

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 45 Hope Cards for Persons Issued Orders of Protection

**SPONSOR(S):** Justice Appropriations Subcommittee, Civil Justice Subcommittee, Gottlieb and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 86

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	16 Y, 0 N, As CS	Mathews	Jones
2) Justice Appropriations Subcommittee	13 Y, 0 N, As CS	Smith	Keith
3) Judiciary Committee	20 Y, 0 N	Mathews	Kramer

### SUMMARY ANALYSIS

Pursuant to s. 741.28, F.S., domestic violence means any assault, aggravated assault, battery, aggravated battery, sexual assault, aggravated sexual assault, stalking, aggravated stalking, kidnapping, false imprisonment, or any other criminal offense resulting in physical injury or death of one family or household member by another family or household member. To protect himself or herself from abuse or threats of abuse, a domestic violence victim may petition for a protective injunction.

In certain matters, a court may grant civil “injunctive relief” to prohibit a person from committing certain actions. For example, a victim of domestic violence may petition the court for protection against domestic violence enjoining the respondent from being near the petitioner.

Chapter 741, F.S., provides a process for an alleged victim to seek protection from domestic violence. Generally, a petitioner files a sworn notarized petition with the circuit court seeking a protective order or injunction for protection against domestic violence. Upon review of the petition and any supporting documents by a judge, one of three ex parte actions generally occurs:

- The petition for injunction is denied, and the judge must provide written findings detailing the reasons for the denial;
- A temporary injunction is issued and a return hearing is set to be held within 15 days as a final hearing on the matter; or
- The injunction is denied but a return hearing is set for the matter to be heard in court with both parties having the opportunity to be present and to present testimony and evidence.

Following a hearing, the court may either issue a final injunction or deny the petition and close the case. A final injunction may be issued for a set period of time or may remain in place indefinitely. The terms of an injunction remain in effect until it expires, is modified, or is dissolved by court order.

CS/CS/HB 45 creates s. 741.311, F.S., establishing the Hope Card Program to provide a wallet-sized card to a person issued a final injunction for protection by a county or circuit court in Florida. The bill directs the clerks of the court to develop and implement the program in consultation with the Attorney General. Under the bill, a person who has been issued a final injunction for protection against domestic violence, stalking, repeat violence, sexual violence, dating violence, or abuse or exploitation of an elderly person or disabled adult may apply for a Hope Card with the clerk of the court where the petition was originally filed.

The bill provides specifications for the form and content of the card and imposes time limitations on when the card must be produced and provided to the applicant. Under the bill, a Hope Card is valid for up to two years after its issuance but may be renewed if the injunction remains in effect. The bill provides a criminal penalty for the intentional misuse of a Hope Card or a document purporting to be a Hope Card.

The bill has an indeterminate negative fiscal impact on the clerks of court; however, it is anticipated that any impact can be absorbed within existing resources. See Fiscal Comments. The bill provides an effective date of October 1, 2024.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives .**

**STORAGE NAME:** h0045e.JDC

**DATE:** 2/21/2024

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Domestic Violence

Domestic violence means any criminal offense resulting in the physical injury or death of one family or household member<sup>1</sup> by another family or household member,<sup>2</sup> including:

- Assault;<sup>3</sup>
- Aggravated assault;<sup>4</sup>
- Battery;<sup>5</sup>
- Aggravated battery;<sup>6</sup>
- Sexual assault;<sup>7</sup>
- Sexual battery;<sup>8</sup>
- Stalking;<sup>9</sup>
- Aggravated stalking;<sup>10</sup>
- Kidnapping;<sup>11</sup> and
- False imprisonment.<sup>12</sup>

In 2020, the last statistical report provided by the Florida Department of Law Enforcement indicated Florida law enforcement agencies received 106,615 domestic violence reports,<sup>13</sup> resulting in 63,345 arrests.<sup>14</sup> During fiscal year 2021-2022, Florida's 41 certified domestic violence shelters<sup>15</sup> admitted 11,811 victims to a residential services program and 38,630 victims to a non-residential outreach

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<sup>1</sup> "Family or household member" means spouses, former spouses, persons related by blood or marriage, persons presently residing together as if a family or who have resided together in the past as if 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.

<sup>2</sup> S. 741.28(2), F.S.

<sup>3</sup> "Assault" means an intentional, unlawful threat by word or act to do violence to another, coupled with an apparent ability to do so, creating a well-founded fear in such other person that violence is imminent. S. 784.011, F.S.

