

# 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.)

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Prepared By: Judiciary Committee

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BILL: SB 512

SPONSOR: Senator Aronberg

SUBJECT: Protective Injunctions/Minors

DATE: February 8, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Maclure</u>	<u>JU</u>	<b>Favorable</b>
2.	_____	_____	<u>CF</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

This bill revises existing law relating to protective injunctions, which currently provides that a parent or legal guardian who is seeking a protective injunction for a minor child living at home must have personally eyewitnessed, have affidavits from eyewitnesses, or have direct physical evidence of the basis for the injunction, regardless of the status of the respondent. This bill specifies that the eyewitness and direct-evidence requirements only apply in cases where the respondent is also a parent, stepparent, or legal guardian to the minor child.

This bill substantially amends section 784.046, Florida Statutes.

## II. Present Situation:

### Statutory Authority on Protective Injunctions

A petitioner can seek a protective injunction based on a variety of allegations relating to violence, including domestic, repeat, dating, and sexual violence. Domestic violence injunctions<sup>1</sup> are addressed separately in statute from repeat, sexual, and dating violence injunctions, which are grouped together in the same section of law.<sup>2</sup>

Domestic violence is defined as:

any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false

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<sup>1</sup> See ch. 741, F.S.

<sup>2</sup> See ch. 784, F.S.

imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.<sup>3</sup>

Family or household members are defined as present or former spouses, persons related by blood or marriage, persons living together in a family situation, presently and formerly, and persons who are the parents of a child.<sup>4</sup>

A person has standing in circuit court to file an injunction petition where he or she is the victim of domestic violence or has reasonable cause to believe he or she is in imminent danger of becoming a victim.<sup>5</sup> A form is provided in statute as a sample domestic violence injunction petition.<sup>6</sup>

Separate causes of action are available for injunctions based on repeat violence, dating violence, and sexual violence.<sup>7</sup>

Section 784.046(1)(b), F.S., defines “repeat violence” as consisting of two incidents of violence or stalking committed by the respondent, at least one taking place within six months of the petition filing, directed against the petitioner or the petitioner’s family member.

Sexual violence may include the following:

- Sexual battery,
- A lewd or lascivious act,
- Luring or enticing a child,
- Sexual performance by a child, or
- Any other forcible felony wherein a sexual act is committed or attempted.<sup>8</sup>

Dating violence means violence between those in a continuing and significant, romantic relationship, excluding casual relationships.<sup>9</sup>

Parents or legal guardians have standing to seek protective injunctions on behalf of minor children living at home, for repeat violence, dating violence, or sexual violence (where the sexual violence has been reported to a law enforcement agency or the respondent is serving time in prison and is about to be released within 90 days from the date of the filing).<sup>10</sup> These injunctions may be sought as temporary injunctions on an ex parte, or unilateral, basis and are valid for up to 15 days.<sup>11</sup>

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<sup>3</sup> s. 741.28(2), F.S.

<sup>4</sup> s. 741.28(3), F.S.

<sup>5</sup> s. 741.30(1)(a), F.S.

<sup>6</sup> s. 741.30(3)(b), F.S.

<sup>7</sup> s. 784.046(2), F.S.

<sup>8</sup> s. 784.046(1)(c), F.S.

<sup>9</sup> s. 784.046(1)(d), F.S.

<sup>10</sup> s. 784.046(2), F.S.

<sup>11</sup> s. 784.046(6)(c), F.S.

The sworn petition must contain allegations of incidents of violence, to include specific facts and circumstances that form the basis upon which relief is sought.<sup>12</sup> A protective injunction form is provided in statute.<sup>13</sup> Once a petition is filed, the court is required to expedite the hearing.<sup>14</sup>

The court is specifically authorized to grant an injunction enjoining the respondent from committing any acts of violence, as well as provided broad authority to order such other relief as is necessary to protect the petitioner.<sup>15</sup> Either party may move at any time to modify or dissolve the injunction, and terms of the injunction remain in effect until modified or dissolved.<sup>16</sup>

Violations of injunctions are enforced through either a civil or criminal contempt proceeding, punishable by a monetary assessment.<sup>17</sup> However, if a respondent is charged with a subsequent act of repeat violence, sexual violence, or dating violence in violation of the injunction, he or she must be held in custody until brought before the court for an expedited hearing.<sup>18</sup>

A violation of injunction for any of the following reasons is punishable as a first-degree misdemeanor:

- Refusing to vacate,
- Visiting the petitioner's residence, school, place of employment, or a specified place that the petitioner or identified family or household member frequents,
- Committing subsequent acts of violence against the petitioner,
- Committing any other violation through intended threats or acts, or
- Contacting the petitioner directly or indirectly.<sup>19</sup>

A first-degree misdemeanor is punishable by up to a year in jail and/or up to \$1,000 in fines.<sup>20</sup>

Committing the crime of stalking against the petitioner of an injunction while the injunction is in effect is chargeable as an aggravated stalking, punishable as a third-degree felony, rather than the first-degree misdemeanor that applies to a simple stalking charge.<sup>21</sup>

Currently, for all petitions involving a parent filing on behalf of a minor child living at home, the parent or legal guardian of the child 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 of the petition.<sup>22</sup>

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<sup>12</sup> s. 784.046(4), F.S.

<sup>13</sup> s. 784.046(4)(b), F.S.

<sup>14</sup> s. 784.046(5), F.S.

<sup>15</sup> s. 784.046(6)(a), F.S.

<sup>16</sup> s. 784.046(7)(c), F.S.

<sup>17</sup> s. 784.046(9)(a), F.S.

<sup>18</sup> s. 784.046(9)(b), F.S.

<sup>19</sup> s. 784.047, F.S.

<sup>20</sup> ss. 775.082 and 775.083, F.S.

<sup>21</sup> s. 784.048(4), F.S.

<sup>22</sup> s. 784.046 (4)(a), F.S.

### **Case Law**

Most challenges to injunctions appear to center on what is meant by “repeat violence.” Courts consistently require evidence of two separate incidents of violence.<sup>23</sup> Further, the two acts of violence must be supported by competent, substantial evidence.<sup>24</sup>

### **III. Effect of Proposed Changes:**

This bill revises current law relating to protective injunctions sought for a minor child, which requires petitioner parents or legal guardians to have personally eyewitnessed, receive eyewitness affidavits, or have direct-evidence of the basis of the injunction in all instances, regardless of the relationship between the respondent and child. Language in this bill limits this more stringent requirement only to those instances in which the respondent is also a parent, stepparent, or legal guardian of the minor child.

This bill removes the higher standard of proof for instances where the parent petitioner is filing against a respondent who does not have a parental relationship with the child.

This bill takes effect upon becoming a law.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **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:**

None.

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<sup>23</sup> See *Perez v. Siegel*, 857 So.2d 353 (Fla. 3<sup>rd</sup> DCA 2003); *Gagnard v. Sticht*, 886 So.2d 321 (Fla. 4<sup>th</sup> DCA 2004).

<sup>24</sup> *Delopa v. Cohen*, 873 So.2d 530 (Fla. 4<sup>th</sup> DCA 2004).

C. Government Sector Impact:

This bill may lead to more filings, due to the lowering of proof in cases involving respondents who do not share a parental role with the minor child.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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## **VIII. Summary of Amendments:**

None.

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