injunction against repeat violence on behalf of a minor child living at home. *See* s. 784.046, F.S. *Repeat violence* is defined as two or more incidents of violence or stalking, one of which must have occurred in the last 6 months. Violence is defined as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, or false imprisonment, or any criminal offense resulting in physical injury or death, by a person against any other person. Stalking is the willful, repeated and malicious following or harassment of one person by another. Aggravated stalking, which requires proof of an additional element, is a third degree felony. The additional element required to prove aggravated stalking is either: (1) that the victim was a minor under 16 years of age; (2) that the offender was subject to an injunction or other court-imposed prohibition of conduct toward the victim or the victim’s property; or (3) that the offender makes a credible threat with the intent to place the victim in reasonable fear of death or bodily injury.

The Criminal Justice Information Program within the Department of Law Enforcement maintains “The Domestic, Dating and Repeat Violence Injunction Statewide Verification System.” See s. 784.046(8), F.S. This system allows for the electronic transmission of information to and between criminal justice agencies relating to *domestic violence* injunctions, *dating violence* injunctions and *repeat violence* injunctions issued by the court throughout the state. The statutes set forth the process for what happens to the injunction for protection after it is entered and delivered to the proper authorities. According to a representative of the Florida Department of Law Enforcement, there were 90,500 active protection orders on file in the state system as of January 2, 2003.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 784.046, F.S., relating to causes of action against repeat violence and *dating violence*. The bill deletes provisions that limited protective injunctive relief to victims of *repeat violence* which required two or more acts or threats of violence. Consequently, it expands the relief to include not only victims of violence who have reasonable cause to believe that they are in imminent danger of being re-victimized by violence, but persons who have reasonable cause to believe that they are in imminent danger of becoming victims of violence as defined in s. 784.046(1)(a), F.S. This relief would also be available to minor children by and through their parent or legal guardian.

Subsection (2)(a), relating to the grounds for seeking a protective injunction, is revised to conform to the changes in the bill so that the grounds for seeking the injunction against *dating violence* and violence are now the same. Subsection (4), relating to the form of the petition for protective injunctive relief, is revised to conform to the changes in the bill by removing all references to *repeat violence* and including the grounds for seeking a protective injunction.

Sections 2 through 12 of the bill are amended by replacing all references to *repeat violence* with the term *violence* such that wherever *repeat violence* was the underlying basis for violation of a protective injunction or an offense, for services, for reporting, or for investigating, the provision applies equally to protective injunctions against violence.

- s. 784.047, F.S., is amended to provide that a violation of an injunction against violence constitutes a first degree misdemeanor.
- s. 61.1825(3), F.S., is amended to require a family violence indicator to be placed on a Title IV-D support order record in the State Case Registry maintained by the Department of Revenue in connection with the entry of a protective injunction against violence.
- s. 741.2901(3), F.S., is amended to require that a state attorney’s investigation during a *domestic violence* case should include an investigation of a defendant’s history of protective injunctions entered against him or her for violence.
- s. 741.30, F.S., is amended to require that the statewide uniform informational brochure distributed by the clerk of the court to persons seeking protective injunctive relief against *domestic violence* be distributed also to persons seeking protective injunctive relief against

violence. The statewide database of injunctions maintained by the Department of Law Enforcement is also redesignated as the “Violence Injunction Statewide Verification System.”