<sup>4</sup> "Aggravated assault" means an assault with a deadly weapon without intent to kill, or an assault with intent to commit a felony. S. 784.021, F.S.

<sup>5</sup> "Battery" means the actual and intentional touching or striking of another against his or her will or intentionally causing bodily harm to another. S. 784.03, F.S.

<sup>6</sup> "Aggravated battery" means a battery in which the offender intentionally or knowingly caused great bodily harm, permanent disability, or permanent disfigurement; used a deadly weapon; or victimized a person the offender knew or should have known was pregnant. S. 784.045, F.S.

<sup>7</sup> "Sexual assault" has the same meaning as sexual battery.

<sup>8</sup> "Sexual battery" means oral, anal, or vaginal penetration by, or in union with, the sexual organ of another or the anal or vaginal penetration of another by any object, but does not include an act done for a bona fide medical purpose. S. 794.011(1)(h), F.S.

<sup>9</sup> "Stalking" means willfully, maliciously, and repeatedly following, harassing, or cyberstalking another. S. 784.048(2), F.S.

<sup>10</sup> "Aggravated stalking" means willfully, maliciously, and repeatedly following, harassing, or cyberstalking another and making a credible threat to that person. S. 784.048(3), F.S.

<sup>11</sup> "Kidnapping" means forcibly, secretly, or by threat confining, abducting, or imprisoning another against his or her will and without lawful authority with the intent to hold for ransom or reward or as a shield or hostage; commit or facilitate a felony; inflict bodily harm upon or terrorize another; or interfere with the performance of any governmental or political function. S. 787.01(1), F.S.

<sup>12</sup> "False imprisonment" means forcibly, by threat, or secretly confining, abducting, imprisoning, or restraining another person without lawful authority and against his or her will. S. 787.02(1), F.S.

<sup>13</sup> Florida Department of Law Enforcement, *Statewide Reported Domestic Violence Offenses in Florida, 1992-2020*, [https://www.fdle.state.fl.us/CJAB/UCR/Annual-Reports/UCR-Domestic-Violence/02/DV\\_Offenses\\_by\\_Type.aspx](https://www.fdle.state.fl.us/CJAB/UCR/Annual-Reports/UCR-Domestic-Violence/02/DV_Offenses_by_Type.aspx) (last visited Jan. 22, 2024).

<sup>14</sup> Florida Department of Law Enforcement, *Florida's County and Jurisdictional Domestic Violence Related Arrests, 2020*, [https://www.fdle.state.fl.us/CJAB/UCR/Annual-Reports/UCR-Domestic-Violence/07/DV\\_Jurisdiction\\_Arrests\\_2020.aspx](https://www.fdle.state.fl.us/CJAB/UCR/Annual-Reports/UCR-Domestic-Violence/07/DV_Jurisdiction_Arrests_2020.aspx) (last visited Jan. 22, 2024).

<sup>15</sup> "Domestic violence shelter" means an agency providing services to domestic violence victims as its primary mission. The Florida Department of Children and Families operates the statewide Domestic Violence Program, responsible for certifying domestic violence centers. Section 39.905, F.S., and ch. 65H-1, F.A.C., set forth the minimum domestic violence center certification standards.

services program.<sup>16</sup> During the same year, the domestic violence centers answered 81,357 crisis hotline calls, completed 171,008 safety plans with survivors, and provided 380,040 direct service information and referrals to survivors, family members, and individuals seeking services.<sup>17</sup>

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

Pursuant to s. 784.046, F.S., “sexual violence” means any one of the following incidents, regardless of whether criminal charges were filed, reduced, or dismissed:

- Sexual battery, as defined under ch. 794, F.S.;
- A lewd or lascivious act committed upon or in the presence of a person under 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.

“Dating violence” is violence between two people who have had or continue to have a significant relationship of a romantic or intimate nature.<sup>18</sup> Unlike with domestic violence, there is no requirement that the alleged victim and aggressor reside together in the same home. Further, the existence of dating violence is proven based on a consideration of the following factors:<sup>19</sup>

- A dating relationship must have existed within the past 6 months;
- The nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and
- The frequency and type of interaction between the persons involved in the relationship must have included that the persons have been involved over time and on a continuous basis during the course of the relationship.

