

1                   A bill to be entitled  
2           An act relating to domestic violence; amending s. 741.29,  
3           F.S.; providing for access by the alleged victim to  
4           certain materials that are part of an active criminal  
5           investigation of an incident of domestic violence that are  
6           exempt from disclosure under specified provisions;  
7           provides for continuing exemption of material from  
8           disclosure; amending s. 741.30, F.S.; providing for law  
9           enforcement officers to obtain verbal emergency protection  
10          orders immediately following incidents of domestic  
11          violence; providing for officers to reduce such orders to  
12          writing; providing for expiration of such orders;  
13          specifying procedures relating to such orders; creating s.  
14          741.313, F.S.; defining the terms "domestic violence,"  
15          "family or household member," and "victim"; requiring that  
16          an employer permit an employee to take leave from work to  
17          undertake activities resulting from an act of domestic  
18          violence; specifying the activities for which the employee  
19          may take leave; requiring the employee to notify the  
20          employer of the leave; providing exceptions; requiring  
21          that an employer keep information relating to the  
22          employee's leave confidential; prohibiting an employer  
23          from taking certain actions against the employee for  
24          exercising rights specified in the act; providing a  
25          recourse for violation of the act; amending s. 943.1702,  
26          F.S.; requiring collection of statistics on noncriminal  
27          judicial actions concerning domestic violence; providing  
28          an effective date.

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Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (2) of section 741.29, Florida Statutes, is amended to read:

741.29 Domestic violence; investigation of incidents; notice to victims of legal rights and remedies; reporting.--

(2) When a law enforcement officer investigates an allegation that an incident of domestic violence has occurred, the officer shall handle the incident pursuant to the arrest policy provided in s. 901.15(7), and as developed in accordance with subsections (3), (4), and (5). Whether or not an arrest is made, the officer shall make a written police report that is complete and clearly indicates the alleged offense was an incident of domestic violence. Such report shall be given to the officer's supervisor and filed with the law enforcement agency in a manner that will permit data on domestic violence cases to be compiled. Such report must include:

(a) A description of physical injuries observed, if any.

(b) If a law enforcement officer decides not to make an arrest or decides to arrest two or more parties, the officer shall include in the report the grounds for not arresting anyone or for arresting two or more parties.

(c) A statement which indicates that a copy of the legal rights and remedies notice was given to the victim.

Whenever possible, the law enforcement officer shall obtain a written statement from the victim and witnesses concerning the

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57 | alleged domestic violence. The officer shall submit the report  
58 | to the supervisor or other person to whom the employer's rules  
59 | or policies require reports of similar allegations of criminal  
60 | activity to be made. The law enforcement agency shall, without  
61 | charge, send a copy of the initial police report, as well as any  
62 | subsequent, supplemental, or related report, ~~which excludes~~  
63 | ~~victim/witness statements or other materials that are part of an~~  
64 | ~~active criminal investigation and are exempt from disclosure~~  
65 | ~~under chapter 119,~~ to the nearest locally certified domestic  
66 | violence center within 24 hours after the agency's receipt of  
67 | the report. The report furnished to the domestic violence center  
68 | must include a narrative description of the domestic violence  
69 | incident. The report furnished to the domestic violence center  
70 | shall also include victim and witness statements or other  
71 | materials that are part of an active criminal investigation and  
72 | are exempt from disclosure under chapter 119; however, such  
73 | statements and materials shall retain their exempt status when  
74 | held by the locally certified domestic violence center and shall  
75 | not be accessed by persons other than the victim.

