

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 495 protective injunctions from repeat, sexual, and dating violence  
**SPONSOR(S):** Planas  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1568

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Public Safety &amp; Crime Prevention</u>	<u></u>	<u>Whittier</u>	<u>De La Paz</u>
2) <u></u>	<u></u>	<u></u>	<u></u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

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. The law amended the Petition for Injunction for Protection against Repeat Violence or Dating Violence, to include *Sexual Violence*.

Under current language, 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.

This bill authorizes a person who is petitioning for an injunction for protection against repeat violence, sexual violence, or dating violence to be able to file their address separately with the court if it is confidential and exempt from public records laws provided in Chapter 119, F.S., and s. 24, Art. I of the Florida Constitution.

This bill corrects s. 784.047(3), F.S., amending language regarding the penalties for violating protective injunctions against repeat violence and dating violence to include *sexual violence*. The bill makes this offense a first degree misdemeanor, and makes last year's amendments to s. 784.046, F.S., enforceable.

This bill corrects s. 784.048(4), F.S., amending language regarding the penalties for someone who violates protective injunctions by knowingly, willfully, maliciously, and repeatedly following, harassing or cyberstalking. The bill amends statutes for injunctions against repeat violence and dating violence to include *sexual violence*. The bill makes this offense a third degree felony and makes last year's amendments to s. 784.046, F.S., enforceable.

There is not a significant fiscal impact to the state. Fiscal impact to local governments is indeterminate, but anticipated to be minimal. According to staff at the Judicial Services Division of the Volusia County Sheriff's Office, given the unique surroundings of an injunction for sexual violence, the number of service for that specific injunction is anticipated to be small.

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

**STORAGE NAME** h0495.ps.doc  
**DATE** February 6, 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 checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" 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:

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 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.

The act provided a broad definition of “sexual violence” as any one incident of:

- Sexual battery, as defined in Chapter 794, F.S.;
- 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;
- Luring and enticement of a child, as described in 787, F.S.;
- Sexual performance by a child, as described in Chapter 827, F.S.; or
- 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 language, 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.

This bill amends s. 784.047(3), F.S., correcting language regarding the penalties for violating protective injunctions against repeat violence and dating violence to include *sexual violence*. The bill makes this offense a first degree misdemeanor and makes last year's amendments to s. 784.046, F.S., enforceable.

The bill amends s. 784.048(4), F.S., correcting language regarding the penalties for someone who violates protective injunctions by knowingly, willfully, maliciously, and repeatedly following, harassing or cyberstalking. The bill amends statutes for injunctions against repeat violence and dating violence to include *sexual violence*. The bill makes this offense a third degree felony and makes last year's amendments to s. 784.046, F.S., enforceable.

HB 495 also authorizes a person who is petitioning for an injunction for protection against repeat violence, sexual violence, or dating violence to be able to file their address separately with the court if it is confidential and exempt from public records laws provided in Chapter 119, F.S., and section 24, Article I of the Florida Constitution.

#### C. SECTION DIRECTORY:

**Section 1.** Amends s. 784.046, F.S., addressing sworn petitions by victims of repeat violence, sexual violence, or dating violence for protective injunctions.

**Section 2.** Amends s. 784.047, F.S., addressing penalties for violating protective injunctions.

**Section 3.** Amends s. 784.048, F.S., addressing penalties for stalking.

**Section 4.** Provides an effective date of July 1, 2004.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate, but anticipated to be minimal. See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to staff at the Judicial Services Division of the Volusia County Sheriff's Office, given the unique surroundings of an injunction for sexual violence, the number of service for that specific injunction is anticipated to be small and would have a minimal fiscal impact.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

N/A

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

When speaking with an expert on domestic violence and the Commander of the Judicial Services Division of the Volusia County Sheriff's Office, it was brought to staff's attention that the legislation passed last year directed that if the respondent for a petition for an injunction is in the custody of the DOC [see s. 784.046(8)(a)2., F.S.], the clerk of the court is to furnish a copy of the petition, notice of hearing, and temporary injunction to the DOC to be served upon the respondent. "The petition, notice of hearing, or temporary injunction may be served in a state prison by a correctional officer...If the respondent in custody is not served before his or her release, a copy of the petition...shall be forwarded to the sheriff of the county..."

This language doesn't specify how the Clerk is to determine where and to whom at DOC to send the paper work, that the language does not direct the DOC to return paperwork to the Clerk or the Sheriff's Office so they may know that the respondent has been served, and that DOC officers have no training in service of injunctions. It is unclear why these respondents are not to be served in the same manner as other respondents of protective injunctions, which would be by the sheriff having jurisdiction where the respondent is located. It is reported that Sheriffs' Offices in Florida serve thousands of injunctions each year.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES