



HB 0561

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1 A bill to be entitled

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



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

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

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

36 784.046 Action by victim of repeat violence, sexual
 37 violence, or dating violence for protective injunction; powers
 38 and duties of court and clerk of court; filing and form of
 39 petition; notice and hearing; temporary injunction; issuance;
 40 statewide verification system; enforcement.--

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

42 (a) "Violence" means any assault, aggravated assault,
 43 battery, aggravated battery, sexual assault, sexual battery,
 44 stalking, aggravated stalking, kidnapping, or false
 45 imprisonment, or any criminal offense resulting in physical
 46 injury or death, by a person against any other person.

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

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

- 53 1. Sexual battery, as defined in chapter 794;
- 54 2. A lewd or lascivious act, as defined in chapter 800,
 55 committed upon or in the presence of a person younger than 16
 56 years of age;
- 57 3. Luring or enticing a child, as described in chapter
 58 787;



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59 4. Sexual performance by a child, as described in chapter
 60 827; or

61 5. Any other forcible felony wherein a sexual act is
 62 committed or attempted,

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

66 (d)(e) "Dating violence" means violence between
 67 individuals who have or have had a continuing and significant
 68 relationship of a romantic or intimate nature. The existence of
 69 such a relationship shall be determined based on the
 70 consideration of the following factors:

71 1. A dating relationship must have existed within the past
 72 6 months;

73 2. The nature of the relationship must have been
 74 characterized by the expectation of affection or sexual
 75 involvement between the parties; and

76 3. The frequency and type of interaction between the
 77 persons involved in the relationship must have included that the
 78 persons have been involved over time and on a continuous basis
 79 during the course of the relationship.

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

84 (2) There is created a cause of action for an injunction
 85 for protection in cases of repeat violence, ~~and~~ there is created
 86 a separate cause of action for an injunction for protection in
 87 cases of dating violence, and there is created a separate cause



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88 of action for an injunction for protection in cases of sexual
89 violence.

90 (a) Any person who is the victim of repeat violence or the
91 parent or legal guardian of any minor child who is living at
92 home and who seeks an injunction for protection against repeat
93 violence on behalf of the minor child has standing in the
94 circuit court to file a sworn petition for an injunction for
95 protection against repeat violence.

96 (b) Any person who is the victim of dating violence and
97 has reasonable cause to believe he or she is in imminent danger
98 of becoming the victim of another act of dating violence, or any
99 person who has reasonable cause to believe he or she is in
100 imminent danger of becoming the victim of an act of dating
101 violence, or the parent or legal guardian of any minor child who
102 is living at home and who seeks an injunction for protection
103 against dating violence on behalf of that minor child, has
104 standing in the circuit court to file a sworn petition for an
105 injunction for protection against dating violence.

106 (c) A person who is the victim of sexual violence or the
107 parent or legal guardian of a minor child who is living at home
108 who is the victim of sexual violence has standing in the circuit
109 court to file a sworn petition for an injunction for protection
110 against sexual violence on his or her own behalf or on behalf of
111 the minor child if:

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



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117 2. The respondent who committed the sexual violence
118 against the victim or minor child was sentenced to a term of
119 imprisonment in state prison for the sexual violence and the
120 respondent's term of imprisonment has expired or is due to
121 expire within 90 days following the date the petition is filed.

122 (d)(e) A This cause of action for an injunction may be
123 sought whether or not any other petition, complaint, or cause of
124 action is currently available or pending between the parties.

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

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

131 (b) Notwithstanding any other law, the clerk of the court
132 may not assess a fee for filing a petition for protection
133 against repeat violence, sexual violence, or dating violence.
134 However, subject to legislative appropriation, the clerk of the
135 court may, each quarter, submit to the Office of the State
136 Courts Administrator a certified request for reimbursement for
137 petitions for protection issued by the court under this section
138 at the rate of \$40 per petition. The request for reimbursement
139 shall be submitted in the form and manner prescribed by the
140 Office of the State Courts Administrator. From this
141 reimbursement, the clerk shall pay the law enforcement agency
142 serving the injunction the fee requested by the law enforcement
143 agency; however, this fee may not exceed \$20. In the event the
144 person desiring to file for an injunction pursuant to this
145 section does not have sufficient funds with which to pay filing



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146 ~~fees to the clerk of the court or service fees to the sheriff or~~
 147 ~~law enforcement agency and signs an affidavit so stating, the~~
 148 ~~fees shall be waived by the clerk of the court or the sheriff or~~
 149 ~~law enforcement agency to the extent necessary to process the~~
 150 ~~petition and serve the injunction, subject to a subsequent order~~
 151 ~~of the court relative to the payment of such fees.~~

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

154 (d) The clerk of the court shall provide the petitioner
 155 with a certified copy of any injunction for protection against
 156 repeat violence, sexual violence, or dating violence entered by
 157 the court.

