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DATE: March 5, 2002

HOUSE OF REPRESENTATIVES
COUNCIL FOR HEALTHY COMMUNITIES
ANALYSIS

BILL #: CS/CS/HB 299

RELATING TO: Domestic Violence

SPONSOR(S): Council for Healthy Communities, Committee on Fiscal Policy and Responsibility,
Representatives Littlefield and Others

TIED BILL(S):

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

- (1) CRIME PREVENTION CORRECTIONS & SAFETY YEAS 11 NAYS 0
 - (2) FISCAL POLICY AND RESOURCES YEAS 11 NAYS 0
 - (3) COUNCIL FOR HEALTHY COMMUNITIES YEAS 15 NAYS 0
 - (4)
 - (5)
-

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING OR MODIFYING ANY LEGISLATION OR STATUTE.

The council substitute 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. The council substitute provides, however, that present or prior co-residency is not required in cases where the victim and perpetrator have a child in common or have or had a "dating relationship." The term "dating relationship" is defined in the council substitute and is added to the scope of persons who fall within the definition of a "family or household member."

The council substitute also eliminates the fees assessed to a person petitioning for an injunction for protection against domestic violence.

Furthermore, the council substitute 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. The council substitute 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 and provides that such petitions can be filed in the circuit where either the petitioner or respondent reside or where the domestic violence occurred. Furthermore, the council substitute provides that there is no minimum residency requirement to petition for an injunction, that all such proceedings must be electronically recorded and that the court shall allow an advocate from a state attorney's office, law enforcement agency or a certified domestic violence center to be present during any court proceedings if requested by the petitioner.

The Revenue Estimating conference is currently considering the estimated impact of the council substitute.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

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

This council substitute expands the ability of the courts to grant restraining orders to people who have been involved in a dating relationship.

B. PRESENT SITUATION:

Definitions of Domestic Violence and Family or Household Member

“Domestic violence” is a term that 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.¹

“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”.

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 § 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.”

¹ §§ 25.385, 39.902, 741.28 and 943.171, Florida Statutes.

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 a 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*, 751 So.2d 68 (Fla. 4th DCA 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”.

C. EFFECT OF PROPOSED CHANGES:

Definitions of Domestic Violence and Family or Household Member

HB 299 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 or have or had a “dating relationship.” 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, or have or had a “dating relationship,” or if they have ever lived together.

Injunction for Protection Proceedings

The council substitute 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 council substitute 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.

Section 741.30, Florida Statutes, is amended to provide that there is no minimum residency requirement to petition for a domestic violence injunction, that all such proceedings must be electronically recorded and that the court shall allow an advocate from a state attorney’s office, law enforcement agency or a certified domestic violence center to be present during any court proceedings if requested by the petitioner.

Filing Fees

The council substitute also eliminates the fees assessed to a person petitioning for an injunction for protection against domestic violence under section 741.30, Florida Statutes.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends § 25.385, Florida Statutes, to amend the definitions for “domestic violence” and “family or household member” to create consistency with the definitions of these same terms in § 741.28, Florida Statutes.

Section 2. Amends § 28.241, Florida Statutes, to conform with the elimination of fees for injunctions concerning domestic violence, which is contained in section 12 of this council substitute.

Section 3. Amends § 39.902, Florida Statutes, to amend the definitions for “domestic violence” and “family or household member” to create consistency with the definitions of these terms in § 741.28, Florida Statutes.

Section 4. Amends § 39.903, Florida Statutes, to renumber several sections and add a new section that provides for the Department of Children and Families to operate the domestic violence program.

Section 5. Amends § 390.01115, Florida Statutes, to realign the reference to § 741.28 in accordance with revisions made in Section 9.

Section 6. Amends § 470.002, 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 or when the victim and the perpetrator have had a “dating relationship”. This corrects a current inconsistency in definitions between the two terms.

Section 7. Amends § 626.9541, Florida Statutes, to realign the reference to § 741.28 in accordance with revisions made in Section 9.

Section 8. Amends § 641.3903, Florida Statutes, to realign the reference to § 741.28 in accordance with revisions made in Section 9.

Section 9. Amends § 741.28, Florida Statutes, to amend the definitions for “domestic violence” and “family or household member” and to provide a definition of “dating relationship.” The amended definitions for “domestic violence and “family of household member” 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 or when the victim and the perpetrator have had a “dating relationship”. This corrects a current inconsistency in definitions between the two terms.

Section 10. Amends § 741.281, Florida Statutes, to delete the requirement that an individual must be in a pretrial diversion program as a condition precedent to mandate a court to order individuals charged with an act of domestic violence into a batterers’ intervention program.

