

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 1059 (2018)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

1 Committee/Subcommittee hearing bill: Judiciary Committee  
2 Representative Burton offered the following:

3  
4 **Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:

6 Section 1. Present subsections (6) through (12) of section  
7 825.101, Florida Statutes, are renumbered as subsections (7)  
8 through (13), respectively, and a new subsection (6) and  
9 subsection (14) are added to that section, to read:

10 825.101 Definitions.—As used in this chapter:

11 (6) "Exploitation" has the same meaning as the term  
12 "exploitation of an elderly person or disabled adult" as defined  
13 in s. 825.103(1).

14 (14) "Vulnerable adult" has the same meaning as in s.  
15 415.102(28).

16 Section 2. Section 825.1035, Florida Statutes, is created

523191 - h1059-strike.docx

Published On: 2/14/2018 9:14:39 PM

Amendment No.

17 to read:

18 825.1035 Injunction for protection against exploitation of  
19 a vulnerable adult.-

20 (1) INJUNCTION CREATED.-There is created a cause of action  
21 for an injunction for protection against exploitation of a  
22 vulnerable adult.

23 (2) WHO MAY FILE; VENUE; RECORDING.-

24 (a) The cause of action may be sought in an adversary  
25 proceeding by:

26 1. A vulnerable adult in imminent danger of being  
27 exploited;

28 2. The guardian of a vulnerable adult in imminent danger  
29 of being exploited;

30 3. A person or organization acting on behalf of the  
31 vulnerable adult with the consent of the vulnerable adult or his  
32 or her guardian; or

33 4. A person who simultaneously files a petition for  
34 determination of incapacity and appointment of an emergency  
35 temporary guardian with respect to the vulnerable adult.

36 (b) A sworn petition for an injunction for protection  
37 against exploitation of a vulnerable adult may be filed  
38 regardless of whether any other cause of action is currently  
39 pending between either the petitioner and the respondent or the  
40 vulnerable adult and the respondent. However, the pendency of  
41 any such cause of action must be noted in the petition.

523191 - h1059-strike.docx

Published On: 2/14/2018 9:14:39 PM

Amendment No.

42 (c) A person temporarily or permanently vacating a  
43 residence or household in an attempt to avoid exploitation does  
44 not affect his or her right to petition for an injunction.

45 (d) Parties to an injunction for protection against  
46 exploitation of a vulnerable adult may not be required to be  
47 represented by an attorney.

48 (e) There is no minimum requirement of residency to  
49 petition for an injunction for protection against exploitation  
50 of a vulnerable adult. It is not required as a prerequisite of  
51 filing a petition for or issuance of an injunction under this  
52 section for exploitation to have already occurred.

53 (f) If a proceeding concerning the vulnerable adult under  
54 chapter 744 is pending at the time of the filing, the petition  
55 must be filed in that proceeding. Otherwise, a petition for an  
56 injunction for protection against exploitation of a vulnerable  
57 adult may only be filed in the circuit where the vulnerable  
58 adult resides.

59 (g) All proceedings conducted pursuant to this subsection  
60 must be recorded. Recording may be by electronic means as  
61 provided by court rule.

62 (3) FORM OF PETITION.—

63 (a) A sworn petition filed under this section must allege  
64 the existence of exploitation, or the imminent exploitation, of  
65 the vulnerable adult and must include the specific facts and  
66 circumstances for which relief is sought. The sworn petition

523191 - h1059-strike.docx

Published On: 2/14/2018 9:14:39 PM

Amendment No.

67 must be in substantially the following form:

68

69

PETITION FOR INJUNCTION

70

FOR PROTECTION AGAINST EXPLOITATION OF A VULNERABLE ADULT

71

72

Before me, the undersigned authority, personally appeared

73

Petitioner ...(Name)..., who has been sworn and says that the

74

following statements are true:

75

1. The vulnerable adult resides at: ...(address)...

76

2. The respondent resides at: ...(last known address)....

77

3. The respondent's last known place of employment is:

78

...(name of business and address)....

79

4. Physical description of the respondent: ....

80

Race....

81

Sex....

82

Date of birth....

83

Height....

84

Weight....

85

Eye color....

86

Hair color....

87

Distinguishing marks or scars....

88

5. Aliases of the respondent: ....

89

6. The respondent is associated with the vulnerable adult

90

as follows:....

91

7. The following describes any other cause of action

523191 - h1059-strike.docx

Published On: 2/14/2018 9:14:39 PM

Amendment No.

92 currently pending between the petitioner and the respondent, any  
 93 proceeding under chapter 744 concerning the vulnerable adult,  
 94 and any previous or pending attempts by the petitioner to obtain  
 95 an injunction for protection against exploitation of the  
 96 vulnerable adult in this or any other circuit; related case  
 97 numbers, if available; and the results of any such attempts:  
 98 .....

99 8. The following describes the petitioner's knowledge of  
 100 any reports made to a government agency, including, but not  
 101 limited to, the Department of Elderly Affairs, the Department of  
 102 Children and Families, and the adult protective services program  
 103 relating to the abuse, neglect, or exploitation of the  
 104 vulnerable adult; any investigations performed by a government  
 105 agency relating to abuse, neglect, or exploitation of the  
 106 vulnerable adult; and the results of any such reports or  
 107 investigations:....

108 9. The petitioner knows the vulnerable adult is either a  
 109 victim of exploitation or the petitioner has reasonable cause to  
 110 believe the vulnerable adult is, or is in imminent danger of  
 111 becoming, a victim of exploitation because the respondent has:  
 112 ....(describe in the spaces below the incidents or threats of  
 113 exploitation) ....

114 10. The following describes the petitioner's knowledge of  
 115 the vulnerable adult's dependence on the respondent for care;  
 116 alternative provisions for the vulnerable adult's care in the

Amendment No.

