

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/SB 1508

INTRODUCER: Criminal Justice Committee and Senator Book

SUBJECT: Public Records

DATE: March 26, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1508, “Serena’s Law,” is designed to allow members of the general public to more easily identify individuals who have had civil protective injunctions ordered against them for acts involving offenses such as domestic violence, sexual violence, and stalking. The bill requires that each county recorder or clerk of the court publish on an Internet website the identity of each person who is the subject of such a protective injunction unless the defendant or respondent is a minor.

If this previously-described information is not on the website by a specified date, it must be made available to the general public on the website if the affected party, such as the victim, identifies the information and requests that it be made publicly available. The bill provides a process for this request and for notifying an affected party of the right to make this request. Further, an affected party may petition the circuit court for an order directing the county recorder or clerk of court to comply with the previously-described requirements.

Finally, the bill requires that final judgments for injunctions for protection be recorded in official records.

The Florida Court Clerks and Comptrollers states that clerks of the court anticipate an increase in labor costs on the court side to track the status of petitions for protective injunctions to post notices of injunctions on their publicly available websites. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2021.

## II. Present Situation:

### Background Information Regarding “Serena”

According to information provided to legislative staff telephonically and via e-mail<sup>1</sup> from an attorney for the law firm representing “Serena,” the person for whom the act is named, Serena was sexually assaulted as a child. The perpetrator was not criminally prosecuted, but a protective injunction against sexual violence was obtained against the perpetrator (i.e., the “respondent” subject to the injunction). The attorney further states that he is aware of two other injunctions against this individual for the protection of minors. One of those other injunctions was issued in Florida.

The attorney details the difficulties in obtaining information electronically on the protective injunction against the respondent in Serena’s case:

The first was a volunteer effort with a youth focused charity the offender pursued through his place of employment. The volunteer organization was notified of the injunction. The volunteer organization was unable to find ... and verify the injunction, including through the use of a background check. The second was also a volunteer effort the offender pursued through his place of employment with a different youth focused charity. This charity was also unable to find and verify the injunction. The third was also a volunteer effort the offender pursued through his place of employment with a different youth focused charity. This final charity ... was able to find the injunction because the background search tool it used had access to a law enforcement database.

As an additional note, our firm has a Lexis Nexis public records searching tool and that tool does not show any of the injunctions discussed above, or any other ones that may be out there.<sup>2</sup>

It is unclear why the information regarding these injunctions was not electronically available on the clerk of the court’s website.

### Injunctions for Protection

Section 741.30, F.S., authorizes a family or household member who is either the victim of domestic violence<sup>3</sup> or has reasonable cause to believe he or she is in imminent danger of

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<sup>1</sup> E-mail from Zachary W. Lombardo, Esq., attorney with Woodward, Pires & Lombardo, P.A., Naples, Florida, to staff of the Senate Committee on Criminal Justice, dated March 18, 2021 (on file with the Senate Committee on Criminal Justice).

<sup>2</sup> The attorney did not indicate that the information was unobtainable pursuant to a written request or by appearing in person at the clerk’s office to request the information.

<sup>3</sup> “Domestic violence” is an 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. Section 741.28(2), F.S.

becoming the victim of any act of domestic violence to file in the circuit court a petition for an injunction against domestic violence.

Section 784.046, F.S., provides that:

- A petition for an injunction for protection against repeat violence may be filed in the circuit court by a person who is the victim of repeat violence<sup>4</sup> or the parent or legal guardian of any minor child who is living at home.
- A petition for an injunction for protection against dating violence may be filed in the circuit court by:
  - A person who is the victim of dating violence<sup>5</sup> and has reasonable cause to believe he or she is in imminent danger of becoming the victim of another act of dating violence;
  - 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; or
  - The parent or legal guardian of any minor child who is living at home and who seeks an injunction for protection against dating violence on behalf of that minor child.
- A petition for an injunction for protection against sexual violence may be filed in the circuit court by a person who is the victim of sexual violence<sup>6</sup> or the parent or legal guardian of a minor child who is living at home who is the victim of sexual violence on his or her own behalf or on behalf of the minor child if:
  - The person has 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 by the state attorney; 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.

Section 784.0485, F.S., authorizes a person who is the victim of stalking<sup>7</sup> or the parent or legal guardian of a minor child who is living at home who seeks an injunction for protection against stalking on behalf of the minor child to file in the circuit court a petition for an injunction for protection against stalking. For the purposes of injunctions for protection against stalking, the offense of stalking includes the offense of cyberstalking.<sup>8</sup>

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<sup>4</sup> "Repeat violence" means 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)(b), F.S.

<sup>5</sup> "Dating violence" is violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. This relationship is determined based on specified factors. Section 784.046(1)(d), F.S.

<sup>6</sup> "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 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, regardless of whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney. Section 784.046(1)(c), F.S.

<sup>7</sup> The offense of stalking is committed by a person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person. Section 784.048(2), F.S.

