

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 905 Protective Injunctions
SPONSOR(S): Judiciary Committee, Fetterhoff and others
TIED BILLS: IDEN./SIM. **BILLS:** CS/CS/SB 654

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Property Rights Subcommittee	18 Y, 0 N	Brascomb	Jones
2) Justice Appropriations Subcommittee	14 Y, 0 N	Smith	Keith
3) Judiciary Committee	18 Y, 0 N, As CS	Brascomb	Kramer

SUMMARY ANALYSIS

An injunction is a court order prohibiting a person from doing a specified act or commanding a person to undo a particular wrong or injury. Protective injunctions are available under Florida law for victims of the following forms of violence:

- Domestic violence;
- Repeat violence;
- Sexual violence;
- Dating violence; and
- Stalking.

Current law requires the clerk of court to furnish a copy of a protective injunction and other required documents to the sheriff or law enforcement agency of the county where the respondent resides or may be found. The sheriff or law enforcement agency must serve the respondent with these documents as soon as possible. Under current law, upon a sheriff's request, a clerk of court may transmit a facsimile copy of the protective injunction that the clerk has certified. Upon receiving a facsimile copy of the protective injunction, the sheriff must verify receipt with the sender clerk before attempting service. Current law also authorizes a sheriff to transmit a facsimile copy of a protective injunction to a law enforcement officer for service of process.

CS/HB 905 requires the clerk of court to electronically submit to the sheriff in the county where the respondent resides or may be found a copy of a protective injunction and any other required documents within 24 hours after the court issues an injunction for protection against:

- Domestic violence;
- Repeat violence;
- Sexual violence;
- Dating violence; and
- Stalking.

Moreover, the bill removes various references to the transmission of facsimile copies of protective injunctions and authorizes a sheriff to electronically transmit a copy of a protective injunction to a law enforcement officer for service of process.

The bill may have an indeterminate, but likely insignificant fiscal impact on local governments.

The bill provides an effective date of October 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Protective Injunctions

An injunction is a court order prohibiting a person from doing a specified act or commanding a person to undo a particular wrong or injury.¹ Protective injunctions are available under Florida law for victims of the following forms of violence:

- Domestic violence;²
- Repeat violence;³
- Sexual violence;⁴
- Dating violence;⁵ and
- Stalking.⁶

A petition for a protective injunction may be filed in the circuit where the petitioner currently or temporarily resides, where the respondent resides, or where the violence or stalking occurred.⁷ A petitioner for a protective injunction must allege in a sworn petition that:

- He or she is a victim of domestic violence; repeat, sexual, or dating violence; or stalking; or
- In the case of a petition for a domestic violence injunction, he or she has reasonable cause to believe he or she is in imminent danger of such violence.⁸

As soon as possible following the filing of the petition, a court must set a hearing to determine whether an immediate and present danger of the alleged violence exists.⁹ Upon finding an immediate and present danger, the court may grant an *ex parte*¹⁰ temporary injunction, 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,¹¹ including a time-sharing schedule,¹² which may award the petitioner up to 100 percent of the time-sharing.¹³

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.¹⁴

¹ Black's Law Dictionary 540 (6th ed. 1995).

² 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. Ss. 741.28(2) and 741.30, F.S.

³ S. 784.046, F.S.

⁴ *Id.*

⁵ *Id.*

⁶ S. 784.0485, F.S., governs the issuance of injunctions against stalking and cyberstalking. This process largely parallels the provisions and procedures relating to domestic violence injunctions.

⁷ Ss. 741.30, and 784.0485, F.S.

⁸ Ss. 741.30(1)(a), 784.046, and 784.0485, F.S.

⁹ Ss. 741.30(5)(a), 784.046, and 784.0485, F.S.

¹⁰ "Ex parte" refers to motions, hearings or orders granted on the request of and for the benefit of one party only. This is an exception to the general rule of court procedure that requires both parties to be present at any argument before a judge, and to the rule that an attorney may not notify a judge without previously notifying the opposition. Ex parte matters usually involve temporary orders (like a restraining order or temporary custody order) pending a formal hearing or an emergency request for a continuance. The People's Law Dictionary, *Ex Parte*, <https://dictionary.law.com/Default.aspx?selected=696> (last visited Feb. 17, 2022).

