

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 Budget Committee

BILL: CS/SB 438

INTRODUCER: Criminal Justice Committee and Senator Hill

SUBJECT: Injunctions for Protection

DATE: April 19, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Fav/CS
2.	Boland	Maclure	JU	Favorable
3.	Hendon	Meyer, C.	BC	Favorable
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes
- B. AMENDMENTS..... Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

The bill requires the Florida Association of Court Clerks and Comptrollers, subject to available funding, to develop an automated process by which a petitioner may request notification that a respondent has been served with a protective injunction against domestic violence, repeat violence, dating violence, or sexual violence. Such notification must be made within 12 hours after the sheriff or other law enforcement officer serves the protective injunction.

This bill amends sections 741.30 and 784.046, Florida Statutes.

II. Present Situation:

Protective Injunctions

In 2005, it was estimated that more than 1.5 million adults in the United States are victims of domestic violence each year, and more than 85 percent of the victims are women.¹ In Florida,

¹ Margaret Graham Tebo, *When Home Comes to Work*, ABA JOURNAL (Sept. 2005), available at http://www.abajournal.com/magazine/when_home_comes_to_work/ (last visited Mar. 10, 2011) (citing statistics from Legal Momentum, an advocacy and research organization based in New York City); see also Nat'l Coalition Against Domestic

113,123 incidents of domestic violence were reported in 2008, which is 1.8 percent less than what was reported for the same period in 2007.² Additionally, statistics show that one in five high school girls has reported being physically or sexually abused by a dating partner, and females ages 16 through 24 are three times more vulnerable for partner violence than any other age group.³

An injunction for protection is a civil order that provides protection from abuse by certain people. An injunction can order the abuser to do certain things (such as moving out of the house), to not do certain things (such as contacting the victim), or it can give the victim certain rights (such as temporary custody of any children).⁴ In 1979, the Florida Legislature created a cause of action for an injunction for protection against domestic violence, and in 1988 a cause of action for an injunction for protection against repeat violence, sexual violence, or dating violence was also created.⁵

A victim of domestic violence⁶ or a person who has reasonable cause to believe that he or she is in imminent danger of becoming a victim of domestic violence may seek protective injunctive relief.⁷ Additionally, a victim of repeat violence,⁸ sexual violence,⁹ or dating violence¹⁰ may seek protective injunctive relief.¹¹

Florida law requires that within 24 hours after the court issues or modifies an injunction for protection against domestic violence, repeat violence, sexual violence, or dating violence, the

Violence, *Domestic Violence Facts*, [http://www.ncadv.org/files/DomesticViolenceFactSheet\(National\).pdf](http://www.ncadv.org/files/DomesticViolenceFactSheet(National).pdf) (last visited Mar. 10, 2011).

² Florida Dep't of Law Enforcement, *Crime in Florida* (Jan.-Dec. 2008), http://www.fdle.state.fl.us/Content/getdoc/4f6a6cd0-6479-4f4f-a5a4-cd260e4119d8/CIF_Annual08.aspx (last visited Mar. 10, 2011).

³ American Bar Association, *Teen Dating Violence Facts* (2006), <http://www.abanet.org/unmet/teendating/facts.pdf> (last visited Mar. 3, 2010).

⁴ *Injunctions for Protection Against Domestic Violence* (Feb. 3, 2010), http://www.womenslaw.org/laws_state_type.php?id=496&state_code=FL (last visited March 10, 2011).

⁵ See chs. 79-402, s. 1, and 88-344, s. 1, Laws of Fla.

⁶ Domestic violence is defined 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." Section 741.28(2), F.S.

⁷ Section 741.30(1), F.S.

⁸ Section 784.046(1)(b), F.S., defines repeat violence 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."

⁹ Sexual violence is defined as any one incident of "1. Sexual battery, as defined in chapter 794; 2. 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; 3. Luring or enticing a child, as described in chapter 787; 4. Sexual performance by a child, as described in chapter 827; or 5. Any other forcible felony wherein a sexual act is committed or attempted." For purposes of this definition, it does not matter whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney. Section 784.046(1)(c), F.S.

¹⁰ 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 following factors come into play when determining the existence of such a relationship: (1) a dating relationship must have existed within the past six months; (2) the nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and (3) the persons involved in the relationship must have been involved over time and on a continuous basis during the course of the relationship. Dating violence does not include violence in a casual acquaintanceship or between individuals who have only engaged in ordinary fraternization. Section 784.046(1)(d), F.S.

¹¹ Section 784.046(2), F.S.

clerk of the court must forward a certified copy of the injunction for service to the sheriff with jurisdiction over the residence of the petitioner. The following requirements must be followed when serving the injunction:

- The law enforcement officer must forward the written proof of service of process to the sheriff within 24 hours after service of process of a domestic violence protective injunction upon a respondent;
- The sheriff must make information relating to the injunction available to other law enforcement agencies by electronically transmitting such information to the Florida Department of Law Enforcement (FDLE) within 24 hours after the sheriff receives a certified copy of the protective injunction; and
- The sheriff must make such information relating to the service available to other law enforcement agencies by electronically transmitting such information to the FDLE within 24 hours after the sheriff or other law enforcement officer makes service upon the respondent and the sheriff has been so notified.¹²

Victim Notification

Section 960.001, F.S., provides guidelines for the fair treatment of victims and witnesses involved in the criminal and juvenile justice systems. Specifically, the purpose of the guidelines is to achieve specified objectives in the following categories:

