



# The Florida Senate

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Committee on Judiciary

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## REVIEW THE PROCEDURES AND STANDARDS FOR SECURING PROTECTIVE INJUNCTIONS

### Issue Description

The Florida Statutes authorize distinct types of orders of protection against violence, including injunctions for protection against domestic violence, repeat violence, sexual violence, and dating violence. An injunction is secured through a civil proceeding governed by the Florida Family Law Rules of Procedure. For example, some of the elements in the process for securing a domestic violence injunction include: filing a sworn petition that alleges the existence of domestic violence and includes specific facts upon which relief is sought; an ex parte review by a judge; potential awarding of a temporary injunction; the scheduling of a return hearing; personal service on the respondent with a copy of the petition; and issuance or denial of a final injunction.

Although in general the orders play an important role in helping to protect individuals from harm, legal scholarship notes that misuse of orders of protection against violence does occur through the filing of false petitions. For example, an abuser may file a false petition against his or her victim, perhaps to intimidate the victim or exclude the victim from a shared residence. In other cases, a person who is not truly a victim of violence, or who does not have reasonable cause to believe that he or she is in imminent danger of becoming a victim of violence, may file a petition in order to harass the respondent or to gain an advantage over the respondent in a related family law matter, such as a divorce or child custody proceeding. Misuse of the process can thwart the public-safety purposes underlying the injunctions and can result in inefficiencies and costs for the state courts system.

This report reviews the current procedures and standards governing the award of injunctions for protection against domestic violence, repeat violence, sexual violence, and dating violence, in an effort to identify the extent to which misuse of the process is occurring, or may occur, and to identify enhancements to the statutory and court-rule framework.

### Background

An injunction for protection is a civil order that provides protection from abuse by certain people. An injunction can order the abuser to do certain things (such as moving out of the house) or not do certain things (such as contacting someone), or it can give the victim certain rights (such as temporary custody of any children).<sup>1</sup> In the 1970s, states began creating laws to help stop domestic violence and provide relief to victims. Today all 50 states have laws providing for domestic violence injunctions,<sup>2</sup> and many states also protect against dating violence, sexual violence, repeat violence, and stalking. In 1979, the Florida Legislature created a cause of action for an injunction for protection against domestic violence, and starting in 1988 it also created separate causes of action for an injunction for protection against repeat violence, sexual violence, or dating violence.<sup>3</sup>

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<sup>1</sup> WomensLaw.org, *Know the Laws (Florida): Injunctions for Protection Against Domestic Violence* (Feb. 3, 2010), [http://www.womenslaw.org/laws\\_state\\_type.php?id=496&state\\_code=FL](http://www.womenslaw.org/laws_state_type.php?id=496&state_code=FL) (last visited Dec. 14, 2010).

<sup>2</sup> David H. Taylor et al., *Ex Parte Domestic Violence Orders of Protection: How Easing Access to Judicial Process Has Eased the Possibility for Abuse of the Process*, 18 KAN. J.L. & PUB. POL'Y 83, 84 (Fall 2008) (citing Catherine F. Klein and Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 810 (Summer 1993)).

<sup>3</sup> See chs. 79-402, s. 1, and 88-344, s. 1, Laws of Fla.

## Injunction for Protection against Domestic Violence

In 2005, it was estimated that more than 1.5 million adults in the United States are victims of domestic violence each year, and more than 85 percent of the victims are women.<sup>4</sup> In Florida, 113,123 incidents of domestic violence were reported in 2008, 1.8 percent fewer than reported in 2007.<sup>5</sup>

Under Florida's legal framework, a victim of domestic violence,<sup>6</sup> or a person who has reasonable cause to believe that he or she is in imminent danger of becoming a victim of domestic violence, may seek injunctive relief.<sup>7</sup> In seeking a protective injunction, a person must file a sworn petition with the court that alleges the existence of domestic violence and includes specific facts and circumstances upon which relief is sought.<sup>8</sup> The court must set a hearing at the earliest possible time after a petition is filed.<sup>9</sup> The respondent must be personally served with a copy of the petition, financial affidavit, Uniform Child Custody Jurisdiction and Enforcement Act affidavit, if any, notice of hearing, and any temporary injunction that has been issued.<sup>10</sup>

The court may grant a temporary ex parte injunction if it finds that there is an immediate and present danger of domestic violence. When issuing a temporary injunction, the court must rely solely on the four corners of the petition and may not consider other evidence, unless the respondent has been given reasonable notice of the hearing. If the court denies a temporary injunction because there was no finding of immediate danger, the court must schedule a follow-up hearing at the earliest possible time. There are statutory criteria that a court must consider when determining whether a petitioner is in "imminent danger" of becoming a victim of domestic violence.<sup>11</sup> If a temporary injunction is granted, it is effective for a period of 15 days, in which time a full hearing must be held. Either party may move the court to modify or dissolve an injunction at any time.<sup>12</sup>

Section 741.31, F.S., provides that it is a first-degree misdemeanor<sup>13</sup> for a person willfully to violate an injunction for protection against domestic violence. The court can enforce a violation of an injunction through a civil or criminal contempt proceeding, or the state attorney may prosecute it as a criminal violation.<sup>14</sup> Any person who suffers as a result of a violation of an injunction for protection against domestic violence may be awarded economic damages, including costs and attorney's fees, for the injury or loss suffered.<sup>15</sup>

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<sup>4</sup> Margaret Graham Tebo, *When Home Comes to Work*, ABA JOURNAL (Sept. 2005), available at [http://www.abajournal.com/magazine/when\\_home\\_comes\\_to\\_work/](http://www.abajournal.com/magazine/when_home_comes_to_work/) (last visited Dec. 14, 2010) (citing statistics from Legal Momentum, an advocacy and research organization based in New York, N.Y.); see also Nat'l Coalition Against Domestic Violence, *Domestic Violence Facts*, [http://www.ncadv.org/files/DomesticViolenceFactSheet\(National\).pdf](http://www.ncadv.org/files/DomesticViolenceFactSheet(National).pdf) (last visited Dec. 14, 2010).

