

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 Rules

BILL: CS/CS/SB 654

INTRODUCER: Rules Committee; Judiciary Committee; Senator Cruz, and others

SUBJECT: Protective Injunctions

DATE: February 15, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Moody</u>	<u>Cox</u>	<u>CF</u>	Favorable
3.	<u>Ravelo</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 654 requires clerks of court to transmit and sheriffs to accept electronic copies of documents relating to proceedings for an injunction for protection against domestic violence and similar injunction proceedings if the respondent resides or can be found in a county other than the county in which the petition is filed. However, the sheriff has discretion to accept documents transmitted electronically if the respondent resides in the county where the petition was filed. The bill requires the Florida Sheriffs Association and the Court Clerks and Comptrollers to establish a joint workgroup to coordinate these new procedures for the electronic transmission of documents.

The bill does not change the requirements of existing law that the clerk forward the documents, including injunctions for protection against domestic violence and similar injunctions, to the sheriff within 24 hours after issuance. These documents are then to be served by the sheriff on the appropriate party to the injunction proceeding as under existing law. By giving the sheriff limited discretion to accept electronic copies of domestic violence injunctions and similar injunctions, the bill will likely enable sheriffs to serve the injunctions on the respondents more quickly after the injunctions are issued by the court. The fiscal impact will vary by county depending on their existing resources and procedures. See Section V. Fiscal Impact Statement.

The bill takes effect January 1, 2023.

II. Present Situation:

Clerks of the Court

The Clerk of the Circuit Court is a constitutional officer elected within each of Florida's 67 counties. The clerk generally serves as both the clerk of the courts as well as the clerk of the board of county commissioners, auditor, recorder and custodian of all county funds.¹ Florida law provides that the clerk of the circuit court is required to be the recorder of all instruments that he or she may be required or authorized by law to record in the county where he or she is clerk. The Clerk is required to record all such instruments in one general series called 'Official Records,' which must be open to the public for the purpose of inspecting and making extracts of the instruments, under the Clerk's supervision."²

Injunctions for Protection

Section 741.30, F.S., authorizes a family or household member³ who is either the victim of domestic violence⁴ or has reasonable cause to believe he or she is in imminent danger of becoming the victim of any act of domestic violence to file in the circuit court a petition for an injunction against domestic violence.

Section 784.046, F.S., provides that:

- A petition for an injunction for protection against repeat violence may be filed in the circuit court by a person who is the victim of repeat violence⁵ or the parent or legal guardian of any minor child who is living at home.
- A petition for an injunction for protection against dating violence may be filed in the circuit court by:
 - A person who is the victim of dating violence⁶ and has reasonable cause to believe he or she is in imminent danger of becoming the victim of another act of dating violence;
 - A person who has reasonable cause to believe he or she is in imminent danger of becoming the victim of an act of dating violence; or

¹ FLA. CONST. Art. V, s. 16. The Florida Constitution specifically provides that two roles may be divided by special or general law between two officers, one serving as clerk of court and one serving as ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds. Additionally, there may be a clerk of the county court if authorized by general or special law.

² Section 28.222(1) & (2), F.S.

³ "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.

⁴ "Domestic violence" is an 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.

⁵ "Repeat violence" means two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner's immediate family member. Section 784.046(1)(b), F.S.

⁶ "Dating violence" is violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. This relationship is determined based on specified factors. Section 784.046(1)(d), F.S.

- The parent or legal guardian of any minor child who is living at home and who seeks an injunction for protection against dating violence on behalf of that minor child.
- A petition for an injunction for protection against sexual violence may be filed in the circuit court by a person who is the victim of sexual violence⁷ or the parent or legal guardian of a minor child who is living at home who is the victim of sexual violence on his or her own behalf or on behalf of the minor child if:
 - The person has reported the sexual violence to a law enforcement agency and is cooperating in any criminal proceeding against the respondent, regardless of whether criminal charges based on the sexual violence have been filed, reduced, or dismissed by the state attorney; or
 - The respondent who committed the sexual violence against the victim or minor child was sentenced to a term of imprisonment in state prison for the sexual violence and the respondent's term of imprisonment has expired or is due to expire within 90 days following the date the petition is filed.

