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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIAL OVERSIGHT
ANALYSIS**

BILL #: HB 167
RELATING TO: Domestic Violence
SPONSOR(S): Representative Littlefield

TIED BILL(S):

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

- (1) JUDICIAL OVERSIGHT
 - (2) CHILD AND FAMILY SECURITY
 - (3) COUNCIL FOR SMARTER GOVERNMENT
 - (4)
 - (5)
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I. SUMMARY:

The bill amends the definitions of the terms "domestic violence" and "family or household member" in four sections of Florida Statute to require present or prior co-residency between the victim and perpetrator in establishing an act of domestic violence, with the exception of cases where the victim and perpetrator have a child in common.

The bill provides for an increase in the amount of the fee assessed when a party files a petition for dissolution of marriage from \$18 to \$36.

Two additional conditions are provided for by the bill for identifying when a family violence indicator must be placed on a child support enforcement case at the State Case Registry, which is then transmitted to the Federal Case Registry. The bill provides legislative intent that the process of granting a temporary injunction for protection against domestic violence should protect victims for as long as the victim is in danger.

The bill clarifies that if either of two criteria are met, an individual has standing to file a petition for an injunction for protection against domestic violence and delineates a list of situations that can be considered acts of violence or threatened acts of violence. It conforms sections of the statute to provide that the criteria for standing to file a petition and to be used by the court to grant a temporary ex parte injunction are the same. The bill provides a list of factors for the court to consider when making a determination of whether the petitioner for a protective injunction has reasonable cause to believe he or she is in imminent danger.

The Office of the State Courts Administrator is required to examine current court practice related to the determination of custody and visitation and granting of injunctions for protection during dissolution of marriage proceedings. This is to be a collaborative effort resulting in recommendations and a report.

The bill amends ss. 25.385, 28.201, 39.902, 61.1825, 741.28, 741.281, 741.30, and 943.171, Florida Statutes.

The bill has an effective date of July 1, 2001.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Definitions of Domestic Violence and Family or Household Member

"Domestic violence" is a term which encompasses a variety of criminal acts committed against one "family or household member" by another. The terms "domestic violence" and "family or household member" are defined in five sections of the Florida Statutes.

M Sections 25.385, 39.902, and 943.171, Florida Statutes, define domestic violence as "any assault, battery, sexual assault, sexual battery, 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".

M Section 414.0252, Florida Statutes, defines domestic violence as "any assault, aggravated assault, sexual battery, aggravated battery, sexual assault, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another.

M Section 741.28, Florida Statutes, defines domestic violence as "any assault, aggravated assault, sexual battery, aggravated battery, sexual assault, stalking, aggravated stalking, kidnapping, 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".

M All five of the above referenced sections define family or household member as " spouse, former spouse, 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 if a family, and persons who have a child in common regardless of whether they have been married or have resided together at any time". The definition in chapter 414 includes "noncohabitating partners" among those to be considered family or household members.

The definition of "domestic violence" in each of these sections, with the exception of s. 414.0252, requires present or prior co-residency and has an inconsistent corresponding definition of "family or household member" which does not require co-residency between persons who have a child in

common. No co-residency exception is made for those individuals having a child in common in the definition of "domestic violence".

"Domestic violence" was redefined in 1991 (ch. 91-210, L.O.F.) to include abuse directed from one family or household member to another, in lieu of the earlier definition which limited the term to spouses and persons related by blood or marriage. The requirement of present or prior co-residency was retained in the definition of "domestic violence". At that same time, a new term, "family and household member", was added to the statutes. However, contrary to the definition of "domestic violence", prior or present co-residency is not required to be considered a "family or household member".

