

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 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) If 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 a temporary parenting plan, including a time-sharing  
77 schedule, which may award the petitioner up to 100 percent of  
78 the time-sharing. The temporary parenting plan remains in effect  
79 until the order expires or an order is entered by a court of  
80 competent jurisdiction in a pending or subsequent civil action  
81 or proceeding affecting the placement of, access to, parental  
82 time with, adoption of, or parental rights and responsibilities  
83 for the minor child.

84 (b) If it appears to the court that an immediate and  
85 present danger of domestic violence exists and will continue,  
86 the court shall order the sheriff to take the respondent into  
87 custody and keep the respondent in custody for 48 hours

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88 immediately upon serving the respondent with the petition for an  
89 injunction for protection against domestic violence.

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

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

113 Section 3. Subsections (6), (13), and (14) of section  
114 784.046, Florida Statutes, are amended to read:

115 784.046 Action by victim of repeat violence, sexual  
116 violence, or dating violence for protective injunction; dating

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117 violence investigations, notice to victims, and reporting;  
118 pretrial release violations.-

119 (6) (a) When it appears to the court that an immediate and  
120 present danger of violence exists, the court may grant a  
121 temporary injunction which may be granted in an ex parte  
122 hearing, pending a full hearing, and may grant such relief as  
123 the court deems proper, including an injunction enjoining the  
124 respondent from committing any acts of violence.

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

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

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

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146 good cause shown by any party.

147 (13) Whenever a law enforcement officer determines upon  
148 probable cause that an act of dating violence has been committed  
149 within the jurisdiction, or that a person has violated a  
150 condition of pretrial release as provided in s. 903.047 and the  
151 original arrest was for an act of dating violence, the officer  
152 may arrest the person or persons suspected of its commission and  
153 charge such person or persons with the appropriate crime. If it  
154 appears to the officer that an immediate and present danger of  
155 dating violence exists and will continue, the officer shall take  
156 the person or persons suspected of dating violence into custody  
157 and keep the person or persons in custody for 48 hours  
158 immediately after arresting the person or persons. The decision  
159 to arrest and charge does ~~shall~~ not require consent of the  
160 victim or consideration of the relationship of the parties.

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

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

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175 custody and keep the aggressor in custody for 48 hours  
176 immediately after arresting that person.

177 Section 4. This act shall take effect July 1, 2010.