<sup>5</sup> Florida Dep't of Law Enforcement, *Crime in Florida* (Jan.-Dec. 2008), [http://www.fdle.state.fl.us/Content/getdoc/4f6a6cd0-6479-4f4f-a5a4-cd260e4119d8/CIF\\_Annual08.aspx](http://www.fdle.state.fl.us/Content/getdoc/4f6a6cd0-6479-4f4f-a5a4-cd260e4119d8/CIF_Annual08.aspx) (last visited Dec. 14, 2010).

<sup>6</sup> Domestic violence is defined 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." Section 741.28(2), F.S.

<sup>7</sup> Section 741.30(1), F.S.

<sup>8</sup> Section 741.30(3), F.S.

<sup>9</sup> Section 741.30(4), F.S.

<sup>10</sup> *Id.* When an immediate and present danger of domestic violence exists, the court may grant a temporary injunction ex parte, pending a full hearing. Section 741.30(5), F.S.

<sup>11</sup> Section 741.30(6)(b), F.S.

<sup>12</sup> Section 741.30(10), F.S.

<sup>13</sup> A first-degree misdemeanor is punishable by a term of imprisonment not exceeding one year or a fine not exceeding \$1,000, or both. See ss. 775.082(4) and 775.083(1), F.S.

<sup>14</sup> Section 741.30(9), F.S.

<sup>15</sup> Section 741.31(6), F.S.

## Injunctions for Protection against Repeat Violence, Sexual Violence, or Dating Violence

Data from the National Women's Study and the National Violence Against Women Survey indicate that 13.4 percent of adult women in the United States have been victims of a forcible rape sometime during their lifetime.<sup>16</sup> Based on this national data, one report found:

[A]pproximately 11.1% of adult women in Florida have been victims of one or more completed forcible rapes during their lifetime. According to the 2000 Census, there are about 6.4 million women age 18 or older living in Florida. This means that the estimated number of adult women in Florida who have ever been raped is nearly 713,000.<sup>17</sup>

Additionally, statistics show that one in five high school girls has reported being physically or sexually abused by a dating partner, and females ages 16 through 24 are three times more vulnerable for partner violence than any other age group.<sup>18</sup>

Section 784.046, F.S., governs the issuance of injunctions for protection against repeat violence,<sup>19</sup> dating violence,<sup>20</sup> and sexual violence.<sup>21</sup> The statute specifies the following:

- Petitions for injunctions for protection must allege the incidents of repeat violence, sexual violence, or dating violence and must include the specific facts and circumstances that form the basis upon which relief is sought.<sup>22</sup>
- Upon the filing of the petition, the court must set a hearing to be held at the earliest possible time. The respondent must be personally served with a copy of the petition, notice of hearing, and temporary injunction, if any, prior to the hearing.<sup>23</sup>
- When it appears to the court that an immediate and present danger of violence exists, the court may grant a temporary injunction, which may be granted in an ex parte hearing, pending a full hearing, and may grant such relief as the court deems proper.<sup>24</sup>
- The court shall enforce, through a civil or criminal contempt proceeding, a violation of an injunction for protection.<sup>25</sup>
- The petitioner or the respondent may move the court to modify or dissolve an injunction at any time.<sup>26</sup>

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<sup>16</sup> Kenneth J. Ruggiero and Dean G. Kilpatrick, *Rape in Florida: A Report to the State, One in Nine*, NAT'L VIOLENCE AGAINST WOMEN PREVENTION RESEARCH CTR., 1 (May 15, 2003), available at [http://www.doh.state.fl.us/Family/svpp/planning/Rape\\_in\\_Florida.pdf](http://www.doh.state.fl.us/Family/svpp/planning/Rape_in_Florida.pdf) (last visited Dec. 14, 2010).

<sup>17</sup> *Id.* at 2.

<sup>18</sup> American Bar Association, *Teen Dating Violence Facts* (2006), <http://www.abanet.org/unmet/teendating/facts.pdf> (last visited Dec. 14, 2010).

<sup>19</sup> Section 784.046(1)(b), F.S., defines repeat violence as “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.”

<sup>20</sup> Dating violence is defined as “violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature.” The following factors come into play when determining the existence of such a relationship: (1) a dating relationship must have existed within the past six months; (2) the nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and (3) the persons involved in the relationship must have been involved over time and on a continuous basis during the course of the relationship. Dating violence does not include violence in a casual acquaintanceship or between individuals who have only engaged in ordinary fraternization. Section 784.046(1)(d), F.S.

<sup>21</sup> Sexual violence is defined as any one incident of “1. Sexual battery, as defined in chapter 794; 2. A lewd or lascivious act, as defined in chapter 800, committed upon or in the presence of a person younger than 16 years of age; 3. Luring or enticing a child, as described in chapter 787; 4. Sexual performance by a child, as described in chapter 827; or 5. Any other forcible felony wherein a sexual act is committed or attempted.” 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. Section 784.046(1)(c), F.S.

