

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 101 Violation of an Injunction for Protection

**SPONSOR(S):** Criminal Justice Subcommittee; Rodríguez, J.

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 380

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Cox	White
2) Justice Appropriations Subcommittee	12 Y, 0 N	McAuliffe	Lloyd
3) Judiciary Committee			

### SUMMARY ANALYSIS

Victims of domestic, repeat, dating, or sexual violence, or stalking or cyberstalking may obtain an 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. A respondent violates the terms of an injunction for protection if the respondent willfully commits specified prohibited acts against the petitioner. 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.

Currently, violating an injunction for protection is a first degree misdemeanor, regardless of how many times a person is convicted of this offense.

The bill amends ss. 741.31(4), 784.047, and 784.0487(4), F.S., increasing the penalty for third or subsequent violations of an injunction for protection to a third degree felony.

While repeat offenders for the offenses of this bill can be determined, the number of third or subsequent offenses cannot. The Criminal Justice Impact Conference met on October 28, 2015 and determined that the impact of this bill on Department of Correction's prison beds is indeterminate but will likely increase prison beds. Additionally, because the bill reduces the number of persons subject to misdemeanor penalties for third or subsequent violations of such injunctions for protection, the bill may reduce the need for jail beds. (See Fiscal Impact Statement)

The bill is effective on October 1, 2016.

# 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 violence<sup>1</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>2</sup> The sworn petition must allege the existence of domestic violence and include specific facts and circumstances upon which relief is sought.<sup>3</sup> A hearing must be set at the earliest possible time after a petition is filed and the respondent must be personally served with a copy of the petition.<sup>4</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>5</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 a temporary injunction *ex parte*.<sup>6,7</sup> Temporary injunctions are only effective for a fixed period that cannot exceed 15 days.<sup>8</sup> The hearing on the petition must be set for a date on or before the date when the temporary injunction expires.<sup>9</sup>

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

Section 784.046, F.S., governs the issuance of injunctions against repeat violence,<sup>10</sup> dating violence,<sup>11</sup> and sexual violence.<sup>12</sup> This statute largely parallels the provisions discussed above regarding domestic violence injunctions.

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<sup>1</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>2</sup> s. 741.30(1), F.S.

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

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

<sup>5</sup> s. 741.30(6), F.S. Either party may move the court to modify or dissolve an injunction at any time. s. 741.30(6)(c) and (10), F.S.

<sup>6</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. s. 741.30(5), F.S.

<sup>7</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. s. 741.30(5)(b), F.S.

<sup>8</sup> s. 741.30(5)(c), F.S.

<sup>9</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. s. 741.30(5)(c), F.S.

<sup>10</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>11</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. Dating violence does not include violence in a casual acquaintanceship or between individuals who have only engaged in ordinary fraternization. The existence of such a relationship is determined by considering the following factors:

- A dating relationship must have existed within the past six months;
- The nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and
- The persons involved in the relationship must have been involved over time and on a continuous basis during the course of the relationship.

### *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.

### **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<sup>13</sup> if the respondent willfully:

- Refuses to vacate the dwelling that the parties share;<sup>14</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 or cyberstalking 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.<sup>15</sup>

A court can enforce a violation of an injunction for protection through civil or criminal contempt proceedings, or the state attorney may prosecute the violation as a first degree misdemeanor.<sup>16,17</sup>

Currently, violating an injunction for protection is a first degree misdemeanor, regardless of how many times a person is convicted of this offense.

### Effect of the Bill

The bill amends ss. 741.31(4), 784.047, and 784.0487(4), F.S., making the penalty for an offense of violating an injunction for protection a third degree felony if a person has two or more prior convictions for the same offense.

The bill defines "conviction" to mean a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

### **B. SECTION DIRECTORY:**

Section 1. Amends s. 741.31, F.S., relating to violation of an injunction for protection against domestic violence.

Section 2. Amends s. 784.047, F.S., relating to penalties for violating protective injunction against violators.

Section 3. Amends s. 784.0487, F.S., relating to violation of an injunction for protection against stalking or cyberstalking.

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<sup>12</sup> Section 784.046(1)(c), F.S., defines "sexual violence" to mean any one incident of: sexual battery; a 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 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.

<sup>13</sup> Sections 741.31(4)(a), 784.047, and 784.0487(4), F.S., provide that this includes foreign protection orders that are accorded full and faith credit pursuant to s. 741.315, F.S.

<sup>14</sup> This provision does not apply to injunctions for protection against stalking or cyberstalking. s. 784.0487, F.S.

<sup>15</sup> ss. 741.31(4)(a), 784.047, and 784.0487, F.S.

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

<sup>17</sup> ss. 741.30(9), 784.046(9), and 784.0485(9), F.S.

Section 4. Reenacts 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 5. Reenacts s. 741.315, F.S., relating to recognition of foreign protection orders.

Section 6. Reenacts 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 7. Reenacts s. 901.15, F.S., relating to when arrest by officer without warrant is lawful.

Section 8. Provides an effective date of October 1, 2016.

## 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 Criminal Justice Impact Conference met on October 28, 2015 and determined that the impact of this bill on Department of Correction's prison beds is indeterminate but will likely increase prison beds.

This bill increases penalties from a misdemeanor to a third degree felony for third or subsequent offenses. While repeat offenders for the offenses of this bill can be determined, the number of third or subsequent offenses cannot. In Fiscal Year 2014-2015, there were 190 persons convicted and 6 adjudication withheld counts for repeat offenders violating s. 741.31, F.S. There were 12 persons convicted and one adjudication withheld for repeat offenders violating s. 784.047, F.S. There was one guilty/convicted count and 0 adjudication withheld counts for repeat offenders violating s. 784.0487, F.S. It is unknown what number of these repeat offenses were third or subsequent violations.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

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

#### 2. Expenditures:

The bill reduces the number of persons subject to misdemeanor penalties for third or subsequent violations of such injunctions for protection, therefore the bill may reduce the need for jail beds.

### 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 November 4, 2015, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment reenacts necessary cross-referenced provisions of statute that are impacted by changes made in the act.

This bill analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.