

## CHAMBER ACTION

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1 The Criminal Justice Committee recommends the following:

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3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to domestic violence; amending s. 741.30,  
7 F.S.; providing for law enforcement officers to obtain  
8 verbal emergency protection orders at the request of the  
9 victim immediately following incidents of domestic  
10 violence; providing for officers to reduce such orders to  
11 writing; providing for expiration of such orders;  
12 specifying procedures relating to such orders; creating s.  
13 741.313, F.S.; defining the terms "domestic violence,"  
14 "employer," "family or household member," and "victim";  
15 requiring that certain employers permit an employee to  
16 take leave from work, with or without pay, to undertake  
17 activities resulting from an act of domestic violence;  
18 specifying the activities for which the employee may take  
19 leave; requiring the employee to notify the employer of  
20 the leave; providing exceptions; requiring that an  
21 employer keep information relating to the employee's leave  
22 confidential; prohibiting an employer from taking certain  
23 actions against the employee for exercising rights

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24 specified in the act; providing a recourse for violations  
 25 of the act; amending s. 943.1702, F.S.; requiring  
 26 collection of statistics on noncriminal judicial actions  
 27 concerning domestic violence; providing an effective date.

28

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

30

31 Section 1. Subsection (5) of section 741.30, Florida  
 32 Statutes, is amended to read:

33 741.30 Domestic violence injunctions; ~~injunction; powers~~  
 34 ~~and duties of court and clerk; petition; notice and hearing;~~  
 35 ~~temporary injunction; issuance of injunction; statewide~~  
 36 ~~verification system; enforcement.--~~

37 (5) (a) 1.a. In an emergency situation immediately following  
 38 an incident of domestic violence by a household member, an  
 39 emergency protection order may be issued, at the request of the  
 40 victim, if a law enforcement officer states under oath to the  
 41 court in person, by telephone, in writing, or via facsimile the  
 42 facts he or she believes show that an emergency protection order  
 43 is needed and the court finds reasonable grounds to believe that  
 44 the victim or the victim's child is in immediate and present  
 45 danger of domestic violence. Such an emergency protection order  
 46 expires 72 hours after issuance or at the end of the next  
 47 judicial day, whichever time is later, or upon request of the  
 48 victim. The time of expiration shall be clearly stated on the  
 49 emergency protection order.

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

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52        (I) If the order is verbal, reduce the emergency  
53 protection order to writing on an approved form provided by the  
54 court, outline the grounds justifying issuance, and sign and  
55 date the order.

56        (II) If possible, serve a signed copy of the order on the  
57 offender and victim at the scene of the domestic violence  
58 dispute.

59        (III) Complete the appropriate affidavit of service and  
60 file the affidavit with the issuing court by the close of  
61 business on the next judicial day.

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

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

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

72            1. Restraining the respondent from committing any acts of  
73 domestic violence.

74            2. Awarding to the petitioner the temporary exclusive use  
75 and possession of the dwelling that the parties share or  
76 excluding the respondent from the residence of the petitioner.

77            3. On the same basis as provided in s. 61.13, granting to  
78 the petitioner temporary custody of a minor child. An order of  
79 temporary custody remains in effect until the order expires or

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80 | an order is entered by a court of competent jurisdiction in a  
81 | pending or subsequent civil action or proceeding affecting the  
82 | placement of, access to, parental time with, adoption of, or  
83 | parental rights and responsibilities for the minor child.

84 |        ~~(c)(b)~~ In a hearing ex parte for the purpose of obtaining  
85 | an ~~such~~ ex parte temporary injunction, no evidence other than  
86 | verified pleadings or affidavits shall be used as evidence,  
87 | unless the respondent appears at the hearing or has received  
88 | reasonable notice of the hearing. A denial of a petition for an  
89 | ex parte injunction shall be by written order noting the legal  
90 | grounds for denial. When the only ground for denial is no  
91 | appearance of an immediate and present danger of domestic  
92 | violence, the court shall set a full hearing on the petition for  
93 | injunction with notice at the earliest possible time. Nothing  
94 | herein affects a petitioner's right to promptly amend any  
95 | petition, or otherwise be heard in person on any petition  
96 | consistent with the Florida Rules of Civil Procedure.

