

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 Committee on Fiscal Policy

BILL: CS/SB 380

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice) and Senator Abruzzo

SUBJECT: Violation of an Injunction for Protection

DATE: January 27, 2016 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Fav/CS
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 380 amends ss. 741.31(4), 784.047, and 784.0487(4), F.S., to provide enhanced criminal penalties for a person who commits a third or subsequent violation of an injunction for protection or a foreign protection order against domestic violence, repeat violence, sexual violence, dating violence, stalking or cyberstalking. Currently, a person who violates an injunction for protection or a foreign protection order commits a misdemeanor of the first degree. The bill increases the penalty to a third degree felony for a person who has two or more prior convictions for violating an injunction for protection or foreign protection order and commits a third or subsequent violation against the same victim. A third degree felony is punishable by probation or up to a maximum of five years in prison and up to a \$5,000 fine.

The Criminal Justice Impact Conference met in October 2015, and estimated that SB 380, as filed, would have a positive indeterminate prison bed impact. This means that there would be an increase in the need for prison beds, but the amount of the increase cannot be determined. PCS/SB 380 likely would have a similar impact.

II. Present Situation:

Injunctions for Protection against Specified Acts of Violence

Domestic Violence

Section 741.30, F.S., governs the issuance of injunctions against 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 and the respondent must be personally served with a copy of the petition.⁴ 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 the victim of an act of domestic violence.⁵

An injunction can include:

- Restraining the respondent from committing any acts of domestic violence;
- Awarding to the petitioner the exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner;
- Providing the petitioner with 100 percent of the time-sharing in a temporary parenting plan;
- Establishing temporary support for a minor child or children or the petitioner;
- Ordering the respondent to participate in treatment, intervention, or counseling services to be paid for by the respondent;
- Referring a petitioner to a certified domestic violence center;
- Ordering such other relief as the court deems necessary for the protection of a victim of domestic violence, including injunctions or directives to law enforcement agencies, as provided in s. 741.30, F.S..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 Temporary 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(1)(a), F.S.

³ Section 741.30(3)(a), F.S.

⁴ Section 741.30(4), F.S.

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

⁶ *Id.*

⁷ Pursuant to s. 741.30(5), F.S., 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.

are only effective for a fixed period that cannot exceed 15 days.⁸ The hearing on the petition must be set for a date on or before the date when the temporary injunction expires.⁹

Repeat, Dating, and Sexual Violence

Section 784.046, F.S., governs the issuance of injunctions against repeat violence,¹⁰ dating violence,¹¹ and sexual violence.¹² 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.

Violation of an Injunction

A respondent violates the terms of an injunction for protection and a foreign protection order against domestic violence, repeat, dating or sexual violence, or stalking or cyberstalking by willfully:

- Refusing to vacate the dwelling that the parties share;¹³
- Going 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;
- Committing an act of domestic violence against the petitioner;
- Committing any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to the petitioner;
- Telephoning, contacting, or otherwise communicating with the petitioner directly or indirectly, unless the injunction specifically allows indirect contact through a third party;
- Knowingly and intentionally coming within 100 feet of the petitioner's motor vehicle, whether or not that vehicle is occupied;
- Defacing or destroying the petitioner's personal property, including the petitioner's car; or

⁸ Section 741.30(5)(c), F.S.

⁹ Pursuant to s. 741.30(5)(c), F.S., 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.

¹⁰ Section 784.046(1)(b)(a), F.S., defines "repeat violence" as two incidents of violence or stalking committed by the respondent, one of which must have been within six months of the filing of the petition, which are directed against the petitioner or the petitioner's immediate family member.

¹¹ 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. 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.

¹² Section 784.046(1)(c), F.S., defines "sexual violence" as 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.

¹³ This provision does not apply to injunctions for protection against stalking or cyberstalking pursuant to s. 784.0487, F.S.

- Refusing to surrender firearms or ammunition if ordered to do so by the court.¹⁴

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.¹⁵

Currently, a person who violates an injunction for protection or a foreign protection order commits a first degree misdemeanor, regardless of how many times the person has been convicted of this offense.¹⁶ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine.¹⁷

III. Effect of Proposed Changes:

Currently, a person who violates an injunction for protection or a foreign protection order commits a first degree misdemeanor. The bill amends ss. 741.31(4), 784.047, and 784.0487(4), F.S., to enhance the criminal penalty to a third degree felony for a person who has two or more convictions for violating an injunction or foreign protection order and who subsequently commits a violation of any injunction or foreign protection order against the same victim. A third degree felony is punishable by probation or up to a maximum of five years in prison and up to a \$5,000 fine

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.

The bill reenacts ss. 741.30, 741.315, 784.0485, and 901.15, F.S., to incorporate the changes made by this bill.

The bill is effective October 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁴ Sections 741.31(4)(a), 784.047, and 784.0487(4), F.S.

¹⁵ Section 741.30(9)(a), F.S.

¹⁶ *Supra* note 14.

¹⁷ See ss. 775.082(4)(a) and 775.083(1)(d), F.S.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference met in October 2015, and estimated that SB 380, as filed, would have a positive indeterminate prison bed impact.¹⁸ This means that the bill will increase the number of inmates incarcerated at the Department of Corrections, but the amount of the increase cannot be determined. PCS/CS 380 likely would have a similar impact.

The FDLE reported that in Fiscal Year 2014-2015, there were 210 convictions for repeat offenders violating ss. 741.31, 784.047, or 784.0487, F.S. The number of these convictions that were third or subsequent violations is not known. The incarceration rate for unranked third degree felonies was 10% in Fiscal Year 2014-2015, but it is possible that the nature of this offense and the fact that it must be at least the third conviction may result in a higher than average incarceration rate.¹⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 741.30, 741.31, 741.315, 784.047, 784.0485, 784.0487, and 901.15 of the Florida Statutes.

¹⁸ The Florida Legislature, Office of Economic and Demographic Research, Criminal Justice Impact Conference, 2016 Narrative Analysis and Adopted Impacts, SB 380 (October 28, 2015).

¹⁹ *Id.*

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Fiscal Policy on January 27, 2016:

As recommended by the Appropriations Subcommittee on Criminal and Civil Justice, the committee substitute:

- Provides that a third or subsequent violation for which the penalty is elevated to a third degree felony may be for violation of any injunction or foreign protection order against the same victim.
- Republishes certain sections of the Florida Statutes to incorporate amendments made in the bill.

- B. **Amendments:**

None.