

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty – This bill adds to the list of ways in which a person could violate an injunction for protection against repeat violence, sexual violence, or dating violence.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Definitions

“Repeat violence” is defined as, “two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner’s immediate family member.”¹

“Dating violence” is defined as, “violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on the consideration of the following factors: a dating relationship must have existed within the past 6 months; the nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and the frequency and type of interaction between the persons involved in the relationship must have included that the persons have been involved over time and on a continuous basis during the course of the relationship. The term does not include violence in a casual acquaintanceship or violence between individuals who only have engaged in ordinary fraternization in a business or social context.”²

“Sexual violence” is defined as, “any one incident of sexual battery, as defined in chapter 794; a lewd or lascivious act, as defined in chapter 800, committed upon or in the presence of a person younger than 16 years of age; luring or enticing a child, as described in chapter 787; sexual performance by a child, as described in chapter 827; or any other forcible felony wherein a sexual act is committed or attempted; regardless of whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney.”³

Injunctions for Protection

Section 784.046, F.S., relates to the issuance of injunctions for protection against repeat violence, dating violence, and sexual violence. The statute specifies the following:

- Petitions for injunctions for protection must allege the incidents of repeat violence, sexual violence, or dating violence and must include the specific facts and circumstances that form the basis upon which relief is sought.
- Upon the filing of the petition, the court must set a hearing to be held at the earliest possible time. The respondent must be personally served with a copy of the petition, notice of hearing, and temporary injunction, if any, prior to the hearing.
- When it appears to the court that an immediate and present danger of violence exists, the court may grant a temporary injunction which may be granted in an ex parte hearing, pending a full hearing, and may grant such relief as the court deems proper.
- The court shall enforce, through a civil or criminal contempt proceeding, a violation of an injunction for protection.

¹ s. 784.046(1), F.S.

² *Id.*

³ *Id.*

- The petitioner or the respondent may move the court to modify or dissolve an injunction at any time.⁴

Section 784.047, F.S., provides penalties for violating an injunction for protection against repeat violence, sexual violence, or dating violence. The statute specifies that a person commits a 1st degree misdemeanor⁵ if they willfully violate an injunction for protection against repeat violence, sexual violence, or dating violence by:

- Refusing to vacate the dwelling that the parties share;
- Going to the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;
- Committing an act of repeat violence, sexual violence, or dating violence against the petitioner;
- Committing any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to the petitioner; or
- Telephoning, contacting, or otherwise communicating with the petitioner directly or indirectly, unless the injunction specifically allows indirect contact through a third party.⁶

Effect of the Bill

HB 555 adds the following to the above list of ways in which a person could violate an injunction for protection against repeat violence, sexual violence, or dating violence:

- Knowingly and intentionally coming within 100 feet of the petitioner's motor vehicle, whether or not that vehicle is occupied;
- Defacing or destroying the petitioner's personal property, including the petitioner's motor vehicle;
- Refusing to surrender firearms or ammunition of ordered to do so by the court.

The bill also adds the following to the *existing* list of ways in which a person could violate an injunction for protection against repeat violence, sexual violence, or dating violence:

- Going to, or being within 500 feet of, the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member.

It should be noted that s. 741.31, F.S., which provides penalties for violating an injunction for protection against *domestic violence*⁷, contains the same provisions as those added by the bill.

C. SECTION DIRECTORY:

Section 1. Amends s. 784.047, F.S., relating to penalties for violating protective injunction against violence.

Section 2. This bill takes effect July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

⁴ s. 784.046, F.S.

⁵ A first degree misdemeanor is punishable by a term of imprisonment not exceeding 1 year and a \$1,000 fine. *See* ss. 775.082 and 775.083.

⁶ s. 784.047, F.S.

⁷ Section 741.28, F.S., defines "domestic violence" as "any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member."

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.

2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.

2. Expenditures:
See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This bill adds to the list of ways in which a person can violate an injunction for protection. Such violations will be a first degree misdemeanor. This could have an indeterminate jail bed impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:
None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The "relating to" clause of this bill is, "an act relating to *domestic violence*." However, the bill amends a section of statute that addresses injunctions for protection against *repeat violence, sexual violence, or dating violence*.

D. STATEMENT OF THE SPONSOR

I was pleased to sponsor this legislation after Jan Manning, a constituent, brought her experience to my attention. Ms. Manning was physically assaulted, stalked, harassed and had her property damaged by a man she dated briefly. Ms. Manning was successful in obtaining a restraining order against this individual, but because they never lived together, was unable to get immediate assistance from law

enforcement when it was repeatedly violated. Thankfully, Ms. Manning survived this ordeal and has been working for change on behalf of other victims.

For the purpose of issuing and enforcing restraining orders, Florida law recognizes four types of violence: domestic, dating, sexual and repeat violence.

In 2001, penalties for, and circumstances that violate restraining orders were added to Florida law, but only for circumstances of domestic violence, where the victim and the offending individual have shared a domicile. This left a situation where Jan Manning, and other victims of dating, sexual or repeat violence are left to file a civil complaint with the clerk of the circuit court when their restraining order is violated, rather than receiving immediate assistance from law enforcement.

This bill creates consistency in the law and provides important protections for victims of dating, sexual and repeat violence.

E. IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 19, 2008, the Homeland Security & Public Safety Committee adopted a title amendment and reported the bill favorably as amended. The title amendment specifies that the bill relates to violations of injunctions for protection rather than domestic violence.