- Information concerning services available to victims of adult and juvenile crime;
- Information for purposes of notifying victim or appropriate next of kin of victim or other designated contact of victim;
- Information concerning protection available to victim or witness;
- Notification of scheduling changes;
- Advance notification to victim or relative of victim concerning judicial proceedings; right to be present;
- Information concerning release from incarceration from a county jail, municipal jail, juvenile detention facility, or residential commitment facility;
- Consultation with victim or guardian or family of victim;
- Return of property to victim;
- Notification to employer and explanation to creditors of victim or witness;
- Notification of right to request restitution;
- Notification of right to submit impact statement;
- Local witness coordination services;
- Victim assistance education and training;
- General victim assistance;
- Victim's rights information card or brochure;
- Information concerning escape from a state correctional institution, county jail, juvenile detention facility, or residential commitment facility;
- Presence of victim advocate during discovery deposition; testimony of victim of a sexual offense;

¹² See ss. 741.30(8)(c)2.-4., and 784.046(8)(c)2.-4., F.S.

- Implementing crime prevention in order to protect the safety of persons and property, as prescribed in the State Comprehensive Plan;
- Attendance of victim at same school as defendant;
- Use of a polygraph examination or other truth-telling device with victim; and
- Presence of victim advocates during forensic medical examination.

Essentially, victims have the right to be informed, to be present, and to be heard when relevant, at all crucial stages of a criminal or juvenile proceeding, to the extent that this right does not interfere with constitutional rights of the accused.

Upon the request of the victim (or the appropriate next of kin or designated contact), the chief administrator of a county jail, municipal jail, juvenile detention facility, or residential commitment facility must make a reasonable attempt to notify the requestor prior to the defendant's or offender's release from incarceration. However, victims (or the appropriate next of kin or designated contact) of specified offenses¹³ must be notified within four hours by the chief administrator about the release of an offender or defendant from incarceration in any of the above facilities or the release of an offender or defendant following sentencing, disposition, or furlough.¹⁴

If an offender escapes from a state correctional institution or any of the above facilities, then the institution of confinement must immediately notify the state attorney of the jurisdiction where the criminal charge arose and the judge who imposed the sentence. The state attorney must then make every effort to notify the victim, material witness, parents or legal guardian of a minor who is a victim or witness, or immediate relatives of a homicide victim of the escapee.¹⁵

The Department of Corrections (DOC or department) is required by law to notify, if requested, the state attorney, victim, or personal representative of the victim when an inmate has been approved for community work release within 30 days after the date of approval.¹⁶ The department is also required to notify the victim six months before the release of an inmate from the custody of the department.¹⁷ In addition, if an inmate is a sexual offender,¹⁸ DOC is required, if requested, to notify the victim of the offense, the victim's parent or legal guardian if the victim is a minor, the lawful representative of the victim, or the next of kin if the victim is a homicide victim, within six months prior to the anticipated release of a sexual offender, or as soon as possible if the sexual offender is released earlier than anticipated.¹⁹

¹³ These offenses include homicide, sexual offense, an attempted murder or sexual offense, stalking, or domestic violence. See s. 960.001(1)(b), F.S.

¹⁴ Section 960.001(1)(f), F.S.

¹⁵ Section 960.001(1)(p), F.S.

¹⁶ Section 944.605(6), F.S.

¹⁷ Section 944.605(1), F.S.

¹⁸ Section 944.606, F.S., defines "sexual offender" as "a person who has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; or s. 985.701(1); or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this subsection."

¹⁹ Section 944.606(3)(b), F.S.

III. Effect of Proposed Changes:

This bill requires (in addition to the notice requirements on law enforcement for serving an injunction for protection) that the Florida Association of Court Clerks and Comptrollers, subject to available funding, develop an automated process by which a petitioner may request notification that a respondent has been served with a protective injunction against domestic violence, repeat violence, dating violence, or sexual violence, as well as other court actions related to the injunction. The association must apply for any available grants to help fund the notification system. Notification must be made within 12 hours after the sheriff or other law enforcement officer has served the protective injunction. The notification must include, at a minimum, the location, date, and time that the protective injunction was served.

This bill provides an effective date of July 1, 2011.

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 bill requires the Florida Association of Court Clerks and Comptrollers to develop an automated process so that a petitioner may request notification of service of an injunction for protection. However, the bill specifies that the association is only required to develop the automated process if it has available funding. It is unclear how the determination will be made that sufficient funding is available for the association to comply with the bill's requirements. The association has stated that a determined funding amount and the source

of the funding need to be established in order for the association to comply with the bill.²⁰ In its agency analysis of the bill, the Florida Association of Court Clerks and Comptrollers found that the bill would have an indeterminate policy and fiscal impact on the office of the clerk.²¹

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 March 14, 2011:

The committee substitute:

- Updates the name of the Florida Association of Court Clerks to the Florida Association of Court Clerks and Comptrollers.
- Requires the association to apply for available grants to fund the notification system.

- B. **Amendments:**

None.

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

²⁰ Correspondence from Fred Baggett, General Counsel, Fla. Ass'n of Court Clerks and Comptrollers, to Senator Anthony Hill (Mar. 25, 2010) (on file with the Senate Committee on Judiciary).

²¹ Florida Association of Court Clerks and Comptrollers, Agency Analysis of SB 438, March 9, 2011 (on file with the Senate Committee on Judiciary).