117 absence of the respondent, if necessary; available resources the  
118 vulnerable adult has to access such alternative provisions; and  
119 the vulnerable adult's willingness to use such alternative  
120 provisions:....

121 11. The petitioner knows the vulnerable adult maintains  
122 assets, account, or lines of credit at the following financial  
123 institution(s): ....(list name, address and account number of  
124 each)....

125 12. The petitioner believes that the vulnerable adult's  
126 assets to be frozen are: ...(mark one)....

127 ....Worth less than \$1500;

128 ....Worth between \$1500 and \$5000; or

129 ....Worth more than \$5000;

130 13. The petitioner genuinely fears imminent exploitation  
131 of the vulnerable adult by the respondent.

132 14. The petitioner seeks an injunction for the protection  
133 of the vulnerable adult, including: ...(mark appropriate section  
134 or sections)....

135 ....Prohibiting the respondent from having any direct or  
136 indirect contact with the vulnerable adult.

137 ....Immediately restraining the respondent from committing  
138 any acts of exploitation against the vulnerable adult.

139 ....Freezing the assets of the vulnerable adult held at  
140 ...(name and address of depository or financial institution)...  
141 even if titled jointly with the respondent, or in the

Amendment No.

142 respondent's name only, in the court's discretion.

143 ....Freezing the credit lines of the vulnerable adult at  
144 ...(name and address of financial institution)... even if  
145 jointly with the respondent, in the court's discretion.

146 ....Providing any terms the court deems necessary for the  
147 protection of the vulnerable adult or his or her assets,  
148 including any injunctions or directives to law enforcement  
149 agencies.

150 15. Should the court enter an injunction freezing assets  
151 and credit lines, the petitioner believes that the critical  
152 expenses of the vulnerable adult will be paid for or provided by  
153 the following persons or entities, or the petitioner requests  
154 that the following expenses be paid notwithstanding the freeze:  
155 ....(for each expense, list the name of the payee, address,  
156 account number if known, amount, and a brief explanation of why  
157 payment is critical)....

158 (b) Each petition for an injunction for protection against  
159 the exploitation of a vulnerable adult must contain, directly  
160 above the signature line, a statement in all capital letters and  
161 bold type not smaller than the surrounding text, as follows:

162  
163 I ACKNOWLEDGE THAT PURSUANT TO SECTION 415.1034,  
164 FLORIDA STATUTES, ANY PERSON WHO KNOWS, OR HAS  
165 REASONABLE CAUSE TO SUSPECT, THAT A VULNERABLE ADULT  
166 HAS BEEN OR IS BEING ABUSED, NEGLECTED, OR EXPLOITED

523191 - h1059-strike.docx

Published On: 2/14/2018 9:14:39 PM

Amendment No.

167 HAS A DUTY TO IMMEDIATELY REPORT SUCH KNOWLEDGE OR  
168 SUSPICION TO THE CENTRAL ABUSE HOTLINE.

169  
170 I HAVE READ EACH STATEMENT MADE IN THIS PETITION AND  
171 EACH SUCH STATEMENT IS TRUE AND CORRECT. I UNDERSTAND  
172 THAT THE STATEMENTS MADE IN THIS PETITION ARE BEING  
173 MADE UNDER PENALTY OF PERJURY PUNISHABLE AS PROVIDED  
174 IN SECTION 837.02, FLORIDA STATUTES.

175  
176 (c) Upon the filing of the petition, the court shall  
177 schedule a hearing on the petition on the earliest possible  
178 date.

179 (4) CLERK'S DUTIES, RESPONSIBILITIES, AND CHARGES.-

180 (a) The clerk of the circuit court shall assist the  
181 petitioner in filing an injunction for protection against  
182 exploitation of a vulnerable adult and any petition alleging a  
183 violation thereof.

184 (b) The clerk of the circuit court shall provide  
185 simplified petition forms for the injunction for protection  
186 against exploitation of a vulnerable adult, and any  
187 modifications thereto, and for the enforcement thereof, and  
188 instructions for completion of such forms.

189 (c) The clerk of the circuit court shall, to the extent  
190 practicable, ensure the petitioner's privacy while completing  
191 such forms.

523191 - h1059-strike.docx

Published On: 2/14/2018 9:14:39 PM

Amendment No.

192       (d) The clerk of the circuit court shall provide the  
193 petitioner with two certified copies of the petition for an  
194 injunction without charge, and shall inform the petitioner of  
195 the steps necessary for service of process and enforcement.

196       (e) If an injunction is entered, the clerk of the circuit  
197 court shall provide, without charge, the petitioner with  
198 certified copies of an order of injunction that may be served  
199 upon any person holding property, upon any financial institution  
200 holding property or accounts, or upon any financial institution  
201 with an open line of credit that is subject to the freeze, and  
202 shall inform the petitioner of the service of process and  
203 enforcement.

204       (e) The clerk of the circuit court and appropriate staff  
205 in each county shall receive training in the effective  
206 assistance of petitioners as provided or approved by the Florida  
207 Association of Court Clerks.

208       (f) The clerk of the circuit court in each county shall  
209 produce an informational brochure and provide it to the  
210 petitioner at the time of filing for an injunction for  
211 protection against exploitation of a vulnerable adult. The  
212 brochure must include information about the exploitation of  
213 vulnerable adults and the effect of providing false information  
214 to the court. The clerk of the circuit court in each county  
215 shall also make available informational brochures on the  
216 exploitation of vulnerable adults to local senior centers, local

523191 - h1059-strike.docx

Published On: 2/14/2018 9:14:39 PM

Amendment No.

217 aging and disability resource centers, or appropriate state or  
218 federal agencies.

