

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1568

SPONSOR: Criminal Justice Committee and Senator Crist

SUBJECT: Protection against Repeat, Sexual, and Dating Violence

DATE: March 18, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Fav/CS
2.	_____	_____	JU	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 1568 brings the statute governing protective injunctions for sexual violence (s. 784.046, F.S.) into conformity with the domestic violence injunction statute as it relates to victim address confidentiality. Specifically, it allows a victim of sexual violence to submit his or her address to the court in a separate confidential filing when petitioning the court for a protective injunction, if the victim needs to keep his or her location confidential for safety reasons.

It removes the statutory language instructing the Department of Corrections (DOC) to serve respondents of protective injunctions against sexual violence if they are in the custody of the DOC.

In addition, the bill makes willful violation of a protective injunction against sexual violence a first degree misdemeanor, which is the same penalty currently provided for willfully violating a protective injunction against repeat, dating, or domestic violence. It also includes violating a sexual violence injunction as aggravated stalking, if the person knowingly, willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person.

Finally, it eliminates duplicative language in s. 901.15(10), F.S., which gives a law enforcement officer warrantless arrest authority when probable cause exists that a person has knowingly committed an act of repeat violence in violation of a repeat violence injunction.

This bill amends the following sections of the Florida Statutes: 784.046, 784.047, 784.08, 20.165, and 901.15.

II. Present Situation:

Section 784.046, F.S., allows a person to obtain a protective injunction against repeat violence, sexual violence, or dating violence as follows:

- *Repeat Violence*: A victim of *repeat violence* who has reasonable cause to believe he or she is in imminent danger of re-victimization by violence may obtain a protective injunction. A victim who is a minor may also seek an injunction against *repeat violence* by or through his or her parent or legal guardian. *Repeat violence* is defined as two or more incidents of violence or stalking, one of which must have occurred in the last 6 months.
- *Dating violence*: Since 2002, a victim of *dating violence* can obtain protective injunctive relief if the victim has reasonable cause to believe she or he is in imminent danger of re-victimization, or if a person has reasonable cause to believe she or he is in imminent danger of becoming the victim of *dating violence*. A parent or legal guardian may also seek a protective injunction against *dating violence* on behalf of a minor child living at home. “*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 court must consider certain enumerated factors in determining whether there is a dating relationship for purposes of the injunction.
- *Sexual violence*: Since 2003, a victim of *sexual violence* or the parent or guardian of a minor child who is a victim of *sexual violence* may petition for protective injunctive relief if: the victim reported the *sexual violence* to a law enforcement agency and is cooperating in a criminal proceeding, or the offender’s term in state prison has expired or is about to expire within 90 days following the filing of the petition for injunctive relief. “*Sexual violence*” is a single incident of: sexual battery (ch. 794, F.S.); lewd and lascivious conduct (ch. 800, F.S.); luring and enticing a child (ch. 787, F.S.); sexual performance by a child (ch. 827, F.S.); or a forcible felony involving an actual or attempted sexual act.

Currently under s. 784.046(8)(a)2., F.S., if the respondent for a petition for protective injunction against sexual violence is in the custody of the DOC, the clerk of the court is to furnish a copy of the petition, notice of hearing, and temporary injunction to the DOC to be served upon the respondent. This provision does not specify how the clerks are to determine where and to whom at DOC to send the paper work. It also does not direct the DOC to return paperwork to the clerks or the sheriff’s offices so they may know that the respondent has been served. Sheriff’s offices already serve incarcerated respondents for other types of injunctions and it is reported by the Sheriff’s Association that sheriff’s offices in Florida serve thousands of injunctions each year.

This statute, unlike the domestic violence protective injunction statute (s. 741.30(3)(b), F.S.), does not include a similar provision allowing victims of sexual violence who are petitioning the court for injunctive relief to submit their address in a separate and confidential filing with the court, if the victim has safety concerns. (Section 119.07(3)(s), F.S., provides a public records exemption for identifying information about victims of sexual crimes, domestic violence, aggravated child abuse, and aggravated battery.)

In addition, the statute making it a first degree misdemeanor to willfully violate a protective injunction against repeat or dating violence does not include a willful violation of a protective injunction against sexual violence. s. 784.047, F.S. (This is the same criminal penalty provided for willful violation of a protective injunction against domestic violence in s. 741.31, F.S.) There is currently no criminal penalty for willfully violating an injunction against sexual violence.

Similarly, the stalking statute making it a third degree felony to knowingly, willfully, maliciously, and repeatedly follow, harass, or cyberstalk another person when the perpetrator has violated an injunction against repeat, dating, or domestic violence does not include violating an injunction against sexual violence. s. 784.048, F.S. Thus, there is currently no criminal penalty for violating an injunction against sexual violence under this statute.

Section 901.15(10), F.S., gives a law enforcement officer warrantless arrest authority when probable cause exists that a person has knowingly committed an act of repeat violence in violation of a repeat violence injunction. This subsection is duplicative because subsection (6) also covers warrantless arrests for repeat violence injunction violations.

III. Effect of Proposed Changes:

Committee Substitute for Senate Bill 1568 would bring the statute governing protective injunctions for sexual violence (s. 784.046, F.S.) into conformity with the domestic violence injunction statute as it relates to victim address confidentiality. Specifically, it would allow a victim of sexual violence to submit his or her address with the court in a separate confidential filing when petitioning the court for a protective injunction, if the victim needs to keep his or her location confidential for safety reasons.

It would also remove the statutory language instructing the DOC to serve respondents of protective injunctions against sexual violence if they are in the custody of the DOC, resulting in the sheriff serving incarcerated respondents.

In addition, the bill would make willful violation of a protective injunction against sexual violence a first degree misdemeanor by adding it to s. 784.047, F.S., the statute currently making it a first degree misdemeanor to willfully violate a protective injunction against repeat or dating violence. (This would also parallel the criminal penalty for willfully violating a protective injunction against domestic violence.)

It would also amend s. 784.048(4), F.S., to include violating a sexual violence injunction as aggravated stalking, if the person knowingly, willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person. (Repeat and dating violence injunction violations are already covered and the current penalty for this offense is a third degree felony.)

Finally, it would eliminate duplicative language in s. 901.15(10), F.S., which gives a law enforcement officer warrantless arrest authority when probable cause exists that a person has knowingly committed an act of repeat violence in violation of a repeat violence injunction. This change will result in warrantless arrest authority for all protective injunction violations being covered in subsection (6) of s. 901.15, F.S.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Violators of a sexual violence injunction would now be subject to a first degree misdemeanor penalty – potentially serving up to one year in jail and/or paying up to \$1,000. Violators of the stalking statute by virtue of a sexual violence injunction violation would now be subject to a third degree felony penalty- potentially serving up to five years in prison and/or paying up to \$5,000.

C. Government Sector Impact:

There could be an indeterminate fiscal impact upon local jails to the extent that sexual violence injunction violators are sentenced to serve time in jail for the first degree misdemeanor under the bill. The fiscal impact, if any, upon prison beds is indeterminate at this time. (The Criminal Justice Estimating Conference has been requested to look at the fiscal impact.)

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.