

STORAGE NAME: h0347.jud

DATE: April 8, 1999

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: HB 347 (PCB LECP 99-01)

RELATING TO: Enforcement of Injunctions for Protection Against Domestic Violence

SPONSOR(S): Committee on Law Enforcement and Crime Prevention and Rep. Futch

COMPANION BILL(S): CS/SB 370(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) LAW ENFORCEMENT AND CRIME PREVENTION YEAS 9 NAYS 0
- (2) FAMILY LAW AND CHILDREN YEAS 6 NAYS 0
- (3) JUDICIARY
- (4) CRIMINAL JUSTICE APPROPRIATIONS
- (5)

I. SUMMARY:

The bill amends s. 741.31, F.S. to provide that it is a first degree misdemeanor for any person subject to a final injunction for protection against domestic violence to refuse to surrender any firearm or ammunition in his or her possession, or to obstruct a law enforcement officer from enforcing the provisions of s. 741.31(4)(b), Florida Statutes.

The bill also amends s. 787.04, F.S. to provide that it is unlawful for any non-custodial parent or respondent subject to an injunction for protection against domestic violence or repeat violence with personal knowledge of the injunction to lead, take, entice or remove a minor from the custodial parent or any child care provider or other person entrusted by the custodial parent with the care of the minor, or to conceal the location of a minor in violation of the injunction. Any person who violates this provision is guilty of a third degree felony as provided for in s. 787.04(7), Florida Statutes.

The bill reenacts s. 901.15(6), Florida Statutes.

The fiscal impact from the bill is expected to be minimal.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Firearms and Protective Injunctions

Federal law [18 U.S.C. 922(g)] makes it illegal for any person to possess a firearm if the person, after a hearing in which the person received actual notice and had an opportunity to participate, is subject to a court order that:

- Restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; **and**
- Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; **or**
- The injunction explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.

Federal law would not apply to an ex parte temporary injunction because the respondent does not have an opportunity to participate.

Florida law contains definitions related to domestic violence and repeat violence:

Section 741.28(1), Florida Statutes, defines “domestic violence” as 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 member or household member by another who is or was residing in the same single dwelling unit.

Section 741.28(2), Florida Statutes, defines “family or household member” as spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as a family, and persons who have a child in common regardless of whether they have been married or have resided together at any time.

Section 784.046(1)(b), Florida Statutes, defines “repeat violence” as 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)(a), Florida Statutes, defines “violence” as any assault, battery, sexual battery, or stalking by a person against any other person.

CS/HB 679 passed during the 1998 legislative session adding paragraph (f) to subsection (6) of section 741.30, Florida Statutes, to provide that:

A final judgment on injunction for protection against domestic violence entered pursuant to this section must, on its face, indicate that it is a violation of s. 790.233, and a first degree misdemeanor, for the respondent to have in his or her care, custody, possession, or control any firearm or ammunition.

In June 1998, the Florida Supreme Court amended the forms for TEMPORARY INJUNCTION FOR PROTECTION AGAINST DOMESTIC VIOLENCE and FINAL JUDGMENT OF INJUNCTION FOR PROTECTION AGAINST DOMESTIC VIOLENCE to reflect this statutory requirement.

CS/HB 679 also created section 790.233, Florida Statutes, to provide that:

(1) A person may not have in his or her care, custody, possession, or control any firearm or ammunition if the person has been issued a final injunction that is currently in force and effect, restraining that person from committing acts of domestic violence, and that has been issued under s. 741.30.

(2) A person who violates subsection (1) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

In addition, CS/HB 679 also amended s. 741.31, Florida Statutes, to provide that:

It is a violation of s. 790.233, and a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, for a person to violate a final injunction for protection against domestic violence by having in his or her care, custody, possession, or control any firearm or ammunition.

The Supreme Court's injunction forms for TEMPORARY INJUNCTION FOR PROTECTION AGAINST DOMESTIC VIOLENCE, FINAL JUDGMENT OF INJUNCTION FOR PROTECTION AGAINST DOMESTIC VIOLENCE, TEMPORARY INJUNCTION FOR PROTECTION AGAINST REPEAT VIOLENCE, AND FINAL JUDGMENT OF INJUNCTION FOR PROTECTION AGAINST REPEAT VIOLENCE (AFTER NOTICE), provide the court with the following options regarding firearms and ammunition:

- Respondent shall surrender any firearms and ammunition in the Respondent's possession to the _____ County Sheriff's Department;
- Other directives relating to firearms and ammunition: _____.

