

# 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: CS/SB 370

SPONSOR: Criminal Justice Committee and Senator Meek

SUBJECT: Domestic Violence

DATE: March 17, 1999

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

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

## I. Summary:

The Committee Substitute for Senate Bill 370 provides a first degree misdemeanor penalty for a person subject to an injunction for protection against domestic violence if said person refuses to surrender any firearm or ammunition in his or her control or custody or interferes with or obstructs a law enforcement officer enforcing the injunction. This CS also provides that it is a third degree felony for any noncustodial parent or respondent subject to an injunction for protection against domestic violence or repeat violence to lead, take, entice or remove a minor from the custodial parent or any child care provider or other person to whom care of the minor is entrusted.

This CS substantially amends the following sections of the Florida Statutes: 741.31, 787.04, 901.15.

## II. Present Situation:

### **Injunction for protection against domestic violence and possession of a firearm:**

Section 741.30 F.S., authorizes a person to file a sworn request for an injunction for protection against domestic violence if the person requesting the injunction is either the victim of domestic violence or has reasonable cause to believe that he or she is in imminent danger of becoming a victim of any act of domestic violence. A court may grant a temporary injunction without a hearing and based solely on the sworn request for an injunction if it appears to the court that an immediate and present danger of domestic violence exists. The temporary injunction is valid for up to 15 days and a full hearing for a final injunction must be set before the temporary injunction expires. Both sides have a right to present evidence regarding the final injunction.

Federal law, at 18 U.S.C. 922(g), makes it illegal and punishable by up to 10 years in prison for a person to possess a firearm if that person has been issued an injunction against domestic violence

following a hearing in which that person had an opportunity to participate. This is applicable if the injunction does one of the following:

1. Includes a finding that such person represents a credible threat to the physical safety of the intimate partner or a child; or
2. The injunction explicitly prohibits the use, attempted use or threatened use of physical force that would reasonably be expected to cause bodily injury against the intimate partner or a child.

Injunctions in Florida generally prohibit domestic violence or the threat of domestic violence but do not include a finding that a person represents a credible threat.

Last year, changes to the law made it a first degree misdemeanor for a person subject to an injunction for protection against domestic violence to possess a firearm. *See* 98-284, Laws of Florida. Once the injunction is issued, the person against whom it is issued is automatically barred from possessing a firearm. (The 1998 change in Florida law essentially conformed Florida's law to the relevant federal provisions.)

Activities that constitute a violation of an injunction for protection against domestic violence are stated at s. 741.31, F.S. (Supp. 1998). Penalties for such a violation are stated herein, as well. Section 741.31(4)(b), F.S. (Supp. 1998), specifically provides that it is a misdemeanor of the first degree for a person to violate a final domestic violence injunction by having in his or her care, custody, possession or control any firearm or ammunition.

#### **Luring or enticing a child; custody offenses:**

Section 787.04, F.S., 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. Circumstances in which such action is unlawful include those in which the minor's custody is at issue or during the pendency of a dependency proceeding affecting said minor.

### **III. Effect of Proposed Changes:**

Section 1 amends s. 741.31, F.S. (Supp. 1998) relating to the violation of an injunction for protection against domestic violence, to provide that it is a misdemeanor of the first degree for any person subject to a domestic violence final injunction to refuse to surrender any firearm or ammunition or to interfere with or obstruct a law enforcement officer who is enforcing the injunction.

Section 2 amends s. 787.04, F.S., regarding the removal or concealment of minors, to include noncustodial parents or respondents subject to an injunction for protection against domestic violence. These persons may not lead, take, entice or remove a minor from the custodial parent or any child care provider or conceal the location of said minor. Any person who violates this section is guilty of a felony of the third degree.

Section 3, for the purpose of incorporating the newly amended s. 741.31, F.S. (Supp. 1998), reenacts s. 901.15(6), F.S.

Section 4 provides that this act shall take effect upon becoming law.

**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:

The Florida Department of Law Enforcement reports no fiscal impact associated with this CS. In addition, according to the Department of Corrections, any fiscal impact as a result of the third degree felony provision will likely be insignificant.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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

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