219 (g) The clerk of the circuit court shall provide a copy of  
220 all petitions filed pursuant to this section and all orders  
221 entered on such petitions to the adult protective services  
222 program. Within 72 hours after receipt of such orders or  
223 petitions, the adult protective services program shall submit to  
224 the court overseeing proceedings on the petition the results of  
225 any relevant investigations relating to the vulnerable adult.

226 (h) Notwithstanding any other provision of law, the clerk  
227 of the circuit court may not assess an initial filing fee or  
228 service charge for petitions filed under this section. However,  
229 subject to legislative appropriation, the clerk of the circuit  
230 court may, on a quarterly basis, submit a certified request for  
231 reimbursement to the Office of the State Courts Administrator  
232 for the processing of such petitions, at the rate of \$40 per  
233 petition. The request for reimbursement must be submitted in the  
234 form and manner prescribed by the office. From each  
235 reimbursement received, the clerk of the circuit court shall pay  
236 any law enforcement agency serving the injunction for protection  
237 against exploitation of a vulnerable adult the fee requested by  
238 the law enforcement agency, to not exceed \$20.

239 (5) TEMPORARY INJUNCTION; SERVICE; HEARING.—

240 (a)1. The court may grant a temporary injunction ex parte,  
241 pending a full hearing, and may grant such relief as the court

523191 - h1059-strike.docx

Published On: 2/14/2018 9:14:39 PM

Amendment No.

242 deems proper if the court finds that:

243 a. An immediate and present danger of exploitation of the  
244 vulnerable adult exists.

245 b. There is a likelihood of irreparable harm and  
246 nonavailability of an adequate remedy at law.

247 c. There is a substantial likelihood of success on the  
248 merits.

249 d. The threatened injury to the vulnerable adult outweighs  
250 possible harm to the respondent.

251 e. Granting a temporary injunction will not disserve the  
252 public interest.

253 2. Such relief the court deems proper may include, but is  
254 not limited to, injunctions doing any of the following:

255 a. Restraining the respondent from committing any acts of  
256 exploitation against the vulnerable adult.

257 b. Awarding to the vulnerable adult the temporary  
258 exclusive use and possession of the dwelling that the vulnerable  
259 adult and the respondent share, or barring the respondent from  
260 the residence of the vulnerable adult.

261 c. Freezing any assets of the vulnerable adult in any  
262 depository or financial institution whether titled solely in the  
263 vulnerable adult's name, solely in the respondent's name,  
264 jointly with the respondent, in guardianship, in trust, or in a  
265 Totten trust, provided that:

266 (I) Assets held by a guardian for the vulnerable adult may

Amendment No.

267 be frozen only by an order entered by the court overseeing the  
268 guardianship proceeding.

269 (II) Assets held by a trust may be frozen only by an order  
270 of the court if all the trustees of the trust are served with  
271 process and are given reasonable notice before any hearing on  
272 the petition.

273 (III) Assets held solely in the name of the respondent may  
274 only be frozen on an ex parte basis if the petition and  
275 affidavit demonstrate to the court probable cause that such  
276 assets are traceable to the unlawful exploitation of the  
277 vulnerable adult, that such assets are likely to be returned to  
278 the vulnerable adult after a final evidentiary hearing, and that  
279 no other adequate remedy at law is reasonably available.

280 d. Freezing any line of credit of the vulnerable adult at  
281 any depository or financial institution whether listed solely in  
282 the vulnerable adult's name or jointly with the respondent.

283 (I) Lines of credit held by a guardian for the vulnerable  
284 adult may be frozen only by an order entered by the court  
285 overseeing the guardianship proceeding.

286 (II) Lines of credit held by a trust may be frozen only by  
287 an order of the court if all the trustees of the trust are  
288 served with process and are given reasonable notice before any  
289 hearing on the petition.

290 e. Prohibiting the respondent from having direct or  
291 indirect contact with the vulnerable adult.

523191 - h1059-strike.docx

Published On: 2/14/2018 9:14:39 PM

Amendment No.

292 f. Providing directives to law enforcement agencies.

293 g. If the court has ordered an asset and credit freeze,  
294 ordering that specified living expenses of the vulnerable adult  
295 continue to be paid.

296 h. Ordering any financial institution holding assets of  
297 the vulnerable adult to pay the clerk of the circuit court from  
298 unencumbered assets of the vulnerable adult, if any, a fee of  
299 \$75 if the assets of the petitioner are between \$1,500 and  
300 \$5,000 or a fee of \$200 if the assets are in excess of \$5,000.  
301 The court may rely on the estimate of the value of the assets in  
302 the petition when assessing the fee. The fee shall be taxed as  
303 costs against the respondent if the court enters an injunction.

304 (b) Except as provided in s. 90.204, in a hearing ex parte  
305 for the purpose of obtaining an ex parte temporary injunction,  
306 only verified pleadings or affidavits may be used as evidence  
307 unless the respondent appears at the hearing or has received  
308 reasonable notice of the hearing. A petition under this section  
309 shall be considered a family case for purposes of s. 90.204(4).

310 (c) A denial of a petition for an ex parte injunction must  
311 be by written order and must note the legal grounds for denial.  
312 When the only ground for denial is failure to demonstrate  
313 appearance of an immediate and present danger of exploitation of  
314 a vulnerable adult, the court must set a full hearing on the  
315 petition for injunction at the earliest possible date. Nothing  
316 in this paragraph affects a petitioner's right to promptly amend

523191 - h1059-strike.docx

Published On: 2/14/2018 9:14:39 PM

Amendment No.

317 any petition consistent with court rules.