- s. 784.048(4), F.S., is amended to revise the definition for stalking to include the violation of a protective injunction against violence as an underlying element.
- ss. 790.06(2)-(3), F.S., are amended to prohibit the issuance of a firearm license or to suspend a license or application for a firearm if a protective injunction against violence has been issued or outstanding to a licensee or applicant.
- s. 790.065(2), F.S., is amended to require that a review of records by the Florida Department of Law Enforcement subsequent to a request for a criminal history check in connection with the sale of a firearm, must include a review of whether there was a protective injunction against violence entered against the potential buyer or transferee.
- s. 901.15(10), F.S., is amended to allow an arrest without warrant if there is probable cause to believe that a person had knowingly committed an act of violence in violation of a protective injunction against violence.
- s. 943.05(2), F.S., is amended to state that the statewide verification system of the Criminal Justice Information Program shall include the collection and transmission of information relating to the issuance of a protective injunction against violence.
- s. 775.084(1), F.S., relating to definitions of specified types of violent offenders, is amended to incorporate and conform to the changes made to s. 784.048, F.S., relating to the definition for aggravated stalking, which means that a violent career criminal is one who could have been previously convicted based on underlying violations of protective injunctions against violence.
- s. 921.0022(3), F.S., relating to the offense severity ranking chart of the criminal punishment code, is amended to incorporate and conform to the changes made to s. 784.048, F.S., relating to the underlying definition for aggravated stalking which is categorized as a 3rd degree felony under the code.

Section 13 provides that the act takes effect on July 1, 2003.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will benefit all actual and threatened victims of violence by bringing them into parity as to the right to seek protective injunctive relief regardless of whether the violence occurs or is imminent between family members, persons dating, or strangers. It is unknown how many people who opt to obtain a protective injunction against violence under the new law could have obtained a protective injunction against domestic violence or a protective injunction against dating violence. It is also unknown how many more people will seek protective injunctive relief whereas they could not previously under the threshold for protective injunctive relief against *repeat violence*.

C. Government Sector Impact:

There are elements of the bill that may impact the workload of the state court system and the law enforcement community including the Department of Juvenile Justice, the Department of Law Enforcement, the Department of Corrections, and the Sheriff's Offices. The expansion of the category of persons entitled to seek protective injunctive relief from one of "repeat violence" to "violence" may result in a significant increase of petition filings and availability of injunctions. The Department of Corrections, the Department of Juvenile Justice, and the Department of Law Enforcement, however, anticipate nominal impact at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The expansion of the protective injunctive relief from *repeat violence* to *violence*, subsumes and obviates, at a minimum, the need to distinguish a subcategory of *dating violence*. Under the bill all matters relating to injunctions against *violence* and to injunctions against *dating violence* are treated similarly. A person who previously would only have met the threshold for protective injunctive relief against dating violence based on his or her physical relationship with the offender can now more easily meet the threshold to obtain a protective injunctive relief against *violence*. It appears redundant to have duplicative provisions governing protective injunctive relief against *violence* AND *dating violence*. In fact, the current injunction statewide verification system does not distinguish between the subcategories of violence.

In contrast, the provisions governing protective injunctive relief against *domestic violence* are more distinct. The *domestic violence* injunction form includes a long detailed checklist of facts and circumstances to be checked and requires a statement regarding any other pending legal matter. The petitioner seeking protective injunctive relief against *domestic violence* does not need to pay a filing fee regardless of his or her ability to pay. Additionally, a petitioner for protective injunctive relief against *domestic violence* is entitled to two certified copies of an injunction in lieu of one. Many more victim services and protections are provided to victims of *domestic violence* than those of *dating violence* or of the former *repeat violence*. On the other hand, the burden is on the petitioner to show some relationship between the victim and the offender, i.e., that the offender is a familial or household member whereas a petitioner for protective injunctive relief against *violence* need not show any connection to the offender.

Therefore, the need to retain the subcategory of protective injunctions against *domestic violence* appear to be important, at a minimum, for purposes of firearm purchases and state and federal background checks and may warrant some clarification at some point. For example, s. 790.065, F.S., actually requires FDLE to “review” repeat violence injunctions and FDLE has interpreted the purpose of the “review” mandate to imply that finding the injunction in a repeat violence case means the purchaser is firearms-disabled. According to the Florida Department of Law Enforcement, there may be other federal or state grant or funding considerations that would justify the maintenance of the various sub-categories of injunctions, particularly *domestic violence*.

At some point the law of protective injunctions may need further review and clarification.

VIII. Amendments:

None.