Section 784.0485, F.S., authorizes a person who is the victim of stalking⁸ or the parent or legal guardian of a minor child who is living at home who seeks an injunction for protection against stalking on behalf of the minor child to file in the circuit court a petition for an injunction for protection against stalking. For the purposes of injunctions for protection against stalking, the offense of stalking includes the offense of cyberstalking.⁹

Once an injunction is ordered by a court, clerk of the court is required to furnish a copy of the petition, notice of hearing, and temporary injunction, if any, to the law enforcement agency of the county where the respondent resides or can be found. For an injunction for protection against dating violence, the clerk must also furnish a copy of any financial affidavit, as well as any Uniform Child Custody Jurisdiction and Enforcement Act affidavit.¹⁰ Within 24 hours after the court issues a protective injunction, the clerk of the court must forward a certified copy of the injunction for service to the law enforcement agency with jurisdiction over the residence of the petitioner. The enforcement agency must serve the respondent with these documents as soon as possible. At the law enforcement agency's request, the clerk may transmit a facsimile copy of the protection injunction that the clerk has certified.¹¹

Legal Standard for a Protective Injunction

The procedures for the issuance of a protective injunction issued under s. 741.30, F.S., s. 784.046, F.S., or s. 784.0485, F.S., are similar. A person who is the victim of domestic violence

⁷ "Sexual violence" means 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, regardless of whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney. Section 784.046(1)(c), F.S.

⁸ The offense of stalking is committed by a person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person. Section 784.048(2), F.S.

⁹ "Cyberstalk" means to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person; or to access, or attempt to access, the online accounts or Internet-connected home electronic systems of another person without that person's permission, causing substantial emotional distress to that person and serving no legitimate purpose. Section 784.048(1)(d), F.S.

¹⁰ Section 741.30, F.S., s. 784.046, F.S., and s. 784.0458, F.S.

¹¹ Sections 741.30(8)(c)(1), F.S., s. 784.046(8)(c)(1), F.S., and s. 784.0458(8)(c)(1), F.S.

or has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence, for example, has standing to file a sworn petition for an injunction.¹² Based on this initial petition, a court may issue a *temporary* injunction ex-parte.¹³ During an ex-parte proceeding, a court is generally not required to review a response from the accused and may base a temporary injunction on hearsay evidence.^{14, 15} Additional evidence may be considered, however, if an accused appears at the ex-parte proceeding or has received reasonable notice of the hearing.¹⁶ This ex-parte proceeding is often necessary because “the existence of a true emergency . . . may sometimes require immediate action that will not permit the movant to verify each allegation made.”¹⁷

Parties to an injunction are entitled to a full hearing and a temporary injunction is effective for a maximum of 15 days.¹⁸ A full hearing is required prior to the expiration of the temporary injunction. At the full hearing, the accused must have a reasonable opportunity to prove or disprove the allegations made in the complaint and is entitled to introduce evidence and cross exam witnesses.¹⁹ Based upon the full hearing, a court “must consider the current allegations, the parties’ behavior within the relationship, and the history of the relationship as a whole” to determine if a permanent injunction is warranted based on the petitioner’s belief that he or she is in imminent danger of becoming a victim of domestic violence.²⁰

III. Effect of Proposed Changes:

The bill allows the clerk of the court to transmit domestic violence related injunction documents to the sheriff in an electronic format if the respondent resides or can be found in the county where the petition is filed and the sheriff consents to receiving the documents in an electronic format. If the respondent resides or can be found outside of the county in which the petition was filed, the clerk of the court *must* electronically transmit of these documents to the sheriff where the respondent resides or can be found. The bill specifically applies to the following documents that the clerk of the court must forward to the sheriff when an injunction proceeding is initiated:

- The petition;
- Any temporary injunction issued;
- Any notice of hearing;
- Any financial affidavit; and
- Any Uniform Child Custody Jurisdiction and Enforcement Act affidavit.

¹² Section 741.30(1)(a), F.S.

¹³ Section 741.30(5)(c), F.S.

¹⁴ *Parrish v. Price*, 71 So. 3d 132, 134 (Fla. 2d DCA 2011) (Holding that a temporary injunction may be based solely on the petition filed, even if it is almost entirely based on hearsay statements).

