

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 241 Domestic Violence Injunctions

SPONSOR(S): Judiciary Committee, Criminal Justice Subcommittee, Killebrew, Silvers, and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1082

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	15 Y, 0 N, As CS	Mawn	Hall
2) Judiciary Committee	14 Y, 0 N As CS	Mawn	Luczynski

SUMMARY ANALYSIS

Domestic violence means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any other criminal offense resulting in the physical injury or death of one family or household member by another family or household member. Domestic violence perpetrators commonly threaten to harm or kill a family or household pet to exert control over their victims, and research shows that pet abuse is one of four significant domestic violence predictors.

To protect himself or herself from abuse or threats of abuse, a domestic violence victim may petition for a protective injunction. In Florida, a petitioner may allege that the respondent injured or killed a family pet as a basis for a domestic violence injunction. If the court believes the petitioner is in immediate and present danger of domestic violence, it may issue a temporary injunction ex parte, awarding the petitioner relief, including temporary exclusive use and possession of a shared residence and up to 100 percent time-sharing of a minor child. Following a hearing, if a court determines that the petitioner is either a domestic violence victim or has reasonable cause to believe he or she is in imminent danger of becoming one, it may issue a permanent injunction and award the petitioner relief, including exclusive use and possession of a shared residence, up to 100 percent time-sharing of a minor child, temporary financial support, and any other relief it deems necessary to protect the petitioner.

Florida does not expressly authorize a court to grant to a petitioner the exclusive care, custody, and control of a pet, to order a respondent to have no contact with a pet, or to enjoin a respondent from harming or disposing of, or threatening to harm or dispose of, a pet. Although Florida law generally authorizes a court issuing a permanent injunction to grant relief it deems necessary to protect a domestic violence victim, a court is not authorized to order equitable property distribution in an injunction proceeding and Florida law classifies pets as personal property. Without express authorization to order relief pertaining to pets, a court issuing a domestic violence injunction may believe it lacks the authority to do so.

CS/CS/HB 241 authorizes a court issuing a domestic violence injunction to:

- Award to the petitioner the exclusive care, possession, or control of an animal that the petitioner, the respondent, or a minor child residing in the home of either party owns, possesses, harbors, keeps, or holds, except an animal owned primarily for a bona fide agricultural purpose or a service animal, if the respondent is the service animal's handler;
- Order the respondent to have no contact with the animal; and
- Enjoin the respondent from taking, transferring, encumbering, concealing, harming, or otherwise disposing of the animal.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Domestic Violence

Domestic violence means any criminal offense resulting in the physical injury or death of one family or household member¹ by another family or household member,² including:

- Assault;³
- Aggravated assault;⁴
- Battery;⁵
- Aggravated battery;⁶
- Sexual assault;⁷
- Sexual battery;⁸
- Stalking;⁹
- Aggravated stalking;¹⁰
- Kidnapping;¹¹ and
- False imprisonment.¹²

In 2018, Florida law enforcement agencies received 104,914 domestic violence reports,¹³ resulting in 64,573 arrests.¹⁴ Additionally, Florida's 42 certified domestic violence shelters¹⁵ admitted 14,817 victims to a residential services program and 38,869 victims to a non-residential services program in FY 2018-19.¹⁶ Domestic violence victims lose about eight million paid work days each year, and between 21 to

¹ "Family or household member" means spouses, former spouses, persons related by blood or marriage, persons presently residing together as if a family or who have resided together in the past as 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. S. 741.28(3), F.S.

² S. 741.28(2), F.S.

³ "Assault" means an intentional, unlawful threat by word or act to do violence to another, coupled with an apparent ability to do so, creating a well-founded fear in such other person that violence is imminent. S. 784.011, F.S.

⁴ "Aggravated assault" means an assault with a deadly weapon without intent to kill or with intent to commit a felony. S. 784.021, F.S.

⁵ "Battery" means the actual and intentional touching or striking of another against his or her will or intentionally causing bodily harm to another. S. 784.03, F.S.

⁶ "Aggravated battery" means a battery in which the offender: intentionally or knowingly caused great bodily harm, permanent disability, or permanent disfigurement; used a deadly weapon; or victimized a person the offender knew or should have known was pregnant. S. 784.045, F.S.

⁷ "Sexual assault" has the same meaning as sexual battery.

⁸ "Sexual battery" means oral, anal, or vaginal penetration by, or in union with, the sexual organ of another or the anal or vaginal penetration of another by any object, but does not include an act done for a bona fide medical purpose. S. 794.011(1)(h), F.S.

⁹ "Stalking" means willfully, maliciously, and repeatedly following, harassing, or cyberstalking another. S. 784.048(2), F.S.

¹⁰ "Aggravated stalking" means willfully, maliciously, and repeatedly following, harassing, or cyberstalking another and making a credible threat to that person. S. 784.048(3), F.S.

¹¹ "Kidnapping" means forcibly, secretly, or by threat confining, abducting, or imprisoning another against his or her will and without lawful authority with the intent to: hold for ransom or reward or as a shield or hostage; commit or facilitate a felony; inflict bodily harm upon or terrorize another; or interfere with the performance of any governmental or political function. S. 787.01(1), F.S.

¹² "False imprisonment" means forcibly, by threat, or secretly confining, abducting, imprisoning, or restraining another person without lawful authority and against his or her will. S. 787.02(1), F.S.

¹³ *Florida's County and Jurisdictional Reported Domestic Violence Offenses, 2018*, Florida Department of Law Enforcement, http://www.fdle.state.fl.us/FSAC/Documents/PDF/DV_OFF_JUR18.aspx (last visited Feb. 6, 2020).

¹⁴ *Florida's County and Jurisdictional Domestic Violence Related Arrests, 2018*, Florida Department of Law Enforcement, http://www.fdle.state.fl.us/FSAC/Documents/PDF/DV_ARR_JUR18.aspx (last visited Feb. 6, 2020).

¹⁵ "Domestic violence shelter" means an agency providing services to domestic violence victims as its primary mission. The Department of Children and Families operates the statewide Domestic Violence Program, responsible for certifying domestic violence centers. Section 39.905, F.S., and ch. 65H-1, F.A.C., set forth the minimum domestic violence center certification standards.

¹⁶ *Domestic Violence Annual Report*, Florida Department of Children and Families, <https://www.myflfamilies.com/service-programs/domestic-violence/docs/2018-2019%20DV%20Service%20Report.pdf> (last visited Feb. 6, 2020).

60 percent lose their jobs for reasons connected to the abuse.¹⁷ Domestic violence costs exceed \$5.8 billion per year, with \$4.1 billion of that cost stemming from health care services.¹⁸

Domestic Violence and Pets

In the United States, 67 percent of households have a pet, equating to approximately 84.9 million homes.¹⁹ Many people have close relationships with their pets; 95 percent of pet owners surveyed in a recent poll reported considering their pets family members.²⁰ Domestic violence perpetrators commonly threaten to harm or kill a household pet to exert control over their victims, and research shows that pet abuse is one of four significant domestic violence predictors.²¹ One survey found that 48 percent of domestic violence victims delayed seeking help or leaving an abusive situation out of fear for their pets' safety,²² and in another, 71 percent reported that their abuser threatened, injured, or killed their pet.²³

Domestic Violence Injunctions

An injunction is a court order prohibiting someone from doing a specified act or commanding someone to undo some wrong or injury.²⁴ An injunction for protection against domestic violence ("domestic violence injunction") may be sought by a family or household member.²⁵ The parties do not need to be married before a person can seek relief from domestic violence, and a party's right to seek relief is not affected by leaving the residence or household to avoid domestic violence.²⁶

A petition for a domestic violence injunction may be filed in the circuit where the petitioner currently or temporarily resides, where the respondent resides, or where the domestic violence occurred.²⁷ The petition must be sworn and include an allegation of domestic violence and the specific facts and circumstances that form the basis for the petitioner's desire for relief.²⁸ Such facts may include an allegation that the respondent intentionally injured or killed a family pet.²⁹