Law enforcement officers contend that the statutes need clarification in order to properly enforce the surrender requirements of an injunction.

Minor Children

There are currently a number of sections of Florida Statutes related to actions involving minor children:

- **Section 787.01, Florida Statutes**, defines "**kidnapping**" as forcibly, secretly, or by threat confining, abducting, or imprisoning another person 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 commission of any felony.
 - Inflict bodily harm upon or to terrorize the victim or another person.
 - Interfere with the performance of any governmental or political function.

The section also provides that **confinement of a child under the age of 13** is against his or will within the meaning of this subsection if such confinement is without the consent of his or her parent or legal guardian. Kidnapping is a felony of the first degree.

- **Section 787.02, Florida Statutes**, defines "**false imprisonment**" as forcibly, by threat, or secretly confining, abducting, imprisoning, or restraining another person without lawful authority and against his or her will. **Confinement of a child under the age of 13** is against his or her will within the meaning of this section if such confinement is without the consent of his or her parent or legal guardian. False imprisonment is a felony of the third degree.
- **Section 787.03, Florida Statutes**, provides that:
 - Whoever, without lawful authority, knowingly or recklessly takes or entices, or aids, abets, hires, or otherwise procures another to take or entice, **any child 17 years of age or under** or any incompetent person from the custody of the child or incompetent person's parent, his or her guardian, a public agency having the lawful charge of the child or incompetent person, or any other lawful custodian commits the offense of interference with custody shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
 - In the absence of a court order determining rights to custody or visitation **with any child 17 years of age** or under or with any incompetent person, any parent of the child or incompetent person, whether natural or adoptive, stepparent, legal guardian, or relative of such child or incompetent person who has custody thereof and who takes, detains, conceals, or entices away that child or incompetent person within or without the state, with malicious intent to deprive another person of his or her right to custody of the child or incompetent person, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

- **Section 787.04, Florida Statutes**, provides that it is unlawful for any person, in violation of a court order, to lead, take, entice, or remove a minor beyond the limits of this state, or to conceal the location of a minor, with personal knowledge of the order.

Violations of this section are a felony of the third degree.

The Supreme Court's injunction form for **TEMPORARY INJUNCTION FOR PROTECTION AGAINST DOMESTIC VIOLENCE**, provides that law enforcement officers shall use any and all reasonable and necessary force to physically deliver the minor child(ren) listed above to the custodial parent. The noncustodial parent shall not take the child(ren) from the custody of the custodial parent or any child care provider or other person entrusted by the custodial parent with the care of the child(ren). In addition, the court may also order as a part of a temporary injunction that neither party shall remove the minor child(ren) from the State of Florida, prior to the hearing on the temporary injunction. Violation of this custody order may constitute a felony of the third degree under **ss. 787.03 and 787.04, Florida Statutes**.

The Supreme Court's injunction form for **FINAL JUDGMENT OF INJUNCTION FOR PROTECTION AGAINST DOMESTIC VIOLENCE**, also provides that law enforcement officers shall use any and all reasonable and necessary force to physically deliver the minor child(ren) listed above to the custodial parent. The noncustodial parent shall not take the child(ren) from the custody of the custodial parent or any child care provider or other person entrusted by the custodial parent with the care of the child(ren). The court may also order that the noncustodial parent shall have no contact with the minor child(ren) of the parties until further notice of the court.

B. EFFECT OF PROPOSED CHANGES:

Firearms and Protective Injunctions

The bill amends s. 741.31 F.S. to provide that it is a first degree misdemeanor for any individual subject to a final injunction for protection against domestic violence who either refuses to turn over all firearms and ammunition in his or her possession or interferes with or obstructs law enforcement from enforcing the provisions of paragraph (b) of s. 741.31, Florida Statutes.

Minor Children

The bill amends s. 787.04 F.S. to clarify that it is a third degree felony for a person subject to an injunction for protection against domestic violence or repeat violence (who has actual knowledge of the injunction) to lead, take, entice, or remove a minor from the custodial parent or any child care provider or other person entrusted with the care of the minor, or to otherwise conceal the location of the minor.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No

(3) any entitlement to a government service or benefit?

