

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 297 Attorney Fees
SPONSOR(S): Civil Justice Subcommittee, Brannan III
TIED BILLS: **IDEN./SIM. BILLS:** SB 768

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--------------------------------------|---------------------|---------|---|
| 1) Civil Justice Subcommittee | 14 Y, 0 N, As CS | Mawn | Poche |
| 2) Health & Human Services Committee | 14 Y, 0 N | Christy | Calamas |
| 3) Judiciary Committee | | | |

SUMMARY ANALYSIS

An injunction is a court order prohibiting someone from doing some specified act or commanding someone to undo some wrong or injury. Protective injunctions can help protect a person from threats or acts of violence by another. Florida recognizes five different types of protective injunctions, targeting domestic violence, dating violence, sexual violence, repeat violence, and stalking.

Section 57.105, F.S., permits a court to award reasonable attorney fees to a prevailing party when the losing party brings a claim unsupported by law or fact; however, Florida specifically prohibits the award of attorney fees in a proceeding for an injunction for protection against domestic violence.

In 2018, the Florida Supreme Court opined that, because repeat, dating, and sexual violence injunction proceedings were civil in nature, and the statutes governing these proceedings did not preclude the award of attorney fees, an unsuccessful petitioner in such a proceeding could be assessed attorney fees under s. 57.105, F.S. The dissenting justices warned that the threat of attorney fees under s. 57.105, F.S., could be used to intimidate a petitioner into withdrawing an otherwise meritorious petition for an injunction for protection against repeat, dating, or sexual violence out of fear that the court may deem all or part of his or her petition unsupported. The dissenting justices concluded by urging the Legislature to correct what they believed to be an unintentional application of s. 57.105, F.S.

CS/HB 297 prohibits the award of attorney fees in a proceeding for an injunction for protection against repeat, dating, or sexual violence and in a proceeding for an injunction for protection against stalking. The award of attorney fees in a proceeding for an injunction for protection against domestic violence remains prohibited under current law.

The bill has no fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2019.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Protective Injunctions

An injunction is a court order prohibiting someone from doing some specified act or commanding someone to undo some wrong or injury.¹ Protective injunctions can help protect a person from threats or acts of violence by another. Florida recognizes five different types of protective injunctions, targeting domestic violence, dating violence, sexual violence, repeat violence, and stalking.²

Domestic Violence Injunctions

Domestic violence means 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 member³ by another family or household member.⁴ An injunction for protection against domestic violence may be sought by family or household members.⁵ There is no requirement that the parties be married before a person can seek relief from domestic violence, and a party's right to seek relief is not affected by the person leaving the residence or household to avoid domestic violence.⁶

A petition for an injunction for protection against domestic violence may be filed in the circuit where the petitioner currently or temporarily resides, where the respondent resides, or where the domestic violence occurred.⁷ The petition must be sworn and must include an allegation of domestic violence and the specific facts and circumstances that form the basis for petitioner's desire for relief.⁸ Upon the filing of the petition, the court must set a hearing at the earliest possible time.⁹ However, if the court believes the petitioner is in immediate and present danger of domestic violence, the court may grant a temporary injunction ex parte, pending a full hearing, and may grant other relief including the temporary exclusive use and possession of a shared dwelling and a temporary parenting plan¹⁰ which may award the petitioner up to 100 percent of the timesharing.¹¹ A temporary ex parte injunction is effective for a period not to exceed 15 days, and a full hearing must be set for a date no later than the date the temporary injunction ceases to be effective.¹²

Following a hearing, if a court determines that the petitioner is either the victim of domestic violence or has reasonable cause to believe the petitioner is in imminent danger of becoming a victim of domestic

¹ Black's Law Dictionary 540 (6th ed. 1995).

² Florida Courts, *Injunctions*, <https://www.flcourts.org/Resources-Services/Court-Improvement/Family-Courts/Domestic-Violence/Injunctions> (last visited Mar. 25, 2019).

³ "Family or household member" means spouses, former spouses, person related by blood or marriage, persons presently residing together as if a family or who have resided together in the past as a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit. S. 741.28(3), F.S.

⁴ S. 741.28(2), F.S.

⁵ S. 741.30(1)(e), F.S.

⁶ Ss. 741.30(1)(d) and (e), F.S.

⁷ S. 741.30(1)(k), F.S.

⁸ S. 74.30(3)(b), F.S.

⁹ S. 741.30(4), F.S.

¹⁰ "Parenting plan" means a document created to govern the relationship between parents relating to decisions that must be made regarding the minor child and must contain a time-sharing schedule for the parents and child. S. 61.046(14), F.S. "Time-sharing schedule" means a timetable that must be included in the parenting plan that specifies the time, including overnights and holidays, that a minor child will spend with each parent. S. 61.046(23), F.S.

¹¹ S. 741.30(5)(a), F.S.

