

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 Committee on Criminal Justice

BILL: SB 804

INTRODUCER: Senator Abruzzo

SUBJECT: Violation of an Injunction for Protection Against Domestic Violence

DATE: March 27, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Cannon	CJ	Favorable
2.			ACJ	
3.			FP	

I. Summary:

SB 804 amends s. 741.31(4), F.S., increasing the penalty for third or subsequent violations of an injunction for protection to a third degree felony if a person has two or more prior convictions for the same offense.

The bill defines “conviction” to mean a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

II. Present Situation:

Injunctions for Protection against Domestic Violence

Any person who is the victim of domestic violence¹ or who reasonably believes that he or she is in imminent danger of becoming the victim of domestic violence may file a petition for an injunction for protection against domestic violence.² The sworn petition must allege the existence of domestic violence and include specific facts and circumstances upon which relief is sought.³ A hearing must be set at the earliest possible time after a petition is filed and the respondent must be personally served with a copy of the petition.⁴ At the hearing, specified injunctive relief may be granted if the court finds that the petitioner is:

- The victim of domestic violence; or

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 Section 741.30(1), F.S.

³ Section 741.30(3), F.S.

⁴ Section 741.30(4), F.S.

- Has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence.⁵

If it appears to the court that an immediate and present danger of domestic violence exists when the petition is filed, the court may grant a temporary injunction ex parte.⁶ Temporary injunctions are only effective for a fixed period that cannot exceed 15 days.⁷ The hearing on the petition must be set for a date on or before the date when the temporary injunction expires.⁸

Violation of an Injunction

A respondent violates the terms of an injunction for protection against domestic violence issued pursuant to s. 741.30, F.S., or a foreign protection order accorded full faith and credit pursuant to s. 741.315, F.S., by:

- Refusing to vacate the dwelling that the parties share;
- Going to, or is 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 car; or
- Refusing to surrender firearms or ammunition if ordered to do so by the court.⁹

A court can enforce a violation of an injunction for protection through civil or criminal contempt proceedings, or the state attorney may prosecute the violation as a first degree misdemeanor.¹⁰

Currently, violating an injunction for protection is a first degree misdemeanor, regardless of how many times a person is convicted of this offense.¹¹

⁵ Either party may move the court to modify or dissolve an injunction at any time. s. 741.30(6)(c) and (10), F.S.

⁶ Pursuant to s. 741.30(5), F.S., the court may grant such relief as it deems proper, including an injunction restraining the respondent from committing any acts of domestic violence, awarding to the petitioner the temporary exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner, and providing the petitioner a temporary parenting plan.

⁷ Section 741.30(5)(c), F.S.

⁸ Pursuant to s. 741.30(5)(c), F.S., the court may grant a continuance of the hearing for good cause, which may include obtaining service of process. A temporary injunction must be extended, if necessary, during any period of continuance.

⁹ Sections 741.31(4)(a), 784.047, and 784.0487, F.S.

¹⁰ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. See ss. 775.082, and 775.083, F.S.

¹¹ Section 741.30, F.S.

III. Effect of Proposed Changes:

The bill amends s. 741.31(4), F.S., increasing the penalty for third or subsequent violations of an injunction for protection to a third degree felony if a person has two or more prior convictions for the same offense.

The bill defines “conviction” to mean a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

The bill provides an effective date of October 1, 2015.

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.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference met on March 11, 2015, and gave a recommended estimate of positive indeterminate. FDLE reported that in FY 13-14, there were 183 guilty/convicted counts and 6 adjudication withheld counts for repeat offenders violating s. 741.31, F.S. It is unknown what number of these repeat offenses were third or subsequent violations. In FY 13-14, the incarceration rate for unranked 3rd degree felonies was 9.7 percent.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 741.31 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of 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.
