

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 659 Protective Orders

SPONSOR(S): Judiciary; Justice Appropriations Subcommittee; Criminal Justice Subcommittee; Mayfield

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 920

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N, As CS	Cox	Cunningham
2) Justice Appropriations Subcommittee	12 Y, 0 N, As CS	McAuliffe	Lloyd
3) Judiciary Committee	14 Y, 0 N, As CS	Cox	Havlicak

SUMMARY ANALYSIS

Victims of domestic, repeat, dating, or sexual violence, or stalking or cyberstalking (specified acts of violence) may obtain a court injunction for protection if certain requirements are met. An injunction is either temporary, lasting a maximum of 15 days, or final, lasting until dissolved by the court. The court can enforce a violation of an injunction against specified acts of violence through a civil or criminal contempt proceeding, or the state attorney may prosecute it as a first degree misdemeanor.

The bill amends various provisions relating to injunctions for protection against domestic, repeat, dating, or sexual violence, or stalking or cyberstalking. Specifically, the bill:

- Requires the effectiveness of a temporary injunction to extend until a final injunction is served upon the respondent;
- Provides that a respondent violates the terms of the injunction if the respondent willfully goes to, or is within 500 feet of a specified place frequented regularly by the petitioner or any named family or household member; and
- Provides that a respondent violates the terms of the final injunction against stalking or cyberstalking, or repeat, dating or sexual violence by possessing a firearm or ammunition.

The bill expands when an officer may arrest a person without a warrant to include cases that involve acts of domestic, repeat, dating, or sexual violence, stalking or cyberstalking, and child abuse injunction violations.

The bill also provides that the condition of pretrial release preventing a defendant from contacting a victim becomes effective immediately upon order of the court.

The bill may have a negative jail bed impact on local governments because it increases the number of potential defendants subject to misdemeanor penalties.

The bill is effective October 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Injunctions for Protection against Specified Acts of Violence

Domestic Violence

Any person who is the victim of domestic violence¹ or who reasonably believes that he or she is in imminent danger of becoming the victim of domestic violence may file a petition for an injunction for protection against domestic violence.² The sworn petition must allege the existence of domestic violence and include specific facts and circumstances upon which relief is sought.³ A hearing must be set at the earliest possible time after a petition is filed,⁴ and the respondent must be personally served with a copy of the petition.⁵ At the hearing, specified injunctive relief may be granted if the court finds that the petitioner is:

- The victim of domestic violence; or
- Has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence.⁶

If it appears to the court that an immediate and present danger of domestic violence exists when the petition is filed, the court may grant a temporary injunction ex parte.^{7,8} Temporary injunctions are only effective for a fixed period that cannot exceed 15 days.⁹ The hearing on the petition must be set for a date on or before the date when the temporary injunction expires.¹⁰

Repeat, Dating, and Sexual Violence

Section 784.046, F.S., governs the issuance of injunctions against repeat violence,¹¹ dating violence,¹² and sexual violence.¹³ This statute largely parallels the provisions discussed above regarding domestic violence injunctions.

¹ Section 741.28, 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.

² Section 741.30, F.S.

³ Section 741.30(3), F.S.

⁴ Section 741.30(4), F.S.

⁵ *Id.*

⁶ Section 741.30(6), F.S. Either party may move the court to modify or dissolve an injunction at any time. Section 741.30(6)(c) and (10), F.S.

⁷ The court may grant such relief as it deems proper, including an injunction restraining the respondent from committing any acts of domestic violence, awarding to the petitioner the temporary exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner, and providing the petitioner a temporary parenting plan. Section 741.30(5), F.S.

⁸ The only evidence admissible in the ex parte hearing is verified pleadings or affidavits, unless the respondent appears at the hearing or has received reasonable notice of the hearing. Section 741.30(5)(b), F.S.

⁹ Section 741.30(5)(c), F.S.

¹⁰ The court may grant a continuance of the hearing for good cause, which may include obtaining service of process. A temporary injunction must be extended, if necessary, during any period of continuance. Section 741.30(5)(c), F.S.

¹¹ Section 784.046(1)(b), F.S., defines “repeat violence” to mean 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. Section 784.046(1)(a), F.S., defines “violence” to mean 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.

¹² Section 784.046(1)(d), F.S., defines “dating violence” to mean 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.

¹³ Section 784.046(1)(c), F.S., defines “sexual violence” to mean any one incident of: 1. Sexual battery; 2. A lewd or lascivious act committed upon or in the presence of a person younger than 16 years of age; 3. Luring or enticing a child; 4. Sexual performance by a

Stalking and Cyberstalking

Section 784.0485, F.S., governs the issuance of injunctions against stalking and cyberstalking. This statute largely parallels the provisions discussed above regarding domestic violence injunctions.