158 (4)(a) The sworn petition shall allege the incidents of
 159 repeat violence, sexual violence, or dating violence and shall
 160 include the specific facts and circumstances that ~~which~~ form the
 161 basis upon which relief is sought. With respect to a minor child
 162 who is living at home, the parent or legal guardian of the minor
 163 child must have been an eyewitness to, or have direct physical
 164 evidence or affidavits from eyewitnesses of, the specific facts
 165 and circumstances which form the basis upon which relief is
 166 sought.

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

169 PETITION FOR INJUNCTION FOR PROTECTION
 170 AGAINST REPEAT VIOLENCE, SEXUAL VIOLENCE, OR DATING VIOLENCE

171
 172 Before me, the undersigned authority, personally appeared
 173 Petitioner ...(Name)..., who has been sworn and says that the
 174 following statements are true:



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- 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)...

.....

.....

.....

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 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



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204 nature, the frequency and type of interaction, and any other
205 facts that characterize the relationship.)...

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211 4. Petitioner genuinely fears repeat violence by the
212 respondent.

213 5. Petitioner seeks: an immediate injunction against the
214 respondent, enjoining him or her from committing any further
215 acts of violence; an injunction enjoining the respondent from
216 committing any further acts of violence; and an injunction
217 providing any terms the court deems necessary for the protection
218 of the petitioner and the petitioner's immediate family,
219 including any injunctions or directives to law enforcement
220 agencies.

221 (5) Upon the filing of the petition, the court shall set a
222 hearing to be held at the earliest possible time. The respondent
223 shall be personally served with a copy of the petition, notice
224 of hearing, and temporary injunction, if any, prior to the
225 hearing.

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



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232 (b) In a hearing ex parte for the purpose of obtaining
233 such temporary injunction, no evidence other than the verified
234 pleading or affidavit shall be used as evidence, unless the
235 respondent appears at the hearing or has received reasonable
236 notice of the hearing.

237 (c) Any such ex parte temporary injunction shall be
238 effective for a fixed period not to exceed 15 days. However, an
239 ex parte temporary injunction granted under subparagraph
240 (2)(c)2. is effective for 15 days following the date the
241 respondent is released from incarceration. A full hearing, as
242 provided by this section, shall be set for a date no later than
243 the date when the temporary injunction ceases to be effective.
244 The court may grant a continuance of the ex parte injunction and
245 the full hearing before or during a hearing, for good cause
246 shown by any party.

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

249 (a) Enjoining the respondent from committing any acts of
250 violence.

251 (b) Ordering such other relief as the court deems
252 necessary for the protection of the petitioner, including
253 injunctions or directives to law enforcement agencies, as
254 provided in this section.

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

259 (d) A temporary or final judgment on injunction for
260 protection against repeat violence, sexual violence, or dating



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261 violence entered pursuant to this section shall, on its face,
262 indicate that:

263 1. The injunction is valid and enforceable in all counties
264 of the State of Florida.

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

267 3. The court had jurisdiction over the parties and matter
268 under the laws of Florida and that reasonable notice and
269 opportunity to be heard was given to the person against whom the
270 order is sought sufficient to protect that person's right to due
271 process.

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

274 (8)(a)1. The clerk of the court shall furnish a copy of
275 the petition, notice of hearing, and temporary injunction, if
276 any, to the sheriff or a law enforcement agency of the county
277 where the respondent resides or can be found, who shall serve it
278 upon the respondent as soon thereafter as possible on any day of
279 the week and at any time of the day or night. The clerk of the
280 court shall be responsible for furnishing to the sheriff such
281 information on the respondent's physical description and
282 location as is required by the department to comply with the
283 verification procedures set forth in this section.

284 Notwithstanding any other provision of law to the contrary, the
285 chief judge of each circuit, in consultation with the
286 appropriate sheriff, may authorize a law enforcement agency
287 within the chief judge's jurisdiction to effect this type of
288 service and to receive a portion of the service fee. No person
289 shall be authorized or permitted to serve or execute an



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290 injunction issued under this section unless the person is a law
291 enforcement officer as defined in chapter 943.