<sup>22</sup> Section 784.046(4), F.S.

<sup>23</sup> Section 784.046(5), F.S.

<sup>24</sup> Section 784.046(6), F.S.

<sup>25</sup> Section 784.046(9), F.S.

<sup>26</sup> Section 784.046(10), F.S.

There are statutory provisions governing enforcement and what constitutes a violation of these injunctions, similar to those governing a domestic violence injunction.<sup>27</sup>

### Statistics on Protective Injunctions and Filings

One report found that approximately 600,000 to 700,000 permanent protection orders are entered each year into the registry of restraining orders within the National Crime Information Center (NCIC) of the Federal Bureau of Investigation.<sup>28</sup> However, the actual number of permanent protection orders entered each year may be higher due to the fact that many jurisdictions do not contribute to the NCIC protection order file.<sup>29</sup>

According to statistics from the Florida Office of the State Courts Administrator, in recent years the annual number of domestic violence case filings, which includes domestic violence, repeat violence, sexual violence, and dating violence, has ranged from 88,259 to 96,113, with no consistent pattern of increase or decrease. (See the table below.) There were 92,924 domestic violence case filings during the 2008-2009 fiscal year, which was more filings than any other circuit family court category that same year.<sup>30</sup> Of that number, 31,201 of the filings were specifically related to repeat violence petitions.<sup>31</sup>

Case Type	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
<b>Simplified Dissolution</b>	5,185	5,092	5,264	5,542	n/a
<b>Dissolution</b>	92,015	91,860	88,297	82,597	n/a
<b>Child Support</b>	34,790	34,100	35,966	37,111	n/a
<b>Other Domestic Relations</b>	45,500	40,035	40,509	40,611	n/a
<b>Domestic Violence</b>	<b>95,785</b>	<b>96,113</b>	<b>95,936</b>	<b>92,924</b>	<b>88,259</b>
<b>Juvenile Delinquency</b>	74,187	72,462	70,284	64,585	n/a
<b>Juvenile Dependency</b>	18,006	16,823	14,221	12,484	n/a

### Potential Misuse of the Protective Injunction Process

Although data shows the need for and benefit of protective injunctions, legal scholarship notes that misuse of orders of protection against violence does occur through the filing of false petitions. For example, an abuser may precede a victim to the courthouse and obtain an ex parte protective injunction, which leads to the actual victim being removed from the home and unable to see his or her children. This scenario is illustrated in a Missouri case in which, after a year of a tumultuous marriage, the battering husband obtained an ex parte order for protection that prohibited his wife from entering or staying in their apartment. Additionally, the husband signed a power of attorney authorizing his parents to make decisions on behalf of the couple's child. After a routine visit, the wife tried to keep the child, and the paternal grandparents called the police. Although the order of protection did not

<sup>27</sup> See s. 784.047, F.S.

<sup>28</sup> Respecting Accuracy in Domestic Abuse Reporting, *Without Restraint: The Use and Abuse of Domestic Restraining Orders*, 8 (2008), available at <http://www.mediadar.org/docs/RADARreport-VAWA-Restraining-Orders.pdf> (last visited Dec. 14, 2010).

<sup>29</sup> *Id.*; see also Sexual Violence Justice Inst., *Enforcement of Protection Orders Across State Lines*, available at [http://www.mncasa.org/documents/svji\\_fact\\_sheets/Full%20Faith%20and%20Credit%20for%20Protection%20Orders.pdf](http://www.mncasa.org/documents/svji_fact_sheets/Full%20Faith%20and%20Credit%20for%20Protection%20Orders.pdf) (last visited Dec. 14, 2010).

<sup>30</sup> Office of the State Courts Adm'r, *Florida's Trial Court Statistical Reference Guide, FY 2008-09*, 6-2 (Jan. 2010), available at [http://www.flcourts.org/gen\\_public/stats/reference\\_guide08\\_09.shtml](http://www.flcourts.org/gen_public/stats/reference_guide08_09.shtml) (last visited Sept. 4, 2010).

<sup>31</sup> *Id.*

address custody, the police ordered the wife to return the child to the grandparents. Having no job, no car, and no house, the wife moved to Florida to live with her mother. After the husband was incarcerated for unrelated issues, the wife attempted to obtain custody of the child. However, the court awarded custody to the paternal grandparents since the child had been living with them as primary caregivers. Essentially, by being the first person to the courthouse for an injunction, the abuser in this situation managed to exclude his wife from the home and make it difficult for her to visit their child.<sup>32</sup>

Additionally, misuse of the process can occur when a person files a petition to accomplish something outside the scope of the protective injunction statutes. For example, potential areas of misuse could involve a party filing a petition to gain an advantage in a related family law matter, neighbors filing a petition for repeat violence to harass each other, or landlords filing a petition as a means to evict a tenant. When misuse occurs, it not only damages the credibility the protective injunction process, to the detriment of true victims of abuse, but it also wastes judicial resources, as well as the time of law enforcement, prosecutors, and advocates for victims of domestic violence.<sup>33</sup>

## Findings and/or Conclusions

### Securing Injunctions in Practice

The Legislature has created separate causes of action for an injunction for protection against domestic violence, repeat violence, sexual violence, and dating violence.<sup>34</sup> The Florida Supreme Court has promulgated forms under the Florida Family Law Rules of Procedure for use in petitioning for an injunction. The petition for securing an injunction for protection against domestic violence, for example, is nine pages and has seven sections. The petition requires certain personal information about the petitioner and the respondent, along with any case history and the reason for the injunction. The petitioner is asked to describe any other court case that is pending currently or that happened in the past between the petitioner and respondent. The petition provides a list of reasons for the petitioner to check for why he or she is a victim of domestic violence or has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence. The petition also provides a narrative section for the petitioner to describe the latest act or threat of violence. Finally, the petition includes sections regarding use and possession of the home, temporary time-sharing, and temporary financial support. The petitioner must sign the petition under penalty of perjury in front of a notary public or the clerk of the court.

