

By Senator Dean

3-02791-08

20081188\_\_

1                   A bill to be entitled  
2           An act relating to dating violence; providing a short  
3           title; amending s. 784.046, F.S.; revising provisions  
4           relating to dating violence incidents to provide  
5           requirements for investigations, notice to victims, and  
6           reporting similar to those for incidents of domestic  
7           violence and to apply certain immunity provisions thereto;  
8           prohibiting certain willful violations of conditions of  
9           pretrial release; providing penalties; amending s. 901.15,  
10          F.S.; providing for warrantless arrests of persons for  
11          dating violence; conforming provisions; providing an  
12          effective date.

13  
14 Be It Enacted by the Legislature of the State of Florida:

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16           Section 1. This act may be cited as the "Barwick-Ruschak  
17 Act."

18           Section 2. Section 784.046, Florida Statutes, is amended to  
19 read:

20           784.046 Action by victim of repeat violence, sexual  
21 violence, or dating violence for protective injunction; dating  
22 violence investigations, notice to victims, and reporting;  
23 pretrial release violations ~~powers and duties of court and clerk~~  
24 ~~of court; filing and form of petition; notice and hearing;~~  
25 ~~temporary injunction; issuance; statewide verification system;~~  
26 ~~enforcement.--~~

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

28           (a) "Violence" means any assault, aggravated assault,  
29 battery, aggravated battery, sexual assault, sexual battery,

3-02791-08

20081188\_\_

30 stalking, aggravated stalking, kidnapping, or false imprisonment,  
31 or any criminal offense resulting in physical injury or death, by  
32 a person against any other person.

33 (b) "Repeat violence" means two incidents of violence or  
34 stalking committed by the respondent, one of which must have been  
35 within 6 months of the filing of the petition, which are directed  
36 against the petitioner or the petitioner's immediate family  
37 member.

38 (c) "Sexual violence" means any one incident of:

39 1. Sexual battery, as defined in chapter 794;

40 2. A lewd or lascivious act, as defined in chapter 800,  
41 committed upon or in the presence of a person younger than 16  
42 years of age;

43 3. Luring or enticing a child, as described in chapter 787;

44 4. Sexual performance by a child, as described in chapter  
45 827; or

46 5. Any other forcible felony wherein a sexual act is  
47 committed or attempted,

48

49 regardless of whether criminal charges based on the incident were  
50 filed, reduced, or dismissed by the state attorney.

51 (d) "Dating violence" means violence between individuals  
52 who have or have had a continuing and significant relationship of  
53 a romantic or intimate nature. The existence of such a  
54 relationship shall be determined based on the consideration of  
55 the following factors:

56 1. A dating relationship must have existed within the past  
57 6 months;

3-02791-08

20081188\_\_

58           2. The nature of the relationship must have been  
59 characterized by the expectation of affection or sexual  
60 involvement between the parties; and

61           3. The frequency and type of interaction between the  
62 persons involved in the relationship must have included that the  
63 persons have been involved over time and on a continuous basis  
64 during the course of the relationship.

65  
66 The term does not include violence in a casual acquaintanceship  
67 or violence between individuals who only have engaged in ordinary  
68 fraternization in a business or social context.

69           (2) There is created a cause of action for an injunction  
70 for protection in cases of repeat violence, there is created a  
71 separate cause of action for an injunction for protection in  
72 cases of dating violence, and there is created a separate cause  
73 of action for an injunction for protection in cases of sexual  
74 violence.

75           (a) Any person who is the victim of repeat violence or the  
76 parent or legal guardian of any minor child who is living at home  
77 and who seeks an injunction for protection against repeat  
78 violence on behalf of the minor child has standing in the circuit  
79 court to file a sworn petition for an injunction for protection  
80 against repeat violence.

81           (b) Any person who is the victim of dating violence and has  
82 reasonable cause to believe he or she is in imminent danger of  
83 becoming the victim of another act of dating violence, or any  
84 person who has reasonable cause to believe he or she is in  
85 imminent danger of becoming the victim of an act of dating  
86 violence, or the parent or legal guardian of any minor child who

3-02791-08

20081188\_\_

87 | is living at home and who seeks an injunction for protection  
88 | against dating violence on behalf of that minor child, has  
89 | standing in the circuit court to file a sworn petition for an  
90 | injunction for protection against dating violence.

