

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 561 The Victim's Freedom Act
SPONSOR(S): Kyle and Needelman
TIED BILLS: None **IDEN./SIM. BILLS:** SB 294

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judicial Apps. (Sub)		Jaroslav/Davis	DeBeaugrine
2) Appropriations			
3)			
4)			
5)			

SUMMARY ANALYSIS

This bill creates "The Victim's Freedom Act." It provides a person the opportunity to obtain protective injunctive relief against "sexual violence," if he or she is a victim of sexual violence and:

- the victim has reported the incident to law enforcement and is cooperating in any criminal proceeding against the offender, or
- the offender's state prison term is expired or will expire within 90 days following the filing of the petition for protective injunctive relief.

This bill provides a broad definition of "sexual violence" which includes sexual offenses under chs. 787, 794, 800 and 827, F.S., and any other forcible felony offenses involving a sexual act.

Additionally, this bill prohibits the assessment of filing fees and service charges for injunctions against dating violence, repeat violence and sexual violence. Subject to legislative appropriation, this bill authorizes the Clerks of Courts to petition the Office of State Courts Administrator for reimbursement at \$40 per petition, of which a maximum of \$20 must be allocated to the law enforcement agency serving the injunction. This bill authorizes service of process by a correctional officer of a sexual violence injunction upon an imprisoned offender.

Finally, this bill redesignates the statewide injunction verification system as the "Domestic Violence, Dating Violence, Sexual Violence and Repeat Violence Injunction Statewide Verification System."

The fiscal impact of this bill appears is indeterminate.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0561.ap.doc
DATE: March 17, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

This bill creates new causes of action.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Protective Injunctive Relief Against Violence

Current law allows for a grant of protective injunctive relief based on three underlying categories of violence. A person may obtain a protective injunction against *domestic violence*, *repeat violence*, or *dating violence*, as follows:

a) Domestic violence: A victim of domestic violence or a person who has reasonable cause to believe that she or he is in imminent danger of becoming a victim of domestic violence may obtain a protective injunction.¹ “Domestic violence” is defined as violence between “family or household members,” which term includes spouses, former spouses, persons related by blood or marriage, married or unmarried persons who share a child together, and persons who currently or previously have resided together as if a family.² With the exception of persons who share a child together, there is a requirement that the persons have resided or currently reside together.

b) Repeat violence: A victim of repeat violence who has reasonable cause to believe he or she is in imminent danger of re-victimization by violence may obtain a protective injunction, as may a minor in such circumstances by or through his or her parent or legal guardian.³ “Repeat violence” is defined as two or more incidents of violence or stalking, one of which must have occurred in the last six months.⁴

c) Dating violence: Since 2002, a victim of dating violence can obtain protective injunctive relief if the victim has reasonable cause to believe she or he is in imminent danger of re-victimization, or if a person has reasonable cause to believe she or he is in imminent danger of becoming the victim of dating violence.⁵ A parent or legal guardian may also seek a protective injunction against dating violence on behalf of a minor child living at home.⁶ “Dating violence” is defined as “violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature.”⁷ A court must consider the following factors in determining whether there is such a relationship for the purposes of the injunction:

¹ See s. 741.30, F.S.

² See ss. 741.28(2) and 741.28(3), F.S.

³ See s. 784.046(2), F.S.

⁴ See s. 784.046(1)(b), F.S.

⁵ See s. 784.046(2), F.S.; ch. 2002-55, L.O.F.

⁶ See s. 784.046(2)(a), F.S.

⁷ Section 784.046(1)(c), F.S.

