

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 Subcommittee on Criminal and Civil Justice Appropriations

BILL: CS/SB 950

INTRODUCER: Criminal Justice Committee and Senators Smith and Storms

SUBJECT: Stalking & Aggravated Stalking

DATE: February 6, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Fav/CS
2.	White	Cibula	JU	Favorable
3.	Harkness	Sadberry	BJA	Pre-meeting
4.			BC	
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 amends the stalking statute, s. 784.048, F.S., by revising definitions related to stalking, primarily the definition of “credible threat.” It establishes a cause of action for an injunction for protection against stalking and cyberstalking, provides procedures and protections for obtaining a temporary or final injunction against stalking or cyberstalking, provides a first-degree misdemeanor penalty for violating an injunction against stalking or cyberstalking, and requires the court to consider issuing an injunction restraining a defendant from victim contact for up to ten years.

This bill substantially amends section 784.048, Florida Statutes. The bill creates sections 784.0485 and 784.0487, Florida Statutes.

II. Present Situation:

Stalking

Section 784.048, F.S., criminalizes the offense of stalking and aggravated stalking. Stalking is a first-degree misdemeanor, punishable by up to one year in county jail and potentially a fine of up

to \$1,000. Stalking is committed when a person willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person.¹

Aggravated stalking is a third-degree felony, punishable by up to five years in prison and potentially a fine of up to \$5,000. There are four aggravated stalking offenses provided in s. 784.048, F.S. Aggravated stalking occurs when a person willfully, maliciously, and repeatedly follows, harasses, or cyberstalks:

- Any person while making a credible threat with the intent to place that person in reasonable fear of death or bodily injury for himself, his child, sibling, spouse, parent, or dependent.²
- The same person for whom there has been an injunction for protection against repeat violence, sexual violence, dating violence, domestic violence, or any other court imposed prohibition of conduct toward the subject person or his property, so long as the aggravated stalking conduct is performed knowingly.³
- A minor under 16 years of age.⁴
- The victim of a crime for which the offender has been sentenced for sexual battery, a lewd or lascivious offense, or lewd or lascivious exhibition via computer transmission and for which the offender has been issued a no contact order under s. 921.244, F.S.⁵

The stalking law provides definitions for several common terms related to the offense of stalking. It defines “harass” as engaging in a “course of conduct directed at a specific person that causes substantial emotional distress and serves no legitimate purpose.”⁶ A course of conduct is a “pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose.”⁷ A credible threat is one that is “made with the intent to cause the targeted person to reasonably fear for his or her safety.” Also, a credible threat must be made against the life of a person, or threaten to cause bodily injury to a person.⁸ Lastly, cyberstalking means engaging in a course of conduct to communicate through words or images by electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose.⁹

In 1995, the constitutionality of Florida’s stalking statute was upheld by the Florida Supreme Court against an overbreadth and vagueness challenge.¹⁰

¹ Section 784.048(2), F.S.

² Section 784.048(3), F.S.

³ Section 784.048(4), F.S.

⁴ Section 784.048(5), F.S.

⁵ Section 784.048(7), F.S.

⁶ Section 784.048(1), F.S.

⁷ Section 784.048(1)(b), F.S.

⁸ Section 784.048(1)(c), F.S.

⁹ Section 784.048(1)(d), F.S.

¹⁰ *Bouters v. State*, 659 So. 2d 235 (1995), *cert. denied*, 116 S.Ct. 245, 516 U.S. 894, 133 L.Ed.2d 171.

Injunctions for Protection against Domestic Violence, Repeat Violence, Sexual Violence, or Dating Violence

A victim of domestic violence,¹¹ 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.¹² In seeking protective injunctive relief, a person must file a sworn petition with the court which alleges the existence of domestic violence and includes specific facts and circumstances upon which relief is sought.¹³ The court must set a hearing at the earliest possible time after a petition is filed.¹⁴ The respondent must be personally served with a copy of the petition, financial affidavit, Uniform Child Custody Jurisdiction and Enforcement Act affidavit, if any, notice of hearing, and any temporary injunction that has been issued.¹⁵ The court can enforce a violation of an injunction through a civil or criminal contempt proceeding, or the state attorney may prosecute it as a first-degree misdemeanor under s. 741.31, F.S.¹⁶ Either party may move the court to modify or dissolve an injunction at any time.¹⁷

Section 784.046, F.S., governs the issuance of injunctions for protection against repeat violence,¹⁸ dating violence,¹⁹ and sexual violence.²⁰ To a large extent, this statute recreates provisions discussed above in the domestic violence law, applying the right to seek protective injunctive relief in instances of repeat violence, dating violence, and sexual violence.

Currently, a statutory cause of action does not exist specifically for an injunction for protection against stalking or cyberstalking. A person seeking such an injunction must pursue injunctive relief through the domestic violence injunction statute or the repeat violence injunction statute, as outlined above. The domestic violence definition requires stalking or aggravated stalking

¹¹ Section 741.28(2), F.S., defines domestic violence 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.”

¹² Section 741.30(1), F.S.

¹³ Section 741.30(3), F.S.

¹⁴ Section 741.30(4), F.S.

¹⁵ *Id.* When an immediate and present danger of domestic violence exists, the court may grant a temporary injunction *ex parte*, pending a full hearing. Section 741.30(5), F.S.

¹⁶ Section 741.30(9), F.S.

¹⁷ Section 741.30(10), F.S.