91 |       (c) A person who is the victim of sexual violence or the  
92 | parent or legal guardian of a minor child who is living at home  
93 | who is the victim of sexual violence has standing in the circuit  
94 | court to file a sworn petition for an injunction for protection  
95 | against sexual violence on his or her own behalf or on behalf of  
96 | the minor child if:

97 |       1. The person has reported the sexual violence to a law  
98 | enforcement agency and is cooperating in any criminal proceeding  
99 | against the respondent, regardless of whether criminal charges  
100 | based on the sexual violence have been filed, reduced, or  
101 | dismissed by the state attorney; or

102 |       2. The respondent who committed the sexual violence against  
103 | the victim or minor child was sentenced to a term of imprisonment  
104 | in state prison for the sexual violence and the respondent's term  
105 | of imprisonment has expired or is due to expire within 90 days  
106 | following the date the petition is filed.

107 |       (d) A cause of action for an injunction may be sought  
108 | whether or not any other petition, complaint, or cause of action  
109 | is currently available or pending between the parties.

110 |       (e) A cause of action for an injunction does not require  
111 | that the petitioner be represented by an attorney.

112 |       (3) (a) The clerk of the court shall provide a copy of this  
113 | section, simplified forms, and clerical assistance for the  
114 | preparation and filing of such a petition by any person who is  
115 | not represented by counsel.

3-02791-08

20081188\_\_

116 (b) Notwithstanding any other law, the clerk of the court  
117 may not assess a fee for filing a petition for protection against  
118 repeat violence, sexual violence, or dating violence. However,  
119 subject to legislative appropriation, the clerk of the court may,  
120 each quarter, submit to the Office of the State Courts  
121 Administrator a certified request for reimbursement for petitions  
122 for protection issued by the court under this section at the rate  
123 of \$40 per petition. The request for reimbursement shall be  
124 submitted in the form and manner prescribed by the Office of the  
125 State Courts Administrator. From this reimbursement, the clerk  
126 shall pay the law enforcement agency serving the injunction the  
127 fee requested by the law enforcement agency; however, this fee  
128 may not exceed \$20.

129 (c) No bond shall be required by the court for the entry of  
130 an injunction.

131 (d) The clerk of the court shall provide the petitioner  
132 with a certified copy of any injunction for protection against  
133 repeat violence, sexual violence, or dating violence entered by  
134 the court.

135 (4) (a) The sworn petition shall allege the incidents of  
136 repeat violence, sexual violence, or dating violence and shall  
137 include the specific facts and circumstances that form the basis  
138 upon which relief is sought. With respect to a minor child who is  
139 living at home, the parent or legal guardian seeking the  
140 protective injunction on behalf of the minor child must:

141 1. Have been an eyewitness to, or have direct physical  
142 evidence or affidavits from eyewitnesses of, the specific facts  
143 and circumstances that form the basis upon which relief is  
144 sought, if the party against whom the protective injunction is

3-02791-08

20081188\_\_

145 sought is also a parent, stepparent, or legal guardian of the  
146 minor child; or

147 2. Have reasonable cause to believe that the minor child is  
148 a victim of repeat sexual or dating violence to form the basis  
149 upon which relief is sought, if the party against whom the  
150 protective injunction is sought is a person other than a parent,  
151 stepparent, or legal guardian of the minor child.

152 (b) The sworn petition must be in substantially the  
153 following form:

154

155 PETITION FOR INJUNCTION FOR PROTECTION  
156 AGAINST REPEAT VIOLENCE, SEXUAL  
157 VIOLENCE, OR DATING VIOLENCE  
158

159 Before me, the undersigned authority, personally appeared  
160 Petitioner (Name) , who has been sworn and says that the  
161 following statements are true:

162

163 1. Petitioner resides at (address) (A petitioner for an  
164 injunction for protection against sexual violence may furnish an  
165 address to the court in a separate confidential filing if, for  
166 safety reasons, the petitioner requires the location of his or  
167 her current residence to be confidential pursuant to s.  
168 119.071(2)(j), Florida Statutes.)

169 2. Respondent resides at (address) .

170 3.a. Petitioner has suffered repeat violence as  
171 demonstrated by the fact that the respondent has:

172 (enumerate incidents of violence)  
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3-02791-08

20081188\_\_

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b. Petitioner has suffered sexual violence as demonstrated by the fact that the respondent has: (enumerate incident of violence and include incident report number from law enforcement agency or attach notice of inmate release.)

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c. Petitioner is a victim of dating violence and has reasonable cause to believe that he or she is in imminent danger of becoming the victim of another act of dating violence or has reasonable cause to believe that he or she is in imminent danger of becoming a victim of dating violence, as demonstrated by the fact that the respondent has: (list the specific incident or incidents of violence and describe the length of time of the relationship, whether it has been in existence during the last 6 months, the nature of the relationship of a romantic or intimate nature, the frequency and type of interaction, and any other facts that characterize the relationship.)