Attached to the petition for an injunction for protection are instructions related to filling out the petition. The instructions explain when the form should be used, what happens if the judge grants or denies the petition, and where the petitioner can go for more information. The instructions also provide additional information on whether a Uniform Child Custody Jurisdiction and Enforcement Act affidavit, family law financial affidavit, or child support guidelines worksheet is needed.

During the 2002 Regular Session, the Legislature amended s. 741.30, F.S., to eliminate the requirement of a filing fee for a petition for protection against domestic violence.<sup>35</sup> A year later, the Legislature also prohibited the clerk of the court from charging a filing fee for a petition for protection against repeat violence, sexual violence, or dating violence.<sup>36</sup>

After a petition is filed, the clerk of court provides it to the judge for a determination of whether an ex parte temporary injunction should be granted. In some cases, the petition is accompanied by additional information, such as criminal reports or information related to other cases involving the petitioner and respondent, which may be gathered by a case manager. Even if additional information is presented to the judge, the judge must rely solely on the four corners of the petition to determine whether or not to grant a temporary injunction, unless the

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<sup>32</sup> Nina W. Tarr, *The Cost to Children When Batterers Misuse Order for Protection Statutes in Child Custody Cases*, 13 S. CAL. REV. L. & WOMEN'S STUD. 35, 48-50 (Fall 2003).

<sup>33</sup> *See id.* at 38.

<sup>34</sup> See ss. 741.30(1) and 784.046(2), F.S.

<sup>35</sup> Chapter 2002-55, s. 12, Laws of Fla.

<sup>36</sup> Chapter 2003-117, s. 2, Laws of Fla.

respondent appears at the hearing or has received reasonable notice of it.<sup>37</sup> If the court issues a temporary injunction, pending a full hearing within 15 days, it may enter relief as it deems proper, including:

- Restraining the respondent from committing any acts of domestic violence;
- Awarding to the petitioner temporary exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner; or
- Providing the petitioner a temporary parenting plan, including a time-sharing schedule.<sup>38</sup>

Within 15 days, unless an extension has been obtained, the court must hold a full hearing on the injunction. For example, in Leon county full hearings are held two days a week on Mondays and Thursdays. Each case is heard separately in front of the judge, and the petitioners and respondents wait outside the courtroom with a bailiff until their case is called. If the petition is granted, the respondent must wait in the courtroom while the petitioner leaves and, regardless of the outcome, both parties are given the final order prior to leaving.

### Concerns with the Injunction Process

A recent national study that examined different perspectives on civil protection orders in domestic violence cases found that protective orders do work and make victims feel safer for the time the orders are in place. Specifically, 50 percent of victims experienced no violations of the protection order during a six-month follow-up period, and, for those victims who experienced violations, the violence was significantly reduced.<sup>39</sup> Also according to the study, Kentucky saved approximately \$85 million over a one-year period because of declines in violence.<sup>40</sup>

Despite the benefits of protective injunctions, legal scholarship and anecdotal information indicate that misuse of the system may be occurring, which may affect persons falsely accused of violence, victims of violence when abusers use the process against them, and victims of violence generally if the credibility of the injunction process is harmed. In 1995, the Massachusetts Trial Court reviewed domestic violence injunctions issued in the state and found that less than half of the orders involved an allegation of violence.<sup>41</sup> More recently, Campbell County, West Virginia, completed an analysis of domestic violence injunctions issued in 2006 and concluded that 81 percent were unnecessary or false.<sup>42</sup>

Research for this interim report did not find a comparable analysis of protective injunctions in Florida. However, Senate professional staff sent a questionnaire to all 20 judicial circuits, as well as the circuit and county conferences, to solicit input from judges who work with the domestic violence docket to gauge their experiences with the standards and procedures for obtaining an injunction for protection. The majority of responses indicated that judges believe that misuse of the system occurs frequently, primarily in the area of repeat violence or in domestic violence in order to gain an advantage in a family law matter. In particular, 14 out of 33 survey respondents suggested that the greatest misuse of the system is in repeat violence cases. One judge estimated that, at least in his circuit, 30 to 40 percent of repeat violence petitions have no merit. Some examples cited by judges of situations in which repeat violence is alleged are:

- Feuding neighbors filing petitions against each other;
- Issues of possible trespass;
- Residents of condominium associations filing against each other;
- Filings by former boyfriends and girlfriends against one another, or filings by a person's current boyfriend or girlfriend against the person's former boyfriend or girlfriend; and
- Landlords filing against tenants to avoid the lawful eviction process.

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<sup>37</sup> Section 741.30(5)(b), F.S.

<sup>38</sup> Section 741.30(5)(a), F.S.

<sup>39</sup> Nikki Hawkins, Nat'l Institute of Justice, *Perspectives on Civil Protective Orders in Domestic Violence Cases: The Rural and Urban Divide*, NIJ Journal No. 266 (June 2010), available at <http://www.ojp.usdoj.gov/nij/journals/266/perspectives.htm> (last visited Sept. 15, 2010).

