

Bill No. CS for SB 294

Amendment No. ____ Barcode 672674

CHAMBER ACTION

Senate

House

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Senator Crist moved the following amendment:

Senate Amendment (with title amendment)

On page 2, line 18, through
page 14, line 19, delete those lines

and insert:

Section 1. Popular name.--This act shall be known as
"The Victim's Freedom Act."

Section 2. Section 784.046, Florida Statutes, is
amended to read:

784.046 Action by victim of repeat violence, sexual
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,
stalking, aggravated stalking, kidnapping, or false
imprisonment, or any criminal offense resulting in physical

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1 injury or death, by a person against any other person.

2 (b) "Repeat violence" means two incidents of violence
3 or stalking committed by the respondent, one of which must
4 have been within 6 months of the filing of the petition, which
5 are directed against the petitioner or the petitioner's
6 immediate family member.

7 (c) "Sexual violence" means any one incident of:

8 1. Sexual battery, as defined in chapter 794;

9 2. A lewd or lascivious act, as defined in chapter
10 800, committed upon or in the presence of a person younger
11 than 16 years of age;

12 3. Luring or enticing a child, as described in chapter
13 787;

14 4. Sexual performance by a child, as described in
15 chapter 827; or

16 5. Any other forcible felony wherein a sexual act is
17 committed or attempted,

18
19 regardless of whether criminal charges based on the
20 incident were filed, reduced, or dismissed by the state
21 attorney.

22 ~~(d)~~(c) "Dating violence" means violence between
23 individuals who have or have had a continuing and significant
24 relationship of a romantic or intimate nature. The existence
25 of such a relationship shall be determined based on the
26 consideration of the following factors:

27 1. A dating relationship must have existed within the
28 past 6 months;

29 2. The nature of the relationship must have been
30 characterized by the expectation of affection or sexual
31 involvement between the parties; and

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1 3. The frequency and type of interaction between the
2 persons involved in the relationship must have included that
3 the persons have been involved over time and on a continuous
4 basis during the course of the relationship.

5
6 The term does not include violence in a casual
7 acquaintanceship or violence between individuals who only have
8 engaged in ordinary fraternization in a business or social
9 context.

10 (2) There is created a cause of action for an
11 injunction for protection in cases of repeat violence, ~~and~~
12 there is created a separate cause of action for an injunction
13 for protection in cases of dating violence, and there is
14 created a separate cause of action for an injunction for
15 protection in cases of sexual violence .

16 (a) Any person who is the victim of repeat violence or
17 the parent or legal guardian of any minor child who is living
18 at home and who seeks an injunction for protection against
19 repeat violence on behalf of the minor child has standing in
20 the circuit court to file a sworn petition for an injunction
21 for protection against repeat violence.

22 (b) Any person who is the victim of dating violence
23 and has reasonable cause to believe he or she is in imminent
24 danger of becoming the victim of another act of dating
25 violence, or any person who has reasonable cause to believe he
26 or she is in imminent danger of becoming the victim of an act
27 of dating violence, or the parent or legal guardian of any
28 minor child who is living at home and who seeks an injunction
29 for protection against dating violence on behalf of that minor
30 child, has standing in the circuit court to file a sworn
31 petition for an injunction for protection against dating

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1 violence.

2 (c) A person who is the victim of sexual violence or
3 the parent or legal guardian of a minor child who is living at
4 home who is the victim of sexual violence has standing in the
5 circuit court to file a sworn petition for an injunction for
6 protection against sexual violence on his or her own behalf or
7 on behalf of the minor child if:

8 1. The person has reported the sexual violence to a
9 law enforcement agency and is cooperating in any criminal
10 proceeding against the respondent, regardless of whether
11 criminal charges based on the sexual violence have been filed,
12 reduced, or dismissed by the state attorney; or

13 2. The respondent who committed the sexual violence
14 against the victim or minor child was sentenced to a term of
15 imprisonment in state prison for the sexual violence and the
16 respondent's term of imprisonment has expired or is due to
17 expire within 90 days following the date the petition is
18 filed.

19 (d)(c) A This cause of action for an injunction may be
20 sought whether or not any other petition, complaint, or cause
21 of action is currently available or pending between the
22 parties.

23 (e)(d) A This cause of action for an injunction does
24 ~~shall~~ not require that the petitioner be represented by an
25 attorney.

