

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: SB 434

INTRODUCER: Senator Fasano

SUBJECT: Violations of Protective Injunctions Against Violence

DATE: January 29, 2009

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Favorable
2.	_____	_____	JU	_____
3.	_____	_____	JA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill increases the ways in which a person can violate an injunction for protection against *repeat violence, sexual violence, or dating violence* by making it identical to the ways a person can violate an injunction for protection against *domestic violence*. Both types of violations are punishable as a first degree misdemeanor (up to one year in jail and up to a \$1,000 fine).

The new violations will include the following:

- Knowingly and intentionally coming within 100 feet of the petitioner’s motor vehicle, whether or not that vehicle is occupied;
- Defacing or destroying the petitioner’s personal property, including the petitioner’s motor vehicle;
- Refusing to surrender firearms or ammunition if ordered to do so by the court; or
- Being within 500 feet of the petitioner’s residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member (currently there is no distance limitation).

This bill substantially amends section 784.047 of the Florida Statutes.

II. Present Situation:

Definitions

“Repeat violence” is defined 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.”¹

“Dating violence” is defined as, “violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on the consideration of the following factors: a dating relationship must have existed within the past 6 months; the nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and the frequency and type of interaction between the persons involved in the relationship must have included that the persons have been involved over time and on a continuous basis during the course of the relationship. The term does not include violence in a casual acquaintanceship or violence between individuals who only have engaged in ordinary fraternization in a business or social context.”²

“Sexual violence” is defined as, “any one incident of sexual battery, as defined in ch. 794; a lewd or lascivious act, as defined in ch. 800, committed upon or in the presence of a person younger than 16 years of age; luring or enticing a child, as described in ch. 787; sexual performance by a child, as described in ch. 827; or any other forcible felony wherein a sexual act is committed or attempted, regardless of whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney.”³

Injunctions for Protection against Repeat, Dating, and Sexual Violence

Section 784.046, F.S., relates to the issuance of injunctions for protection against repeat violence, dating violence, and sexual violence. The statute specifies the following:

- Petitions for injunctions for protection must allege the incidents of repeat violence, sexual violence, or dating violence and must include the specific facts and circumstances that form the basis upon which relief is sought.
- Upon the filing of the petition, the court must set a hearing to be held at the earliest possible time. The respondent must be personally served with a copy of the petition, notice of hearing, and temporary injunction, if any, prior to the hearing.
- When it appears to the court that an immediate and present danger of violence exists, the court may grant a temporary injunction which may be granted in an ex parte hearing, pending a full hearing, and may grant such relief as the court deems proper.
- The court shall enforce, through a civil or criminal contempt proceeding, a violation of an injunction for protection.
- The petitioner or the respondent may move the court to modify or dissolve an injunction at any time.⁴

¹ s. 784.046(1), F.S.

² *Id.*

³ *Id.*

⁴ s. 784.046, F.S.

Section 784.047, F.S., provides penalties for violating an injunction for protection against repeat violence, sexual violence, or dating violence. The statute specifies that a person commits a first degree misdemeanor⁵ if they willfully violate an injunction for protection against repeat violence, sexual violence, or dating violence by:

- Refusing to vacate the dwelling that the parties share;
- Going 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;
- Committing an act of repeat violence, sexual violence, or dating violence against the petitioner;
- Committing any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to the petitioner; or
- Telephoning, contacting, or otherwise communicating with the petitioner directly or indirectly, unless the injunction specifically allows indirect contact through a third party.⁶

III. Effect of Proposed Changes:

The bill increases the ways in which a person can violate an injunction for protection against *repeat violence, sexual violence, or dating violence* by making it identical to the ways a person can violate an injunction for protection against *domestic violence*.⁷ Both types of violations are punishable as a first degree misdemeanor.

The new violations will include the following:

- Knowingly and intentionally coming within 100 feet of the petitioner’s motor vehicle, whether or not that vehicle is occupied;
- Defacing or destroying the petitioner’s personal property, including the petitioner’s motor vehicle;
- Refusing to surrender firearms or ammunition if ordered to do so by the court; or
- Being within 500 feet of the petitioner’s residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member (currently there is no 500 feet distance limitation).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁵ A first degree misdemeanor is punishable by a term of imprisonment not exceeding 1 year and a \$1,000 fine. *See* ss. 775.082 and 775.083.

⁶ s. 784.047, F.S.

⁷ Section 741.28, F.S., defines “domestic violence” as “any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.”

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

More people will potentially be subjected to a fine of up to \$1,000 for violating an injunction against dating violence under the bill.

C. Government Sector Impact:

This bill expands the way in which a person can violate an injunction for protection against dating violence, resulting in a first degree misdemeanor penalty (up to a year in jail). This could have an indeterminate bed impact upon the local jails.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.