“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 at the petitioner, or the petitioner’s immediate family member.<sup>20</sup>

### Abuse, Neglect, and Exploitation of Elderly Persons and Disabled Adults

Section 825.103, F.S., prohibits specified exploitation of elderly persons or disabled adults and provides criminal penalties for a violation. Under s. 825.101(4), F.S., an elderly person is defined as a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunction, to the extent that the ability of the person to provide adequately for the person’s own care or protection is impaired. A disabled adult is defined as a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person’s ability to perform the normal activities of daily living.<sup>21</sup>

Under s. 825.103, F.S., exploitation of an elderly person or disabled adult (EPDA) means:

- Knowingly obtaining or using, or endeavoring to obtain or use, an EPDA’s funds, assets, or property with the intent to temporarily or permanently deprive the EPDA of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the EPDA, by a person who:
  - Stands in a position of trust and confidence with the EPDA; or
  - Has a business relationship with the EPDA.<sup>22</sup>

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<sup>16</sup> Florida Department of Children and Families, 2022 *Domestic Violence Annual Report* [https://www.myflfamilies.com/sites/default/files/2023-02/Domestic\\_Violence\\_Annual\\_Report\\_2021-22.pdf](https://www.myflfamilies.com/sites/default/files/2023-02/Domestic_Violence_Annual_Report_2021-22.pdf) (last visited Jan. 22, 2024).

<sup>17</sup> *Id.*

<sup>18</sup> S. 784.046(1)(d), F.S.

<sup>19</sup> *Id.*

<sup>20</sup> S. 784.046(1)(b), F.S.

<sup>21</sup> S. 825.101(3), F.S.

<sup>22</sup> S. 825.103(1)(a), F.S.

- Obtaining or using, or endeavoring to obtain or use, or conspiring with another to obtain or use an EPDA's funds, assets, or property with the intent to temporarily or permanently deprive the EPDA of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the EPDA, by a person who knows or reasonably should know that the EPDA lacks the capacity<sup>23</sup> to consent.<sup>24</sup>
- Breach of a fiduciary duty to an EPDA by the person's guardian, trustee, or agent under a power of attorney which results in an unauthorized appropriation, sale, transfer of property, kickback,<sup>25</sup> or receipt of an improper benefit.<sup>26</sup> An unauthorized appropriation occurs when the EPDA does not receive the reasonably equivalent financial value in goods or services, or when the fiduciary violates a specified duty.<sup>27</sup>
- Misappropriating, misusing, or transferring without authorization money belonging to an EPDA from an account<sup>28</sup> in which the EPDA placed the funds, owned the funds, and was the sole contributor or payee of the funds before the misappropriation, misuse, or unauthorized transfer.<sup>29</sup>
- Intentionally and negligently failing to effectively use an EPDA's income and assets for the necessities required for that person's support and maintenance, by a caregiver or a person who stands in a position of trust and confidence with the EPDA.<sup>30</sup>
- Knowingly obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use an EPDA's funds, assets, property, or estate through intentional modification, alteration, or fraudulent creation of a plan of distribution or disbursement expressed in a will, trust agreement, or other testamentary devise of the EPDA without:
  - A court order which authorizes the modification or alteration;
  - A written instrument executed by the EPDA, sworn to and witnessed by two persons who would be competent as witnesses to a will, which authorizes the modification or alteration; or
  - Action of an agent under a valid power of attorney which authorizes the modification or alteration.<sup>31</sup>

## Injunctions for Protection

### *Domestic Violence Injunctions*

An injunction is a court order prohibiting a person from doing a specified act or commanding a person to undo some wrong or injury.<sup>32</sup> An injunction for protection against domestic violence ("domestic violence injunction") may be sought by a family or household member.<sup>33</sup> The parties do not need to be married before a person can seek relief from domestic violence, and a party's right to seek relief is not affected by leaving the residence or household to avoid domestic violence.<sup>34</sup>

Once a petition for an injunction has been filed with the court, one of three events takes place:

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<sup>23</sup> "Lacks capacity to consent" means an impairment by reason of mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss, or other cause, that causes an elderly person or disabled adult to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning the elderly person's or disabled adult's person or property. S. 825.101(10), F.S.

<sup>24</sup> S. 825.103(1)(b), F.S.

<sup>25</sup> "Kickback" means a remuneration or payment, by or on behalf of a provider of health care services or items, to any person as an incentive or inducement to refer patients for past or future services or items, when the payment is not tax deductible as an ordinary and necessary expense. S. 456.054(1), F.S.

