

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:

26
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 injunction for
89 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 injunction 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, 2011.