

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 761 Interpersonal Violence Injunction Petitions

SPONSOR(S): Garcia

TIED BILLS: IDEN./SIM. BILLS: SB 852

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Mathews	Jones
2) Judiciary Committee			

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.

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; 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.

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. Separate and apart from the criminal actions established relating to domestic violence, Florida recognizes repeat violence, sexual violence, and dating violence, as well as stalking, as offenses for which a victim may also seek civil injunctive protection. Under current law, a petition for protection against domestic violence, repeat violence, sexual violence, dating violence, or stalking must be sworn to and signed in the presence of a notary.

HB 761 eliminates the requirement that a petition for protection against the above-mentioned offenses be sworn to and witnessed by a notary. Under the bill, such petitions need only be verified, meaning that the petitioner must acknowledge that the statements made in the petition are true and sign the petition under penalty of perjury. The bill also requires each of the above-mentioned petitions to include a specific statement in all capital letters and bold font informing the petitioner that by signing the petition he or she is acknowledging that the statements in the petition are true and are made under penalty of perjury.

The bill is unlikely to have a fiscal impact on state or local governments.

The bill has an effective date of July 1, 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 member¹ by another family or household member,² including:

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

In 2020,¹³ Florida law enforcement agencies received 106,615 domestic violence reports,¹⁴ resulting in 63,345 arrests.¹⁵ During fiscal year 2021-2022, Florida's 41 certified domestic violence shelters¹⁶ admitted 11,811 victims to a residential services program and 38,630 victims to a non-residential

¹ "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.

² S. 741.28(2), F.S.

³ "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.

⁴ "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.

⁵ "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.

⁶ "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.

⁷ "Sexual assault" has the same meaning as sexual battery.

⁸ "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.

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

¹⁰ "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.

¹¹ "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.

¹² "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.

¹³ The Florida Department of Law Enforcement has not issued a report with updated statistics after 2020.

¹⁴ *Statewide Reported Domestic Violence Offenses in Florida, 1992-2020*, Florida Department of Law Enforcement, https://www.fdle.state.fl.us/CJAB/UCR/Annual-Reports/UCR-Domestic-Violence/02/DV_Offenses_by_Type.aspx (last visited Jan. 4, 2024).

¹⁵ *Florida's County and Jurisdictional Domestic Violence Related Arrests, 2020*, Florida Department of Law Enforcement, https://www.fdle.state.fl.us/CJAB/UCR/Annual-Reports/UCR-Domestic-Violence/07/DV_Jurisdiction_Arrests_2020.aspx (last visited Jan. 4, 2024).

¹⁶ "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.

outreach services program.¹⁷ 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.¹⁸

Repeat Violence, Sexual Violence, and 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, 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;
- 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.¹⁹ 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:²⁰

- 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.

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.²¹ An injunction for protection against domestic violence (“domestic violence injunction”) may be sought by a family or household member.²² 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.²³

Under current law, every petition for injunction against domestic violence must be sworn to and signed in the presence of a notary.²⁴ Every petition must contain a statement directly above the signature line stating:

I HAVE READ EVERY STATEMENT MADE IN THIS PETITION AND EACH STATEMENT IS TRUE AND CORRECT. I UNDERSTAND THAT THE STATEMENTS MADE IN THIS PETITION ARE BEING MADE UNDER PENALTY OF PERJURY, PUNISHABLE AS PROVIDED IN SECTION 837.02, FLORIDA STATUTES.²⁵

Upon the filing of a petition for an injunction against domestic violence, the court must set a hearing at the earliest possible time.²⁶ However, if the court finds the petitioner is in immediate and present danger

¹⁷ 2022 *Domestic Violence Annual Report*, Florida Department of Children and Families https://www.myflfamilies.com/sites/default/files/2023-02/Domestic_Violence_Annual_Report_2021-22.pdf (last visited Jan. 4, 2024).

¹⁸ *Id.*

¹⁹ S. 784.046(1)(d), F.S.