¹⁵ Additionally, when a “parent files a sworn petition and has reasonable cause to believe the minor child is a victim of sexual violence by a nonparent, the sworn petition is a *presumptively sufficient* basis for an injunction.” (emphasis added) *Berthiaume v. B.S. ex rel. A.K.*, 85 So. 3d 1117, 1119 (Fla. 1st DCA 2012).

¹⁶ Section 741.30(5)(b), F.S.

¹⁷ *Smith v. Crider*, 932 So. 2d 393, 399 n. 4 (Fla. 2d DCA 2006).

¹⁸ A court may, however, grant a continuance for good cause as requested by either party. The temporary injunction may be extended to include the continuance. Section 741.30(5)(c), F.S.

¹⁹ *Furry v. Rickles*, 68 So. 3d 389, 390 (Fla. 1st DCA 2011) (citing *Ohrn v. Wright*, 963 So. 2d 298 (Fla. 5th DCA 2007)).

²⁰ *Giallanza v. Giallanza*, 787 So.2d 162, 164 (Fla. 2d DCA 2001) (citing *Gustafson v. Mauck*, 743 So. 2d 614, 616 (Fla. 1st DCA 1999)).

The bill deletes the provisions of current law that would allow the clerk of the court to transmit a facsimile copy of the information only upon the request of the sheriff. Additionally, the bill allows for a sheriff to authorize a law enforcement officer to provide proof of service of the injunction electronically.

The bill requires the Florida Sheriffs Association and the Court Clerks and Comptrollers to discuss and coordinate the new procedures outlined in the bill.

The bill takes effect January 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

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:

CS/CS/SB 654 may result in indeterminate negative impact for any law enforcement agencies and clerks of court that do not currently have the resources in place to transmit and receive injunction documents in an electronic format.

The FCCC reports that technology to be able to send electronic certified copies of injunction related documents could cost up to \$30,000 per office, but this cost will vary depending on each county's current resources.²¹ The cost may be higher in smaller counties because of the need to purchase equipment; whereas, larger counties may be able to absorb the costs or have the necessary equipment already.²²

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Florida Court Clerks & Comptrollers (FCCC) reports that the bill may have a significant operational impact to the Clerk of Courts, and suggests that delivery options should be expanded to include all means of expedited service.²³ The FCCC suggests that hand-delivery of the injunction and related documents may be most effective and efficient means in some instances, such as when a Clerk's office shares physical office space with a Sheriff's office.²⁴ The FCCC also noted that electronic delivery of an Injunctive Relief Against Sexual Violence would need to be password protected to ensure personal identifying information of the victim is confidential.²⁵ If the clerks and sheriff's offices do not have the required technology to certify documents electronically, the documents will need to be printed, wet ink certified, scanned and emailed.²⁶ Moreover, staff would need to be trained on the new technology.²⁷

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 741.30, 784.046, 784.0485.

IX. Additional Information:

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

CS/CS by Rules on February 15, 2022:

The underlying bill requires the clerk of the courts to electronically transmit certain domestic violence injunction documents to the local sheriff within 24 hours of a court issuing such an injunction. The CS, instead, gives discretion to the local sheriff as to whether or not to accept electronic transmission. The clerk of the court must, however, transmit these documents electronically if the respondent resides or can be found outside the jurisdiction where the petition was filed. Additionally, the CS allows for a sheriff to

²¹ The FCCC, *2022 Bill Analysis*, p. 1 (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as "2021 FCCC Bill Analysis").

²² *Id.* at p. 2.

²³ *Id.* at p. 1.

²⁴ *Id.* at p. 1-2.

²⁵ *2021 FCCC Bill Analysis* at p. 2

²⁶ *Id.*

²⁷ *Id.*

authorize a law enforcement officer to provide proof of service of the injunction electronically.

The CS requires the Florida Sheriffs Association and the Court Clerks and Comptrollers to discuss and coordinate the new procedures outlined in the bill.

The effective date has been changed from July 1, 2022 to January 1, 2023.

CS by Judiciary on January 31, 2022:

The CS adds a provision to state that in the event of an Internet or network outage that would delay the electronic transmission of injunction documents by more than 24 hours after the injunction is issued by a court, the clerk of the court may, instead, provide a copy of the injunction documents using facsimile, hand delivery, or certified or registered mail.

B. Amendments:

None.