There is no concrete information regarding how these definitions have been applied across the state. The Florida Coalition Against Domestic Violence states that the domestic violence centers statewide are not requiring co-residency in order to receive the services of the centers. In addition, the courts have questioned whether the Legislature intended to allow for injunctions for protection against domestic violence between persons related by blood or marriage, who do not or have never resided together. See *Sharpe v. Sharpe*, 695 So.2d 1302 (Fla. 5th DCA 1997). In *Sharpe*, the court stated "[a]lthough the legislature thereafter amended subsection (e) [providing that a cause of action for an injunction may be sought between persons related by blood or marriage who are or were residing within a single dwelling unit; see s. 741.30(1)(e), Florida Statutes (1990).], to eliminate the requirement that one related to the offender by blood or marriage must have resided with such offender in the same household, it failed to amend the very definition of domestic violence".

Domestic Violence Centers and Funding

Domestic violence centers were established by the Legislature to provide services to victims of domestic violence and there are currently 38 such centers statewide. Centers are certified under s. 39.905, Florida Statutes, and are required to offer a wide range of services to and on behalf of victims of domestic violence, their minor children, and other dependents of victims of domestic violence. Those services include, but are not limited to, information and referral services, counseling and case management services, temporary emergency shelter for more than 24 hours, a 24-hour hotline, training for law enforcement personnel, assessment and appropriate referral of resident children, and educational services for community awareness.

Monies collected and appropriated for domestic violence centers are distributed annually by the Department of Children and Family Services to districts for certified domestic violence centers utilizing an allocation formula developed by the department. In developing this formula, the department must consider population, a rural and geographical area factor, and the incidence of domestic violence. Funding to be distributed includes federal funds through the Family Violence Prevention and Services Act; Temporary Assistance for Needy Families (TANF) funding for the Diversion Program for victims of Domestic Violence (s. 414.157, Florida Statutes); general revenue funds; and fees collected and deposited into the Domestic Violence Trust Fund. Domestic violence centers are required by statute to receive at least 25% of their funding from other public or private, local, municipal or county sources. In kind contributions may be counted as a part of the required local funding.

Section 741.01(2), Florida Statutes, provides that the "Executive Office of the Governor shall establish a Domestic Violence Trust Fund for the purpose of collecting and disbursing funds generated from the increase in the marriage license fee". Generated funds are to be directed to the Department of Children and Family Services for the specific purpose of funding domestic violence centers. Funds deposited into the Domestic Violence Trust Fund include a \$30 fee charged for

each marriage license issued (s. 741.01(2), Florida Statutes) and an \$18 charge on each petition for a dissolution of marriage (s. 28.101(1)(c), Florida Statutes).

For fiscal year 2000-2001, a total of \$20,738,459 from all sources was appropriated to the Department of Children and Family Services for domestic violence centers. This includes a one-time appropriation of \$4,000,000 in TANF funds. Of this total amount, \$5,630,466 was budgeted from the Domestic Violence Trust Fund. Additionally, \$250,000 of the total appropriated funding is allocated for a designated domestic violence center and not made available through the allocation process.

Family Violence Indicator

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, or federal welfare reform, required states to establish and maintain a State Case Registry. Information contained in the State Case Registry must be transmitted to the Federal Case Registry which other states access for location information for the limited purposes of establishing paternity; establishing, modifying, or enforcing child support obligations; or making or enforcing child custody or visitation orders. In order to protect location information in the State and Federal Case Registries when the safety of parties or children could be jeopardized by disclosure, states are required to have procedures for placement of family violence indicators.

In 1999, legislation was passed which prescribed that a family violence indicator must be placed on a case at the State Case Registry when a party executes a sworn statement requesting an indicator and they have reason to believe that the release of the information to the Federal Case Registry may result in physical or emotional harm to the party or the child (ch.99-375, L.O.F.). Federal requirements compel states to place the family violence indicator on a case if there is reasonable evidence of domestic violence or child abuse and the disclosure of such information could be harmful to the party or child. A recent federal policy directive provided that a protective order was reasonable evidence of domestic violence or abuse.

Injunction for Protection Proceedings

Section 741.30(1)(a), Florida Statutes, provides standing to petition for injunctive relief against domestic violence to a victim of domestic violence or to any person with "reasonable cause to believe that he or she is in imminent danger of becoming a victim of any act of domestic violence".

