

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 Judiciary Committee

BILL: SB 434

INTRODUCER: Senator Fasano

SUBJECT: Domestic Violence/Injunction for Protection

DATE: February 17, 2009 REVISED: _____

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

I. Summary:

This bill creates additional ways a person can violate an injunction for protection against repeat violence, sexual violence, or dating violence. Specifically, the bill provides the following additional violations:

- 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; rather the violation is based solely on going to those places);
- 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; or
- Refusing to surrender firearms or ammunition if ordered to do so by the court.

This bill substantially amends section 784.047, Florida Statutes.

II. Present Situation:

Injunction for Protection against Domestic Violence

In 2005, it was estimated that more than 1.5 million adults in the United States are victims of domestic violence each year, and more than 85 percent of the victims are women.¹ In Florida, 115,150 incidents of domestic violence were reported in 2007.² As of October 1, 2008, there were 55,211 incidents of domestic violence reported in Florida, which is 3 percent less than what was reported for the same period of time in 2007.³

A victim of domestic violence⁴ or a person who has reasonable cause to believe that he or she is in imminent danger of becoming a victim of domestic violence may seek protective injunctive relief.⁵ In seeking protective injunctive relief, a person must file a sworn petition with the court that alleges the existence of domestic violence and includes specific facts and circumstances upon which relief is sought.⁶ The court must set a hearing at the earliest possible time after a petition is filed.⁷ The respondent must be personally served with a copy of the petition, financial affidavit, Uniform Child Custody Jurisdiction and Enforcement Act affidavit, if any, notice of hearing, and any temporary injunction that has been issued.⁸ The court can enforce a violation of an injunction through a civil or criminal contempt proceeding, or the state attorney may prosecute it as a criminal violation under s. 741.31, F.S.⁹ Either party may move the court to modify or dissolve an injunction at any time.¹⁰

Section 741.31, F.S., deals with violations of an injunction for protection against domestic violence. This section provides that it is a first-degree misdemeanor¹¹ for a person to willfully violate an injunction for protection against domestic violence by:

- Refusing to vacate the dwelling that the parties share;

¹ Margaret Graham Tebo, *When Home Comes to Work*, ABA JOURNAL (Sept. 2005), available at http://www.abajournal.com/magazine/when_home_comes_to_work/ (last visited Feb. 9, 2009) (citing statistics from Legal Momentum, an advocacy and research organization based in New York City); see also Nat'l Coalition Against Domestic Violence, *Domestic Violence Facts*, [http://www.ncadv.org/files/DomesticViolenceFactSheet\(National\).pdf](http://www.ncadv.org/files/DomesticViolenceFactSheet(National).pdf) (last visited Feb. 9, 2009).

² Florida Dep't of Law Enforcement, *Crime in Florida* (Jan.-Dec. 2007), http://www.fdle.state.fl.us/Content/getdoc/6d01ac98-4c35-4785-abfb-6a44264dfed3/CIF_Annual07-pdf.aspx (last visited Feb. 9, 2009).

³ Florida Dep't of Law Enforcement, *Crime in Florida* (Jan.-June 2008), http://www.fdle.state.fl.us/Content/getdoc/715a03c5-902c-4637-87bb-01cf2930518c/2008SA_CIF-1-.aspx (last visited Feb. 9, 2009).

⁴ Domestic violence is defined 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." Section 741.28(2), F.S.

⁵ Section 741.30(1), F.S.

⁶ Section 741.30(3), F.S.

⁷ Section 741.30(4), F.S.

⁸ *Id.* When an immediate and present danger of domestic violence exists, the court may grant a temporary injunction ex parte, pending a full hearing. Section 741.30(5), F.S.

⁹ Section 741.30(9), F.S.

¹⁰ Section 741.30(10), F.S.

¹¹ A first-degree misdemeanor is punishable by a term of imprisonment not exceeding one year or a fine not exceeding \$1,000. See ss. 775.082(4) and 775.083(1), F.S.

- Going to, 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;
- Committing an act of domestic 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;
- Telephoning, contacting, or otherwise communicating with the petitioner directly or indirectly, unless the injunction specifically allows indirect contact through a third party;
- 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; or
- Refusing to surrender firearms or ammunition if ordered to do so by the court.¹²

Any person who suffers as a result of a violation of an injunction for protection against domestic violence may be awarded economic damages, including costs and attorneys' fees, for the injury or loss suffered.¹³

Injunction for Protection against Repeat Violence, Sexual Violence, or Dating Violence

Data from the National Women's Study and the National Violence Against Women Survey indicate that 13.4 percent of adult women in the United States have been victims of a forcible rape sometime during their lifetime.¹⁴ Based on this national data, one report found:

[A]pproximately 11.1% of adult women in Florida have been victims of one or more completed forcible rapes during their lifetime. According to the 2000 Census, there are about 6.4 million women age 18 or older living in Florida. This means that the estimated number of adult women in Florida who have ever been raped is nearly 713,000.¹⁵

Additionally, statistics show that one in five high school girls has reported being physically or sexually abused by a dating partner, and females ages 16 through 24 are three times more vulnerable for partner violence than any other age group.¹⁶

Section 784.046, F.S., governs the issuance of injunctions for protection against repeat violence,¹⁷ dating violence,¹⁸ and sexual violence.¹⁹ The statute specifies the following:

¹² Section 741.31(4), F.S.