¹² S. 741.30(5)(c), F.S.

violence, the court may grant an injunction for protection against domestic violence, and may award other relief, including exclusive use and possession of a shared residence; 100 percent timesharing for the petitioner under a parenting plan; temporary financial support for a minor child; and treatment, intervention, or counseling services for the respondent.¹³ The terms of an injunction for protection against domestic violence remain in effect until modified or dissolved, and either party may move at any time to modify or dissolve the injunction.¹⁴

Repeat, Dating, and Sexual Violence Injunctions

Violence means 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.¹⁵

Repeat Violence

Repeat violence means two incidents of violence or stalking committed by the same person, one of which must have been within 6 months of the filing of the petition for injunction for protection against repeat violence, which were directed against the petitioner or the petitioner's immediate family member.¹⁶ An injunction for protection against repeat violence may be brought by any person who is a victim of repeat violence.¹⁷ Additionally, the parent or legal guardian of a minor child living at home may petition for an injunction for protection against repeat violence on behalf of that minor child.¹⁸

Dating Violence

Dating violence means violence between individuals who have or have had a continuing and significant relationship or a romantic or intimate nature.¹⁹ The term does not include violence in a causal acquaintanceship or violence between persons who only interact in business or social settings.²⁰ An injunction for protection against dating violence may be sought by a victim of dating violence who has reasonable cause to believe he or she is in imminent danger of another act of dating violence, or by a person who has reasonable cause to believe he or she is in imminent danger of becoming the victim of an act of dating violence.²¹ Additionally, the parent or legal guardian of a minor child living at home who is the victim of dating violence may petition for an injunction for protection against dating violence on behalf of that minor child.²²

Sexual Violence

Sexual violence means any one incident of sexual battery, a lewd or lascivious act committed upon or in the presence of a person younger than 16, luring or enticing a child, or any other forcible felony wherein a sexual act is committed or attempted regardless of whether criminal charges based on the incident were filed, reduced, or dismissed.²³ A person who is the victim of sexual violence may seek an injunction for protection against sexual violence, and the parent or legal guardian of a minor child living at home who is the victim of sexual violence may petition for an injunction for protection against sexual violence on behalf of that minor child, if:

¹³ S. 741.30(6)(a), F.S.

¹⁴ S. 741.30(6)(c), F.S.

¹⁵ S. 784.046(1)(a), F.S.

¹⁶ S. 784.046(1)(b), F.S.

¹⁷ S. 784.046(2)(a), F.S.

¹⁸ *Id.*

¹⁹ S. 784.046(1)(d), F.S.

²⁰ S. 784.046(1)(d), F.S.

²¹ S. 784.046(2)(b), F.S.

²² *Id.*

²³ S. 784.046(1)(c), F.S.

- The person reported the sexual violence to a law enforcement agency and is cooperating in any criminal proceeding against the respondent regardless of whether criminal charges based on the sexual violence have been filed, reduced, or dismissed;²⁴ or
- The respondent who committed the sexual violence against the victim or minor child was sentenced to a term of imprisonment in state prison for the sexual violence and the respondent's term of imprisonment has expired or is due to expire within 90 days following the date the petition is filed.²⁵

Injunctions

A petition for injunction against repeat, dating, or sexual violence must allege instances of repeat, dating, or sexual violence and must include the specific facts and circumstances that form the basis for petitioner's desire for relief.²⁶ Upon the filing of the petition, the court must set a hearing at the earliest possible time.²⁷ However, if the court believes the petitioner or minor child is in immediate and present danger, the court may grant a temporary injunction *ex parte*.²⁸ A temporary injunction is effective for a period not to exceed 15 days, except that a temporary injunction granted when a respondent who committed sexual violence is about to be released from incarceration may last up to 15 days from the respondent's release from incarceration.²⁹ In either case, a full hearing must be set for a date no later than the date the temporary injunction ceases to be effective.³⁰

Following a hearing, if the court determines the petitioner is the victim of repeat, dating, or sexual violence, the court may grant an injunction for protection and may grant other relief, including directives to law enforcement regarding the protection of the petitioner.³¹ The terms of the injunction remain in effect unless modified or dissolved, and either party may move at any time to modify or dissolve the injunction.³²

Stalking Injunctions

Stalking is the willful, malicious, and repeated following, harassment,³³ or cyberstalking³⁴ of another person.³⁵ A victim of stalking may file an injunction for protection against stalking.³⁶ Additionally, the parent or guardian of a minor child living at home may file an injunction for protection on behalf of that minor child.³⁷

A petition for injunction against stalking may be brought in the circuit court where the petitioner currently or temporarily resides, where the respondent resides, or where the stalking occurred.³⁸ A petition must be sworn and must include an allegation of stalking and the specific facts and circumstances that form the basis for the petitioner's desire for relief.³⁹ Upon the filing of a petition, the

²⁴ S. 784.046(2)(c)1., F.S.

²⁵ S. 784.046(2)(c)2., F.S.

²⁶ S. 784.046(4)(a), F.S.