No

- b. If an agency or program is eliminated or reduced:

Not Applicable

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?
- (2) what is the cost of such responsibility at the new level/agency?
- (3) how is the new agency accountable to the people governed?

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?
No
- b. Does the bill require or authorize an increase in any fees?
No
- c. Does the bill reduce total taxes, both rates and revenues?
No
- d. Does the bill reduce total fees, both rates and revenues?
No
- e. Does the bill authorize any fee or tax increase by any local government?
No

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?
No
- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?
No

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/ associations to conduct their own affairs?
No.
- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?
No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

Not applicable.

- (1) Who evaluates the family's needs?
- (2) Who makes the decisions?
- (3) Are private alternatives permitted?
- (4) Are families required to participate in a program?
- (5) Are families penalized for not participating in a program?

- b. Does the bill directly affect the legal rights and obligations between family members?

No. This bill only clarifies the penalties for violation of an injunction for protection against domestic violence or an injunction for protection against repeat violence.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

Not applicable.

- (1) parents and guardians?
- (2) service providers?
- (3) government employees/agencies?

D. STATUTE(S) AFFECTED:

Amends ss.741.31 and 787.04 and reenacts s. 901.15(6), Florida Statutes.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Adds paragraph (c) to subsection (4) of s. 741.31, F.S., to provide that it is a first degree misdemeanor for any person subject to a final injunction for protection against domestic violence to refuse to surrender any firearm or ammunition in his or her care, custody, possession, or control, or to interfere with or obstruct a law enforcement officer enforcing the provisions of paragraph (b) of s. 741.31, F.S.

Section 2. Adds subsection (4) to s. 787.04 F.S. to provide that it is unlawful for any non-custodial parent or respondent subject to an injunction for protection against domestic violence or repeat violence with personal knowledge of the injunction to remove a child from the custodial parent or any child care provider or other person entrusted by the custodial parent with the care of the child, deemed. The location of the child may also not be concealed in violation of the injunction. Any person violating this provision is guilty of a third degree felony.

Section 3. Reenacts s. 901.15(6), Florida Statutes.

Section 4. Provides for an effective date of upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None

2. Recurring Effects:

No significant increase in arrests and convictions is expected as a result of this bill.

3. Long Run Effects Other Than Normal Growth:

None

4. Total Revenues and Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None

2. Recurring Effects:

The impact to local governments is expected to be very minimal.

3. Long Run Effects Other Than Normal Growth:

The impact to local governments is expected to be very minimal.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

The fiscal impact from this bill is expected to be minimal.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

THIS ENTIRE ANALYSIS HAS BEEN SUBSTANTIALLY REVISED BY THE COMMITTEE ON FAMILY LAW AND CHILDREN.

Firearms and Ammunition

The revision to s. 741.31, Florida Statutes, applies only to persons subject to a **final** injunction for protection against **domestic violence**. It does not apply to ex parte temporary injunctions for protection against domestic violence even though the Supreme Court's form for TEMPORARY INJUNCTION FOR PROTECTION AGAINST DOMESTIC VIOLENCE also provides the court with the option to require that the "Respondent shall surrender any firearms and ammunition in the Respondent's possession to the County Sheriff's Department." This legislation does not provide statutory authority to enforce or provide penalties for failure to surrender firearms or ammunition as may be ordered by the court in a temporary injunction.

The Supreme Court's forms for TEMPORARY INJUNCTION FOR PROTECTION AGAINST DOMESTIC VIOLENCE and FINAL JUDGMENT OF INJUNCTION FOR PROTECTION AGAINST DOMESTIC VIOLENCE also provide the court with the option to require "Other directives relating to firearms and ammunition" This legislation does not provide statutory authority to enforce or provide penalties for failure to comply with those other directives as may be ordered by the court.

The legislation also does not apply to any temporary or final injunction for protection against repeat violence. Nonetheless, the forms used by the Supreme Court related to repeat violence, TEMPORARY INJUNCTION FOR PROTECTION AGAINST REPEAT VIOLENCE and FINAL JUDGMENT OF INJUNCTION FOR PROTECTION AGAINST REPEAT VIOLENCE, provide the court with the options of either requiring the respondent to surrender any firearms and ammunition in the respondent's possession to the county sheriff's department or issuing other directives relating to firearms and ammunition. This legislation does not provide statutory authority to enforce or provide penalties for failure to comply with provisions of a court ordered injunction for repeat violence.

