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By Representative Morse

A bill to be entitled

An act relating to child custody; amending s. 61.13, F.S.; providing for consideration of spousal or child abuse in custody proceedings; reenacting ss. 39.408(3)(a) and 741.30(5)(a), F.S., relating to disposition hearings in dependency cases, and relating to temporary injunctions in domestic violence cases, to incorporate said amendment in references; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (k) of subsection (3) of section 61.13, Florida Statutes, is redesignated as paragraph (l), and a new paragraph (k) is added to said subsection to read:

61.13 Custody and support of children; visitation rights; power of court in making orders --

(3) For purposes of shared parental responsibility and primary residence, the best interests of the child shall include an evaluation of all factors affecting the welfare and interests of the child, including, but not limited to:

(k) Evidence of spousal or child abuse.

Section 2. For the purpose of incorporating the amendment to s. 61.13, Florida Statutes, in references thereto, the sections or subdivisions of Florida Statutes set forth below are reenacted to read:

39.408 Hearings for dependency cases --

(3) DISPOSITION HEARING.--At the disposition hearing, if the court finds that the facts alleged in the petition for dependency were proven in the adjudicatory hearing, or if the

281-161A-97

1 parents have consented to the finding of dependency or
2 admitted the allegations in the petition, have failed to
3 appear for the arraignment hearing after proper notice, or
4 have not been located despite a diligent search having been
5 conducted, the court shall receive and consider a
6 predisposition study, which must be in writing and presented
7 by an authorized agent of the department

8 (a) The predisposition study shall cover for any
9 dependent child all factors specified in s. 61.13(3), and must
10 also provide the court with the following documented
11 information:

12 1. An assessment defining the dangers and risks of
13 returning the child home, including a description of the
14 changes in and resolutions to the initial risks.

15 2. A description of what risks are still present and
16 what resources are available and will be provided for the
17 protection and safety of the child.

18 3. A description of the benefits of returning the
19 child home.

20 4. A description of all unresolved issues.

21 5. An abuse registry history for all caretakers,
22 family members, and individuals residing within the household.

23 6. The complete child protection team report and
24 recommendation or, if no report exists, a statement reflecting
25 that no report has been made.

26 7. All opinions or recommendations from other
27 professionals or agencies that provide evaluative, social,
28 reunification, or other services to the family.

29 8. The availability of appropriate prevention and
30 reunification services for the family to prevent the removal
31 of the child from the home or to reunify the child with the

1 family after removal, including the availability of family
2 preservation services through the Family Builders Program, the
3 Intensive Crisis Counseling Program, or both.

4 9. The inappropriateness of other prevention and
5 reunification services that were available.

6 10 The efforts by the department to prevent
7 out-of-home placement of the child or, when applicable, to
8 reunify the family if appropriate services were available,
9 including the application of intensive family preservation
10 services through the Family Builders Program, the Intensive
11 Crisis Counseling Program, or both.

12 11. Whether the services were provided to the family
13 and child.

14 12. If the services were provided, whether they were
15 sufficient to meet the needs of the child and the family and
16 to enable the child to remain at home or to be returned home.

17 13. If the services were not provided, the reasons for
18 such lack of action.

19 14. The need for, or appropriateness of, continuing
20 the services if the child remains in the custody of the family
21 or if the child is placed outside the home.

22 15. Whether family mediation was provided

23 16. Whether a multidisciplinary case staffing was
24 conducted and, if so, the results.

25 17. If the child has been removed from the home and
26 there is a parent who may be considered for custody pursuant
27 to s. 39.41(1), a recommendation as to whether placement of
28 the child with that parent would be detrimental to the child.

29 741.30 Domestic violence; injunction; powers and
30 duties of court and clerk; petition; notice and hearing;

31

1 temporary injunction; issuance of injunction; statewide
2 verification system; enforcement.--

3 (5)(a) When it appears to the court that an immediate
4 and present danger of domestic violence exists, the court may
5 grant a temporary injunction ex parte, pending a full hearing,
6 and may grant such relief as the court deems proper, including
7 an injunction:

8 1. Restraining the respondent from committing any acts
9 of domestic violence.

10 2. Awarding to the petitioner the temporary exclusive
11 use and possession of the dwelling that the parties share or
12 excluding the respondent from the residence of the petitioner.

13 3. On the same basis as provided in s. 61.13(2), (3),
14 (4), and (5), granting to the petitioner temporary custody of
15 a minor child or children.

16 Section 3. This act shall take effect upon becoming a
17 law.

18 *****

19 HOUSE SUMMARY

20
21 Provides for the court to consider evidence of spousal
22 abuse or child abuse when evaluating the best interests
23 of the child in child custody proceedings under ch. 61,
24 F.S., relating to dissolution of marriage

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27 This publication was produced at an average cost of 1.12 cents
28 per single page in compliance with the Rules and for the
information of members of the Legislature and the public.

By Senator Harris

24-344-97

A bill to be entitled

An act relating to injunctions and restraining orders for domestic violence; amending s. 28.241, F.S.; limiting certain fees for injunctions relating to domestic violence; amending s. 741.30, F.S.; limiting total charges for issuing or serving injunctions or restraining orders relating to domestic violence; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (5) of section 28.241, Florida Statutes, 1996 Supplement, is amended to read:

28.241 Filing charges for trial and appellate proceedings.--

(5) The fees prescribed in this section do not include the service charges required by law for the clerk as provided in s. 28.24 or by other sections of the Florida Statutes. Service charges authorized by this section may not be added to any civil penalty imposed by chapter 316 or chapter 318. Fees for injunctions concerning domestic violence shall be limited as provided in s. 741.30(2)(a).

Section 2. Paragraph (a) of subsection (2) of section 741.30, Florida Statutes, 1996 Supplement, is amended to read:

741.30 Domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement.--

(2)(a) Notwithstanding any other provision of law, the total charge, including any administration fees, law

1 enforcement agency charges, and court costs or service
 2 charges, for any court to issue an injunction concerning
 3 domestic violence under chapter 741 or chapter 784 shall not
 4 exceed \$50. The total charge by any law enforcement agency to
 5 serve an injunction or restraining order concerning violence
 6 shall not exceed \$20. The remaining \$30 fee collected for an
 7 injunction under chapter 741 shall only be applied to the
 8 initial \$40 service charge collected by the clerk of the court
 9 as provided in s. 28.241(1). In the event the victim does not
 10 have sufficient funds with which to pay filing fees to the
 11 clerk of the court or service fees to the sheriff or law
 12 enforcement agency and signs an affidavit stating so, the fees
 13 shall be waived by the clerk of the court or the sheriff or
 14 law enforcement agency to the extent necessary to process the
 15 petition and serve the injunction, subject to a subsequent
 16 order of the court relative to the payment of such fees.

17 Section 3. This act shall take effect upon becoming a
 18 law.

19 *****

20 HOUSE SUMMARY

21
 22 Limits total charges for issuing or serving injunctions
 23 or restraining orders relating to domestic violence. See
 24 bill for details.
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 30
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By the Committee on Family Law & Children and
Representatives Futch and Feeney

1 A bill to be entitled
2 An act relating to injunctions and restraining
3 orders for domestic violence; amending s.
4 28.241, F.S.; limiting certain fees for
5 injunctions relating to domestic violence;
6 amending s. 741.30, F.S.; limiting total
7 charges for issuing or serving injunctions or
8 restraining orders relating to domestic
9 violence; providing an effective date.

10

11 Be It Enacted by the Legislature of the State of Florida:

12

13 Section 1. Subsection (5) of section 28.241, Florida
14 Statutes, 1996 Supplement, is amended to read:

15

16

28.241 Filing charges for trial and appellate
proceedings.--

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22

(5) The fees prescribed in this section do not include
the service charges required by law for the clerk as provided
in s. 28.24 or by other sections of the Florida Statutes.
Service charges authorized by this section may not be added to
any civil penalty imposed by chapter 316 or chapter 318. Fees
for injunctions concerning domestic violence shall be limited
as provided in s. 741.30(2)(a).

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Section 2. Paragraph (a) of subsection (2) of section
741.30, Florida Statutes, 1996 Supplement, is amended to read:
741.30 Domestic violence; injunction; powers and
duties of court and clerk; petition; notice and hearing;
temporary injunction; issuance of injunction; statewide
verification system; enforcement.--

30

31

(2)(a) Notwithstanding any other provision of law, the
total charge, including any administration fees, law

1 enforcement agency charges, and court costs or service
2 charges, for any court to issue an injunction concerning
3 domestic violence under chapter 741 or chapter 784 shall not
4 exceed \$50. The total charge by any law enforcement agency to
5 serve an injunction or restraining order concerning violence
6 shall not exceed \$20. The remaining fee collected for an
7 injunction under chapter 741 shall only be applied to the
8 initial \$40 service charge collected by the clerk of the court
9 as provided in s. 28.241(1). In the event the victim does not
10 have sufficient funds with which to pay filing fees to the
11 clerk of the court or service fees to the sheriff or law
12 enforcement agency and signs an affidavit stating so, the fees
13 shall be waived by the clerk of the court or the sheriff or
14 law enforcement agency to the extent necessary to process the
15 petition and serve the injunction, subject to a subsequent
16 order of the court relative to the payment of such fees.

17 Section 3. This act shall take effect upon becoming a
18 law.

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20 *****

21 HOUSE SUMMARY

22 Limits total charges for issuing or serving injunctions
23 or restraining orders relating to domestic violence. See
24 bill for details.
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By Representative Futch

1 A bill to be entitled

2 An act relating to injunctions and restraining
3 orders for domestic violence; amending s.
4 28.241, F.S.; limiting certain fees for
5 injunctions relating to domestic violence;
6 amending s. 741.30, F.S.; limiting total
7 charges for issuing or serving injunctions or
8 restraining orders relating to domestic
9 violence; providing an effective date.

10
11 Be It Enacted by the Legislature of the State of Florida.

12
13 Section 1. Subsection (5) of section 28.241, Florida
14 Statutes, 1996 Supplement, is amended to read.

15 28.241 Filing charges for trial and appellate
16 proceedings.--

17 (5) The fees prescribed in this section do not include
18 the service charges required by law for the clerk as provided
19 in s. 28.24 or by other sections of the Florida Statutes.
20 Service charges authorized by this section may not be added to
21 any civil penalty imposed by chapter 316 or chapter 318 fees
22 for injunctions concerning domestic violence shall be limited
23 as provided in s. 741.30(2)(a).

24 Section 2 Paragraph (a) of subsection (2) of section
25 741.30, Florida Statutes, 1996 Supplement, is amended to read.

26 741.30 Domestic violence; injunction; powers and
27 duties of court and clerk; petition; notice and hearing;
28 temporary injunction; issuance of injunction; statewide
29 verification system; enforcement.--

30 (2)(a) Notwithstanding any other provision of law, the
31 total charge, including any administration fees, law

1 enforcement agency charges, and court costs or service
 2 charges, for any court to issue an injunction concerning
 3 domestic violence under chapter 741 or chapter 784 shall not
 4 exceed \$50. The total charge by any law enforcement agency to
 5 serve an injunction or restraining order concerning violence
 6 shall not exceed \$20. The remaining \$30 fee collected for an
 7 injunction under chapter 741 shall only be applied to the
 8 initial \$40 service charge collected by the clerk of the court
 9 as provided in s 28 241(1). In the event the victim does not
 10 have sufficient funds with which to pay filing fees to the
 11 clerk of the court or service fees to the sheriff or law
 12 enforcement agency and signs an affidavit stating so, the fees
 13 shall be waived by the clerk of the court or the sheriff or
 14 law enforcement agency to the extent necessary to process the
 15 petition and serve the injunction, subject to a subsequent
 16 order of the court relative to the payment of such fees.

17 Section 3 This act shall take effect upon becoming a
 18 law.

19 *****

20 HOUSE SUMMARY

21
 22 Limits total charges for issuing or serving injunctions
 23 or restraining orders relating to domestic violence See
 24 bill for details.
 25
 26

27 This publication was produced at an average cost of 1.12 cents
 28 per single page in compliance with the Rules and for the
 29 information of members of the Legislature and the public.
 30
 31

By Representative Lynn

A bill to be entitled

2 An act relating to weapons and firearms;
3 creating s. 790.233, F.S.; prohibiting a person
4 who has been issued an injunction against
5 committing acts of domestic violence or repeat
6 violence from possessing any firearm or
7 ammunition; providing a penalty; amending s.
8 741.30, F.S.; requiring that an injunction for
9 protection against domestic violence indicate
10 that possessing any firearm or ammunition is
11 prohibited; amending s. 741.31, F.S.; providing
12 that it is a third-degree felony to possess a
13 firearm or ammunition following actual notice
14 of the injunction; amending s. 784.046, F.S.;
15 requiring that an injunction for protection
16 against repeat violence indicate that the
17 injunction is enforceable by law enforcement
18 officers in all counties and that possessing
19 any firearm or ammunition is prohibited;
20 amending s. 784.047, F.S.; providing that it is
21 a third-degree felony to possess a firearm or
22 ammunition following actual notice of the
23 injunction; reenacting s. 901.15(6), F.S.,
24 relating to lawful arrest by a law enforcement
25 officer without a warrant, to incorporate the
26 amendments to ss. 741.31, 784.047, F.S., in
27 references thereto; amending s. 790.06, F.S.;
28 providing that the Department of State may
29 issue a license to carry a concealed weapon or
30 firearm if the applicant has not had
31 adjudication of guilt withheld or imposition of

560-154A-97

1 sentence suspended for committing a violent
2 misdemeanor; authorizing the department to
3 issue such a license if the applicant has not
4 been issued an injunction against committing
5 acts of domestic violence or acts of repeat
6 violence; requiring that the department suspend
7 such a license, or the processing of a license
8 application, if the licensee or applicant is
9 issued an injunction against committing acts of
10 domestic violence or acts of repeat violence;
11 amending s. 790.065, F.S.; requiring that the
12 Department of Law Enforcement determine if a
13 potential buyer or transferee of a firearm has
14 been convicted of a violent misdemeanor or had
15 adjudication of guilt withheld or imposition of
16 sentence suspended for committing a violent
17 misdemeanor; providing an effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Section 790.233, Florida Statutes, is
22 created to read:

23 790.233 Possession of firearm and ammunition
24 prohibited if person is subject to an injunction against
25 committing acts of violence; penalty.--

26 (1) A person may not have in his or her care, custody,
27 possession, or control any firearm or ammunition if the person
28 has been issued a temporary or final injunction against
29 committing acts of:

30 (a) Domestic violence, issued under s. 741.30; or

31 (b) Repeat violence, issued under s. 784.046.

560-154A-97

1 (2) A person who violates subsection (1) after
2 receiving actual notice of the injunction, regardless of
3 whether the injunction is issued ex parte, commits a felony of
4 the third degree, punishable as provided under s. 775.082, s.
5 775.083, or s. 775.084.

6 Section 2. Paragraph (c) of subsection (6) of section
7 741.30, Florida Statutes, 1996 Supplement, is amended to read:
8 741.30 Domestic violence; injunction; powers and
9 duties of court and clerk; petition; notice and hearing;
10 temporary injunction; issuance of injunction; statewide
11 verification system; enforcement.--

12 (6)

13 (c) A temporary or final judgment on injunction for
14 protection against domestic violence entered pursuant to this
15 section must shall, on its face, indicate that

16 1. The injunction is valid and enforceable in all
17 counties of the State of Florida.

18 2. Law enforcement officers may use their arrest
19 powers pursuant to s. 901.15(6) to enforce the terms of the
20 injunction.

21 3. It is a violation of s. 790.233, and a third-degree
22 felony, for the respondent to have in his or her care,
23 custody, possession, or control any firearm or ammunition.

24 Section 3. Subsection (4) of section 741.31, Florida
25 Statutes, 1996 Supplement, is amended to read:

26 741.31 Violation of an injunction for protection
27 against domestic violence.--

28 (4)(a) A person who willfully violates an injunction
29 for protection against domestic violence, issued pursuant to
30 s. 741.30, by:

560-154A-97

1 1.(a) Refusing to vacate the dwelling that the parties
2 share;

3 2.(b) Going to the petitioner's residence, school,
4 place of employment, or a specified place frequented regularly
5 by the petitioner and any named family or household member;

6 3.(c) Committing an act of domestic violence against
7 the petitioner;

8 4.(d) Committing any other violation of the injunction
9 through an intentional unlawful threat, word, or act to do
10 violence to the petitioner; or

11 5.(e) Telephoning, contacting, or otherwise
12 communicating with the petitioner directly or indirectly,
13 unless the injunction specifically allows indirect contact
14 through a third party

15
16 is guilty of a misdemeanor of the first degree, punishable as
17 provided in s. 775.082 or s. 775.083.

18 (b) It is a violation of s. 790.233, and a felony of
19 the third degree, punishable as provided in s. 775.082, s.
20 775.083, or s. 775.084, for a person to violate a temporary or
21 final injunction for protection against domestic violence by
22 having in his or her care, custody, possession, or control any
23 firearm or ammunition, after having received actual notice of
24 the injunction.

25 Section 4 Paragraph (d) is added to subsection (6) of
26 section 784.046, Florida Statutes, to read:

27 784.046 Action by victim of repeat violence for
28 protective injunction; powers and duties of court and clerk of
29 court; filing and form of petition; notice and hearing;
30 temporary injunction; issuance; statewide verification system;
31 enforcement.--

560-154A-97

(6)

(d) A temporary or final injunction for protection against repeat violence entered under this section must, on its face, indicate that:

1. The injunction is valid and enforceable in all counties of the State of Florida.

2. Law enforcement officers may use their arrest powers pursuant to s. 901.15(6) to enforce the terms of the injunction.

3. It is a violation of s. 790.233, and a third-degree felony, for the respondent to have in his or her care, custody, possession, or control any firearm or ammunition.

Section 5. Section 784.047, Florida Statutes, is amended to read:

784.047 Penalties for violating protective injunction against repeat violators.--

(1) A person who willfully violates an injunction for protection against repeat violence, issued pursuant to s. 784.046, by:

(a)(4) Refusing to vacate the dwelling that the parties share;

(b)(2) Going to the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;

(c)(3) Committing an act of repeat violence against the petitioner;

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

(e)(5) Telephoning, contacting, or otherwise communicating with the petitioner directly or indirectly,

560-154A-97

1 unless the injunction specifically allows indirect contact
2 through a third party;

3
4 is guilty of a misdemeanor of the first degree, punishable as
5 provided in s. 775.082 or s. 775.083.

6 (2) It is a violation of s. 790.233, and a felony of
7 the third degree, punishable as provided in s. 775.082, s.
8 775.083, or s. 775.084, for a person to violate a temporary or
9 final injunction for protection against repeat violence by
10 having in his or her care, custody, possession, or control any
11 firearm or ammunition, after having received actual notice of
12 the injunction.

13 Section 6. For the purpose of incorporating the
14 amendments made by this act to section 741.31, Florida
15 Statutes, 1996 Supplement, and section 784.047, Florida
16 Statutes, in references thereto, subsection (6) of section
17 901.15, Florida Statutes, 1996 Supplement, is reenacted to
18 read:

19 901.15 When arrest by officer without warrant is
20 lawful.--A law enforcement officer may arrest a person without
21 a warrant when:

22 (6) There is probable cause to believe that the person
23 has committed a criminal act according to s. 741.31 or s.
24 784.047 which violates an injunction for protection entered
25 pursuant to s. 741.30 or s. 784.046, over the objection of the
26 petitioner, if necessary.

27 Section 7. Subsections (2) and (3) of section 790.06,
28 Florida Statutes, are amended to read:

29 790.06 License to carry concealed weapon or firearm.--

30 (2) The Department of State shall issue a license if
31 the applicant:

560-154A-97

1 (a) Is a resident of the United States or is a
2 consular security official of a foreign government that
3 maintains diplomatic relations and treaties of commerce,
4 friendship, and navigation with the United States and is
5 certified as such by the foreign government and by the
6 appropriate embassy in this country;

7 (b) Is 21 years of age or older;

8 (c) Does not suffer from a physical infirmity which
9 prevents the safe handling of a weapon or firearm;

10 (d) Is not ineligible to possess a firearm pursuant to
11 s. 790.23 by virtue of having been convicted of a felony;

12 (e) Has not been committed for the abuse of a
13 controlled substance or been found guilty of a crime under the
14 provisions of chapter 893 or similar laws of any other state
15 relating to controlled substances within a 3-year period
16 immediately preceding the date on which the application is
17 submitted;

18 (f) Does not chronically and habitually use alcoholic
19 beverages or other substances to the extent that his normal
20 faculties are impaired. It shall be presumed that an
21 applicant chronically and habitually uses alcoholic beverages
22 or other substances to the extent that his normal faculties
23 are impaired if the applicant has been committed under chapter
24 397 or under the provisions of former chapter 396 or has been
25 convicted under s. 790.151 or has been deemed a habitual
26 offender under s. 856.011(3), or has had two or more
27 convictions under s. 316.193 or similar laws of any other
28 state, within the 3-year period immediately preceding the date
29 on which the application is submitted;

30 (g) Desires a legal means to carry a concealed weapon
31 or firearm for lawful self-defense;

1 (h) Demonstrates competence with a firearm by any one
2 of the following:

3 1. Completion of any hunter education or hunter safety
4 course approved by the Game and Fresh Water Fish Commission or
5 a similar agency of another state;

6 2. Completion of any National Rifle Association
7 firearms safety or training course;

8 3. Completion of any firearms safety or training
9 course or class available to the general public offered by a
10 law enforcement, junior college, college, or private or public
11 institution or organization or firearms training school,
12 utilizing instructors certified by the National Rifle
13 Association, Criminal Justice Standards and Training
14 Commission, or the Department of State;

15 4. Completion of any law enforcement firearms safety
16 or training course or class offered for security guards,
17 investigators, special deputies, or any division or
18 subdivision of law enforcement or security enforcement;

19 5. Presents evidence of equivalent experience with a
20 firearm through participation in organized shooting
21 competition or military service;

22 6. Is licensed or has been licensed to carry a firearm
23 in this state or a county or municipality of this state,
24 unless such license has been revoked for cause; or

25 7. Completion of any firearms training or safety
26 course or class conducted by a state-certified or National
27 Rifle Association certified firearms instructor;

28
29 A photocopy of a certificate of completion of any of the
30 courses or classes; or an affidavit from the instructor,
31 school, club, organization, or group that conducted or taught

560-154A-97

1 said course or class attesting to the completion of the course
2 or class by the applicant; or a copy of any document which
3 shows completion of the course or class or evidences
4 participation in firearms competition shall constitute
5 evidence of qualification under this paragraph;

6 (i) Has not been adjudicated an incapacitated person
7 under s. 744.331, or similar laws of any other state, unless 5
8 years have elapsed since the applicant's restoration to
9 capacity by court order;

10 (j) Has not been committed to a mental institution
11 under chapter 394, or similar laws of any other state, unless
12 the applicant produces a certificate from a licensed
13 psychiatrist that he has not suffered from disability for at
14 least 5 years prior to the date of submission of the
; application; and

16 (k) Has not had adjudication of guilt withheld or
17 imposition of sentence suspended on any felony or violent
18 misdemeanor unless 3 years have elapsed since probation or any
19 other conditions set by the court have been fulfilled, or the
20 record has been sealed or expunged; and:

21 (1) Has not been issued an injunction that is
22 currently in force and effect and that restrains the applicant
23 from committing acts of domestic violence or acts of repeat
24 violence.

25 (3) The Department of State shall may deny a license
26 if the applicant has been found guilty of, had adjudication of
27 guilt withheld for, or had imposition of sentence suspended
28 for one or more crimes of violence constituting a misdemeanor,
; unless 3 years have elapsed since probation or any other
; conditions set by the court have been fulfilled; or the record
; has been sealed or expunged. The Department of State shall; or

1 may revoke a license if the licensee has been found guilty of,
2 had adjudication of guilt withheld for, or had imposition of
3 sentence suspended for one or more crimes of violence within
4 the preceding 3 years. The department shall, upon
5 notification by a law enforcement agency, a court, or the
6 Florida Department of Law Enforcement and subsequent written
7 verification, suspend a license or the processing of an
8 application for a license if the licensee or applicant is
9 arrested or formally charged with a crime ~~that~~ which would
10 disqualify such person from having a license under this
11 section, until final disposition of the case. The department
12 shall suspend a license or the processing of an application
13 for a license if the licensee or applicant is issued an
14 injunction that restrains the licensee or applicant from
15 committing acts of domestic violence or acts of repeat
16 violence.

17 Section 8. Subsections (1) and (2) of section 790.065,
18 Florida Statutes, 1996 Supplement, are amended to read:

19 790.065 Sale and delivery of firearms.--

20 (1) A No licensed importer, licensed manufacturer, or
21 licensed dealer may not shall sell or deliver from his
22 inventory at his licensed premises any firearm to another
23 person, other than a licensed importer, licensed manufacturer,
24 licensed dealer, or licensed collector, until he has:

25 (a) Obtained a completed form from the potential buyer
26 or transferee, which form shall have been promulgated by the
27 Department of Law Enforcement and provided by the licensed
28 importer, licensed manufacturer, or licensed dealer, which
29 shall include the name, date of birth, gender, race, and
30 social security number or other identification number of such
31 potential buyer or transferee and has inspected proper

560-154A-97

(c)1. Review any records available to it to determine whether the potential buyer or transferee has been indicted or has had an information filed against him for an offense that is a felony under either state or federal law, or, as mandated by federal law, has had an injunction for protection against domestic violence entered against the potential buyer or transferee under s. 741.30, has had an injunction for protection against repeat violence entered against the potential buyer or transferee under s. 784.046, or has been arrested for a dangerous crime as specified in s.

907.041(4)(a) or for any of the following enumerated offenses:

- a. Criminal anarchy under ss. 876.01 and 876.02.
- b. Extortion under s. 836.05.
- c. Explosives violations under s. 552.22(1) and (2).
- d. Controlled substances violations under chapter 893.
- e. Resisting an officer with violence under s. 843.01.
- f. Weapons and firearms violations under this chapter.
- g. Treason under s. 876.32.
- h. Assisting self-murder under s. 782.08.
- i. Sabotage under s. 876.38.
- j. Stalking or aggravated stalking under s. 784.048.

If the review indicates any such indictment, information, or arrest, the department shall provide to the licensee a conditional nonapproval number.

2. Within 24 working hours, the department shall determine the disposition of the indictment, information, or arrest and inform the licensee as to whether the potential buyer is prohibited from receiving or possessing a firearm. For purposes of this paragraph, "working hours" means the

560-154A-97

1 hours from 8 a.m. to 5 p.m. Monday through Friday, excluding
2 legal holidays.

3 3. The office of the clerk of court, at no charge to
4 the department, shall respond to any department request for
5 data on the disposition of the indictment, information, or
6 arrest as soon as possible, but in no event later than 8
7 working hours.

8 4. The department shall determine as quickly as
9 possible within the allotted time period whether the potential
10 buyer is prohibited from receiving or possessing a firearm.

11 5. If the potential buyer is not so prohibited, or if
12 the department cannot determine the disposition information
13 within the allotted time period, the department shall provide
14 the licensee with a conditional approval number.

15 6. If the buyer is so prohibited, the conditional
16 nonapproval number shall become a nonapproval number.

17 7. The department shall continue its attempts to
18 obtain the disposition information and may retain a record of
19 all approval numbers granted without sufficient disposition
20 information. If the department later obtains disposition
21 information which indicates:

22 a. That the potential buyer is not prohibited from
23 owning a firearm, it shall treat the record of the transaction
24 in accordance with this section; or

25 b. That the potential buyer is prohibited from owning
26 a firearm, it shall immediately revoke the conditional
27 approval number and notify local law enforcement.

28 8. During the time that disposition of the indictment,
29 information, or arrest is pending and until the department is
30 notified by the potential buyer that there has been a final
31

disposition of the indictment, information, or arrest, the conditional nonapproval number shall remain in effect.

Section 9. This act shall take effect July 1, 1997.

SENATE SUMMARY

Prohibits possessing or having within one's control a firearm or ammunition after being issued a temporary or final injunction against committing acts of domestic violence or acts of repeat violence. Provides that it is a third-degree felony to possess or have control of a firearm or ammunition after receiving actual notice of the injunction. Requires that any such injunction must state, on its face, that possessing a firearm or ammunition is prohibited. Provides that the Department of State may not issue a license to carry a concealed weapon or firearm to a person who has been issued an injunction against committing acts of domestic violence or acts of repeat violence. Provides that the department may not issue a license to carry a concealed weapon or firearm to a person who has had adjudication of guilt withheld or imposition of sentence suspended for a violent misdemeanor within the past 3 years. Requires that the department suspend a license to carry a concealed weapon or firearm, or the processing of an application for such a license, if the licensee or applicant has been issued an injunction against committing acts of domestic violence or acts of repeat violence.

This publication was produced at an average cost of 1.12 cents per single page in compliance with the Rules and for the information of members of the Legislature and the public.

By Representative Villalobos

A bill to be entitled

1 An act relating to protection against domestic
2 violence; amending s. 44.102, F.S.; providing
3 that a case is not referable to family
4 mediation if the court finds there has been a
5 history of domestic violence; amending s
6 61.13, F.S., relating to child custody and
7 support; providing for creation of a rebuttable
8 presumption of detriment to a child upon
9 evidence of a parent's conviction of a felony
10 involving domestic violence; providing for
11 evidence of spousal or child abuse to be
12 considered by the court as evidence of
13 detriment to the child; amending s. 741.28,
14 F.S.; redefining "domestic violence" to include
15 kidnapping and false imprisonment and other
16 specified criminal offenses resulting in
17 physical injury or death of one family or
18 household member by another, regardless of
19 whether the perpetrator was or is residing in
20 the same dwelling unit; amending s. 741.30,
21 F.S.; providing for court orders to protect the
22 children of the domestic violence victim's
23 minor children; revising the period during
24 which injunctive relief remains effective;
25 providing for motion to modify or dissolve
26 injunction by either party; providing for
27 indication of specified information on the face
28 of a temporary or final judgment for protection
29 against domestic violence; amending s. 741.31,
30 F.S.; defining the offense of willfully
31

1 violating a foreign protection order accorded
2 full faith and credit by specified acts;
3 providing penalties; creating s. 741.315, F.S.;
4 requiring that an injunction for protection
5 against domestic violence issued by a "court of
6 a foreign state," as defined, be accorded full
7 faith and credit; providing exceptions;
8 providing for availability of a registration
9 procedure to protected persons; providing
10 duties of the Florida Department of Law
11 Enforcement and sheriffs and other local law
12 enforcement officers with respect to
13 registration and enforcement of foreign
14 protection order; providing certain immunity
15 from civil and criminal liability to law
16 enforcement officer and officer's employing
17 agency; defining the offense of intentionally
18 providing a law enforcement officer with a copy
19 of protection order known to be invalid or
20 denying having been served with protection
21 order when served; providing penalties;
22 amending s. 784.046, F.S., relating to action
23 by victim of repeat violence for protective
24 injunction; providing certain immunity from
25 civil and criminal liability to law enforcement
26 officer and officer's employing agency;
27 revising period of duration of injunctive
28 relief; amending s. 784.047, F.S., relating to
29 penalties for violating protective injunction
30 against repeat violators; defining offenses of
31 willfully violating a foreign protection order

509-147A-97

1 accorded full faith and credit by committing
2 specified acts; providing penalties; amending
3 s. 901.15, F.S., relating to circumstances when
4 arrest by officer without warrant is lawful;
5 providing conforming terminology and cross
6 references; providing certain immunity from
7 civil liability to law enforcement officer;
8 providing an effective date.
9

10 Be It Enacted by the Legislature of the State of Florida:
11

12 Section 1 Paragraph (b) of subsection (2) of section
13 44.102, Florida Statutes, 1996 Supplement, is amended to read:

14 44.102 Court-ordered mediation.--

15 (2) A court, under rules adopted by the Supreme Court:

16 (b) In circuits in which a family mediation program
17 has been established and upon a court finding of a dispute,
18 shall refer to mediation all or part of custody, visitation,
19 or other parental responsibility issues as defined in s.
20 61.13. A court shall not refer any case to mediation if it
21 finds there has been a significant history of domestic
22 violence ~~abuse-that-would-compromise-the-mediation-process.~~

23 Section 2. Paragraph (b) of subsection (2) of section
24 61.13, Florida Statutes, 1996 Supplement, is amended to read:

25 61.13 Custody and support of children; visitation
26 rights; power of court in making orders.--

27 (2)

28 (b)1. The court shall determine all matters relating
9 to custody of each minor child of the parties in accordance
30 with the best interests of the child and in accordance with
31 the Uniform Child Custody Jurisdiction Act It is the public

1 policy of this state to assure that each minor child has
2 frequent and continuing contact with both parents after the
3 parents separate or the marriage of the parties is dissolved
4 and to encourage parents to share the rights and
5 responsibilities, and joys, of childrearing. After considering
6 all relevant facts, the father of the child shall be given the
7 same consideration as the mother in determining the primary
8 residence of a child irrespective of the age or sex of the
9 child

10 2. The court shall order that the parental
11 responsibility for a minor child be shared by both parents
12 unless the court finds that shared parental responsibility
13 would be detrimental to the child. ~~The court shall consider~~
14 ~~evidence of spousal or child abuse as evidence of detriment to~~
15 ~~the child. The court shall consider~~ Evidence that a parent has
16 been convicted of a felony of the third second degree or
17 higher involving domestic violence, as defined in s 741.28
18 and chapter 775, creates as a rebuttable presumption of
19 detriment to the child. If the presumption is not rebutted,
20 shared parental responsibility, including visitation,
21 residence of the child, and decisions made regarding the
22 child, shall not be granted to the convicted parent. However,
23 the convicted parent shall not be relieved of any obligation
24 to provide financial support. If the court determines that
25 shared parental responsibility would be detrimental to the
26 child, it may order sole parental responsibility and make such
27 arrangements for visitation as will best protect the child or
28 abused spouse from further harm. Irrespective of a conviction
29 of any offense or the existence of an injunction for
30 protection against domestic violence, the court shall consider
31

1 evidence of spousal or child abuse as evidence of detriment to
2 the child.

3 a. In ordering shared parental responsibility, the
4 court may consider the expressed desires of the parents and
5 may grant to one party the ultimate responsibility over
6 specific aspects of the child's welfare or may divide those
7 responsibilities between the parties based on the best
8 interests of the child. Areas of responsibility may include
9 primary residence, education, medical and dental care, and any
10 other responsibilities which the court finds unique to a
11 particular family.

12 b The court shall order "sole parental
13 responsibility, with or without visitation rights, to the
14 other parent when it is in the best interests of" the minor
15 child.

16 c. The court may award the grandparents visitation
17 rights of a minor child if it is in the child's best interest.
18 Grandparents shall have legal standing to seek judicial
19 enforcement of such an award. Nothing in this section shall
20 require that grandparents be made parties or given notice of
21 dissolution pleadings or proceedings, nor shall grandparents
22 have legal standing as "contestants" as defined in s. 61.1306.
23 No court shall order that a child be kept within the state or
24 jurisdiction of the court solely for the purpose of permitting
25 visitation by the grandparents.

26 3. Access to records and information pertaining to a
27 minor child, including, but not limited to, medical, dental,
28 and school records, shall not be denied to a parent because
29 such parent is not the child's primary residential parent.

30 Section 3. Subsection (1) of section 741.28, Florida
31 Statutes, is amended to read:

1 741.28 Domestic violence; definitions.--As used in ss.
2 741.28-741.31:

3 (1) "Domestic violence" means any assault, aggravated
4 assault, battery, aggravated battery, sexual assault, sexual
5 battery, stalking, aggravated stalking, kidnapping, false
6 imprisonment, or any criminal offense resulting in physical
7 injury or death of one family or household member by another
8 ~~who-is-er-was-residing-in-the-same-single-dwelling-unit~~.

9 Section 4. Paragraphs (a), (b), and (c) of subsection
10 (6) of section 741.30, Florida Statutes, 1996 Supplement, are
11 amended to read:

12 741.30 Domestic violence; injunction; powers and
13 duties of court and clerk; petition; notice and hearing;
14 temporary injunction; issuance of injunction; statewide
15 verification system; enforcement.--

16 (6)(a) Upon notice and hearing, the court may grant
17 such relief as the court deems proper, including an
18 injunction:

19 1. Restraining the respondent from committing any acts
20 of domestic violence.

21 2. Awarding to the petitioner the exclusive use and
22 possession of the dwelling that the parties share or excluding
23 the respondent from the residence of the petitioner.

24 3. On the same basis as provided in chapter 61,
25 awarding temporary custody of, or temporary visitation rights
26 with regard to, a minor child or children of the parties.

27 4. On the same basis as provided in chapter 61,
28 establishing temporary support for a minor child or children
29 or the petitioner.

30 5. Ordering the respondent to participate in
31 treatment, intervention, or counseling services.

1 6. Ordering such other relief as the court deems
2 necessary for the protection of a victim of domestic violence,
3 ~~or any minor children of the victim.~~ including injunctions or
4 directives to law enforcement agencies, as provided in this
5 section.

6 (b) Any relief granted by the injunction is effective
7 for a term of not less than 1 year and until further order of
8 the court. ~~shall be granted for a fixed period not to exceed 1~~
9 ~~year; unless upon petition of the victim the court extends the~~
10 ~~injunction for successive fixed periods not to exceed 1 year.~~
11 ~~Broad discretion resides with the court to grant an extension~~
12 ~~after considering the circumstances.~~ Either party may move at
13 any time to modify or dissolve the injunction. No specific
14 allegations are required. Such relief may be granted in
15 addition to other civil or criminal remedies.

16 (c) A temporary or final judgment on injunction for
17 protection against domestic violence entered pursuant to this
18 section shall, on its face, indicate that:

19 1. The injunction is valid and enforceable in all
20 counties of the State of Florida

21 2. Law enforcement officers may use their arrest
22 powers pursuant to s. 901.15(6) to enforce the terms of the
23 injunction.

24 3. The court had jurisdiction over the parties and
25 matter under the laws of Florida and that reasonable notice
26 and opportunity to be heard was given to the person against
27 whom the order is sought sufficient to protect that person's
28 right to due process.

29 4. The date respondent was served with the temporary
30 or final order, if obtainable.

1 Section 5. Subsection (4) of section 741.31, Florida
2 Statutes, 1996 Supplement, is amended to read:

3 741.31 Violation of an injunction for protection
4 against domestic violence --

5 (4) A person who willfully violates an injunction for
6 protection against domestic violence; issued pursuant to s.
7 741.30, or a foreign protection order accorded full faith and
8 credit pursuant to s. 741.305, by:

9 (a) Refusing to vacate the dwelling that the parties
10 share;

11 (b) Going to the petitioner's residence, school, place
12 of employment, or a specified place frequented regularly by
13 the petitioner and any named family or household member;

14 (c) Committing an act of domestic violence against the
15 petitioner;

16 (d) Committing any other violation of the injunction
17 through an intentional unlawful threat, word, or act to do
18 violence to the petitioner; or

19 (e) Telephoning, contacting, or otherwise
20 communicating with the petitioner directly or indirectly,
21 unless the injunction specifically allows indirect contact
22 through a third party

23
24 is guilty of a misdemeanor of the first degree, punishable as
25 provided in s. 775.082 or s. 775.083.

26 Section 6. Section 741.315, Florida Statutes, is
27 created to read:

28 741.315 Recognition of foreign protection orders.--

29 (1) As used in this section, the term "court of a
30 foreign state" means a court of competent jurisdiction of a
31 state of the United States, other than Florida; the District

1 of Columbia; an Indian tribe; or a commonwealth, territory, or
2 possession of the United States.

3 (2) Pursuant to 18 U.S.C. s. 2265, an injunction for
4 protection against domestic violence issued by a court of a
5 foreign state must be accorded full faith and credit by the
6 courts of this state and enforced by a law enforcement agency
7 as if it were the order of a Florida court issued under s.
8 741.30, s. 741.31, s. 784.046, s. 784.047, or s.
9 901.15(6)-(8). Ex parte foreign injunctions for protection are
10 not eligible for enforcement under this section unless notice
11 and opportunity to be heard have been provided within the time
12 required by the foreign state or tribal law, and in any event
13 within a reasonable time after the order is issued, sufficient
14 to protect the respondent's due process rights.

15 (3) Notwithstanding s. 55.505 or any other provision
16 to the contrary, neither residence in this state nor
17 registration of foreign injunctions for protection shall be
18 required for enforcement of this order by this state and
19 failure to register the foreign order shall not be an
20 impediment to its enforcement. However, in order to assist law
21 enforcement and the courts in enforcement of foreign
22 injunctions for protection, the following registration
23 procedure shall be available to protected persons who hold
24 orders from a court of a foreign state.

25 (a) A protected person may present a certified copy of
26 a foreign order of protection to any sheriff in this state and
27 request that the same be registered in the injunction
28 registry. It is not necessary that the protected person
9 register the foreign order in the protected person's county of
0 residence. Venue is proper throughout the state. The protected
31 person must swear by affidavit, that to the best of the

1 protected person's knowledge and belief, the attached
2 certified copy of the foreign order, docket number
3 issued in the state of on
4 is currently in effect as written and has not
5 been superseded by any other order.

6 (b) The sheriff shall examine the certified copy of
7 the foreign order and register the order in the injunction
8 registry, noting that it is a foreign order of protection. If
9 not apparent from the face of the certified copy of the
10 foreign order, the sheriff shall use best efforts to ascertain
11 whether the order was served on the respondent. The Florida
12 Department of Law Enforcement shall develop a special notation
13 for foreign orders of protection. The sheriff shall assign a
14 case number and give the protected person a receipt showing
15 registration of the foreign order in this state. There shall
16 be no fee for registration of a foreign order.

17 (c) The foreign order may also be registered by local
18 law enforcement agencies upon receipt of the foreign order and
19 any accompanying affidavits in the same manner described in
20 paragraphs (a) and (b).

21 (d) Law enforcement, the judiciary, and the clerks of
22 court are prohibited from disclosing the location of a
23 petitioner seeking to enforce or register a foreign order.

24 (4)(a) Law enforcement officers shall enforce foreign
25 orders of protection as if they were entered by a court of
26 this state. Upon presentation of a foreign protection order by
27 a protected person, a law enforcement officer shall assist in
28 enforcement of all of its terms, pursuant to federal law,
29 except matters related to child custody, visitation, and
30 support. As to those provisions only, enforcement may be
31 obtained upon domestication of the foreign order pursuant to

1 ss. 55.501-55.509 unless the foreign order is a "pickup order"
2 or "order of bodily attachment" requiring the immediate return
3 of a child.

4 (b) Before enforcing a foreign protection order, a law
5 enforcement officer should confirm the identity of the parties
6 present and review the order to determine that, on its face,
7 it has not expired. Presentation of a certified or true copy
8 of the protection order shall not be required as a condition
9 of enforcement, provided that a conflicting certified copy is
10 not presented by the respondent or the individual against whom
11 enforcement is sought.

12 (c) A law enforcement officer shall use reasonable
13 efforts to verify service of process.

14 (d) In order to assist enforcement, service may be
15 verified as follows:

16 1. By petitioner: Petitioner may swear that to the
17 best of petitioner's knowledge, respondent was served with the
18 order of protection because petitioner was present at time of
19 service; respondent told petitioner he was served; another
20 named person told petitioner respondent was served; OR
21 respondent told petitioner he knows of the content of the
22 order and date of the return hearing.

23 2. By respondent: Respondent swears that he was or
24 was not served with the order.

25 (e) Enforcement and arrest for violation of a foreign
26 protection order shall be consistent with the enforcement of
27 orders issued in this state.

28 (f) A law enforcement officer acting in good faith
29 under this section and the officer's employing agency shall be
30 immune from all liability, civil or criminal, that might
31 otherwise be incurred or imposed by reason of the officer's or

1 agency's actions in carrying out the provisions of this
2 section.

3 (g) Law enforcement shall not require petitioner to
4 sign a registration affidavit as a condition of enforcement.

5 (h) A foreign order of protection shall remain in
6 effect until the date of expiration on its face; or, if there
7 is no expiration date on its face, a foreign order of
8 protection shall remain in effect until expiration. If the
9 order of protection states on its face that it is a permanent
10 order, then there is no date of expiration.

11 (5) Any person who acts under this section and
12 intentionally provides a law enforcement officer with a copy
13 of an order of protection known by that person to be false or
14 invalid, or who denies having been served with an order of
15 protection when that person has been served with such order,
16 commits a misdemeanor of the first degree, punishable as
17 provided in s. 775.082 or s. 775.083.

18 (6) In the event 18 U.S.C. s. 2265 is held to be
19 unconstitutional, this section shall be null and void.

20 Section 7. Subsection (7) of section 784.046, Florida
21 Statutes, is amended, and subsection (11) is added to said
22 section, to read:

23 784.046 Action by victim of repeat violence for
24 protective injunction; powers and duties of court and clerk of
25 court; filing and form of petition; notice and hearing;
26 temporary injunction; issuance; statewide verification system;
27 enforcement.--

28 (7) Upon notice and hearing, the court may grant such
29 relief as the court deems proper, including an injunction:

30 (a) Enjoining the respondent from committing any acts
31 of violence.

2 (b) Ordering such other relief as the court deems
3 necessary for the protection of the petitioner, including
4 injunctions or directives to law enforcement agencies, as
5 provided in this section.

6 (c) Any relief granted by the injunction is effective for a
7 term of not less than 1 year and until further order of the
8 court shall be granted for a fixed period not to exceed 1
9 year; unless upon petition of the victim the court extends the
10 injunction for successive fixed periods not to exceed 1 year.
11 Such relief may be granted in addition to other civil or
12 criminal remedies.

13 (c) A temporary or final judgment on injunction for
14 protection against repeat violence entered pursuant to this
15 section shall, on its face, indicate that:

16 1. The injunction is valid and enforceable in all
17 counties of the State of Florida.

18 2. Law enforcement officers may use their arrest
19 powers pursuant to s. 901.15(6) to enforce the terms of the
20 injunction.

21 (11) A law enforcement officer acting in good faith
22 under this section and the officer's employing agency shall be
23 immune from all liability, civil or criminal, that might
24 otherwise be incurred or imposed by reason of the officer's or
25 agency's actions in carrying out the provisions of this
26 section.

27 Section 8. Section 784.047, Florida Statutes, is
28 amended to read:

29 784.047 Penalties for violating protective injunction
30 against repeat violators.--A person who willfully violates an
31 injunction for protection against repeat violence, or a

1 foreign protection order accorded full faith and credit.

2 issued pursuant to s. 784.046, by:

3 (1) Refusing to vacate the dwelling that the parties
4 share;

5 (2) Going to the petitioner's residence, school, place
6 of employment, or a specified place frequented regularly by
7 the petitioner and any named family or household member;

8 (3) Committing an act of repeat violence against the
9 petitioner;

10 (4) Committing any other violation of the injunction
11 through an intentional unlawful threat, word, or act to do
12 violence to the petitioner; or

13 (5) Telephoning, contacting, or otherwise
14 communicating with the petitioner directly or indirectly,
15 unless the injunction specifically allows indirect contact
16 through a third party;

17
18 ~~commits~~ is-guilty-of a misdemeanor of the first degree,
19 punishable as provided in s. 775.082 or s. 775.083.

20 Section 9. Subsections (6), (7), and (8) of section
21 901.15, Florida Statutes, 1996 Supplement, are amended to
22 read:

23 901.15 When arrest by officer without warrant is
24 lawful.--A law enforcement officer may arrest a person without
25 a warrant when:

26 (6) There is probable cause to believe that the person
27 has committed a criminal act according to s. 741.31 or s.
28 784.047 which violates an injunction for protection entered,
29 or a foreign protection order accorded full faith and credit.
30 pursuant to s. 741.30 or s. 784 046, over the objection of the
31 petitioner, if necessary.

509-147A-97

2 (7) There is probable cause to believe that the person
has committed:

3 (a) An act of domestic violence, as defined in s.
4 741.28;

5 (b) Child abuse, as defined in s. 827.04(2) and (3);
6 or

7 (c) Any battery upon another person, as defined in s.
8 784.03.

9
10 With respect to an arrest for an act of domestic violence, the
11 decision to arrest shall not require consent of the victim or
12 consideration of the relationship of the parties. A law
13 enforcement officer who acts in good faith and exercises due
14 care in making an arrest under this subsection, under s.
741.31(4) or s. 784.047, or pursuant to a foreign order of
15 protection is immune from civil liability that otherwise might
16 result by reason of his or her action.

17
18 (8) He has probable cause to believe that the person
19 has knowingly committed an act of repeat violence in violation
20 of an injunction for protection from repeat violence entered,
21 or a foreign protection order accorded full faith and credit,
22 pursuant to s. 784.046.

23 Section 10. This act shall take effect October 1,
24 1997.

509-147A-97

HOUSE SUMMARY

Provides that a case is not referable to family mediation if the court finds there has been a history of domestic violence. Provides for creation of a rebuttable presumption of detriment to a child upon evidence of a parent's conviction of a felony involving domestic violence. Provides for evidence of spousal or child abuse as evidence to be considered by the court as evidence of detriment to the child.

Redefines "domestic violence" to include kidnapping and false imprisonment and other specified criminal offenses resulting in physical injury or death of one family or household member by another, regardless of whether the perpetrator was or is residing in the same dwelling unit. Provides for court orders to protect the children of the domestic violence victim's minor children. Revises the period during which injunctive relief remains affective. Provides for motion to modify or dissolve injunction by either party. Provides for indication of specified information on the face of a temporary or final judgment for protection against domestic violence. Defines the offense of willfully violating a foreign protection order accorded full faith and credit by committing specified acts. Provides penalties. Requires that an injunction for protection against domestic violence issued by a "court of a foreign state," as defined, be accorded full faith and credit. Provides exceptions. Provides for availability of a registration procedure to protected persons. Provides duties of the Florida Department of Law Enforcement and sheriffs and other local law enforcement officers with respect to registration and enforcement of foreign protection order. Provides certain immunity from civil and criminal liability to law enforcement officer and officer's employing agency. Defines the offense of intentionally providing a law enforcement officer with a copy of protection order known to be invalid or denying having been served with protection order when served. Provides penalties.

Revises specified provisions relating to action by victim of repeat violence for protective injunction. Defines offenses of willfully violating a foreign protection order accorded full faith and credit by committing specified acts. Provides penalties. Provides certain immunity from civil and criminal liability to law enforcement officer and officer's employing agency. Revises period of duration of injunctive relief.

Revises provisions relating to circumstances when arrest by officer without warrant is lawful to provide conforming terminology and cross references. Provides certain immunity from civil liability to law enforcement officer.

By the Committee on Crime & Punishment and Representatives
Lynn, Chestnut, Heyman and Crow

A bill to be entitled

An act relating to weapons and firearms;
creating s. 790.233, F.S.; prohibiting a person
who has been issued an injunction against
committing acts of domestic violence from
possessing any firearm or ammunition; providing
penalties; providing an exception for law
enforcement officers; amending s. 741.30, F.S.;
requiring that a final injunction for
protection against domestic violence indicate
that possessing any firearm or ammunition is
prohibited; amending s. 741.31, F.S.; providing
that it is a first degree misdemeanor to
violate a final injunction by possessing a
firearm or ammunition; providing an exception
for law enforcement officers; amending s.
901.15, F.S.; providing for arrest without
warrant under certain circumstances when there
is probable cause to believe that the person
has committed a crime in violation of specified
provisions prohibiting possession of firearm or
ammunition by person restrained by final
injunction from committing acts of domestic
violence; amending s. 790.06, F.S., relating to
issuance by the Department of State of license
to carry a concealed weapon or firearm;
revising qualifications for such license to
include restrictions that the applicant has not
had adjudication of guilt withheld or
imposition of sentence suspended for committing
a misdemeanor crime of domestic violence within

1 a specified period and is not enjoined from
2 committing acts of domestic violence or repeat
3 violence; requiring denial or revocation of
4 such license under specified circumstances;
5 requiring that the department suspend such
6 license, or the processing of the license
7 application, if the licensee or applicant is
8 issued an injunction against committing acts of
9 domestic violence or acts of repeat violence;
10 amending s. 790.065, F.S.; removing obsolete
11 provisions; requiring that the Department of
12 Law Enforcement determine if a potential buyer
13 or transferee of a firearm has been convicted
14 of a misdemeanor crime of domestic violence or
15 had adjudication of guilt withheld or
16 imposition of sentence suspended for committing
17 a misdemeanor crime of domestic violence;
18 providing an effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Section 790.233, Florida Statutes, is
23 created to read:

24 790.233 Possession of firearm or ammunition prohibited
25 when person is subject to an injunction against committing
26 acts of domestic violence; penalties.--

27 (1) A person may not have in his or her care, custody,
28 possession, or control any firearm or ammunition if the person
29 has been issued a final injunction restraining that person
30 from committing acts of domestic violence, issued under s.
31 741.30.

1 (2) A person who violates subsection (1) commits a
2 misdemeanor of the first degree, punishable as provided in s.
3 775.082 or s. 775.083.

4 (3) It is the intent of the Legislature that the
5 disabilities regarding possession of firearms and ammunition
6 are consistent with federal law. Accordingly, this section
7 shall not apply to state or local law enforcement officers who
8 receive or possess a firearm or ammunition for use in
9 performing official duties on behalf of that state or local
10 law enforcement agency, unless prohibited by that law
11 enforcement officer's agency.

12 Section 2. Paragraph (f) is added to subsection (6) of
13 section 741.30, Florida Statutes, 1996 Supplement, to read:

14 741.30 Domestic violence; injunction; powers and
15 duties of court and clerk; petition; notice and hearing;
16 temporary injunction; issuance of injunction; statewide
17 verification system; enforcement.--

18 (6)

19 (f) A final judgment on injunction for protection
20 against domestic violence entered pursuant to this section
21 must, on its face, indicate that it is a violation of s.
22 790.233, and a first degree misdemeanor, for the respondent to
23 have in his or her care, custody, possession, or control any
24 firearm or ammunition.

25 Section 3. Subsection (4) of section 741.31, Florida
26 Statutes, 1996 Supplement, is amended to read:

27 741.31 Violation of an injunction for protection
28 against domestic violence.--

29 (4)(a) A person who willfully violates an injunction
30 for protection against domestic violence, issued pursuant to
31 s. 741.30, by:

189-222-97

1 1.(a) Refusing to vacate the dwelling that the parties
2 share;

3 2.(b) Going to the petitioner's residence, school,
4 place of employment, or a specified place frequented regularly
5 by the petitioner and any named family or household member;

6 3.(c) Committing an act of domestic violence against
7 the petitioner;

8 4.(d) Committing any other violation of the injunction
9 through an intentional unlawful threat, word, or act to do
10 violence to the petitioner; or

11 5.(e) Telephoning, contacting, or otherwise
12 communicating with the petitioner directly or indirectly,
13 unless the injunction specifically allows indirect contact
14 through a third party

15
16 ~~commits is-guilty-of a misdemeanor of the first degree,~~
17 ~~punishable as provided in s. 775.082 or s. 775.083.~~

18 (b)1. It is a violation of s. 790.233, and a
19 misdemeanor of the first degree, punishable as provided in s.
20 775.082 or s. 775.083, for a person to violate a final
21 injunction for protection against domestic violence by having
22 in his or her care, custody, possession, or control any
23 firearm or ammunition.

24 2. It is the intent of the Legislature that the
25 disabilities regarding possession of firearms and ammunition
26 are consistent with federal law. Accordingly, this paragraph
27 shall not apply to state or local law enforcement officers who
28 receive or possess a firearm or ammunition for use in
29 performing official duties on behalf of that state or local
30 law enforcement agency, unless prohibited by that law
31 enforcement officer's agency.

189-822-97

1 Section 4. Subsection (6) of section 901.15, Florida
2 Statutes, is amended to read:

3 901.15 When arrest by officer without warrant is
4 lawful.--A law enforcement officer may arrest a person without
5 a warrant when:

6 (6) There is probable cause to believe that the person
7 has committed a criminal act according to s. 790.233 or to s.
8 741.31 or s. 784.047 which violates an injunction for
9 protection entered pursuant to s. 741.30 or s. 784.046, over
10 the objection of the petitioner, if necessary.