76 | Section 2. Subsection (5) of section 741.30, Florida  
77 | Statutes, is amended to read:

78 | 741.30 Domestic violence injunctions, ~~injunction; powers~~  
79 | ~~and duties of court and clerk; petition; notice and hearing;~~  
80 | ~~temporary injunction; issuance of injunction; statewide~~  
81 | ~~verification system; enforcement.--~~

82 | (5) (a) 1.a. In an emergency situation immediately following  
83 | an incident of domestic violence by a household member, an  
84 | emergency protection order may be issued if a law enforcement

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85 officer states under oath to the court in person, by telephone,  
86 in writing, or via facsimile the facts he or she believes show  
87 that an emergency protection order is needed and the court finds  
88 reasonable grounds to believe that the victim or the victim's  
89 child is in immediate danger of domestic violence. Such an  
90 emergency protection order expires 72 hours after issuance or at  
91 the end of the next judicial day, whichever time is later, or  
92 upon request of the victim. The time of expiration shall be  
93 clearly stated on the emergency protection order.

94 b. Following the judge's issuance of the emergency  
95 protection order, the law enforcement officer shall:

96 (I) If the order is verbal, reduce the emergency  
97 protection order to writing on an approved form provided by the  
98 court, outline the grounds justifying issuance, and sign and  
99 date the order.

100 (II) If possible, serve a signed copy of the order on the  
101 offender and victim at the scene of the domestic violence  
102 dispute.

103 (III) Complete the appropriate affidavit of service and  
104 file the affidavit with the issuing court by the close of  
105 business on the next judicial day.

106 (IV) If the order was reduced to writing and signed by the  
107 officer, file the original, signed emergency order with the  
108 issuing court by the close of business on the next judicial day.

109 2. In a nonemergency situation, but when it appears to the  
110 court that an immediate and present danger of domestic violence  
111 exists, the court may grant a temporary injunction ex parte,  
112 pending a full hearing.

113           (b) In either an emergency protection order or an ex parte  
114 temporary injunction order, the court ~~and~~ may grant such  
115 relief as it ~~the court~~ deems proper, including an injunction:

116           1. Restraining the respondent from committing any acts of  
117 domestic violence.

118           2. Awarding to the petitioner the temporary exclusive use  
119 and possession of the dwelling that the parties share or  
120 excluding the respondent from the residence of the petitioner.

121           3. On the same basis as provided in s. 61.13, granting to  
122 the petitioner temporary custody of a minor child. An order of  
123 temporary custody remains in effect until the order expires or  
124 an order is entered by a court of competent jurisdiction in a  
125 pending or subsequent civil action or proceeding affecting the  
126 placement of, access to, parental time with, adoption of, or  
127 parental rights and responsibilities for the minor child.

128           (c) ~~(b)~~ In a hearing ex parte for the purpose of obtaining  
129 an ~~such~~ ex parte temporary injunction, no evidence other than  
130 verified pleadings or affidavits shall be used as evidence,  
131 unless the respondent appears at the hearing or has received  
132 reasonable notice of the hearing. A denial of a petition for an  
133 ex parte injunction shall be by written order noting the legal  
134 grounds for denial. When the only ground for denial is no  
135 appearance of an immediate and present danger of domestic  
136 violence, the court shall set a full hearing on the petition for  
137 injunction with notice at the earliest possible time. Nothing  
138 herein affects a petitioner's right to promptly amend any  
139 petition, or otherwise be heard in person on any petition  
140 consistent with the Florida Rules of Civil Procedure.

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141        (d)-(e) Except for emergency protection orders issued under  
142 subparagraph (a)1., an Any such ex parte temporary injunction  
143 shall be effective for a fixed period not to exceed 15 days. A  
144 full hearing, as provided by this section, shall be set for a  
145 date no later than the date when the emergency protection order  
146 or ex parte temporary injunction ceases to be effective. The  
147 court may grant a continuance of the hearing before or during a  
148 hearing for good cause shown by any party, which shall include a  
149 continuance to obtain service of process. Any emergency  
150 protection order or ex parte temporary injunction shall be  
151 extended if necessary to remain in full force and effect during  
152 any period of continuance.

153        Section 3. Section 741.313, Florida Statutes, is created  
154 to read:

155        741.313 Unlawful action against employees seeking  
156 protection.--

157        (1) As used in this section, the term:

158        (a) "Domestic violence" means domestic violence, as  
159 defined in s. 741.28(2), or any crime the underlying factual  
160 basis of which has been found by a court to include an act of  
161 domestic violence.