<sup>40</sup> *Id.*

<sup>41</sup> Respecting Accuracy in Domestic Abuse Reporting, *supra* note 28, at 9.

<sup>42</sup> *Id.*



Additionally, many judges cited examples of domestic violence injunctions being used to address issues that should be addressed in family court. For example, one judge commented that:

The domestic violence injunctive process is also being used as a means of dealing with acrimony caused by the inability of parties to resolve issues concerning time sharing, support and other issues which should be addressed in Family Court. Many of the litigants I see in Domestic Violence Court indicate that they cannot or have not been able to file a dissolution action because they cannot afford the filing fee. Failure to file the action and thus settle their affairs often leaves these issues, which are generally highly emotional to begin with, unresolved. In other situations, the parties have filed a dissolution action but cannot get a hearing quickly enough to resolve the issues. The volatility caused by the inability to resolve these issues expeditiously often escalates to violence. Domestic Violence Court then becomes a viable avenue for these litigants to address issues that should really have been addressed in Family Court.

One judge noted that petitioners often use the injunction process to enforce child support or time-sharing issues. For example, one judge stated: “I have also seen, not infrequently, where ex parte injunctions are obtained on the eve of, or commensurate with, the filing of a petition to dissolve a marriage with the intent [to] get a ‘jump’ on issues involving children or exclusive use of a marital residence. It is also unfortunately not uncommon where the ex parte injunction process is used to circumvent or vary existing court orders in dissolution or paternity cases pertaining to minor children.”

The extent to which the court should address collateral issues and for what period of time is a potential challenge for judges in the case of legitimate petition filings as well. In awarding a domestic violence injunction, a judge may feel it is necessary also to address support or time-sharing issues related to any minor children of the petitioner and respondent, at least in a preliminary fashion. However, because these issues have been addressed as part of the protective injunction process, the parties may not have an incentive to pursue proceedings through the traditional family court docket, which is the more appropriate forum for addressing these matters in a long-term and comprehensive fashion.

Although the majority of respondents to the questionnaire stated that there is significant misuse of the current system, some felt that the misuse was not necessarily intentional, but rather reflected a lack of understanding by petitioners – most of them pro se<sup>43</sup> – as to what is legally required for an order for protection. Suggestions for addressing this issue included: rewriting the petitions using simple, understandable wording; providing additional explanations and definitions on the petitions; having the instructions and petitions available in multiple languages; and using intake officers to help petitioners fill out the petition accurately. A few of the respondents suggested providing education to the public as well as to law enforcement and other agencies, such as the Department of Children and Families, on when an order for protection is the correct course of conduct. Comparably, advocates on behalf of victims of domestic violence interviewed for this report stressed additional education for judges hearing protective injunction cases.

Some other recommendations from the judicial community to help curb misuse of the system are to put time limits on certain provisions in an injunction, such as the time-sharing or child support issues, in order to motivate litigants to raise those issues in family court; to follow through with swift prosecution of petitioners found to have lied in a petition; to amend the statute to authorize the judge to consider evidence beyond the pleadings when determining whether to grant a temporary ex parte injunction; to revise the injunction process in ch. 39, F.S., so that petitions alleging child abuse are brought in family court, where the Department of Children and Families can investigate and a guardian ad litem can be appointed, rather than in domestic violence court; and to create a separate injunction for stalking and impose a filing fee for repeat violence petitions. Of all the recommendations provided by judges throughout the state, the overwhelming suggestion was to institute a filing fee or sanctions in all protective injunction cases.

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<sup>43</sup> A pro se petitioner is one without representation by an attorney. See BLACK’S LAW DICTIONARY (9th ed. 2009).

## Violence Against Women Act; Filing Fee Limitations

The policy recommendation of imposing a filing fee or sanctions for misuse of the system may have fiscal consequences for the state because of funding conditions under the federal Violence Against Women Act (VAWA). The U.S. Department of Justice describes VAWA as a comprehensive policy “designed to improve criminal justice responses to domestic violence, sexual assault, and stalking to increase the availability of services for victims of these crimes.”<sup>44</sup>

In addition to creating an approach to help end violence against women, VAWA authorizes grant programs. In order for a state to receive funding under VAWA, the state must certify that it does not require a victim of domestic violence, stalking, or sexual assault to bear “the costs associated with the filing, issuance, registration, or service of a . . . protection order [or] petition for a protection order.”<sup>45</sup> States applying for VAWA funding had to be in compliance with the new law by the end of 2003. According to the federal Office on Violence Against Women, charging victims (the petitioner) a filing fee and then offering a fee waiver based on indigent status or providing reimbursement for legitimate petitions is not allowed.<sup>46</sup> However, a state may charge the petitioner a fee if the court finds that the person was not a victim of domestic violence, sexual assault, or stalking.<sup>47</sup>

During fiscal year 2009, 22 programs in Florida received funding from the Office on Violence Against Women, totaling more than \$18 million in grant funding.<sup>48</sup> Although a common suggestion for curbing misuse of the protective order process has been to institute a filing fee, if the Legislature chooses to do so Florida may be at risk for losing millions of dollars in federal funding from VAWA. However, it appears based on a review of VAWA guidelines that the Legislature may authorize court-imposed sanctions for frivolous petitions or institute a filing fee for repeat violence petitions, as long as petitioners do not have to pay a fee to file a petition for stalking.