¹¹ 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.

¹² "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.

¹³ S. 741.30(5)(a), F.S.

¹⁴ *Id.*

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;
- Awarding to 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 residing in the residence or household of the petitioner or respondent; and
- Ordering other relief necessary to protect a domestic violence victim.¹⁵

Violation of a protective injunction is a first degree misdemeanor, punishable by up to one year in jail and a \$1,000 fine.¹⁶ The terms of a permanent protective injunction remain in effect until modified or dissolved, and either party may move at any time for modification or dissolution.¹⁷

Current law requires the clerk of court to furnish a copy of the following documents to the sheriff or law enforcement agency in the county where the respondent resides or may be found:

- Petition for a protective injunction;
- Notice of hearing;
- Temporary injunction, if any; and
- In the case of a petition for protection against domestic violence:
 - A financial affidavit; and
 - A Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) affidavit, if any.¹⁸

Within 24 hours after the court issues, changes, continues, extends, or vacates a protective injunction, the clerk of the court must forward a certified copy of the injunction for service to the sheriff with jurisdiction over the residence of the petitioner.¹⁹ The sheriff or law enforcement agency must serve the respondent with these documents as soon as possible.²⁰ Under current law, upon a sheriff's request, a clerk of court may transmit a facsimile copy of the protective injunction that the clerk has certified. Upon receiving a facsimile copy of the protective injunction, the sheriff must verify receipt with the sender clerk before attempting service.²¹ Current law also authorizes a sheriff to transmit a facsimile copy of a protective injunction to a law enforcement officer for service of process.²²

Effect of Proposed Changes

CS/HB 905 amends ss. 741.30, 784.046, and 784.0485, F.S., to require the clerk of court to electronically transmit to the sheriff in the county where the respondent resides or may be found a certified copy of a protective injunction and any other required documents²³ within 24 hours after the court issues an injunction for protection against:

- Domestic violence;
- Repeat violence;
- Sexual violence;
- Dating violence; and
- Stalking.

¹⁵ S. 741.30(6)(a), F.S.

¹⁶ Ss. 741.31, 775.082, 775.083, 784.047, and 784.0487, F.S.

¹⁷ S. 741.30(6)(c), F.S.

¹⁸ Ss. 741.30, 784.046, and 784.0458, F.S.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ In addition to a certified copy of a protective injunction, the clerk of court must also transmit the petition for a protective injunction; notice of hearing; temporary injunction, if any; and in the case of a petition for protection against domestic violence a financial affidavit; and a Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) affidavit, if any.

The bill amends various references from “forward” to “electronically transmit” to reflect that change. After receiving the electronic copy, the sheriff must verify receipt with the sender before attempting to serve it on the respondent.

Moreover, the bill removes references to the transmission of facsimile copies of protective injunctions and authorizes a sheriff to electronically transmit a copy of a protective injunction to a law enforcement officer for service of process.

The bill provides an effective date of October 1, 2022.

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: Amends s. 784.046, F.S., relating to action by victim of repeat violence, sexual violence, or dating violence for protective injunction; dating violence investigations, notice to victims, and reporting; pretrial release violations; public records exemption.

Section 3: Amends s. 784.0485, F.S., relating to stalking; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement.

Section 4: Provides an effective date of October 1, 2022.

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:

This bill may have an indeterminate, but likely insignificant fiscal impact on clerks of court expenditures, to the extent clerk workload increases as a result of the requirement to electronically transmit protective injunctions within 24 hours. However, any increased workload as a result of provisions in the bill can likely be absorbed within existing resources.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill creates new requirements for a county clerk; however, an exemption may apply because the fiscal impact may be insignificant.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 17, 2022, the Judiciary Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment changed the effective date from July 1, 2022, to October 1, 2022.

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