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

30 (b) Notwithstanding any other law, the clerk of the
31 court may not assess a fee for filing a petition for

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1 protection against repeat violence, sexual violence, or dating
2 violence. However, subject to legislative appropriation, the
3 clerk of the court may, each quarter, submit to the Office of
4 the State Courts Administrator a certified request for
5 reimbursement for petitions for protection issued by the court
6 under this section at the rate of \$40 per petition. The
7 request for reimbursement shall be submitted in the form and
8 manner prescribed by the Office of the State Courts
9 Administrator. From this reimbursement, the clerk shall pay
10 the law enforcement agency serving the injunction the fee
11 requested by the law enforcement agency; however, this fee may
12 not exceed \$20. In the event the person desiring to file for
13 an injunction pursuant to this section does not have
14 sufficient funds with which to pay filing fees to the clerk of
15 the court or service fees to the sheriff or law enforcement
16 agency and signs an affidavit so stating, the fees shall be
17 waived by the clerk of the court or the sheriff or law
18 enforcement agency to the extent necessary to process the
19 petition and serve the injunction, subject to a subsequent
20 order of the court relative to the payment of such fees.

21 (c) No bond shall be required by the court for the
22 entry of an injunction.

23 (d) The clerk of the court shall provide the
24 petitioner with a certified copy of any injunction for
25 protection against repeat violence, sexual violence, or dating
26 violence entered by the court.

27 (4)(a) The sworn petition shall allege the incidents
28 of repeat violence, sexual violence, or dating violence and
29 shall include the specific facts and circumstances that which
30 form the basis upon which relief is sought. With respect to a
31 minor child who is living at home, the parent or legal

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1 guardian of the minor child must have been an eyewitness to,
2 or have direct physical evidence or affidavits from
3 eyewitnesses of, the specific facts and circumstances which
4 form the basis upon which relief is sought.

5 (b) The sworn petition must ~~shall~~ be in substantially
6 the following form:

7 PETITION FOR INJUNCTION FOR PROTECTION
8 AGAINST REPEAT VIOLENCE, SEXUAL VIOLENCE, OR DATING
9 VIOLENCE

10

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

14

- 15 1. Petitioner resides at ...(address)...
- 16 2. Respondent resides at ...(address)...
- 17 3.a. Petitioner has suffered repeat violence as
- 18 demonstrated by the fact that the respondent has:
- 19 ...(enumerate incidents of violence)...

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25 b. Petitioner has suffered sexual violence as
26 demonstrated by the fact that the respondent has: (enumerate
27 incident of violence and attach incident report by law
28 enforcement agency or notice of inmate release.)

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~~c.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.)...

.....
.....
.....

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 violence; an injunction enjoining the respondent from committing any further acts of 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.

(5) Upon the filing of the petition, the court shall set a hearing to be held at the earliest possible time. The respondent shall be personally served with a copy of the

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1 petition, notice of hearing, and temporary injunction, if any,
2 prior to the hearing.

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

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

14 (c) Any such ex parte temporary injunction shall be
15 effective for a fixed period not to exceed 15 days. However,
16 an ex parte temporary injunction granted under subparagraph
17 (2)(c)2. is effective for 15 days following the date the
18 respondent is released from incarceration. A full hearing, as
19 provided by this section, shall be set for a date no later
20 than the date when the temporary injunction ceases to be
21 effective. The court may grant a continuance of the ex parte
22 injunction and the full hearing before or during a hearing,
23 for good cause shown by any party.

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

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

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

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

6 (d) A temporary or final judgment on injunction for
7 protection against repeat violence, sexual violence, or dating
8 violence entered pursuant to this section shall, on its face,
9 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. If the respondent is in the custody of the
10 | Department of Corrections and the petition for an injunction
11 | has been filed as provided in subparagraph (2)(c)2., the clerk
12 | of the court shall furnish a copy of the petition, notice of
13 | hearing, and temporary injunction, if any, to the Department
14 | of Corrections and copies shall be served upon the respondent
15 | as soon thereafter as possible on any day of the week and at
16 | any time of the day or night. The petition, notice of hearing,
17 | or temporary injunction may be served in a state prison by a
18 | correctional officer as defined in chapter 943. If the
19 | respondent in custody is not served before his or her release,
20 | a copy of the petition, notice of hearing, and temporary
21 | injunction, if any, shall be forwarded to the sheriff of the
22 | county specified in the respondent's release plan for service
23 | as provided in subparagraph 1.

24 | ~~3.2.~~ When an injunction is issued, if the petitioner
25 | requests the assistance of a law enforcement agency, the court
26 | may order that an officer from the appropriate law enforcement
27 | agency accompany the petitioner and assist in the execution or
28 | service of the injunction. A law enforcement officer shall
29 | accept a copy of an injunction for protection against repeat
30 | violence, sexual violence, or dating violence, certified by
31 | the clerk of the court, from the petitioner and immediately

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1 serve it upon a respondent who has been located but not yet
2 served.

