

Proposal for the 2015 FSA Legislative Summit

Issue: This proposal closes multiple loopholes for victims of stalking, cyberstalking, or sexual repeat, dating, or domestic violence. Currently, a temporary injunction is effective for 15 days, regardless of the length of time it takes for a final injunction to be served. This proposal allows a temporary injunction to remain effective until a final injunction is served, which will extend the protection of a temporary injunction to a petitioner until the final injunction is served.

This proposal closes another loophole by ensuring that law enforcement can arrest a person for violating an injunction related to child abuse, stalking, or sexual or repeat violence without a warrant. This change provides equal safeguards for a person no matter what type of injunction protects them and keeps law enforcement safe from wrongful arrest charges.

Statewide Impact: Increased protection for all victims of domestic violence, dating violence, repeat violence, sexual violence, and child abuse.

Funding Implications: None

Law Enforcement Impact: None

Opposition: None

Do you have draft legislation: Yes, filed in 2014 as SB 920 and HB 659. House bill died on calendar and SB died in final committee.

1 A bill to be entitled

2 An act relating to protection of crime victims;
3 amending ss. 741.30, 784.046, and 784.0485, F.S.;
4 extending the effectiveness of certain temporary
5 injunctions in domestic violence, repeat violence,
6 sexual violence, dating violence, or stalking
7 proceedings in certain circumstances; amending ss.
8 784.047 and 784.0487, F.S.; providing that it is
9 unlawful for a person to violate a final injunction
10 for protection against repeat violence, dating
11 violence, sexual violence, stalking, or cyberstalking
12 by having in his or her care, custody, possession, or
13 control any firearm or ammunition; providing
14 penalties; amending s. 790.233, F.S.; conforming
15 provisions to changes made by the act; amending s.
16 901.15, F.S.; expanding situations in which an arrest
17 without a warrant is lawful to include probable cause
18 of repeat violence, sexual violence, stalking,
19 cyberstalking, or child abuse; amending s. 903.047,
20 F.S.; providing that the condition of pretrial release
21 prohibiting a defendant from contacting the victim
22 becomes effective immediately upon order of the court;
23 providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:
26

27 Section 1. Paragraph (c) of subsection (5) of section
 28 741.30, Florida Statutes, is amended to read:

29 741.30 Domestic violence; injunction; powers and duties of
 30 court and clerk; petition; notice and hearing; temporary
 31 injunction; issuance of injunction; statewide verification
 32 system; enforcement; public records exemption.—

33 (5)

34 (c) Any such ex parte temporary injunction is ~~shall be~~
 35 effective for a fixed period not to exceed 15 days. However, if
 36 a final injunction is issued but has not been served on the
 37 respondent, the temporary injunction remains in full force and
 38 effect until the final injunction is served on the respondent.
 39 In no event shall the temporary injunction extend beyond the
 40 expiration date of the final injunction, if such a date is
 41 designated.

42 (d) A full hearing, as provided by this section, shall be
 43 set for a date no later than the date when the ex parte
 44 temporary injunction ceases to be effective. The court may grant
 45 a continuance of a the hearing, before or during the a hearing,
 46 for good cause shown by any party. The need to obtain service of
 47 process constitutes good cause. An, which shall include a
 48 continuance to obtain service of process. Any injunction shall
 49 be extended so that it remains if necessary to remain in full
 50 force and effect during any period of continuance.

51 Section 2. Paragraph (c) of subsection (6) of section
 52 784.046, Florida Statutes, is amended to read:

53 784.046 Action by victim of repeat violence, sexual
 54 violence, or dating violence for protective injunction; dating
 55 violence investigations, notice to victims, and reporting;
 56 pretrial release violations; public records exemption.-

57 (6)

58 (c) Any such ex parte temporary injunction is ~~shall be~~
 59 effective for a fixed period not to exceed 15 days. ~~However,~~ An
 60 ex parte temporary injunction granted under subparagraph
 61 (2)(c)2. is effective for 15 days following the date the
 62 respondent is released from incarceration. However, if a final
 63 injunction is issued but has not been served on the respondent,
 64 the temporary injunction remains in full force and effect until
 65 the final injunction is served on the respondent. In no event
 66 shall the temporary injunction extend beyond the expiration date
 67 of the final injunction, if such a date is designated.