It is not entirely clear why the Florida Statutes contain provisions related to possession of firearms and ammunition in cases of domestic violence and are silent with regard to possession of firearms and ammunition in cases of repeat violence. Federal law [18 U.S.C. 922(g)] does not use the terms "domestic violence" or "repeat violence". It refers to acts against "an intimate partner or child of such intimate partner". "Intimate partner" may spill over as a relationship included in the definition of repeat violence currently in Florida Statute.

Section 790.233, Florida Statutes, provides that it is a first degree misdemeanor for a person who is subject to a final injunction for domestic violence to have in his or her care, custody, possession, or control any firearm or ammunition. The Supreme Court's final judgment form for protection against domestic violence contains the statement in bold face type:

Unless paragraph a. is initialed below, Respondent shall not have in his or her care, custody, possession or control any firearm or ammunition. It is a violation of section 790.233, Florida Statutes, and a first degree misdemeanor, for the respondent to have in his or her care, custody or possession or control any firearm or ammunition.

The Supreme Court form also states in bold face type:

Any party violating this injunction may be subject to civil or indirect criminal contempt proceedings, including the imposition of a fine or imprisonment, and also may be charged with a crime punishable by a fine, jail, or both, as provided by Florida Statutes.

This would appear to provide statutory authority for law enforcement to uphold the law.

In order to maintain the structural integrity of the statutes, the amending language might be better placed as s. 741.31(4)(a)6. or as s. 741.31(4)(b)3., Florida Statutes.

Minor Children

The bill amends s. 787.04, Florida Statutes, related to removing minors from the state or concealing minors contrary to a state agency order or a court order. In 1968, the Uniform Law Commissioners promulgated the **Uniform Child Custody Jurisdiction Act (UCCJA)** Florida adopted the Act in 1977 (ss. 61.1302 - 61.1348, Florida Statutes) and by 1981, every state had adopted the Act. The UCCJA was designed to discourage interstate kidnapping of children by their non-custodial parents. Before the UCCJA, it was a relatively common practice for non-custodial parents to take children across state lines in order to find sympathetic courts willing to reserve custody orders unfavorable to them. In 1981, Congress adopted the **Parental Kidnapping Prevention Act (PKPA)** as an effort to put the weight of full faith and credit behind the principles of the Uniform Child Custody Jurisdiction Act.

There are two main differences between the UCCJA and the PKPA. The UCCJA does not give first priority to the home state of the child in determining which state has jurisdiction over a child custody dispute. The PKPA does. The PKPA also provides that once a state has exercised jurisdiction, that jurisdiction remains the continuing, exclusive jurisdiction until every party to the dispute has exited the state. Neither the UCCJA nor the PKPA addresses the issue of interstate enforcement of child custody order including visitation provisions.

In 1997, the Uniform Law Commissioners disseminated a new **Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)**. This act reconciles the principles of UCCJA with PKPA and adds interstate civil enforcement for child custody orders. The UCCJEA would replace the UCCJA. To date, the UCCJEA has been adopted by 2 states and will be introduced during the 1999 legislative sessions of 10 other states.

Section 61.1304, Florida Statutes, states that one of the purposes of the Uniform Child Custody Jurisdiction Act is to "make uniform the law with respect to the subject of this act among states enacting it". Therefore, most of ss. 61.1302 - 61.1348, Florida Statutes, have not been amended since enactment in 1977. Portions of chapter 787, Florida Statutes, provide criminal penalties for violations of the UCCJA provisions of chapter 61, Florida Statutes. There is always concern over amendments to uniform laws.

The situations addressed by Section 2. of the bill are currently provided for in ss. 787.01, 787.02, 787.03, and 787.04, Florida Statutes. The substance of the amending language in Section 2. of the bill is structurally and conceptually flawed. The addition of this language as written would also fail to maintain the structural and conceptual integrity of the statutes.