<sup>26</sup> "Improper benefit" means any remuneration or payment, by or on behalf of any service provider or merchant of goods, to any person as an incentive or inducement to refer customers or patrons for past or future services or goods. S. 825.101(8), F.S.

<sup>27</sup> S. 825.103(1)(c), F.S.

<sup>28</sup> This type of exploitation only applies to the following types of accounts: personal accounts; joint accounts created with the intent that only the elderly person or disabled adult enjoys all rights, interests, and claims to monies deposited into such account; or convenience accounts created in accordance with s. 655.80, F.S. S. 825.103(d)(1.-3.), F.S.

<sup>29</sup> S. 825.103(1)(d), F.S.

<sup>30</sup> S. 825.103(1)(e), F.S.

<sup>31</sup> S. 825.103(1)(f), F.S.

<sup>32</sup> Black's Law Dictionary 540 (6th ed. 1995).

<sup>33</sup> S. 741.30(1)(e), F.S.

<sup>34</sup> S. 741.30(1)(d) and (e), F.S.

- The court determines the petition has no merit and denies the petition, providing written findings for the denial;
- The court grants an ex parte temporary injunction and simultaneously sets a return hearing within 15 days; or
- The injunction is denied but a return hearing is scheduled so that both parties have the opportunity to present their issues and evidence before the court for further evaluation.

If, upon the initial review of the contents of the petition for an injunction, the court finds the petitioner is in immediate and present danger of domestic violence, it may grant a temporary injunction in an ex parte proceeding,<sup>35</sup> pending a full hearing, and grant relief including:

- Restraining the respondent from committing any acts of domestic violence;
- Awarding to the petitioner the temporary exclusive use and possession of a shared residence or excluding the respondent from the petitioner's residence; and
- Providing to the petitioner a temporary parenting plan,<sup>36</sup> including a timesharing schedule,<sup>37</sup> which may award the petitioner up to 100 percent of the timesharing.<sup>38</sup>

A temporary injunction is effective only for up to 15 days, and a full hearing must be set for a date prior to the injunction's expiration.<sup>39</sup>

In determining whether reasonable cause exists that the petitioner is in imminent danger exists, the court must consider ten specific factors:<sup>40</sup>

1. The history between the petitioner and the respondent, including threats, harassment, stalking, and physical abuse.
2. Whether the respondent has attempted to harm the petitioner or family members or individuals closely associated with the petitioner.
3. Whether the respondent has threatened to conceal, kidnap, or harm the petitioner's child or children.
4. Whether the respondent has intentionally injured or killed a family pet.
5. Whether the respondent has used, or has threatened to use, against the petitioner any weapons such as guns or knives.
6. Whether the respondent has physically restrained the petitioner from leaving the home or calling law enforcement.
7. Whether the respondent has a criminal history involving violence or the threat of violence.
8. The existence of a verifiable injunction for protection issued previously or from another jurisdiction.
9. Whether the respondent has destroyed personal property, including, but not limited to, telephones or other communications equipment, clothing, or other items belonging to the petitioner.
10. Whether the respondent engaged in any other behavior or conduct that leads the petitioner to have reasonable cause to believe that he or she is in imminent danger of becoming a victim of domestic violence.

Following a final evidentiary hearing, if the court determines that the petitioner is either a domestic violence victim or has reasonable cause to believe he or she is in imminent danger of becoming a domestic violence victim, it may issue a permanent domestic violence injunction.<sup>41</sup> However, if, after hearing evidence and testimony from the parties, the court finds no merit in the petitioner's case, the court may deny the injunction and dismiss the case.

<sup>35</sup> "Ex parte," Latin for "from one party," refers to motions for orders that can be granted without waiting for a response from the other side. These are generally orders that are in place only until further hearings can be held. Legal Information Institute, *Ex Parte*, [https://www.law.cornell.edu/wex/ex\\_parte](https://www.law.cornell.edu/wex/ex_parte) (last visited Nov. 28, 2023).

<sup>36</sup> A "parenting plan" governs the relationship between parents relating to decisions that must be made regarding the minor child and must contain a timesharing schedule for the parents and child. S. 61.046(14), F.S.

<sup>37</sup> "Timesharing schedule" means a timetable that must be included in a parenting plan that specifies the time, including overnights and holidays, which a minor child will spend with each parent. S. 61.046(23), F.S.

<sup>38</sup> S. 741.30(5)(a), F.S.