Section 11. Amends § 741.2902, Florida Statutes, to conform with the elimination of fees for injunctions concerning domestic violence, which is contained in section 11 of this council substitute.

Section 12. Amends § 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. The section 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. Also provides that there is no minimum residency requirement to petition for a domestic violence injunction and that such petition may be filed in the circuit where either the petitioner or respondent reside or where the domestic violence occurred.

Additionally, this section eliminates the fee for filing a petition for an injunction for protection against domestic violence. The language provides for the reimbursement of filing costs to clerks of the court at a rate of \$40 per petition, subject to legislative appropriation.

Finally, this section requires injunction proceedings to be recorded.

Section 13. Amends § 741.31, Florida Statutes, to add four provisions to the “violation of an injunction for protection against domestic violence” that (1) limits the distance to 500 feet an enjoined individual can be to the petitioner’s “residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;” (2) knowingly or intentionally coming within 100 feet of the petitioner’s motor vehicle; (3) defacing or destroying the petitioner’s personal property; or (4) refusing to surrender firearms or ammunition if ordered to do so by the court.

Section 14. Amends § 943.171, Florida Statutes, to amend the definitions for “domestic violence” and “household member” to create consistency with the definitions of these terms in § 741.28, Florida Statutes.

Section 15. Amends § 985.213, Florida Statutes, to realign the reference to § 741.28 in accordance with revisions made in Section 9.

Section 16. Amends § 985.215, Florida Statutes, to realign the reference to § 741.28 in accordance with revisions made in Section 9.

Section 17. Amends § 938.01, Florida Statutes, to substantially reword § 938.01(1) providing for a one and seven-tenths percent of the \$3.00 fee collected from every person convicted of violating a state penal code, criminal statute to be distributed to the Department of Children and Family Services Domestic Violence Trust Fund.

Section 18. Repeals subsection (2) of section 4 of chapter 2001-184, Laws of Florida, and subsection (2) of section 7 of chapter 2001-232, Laws of Florida to remove the authority of the Department of Community Affairs to receive and transfer funds for the domestic violence program.

Section 19. Repeals § 741.466, Florida Statutes, to remove the authority of the Department of Community Affairs over the domestic violence program.

Section 20. Provides for an effective date of October 1, 2002.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The council substitute provides for the reimbursement of filing costs to clerks of the court at a rate of \$40 per petition, subject to legislative appropriation.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This committee substitute eliminates the fee for filing a petition for an injunction for protection against domestic violence. These fees were collected by the clerk of the court handling the paperwork and the law enforcement agency serving the injunction or restraining order, and used to cover the cost of providing these services.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals petitioning for a injunction for protection against domestic violence will no longer be charged a fee.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This council substitute 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:

This council substitute will reduce the authority of municipalities and counties to raise revenues but does provide a mechanism for reimbursement. Until the Revenue Estimating Conference has determined the impact it is unknown but is not anticipated to be significant.

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

This council substitute will not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Crime Prevention, Corrections & Safety, adopted three (3) amendments to the council substitute. Amendment 1 and 2 removed from the bill proposed new language that would have made a violation of an domestic violence injunction a basis for a petition and finding of domestic violence. Amendment 3 added clarifying language to the definition of "dating relationship" in Section 8 of the bill.

The Committee on Fiscal Policy and Resources adopted an additional four amendments to the bill, then made the bill into a committee substitute. Amendment 1 removed language from the bill which would

have increased the fee charged on each divorce petition which is used to fund the Domestic Violence Trust Fund from \$18 to \$36. Amendment 2 eliminated the fees currently charged for filing a petition for an injunction for protection from domestic violence. Amendments 3 and 4 were conforming amendments to Amendment 2.

The Healthy Communities Council adopted five (5) amendments. The first adopted amendment provides for the Department of Children and Families to operate the domestic violence program. The second amendment removes the authority of the Department of Community Affairs over the domestic violence program. The third amendment substantially provides for one and seven-tenths percent of the \$3.00 fee collected from every person convicted of violating a state penal code, criminal statute to be distributed to the Department of Children and Family Services Domestic Violence Trust Fund. The fourth adopted amendment provides for clarification and the fifth adopted amendment provides for a reimbursement mechanism for circuit court clerks for domestic violence petitions.

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:
Eric Haug

Staff Director:
Trina Kramer

AS REVISED BY THE COMMITTEE ON FISCAL POLICY AND RESOURCES:

Prepared by:
Kama Monroe

Staff Director:
Lynne Overton

AS FURTHER REVISED BY THE COUNCIL FOR HEALTHY COMMUNITIES:

Prepared by:

Eric S. Haug

Council Director:

David M. De la Paz