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3-02791-08

20081188\_\_

203 4. Petitioner genuinely fears repeat violence by the  
204 respondent.

205 5. Petitioner seeks: an immediate injunction against the  
206 respondent, enjoining him or her from committing any further acts  
207 of violence; an injunction enjoining the respondent from  
208 committing any further acts of violence; and an injunction  
209 providing any terms the court deems necessary for the protection  
210 of the petitioner and the petitioner's immediate family,  
211 including any injunctions or directives to law enforcement  
212 agencies.

213 (5) Upon the filing of the petition, the court shall set a  
214 hearing to be held at the earliest possible time. The respondent  
215 shall be personally served with a copy of the petition, notice of  
216 hearing, and temporary injunction, if any, prior to the hearing.

217 (6) (a) When it appears to the court that an immediate and  
218 present danger of violence exists, the court may grant a  
219 temporary injunction which may be granted in an ex parte hearing,  
220 pending a full hearing, and may grant such relief as the court  
221 deems proper, including an injunction enjoining the respondent  
222 from committing any acts of violence.

223 (b) In a hearing ex parte for the purpose of obtaining such  
224 temporary injunction, no evidence other than the verified  
225 pleading or affidavit shall be used as evidence, unless the  
226 respondent appears at the hearing or has received reasonable  
227 notice of the hearing.

228 (c) Any such ex parte temporary injunction shall be  
229 effective for a fixed period not to exceed 15 days. However, an  
230 ex parte temporary injunction granted under subparagraph (2) (c) 2.  
231 is effective for 15 days following the date the respondent is



3-02791-08

20081188\_\_

232 released from incarceration. A full hearing, as provided by this  
233 section, shall be set for a date no later than the date when the  
234 temporary injunction ceases to be effective. The court may grant  
235 a continuance of the ex parte injunction and the full hearing  
236 before or during a hearing, for good cause shown by any party.

237 (7) Upon notice and hearing, the court may grant such  
238 relief as the court deems proper, including an injunction:

239 (a) Enjoining the respondent from committing any acts of  
240 violence.

241 (b) Ordering such other relief as the court deems necessary  
242 for the protection of the petitioner, including injunctions or  
243 directives to law enforcement agencies, as provided in this  
244 section.

245 (c) The terms of the injunction shall remain in full force  
246 and effect until modified or dissolved. Either party may move at  
247 any time to modify or dissolve the injunction. Such relief may be  
248 granted in addition to other civil or criminal remedies.

249 (d) A temporary or final judgment on injunction for  
250 protection against repeat violence, sexual violence, or dating  
251 violence entered pursuant to this section shall, on its face,  
252 indicate that:

253 1. The injunction is valid and enforceable in all counties  
254 of the State of Florida.

255 2. Law enforcement officers may use their arrest powers  
256 pursuant to s. 901.15(6) to enforce the terms of the injunction.

257 3. The court had jurisdiction over the parties and matter  
258 under the laws of Florida and that reasonable notice and  
259 opportunity to be heard was given to the person against whom the

3-02791-08

20081188\_\_

260 order is sought sufficient to protect that person's right to due  
261 process.

262 4. The date that the respondent was served with the  
263 temporary or final order, if obtainable.

264 (8)(a)1. The clerk of the court shall furnish a copy of the  
265 petition, notice of hearing, and temporary injunction, if any, to  
266 the sheriff or a law enforcement agency of the county where the  
267 respondent resides or can be found, who shall serve it upon the  
268 respondent as soon thereafter as possible on any day of the week  
269 and at any time of the day or night. The clerk of the court shall  
270 be responsible for furnishing to the sheriff such information on  
271 the respondent's physical description and location as is required  
272 by the department to comply with the verification procedures set  
273 forth in this section. Notwithstanding any other provision of law  
274 to the contrary, the chief judge of each circuit, in consultation  
275 with the appropriate sheriff, may authorize a law enforcement  
276 agency within the chief judge's jurisdiction to effect this type  
277 of service and to receive a portion of the service fee. No person  
278 shall be authorized or permitted to serve or execute an  
279 injunction issued under this section unless the person is a law  
280 enforcement officer as defined in chapter 943.

281 2. When an injunction is issued, if the petitioner requests  
282 the assistance of a law enforcement agency, the court may order  
283 that an officer from the appropriate law enforcement agency  
284 accompany the petitioner and assist in the execution or service  
285 of the injunction. A law enforcement officer shall accept a copy  
286 of an injunction for protection against repeat violence, sexual  
287 violence, or dating violence, certified by the clerk of the

3-02791-08

20081188\_\_

288 court, from the petitioner and immediately serve it upon a  
289 respondent who has been located but not yet served.

290 (b) There shall be created a Domestic, Dating, Sexual, and  
291 Repeat Violence Injunction Statewide Verification System within  
292 the Department of Law Enforcement. The department shall  
293 establish, implement, and maintain a statewide communication  
294 system capable of electronically transmitting information to and  
295 between criminal justice agencies relating to domestic violence  
296 injunctions, dating violence injunctions, sexual violence  
297 injunctions, and repeat violence injunctions issued by the courts  
298 throughout the state. Such information must include, but is not  
299 limited to, information as to the existence and status of any  
300 injunction for verification purposes.

301 (c)1. Within 24 hours after the court issues an injunction  
302 for protection against repeat violence, sexual violence, or  
303 dating violence or changes or vacates an injunction for  
304 protection against repeat violence, sexual violence, or dating  
305 violence, the clerk of the court must forward a copy of the  
306 injunction to the sheriff with jurisdiction over the residence of  
307 the petitioner.

308 2. Within 24 hours after service of process of an  
309 injunction for protection against repeat violence, sexual  
310 violence, or dating violence upon a respondent, the law  
311 enforcement officer must forward the written proof of service of  
312 process to the sheriff with jurisdiction over the residence of  
313 the petitioner.

314 3. Within 24 hours after the sheriff receives a certified  
315 copy of the injunction for protection against repeat violence,  
316 sexual violence, or dating violence, the sheriff must make

3-02791-08

20081188\_\_

317 information relating to the injunction available to other law  
318 enforcement agencies by electronically transmitting such  
319 information to the department.

320 4. Within 24 hours after the sheriff or other law  
321 enforcement officer has made service upon the respondent and the  
322 sheriff has been so notified, the sheriff must make information  
323 relating to the service available to other law enforcement  
324 agencies by electronically transmitting such information to the  
325 department.

326 5. Within 24 hours after an injunction for protection  
327 against repeat violence, sexual violence, or dating violence is  
328 lifted, terminated, or otherwise rendered no longer effective by  
329 ruling of the court, the clerk of the court must notify the  
330 sheriff or local law enforcement agency receiving original  
331 notification of the injunction as provided in subparagraph 2.  
332 That agency shall, within 24 hours after receiving such  
333 notification from the clerk of the court, notify the department  
334 of such action of the court.

335 (9) (a) The court shall enforce, through a civil or criminal  
336 contempt proceeding, a violation of an injunction for protection.  
337 The court may enforce the respondent's compliance with the  
338 injunction by imposing a monetary assessment. The clerk of the  
339 court shall collect and receive such assessments. On a monthly  
340 basis, the clerk shall transfer the moneys collected pursuant to  
341 this paragraph to the State Treasury for deposit in the Crimes  
342 Compensation Trust Fund established in s. 960.21.

343 (b) If the respondent is arrested by a law enforcement  
344 officer under s. 901.15(6) for committing an act of repeat  
345 violence, sexual violence, or dating violence in violation of an

3-02791-08

20081188\_\_

346 injunction for protection, the respondent shall be held in  
347 custody until brought before the court as expeditiously as  
348 possible for the purpose of enforcing the injunction and for  
349 admittance to bail in accordance with chapter 903 and the  
350 applicable rules of criminal procedure, pending a hearing.

351 (10) The petitioner or the respondent may move the court to  
352 modify or dissolve an injunction at any time.

353 (11) Any law enforcement officer who investigates an  
354 alleged incident of dating violence shall assist the victim to  
355 obtain medical treatment if such is required as a result of the  
356 alleged incident to which the officer responds. Any law  
357 enforcement officer who investigates an alleged incident of  
358 dating violence shall advise the victim of such violence that  
359 there is a domestic violence center from which the victim may  
360 receive services. The law enforcement officer shall give the  
361 victim immediate notice of the legal rights and remedies  
362 available on a standard form developed and distributed by the  
363 Department of Law Enforcement. As necessary, the Department of  
364 Law Enforcement shall revise the Legal Rights and Remedies Notice  
365 to Victims to include a general summary of this section, using  
366 simple English as well as Spanish, and shall distribute the  
367 notice as a model form to be used by all law enforcement agencies  
368 throughout the state. The notice shall include:

369 (a) The resource listing, including telephone number, for  
370 the area domestic violence center designated by the Department of  
371 Children and Family Services; and

372 (b) A copy of the following statement: "IF YOU ARE THE  
373 VICTIM OF DATING VIOLENCE, you may ask the state attorney to file  
374 a criminal complaint. You also have the right to go to court and

3-02791-08

20081188\_\_

375 file a petition requesting an injunction for protection from  
376 dating violence which may include, but need not be limited to,  
377 provisions that restrain the abuser from further acts of abuse;  
378 direct the abuser to leave your household; and prevent the abuser  
379 from entering your residence, school, business, or place of  
380 employment."