68 (d) A full hearing, as provided by this section, shall be
 69 set for a date no later than the date when the ex parte
 70 temporary injunction ceases to be effective. The court may grant
 71 a continuance of a ~~the ex parte injunction and the full hearing,~~
 72 before or during the ~~a~~ hearing, for good cause shown by any
 73 party. The need to obtain service of process constitutes good
 74 cause. An injunction shall be extended so that it remains in
 75 full force and effect during any period of continuance.

76 Section 3. Paragraph (c) of subsection (5) of section
 77 784.0485, Florida Statutes, is amended to read:

78 784.0485 Stalking; injunction; powers and duties of court

79 and clerk; petition; notice and hearing; temporary injunction;
 80 issuance of injunction; statewide verification system;
 81 enforcement.—

82 (5)

83 (c) Any such ex parte temporary injunction is effective
 84 for a fixed period not to exceed 15 days. However, if a final
 85 injunction is issued but has not been served on the respondent,
 86 the temporary injunction remains in full force and effect until
 87 the final injunction is served on the respondent. In no event
 88 shall the temporary injunction extend beyond the expiration date
 89 of the final injunction, if such a date is designated.

90 (d) A full hearing, as provided in this section, shall be
 91 set for a date no later than the date when the ex parte
 92 temporary injunction ceases to be effective. The court may grant
 93 a continuance of a the hearing, before or during the a hearing,
 94 for good cause shown by any party. The need to obtain service of
 95 process constitutes good cause, which shall include a
 96 continuance to obtain service of process. An injunction shall be
 97 extended so that it remains if necessary to remain in full force
 98 and effect during any period of continuance.

99 Section 4. Section 784.047, Florida Statutes, is amended
 100 to read:

101 784.047 Penalties for violating protective injunction
 102 against violators.—

103 (1) A person who willfully violates an injunction for
 104 protection against repeat violence, sexual violence, or dating

105 violence, issued pursuant to s. 784.046, or a foreign protection
106 order accorded full faith and credit pursuant to s. 741.315, by:

107 (a)~~(1)~~ Refusing to vacate the dwelling that the parties
108 share;

109 (b)~~(2)~~ Going to, or being within 500 feet of, the
110 petitioner's residence, school, or place of employment, or a
111 specified place frequented regularly by the petitioner or ~~and~~
112 any named family or household member;

113 (c)~~(3)~~ Committing an act of repeat violence, sexual
114 violence, or dating violence against the petitioner;

115 (d)~~(4)~~ Committing any other violation of the injunction
116 through an intentional unlawful threat, word, or act to do
117 violence to the petitioner;

118 (e)~~(5)~~ Telephoning, contacting, or otherwise communicating
119 with the petitioner directly or indirectly, unless the
120 injunction specifically allows indirect contact through a third
121 party;

122 (f)~~(6)~~ Knowingly and intentionally coming within 100 feet
123 of the petitioner's motor vehicle, whether or not that vehicle
124 is occupied;

125 (g)~~(7)~~ Defacing or destroying the petitioner's personal
126 property, including the petitioner's motor vehicle; or

127 (h)~~(8)~~ Refusing to surrender firearms or ammunition if
128 ordered to do so by the court,

129

130 commits a misdemeanor of the first degree, punishable as

131 provided in s. 775.082 or s. 775.083.

132 (2) A person who violates a final injunction for
 133 protection against repeat violence, sexual violence, or dating
 134 violence by having in his or her care, custody, possession, or
 135 control any firearm or ammunition violates s. 790.233 and
 136 commits a misdemeanor of the first degree, punishable as
 137 provided in s. 775.082 or s. 775.083.

138 Section 5. Paragraph (a) of subsection (4) of section
 139 784.0487, Florida Statutes, is amended, and subsection (6) is
 140 added to that section, to read:

141 784.0487 Violation of an injunction for protection against
 142 stalking or cyberstalking.—

143 (4) A person who willfully violates an injunction for
 144 protection against stalking or cyberstalking issued pursuant to
 145 s. 784.0485, or a foreign protection order accorded full faith
 146 and credit pursuant to s. 741.315, by:

147 (a) Going to, or being within 500 feet of, the
 148 petitioner's residence, school, or place of employment, or a
 149 specified place frequented regularly by the petitioner, ~~and~~ any
 150 named family members, or individuals closely associated with the
 151 petitioner;

152
 153 commits a misdemeanor of the first degree, punishable as
 154 provided in s. 775.082 or s. 775.083.

155 (6) A person who violates a final injunction for
 156 protection against stalking or cyberstalking by having in his or

157 her care, custody, possession, or control any firearm or
 158 ammunition violates s. 790.233 and commits a misdemeanor of the
 159 first degree, punishable as provided in s. 775.082 or s.
 160 775.083.

161 Section 6. Subsection (1) of section 790.233, Florida
 162 Statutes, is amended to read:

163 790.233 Possession of firearm or ammunition prohibited
 164 when person is subject to an injunction against committing acts
 165 of domestic violence, repeat violence, dating violence, sexual
 166 violence, stalking, or cyberstalking; penalties.—

167 (1) A person may not have in his or her care, custody,
 168 possession, or control any firearm or ammunition if the person
 169 has been issued a final injunction that is currently in force
 170 and effect, restraining that person from committing acts of:

- 171 (a) Domestic violence, as issued under s. 741.30;
- 172 (b) Repeat violence, dating violence, or sexual violence,
 173 as issued under s. 784.046; or ~~from committing acts of~~
- 174 (c) Stalking or cyberstalking, as issued under s.
 175 784.0485.

176 Section 7. Subsections (6) and (7) of section 901.15,
 177 Florida Statutes, are amended to read:

178 901.15 When arrest by officer without warrant is lawful.—A
 179 law enforcement officer may arrest a person without a warrant
 180 when:

181 (6) There is probable cause to believe that the person has
 182 committed a criminal act according to s. 790.233 or according to

183 s. 39.504, s. 741.31, ~~or~~ s. 784.047, or s. 784.0487 which
 184 violates an injunction for protection entered pursuant to s.
 185 39.504, s. 741.30, ~~or~~ s. 784.046, or s. 784.0485, or a foreign
 186 protection order accorded full faith and credit pursuant to s.
 187 741.315, over the objection of the petitioner, if necessary.

188 (7) There is probable cause to believe that the person has
 189 committed an act of child abuse as provided in s. 39.01; an act
 190 of domestic violence, as defined in s. 741.28; an act of,~~or~~
 191 dating violence, repeat violence, or sexual violence as provided
 192 in s. 784.046; or an act of stalking or cyberstalking as
 193 provided in s. 784.0485. The decision to arrest does ~~shall~~ not
 194 require consent of the victim or consideration of the
 195 relationship of the parties. It is the public policy of this
 196 state to strongly discourage arrest and charges of both parties
 197 for domestic violence or dating violence on each other and to
 198 encourage training of law enforcement and prosecutors in these
 199 areas. A law enforcement officer who acts in good faith and
 200 exercises due care in making an arrest under this subsection,
 201 under s. 39.504, s. 741.31(4), ~~or~~ s. 784.047, or s. 784.0487, or
 202 pursuant to a foreign order of protection accorded full faith
 203 and credit pursuant to s. 741.315, is immune from civil
 204 liability that otherwise might result by reason of his or her
 205 action.

206 Section 8. Paragraph (b) of subsection (1) of section
 207 903.047, Florida Statutes, is amended to read:

208 903.047 Conditions of pretrial release.—

CS/CS/CS/HB 659

2014

209 (1) As a condition of pretrial release, whether such
210 release is by surety bail bond or recognizance bond or in some
211 other form, the defendant shall:

212 (b) Refrain from any contact of any type with the victim,
213 except through pretrial discovery pursuant to the Florida Rules
214 of Criminal Procedure. This condition becomes effective
215 immediately upon order of the court.

216 Section 9. This act shall take effect October 1, 2014.