

By Senator Hill

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1 A bill to be entitled
2 An act relating to injunctions for protection against
3 domestic violence, repeat violence, sexual violence,
4 or dating violence; amending s. 741.29, F.S.;
5 requiring a law enforcement officer, under certain
6 circumstances, to arrest and to keep in custody for a
7 specified period a person who is suspected of domestic
8 violence; requiring a law enforcement officer, under
9 certain circumstances, to arrest and to keep in
10 custody for a specified period a suspected primary
11 aggressor in a case of domestic violence; amending ss.
12 741.30 and 784.046, F.S.; requiring the court, under
13 certain circumstances, to order the sheriff to take
14 into custody and to keep in custody for a specified
15 period the respondent of a petition for an injunction
16 for protection against domestic violence or for an
17 injunction for protection against repeat violence,
18 sexual violence, or dating violence; requiring a law
19 enforcement officer, under certain circumstances, to
20 arrest and to keep in custody for a specified period a
21 person who is suspected of dating violence or who is
22 the primary aggressor in a case of dating violence;
23 providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

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27 Section 1. Subsections (3) and (4) of section 741.29,
28 Florida Statutes, are amended to read:

29 741.29 Domestic violence; investigation of incidents;

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30 notice to victims of legal rights and remedies; reporting.-

31 (3) Whenever a law enforcement officer determines upon
32 probable cause that an act of domestic violence has been
33 committed within the jurisdiction, the officer may arrest the
34 person or persons suspected of its commission and charge such
35 person or persons with the appropriate crime. If it appears to
36 the officer that an immediate and present danger of domestic
37 violence exists and will continue, the officer shall take the
38 person or persons suspected of domestic violence into custody
39 and keep the person or persons in custody for 48 hours
40 immediately after arresting the person or persons. The decision
41 to arrest and charge does ~~shall~~ not require consent of the
42 victim or consideration of the relationship of the parties.

43 (4) (a) When complaints are received from two or more
44 parties, the officers shall evaluate each complaint separately
45 to determine whether there is probable cause for arrest.

46 (b) If a law enforcement officer has probable cause to
47 believe that two or more persons have committed a misdemeanor or
48 felony, or if two or more persons make complaints to the
49 officer, the officer shall try to determine who was the primary
50 aggressor. Arrest is the preferred response only with respect to
51 the primary aggressor and not the preferred response with
52 respect to a person who acts in a reasonable manner to protect
53 or defend himself or herself ~~oneself~~ or another family or
54 household member from domestic violence. If it appears to the
55 officer that an immediate and present danger of domestic
56 violence exists and will continue, the officer shall take the
57 primary aggressor into custody and keep the aggressor in custody
58 for 48 hours immediately after arresting that person.

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59 Section 2. Subsection (5) of section 741.30, Florida
60 Statutes, is amended to read:

61 741.30 Domestic violence; injunction; powers and duties of
62 court and clerk; petition; notice and hearing; temporary
63 injunction; issuance of injunction; statewide verification
64 system; enforcement.—

65 (5) (a) When it appears to the court that an immediate and
66 present danger of domestic violence exists, the court may grant
67 a temporary injunction ex parte, pending a full hearing, and may
68 grant such relief as the court deems proper, including an
69 injunction:

70 1. Restraining the respondent from committing any acts of
71 domestic violence.

72 2. Awarding to the petitioner the temporary exclusive use
73 and possession of the dwelling that the parties share or
74 excluding the respondent from the residence of the petitioner.

75 3. On the same basis as provided in s. 61.13, providing the
76 petitioner with 100 percent of the time-sharing that shall
77 remain in effect until the order expires or an order is entered
78 by a court of competent jurisdiction in a pending or subsequent
79 civil action or proceeding affecting the placement of, access
80 to, parental time with, adoption of, or parental rights and
81 responsibilities for the minor child.

82 (b) If it appears to the court that an immediate and
83 present danger of domestic violence exists and will continue,
84 the court shall order the sheriff to take the respondent into
85 custody and keep the respondent in custody for 48 hours
86 immediately upon serving the respondent with the petition for an
87 injunction for protection against domestic violence.

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88 (c) ~~(b)~~ In a hearing ex parte for the purpose of obtaining
89 such ex parte temporary injunction, no evidence other than
90 verified pleadings or affidavits shall be used as evidence,
91 unless the respondent appears at the hearing or has received
92 reasonable notice of the hearing. A denial of a petition for an
93 ex parte injunction shall be by written order noting the legal
94 grounds for denial. When the only ground for denial is no
95 appearance of an immediate and present danger of domestic
96 violence, the court shall set a full hearing on the petition for
97 injunction with notice at the earliest possible time. Nothing
98 herein affects a petitioner's right to promptly amend any
99 petition, or otherwise be heard in person on any petition
100 consistent with the Florida Rules of Civil Procedure.

101 (d) ~~(e)~~ An ~~Any such~~ ex parte temporary injunction shall be
102 effective for a fixed period not to exceed 15 days. A full
103 hearing, as provided by this section, shall be set for a date no
104 later than the date when the temporary injunction ceases to be
105 effective. The court may grant a continuance of the hearing
106 before or during a hearing for good cause shown by any party,
107 which shall include a continuance to obtain service of process.
108 Any injunction shall be extended if necessary to remain in full
109 force and effect during any period of continuance.

110 Section 3. Subsections (6), (13), and (14) of section
111 784.046, Florida Statutes, are amended to read:

112 784.046 Action by victim of repeat violence, sexual
113 violence, or dating violence for protective injunction; dating
114 violence investigations, notice to victims, and reporting;
115 pretrial release violations.—

116 (6) (a) When it appears to the court that an immediate and

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117 present danger of violence exists, the court may grant a
118 temporary injunction which may be granted in an ex parte
119 hearing, pending a full hearing, and may grant such relief as
120 the court deems proper, including an injunction enjoining the
121 respondent from committing any acts of violence.

122 (b) When it appears to the court that an immediate and
123 present danger of repeat violence, sexual violence, or dating
124 violence exists and will continue, the court shall order the
125 sheriff to take the respondent into custody and keep the
126 respondent in custody for 48 hours immediately upon serving the
127 respondent with the petition for protection against repeat
128 violence, sexual violence, or dating violence.

129 (c) ~~(b)~~ In a hearing ex parte for the purpose of obtaining a
130 ~~such~~ temporary injunction, no evidence other than the verified
131 pleading or affidavit shall be used as evidence, unless the
132 respondent appears at the hearing or has received reasonable
133 notice of the hearing.

134 (d) ~~(e)~~ An Any ~~such~~ ex parte temporary injunction is ~~shall~~
135 ~~be~~ effective for a fixed period not to exceed 15 days. However,
136 an ex parte temporary injunction granted under subparagraph
137 (2) (c) 2. is effective for 15 days following the date the
138 respondent is released from incarceration. A full hearing, as
139 provided by this section, shall be set for a date no later than
140 the date when the temporary injunction ceases to be effective.
141 The court may grant a continuance of the ex parte injunction and
142 the full hearing before or during a hearing, for good cause
143 shown by any party.

144 (13) Whenever a law enforcement officer determines upon
145 probable cause that an act of dating violence has been committed

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146 within the jurisdiction, the officer may arrest the person or
147 persons suspected of its commission and charge such person or
148 persons with the appropriate crime. If it appears to the officer
149 that an immediate and present danger of dating violence exists
150 and will continue, the officer shall take the person or persons
151 suspected of dating violence into custody and keep the person or
152 persons in custody for 48 hours immediately after arresting the
153 person or persons. The decision to arrest and charge shall not
154 require consent of the victim or consideration of the
155 relationship of the parties.

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

159 (b) If a law enforcement officer has probable cause to
160 believe that two or more persons have committed a misdemeanor or
161 felony, or if two or more persons make complaints to the
162 officer, the officer shall try to determine who was the primary
163 aggressor. Arrest is the preferred response only with respect to
164 the primary aggressor and not the preferred response with
165 respect to the ~~a~~ person who acts in a reasonable manner to
166 protect or defend himself or herself or another family or
167 household member from dating violence. If it appears to the
168 officer that an immediate and present danger of dating violence
169 exists and will continue, the officer shall take the primary
170 aggressor into custody and keep the aggressor in custody for 48
171 hours immediately after arresting that person.

172 Section 4. This act shall take effect July 1, 2009.