

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 Judiciary

BILL: CS/SB 1082

INTRODUCER: Agriculture Committee and Senator Albritton

SUBJECT: Domestic Violence Injunctions

DATE: February 18, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Akhvein</u>	<u>Becker</u>	<u>AG</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u>Favorable</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1082 expressly authorizes a court, when granting a domestic violence injunction, to:

- Award the petitioner the exclusive care, possession, or control of an animal that is owned, possessed, harbored, kept, or held by the petitioner, the respondent, or a minor child who is residing in the residence or household of the petitioner or respondent.
- Order the respondent to have no contact with the animal.
- Prohibit the respondent from taking, transferring, encumbering, concealing, harming, or otherwise disposing of the animal.

The bill does not apply to animals owned primarily for a bona fide agricultural purpose or to a service animal if the respondent is the service animal's handler.

The bill takes effect July 1, 2020.

II. Present Situation:

Domestic Violence Data

According to data compiled by the Florida Department of Law Enforcement, 104,914 incidents of domestic violence were reported in 2018. The vast majority of the crimes were considered simple assaults, accounting for 83,980 incidents, with an additional 16,000 crimes labeled as

aggravated assaults. Of the more serious crimes, there were 19 cases of manslaughter and 196 cases of criminal homicide.¹

Domestic Violence Injunctions

Temporary Injunctions

If someone believes that she or he is a victim of domestic violence² or has reasonable cause to believe that she or he is in imminent danger of becoming a victim of domestic violence, that person may petition a circuit court for an injunction for protection against domestic violence. The clerk of the court is required by statute to provide simplified forms for the petitioner to file as well as an informational brochure about the process. The petitioner may not be charged a fee for filing the petition.³ The clerk's office will take the sworn petition to a judge who rules on the petition, generally within 24 hours.

The petition form contains a list of circumstances that the petitioner may check to demonstrate that various instances or threats of domestic violence have occurred. One of these instances is whether the respondent has ever intentionally injured or killed a family pet.⁴

The judge examines the petition, *ex parte*, meaning that the judge examines only the information submitted by the petitioner. The parties are generally not present, and no additional evidence is submitted. If it appears to the court that an immediate and present danger of domestic violence exists, the court may grant a temporary injunction, pending a full hearing at a later date. In addition to the temporary injunction, the court may grant relief as it deems proper, including an injunction:

- Restraining the respondent from committing any acts of domestic violence.
- Awarding the petitioner the temporary and exclusive use of the dwelling that the parties share or excluding the respondent from the petitioner's residence.
- Providing the petitioner a temporary parenting plan in which the petitioner may receive up to 100 percent of time-sharing.⁵

Any *ex parte* temporary injunction is effective for a fixed period of time that does not exceed 15 days. A full hearing will be set for a date that is no later than the date when the temporary injunction expires, although the court may grant a continuance for good cause shown, including a

¹ Florida Department of Law Enforcement, *Domestic Violence, Victim to Offender Relationships*, <http://www.fdle.state.fl.us/FSAC/Crime-Data/DV.aspx> and Florida Department of Law Enforcement, *Florida's County and Jurisdictional Reported Domestic Violence Offenses*, 2018, http://www.fdle.state.fl.us/FSAC/Documents/PDF/DV_OFF_JUR18.aspx.

² "Domestic violence" means 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.

"Family or household member means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit." Section 741.28(3), F.S.

³ Section 741.30(1)(a) and (2)(a), F.S.

⁴ Section 741.30(3)(a), F.S.

⁵ Section 741.30(5)(a) and (b), F.S.

continuance to obtain service of process on the respondent. A temporary injunction will be extended if it is necessary to remain in full force and effect during the continuance.⁶

Injunctions

Once notice is given and a hearing is held, and the court concludes that the petitioner is a victim of domestic violence or has reasonable cause to believe that she or he is in imminent danger of becoming a victim, the court may grant an injunction, no longer a temporary injunction:

- Restraining the respondent from committing any acts of domestic violence.
- Awarding the petitioner the exclusive use of the dwelling or excluding the respondent from the petitioner's residence.
- Providing the petitioner a temporary parenting plan in which the petitioner may receive up to 100 percent of time-sharing.
- Establishing temporary support for a minor child or children of the petitioner.
- Ordering the respondent to participate in treatment, intervention, or counseling.
- Referring a petitioner to a certified domestic violence center.
- Order other relief that the court deems necessary to protect the domestic violence victim, including injunctions or directives to law enforcement agencies.⁷

The injunction remains in effect until it is modified or dissolved. The petitioner or respondent may move at any time for those actions.⁸

Domestic Violence and Animal Abuse

According to the Florida Coalition Against Domestic Violence, there is an interconnection between domestic violence and animal abuse. The Coalition states that the American Humane Association reports that 71 percent of women who enter emergency shelters report that their abuser injured, maimed, killed, or threatened harm to family pets for the purpose of revenge or to psychologically control their victims. The Coalition also states that between 25 percent and 40 percent of battered women postpone leaving abusive situations because they fear harm will be done to their animals.⁹

A 2020 Michigan State University College of Law publication notes that 35 states, the District of Columbia, and Puerto Rico have enacted legislation that includes references to pets in domestic violence protection injunctions and orders.¹⁰

Domestic Violence Injunctions and the Award of Animals

Staff has been unable to find a statute authorizing a court to order an equitable property distribution in an injunction proceeding. Although pets may be considered by some to be a

⁶ Section 741.30(5)(c), F.S.

⁷ Section 741.30(6), F.S.

⁸ Section 741.30(6)(c), F.S.

⁹ Florida Coalition Against Domestic Violence, *Darby Against Domestic Violence*, <https://www.fcadv.org/darby>.

¹⁰ Rebecca F. Wisch, Michigan State University College of Law, *Domestic Violence and Pets: List of States that Include Pets in Protection Orders* (2020), <https://www.animallaw.info/article/domestic-violence-and-pets-list-states-include-pets-protection-orders>.

member of the family, under Florida law, pets are considered personal property and subject to the equitable distribution statute.¹¹ Therefore, without a specific authorization, a court would likely be reluctant to make a determination that someone is entitled to the care of an animal in an injunction proceeding.

III. Effect of Proposed Changes:

The bill expressly authorizes a court, when granting a domestic violence injunction, to:

- Award the petitioner the exclusive care, possession, or control of an animal that is owned, possessed, harbored, kept, or held by the petitioner, the respondent, or a minor child who is residing in the residence of the petitioner or respondent. (In a temporary injunction, the petitioner’s care is “temporary” but in the injunction, the care is not restricted to temporary care.)
- Order the respondent to temporarily have no contact with the animal. (Similarly, in the temporary injunction, the respondent is “temporarily” ordered to have no contact with the animal, but the injunction removes the reference to “temporarily.”)
- Prohibit the respondent from taking, transferring, encumbering, concealing, harming, or otherwise disposing of the animal.

This provision does not apply to an animal that is owned primarily for a bona fide agricultural purpose,¹² as defined under s. 193.461, F.S., or to a service animal,¹³ as defined under s. 413.08, F.S., if the respondent is the service animal’s handler.

The bill also conforms cross-references and makes technical changes.

The bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹¹ *Bennett v. Bennett*, 655 So. 2d 109 (Fla. 1st DCA 1995).

¹² The term “bona fide agricultural purposes” means a good faith commercial agricultural use of the land. In determining whether the use of the land for agricultural purposes is bona fide, the following factors may be taken into consideration: The length of time the land has been so used; whether the use has been continuous; the purchase price paid; the size, as it relates to specific agricultural use, but a minimum acreage may not be required for agricultural assessment; whether an indicated effort has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices, including, without limitation, fertilizing, liming, tilling, mowing, reforestation, and other accepted agricultural practices; whether the land is under lease and, if so, the effective length, terms, and conditions of the lease; and such other factors as may become applicable. Section 193.461(3)(b), F.S.

¹³ “Service animal” means an animal that is trained to do work or perform tasks for an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. A service animal is not a pet. Section 413.08(1)(d), F.S.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 741.30 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Agriculture on January 14, 2020:

The committee substitute corrects an error that appears two places in the bill by changing the word “defendant” to the word “respondent.”

B. Amendments:

None.

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