

By the Committee on Commerce and Consumer Services; and
Senator Aronberg

577-2053-06

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

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30 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Subsection (5) of section 741.30, Florida
2 Statutes, is amended to read:

3 741.30 Domestic violence ~~injunctions; injunction;~~
4 ~~powers and duties of court and clerk; petition; notice and~~
5 ~~hearing; temporary injunction; issuance of injunction;~~
6 ~~statewide verification system; enforcement.--~~

7 (5)(a)1.a. In an emergency situation immediately
8 following an incident of domestic violence by a household
9 member, an emergency protection order may be issued if a law
10 enforcement officer states under oath to the court in person,
11 by telephone, in writing, or via facsimile the facts he or she
12 believes show that an emergency protection order is needed and
13 the court finds reasonable grounds to believe that the victim
14 or the victim's child is in immediate danger of domestic
15 violence. Such an emergency protection order expires 72 hours
16 after issuance or at the end of the next judicial day,
17 whichever time is later, or upon request of the victim. The
18 time of expiration shall be clearly stated on the emergency
19 protection order.

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

22 (I) If the order is verbal, reduce the emergency
23 protection order to writing on an approved form provided by
24 the court, outline the grounds justifying issuance, and sign
25 and date the order.

26 (II) If possible, serve a signed copy of the order on
27 the offender and victim at the scene of the domestic violence
28 dispute.

29 (III) Complete the appropriate affidavit of service
30 and file the affidavit with the issuing court by the close of
31 business on the next judicial day.

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

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

9 **(b)** In either an emergency protection order or an ex
10 parte temporary injunction order, the court, ~~and~~ may grant
11 such relief as it ~~the court~~ deems proper, including an
12 injunction:

13 1. Restraining the respondent from committing any acts
14 of domestic violence.

15 2. Awarding to the petitioner the temporary exclusive
16 use and possession of the dwelling that the parties share or
17 excluding the respondent from the residence of the petitioner.

18 3. On the same basis as provided in s. 61.13, granting
19 to the petitioner temporary custody of a minor child. An order
20 of temporary custody remains in effect until the order expires
21 or an order is entered by a court of competent jurisdiction in
22 a pending or subsequent civil action or proceeding affecting
23 the placement of, access to, parental time with, adoption of,
24 or parental rights and responsibilities for the minor child.

25 **(c)(b)** ~~In a hearing ex parte for the purpose of~~
26 obtaining an ~~such~~ ex parte temporary injunction, no evidence
27 other than verified pleadings or affidavits shall be used as
28 evidence, unless the respondent appears at the hearing or has
29 received reasonable notice of the hearing. A denial of a
30 petition for an ex parte injunction shall be by written order
31 noting the legal grounds for denial. When the only ground for

1 denial is no appearance of an immediate and present danger of
2 domestic violence, the court shall set a full hearing on the
3 petition for injunction with notice at the earliest possible
4 time. Nothing herein affects a petitioner's right to promptly
5 amend any petition, or otherwise be heard in person on any
6 petition consistent with the Florida Rules of Civil Procedure.

7 ~~(d)(e)~~ Except for emergency protection orders issued
8 under subparagraph (a)1., an ~~Any such~~ ex parte temporary
9 injunction shall be effective for a fixed period not to exceed
10 15 days. A full hearing, as provided by this section, shall be
11 set for a date no later than the date when the emergency
12 protection order or ex parte temporary injunction ceases to be
13 effective. The court may grant a continuance of the hearing
14 before or during a hearing for good cause shown by any party,
15 which shall include a continuance to obtain service of
16 process. Any emergency protection order or ex parte temporary
17 injunction shall be extended if necessary to remain in full
18 force and effect during any period of continuance.

19 Section 2. Section 741.313, Florida Statutes, is
20 created to read:

21 741.313 Unlawful action against employees seeking
22 protection.--

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

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

28 (b) "Employer" has the same meaning as in s.
29 440.02(16)(a).

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

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

3 (2)(a) An employer shall permit an employee to request
4 or take up to 3 working days of leave from work in any 90-day
5 period if the employee or a family or household member of an
6 employee is the victim of domestic violence. This leave may be
7 with or without pay, at the discretion of the employer.

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

10 1. Seek an injunction for protection against domestic
11 violence or an injunction for protection in cases of repeat
12 violence, dating violence, or sexual violence;

13 2. Obtain medical care or mental health counseling, or
14 both, for the employee or a family or household member to
15 address physical or psychological injuries resulting from the
16 act of domestic violence;

17 3. Obtain services from a victim-services
18 organization, including, but not limited to, a domestic
19 violence shelter, program, or a rape crisis center as a result
20 of the act of domestic violence;

21 4. Make the employee's home secure from the
22 perpetrator of the domestic violence or to seek new housing to
23 escape the perpetrator; or

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

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

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1 (4)(a) Except in cases of imminent danger to the
2 health or safety of the employee, or to the health or safety
3 of a family or household member, an employee seeking leave
4 from work under this section must provide his or her employer
5 with appropriate advance notice of the leave as may be
6 required by the employer's policy and with sufficient
7 documentation of the act of domestic violence as may be
8 required by the employer.

9 (b) An employee seeking leave under this section must,
10 before receiving the leave, exhaust all annual or vacation
11 leave, personal leave, and sick leave, if applicable, which is
12 available to the employee, unless the employer waives this
13 requirement.

14 (c)1. A private employer must keep all information
15 relating to the employee's leave under this section
16 confidential.

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

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

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

26 (c) An employee has no greater rights to continued
27 employment or to other benefits and conditions of employment
28 than if the employee was not entitled to leave under this
29 section. This section does not limit the employer's right to
30 discipline or terminate any employee for any reason,
31 including, but not limited to, reductions in work force or

1 termination for cause or for no reason at all, other than
2 exercising his or her rights under this section.

3 (6) Notwithstanding any other law to the contrary, the
4 sole remedy for any person claiming to be aggrieved by a
5 violation of this section is to bring a civil suit for damages
6 or equitable relief, or both, in circuit court. The person may
7 claim as damages all wages and benefits that would have been
8 due the person up to and including the date of the judgment
9 had the act violating this section not occurred, but the
10 person may not claim wages or benefits for a period of leave
11 granted without pay as provided in paragraph (2)(a). However,
12 this section does not relieve the person from the obligation
13 to mitigate his or her damages.

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

16 943.1702 Collection of statistics on domestic
17 violence.--

18 (2) Each agency in the state which is involved with
19 the enforcement, monitoring, or prosecution of crimes of
20 domestic violence or, as to noncriminal actions related to
21 domestic violence, including petitions seeking injunctions for
22 protection, the judicial branch shall collect and maintain
23 records of each domestic violence incident for access by
24 investigators preparing for bond hearings and prosecutions for
25 acts of domestic violence. This information shall be provided
26 to the court at first appearance hearings and all subsequent
27 hearings.

28 Section 4. This act shall take effect July 1, 2006.
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 498

This committee substitute differs from the bill as filed in the following manner:

- Permits a court to issue an emergency protection order immediately following an incident of domestic violence based on a law enforcement officer's attestation of facts demonstrating a need for the order and a court's finding of reasonable grounds for the order;
- Gives courts the discretion to grant the same relief as currently provided through temporary injunctions;
- Provides that 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;
- Requires employers to allow employees to take up to three working days of leave, with or without pay, within a 90-day period rather than 12 months; and
- 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.