11 Section 5. Subsections (2) and (3) of section 790.06,
12 Florida Statutes, are amended to read:

13 790.06 License to carry concealed weapon or firearm.--

14 (2) The Department of State shall issue a license if
15 the applicant:

16 (a) Is a resident of the United States or is a
17 consular security official of a foreign government that
18 maintains diplomatic relations and treaties of commerce,
19 friendship, and navigation with the United States and is
20 certified as such by the foreign government and by the
21 appropriate embassy in this country;

22 (b) Is 21 years of age or older;

23 (c) Does not suffer from a physical infirmity which
24 prevents the safe handling of a weapon or firearm;

25 (d) Is not ineligible to possess a firearm pursuant to
26 s. 790.23 by virtue of having been convicted of a felony;

27 (e) Has not been committed for the abuse of a
28 controlled substance or been found guilty of a crime under the
29 provisions of chapter 893 or similar laws of any other state
30 relating to controlled substances within a 3-year period

31

1 immediately preceding the date on which the application is
2 submitted;

3 (f) Does not chronically and habitually use alcoholic
4 beverages or other substances to the extent that his normal
5 faculties are impaired. It shall be presumed that an
6 applicant chronically and habitually uses alcoholic beverages
7 or other substances to the extent that his normal faculties
8 are impaired if the applicant has been committed under chapter
9 397 or under the provisions of former chapter 396 or has been
10 convicted under s. 790.151 or has been deemed a habitual
11 offender under s. 856.011(3), or has had two or more
12 convictions under s. 316.193 or similar laws of any other
13 state, within the 3-year period immediately preceding the date
14 on which the application is submitted;

15 (g) Desires a legal means to carry a concealed weapon
16 or firearm for lawful self-defense;

17 (h) Demonstrates competence with a firearm by any one
18 of the following:

19 1. Completion of any hunter education or hunter safety
20 course approved by the Game and Fresh Water Fish Commission or
21 a similar agency of another state;

22 2. Completion of any National Rifle Association
23 firearms safety or training course;

24 3. Completion of any firearms safety or training
25 course or class available to the general public offered by a
26 law enforcement, junior college, college, or private or public
27 institution or organization or firearms training school,
28 utilizing instructors certified by the National Rifle
29 Association, Criminal Justice Standards and Training
30 Commission, or the Department of State;

189-822-97

1 4. Completion of any law enforcement firearms safety
2 or training course or class offered for security guards,
3 investigators, special deputies, or any division or
4 subdivision of law enforcement or security enforcement;

5 5. Presents evidence of equivalent experience with a
6 firearm through participation in organized shooting
7 competition or military service;

8 6. Is licensed or has been licensed to carry a firearm
9 in this state or a county or municipality of this state,
10 unless such license has been revoked for cause; or

11 7. Completion of any firearms training or safety
12 course or class conducted by a state-certified or National
13 Rifle Association certified firearms instructor;

14
15 A photocopy of a certificate of completion of any of the
16 courses or classes; or an affidavit from the instructor,
17 school, club, organization, or group that conducted or taught
18 said course or class attesting to the completion of the course
19 or class by the applicant; or a copy of any document which
20 shows completion of the course or class or evidences
21 participation in firearms competition shall constitute
22 evidence of qualification under this paragraph;

23 (i) Has not been adjudicated an incapacitated person
24 under s. 744.331, or similar laws of any other state, unless 5
25 years have elapsed since the applicant's restoration to
26 capacity by court order;

27 (j) Has not been committed to a mental institution
28 under chapter 394, or similar laws of any other state, unless
29 the applicant produces a certificate from a licensed
30 psychiatrist that he has not suffered from disability for at
31

1 least 5 years prior to the date of submission of the
2 application; and

3 (k) Has not had adjudication of guilt withheld or
4 imposition of sentence suspended on any felony or misdemeanor
5 crime of domestic violence unless 3 years have elapsed since
6 probation or any other conditions set by the court have been
7 fulfilled, or the record has been sealed or expunged; and:

8 (1) Has not been issued an injunction that is
9 currently in force and effect and that restrains the applicant
10 from committing acts of domestic violence or acts of repeat
11 violence.

12 (3) The Department of State ~~shall~~ may deny a license
13 if the applicant has been found guilty of, had adjudication of
14 guilt withheld for, or had imposition of sentence suspended
15 for one or more crimes of violence constituting a misdemeanor,
16 unless 3 years have elapsed since probation or any other
17 conditions set by the court have been fulfilled; or the record
18 has been sealed or ~~expunged~~. The Department of State shall; ~~or~~
19 may revoke a license if the licensee has been found guilty of,
20 had adjudication of guilt withheld for, or had imposition of
21 sentence suspended for one or more crimes of violence within
22 the preceding 3 years. The department shall, upon
23 notification by a law enforcement agency, a court, or the
24 Florida Department of Law Enforcement and subsequent written
25 verification, suspend a license or the processing of an
26 application for a license if the licensee or applicant is
27 arrested or formally charged with a crime ~~that~~ which would
28 disqualify such person from having a license under this
29 section, until final disposition of the case. The department
30 shall suspend a license or the processing of an application
31 for a license if the licensee or applicant is issued an

1 ~~injunction that restrains the licensee or applicant from~~
2 ~~committing acts of domestic violence or acts of repeat~~
3 ~~violence.~~

4 Section 6. Subsections (1) and (2) of section 790.065,
5 Florida Statutes, 1996 Supplement, are amended to read:

6 790.0 65 Sale and delivery of firearms.--

7 (1) A No licensed importer, licensed manufacturer, or
8 licensed dealer ~~may not~~ shall sell or deliver from his
9 inventory at his licensed premises any firearm to another
10 person, other than a licensed importer, licensed manufacturer,
11 licensed dealer, or licensed collector, until he has:

12 (a) Obtained a completed form from the potential buyer
13 or transferee, which form shall have been promulgated by the
14 Department of Law Enforcement and provided by the licensed
15 importer, licensed manufacturer, or licensed dealer, which
16 shall include the name, date of birth, gender, race, and
17 social security number or other identification number of such
18 potential buyer or transferee and has inspected proper
19 identification including an identification containing a
20 photograph of the potential buyer or transferee.

21 (b)4: Collected a fee from the potential buyer for
22 processing the criminal history check of the potential buyer.
23 The fee shall be \$8. The Department of Law Enforcement shall,
24 by rule, establish procedures for the fees to be transmitted
25 by the licensee to the Department of Law Enforcement. All such
26 fees shall be deposited into the Department of Law Enforcement
27 Operating Trust Fund, but shall be segregated from all other
28 funds deposited into such trust fund and must be accounted for
29 separately. Such segregated funds must not be used for any
30 purpose other than the operation of the criminal history
31 checks required by this section. The Department of Law

1 Enforcement, each year prior to February 1, shall make a full
2 accounting of all receipts and expenditures of such funds to
3 the President of the Senate, the Speaker of the House of
4 Representatives, the majority and minority leaders of each
5 house of the Legislature, and the chairs of the appropriations
6 committees of each house of the Legislature. In the event
7 that the cumulative amount of funds collected exceeds the
8 cumulative amount of expenditures by more than \$2.5 million,
9 excess funds may be used for the purpose of purchasing soft
10 body armor for law enforcement officers.

11 ~~2:--For the 1995-1996 fiscal year only, if the~~
12 ~~cumulative amount of funds collected exceeds the cumulative~~
13 ~~amount of expenditures by more than \$2.5 million, \$1.5 million~~
14 ~~of such excess funds may be transferred to the General Revenue~~
15 ~~Fund. This subparagraph is repealed on July 1, 1996:~~

16 (c) Requested, by means of a toll-free telephone call,
17 the Department of Law Enforcement to conduct a check of the
18 information as reported and reflected in the Florida Crime
19 Information Center and National Crime Information Center
20 systems as of the date of the request.

21 (d) Received a unique approval number for that inquiry
22 from the Department of Law Enforcement, and recorded the date
23 and such number on the consent form.

24
25 However, if the person purchasing, or receiving delivery of,
26 the firearm is a holder of a valid concealed weapons or
27 firearms license pursuant to the provisions of s. 790.06 or
28 holds an active certification from the Criminal Justice
29 Standards and Training Commission as a "law enforcement
30 officer," a "correctional officer," or a "correctional
31 probation officer" as defined in s. 943.10(1), (2), (3), (6),

1 (7), (8), or (9), the provisions of this subsection do not
2 apply.

3 (2) Upon receipt of a request for a criminal history
4 record check, the Department of Law Enforcement shall, during
5 the licensee's call or by return call, forthwith:

6 (a) Review criminal history records to determine if
7 the potential buyer or transferee has been convicted of a
8 felony or misdemeanor crime of domestic violence and is
9 prohibited from receipt or possession of a firearm pursuant to
10 s. 790.23 or has had adjudication of guilt withheld or
11 imposition of sentence suspended on any felony or misdemeanor
12 crime of domestic violence unless 3 years have elapsed since
13 probation or any other conditions set by the court have been
14 fulfilled or expunction has occurred.

15 (b) Inform the licensee making the inquiry either that
16 records demonstrate that the buyer or transferee is so
17 prohibited and provide the licensee a nonapproval number, or
18 provide the licensee with a unique approval number.

19 (c)1. Review any records available to it to determine
20 whether the potential buyer or transferee has been indicted or
21 has had an information filed against him for an offense that
22 is a felony under either state or federal law, or, as mandated
23 by federal law, has had an injunction for protection against
24 domestic violence entered against the potential buyer or
25 transferee under s. 741.30, has had an injunction for
26 protection against repeat violence entered against the
27 potential buyer or transferee under s. 784.046, or has been
28 arrested for a dangerous crime as specified in s.

29 907.041(4)(a) or for any of the following enumerated offenses:

- 30 a. Criminal anarchy under ss. 876.01 and 876.02.
31 b. Extortion under s. 836.05.

189-822-97

- 1 c. Explosives violations under s. 552.22(1) and (2).
- 2 d. Controlled substances violations under chapter 893.
- 3 e. Resisting an officer with violence under s. 843.01.
- 4 f. Weapons and firearms violations under this chapter.
- 5 g. Treason under s. 876.32.
- 6 h. Assisting self-murder under s. 782.08.
- 7 i. Sabotage under s. 876.38.
- 8 j. Stalking or aggravated stalking under s. 784.048.
- 9

10 If the review indicates any such indictment, information, or
11 arrest, the department shall provide to the licensee a
12 conditional nonapproval number.

13 2. Within 24 working hours, the department shall
14 determine the disposition of the indictment, information, or
15 arrest and inform the licensee as to whether the potential
16 buyer is prohibited from receiving or possessing a firearm.
17 For purposes of this paragraph, "working hours" means the
18 hours from 8 a.m. to 5 p.m. Monday through Friday, excluding
19 legal holidays.

20 3. The office of the clerk of court, at no charge to
21 the department, shall respond to any department request for
22 data on the disposition of the indictment, information, or
23 arrest as soon as possible, but in no event later than 8
24 working hours.

25 4. The department shall determine as quickly as
26 possible within the allotted time period whether the potential
27 buyer is prohibited from receiving or possessing a firearm.

28 5. If the potential buyer is not so prohibited, or if
29 the department cannot determine the disposition information
30 within the allotted time period, the department shall provide
31 the licensee with a conditional approval number.

1 6. If the buyer is so prohibited, the conditional
2 nonapproval number shall become a nonapproval number.

3 7. The department shall continue its attempts to
4 obtain the disposition information and may retain a record of
5 all approval numbers granted without sufficient disposition
6 information. If the department later obtains disposition
7 information which indicates:

8 a. That the potential buyer is not prohibited from
9 owning a firearm, it shall treat the record of the transaction
10 in accordance with this section; or

11 b. That the potential buyer is prohibited from owning
12 a firearm, it shall immediately revoke the conditional
13 approval number and notify local law enforcement.

14 8. During the time that disposition of the indictment,
15 information, or arrest is pending and until the department is
16 notified by the potential buyer that there has been a final
17 disposition of the indictment, information, or arrest, the
18 conditional nonapproval number shall remain in effect.

19 Section 7. This act shall take effect July 1, 1997.
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By the Committee on Family Law & Children and
Representatives Morse, Feeney and Constantine

A bill to be entitled

2 An act relating to child custody; amending s.
3 61.13, F.S.; providing for consideration of the
4 child's primary caretaker, domestic violence,
5 or child abuse in custody proceedings;
6 reenacting ss. 39.408(3)(a) and 741.30(5)(a),
7 F.S., relating to disposition hearings in
8 dependency cases, and relating to temporary
9 injunctions in domestic violence cases, to
10 incorporate said amendment in references;
11 providing an effective date.
12

13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Paragraph (b) of subsection (2) of section
16 61.13, Florida Statutes, 1996 Supplement, is amended, and
17 paragraph (k) of subsection (3) of said section is
18 redesignated as paragraph (m), and new paragraphs (k) and (l)
19 are added to said subsection, to read:

20 61.13 Custody and support of children; visitation
21 rights; power of court in making orders.--

22 (2)

23 (b)1. The court shall determine all matters relating
24 to custody of each minor child of the parties in accordance
25 with the best interests of the child and in accordance with
26 the Uniform Child Custody Jurisdiction Act. It is the public
27 policy of this state to assure that each minor child has
28 frequent and continuing contact with both parents after the
29 parents separate or the marriage of the parties is dissolved
30 and to encourage parents to share the rights and
31 responsibilities, and joys, of childrearing. After considering

606-101-97

1 all relevant facts, the father of the child shall be given the
2 same consideration as the mother in determining the primary
3 residence of a child irrespective of the age or sex of the
4 child.

5 2. The court shall order that the parental
6 responsibility for a minor child be shared by both parents
7 unless the court finds that shared parental responsibility
8 would be detrimental to the child. The court shall consider
9 evidence of domestic violence ~~spousal~~ or child abuse as
10 evidence of detriment to the child. The court shall consider
11 evidence that a parent has been convicted of a felony of the
12 second degree or higher involving domestic violence as defined
13 in s. 741.28 and chapter 775, as a rebuttable presumption of
14 detriment to the child. If the presumption is not rebutted,
15 shared parental responsibility, including visitation,
16 residence of the child, and decisions made regarding the
17 child, shall not be granted to the convicted parent. However,
18 the convicted parent shall not be relieved of any obligation
19 to provide financial support. If the court determines that
20 shared parental responsibility would be detrimental to the
21 child, it may order sole parental responsibility and make such
22 arrangements for visitation as will best protect the child or
23 abused spouse from further harm.

24 a. In ordering shared parental responsibility, the
25 court may consider the expressed desires of the parents and
26 may grant to one party the ultimate responsibility over
27 specific aspects of the child's welfare or may divide those
28 responsibilities between the parties based on the best
29 interests of the child. Areas of responsibility may include
30 primary residence, education, medical and dental care, and any

31

1 other responsibilities which the court finds unique to a
2 particular family.

3 b. The court shall order "sole parental
4 responsibility, with or without visitation rights, to the
5 other parent when it is in the best interests of" the minor
6 child.

7 c. The court may award the grandparents visitation
8 rights of a minor child if it is in the child's best interest.
9 Grandparents shall have legal standing to seek judicial
10 enforcement of such an award. Nothing in this section shall
11 require that grandparents be made parties or given notice of
12 dissolution pleadings or proceedings, nor shall grandparents
13 have legal standing as "contestants" as defined in s. 61.1306.
14 No court shall order that a child be kept within the state or
15 jurisdiction of the court solely for the purpose of permitting
16 visitation by the grandparents.

17 3. Access to records and information pertaining to a
18 minor child, including, but not limited to, medical, dental,
19 and school records, shall not be denied to a parent because
20 such parent is not the child's primary residential parent.

21 (3) For purposes of shared parental responsibility and
22 primary residence, the best interests of the child shall
23 include an evaluation of all factors affecting the welfare and
24 interests of the child, including, but not limited to:

25 (k) The parent who, during the parties' marriage, was
26 the child's primary caretaker.

27 (l) Evidence of domestic violence or child abuse.

28 Section 2. For the purpose of incorporating the
29 amendment to s. 61.13, Florida Statutes, in references
30 thereto, the sections or subdivisions of Florida Statutes set
31 forth below are reenacted to read:

1 39.408 Hearings for dependency cases.--

2 (3) DISPOSITION HEARING.--At the disposition hearing,
3 if the court finds that the facts alleged in the petition for
4 dependency were proven in the adjudicatory hearing, or if the
5 parents have consented to the finding of dependency or
6 admitted the allegations in the petition, have failed to
7 appear for the arraignment hearing after proper notice, or
8 have not been located despite a diligent search having been
9 conducted, the court shall receive and consider a
10 predisposition study, which must be in writing and presented
11 by an authorized agent of the department.

12 (a) The predisposition study shall cover for any
13 dependent child all factors specified in s. 61.13(3), and must
14 also provide the court with the following documented
15 information:

16 1. An assessment defining the dangers and risks of
17 returning the child home, including a description of the
18 changes in and resolutions to the initial risks.

19 2. A description of what risks are still present and
20 what resources are available and will be provided for the
21 protection and safety of the child.

22 3. A description of the benefits of returning the
23 child home.

24 4. A description of all unresolved issues.

25 5. An abuse registry history for all caretakers,
26 family members, and individuals residing within the household.

27 6. The complete child protection team report and
28 recommendation or, if no report exists, a statement reflecting
29 that no report has been made.

7. All opinions or recommendations from other professionals or agencies that provide evaluative, social, reunification, or other services to the family.

8. The availability of appropriate prevention and reunification services for the family to prevent the removal of the child from the home or to reunify the child with the family after removal, including the availability of family preservation services through the Family Builders Program, the Intensive Crisis Counseling Program, or both.

9. The inappropriateness of other prevention and reunification services that were available.

10. The efforts by the department to prevent out-of-home placement of the child or, when applicable, to reunify the family if appropriate services were available, including the application of intensive family preservation services through the Family Builders Program, the Intensive Crisis Counseling Program, or both.

11. Whether the services were provided to the family and child.

12. If the services were provided, whether they were sufficient to meet the needs of the child and the family and to enable the child to remain at home or to be returned home.

13. If the services were not provided, the reasons for such lack of action.

14. The need for, or appropriateness of, continuing the services if the child remains in the custody of the family or if the child is placed outside the home.

15. Whether family mediation was provided.

16. Whether a multidisciplinary case staffing was conducted and, if so, the results.

1 17. If the child has been removed from the home and
2 there is a parent who may be considered for custody pursuant
3 to s. 39.41(1), a recommendation as to whether placement of
4 the child with that parent would be detrimental to the child.

5 741.30 Domestic violence; injunction; powers and
6 duties of court and clerk; petition; notice and hearing;
7 temporary injunction; issuance of injunction; statewide
8 verification system; enforcement.--

9 (5)(a) When it appears to the court that an immediate
10 and present danger of domestic violence exists, the court may
11 grant a temporary injunction ex parte, pending a full hearing,
12 and may grant such relief as the court deems proper, including
13 an injunction:

14 1. Restraining the respondent from committing any acts
15 of domestic violence.

16 2. Awarding to the petitioner the temporary exclusive
17 use and possession of the dwelling that the parties share or
18 excluding the respondent from the residence of the petitioner.

19 3. On the same basis as provided in s. 61.13(2), (3),
20 (4), and (5), granting to the petitioner temporary custody of
21 a minor child or children.

22 Section 3. This act shall take effect upon becoming a
23 law.

By Senator Silver

38-878-97

1 A bill to be entitled

2 An act relating to child custody; amending s.
3 61.13, F.S.; providing for consideration of
4 spousal or child abuse in custody proceedings;
5 reenacting ss. 39.408(3)(a) and 741.30(5)(a),
6 F.S., relating to disposition hearings in
7 dependency cases, and relating to temporary
8 injunctions in domestic violence cases, to
9 incorporate said amendment in references;
10 providing an effective date.

11
12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. Present paragraph (k) of subsection (3) of
15 section 61.13, Florida Statutes, 1996 Supplement, is
16 redesignated as paragraph (l), and a new paragraph (k) is
17 added to that subsection to read:

18 61.13 Custody and support of children; visitation
19 rights; power of court in making orders.--

20 (3) For purposes of shared parental responsibility and
21 primary residence, the best interests of the child shall
22 include an evaluation of all factors affecting the welfare and
23 interests of the child, including, but not limited to:

24 (k) Evidence of spousal or child abuse.

25 Section 2. For the purpose of incorporating the
26 amendment to section 61.13, Florida Statutes, 1996 Supplement,
27 in references thereto, paragraph (a) of subsection (3) of
28 section 39.408, Florida Statutes, is reenacted to read:

29 39.408 Hearings for dependency cases.--

30 (3) DISPOSITION HEARING.--At the disposition hearing,
31 if the court finds that the facts alleged in the petition for

1 dependency were proven in the adjudicatory hearing, or if the
2 parents have consented to the finding of dependency or
3 admitted the allegations in the petition, have failed to
4 appear for the arraignment hearing after proper notice, or
5 have not been located despite a diligent search having been
6 conducted, the court shall receive and consider a
7 predisposition study, which must be in writing and presented
8 by an authorized agent of the department.

9 (a) The predisposition study shall cover for any
10 dependent child all factors specified in s. 61.13(3), and must
11 also provide the court with the following documented
12 information:

13 1. An assessment defining the dangers and risks of
14 returning the child home, including a description of the
15 changes in and resolutions to the initial risks.

16 2. A description of what risks are still present and
17 what resources are available and will be provided for the
18 protection and safety of the child.

19 3. A description of the benefits of returning the
20 child home.

21 4. A description of all unresolved issues.

22 5. An abuse registry history for all caretakers,
23 family members, and individuals residing within the household.

24 6. The complete child protection team report and
25 recommendation or, if no report exists, a statement reflecting
26 that no report has been made.

27 7. All opinions or recommendations from other
28 professionals or agencies that provide evaluative, social,
29 reunification, or other services to the family.

30 8. The availability of appropriate prevention and
31 reunification services for the family to prevent the removal

1 of the child from the home or to reunify the child with the
2 family after removal, including the availability of family
3 preservation services through the Family Builders Program, the
4 Intensive Crisis Counseling Program, or both.

5 9. The inappropriateness of other prevention and
6 reunification services that were available.

7 10. The efforts by the department to prevent
8 out-of-home placement of the child or, when applicable, to
9 reunify the family if appropriate services were available,
10 including the application of intensive family preservation
11 services through the Family Builders Program, the Intensive
12 Crisis Counseling Program, or both.

13 11. Whether the services were provided to the family
14 and child.

15 12. If the services were provided, whether they were
16 sufficient to meet the needs of the child and the family and
17 to enable the child to remain at home or to be returned home.

18 13. If the services were not provided, the reasons for
19 such lack of action.

20 14. The need for, or appropriateness of, continuing
21 the services if the child remains in the custody of the family
22 or if the child is placed outside the home.

23 15. Whether family mediation was provided.

24 16. Whether a multidisciplinary case staffing was
25 conducted and, if so, the results.

26 17. If the child has been removed from the home and
27 there is a parent who may be considered for custody pursuant
28 to s. 39.41(1), a recommendation as to whether placement of
29 the child with that parent would be detrimental to the child.

30

31

1 Any other relevant and material evidence, including other
2 written or oral reports, may be received by the court in its
3 effort to determine the action to be taken with regard to the
4 child and may be relied upon to the extent of its probative
5 value, even though not competent in an adjudicatory hearing.
6 Except as provided in paragraph (2)(c), nothing in this
7 section prohibits the publication of proceedings in a hearing.

8 Section 3. For the purpose of incorporating the
9 amendment to section 61.13, Florida Statutes, 1996 Supplement,
10 in references thereto, paragraph (a) of subsection (5) of
11 section 741.30, Florida Statutes, 1996 Supplement, is
12 reenacted to read:

13 741.30 Domestic violence; injunction; powers and
14 duties of court and clerk; petition; notice and hearing;
15 temporary injunction; issuance of injunction; statewide
16 verification system; enforcement.--

17 (5)(a) When it appears to the court that an immediate
18 and present danger of domestic violence exists, the court may
19 grant a temporary injunction ex parte, pending a full hearing,
20 and may grant such relief as the court deems proper, including
21 an injunction:

22 1. Restraining the respondent from committing any acts
23 of domestic violence.

24 2. Awarding to the petitioner the temporary exclusive
25 use and possession of the dwelling that the parties share or
26 excluding the respondent from the residence of the petitioner.

27 3. On the same basis as provided in s. 61.13(2), (3),
28 (4), and (5), granting to the petitioner temporary custody of
29 a minor child or children.

30 Section 4. This act shall take effect upon becoming a
31 law.

LEGISLATIVE SUMMARY

Provides for the court to consider evidence of spousal abuse or child abuse when evaluating the best interests of the child in child custody proceedings under ch. 61, F.S., relating to dissolution of marriage.

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By Senator Kurth

15-284B-97

A bill to be entitled

1
2 An act relating to weapons and firearms;
3 creating s. 790.233, F.S.; prohibiting a person
4 who has been issued a final injunction against
5 committing acts of domestic violence or repeat
6 violence from possessing any firearm or
7 ammunition; providing a penalty; amending s.
8 741.30, F.S.; requiring that a final injunction
9 for protection against domestic violence
10 indicate that possessing any firearm or
11 ammunition is prohibited; amending s. 741.31,
12 F.S.; providing that it is a first-degree
13 misdemeanor to possess a firearm or ammunition
14 following actual notice of the injunction;
15 amending s. 784.046, F.S.; requiring that an
16 injunction for protection against repeat
17 violence indicate that the injunction is
18 enforceable by law enforcement officers in all
19 counties; requiring that a final injunction for
20 protection against repeat violence indicate
21 that possessing any firearm or ammunition is
22 prohibited; amending s. 784.047, F.S.;
23 providing that it is a first-degree misdemeanor
24 to possess a firearm or ammunition following
25 actual notice of the injunction; reenacting s.
26 901.15(6), F.S., relating to lawful arrest by a
27 law enforcement officer without a warrant, to
28 incorporate the amendments to ss. 741.31,
29 784.047, F.S., in references thereto; amending
30 s. 790.06, F.S.; providing that the Department
31 of State may issue a license to carry a

1 concealed weapon or firearm if the applicant
 2 has not had adjudication of guilt withheld or
 3 imposition of sentence suspended for committing
 4 a violent misdemeanor; authorizing the
 5 department to issue such a license if the
 6 applicant has not been issued a final
 7 injunction against committing acts of domestic
 8 violence or acts of repeat violence; requiring
 9 that the department suspend such a license, or
 10 the processing of a license application, if the
 11 licensee or applicant is issued a final
 12 injunction against committing acts of domestic
 13 violence or acts of repeat violence; amending
 14 s. 790.065, F.S.; requiring that the Department
 15 of Law Enforcement determine if a potential
 16 buyer or transferee of a firearm has been
 17 convicted of a violent misdemeanor or had
 18 adjudication of guilt withheld or imposition of
 19 sentence suspended for committing a violent
 20 misdemeanor; providing an effective date.

21
 22 Be It Enacted by the Legislature of the State of Florida:

23
 24 Section 1. Section 790.233, Florida Statutes, is
 25 created to read:

26 790.233 Possession of firearm and ammunition
 27 prohibited if person is subject to an injunction against
 28 committing acts of violence; penalty.--

29 (1) A person may not have in his or her care, custody,
 30 possession, or control any firearm or ammunition if the person
 31 has been issued a final injunction against committing acts of;

1 (a) Domestic violence, issued under s. 741.30; or

2 (b) Repeat violence, issued under s. 784.046.

3 (2) A person who violates subsection (1) after
4 receiving actual notice of the injunction and being given an
5 opportunity to be heard, commits a misdemeanor of the first
6 degree, punishable as provided under s. 775.082 or s. 775.083.

7 Section 2. Paragraph (c) of subsection (6) of section
8 741.30, Florida Statutes, 1996 Supplement, is amended to read:

9 741.30 Domestic violence; injunction; powers and
10 duties of court and clerk; petition; notice and hearing;
11 temporary injunction; issuance of injunction; statewide
12 verification system; enforcement.--

13 (6)

14 (c)1. A temporary or final judgment on injunction for
15 protection against domestic violence entered pursuant to this
16 section must shall, on its face, indicate that:

17 a.1- The injunction is valid and enforceable in all
18 counties of the State of Florida.

19 b.2- Law enforcement officers may use their arrest
20 powers pursuant to s. 901.15(6) to enforce the terms of the
21 injunction.

22 2. A final judgment on injunction for protection
23 against domestic violence entered pursuant to this section
24 must, on its face, indicate that it is a violation of s.
25 790.233, and a first-degree misdemeanor, for the respondent to
26 have in his or her care, custody, possession, or control any
27 firearm or ammunition.

28 Section 3. Subsection (4) of section 741.31, Florida
29 Statutes, 1996 Supplement, is amended to read:

30 741.31 Violation of an injunction for protection
31 against domestic violence.--

1 (4) A person who willfully violates an injunction for
2 protection against domestic violence, issued pursuant to s.
3 741.30, by:

4 (a) Refusing to vacate the dwelling that the parties
5 share;

6 (b) Going to the petitioner's residence, school, place
7 of employment, or a specified place frequented regularly by
8 the petitioner and any named family or household member;

9 (c) Committing an act of domestic violence against the
10 petitioner;

11 (d) Committing any other violation of the injunction
12 through an intentional unlawful threat, word, or act to do
13 violence to the petitioner; or

14 (e) Telephoning, contacting, or otherwise
15 communicating with the petitioner directly or indirectly,
16 unless the injunction specifically allows indirect contact
17 through a third party; or

18 (f) Having in his or her care, custody, possession, or
19 control any firearm or ammunition, in violation of s. 790.233,
20 after having received actual notice of the injunction and
21 being given an opportunity to be heard.

22
23 is guilty of a misdemeanor of the first degree, punishable as
24 provided in s. 775.082 or s. 775.083.

25 Section 4. Paragraph (d) is added to subsection (6) of
26 section 784.046, Florida Statutes, to read:

27 784.046 Action by victim of repeat violence for
28 protective injunction; powers and duties of court and clerk of
29 court; filing and form of petition; notice and hearing;
30 temporary injunction; issuance; statewide verification system;
31 enforcement.--

1 (6)

2 (d)1. A temporary or final injunction for protection
3 against repeat violence entered under this section must, on
4 its face, indicate that:

5 a. The injunction is valid and enforceable in all
6 counties of the State of Florida.

7 b. Law enforcement officers may use their arrest
8 powers pursuant to s. 901.15(6) to enforce the terms of the
9 injunction.