<sup>8</sup> "Cyberstalk" means: (1) 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; or (2) to access, or attempt to access, the online accounts or Internet-connected home electronic systems of another person without that

### ***Legal Standard for a Protective Injunction***

The procedures for the issuance of a protective injunction issued under s. 741.30, s. 784.046, or s. 784.0485, F.S., are similar. A person who is the victim of domestic violence or has reasonable cause to believe her or she is in imminent danger of becoming a victim of domestic violence, for example, has standing to file a sworn petition for an injunction.<sup>9</sup> Based on this initial petition, a court may issue a *temporary* injunction ex-parte.<sup>10</sup> During an ex-parte proceeding, a court is generally not required to review a response from the accused and may base a temporary injunction on hearsay evidence.<sup>11,12</sup> Additional evidence may be considered, however, if an accused appears at the ex-parte proceeding or has received reasonable notice of the hearing.<sup>13</sup> This ex-parte proceeding is often necessary because “the existence of a true emergency...may sometimes require immediate action that will not permit the movant to verify each allegation made.”<sup>14</sup>

Parties to an injunction are entitled to a full hearing, and a temporary injunction is effective for a maximum of 15 days.<sup>15</sup> A full hearing is required prior to the expiration of the temporary injunction. At the full hearing, the accused must have a reasonable opportunity to prove or disprove the allegations made in the complaint and is entitled to introduce evidence and cross examine witnesses.<sup>16</sup> Based upon the full hearing, a court “must consider the current allegations, the parties’ behavior within the relationship, and the history of the relationship as a whole” to determine if a permanent injunction is warranted based on the petitioner’s belief that he or she is in imminent danger of becoming a victim of domestic violence.<sup>17</sup>

### **Protective Injunctions and the Florida Family Law Rules of Procedure**

Rule 12.010 of the Florida Family Law Rules of Procedure states that these rules generally apply to all actions concerning family matters, including injunctions for protection against domestic, repeat, dating, and sexual violence, and stalking.<sup>18</sup> Rule 12.610 of the Florida Family Law Rules of Procedure addresses procedures for injunctions for protection against domestic, repeat, dating, and sexual violence, and stalking.

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person’s permission, causing substantial emotional distress to that person and serving no legitimate purpose.

Section 784.048(1)(d), F.S.

<sup>9</sup> Section 741.30(1)(a), F.S.

<sup>10</sup> Section 741.30(5)(c), F.S.

<sup>11</sup> *Parrish v. Price*, 71 So. 3d 132, 134 (Fla. 2d DCA 2011) (Holding that a temporary injunction may be based solely on the petition filed, even if it is almost entirely based on hearsay statements).

<sup>12</sup> Additionally, when a “parent files a sworn petition and has reasonable cause to believe the minor child is a victim of sexual violence by a nonparent, the sworn petition is a *presumptively sufficient* basis for an injunction.” (emphasis added) *Berthiaume v. B.S. ex rel. A.K.*, 85 So. 3d 1117, 1119 (Fla. 1st DCA 2012).

<sup>13</sup> Section 741.30(5)(b), F.S.

<sup>14</sup> *Smith v. Crider*, 932 So. 2d 393, 399 n. 4 (Fla. 2d DCA 2006).

<sup>15</sup> A court may, however, grant a continuance for good cause as requested by either party. The temporary injunction may be extended to include the continuance. Section 741.30(5)(c), F.S.

<sup>16</sup> *Furry v. Rickles*, 68 So. 3d 389, 390 (Fla. 1st DCA 2011) (citing *Ohrn v. Wright*, 963 So. 2d 298 (Fla. 5th DCA 2007)).

<sup>17</sup> *Giallanza v. Giallanza*, 787 So.2d 162, 164 (Fla. 2d DCA 2001) (citing *Gustafson v. Mauck*, 743 So. 2d 614, 616 (Fla. 1st DCA 1999)).

<sup>18</sup> See Florida Family Law Rules of Procedure (Dec. 31, 2020), available at <https://www-media.floridabar.org/uploads/2020/12/Family-Law-Rules-of-Procedure-12-2020.pdf> (last visited March 18, 2021).

## Florida Supreme Court Administrative Order on Access to Electronic Court Records

Through administrative rule, the Florida Supreme Court adopted standards for access to electronic court records and an access security matrix.<sup>19</sup> There are different levels of permissible access depending on “the user’s role and applicable statutes, court rules, and applicable administrative policy. Access may be restricted to certain user roles based on case type, document type, or information contained within court records.”<sup>20</sup>

Permitted access for the general public (without registration agreement) includes:

- All records except those that are expunged or sealed, automatically confidential under Rule 2.420(d)(1), Fla. R. Jud. Admin., or made confidential by court order.
- No remote access to images of records in cases governed by the Florida Family Law Rules of Procedure, Florida Rules of Juvenile Procedure, or Florida Probate Rules, pursuant to s. 28.2221(5)(a), F.S.<sup>21</sup>

There are no user security requirements. Anonymous web-based access is permitted.<sup>22</sup>

### Clerks of the Court

The Florida Court Clerks and Comptrollers states that a clerk of the court is “designated as the county recorder of all instruments that he or she may be required or authorized by law to record in the county where he or she is the Clerk. The Clerk is required to record all such instruments in one general series called ‘Official Records,’ which must be open to the public for the purpose of inspecting and making extracts of the instruments, under the Clerk’s supervision.”<sup>23</sup>

### Recording of Orders and Judgments (s. 28.29, F.S.)

Section 28.29, F.S., which relates to recording of orders and judgments, in part, requires that orders of dismissal and final judgments of the courts in civil actions be recorded in official records. Other orders must be recorded only on written direction of the court. The direction may be by incorporation in the order of the words “To be recorded” or words to that effect. Failure to record an order or judgment does not affect its validity.

The statute does not specifically refer to final judgments for injunctions for protection.

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<sup>19</sup> *In Re: Access to Electronic Court Records* (Administrative Order), No. 20-108 (Nov. 20, 2020) and *Standards for Access to Electronic Court Records* (Nov. 2020), Florida Supreme Court, available at <https://www.floridasupremecourt.org/content/download/693366/7743882> (last visited March 18, 2021).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *FCCC Bill Analysis* (SB 1508) (citations omitted), Florida Court Clerks & Comptrollers (on file with the Senate Committee on Criminal Justice).

### III. Effect of Proposed Changes:

#### “Serena’s Law”

The bill provides that the act shall be known as “Serena’s Law.”

#### **Requirement that County Recorders or Clerks of the Court Provide Certain Information on Protective Injunctions**

The bill amends s. 28.2221, F.S., relating to electronic access to official records, to require that each county recorder or clerk of the court make the identity of each defendant or respondent against whom a protective injunction under ss. 741.30, 784.046, or 784.0485, F.S., is entered as well as the fact that such protective injunction has been entered against that defendant or respondent publicly available on an Internet website for general public display, unless the defendant or respondent is a minor.

Information previously described that is not made available by the county recorder or the clerk of the court on a publicly available Internet website for general public display prior to July 1, 2021, must be made publicly available if the affected party identifies the information and requests that it be made publicly available. This request must be in writing and delivered by mail, facsimile, or electronic transmission, or in person to the county recorder or clerk of the court. The request must specify the case number assigned to the protective injunction. No fee may be charged for the addition of information pursuant to this request.

No later than 30 days after July 1, 2021, notice of the right of any affected party to request the addition of information as previously described must be conspicuously and clearly displayed by the county recorder or clerk of the court on the publicly available Internet website on which images or copies of the county’s public records are placed and in the office of each county recorder or clerk of the court.

This notice must contain appropriate instructions for making the addition request in person, by mail, by facsimile, or by electronic transmission. The notice must state, in substantially similar form, that any person has a right to request that a county recorder or clerk of the court add information to a publicly available Internet website if that information involves the identity of a defendant or respondent against whom a protective injunction is entered, unless the defendant or respondent is a minor. This request must be made in writing and delivered by mail, facsimile, or electronic transmission, or in person to the county recorder or clerk of the court. The request must specify the case number assigned to the protective injunction. No fee will be charged for the addition of a document pursuant to this request.

The bill further provides that any affected person may petition the circuit court for an order directing compliance with this subsection. The recorder or clerk, as applicable, must conspicuously and clearly display on its publicly available website and its office notice of the right of the minor, or his or her representative, to request the addition of such information to the publicly available website.

**Recording of Final Judgments for Injunctions for Protection**

The bill amends s. 28.29, F.S., relating to recording of orders and judgments to require that final judgments for injunctions for protection as defined in chs. 741 and 784, F.S., be recorded in official records.

The bill also provides that direction regarding recording of orders of dismissals and final judgments referenced in the statute may be by incorporation in the order of the words “To be recorded in official records” or words to that effect.

**Effective Date**

The bill takes effect July 1, 2021.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by article VII, section 18 of the Florida Constitution.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Florida Clerk of Court Association states that it anticipates “an increase in labor costs on the court side, as it would be necessary to track the status of petition filings to post notices of injunctions on the Clerks’ publicly available websites.”<sup>24</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 28.2221 and 28.29.

**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 Criminal Justice on March 23, 2021:**

The committee substitute:

- Removes a provision of the original bill that specified that a public records exemption for certain active criminal intelligence information and active criminal investigative information involving certain victims does not apply to the identity of a person, other than a minor, who is charged with or found guilty of any offense specified in the exemption (most of which are sexual offenses).
- Requires that each county recorder or clerk of the court make the identity of each defendant or respondent against whom a protective injunction is entered as well as the fact that a protective injunction has been entered against that defendant or respondent publicly available on an Internet website for general public display, unless the defendant or respondent is a minor.
- Removes a provision of the bill that required newspaper publication of notices.
- Requires that final judgments for injunctions for protection be recorded in official records.

**B. Amendments:**

None.

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

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<sup>24</sup> *FCCC Bill Analysis* (SB 1508) (citations omitted), Florida Court Clerks & Comptrollers (on file with the Senate Committee on Criminal Justice).