318 (d) An ex parte temporary injunction may be effective for  
319 a fixed period not to exceed 15 days. A full hearing, as  
320 provided by this section, must be set for a date no later than  
321 the date when the temporary injunction ceases to be effective.  
322 The court may grant a continuance of the hearing, before or  
323 during the hearing, for good cause shown by any party, which  
324 good cause may include a continuance to obtain service of  
325 process. An ex parte injunction is not extended beyond the  
326 initial 15 days as a result of a continuance.

327 (6) REASONABLE CAUSE.—In determining whether a petitioner  
328 has reasonable cause to believe that the vulnerable adult is, or  
329 is in imminent danger of becoming, a victim of exploitation, the  
330 court shall consider and evaluate all relevant factors,  
331 including, but not limited to, any of the following:

332 (a) The existence of a verifiable order of protection  
333 issued previously or from another jurisdiction.

334 (b) Any history of exploitation by the respondent upon the  
335 vulnerable adult in the petition or any other vulnerable adult.

336 (c) Any history of the vulnerable adult being previously  
337 exploited or unduly influenced.

338 (d) The capacity of the vulnerable adult to make decisions  
339 related to his or her finances and property.

340 (e) Susceptibility of the vulnerable adult to undue  
341 influence.

523191 - h1059-strike.docx

Published On: 2/14/2018 9:14:39 PM

Amendment No.

342 (f) Any criminal history of the respondent or previous  
343 probable cause findings by the adult protective services  
344 program, if known.

345 (7) NOTICE OF PETITION AND INJUNCTION.—

346 (a) The respondent shall be personally served, pursuant to  
347 chapter 48, with a copy of the petition, notice of hearing, and  
348 temporary injunction, if any, before the final hearing.

349 (b) If the petitioner is acting in a representative  
350 capacity, the vulnerable adult shall also be served with a copy  
351 of the petition, notice of hearing, and temporary injunction, if  
352 any, before the final hearing.

353 (c) If any assets or lines of credit are ordered to be  
354 frozen, the depository or financial institution must be served  
355 as provided in s. 655.0201.

356 (8) FINAL HEARING ON PETITION.—

357 (a)1. The court may grant such relief as the court deems  
358 proper when, upon notice and hearing, it appears to the court  
359 that:

360 a. The vulnerable adult is the victim of exploitation or  
361 that the vulnerable adult is in imminent danger of becoming a  
362 victim of exploitation.

363 b. There is a likelihood of irreparable harm and  
364 nonavailability of an adequate remedy at law.

365 c. The threatened injury to the vulnerable adult outweighs  
366 possible harm to the respondent.

Amendment No.

367 d. Where the injunction freezes assets of the respondent,  
368 the court finds probable cause that exploitation has occurred,  
369 the freeze only affects the proceeds of such exploitation, and  
370 there is a substantial likelihood that such assets will be  
371 ordered to be returned to the vulnerable adult.

372 2. Such relief may include, but need not be limited to,  
373 injunctions doing any of the following:

374 a. Continuing the temporary injunction in part or in  
375 whole.

376 b. Restraining the respondent from committing any acts of  
377 exploitation.

378 c. Awarding to the vulnerable adult the exclusive use and  
379 possession of the dwelling that the vulnerable adult and the  
380 respondent share or excluding the respondent from the residence  
381 of the vulnerable adult.

382 d. Ordering the respondent to participate in treatment,  
383 intervention, or counseling services to be paid for by the  
384 respondent.

385 e. Directing that assets under temporary freeze by  
386 injunction be returned to the vulnerable adult, or directing  
387 that those assets remain frozen until ownership can be  
388 determined; and directing that the temporary freeze on any line  
389 of credit be lifted.

390 f. Where the court has found that the respondent has  
391 engaged in exploitation of the vulnerable adult, entering a

Amendment No.

392 final cost judgment against the respondent and in favor of the  
393 petitioner for all taxable costs, and entering a final cost  
394 judgment against the respondent and in favor of the clerk of the  
395 circuit court for all the clerk's filing fees and service  
396 charges that were waived by operation of this section.

397 g. Ordering such other relief as the court deems necessary  
398 for the protection of a victim of exploitation, including  
399 injunctions or directives to law enforcement agencies, as  
400 provided in this section.

401 (b) The court must allow an advocate from a state  
402 attorney's office, a law enforcement agency, or the adult  
403 protective services program to be present with the petitioner or  
404 the respondent during any court proceedings or hearings related  
405 to the injunction, provided the petitioner or the respondent has  
406 made such a request and the advocate is able to be present.

407 (c) The terms of an injunction restraining the respondent  
408 as provided in paragraph (a) remain in effect until the  
409 injunction is modified or dissolved.

410 (9) PROVISIONS REQUIRED IN ANY TEMPORARY OR PERMANENT  
411 INJUNCTION.—A temporary or final judgment on an injunction must,  
412 on its face, indicate:

413 (a) That the injunction is valid and enforceable in all  
414 counties of this state.

415 (b) That law enforcement officers may use their arrest  
416 powers under s. 901.15(6) to enforce the terms of the

523191 - h1059-strike.docx

Published On: 2/14/2018 9:14:39 PM

Amendment No.

417 injunction.

418 (c) That the court had jurisdiction over the parties and  
419 subject matter under state law and that reasonable notice and  
420 opportunity to be heard were given to the person against whom  
421 the order was sought, in a manner that was sufficient to protect  
422 that person's right to due process.

423 (d) If any assets or lines of credit are ordered to be  
424 frozen, the date that the depository or financial institution  
425 was served with the injunction as provided in s. 655.0201.

426 (e) The date the respondent was served with the petition  
427 for injunction.