All three statutes are silent as to whether a temporary injunction may remain in effect past the 15 day time limit to allow a final injunction that is issued by the court to be served on the respondent.

Effect of the Bill

The bill amends ss. 741.30 (domestic violence), 784.046 (repeat, dating, or sexual violence), and 784.0485, F.S. (stalking and cyberstalking), to require the effectiveness of a temporary injunction against domestic, repeat, dating, or sexual violence, or stalking or cyberstalking to extend until a final injunction is served upon the respondent. The effectiveness of the temporary injunction cannot extend beyond the expiration date of the final injunction, if such a date is designated. The bill further provides that a full hearing will be set for a date no later than the date when the ex parte temporary injunction ceases to be effective.

Violation of an Injunction against Specified Acts of Violence

A respondent violates the terms of an injunction against domestic, repeat, dating, or sexual violence, or stalking or cyberstalking, if the respondent willfully:

- Refuses to vacate the dwelling that the parties share;¹⁴
- Goes to, or is within 500 feet of, the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;
- Commits an act of domestic, repeat, dating, or sexual violence, or stalking against the petitioner;
- Commits any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to the petitioner;
- Telephones, contacts, or otherwise communicates with the petitioner directly or indirectly, unless the injunction specifically allows indirect contact through a third party;
- Knowingly and intentionally comes within 100 feet of the petitioner's motor vehicle, whether or not that vehicle is occupied;
- Defaces or destroys the petitioner's personal property, including the petitioner's car; or
- Refuses to surrender firearms or ammunition if ordered to do so by the court.¹⁵

A court can enforce a violation of an injunction through civil or criminal contempt proceedings, or the state attorney may prosecute the violation as a first degree misdemeanor.^{16,17}

Effect of the Bill

The bill amends ss. 741.31 (domestic violence), 784.047 (repeat, dating, or sexual violence), and 784.0487 (stalking and cyberstalking), F.S., providing a respondent violates the terms of an injunction if the respondent willfully goes to, or is within 500 feet of a specified place frequented regularly by the petitioner or any named family or household member, rather than a place frequented by both the petitioner and a family or household member.

The bill amends ss. 784.047 and 784.0487, F.S., to make it a first degree misdemeanor for a person to violate a repeat, dating, or sexual violence injunction, or a stalking or cyberstalking injunction by having

child; 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.

¹⁴ The terms of an injunction against stalking or cyberstalking cannot be violated by a respondent refusing to vacate the parties' shared dwelling. Section 784.0487(4), F.S.

¹⁵ Sections 741.31(4)(a), 784.047, and 784.0487, F.S.

¹⁶ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

¹⁷ Sections 741.30(9), 784.046(9), and 784.0485(9), F.S.

in his or her care, custody, possession, or control any firearm or ammunition.¹⁸ This mirrors language currently found in s. 741.31, F.S., which addresses violations of domestic violence injunctions.

Lawful Arrest by an Officer without a Warrant

Section 901.15, F.S., sets forth the instances in which a law enforcement officer (LEO) can arrest a person without a warrant. For misdemeanor offenses, the general rule is that LEOs must witness the occurrence of the offense in order to make an arrest without a warrant. LEOs that do not witness the offense must obtain an arrest warrant.¹⁹

In certain instances the Legislature has deemed particular misdemeanor offenses to be of such a nature that they should be exceptions to the above rule. Those crimes include instances in which there is probable cause to believe that a person:

- Possessed a firearm or ammunition when such person is subject to a final injunction against domestic violence, stalking, or cyberstalking;²⁰
- Committed a criminal act that violates the terms of an injunction against domestic, repeat, dating, or sexual violence;²¹ or
- Committed an act of domestic or dating violence.²²

Section 901.15, F.S., also provides LEOs civil immunity from any actions taken when effectuating a good faith arrest of a person believed to have:

- Committed an act of domestic or dating violence; or
- Violated the terms of an injunction against domestic, repeat, dating, or sexual violence.

Effect of the Bill

The bill amends s. 901.15, F.S., to permit a LEO to arrest a person without a warrant when there is probable cause to believe that a person has committed:

- A criminal act that violates the terms of an injunction against:
 - An act of child abuse occurring after a protective investigation is initiated;²³ or
 - Stalking or cyberstalking; or
- An act of repeat or sexual violence, stalking or cyberstalking, or child abuse.²⁴

The bill expands the civil immunity provision to apply to a LEO who effectuates a good faith arrest of a person believed to have:

- Committed an act of repeat or sexual violence, stalking or cyberstalking, or child abuse; or
- Violated the terms of an injunction against:
 - An act of child abuse occurring after a protective investigation is initiated; or
 - Stalking or cyberstalking.

