

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1667
SPONSOR(S): Kottkamp
TIED BILLS:

Protective Injunctions

IDEN./SIM. BILLS: SB 512

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice Committee		Lammers	Billmeier
2) Justice Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

HB 1667 allows an additional type of evidence to be introduced when a parent or guardian files a petition for a protective injunction against another parent, stepparent, or guardian on behalf of a minor child living at home. This bill will allow the filing of a petition based on evidence of facts or circumstances having circumstantial guarantees of trustworthiness, in addition to petitions based on the parent's eyewitness and direct physical evidence.

This bill has no significant fiscal impact.

This bill shall take effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower families—This bill permits a parent or guardian seeking a protective injunction on behalf of a minor child against another parent or guardian to provide additional evidence of the need for an injunction.

B. EFFECT OF PROPOSED CHANGES:

Domestic Violence

Section 741.30(1)(a), F.S., creates a cause of action for an injunction for protection against domestic violence, and provides that a person who is the victim of domestic violence, as defined in s. 741.28, F.S.,¹ or who has reasonable cause to believe that he or she is in imminent danger of becoming a victim of domestic violence, has standing to seek an injunction against domestic violence. A domestic violence injunction may be sought by family or household members, and “[n]o person shall be precluded from seeking injunctive relief pursuant to this chapter solely on the basis that such person is not a spouse.”² Following notice and a hearing, if it appears to the court that the petitioner is either the victim of domestic violence or that the victim has reasonable cause to believe that he or she is in imminent danger of such, the court may grant an injunction or other appropriate relief.³

The Third District Court of Appeal has explained that:

Under the plain language of this statute [, section 741.30], it is not necessary for the petitioner to demonstrate that he or she has been the victim of domestic violence; it merely requires the petitioner to demonstrate that he or she has reasonable cause to believe that he or she may become the victim of domestic violence.⁴

Before the trial court grants a domestic violence injunction, it must determine whether the petitioner’s alleged fear is reasonable based upon the current allegations, the parties’ behavior within the relationship, and the history of the relationship.⁵ Courts have adopted a two-prong test for determining whether a relationship is such that the court can properly issue a domestic violence injunction against one of the parties.⁶ First, the petitioner must have a familial or domestic relationship with the respondent that falls within the range of relationships listed in the statute, and second, the parties must have resided together, either in the past or present, as a family or household in the same dwelling unit.⁷

Section 784.046, F.S., defines violence, repeat violence, sexual violence, and dating violence, and creates separate causes of action for repeat, sexual, and dating violence. Violence is defined as any assault, aggravated stalking, kidnapping, or false imprisonment or any criminal offense resulting in physical injury or death.⁸

¹ “‘Domestic violence’ means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.” s. 741.28(2), F.S.

² Section 741.30(1)(e), F.S.

³ Section 741.30(6)(a), F.S.

⁴ *Patterson v. Simonik*, 709 So. 2d 189, 190 (Fla. 3d DCA 1998).

⁵ *Giallanza v. Giallanza*, 787 So. 2d 162, 164 (Fla. 2d DCA 2001).

⁶ *Kokoris v. Zipnick*, 738 So. 2d 369, 370 (Fla. 4th DCA 1999).

⁷ *Id.*

⁸ Section 784.046(1)(a), F.S.

Injunctions for Repeat Violence

“Repeat violence” means two incidents of violence or stalking committed by the respondent, one of which must have occurred within six months of the filing of the petition, and which were directed against the petitioner or an immediate member of the petitioner’s family.⁹ Any person who is the victim of repeat violence, or the parent of a minor child who lives at home and is the victim of repeat violence, has standing to file a sworn petition for an injunction against repeat violence.¹⁰

Dating Violence

The cause of action for an injunction against dating violence was created by the Legislature in 2002, and although it is located in ch. 784, rather than ch. 741, the domestic violence chapter, “the law provides that persons in dating relationships must meet the same statutory criteria as is required for issuance of a domestic violence injunction.”¹¹ “Dating violence” is defined as “violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature.”¹²

The following factors are used to determine whether such a relationship exists:

- A dating relationship must have existed within the past 6 months
- The nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties
- The frequency and type of interaction between the persons involved in the relationship must have included continuous involvement over time during the course of the relationship¹³

