

By Senator Crist

26-220-03

1                                   A bill to be entitled  
2           An act relating to protective injunctions;  
3           providing a short title; amending s. 784.046,  
4           F.S.; defining the term "sexual violence";  
5           providing for a cause of action for an  
6           injunction for protection in cases of sexual  
7           violence; providing for a petition to be filed  
8           on the victim's own behalf or on behalf of a  
9           minor child under certain circumstances;  
10          requiring that the sexual violence be reported  
11          to a law enforcement agency and that the person  
12          filing the petition cooperate in any  
13          investigation; providing for a petition to be  
14          filed against a respondent who was sentenced to  
15          imprisonment for the sexual violence and who  
16          has been or will be released; prohibiting the  
17          assessment of filing fees for a petition for  
18          protection against repeat violence, sexual  
19          violence, or dating violence; providing for the  
20          Office of the State Courts Administrator to  
21          reimburse the clerks of the court for filing  
22          fees, subject to legislative appropriation;  
23          providing requirements for a petition for  
24          protection against sexual violence; specifying  
25          the period of effect for an ex parte temporary  
26          injunction against a respondent released from  
27          incarceration; providing requirements for  
28          serving an injunction; redesignating the  
29          Domestic, Dating, and Repeat Violence  
30          Injunction Statewide Verification System as the  
31          Domestic, Dating, Sexual, and Repeat Violence

1           Injunction Statewide Verification System;  
2           requiring notice to the sheriff and law  
3           enforcement agencies; providing an effective  
4           date.

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6 Be It Enacted by the Legislature of the State of Florida:

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8           Section 1. This act may be cited as "The Victim's  
9 Freedom Act."

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

12           784.046 Action by victim of repeat violence, sexual  
13 violence, or dating violence for protective injunction; powers  
14 and duties of court and clerk of court; filing and form of  
15 petition; notice and hearing; temporary injunction; issuance;  
16 statewide verification system; enforcement.--

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

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

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

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

29           1. Sexual battery, as defined in chapter 794;  
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1           2. A lewd or lascivious act, as defined in chapter  
2 800, committed upon or in the presence of a person younger  
3 than 16 years of age;

4           3. Luring or enticing a child, as described in chapter  
5 787;

6           4. Sexual performance by a child, as described in  
7 chapter 827; or

8           5. Any other forcible felony wherein a sexual act is  
9 committed or attempted,

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11 regardless of whether criminal charges based on the incident  
12 were filed, reduced, or dismissed by the state attorney.

13           ~~(d)(c)~~ "Dating violence" means violence between  
14 individuals who have or have had a continuing and significant  
15 relationship of a romantic or intimate nature. The existence  
16 of such a relationship shall be determined based on the  
17 consideration of the following factors:

18           1. A dating relationship must have existed within the  
19 past 6 months;

20           2. The nature of the relationship must have been  
21 characterized by the expectation of affection or sexual  
22 involvement between the parties; and

23           3. The frequency and type of interaction between the  
24 persons involved in the relationship must have included that  
25 the persons have been involved over time and on a continuous  
26 basis during the course of the relationship.

27  
28 The term does not include violence in a casual  
29 acquaintanceship or violence between individuals who only have  
30 engaged in ordinary fraternization in a business or social  
31 context.

1           (2) There is created a cause of action for an  
2 injunction for protection in cases of repeat violence, ~~and~~  
3 there is created a separate cause of action for an injunction  
4 for protection in cases of dating violence, and there is  
5 created a separate cause of action for an injunction for  
6 protection in cases of sexual violence.

7           (a) Any person who is the victim of repeat violence or  
8 the parent or legal guardian of any minor child who is living  
9 at home and who seeks an injunction for protection against  
10 repeat violence on behalf of the minor child has standing in  
11 the circuit court to file a sworn petition for an injunction  
12 for protection against repeat violence.

13           (b) Any person who is the victim of dating violence  
14 and has reasonable cause to believe he or she is in imminent  
15 danger of becoming the victim of another act of dating  
16 violence, or any person who has reasonable cause to believe he  
17 or she is in imminent danger of becoming the victim of an act  
18 of dating violence, or the parent or legal guardian of any  
19 minor child who is living at home and who seeks an injunction  
20 for protection against dating violence on behalf of that minor  
21 child, has standing in the circuit court to file a sworn  
22 petition for an injunction for protection against dating  
23 violence.

24           (c) A person who is the victim of sexual violence or  
25 the parent or legal guardian of a minor child who is living at  
26 home who is the victim of sexual violence has standing in the  
27 circuit court to file a sworn petition for an injunction for  
28 protection against sexual violence on his or her own behalf or  
29 on behalf of the minor child if:

30           1. The person has reported the sexual violence to a  
31 law enforcement agency and is cooperating in any criminal

1 proceeding against the respondent, regardless of whether  
2 criminal charges based on the sexual violence have been filed,  
3 reduced, or dismissed by the state attorney; or

4 2. The respondent who committed the sexual violence  
5 against the victim or minor child was sentenced to a term of  
6 imprisonment in state prison for the sexual violence and the  
7 respondent's term of imprisonment has expired or is due to  
8 expire within 90 days following the date the petition is  
9 filed.

10 (d)(c) A This cause of action for an injunction may be  
11 sought whether or not any other petition, complaint, or cause  
12 of action is currently available or pending between the  
13 parties.

14 (e)(d) A This cause of action for an injunction does  
15 shall not require that the petitioner be represented by an  
16 attorney.

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

21 (b) Notwithstanding any other law, the clerk of the  
22 court may not assess a fee for filing a petition for  
23 protection against repeat violence, sexual violence, or dating  
24 violence. However, subject to legislative appropriation, the  
25 clerk of the court may, each quarter, submit to the Office of  
26 the State Courts Administrator a certified request for  
27 reimbursement for petitions for protection issued by the court  
28 under this section at the rate of \$40 per petition. The  
29 request for reimbursement shall be submitted in the form and  
30 manner prescribed by the Office of the State Courts  
31 Administrator. From this reimbursement, the clerk shall pay

1 the law enforcement agency serving the injunction the fee  
2 requested by the law enforcement agency; however, this fee may  
3 not exceed \$20.~~In the event the person desiring to file for~~  
4 ~~an injunction pursuant to this section does not have~~  
5 ~~sufficient funds with which to pay filing fees to the clerk of~~  
6 ~~the court or service fees to the sheriff or law enforcement~~  
7 ~~agency and signs an affidavit so stating, the fees shall be~~  
8 ~~waived by the clerk of the court or the sheriff or law~~  
9 ~~enforcement agency to the extent necessary to process the~~  
10 ~~petition and serve the injunction, subject to a subsequent~~  
11 ~~order of the court relative to the payment of such fees.~~

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

14 (d) The clerk of the court shall provide the  
15 petitioner with a certified copy of any injunction for  
16 protection against repeat violence, sexual violence, or dating  
17 violence entered by the court.

18 (4)(a) The sworn petition shall allege the incidents  
19 of repeat violence, sexual violence, or dating violence and  
20 shall include the specific facts and circumstances that ~~which~~  
21 form the basis upon which relief is sought. With respect to a  
22 minor child who is living at home, the parent or legal  
23 guardian of the minor child must have been an eyewitness to,  
24 or have direct physical evidence or affidavits from  
25 eyewitnesses of, the specific facts and circumstances which  
26 form the basis upon which relief is sought.

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

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30 PETITION FOR INJUNCTION FOR PROTECTION  
31 AGAINST REPEAT VIOLENCE, SEXUAL VIOLENCE, OR DATING VIOLENCE

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

- 1. Petitioner resides at ...(address)...
- 2. Respondent resides at ...(address)...
- 3.a. Petitioner has suffered repeat violence as

demonstrated by the fact that the respondent has:  
...(enumerate incidents of violence)...

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.....

b. Petitioner has suffered sexual violence as demonstrated by the fact that the respondent has: (enumerate incident of violence and attach incident report by law 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

1 length of time of the relationship, whether it has been in  
2 existence during the last 6 months, the nature of the  
3 relationship of a romantic or intimate nature, the frequency  
4 and type of interaction, and any other facts that characterize  
5 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 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 petition, notice of hearing, and temporary injunction, if any, prior to the hearing.

(6)(a) When it appears to the court that an immediate and present danger of violence exists, the court may grant a temporary injunction which may be granted in an ex parte hearing, pending a full hearing, and may grant such relief as



1 the court deems proper, including an injunction enjoining the  
2 respondent from committing any acts of violence.

3 (b) In a hearing ex parte for the purpose of obtaining  
4 such temporary injunction, no evidence other than the verified  
5 pleading or affidavit shall be used as evidence, unless the  
6 respondent appears at the hearing or has received reasonable  
7 notice of the hearing.

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

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

20 (a) Enjoining the respondent from committing any acts  
21 of violence.

22 (b) Ordering such other relief as the court deems  
23 necessary for the protection of the petitioner, including  
24 injunctions or directives to law enforcement agencies, as  
25 provided in this section.

26 (c) The terms of the injunction shall remain in full  
27 force and effect until modified or dissolved. Either party may  
28 move at any time to modify or dissolve the injunction. Such  
29 relief may be granted in addition to other civil or criminal  
30 remedies.

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1 (d) A temporary or final judgment on injunction for  
2 protection against repeat violence, sexual violence, or dating  
3 violence entered pursuant to this section shall, on its face,  
4 indicate that:

5 1. The injunction is valid and enforceable in all  
6 counties of the State of Florida.

7 2. Law enforcement officers may use their arrest  
8 powers pursuant to s. 901.15(6) to enforce the terms of the  
9 injunction.

