

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.)

Prepared By: Judiciary Committee

BILL: SB 200

INTRODUCER: Senator Aronberg

SUBJECT: Protective Injunction/Govt. Employer

DATE: December 2, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Chinn	Maclure	JU	Pre-meeting
2.			GO	
3.				
4.				
5.				
6.				

I. Summary:

This bill revises existing law relating to who may file for a protective injunction in cases of repeat violence. Currently, the law provides that a victim of repeat violence, or a parent or legal guardian who is seeking an injunction for protection from repeat violence for a minor child who is living at home, has standing in court to file for this type of protective injunction. The proposed language would allow a governmental employer to file for a protective injunction for an employee who is the victim of repeat violence in the workplace.

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 such as domestic, repeat, dating, and sexual violence. Repeat violence injunctions are grouped in the same section of law as sexual and dating violence injunctions,¹ while domestic violence injunctions are addressed in a separate chapter.²

Section 784.046(1)(b), F.S., defines “repeat violence” as 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 immediate family member.

¹ See ch. 784, F.S.

² See ch. 741, F.S.

A person has standing in circuit court to file a petition for a protective injunction against repeat violence where he or she is the victim of repeat violence or is the parent or legal guardian of any minor child who is living at home and who seeks protection from repeat violence.³ A sample form is provided in statute for filing a petition for a protective injunction against repeat violence.⁴

The sworn petition must contain allegations of incidents of violence, including specific facts and circumstances, to form the basis upon which a protective injunction is sought.⁵ Once a petition is filed, the court is required to expedite the hearing.⁶ Before the full hearing on the injunction, the court may grant an immediate temporary injunction in an ex parte hearing (i.e., the respondent does not have to be present) if there is an immediate and present danger of violence.⁷ A temporary injunction is only valid for up to 15 days, during which time the full hearing must take place unless good cause is shown.⁸

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.⁹ Section 784.046, F.S., which creates a cause of action for a protective injunction, does not specify what is encompassed by other relief, but the statute providing for penalties for a violation of injunction provides insight into the types of restrictions a judge might order.¹⁰

Among the acts that a respondent could do which constitute a violation of a protective injunction are:

- 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.¹¹

Violations of injunctions are enforced through either a civil or criminal contempt proceeding, punishable by a monetary assessment.¹² The commission of any of these acts, specifically, constitutes a first-degree misdemeanor and is punishable by up to a year in jail and/or up to \$1,000 in fines.¹³

³ s. 784.046(2)(a), F.S.

⁴ s. 784.046(4)(b), F.S.

⁵ s. 784.046(4), F.S.

⁶ s. 784.046(5), F.S.

⁷ s. 784.046(6)(a), F.S.

⁸ s. 784.046(6)(c), F.S.

⁹ s. 784.046(7), F.S.

¹⁰ See s. 784.047, F.S.

¹¹ s. 784.047, F.S.

¹² s. 784.046(9)(a), F.S.

¹³ ss. 784.047; 775.082 and 775.083, F.S.

If a respondent is charged with a subsequent act of repeat violence, he or she must be held in custody until brought before the court for an expedited hearing.¹⁴ Additionally, if one commits the crime of stalking against the petitioner of an injunction while the injunction is in effect, the respondent may be charged with aggravated stalking, punishable as a third-degree felony, rather than the first-degree misdemeanor that applies to a simple stalking charge.¹⁵

Either party—the petitioner or the respondent—may move at any time to modify or dissolve the injunction, and terms of the injunction remain in effect until modified or dissolved.¹⁶

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.¹⁷ Further, the two acts of violence must be supported by competent substantial evidence.¹⁸

III. Effect of Proposed Changes:

Senate Bill 200 would revise existing law to provide standing for a governmental employer to file for a protective injunction for an employee who is experiencing repeat violence in a public workplace. This would add to the standing already provided in statute to victims and parents or legal guardians of minors who are victims of repeat violence.

The proposed language does not address the following:

- Whether the employee must consent for the employer to be able to obtain a protective injunction on the employee’s behalf;
- Whether the employee would be considered a “party” for purposes of standing to request that the court dismiss or modify the injunction;¹⁹
- Whether and to what extent the employer would need to provide direct evidence of the repeat violence as is generally required to file a petition for a protective injunction;²⁰
- Whether the scope of the protective injunction would cover areas outside of the workplace;
- Whether the bill would only apply to violence stemming from the performance of one’s official duties as opposed to other violence (e.g., domestic violence) that happens to occur in the workplace; or
- How “governmental employer” is defined (i.e., local, county, state levels of government).

The Legislature may wish to revise the proposed language to address these matters to avoid any difficulties in implementation.

¹⁴ s. 784.046(9)(b), F.S.

¹⁵ s. 784.048(4), F.S.

¹⁶ s. 784.046(7)(c), F.S.

¹⁷ See *Perez v. Siegel*, 857 So. 2d 353 (Fla. 3d DCA 2003); *Gagnard v. Sticht*, 886 So. 2d 321 (Fla. 4th DCA 2004).

¹⁸ *Delopa v. Cohen*, 873 So. 2d 530 (Fla. 4th DCA 2004).

¹⁹ See s. 784.046(10), F.S.

²⁰ See s. 784.046(4), F.S.

The 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.

C. Government Sector Impact:

Section 784.046(3)(b), F.S., prohibits petitioners from being assessed a fee for filing a petition. To cover the cost of the law enforcement agency serving the injunction and the clerk's administrative costs, the statute provides a process for the Office of the State Courts Administrator to reimburse the court clerk \$40 for each petition that is filed. Reimbursement to the clerk for processing petitions is subject to legislative appropriation, and thus far the Legislature has not appropriated funds for this reimbursement. It is uncertain whether adding another class to those who have standing to petition for a protective injunction would increase the number of petitions filed and the amount of unreimbursed fees to the clerk of the court.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

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