¹³ Section 741.31(6), F.S.

¹⁴ Kenneth J. Ruggiero and Dean G. Kilpatrick, *Rape in Florida: A Report to the State*, NAT'L VIOLENCE AGAINST WOMEN PREVENTION RESEARCH CTR., 1 (May 15, 2003), available at http://www.fcasv.org/2005_Web/Statistics/OneNineReport.pdf (last visited Feb. 9, 2009).

¹⁵ *Id.* at 2.

¹⁶ American Bar Association, *Teen Dating Violence Facts* (2006), <http://www.abanet.org/unmet/teendating/facts.pdf> (last visited Feb. 9, 2009).

¹⁷ Section 784.046(1)(b), F.S., 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."

- 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.²⁰
- 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.²¹
- 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.²²
- The court shall enforce, through a civil or criminal contempt proceeding, a violation of an injunction for protection.²³
- The petitioner or the respondent may move the court to modify or dissolve an injunction at any time.²⁴

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 misdemeanor²⁵ if he or she willfully violates 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

¹⁸ 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 following factors come into play when determining the existence of such a relationship: (1) A dating relationship that existed within the past six months; (2) The nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and (3) The persons involved in the relationship must have been involved over time and on a continuous basis during the course of the relationship. Dating violence does not include violence in a casual acquaintanceship or between individuals who have only engaged in ordinary fraternization. Section 784.046(1)(d), F.S.

¹⁹ Sexual violence is defined as any one incident of "1. Sexual battery, as defined in chapter 794; 2. A lewd or lascivious act, as defined in chapter 800, committed upon or in the presence of a person younger than 16 years of age; 3. Luring or enticing a child, as described in chapter 787; 4. Sexual performance by a child, as described in chapter 827; or 5. Any other forcible felony wherein a sexual act is committed or attempted." For purposes of this definition, it does not matter whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney. Section 784.046(1)(c), F.S.

²⁰ Section 784.046(4), F.S.

²¹ Section 784.046(5), F.S.

²² Section 784.046(6), F.S.

²³ Section 784.046(9), F.S.

²⁴ Section 784.046(10), F.S.

²⁵ A first-degree misdemeanor is punishable by a term of imprisonment not exceeding one year or a fine not exceeding \$1,000. See ss. 775.082(4) and 775.083(1), F.S.

- Telephoning, contacting, or otherwise communicating with the petitioner directly or indirectly, unless the injunction specifically allows indirect contact through a third party.²⁶

III. Effect of Proposed Changes:

This bill creates additional ways 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*.

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; or
- Refusing to surrender firearms or ammunition if ordered to do so by the court.

Additionally, the bill adds a distance limitation to a violation in existing law by providing that a person can violate an injunction for protection by going to, *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. This change also parallels the way a person can currently violate an injunction for protection against domestic violence.

This bill has an effective date of July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

²⁶ Section 784.047, F.S.

B. Private Sector Impact:

This bill provides additional ways a person may violate an injunction for protection against repeat violence, sexual violence, or dating violence, which subjects the person to a possible fine of up to \$1,000. Accordingly, this bill has the potential to fiscally affect people who willfully violate the new provisions added by the bill, which may not have been punishable before.

C. Government Sector Impact:

This bill expands the ways in which a person can violate an injunction for protection against repeat violence, sexual violence, or dating violence, resulting in a first-degree misdemeanor, which can be punishable by up to one year in jail. The Criminal Justice Impact Conference has not yet reviewed this bill, so the exact fiscal impact of the bill is unknown at this time. However, last year the Criminal Justice Impact Conference reviewed SB 636, which is identical to this bill, and found that there was not expected to be a prison bed impact from the legislation.²⁷

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²⁷ Office of Economic & Demographic Research, Fla. Legislature, *Criminal Justice Impact Conference 2008 Legislature* (March 31, 2008), available at <http://edr.state.fl.us/conferences/criminaljustice/Impact/cjimpact.htm> (follow the "2008 Conference Results" link) (last visited Feb. 9, 2009).