10 3. The court had jurisdiction over the parties and  
11 matter under the laws of Florida and that reasonable notice  
12 and opportunity to be heard was given to the person against  
13 whom the order is sought sufficient to protect that person's  
14 right to due process.

15 4. The date that the respondent was served with the  
16 temporary or final order, if obtainable.

17 (8)(a)1. The clerk of the court shall furnish a copy  
18 of the petition, notice of hearing, and temporary injunction,  
19 if any, to the sheriff or a law enforcement agency of the  
20 county where the respondent resides or can be found, who shall  
21 serve it upon the respondent as soon thereafter as possible on  
22 any day of the week and at any time of the day or night. The  
23 clerk of the court shall be responsible for furnishing to the  
24 sheriff such information on the respondent's physical  
25 description and location as is required by the department to  
26 comply with the verification procedures set forth in this  
27 section. Notwithstanding any other provision of law to the  
28 contrary, the chief judge of each circuit, in consultation  
29 with the appropriate sheriff, may authorize a law enforcement  
30 agency within the chief judge's jurisdiction to effect this  
31 type of service and to receive a portion of the service fee.

1 No person shall be authorized or permitted to serve or execute  
2 an injunction issued under this section unless the person is a  
3 law enforcement officer as defined in chapter 943.

4 2. If the respondent is in the custody of the  
5 Department of Corrections and the petition for an injunction  
6 has been filed as provided in subparagraph (2)(c)2., the clerk  
7 of the court shall furnish a copy of the petition, notice of  
8 hearing, and temporary injunction, if any, to the Department  
9 of Corrections and copies shall be served upon the respondent  
10 as soon thereafter as possible on any day of the week and at  
11 any time of the day or night. The petition, notice of hearing,  
12 or temporary injunction may be served in a state prison by a  
13 correctional officer as defined in chapter 943. If the  
14 respondent in custody is not served before his or her release,  
15 a copy of the petition, notice of hearing, and temporary  
16 injunction, if any, shall be forwarded to the sheriff of the  
17 county specified in the respondent's release plan for service  
18 as provided in subparagraph 1.

19 ~~3.2.~~ When an injunction is issued, if the petitioner  
20 requests the assistance of a law enforcement agency, the court  
21 may order that an officer from the appropriate law enforcement  
22 agency accompany the petitioner and assist in the execution or  
23 service of the injunction. A law enforcement officer shall  
24 accept a copy of an injunction for protection against repeat  
25 violence, sexual violence, or dating violence, certified by  
26 the clerk of the court, from the petitioner and immediately  
27 serve it upon a respondent who has been located but not yet  
28 served.

29 (b) There shall be created a Domestic, Dating, Sexual,  
30 and Repeat Violence Injunction Statewide Verification System  
31 within the Department of Law Enforcement. The department shall

1 establish, implement, and maintain a statewide communication  
2 system capable of electronically transmitting information to  
3 and between criminal justice agencies relating to domestic  
4 violence injunctions, dating violence injunctions, sexual  
5 violence injunctions, and repeat violence injunctions issued  
6 by the courts throughout the state. Such information must  
7 include, but is not limited to, information as to the  
8 existence and status of any injunction for verification  
9 purposes.

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

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

23 3. Within 24 hours after the sheriff receives a  
24 certified copy of the injunction for protection against repeat  
25 violence, sexual violence, or dating violence, the sheriff  
26 must make information relating to the injunction available to  
27 other law enforcement agencies by electronically transmitting  
28 such information to the department.

29 4. Within 24 hours after the sheriff or other law  
30 enforcement officer has made service upon the respondent and  
31 the sheriff has been so notified, the sheriff must make

1 information relating to the service available to other law  
2 enforcement agencies by electronically transmitting such  
3 information to the department.

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

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

22           (b) If the respondent is arrested by a law enforcement  
23 officer under s. 901.15(10) for committing an act of repeat  
24 violence, sexual violence, or dating violence in violation of  
25 an a repeat or dating violence injunction for protection, the  
26 respondent shall be held in custody until brought before the  
27 court as expeditiously as possible for the purpose of  
28 enforcing the injunction and for admittance to bail in  
29 accordance with chapter 903 and the applicable rules of  
30 criminal procedure, pending a hearing.

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

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

9 Section 3. This act shall take effect July 1, 2003.

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SENATE SUMMARY

Creates "The Victim's Freedom Act." Provides a cause of  
action for injunctions for protection against sexual  
violence. Requires that the sexual violence be reported  
to a law enforcement agency and that the person filing  
the petition cooperate in an investigation. Provides for  
filing a petition against a respondent who has been or  
will be released following incarceration for committing  
sexual violence. Prohibits the court clerk from assessing  
filing fees for a petition for protection against repeat  
violence, sexual violence, or dating violence. Renames  
the Domestic, Dating, and Repeat Violence Injunction  
Statewide Verification System as the Domestic, Dating,  
Sexual, and Repeat Violence Injunction Statewide  
Verification System. (See bill for details.)