

# 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: Commerce and Consumer Services Committee

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BILL: CS/SB 498

INTRODUCER: Committee on Commerce and Consumer Services and Senator Aronberg

SUBJECT: Domestic Violence

DATE: March 28, 2006

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sanford</u>	<u>Whiddon</u>	<u>CF</u>	<u>Fav/2 amendments</u>
2.	<u>Gordon</u>	<u>Cooper</u>	<u>CM</u>	<u>Fav/CS</u>
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

This committee substitute (CS) permits a court to issue an emergency protection order immediately following an incidence of domestic violence if a law enforcement officer states, under oath, facts that demonstrate that such an order is needed and a court finds reasonable grounds to believe that the victim or the victim's child is in immediate danger of domestic violence. The court has the discretion to grant the same relief as currently provided for temporary injunctions such as, for example, use of the dwelling and custody of the children. Emergency protection orders expire 72 hours after issuance or at the end of the next judicial day, whichever is later, or at the request of the victim.

The CS requires employers to allow employees to request or take up to three working days of leave, with or without pay, within a 90-day period if the employee is the victim of domestic violence and the leave is sought to:

- Seek an injunction for protection against domestic violence or an injunction for protection in cases of repeat violence, dating violence, or sexual violence;
- Obtain medical care or mental health counseling, or both, for the employee or a family or household member to address physical or psychological injuries resulting from the act of domestic violence;
- Obtain services from a victim-services organization, including, but not limited to, a domestic violence shelter, program, or a rape crisis center as a result of the act of domestic violence;
- Make the employee's home secure from the perpetrator of the domestic violence or to seek new housing to escape the perpetrator; or

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

The CS also defines “employer” as the term is defined in s. 440.02(16)(a), F.S., a definition which encompasses both public and private employers.

Application of the CS is limited to employers with 50 or more employees and to employees who have been employed by the employer for at least 12 months. The employee is required to provide advance notice of the leave except in cases of imminent danger to the employee or the employee’s family. The employer is authorized to require documentation of the act of domestic violence. The employee must use all available annual or vacation leave, personal leave, and sick leave available to the employee prior to using the leave provided for in this CS, unless this requirement is waived by the employer.

The employer is required to keep all information relating to the employee’s leave under this section confidential. The employer is prohibited from taking any disciplinary action against the employee for exercising rights under this CS, but the employee is not granted any rights under the CS to continued employment or other benefits not available outside the provisions of the CS.

The remedy for damages to an employee aggrieved under the CS is limited to a civil suit for damages or equitable relief in the circuit court. The employee may claim as damages all wages and benefits that would have been due the person up to and including the date of judgment had the act violating this CS not occurred, but the employee is not relieved from the obligation to mitigate damages.

The CS provides for an effective date of July 1, 2006.

This CS amends sections 741.30 and 943.1702 of the Florida Statutes.

This CS creates section 741.313 of the Florida Statutes.

## II. Present Situation:

### *Overview*

Nationally, more than 1.5 million adults are victims of domestic violence each year, and more than 85 percent of the victims are women.<sup>1</sup> This same source estimates that U.S. employers lost between \$3 billion and \$13 billion each year as a result of domestic violence when lost productivity of victims and the cost of training replacement employees are taken into consideration.<sup>2</sup>

Only six states (California, Colorado, Hawaii, Illinois, Maine, and North Carolina) have to date enacted legislation giving domestic violence victims specific job protections.<sup>3</sup>

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<sup>1</sup> Legal Momentum, an advocacy and research organization based in New York City, as quoted in *When Home Comes to Work*, ABA Journal (Sept 2005), at 42.

<sup>2</sup> *Id.* at 44.

<sup>3</sup> *When Home Comes to Work*, ABA Journal (Sept 2005), at 44.

After years of steady increases in domestic violence numbers, the total number of reported domestic violence offenses<sup>4</sup> reported to law enforcement agencies in Florida declined slightly in 1998, and has continued the same slight decline through 2004, according to the Florida Department of Law Enforcement (FDLE).<sup>5</sup>

***Domestic Violence: Injunctions and Protective Orders***

Under s. 741.30, F.S., any person who believes he or she is in imminent danger of becoming the victim of an act of domestic violence may file a sworn petition with a court for an injunction for protection against domestic violence. Once a petition has been filed, an *ex parte* hearing<sup>6</sup> will be held in which a judge, pending a full hearing, either grants or denies a temporary injunction.

Section 741.30, F.S., provides that a temporary injunction may include the following relief:

- Restraining the respondent from committing any acts of domestic violence;
- Awarding the petitioner temporary exclusive use of a dwelling; and
- Awarding the petitioner temporary custody of a minor child.