162        (b) "Family or household member" has the same meaning as  
163 in s. 741.28.

164        (c) "Victim" means an individual who has been subjected to  
165 domestic violence.

166        (2) (a) An employer shall permit an employee to request or  
167 to take up to 3 working days of leave from work in any 90-day  
168 period if the employee or a family or household member of the

169 employee is the victim of domestic violence. This leave may be  
 170 with or without pay, at the discretion of the employer.

171 (b) This section applies if an employee uses the leave  
 172 from work to:

173 1. Seek an injunction for protection against domestic  
 174 violence or an injunction for protection in cases of repeat  
 175 violence, dating violence, or sexual violence;

176 2. Obtain medical care or mental health counseling, or  
 177 both, for the employee or a family or household member to  
 178 address physical or psychological injuries resulting from the  
 179 act of domestic violence;

180 3. Obtain services from a victim services organization,  
 181 including, but not limited to, a domestic violence shelter or  
 182 program or a rape crisis center as a result of the act of  
 183 domestic violence;

184 4. Make the employee's home secure from the perpetrator of  
 185 the domestic violence or to seek new housing to escape the  
 186 perpetrator; or

187 5. Seek legal assistance to address issues arising from  
 188 the act of domestic violence and to attend and prepare for  
 189 court-related proceedings arising from the act of domestic  
 190 violence.

191 (3) This section applies to an employer who employs 50 or  
 192 more employees and to an employee who has been employed by the  
 193 employer for 12 or more months.

194 (4) (a) Except in cases of imminent danger to the health or  
 195 safety of the employee or to the health or safety of a family or  
 196 household member, an employee seeking leave from work under this

197 section must provide his or her employer with appropriate  
198 advance notice of the leave as may be required by the employer's  
199 policy and with sufficient documentation of the act of domestic  
200 violence as may be required by the employer.

201 (b) An employee seeking leave under this section must,  
202 before receiving the leave, exhaust all annual or vacation  
203 leave, personal leave, and sick leave, if applicable, which is  
204 available to the employee, unless the employer waives this  
205 requirement.

206 (c) An employer must keep all information relating to the  
207 employee's leave under this section confidential.

208 (5)(a) An employer may not interfere with, restrain, or  
209 deny the exercise of or any attempt by an employee to exercise  
210 any right provided under this section.

211 (b) An employer may not discharge, demote, suspend,  
212 retaliate against, or in any other manner discriminate against  
213 an employee for exercising his or her rights under this section.

214 (c) An employee has no greater rights to continued  
215 employment or to other benefits and conditions of employment  
216 than if the employee was not entitled to leave under this  
217 section. This section does not limit the employer's right to  
218 discipline or terminate any employee for any reason, including,  
219 but not limited to, reductions in workforce or termination for  
220 cause or for no reason at all, other than exercising his or her  
221 rights under this section.

222 (6) Notwithstanding any other law to the contrary, the  
223 sole remedy for any person claiming to be aggrieved by a  
224 violation of this section is to bring a civil suit for damages



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225 or equitable relief, or both, in circuit court. The person may  
226 claim as damages all wages and benefits that would have been due  
227 the person up to and including the date of the judgment had the  
228 act violating this section not occurred. However, this section  
229 does not relieve the person from the obligation to mitigate his  
230 or her damages.

231 Section 4. Subsection (2) of section 943.1702, Florida  
232 Statutes, is amended to read:

233 943.1702 Collection of statistics on domestic violence.--

234 (2) Each agency in the state that ~~which~~ is involved with  
235 the enforcement, monitoring, or prosecution of crimes of  
236 domestic violence or, as to noncriminal actions related to  
237 domestic violence, including petitions seeking injunctions for  
238 protection, the judicial branch, shall collect and maintain  
239 records of each domestic violence incident for access by  
240 investigators preparing for bond hearings and prosecutions for  
241 acts of domestic violence. This information shall be provided to  
242 the court at first appearance hearings and all subsequent  
243 hearings.

244 Section 5. This act shall take effect October 1, 2006.