<sup>39</sup> S. 741.30(5)(a), F.S.

<sup>40</sup> S. 741.30(6)(b), F.S.

<sup>41</sup> *Id.*

A court issuing a permanent domestic violence injunction may grant relief including:

- Restraining the respondent from committing any acts of domestic violence;
- Awarding to the petitioner the exclusive use and possession of a shared residence or excluding the respondent from the petitioner's residence;
- Providing the petitioner with 100 percent of the timesharing in a parenting plan;
- Establishing temporary support for a minor child or for the petitioner;
- Ordering the respondent to participate in treatment, intervention, or counseling services;
- Referring a petitioner to a certified domestic violence center; and
- Ordering relief it deems necessary to protect a domestic violence victim.<sup>42</sup>

The terms of a permanent domestic violence injunction remain in effect until the defined period of the injunction expires, or the injunction is modified or dissolved, and either party may move at any time for modification or dissolution.<sup>43</sup>

#### *Injunction for Protection from Repeat Violence, Sexual Violence, or Dating Violence*

Separate and apart from the criminal actions established relating to domestic violence, Florida recognizes repeat violence, sexual violence, and dating violence as offenses for which a victim may seek civil injunctive protection. Pursuant to s. 784.046(2), F.S., there is a separate cause of action for an injunction for protection in cases of repeat violence,<sup>44</sup> sexual violence, and dating violence. Under s. 784.046, F.S., any person who is the victim of repeat violence, sexual violence, or dating violence, as well as the parent or guardian of a minor who is living at home and is the victim of such violence, may file a sworn petition for an injunction for protection with the circuit court.<sup>45</sup>

Once a petition has been filed, the court must set a hearing to be held as soon as possible.<sup>46</sup> If, after reviewing the petition, the court believes that an immediate and present danger of violence exists, the court may grant a temporary ex parte injunction. The temporary injunction is only valid for 15 days unless it is continued by the court.

Similar to an injunction for protection against domestic violence, a court may grant an ex parte temporary injunction in response to a petitioner's petition for injunction for protection against repeat violence, sexual violence, or dating violence. Upon proper notice and a final evidentiary hearing, the court may grant such relief as it deems appropriate, including the issuance of a final injunction.<sup>47</sup>

#### *Injunction for Protection from Stalking*

In addition to the criminal actions covered by an injunction for protection against domestic violence, Florida recognizes stalking as an offense for which a victim may seek civil injunctive protection. Pursuant to s. 784.0485(1), F.S., civil injunctive protection against stalking includes protection against offenses of cyberstalking as defined under s. 784.048(1)(d), F.S. A protective injunction against stalking under s. 784.0485, F.S., is available to a broader group of victims than the traditional domestic violence injunction, which, generally, is limited in its availability to members of the same household or family. Any person who is the victim of stalking 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 has standing to file a sworn petition for such an injunction.<sup>48</sup>

Similar to an injunction for protection against domestic violence, a court may:

- Deny the petition and provide written findings explaining the denial; or

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<sup>42</sup> S. 741.30(6)(a), F.S.

<sup>43</sup> S. 741.30(6)(c), F.S.

<sup>44</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 at the petitioner, or the petitioner's immediate family member. S. 784.046(1)(b), F.S.

<sup>45</sup> S. 784.064(2), F.S.

<sup>46</sup> S. 784.064(5), F.S.

<sup>47</sup> *Id.*

<sup>48</sup> S. 784.0845(1), F.S.

- Grant an ex parte temporary injunction in response to a petitioner's petition for injunction for protection against stalking.

Upon proper notice and a final evidentiary hearing, the court may grant such relief as it deems appropriate, including the issuance of a final injunction.<sup>49</sup>

### *Injunction for Protection Against Exploitation of a Vulnerable Adult*

Under s. 825.1035, F.S., a vulnerable adult<sup>50</sup> in imminent danger of being exploited may file a petition<sup>51</sup> for an injunction for protection against exploitation. There is no requirement for any exploitation to have already occurred before the vulnerable adult may petition for an injunction.<sup>52</sup> A court may grant a temporary injunction ex parte, pending a full hearing on the petition,<sup>53</sup> upon making specified findings including that an immediate and present danger of exploitation of the vulnerable adult exists.<sup>54</sup> A temporary injunction may:

- Prohibit the respondent from having any direct or indirect contact with the vulnerable adult;
- Restrain the respondent from committing any acts of exploitation against the vulnerable adult;<sup>55</sup>
- Freeze the assets or credit lines of the vulnerable adult;
- Award the temporary exclusive use and possession of the dwelling that the vulnerable adult and the respondent share to the vulnerable adult, or bar the respondent from the vulnerable adult's residence; or
- Include any other terms the court deems necessary to protect the vulnerable adult or his or her assets, including any injunctions or directives to law enforcement agencies.<sup>56</sup>

In determining whether reasonable cause exists to believe that the vulnerable adult is, or is in imminent danger of becoming, a victim of exploitation, the court must consider the following factors:

- The existence of a verifiable injunction for protection issued previously or from another jurisdiction.
- Any history of exploitation by the respondent upon the vulnerable adult in the petition or any other vulnerable adult.
- Any history of the vulnerable adult being previously exploited or unduly influenced.
- The capacity of the vulnerable adult to make decisions related to his or her finances and property.
- Susceptibility of the vulnerable adult to undue influence.
- Any criminal history of the respondent or previous probable cause findings by the adult protective services program, if known.<sup>57</sup>

A court may grant a temporary ex parte injunction if it finds any of the following:<sup>58</sup>

- An immediate and present danger of exploitation of the vulnerable adult exists.
- There is a likelihood of irreparable harm and non-availability of an adequate remedy at law.
- There is a substantial likelihood of success on the merits.

<sup>49</sup> S. 784.0845(6)(a), F.S.

<sup>50</sup> "Vulnerable adult" means a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging. S. 415.102(28), F.S.

<sup>51</sup> Additionally, the guardian of a vulnerable adult, a person or organization acting on behalf of and with the consent of the vulnerable adult or his or her guardian, an agent acting under power of attorney, or a person simultaneously filing a petition for determination of incapacity and appointment of an emergency temporary guardian with respect to the vulnerable adult may file a petition for injunction for protection from exploitation. S. 825.1035(2)(a)2.-5., F.S.

<sup>52</sup> S. 825.1035(2)(e), F.S.

<sup>53</sup> An ex parte temporary injunction may be effective for up to 15 days, unless good cause is shown to extend the injunction, in which case, the temporary injunction may be extended one time for up to an additional 30 days. S. 825.1035(5)(d), F.S.

<sup>54</sup> S. 825.1035(5)(a)1., F.S.

<sup>55</sup> The terms of an injunction restraining the respondent remain in effect until the injunction is modified or dissolved. S. 825.1035(8)(c), F.S.

<sup>56</sup> Ss. 825.1035(3)(a)22., (5)(a)2., and (8)(a)2., F.S.

<sup>57</sup> S. 825.1035(6), F.S.

<sup>58</sup> The findings required for a temporary injunction and continuing an injunction after a full hearing on the petition are the same with the exception of probable cause findings that exploitation occurred if the temporary injunction froze the vulnerable adult's assets. Ss.

825.1035(5)(a)1. and (8)(a)1., F.S.

- The threatened injury to the vulnerable adult outweighs possible harm to the respondent.
- Granting the injunction will not disserve the public interest.
- Such injunction provides for the vulnerable adult's physical or financial safety.<sup>59</sup>

After a final hearing, a court may grant any additional relief the court deems appropriate, including:

- Ordering the respondent to participate in treatment, intervention, or counseling services to be paid for by the respondent;
- Directing the vulnerable adult's frozen assets or credit lines to be returned to the vulnerable adult; or
- Entering a final cost judgment against the respondent and in favor of the petitioner for all taxable costs and entering a final cost judgment against the respondent and in favor of the clerk of the court for all the clerk's filing fees and service charges that were waived.

A court may enforce a violation of an injunction for protection through a civil or criminal contempt proceeding. A state attorney may also prosecute the violation under s. 825.1036, F.S.<sup>60</sup> A person who willfully violates an injunction for protection against exploitation of a vulnerable adult commits a first-degree misdemeanor.<sup>61</sup> A vulnerable adult who suffers an injury or loss as a result of a violation of an injunction for protection may be awarded economic damages and attorney fees and costs for enforcement of such injunction.<sup>62</sup> Alternatively, actual damages may be assessed against the petitioner if the court finds that the petition lacks substantial fact or legal support.<sup>63</sup>

### **Effect of Proposed Changes**

CS/CS/HB 45 creates the Hope Card program throughout the state of Florida. The bill directs the clerks of the court to develop and implement the program in consultation with the Office of the Attorney General.

