

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 380

INTRODUCER: Senator Abruzzo

SUBJECT: Violation of an Injunction for Protection

DATE: November 16, 2015 REVISED: 11/17/15

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

I. Summary:

SB 380 amends ss. 741.31(4), 784.047, and 784.0487(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. A third degree felony is punishable by probation or up to a maximum of five years in prison.

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 Specified Acts of Violence

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

Repeat, Dating, and Sexual Violence

Section 784.046, F.S., governs the issuance of injunctions against repeat violence, dating violence, and sexual violence. This statute largely parallels the provisions discussed above regarding domestic violence injunctions. Section 784.046(1)(b)(a), F.S., defines “repeat violence” to mean two incidents of violence or stalking committed by the Respondent, one of which must have been within six months of the filing of the petition, which are directed against the petitioner or the petitioner’s immediate family member. Section 784.046(1)(a), F.S., defines “violence” to mean any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, or false imprisonment, or any criminal offense resulting in physical injury or death, by a person against any other person.

Section 784.046(1)(d), F.S., defines “dating violence” to mean violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. Dating violence does not include violence in a casual acquaintanceship or between individuals who have only engaged in ordinary fraternization. The existence of such a relationship is determined by considering the following factors:

- A dating relationship must have existed within the past six months;
- The nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and
- The persons involved in the relationship must have been involved over time and on a continuous basis during the course of the relationship.

Section 784.046(1)(c), F.S., defines “sexual violence” to mean any one incident of:

- Sexual battery;
- A lewd or lascivious act committed upon or in the presence of a person younger than 16 years of age;
- Luring or enticing a child;
- Sexual performance by a child; or
- Any other forcible felony wherein a sexual act is committed or attempted.

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.

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.

Stalking and Cyberstalking

Section 784.0485, F.S., governs the issuance of injunctions against stalking and cyberstalking. This statute largely parallels the provisions discussed above regarding domestic violence injunctions.

Violation of an Injunction

A respondent violates the terms of an injunction for protection against domestic violence, repeat, dating or sexual violence, or stalking or cyberstalking by willfully:

- Refusing to vacate the dwelling that the parties share;⁹
- 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.¹⁰

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.¹¹

Currently, violating an injunction for protection is a first degree misdemeanor, regardless of how many times a person is convicted of this offense.¹²

III. Effect of Proposed Changes:

The bill amends ss. 741.31(4), 784.047 and 784.0487(4) F.S., making the penalty for an offense of violating an injunction for protection 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.

⁹ This provision does not apply to injunctions for protection against stalking or cyberstalking. s. 784.0487, F.S.

¹⁰ Sections 741.31(4)(a), 784.047, and 784.0487, F.S.

¹¹ 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.

¹² Section 741.30, F.S.

The bill provides an effective date of October 1, 2016.

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 in October 2015, and gave a recommended estimate of positive indeterminate. FDLE reported that in FY 14-15, there were 190 guilty/convicted counts and 6 adjudication withheld counts for repeat offenders violating s. 741.31, F.S. There were 12 guilty/convicted counts and 1 adjudication withheld count for repeat offenders violating s. 784.047, F.S. There was 1 guilty/convicted count and 0 adjudication withheld counts for repeat offenders violating s. 784.0487, F.S. It is unknown what number of these repeat offenses were third or subsequent violations. In FY 14-15, the incarceration rate for unranked 3rd degree felonies was 9.9 percent.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 741.31, 784.047, and 784.0487.

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.
