

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 563 Injunctions for Protection against Domestic Violence, Repeat Violence, Sexual Violence, or Dating Violence

SPONSOR(S): Criminal Justice Subcommittee; Jones and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 438

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	14 Y, 0 N, As CS	Williams	Cunningham
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Sections 741.30 and 784.046, F.S., currently provide the following in relation to the service of injunctions for protection against domestic violence, repeat violence, sexual violence, or dating violence:

- Within 24 hours after service of process of a protective injunction upon a respondent, the law enforcement officer must forward the written proof of service of process to the sheriff with jurisdiction over the petitioner's residence;
- Within 24 hours after the sheriff receives a certified copy of the protective injunction, the sheriff must make information relating to the injunction available to other law enforcement agencies by electronically transmitting such information to the Florida Department of Law Enforcement (FDLE); and
- Within 24 hours after the sheriff or other law enforcement officer makes service upon the respondent and the sheriff has been so notified, the sheriff must make such information relating to the service available to other law enforcement agencies by electronically transmitting such information to the FDLE.

CS/HB 563 amends ss. 741.30 and 784.046, F.S., to require the Florida Association of Court Clerks and Comptrollers (association), subject to available funding, to develop an automated process by which a petitioner may request notification that a respondent has been served with a protective injunction against domestic violence, repeat violence, dating violence, or sexual violence. Notice must be made within 12 hours after the sheriff or other law enforcement officer has served the injunction upon the respondent. Such notification must include the date, time, and location in which the protective injunction was served.

The bill also requires the association to apply for any available grants to fund the development of the automated process.

The bill provides an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Injunctions

Current law provides the following in relation to the service of injunctions for protection against domestic violence,¹ repeat violence, sexual violence, or dating violence²:

- Within 24 hours after service of process of a protective injunction upon a respondent, the law enforcement officer must forward the written proof of service of process to the sheriff with jurisdiction over the petitioner's residence;
- Within 24 hours after the sheriff receives a certified copy of the protective injunction, the sheriff must make information relating to the injunction available to other law enforcement agencies by electronically transmitting such information to the Florida Department of Law Enforcement (FDLE); and
- Within 24 hours after the sheriff or other law enforcement officer makes service upon the respondent and the sheriff has been so notified, the sheriff must make such information relating to the service available to other law enforcement agencies by electronically transmitting such information to the FDLE.³

Victim Notification

Section 960.001, F.S., provides guidelines for the fair treatment of victims and witnesses involved in the criminal and juvenile justice systems. Victims have the right to be informed, to be present, and to be heard when relevant, at all crucial stages of a criminal or juvenile proceeding, to the extent that this right does not interfere with constitutional rights of the accused.⁴

Victims⁵ of specific offenses⁶ must be notified within 4 hours by the chief administrator, or a person designated by the chief administrator, of a county jail, municipal jail, juvenile detention facility, or residential commitment facility concerning:

- The release of an offender from incarceration in a county jail, municipal jail, juvenile detention facility, or residential commitment facility; and
- The release of an offender following sentencing, disposition, or furlough.⁷

In any case where an offender escapes from a state correctional institution, private correctional facility, county jail, juvenile detention facility, or residential commitment facility, the institution of confinement must immediately notify the state attorney of the jurisdiction where the criminal charge or petition for delinquency arose and the judge who imposed the sentence of incarceration.⁸ The state attorney must make every effort to notify the victim, material witness, parents or legal guardian of a minor who is a victim or witness, or immediate relatives of a homicide victim of the escapee.⁹

The Department of Corrections (department) is also required to notify within 30 days, and upon request, the state attorney, the victim, and the personal representative of the victim when an inmate

¹ 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.

² The terms "repeat violence," "sexual violence," and "dating violence" are defined in s. 784.046, F.S.

³ See ss. 741.30 and 784.046, F.S.

⁴ Section 960.001(1)(a), F.S.

⁵ Section 960.001, F.S., provides that notification can requested by the victim or the appropriate next of kin of a victim or a designated contact of the victim.

⁶ These offenses include homicide, pursuant to ch. 782, F.S.; a sexual offense, pursuant to ch. 794, F.S.; an attempted murder or sexual offense, pursuant to ch. 777, F.S.; stalking, pursuant to s. 784.048, F.S.; and domestic violence, pursuant to s. 25.385, F.S.

⁷ Section 960.001(1)(f), F.S.

⁸ Section 960.001(1)(p), F.S.

⁹ *Id.*

has been approved for community work release.¹⁰ The department is also required to notify the victim six months before the release of an inmate from the department.¹¹ If an inmate is a sexual offender,¹² the department is required, if requested, to notify the victim of the offense, the victim's parent, legal guardian, or lawful representative if the victim is a minor, or the next of kin if the victim is a homicide victim, within 6 months prior to the anticipated release of a sexual offender, or as soon as possible if the sexual offender is released earlier than anticipated.¹³

Effect of Proposed Changes

CS/HB 563 amends ss. 741.30 and 784.046, F.S., to require the Florida Association of Court Clerks and Comptrollers (association), subject to available funding, to develop an automated process by which a petitioner may request notification that a respondent has been served with a protective injunction against domestic violence, repeat violence, dating violence, or sexual violence. Notice must be made within 12 hours after the sheriff or other law enforcement officer has served the injunction upon the respondent. Such notification must include the date, time, and location in which the protective injunction was served.

The bill also requires the association to apply for any available grants to fund the development of automated process.

B. SECTION DIRECTORY:

Section 1. Amends s. 741.30, F.S., relating to domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement.

Section 2. Amends s. 784.046, F.S., relating to action by victim of repeat violence, sexual violence, or dating violence for protective injunction; dating violence investigations, notice to victims, and reporting; pretrial release violations.

Section 3. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

¹⁰ Section 944.605(6), F.S.

¹¹ Section 944.605(1), F.S.

¹² Section 944.606, F.S., "sexual offender" is defined as "a person who has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; or s. 985.701(1); or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this subsection."

¹³ Section 944.606(3)(b), F.S.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See "Fiscal Comments."

D. FISCAL COMMENTS:

The bill requires the association to develop an automated process so that a petitioner may request notification of service of an injunction for protection. However, the bill specifies that the association is only required to develop the automated process if it has available funding. The association must also apply for any available grants to fund the automated process.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

There are several statutes that provide public record exemptions for certain information concerning victims of domestic violence.¹⁴ As drafted, this bill does not create a public records exemption. Therefore, information a petitioner discloses pursuant to the bill may be public record.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 22, 2011, the Criminal Justice Subcommittee adopted a strike-all amendment to the bill and reported the bill favorably as a Committee Substitute. The amendment requires the Florida Association of Court Clerks and Comptrollers to:

- Subject to available funding, develop an automated process by which a petitioner may request notification that a respondent has been served with a protective injunction against domestic violence, repeat violence, dating violence, or sexual violence.
- Apply for any available grants to fund the development of the automated process.

This analysis is drafted to the Committee Substitute.

¹⁴ These statutes include s. 39.908, F.S., (confidentiality of information received by department or domestic violence center); s. 97.0585, F.S., (public records exemption; information regarding voters and voter registration; confidentiality); s. 741.29, F.S., (domestic violence; investigation of incidents; notice to victims of legal rights and remedies; reporting); s. 741.30, F.S., (domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement); s. 741.3165, F.S., (certain information exempt from disclosure); and s. 741.465, F.S., (public records exemption for the Address Confidentiality Program for Victims of Domestic Violence).