

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 0322
 SPONSOR: Committee on Judiciary and Senator Saunders
 SUBJECT: Protective Injunction Act
 DATE: January 21, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matthews	Lang	JU	Fav/CS
2.	_____	_____	CJ	_____
3.	_____	_____	CF	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This committee substitute (CS) is cited as the “Tonda Soisson Protective Injunction Act” and revises the law on protective injunctions as follows:

- Creates a civil cause of action for injunction for protection against violence such that any person can petition for a protective injunction regardless of whether the offender is a family member, friend, acquaintance, or stranger, provided the petitioner has reasonable cause to believe that he or she is in imminent danger of becoming a victim of violence, or the petitioner is a victim of violence and has reasonable cause to believe that he or she is in imminent danger of re-victimization;
- Eliminates the cause of action for protective injunctive relief against *repeat violence*;
- Makes conforming changes to reflect the creation of the injunction against *violence* in provisions governing the grounds for the petition, the form of the petition, the family violence indicator in the State Case Registry, the underlying elements of the offense of stalking, the criminal penalty for violating a protective injunction, the issuance or suspension of weapons license, the authority to arrest without a warrant, and the input of injunction orders into the statewide injunction verification system within the Criminal Justice Information Program;
- Redesignates the “Domestic Violence, Dating Violence, Sexual Violence, and Repeat Violence Statewide Injunction Verification System as the “Violence Injunction Statewide Verification System;”
- Authorizes the court to sanction a petitioner who obtains a temporary *domestic violence* injunction by awarding attorney’s fees, costs and reasonable reimbursement of living expenses when the court determines that the petitioner did not have reasonable cause to believe that he or she was in danger or that the petitioner provided false information to the court resulting in the issuance of a temporary *domestic violence* injunction; and

- Deletes a provision made obsolete by the statutory prohibition against filing fees for protective injunctions that originally required the clerks of the court to advise a petitioner about the option to file a certificate of indigence to avoid payment of a filing fee.

This CS substantially amends the following sections of the Florida Statutes: 61.1825, 741.2901, 741.30, 775.084, 784.046, 784.047, 784.048, 790.06, 790.065, 901.15, 921.0022, and 943.05.

II. Present Situation:

Protective Injunctions

Civil protective injunctions against violence¹ are available under Florida law and are based on four subcategories of violence (*dating violence*, *domestic violence*, *repeat violence*, and *sexual violence*) as follows:

- An injunction *against domestic violence* refers to protective injunctive relief available to someone based on violence between family or household members. A family or household member includes a spouse, a former spouse, a person related by blood or marriage, familial co-residents, and married or unmarried persons who share a child together. *See s. 741.28, F.S.* With the exception of persons who share a child together, a petitioner must have resided or currently be residing with the offender. The person must have reasonable cause to believe that he or she is in imminent danger of becoming a victim of *domestic violence* or that he or she is a victim of *domestic violence*. *See s. 741.30, F.S.*
- An injunction *against dating violence*² refers to protective injunctive relief available to someone based on violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. The court must determine whether the relationship falls within the parameter of the relief based on a consideration of the following factors:
 - i. A dating relationship must have existed within the past six months;
 - ii. The nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and
 - iii. 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 petitioner must have reasonable cause to believe he or she is in imminent danger of becoming the victim of *dating violence*, or the petitioner must be the victim of *dating violence* and have reasonable cause to believe he or she is in imminent danger of re-

¹ The underlying term “violence” is defined as 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. *See s. 784.46(1)(a), F.S.* Stalking is the willful, repeated and malicious following, harassment, or cyberstalking of one person by another. Aggravated stalking, which requires proof of an additional element, is a third degree felony. *See s. 784.048, F.S.* The additional element required to prove aggravated stalking 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 makes a credible threat with the intent to place the victim in reasonable fear of death or bodily injury. *See ss. 784.048(3),(4), & (5), F.S.*

² *See ch. 2002-55, L.O.F.*

victimization. A parent or legal guardian may also seek a protective injunction against dating violence on behalf of a minor child living at home. This form of relief does not apply in scenarios involving violence between casual acquaintances or between individuals engaged in ordinary fraternization in a business or social context.

- An injunction against *repeat violence* refers to protective injunctive relief available to someone based on two or more incidents of violence or stalking. One of the incidents of violence must have occurred in the last six months. The petitioner must either be a victim of *repeat violence* who has reasonable cause to believe he or she is in imminent danger of re-victimization. A parent or legal guardian may also seek a protective injunction against repeat violence on behalf of a minor child living at home. *See* s. 784.046, F.S.
- An injunction against *sexual violence*³ refers to protective injunctive relief based on violence committed upon any person involving statutorily enumerated sexual offenses under chapters 787, 794, 800 and 827, F.S., or any forcible felony offenses⁴ involving a sexual act. The petitioner must have reported the incident to law enforcement and be cooperating in any criminal proceeding against the offender, or the prison term of the sexual violence offender must have expired or will expire within 90 days following the filing of the petition for protective injunctive relief.

Once a petition for protective injunctive relief is sought, a judge can enter *ex parte* (without a hearing and without supporting documentation) a temporary injunction. The temporary injunction is valid for a maximum of 15 days during which time a full evidentiary hearing must be scheduled. For good cause shown including failure to obtain service of process, the hearing can be continued. At the final hearing, the court may enter a permanent injunction which will essentially remain in effect until modified or dissolved as specified in the order. Multiple extensions can be granted. If a temporary injunction against violence is denied, a hearing must still be granted at which the petitioner must prove by a preponderance of the evidence that injunction is warranted.

No filing fee or service charge can be assessed for protective injunctions against violence, but the clerks of the court can seek reimbursement, subject to legislative appropriation. A portion of the reimbursement must be allocated to law enforcement to cover the cost of service of process of the injunction. Generally, violations of protective injunctions are enforceable through civil or criminal remedies including contempt proceedings and monetary assessments. *See* s. 741.30 (9) (a), F.S., and s. 784.046(9), F.S.

Violations of Protective Injunctions

Differences exist between the provisions governing a violation of an injunction against *domestic violence* versus a violation of an injunction against *repeat violence* and *dating violence*. [Due to an oversight last year, the law was not amended to recognize a violation of an injunction against *sexual violence* when the civil action was first created. *See* ch. 2003-117, L.O.F.] Although a

³ *See* ch. 2003-117, L.O.F.; s. 784.046, F.S.

⁴ *See* s. 776.08, F.S. Forcible felony includes treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

violation of a violence injunction under either section 741.31, F.S., or section 784.047, F.S., is punishable as a first degree misdemeanor, the list of prohibited acts underlying the violations are not the same for both sections as indicated below:

Violation of injunction against <i>domestic violence</i> (s. 741.31(4)(a), F.S.)	Violation of injunction against <i>repeat violence or dating violence</i> (s. 784.047, F.S.)
Refusing to vacate shared dwelling	Refusing to vacate shared dwelling
Going <i>within 500 feet</i> of petitioner’s or petitioner’s family or household member’s residence, school, work, or specified place	Going to petitioner’s or his or her family or household member’s residence, school, work, or specified place
Committing act of domestic violence	Committing act of repeat violence or dating violence
Committing other violation through threat, word, or act to do violence	Committing other violation through threat, word, or act to do violence
Communicating with petitioner indirectly or indirectly	Communicating with petitioner indirectly or indirectly
Coming within 100 feet of car	None
Defacing or destroying petitioner’s personal property or care	None
Refusing to surrender firearms	None
Possessing or in custody of firearm	None

Moreover, a person who is the victim of a violation of a protective injunction against *domestic violence* may be awarded economic damages and costs and attorney’s fees for an injury or loss suffered as a result of the violation of the injunction. No similar provision exists for a victim of a violation of protective injunctive relief against *repeat violence, dating violence, or against sexual violence*.

Injunction Statewide Verification System

The Criminal Justice Information Program within the Department of Law Enforcement maintains an injunction statewide verification system which was renamed last year as “The Domestic, Dating, Repeat Violence and Sexual Injunction Statewide Verification System.” See s. 784.046(8), F.S. This system allows for the electronic transmission of information to and between criminal justice agencies relating to protective injunctions issued against *domestic violence, dating violence, repeat violence and sexual violence*. The statutes set forth the process for what happens to the injunction for protection after it is entered and delivered to the proper authorities. According to a representative of the Florida Department of Law Enforcement, there were 113,213 active, non-expired protection orders on file in the state system as of January, 2004.⁵ Although the injunction statewide verification system currently does not distinguish between subcategories of protective injunctive orders, it is estimated that over 90 percent involve domestic violence injunction orders.

III. Effect of Proposed Changes:

Section 1 provides that the CS may be cited as the “Tonda Soisson Protective Injunction Act.”

⁵ The system contained 90,500 active, non-expired protection orders the same time last year.

Section 2 amends s. 784.046, F.S., relating to causes of action for protective injunctive relief against *repeat violence*, *dating violence* and *sexual violence*. The CS creates a cause of action for protective injunctive relief against violence by eliminating provisions relating to repeat violence. Therefore, no prior acts of violence are required in order to receive a protective injunctive relief provided the person has reasonable cause to believe that he or she is in imminent danger of becoming a victim of violence, or the person is a victim of violence and has reasonable cause to believe she or he is in imminent danger of re-victimization. This relief would also be available to minor children by and through their parent or legal guardian.

Sections 3 through 13 of the CS replace the phrase *repeat violence* with the term *violence* in provisions governing the grounds for injunctive relief, the form of the petition, the penalty for violating protective injunctions, the entry of existing protective injunctions into the injunction tracking database system, the requirements for criminal background checks for violators of injunctions, the requirements for history checks of injunctions, and available services for victims. Specifically, the CS amends:

- Section 61.1825(3), F.S., to require a family violence indicator to be placed on a Title IV-D support order record in the State Case Registry maintained by the Department of Revenue in connection with the entry of a protective injunction against *violence*. The statewide database of injunctions maintained by the Department of Law Enforcement is also redesignated as the “Violence Injunction Statewide Verification System.” This more accurately reflects the system contains entries of all the four subcategories of protection orders.
- Section 784.047, F.S., to create a first degree misdemeanor based on a violation of an injunction against *violence*.
- Section 741.2901(3), F.S., to require that a state attorney’s investigation during a *domestic violence* case should include an investigation of a defendant’s history of protective injunctions entered against him or her for *violence*.
- Section 741.30, F.S., to require that the clerk of the court to distribute the statewide uniform informational brochure (whenever such brochure is created by the local domestic violence centers), to petitioners for protective injunctive relief regardless of whether they are seeking an injunction against domestic violence or an injunction against *violence under s. 784.046*.
- Section 784.048(4), F.S., is amended to include a violation of the violence injunction as an underlying element for aggravated stalking.
- Sections 790.06(2)-(3), F.S., to prohibit the issuance of a firearm license or to suspend a license or application for a firearm if a protective injunction against *violence* has been previously issued or is outstanding against a licensee or applicant.
- Section 790.065(2), F.S., to require the Florida Department of Law Enforcement to check for the existence of protective injunction against violence against a potential buyer or transferee of a firearm when conducting a criminal history check in connection with the sale of a firearm.
- s. 901.15(10), F.S., to allow an arrest without a warrant if there is probable cause to believe that a person had knowingly committed an act of violence in violation of a protective injunction against *violence*, just as is currently allowed in cases of acts of *sexual violence*, *dating violence*, and *domestic violence*.

- Section 943.05(2), F.S., to state that the injunction tracking database by the Criminal Justice Information Program shall include the collection and transmission of information relating to the issuance of a protective injunction against *violence*.
- Section 775.084(1), F.S., relating to definitions of specified types of violent offenders, to re-enact and incorporate conforming changes made to s. 784.048, F.S., relating to the definition for aggravated stalking, which means that a violent career criminal is one who could have been previously convicted based on underlying violations of a protective injunction against *violence*.⁶
- Section 921.0022(3), F.S., relating to the offense severity ranking chart of the criminal punishment code, to re-enact and incorporate conforming changes made to s. 784.048, F.S., relating to the underlying definition for aggravated stalking which is categorized as a third degree felony under the code.