428 (10) TRANSMITTAL TO SHERIFF; SERVICE.-

429 (a)1.a. The clerk of the circuit court shall furnish a  
430 copy of the petition, the financial affidavit, the notice of  
431 hearing, and any temporary injunction to the sheriff or a law  
432 enforcement agency of the county in which the respondent resides  
433 or can be found, who shall serve it upon the respondent as soon  
434 thereafter as possible on any day of the week and at any time of  
435 the day or night. At the request of the sheriff, the clerk of  
436 the circuit court may transmit a facsimile copy of an injunction  
437 that has been certified by the clerk of the circuit court  
438 pursuant to subparagraph 4., and this facsimile copy may be  
439 served in the same manner as a certified copy. The clerk of the  
440 circuit court shall also furnish to the sheriff such information  
441 on the respondent's physical description and location as is

523191 - h1059-strike.docx

Published On: 2/14/2018 9:14:39 PM

Amendment No.

442 required by the Department of Law Enforcement to comply with the  
443 verification procedures set forth in sub-subparagraph b.

444 b. Upon receiving a facsimile copy, the sheriff must  
445 verify receipt with the clerk of the circuit court before  
446 attempting to serve it upon the respondent. If the sheriff is in  
447 possession of an injunction that has been certified by the clerk  
448 of the circuit court, the sheriff may transmit a facsimile copy  
449 of that injunction to a law enforcement officer who shall serve  
450 it in the same manner as a certified copy.

451 c. Notwithstanding any other provision of law, the chief  
452 judge of each judicial circuit, in consultation with the  
453 appropriate sheriff, may authorize a law enforcement agency  
454 within the jurisdiction to effect service. A law enforcement  
455 agency performing service pursuant to this section shall use  
456 service and verification procedures consistent with those of the  
457 sheriff.

458 2.a. Except where the vulnerable adult is the petitioner,  
459 the clerk of the circuit court shall furnish a copy of the  
460 petition, the financial affidavit, the notice of hearing, and  
461 any temporary injunction to the sheriff or a law enforcement  
462 agency of the county in which the vulnerable adult resides or  
463 can be found, who shall serve it upon the vulnerable adult as  
464 soon thereafter as possible on any day of the week and at any  
465 time of the day or night. At the request of the sheriff, the  
466 clerk of the circuit court may transmit a facsimile copy of an

523191 - h1059-strike.docx

Published On: 2/14/2018 9:14:39 PM

Amendment No.

467 injunction that has been certified by the clerk of the circuit  
468 court pursuant to subparagraph 4., and this facsimile copy may  
469 be served in the same manner as a certified copy. The clerk of  
470 the circuit court shall also furnish to the sheriff such  
471 information on the vulnerable adult's physical description and  
472 location as is required by the Department of Law Enforcement to  
473 comply with the verification procedures set forth in sub-  
474 subparagraph b.

475 b. Upon receiving a facsimile copy, the sheriff must  
476 verify receipt with the clerk of the circuit court before  
477 attempting to serve it upon the vulnerable adult. If the sheriff  
478 is in possession of an injunction that has been certified by the  
479 clerk of the circuit court, the sheriff may transmit a facsimile  
480 copy of that injunction to a law enforcement officer, who shall  
481 serve it in the same manner as a certified copy.

482 c. Notwithstanding any other provision of law, the chief  
483 judge of each judicial circuit, in consultation with the  
484 appropriate sheriff, may authorize a law enforcement agency  
485 within the jurisdiction of the circuit to effect service. A law  
486 enforcement agency performing service pursuant to this section  
487 shall use service and verification procedures consistent with  
488 those of the sheriff.

489 3. When an injunction for protection against exploitation  
490 of a vulnerable adult is issued, if the petitioner requests that  
491 a law enforcement agency assist the vulnerable adult, the court

523191 - h1059-strike.docx

Published On: 2/14/2018 9:14:39 PM

Amendment No.

492 may order that an officer from the appropriate law enforcement  
493 agency accompany the vulnerable adult and assist in the service  
494 or execution of the injunction, including returning possession  
495 of a dwelling or residence to the vulnerable adult. A law  
496 enforcement officer shall accept a copy of an injunction,  
497 certified by the clerk of the circuit court pursuant to  
498 subparagraph 4., from the petitioner and immediately serve it  
499 upon a respondent who has been located but not yet served. The  
500 law enforcement agency must also serve any injunction freezing  
501 assets on a financial institution where assets subject to  
502 dissipation are held, or where a credit line may be exploited.  
503 Service upon the depository or financial institution must be  
504 served as provided in s. 655.0201.

505 4. The clerk of the circuit court shall certify a copy of  
506 all orders issued, changed, continued, extended, or vacated  
507 subsequent to the original service of the original petition,  
508 notice of hearing, or temporary injunction and deliver the  
509 certified copy to the parties at the time of the entry of the  
510 order. The parties may acknowledge receipt of a certified order  
511 in writing on the face of the original order. If a party fails  
512 or refuses to acknowledge the receipt of a certified copy of an  
513 order, the clerk of the circuit court must note on the original  
514 petition that service was effected. If delivery at the hearing  
515 during which an order is issued is not possible, the clerk of  
516 the circuit court shall mail certified copies of the order to

523191 - h1059-strike.docx

Published On: 2/14/2018 9:14:39 PM

Amendment No.

517 the parties at their respective last known mailing addresses;  
518 except that service upon a depository or financial institution  
519 must be pursuant to s. 655.0201. Service by mail is complete  
520 upon mailing. When an order is served pursuant to this  
521 subparagraph the clerk of the circuit court shall notify the  
522 sheriff of the service and prepare a written certification to be  
523 placed in the court file specifying the time, date, and method  
524 of service.

525 5. If the respondent has been previously served with the  
526 temporary injunction and has failed to appear at the initial  
527 hearing on the temporary injunction, any subsequent petition for  
528 an injunction seeking an extension of time may be served on the  
529 respondent by the clerk of the court by certified mail in lieu  
530 of personal service by a law enforcement officer.