## Repeat Violence as an Area of Concern

As mentioned previously in this report, many judges reported that the most misused injunction is the repeat violence injunction. According to the Office of the State Courts Administrator, approximately 58 percent of petitions for repeat violence are dismissed.<sup>49</sup>

The Legislature in 1988 created the cause of action for an injunction for protection for repeat violence, which is codified in s. 784.046, F.S.<sup>50</sup> The Legislature has amended the statute multiple times, including in 1995, when it included stalking in the definition of repeat violence, and in 2002 and 2003, when it added causes of action for an injunction for protection in cases of dating and sexual violence to s. 784.046, F.S.<sup>51</sup> Repeat violence is defined in statute as “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.”<sup>52</sup>

Many of the respondents to the questionnaire from Senate professional staff opined that instituting a filing fee – especially in repeat violence situations – may cut down on the misuse of the protective order process. However, as discussed previously, instituting a filing fee for all protective orders may jeopardize federal funding under VAWA. In response to federal funding concerns, several judges, as well as other professionals interviewed for

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<sup>44</sup> Office on Violence Against Women Act, Dep’t of Justice, *The Facts about the Violence Against Women Act*, available at <http://www.ovw.usdoj.gov/docs/vawa.pdf> (last visited Sept. 21, 2010).

<sup>45</sup> 42 U.S.C. s. 3796gg-5(a).

<sup>46</sup> Office on Violence Against Women Act, Dep’t of Justice, *Frequently Asked Questions on the VAWA 2000 Requirement Regarding Costs for Criminal Charges and Protection Orders*, <http://www.ovw.usdoj.gov/faqvawa2000.htm> (last visited Sept. 22, 2010).

<sup>47</sup> *Id.*

<sup>48</sup> Office on Violence Against Women Act, Dep’t of Justice, *FY 2009 Office on Violence Against Women Grant Awards by State*, <http://www.ovw.usdoj.gov/grant2009.htm> (last visited Sept. 22, 2010).

<sup>49</sup> Conversation with staff from the Office of the State Courts Adm’r (Aug. 3, 2010).

<sup>50</sup> Ch. 88-344, s. 1, Laws of Fla.

<sup>51</sup> See chs. 95-195, s. 13; 2002-55, s. 21; and 2003-117, s. 2, Laws of Fla.

<sup>52</sup> Section 784.046(1), F.S.



this report, suggested removing stalking from repeat violence and creating new statutory criteria for stalking and then charging a filing fee for repeat violence petitions. Under VAWA, a state may not charge a fee in connection with the filing of a protection order, or a petition for a protection order, for domestic violence, stalking, or sexual assault.<sup>53</sup> Accordingly, a critical step in charging a filing fee for a repeat violence protection order would be to separate stalking from the definition of repeat violence in order to be in compliance with federal law.

During the 2009 Regular Session, HB 5117 attempted to institute a filing fee for repeat violence. The bill amended s. 28.241, F.S., relating to filing fees for trial and appellate proceedings, and provided that the person instituting an action for an injunction against repeat violence shall pay a \$200 filing fee to the clerk of the court.<sup>54</sup> The Office of the State Courts Administrator estimated that, for fiscal year 2009-10, a \$200 filing fee for petitions for repeat violence injunctions would have generated approximately \$1.6 million to \$2.7 million.<sup>55</sup> However, this provision was removed from HB 5117 before it passed the House of Representatives.

In addition to removing stalking from repeat violence, the Legislature may also need to consider amending the definition of “violence” under s. 784.046, F.S., in order not to jeopardize federal funding under VAWA. Section 784.046(1), F.S., defines “violence” as “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.” This definition of violence is incorporated into the definition of “repeat violence.”<sup>56</sup> According to the Office on Violence Against Women, jurisdictions may charge a fee for a repeat violence protection order as long as the applicant is not a victim of domestic violence, sexual assault, or stalking.<sup>57</sup> Although Florida has a separate cause of action for a protective order for sexual violence, it is unclear whether the current definition of repeat violence would jeopardize Florida’s federal funding from VAWA. However, according to one judge, the definition of repeat violence may not need to be changed because Florida has a separate cause of action for a protective injunction for sexual assault.<sup>58</sup> Accordingly, because victims of sexual assault by family or household members can file for a domestic violence or sexual assault injunction, and victims of sexual assault by a stranger can file for a sexual assault injunction, the fact that sexual assault is encompassed in the definition of repeat violence may not be of significance.

### Education, Training, and Intake Assistance

Judges and advocates on behalf of domestic violence victims also recommended training for all parties involved in cases related to protective injunctions. Representatives of the legal community that serve victims of domestic violence stress the importance of judicial education. For example, many domestic violence advocates mentioned that it would be beneficial for judges to understand the characteristics and perspective of a domestic violence victim. Having that knowledge may help judges understand why victims respond in certain ways, such as voluntarily dismissing his or her case.

Almost all of the judges responding to the questionnaire sent by professional staff of the Judiciary Committee stated that aside from Florida Judicial College, which provides a total of 3.5 hours of education on the topic of protective injunctions, there is no required training for judges related to protective injunctions. All judges do receive Florida’s Domestic Violence Benchbook, which was developed by the Office of the State Courts Administrator (OSCA) “to address the highly litigated legal issues in domestic violence cases.”<sup>59</sup>

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<sup>53</sup> 42 U.S.C. s. 3796gg-5(a).

<sup>54</sup> See HB 5117 (2009 Reg. Session), available at <http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName= h5117 .xml&DocumentType=Bill&BillNumber=5117&Session=2009> (last visited Sept. 27, 1010).