The respondent to a temporary injunction must be served with the injunction before the injunction can be enforced. Temporary injunctions are only effective for up to 15 days, during which time a full hearing is scheduled and held.

***Domestic Violence: Employment Issues***

The federal Family and Medical Leave Act of 1993 (FMLA),<sup>7</sup> while not specifically directed to domestic violence, requires employers to grant up to 12 weeks of unpaid leave during any 12-month period for specified family and medical needs. The U.S. Office of Personnel Management has suggested that this act, which affects any employer with more than 50 employees which is engaged in commerce or any activity affecting commerce, is available to employees who suffer from the effects of physical or emotional abuse, either of themselves or their children, which require medical attention.<sup>8</sup>

In 1996, the Governor and Cabinet of Florida developed a model policy on Domestic Violence in the Workplace. It was described as “a standard to which agencies may look for guidance and policy development,”<sup>9</sup> but left to each agency the flexibility to address individual agency needs. The policy included a provision that directed that:

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<sup>4</sup> Domestic violence crimes include murder, manslaughter, forcible rape, forcible sodomy, forcible fondling, aggravated assault, aggravated stalking (1996-present), simple assault, simple stalking, threat/intimidation and arson (1992-1995), according to FDLE.

<sup>5</sup> FDLE reports a total of 131,152 domestic violence crimes in 1995 and 119,772 in 2004. The rate of incidence has fallen from 926.9 to 683.8 per 100,000 population during the same time period.

<sup>6</sup> An *ex parte* hearing involves one of the parties to the action and the judge and is usually conducted outside of the presence of and without notice to the other party. See Black’s Law Dictionary, 6<sup>th</sup> Ed., p. 398.

<sup>7</sup> Public Law 103-3.

<sup>8</sup> *Responding to Domestic Violence: Where Federal Employees Can Find Help*, U.S. Office of Personnel Management, <http://www.opm.gov/ehs/workplac/html/domestic.html>, (accessed December 27, 2005).

<sup>9</sup> *State of Florida Model Policy on Domestic Violence in the Workplace*, The Third Report of the Governor’s Task Force on Domestic and Sexual Violence (1997), p. 1.

The agency shall grant leave with or without pay, adjust schedules or work assignments, as appropriate, for employees who are victims of domestic violence to include time off for medical and legal assistance, court appearances, counseling, relocation, or to make other necessary arrangements to provide for victim safety.<sup>10</sup>

The Florida Department of Management Services has provided by rule<sup>11</sup> that executive agencies must approve parental or family medical leave to assist employees in meeting family needs, specifically allowing leave to be granted for up to six months for a family member's serious health condition<sup>12</sup> as defined in the FMLA. Additionally, agencies are required to approve up to 30 days family leave for "non-medical family responsibilities," which would appear to be broad enough to include domestic violence-related issues. If the employee is granted such leave, the employee may request to use accrued leave credits. If the employee does not so request, the agency may place the employee on leave without pay.

At least one executive agency, the Department of Children and Families (DCF), has in place an operating policy which addresses employees who are victims of domestic violence. In regard to the use of leave time, this policy provides:

...The department shall grant the use of accrued leave time or adjust an employee's work schedule or work assignment, as appropriate, for an employee who is a victim of domestic violence. This may include approved time off for medical and legal assistance, court appearances, counseling, relocation, or to make other necessary arrangements to provide for the victim's safety and the safety of any of the victim's children, if necessary...<sup>13</sup>

Policies have also been adopted at the county level to address these concerns. For example, the Miami-Dade County Code entitles domestic violence victims to up to 30 days of unpaid leave for medical or dental care, legal assistance, court appearances, counselor or supportive services, or any other arrangements needed because of domestic violence. The ordinance applies to leave to obtain orders of protection and for divorce, child custody, and child support hearings. The employee is required to exhaust all paid vacation and personal leave prior to taking leave under this provision. The employer may request certification from a health care provider, attorney of record, counselor, law enforcement agency, clergy, or domestic violence service provider that the employee is being subjected to domestic or repeat violence and is in need of time off for one of the permitted reasons.<sup>14</sup> Miami-Dade County officials report that since the ordinance was enacted in 1999, only six employees have availed themselves of its protection, for a total of 461.25 hours of unpaid leave.<sup>15</sup>

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<sup>10</sup> *Id.*, paragraph (5)(E), at 177.

<sup>11</sup> 60L-34.0051, FAC.

<sup>12</sup> The FMLA defines a serious health condition as an illness, injury, impairment or physical or mental condition that involves (1) inpatient care in a hospital, hospice or residential medical care facility or (2) continuing treatment by a health care provider. *See* 29 CFR 825.114, [http://www.dol.gov/dol/allcfr/ESA/Title\\_29/Part\\_825/29CFR825.114.htm](http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_825/29CFR825.114.htm). (accessed February 22, 2006).