531 (b)1. Within 24 hours after the court issues an injunction  
532 for protection against the exploitation of a vulnerable adult or  
533 changes, continues, extends, or vacates such an injunction, the  
534 clerk of the circuit court must forward a certified copy of the  
535 order to the sheriff with jurisdiction over the residence of the  
536 petitioner for service in accordance with this subsection.

537 2. Within 24 hours after service of an injunction for  
538 protection against the exploitation of a vulnerable adult upon a  
539 respondent, the law enforcement officer who served the  
540 injunction must forward the written proof of service to the  
541 sheriff with jurisdiction over the residence of the petitioner.

523191 - h1059-strike.docx

Published On: 2/14/2018 9:14:39 PM

Amendment No.

542 3. Within 24 hours after the sheriff receives a certified  
543 copy of the injunction for protection against exploitation of a  
544 vulnerable adult, the sheriff must make information related to  
545 the injunction available to this state's law enforcement  
546 agencies by electronically transmitting such information to the  
547 Department of Law Enforcement.

548 4. Within 24 hours after the sheriff or other law  
549 enforcement officer has made service upon the respondent and the  
550 sheriff has been so notified, the sheriff must make information  
551 relating to the service available to other law enforcement  
552 agencies by electronically transmitting such information to the  
553 Department of Law Enforcement.

554 5. Within 24 hours after an injunction for protection  
555 against exploitation of a vulnerable adult is terminated or  
556 otherwise rendered no longer effective by ruling of the court,  
557 the clerk of the circuit court must notify the sheriff receiving  
558 original notification of the injunction as provided in  
559 subparagraph 1. The sheriff shall, within 24 hours after  
560 receiving such notification from the clerk of the circuit court,  
561 notify the Department of Law Enforcement of such court action.

562 (11) ENFORCEMENT.—

563 (a) As to the respondent, the court may enforce a  
564 violation of an injunction for protection against exploitation  
565 of a vulnerable adult through a civil or criminal contempt  
566 proceeding, and the state attorney may prosecute it as a

Amendment No.

567 criminal violation under s. 825.1036. Any assessment or fine  
568 ordered by the court enforcing such injunction shall be  
569 collected by the clerk of the circuit court and transferred on a  
570 monthly basis to the Department of Revenue for deposit in the  
571 Domestic Violence Trust Fund.

572 (b) If the respondent is arrested by a law enforcement  
573 officer under s. 901.15(6) or for a violation of s. 825.1036,  
574 the respondent must be held in custody until he or she is  
575 brought before the court, which must occur as expeditiously as  
576 possible, for the purpose of enforcing the injunction for  
577 protection against exploitation of a vulnerable adult and for  
578 admittance to bail in accordance with chapter 903 and the  
579 applicable rules of criminal procedure, pending a hearing.

580 (12) JUDGMENT FOR DAMAGES.—Actual damages may be assessed  
581 against the petitioner in a proceeding under this section if the  
582 court finds that the petition lacks substantial fact or legal  
583 support.

584 (13) MODIFICATION OR DISSOLUTION OF INJUNCTION.—The  
585 petitioner, respondent, or vulnerable adult may move at any time  
586 to modify or dissolve the injunction in part or in whole. No  
587 specific allegations are required for modification or  
588 dissolution of the injunction, which may be granted in addition  
589 to other civil or criminal penalties. The court shall promptly  
590 hear a motion to modify or dissolve an injunction.

591 (14) LIMITATION.—Nothing in this section may affect title

523191 - h1059-strike.docx

Published On: 2/14/2018 9:14:39 PM

Amendment No.

592 to real property.

593 Section 3. Section 825.1036, Florida Statutes, is created  
594 to read:

595 825.1036 Violation of an injunction for protection against  
596 exploitation of a vulnerable adult.—

597 (1) In the event of a violation of an injunction for  
598 protection against exploitation of a vulnerable adult when the  
599 person who violated such injunction has not been arrested, the  
600 petitioner may contact the clerk of the circuit court of the  
601 county in which the violation is alleged to have occurred. The  
602 clerk of the circuit court shall assist the petitioner in the  
603 preparation of an affidavit in support of the violation or  
604 direct the petitioner to the office operated by the court within  
605 the circuit which has been designated by the chief judge of the  
606 judicial circuit as the central intake point for injunction  
607 violations and where the petitioner can receive assistance in  
608 the preparation of the affidavit in support of the violation.

609 (2) The affidavit shall be immediately forwarded by the  
610 clerk of the circuit court or the office assisting the  
611 petitioner to the state attorney of the circuit and to the court  
612 or judge as the chief judge of the circuit determines to be the  
613 recipient of affidavits of violation. If the affidavit alleges  
614 that a crime has been committed, the clerk of the circuit court  
615 or the office assisting the petitioner shall also forward a copy  
616 of the affidavit to the appropriate law enforcement agency for

523191 - h1059-strike.docx

Published On: 2/14/2018 9:14:39 PM

Amendment No.

617 investigation. Within 20 days after receipt of the affidavit,  
618 the local law enforcement agency shall complete its  
619 investigation and forward the affidavit and a report containing  
620 the agency's findings to the state attorney. The state attorney  
621 shall determine within 30 business days whether its office will  
622 proceed to file criminal charges, prepare a motion for an order  
623 to show cause as to why the respondent should not be held in  
624 criminal contempt, prepare both as alternative findings, or file  
625 notice that the case remains under investigation or is pending  
626 subject to another action.

