

**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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 920

INTRODUCER: Senator Dean

SUBJECT: Protection of Crime Victims

DATE: March 31, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<b>Favorable</b>
2.	<u>Munroe</u>	<u>Cibula</u>	<u>JU</u>	<b>Pre-meeting</b>
3.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 920 requires a private investigator or investigative agency to determine if the individual being investigated is a petitioner requesting notification of service of a protective injunction against domestic, repeat, dating, or sexual violence or a participant in the Address Confidentiality Program for domestic violence victims. The bill prohibits a private investigator from releasing that petitioner's or participant's personal identifying information. Violating this prohibition results in a first degree misdemeanor penalty and suspension or revocation of the investigator's license.

The bill also amends laws relating to injunctions for protection against domestic, repeat, dating, or sexual violence, stalking, or cyberstalking as follows:

- Provides for a temporary injunction to remain in effect until the final injunction is served on a respondent; and
- Provides that a respondent violates the terms of a final injunction against stalking or cyberstalking by possessing a firearm or ammunition (currently a first degree misdemeanor).

Finally, the bill expands the circumstances under which a law enforcement officer may conduct a warrantless arrest to include acts of stalking, cyberstalking, child abuse, and violations of a protective injunction for these acts.

## II. Present Situation:

### Regulation of Private Investigators

The profession of private investigation is regulated by the Department of Agriculture.<sup>1</sup> Private investigation is the investigation by a person for the purpose of obtaining information on any of the following matters:

- Crimes or threats against the United States or any state or territory of the United States, when operating under express written authority of the governmental official responsible for authorizing such investigation;
- The identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any society, person, or group of persons;
- The credibility of witnesses or other persons;
- The whereabouts of missing persons, owners of unclaimed property or escheated property, or heirs to estates;
- The location or recovery of lost or stolen property;
- The causes and origin of, or responsibility for, fires, libels, slanders, losses, accidents, damage, or injuries to real or personal property; or
- The business of securing evidence to be used before investigating committees or boards of award or arbitration or in the trial of civil or criminal cases.<sup>2</sup>

Every private investigator<sup>3</sup> must meet specified educational and training requirements and obtain a Class “C” license.<sup>4</sup> A Class “C” licensee may conduct investigations, own or manage a private investigation agency, carry a firearm, and perform bodyguard services.<sup>5</sup> A private investigator must comply with all regulations of the profession and is subject to specified disciplinary actions or criminal penalties for violating any provision of ch. 493, F.S.<sup>6</sup>

### Address Confidentiality Program

Domestic violence victims may apply to the Office of the Attorney General (Attorney General) to have his or her address designated as confidential.<sup>7</sup> The application must meet specified requirements. For example, a sworn statement must be provided that there is good reason to believe the subject of the application is the victim of domestic violence and the subject fears for his or her safety, or the safety of the subject’s children.<sup>8</sup> Once a properly completed application is filed, the Attorney General must certify the subject as a program participant, and designate an

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<sup>1</sup> See ss. 493.6100 and 493.6101(1), F.S.

<sup>2</sup> Section 493.6101(17), F.S.

<sup>3</sup> Section 493.6101(16), F.S., defines “private investigator” to mean any individual who, for consideration, advertises as providing or performs private investigation.

<sup>4</sup> Sections 493.6201 and 493.6203, F.S.

<sup>5</sup> Section 493.6201(3), (5), (7), and (8), F.S.

<sup>6</sup> Sections 493.6118 and 493.6120, F.S.

<sup>7</sup> Section 741.403(1), F.S., states that any adult person, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of a person adjudicated incapacitated under ch. 744, F.S., may apply to the Attorney General.

<sup>8</sup> Section 741.403(1)(a), F.S.

address to serve as the victim's address.<sup>9</sup> The Attorney General becomes the agent for purposes of service of process and receipt of mail.<sup>10</sup>

Section 741.465, F.S., specifies that the addresses, telephone numbers, and social security numbers of Address Program participants are exempt from the public records requirements of s. 119.07(1), F.S., and Article I, Section 24(a) of the State Constitution. A limited number of specified instances are provided that allow the confidential information to be released. There is no criminal penalty for releasing a program participant's confidential information.