10 2. A final judgment on injunction for protection
11 against repeat violence entered under this section must, on
12 its face, indicate that it is a violation of s. 790.233, and a
13 first-degree misdemeanor, for the respondent to have in his or
14 her care, custody, possession, or control any firearm or
15 ammunition.

16 Section 5. Section 784.047, Florida Statutes, is
17 amended to read:

18 784.047 Penalties for violating protective injunction
19 against repeat violators.--A person who willfully violates an
20 injunction for protection against repeat violence, issued
21 pursuant to s. 784.046, by:

22 (1) Refusing to vacate the dwelling that the parties
23 share;

24 (2) Going to the petitioner's residence, school, place
25 of employment, or a specified place frequented regularly by
26 the petitioner and any named family or household member;

27 (3) Committing an act of repeat violence against the
28 petitioner;

29 (4) Committing any other violation of the injunction
30 through an intentional unlawful threat, word, or act to do
31 violence to the petitioner; or

1 (5) Telephoning, contacting, or otherwise
2 communicating with the petitioner directly or indirectly,
3 unless the injunction specifically allows indirect contact
4 through a third party; or

5 (6) Having in his or her care, custody, possession, or
6 control any firearm or ammunition, in violation of s. 790.233,
7 after having received actual notice of the injunction and
8 being given an opportunity to be heard,

9
10 is guilty of a misdemeanor of the first degree, punishable as
11 provided in s. 775.082 or s. 775.083.

12 Section 6. For the purpose of incorporating the
13 amendments made by this act to section 741.31, Florida
14 Statutes, 1996 Supplement, and section 784.047, Florida
15 Statutes, in references thereto, subsection (6) of section
16 901.15, Florida Statutes, 1996 Supplement, is reenacted to
17 read:

18 901.15 When arrest by officer without warrant is
19 lawful.--A law enforcement officer may arrest a person without
20 a warrant when:

21 (6) There is probable cause to believe that the person
22 has committed a criminal act according to s. 741.31 or s.
23 784.047 which violates an injunction for protection entered
24 pursuant to s. 741.30 or s. 784.046, over the objection of the
25 petitioner, if necessary.

26 Section 7. Subsections (2) and (3) of section 790.06,
27 Florida Statutes, are amended to read:

28 790.06 License to carry concealed weapon or firearm.--

29 (2) The Department of State shall issue a license if
30 the applicant:

1 (a) Is a resident of the United States or is a
2 consular security official of a foreign government that
3 maintains diplomatic relations and treaties of commerce,
4 friendship, and navigation with the United States and is
5 certified as such by the foreign government and by the
6 appropriate embassy in this country;

7 (b) Is 21 years of age or older;

8 (c) Does not suffer from a physical infirmity which
9 prevents the safe handling of a weapon or firearm;

10 (d) Is not ineligible to possess a firearm pursuant to
11 s. 790.23 by virtue of having been convicted of a felony;

12 (e) Has not been committed for the abuse of a
13 controlled substance or been found guilty of a crime under the
14 provisions of chapter 893 or similar laws of any other state
15 relating to controlled substances within a 3-year period
16 immediately preceding the date on which the application is
17 submitted;

18 (f) Does not chronically and habitually use alcoholic
19 beverages or other substances to the extent that his normal
20 faculties are impaired. It shall be presumed that an
21 applicant chronically and habitually uses alcoholic beverages
22 or other substances to the extent that his normal faculties
23 are impaired if the applicant has been committed under chapter
24 397 or under the provisions of former chapter 396 or has been
25 convicted under s. 790.151 or has been deemed a habitual
26 offender under s. 856.011(3), or has had two or more
27 convictions under s. 316.193 or similar laws of any other
28 state, within the 3-year period immediately preceding the date
29 on which the application is submitted;

30 (g) Desires a legal means to carry a concealed weapon
31 or firearm for lawful self-defense;

1 (h) Demonstrates competence with a firearm by any one
2 of the following:

3 1. Completion of any hunter education or hunter safety
4 course approved by the Game and Fresh Water Fish Commission or
5 a similar agency of another state;

6 2. Completion of any National Rifle Association
7 firearms safety or training course;

8 3. Completion of any firearms safety or training
9 course or class available to the general public offered by a
10 law enforcement, junior college, college, or private or public
11 institution or organization or firearms training school,
12 utilizing instructors certified by the National Rifle
13 Association, Criminal Justice Standards and Training
14 Commission, or the Department of State;

15 4. Completion of any law enforcement firearms safety
16 or training course or class offered for security guards,
17 investigators, special deputies, or any division or
18 subdivision of law enforcement or security enforcement;

19 5. Presents evidence of equivalent experience with a
20 firearm through participation in organized shooting
21 competition or military service;

22 6. Is licensed or has been licensed to carry a firearm
23 in this state or a county or municipality of this state,
24 unless such license has been revoked for cause; or

25 7. Completion of any firearms training or safety
26 course or class conducted by a state-certified or National
27 Rifle Association certified firearms instructor;

28
29 A photocopy of a certificate of completion of any of the
30 courses or classes; or an affidavit from the instructor,
31 school, club, organization, or group that conducted or taught

1 said course or class attesting to the completion of the course
2 or class by the applicant; or a copy of any document which
3 shows completion of the course or class or evidences
4 participation in firearms competition shall constitute
5 evidence of qualification under this paragraph;

6 (i) Has not been adjudicated an incapacitated person
7 under s. 744.331, or similar laws of any other state, unless 5
8 years have elapsed since the applicant's restoration to
9 capacity by court order;

10 (j) Has not been committed to a mental institution
11 under chapter 394, or similar laws of any other state, unless
12 the applicant produces a certificate from a licensed
13 psychiatrist that he has not suffered from disability for at
14 least 5 years prior to the date of submission of the
15 application; and

16 (k) Has not had adjudication of guilt withheld or
17 imposition of sentence suspended on any felony or violent
18 misdemeanor unless 3 years have elapsed since probation or any
19 other conditions set by the court have been fulfilled, or the
20 record has been sealed or expunged; and-

21 (l) Has not been issued a final injunction that is
22 currently in force and effect and that restrains the applicant
23 from committing acts of domestic violence or acts of repeat
24 violence.

25 (3) The Department of State shall may deny a license
26 if the applicant has been found guilty of, had adjudication of
27 guilt withheld for, or had imposition of sentence suspended
28 for one or more crimes of violence constituting a misdemeanor,
29 unless 3 years have elapsed since probation or any other
30 conditions set by the court have been fulfilled, or the record
31 has been sealed or expunged. The Department of State shall-or

1 ~~may~~ revoke a license if the licensee has been found guilty of,
2 had adjudication of guilt withheld for, or had imposition of
3 sentence suspended for one or more crimes of violence within
4 the preceding 3 years. The department shall, upon
5 notification by a law enforcement agency, a court, or the
6 Florida Department of Law Enforcement and subsequent written
7 verification, suspend a license or the processing of an
8 application for a license if the licensee or applicant is
9 arrested or formally charged with a crime that ~~which~~ would
10 disqualify such person from having a license under this
11 section, until final disposition of the case. The department
12 shall suspend a license or the processing of an application
13 for a license if the licensee or applicant is issued a final
14 injunction that restrains the licensee or applicant from
15 committing acts of domestic violence or acts of repeat
16 violence.

17 Section 8. Subsections (1) and (2) of section 790.065,
18 Florida Statutes, 1996 Supplement, are amended to read:

19 790.065 Sale and delivery of firearms.--

20 (1) A ~~No~~ licensed importer, licensed manufacturer, or
21 licensed dealer may not ~~shall~~ sell or deliver from his
22 inventory at his licensed premises any firearm to another
23 person, other than a licensed importer, licensed manufacturer,
24 licensed dealer, or licensed collector, until he has:

25 (a) Obtained a completed form from the potential buyer
26 or transferee, which form shall have been promulgated by the
27 Department of Law Enforcement and provided by the licensed
28 importer, licensed manufacturer, or licensed dealer, which
29 shall include the name, date of birth, gender, race, and
30 social security number or other identification number of such
31 potential buyer or transferee and has inspected proper

1 identification including an identification containing a
2 photograph of the potential buyer or transferee.

3 (b)+. Collected a fee from the potential buyer for
4 processing the criminal history check of the potential buyer.
5 The fee shall be \$8. The Department of Law Enforcement shall,
6 by rule, establish procedures for the fees to be transmitted
7 by the licensee to the Department of Law Enforcement. All such
8 fees shall be deposited into the Department of Law Enforcement
9 Operating Trust Fund, but shall be segregated from all other
10 funds deposited into such trust fund and must be accounted for
11 separately. Such segregated funds must not be used for any
12 purpose other than the operation of the criminal history
13 checks required by this section. The Department of Law
14 Enforcement, each year prior to February 1, shall make a full
15 accounting of all receipts and expenditures of such funds to
16 the President of the Senate, the Speaker of the House of
17 Representatives, the majority and minority leaders of each
18 house of the Legislature, and the chairs of the appropriations
19 committees of each house of the Legislature. In the event
20 that the cumulative amount of funds collected exceeds the
21 cumulative amount of expenditures by more than \$2.5 million,
22 excess funds may be used for the purpose of purchasing soft
23 body armor for law enforcement officers.

24 ~~2--For the 1995-1996 fiscal year only, if the~~
25 ~~cumulative amount of funds collected exceeds the cumulative~~
26 ~~amount of expenditures by more than \$2.5 million, \$1.5 million~~
27 ~~of such excess funds may be transferred to the General Revenue~~
28 ~~Fund. This subparagraph is repealed on July 1, 1996.~~

29 (c) Requested, by means of a toll-free telephone call,
30 the Department of Law Enforcement to conduct a check of the
31 information as reported and reflected in the Florida Crime

1 disposition of the indictment, information, or arrest, the
2 conditional nonapproval number shall remain in effect.

3 Section 9. This act shall take effect July 1, 1997.

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SENATE SUMMARY

Prohibits possessing or having within one's control a
firearm or ammunition after being issued a final
injunction against committing acts of domestic violence
or acts of repeat violence. Provides that it is a
first-degree misdemeanor to possess or have control of a
firearm or ammunition after receiving actual notice of
the injunction and being given an opportunity to be
heard. Requires that a final injunction must state, on
its face, that possessing a firearm or ammunition is
prohibited. Provides that the Department of State may not
issue a license to carry a concealed weapon or firearm to
a person who has been issued a final injunction against
committing acts of domestic violence or acts of repeat
violence. Provides that the department may not issue a
license to carry a concealed weapon or firearm to a
person who has had adjudication of guilt withheld or
imposition of sentence suspended for a violent
misdemeanor within the past 3 years. Requires that the
department suspend a license to carry a concealed weapon
or firearm, or the processing of an application for such
a license, if the licensee or applicant has been issued a
final injunction against committing acts of domestic
violence or acts of repeat violence.

By Senator Campbell

33-1109-97

A bill to be entitled

1
2 An act relating to protection against domestic
3 violence; amending s. 44.102, F.S.; providing
4 that a case is not referable to family
5 mediation if the court finds there has been a
6 history of domestic violence; amending s.
7 61.13, F.S., relating to child custody and
8 support; providing for creation of a rebuttable
9 presumption of detriment to a child upon
10 evidence of a parent's conviction of a felony
11 involving domestic violence; providing for
12 evidence of spousal or child abuse to be
13 considered by the court as evidence of
14 detriment to the child; amending s. 741.28,
15 F.S.; redefining "domestic violence" to include
16 kidnapping and false imprisonment and other
17 specified criminal offenses resulting in
18 physical injury or death of one family or
19 household member by another, regardless of
20 whether the perpetrator was or is residing in
21 the same dwelling unit; amending s. 741.30,
22 F.S.; providing for court orders to protect the
23 children of the domestic violence victim's
24 minor children; revising the period during
25 which injunctive relief remains effective;
26 providing for motion to modify or dissolve
27 injunction by either party; providing for
28 indication of specified information on the face
29 of a temporary or final judgment for protection
30 against domestic violence; amending s. 741.31,
31 F.S.; defining the offense of willfully

1 violating a foreign protection order accorded
2 full faith and credit by specified acts;
3 providing penalties; creating s. 741.315, F.S.;
4 requiring that an injunction for protection
5 against domestic violence issued by a "court of
6 a foreign state," as defined, be accorded full
7 faith and credit; providing exceptions;
8 providing for availability of a registration
9 procedure to protected persons; providing
10 duties of the Florida Department of Law
11 Enforcement and sheriffs and other local law
12 enforcement officers with respect to
13 registration and enforcement of foreign
14 protection order; providing certain immunity
15 from civil and criminal liability to law
16 enforcement officer and officer's employing
17 agency; defining the offense of intentionally
18 providing a law enforcement officer with a copy
19 of protection order known to be invalid or
20 denying having been served with protection
21 order when served; providing penalties;
22 amending s. 784.046, F.S., relating to action
23 by victim of repeat violence for protective
24 injunction; providing certain immunity from
25 civil and criminal liability to law enforcement
26 officer and officer's employing agency;
27 revising period of duration of injunctive
28 relief; amending s. 784.047, F.S., relating to
29 penalties for violating protective injunction
30 against repeat violators; defining offenses of
31 willfully violating a foreign protection order

1 accorded full faith and credit by committing
2 specified acts; providing penalties; amending
3 s. 901.15, F.S., relating to circumstances when
4 arrest by officer without warrant is lawful;
5 providing conforming terminology and cross
6 references; providing certain immunity from
7 civil liability to law enforcement officer;
8 providing an effective date.

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Paragraph (b) of subsection (2) of section
13 44.102, Florida Statutes, 1996 Supplement, is amended to read:

14 44.102 Court-ordered mediation.--

15 (2) A court, under rules adopted by the Supreme Court:

16 (b) In circuits in which a family mediation program
17 has been established and upon a court finding of a dispute,
18 shall refer to mediation all or part of custody, visitation,
19 or other parental responsibility issues as defined in s.

20 61.13. A court shall not refer any case to mediation if it
21 finds there has been a significant history of domestic
22 violence abuse that would compromise the mediation process.

23 Section 2. Paragraph (b) of subsection (2) of section
24 61.13, Florida Statutes, 1996 Supplement, is amended to read:

25 61.13 Custody and support of children; visitation
26 rights; power of court in making orders.--

27 (2)

28 (b)1. The court shall determine all matters relating
to custody of each minor child of the parties in accordance
30 with the best interests of the child and in accordance with
31 the Uniform Child Custody Jurisdiction Act. It is the public

1 policy of this state to assure that each minor child has
2 frequent and continuing contact with both parents after the
3 parents separate or the marriage of the parties is dissolved
4 and to encourage parents to share the rights and
5 responsibilities, and joys, of childrearing. After considering
6 all relevant facts, the father of the child shall be given the
7 same consideration as the mother in determining the primary
8 residence of a child irrespective of the age or sex of the
9 child.

10 2. The court shall order that the parental
11 responsibility for a minor child be shared by both parents
12 unless the court finds that shared parental responsibility
13 would be detrimental to the child. ~~The court shall consider~~
14 ~~evidence of spousal or child abuse as evidence of detriment to~~
15 ~~the child. The court shall consider~~ Evidence that a parent has
16 been convicted of a felony of the third ~~second~~ degree or
17 higher involving domestic violence, as defined in s. 741.28
18 and chapter 775, creates as a rebuttable presumption of
19 detriment to the child. If the presumption is not rebutted,
20 shared parental responsibility, including visitation,
21 residence of the child, and decisions made regarding the
22 child, shall not be granted to the convicted parent. However,
23 the convicted parent shall not be relieved of any obligation
24 to provide financial support. If the court determines that
25 shared parental responsibility would be detrimental to the
26 child, it may order sole parental responsibility and make such
27 arrangements for visitation as will best protect the child or
28 abused spouse from further harm. Irrespective of a conviction
29 of any offense or the existence of an injunction for
30 protection against domestic violence, the court shall consider
31

1 evidence of spousal or child abuse as evidence of detriment to
2 the child.

3 a. In ordering shared parental responsibility, the
4 court may consider the expressed desires of the parents and
5 may grant to one party the ultimate responsibility over
6 specific aspects of the child's welfare or may divide those
7 responsibilities between the parties based on the best
8 interests of the child. Areas of responsibility may include
9 primary residence, education, medical and dental care, and any
10 other responsibilities which the court finds unique to a
11 particular family.

12 b. The court shall order "sole parental
13 responsibility, with or without visitation rights, to the
14 other parent when it is in the best interests of" the minor
15 child.

16 c. The court may award the grandparents visitation
17 rights of a minor child if it is in the child's best interest.
18 Grandparents shall have legal standing to seek judicial
19 enforcement of such an award. Nothing in this section shall
20 require that grandparents be made parties or given notice of
21 dissolution pleadings or proceedings, nor shall grandparents
22 have legal standing as "contestants" as defined in s. 61.1306.
23 No court shall order that a child be kept within the state or
24 jurisdiction of the court solely for the purpose of permitting
25 visitation by the grandparents.

26 3. Access to records and information pertaining to a
27 minor child, including, but not limited to, medical, dental,
28 and school records, shall not be denied to a parent because
such parent is not the child's primary residential parent.

30 Section 3. Subsection (1) of section 741.28, Florida
31 Statutes, is amended to read:

1 741.28 Domestic violence; definitions.--As used in ss.

2 741.28-741.31:

3 (1) "Domestic violence" means any assault, aggravated
4 assault, battery, aggravated battery, sexual assault, sexual
5 battery, stalking, aggravated stalking, kidnapping, false
6 imprisonment, or any criminal offense resulting in physical
7 injury or death of one family or household member by another
8 ~~who is or was residing in the same single dwelling unit.~~

9 Section 4. Paragraphs (a), (b), and (c) of subsection
10 (6) of section 741.30, Florida Statutes, 1996 Supplement, are
11 amended to read:

12 741.30 Domestic violence; injunction; powers and
13 duties of court and clerk; petition; notice and hearing;
14 temporary injunction; issuance of injunction; statewide
15 verification system; enforcement.--

16 (6)(a) Upon notice and hearing, the court may grant
17 such relief as the court deems proper, including an
18 injunction:

19 1. Restraining the respondent from committing any acts
20 of domestic violence.

21 2. Awarding to the petitioner the exclusive use and
22 possession of the dwelling that the parties share or excluding
23 the respondent from the residence of the petitioner.

24 3. On the same basis as provided in chapter 61,
25 awarding temporary custody of, or temporary visitation rights
26 with regard to, a minor child or children of the parties.

27 4. On the same basis as provided in chapter 61,
28 establishing temporary support for a minor child or children
29 or the petitioner.

30 5. Ordering the respondent to participate in
31 treatment, intervention, or counseling services.

33-1109-97

6. Ordering such other relief as the court deems
necessary for the protection of a victim of domestic violence,
or any minor children of the victim, including injunctions or
directives to law enforcement agencies, as provided in this
section.

(b) Any relief granted by the injunction is effective
for a term of not less than 1 year and until further order of
the court. ~~shall be granted for a fixed period not to exceed 1~~
~~year; unless upon petition of the victim the court extends the~~
~~injunction for successive fixed periods not to exceed 1 year.~~
~~Broad discretion resides with the court to grant an extension~~
~~after considering the circumstances.~~ Either party may move at
any time to modify or dissolve the injunction. No specific
allegations are required. Such relief may be granted in
addition to other civil or criminal remedies.

(c) A temporary or final judgment on injunction for
protection against domestic violence entered pursuant to this
section shall, on its face, indicate that:

1. The injunction is valid and enforceable in all
counties of the State of Florida.

2. Law enforcement officers may use their arrest
powers pursuant to s. 901.15(6) to enforce the terms of the
injunction.

3. The court had jurisdiction over the parties and
matter under the laws of Florida and that reasonable notice
and opportunity to be heard was given to the person against
whom the order is sought sufficient to protect that person's
right to due process.

4. The date respondent was served with the temporary
or final order, if obtainable.

1 Section 5. Subsection (4) of section 741.31, Florida
2 Statutes, 1996 Supplement, is amended to read:

3 741.31 Violation of an injunction for protection
4 against domestic violence.--

5 (4) A person who willfully violates an injunction for
6 protection against domestic violence, issued pursuant to s.
7 741.30, or a foreign protection order accorded full faith and
8 credit pursuant to s. 741.305, by:

9 (a) Refusing to vacate the dwelling that the parties
10 share;

11 (b) Going to the petitioner's residence, school, place
12 of employment, or a specified place frequented regularly by
13 the petitioner and any named family or household member;

14 (c) Committing an act of domestic violence against the
15 petitioner;

16 (d) Committing any other violation of the injunction
17 through an intentional unlawful threat, word, or act to do
18 violence to the petitioner; or

19 (e) Telephoning, contacting, or otherwise
20 communicating with the petitioner directly or indirectly,
21 unless the injunction specifically allows indirect contact
22 through a third party

23
24 is guilty of a misdemeanor of the first degree, punishable as
25 provided in s. 775.082 or s. 775.083.

26 Section 6. Section 741.315, Florida Statutes, is
27 created to read:

28 741.315 Recognition of foreign protection orders --

29 (1) As used in this section, the term "court of a
30 foreign state" means a court of competent jurisdiction of a
31 state of the United States, other than Florida; the District

1 of Columbia; an Indian tribe; or a commonwealth, territory, or
2 possession of the United States.

3 (2) Pursuant to 18 U.S.C. s. 2265, an injunction for
4 protection against domestic violence issued by a court of a
5 foreign state must be accorded full faith and credit by the
6 courts of this state and enforced by a law enforcement agency
7 as if it were the order of a Florida court issued under s.
8 741.30, s. 741.31, s. 784.046, s. 784.047, or s.
9 901.15(6)-(8). Ex parte foreign injunctions for protection are
10 not eligible for enforcement under this section unless notice
11 and opportunity to be heard have been provided within the time
12 required by the foreign state or tribal law, and in any event
13 within a reasonable time after the order is issued, sufficient
14 to protect the respondent's due process rights.

15 (3) Notwithstanding s. 55.505 or any other provision
16 to the contrary, neither residence in this state nor
17 registration of foreign injunctions for protection shall be
18 required for enforcement of this order by this state and
19 failure to register the foreign order shall not be an
20 impediment to its enforcement. However, in order to assist law
21 enforcement and the courts in enforcement of foreign
22 injunctions for protection, the following registration
23 procedure shall be available to protected persons who hold
24 orders from a court of a foreign state.

25 (a) A protected person may present a certified copy of
26 a foreign order of protection to any sheriff in this state and
27 request that the same be registered in the injunction
28 registry. It is not necessary that the protected person
29 register the foreign order in the protected person's county of
30 residence. Venue is proper throughout the state. The protected
31 person must swear by affidavit, that to the best of the

1 protected person's knowledge and belief, the attached
2 certified copy of the foreign order, docket number
3, issued in the state of on
4 is currently in effect as written and has not
5 been superseded by any other order.

6 (b) The sheriff shall examine the certified copy of
7 the foreign order and register the order in the injunction
8 registry, noting that it is a foreign order of protection. If
9 not apparent from the face of the certified copy of the
10 foreign order, the sheriff shall use best efforts to ascertain
11 whether the order was served on the respondent. The Florida
12 Department of Law Enforcement shall develop a special notation
13 for foreign orders of protection. The sheriff shall assign a
14 case number and give the protected person a receipt showing
15 registration of the foreign order in this state. There shall
16 be no fee for registration of a foreign order.

17 (c) The foreign order may also be registered by local
18 law enforcement agencies upon receipt of the foreign order and
19 any accompanying affidavits in the same manner described in
20 paragraphs (a) and (b).

21 (d) Law enforcement, the judiciary, and the clerks of
22 court are prohibited from disclosing the location of a
23 petitioner seeking to enforce or register a foreign order.

24 (4)(a) Law enforcement officers shall enforce foreign
25 orders of protection as if they were entered by a court of
26 this state. Upon presentation of a foreign protection order by
27 a protected person, a law enforcement officer shall assist in
28 enforcement of all of its terms, pursuant to federal law,
29 except matters related to child custody, visitation, and
30 support. As to those provisions only, enforcement may be
31 obtained upon domestication of the foreign order pursuant to

1 ss. 55.501-55.509 unless the foreign order is a "pickup order"
2 or "order of bodily attachment" requiring the immediate return
3 of a child.

4 (b) Before enforcing a foreign protection order, a law
5 enforcement officer should confirm the identity of the parties
6 present and review the order to determine that, on its face,
7 it has not expired. Presentation of a certified or true copy
8 of the protection order shall not be required as a condition
9 of enforcement, provided that a conflicting certified copy is
10 not presented by the respondent or the individual against whom
11 enforcement is sought.

12 (c) A law enforcement officer shall use reasonable
13 efforts to verify service of process.

14 (d) In order to assist enforcement, service may be
15 verified as follows:

16 1. By petitioner: Petitioner may swear that to the
17 best of petitioner's knowledge, respondent was served with the
18 order of protection because petitioner was present at time of
19 service; respondent told petitioner he was served; another
20 named person told petitioner respondent was served; or
21 respondent told petitioner he knows of the content of the
22 order and date of the return hearing.

23 2. By respondent: Respondent swears that he was or
24 was not served with the order.

25 (e) Enforcement and arrest for violation of a foreign
26 protection order shall be consistent with the enforcement of
27 orders issued in this state.

28 (f) A law enforcement officer acting in good faith
29 under this section and the officer's employing agency shall be
30 immune from all liability, civil or criminal, that might
31 otherwise be incurred or imposed by reason of the officer's or

33-1109-97

1 agency's actions in carrying out the provisions of this
2 section.

3 (g) Law enforcement shall not require petitioner to
4 sign a registration affidavit as a condition of enforcement.

5 (h) A foreign order of protection shall remain in
6 effect until the date of expiration on its face; or, if there
7 is no expiration date on its face, a foreign order of
8 protection shall remain in effect until expiration. If the
9 order of protection states on its face that it is a permanent
10 order, then there is no date of expiration.

11 (5) Any person who acts under this section and
12 intentionally provides a law enforcement officer with a copy
13 of an order of protection known by that person to be false or
14 invalid, or who denies having been served with an order of
15 protection when that person has been served with such order,
16 commits a misdemeanor of the first degree, punishable as
17 provided in s. 775.082 or s. 775.083.

18 (6) In the event 18 U.S.C. s. 2265 is held to be
19 unconstitutional, this section shall be null and void.

20 Section 7. Subsection (7) of section 784.046, Florida
21 Statutes, is amended, and subsection (11) is added to that
22 section, to read:

23 784.046 Action by victim of repeat violence for
24 protective injunction; powers and duties of court and clerk of
25 court; filing and form of petition; notice and hearing;
26 temporary injunction; issuance; statewide verification system;
27 enforcement.--

28 (7) Upon notice and hearing, the court may grant such
29 relief as the court deems proper, including an injunction:

30 (a) Enjoining the respondent from committing any acts
31 of violence.

(b) Ordering such other relief as the court deems
 2 necessary for the protection of the petitioner, including
 3 injunctions or directives to law enforcement agencies, as
 4 provided in this section.

5
 6 ~~fe)~~ Any relief granted by the injunction is effective for a
 7 term of not less than 1 year and until further order of the
 8 court shall be granted for a fixed period not to exceed 1
 9 year, unless upon petition of the victim the court extends the
 10 injunction for successive fixed periods not to exceed 1 year.
 11 Such relief may be granted in addition to other civil or
 12 criminal remedies.

13 (c) A temporary or final judgment on injunction for
 14 protection against repeat violence entered pursuant to this
section shall, on its face, indicate that:

15 1. The injunction is valid and enforceable in all
 16 counties of the State of Florida.

17 2. Law enforcement officers may use their arrest
 18 powers pursuant to s. 901.15(6) to enforce the terms of the
 19 injunction.

20 (11) A law enforcement officer acting in good faith
 21 under this section and the officer's employing agency shall be
 22 immune from all liability, civil or criminal, that might
 23 otherwise be incurred or imposed by reason of the officer's or
 24 agency's actions in carrying out the provisions of this
 25 section.

26 Section 8. Section 784.047, Florida Statutes, is
 27 amended to read:

28 784.047 Penalties for violating protective injunction
 29 against repeat violators.--A person who willfully violates an
 30 injunction for protection against repeat violence, or a
 31

33-1109-97

1 foreign protection order accorded full faith and credit,

2 issued pursuant to s. 784.046, by:

3 (1) Refusing to vacate the dwelling that the parties
4 share;

5 (2) Going to the petitioner's residence, school, place
6 of employment, or a specified place frequented regularly by
7 the petitioner and any named family or household member;

8 (3) Committing an act of repeat violence against the
9 petitioner;

10 (4) Committing any other violation of the injunction
11 through an intentional unlawful threat, word, or act to do
12 violence to the petitioner; or

13 (5) Telephoning, contacting, or otherwise
14 communicating with the petitioner directly or indirectly,
15 unless the injunction specifically allows indirect contact
16 through a third party;

17

18 ~~commits as-guilty-of~~ a misdemeanor of the first degree,
19 punishable as provided in s. 775.082 or s. 775.083.

20 Section 9. Subsections (6), (7), and (8) of section
21 901.15, Florida Statutes, 1996 Supplement, are amended to
22 read:

23 901.15 When arrest by officer without warrant is
24 lawful.--A law enforcement officer may arrest a person without
25 a warrant when:

26 (6) There is probable cause to believe that the person
27 has committed a criminal act according to s. 741.31 or s.
28 784.047 which violates an injunction for protection entered,
29 or a foreign protection order accorded full faith and credit,
30 pursuant to s. 741.30 or s. 784.046, over the objection of the
31 petitioner, if necessary.

33-1109-97

1 (7) There is probable cause to believe that the person
2 has committed:

3 (a) An act of domestic violence, as defined in s.
4 741.28;

5 (b) Child abuse, as defined in s. 827.04(2) and (3);
6 or

7 (c) Any battery upon another person, as defined in s.
8 784.03.

9
10 With respect to an arrest for an act of domestic violence, the
11 decision to arrest shall not require consent of the victim or
12 consideration of the relationship of the parties. A law
13 enforcement officer who acts in good faith and exercises due
14 care in making an arrest under this subsection, under s.
15 741.31(4) or s. 784.047, or pursuant to a foreign order of
16 protection is immune from civil liability that otherwise might
17 result by reason of his or her action.

18 (8) He has probable cause to believe that the person
19 has knowingly committed an act of repeat violence in violation
20 of an injunction for protection from repeat violence entered,
21 or a foreign protection order accorded full faith and credit,
22 pursuant to s. 784.046.

23 Section 10. This act shall take effect October 1,
24 1997.

LEGISLATIVE SUMMARY

Provides that a case is not referable to family mediation if the court finds there has been a history of domestic violence. Provides for creation of a rebuttable presumption of detriment to a child upon evidence of a parent's conviction of a felony involving domestic violence. Provides for evidence of spousal or child abuse as evidence to be considered by the court as evidence of detriment to the child.

Redefines "domestic violence" to include kidnapping and false imprisonment and other specified criminal offenses resulting in physical injury or death of one family or household member by another, regardless of whether the perpetrator was or is residing in the same dwelling unit. Provides for court orders to protect the children of the domestic violence victim's minor children. Revises the period during which injunctive relief remains effective. Provides for motion to modify or dissolve injunction by either party. Provides for indication of specified information on the face of a temporary or final judgment for protection against domestic violence. Defines the offense of willfully violating a foreign protection order accorded full faith and credit by committing specified acts. Provides penalties. Requires that an injunction for protection against domestic violence issued by a "court of a foreign state," as defined, be accorded full faith and credit. Provides exceptions. Provides for availability of a registration procedure to protected persons. Provides duties of the Florida Department of Law Enforcement and sheriffs and other local law enforcement officers with respect to registration and enforcement of foreign protection order. Provides certain immunity from civil and criminal liability to law enforcement officer and officer's employing agency. Defines the offense of intentionally providing a law enforcement officer with a copy of protection order known to be invalid or denying having been served with protection order when served. Provides penalties.

Revises specified provisions relating to action by victim of repeat violence for protective injunction. Defines offenses of willfully violating a foreign protection order accorded full faith and credit by committing specified acts. Provides penalties. Provides certain immunity from civil and criminal liability to law enforcement officer and officer's employing agency. Revises period of duration of injunctive relief.

Revises provisions relating to circumstances when arrest by officer without warrant is lawful to provide conforming terminology and cross references. Provides certain immunity from civil liability to law enforcement officer.

By the Committee on Judiciary and Senators Dudley, Harris and Campbell

308-1909-97

1 A bill to be entitled

2 An act relating to protection against domestic
3 violence; amending s. 28.241, F.S.; limiting
4 certain fees for injunctions relating to
5 domestic violence; amending s. 44.102, F.S.;
6 providing that a case is not referable to
7 family mediation if the court finds there has
8 been a history of domestic violence; amending
9 s. 61.13, F.S., relating to child custody and
10 support; providing for creation of a rebuttable
11 presumption of detriment to a child upon
12 evidence of a parent's conviction of a felony
13 involving domestic violence; providing for
14 evidence of domestic violence or child abuse to
15 be considered by the court as evidence of
16 detriment to the child; providing for
17 consideration of false allegations of domestic
18 violence or child abuse in custody proceedings;
19 amending s. 741.28, F.S.; redefining "domestic
20 violence" to include kidnapping and false
21 imprisonment and other specified criminal
22 offenses resulting in physical injury or death
23 of one family or household member by another;
24 amending s. 741.30, F.S.; providing for court
25 orders to protect the children of the domestic
26 violence victim's minor children; revising the
27 period during which injunctive relief remains
28 effective; providing for motion to modify or
29 dissolve injunction by either party; providing
30 for indication of specified information on the
31 face of a temporary or final judgment for

1 protection against domestic violence;
2 prescribing conditions under which persons may
3 present evidence or recommendations; providing
4 for information through the clerk of the court;
5 specifying information to be included in the
6 petition for injunction for protection from
7 domestic violence; providing certain procedures
8 after granting an ex parte injunction;
9 requiring the court to provide respondents with
10 a list of counseling, treatment, batterers'
11 intervention programs; requiring the court
12 administrator to maintain a registry of program
13 providers; providing for petitioners to be
14 ordered to counseling; providing for
15 petitioners to be provided a list of counseling
16 programs; providing for payment of a
17 petitioner's counseling; limiting total charges
18 for issuing or serving injunctions or
19 restraining orders relating to domestic
20 violence; amending s. 741.31, F.S.; defining
21 the offense of willfully violating a foreign
22 protection order accorded full faith and credit
23 by specified acts; providing penalties;
24 creating s. 741.315, F.S.; requiring that an
25 injunction for protection against domestic
26 violence issued by a "court of a foreign
27 state," as defined, be accorded full faith and
28 credit; providing exceptions; providing for
29 availability of a registration procedure to
30 protected persons; providing duties of the
31 Florida Department of Law Enforcement and

1 sheriffs and other local law enforcement
2 officers with respect to registration and
3 enforcement of foreign protection order;
4 providing certain immunity from civil and
5 criminal liability to law enforcement officer
6 and officer's employing agency; defining the
7 offense of intentionally providing a law
8 enforcement officer with a copy of protection
9 order known to be invalid or denying having
10 been served with protection order when served;
11 providing penalties; amending s. 784.046, F.S.,
12 relating to action by victim of repeat violence
13 for protective injunction; providing certain
14 immunity from civil and criminal liability to
15 law enforcement officer and officer's employing
16 agency; revising period of duration of
17 injunctive relief; amending s. 784.047, F.S.,
18 relating to penalties for violating protective
19 injunction against repeat violators; defining
20 offenses of willfully violating a foreign
21 protection order accorded full faith and credit
22 by committing specified acts; providing
23 penalties; amending s. 901.15, F.S., relating
24 to circumstances when arrest by officer without
25 warrant is lawful; providing conforming
26 terminology and cross references; providing
27 certain immunity from civil liability to law
28 enforcement officer; providing an effective
9 date.

31 Be It Enacted by the Legislature of the State of Florida:

1 Section 1. Subsection (5) of section 28.241, Florida
2 Statutes, 1996 Supplement, is amended to read:

3 28.241 Filing charges for trial and appellate
4 proceedings.--

5 (5) The fees prescribed in this section do not include
6 the service charges required by law for the clerk as provided
7 in s. 28.24 or by other sections of the Florida Statutes.
8 Service charges authorized by this section may not be added to
9 any civil penalty imposed by chapter 316 or chapter 318. Fees
10 for injunctions concerning domestic violence shall be limited
11 as provided in s. 741.30(2)(a).

12 Section 2. Paragraph (b) of subsection (2) of section
13 44.102, Florida Statutes, 1996 Supplement, is amended to read:

14 44.102 Court-ordered mediation.--

15 (2) A court, under rules adopted by the Supreme Court:

16 (b) In circuits in which a family mediation program
17 has been established and upon a court finding of a dispute,
18 shall refer to mediation all or part of custody, visitation,
19 or other parental responsibility issues as defined in s.

20 61.13. A court shall not refer any case to mediation if it
21 finds there has been a ~~significant~~ history of domestic
22 ~~violence abuse that would compromise the mediation process.~~

23 Section 3. Paragraph (b) of subsection (2) of section
24 61.13, Florida Statutes, 1996 Supplement, is amended, present
25 paragraph (k) of subsection (3) of that section is
26 redesignated as paragraph (l), and a new paragraph (k) is
27 added to that subsection, to read:

28 61.13 Custody and support of children; visitation
29 rights; power of court in making orders.--

30 (2)

31

1 (b)1. The court shall determine all matters relating
2 to custody of each minor child of the parties in accordance
3 with the best interests of the child and in accordance with
4 the Uniform Child Custody Jurisdiction Act. It is the public
5 policy of this state to assure that each minor child has
6 frequent and continuing contact with both parents after the
7 parents separate or the marriage of the parties is dissolved
8 and to encourage parents to share the rights and
9 responsibilities, and joys, of childrearing. After considering
10 all relevant facts, the father of the child shall be given the
11 same consideration as the mother in determining the primary
12 residence of a child irrespective of the age or sex of the
13 child.

14 2. The court shall order that the parental
15 responsibility for a minor child be shared by both parents
16 unless the court finds that shared parental responsibility
17 would be detrimental to the child. ~~The court shall consider~~
18 ~~evidence of spousal or child abuse as evidence of detriment to~~
19 ~~the child. The court shall consider~~ Evidence that a parent has
20 been convicted of a felony of the third ~~second~~ degree or
21 higher involving domestic violence, as defined in s. 741.28
22 and chapter 775, creates as a rebuttable presumption of
23 detriment to the child. If the presumption is not rebutted,
24 shared parental responsibility, including visitation,
25 residence of the child, and decisions made regarding the
26 child, shall not be granted to the convicted parent. However,
27 the convicted parent shall not be relieved of any obligation
28 to provide financial support. If the court determines that
29 shared parental responsibility would be detrimental to the
30 child, it may order sole parental responsibility and make such
31 arrangements for visitation as will best protect the child or

1 abused spouse from further harm. Irrespective of a conviction
2 of any offense or the existence of an injunction for
3 protection against domestic violence, the court shall consider
4 evidence of domestic violence or child abuse as evidence of
5 detriment to the child.

6 a. In ordering shared parental responsibility, the
7 court may consider the expressed desires of the parents and
8 may grant to one party the ultimate responsibility over
9 specific aspects of the child's welfare or may divide those
10 responsibilities between the parties based on the best
11 interests of the child. Areas of responsibility may include
12 primary residence, education, medical and dental care, and any
13 other responsibilities which the court finds unique to a
14 particular family.

15 b. The court shall order "sole parental
16 responsibility, with or without visitation rights, to the
17 other parent when it is in the best interests of" the minor
18 child.

19 c. The court may award the grandparents visitation
20 rights of a minor child if it is in the child's best interest.
21 Grandparents shall have legal standing to seek judicial
22 enforcement of such an award. Nothing in this section shall
23 require that grandparents be made parties or given notice of
24 dissolution pleadings or proceedings, nor shall grandparents
25 have legal standing as "contestants" as defined in s. 61.1306.
26 No court shall order that a child be kept within the state or
27 jurisdiction of the court solely for the purpose of permitting
28 visitation by the grandparents.

29 3. Access to records and information pertaining to a
30 minor child, including, but not limited to, medical, dental,
31

1 and school records, shall not be denied to a parent because
2 such parent is not the child's primary residential parent.

3 (3) For purposes of shared parental responsibility and
4 primary residence, the best interests of the child shall
5 include an evaluation of all factors affecting the welfare and
6 interests of the child, including, but not limited to:

7 (k) Evidence of a false allegation of domestic
8 violence or child abuse.

9 Section 4. Subsection (1) of section 741.28, Florida
10 Statutes, is amended to read:

11 741.28 Domestic violence; definitions.--As used in ss.
12 741.28-741.31:

13 (1) "Domestic violence" means any assault, aggravated
14 assault, battery, aggravated battery, sexual assault, sexual
15 battery, stalking, aggravated stalking, kidnapping, false
16 imprisonment, or any criminal offense resulting in physical
17 injury or death of one family or household member by another
18 who is or was residing in the same single dwelling unit.

19 Section 5. Section 741.30, Florida Statutes, 1996
20 Supplement, is amended to read:

21 741.30 Domestic violence; injunction; powers and
22 duties of court and clerk; petition; notice and hearing;
23 temporary injunction; issuance of injunction; statewide
24 verification system; enforcement.--

25 (1) There is created a cause of action for an
26 injunction for protection against domestic violence.

27 (a) Any person described in paragraph (e), who is the
28 victim of any act of domestic violence, or has reasonable
29 cause to believe he or she is in imminent danger of becoming
30 ~~may-become~~ the victim of any act of domestic violence, has
31 standing in the circuit court to file a sworn petition for an

1 injunction for protection against domestic violence. On or
2 after October 1, 1997, the act of domestic violence must have
3 occurred within 6 months before the filing of a petition for
4 an injunction for protection against domestic violence.

5 (b) This cause of action for an injunction may be
6 sought whether or not any other cause of action is currently
7 pending between the parties. However, the pendency of any such
8 cause of action shall be alleged in the petition.

9 (c) In the event a subsequent cause of action is filed
10 under chapter 61, any orders entered therein shall take
11 precedence over any inconsistent provisions of an injunction
12 issued under this section which addresses matters governed by
13 chapter 61.

14 (d) A person's right to petition for an injunction
15 shall not be affected by such person having left a residence
16 or household to avoid domestic violence.

17 (e) This cause of action for an injunction may be
18 sought by family or household members. No person shall be
19 precluded from seeking injunctive relief pursuant to this
20 chapter solely on the basis that such person is not a spouse.

21 (f) This cause of action for an injunction shall not
22 require that either party ~~the-petitioner~~ be represented by an
23 attorney.

24 (g) Any person, including an officer of the court, who
25 offers evidence or recommendations relating to the cause of
26 action must either present the evidence or recommendations in
27 writing to the court with copies to each party and their
28 attorney, or must present the evidence under oath at a hearing
29 at which all parties are present.

30 (h)~~(g)~~ Nothing in this section shall affect the title
31 to any real estate.

1 ~~(i)(h)~~ The court is prohibited from issuing mutual
2 orders of protection. This does not preclude the court from
3 issuing separate injunctions for protection against domestic
4 violence where each party has complied with the provisions of
5 this section. Compliance with the provisions of this section
6 cannot be waived.

7 (2)(a) Notwithstanding any other provision of law, the
8 total charge, including any administration fees, law
9 enforcement agency charges, and court costs or service
10 charges, for any court to issue an injunction concerning
11 domestic violence under chapter 741 or chapter 784 shall not
12 exceed \$50. The total charge by any law enforcement agency to
13 serve an injunction or restraining order concerning violence
14 shall not exceed \$20. The remaining \$30 fee collected for an
15 injunction under chapter 741 shall only be applied to the
16 initial \$40 service charge collected by the clerk of the court
17 as provided in s. 28.241(1). In the event the victim does not
18 have sufficient funds with which to pay filing fees to the
19 clerk of the court or service fees to the sheriff or law
20 enforcement agency and signs an affidavit stating so, the fees
21 shall be waived by the clerk of the court or the sheriff or
22 law enforcement agency to the extent necessary to process the
23 petition and serve the injunction, subject to a subsequent
24 order of the court relative to the payment of such fees.

25 (b) No bond shall be required by the court for the
26 entry of an injunction.

27 (c)1. The clerk of the court shall assist petitioners
28 in seeking both injunctions for protection against domestic
29 violence and enforcement for a violation thereof as specified
30 in this section.

31

1 2. All clerks' offices shall provide simplified
2 petition forms for the injunction, any modifications, and the
3 enforcement thereof, including instructions for completion.

4 3. The clerk of the court shall advise petitioners of
5 the availability of affidavits of insolvency or indigence in
6 lieu of payment for the cost of the filing fee, as provided in
7 paragraph (a).

8 4. The clerk of the court shall ensure the
9 petitioner's privacy to the extent practical while completing
10 the forms for injunctions for protection against domestic
11 violence.

12 5. The clerk of the court shall provide petitioners
13 with a minimum of two certified copies of the order of
14 injunction, one of which is serviceable and will inform the
15 petitioner of the process for service and enforcement.

16 6. Clerks of court and appropriate staff in each
17 county shall receive training in the effective assistance of
18 petitioners as provided or approved by the Florida Association
19 of Court Clerks.

20 7. The clerk of the court in each county shall make
21 available informational brochures on domestic violence when
22 such brochures are provided by local certified domestic
23 violence centers.

24 8. The clerk of the court in each county shall
25 distribute a statewide uniform informational brochure to
26 petitioners at the time of filing for an injunction for
27 protection against domestic or repeat violence when such
28 brochures become available. The brochure must include
29 information about the effect of a false accusation.

30
31

1 (3)(a) The sworn petition shall allege the existence
2 of such domestic violence and shall include the specific facts
3 and circumstances upon the basis of which relief is sought.

4 (b) The sworn petition shall be in substantially the
5 following form:

6
7 PETITION FOR
8 INJUNCTION FOR PROTECTION
9 AGAINST DOMESTIC VIOLENCE
10

11 Before me, the undersigned authority, personally appeared
12 Petitioner ...(Name)..., who has been sworn and says that the
13 following statements are true:

14 (a) Petitioner resides at: ...(address)...

15 (Petitioner may furnish address to the court in a
16 separate confidential filing if, for safety reasons, the
17 petitioner requires the location of the current residence to
18 be confidential.)

19 (b) Respondent resides at: ...(last known address)...

20 (c) Respondent's last known place of employment:
21 ...(name of business and address)...

22 (d) Physical description of respondent:

23 Race....

24 Sex....

25 Date of birth....

26 Height....

27 Weight....

28 Eye color....

29 Hair color....

30 Distinguishing marks or scars....

31 (e) Aliases of respondent:

1 (f) Respondent is the spouse or former spouse of the
2 petitioner or is any other person related by blood or marriage
3 to the petitioner or is any other person who is or was
4 residing within a single dwelling unit with the petitioner, as
5 if a family, or is a person with whom the petitioner has a
6 child in common, regardless of whether the petitioner and
7 respondent are or were married or residing together, as if a
8 family.

9 (g) The following describes any other cause of action
10 currently pending between the petitioner and respondent:

11

12 The petitioner should also describe any previous or
13 pending attempts by the petitioner to obtain an injunction for
14 protection against domestic violence in this or any other
15 circuit, and the results of that attempt.....

16

17 Case numbers should be included if available.

18 (h) Petitioner has suffered or has reasonable cause to
19 fear imminent domestic violence because respondent has:

20 (i) Petitioner alleges the following additional
21 specific facts: (mark appropriate sections)

22Petitioner is the custodian of a minor child or
23 children whose names and ages are as follows:

24Petitioner needs the exclusive use and possession
25 of the dwelling that the parties share.

26Petitioner is unable to obtain safe alternative
27 housing because:

28Petitioner genuinely and imminently fears that
29 respondent will abuse, remove, or hide the minor child or
30 children from petitioner because:

31

1 (j) Petitioner genuinely and imminently fears domestic
2 violence by respondent.

3 (k) Petitioner seeks an injunction: (mark appropriate
4 section or sections)

5 ...Immediately restraining the respondent from
6 committing any acts of domestic violence.

7 ...Restraining the respondent from committing any acts
8 of domestic violence.

9 ...Awarding to the petitioner the temporary exclusive
10 use and possession of the dwelling that the parties share or
11 excluding the respondent from the residence of the petitioner.

12 ...Awarding temporary custody of, or temporary
13 visitation rights with regard to, the minor child or children
14 of the parties, or prohibiting or limiting visitation to that
15 which is supervised by a third party.

16 ...Establishing temporary support for the minor child
17 or children or the petitioner.

18 ...Directing the respondent to participate in a
19 batterers' intervention program or other treatment pursuant to
20 s. 415.601.

21 ...Providing any terms the court deems necessary for
22 the protection of a victim of domestic violence, or any minor
23 children of the victim, including any injunctions or
24 directives to law enforcement agencies.

25 (c) Every petition for an injunction against domestic
26 violence shall contain, directly above the signature line, a
27 statement in all capital letters and bold type not smaller
28 than the surrounding text, as follows:

9 I HAVE READ EVERY STATEMENT MADE IN THIS
30 PETITION AND EACH STATEMENT IS TRUE AND
31 CORRECT. I UNDERSTAND THAT THE STATEMENTS MADE

1 verified pleadings or affidavits shall be used as evidence,
2 unless the respondent appears at the hearing or has received
3 reasonable notice of the hearing. A denial of a petition for
4 an ex parte injunction shall be by written order noting the
5 legal grounds for denial. When the only ground for denial is
6 no appearance of an immediate and present danger of domestic
7 violence, the court shall set a full hearing on the petition
8 for injunction with notice at the earliest possible time.
9 Nothing herein affects a petitioner's right to promptly amend
10 any petition, or otherwise be heard in person on any petition
11 consistent with the Florida Rules of Civil Procedure.

12 (c) Any such ex parte temporary injunction shall be
13 effective for a fixed period not to exceed 15 days. A full
14 hearing, as provided by this section, shall be set for a date
15 no later than the date when the temporary injunction ceases to
16 be effective. The court may grant a continuance of the ~~ex~~
17 ~~parte-injunction-and-the-full~~ hearing before or during a
18 hearing for good cause shown by any party, which shall include
19 a continuance to obtain service of process. Any injunction
20 shall be extended if necessary to remain in full force and
21 effect during any period of continuance.

22 (6)(a) Upon notice and hearing, the court may grant
23 such relief as the court deems proper, including an
24 injunction:

25 1. Restraining the respondent from committing any acts
26 of domestic violence.

27 2. Awarding to the petitioner the exclusive use and
28 possession of the dwelling that the parties share or excluding
29 the respondent from the residence of the petitioner.

30
31

1 3. On the same basis as provided in chapter 61,
2 awarding temporary custody of, or temporary visitation rights
3 with regard to, a minor child or children of the parties.

4 4. On the same basis as provided in chapter 61,
5 establishing temporary support for a minor child or children
6 or the petitioner.

7 5. Ordering the respondent to participate in
8 treatment, intervention, or counseling services to be paid for
9 by the respondent. When the court orders the respondent to
10 participate in treatment, intervention, or counseling,
11 including, but not limited to, a batterers' intervention
12 program, the court must provide the respondent with a copy of
13 the registry of providers of programs in the circuit from
14 which the respondent must select a provider. The court
15 administrator of each judicial circuit shall maintain a
16 registry of providers which must include all program providers
17 that have requested to be registered and have been approved by
18 the Alcohol, Drug Abuse, and Mental Health Program Office of
19 the Department of Children and Family Services or certified by
20 the Department of Corrections.

21 6. Ordering a petitioner if it is in the petitioner's
22 best interest, to attend counseling, the cost of which is to
23 be paid by the respondent. When the Court orders the
24 petitioner to participate in treatment, intervention, or
25 counseling, the court must provide the petitioner with a copy
26 of the registry of providers and programs in the circuit, from
27 which the petitioner must select a provider. The court
28 administrator of each judicial circuit shall maintain a
29 registry of providers which must include all program providers
30 that have requested to be registered and have been approved by
31 the Alcohol, Drug Abuse, and Mental Health Program Office of

1 the Department of Children and Family Services or certified by
2 the Department of Corrections.

3 7.6- Ordering such other relief as the court deems
4 necessary for the protection of a victim of domestic violence,
5 including injunctions or directives to law enforcement
6 agencies, as provided in this section.

7 (b) The terms of an injunction restraining the
8 respondent under subparagraph (a)1. or ordering other relief
9 for the protection of the victim under subparagraph (a)7.

10 shall remain in effect until modified or dissolved. Any relief
11 ~~granted by the injunction shall be granted for a fixed period~~
12 ~~not to exceed 1 year, unless upon petition of the victim the~~
13 ~~court extends the injunction for successive fixed periods not~~
14 ~~to exceed 1 year. Broad discretion resides with the court to~~
15 ~~grant an extension after considering the circumstances. Either~~
16 ~~party may move at any time to modify or dissolve the~~
17 injunction. No specific allegations are required. Such relief
18 may be granted in addition to other civil or criminal
19 remedies.

20 (c) A temporary or final judgment on injunction for
21 protection against domestic violence entered pursuant to this
22 section shall, on its face, indicate that:

23 1. The injunction is valid and enforceable in all
24 counties of the State of Florida.

25 2. Law enforcement officers may use their arrest
26 powers pursuant to s. 901.15(6) to enforce the terms of the
27 injunction.

28 3. The court had jurisdiction over the parties and
9 matter under the laws of Florida and that reasonable notice
30 and opportunity to be heard was given to the person against
31

1 whom the order is sought sufficient to protect that person's
2 right to due process.

3 4. The date respondent was served with the temporary
4 or final order, if obtainable.

5 (d) An injunction for protection against domestic
6 violence entered pursuant to this section, on its face, may
7 order that the respondent attend a batterers' intervention
8 program as a condition of the injunction. Unless the court
9 makes written factual findings in its judgment or order which
10 are based on substantial evidence, stating why batterers'
11 intervention programs would be inappropriate, the court shall
12 order the respondent to attend a batterers' intervention
13 program if:

14 1. It finds that the respondent willfully violated the
15 ex parte injunction;

16 2. The respondent, in this state or any other state,
17 has been convicted of, had adjudication withheld on, or pled
18 nolo contendere to a crime involving violence or a threat of
19 violence; or

20 3. The respondent, in this state or any other state,
21 has had at any time a prior injunction for protection entered
22 against the respondent after a hearing with notice.

23
24 It is preferred, but not mandatory, that such programs be
25 certified under s. 741.32.

26 (e) The fact that a separate order of protection is
27 granted to each opposing party shall not be legally sufficient
28 to deny any remedy to either party or to prove that the
29 parties are equally at fault or equally endangered.

30 (7)(a)1. The clerk of the court shall furnish a copy
31 of the petition, financial affidavit, uniform child custody

1 jurisdiction act affidavit, if any, notice of hearing, and
2 temporary injunction, if any, to the sheriff or a law
3 enforcement agency of the county where the respondent resides
4 or can be found, who shall serve it upon the respondent as
5 soon thereafter as possible on any day of the week and at any
6 time of the day or night. The clerk of the court shall be
7 responsible for furnishing to the sheriff such information on
8 the respondent's physical description and location as is
9 required by the department to comply with the verification
10 procedures set forth in this section. Notwithstanding any
11 other provision of law to the contrary, the chief judge of
12 each circuit, in consultation with the appropriate sheriff,
13 may authorize a law enforcement agency within the jurisdiction
14 to effect service. A law enforcement agency serving
15 injunctions pursuant to this section shall use service and
16 verification procedures consistent with those of the sheriff.

17 2. When an injunction is issued, if the petitioner
18 requests the assistance of a law enforcement agency, the court
19 may order that an officer from the appropriate law enforcement
20 agency accompany the petitioner and assist in placing the
21 petitioner in possession of the dwelling or residence, or
22 otherwise assist in the execution or service of the
23 injunction. A law enforcement officer shall accept a copy of
24 an injunction for protection against domestic violence,
25 certified by the clerk of the court, from the petitioner and
26 immediately serve it upon a respondent who has been located
27 but not yet served.

28 3. All orders issued, changed, continued, extended, or
29 vacated subsequent to the original service of documents
30 enumerated under subparagraph 1., shall be certified by the
31 clerk of the court and delivered to the parties at the time of

1 the entry of the order. The parties may acknowledge receipt
2 of such order in writing on the face of the original order.
3 In the event a party fails or refuses to acknowledge the
4 receipt of a certified copy of an order, the clerk shall note
5 on the original order that service was effected. If delivery
6 at the hearing is not possible, the clerk shall mail certified
7 copies of the order to the parties at the last known address
8 of each party. Service by mail is complete upon mailing.
9 When an order is served pursuant to this subsection, the clerk
10 shall prepare a written certification to be placed in the
11 court file specifying the time, date, and method of service
12 and shall notify the sheriff.

13

14 If the respondent has been served previously with the
15 temporary injunction and has failed to appear at the initial
16 hearing on the temporary injunction, any subsequent petition
17 for injunction seeking an extension of time may be served on
18 the respondent by the clerk of the court by certified mail in
19 lieu of personal service by a law enforcement officer.

20 (b) There shall be created a Domestic and Repeat
21 Violence Injunction Statewide Verification System within the
22 Department of Law Enforcement. The department shall establish,
23 implement, and maintain a statewide communication system
24 capable of electronically transmitting information to and
25 between criminal justice agencies relating to domestic
26 violence injunctions and repeat violence injunctions issued by
27 the courts throughout the state. Such information must
28 include, but is not limited to, information as to the
29 existence and status of any injunction for verification
30 purposes.

31

1 (c)1. Within 24 hours after the court issues an
2 injunction for protection against domestic violence or
3 changes, continues, extends, or vacates an injunction for
4 protection against domestic violence, the clerk of the court
5 must forward a certified copy of the injunction for service to
6 the sheriff with jurisdiction over the residence of the
7 petitioner. The injunction must be served in accordance with
8 this subsection.

9 2. Within 24 hours after service of process of an
10 injunction for protection against domestic violence upon a
11 respondent, the law enforcement officer must forward the
12 written proof of service of process to the sheriff with
13 jurisdiction over the residence of the petitioner.

14 3. Within 24 hours after the sheriff receives a
15 certified copy of the injunction for protection against
16 domestic violence, the sheriff must make information relating
17 to the injunction available to other law enforcement agencies
18 by electronically transmitting such information to the
19 department.

20 4. Within 24 hours after the sheriff or other law
21 enforcement officer has made service upon the respondent and
22 the sheriff has been so notified, the sheriff must make
23 information relating to the service available to other law
24 enforcement agencies by electronically transmitting such
25 information to the department.

26 5. Within 24 hours after an injunction for protection
27 against domestic violence is vacated, terminated, or otherwise
28 rendered no longer effective by ruling of the court, the clerk
29 of the court must notify the sheriff receiving original
30 notification of the injunction as provided in subparagraph 2.
31 That agency shall, within 24 hours after receiving such

1 notification from the clerk of the court, notify the
2 department of such action of the court.

3 (8)(a) The court may enforce a violation of an
4 injunction for protection against domestic violence through a
5 civil or criminal contempt proceeding, or the state attorney
6 may prosecute it as a criminal violation under s. 741.31. The
7 court may enforce the respondent's compliance with the
8 injunction through any appropriate civil and criminal
9 remedies, including, but not limited to, a monetary assessment
10 or a fine. The clerk of the court shall collect and receive
11 such assessments or fines. On a monthly basis, the clerk
12 shall transfer the moneys collected pursuant to this paragraph
13 to the State Treasury for deposit in the Domestic Violence
14 Trust Fund established in s. 741.01.

15 (b) If the respondent is arrested by a law enforcement
16 officer under s. 901.15(6) or for a violation of s. 741.31,
17 the respondent shall be held in custody until brought before
18 the court as expeditiously as possible for the purpose of
19 enforcing the injunction and for admittance to bail in
20 accordance with chapter 903 and the applicable rules of
21 criminal procedure, pending a hearing.

22 (9) The petitioner or the respondent may move the
23 court to modify or dissolve an injunction at any time.

24 Section 6. Subsection (4) of section 741.31, Florida
25 Statutes, 1996 Supplement, is amended to read:

26 741.31 Violation of an injunction for protection
27 against domestic violence.--

28 (4) A person who willfully violates an injunction for
29 protection against domestic violence~~7~~ issued pursuant to s.
30 741.30, or a foreign protection order accorded full faith and
31 credit pursuant to s. 741.315, by:

1 (a) Refusing to vacate the dwelling that the parties
2 share;

3 (b) Going to the petitioner's residence, school, place
4 of employment, or a specified place frequented regularly by
5 the petitioner and any named family or household member;

6 (c) Committing an act of domestic violence against the
7 petitioner;

8 (d) Committing any other violation of the injunction
9 through an intentional unlawful threat, word, or act to do
10 violence to the petitioner; or

11 (e) Telephoning, contacting, or otherwise
12 communicating with the petitioner directly or indirectly,
13 unless the injunction specifically allows indirect contact
14 through a third party

15
16 is guilty of a misdemeanor of the first degree, punishable as
17 provided in s. 775.082 or s. 775.083.

18 Section 7. Section 741.315, Florida Statutes, is
19 created to read:

20 741.315 Recognition of foreign protection orders.--

21 (1) As used in this section, the term "court of a
22 foreign state" means a court of competent jurisdiction of a
23 state of the United States, other than Florida; the District
24 of Columbia; an Indian tribe; or a commonwealth, territory, or
25 possession of the United States.

26 (2) Pursuant to 18 U.S.C. s. 2265, an injunction for
27 protection against domestic violence issued by a court of a
28 foreign state must be accorded full faith and credit by the
29 courts of this state and enforced by a law enforcement agency
30 as if it were the order of a Florida court issued under s.
31 741.30, s. 741.31, s. 784.046, or s. 784.047 and provided that

1 the court had jurisdiction over the parties and the matter and
2 that reasonable notice and opportunity to be heard was given
3 to the person against whom the order is sought sufficient to
4 protect that person's right to due process. Ex parte foreign
5 injunctions for protection are not eligible for enforcement
6 under this section unless notice and opportunity to be heard
7 have been provided within the time required by the foreign
8 state or tribal law, and in any event within a reasonable time
9 after the order is issued, sufficient to protect the
10 respondent's due process rights.

11 (3) Notwithstanding s. 55.505 or any other provision
12 to the contrary, neither residence in this state nor
13 registration of foreign injunctions for protection shall be
14 required for enforcement of this order by this state and
15 failure to register the foreign order shall not be an
16 impediment to its enforcement. The following registration
17 procedure shall be available to protected persons who hold
18 orders from a court of a foreign state.

19 (a) A protected person may present a certified copy of
20 a foreign order of protection to any sheriff in this state and
21 request that the same be registered in the injunction
22 registry. It is not necessary that the protected person
23 register the foreign order in the protected person's county of
24 residence. Venue is proper throughout the state. The protected
25 person must swear by affidavit, that to the best of the
26 protected person's knowledge and belief, the attached
27 certified copy of the foreign order, docket number
28 issued in the state of on
29 is currently in effect as written and has not
30 been superseded by any other order.
31

1 (b) The sheriff shall examine the certified copy of
2 the foreign order and register the order in the injunction
3 registry, noting that it is a foreign order of protection. If
4 not apparent from the face of the certified copy of the
5 foreign order, the sheriff shall use best efforts to ascertain
6 whether the order was served on the respondent. The Florida
7 Department of Law Enforcement shall develop a special notation
8 for foreign orders of protection. The sheriff shall assign a
9 case number and give the protected person a receipt showing
10 registration of the foreign order in this state. There shall
11 be no fee for registration of a foreign order.

12 (c) The foreign order may also be registered by local
13 law enforcement agencies upon receipt of the foreign order and
14 any accompanying affidavits in the same manner described in
15 paragraphs (a) and (b).

16 (d) Law enforcement, the judiciary, and the clerks of
17 court are prohibited from disclosing the location of a
18 petitioner seeking to enforce or register a foreign order.

19 (4)(a) Law enforcement officers shall enforce foreign
20 orders of protection as if they were entered by a court of
21 this state. Upon presentation of a foreign protection order by
22 a protected person, a law enforcement officer shall assist in
23 enforcement of all of its terms, pursuant to federal law,
24 except matters related to child custody, visitation, and
25 support. As to those provisions only, enforcement may be
26 obtained upon domestication of the foreign order pursuant to
27 ss. 55.501-55.509 unless the foreign order is a "pickup order"
28 or "order of bodily attachment" requiring the immediate return
29 of a child.

30 (b) Before enforcing a foreign protection order, a law
31 enforcement officer should confirm the identity of the parties

1 present and review the order to determine that, on its face,
2 it has not expired. Presentation of a certified or true copy
3 of the protection order shall not be required as a condition
4 of enforcement, provided that a conflicting certified copy is
5 not presented by the respondent or the individual against whom
6 enforcement is sought.

7 (c) A law enforcement officer shall use reasonable
8 efforts to verify service of process.

9 (d) Service may be verified as follows:

10 1. By petitioner: Petitioner may state under oath
11 that to the best of petitioner's knowledge, respondent was
12 served with the order of protection because petitioner was
13 present at time of service; respondent told petitioner he was
14 served; another named person told petitioner respondent was
15 served; or respondent told petitioner he knows of the content
16 of the order and date of the return hearing.

17 2. By respondent: Respondent states under oath that
18 he was or was not served with the order.

19 (e) Enforcement and arrest for violation of a foreign
20 protection order shall be consistent with the enforcement of
21 orders issued in this state.

22 (f) A law enforcement officer acting in good faith
23 under this section and the officer's employing agency shall be
24 immune from all liability, civil or criminal, that might
25 otherwise be incurred or imposed by reason of the officer's or
26 agency's actions in carrying out the provisions of this
27 section.

28 (g) Law enforcement shall not require petitioner to
29 sign a registration affidavit as a condition of enforcement.

30 (h) A foreign order of protection shall remain in
31 effect until the date of expiration on its face; or, if there

1 is no expiration date on its face, a foreign order of
2 protection shall remain in effect until expiration. If the
3 order of protection states on its face that it is a permanent
4 order, then there is no date of expiration.

5 (5) Any person who acts under this section and
6 intentionally provides a law enforcement officer with a copy
7 of an order of protection known by that person to be false or
8 invalid, or who denies having been served with an order of
9 protection when that person has been served with such order,
10 commits a misdemeanor of the first degree, punishable as
11 provided in s. 775.082 or s. 775.083.

12 (6) In the event 18 U.S.C. s. 2265 is held to be
13 unconstitutional, this section shall be null and void.

14 Section 8. Subsection (7) of section 784.046, Florida
15 Statutes, is amended, and subsection (11) is added to that
16 section, to read:

17 784.046 Action by victim of repeat violence for
18 protective injunction; powers and duties of court and clerk of
19 court; filing and form of petition; notice and hearing;
20 temporary injunction; issuance; statewide verification system;
21 enforcement.--

22 (7) Upon notice and hearing, the court may grant such
23 relief as the court deems proper, including an injunction:

24 (a) Enjoining the respondent from committing any acts
25 of violence.

26 (b) Ordering such other relief as the court deems
27 necessary for the protection of the petitioner, including
28 injunctions or directives to law enforcement agencies, as
9 provided in this section.

1 (b) Child abuse, as defined in s. 827.04(2) and (3);

2 or

3 (c) Any battery upon another person, as defined in s.

4 784.03.

5

6 With respect to an arrest for an act of domestic violence, the
7 decision to arrest shall not require consent of the victim or
8 consideration of the relationship of the parties. A law
9 enforcement officer who acts in good faith and exercises due
10 care in making an arrest under this subsection, under s.
11 741.31(4) or s. 784.047, or pursuant to a foreign order of
12 protection accorded full faith and credit pursuant to s.
13 741.315, is immune from civil liability that otherwise might
14 result by reason of his or her action.

15 (8) He has probable cause to believe that the person
16 has knowingly committed an act of repeat violence in violation
17 of an injunction for protection from repeat violence entered
18 pursuant to s. 784.046 or a foreign protection order accorded
19 full faith and credit pursuant to s. 741.315.

20 Section 11. Except for this section, section 1, and
21 the amendment of section 741.30(2)(a), Florida Statutes, 1996
22 Supplement, which shall take effect upon becoming a law, this
23 act shall take effect October 1, 1997.

24

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 SB's 910, 302 & 2300

4 The committee substitute:

- 5 1. Removes the requirement for a preliminary hearing within
6 three days on an injunction for protection against
7 domestic violence that was contained in SB 910.
- 8 2. Provides that any person, including an officer of the
9 court, offering evidence or recommendations in a domestic
10 violence case must do so under oath at a hearing with all
11 parties present or in writing with copies to all parties.
- 12 3. Provides that an injunction is in full force and effect
13 for the period of continuance whenever a hearing is
14 continued.
- 15 4. Changes the expiration date for an injunction for
16 protection against domestic violence from one year to
17 until modified or dissolved by the court for provisions
18 relating to restraints against further acts of domestic
19 violence and other relief the court deems appropriate for
20 the victim's protection, and no specified time for
21 provisions relating to exclusive use and possession of
22 the parties residence or excluding the respondent from
23 the petitioner's residence; child custody, visitation and
24 support; or treatment, intervention or counseling for
25 petitioner or respondent.
- 26 5. Provides that the court may order a petitioner to
27 counseling if it is in the petitioner's best interest.
- 28 6. Requires the court to provide a list of counseling
29 services available to those respondents or petitioners
30 ordered to attend treatment, intervention, or counseling.
- 31 7. Provides that evidence of a false accusation of domestic
violence or child abuse must be considered by the court
in child custody determinations.
8. Requires that information about the effect of a false
accusation be included in the brochure the clerk of the
court is required by current law to provide to any one
filing for an injunction for protection against domestic
or repeat violence.
9. Requires that every petition for an injunction for
protection against domestic violence contain specified
language directly above the signature line about the
penalty for a false accusation.

By Senator Dudley

25-228A-97

1 A bill to be entitled

2 An act relating to domestic violence; amending
3 s. 741.30, F.S.; specifying persons who have
4 standing and may present evidence for an
5 injunction for protection against domestic
6 violence; providing for information and
7 assistance through the clerk of the court;
8 specifying information to be included in the
9 petition for injunction for protection from
10 domestic violence; providing certain procedures
11 after granting an ex parte injunction;
12 requiring the court to provide respondents with
13 a list of counseling programs and batterers'
14 intervention programs; amending s. 61.13, F.S.;
15 providing for presumption of child custody when
16 false accusations of domestic violence or child
17 abuse have been proven; providing an effective
18 date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Section 741.30, Florida Statutes, 1996
23 Supplement, is amended to read:

24 741.30 Domestic violence; injunction; powers and
25 duties of court and clerk; petition; notice and hearing;
26 temporary injunction; issuance of injunction; statewide
27 verification system; enforcement.--

28 (1) There is created a cause of action for an
29 injunction for protection against domestic violence.

30 (a) Any person described in paragraph (e), who is the
31 victim of any act of domestic violence, or has reasonable

1 cause to believe he or she is in imminent danger of becoming
2 ~~may-become~~ the victim of any act of domestic violence, has
3 standing in the circuit court to file a sworn petition for an
4 injunction for protection against domestic violence. On or
5 after October 1, 1997, the act of domestic violence must have
6 occurred within 60 days before the filing of a petition for an
7 injunction for protection against domestic violence.

8 (b) This cause of action for an injunction may be
9 sought whether or not any other cause of action is currently
10 pending between the parties. However, the pendency of any such
11 cause of action shall be alleged in the petition.

12 (c) In the event a subsequent cause of action is filed
13 under chapter 61, any orders entered therein shall take
14 precedence over any inconsistent provisions of an injunction
15 issued under this section which addresses matters governed by
16 chapter 61.

17 (d) A person's right to petition for an injunction
18 shall not be affected by such person having left a residence
19 or household to avoid domestic violence.

20 (e) This cause of action for an injunction may be
21 sought by family or household members. No person shall be
22 precluded from seeking injunctive relief pursuant to this
23 chapter solely on the basis that such person is not a spouse.

24 (f) This cause of action for an injunction shall not
25 require that either party ~~the-petitioner~~ be represented by an
26 attorney; however, only a petitioner or respondent acting pro
27 se or an attorney representing the petitioner or respondent
28 may present evidence to and request relief from the court.

29 (g) Nothing in this section shall affect the title to
30 any real estate.

31

1 (h) The court is prohibited from issuing mutual orders
2 of protection. This does not preclude the court from issuing
3 separate injunctions for protection against domestic violence
4 where each party has complied with the provisions of this
5 section. Compliance with the provisions of this section cannot
6 be waived.

7 (2)(a) In the event the victim does not have
8 sufficient funds with which to pay filing fees to the clerk of
9 the court or service fees to the sheriff or law enforcement
10 agency and signs an affidavit stating so, the fees shall be
11 waived by the clerk of the court or the sheriff or law
12 enforcement agency to the extent necessary to process the
13 petition and serve the injunction, subject to a subsequent
14 order of the court relative to the payment of such fees.

15 (b) No bond shall be required by the court for the
16 entry of an injunction.

17 (c)1. The clerk of the court shall assist petitioners
18 in seeking both injunctions for protection against domestic
19 violence and enforcement for a violation thereof as specified
20 in this section.

21 2. All clerks' offices shall provide simplified
22 petition forms for the injunction, any modifications, and the
23 enforcement thereof, including instructions for completion.

24 3. The clerk of the court shall advise petitioners of
25 the availability of affidavits of insolvency or indigence in
26 lieu of payment for the cost of the filing fee, as provided in
27 paragraph (a).

28 4. The clerk of the court shall ensure the
29 petitioner's privacy to the extent practical while completing
30 the forms for injunctions for protection against domestic
31 violence.

1 5. The clerk of the court shall provide petitioners
2 with a minimum of two certified copies of the order of
3 injunction, one of which is serviceable and will inform the
4 petitioner of the process for service and enforcement and the
5 effect of a false accusation.

6 6. Clerks of court and appropriate staff in each
7 county shall receive training in the effective assistance of
8 petitioners as provided or approved by the Florida Association
9 of Court Clerks.

10 7. The clerk of the court in each county shall make
11 available informational brochures on domestic violence when
12 such brochures are provided by local certified domestic
13 violence centers.

14 8. The clerk of the court in each county shall
15 distribute a statewide uniform informational brochure to
16 petitioners at the time of filing for an injunction for
17 protection against domestic or repeat violence when such
18 brochures become available. The brochure must include
19 information about the effect of a false accusation.

20 (3)(a) The sworn petition shall allege the existence
21 of such domestic violence and shall include the specific facts
22 and circumstances upon the basis of which relief is sought.

23 (b) The sworn petition shall be in substantially the
24 following form:

25
26 PETITION FOR
27 INJUNCTION FOR PROTECTION
28 AGAINST DOMESTIC VIOLENCE
29
30
31

1 Before me, the undersigned authority, personally appeared
2 Petitioner ...(Name)..., who has been sworn and says that the
3 following statements are true:

4 (a) Petitioner resides at: ...(address)...

5 (Petitioner may furnish address to the court in a
6 separate confidential filing if, for safety reasons, the
7 petitioner requires the location of the current residence to
8 be confidential.)

9 (b) Respondent resides at: ...(last known address)...

10 (c) Respondent's last known place of employment:
11 ...(name of business and address)...

12 (d) Physical description of respondent:

13 Race....

14 Sex....

15 Date of birth....

16 Height....

17 Weight....

18 Eye color....

19 Hair color....

20 Distinguishing marks or scars....

21 (e) Aliases of respondent:

22 (f) Respondent is the spouse or former spouse of the
23 petitioner or is any other person related by blood or marriage
24 to the petitioner or is any other person who is or was
25 residing within a single dwelling unit with the petitioner, as
26 if a family, or is a person with whom the petitioner has a
27 child in common, regardless of whether the petitioner and
28 respondent are or were married or residing together, as if a
29 family.

30 (g) The following describes any other cause of action
31 currently pending between the petitioner and respondent:

1
2 The petitioner should also describe any previous or
3 pending attempts by the petitioner to obtain an injunction for
4 protection against domestic violence in this or any other
5 circuit, and the results of that attempt.....
6
7 Case numbers should be included if available.
8 (h) Petitioner has suffered or has reasonable cause to
9 fear imminent domestic violence because respondent has:
10 (i) Petitioner alleges the following additional
11 specific facts: (mark appropriate sections)
12 ...Petitioner is the custodian of a minor child or
13 children whose names and ages are as follows:
14 ...Petitioner needs the exclusive use and possession
15 of the dwelling that the parties share.
16 ...Petitioner is unable to obtain safe alternative
17 housing because:
18 ...Petitioner genuinely and imminently fears that
19 respondent will abuse, remove, or hide the minor child or
20 children from petitioner because:
21
22 (j) Petitioner genuinely and imminently fears domestic
23 violence by respondent.
24 (k) Petitioner seeks an injunction: (mark appropriate
25 section or sections)
26 ...Immediately restraining the respondent from
27 committing any acts of domestic violence.
28 ...Restraining the respondent from committing any acts
29 of domestic violence.
30
31

1 ...Awarding to the petitioner the temporary exclusive
2 use and possession of the dwelling that the parties share or
3 excluding the respondent from the residence of the petitioner.

4 ...Awarding temporary custody of, or temporary
5 visitation rights with regard to, the minor child or children
6 of the parties, or prohibiting or limiting visitation to that
7 which is supervised by a third party.

8 ...Establishing temporary support for the minor child
9 or children or the petitioner.

10 ...Directing the respondent to participate in a
11 batterers' intervention program or other treatment pursuant to
12 s. 415.601.

13 ...Providing any terms the court deems necessary for
14 the protection of a victim of domestic violence, or any minor
15 children of the victim, including any injunctions or
16 directives to law enforcement agencies.

17
18 (4) Upon the filing of the petition, the court shall
19 set a hearing to be held at the earliest possible time. The
20 respondent shall be personally served with a copy of the
21 petition, financial affidavit, uniform child custody
22 jurisdiction act affidavit, if any, notice of hearing, and
23 temporary injunction, if any, prior to the hearing.

24 (5)(a) When it appears to the court that an immediate
25 and present danger of domestic violence exists, the court may
26 grant a temporary injunction ex parte, pending a full hearing,
27 and may grant such relief as the court deems proper, including
28 an injunction:

29 1. Restraining the respondent from committing any acts
30 of domestic violence.

1 2. Awarding to the petitioner the temporary exclusive
2 use and possession of the dwelling that the parties share or
3 excluding the respondent from the residence of the petitioner.

4 3. On the same basis as provided in s. 61.13(2), (3),
5 (4), and (5), granting to the petitioner temporary custody of
6 a minor child or children.

7 (b) In a hearing ex parte for the purpose of obtaining
8 such ex parte temporary injunction, no evidence other than
9 verified pleadings or affidavits shall be used as evidence,
10 unless the respondent appears at the hearing or has received
11 reasonable notice of the hearing. A denial of a petition for
12 an ex parte injunction shall be by written order noting the
13 legal grounds for denial. When the only ground for denial is
14 no appearance of an immediate and present danger of domestic
15 violence, the court shall set a full hearing on the petition
16 for injunction with notice at the earliest possible time.
17 Nothing herein affects a petitioner's right to promptly amend
18 any petition, or otherwise be heard in person on any petition
19 consistent with the Florida Rules of Civil Procedure.

20 (c) Any such ex parte temporary injunction shall be
21 effective for a fixed period not to exceed 15 days.

22 1. The court must hold a preliminary hearing within 3
23 days after granting an ex parte injunction. The respondent
24 must be served notice of the preliminary hearing. At the
25 preliminary hearing, the court must determine whether a prima
26 facie case exists to continue the injunction until a full
27 hearing is held, provide for temporary parental
28 responsibilities, including visitation and child support, and
29 determine residential responsibilities.

30 2. Upon request of either party at the preliminary
31 hearing, the court must hold a full hearing no later than 21

1 days after the preliminary hearing to determine arrangements
2 for temporary parental and residential responsibilities,
3 including visitation and child support, based on evidence
4 concerning the best interest of the child on the same basis as
5 provided in s. 61.13(2)-(5).

6 3. At the full hearing, the court must determine
7 whether to modify, dissolve, or continue the injunction as
8 provided in this section if either party objects to the
9 continuation of the injunction.

10 4. The court may grant a continuance of the ex parte
11 injunction and the full hearing before or during a hearing for
12 good cause shown by any party, which must also include a
13 continuance to obtain service of process. A full hearing, as
14 provided by this section, shall be set for a date no later
15 than the date when the temporary injunction ceases to be
16 effective. The court may grant a continuance of the ex parte
17 injunction and the full hearing before or during a hearing for
18 good cause shown by any party, which shall include a
19 continuance to obtain service of process.

20 (6)(a) Upon notice and hearing, the court may grant
21 such relief as the court deems proper, including an
22 injunction:

23 1. Restraining the respondent from committing any acts
24 of domestic violence.

25 2. Awarding to the petitioner the exclusive use and
26 possession of the dwelling that the parties share or excluding
27 the respondent from the residence of the petitioner.

28 3. On the same basis as provided in chapter 61,
29 awarding temporary custody of, or temporary visitation rights
30 with regard to, a minor child or children of the parties.

31

1 4. On the same basis as provided in chapter 61,
2 establishing temporary support for a minor child or children
3 or the petitioner.

4 5. Ordering the respondent to participate in
5 treatment, intervention, or counseling services. When the
6 court orders the respondent to participate in treatment,
7 intervention, or counseling, including, but not limited to, a
8 batterers' intervention program, the court must provide the
9 respondent with a list of courses acceptable to any court in
10 the circuit from which the respondent must select a provider.

11 6. Ordering such other relief as the court deems
12 necessary for the protection of a victim of domestic violence,
13 including injunctions or directives to law enforcement
14 agencies, as provided in this section.

15 (b) Any relief granted by the injunction shall be
16 granted for a fixed period not to exceed 1 year, unless upon
17 petition of the victim the court extends the injunction for
18 successive fixed periods not to exceed 1 year. Broad
19 discretion resides with the court to grant an extension after
20 considering the circumstances. No specific allegations are
21 required. Such relief may be granted in addition to other
22 civil or criminal remedies.

23 (c) A temporary or final judgment on injunction for
24 protection against domestic violence entered pursuant to this
25 section shall, on its face, indicate that:

26 1. The injunction is valid and enforceable in all
27 counties of the State of Florida.

28 2. Law enforcement officers may use their arrest
29 powers pursuant to s. 901.15(6) to enforce the terms of the
30 injunction.

1 (d) An injunction for protection against domestic
2 violence entered pursuant to this section, on its face, may
3 order that the respondent attend a batterers' intervention
4 program as a condition of the injunction. When the court
5 orders the respondent to attend a batterers' intervention
6 program, the court must provide the respondent with a list of
7 programs acceptable to any court in the circuit from which the
8 respondent must select a provider. Unless the court makes
9 written factual findings in its judgment or order which are
10 based on substantial evidence, stating why batterers'
11 intervention programs would be inappropriate, the court shall
12 order the respondent to attend a batterers' intervention
13 program if:

14 1. It finds that the respondent willfully violated the
15 ex parte injunction;

16 2. The respondent, in this state or any other state,
17 has been convicted of, had adjudication withheld on, or pled
18 nolo contendere to a crime involving violence or a threat of
19 violence; or

20 3. The respondent, in this state or any other state,
21 has had at any time a prior injunction for protection entered
22 against the respondent after a hearing with notice.

23
24 It is preferred, but not mandatory, that such programs be
25 certified under s. 741.32.

26 (e) The fact that a separate order of protection is
27 granted to each opposing party shall not be legally sufficient
28 to deny any remedy to either party or to prove that the
29 parties are equally at fault or equally endangered.

30 (7)(a)1. The clerk of the court shall furnish a copy
31 of the petition, financial affidavit, uniform child custody

1 jurisdiction act affidavit, if any, notice of hearing, and
2 temporary injunction, if any, to the sheriff or a law
3 enforcement agency of the county where the respondent resides
4 or can be found, who shall serve it upon the respondent as
5 soon thereafter as possible on any day of the week and at any
6 time of the day or night. The clerk of the court shall be
7 responsible for furnishing to the sheriff such information on
8 the respondent's physical description and location as is
9 required by the department to comply with the verification
10 procedures set forth in this section. Notwithstanding any
11 other provision of law to the contrary, the chief judge of
12 each circuit, in consultation with the appropriate sheriff,
13 may authorize a law enforcement agency within the jurisdiction
14 to effect service. A law enforcement agency serving
15 injunctions pursuant to this section shall use service and
16 verification procedures consistent with those of the sheriff.

17 2. When an injunction is issued, if the petitioner
18 requests the assistance of a law enforcement agency, the court
19 may order that an officer from the appropriate law enforcement
20 agency accompany the petitioner and assist in placing the
21 petitioner in possession of the dwelling or residence, or
22 otherwise assist in the execution or service of the
23 injunction. A law enforcement officer shall accept a copy of
24 an injunction for protection against domestic violence,
25 certified by the clerk of the court, from the petitioner and
26 immediately serve it upon a respondent who has been located
27 but not yet served.

28 3. All orders issued, changed, continued, extended, or
29 vacated subsequent to the original service of documents
30 enumerated under subparagraph 1., shall be certified by the
31 clerk of the court and delivered to the parties at the time of

1 the entry of the order. The parties may acknowledge receipt
2 of such order in writing on the face of the original order.
3 In the event a party fails or refuses to acknowledge the
4 receipt of a certified copy of an order, the clerk shall note
5 on the original order that service was effected. If delivery
6 at the hearing is not possible, the clerk shall mail certified
7 copies of the order to the parties at the last known address
8 of each party. Service by mail is complete upon mailing.
9 When an order is served pursuant to this subsection, the clerk
10 shall prepare a written certification to be placed in the
11 court file specifying the time, date, and method of service
12 and shall notify the sheriff.

13

14 If the respondent has been served previously with the
15 temporary injunction and has failed to appear at the initial
16 hearing on the temporary injunction, any subsequent petition
17 for injunction seeking an extension of time may be served on
18 the respondent by the clerk of the court by certified mail in
19 lieu of personal service by a law enforcement officer.

20 (b) There shall be created a Domestic and Repeat
21 Violence Injunction Statewide Verification System within the
22 Department of Law Enforcement. The department shall establish,
23 implement, and maintain a statewide communication system
24 capable of electronically transmitting information to and
25 between criminal justice agencies relating to domestic
26 violence injunctions and repeat violence injunctions issued by
27 the courts throughout the state. Such information must
28 include, but is not limited to, information as to the
29 existence and status of any injunction for verification
30 purposes.

31

1 (c)1. Within 24 hours after the court issues an
2 injunction for protection against domestic violence or
3 changes, continues, extends, or vacates an injunction for
4 protection against domestic violence, the clerk of the court
5 must forward a certified copy of the injunction for service to
6 the sheriff with jurisdiction over the residence of the
7 petitioner. The injunction must be served in accordance with
8 this subsection.

9 2. Within 24 hours after service of process of an
10 injunction for protection against domestic violence upon a
11 respondent, the law enforcement officer must forward the
12 written proof of service of process to the sheriff with
13 jurisdiction over the residence of the petitioner.

14 3. Within 24 hours after the sheriff receives a
15 certified copy of the injunction for protection against
16 domestic violence, the sheriff must make information relating
17 to the injunction available to other law enforcement agencies
18 by electronically transmitting such information to the
19 department.

20 4. Within 24 hours after the sheriff or other law
21 enforcement officer has made service upon the respondent and
22 the sheriff has been so notified, the sheriff must make
23 information relating to the service available to other law
24 enforcement agencies by electronically transmitting such
25 information to the department.

26 5. Within 24 hours after an injunction for protection
27 against domestic violence is vacated, terminated, or otherwise
28 rendered no longer effective by ruling of the court, the clerk
29 of the court must notify the sheriff receiving original
30 notification of the injunction as provided in subparagraph 2.
31 That agency shall, within 24 hours after receiving such

1 notification from the clerk of the court, notify the
2 department of such action of the court.

3 (8)(a) The court may enforce a violation of an
4 injunction for protection against domestic violence through a
5 civil or criminal contempt proceeding, or the state attorney
6 may prosecute it as a criminal violation under s. 741.31. The
7 court may enforce the respondent's compliance with the
8 injunction through any appropriate civil and criminal
9 remedies, including, but not limited to, a monetary assessment
10 or a fine. The clerk of the court shall collect and receive
11 such assessments or fines. On a monthly basis, the clerk
12 shall transfer the moneys collected pursuant to this paragraph
13 to the State Treasury for deposit in the Domestic Violence
14 Trust Fund established in s. 741.01.

15 (b) If the respondent is arrested by a law enforcement
16 officer under s. 901.15(6) or for a violation of s. 741.31,
17 the respondent shall be held in custody until brought before
18 the court as expeditiously as possible for the purpose of
19 enforcing the injunction and for admittance to bail in
20 accordance with chapter 903 and the applicable rules of
21 criminal procedure, pending a hearing.

22 (9) The petitioner or the respondent may move the
23 court to modify or dissolve an injunction at any time.

24 Section 2. Paragraph (e) is added to subsection (4) of
25 section 61.13, Florida Statutes, 1996 Supplement, to read:

26 61.13 Custody and support of children; visitation
27 rights; power of court in making orders.--

28 (4)

29 (e) If the court finds that one parent has falsely
30 accused the other parent of domestic violence or child abuse,

1 interests would not be served by awarding to the accusing
2 parent primary residential responsibility for the child.

3 Section 3. This act shall take effect October 1, 1997.

4 *****

5
6 SENATE SUMMARY

7 Specifies and clarifies who has standing to obtain an
8 injunction for protection against domestic violence and
9 who may present evidence. Provides that only a
10 petitioner or respondent for an injunction acting pro se
11 or an attorney representing the petitioner or respondent
12 may present evidence to and request relief from the
13 court. Requires the clerk of the circuit court to notify
14 a petitioner of the effect of making a false accusation
15 and to include such information in its statewide uniform
16 informational brochure. Prescribes information to be
17 included in the petition. Specifies certain procedures
18 after the granting of an ex parte injunction. Requires
19 the court to provide a respondent with a list of
20 counseling programs and batterers' intervention programs.
21 Establishes a rebuttable presumption of child custody
22 when false accusations of domestic violence or child
23 abuse have been proven.
24
25
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28
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31

308-1954-97

A bill to be entitled

An act relating to protection against domestic violence; amending s. 28.241, F.S.; limiting certain fees for injunctions relating to domestic violence; amending s. 44.102, F.S.; providing that a case is not referable to family mediation if the court finds there has been a history of domestic violence; amending s. 61.13, F.S., relating to child custody and support; providing for creation of a rebuttable presumption of detriment to a child upon evidence of a parent's conviction of a felony involving domestic violence; providing for evidence of domestic violence or child abuse to be considered by the court as evidence of detriment to the child; providing for consideration of false allegations of domestic violence or child abuse in custody proceedings; providing for consideration of domestic violence and child abuse in custody proceedings; providing for consideration of allegations of domestic violence or child abuse in custody proceedings; amending s. 741.28, F.S.; redefining "domestic violence" to include kidnapping and false imprisonment and other specified criminal offenses resulting in physical injury or death of one family or household member by another; amending s. 741.30, F.S.; providing for court orders to protect the children of the domestic violence victim's minor children; revising the period

1 during which injunctive relief remains
2 effective; providing for motion to modify or
3 dissolve injunction by either party; providing
4 for indication of specified information on the
5 face of a temporary or final judgment for
6 protection against domestic violence;
7 prescribing conditions under which persons may
8 present evidence or recommendations; providing
9 for information through the clerk of the court;
10 specifying information to be included in the
11 petition for injunction for protection from
12 domestic violence; providing certain procedures
13 after granting an ex parte injunction;
14 requiring the court to provide respondents with
15 a list of counseling, treatment, batterers'
16 intervention programs; requiring the court
17 administrator to maintain a registry of program
18 providers; providing for petitioners to be
19 ordered to counseling; providing for
20 petitioners to be provided a list of treatment,
21 intervention, and counseling programs;
22 providing for payment of a petitioner's
23 treatment, intervention, or counseling;
24 limiting total charges for issuing or serving
25 injunctions or restraining orders relating to
26 domestic violence; amending s. 741.31, F.S.;
27 defining the offense of willfully violating a
28 foreign protection order accorded full faith
29 and credit by specified acts; providing
30 penalties; creating s. 741.315, F.S.; requiring
31 that an injunction for protection against

1 domestic violence issued by a "court of a
2 foreign state," as defined, be accorded full
3 faith and credit; providing exceptions;
4 providing for availability of a registration
5 procedure to protected persons; providing
6 duties of the Florida Department of Law
7 Enforcement and sheriffs and other local law
8 enforcement officers with respect to
9 registration and enforcement of foreign
10 protection order; providing certain immunity
11 from civil and criminal liability to law
12 enforcement officer and officer's employing
13 agency; defining the offense of intentionally
14 providing a law enforcement officer with a copy
15 of protection order known to be invalid or
16 denying having been served with protection
17 order when served; providing penalties;
18 amending s. 784.046, F.S., relating to action
19 by victim of repeat violence for protective
20 injunction; providing certain immunity from
21 civil and criminal liability to law enforcement
22 officer and officer's employing agency;
23 revising period of duration of injunctive
24 relief; amending s. 784.047, F.S., relating to
25 penalties for violating protective injunction
26 against repeat violators; defining offenses of
27 willfully violating a foreign protection order
28 accorded full faith and credit by committing
29 specified acts; providing penalties; amending
30 s. 901.15, F.S., relating to circumstances when
31 arrest by officer without warrant is lawful;

1 providing conforming terminology and
2 cross-references; providing certain immunity
3 from civil liability to law enforcement
4 officer; providing an effective date.
5

6 Be It Enacted by the Legislature of the State of Florida:
7

8 Section 1. Subsection (5) of section 28.241, Florida
9 Statutes, 1996 Supplement, is amended to read:

10 28.241 Filing charges for trial and appellate
11 proceedings.--

12 (5) The fees prescribed in this section do not include
13 the service charges required by law for the clerk as provided
14 in s. 28.24 or by other sections of the Florida Statutes.
15 Service charges authorized by this section may not be added to
16 any civil penalty imposed by chapter 316 or chapter 318. Fees
17 for injunctions concerning domestic violence shall be limited
18 as provided in s. 741.30(2)(a).

19 Section 2. Paragraph (b) of subsection (2) of section
20 44.102, Florida Statutes, 1996 Supplement, is amended to read:

21 44.102 Court-ordered mediation.--

22 (2) A court, under rules adopted by the Supreme Court:

23 (b) In circuits in which a family mediation program
24 has been established and upon a court finding of a dispute,
25 shall refer to mediation all or part of custody, visitation,
26 or other parental responsibility issues as defined in s.
27 61.13. Upon motion or request of a party, a court shall not
28 refer any case to mediation if it finds there has been a
29 significant history of domestic violence abuse that would
30 compromise the mediation process.
31

1 Section 3. Paragraph (b) of subsection (2) of section
2 61.13, Florida Statutes, 1996 Supplement, is amended, present
3 paragraph (k) of subsection (3) of that section is
4 redesignated as paragraph (m), and new paragraphs (k) and (l)
5 are added to that subsection, to read:

6 61.13 Custody and support of children; visitation
7 rights; power of court in making orders.--

8 (2)

9 (b)1. The court shall determine all matters relating
10 to custody of each minor child of the parties in accordance
11 with the best interests of the child and in accordance with
12 the Uniform Child Custody Jurisdiction Act. It is the public
13 policy of this state to assure that each minor child has
14 frequent and continuing contact with both parents after the
15 parents separate or the marriage of the parties is dissolved
16 and to encourage parents to share the rights and
17 responsibilities, and joys, of childrearing. After considering
18 all relevant facts, the father of the child shall be given the
19 same consideration as the mother in determining the primary
20 residence of a child irrespective of the age or sex of the
21 child.

22 2. The court shall order that the parental
23 responsibility for a minor child be shared by both parents
24 unless the court finds that shared parental responsibility
25 would be detrimental to the child. ~~The court shall consider~~
26 ~~evidence of spousal or child abuse as evidence of detriment to~~
27 ~~the child. The court shall consider~~ Evidence that a parent has
28 been convicted of a felony of the third second degree or
29 higher involving domestic violence, as defined in s. 741.28
30 and chapter 775, creates as a rebuttable presumption of
31 detriment to the child. If the presumption is not rebutted,

1 shared parental responsibility, including visitation,
2 residence of the child, and decisions made regarding the
3 child, shall not be granted to the convicted parent. However,
4 the convicted parent shall not be relieved of any obligation
5 to provide financial support. If the court determines that
6 shared parental responsibility would be detrimental to the
7 child, it may order sole parental responsibility and make such
8 arrangements for visitation as will best protect the child or
9 abused spouse from further harm. Irrespective of a conviction
10 of any offense or the existence of an injunction for
11 protection against domestic violence, the court shall consider
12 evidence of domestic violence or child abuse as evidence of
13 detriment to the child.

14 a. In ordering shared parental responsibility, the
15 court may consider the expressed desires of the parents and
16 may grant to one party the ultimate responsibility over
17 specific aspects of the child's welfare or may divide those
18 responsibilities between the parties based on the best
19 interests of the child. Areas of responsibility may include
20 primary residence, education, medical and dental care, and any
21 other responsibilities which the court finds unique to a
22 particular family.

23 b. The court shall order "sole parental
24 responsibility, with or without visitation rights, to the
25 other parent when it is in the best interests of" the minor
26 child.

27 c. The court may award the grandparents visitation
28 rights of a minor child if it is in the child's best interest.
29 Grandparents shall have legal standing to seek judicial
30 enforcement of such an award. Nothing in this section shall
31 require that grandparents be made parties or given notice of

1 dissolution pleadings or proceedings, nor shall grandparents
2 have legal standing as "contestants" as defined in s. 61.1306.
3 No court shall order that a child be kept within the state or
4 jurisdiction of the court solely for the purpose of permitting
5 visitation by the grandparents.

6 3. Access to records and information pertaining to a
7 minor child, including, but not limited to, medical, dental,
8 and school records, shall not be denied to a parent because
9 such parent is not the child's primary residential parent.

10 (3) For purposes of shared parental responsibility and
11 primary residence, the best interests of the child shall
12 include an evaluation of all factors affecting the welfare and
13 interests of the child, including, but not limited to:

14 (k) Evidence of a false allegation of domestic
15 violence or child abuse.

16 (l) Evidence of domestic violence or child abuse.

17 Section 4. Subsection (1) of section 741.28, Florida
18 Statutes, is amended to read:

19 741.28 Domestic violence; definitions.--As used in ss.
20 741.28-741.31:

21 (1) "Domestic violence" means any assault, aggravated
22 assault, battery, aggravated battery, sexual assault, sexual
23 battery, stalking, aggravated stalking, kidnapping, false
24 imprisonment, or any criminal offense resulting in physical
25 injury or death of one family or household member by another
26 who is or was residing in the same single dwelling unit.

27 Section 5. Section 741.30, Florida Statutes, 1996
28 Supplement, is amended to read:

29 741.30 Domestic violence; injunction; powers and
30 duties of court and clerk; petition; notice and hearing;

31

1 temporary injunction; issuance of injunction; statewide
2 verification system; enforcement.--

3 (1) There is created a cause of action for an
4 injunction for protection against domestic violence.

5 (a) Any person described in paragraph (e), who is the
6 victim of any act of domestic violence, or has reasonable
7 cause to believe he or she is in imminent danger of becoming
8 ~~may-become~~ the victim of any act of domestic violence, has
9 standing in the circuit court to file a sworn petition for an
10 injunction for protection against domestic violence. On or
11 after October 1, 1997, the act of domestic violence must have
12 occurred within 6 months before the filing of a petition for
13 an injunction for protection against domestic violence.

14 (b) This cause of action for an injunction may be
15 sought whether or not any other cause of action is currently
16 pending between the parties. However, the pendency of any such
17 cause of action shall be alleged in the petition.

18 (c) In the event a subsequent cause of action is filed
19 under chapter 61, any orders entered therein shall take
20 precedence over any inconsistent provisions of an injunction
21 issued under this section which addresses matters governed by
22 chapter 61.

23 (d) A person's right to petition for an injunction
24 shall not be affected by such person having left a residence
25 or household to avoid domestic violence.

26 (e) This cause of action for an injunction may be
27 sought by family or household members. No person shall be
28 precluded from seeking injunctive relief pursuant to this
29 chapter solely on the basis that such person is not a spouse.

30
31

1 (f) This cause of action for an injunction shall not
2 require that either party ~~the petitioner~~ be represented by an
3 attorney.

4 (g) Any person, including an officer of the court, who
5 offers evidence or recommendations relating to the cause of
6 action must either present the evidence or recommendations in
7 writing to the court with copies to each party and their
8 attorney, or must present the evidence under oath at a hearing
9 at which all parties are present.

10 ~~(h)~~(g) Nothing in this section shall affect the title
11 to any real estate.

12 ~~(i)~~(h) The court is prohibited from issuing mutual
13 orders of protection. This does not preclude the court from
14 issuing separate injunctions for protection against domestic
15 violence where each party has complied with the provisions of
16 this section. Compliance with the provisions of this section
17 cannot be waived.

18 (2)(a) Notwithstanding any other provision of law, the
19 total charge, including any administration fees, law
20 enforcement agency charges, and court costs or service
21 charges, for any court to issue an injunction concerning
22 domestic violence under chapter 741 or chapter 784 shall not
23 exceed \$50. The total charge by any law enforcement agency to
24 serve an injunction or restraining order concerning violence
25 shall not exceed \$20. The remaining \$30 fee collected for an
26 injunction under chapter 741 shall only be applied to the
27 initial \$40 service charge collected by the clerk of the court
28 as provided in s. 28.241(1). In the event the victim does not
29 have sufficient funds with which to pay filing fees to the
30 clerk of the court or service fees to the sheriff or law
31 enforcement agency and signs an affidavit stating so, the fees

1 shall be waived by the clerk of the court or the sheriff or
2 law enforcement agency to the extent necessary to process the
3 petition and serve the injunction, subject to a subsequent
4 order of the court relative to the payment of such fees.

5 (b) No bond shall be required by the court for the
6 entry of an injunction.

7 (c)1. The clerk of the court shall assist petitioners
8 in seeking both injunctions for protection against domestic
9 violence and enforcement for a violation thereof as specified
10 in this section.

11 2. All clerks' offices shall provide simplified
12 petition forms for the injunction, any modifications, and the
13 enforcement thereof, including instructions for completion.

14 3. The clerk of the court shall advise petitioners of
15 the availability of affidavits of insolvency or indigence in
16 lieu of payment for the cost of the filing fee, as provided in
17 paragraph (a).

18 4. The clerk of the court shall ensure the
19 petitioner's privacy to the extent practical while completing
20 the forms for injunctions for protection against domestic
21 violence.

22 5. The clerk of the court shall provide petitioners
23 with a minimum of two certified copies of the order of
24 injunction, one of which is serviceable and will inform the
25 petitioner of the process for service and enforcement.

26 6. Clerks of court and appropriate staff in each
27 county shall receive training in the effective assistance of
28 petitioners as provided or approved by the Florida Association
29 of Court Clerks.

30 7. The clerk of the court in each county shall make
31 available informational brochures on domestic violence when

1 such brochures are provided by local certified domestic
2 violence centers.

3 8. The clerk of the court in each county shall
4 distribute a statewide uniform informational brochure to
5 petitioners at the time of filing for an injunction for
6 protection against domestic or repeat violence when such
7 brochures become available. The brochure must include
8 information about the effect of a false accusation.

9 (3)(a) The sworn petition shall allege the existence
10 of such domestic violence and shall include the specific facts
11 and circumstances upon the basis of which relief is sought.

12 (b) The sworn petition shall be in substantially the
13 following form:

14
15 PETITION FOR
16 INJUNCTION FOR PROTECTION
17 AGAINST DOMESTIC VIOLENCE
18

19 Before me, the undersigned authority, personally appeared
20 Petitioner ...(Name)..., who has been sworn and says that the
21 following statements are true:

22 (a) Petitioner resides at: ...(address)...

23 (Petitioner may furnish address to the court in a
24 separate confidential filing if, for safety reasons, the
25 petitioner requires the location of the current residence to
26 be confidential.)

27 (b) Respondent resides at: ...(last known address)...

28 (c) Respondent's last known place of employment:
29 ...(name of business and address)...

30 (d) Physical description of respondent:

31 Race....

1 Sex....
2 Date of birth....
3 Height....
4 Weight....
5 Eye color....
6 Hair color....
7 Distinguishing marks or scars....
8 (e) Aliases of respondent:
9 (f) Respondent is the spouse or former spouse of the
10 petitioner or is any other person related by blood or marriage
11 to the petitioner or is any other person who is or was
12 residing within a single dwelling unit with the petitioner, as
13 if a family, or is a person with whom the petitioner has a
14 child in common, regardless of whether the petitioner and
15 respondent are or were married or residing together, as if a
16 family.
17 (g) The following describes any other cause of action
18 currently pending between the petitioner and respondent:
19
20 The petitioner should also describe any previous or
21 pending attempts by the petitioner to obtain an injunction for
22 protection against domestic violence in this or any other
23 circuit, and the results of that attempt.....
24
25 Case numbers should be included if available.
26 (h) Petitioner has suffered or has reasonable cause to
27 fear imminent domestic violence because respondent has:
28 (i) Petitioner alleges the following additional
29 specific facts: (mark appropriate sections)
30 ...Petitioner is the custodian of a minor child or
31 children whose names and ages are as follows:

1 Petitioner needs the exclusive use and possession
2 of the dwelling that the parties share.

3 Petitioner is unable to obtain safe alternative
4 housing because:

5 Petitioner genuinely and imminently fears that
6 respondent will abuse, remove, or hide the minor child or
7 children from petitioner because:

8
9 (j) Petitioner genuinely and imminently fears domestic
10 violence by respondent.

11 (k) Petitioner seeks an injunction: (mark appropriate
12 section or sections)

13 Immediately restraining the respondent from
14 committing any acts of domestic violence.

15 Restraining the respondent from committing any acts
16 of domestic violence.

17 Awarding to the petitioner the temporary exclusive
18 use and possession of the dwelling that the parties share or
19 excluding the respondent from the residence of the petitioner.

20 Awarding temporary custody of, or temporary
21 visitation rights with regard to, the minor child or children
22 of the parties, or prohibiting or limiting visitation to that
23 which is supervised by a third party.

24 Establishing temporary support for the minor child
25 or children or the petitioner.

26 Directing the respondent to participate in a
27 batterers' intervention program or other treatment pursuant to
28 s. 415.601.

29 Providing any terms the court deems necessary for
30 the protection of a victim of domestic violence, or any minor
31

1 children of the victim, including any injunctions or
2 directives to law enforcement agencies.

3 (c) Every petition for an injunction against domestic
4 violence shall contain, directly above the signature line, a
5 statement in all capital letters and bold type not smaller
6 than the surrounding text, as follows:

7 I HAVE READ EVERY STATEMENT MADE IN THIS
8 PETITION AND EACH STATEMENT IS TRUE AND
9 CORRECT. I UNDERSTAND THAT THE STATEMENTS MADE
10 IN THIS PETITION ARE BEING MADE UNDER PENALTY
11 OF PERJURY, PUNISHABLE AS PROVIDED IN SECTION
12 837.02, FLORIDA STATUTES.

13 ...(initials)...

14
15 (d) If the sworn petition seeks to determine issues of
16 custody or visitation with regard to the minor child or
17 children of the parties, the sworn petition shall be
18 accompanied by or shall incorporate the allegations required
19 by s. 61.132 of the Uniform Child Custody Jurisdiction Act.

20 (4) Upon the filing of the petition, the court shall
21 set a hearing to be held at the earliest possible time. The
22 respondent shall be personally served with a copy of the
23 petition, financial affidavit, uniform child custody
24 jurisdiction act affidavit, if any, notice of hearing, and
25 temporary injunction, if any, prior to the hearing.

26 (5)(a) When it appears to the court that an immediate
27 and present danger of domestic violence exists, the court may
28 grant a temporary injunction ex parte, pending a full hearing,
29 and may grant such relief as the court deems proper, including
30 an injunction:

31

1 1. Restraining the respondent from committing any acts
2 of domestic violence.

3 2. Awarding to the petitioner the temporary exclusive
4 use and possession of the dwelling that the parties share or
5 excluding the respondent from the residence of the petitioner.

6 3. On the same basis as provided in s. 61.13(2), (3),
7 (4), and (5), granting to the petitioner temporary custody of
8 a minor child or children.

9 (b) In a hearing ex parte for the purpose of obtaining
10 such ex parte temporary injunction, no evidence other than
11 verified pleadings or affidavits shall be used as evidence,
12 unless the respondent appears at the hearing or has received
13 reasonable notice of the hearing. A denial of a petition for
14 an ex parte injunction shall be by written order noting the
15 legal grounds for denial. When the only ground for denial is
16 no appearance of an immediate and present danger of domestic
17 violence, the court shall set a full hearing on the petition
18 for injunction with notice at the earliest possible time.
19 Nothing herein affects a petitioner's right to promptly amend
20 any petition, or otherwise be heard in person on any petition
21 consistent with the Florida Rules of Civil Procedure.

22 (c) Any such ex parte temporary injunction shall be
23 effective for a fixed period not to exceed 15 days. A full
24 hearing, as provided by this section, shall be set for a date
25 no later than the date when the temporary injunction ceases to
26 be effective. The court may grant a continuance of the ~~ex~~
27 ~~parte injunction and the full~~ hearing before or during a
28 hearing for good cause shown by any party, which shall include
29 a continuance to obtain service of process. Any injunction
30 shall be extended if necessary to remain in full force and
31 effect during any period of continuance.

1 (6)(a) Upon notice and hearing, the court may grant
2 such relief as the court deems proper, including an
3 injunction:

4 1. Restraining the respondent from committing any acts
5 of domestic violence.

6 2. Awarding to the petitioner the exclusive use and
7 possession of the dwelling that the parties share or excluding
8 the respondent from the residence of the petitioner.

9 3. On the same basis as provided in chapter 61,
10 awarding temporary custody of, or temporary visitation rights
11 with regard to, a minor child or children of the parties.

12 4. On the same basis as provided in chapter 61,
13 establishing temporary support for a minor child or children
14 or the petitioner.

15 5. Ordering the respondent to participate in
16 treatment, intervention, or counseling services to be paid for
17 by the respondent. When the court orders the respondent to
18 participate in treatment, intervention, or counseling,
19 including, but not limited to, a batterers' intervention
20 program, the court must provide the respondent with a copy of
21 the registry of providers of programs in the circuit from
22 which the respondent must select a provider. The court
23 administrator of each judicial circuit shall maintain a
24 registry of providers which must include all program providers
25 that have requested to be registered and have been approved by
26 the Alcohol, Drug Abuse, and Mental Health Program Office of
27 the Department of Children and Family Services or certified by
28 the Department of Corrections. All programs listed on the
29 registry must provide for payment of services on a sliding
30 scale based upon the participant's income.
31

1 6. Ordering a petitioner, if it is in the petitioner's
2 best interest, to participate in treatment, intervention, or
3 counseling, the cost of which is to be paid by the respondent.
4 When the Court orders the petitioner to participate in
5 treatment, intervention, or counseling, the court must provide
6 the petitioner with a copy of the registry of providers and
7 programs in the circuit, from which the petitioner must select
8 a provider. The court administrator of each judicial circuit
9 shall maintain a registry of providers which must include all
10 program providers that have requested to be registered and
11 have been approved by the Alcohol, Drug Abuse, and Mental
12 Health Program Office of the Department of Children and Family
13 Services or certified by the Department of Corrections. All
14 programs listed on the registry must provide for payment of
15 services on a sliding scale based upon the participant's
16 income.

17 7.6- Ordering such other relief as the court deems
18 necessary for the protection of a victim of domestic violence,
19 including injunctions or directives to law enforcement
20 agencies, as provided in this section.

21 (b) The terms of an injunction restraining the
22 respondent under subparagraph (a)1. or ordering other relief
23 for the protection of the victim under subparagraph (a)7.
24 shall remain in effect until modified or dissolved. Any relief
25 granted by the injunction shall be granted for a fixed period
26 not to exceed 1 year, unless upon petition of the victim the
27 court extends the injunction for successive fixed periods not
28 to exceed 1 year. Broad discretion resides with the court to
29 grant an extension after considering the circumstances. Either
30 party may move at any time to modify or dissolve the
31 injunction. No specific allegations are required. Such relief

1 may be granted in addition to other civil or criminal
2 remedies.

3 (c) A temporary or final judgment on injunction for
4 protection against domestic violence entered pursuant to this
5 section shall, on its face, indicate that:

6 1. The injunction is valid and enforceable in all
7 counties of the State of Florida.

8 2. Law enforcement officers may use their arrest
9 powers pursuant to s. 901.15(6) to enforce the terms of the
10 injunction.

11 3. The court had jurisdiction over the parties and
12 matter under the laws of Florida and that reasonable notice
13 and opportunity to be heard was given to the person against
14 whom the order is sought sufficient to protect that person's
15 right to due process.

16 4. The date respondent was served with the temporary
17 or final order, if obtainable.

18 (d) An injunction for protection against domestic
19 violence entered pursuant to this section, on its face, may
20 order that the respondent attend a batterers' intervention
21 program as a condition of the injunction. Unless the court
22 makes written factual findings in its judgment or order which
23 are based on substantial evidence, stating why batterers'
24 intervention programs would be inappropriate, the court shall
25 order the respondent to attend a batterers' intervention
26 program if:

27 1. It finds that the respondent willfully violated the
28 ex parte injunction;

29 2. The respondent, in this state or any other state,
30 has been convicted of, had adjudication withheld on, or pled
31

1 nolo contendere to a crime involving violence or a threat of
2 violence; or

3 3. The respondent, in this state or any other state,
4 has had at any time a prior injunction for protection entered
5 against the respondent after a hearing with notice.

6
7 It is preferred, but not mandatory, that such programs be
8 certified under s. 741.32.

9 (e) The fact that a separate order of protection is
10 granted to each opposing party shall not be legally sufficient
11 to deny any remedy to either party or to prove that the
12 parties are equally at fault or equally endangered.

13 (7)(a)1. The clerk of the court shall furnish a copy
14 of the petition, financial affidavit, uniform child custody
15 jurisdiction act affidavit, if any, notice of hearing, and
16 temporary injunction, if any, to the sheriff or a law
17 enforcement agency of the county where the respondent resides
18 or can be found, who shall serve it upon the respondent as
19 soon thereafter as possible on any day of the week and at any
20 time of the day or night. The clerk of the court shall be
21 responsible for furnishing to the sheriff such information on
22 the respondent's physical description and location as is
23 required by the department to comply with the verification
24 procedures set forth in this section. Notwithstanding any
25 other provision of law to the contrary, the chief judge of
26 each circuit, in consultation with the appropriate sheriff,
27 may authorize a law enforcement agency within the jurisdiction
28 to effect service. A law enforcement agency serving
29 injunctions pursuant to this section shall use service and
30 verification procedures consistent with those of the sheriff.

31

1 2. When an injunction is issued, if the petitioner
2 requests the assistance of a law enforcement agency, the court
3 may order that an officer from the appropriate law enforcement
4 agency accompany the petitioner and assist in placing the
5 petitioner in possession of the dwelling or residence, or
6 otherwise assist in the execution or service of the
7 injunction. A law enforcement officer shall accept a copy of
8 an injunction for protection against domestic violence,
9 certified by the clerk of the court, from the petitioner and
10 immediately serve it upon a respondent who has been located
11 but not yet served.