627 (3) If, based on its familiarity with the case, the court  
628 has knowledge that the vulnerable adult is in immediate danger  
629 if the court fails to act before the decision of the state  
630 attorney to prosecute, it should immediately issue an order of  
631 appointment of the state attorney to file a motion for an order  
632 to show cause as to why the respondent should not be held in  
633 contempt. If the court does not issue an order of appointment of  
634 the state attorney, it shall immediately notify the state  
635 attorney that the court is proceeding to enforce the violation  
636 through a ruling of criminal contempt.

637 (4) (a) Except as provided in paragraph (b), a person who  
638 willfully violates an injunction for protection against  
639 exploitation of a vulnerable adult commits a misdemeanor of the  
640 first degree, punishable as provided in s. 775.082 or s.  
641 775.083. A person may violate such injunction by:

523191 - h1059-strike.docx

Published On: 2/14/2018 9:14:39 PM

Amendment No.

- 642        1. Refusing to vacate the dwelling shared with the  
643 vulnerable adult;
- 644        2. Going to or being within 500 feet of the vulnerable  
645 adult's residence;
- 646        3. Exploiting or unduly influencing the vulnerable adult;
- 647        4. Committing any other violation of the injunction  
648 through an intentional unlawful threat, word, or act to do  
649 violence to the vulnerable adult;
- 650        5. Telephoning, contacting, or otherwise communicating  
651 with the vulnerable adult directly or indirectly, unless the  
652 injunction specifically allows indirect contact through a third  
653 party;
- 654        6. Knowingly and intentionally coming within 100 feet of  
655 the vulnerable adult's motor vehicle, regardless of whether that  
656 vehicle is occupied; or
- 657        7. Defacing or destroying the vulnerable adult's personal  
658 property.
- 659        (b) A person who has two or more prior convictions for  
660 violation of an injunction or foreign protection order against  
661 the same victim, and who subsequently commits a violation of any  
662 injunction or foreign protection order against the same victim,  
663 commits a felony of the third degree, punishable as provided in  
664 s. 775.082, s. 775.083, or s. 775.084. For purposes of this  
665 paragraph, the term "conviction" means a determination of guilt  
666 which is the result of a plea or a trial, regardless of whether

523191 - h1059-strike.docx

Published On: 2/14/2018 9:14:39 PM

Amendment No.

667 adjudication is withheld or a plea of nolo contendere is  
668 entered.

669 (5) A vulnerable adult who suffers an injury or loss as a  
670 result of a violation of an injunction for protection against  
671 the exploitation of a vulnerable adult may be awarded economic  
672 damages and attorney fees and costs for enforcement of such  
673 injunction.

674 (6) A financial institution holding assets or having  
675 issued a line of credit ordered to be frozen under s. 825.1035  
676 is not considered a party to the action and is not liable for  
677 damages or penalty by reason of any action or inaction made in  
678 accordance with s. 825.1035. No private cause of action may be  
679 brought against a financial institution for any action or  
680 inaction made pursuant to an injunction or any other court order  
681 entered pursuant to s. 825.1035, unless such action was a  
682 knowing and intentional violation of the injunction.

683 Section 4. Subsection (6) of section 901.15, Florida  
684 Statutes, is amended to read:

685 901.15 When arrest by officer without warrant is lawful.—A  
686 law enforcement officer may arrest a person without a warrant  
687 when:

688 (6) There is probable cause to believe that the person has  
689 committed a criminal act according to s. 790.233 or according to  
690 s. 741.31, ~~or~~ s. 784.047, or s. 825.1036 which violates an  
691 injunction for protection entered pursuant to s. 741.30, ~~or~~ s.

523191 - h1059-strike.docx

Published On: 2/14/2018 9:14:39 PM

Amendment No.

692 784.046, or s. 825.1035 or a foreign protection order accorded  
693 full faith and credit pursuant to s. 741.315, over the objection  
694 of the petitioner, if necessary.

695 Section 5. Paragraph (e) of subsection (3) of section  
696 415.107, Florida Statutes, is amended to read:

697 415.107 Confidentiality of reports and records.—

698 (3) Access to all records, excluding the name of the  
699 reporter which shall be released only as provided in subsection  
700 (6), shall be granted only to the following persons, officials,  
701 and agencies:

702 (e) A court, pursuant to s. 825.1035(4)(g); or by  
703 subpoena, upon its finding that access to such records may be  
704 necessary for the determination of an issue before the court;  
705 however, such access must be limited to inspection in camera,  
706 unless the court determines that public disclosure of the  
707 information contained in such records is necessary for the  
708 resolution of an issue then pending before it.

709 Section 6. This act shall take effect July 1, 2018.

710

711 -----

712 **T I T L E A M E N D M E N T**

713 Remove everything before the enacting clause and insert:  
714 An act relating to exploitation of a vulnerable adult; amending  
715 s. 825.101, F.S.; defining terms; creating s. 825.1035, F.S.;;  
716 creating a cause of action for an injunction for protection

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 1059 (2018)

Amendment No.

717 | against the exploitation of a vulnerable adult; providing for  
718 | standing to bring a cause of action for an injunction; providing  
719 | that an injunction may be sought regardless of any other action  
720 | that may be pending between specified parties; specifying that  
721 | the right to petition for an injunction is not affected by a  
722 | person temporarily or permanently vacating a residence or  
723 | household to avoid exploitation; providing that parties to an  
724 | injunction may not be required to be represented by an attorney;  
725 | providing for venue; providing that exploitation already having  
726 | occurred is not required as a prerequisite for filing for or  
727 | issuance of an injunction; requiring that a petition be filed in  
728 | certain proceedings under ch. 744, F.S.; requiring that certain  
729 | proceedings be recorded; requiring a sworn petition to contain  
730 | certain allegations and statements; requiring the court to set a  
731 | hearing within a certain time; requiring the clerk of the  
732 | circuit court to assist the petitioner in filing an injunction  
733 | or petition by providing certain forms and instructions;  
734 | requiring the clerk of the court to ensure the petitioner's  
735 | privacy; requiring the clerk of the court to provide the  
736 | petitioner with certified copies of the injunction order;  
737 | requiring that the clerks of the court and appropriate staff  
738 | receive certain training; requiring that the clerk of the  
739 | circuit court make available certain informational brochures and  
740 | create and distribute a specified brochure containing specified  
741 | information to the petitioner at the time of filing for an

523191 - h1059-strike.docx

Published On: 2/14/2018 9:14:39 PM

Amendment No.