²⁰ *Id.*

²¹ Black’s Law Dictionary 540 (6th ed. 1995).

²² S. 741.30(1)(e), F.S.

²³ S. 741.30(1)(d) and (e), F.S.

²⁴ S. 741.30(3), F.S.

²⁵ S. 741.30(3)(c), F.S.

²⁶ S. 741.30(4), F.S.

of domestic violence, it may grant a temporary injunction in an ex parte proceeding,²⁷ 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,²⁸ including a timesharing schedule,²⁹ which may award the petitioner up to 100 percent of the timesharing.³⁰

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.³¹

Following a 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.³²

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.³³

The terms of a permanent domestic violence injunction remain in effect until modified or dissolved, and either party may move at any time for modification or dissolution.³⁴

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

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,³⁵ 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.³⁶

Under current law, every petition for injunction against repeat violence, sexual violence, or dating violence must be sworn to and signed in the presence of a notary.³⁷ Once a petition has been filed, the court must set a hearing to be held as soon as possible.³⁸ 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.

²⁷ "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 (last visited Nov. 28, 2023).

²⁸ 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.

²⁹ "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.

³⁰ S. 741.30(5)(a), F.S.

³¹ S. 741.30(5)(a), F.S.

³² *Id.*

³³ S. 741.30(6)(a), F.S.

³⁴ S. 741.30(6)(c), F.S.

³⁵ "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.

³⁶ S. 784.064(2), F.S.

³⁷ S. 784.046(4)(a), F.S.

³⁸ S. 784.064(5), F.S.

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 full hearing, the court may grant such relief as it deems appropriate, including the issuance of an injunction.³⁹

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.⁴⁰

Under current law, every petition for injunction for protection against stalking must be sworn to and signed in the presence of a notary.⁴¹ Every petition must contain a statement directly above the signature line that states:

I HAVE READ EVERY STATEMENT MADE IN THIS PETITION AND EACH STATEMENT IS TRUE AND CORRECT. I UNDERSTAND THAT THE STATEMENTS MADE IN THIS PETITION ARE BEING MADE UNDER PENALTY OF PERJURY, PUNISHABLE AS PROVIDED IN SECTION 837.02, FLORIDA STATUTES.⁴²

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 stalking. Upon proper notice and a full hearing, the court may grant such relief as it deems appropriate, including the issuance of an injunction.⁴³

Effect of Proposed Changes

HB 761 removes the requirement that a petition for injunction for protection be sworn to in the presence of a notary in certain types of cases. For matters of domestic violence, stalking, repeat violence, sexual violence, or dating violence, the petition will only need to be verified and signed by the petitioner under penalty of perjury; the petitioner will not need to have it notarized.

Under the bill, each applicable type of injunctive petition must contain the following statement above the signature line, in all capital letters and bold font:

I HAVE READ EVERY STATEMENT MADE IN THIS PETITION AND EACH STATEMENT IS TRUE AND CORRECT. I UNDERSTAND THAT THE STATEMENTS MADE IN THIS PETITION ARE BEING MADE UNDER PENALTY OF PERJURY, PUNISHABLE AS PROVIDED IN SECTION 92.525, FLORIDA STATUTES.

The bill has an effective date of July 1, 2024.

B. SECTION DIRECTORY:

³⁹ *Id.*

⁴⁰ S. 784.0845(1), F.S.

⁴¹ S. 784.0845(3), F.S.

⁴² S. 784.0845(3)(f), F.S.

⁴³ S. 784.0845(6)(a), F.S.

Section 1: Amends s. 741.30, F.S., relating to domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement; public records exemption.

Section 2: 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 3: Amends s. 784.0845, F.S., 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 4: Provides an effective date of July 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:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Removing the requirement for the specified petitions to be notarized may increase access to the courts for victims seeking protection through a civil injunction. Eliminating the notarization requirement may make it easier for a petitioner to complete and timely file his or her petition and may also save him or her the cost that may be associated with obtaining a notary.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES