

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1721 Protective Injunctions
SPONSOR(S): Rep. Antone
TIED BILLS: **IDEN./SIM. BILLS:** SB 434

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice (Sub)	6 Y, 0 N	Maynard	De La Paz
2) Public Safety & Crime Prevention			
3) Public Safety Appropriations (Sub)			
4) Appropriations			
5)			

SUMMARY ANALYSIS

Current law provides a first degree misdemeanor for a person who violates an injunction for repeat violence or dating violence or a foreign protection order. In the 2003 session, the Victim's Freedom Act [Chapter 2003-117, L.O.F.] was passed. It provided a person the opportunity to obtain protective injunctive relief against "sexual violence," if he or she is a victim of sexual violence. However, the Victim's Freedom Act neglected to amend the violations sections to make them enforceable.

HB 1721 adds "sexual violence" to the list of types of injunctions for protection the violation of which is punishable as a criminal offense. The bill increases the penalty for a violation of an injection for protection against domestic violence, repeat violence, sexual violence or dating violence from a first degree misdemeanor to a second degree felony. The bill also creates a third degree felony for committing a crime against the property of the petitioner or other protected person.

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

STORAGE NAME: h1721a.ps.doc
DATE: March 18, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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 checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

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

B. EFFECT OF PROPOSED CHANGES:

Under s. 784.047, F.S., provides a first degree misdemeanor¹ for a person who violates an injunction for repeat violence or dating violence or a foreign protection order by any of the following:

- Refusing to vacate the dwelling the parties share
- Going to the petitioner's residence, school or place of employment, or a specified place frequented regularly by the petitioner and any family or household member
- Committing an act of repeat violence or dating violence against the petitioner²
- Committing any other violation of the injunction through intentional unlawful threat, word, act to do violence to the petitioner
- Telephoning, contacting or otherwise communicating with the petitioner directly or indirectly, unless the injunction specifically allows indirect contact.

In the 2003 session, the Victim's Freedom Act [Chapter 2003-117, L.O.F.] was passed. It provided 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, or the offender's state prison term is expired or will expire within 90 days.

¹ Under ss. 775.082 and 775.083, F.S., a misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year or a \$1000 fine.

² Section 784.046(1)(b), F.S. provides that "repeat violence" is defined as: "two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner's immediate family." Subsection (1)(d) provides that "dating violence is defined as: "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.

The act provided a broad definition of “sexual violence” as any one incident of: 1) sexual battery, as defined in Chapter 794, F.S.; 2) a lewd or lascivious act, as defined in Chapter 800, F.S., committed upon or in the presence of a person younger than 16 years of age; 3) luring and enticement of a child, as described in 787, F.S.; 4) sexual performance by a child, as described in Chapter 827, F.S.; or 4) any other forcible felony wherein a sexual act is committed or attempted, regardless of whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney.

Chapter 2003–117, L.O.F., created a specific cause of action for an injunction for protection in cases of sexual violence. Prior to that legislation, section 784.046(2), F.S., contained separate causes of action for protection injunctions for repeat violence and dating violence.

Under current law, either the victim of sexual violence, or the parent or guardian of a minor child who is living at home and 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.

The 2003 legislation amended the Petition for Injunction for Protection Against Repeat Violence or Dating Violence, to include Sexual Violence.

Chapter 2003-117, L.O.F., while creating a specific cause of action for an injunction for protection in cases of sexual violence, neglected to amend the violations sections to make them enforceable.

HB 1721 adds “sexual violence” to the list of types of injunctions for protection the violation of which is punishable as a criminal offense. The bill increases the penalty for a violation of an injunction for protection against domestic violence, repeat violence, sexual violence or dating violence from a first degree misdemeanor to a second degree felony.³ The bill also creates a third degree felony⁴ for committing a crime against the property of the petitioner or other protected person.

C. SECTION DIRECTORY:

Section 1. amends s. 784.047.

Section 2. provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments

³ Under ss. 775.082 and 775.083, F.S, a second degree felony is punishable by fifteen years in prison, or a \$10,000 fine.

⁴ Under ss. 775.082 and 775.083, F.S, a third degree felony is punishable by five years in prison, or a \$5,000 fine.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments

2. Expenditures:

See Fiscal Comments

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments

D. FISCAL COMMENTS:

The Criminal Justice Estimating Conference has not yet evaluated the fiscal impact of this bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

As this bill is a criminal law, there is no local mandates issue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 17, 2004, the Criminal Justice Subcommittee voted to favorably recommend HB 1721 with one strike-all amendment. To prevent confusion, the amendment amends the section of statutes which specifically addresses "domestic battery" instead of adding the term to list of other types of injunctions. The amendment also clarifies language describing the offense of violation of injunction by committing a crime against the property of the petitioner or other protected person.