<sup>55</sup> Office of the State Courts Adm’r, *Repeat Violence Filing Fee/Court Cost* (on file with the Senate Committee on Judiciary).

<sup>56</sup> See s. 784.046(1)(b), F.S. (repeat violence means two incidents of violence or stalking).

<sup>57</sup> *Frequently Asked Questions on the VAWA 2000 Requirement Regarding Costs for Criminal Charges and Protection Orders*, supra note 46.

<sup>58</sup> E-mail from Judge Carroll Kelly, Administrative Judge, Domestic Violence Division, to Professional Staff of the Senate Committee on Judiciary (Sept. 24, 2010) (on file with the Senate Committee on Judiciary).

<sup>59</sup> Office of the State Courts Adm’r, *Florida’s Domestic Violence Benchbook*, 3 (Sept. 2008), available at [http://www.flcourts.org/gen\\_public/family/bin/DV%20bench%20book%202008\(try%20\).pdf](http://www.flcourts.org/gen_public/family/bin/DV%20bench%20book%202008(try%20).pdf) (last visited Sept. 17).

The Office of Court Improvement (OCI) within OSCA develops programs to improve Florida's courts. One of the newest programs created by OCI is the domestic violence online training site. The program "is designed to introduce judges and court staff to issues and challenges that typically arise in civil domestic violence cases. . . . This training program presents video scenarios and pertinent documents related to pro se parties engaged in a civil domestic violence injunction case."<sup>60</sup> According to OCI, more than 160 judges have used this free interactive program since it was introduced a year and a half ago.<sup>61</sup> The OCI also intends to implement a test at the end of the training program to assess how much information the person using the program is absorbing.<sup>62</sup> However, all training offered to judges through OCI is discretionary.

In addition to judicial education, it may be beneficial to have education available for state agency personnel as well as the public in general. For example, providing additional instructions and definitions on the petitions for a protective injunction may help petitioners complete the petition more accurately. Additionally, having separate intake counselors or advocates who can assist petitioners in filling out the forms and advise them of the requirements under the law may help ensure that judges receive specific and legible petitions. One judge suggested that the petition should direct the parties to be more specific about the elements that need to be alleged under the law because often petitioners write too much information, much of which is not pertinent to the injunction. Another judge stated that "[a]ny additional failure in the process when filing the petition is generally due to the lack of detail contained in the recitation of the facts supporting the petition. This issue can be addressed through appropriate training of those charged with processing the petitions before review." Other suggestions included providing the petitions in multiple languages, offering an informational video to petitioners before they apply for an injunction, and promoting continued education of law enforcement<sup>63</sup> and the Department of Children and Families on the proper legal basis for obtaining an injunction.

### Operational Factors Affecting Injunction Workload

A procedural element to the protective injunction process that may be increasing judicial workload relates to the initial denial of an injunction at the ex-parte stage. The statute provides that, if the only ground for denial of a domestic violence injunction is no appearance of an immediate and present danger of domestic violence, the court *shall* set a hearing on the petition at the earliest possible time.<sup>64</sup> The statute does not explicitly authorize the petitioner to decline the return hearing. In cases of legitimate danger, the petitioner may prefer to decline the return hearing rather than risk having the respondent be served with notice of the hearing when there is no protective injunction in place. Additionally, there may be instances in which a person who files a petition that is not meritorious would, upon reflection, accept the decision and voluntarily decline the hearing. Explicitly providing for a decline of the return hearing may help petitioners avoid risk of physical harm or may save resources expended in scheduling and planning hearings that arguably are not necessary.

Frustrations with the injunction process may arise from challenges in contacting a person who secures a protective injunction when further court proceedings are necessary. When a petition is granted, it is important that the clerk of court be able to contact the petitioner if the respondent moves at a future date to have the injunction dissolved or its terms modified. Some practitioners noted that the process is complicated when the petitioner has relocated following the award of the original injunction but has not notified the clerk of his or her new address.

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<sup>60</sup> Florida State Courts, *Domestic Violence – Online Training*, <http://virtualcourt.flcourts.org/> (last visited Oct. 18, 2010).

<sup>61</sup> Conversation with Rose Patterson, Chief of Court Improvement, Office of Court Improvement (Sept. 2, 2010).

<sup>62</sup> *Id.*

<sup>63</sup> Some practitioners who provided information for this report raised concerns that in some cases law enforcement officers may be inappropriately directing individuals to the protective injunction process. Representatives of law enforcement noted that officers currently receive training under a statute that requires "uniform statewide policies and procedures to be incorporated into required courses of basic law enforcement training and continuing education." Section 943.1701, F.S. Among the required elements are techniques for handling domestic violence disputes and legal rights and remedies available to victims. See *id.* Law enforcement officers are required by statute to provide victims of domestic violence and dating violence immediate notice of the legal rights and remedies available on a standard form developed and distributed by the Department of Law Enforcement. Sections 741.29(1) and 784.046(11), F.S.

<sup>64</sup> Section 741.30(5)(b), F.S.