1. The relationship must have existed within the past six months;⁸
2. The nature of the relationship “must have been characterized by the expectation of affection or sexual involvement between the parties;”⁹ and
3. The persons involved in the relationship must “have been involved over time and on a continuous basis[.]”¹⁰

Protective injunctive relief against dating violence is not available to a person who is a victim of violence arising in a “casual acquaintanceship or ... between individuals who only have engaged in ordinary fraternization in a business or social context.”¹¹

The term “violence” as used in each of these types of injunctions refers to “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.”¹² Stalking is the willful, repeated and malicious following or harassment of one person by another.¹³ Aggravated stalking, which requires proof of an additional element, is a third-degree felony; that additional element 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 made a credible threat with the intent to place the victim in reasonable fear of death or bodily injury.¹⁴

Filing Fees for Protective Injunctions Against Violence

Current law prohibits the assessment of a filing fee for any person seeking a protective injunction against domestic violence.¹⁵ Subject to legislative appropriation, however, the Clerks of Courts can submit on a quarterly basis a request for reimbursement from the Office of State Courts Administrator, limited to \$40 per petition; of each \$40 recovered, a maximum of \$20 must be forwarded to the law enforcement agency responsible for service of process.¹⁶ As to injunctions against repeat violence or dating violence, filing fees to the clerk of the court and service of process charges to the law enforcement agency are assessed; however, they may be waived upon submission of an affidavit of insufficient funds by the petitioner.¹⁷

Service of Process of Protective Injunctions

Under current law, process must be served by the sheriff’s office of each county.¹⁸ Each county sheriff’s office maintains a list of approved special process servers who satisfy the statutory requirements. The law prohibits service or execution of an injunction by anyone other than a law enforcement officer as defined under ch. 943, F.S.¹⁹ That chapter defines a law enforcement officer as:

any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof ... vested with the authority to bear arms and make arrests ...

⁸ See s. 784.046(1)(c)1, F.S.

⁹ Section 784.046(1)(c)2, F.S.

¹⁰ Section 784.046(1)(c)3, F.S.

¹¹ Section 784.046(1)(c), F.S.

¹² Sections 741.28(2) (domestic violence) and 784.046(1)(a) (repeat and dating violence), F.S.

¹³ See s. 784.048(2), F.S.

¹⁴ See ss. 784.048(3)-784.048(5), F.S.

¹⁵ See s. 741.30(2)(a), F.S.

¹⁶ See id.

¹⁷ See s. 784.046(3), F.S.

¹⁸ See s. 48.021, F.S.

¹⁹ See s. 784.046(8), F.S.

whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state.²⁰

Although it is unclear whether correctional officers constitute law enforcement officers under this definition, current law also provides that service of process of a state prisoner must be made upon the prisoner.²¹

Injunction Statewide Verification System

Information regarding injunctions against domestic violence, repeat violence and dating violence must be submitted to the Criminal Justice Information Program within the Department of Law Enforcement ("FDLE") for input into the "Domestic, Dating and Repeat Violence Injunction Statewide Verification System."²² This system allows for the electronic transmission of information to and between criminal justice agencies relating to protective injunctions against violence issued by courts throughout the state. According to a representative of FDLE, there were 90,500 active protection orders on file in the state system as of January 2, 2003. The current statewide verification system does not track, nor does it have the capability to track, the injunctions according to the type of violence. One must look to the protective injunction in the county from which it was issued to determine the underlying nature of the injunction.

Proposed Changes

This bill creates "The Victim's Freedom Act." Section 784.046, F.S., which currently relates to injunctions against repeat violence and dating violence, is expanded to create a new category of protective injunctive relief against "sexual violence." This bill defines sexual violence as a single incident of:

- Sexual battery under ch. 794, F.S.,
- Lewd and lascivious conduct under ch. 800, F.S.,
- Luring and enticement of a child under ch. 787, F.S.,
- Sexual performance by a child under ch. 827, F.S., or
- Any forcible felony involving an actual or attempted sexual act.

Either the victim of sexual violence or the parent or guardian of a minor child who is a victim of sexual violence may petition for protective injunctive relief under two scenarios:

- If the person reported the sexual violence to a law enforcement agency and is cooperating in a criminal proceeding, or
- If the offender's term in state prison has expired or is about to expire within 90 days following the filing of the petition.

This bill also prohibits the assessment of filing fees for injunctions against repeat violence, dating violence and sexual violence. This places these injunctions on par with injunctions against domestic violence (for which filing fees are already prohibited). However, the bill provides that, as with protective injunctions against domestic violence, subject to legislative appropriation, the Clerks of Courts may seek reimbursement of \$40 per petition from the Office of State Courts Administrator, of which a maximum of \$20 must be forwarded to the law enforcement agency to cover the cost of serving the injunction.