Upon the filing of a petition, the court must set a hearing at the earliest possible time.³⁰ However, if the court believes the petitioner is in immediate and present danger of domestic violence, it may grant a temporary injunction ex parte, pending a full hearing, and grant relief including:

- Restraining the respondent from committing any acts of domestic violence;
- Awarding to the petitioner the temporary exclusive use and possession of a shared residence or excluding the respondent from the petitioner's residence; and
- Providing the petitioner a temporary parenting plan,³¹ including a time-sharing schedule,³² which may award the petitioner up to 100 percent of the time-sharing.³³

¹⁷ Statistics, National Coalition Against Domestic Violence, <https://ncadv.org/statistics> (last visited Feb. 6, 2020).

¹⁸ What is Domestic Violence?, Florida Coalition Against Domestic Violence, <https://www.fcadv.org/about/what-domestic-violence> (last visited Feb. 6, 2020).

¹⁹ See *2019-2020 APPA National Pet Owners Survey*, American Pet Products Association, https://www.americanpetproducts.org/press_industrytrends.asp (last visited Feb. 6, 2020).

²⁰ The Harris Poll #41 (July 16, 2015), <https://theharrispoll.com/whether-furry-feathered-or-flippers-a-flapping-americans-continue-to-display-close-relationships-with-their-pets-2015-is-expected-to-continue-the-pet-industrys-more-than-two-decades-strong/> (last visited Feb. 6, 2020).

²¹ The other predictors are lack of a high school degree, fair or poor mental health, and substance abuse. See B. Walton-Moss, et al., *Risk Factors for Intimate Partner Violence and Associated Injury Among Urban Women*, *Community Health* Vol. 30, 377-389 (Oct. 2005), <https://www.ncbi.nlm.nih.gov/pubmed/16175959> (last visited Feb. 6, 2020).

²² Pamela Carlisle-Frank, et al., *Selective Battering of the Family Pet*, *Anthrozoös*, Vol. 17 (April 2015), <https://www.tandfonline.com/doi/abs/10.2752/089279304786991864> (last visited Feb. 6, 2020).

²³ Frank R. Ascione, et al., *The Abuse of Animals and Domestic Violence: A National Survey of Shelters for Women Who Are Battered, Society and Animals* Vol. 5 (1997), http://www.ncdsv.org/images/animal_abuse_and_dv.pdf (last visited Feb. 6, 2020).

²⁴ Black's Law Dictionary 540 (6th ed. 1995).

²⁵ S. 741.30(1)(e), F.S.

²⁶ Ss. 741.30(1)(d) and (e), F.S.

²⁷ S. 741.30(1)(k), F.S.

²⁸ S. 741.30(3)(b), F.S.

²⁹ *Id.*

³⁰ S. 741.30(4), F.S.

³¹ A "parenting plan" governs the relationship between parents relating to decisions that must be made regarding the minor child and must contain a time-sharing schedule for the parents and child. S. 61.046(14), F.S.

³² "Time-sharing schedule" means a timetable that must be included in a parenting plan that specifies the time, including overnights and holidays, which a minor child will spend with each parent. S. 61.046(23), F.S.

A temporary injunction is effective for up to 15 days, and a full hearing must be set for a date prior to the injunction's expiration.³⁴

Following a hearing, if a court determines that the petitioner is either a domestic violence victim or has reasonable cause to believe he or she is in imminent danger of becoming a domestic violence victim, it may grant a domestic violence injunction.³⁵ In determining whether the petitioner has reasonable cause to believe he or she is in imminent danger of becoming a domestic violence victim, the court may consider whether the respondent has intentionally injured or killed a family pet.³⁶

A court issuing a permanent injunction may grant relief including:

- Restraining the respondent from committing any acts of domestic violence;
- Awarding to the petitioner the exclusive use and possession of a shared residence or excluding the respondent from the petitioner's residence;
- Providing the petitioner with 100 percent of the time-sharing in a parenting plan;
- Establishing temporary support for a minor child or for the petitioner;
- Ordering the respondent to participate in treatment, intervention or counseling services;
- Referring a petitioner to a certified domestic violence center; and
- Ordering other relief it deems necessary to protect a domestic violence victim.³⁷