Section 741.30(5)(a), Florida Statutes, provides that when it appears to the court that an "immediate and present danger of domestic violence exists", the court may grant an temporary injunction ex parte without prior notice to the alleged perpetrator, pending a full hearing. Section 741.30(5)(c), Florida Statutes, provides that if the temporary injunction is granted ex parte, it is to remain in effect for up to 15 days and a full hearing must be set for a date no later than that on which the temporary injunction will expire. The respondent is required to be personally served with a copy of the petition for injunction for protection, notice of a hearing, and temporary injunction, if any, prior to the hearing. The courts are permitted to grant a continuance of the hearing for good cause shown, including the need to obtain service. Injunctions can be extended, if necessary, to remain in full force and effect during any period of continuance.

Currently, domestic violence proceedings are not required to be recorded. The Office of State Courts Administrator reports that 34 of 65 counties who reported routinely record domestic violence proceedings as a matter of local procedure. Two other counties record only the criminal order to show cause hearings, and one county records only indirect criminal contempt hearings. In *Lawrence v. Walker*, 24 Fla. L. Weekly D2571 (Fla. 4th D.C.A. 1999), in a concurring opinion, Chief Judge Warner noted that the court was compelled to affirm an appeal from a final judgment for

protection against domestic violence because there was no transcript of the evidentiary hearing, so the appellate court could not evaluate the merits of the contentions raised by the appellant. The appellant assumed that the evidentiary hearing was a criminal proceeding, and would be recorded. Under the Family Law Rules of Procedure, there is no requirement for civil proceedings to be recorded. If the parties so desire, they must arrange in advance for the recording of the hearing. Chief Judge Warner stated “[i]t is indeed unfortunate that parties frequently are unaware of this requirement until after the fact. With so much litigation being conducted pro se, it seems to me that in the notice for final hearing on the injunction the parties should be alerted that if they want the hearing reported it is up to them to arrange for the services of a court reporter to transcribe the proceedings. Without a record, a party’s ability to exercise their appellate rights is, in most cases, lost before the final judgment is ever entered”.

Section 741.30(6)(b), Florida Statutes, provides that either party may move at any time to modify or dissolve an injunction. The Third District Court of Appeals of Florida ruled in *Madan v. Madan*, 729 So.2d 416 (Fla. 3rd DCA 1999), that this would include presenting evidence regarding the initial procurement of the injunction.

C. EFFECT OF PROPOSED CHANGE

Definitions of Domestic Violence and Family or Household Member

HB 167 amends the definitions of “domestic violence” and “family or household member” in four sections of Florida Statute to require present or prior co-residency between the victim and the family or household member in establishing an act of domestic violence, with the exception of when the victim and perpetrator have a child in common. These amendments would correct a current inconsistency between the definitions of “domestic violence” and “family or household member”. They would also direct the application of domestic violence related legal actions and initiatives to those victims and perpetrators who have lived in the same dwelling either currently or in the past, or those victims and perpetrators who have a child in common, regardless of whether they had ever lived together.

Domestic Violence Centers and Funding

The bill would provide for an additional \$18 to be collected for each petition for dissolution of marriage filed, with those monies to be deposited into the Domestic Violence Trust Fund for use in funding domestic violence centers statewide.

Family Violence Indicator

The bill amends s. 61.1825, Florida Statutes, to provide two additional conditions for identifying when a family violence indicator must be placed on a child support enforcement case, which is then transmitted to the Federal Case Registry, to prevent the disclosure of information on the case when release of the information may result in harm to the individual or child. These conditions are when a temporary or final injunction for protection against domestic violence, repeat violence has been granted by a Florida court or by a court from another state and when the Domestic and Repeat Violence Injunction Statewide Verification System indicates that a party has been granted a domestic violence or repeat violence injunction. The addition of these two conditions for determining when a family violence indicator must be added offers more immediate protection for the victims, since they would not have to take the extra step to issue a sworn statement if there was an injunction. It also provides greater assurance that Florida is in full compliance with federal regulations relative to this issue.