3 (b) There shall be created a Domestic, Dating, Sexual,
4 and Repeat Violence Injunction Statewide Verification System
5 within the Department of Law Enforcement. The department shall
6 establish, implement, and maintain a statewide communication
7 system capable of electronically transmitting information to
8 and between criminal justice agencies relating to domestic
9 violence injunctions, dating violence injunctions, sexual
10 violence injunctions, and repeat violence injunctions issued
11 by the courts throughout the state. Such information must
12 include, but is not limited to, information as to the
13 existence and status of any injunction for verification
14 purposes.

15 (c)1. Within 24 hours after the court issues an
16 injunction for protection against repeat violence, sexual
17 violence, or dating violence or changes or vacates an
18 injunction for protection against repeat violence, sexual
19 violence, or dating violence, the clerk of the court must
20 forward a copy of the injunction to the sheriff with
21 jurisdiction over the residence of the petitioner.

22 2. Within 24 hours after service of process of an
23 injunction for protection against repeat violence, sexual
24 violence, or dating violence upon a respondent, the law
25 enforcement officer must forward the written proof of service
26 of process to the sheriff with jurisdiction over the residence
27 of the petitioner.

28 3. Within 24 hours after the sheriff receives a
29 certified copy of the injunction for protection against repeat
30 violence, sexual violence, or dating violence, the sheriff
31 must make information relating to the injunction available to

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1 other law enforcement agencies by electronically transmitting
2 such information to the department.

3 4. Within 24 hours after the sheriff or other law
4 enforcement officer has made service upon the respondent and
5 the sheriff has been so notified, the sheriff must make
6 information relating to the service available to other law
7 enforcement agencies by electronically transmitting such
8 information to the department.

9 5. Within 24 hours after an injunction for protection
10 against repeat violence, sexual violence, or dating violence
11 is lifted, terminated, or otherwise rendered no longer
12 effective by ruling of the court, the clerk of the court must
13 notify the sheriff or local law enforcement agency receiving
14 original notification of the injunction as provided in
15 subparagraph 2. That agency shall, within 24 hours after
16 receiving such notification from the clerk of the court,
17 notify the department of such action of the court.

18 (9)(a) The court shall enforce, through a civil or
19 criminal contempt proceeding, a violation of an injunction for
20 protection. The court may enforce the respondent's compliance
21 with the injunction by imposing a monetary assessment. The
22 clerk of the court shall collect and receive such assessments.
23 On a monthly basis, the clerk shall transfer the moneys
24 collected pursuant to this paragraph to the State Treasury for
25 deposit in the Crimes Compensation Trust Fund established in
26 s. 960.21.

27 (b) If the respondent is arrested by a law enforcement
28 officer under s. 901.15(10) for committing an act of repeat
29 violence, sexual violence, or dating violence in violation of
30 ~~an a repeat or dating violence~~ injunction for protection, the
31 respondent shall be held in custody until brought before the

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1 court as expeditiously as possible for the purpose of
2 enforcing the injunction and for admittance to bail in
3 accordance with chapter 903 and the applicable rules of
4 criminal procedure, pending a hearing.

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

7 (11) A law enforcement officer acting in good faith
8 under this section and the officer's employing agency shall be
9 immune from all liability, civil or criminal, that might
10 otherwise be incurred or imposed by reason of the officer's or
11 agency's actions in carrying out the provisions of this
12 section.

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15 ===== T I T L E A M E N D M E N T =====

16 And the title is amended as follows:

17 On page 1, lines 1-26, delete those lines

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19 and insert:

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A bill to be entitled

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An act relating to protective injunctions;

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providing a popular name; amending s. 784.046,

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F.S.; defining the term "sexual violence";

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providing for a cause of action for an

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injunction for protection in cases of sexual

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violence; providing for a petition to be filed

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on the victim's own behalf or on behalf of a

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minor child under certain circumstances;

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requiring that the sexual violence be reported

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to a law enforcement agency and that the person

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filing the petition cooperate in any

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1 investigation; providing for a petition to be
2 filed against a respondent who was sentenced to
3 imprisonment for the sexual violence and who
4 has been or will be released; prohibiting the
5 assessment of filing fees for a petition for
6 protection against repeat violence, sexual
7 violence, or dating violence; providing for the
8 Office of the State Courts Administrator to
9 reimburse the clerks of the court for filing
10 fees, subject to legislative appropriation;
11 providing requirements for a petition for
12 protection against sexual violence; specifying
13 the period of effect for an ex parte temporary
14 injunction against a respondent released from
15 incarceration; providing requirements for
16 serving an injunction; redesignating the
17 Domestic, Dating, and Repeat Violence
18 Injunction Statewide Verification System as the
19 Domestic, Dating, Sexual, and Repeat Violence
20 Injunction Statewide Verification System;
21 requiring notice to the sheriff and law
22 enforcement agencies;

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