

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 160

SPONSOR: Senator Hargrett

SUBJECT: Domestic Violence

DATE: February 25, 1999

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Crosby</u>	<u>Whiddon</u>	<u>CF</u>	<u>Fav/1 amendment</u>
2.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Senate Bill 160 provides that a child, on his or her own or through a parent or guardian, may not obtain an injunction for protection against domestic violence based on acts committed by a family or household member against the child unless those acts are found by the court to constitute “harm” or “child abuse or neglect” as defined in s. 39.01(30), F.S. This provision does not apply when the injunction for protection is granted to protect an adult petitioner who has included a child or children in that adult’s petition for an injunction.

This bill substantially amends section 741.30, Florida Statutes.

II. Present Situation:

Presently, the term “domestic violence” is defined to mean “any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnaping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another who is or was residing in the same single dwelling unit.” s. 741.28(1), F.S.

Section 741.30(1) F.S. (Supp.1998), creates a cause of action for an injunction for protection against domestic violence. Any family or household member who is a victim of any act of domestic violence, or has reasonable cause to believe that he or she is in imminent danger of becoming a victim of domestic violence, has the right to file a petition for protection. This section also provides that no person is prohibited from seeking injunctive relief solely because he or she is not a spouse. However, the statute does not expressly provide that if a child, on his or her own or through a parent or guardian on the child’s behalf, seeks an injunction for protection based on acts committed by a family member against the child, those acts must constitute “harm” or “child abuse or neglect” in order for the court to grant the injunction.

According to the Executive Director of the Governor's Task Force on Domestic Violence, it is unusual for a child, on his or her own or through a parent, to petition the court for a protective injunction based on acts committed against the child. Typically, the parent-petitioner asks the court for protection from acts or threatened acts committed against the petitioner personally, and also asks the court to take into consideration protection for the children.

Section 39.01, F.S. (Supp. 1998), defines the terms "abuse" and "neglect" to require the parent or other person responsible for the child to harm or threaten harm to a child's physical or mental health or welfare. "Harm" is defined as inflicting or allowing to be inflicted on a child physical, mental, or emotional injury, including but not limited to, the following: committing or allowing to be committed sexual battery; allowing or encouraging sexual exploitation; exploitation of a child; abandonment of the child; exposing the child to a controlled substance or alcohol; using mechanical devices, unreasonable restraint, or extended period of isolation to control a child; engaging in violent behavior that demonstrates a wanton disregard to the presence of a child; negligently failing to protect a child; and allowing a child's sibling to die as a result of abuse, abandonment or neglect.

III. Effect of Proposed Changes:

Section 1 amends s. 741.30(1), F.S. (Supp. 1998), adding a paragraph to provide that a child, on his or her own or through a parent or legal guardian, may not obtain an injunction for protection against domestic violence based on acts committed by a family or household member unless those acts are found by the court to constitute "harm" or "child abuse or neglect" as defined in s. 39.01(30), F.S. This provision will not apply when the injunction for protection against domestic violence is granted to protect an adult petitioner who has included a child or children in that adult's petition for an injunction for protection.

Section 2 provides an effective date of July 1, 1999.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Children and Families:

This is a technical amendment correcting the definitional references in the bill.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
