

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Gardiner offered the following:

2
3 **Amendment (with directory and title amendments)**

4 Remove lines 254-295 and insert:

5 784.046 Actions ~~Action~~ by victims ~~victim~~ of certain forms
6 of repeat ~~violence, sexual violence, or dating violence~~ for
7 protective injunction; powers and duties of court and court
8 ~~clerk of court; filing and form of~~ petition; notice and hearing;
9 temporary injunction; issuance; statewide verification system;
10 enforcement.--

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

12 (a) "Violence" means any assault, aggravated assault,
13 battery, aggravated battery, sexual assault, sexual battery,
14 stalking, aggravated stalking, kidnapping, or false
15 imprisonment, or any criminal offense resulting in physical
16 injury or death, by a person against any other person.

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17 (b) "Repeat violence" means two incidents of violence or
18 stalking committed by the respondent, one of which must have
19 been within 6 months of the filing of the petition, which are
20 directed against the petitioner or the petitioner's immediate
21 family member.

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

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

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

27 3. Luring or enticing a child, as described in chapter
28 787;

29 4. Sexual performance by a child, as described in chapter
30 827; or

31 5. Any other forcible felony wherein a sexual act is
32 committed or attempted,

33
34 regardless of whether criminal charges based on the incident
35 were filed, reduced, or dismissed by the state attorney.

36 (d) "Dating violence" means violence between individuals
37 who have or have had a continuing and significant relationship
38 of a romantic or intimate nature. The existence of such a
39 relationship shall be determined based on the consideration of
40 the following factors:

41 1. A dating relationship must have existed within the past
42 6 months;

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43 2. The nature of the relationship must have been
44 characterized by the expectation of affection or sexual
45 involvement between the parties; and

46 3. The frequency and type of interaction between the
47 persons involved in the relationship must have included that the
48 persons have been involved over time and on a continuous basis
49 during the course of the relationship.

50
51 The term does not include violence in a casual acquaintanceship
52 or violence between individuals who only have engaged in
53 ordinary fraternization in a business or social context.

54 (e) "Threatened violence" means intentional or reckless
55 engagement in a course of conduct targeted at a specific person
56 that would cause a reasonable person in the circumstances of the
57 targeted person to fear for his or her safety, or the safety of
58 a member of his or her immediate family, and that actually
59 places the targeted person in such fear.

60 (2) There is created a cause of action for an injunction
61 for protection in cases of repeat violence, there is created a
62 separate cause of action for an injunction for protection in
63 cases of dating violence, ~~and~~ there is created a separate cause
64 of action for an injunction for protection in cases of sexual
65 violence, and there is created a separate cause of action for an
66 injunction for protection in cases of threatened violence.

67 (a) Any person who is the victim of repeat violence or the
68 parent or legal guardian of any minor child who is living at
69 home and who seeks an injunction for protection against repeat
70 violence on behalf of the minor child has standing in the

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71 circuit court to file a sworn petition for an injunction for
72 protection against repeat violence.

73 (b) Any person who is the victim of dating violence and
74 has reasonable cause to believe he or she is in imminent danger
75 of becoming the victim of another act of dating violence, or any
76 person who has reasonable cause to believe he or she is in
77 imminent danger of becoming the victim of an act of dating
78 violence, or the parent or legal guardian of any minor child who
79 is living at home and who seeks an injunction for protection
80 against dating violence on behalf of that minor child, has
81 standing in the circuit court to file a sworn petition for an
82 injunction for protection against dating violence.

83 (c) A person who is the victim of sexual violence or the
84 parent or legal guardian of a minor child who is living at home
85 who is the victim of sexual violence has standing in the circuit
86 court to file a sworn petition for an injunction for protection
87 against sexual violence on his or her own behalf or on behalf of
88 the minor child if:

89 1. The person has reported the sexual violence to a law
90 enforcement agency and is cooperating in any criminal proceeding
91 against the respondent, regardless of whether criminal charges
92 based on the sexual violence have been filed, reduced, or
93 dismissed by the state attorney; or

94 2. The respondent who committed the sexual violence
95 against the victim or minor child was sentenced to a term of
96 imprisonment in state prison for the sexual violence and the
97 respondent's term of imprisonment has expired or is due to
98 expire within 90 days following the date the petition is filed.

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

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

104 (3) (a) The clerk of the court shall provide a copy of this
105 section, simplified forms, and clerical assistance for the
106 preparation and filing of such a petition by any person who is
107 not represented by counsel.

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

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

124 (d) The clerk of the court shall provide the petitioner
125 with a certified copy of any injunction for protection against

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126 repeat violence, sexual violence, ~~or~~ dating violence, or
127 threatened violence entered by the court.

128 (4) (a) The sworn petition shall allege the incidents of
129 repeat violence, sexual violence, ~~or~~ dating violence, or
130 threatened violence and shall include the specific facts and
131 circumstances that form the basis upon which relief is sought.
132 With respect to a minor child who is living at home, the parent
133 or legal guardian seeking the protective injunction on behalf of
134 the minor child must:

135 1. Have been an eyewitness to, or have direct physical
136 evidence or affidavits from eyewitnesses of, the specific facts
137 and circumstances that form the basis upon which relief is
138 sought, if the party against whom the protective injunction is
139 sought is also a parent, stepparent, or legal guardian of the
140 minor child; or

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

146 (b) The sworn petition must be in substantially the
147 following form:

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149 PETITION FOR INJUNCTION FOR PROTECTION

150 AGAINST REPEAT VIOLENCE, SEXUAL

151 VIOLENCE, ~~OR~~ DATING VIOLENCE, OR THREATENED VIOLENCE

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

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157 1. Petitioner resides at (address) (A petitioner for
158 an injunction for protection against sexual violence may furnish
159 an address to the court in a separate confidential filing if,
160 for safety reasons, the petitioner requires the location of his
161 or her current residence to be confidential pursuant to s.
162 119.071(2)(j), Florida Statutes.)

163 2. Respondent resides at (address) .

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

166 (enumerate incidents of violence)

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

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

192 _____
193 _____
194 _____
195 _____

197 d. Petitioner has suffered threatened violence as
198 demonstrated by the fact that the respondent has: (enumerate
199 incidents.)

200 _____
201 _____
202 _____
203 _____

205 4. Petitioner genuinely fears repeat violence by the
206 respondent.

207 5. Petitioner seeks: an immediate injunction against the
208 respondent, enjoining him or her from committing any further

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209 acts of violence; an injunction enjoining the respondent from
210 committing any further acts of violence; and an injunction
211 providing any terms the court deems necessary for the protection
212 of the petitioner and the petitioner's immediate family,
213 including any injunctions or directives to law enforcement
214 agencies.

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

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

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

231 (c) Any such ex parte temporary injunction shall be
232 effective for a fixed period not to exceed 15 days. However, an
233 ex parte temporary injunction granted under subparagraph
234 (2) (c) 2. is effective for 15 days following the date the
235 respondent is released from incarceration. A full hearing, as
236 provided by this section, shall be set for a date no later than

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237 the date when the temporary injunction ceases to be effective.

238 The court may grant a continuance of the ex parte injunction and

239 the full hearing before or during a hearing, for good cause

240 shown by any party.

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

243 (a) Enjoining the respondent from committing any acts of
244 violence.

245 (b) Ordering such other relief as the court deems
246 necessary for the protection of the petitioner, including
247 injunctions or directives to law enforcement agencies, as
248 provided in this section.

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

253 (d) A temporary or final judgment on injunction for
254 protection against repeat violence, sexual violence, ~~or~~ dating
255 violence, or threatened violence entered pursuant to this
256 section shall, on its face, indicate that:

257 1. The injunction is valid and enforceable in all counties
258 of the State of Florida.

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

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

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264 order is sought sufficient to protect that person's right to due
265 process.

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

268 (8)(a)1. The clerk of the court shall furnish a copy of
269 the petition, notice of hearing, and temporary injunction, if
270 any, to the sheriff or a law enforcement agency of the county
271 where the respondent resides or can be found, who shall serve it
272 upon the respondent as soon thereafter as possible on any day of
273 the week and at any time of the day or night. When requested by
274 the sheriff, the clerk of court may transmit a facsimile copy of
275 an injunction that has been certified by the clerk of court, and
276 this facsimile copy may be served in the same manner as a
277 certified copy. Upon receiving such a facsimile copy, the
278 sheriff must verify receipt with the sender before attempting to
279 serve it upon the respondent. In addition, if the sheriff is in
280 possession of an injunction for protection that has been
281 certified by the clerk of court, the sheriff may transmit a
282 facsimile copy of that injunction to a law enforcement officer
283 who shall serve it in the same manner as a certified copy. The
284 clerk of the court shall be responsible for furnishing to the
285 sheriff such information on the respondent's physical
286 description and location as is required by the department to
287 comply with the verification procedures set forth in this
288 section. Notwithstanding any other provision of law to the
289 contrary, the chief judge of each circuit, in consultation with
290 the appropriate sheriff, may authorize a law enforcement agency
291 within the chief judge's jurisdiction to effect this type of

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292 service and to receive a portion of the service fee. No person
293 shall be authorized or permitted to serve or execute an
294 injunction issued under this section unless the person is a law
295 enforcement officer as defined in chapter 943.

296 2. When an injunction is issued, if the petitioner
297 requests the assistance of a law enforcement agency, the court
298 may order that an officer from the appropriate law enforcement
299 agency accompany the petitioner and assist in the execution or
300 service of the injunction. A law enforcement officer shall
301 accept a copy of an injunction for protection against repeat
302 violence, sexual violence, ~~or~~ dating violence, or threatened
303 violence, certified by the clerk of the court, from the
304 petitioner and immediately serve it upon a respondent who has
305 been located but not yet served.

306 (b) There shall be created a Domestic, Dating, Sexual, ~~and~~
307 Repeat, and Threatened Violence Injunction Statewide
308 Verification System within the Department of Law Enforcement.
309 The department shall establish, implement, and maintain a
310 statewide communication system capable of electronically
311 transmitting information to and between criminal justice
312 agencies relating to domestic violence injunctions, dating
313 violence injunctions, sexual violence injunctions, ~~and~~ repeat
314 violence injunctions, and threatened violence injunctions issued
315 by the courts throughout the state. Such information must
316 include, but is not limited to, information as to the existence
317 and status of any injunction for verification purposes.

318 (c)1. Within 24 hours after the court issues an injunction
319 for protection against repeat violence, sexual violence, ~~or~~

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320 dating violence, or threatened violence or changes or vacates an
321 injunction for protection against repeat violence, sexual
322 violence, ~~or~~ dating violence, or threatened violence, the clerk
323 of the court must forward a copy of the injunction to the
324 sheriff with jurisdiction over the residence of the petitioner.

325 2. Within 24 hours after service of process of an
326 injunction for protection against repeat violence, sexual
327 violence, ~~or~~ dating violence, or threatened violence upon a
328 respondent, the law enforcement officer must forward the written
329 proof of service of process to the sheriff with jurisdiction
330 over the residence of the petitioner.

331 3. Within 24 hours after the sheriff receives a certified
332 copy of the injunction for protection against repeat violence,
333 sexual violence, ~~or~~ dating violence, or threatened violence, the
334 sheriff must make information relating to the injunction
335 available to other law enforcement agencies by electronically
336 transmitting such information to the department.

337 4. Within 24 hours after the sheriff or other law
338 enforcement officer has made service upon the respondent and the
339 sheriff has been so notified, the sheriff must make information
340 relating to the service available to other law enforcement
341 agencies by electronically transmitting such information to the
342 department.

343 5. Within 24 hours after an injunction for protection
344 against repeat violence, sexual violence, ~~or~~ dating violence, or
345 threatened violence is lifted, terminated, or otherwise rendered
346 no longer effective by ruling of the court, the clerk of the
347 court must notify the sheriff or local law enforcement agency

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348 receiving original notification of the injunction as provided in
349 subparagraph 2. That agency shall, within 24 hours after
350 receiving such notification from the clerk of the court, notify
351 the department of such action of the court.

352 (9) (a) The court shall enforce, through a civil or
353 criminal contempt proceeding, a violation of an injunction for
354 protection. The court may enforce the respondent's compliance
355 with the injunction by imposing a monetary assessment. The clerk
356 of the court shall collect and receive such assessments. On a
357 monthly basis, the clerk shall transfer the moneys collected
358 pursuant to this paragraph to the State Treasury for deposit in
359 the Crimes Compensation Trust Fund established in s. 960.21.

360 (b) If the respondent is arrested by a law enforcement
361 officer under s. 901.15(6) for committing an act of repeat
362 violence, sexual violence, ~~or~~ dating violence, or threatened
363 violence in violation of an injunction for protection, the
364 respondent shall be held in custody until brought before the
365 court as expeditiously as possible for the purpose of enforcing
366 the injunction and for admittance to bail in accordance with
367 chapter 903 and the applicable rules of criminal procedure,
368 pending a hearing.

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

371 (11) A law enforcement officer acting in good faith under
372 this section and the officer's employing agency shall be immune
373 from all liability, civil or criminal, that might otherwise be
374 incurred or imposed by reason of the officer's or agency's
375 actions in carrying out the provisions of this section.

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D I R E C T O R Y A M E N D M E N T

Remove lines 252-253 and insert:

Section 7. Section 784.046, Florida Statutes, is amended
to read:

T I T L E A M E N D M E N T

Remove lines 23-31 and insert:

amending s. 741.30, F.S., relating to service of process
in cases of domestic violence; authorizing clerks of court
to transmit facsimile copies of previously certified
injunctions to sheriffs upon request; requiring sheriffs
to verify receipt of facsimile copies of injunctions with
clerks of court before attempting service; authorizing law
enforcement officers to serve facsimile copies of
injunctions in the same manner as certified copies;
amending s. 784.046, F.S., relating to service of process
in cases of repeat violence, sexual violence, or dating
violence; defining the term "threatened violence";
providing for injunctions against threatened violence;
authorizing clerks of court to transmit facsimile copies
of previously certified injunctions to sheriffs upon
request; requiring sheriffs to verify receipt of facsimile
copies of injunctions with clerks of court before
attempting service; authorizing law enforcement officers

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403 to serve facsimile copies of injunctions in the same
404 manner as certified copies; providing an effective date.