Dating violence does not include violence in the context of a casual acquaintanceship or between individuals who have only ordinary business or social association.¹⁴

Any person who has reasonable cause to believe that he or she is in imminent danger of becoming the victim of an act of dating violence, or who is the victim of dating violence and has reasonable cause to fear imminent future dating violence, may file a petition for an injunction to protect against dating violence.¹⁵

Sexual Violence

Sexual violence means one incident of sexual battery, a lewd or lascivious act committed upon or in the presence of a person younger than 16, luring or enticing a child, sexual performance by a child, or any forcible felony wherein a sexual act is committed or attempted, regardless of the presence or absence of criminal charges resulting from the incident.¹⁶

A person who is the victim of sexual violence, or the parent of any minor child living at home who is the victim of sexual violence, has standing to file a petition for protection against sexual violence if:

- The person has reported the sexual violence to a law enforcement agency and is cooperating with any criminal proceeding against the respondent; or

⁹ *Id.* at (1)(b).

¹⁰ *Id.* at (2)(a).

¹¹ Amy Karan & Lauren Lazarus, *Florida’s Four Orders of Protection Against Violence: Distinguishing the Difference*, 77-DEC Fla. B.J. 31, 34 (2003).

¹² Section 784.046(1)(d) F.S.

¹³ *Id.* at (d)1.-3.

¹⁴ *Id.* at (d).

¹⁵ *Id.* at (2)(b).

¹⁶ *Id.* at (1)(c).

- The person who committed the sexual violence was sentenced to a term of imprisonment for the sexual violence, and such sentence expires or shall expire within 90 days of the filing of the petition.¹⁷

Petition for Injunction Against Repeat, Sexual, or Dating Violence

The sworn petition alleging incidents of repeat violence, sexual violence, or dating violence shall include specific facts and circumstances forming the basis upon which relief is sought.¹⁸

When a parent or legal guardian files a petition for an injunction against repeat, sexual, or dating violence, on behalf of a minor child living at home, the parent must have been an eyewitness to the specific facts and circumstances which form the basis for seeking relief, or the petition must be supported by direct physical evidence or the affidavit of another eyewitness.¹⁹ A prescribed form for the sworn petition is set forth in statute.²⁰

The court is authorized to grant an injunction enjoining the respondent from committing any acts of violence and it is also given broad authority to order such other relief as is necessary to protect the victim.²¹ An order granting an injunction must be supported by competent, substantial evidence.²² Either party may move to have the injunction modified or dissolved at any time, and the terms of the injunction remain in effect until modified or dissolved.²³

The court may use a civil or criminal contempt proceeding to enforce a protective injunction.²⁴

HB 1667

This bill amends s. 784.046(4)(a), regarding when an injunction against repeat violence, sexual violence, or dating violence is sought by a parent or legal guardian of a minor child living at home. The bill provides that when a parent or legal guardian is seeking a protective injunction on behalf of a minor child, and the party against whom the injunction is sought is also a parent, stepparent, or legal guardian of the minor child, the sworn petition alleging repeat violence, sexual violence, or dating violence may be based upon "evidence of those facts and circumstances having circumstantial guarantees of trustworthiness."

Thus, this bill will expand the evidence that is admissible in a petition filed by one parent or guardian of a child against the other parent or guardian. Eyewitness testimony or direct evidence of the need for a protective injunction against a parent will no longer be necessary to obtain an injunction on behalf of a minor living at home.

C. SECTION DIRECTORY:

Section 1. Amends s. 784.046, F.S., to allow introduction of facts and evidence with circumstantial guarantees of trustworthiness when a parent or legal guardian seeks a protective injunction on behalf of a minor child.

Section 2. Provides that this bill shall take effect upon becoming a law.

¹⁷ *Id.* at (2)(c).

¹⁸ *Id.* at (4)(a).

¹⁹ *Id.*

²⁰ *Id.* at (4)(b).

²¹ *Id.* at (6)(a), (7)(a)-(b).

²² *Forrest v. Wilson*, 889 So. 2d 124, 124-25 (Fla. 1st DCA 2004) (citations omitted).

²³ Section 784.046(7)(c); (10).

²⁴ *Id.* at (9)(a).

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:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill does not grant rule-making authority to any administrative agency.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A.