## Child Abuse Injunctions

The Florida Statutes prescribe a specific process for obtaining an injunction against child abuse. Under s. 39.504, F.S., the court may issue an injunction to prevent child abuse upon the request of certain entities at any time after a protective investigation has been initiated. The parties must be provided notice unless the child is found to be in imminent danger. If that is the case, a judge may issue an emergency injunction; however the court must hold a hearing on the next business day to dissolve the emergency injunction or to continue or modify it.<sup>65</sup> When issuing an injunction, the court can order the alleged offender to:

- Refrain from further abuse;
- Participate in a specialized treatment program;
- Limit contact or communication with the child;
- Refrain from contacting the child;
- Have limited or supervised visitation with the child;
- Pay temporary support or the costs of medical, psychiatric, and psychological treatment for the child or other family members; or
- Vacate the home in which the child resides.<sup>66</sup>

The petitioner, respondent, or caregiver may move to modify or dissolve the injunction at any time. The injunction remains in effect until dissolved or modified by the court.

Several practitioners with whom Senate professional staff spoke suggested that a possible area for improvement – which may help with the judicial workload on the domestic violence docket – is the ch. 39, F.S., injunction process. According to some practitioners, often in child abuse situations the Department of Children and Families (DCF) may suggest to the non-abusing parent that he or she needs to file a domestic violence injunction against the abuser on behalf of the child. However, a ch. 39, F.S., injunction is usually more appropriate because DCF can provide services to the family, a guardian ad litem (GAL) is appointed, and reunification is often the goal. In contrast, with a traditional domestic violence injunction, no contact is allowed at all by the abuser, a GAL is not appointed to speak on behalf of the child, and DCF does not have to stay involved in the case. Additionally, according to one judge, the parent filing for the domestic violence injunction will often tell the court that he or she does not actually want the injunction but filed for it out of fear that DCF would take away the children otherwise. In situations like this, the petitioner will most likely not enforce the injunction, and the children may still be at risk.

Practitioners with whom Senate professional staff spoke offered two areas of concern that may explain why the injunction process in ch. 39, F.S., is not utilized more often. The first concern is the turnaround time for a hearing. Section 39.504(2), F.S., requires the court to hold a hearing the next business day after an emergency injunction is issued. One judge mentioned that it is often impossible to hold a hearing so soon after the emergency injunction is issued. One suggestion for fixing this problem is to increase the time period for holding a full hearing to 15 days from the date of the emergency injunction – similar to a domestic violence injunction.

Another concern that was raised regarding the ch. 39, F.S., injunction is when a court actually has jurisdiction. Section 39.013, F.S., provides that the circuit court has original jurisdiction over all proceedings in ch. 39, F.S. Jurisdiction attaches with the filing of a shelter petition, dependency petition, or termination of parental rights petition. Based on the statutory language, some professionals believe that the court's jurisdiction to issue an injunction does not attach until either a dependency, child abuse, or some other equivalent petition has been filed.

During the 2009 Regular Session, Senate Bill 2288 addressed both of these concerns with the ch. 39, F.S., injunction process. First, the bill amended s. 39.013, F.S., to provide that jurisdiction also attaches when a petition for an injunction issued pursuant to s. 39.504, F.S., is filed. Additionally, the bill amended s. 39.504, F.S., to provide that upon the filing of a petition for injunction, the court must set a hearing at the earliest possible time,

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<sup>65</sup> Section 39.504(2), F.S.

<sup>66</sup> Section 39.504(3)(a), F.S.

but no later than 15 days after the temporary ex parte injunction is issued. Senate Bill 2288 died in the Senate Committee on Children, Families, and Elder Affairs.

## Options and/or Recommendations

Research for this interim report reveals that protective injunctions play an important role in helping to promote the safety of individuals exposed to or at risk of violence. However, the research also reveals potential for the protective injunction process to be misused by some individuals, either through the assertion of false allegations of violence or the seeking of injunctions, particularly injunctions against protection from repeat violence, for civil disputes beyond the scope of the governing statutes. Aside from intentional misuse of the process, the research also reveals judicial frustration with presentation of incomplete or irrelevant information in the filing of potentially legitimate petitions for protection. Based on that research, this review identifies changes that the Legislature and the state courts system could consider making to the protective injunction process in Florida.

In particular, this report recommends the following changes to the current framework to deter misuse of the process and protect true victims of violence:

- Remove stalking from the current repeat violence definition and create a separate cause of action for an injunction for protection against stalking. Additionally, institute a filing fee for the filing of a petition for repeat violence. The Legislature may wish to effectuate this recommendation carefully to ensure that the policy change does not jeopardize grant funding under the Violence Against Women Act, which requires state grant recipients to certify that the state does not require a victim of domestic violence, stalking, or sexual assault to bear the costs associated with the filing of a protection order.
- Amend Florida's child abuse injunction statute to allow jurisdiction to attach without requiring a dependency petition (or other equivalent petition) to be pending and provide that a hearing must be held within 15 days – rather than 24 hours – of a judge issuing an emergency child abuse injunction.

Additionally, to the extent judges are frustrated with the current injunction process, the following are some reforms that may help ensure that legitimate petitions are processed efficiently and that petitions that are not meritorious are discouraged:

- Redesign the petitions to provide additional instructions to petitioners on the proper legal requirements for an injunction and, if resources allow, provide intake counselors or advocates who can assist petitioners in filling out the petitions.
- To the extent resources are available, promote additional opportunities for judicial education.
- Prescribe a time limit for the portions of a domestic violence injunction that should be brought as part of the traditional family court docket. For example, when a judge issues a domestic violence injunction that also orders time-sharing or child support, those portions of the injunction would expire in 90 days in order to direct people into the proper court for those issues.
- Allow a petitioner to decline the return hearing if the court denies his or her ex parte petition solely on the ground that there is no appearance of an immediate and present danger of domestic violence.
- Require a petitioner who is granted a permanent injunction to notify the clerk of court if her or his address changes.