97 |        ~~(d)(e)~~ Except for emergency protection orders issued under  
98 | subparagraph (a)1., an ~~Any such~~ ex parte temporary injunction  
99 | shall be effective for a fixed period not to exceed 15 days. A  
100 | full hearing, as provided by this section, shall be set for a  
101 | date no later than the date when the emergency protection order  
102 | or ex parte temporary injunction ceases to be effective. The  
103 | court may grant a continuance of the hearing before or during a  
104 | hearing for good cause shown by any party, which shall include a  
105 | continuance to obtain service of process. Any emergency  
106 | protection order or ex parte temporary injunction shall be

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107 extended if necessary to remain in full force and effect during  
108 any period of continuance.

109 Section 2. Section 741.313, Florida Statutes, is created  
110 to read:

111 741.313 Unlawful action against employees seeking  
112 protection.--

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

114 (a) "Domestic violence" means domestic violence, as  
115 defined in s. 741.28(2); stalking or aggravated stalking, as  
116 defined in s. 784.048; sexual battery, as defined in s.  
117 794.011(1); dating violence, as defined in s. 784.046(1); or any  
118 crime the underlying factual basis of which has been found by a  
119 court to include an act of domestic violence.

120 (b) "Employer" has the same meaning as in s.  
121 440.02(16)(a).

122 (c) "Family or household member" has the same meaning as  
123 in s. 741.28.

124 (d) "Victim" means an individual who has been subjected to  
125 domestic violence.

126 (2)(a) An employer shall permit an employee to request or  
127 to take up to 3 working days of leave from work in any 12-month  
128 period, with or without pay, if the employee or a family or  
129 household member of the employee is the victim of domestic  
130 violence.

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

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133        1. Seek an injunction for protection against domestic  
134 violence or an injunction for protection in cases of repeat  
135 violence, dating violence, or sexual violence;

136        2. Obtain medical care or mental health counseling, or  
137 both, for the employee or a family or household member to  
138 address physical or psychological injuries resulting from the  
139 act of domestic violence;

140        3. Obtain services from a victim services organization,  
141 including, but not limited to, a domestic violence shelter or  
142 program or a rape crisis center as a result of the act of  
143 domestic violence;

144        4. Make the employee's home secure from the perpetrator of  
145 the domestic violence or to seek new housing to escape the  
146 perpetrator; or

147        5. Seek legal assistance to address issues arising from  
148 the act of domestic violence and to attend and prepare for  
149 court-related proceedings arising from the act of domestic  
150 violence.

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

154        (4) (a) Except in cases of imminent danger to the health or  
155 safety of the employee or to the health or safety of a family or  
156 household member, an employee seeking leave from work under this  
157 section must provide his or her employer with appropriate  
158 advance notice of the leave as may be required by the employer's  
159 policy and with sufficient documentation of the act of domestic  
160 violence as may be required by the employer.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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161        (b) An employee seeking leave under this section must,  
162 before receiving the leave, exhaust all annual or vacation  
163 leave, personal leave, and sick leave, if applicable, which is  
164 available to the employee, unless the employer waives this  
165 requirement.

166        (c)1. A private employer must keep all information  
167 relating to the employee's leave under this section  
168 confidential.

169        2. An agency, as defined in s. 119.011, must keep all  
170 information relating to the employee's leave under this section  
171 confidential and exempt pursuant to this section.

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

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

178        (c) An employee has no greater rights to continued  
179 employment or to other benefits and conditions of employment  
180 than if the employee was not entitled to leave under this  
181 section. This section does not limit the employer's right to  
182 discipline or terminate any employee for any reason, including,  
183 but not limited to, reductions in workforce or termination for  
184 cause or for no reason at all, other than exercising his or her  
185 rights under this section.

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

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189 or equitable relief, or both, in circuit court. The person may  
190 claim as damages all wages and benefits that would have been due  
191 the person up to and including the date of the judgment had the  
192 act violating this section not occurred but may not claim wages  
193 or benefits for a period of leave granted without pay as  
194 provided in paragraph (2) (a). However, this section does not  
195 relieve the person from the obligation to mitigate his or her  
196 damages.

197 Section 3. Subsection (2) of section 943.1702, Florida  
198 Statutes, is amended to read:

199 943.1702 Collection of statistics on domestic violence.--

200 (2) Each agency in the state that ~~which~~ is involved with  
201 the enforcement, monitoring, or prosecution of crimes of  
202 domestic violence or, as to noncriminal actions related to  
203 domestic violence, including petitions seeking injunctions for  
204 protection, the judicial branch, shall collect and maintain  
205 records of each domestic violence incident for access by  
206 investigators preparing for bond hearings and prosecutions for  
207 acts of domestic violence. This information shall be provided to  
208 the court at first appearance hearings and all subsequent  
209 hearings.

210 Section 4. This act shall take effect October 1, 2006.