381 (12) When a law enforcement officer investigates an  
382 allegation that an incident of dating violence has occurred, the  
383 officer shall handle the incident pursuant to the arrest policy  
384 provided in s. 901.15(7), and as developed in accordance with  
385 subsections (13), (14), and (16). Whether or not an arrest is  
386 made, the officer shall make a written police report that is  
387 complete and clearly indicates that the alleged offense was an  
388 incident of dating violence. Such report shall be given to the  
389 officer's supervisor and filed with the law enforcement agency in  
390 a manner that will permit data on dating violence cases to be  
391 compiled. Such report must include:

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

393 (b) If a law enforcement officer decides not to make an  
394 arrest or decides to arrest two or more parties, the grounds for  
395 not arresting anyone or for arresting two or more parties.

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

398  
399 Whenever possible, the law enforcement officer shall obtain a  
400 written statement from the victim and witnesses concerning the  
401 alleged dating violence. The officer shall submit the report to  
402 the supervisor or other person to whom the employer's rules or  
403 policies require reports of similar allegations of criminal

3-02791-08

20081188\_\_

404 activity to be made. The law enforcement agency shall, without  
405 charge, send a copy of the initial police report, as well as any  
406 subsequent, supplemental, or related report, which excludes  
407 victim or witness statements or other materials that are part of  
408 an active criminal investigation and are exempt from disclosure  
409 under chapter 119, to the nearest locally certified domestic  
410 violence center within 24 hours after the agency's receipt of the  
411 report. The report furnished to the domestic violence center must  
412 include a narrative description of the dating violence incident.

413 (13) Whenever a law enforcement officer determines upon  
414 probable cause that an act of dating violence has been committed  
415 within the jurisdiction, the officer may arrest the person or  
416 persons suspected of its commission and charge such person or  
417 persons with the appropriate crime. The decision to arrest and  
418 charge shall not require consent of the victim or consideration  
419 of the relationship of the parties.

420 (14) (a) When complaints are received from two or more  
421 parties, the officers shall evaluate each complaint separately to  
422 determine whether there is probable cause for arrest.

423 (b) If a law enforcement officer has probable cause to  
424 believe that two or more persons have committed a misdemeanor or  
425 felony, or if two or more persons make complaints to the officer,  
426 the officer shall try to determine who was the primary aggressor.  
427 Arrest is the preferred response only with respect to the primary  
428 aggressor and not the preferred response with respect to a person  
429 who acts in a reasonable manner to protect or defend himself or  
430 herself or another family or household member from dating  
431 violence.

3-02791-08

20081188\_\_

432           (15) A person who willfully violates a condition of  
433 pretrial release provided in s. 903.047, when the original arrest  
434 was for an act of dating violence as defined in this section,  
435 commits a misdemeanor of the first degree, punishable as provided  
436 in s. 775.082 or s. 775.083, and shall be held in custody until  
437 his or her first appearance.

438           (16)~~(11)~~ A law enforcement officer acting in good faith  
439 under this section and the officer's employing agency shall be  
440 immune from all liability, civil or criminal, which ~~that~~ might  
441 otherwise be incurred or imposed by reason of the officer's or  
442 agency's actions in carrying out the provisions of this section.

443           Section 3. Subsection (7) of section 901.15, Florida  
444 Statutes, is amended to read:

445           901.15 When arrest by officer without warrant is lawful.--A  
446 law enforcement officer may arrest a person without a warrant  
447 when:

448           (7) There is probable cause to believe that the person has  
449 committed an act of domestic violence, as defined in s. 741.28,  
450 or dating violence, as provided in s. 784.046. The decision to  
451 arrest shall not require consent of the victim or consideration  
452 of the relationship of the parties. It is the public policy of  
453 this state to strongly discourage arrest and charges of both  
454 parties for domestic violence or dating violence on each other  
455 and to encourage training of law enforcement and prosecutors in  
456 these areas ~~this area~~. A law enforcement officer who acts in good  
457 faith and exercises due care in making an arrest under this  
458 subsection, under s. 741.31(4) or s. 784.047, or pursuant to a  
459 foreign order of protection accorded full faith and credit



3-02791-08

20081188\_\_

460 | pursuant to s. 741.315, is immune from civil liability that  
461 | otherwise might result by reason of his or her action.

462 |       Section 4. This act shall take effect October 1, 2008.