742 injunction; prohibiting the clerk of the circuit court from  
743 assessing an initial filing fee; authorizing the clerk of the  
744 circuit court to request a reimbursement for such petitions,  
745 subject to the appropriation of funds for that purpose;  
746 requiring the clerk of the circuit court to pay from such  
747 reimbursement certain fees to a law enforcement agency;  
748 authorizing the court to grant a temporary injunction ex parte  
749 under certain circumstances; prohibiting the use of evidence  
750 other than verified pleadings or affidavits in an ex parte  
751 hearing; providing an exception; authorizing the court to grant  
752 specified relief under certain circumstances; requiring the  
753 court to follow certain procedures when issuing an order denying  
754 a petition for an ex parte injunction; prohibiting an ex parte  
755 temporary injunction from having a duration longer than a  
756 specified number of days; requiring that a full hearing be set  
757 for a date no later than the date the temporary injunction  
758 expires; authorizing the court to grant a continuance of the  
759 hearing for good cause; providing factors that a court must  
760 consider when determining whether petitioners have reasonable  
761 cause; requiring the respondent to be personally served with  
762 certain documents before the hearing; providing for the relief a  
763 court may grant after a final hearing on a petition; requiring  
764 that the court allow certain advocates to be present under  
765 certain circumstances; requiring that the terms of certain  
766 injunctions remain in effect until modified or dissolved;

523191 - h1059-strike.docx

Published On: 2/14/2018 9:14:39 PM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 1059 (2018)

Amendment No.

767 requiring that a temporary or final judgment on an injunction  
768 meet certain requirements; providing requirements and options  
769 for service of process; authorizing the court to waive the  
770 service of process requirement for a financial institution;  
771 requiring that the clerk of the circuit court deliver a  
772 certified copy of certain orders meeting certain criteria to the  
773 parties under certain circumstances; providing options for  
774 noting the service was effective; requiring form of process upon  
775 a financial institution; requiring that the clerk of the circuit  
776 court place a written certification in the court file and notify  
777 the sheriff under certain circumstances; authorizing the clerk  
778 of the circuit court to serve certain respondents by certified  
779 mail; requiring that the clerk of the circuit court, law  
780 enforcement officers, and sheriffs follow certain procedures  
781 within a certain timeframe after an injunction has been issued  
782 or an injunction becomes ineffective; requiring the clerk of the  
783 circuit court to provide copies of certain petitions and orders  
784 to the adult protective services program; requiring the adult  
785 protective services program to treat petitions in a certain  
786 manner; requiring the adult protective services program to  
787 submit to the court the results of any previous investigations  
788 relating to the vulnerable adult within a specified timeframe;  
789 providing options for enforcing and prosecuting a violation of  
790 an injunction; requiring that the clerk of the circuit court  
791 collect any assessment or fine; providing for deposit of funds;

523191 - h1059-strike.docx

Published On: 2/14/2018 9:14:39 PM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 1059 (2018)

Amendment No.

792 requiring that a respondent held in custody after an arrest for  
793 violating an injunction be brought before the court as  
794 expeditiously as possible; specifying that the petitioner is  
795 liable for actual damages under certain circumstances;  
796 authorizing either party to move at any time to modify or  
797 dissolve an injunction; providing construction; creating s.  
798 825.1036, F.S.; requiring that a clerk of the circuit court  
799 assist the petitioner in preparing an affidavit or direct the  
800 petitioner to a certain office, under certain circumstances;  
801 requiring the clerk of the circuit court or the office assisting  
802 the petitioner to immediately forward the affidavit to certain  
803 people and places depending on certain circumstances; requiring  
804 a law enforcement agency to complete its investigation and  
805 forward the affidavit along with a report of any information  
806 obtained through its investigation to the state attorney within  
807 a specified timeframe; requiring the state attorney to determine  
808 how it will proceed within a specified timeframe; authorizing  
809 the court to immediately issue an order of appointment of the  
810 state attorney in certain circumstances; requiring the court to  
811 immediately notify the state attorney that the court is  
812 proceeding to enforce the violation through a ruling of criminal  
813 contempt if the court does not issue an order of appointment;  
814 providing a penalty for a willful violation of an injunction;  
815 providing an exception; providing for how an injunction may be  
816 violated; providing that a person with two or more prior

523191 - h1059-strike.docx

Published On: 2/14/2018 9:14:39 PM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 1059 (2018)

Amendment No.

817 convictions for violation of an injunction or foreign protection  
818 order against the same victim who commits a subsequent violation  
819 against the same victim commits a third degree felony; defining  
820 the term "conviction"; authorizing the court to award economic  
821 damages to a person who suffers an injury or loss as a result of  
822 a violation of an injunction; limiting liability of a financial  
823 institution related ton an injunction freezing assets or a  
824 credit line; amending s. 901.15, F.S.; conforming provisions to  
825 changes made by the act; amending s. 415.107, F.S.; granting the  
826 court access to records in protective injunction proceedings;  
827 providing an effective date.

523191 - h1059-strike.docx

Published On: 2/14/2018 9:14:39 PM