

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/SB 622

INTRODUCER: Criminal Justice Committee and Senator Dockery

SUBJECT: Victims/No-Contact Orders

DATE: March 10, 2008 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Fav/CS
2.	Cary	Maclure	JU	Favorable
3.			JA	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill would add several violent offenses prescribed in s. 775.084(1)(b)1.a.-o., F.S., to the current crimes (sexual battery and lewd or lascivious offenses upon a child less than 16 years of age) requiring a court to issue a no-contact order with the victim when sentencing the offender.

This bill substantially amends section 921.244, Florida Statutes.

II. Present Situation:

Currently, courts must issue an order prohibiting an offender from having contact with the victim for the duration of the imposed sentence when sentencing offenders who have been convicted of sexual battery under s. 794.011, F.S., or lewd or lascivious offenses upon persons less than 16 years of age under s. 800.04, F.S.

The prohibition includes direct as well as indirect contact and remains in effect for the entire imposed sentence. Offenders who violate these orders, commonly referred to as “no-contact

orders,” commit a third-degree felony,¹ and any punishment imposed must run consecutive to any former sentence imposed.²

Courts may reconsider a no-contact order upon the request of the victim if the request is made after the victim is 18 years of age or older.³ If such a request is made, the court must hold an evidentiary hearing to determine whether a change of circumstances has occurred which warrants changing the order and whether it is in the best interests of the victim that the order be modified or rescinded.⁴

III. Effect of Proposed Changes:

The bill adds several violent offenses prescribed in s. 775.084(1)(b)1.a.-o., F.S., to the current crimes requiring a court to issue a no-contact order when sentencing a convicted offender. These offenses would include the following: arson; sexual battery; robbery; kidnapping; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; aggravated assault with a deadly weapon; murder; manslaughter; aggravated manslaughter of an elderly person or disabled adult; aggravated manslaughter of a child; unlawful throwing, placing, or discharging of a destructive device or bomb; armed burglary; aggravated battery; and aggravated stalking. Violating a no-contact order would remain a third-degree felony under the bill.

The existing statute governing no-contact orders does not define the term “victim.” In the case of the offenses covered under the existing statute – sexual battery and lewd or lascivious offenses on a child less than 16 – the victim is apparent. With some of the crimes proposed under the bill for inclusion as grounds for no-contact orders, however, the primary victim may not be living or immediately apparent. In cases of murder or manslaughter, for example, it is unclear whether the court might impose an order of no-contact preventing the offender from contacting certain family members of the deceased person. In the case of arson, it is unclear if the no-contact order would prevent the offender from contacting the owner of the building or whether it might apply to others connected to the building (e.g., a manager, employees, etc.). Under the statute requiring a defendant to make restitution, the term “victim” means “each person who suffers property damage or loss, monetary expense, or physical injury or death as a direct or indirect result of the defendant’s offense or criminal episode, and also includes the victim’s estate if the victim is deceased, and the victim’s next of kin if the victim is deceased as a result of the offense.”⁵ One court interpreted a county to be a “victim” in accordance with the definition provided in the restitution statute.⁶

The bill provides an effective date of October 1, 2008.

¹ A third-degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082, 775.083, and 775.084, F.S.

² Section 921.244(3), F.S.

³ Section 921.244(1), F.S.

⁴ *Id.*

⁵ Section 775.089(1)(c), F.S.

⁶ *Childers v. State*, 936 So. 2d 585, 596 (Fla. 1st DCA 2006).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference determined that the bill would result in an insignificant prison bed impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on February 6, 2008:

- References the specific statute, s. 775.084(1)(b)1.a.-o., F.S., containing the enumerated violent offenses rather than listing the offenses by name.
- Deletes a provision authorizing a guardian ad litem to request the court to reconsider the no-contact order.

B. Amendments:

None.

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