²⁰ Section 943.10(1), F.S.

²¹ See s. 48.051, F.S.

²² See s. 784.046(8), F.S.

This bill amends all current statutory provisions governing protective injunctive relief, including the form for the petition, to include the new injunction against sexual violence. This means that whatever terms and conditions that apply to injunctions against domestic violence, repeat violence or dating violence also apply to injunctions against sexual violence.

Under this bill, authority to serve an injunction against sexual violence upon a state prisoner is shifted from a law enforcement officer to a correctional officer at the state prison.

This bill sets the period of effect for an ex parte temporary injunction against sexual violence based on the expiration of an offender's state prison term at fifteen days from the day the offender is released from, rather than fifteen days from the date of issuance as is the case with other protective injunctions.

In those circumstances where the sexual violence offender is in the custody of the Department of Corrections ("DOC"), this bill requires the Clerk of Court to send copies of a petition for injunctive relief, the notice of hearing and the temporary injunction (if issued) to DOC to be served upon the offender by a correctional officer. If the offender is not served before his or her release, the copies must be forwarded to the sheriff of the county where the offender is released.

As with other protective injunctions against violence, if the injunction against sexual violence is violated, the offender must be arrested and held in custody until court resolution.

C. SECTION DIRECTORY:

Section 1. Provides that the popular name of this act shall be "The Victim's Freedom Act."

Section 2. Amends s. 784.046, F.S., to provide for injunctions against sexual violence, and to define the term "sexual violence."

Section 3. Provides an effective date of July 1, 2003.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See "Fiscal Comments" below.

2. Expenditures:

See "Fiscal Comments" below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See "Fiscal Comments" below.

2. Expenditures:

See "Fiscal Comments" below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could increase workload and associated costs to the state courts and other state and local law enforcement entities. Since a portion of filing fees are retained by the clerk of the court, the waiver of filing fees for injunctions for dating violence, repeat violence and sexual violence could cause a loss of revenues to the clerk.

The precise impact of this bill is indeterminate since there is no way to determine the number of persons that will avail themselves of this new cause of action. The bill would also limit potential court-related revenues since it prohibits collection of a filing fee for protective injunctions against domestic violence, repeat violence, dating violence or sexual violence.

The precise impact on collections is also not known since there is no way to determine the number of persons that would be relieved of having to pay a filing fee. The Office of State Courts Administrator reports that 20,567 petitions for protective injunctive relief against repeat violence and dating violence were filed in Fiscal Year 2001-2002. However, the amount of filing fees for injunctions varies from county to county and it is not known how many people have fees waived under current law.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill presumably will increase workload and associated costs to local law enforcement entities who will be required to effect service of process without being compensated for this service. Whether the increase would rise to the level of requiring the addition of law enforcement personnel at the county's expense cannot be determined.

This bill does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Article V

The 1998 amendment (Revision 7) to Article V of the Florida Constitution shifts major costs of Florida's judicial system from the counties to the state.²³ It sets out specific and added costs to be borne solely by the state, certain costs to be borne fully by the counties, and other costs to be paid from fees. Additionally, it requires the Clerks of Courts to be substantially funded through filing fees, service charges and costs. In light of the impending identification, determination and categorization by the Legislature of these fees and costs, it is not exactly clear whether and how any fees prohibited by this bill may impact anticipated judicial and court operational activities and current funding resources.

Due Process

This bill provides that a protective injunction against sexual violence issued to a state prisoner is effective fifteen days from the day the prisoner is released. There may be due process concerns if the prisoner is released and for whatever reason was not personally served notice of the petition for injunction and hearing, and temporary injunction, if issued, prior to his or her release. The former

²³ See Art. V, s. 14, Fla. Const.

state prisoner risks inadvertent violation of the terms of the injunction between the time of their release and when the documents are forwarded to the sheriff's office in the county indicated in the prisoner's release plan.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

N/A