## **Injunctions for Protection against Specified Acts of Violence**

### ***Domestic Violence***

Any person who is the victim of domestic violence<sup>11</sup> 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.<sup>12</sup> The sworn petition must allege the existence of domestic violence and include specific facts and circumstances upon which relief is sought.<sup>13</sup> A hearing must be set at the earliest possible time after a petition is filed,<sup>14</sup> and the respondent must be personally served with a copy of the petition.<sup>15</sup> 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.<sup>16</sup>

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 an ex parte temporary injunction.<sup>17,18</sup> Temporary injunctions are only effective for a fixed period of time that cannot exceed 15 days.<sup>19</sup> The hearing on the petition must be set for a date on or before the date when the temporary injunction expires.<sup>20</sup>

<sup>9</sup> Section 741.403(1) and (3), F.S. The certification is valid for 4 years, unless it is withdrawn or invalidated.

<sup>10</sup> Section 741.403(1)(b), F.S.

<sup>11</sup> 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.

<sup>12</sup> Section 741.30, F.S.

<sup>13</sup> Section 741.30(3), F.S.

<sup>14</sup> Section 741.30(4), F.S.

<sup>15</sup> *Id.*

<sup>16</sup> 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.

<sup>17</sup> 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.

<sup>18</sup> 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.

<sup>19</sup> Section 741.30(5)(c), F.S.

<sup>20</sup> 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.

### ***Repeat, Dating, and Sexual Violence***

Section 784.046, F.S., governs the issuance of injunctions against repeat violence,<sup>21</sup> dating violence,<sup>22</sup> and sexual violence.<sup>23</sup> This statute largely parallels the provisions discussed above regarding domestic violence injunctions.

### ***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.

It is ambiguous 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.

### **Violation of an Injunction against Specified Acts of Violence**

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

- Refuses to vacate the dwelling that the parties share;<sup>24</sup>
- 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

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<sup>21</sup> 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.

<sup>22</sup> 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 are considered when determining the existence of such a relationship: it must have existed within the past six months; it must have been characterized by the expectation of affection or sexual involvement between the parties; and it must have included that the persons be involved over time and on a continuous basis. (Dating violence does not include violence in a casual acquaintanceship or between individuals who have only engaged in ordinary fraternization.)

<sup>23</sup> Section 784.046(1)(c), F.S., defines "sexual violence" to mean any one incident of: sexual battery, lewd or lascivious act committed upon or in the presence of a person younger than 16 years of age, luring or enticing a child, sexual performance by a child, or any other forcible felony that involves a sexual act being attempted or committed. 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.

<sup>24</sup> This action does not apply to an injunction against stalking or cyberstalking. Section 784.0487(4), F.S.

- Refuses to surrender firearms or ammunition if ordered to do so by the court.<sup>25</sup>

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.<sup>26,27</sup>

### **Prohibition against Possessing a Firearm or Ammunition**

Under the firearms statute, a person may not have in his or her care, custody, possession, or control any firearm or ammunition if he or she has been issued a final protective injunction restraining that person from committing acts of domestic violence, stalking, or cyberstalking (acts of repeat, dating, or sexual violence are not currently included).<sup>28</sup> Violation of the prohibition results in a first degree misdemeanor penalty under s. 790.233, F.S. This prohibition is mirrored in the domestic violence statute,<sup>29</sup> but not in the stalking or cyberstalking statute.