Conditions of Pretrial Release

Section 903.047, F.S., requires the defendant as a condition of pretrial release, whether such release is by surety bail bond or recognizance bond or in some other form, to:

- Refrain from criminal activity of any kind;
- Refrain from any contact of any type with the victim, except through pretrial discovery pursuant to the Florida Rules of Criminal Procedure; and
- Comply with all conditions of pretrial release.

¹⁸ This is also a violation of s. 790.233, F.S., which prohibits a person from having in his or her care, custody, possession, or control any firearm or ammunition if the person has been issued a final injunction that is currently in force and effect, restraining that person from committing acts of domestic violence, or from committing acts of stalking or cyberstalking.

¹⁹ Section 901.15, F.S.

²⁰ Section 901.15(6), F.S., in accordance with s. 790.233, F.S.

²¹ This includes injunctions issued in accordance with ss. 741.30 or 784.046, F.S., or a foreign protection order accorded full faith and credit pursuant to s. 741.315, F.S. Additionally, the arrest may be made over the objection of the petitioner, if necessary. Section 901.15(6), F.S.

²² Section 901.15(7), F.S., further provides that the arrest may be made without consent of the victim.

²³ This injunction is governed by s. 39.504, F.S.

²⁴ As provided in s. 39.01, F.S.

Additionally, it provides that upon motion by the defendant when bail is set, or upon later motion properly noticed pursuant to law, the court may modify the condition to refrain from any contact with the victim if good cause is shown and the interests of justice so require.²⁵ The victim shall be permitted to be heard at any proceeding in which such modification is considered, and the state attorney shall notify the victim of the provisions of this subsection and of the pendency of any such proceeding.

Effect of the Bill

The bill amends s. 903.047, F.S., to provide that the condition of pretrial release preventing a defendant from contacting a victim becomes effective immediately upon order of the court.

B. SECTION DIRECTORY:

Section 1. Amends s. 741.30, F.S., relating to domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement; public records exemption.

Section 2. Amends s. 784.046, F.S., relating to action by victim of repeat violence, sexual violence, or dating violence for protective injunction; dating violence investigations, notice to victims, and reporting; pretrial release violations; public records exemption.

Section 3. Amends s. 784.0485, F.S., relating to stalking; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement.

Section 4. Amends s. 784.047, F.S., relating to penalties for violating protective injunction against violators.

Section 5. Amends s. 784.0487, F.S., relating to violation of an injunction for protection against stalking or cyberstalking.

Section 6. Amends s. 790.233, F.S., relating to possession of a firearm or ammunition prohibited when person is subject to an injunction against committing acts of domestic violence, stalking, or cyberstalking; penalties.

Section 7. Amends s. 901.15, F.S., relating to when arrest by officer without warrant is lawful.

Section 8. Amends s. 903.047, F.S., relating to conditions of pretrial release.

Section 9. Provides an effective date of October 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

²⁵ Section 903.047(2), F.S.
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The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill may have a negative jail bed impact on local governments because it increases the number of potential defendants subject to misdemeanor penalties.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 5, 2014, the Criminal Justice Subcommittee adopted one strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Removes all sections amending ch. 493, F.S., related to private investigators conducting certain records searches;
- Removes all sections providing a respondent is subject to prosecution or contempt proceedings for violating an injunction if the respondent directs a third party to commit specified acts that result in a violation of the injunction;
- Provides a person violates a final injunction for protection against repeat, dating, or sexual violence by possessing any firearm or ammunition; and
- Provides consistency between sections that address injunctions for protection and violations of injunctions against domestic violence; repeat, dating, and sexual violence; and stalking and cyberstalking.

On March 19, 2014, the Justice Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Provides that a temporary injunction is effective for not more than 15 days unless after a full hearing, a final injunction is issued on the same case, then the temporary injunction remains in effect until the final injunction is served.
- Provides that a full hearing will be set for a date no later than the date when the ex parte temporary injunction ceases to be effective.

- Provides the need to obtain service of process constitutes good cause, and a temporary injunction that is already served must be extended if necessary, so that it remains in full force and effect during any period of continuance.

On April 4, 2014, the Judiciary Committee adopted two amendments and reported the bill favorably as a committee substitute. The amendments provide that the:

- Effectiveness of the temporary injunction cannot extend beyond the expiration date of the final injunction, if such a date is designated; and
- Condition of pretrial release preventing the defendant from contacting the victim becomes effective immediately upon order of the court.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.