

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1897 (PCB JU 04-03) Protective Injunctions
SPONSOR(S): Committee on Judiciary and Rep. Kottkamp
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary	14 Y, 0 N	Jaroslav	Havlicak
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

Under current law, when a parent or legal guardian petitions a court for injunctive relief to protect his or her minor child from violence, that adult “must have been an eyewitness to, or have direct physical evidence or affidavits from eyewitnesses of, the specific facts and circumstances which form the basis upon which relief is sought.”

This bill narrows the application of the special evidentiary requirements that apply only to injunctions for the protection of minor children, so that this higher standard must only be met when the party against whom the injunction is sought is also a parent, step-parent or legal guardian of the minor child to be protected. It further adds that, in such cases where the elevated standard is still required, the petitioner may also meet it with corroborative evidence having other circumstantial guarantees of trustworthiness.

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

STORAGE NAME: h1897.ju.doc
DATE: April 1, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

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

Present Situation

Generally: Protective Injunctive Relief Against Violence

Current law allows for a grant of protective injunctive relief based on four underlying categories of violence. A victim, or the parent or legal guardian of a minor child who is a victim, may obtain a protective injunction against *domestic violence*, *repeat violence*, *dating violence* or *sexual 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

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.

nature.”⁷ A court must consider the following factors in determining whether there is such a relationship for the purposes of the injunction:

- The relationship must have existed within the past six months;⁸
- The nature of the relationship “must have been characterized by the expectation of affection or sexual involvement between the parties;”⁹ and
- 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

d) Sexual violence: Since 2003, a victim of sexual violence has been able to obtain a protective injunction under two scenarios:¹²

- If the person reported the sexual violence to a law enforcement agency and is cooperating in a criminal proceeding;¹³ 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.¹⁴

“Sexual violence” is defined¹⁵ 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.

The term “violence,” in general, as used with respect to protective 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.”¹⁶ Stalking is the willful, repeated and malicious following or harassment of one person by another.¹⁷ 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.¹⁸

⁷ Section 784.046(1)(d), F.S.

⁸ See s. 784.046(1)(d)1, F.S.

⁹ Section 784.046(1)(d)2, F.S.

¹⁰ Section 784.046(1)(d)3, F.S.

¹¹ Section 784.046(1)(d), F.S.

¹² See ch. 2003-117, L.O.F.

¹³ See s. 784.046(2)(c)1, F.S.

¹⁴ See s. 784.046(2)(c)2, F.S.

¹⁵ See s. 784.046(1)(c), F.S.

¹⁶ Sections 741.28(2) (domestic violence) and 784.046(1)(a) (repeat and dating violence), F.S.

¹⁷ See s. 784.048(2), F.S.

¹⁸ See ss. 784.048(3)-784.048(5), F.S.

Evidentiary Requirements for Injunctions Protecting Minor Children

Under current law, when a parent or legal guardian petitions a court for injunctive relief to protect his or her minor child from violence, that adult “must have been an eyewitness to, or have direct physical evidence or affidavits from eyewitnesses of, the specific facts and circumstances which form the basis upon which relief is sought.”¹⁹

Proposed Changes

This bill narrows the application of the special evidentiary requirements that apply only to injunctions for the protection of minor children, so that this higher standard must only be met when the party against whom the injunction is sought is also a parent, step-parent or legal guardian of the minor child to be protected. It further adds that, in such cases where the elevated standard is still required, the petitioner may also meet it with corroborative evidence having other circumstantial guarantees of trustworthiness.

C. SECTION DIRECTORY:

Section 1. Amends s. 748.046, F.S., with respect to injunctions for the protection of minor children.

Section 2. Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See “Fiscal Comments,” below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

It is possible that, by eliminating an evidentiary hurdle, this bill could make adjudicating petitions for the protection of minor children less complex and thus consume less time on the part of the courts. Contrarily, however, by doing so this bill might also encourage more such injunctions to be sought. The net effect is uncertain, although probably negligible.

¹⁹ Section 784.046(4)(a), F.S.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, 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:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 24, 2004, the House Judiciary Committee adopted one amendment to this bill. This amendment narrows the application of the special evidentiary requirements that apply only to injunctions for the protection of minor children, so that this higher standard must only be met when the party against whom the injunction is sought is also a parent, step-parent or legal guardian of the minor child to be protected. It further adds that, in such cases where the elevated standard is still required, the petitioner may also meet it with corroborative evidence having other circumstantial guarantees of trustworthiness. The Committee then reported this bill favorably with a committee substitute.

This analysis is drafted to the bill as amended.