The terms of a permanent domestic violence injunction remain in effect until modified or dissolved, and either party may move at any time for modification or dissolution.³⁸

Animals and Domestic Violence Injunctions

Florida does not expressly authorize a court to grant to a petitioner the exclusive care, custody, and control of a pet, to order a respondent to have no contact with a pet, or to enjoin a respondent from harming or disposing of, or threatening to harm or dispose of, a pet.³⁹ Although Florida law generally authorizes a court issuing a permanent injunction to grant relief it deems necessary to protect a domestic violence victim,⁴⁰ a court is not authorized to order equitable property distribution in an injunction proceeding⁴¹ and Florida law classifies pets as personal property.⁴² Without express authorization to order relief pertaining to pets, a court issuing a domestic violence injunction may believe it lacks the authority to do so.

As of 2019, 33 states,⁴³ the District of Columbia, and Puerto Rico have enacted legislation explicitly authorizing a court to order relief pertaining to pets in a domestic violence injunction proceeding.⁴⁴ Such relief generally includes awarding the exclusive care, custody, and control of a pet to the petitioner, ordering the respondent to have no contact with a pet, and enjoining the respondent from harming or disposing of, or threatening to harm or dispose of, a pet.⁴⁵

Effect of the Proposed Changes

CS/CS/HB 241 authorizes a court granting a domestic violence injunction to:

³³ S. 741.30(5)(a), F.S.

³⁴ *Id.*

³⁵ *Id.*

³⁶ S. 741.30(6)(b)4., F.S.

³⁷ S. 741.30(6)(a), F.S.

³⁸ S. 741.30(6)(c), F.S.

³⁹ *See generally* s. 741.30, F.S.

⁴⁰ S. 741.30(6)(a)(7), F.S.

⁴¹ *See* ch. 71, F.S.

⁴² *Levine v. Knowles*, 197 So.2d 329 (Fla. 3rd DCA 1967).

⁴³ These states include: Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Hawaii, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, and Wisconsin.

⁴⁴ Rebecca F. Wisch, *Domestic Violence and Pets: Lists of State that Include Pets in Protection Orders*, Michigan State University (2019), <https://www.animallaw.info/article/domestic-violence-and-pets-list-states-include-pets-protection-orders> (last visited Feb. 6, 2020).

⁴⁵ *Id.*

- Award to the petitioner the exclusive care, possession, or control of an animal that the petitioner, the respondent, or a minor child residing in the home of either party owns, possesses, harbors, keeps, or holds, except for an animal owned primarily for a bona fide agricultural purpose⁴⁶ or a service animal, if the respondent is the service animal's handler;⁴⁷
- Order the respondent to have no contact with the animal; and
- Enjoin the respondent from taking, transferring, encumbering, concealing, harming, or otherwise disposing of the animal.

The bill provides an effective date of July 1, 2020.

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; public records exemption.

Section 2: Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may reduce the number of paid work days missed, jobs lost, and health care costs incurred by domestic violence victims as more victims concerned for their pets' safety may seek protective injunctions.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

⁴⁶ "Bona fide agricultural purpose" means a good faith commercial agricultural use of land. In determining whether agricultural use of land is bona fide, a person may consider 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; whether an indicated effort has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices; whether the land is under lease, and if so, the length, terms, and conditions of the lease; and other applicable factors. S. 193.461(3)(b), F.S.

⁴⁷ "Service animal" means an animal trained to do work or perform tasks for an individual with a disability. The work done or tasks performed must be directly related to the individual's disability. A service animal is not a pet. S. 413.08(1)(d), F.S.

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 21, 2020, the Criminal Justice Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments changed references from “defendant” to “respondent” throughout the bill, as a court issues an injunction against a respondent and not a defendant.

On February 6, 2020, the Judiciary Committee adopted two amendments and reported the bill favorably as a committee substitute. The amendments provided that a court is not authorized to award a petitioner either temporary or permanent injunctive relief including possession of a service animal, as defined under s. 413.08, F.S., if the respondent is the service animal’s handler.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.