<sup>13</sup> CFOP 60-11 (July 1, 2001), subparagraph 1-7(b)(3), at 1-6.

<sup>14</sup> County Ordinance 99.5.

<sup>15</sup> Two employees used 16 hours each; two used between 50-100 hours each, and two used 100-200 hours each. One employee used the leave in 2001, two in 2002, one in 2003, and two in 2004.

Florida law currently prohibits dismissing from employment any person who testifies in a judicial proceeding in response to a subpoena<sup>16</sup> but provides none of the other protections enumerated in the CS to victims of domestic violence.

The Florida courts have considered at least three cases in which victims sought unemployment compensation after being dismissed from their jobs for excessive absenteeism related to domestic violence or after leaving their employment as a result of domestic violence concerns. While these three cases are not precisely on point, since they deal with unemployment compensation rather than entitlement to leave, they are illustrative of the lack of clarity in the judicial decision making regarding employees who are victims of domestic violence.

In the earliest of the three cases,<sup>17</sup> the court held that the claimant's concerns for her personal safety provided good cause for leaving her employment, particularly due to robberies which occurred at the workplace while she was there. In the second case,<sup>18</sup> the court found that an employee whose excessive absenteeism was caused by domestic problems and by injuries received from her husband was not guilty of misconduct related to work and was thus eligible for unemployment compensation. In the final case,<sup>19</sup> the court decided that a claimant who resigned her job and moved to another state was not entitled to compensation since she had voluntarily left her employment without good cause attributable to her employer. The last two cases were actually decided on the same day by the same court.

The personnel records of public employees are currently public record, unless specifically excluded from the requirements of Florida's public records law, s. 119.01, F.S.

### III. Effect of Proposed Changes:

The CS permits a court to issue an emergency protection order immediately following an incidence of domestic violence if a law enforcement officer states, under oath, facts that demonstrate that such an order is needed and a court finds reasonable grounds to believe that the victim or the victim's child is in immediate danger of domestic violence. The court has the discretion to grant the same relief as currently provided for temporary injunctions such as, for example, use of the dwelling and custody of the children. Emergency protection orders expire 72 hours after issuance or at the end of the next judicial day, whichever is later, or at the request of the victim.

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<sup>16</sup> Section 92.57, F.S.

<sup>17</sup> *Wall v. Unemployment Claims Commission*, 682 So.2d 1187 (2<sup>nd</sup> DCA 1996).

<sup>18</sup> *Gilbert v. Department of Corrections*, 696 So.2d 416 (1<sup>st</sup> DCA 1997).

<sup>19</sup> *Hall v. Florida Unemployment Appeals Commission*, 697 So.2d 541 (1<sup>st</sup> DCA 1997).

- Obtain services from a victim-services organization, including, but not limited to, a domestic violence shelter, program, or a rape crisis center as a result of the act of domestic violence;
- Make the employee's home secure from the perpetrator of the domestic violence or to seek new housing to escape the perpetrator; or
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The CS defines employer as it is currently defined in s. 440.02(16)(a), F.S. That definition includes both public and private employers.

The employee must use all available annual or vacation leave, personal leave, and sick leave available to the employee prior to using the leave provided for in this CS, unless this requirement is waived by the employer.

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The remedy for damages to an employee aggrieved under the CS is limited to a civil suit for damages or equitable relief in the circuit court. The employee may claim as damages all wages and benefits that would have been due the person, up to and including the date of judgment, had the act violating this CS not occurred, but the employee is not relieved from the obligation to mitigate damages.

The CS requires the judicial branch to collect and maintain records regarding noncriminal actions related to domestic violence, including petitions seeking injunctions for protection, for access by investigators preparing for bond hearings and prosecutions for acts of domestic violence.

The CS provides for an effective date of July 1, 2006.

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

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

None.

**B. Public Records/Open Meetings Issues:**

The CS requires employers to keep confidential all information relating to an employee's leave granted under this section. However, if the employee is a public employee, the personnel record is a public record unless specifically exempted from Florida's public records law.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Employers will be required to grant leave to employees, whether or not the employee has accrued sufficient paid leave to cover the absence, who are victims of domestic violence. Employees will be able to retain employment despite absences caused by domestic violence.

**C. Government Sector Impact:**

Employers will be required to grant leave to employees, whether or not the employee has accrued sufficient paid leave to cover the absence, who are victims of domestic violence. However, since many state agencies may have already provided (in their personnel policies) for this leave as the result of the 1997 Model Policy, state agencies may be less affected than private employers.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

A companion bill, SB 1800, has been filed to provide the public records exemption needed to keep confidential the information covered by this CS in public employee personnel files.





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

None.

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

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