²⁷ S. 784.046(5), F.S.

²⁸ S. 784.046(6)(a), F.S.

²⁹ S. 784.046(6)(c), F.S.

³⁰ *Id.*

³¹ S. 784.046(7), F.S.

³² S. 784.046(7)(c), F.S.

³³ "Harass" means to engage in a course of conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose. S. 784.048(1)(a), F.S.

³⁴ "Cyberstalk" means to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose. S. 784.048(1)(d), F.S.

³⁵ S. 784.048(3), F.S.

³⁶ S. 784.0785(1)(a), F.S.

³⁷ *Id.*

³⁸ S. 784.0785(1)(f), F.S.

³⁹ S. 784.0785(3)(a), F.S.

court must set a hearing for the earliest possible time.⁴⁰ However, if the court believes that stalking exists, the court may grant a temporary injunction ex parte.⁴¹ Temporary injunctions are effective for a period not to exceed 15 days, and a full hearing must be set for no later than the date when the temporary injunction ceases to be effective.⁴²

Following a hearing, if the court believes the petitioner is a victim of stalking, the court may grant the injunction for protection and may grant other relief, including ordering the respondent to participate in treatment, intervention, or counseling services.⁴³ The terms of an injunction for stalking remain in effect until modified or dissolved, and either party may move at any time to modify or dissolve the injunction.⁴⁴

Attorney Fees

Section 57.105, F.S., allows a prevailing party in a civil proceeding to recover his or her reasonable attorney fees from the losing party and from the losing party's attorney if the court determines that the losing party or the losing party's attorney knew or should have known that a claim or defense:

- Was not supported by the material facts necessary to establish the claim or defense; or
- Would not be supported by the application of then-existing law to those facts.⁴⁵

Essentially, s. 57.105, F.S., subjects a civil litigant to sanctions for asserting any position that does not find substantial support in both fact and law. The statute applies to any claim stated or defense raised in a proceeding; a movant for attorney fees under this section does not need to establish that the entire action was without merit.⁴⁶

Section 741.30, F.S., specifically prohibits the award of attorney fees, even under s. 57.105, F.S., in a proceeding for an injunction for protection against domestic violence.⁴⁷

Lopez v. Hall

In *Lopez v. Hall*, decided in 2018, the Florida Supreme Court opined that, because repeat, dating, and sexual violence injunction proceedings were civil in nature, and the statutes governing these proceedings did not preclude the award of attorney fees, an unsuccessful petitioner in such a proceeding could be assessed attorney fees under s. 57.105, F.S.⁴⁸ The dissenting *Lopez* justices warned that the threat of attorney fees under s. 57.105, F.S., could be used to intimidate a petitioner into withdrawing an otherwise meritorious petition for an injunction for protection against repeat, dating, or sexual violence out of fear that the court may deem all or part of his or her petition unsupported.⁴⁹ The dissenting justices urged the Legislature to correct what they believed to be an unintentional application of s. 57.105, F.S., to these proceedings.⁵⁰

Effect of the Bill

CS/HB 297 prohibits the award of attorney fees, even under s. 57.105, F.S., in a proceeding for an injunction for protection against repeat, dating, or sexual violence and in a proceeding for an injunction for protection against stalking.

⁴⁰ S. 784.0785(4), F.S.

⁴¹ S. 784.0785(5)(a), F.S.

⁴² S. 784.0785(5)(c), F.S.

⁴³ S. 784.0485(6)(a), F.S.

⁴⁴ S. 784.0485(6)(b), F.S.

⁴⁵ S. 57.105(1), F.S.

⁴⁶ The Florida Bar, *Section 57.105's New Look: The Florida Legislature Encourages Courts To Sanction Unsupported Claims and Dilatory Actions, Part 1*, 76 Fla. Bar Journal 8 (April 2002), <https://www.floridabar.org/the-florida-bar-journal/section-57-105s-new-look-the-florida-legislature-encourages-courts-to-sanction-unsupported-claims-and-dilatory-actions-part-1/> (last visited Mar. 25, 2019).

⁴⁷ S. 741.30(1)(g), F.S.

⁴⁸ *Lopez v. Hall*, 233 So. 3d 451 (Fla. 2018).

⁴⁹ *Id.*

⁵⁰ *Id.*

The award of attorney fees in a proceeding for an injunction for protection against domestic violence remains prohibited under current law.

B. SECTION DIRECTORY:

Section 1: Amends s. 784.046, F.S., relating to action by victim of repeat violence, sexual violence, or dating violence for protective injunction; dating violence investigations, notice to victims, and reporting; pretrial release violations; public records exemption.

Section 2: Amends s. 784.0485, F.S., relating to staling; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement.

Section 3: Providing an effective date of July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 25, 2019, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment added “attorney fee awards” to the section titles in ss. 784.046 and 784.0485, F.S. This analysis is drafted to the committee substitute as adopted by the Civil Justice Subcommittee.