Judiciary Committee Staff Comments:

The creation of section 741.31 (4)(b)3 -- creating the first degree misdemeanor of refusing to surrender a firearm if subject to a final injunction against domestic violence --is not necessary to accomplish the state goal: arrest when guns are retained. Section 741.31 (4)(b)(1) currently makes possession of a firearm by these individuals a first degree misdemeanor. Thus, law enforcement can currently charge these individuals with a first degree misdemeanor for possession of the gun, and the crime of refusal to turn over the gun does not give law enforcement any authority to arrest which does not currently exist. If an individual has a gun and currently denies possession of the firearm, law enforcement may not procure a search warrant because the offense is currently a misdemeanor. Even with the suggested change, if the individual says he does not have a firearm and refuses to turn it over, no basis exists for a search warrant. If the individual admits to possession, then no law other than that in existence is necessary for law enforcement to obtain the firearm or take the individual into custody.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The **Committee on Family Law and Children** adopted a strike everything amendment that contained the following provisions:

- **Amends s. 741.31, F.S.**, to provide that it is a first degree misdemeanor for any person subject to a final injunction for protection against domestic violence to refuse to surrender any firearm or ammunition in his or her care, custody, possession, or control, or to interfere with or obstruct a law enforcement officer enforcing the provisions of paragraph (b) of s. 741.31, F.S.
- **Amends s. 741.31, F.S.**, to provide that It is a third degree felony for a person to violate an injunction for protection against domestic violence that awards temporary custody or visitation with regard to a minor child or children of the parties by removing, failing to return, or concealing the child within or without the state. For purposes of this section, removing the child shall include, but not be limited to, taking the child from the custody of the custodial parent, or any school, child care provider, or other person entrusted by the custodial parent with the care of the child.
- **Amends s. 784.046, F.S.**, to provide that a parent or legal guardian of a minor child who is living at home has standing to petition for an injunction for protection against repeat violence on behalf of the minor child.
- **Amends s. 784.047, F.S.**, to provide that it is a third degree felony for a person to violate an injunction for protection against repeat violence by forcibly, secretly, or by threat confining, abducting, or imprisoning a minor child of the petitioner. A violation of this section shall include, but not be limited to, taking the child from the custody of the petitioner, or any school, child care provider, or other person entrusted by the petitioner with the care of the child.
- **Amends s. 787.01, F.S.**, to provide that it is a third degree felony for a person to violate an injunction for protection against repeat violence by forcibly, secretly, or by threat confining, abducting, or imprisoning a minor child of the petitioner. A violation of this section shall include, but not be limited to, taking the child from the custody of the petitioner, or any school, child care provider, or other person entrusted by the petitioner with the care of the child.
- **Amends s. 787.02, F.S.**, to provide that it is a third degree felony for a person to violate an injunction for protection against repeat violence by forcibly, secretly, or by threat confining, abducting, or imprisoning a minor child of the petitioner. A violation of this section shall include, but not be limited to, taking the child from the custody of the petitioner, or any school, child care provider, or other person entrusted by the petitioner with the care of the child.

- **Amends s. 787.03, F.S.**, to provide that It is a third degree felony for a person to violate an injunction for protection against domestic violence that awards temporary custody or visitation with regard to a minor child or children of the parties by removing, failing to return, or concealing the child within or without the state. For purposes of this section, removing the child shall include, but not be limited to, taking the child from the custody of the custodial parent, or any school, child care provider, or other person entrusted by the custodial parent with the care of the child.
- **Amends s. 787.04, F.S.**, to provide that It is a third degree felony for a person to violate an injunction for protection against domestic violence that awards temporary custody or visitation with regard to a minor child or children of the parties by removing, failing to return, or concealing the child within or without the state. For purposes of this section, removing the child shall include, but not be limited to, taking the child from the custody of the custodial parent, or any school, child care provider, or other person entrusted by the custodial parent with the care of the child.

VII. SIGNATURES:

COMMITTEE ON LAW ENFORCEMENT AND CRIME PREVENTION:

Prepared by:

Staff Director:

Allen Mortham Jr.

Kurt E. Ahrendt

AS REVISED BY THE COMMITTEE ON FAMILY LAW AND CHILDREN:

Prepared by:

Staff Director:

Carol E. Preston

Carol E. Preston

AS FURTHER REVISED BY THE COMMITTEE ON JUDICIARY:

Prepared by:

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Jo Ann Levin

Don Rubottom