Under the bill, a person who has received a final judgment for injunction for protection against domestic violence, stalking, repeat violence, sexual violence, dating violence, or exploitation of a vulnerable adult may apply for a Hope Card. The application for a Hope Card must be submitted to the clerk of the court in the circuit where the order for an injunction for protection was originally filed.

A person may apply for a Hope Card at any time after the final judgment for injunction is issued and at any time prior to the expiration of the underlying injunction. Pursuant to the bill, no fee for the application or the receipt of the card may be assessed.

The bill provides that a Hope Card is valid for two years from the date of issuance or until the expiration of the underlying injunction, whichever is earlier. A Hope Card may be renewed after the two year period if the underlying injunction remains in effect.

The bill provides that each Hope Card issued must be a durable, wallet-sized card and must include all of the following information:

- The respondent's name and date of birth;
- The name and date of birth of the petitioner or protected person;
- Information regarding:
  - The issuing court;
  - Case number;
  - Date the injunction was issued; and
  - Expiration date, if any, of the injunction.
- The date of issuance and expiration date of the Hope Card.

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<sup>59</sup> S. 825.1035(5)(a)1., F.S.

<sup>60</sup> S. 825.1035(11)(a), F.S.

<sup>61</sup> 825.1036(4)(a), F.S. A first-degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

<sup>62</sup> S. 825.1036(5), F.S.

<sup>63</sup> S. 825.1035(12), F.S.



The bill provides that intentional misuse of a Hope Card or a document purporting to be Hope Card is a second-degree misdemeanor. As such, a person who has actual knowledge that he or she is not protected by a valid injunction and presents the Hope Card or a document purporting to be a Hope Card for the purpose of proving the existence of an injunction, commits a second-degree misdemeanor. A second-degree misdemeanor is punishable by imprisonment for up to 60 days and a \$500 fine.

The bill provides an effective date of October 1, 2024.

**B. SECTION DIRECTORY:**

- Section 1:** Creates s. 741.311, relating to Hope Card Program for persons issued orders of protection.
- Section 2:** Amends s. 741.30, relating to domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; statewide verification system; enforcement; public records exemption.
- Section 3:** Amends s. 784.046, 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 4:** Amends s. 784.0485, relating to stalking; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement.
- Section 5:** Amends s. 825.1035, relating to injunction for protection against exploitation of a vulnerable adult.
- Section 6:** Provides an effective date of October 1, 2024.

## **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:

See Fiscal Comments.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

CS/CS/HB 45 has an indeterminate negative fiscal impact to the clerks of court due to increased workload and costs associated with program implementation. Projections from the Florida Court Clerks and Comptrollers indicate the cost to produce the Hope Cards to be approximately \$10 per card. Based on county fiscal year 2021-22 data, there were approximately 17,761 filed injunctions resulting in final

orders of protection, representing an approximate cost of \$176,710.<sup>64</sup> This indicates an average impact per county of approximately \$2,637, if averaged across Florida's 67 counties.

Resources provided to the clerks of court in Fiscal Year 2023-24 include the redistribution of approximately \$25.6 million from the General Revenue Fund to the clerks Fine and Forfeiture fund.<sup>65</sup> It is anticipated that any impact on the clerks of court for development and implementation of the Hope Card program can be absorbed within existing resources.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 11, 2024, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed an erroneous reference to the district courts of appeal and clarified that the program must be developed by OSCA in consultation with the Attorney General and the clerks of court, through their association. Once developed, the clerks must implement the Hope Card Program. The amendment specified that each Hope Card is valid for a maximum of two years with the ability to be renewed if the underlying injunction remains in effect. The amendment provided that misuse of a Hope Card or a document purporting to be a Hope Card is a second-degree misdemeanor.

On January 29, 2024, the Justice Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment requires the clerks of the court, in consultation with the Office of the Attorney General, to develop and implement the Hope Card Program. The amendment also removed a provision allowing for Hope Cards to be provided to those with orders of protection foreign to the state of Florida, and removed the certified mail delivery requirement for Hope Cards.

This analysis is drafted to the committee substitute as amended by the Justice Appropriations Subcommittee.

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<sup>64</sup> Information from Sara Sanders Bremer, Director of Government Relations, Florida Court Clerks and Comptrollers, RE: Hope Cards for Persons Issued Orders of Protection (Jan. 25, 2024)

<sup>65</sup> Ch. 23-284, Laws of Fla.