### **Warrantless Arrests**

Section 901.15, F.S., prescribes when a law enforcement officer is authorized to conduct a warrantless arrest. Generally, the officer must witness a misdemeanor offense before making a warrantless arrest. If the officer does not witness it, he or she must first obtain an arrest warrant.<sup>30</sup>

There are certain exceptions to this rule, including when there is probable cause to believe that a person:

- Possesses a firearm or ammunition when the person is subject to a final injunction against domestic violence, stalking, or cyberstalking;<sup>31</sup>
- Commits a criminal act that violates the terms of an injunction against domestic, repeat, dating, or sexual violence;<sup>32</sup> or
- Commits an act of domestic or dating violence.<sup>33</sup>

Law enforcement officers acting in good faith and exercising due care in making a warrantless arrest are granted civil immunity when they believe a person has committed an act of domestic or dating violence, or violated the terms of an injunction against domestic, repeat, dating, or sexual violence.

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<sup>25</sup> Sections 741.31(4)(a), 784.047, and 784.0487, F.S.

<sup>26</sup> A first degree misdemeanor is punishable by up to 1 year in county jail and a potential \$1,000 fine. Sections 775.082 and 775.083, F.S.

<sup>27</sup> Sections 741.30(9), 784.046(9), and 784.0485(9), F.S.

<sup>28</sup> Section 790.233, F.S.

<sup>29</sup> Section 741.31(4)(b), F.S.

<sup>30</sup> Section 901.15, F.S.

<sup>31</sup> Section 901.15(6), F.S., in accordance with s. 790.233, F.S.

<sup>32</sup> 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.

<sup>33</sup> Section 901.15(7), F.S., further provides that the arrest may be made without consent of the victim.

### III. Effect of Proposed Changes:

#### Regulation of Private Investigators

The bill creates s. 493.6204, F.S., to require a licensed private investigator or investigative agency to determine if an individual being investigated is a petitioner requesting notification of service of a protective injunction against domestic, repeat, dating, or sexual violence or a participant in the Address Confidentiality Program for domestic violence victims. If the subject of the investigation is such a petitioner or participant, the bill prohibits private investigators, private investigative agencies, and their agents from releasing the petitioner's or participant's personal identifying information. Private investigators who violate this prohibition commit a first degree misdemeanor and are subject to suspension or revocation of their license.

#### Injunctions for Protection against Specified Acts of Violence

The bill amends ss. 741.30 and 741.31, F.S., (domestic violence), s. 784.046, F.S., (repeat, dating, or sexual violence), and s. 784.0485, F.S. (stalking and cyberstalking), to specify that a temporary injunction is effective for a fixed period of time that cannot exceed 15 days, unless a final injunction is issued. In such instances, the temporary injunction remains in effect until the final injunction is served on the respondent.

The bill also amends s. 784.0487, F.S., to make it a first degree misdemeanor for a person to violate a stalking or cyberstalking injunction by having in his or her care, custody, possession, or control any firearm or ammunition. This mirrors current provisions found in s. 790.233, F.S., the firearms statute, as well as s. 741.31, F.S., which addresses violations of domestic violence injunctions.

#### Warrantless Arrests

The bill amends s. 901.15, F.S., to permit a law enforcement officer to conduct a warrantless arrest when there is probable cause to believe that the person has committed:

- A criminal act that violates the terms of an injunction against stalking or cyberstalking, or an act of child abuse occurring after a protective investigation is initiated;<sup>34</sup> or
- An act of repeat or sexual violence, stalking, cyberstalking, or child abuse.<sup>35</sup>

Similarly, the bill broadens the civil immunity provision to include a law enforcement officer who makes a good faith arrest of a person believed to have committed any of the above acts.

The bill takes effect October 1, 2014.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

<sup>34</sup> This injunction is governed by s. 39.504, F.S.

<sup>35</sup> As provided in s. 39.01, F.S.

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:

The bill could have a detrimental impact on private investigators.

C. Government Sector Impact:

There could be an indeterminate fiscal impact upon local jails to the extent that more persons are prosecuted and sent to jail for a first degree misdemeanor offense under the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 741.30, 741.31, 784.046, 784.0485, 784.0487, and 901.15.

This bill creates section 493.6204 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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

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