¹⁸ Section 784.046(1)(a), F.S., defines violence as “any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, or false imprisonment, or any criminal offense resulting in physical injury or death, by a person against any other person.” 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.”

¹⁹ Section 784.046(1)(d), F.S., defines dating violence 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.

²⁰ Section 784.046(1)(c), F.S., defines sexual violence 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.

resulting in physical injury or death of one family or household member by another member.²¹ Similarly, the violence definition in the repeat violence statute requires stalking or aggravated stalking resulting in physical injury or death by one person against any other person.²² The repeat violence definition requires two incidents of stalking, one being within six months of the petition's filing, which are directed against the petitioner or an immediate family member.²³

III. Effect of Proposed Changes:

The bill amends the stalking statute, s. 784.048, F.S., by revising certain definitions, including the definition of what constitutes a "credible threat." Additionally, the bill establishes a cause of action for an injunction for protection against stalking and cyberstalking. It provides procedures and protections for obtaining a temporary or final injunction against stalking or cyberstalking, and also provides a first-degree misdemeanor penalty for violating an injunction against stalking or cyberstalking.²⁴ Finally, the bill requires the court to consider issuing an injunction restraining a defendant from victim contact for up to ten years.

Stalking

This bill clarifies the stalking statute by revising the definition of "credible threat" and providing a definition of "immediate family." Under the definition provided in the bill, the standard for establishing a credible threat is relaxed, so that the threat no longer must be made against the life of the targeted person, or be a threat to cause bodily injury to the targeted person. Rather, the bill contemplates the possibility of a credible threat being made against a person's family or household member.

Under the bill, a "credible threat" means a verbal or nonverbal threat, including one delivered by electronic communication, which places the targeted person in reasonable fear of his or her safety or that of his or her immediate family or household member, and made with the apparent ability to carry it out. This language further strengthens the Supreme Court of Florida's interpretation of the existing statute,²⁵ in that the bill specifically sets out an objective, reasonable fear standard.²⁶ Additionally, the bill clarifies that it is not necessary to prove that the person making the threat had the intent to actually carry it out. The bill deletes the current language requiring that the credible threat be against the life of a person, or be a threat to cause bodily injury to a person. These changes should make it easier to establish aggravated stalking when a person willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another and makes a credible threat against that person.

The bill also provides a definition of "immediate family" to include a person's spouse, parent, child, grandparent, or sibling. This definition potentially includes people not represented in the class established by the definition of "family or household member" as provided elsewhere in the

²¹ See *supra* note 11.

²² See *supra* note 18.

²³ *Id.*

²⁴ Generally, these same procedures, protections, and penalties exist for domestic violence and repeat violence injunctions. See ss. 741.30 and 741.046, F.S.

²⁵ *Bouters*, 659 So. 2d at 238.

²⁶ So long as a reasonable person in the targeted person's place would fear for his safety or that of his family or household members, the standard will be met.

statutes. For example, under the domestic violence statute, a “family or household member” means spouses, former spouses, persons related by blood or marriage, persons presently residing together, or persons who have a child in common.²⁷

Injunctions for No Contact and for Protection Against Stalking and Cyberstalking

The bill requires the sentencing court to consider issuing an injunction restraining the defendant from any victim contact for up to ten years. The length of this restraining injunction is intended to be based upon the seriousness of the case facts, the probability of future violations, and the victim’s safety. The court may issue the injunction regardless of whether the defendant is in prison, county jail, or on probation.

The bill creates a statutory cause of action for an injunction for protection against stalking and cyberstalking, which is similar to the current causes of action for injunctions against domestic violence, repeat violence, sexual violence, and dating violence. The cause of action that this bill establishes, however, does not include a requirement that physical injury or death be involved. The bill allows a stalking victim to file a sworn petition for an injunction for protection against stalking or cyberstalking in circuit court.

The petition for protection must allege the incidents of stalking or cyberstalking and include specific facts and circumstances upon which relief is sought. The court may not require the petitioner to file a bond upon the issuance of the injunction, nor pay a filing fee. The clerk of the court must provide the petitioner with a certified copy of any protective injunction against stalking entered by the court.

The bill provides procedures and protections for obtaining a temporary or final injunction against stalking or cyberstalking, which are generally similar to those currently existing for a domestic violence or repeat violence injunction. Additionally, the bill provides a first degree misdemeanor penalty for violating an injunction against stalking or cyberstalking, similar to the current criminal penalty that exists for violating a domestic violence or repeat violence injunction.

The bill provides an effective date of October 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²⁷ Section 741.28(3), F.S.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The first-degree misdemeanor penalty imposed upon violators of injunctions against stalking or cyberstalking would subject those violators to serving up to one year in jail and paying up to \$1,000 in a fine. Fines associated with the misdemeanor penalties established by this bill could result in an indeterminate amount of government revenues. An indeterminate fiscal impact upon local jails is expected because violators of stalking injunctions are subject to incarceration for up to one year in jail. There would be no fiscal impact on state prisons.

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 January 19, 2012:

- Deletes the enhanced criminal penalties for aggravated stalking and the conforming changes to the Criminal Punishment Code;
- Deletes mandatory attendance at a batterers' intervention program;
- Provides procedures and protections for obtaining a temporary or final injunction against stalking or cyberstalking (generally the same as exists for a domestic violence or repeat violence injunction); and
- Provides a first degree misdemeanor penalty for violating an injunction against stalking or cyberstalking (same as exists for a domestic violence or repeat violence injunction).

B. Amendments:

None.