

# 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: April 5, 2004

REVISED: \_\_\_\_\_

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

## I. Summary:

This bill revises existing law to provide for the same treatments and protections in law of protective injunctions for sexual violence, as that currently given to protective injunctions based on repeat, dating, and domestic violence.

This bill specifically:

- Grants victims requesting protective injunctions for sexual violence confidentiality, by allowing a victim of sexual violence to submit his or her address to the court in a separate filing when petitioning the court for a protective injunction, when needed for safety.
- Includes a willful violation of a protective injunction against sexual violence in the section currently providing for the criminal penalty of a first degree misdemeanor in cases of repeat, dating, or domestic violence.
- Recognizes a violation of a sexual violence injunction as an aggravated stalking, if the person knowingly, willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person.

This bill also makes the following technical changes:

- Removes the authority of the Department of Corrections (DOC) to serve respondents of protective injunctions against sexual violence if they are in DOC custody, which results in service by sheriffs.
- 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* with 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 a parent or legal guardian. *Repeat violence* is defined as two or more incidents of violence or stalking, one of which occurred in the 6 months before filing the petition.
- *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 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 DOC custody, the clerk of the court is to furnish a copy of the petition, notice of hearing, and temporary injunction to DOC to be served upon the respondent. This provision does not specify how clerks 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 to confirm service. 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 petition 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 a 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) already authorizes warrantless arrests for repeat violence injunction violations.

### **III. Effect of Proposed Changes:**

This bill brings the statute governing protective injunctions for sexual violence (s. 784.046, F.S.) into conformity with the domestic violence injunction statute as relates to confidentiality of a victim's address. Specifically, it allows 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 necessary for safety reasons.

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

In addition, the bill includes sexual violence in s. 784.047, F.S., which currently provides for a first degree misdemeanor for a willful violation of a protective injunction for cases of repeat or dating violence. This change parallels the criminal penalty for willfully violating a protective injunction against domestic violence.

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

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 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 will 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 based on a sexual violence injunction violation will now be subject to a third degree felony penalty, with incarceration of up to five years and up to \$5,000 in fines.

C. Government Sector Impact:

There may be an indeterminate fiscal impact on 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.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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