Additionally, when appropriate, clarifying amendments are made to these statutory sections to reflect the existence of the four different types of protective injunctions available or to include cross-references to the underlying authorizing statutory section in lieu of listing out each of the different types of protective injunctions available. In part, this corrects some of the drafting oversights that have occurred in the last two years since the sexual violence injunction and the dating violence injunction were created when conforming changes were not made to applicable statutory provisions.

Section 6 also amends s. 741.30, F.S., relating to *domestic violence* injunctions, to allow for a court-ordered sanction of attorney's fees, costs, and reimbursement costs for temporary living expenses resulting from the issuance of an ex parte temporary injunction if the court determines at the extension hearing for the injunction that the petitioner:

1. Did not have reasonable cause to believe that he or she was in danger of becoming a victim of an act of domestic violence; or
2. Knowingly provided false information regarding the alleged domestic violence.

The CS does not change the underlying statutory definitions for the different acts of violence in each of the different types of protective injunctions.

Section 14 provides that the act takes effect on October 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁶ Under the rules of statutory construction, a section of law that cross-references another section that is subsequently amended must be re-enacted (or republished) if the amendments to the cross-reference section are intended to be incorporated. Otherwise, the statutory cross-reference is linked to the version of the section that existed prior to the amendment.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The CS brings all actual and threatened victims of violence into parity with domestic violence victims, dating violence victims and sexual violence victims who have the right to petition for a civil protective injunctive relief. However, unlike the latter categories of victims who must show some connection or type of relationship with the offender or for there to be some type of triggering event such as a specific type of violent act, or a prior incident of threatened or actual violence, a petitioner for an injunction against violence does not. Therefore the standing and threshold for obtaining an injunction against violence will be easier to satisfy than the requirements for the other categories of injunctions against violence (*sexual violence*, *domestic violence*, and *dating violence*. It is unknown how many more people will seek protective injunctive relief whereas they could not previously under the threshold for protective injunctive relief against the former *repeat violence*, *domestic violence*, *sexual violence* or *dating violence*. It is also unknown how many people who opt to obtain a protective injunction against violence under the new law could have obtained a protective injunction under existing causes of actions.

The discretionary award of attorney's fees, costs and reimbursement of living expenses in cases where the court determines at an extension hearing that the domestic violence petitioner did not have reasonable cause to believe he or she was in danger or that the petitioner knowingly provided false information as the basis for an ex parte temporary injunction against domestic violence may help to curb abuses when injunctive relief provisions are used as a preemptive advantage in a child custody and divorce proceeding.

C. Government Sector Impact:

Elements of the CS may impact the workload of the state court system and the law enforcement community including the Department of Juvenile Justice, the Department of Law Enforcement, the Department of Corrections, and the Sheriff's Offices. The expansion of the category of persons entitled to seek protective injunctive relief from one of "*repeat violence*" to "*violence*" may result in a significant increase of petition filings and availability of injunctions. The substantive rules of court and underlying forms may

also have to be revised to reflect the various violence subcategories of protective injunctions against violence.

VI. Technical Deficiencies:

On page 19, lines 26-29, the court can sanction a domestic violence petitioner if it finds that at an injunction extension hearing that the petitioner did not have reasonable cause to believe that he or she was in danger of becoming a victim of an act of domestic violence but the threshold in law is whether the danger is or was “imminent.” An amendment is necessary to conform with the law.

VII. Related Issues:

The law began with a recognition of a right to seek a civil protective injunction against domestic *violence* and *repeat violence* and broadened in the last two years to include protective injunctions against *dating violence* and *sexual violence*. With the creation of the right to petition for a civil protective injunction against *violence*, the need to distinguish between the classes of violence has become superfluous (other than for tracking purposes or for victim services specific to domestic violence victims). Greater protections and access to victim services exist in law for victims of domestic violence. According to the Florida Department of Law Enforcement, there may be other federal or state grant or funding considerations that would justify the continued maintenance of the various subcategories of injunctions, particularly domestic violence. The injunction against *violence* in essence subsumes the other existing subcategories of protection orders (that is, *domestic violence*, *dating violence*, or *sexual violence* since any person who has reasonable cause to believe that he or she is in imminent danger of violence or who is an actual victim of violence will have the right to petition for a protective injunction, without regard to any pre-existing formal or informal relationship between the offender and the victim, or the context of the violence.

VIII. Amendments:

None.