292 2. If the respondent is in the custody of the Department
293 of Corrections and the petition for an injunction has been filed
294 as provided in subparagraph (2)(c)2., the clerk of the court
295 shall furnish a copy of the petition, notice of hearing, and
296 temporary injunction, if any, to the Department of Corrections
297 and copies shall be served upon the respondent as soon
298 thereafter as possible on any day of the week and at any time of
299 the day or night. The petition, notice of hearing, or temporary
300 injunction may be served in a state prison by a correctional
301 officer as defined in chapter 943. If the respondent in custody
302 is not served before his or her release, a copy of the petition,
303 notice of hearing, and temporary injunction, if any, shall be
304 forwarded to the sheriff of the county specified in the
305 respondent's release plan for service as provided in
306 subparagraph 1.

307 ~~3.2.~~ When an injunction is issued, if the petitioner
308 requests the assistance of a law enforcement agency, the court
309 may order that an officer from the appropriate law enforcement
310 agency accompany the petitioner and assist in the execution or
311 service of the injunction. A law enforcement officer shall
312 accept a copy of an injunction for protection against repeat
313 violence, sexual violence, or dating violence, certified by the
314 clerk of the court, from the petitioner and immediately serve it
315 upon a respondent who has been located but not yet served.

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



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319 establish, implement, and maintain a statewide communication
320 system capable of electronically transmitting information to and
321 between criminal justice agencies relating to domestic violence
322 injunctions, dating violence injunctions, sexual violence
323 injunctions, and repeat violence injunctions issued by the
324 courts throughout the state. Such information must include, but
325 is not limited to, information as to the existence and status of
326 any injunction for verification purposes.

327 (c)1. Within 24 hours after the court issues an injunction
328 for protection against repeat violence, sexual violence, or
329 dating violence or changes or vacates an injunction for
330 protection against repeat violence, sexual violence, or dating
331 violence, the clerk of the court must forward a copy of the
332 injunction to the sheriff with jurisdiction over the residence
333 of the petitioner.

334 2. Within 24 hours after service of process of an
335 injunction for protection against repeat violence, sexual
336 violence, or dating violence upon a respondent, the law
337 enforcement officer must forward the written proof of service of
338 process to the sheriff with jurisdiction over the residence of
339 the petitioner.

340 3. Within 24 hours after the sheriff receives a certified
341 copy of the injunction for protection against repeat violence,
342 sexual violence, or dating violence, the sheriff must make
343 information relating to the injunction available to other law
344 enforcement agencies by electronically transmitting such
345 information to the department.

346 4. Within 24 hours after the sheriff or other law
347 enforcement officer has made service upon the respondent and the



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348 sheriff has been so notified, the sheriff must make information
349 relating to the service available to other law enforcement
350 agencies by electronically transmitting such information to the
351 department.

352 5. Within 24 hours after an injunction for protection
353 against repeat violence, sexual violence, or dating violence is
354 lifted, terminated, or otherwise rendered no longer effective by
355 ruling of the court, the clerk of the court must notify the
356 sheriff or local law enforcement agency receiving original
357 notification of the injunction as provided in subparagraph 2.
358 That agency shall, within 24 hours after receiving such
359 notification from the clerk of the court, notify the department
360 of such action of the court.

361 (9)(a) The court shall enforce, through a civil or
362 criminal contempt proceeding, a violation of an injunction for
363 protection. The court may enforce the respondent's compliance
364 with the injunction by imposing a monetary assessment. The clerk
365 of the court shall collect and receive such assessments. On a
366 monthly basis, the clerk shall transfer the moneys collected
367 pursuant to this paragraph to the State Treasury for deposit in
368 the Crimes Compensation Trust Fund established in s. 960.21.

369 (b) If the respondent is arrested by a law enforcement
370 officer under s. 901.15(10) for committing an act of repeat
371 violence, sexual violence, or dating violence in violation of an
372 ~~a repeat or dating violence~~ injunction for protection, the
373 respondent shall be held in custody until brought before the
374 court as expeditiously as possible for the purpose of enforcing
375 the injunction and for admittance to bail in accordance with



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376 chapter 903 and the applicable rules of criminal procedure,
377 pending a hearing.

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

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

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