

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1667 CS

Protective Injunctions

SPONSOR(S): Kottkamp

TIED BILLS:

IDEN./SIM. BILLS: SB 512

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Civil Justice Committee</u>	<u>5 Y, 0 N, w/CS</u>	<u>Lammers</u>	<u>Billmeier</u>
2) <u>Justice Council</u>	<u>10 Y, 0 N</u>	<u>Lammers</u>	<u>De La Paz</u>
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 on behalf of a minor child living at home against a person who is not also a parent, stepparent, or guardian of the child. This bill will allow the filing of a petition based on reasonable cause to believe that the minor is a victim of repeat, sexual, or dating violence, 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 a person other than the child's other parent or guardian to provide indirect evidence of the need for an injunction.

B. EFFECT OF PROPOSED CHANGES:

Currently, s. 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.¹

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.² 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.³

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."⁴ Because injunctions protecting against dating violence are such a recent addition to the law, there is no case law interpreting this statute. "Dating violence" is defined as "violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature."⁵

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 relationship⁶

¹ Section 784.046(1)(a), F.S.

² *Id.* at (1)(b).

³ *Id.* at (2)(a).

⁴ Amy Karan & Lauren Lazarus, *Florida's Four Orders of Protection Against Violence: Distinguishing the Difference*, 77-DEC Fla. B.J. 31, 34 (2003). 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, 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.

⁵ Section 784.046(1)(d) F.S.

⁶ *Id.* at (d)1.-3.

Dating violence does not include violence in the context of a casual acquaintanceship or between individuals who have only ordinary business or social association.⁷

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.⁸

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.⁹

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
- 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.¹⁰

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.¹¹

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.¹² A prescribed form for the sworn petition is set forth in statute.¹³

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.¹⁴ An order granting an injunction must be supported by competent, substantial evidence.¹⁵ 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.¹⁶

The court may use a civil or criminal contempt proceeding to enforce a protective injunction.¹⁷

⁷ *Id.* at (d).

⁸ *Id.* at (2)(b).

⁹ *Id.* at (1)(c).

¹⁰ *Id.* at (2)(c).

¹¹ *Id.* at (4)(a).

¹² *Id.*

¹³ *Id.* at (4)(b).

¹⁴ *Id.* at (6)(a), (7)(a)-(b).

¹⁵ *Forrest v. Wilson*, 889 So. 2d 124, 124-25 (Fla. 1st DCA 2004) (citations omitted).

¹⁶ Section 784.046(7)(c); (10).

¹⁷ *Id.* at (9)(a).

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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 living at home, and the party against whom the injunction is sought is not 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 reasonable cause that the minor child is a victim of repeat, sexual, or dating violence.¹⁸

Thus, this bill expands the types of evidence that are admissible in a petition for a protective injunction filed by a parent or legal guardian of a child. Eyewitness testimony or direct physical evidence of the need for a protective injunction will no longer be necessary to obtain an injunction on behalf of a minor living at home unless the injunction is against the minor's other parent, stepparent, or legal guardian.

C. SECTION DIRECTORY:

Section 1. Amends s. 784.046, F.S., concerning the basis upon which a parent may obtain an injunction on behalf of a minor child living at home.

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

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.

¹⁸ In the context of domestic violence injunctions, the reasonable cause standard has been interpreted to mean that the petitioner must demonstrate that there is reasonable cause to believe that he or she is in imminent danger of becoming a victim of domestic violence. *Rey v. Perez-Gurri*, 662 So. 2d 1328, 1330 (Fla. 3d DCA 1995). Examples of evidence of the danger forming the basis for reasonable cause include threats and prior violent or threatening behavior. *See id.*

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

On March 30, 2005, the Civil Justice Committee considered this bill and adopted one amendment, which clarifies that when a parent or guardian seeks a protective injunction on behalf of a minor living at home, the parent may obtain a protective injunction against a person based on reasonable cause rather than eyewitness testimony, as long as that person is not another parent, stepparent, or legal guardian. The bill was reported favorably as amended.