Injunction for Protection Proceedings

The bill clarifies existing law that a person can petition the court for an injunction for protection against domestic violence based on either one of two circumstances: the person has been a victim of domestic violence or the person has reasonable cause to believe that her or she is in imminent danger of becoming a victim of domestic violence. While two criteria exist for filing a petition, some courts have been found to focus on one of the criteria, to the exclusion of the alternative criteria, thus limiting conditions under which a petition will be granted.

The criterion for filing a petition for an injunction for protection was changed in 1997 from requiring that the person “may become” the victim of domestic violence to the current “has reasonable cause to believe he or she is in imminent danger of becoming” the victim of domestic violence (ch. 97-155, L.O.F.). That new requirement that the petitioner be in “imminent danger” of becoming a victim of domestic violence is considered by some to be problematic because of the varying interpretations and applications across the circuits, and by others to be necessary because of the significant ramifications resulting from issuing an injunction to the alleged perpetrator. According to a 1999 Senate Interim Project Report, domestic violence advocates report that the 1997 statutory change to require that the victim be in “imminent” danger in order to obtain an injunction is interpreted differently among the circuits because the term has not been defined, and is subjected to varying applications. Fla. S. Comm. on Children and Families, Interim Project Report 2000-15, *Domestic Violence Initiatives in Florida* (1999). Some courts feel that due to the extreme ramifications of injunctions, “imminent” must be defined as an impending threat to the victim. The bill provides the court with factors that, if alleged in the petition, can be considered in determining whether a petitioner is in imminent danger of becoming a victim of domestic violence.

The bill changes the standard for the court to grant an ex parte injunction for protection from the “existence of immediate and present danger of domestic violence” to the “reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence” standard used for standing to file a petition. This would constitute a lowering of the standard for granting an injunction.

The bill sets forth as the intent of the Legislature that the process of granting ex parte temporary injunctions protect victims of domestic violence for as long as the victim is in danger. It requests the Supreme Court to adopt rules to require extensions of the ex parte temporary injunction when the sole reason for denying the extension is that the respondent could not be served the temporary restraining order and notice of the hearing. This provision retains the protection granted in the temporary injunction for the victim of domestic violence while efforts to serve the respondent continue.

Section 741.30, Florida Statutes, is amended to add a provision that injunctions for protection against domestic violence proceedings shall be recorded, if the court so chooses and adequate resources for such recording are available. If such resources are not available, parties shall be notified of this fact prior to the full hearing. Recordings may be by electronic means.

In response to *Maden v. Maden*, the bill provides a de novo review of the allegations considered by the court at the hearing on the final judgment of injunction may not be sought by a party.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 25.385, Florida Statutes, to amend the definitions for “domestic violence” and “family or household member” to provide that present or prior co-residency between the victim and the perpetrator is required to establish an act of domestic violence, except in instances where the victim and perpetrator have a child in common. This corrects a current inconsistency in definitions between the two terms.

Section 2. Amends s. 28.101, Florida Statutes, to provide for an increase in amount of the fee assessed when a party files a petition for dissolution of marriage. The current \$18 fee would be increased to \$36. The money collected from this source would continue to be deposited into the Domestic Violence Trust Fund for use in funding domestic violence centers statewide.

Section 3. Amends s. 39.902, Florida Statutes, to amend the definitions for “domestic violence” and “family or household member” to provide that present or prior co-residency between the victim and the perpetrator is required to establish an act of domestic violence, except in instances where the victim and perpetrator have a child in common. This corrects a current inconsistency in definitions between the two terms.

Section 4. Amends s. 61.1825, Florida Statutes, to provide two additional conditions for determining when a domestic violence indicator must be placed on a record with the State Case Registry in child support enforcement cases.

Section 5. Amends s. 741.28, Florida Statutes, to amend the definitions for “domestic violence” and “family or household member” to provide that present or prior co-residency between the victim and the perpetrator is required to establish an act of domestic violence, except in instances where the victim and perpetrator have a child in common. This corrects a current inconsistency in definitions between the two terms.

Section 6. Amends s. 741.281, Florida Statutes, to delete the requirement that the court shall order individuals charged with an act of domestic violence and admitted to a pretrial diversion program into a batterers’ intervention program.

Section 7. Amends s. 741.30, Florida Statutes, to clarify when a person has standing to file a petition for an injunction for protection against domestic violence and to provide a delineated listing of incidents that describe violence or threatened violence. It conforms sections of the statute to provide that the criteria for standing to file a petition and to be used by the court to grant a temporary ex parte injunction are the same and provides legislative intent that ex parte temporary injunctions protect victims for as long as they are in danger. The section prohibits the court from referring cases to mediation or alternative dispute resolution prior to a full hearing and provides a list of criteria for the court to consider in making a determination of whether a petitioner has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence. Injunction proceedings may be recorded if the court so chooses and adequate resources exist for such recording.

Section 8. Amends s. 943.171, Florida Statutes, to amend the definitions for “domestic violence” and “family or household member” to provide that present or prior co-residency between the victim and the perpetrator is required to establish an act of domestic violence, except in instances where the victim and perpetrator have a child in common. This corrects a current inconsistency in definitions between the two terms.

Section 9. Directs the Office of the State Courts Administrator to examine current court practice related to the determination of visitation and custody in the injunctive process. Provides for collaboration with other entities in conducting the examination and provides for a report.

Section 10. Provides for an effective date of July 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill raises the filing fees an additional \$18 for a petition for dissolution of marriage. In 1999, there were approximately 91,000 petitions for dissolution filed, with an estimated 5% of those being filed by indigent persons for whom the filing fee was waived. Based on those numbers, it is estimated that the additional fee provided for in the bill would generate approximately \$1,556,100 for the Domestic Violence Trust Fund. The number of dissolutions decreased from FY 1998-99 to FY 1999-2000 by about 750.

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The filing fee for individuals petitioning for dissolution of marriage will increase by \$18.

D. FISCAL COMMENTS:

Section 28.101, Florida Statutes, requires the assessment of a number charges when a party petitions for a dissolution of marriage in addition to the filing charges required in s. 28.241, Florida Statutes. Those include \$5 for deposit in the Child Welfare Trust Fund, \$5 for deposit in the Displaced Homemaker Trust Fund, \$18 for deposit in the Domestic Violence Trust Fund, and \$32.50, \$25 of which is for deposit in the Family Courts Trust Fund and \$7.50 of which is for deposit in the Displaced Homemaker Trust Fund. The \$32.50 fee was instituted in 1998. As filing fees increase, it raises concerns that access to the courts may become more limited.

A number of requirements of the bill may result in a changed workload for the state courts system. The requirement that the court consider specified additional factors in determining whether to grant an injunction may result in additional hearing time. Prohibiting the court from ordering mediation or alternative dispute resolution before a full hearing or at the request of a party after a full hearing, may require additional hearing time. Lowering the standard for the court to grant an ex parte injunction may result in additional requests for injunctions. The prohibition against de novo review may result in fewer hearings to modify the original injunction. An insignificant fiscal impact on the courts is anticipated.

The study required in section 9 of the bill is already underway. The Chief Justice of the Supreme Court has directed the Family Court Steering Committee to conduct an assessment of how courts are handling domestic violence cases and develop model practices for handling these cases in a

manner that helps ensure the safety of victims and children. It is anticipated that this assessment can be conducted within existing resources.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill will not reduce the authority of municipalities and counties to raise revenues.

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

The bill will not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

There remain some inconsistencies among the definitions of "domestic violence" and "family or household member" that may or may not need to be addressed.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

Staff Director:

Carol Preston

Lynne Overton