12 3. All orders issued, changed, continued, extended, or
13 vacated subsequent to the original service of documents
14 enumerated under subparagraph 1., shall be certified by the
15 clerk of the court and delivered to the parties at the time of
16 the entry of the order. The parties may acknowledge receipt
17 of such order in writing on the face of the original order.
18 In the event a party fails or refuses to acknowledge the
19 receipt of a certified copy of an order, the clerk shall note
20 on the original order that service was effected. If delivery
21 at the hearing is not possible, the clerk shall mail certified
22 copies of the order to the parties at the last known address
23 of each party. Service by mail is complete upon mailing.
24 When an order is served pursuant to this subsection, the clerk
25 shall prepare a written certification to be placed in the
26 court file specifying the time, date, and method of service
27 and shall notify the sheriff.

28
29 If the respondent has been served previously with the
30 temporary injunction and has failed to appear at the initial
31 hearing on the temporary injunction, any subsequent petition

1 for injunction seeking an extension of time may be served on
2 the respondent by the clerk of the court by certified mail in
3 lieu of personal service by a law enforcement officer.

4 (b) There shall be created a Domestic and Repeat
5 Violence Injunction Statewide Verification System within the
6 Department of Law Enforcement. The department shall establish,
7 implement, and maintain a statewide communication system
8 capable of electronically transmitting information to and
9 between criminal justice agencies relating to domestic
10 violence injunctions and repeat violence injunctions issued by
11 the courts throughout the state. Such information must
12 include, but is not limited to, information as to the
13 existence and status of any injunction for verification
14 purposes.

15 (c)1. Within 24 hours after the court issues an
16 injunction for protection against domestic violence or
17 changes, continues, extends, or vacates an injunction for
18 protection against domestic violence, the clerk of the court
19 must forward a certified copy of the injunction for service to
20 the sheriff with jurisdiction over the residence of the
21 petitioner. The injunction must be served in accordance with
22 this subsection.

23 2. Within 24 hours after service of process of an
24 injunction for protection against domestic violence upon a
25 respondent, the law enforcement officer must forward the
26 written proof of service of process to the sheriff with
27 jurisdiction over the residence of the petitioner.

28 3. Within 24 hours after the sheriff receives a
29 certified copy of the injunction for protection against
30 domestic violence, the sheriff must make information relating
31 to the injunction available to other law enforcement agencies

1 by electronically transmitting such information to the
2 department.

3 4. Within 24 hours after the sheriff or other law
4 enforcement officer has made service upon the respondent and
5 the sheriff has been so notified, the sheriff must make
6 information relating to the service available to other law
7 enforcement agencies by electronically transmitting such
8 information to the department.

9 5. Within 24 hours after an injunction for protection
10 against domestic violence is vacated, terminated, or otherwise
11 rendered no longer effective by ruling of the court, the clerk
12 of the court must notify the sheriff receiving original
13 notification of the injunction as provided in subparagraph 2.
14 That agency shall, within 24 hours after receiving such
15 notification from the clerk of the court, notify the
16 department of such action of the court.

17 (8)(a) The court may enforce a violation of an
18 injunction for protection against domestic violence through a
19 civil or criminal contempt proceeding, or the state attorney
20 may prosecute it as a criminal violation under s. 741.31. The
21 court may enforce the respondent's compliance with the
22 injunction through any appropriate civil and criminal
23 remedies, including, but not limited to, a monetary assessment
24 or a fine. The clerk of the court shall collect and receive
25 such assessments or fines. On a monthly basis, the clerk
26 shall transfer the moneys collected pursuant to this paragraph
27 to the State Treasury for deposit in the Domestic Violence
28 Trust Fund established in s. 741.01.

29 (b) If the respondent is arrested by a law enforcement
30 officer under s. 901.15(6) or for a violation of s. 741.31,
31 the respondent shall be held in custody until brought before

1 the court as expeditiously as possible for the purpose of
2 enforcing the injunction and for admittance to bail in
3 accordance with chapter 903 and the applicable rules of
4 criminal procedure, pending a hearing.

5 (9) The petitioner or the respondent may move the
6 court to modify or dissolve an injunction at any time.

7 Section 6. Subsection (4) of section 741.31, Florida
8 Statutes, 1996 Supplement, is amended to read:

9 741.31 Violation of an injunction for protection
10 against domestic violence.--

11 (4) A person who willfully violates an injunction for
12 protection against domestic violence~~y~~ issued pursuant to s.
13 741.30, or a foreign protection order accorded full faith and
14 credit pursuant to s. 741.315, by:

5 (a) Refusing to vacate the dwelling that the parties
16 share;

17 (b) Going to the petitioner's residence, school, place
18 of employment, or a specified place frequented regularly by
19 the petitioner and any named family or household member;

20 (c) Committing an act of domestic violence against the
21 petitioner;

22 (d) Committing any other violation of the injunction
23 through an intentional unlawful threat, word, or act to do
24 violence to the petitioner; or

25 (e) Telephoning, contacting, or otherwise
26 communicating with the petitioner directly or indirectly,
27 unless the injunction specifically allows indirect contact
28 through a third party

9
30 is guilty of a misdemeanor of the first degree, punishable as
31 provided in s. 775.082 or s. 775.083.

1 Section 7. Section 741.315, Florida Statutes, is
2 created to read:

3 741.315 Recognition of foreign protection orders.--

4 (1) As used in this section, the term "court of a
5 foreign state" means a court of competent jurisdiction of a
6 state of the United States, other than Florida; the District
7 of Columbia; an Indian tribe; or a commonwealth, territory, or
8 possession of the United States.

9 (2) Pursuant to 18 U.S.C. s. 2265, an injunction for
10 protection against domestic violence issued by a court of a
11 foreign state must be accorded full faith and credit by the
12 courts of this state and enforced by a law enforcement agency
13 as if it were the order of a Florida court issued under s.

14 741.30, s. 741.31, s. 784.046, or s. 784.047 and provided that
15 the court had jurisdiction over the parties and the matter and
16 that reasonable notice and opportunity to be heard was given
17 to the person against whom the order is sought sufficient to
18 protect that person's right to due process. Ex parte foreign
19 injunctions for protection are not eligible for enforcement
20 under this section unless notice and opportunity to be heard
21 have been provided within the time required by the foreign
22 state or tribal law, and in any event within a reasonable time
23 after the order is issued, sufficient to protect the
24 respondent's due process rights.

25 (3) Notwithstanding s. 55.505 or any other provision
26 to the contrary, neither residence in this state nor
27 registration of foreign injunctions for protection shall be
28 required for enforcement of this order by this state and
29 failure to register the foreign order shall not be an
30 impediment to its enforcement. The following registration
31

1 procedure shall be available to protected persons who hold
2 orders from a court of a foreign state.

3 (a) A protected person may present a certified copy of
4 a foreign order of protection to any sheriff in this state and
5 request that the same be registered in the injunction
6 registry. It is not necessary that the protected person
7 register the foreign order in the protected person's county of
8 residence. Venue is proper throughout the state. The protected
9 person must swear by affidavit, that to the best of the
10 protected person's knowledge and belief, the attached
11 certified copy of the foreign order, docket number
12, issued in the state of on
13 is currently in effect as written and has not
14 been superseded by any other order.

15 (b) The sheriff shall examine the certified copy of
16 the foreign order and register the order in the injunction
17 registry, noting that it is a foreign order of protection. If
18 not apparent from the face of the certified copy of the
19 foreign order, the sheriff shall use best efforts to ascertain
20 whether the order was served on the respondent. The Florida
21 Department of Law Enforcement shall develop a special notation
22 for foreign orders of protection. The sheriff shall assign a
23 case number and give the protected person a receipt showing
24 registration of the foreign order in this state. There shall
25 be no fee for registration of a foreign order.

26 (c) The foreign order may also be registered by local
27 law enforcement agencies upon receipt of the foreign order and
28 any accompanying affidavits in the same manner described in
29 paragraphs (a) and (b).

30 (4)(a) Law enforcement officers shall enforce foreign
31 orders of protection as if they were entered by a court of

1 this state. Upon presentation of a foreign protection order by
2 a protected person, a law enforcement officer shall assist in
3 enforcement of all of its terms, pursuant to federal law,
4 except matters related to child custody, visitation, and
5 support. As to those provisions only, enforcement may be
6 obtained upon domestication of the foreign order pursuant to
7 ss. 55.501-55.509 unless the foreign order is a "pickup order"
8 or "order of bodily attachment" requiring the immediate return
9 of a child.

10 (b) Before enforcing a foreign protection order, a law
11 enforcement officer should confirm the identity of the parties
12 present and review the order to determine that, on its face,
13 it has not expired. Presentation of a certified or true copy
14 of the protection order shall not be required as a condition
15 of enforcement, provided that a conflicting certified copy is
16 not presented by the respondent or the individual against whom
17 enforcement is sought.

18 (c) A law enforcement officer shall use reasonable
19 efforts to verify service of process.

20 (d) Service may be verified as follows:

21 1. By petitioner: Petitioner may state under oath
22 that to the best of petitioner's knowledge, respondent was
23 served with the order of protection because petitioner was
24 present at time of service; respondent told petitioner he was
25 served; another named person told petitioner respondent was
26 served; or respondent told petitioner he knows of the content
27 of the order and date of the return hearing.

28 2. By respondent: Respondent states under oath that
29 he was or was not served with the order.

30
31

2 (e) Enforcement and arrest for violation of a foreign
3 protection order shall be consistent with the enforcement of
4 orders issued in this state.

5 (f) A law enforcement officer acting in good faith
6 under this section and the officer's employing agency shall be
7 immune from all liability, civil or criminal, that might
8 otherwise be incurred or imposed by reason of the officer's or
9 agency's actions in carrying out the provisions of this
10 section.

11 (g) Law enforcement shall not require petitioner to
12 sign a registration affidavit as a condition of enforcement.

13 (h) A foreign order of protection shall remain in
14 effect until the date of expiration on its face; or, if there
15 is no expiration date on its face, a foreign order of
16 protection shall remain in effect until expiration. If the
17 order of protection states on its face that it is a permanent
18 order, then there is no date of expiration.

19 (5) Any person who acts under this section and
20 intentionally provides a law enforcement officer with a copy
21 of an order of protection known by that person to be false or
22 invalid, or who denies having been served with an order of
23 protection when that person has been served with such order,
24 commits a misdemeanor of the first degree, punishable as
25 provided in s. 775.082 or s. 775.083.

26 (6) In the event 18 U.S.C. s. 2265 is held to be
27 unconstitutional, this section shall be null and void.

28 Section 8. Subsection (7) of section 784.046, Florida
29 Statutes, is amended, and subsection (11) is added to that
30 section, to read:

31 784.046 Action by victim of repeat violence for
protective injunction; powers and duties of court and clerk of

1 court; filing and form of petition; notice and hearing;
2 temporary injunction; issuance; statewide verification system;
3 enforcement.--

4 (7) Upon notice and hearing, the court may grant such
5 relief as the court deems proper, including an injunction:

6 (a) Enjoining the respondent from committing any acts
7 of violence.

8 (b) Ordering such other relief as the court deems
9 necessary for the protection of the petitioner, including
10 injunctions or directives to law enforcement agencies, as
11 provided in this section.

12 (c) The terms of the injunction shall remain in full
13 force and effect until modified or dissolved. Either party may
14 move at any time to modify or dissolve the injunction. Any
15 relief granted by the injunction shall be granted for a fixed
16 period not to exceed 4 year, unless upon petition of the
17 victim the court extends the injunction for successive fixed
18 periods not to exceed 4 year. Such relief may be granted in
19 addition to other civil or criminal remedies.

20 (d) A temporary or final judgment on injunction for
21 protection against repeat violence entered pursuant to this
22 section shall, on its face, indicate that:

23 1. The injunction is valid and enforceable in all
24 counties of the State of Florida.

25 2. Law enforcement officers may use their arrest
26 powers pursuant to s. 901.15(6) to enforce the terms of the
27 injunction.

28 3. The court had jurisdiction over the parties and
29 matter under the laws of Florida and that reasonable notice
30 and opportunity to be heard was given to the person against
31

1 whom the order is sought sufficient to protect that person's
2 right to due process.

3 4. The date that the respondent was served with the
4 temporary or final order, if obtainable.

5 (11) A law enforcement officer acting in good faith
6 under this section and the officer's employing agency shall be
7 immune from all liability, civil or criminal, that might
8 otherwise be incurred or imposed by reason of the officer's or
9 agency's actions in carrying out the provisions of this
10 section.

11 Section 9. Section 784.047, Florida Statutes, is
12 amended to read:

13 784.047 Penalties for violating protective injunction
14 against repeat violators.--A person who willfully violates an
15 injunction for protection against repeat violence, issued
16 pursuant to s. 784.046, or a foreign protection order accorded
17 full faith and credit pursuant to s. 741.315 by:

18 (1) Refusing to vacate the dwelling that the parties
19 share;

20 (2) Going to the petitioner's residence, school, place
21 of employment, or a specified place frequented regularly by
22 the petitioner and any named family or household member;

23 (3) Committing an act of repeat violence against the
24 petitioner;

25 (4) Committing any other violation of the injunction
26 through an intentional unlawful threat, word, or act to do
27 violence to the petitioner; or

28 (5) Telephoning, contacting, or otherwise
29 communicating with the petitioner directly or indirectly,
30 unless the injunction specifically allows indirect contact
31 through a third party;

1
2 ~~commits~~ ~~is-guilty-of~~ a misdemeanor of the first degree,
3 punishable as provided in s. 775.082 or s. 775.083.

4 Section 10. Subsections (6), (7), and (8) of section
5 901.15, Florida Statutes, 1996 Supplement, are amended to
6 read:

7 901.15 When arrest by officer without warrant is
8 lawful.--A law enforcement officer may arrest a person without
9 a warrant when:

10 (6) There is probable cause to believe that the person
11 has committed a criminal act according to s. 741.31 or s.
12 784.047 which violates an injunction for protection entered
13 pursuant to s. 741.30 or s. 784.046, or a foreign protection
14 order accorded full faith and credit pursuant to s. 741.315,
15 over the objection of the petitioner, if necessary.

16 (7) There is probable cause to believe that the person
17 has committed:

18 (a) An act of domestic violence, as defined in s.
19 741.28;

20 (b) Child abuse, as defined in s. 827.04(2) and (3);
21 or

22 (c) Any battery upon another person, as defined in s.
23 784.03.

24
25 With respect to an arrest for an act of domestic violence, the
26 decision to arrest shall not require consent of the victim or
27 consideration of the relationship of the parties. A law
28 enforcement officer who acts in good faith and exercises due
29 care in making an arrest under this subsection, under s.
30 741.31(4) or s. 784.047, or pursuant to a foreign order of
31 protection accorded full faith and credit pursuant to s.

1 741.315, is immune from civil liability that otherwise might
2 result by reason of his or her action.

3 (8) He has probable cause to believe that the person
4 has knowingly committed an act of repeat violence in violation
5 of an injunction for protection from repeat violence entered
6 pursuant to s. 784.046 or a foreign protection order accorded
7 full faith and credit pursuant to s. 741.315.

8 Section 11. Except for this section, section 1, and
9 the amendment of section 741.30(2)(a), Florida Statutes, 1996
10 Supplement, which shall take effect upon this act becoming a
11 law, this act shall take effect October 1, 1997.

12
13 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
14 COMMITTEE SUBSTITUTE FOR
15 Senate Bill 1006

16 The committee substitute incorporates the substance of CS/SB's
17 910, 302, and 2300 and makes the following changes:

- 18 1. Provides that evidence of domestic violence or child
19 abuse must be considered by the court in child custody
20 determinations.
21 2. Provides that upon the motion of any party, the court
22 must not refer the case to mediation if it finds that
23 there is a history of domestic violence that would
24 compromise the mediation process.
25
26
27
28
29
30
31

STORAGE NAME. h0055s1.flc
DATE: March 13, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
Family Law and Children
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL # CS/HB 55
RELATING TO: Child Custody
SPONSOR(S): Committee on Family Law and Children and Representative Morse
STATUTE(S) AFFECTED: Section 61.13, reenacting ss. 39 408(3)(a) and 741 30(5)(a)
COMPANION BILL(S). SB 1006

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) Family Law and Children YEAS 9 NAYS 0
 - (2)
 - (3)
 - (4)
 - (5)
-

I SUMMARY:

This bill adds two factors to the list which the court shall consider when making a determination as to shared parental responsibility and primary residence of a child:

- a the parent who, during the parties' marriage, was the child's primary caretaker.
- b. evidence of domestic violence or child abuse.

The bill also amends s. 61.13(2)(b), F.S., 1996 Supplement, to replace the term "spousal" a it relates to abuse with the term "domestic violence".

The bill also reenacts section 39 408(3)(a), F.S., concerning dependency hearings, and section 741 30(5)(a), F.S., concerning domestic violence, for the purpose of incorporating the amendment to section 61.12, F S.

The is no fiscal impact predicted for this bill.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

For purposes of shared parental responsibility and primary residence, the court is required to evaluate the best interests of the child. Section 61.13(3), Florida Statutes, sets forth a list of factors for the court to consider in making that evaluation. Currently consideration of the parent who, during the parties' marriage, was the child's primary caretaker or evidence of domestic violence or child abuse are not among the listed factors.

Section 61.13(2)(b)2, Florida Statutes, requires the court to order parental responsibility to be shared by both parents unless the court finds that shared parental responsibility would be detrimental to the child. The court must consider evidence of spousal or child abuse as evidence of detriment. If the court determines that shared parental responsibility would be detrimental to the child, it may order sole parental responsibility and make visitation arrangements that will best protect the child or abused spouse from further harm.

Section 61.13(2)(b)2, F.S., also requires the court to consider evidence that a parent has been convicted of a felony on the second degree or higher involving domestic violence as a rebuttable presumption of detriment to the child. If this presumption is not rebutted, then the court may not grant shared parental responsibility, including visitation residence of the child, and decisions made regarding the child to the convicted parent. The convicted parent is not relieved of any obligation to provide financial support

Public concern has been expressed that some courts are narrowly construing section 61.13(3), F.S. The courts may, therefore, be excluding evidence of spousal or child abuse as a factor in determining shared parental responsibility and primary residence of a child

B. EFFECT OF PROPOSED CHANGES:

This bill adds consideration of the parent who, during the parties marriage, was the child's primary caretaker and evidence of domestic violence or child abuse to the list of factors for the court to consider in making its determination of shared parental responsibility and primary residence of a child. This change is expected to remove ambiguities which may exist in the current statute and reduce the potential for misinterpretation by the court. The bill also replaces the term "spousal" as relating to abuse with "domestic violence" in s. 61.13(2)(b), F.S., 1996 Supplement

C. APPLICATION OF PRINCIPLES:

1 Less Government.

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

This section is not applicable to this bill.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

(2) what is the cost of such responsibility at the new level/agency?

(3) how is the new agency accountable to the people governed?

2. Lower Taxes.

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

This section is not applicable to this bill.

(1) Who evaluates the family's needs?

(2) Who makes the decisions?

(3) Are private alternatives permitted?

(4) Are families required to participate in a program?

(5) Are families penalized for not participating in a program?

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

This section is not applicable to this bill.

(1) parents and guardians?

(2) service providers?

(3) government employees/agencies?

D SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee

III FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures.

None.

B FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects.

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth.

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

There is no fiscal impact from this bill.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Two amendments were adopted by the Committee on Family Law and Children on March 11, 1997, and enrolled into the committee substitute for House Bill 55.

Amendment #1: Adds the consideration of the parent who, during the parties' marriage was the child's primary caretaker to the list of factors for the court to consider for purposes of determining shared parental responsibility and primary residence. The bill adds evidence of spousal or child abuse to the same list of factors and the amendment replaces the term "spousal" with the term "domestic violence".

Amendment #2: Replaces the term "spousal" used in conjunction with abuse with the term "domestic violence" in s. 61.13(2)(b), F.S., 1996 Supplement.

VII SIGNATURES:

COMMITTEE ON Family Law and Children:
Prepared by:

Legislative Research Director

Carol E. Preston

Peggy Sanford

STORAGE NAME. h0055.flc
DATE: March 6, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
Family Law and Children
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 55

RELATING TO: Child Custody

SPONSOR(S). Representative Morse

STATUTE(S) AFFECTED Section 61.13, reenacting ss. 39.408(3)(a) and 741.30(5)(a)

COMPANION BILL(S): SB 1006

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE.

- (1) Family Law and Children
 - (2)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill adds evidence of spousal or child abuse to the list of factors for the court to consider when making a determination of shared parental responsibility and primary residence of a child

The bill also reenacts section 39 408(3)(a), F S., concerning dependency hearings, and section 741.30(5)(a), F S., concerning domestic violence, for the purpose of incorporating the amendment to section 61.12, F.S.

II. SUBSTANTIVE ANALYSIS.

A. PRESENT SITUATION

For purposes of shared parental responsibility and primary residence, the court is required to evaluate the best interests of the child. Section 61.13(3), Florida Statutes sets forth a list of factors for the court to consider in making that evaluation. Currently evidence of domestic violence or child abuse is not among the listed factors.

Section 61.13(2)(b)2, Florida Statutes, requires the court to order parental responsibility to be shared by both parents unless the court finds that shared parental responsibility would be detrimental to the child. The court must consider evidence of spousal or child abuse as evidence of detriment. If the court determines that shared parental responsibility would be detrimental to the child, it may order sole parental responsibility and make visitation arrangements that will best protect the child or abused spouse from further harm.

Section 61.13(2)(b)2, F.S., also requires the court to consider evidence that a parent has been convicted of a felony on the second degree or higher involving domestic violence as a rebuttable presumption of detriment to the child. If this presumption is not rebutted, then the court may not grant shared parental responsibility, including visitation residence of the child, and decisions made regarding the child to the convicted parent. The convicted parent is not relieved of any obligation to provide financial support.

Public concern has been expressed that some courts are narrowly construing section 61.13(3), F.S. The courts may, therefore, be excluding evidence of spousal or child abuse as a factor in determining shared parental responsibility and primary residence of a child.

B. EFFECT OF PROPOSED CHANGES.

This bill adds evidence of spousal or child abuse to the list of factors for the court to consider in making its determination of shared parental responsibility and primary residence of a child. This change should remove ambiguities which may exist in the current statute and reduce the potential for misinterpretation by the court.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

This section is not applicable to this bill

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

(2) what is the cost of such responsibility at the new level/agency?

(3) how is the new agency accountable to the people governed?

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children.

This section is not applicable to this bill

(1) Who evaluates the family's needs?

(2) Who makes the decisions?

(3) Are private alternatives permitted?

(4) Are families required to participate in a program?

(5) Are families penalized for not participating in a program?

b Does the bill directly affect the legal rights and obligations between family members?

No

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority.

This section is not applicable to this bill.

(1) parents and guardians?

(2) service providers?

(3) government employees/agencies?

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects.

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE.

1. Non-recurring Effects.

None.

2. Recurring Effects.

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets

None.

D. FISCAL COMMENTS

There is no fiscal impact from this bill.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

VI AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES

VII. SIGNATURES.

COMMITTEE ON Family Law and Children:
Prepared by:

Legislative Research Director

Carol E. Preston

Peggy Sanford

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: April 10, 1997 Revised: _____

Subject: Domestic Violence

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Moody</u>	<u>Lang</u>	<u>JU</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>CJ</u>	<u>Withdrawn</u>
3.	_____	_____	<u>WM</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

A. Terms of the Injunction

- Requires petitioners seeking an injunction for protection have cause to believe he or she is in imminent danger of becoming a victim of domestic violence.
- Requires that the act of domestic violence occurred within 6 months before filing a petition for an injunction for protection against domestic violence
- Provides the court may grant any relief the court deems necessary to protect any minor child of a victim of domestic violence.
- Amends the period for which certain relief awarded in an injunction for protection against domestic violence may be issued after hearing to last until modified or dissolved.
- Deletes any time limitation for other types of relief the domestic violence injunction may contain
- Amends the period for which certain relief awarded in an injunction for protection against repeat violence may be awarded to a period of not less than one year and until further order of the court
- Requires that an injunction indicate on its face that the person against whom the injunction is issued had notice and an opportunity to be heard sufficient to protect that person's right to due process and, if obtainable, the date that person was served with the temporary or final order

B. Hearings

- Provides that any person, including an officer of the court, offering evidence or recommendations in a domestic violence case must do so under oath at a hearing with all parties present or in writing with copies to all parties.

- Provides that an injunction is in full force and effect for the period of continuance whenever a hearing is continued.

C. Costs

The bill places a \$50 limit on the total costs and fees for a court to issue an injunction or restraining order, with a limit of \$20 on the total charge for any law enforcement agency to serve an injunction or restraining order and the remaining \$30 to be applied to the clerk's fee

D. Enforcement

- Requires that an injunction for protection against repeat violence must state on its face that the injunction is valid and enforceable in all counties in the State of Florida.
- Requires that an injunction for protection against repeat violence must state on its face that law enforcement officers may use their arrest powers under 901.15(6) to enforce the terms of the injunction
- Provides for good faith immunity from any liability, both civil or criminal, for law enforcement officers in enforcing injunctions for protection against repeat violence

E. Treatment, Intervention and Counseling

- Provides that the court may order a petitioner to counseling if it is in the petitioner's best interest
- Requires the court to provide a list of counseling services available to those respondents or petitioners ordered to attend treatment, intervention, or counseling.

F. False Accusation

- Provides that evidence of a false accusation of domestic violence or child abuse must be considered by the court in child custody determinations
- Requires that information about the effect of a false accusation be included in the brochure the clerk of the court is required by current law to provide to any one filing for an injunction for protection against domestic or repeat violence.
- Requires that every petition for an injunction for protection against domestic violence contain specified language directly above the signature line about the penalty for a false accusation.

G. Full Faith and Credit: Enforcement of Injunctions Issued in Other States

The bill creates a new section to implement the federal law requiring states to grant full faith and credit to the protection orders of other states or Indian tribes. The bill does not require the person seeking enforcement of the order to be a resident of Florida or to ever register the foreign judgment under s 55 505, F.S. Instead the bill provides.

- An optional procedure for placing a foreign injunction on the registry of injunctions for protection currently maintained by the Florida Department of Law Enforcement and for registering it
- An optional procedure for registering a foreign injunction with local law enforcement.
- Procedures for law enforcement to follow to enforce an order of protection from a foreign jurisdiction, including verification of identities and reasonable efforts to verify service.
- Complete good faith immunity to law enforcement in enforcing a foreign injunction
- That the foreign injunction shall be in force in Florida until its date of expiration,
- Criminal penalties for persons attempting to enforce an order they know to be false or falsely denying having received service of a valid order.
- That law enforcement officers may use their arrest powers under 901 15(6) to enforce the terms of a foreign injunction
- That specified acts, if done in violation of a foreign order of protection against domestic violence that is accorded full faith and credit under Florida Law are misdemeanors

H. Child Custody and Visitation

- Provides that evidence of a false accusation of domestic violence or child abuse must be considered by the court in child custody determinations
- Evidence of domestic or child abuse would be evidence of detriment to a child for purposes of denying shared parental responsibility or restricting visitation rights even if no injunction for protection against domestic violence was in existence.
- Evidence that a parent has been convicted of a felony of the third degree or higher involving domestic violence creates a rebuttable presumption of detriment to a child

I. Mediation

The bill prohibits the court from referring cases to mediation if it finds that there is a history of domestic violence, even if it would *not* compromise the mediation process

The bill has an effective date of October 1, 1997.

This bill substantially amends the following sections of the Florida Statutes. 28 24, 44 102, 61.13, 741 28, 741 30, 784 046, 784 047, 901 15, and creates section 741 315 of the Florida Statutes

II. Present Situation:

A. Terms of the Injunction

- 1 The right to injunction for protection against domestic or repeat violence

Presently "domestic violence" is defined as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, or any criminal offense resulting in physical injury or death of one family or household member by another who is or was residing in the same single dwelling unit s 741.28(1), F.S Further, "family or household member" is defined as spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who have a child in common regardless of whether they have been married or have resided together at any time. s 741 28(2), F S Any person who is the victim of domestic violence or has reasonable cause to believe they may become a victim of domestic violence may file for an injunction for protection s. 741.30, F S., 1996 Supp.

Courts have found that an injunction for protection is appropriate when the petitioner proves he or she has *reasonable cause* to believe that he or she may become a victim of domestic violence and the respondent has the capacity to fulfill this belief. *Rey v. Perez-Gurri*, 662 So.2d 1328 (3rd DCA, 1995) (holding that a temporary injunction for protection was appropriate where respondent had made verbal threats to the petitioner and had demonstrated the past behavior linked to the threat); *Cf. Trowell v. Meads*, 618 So 2d 351 (1st DCA, 1993) (finding that although the defendant had committed an assault upon the plaintiff via the telephone, it was unreasonable for her to believe she was about to become a victim of domestic violence since the defendant was involuntarily confined at the Florida State Hospital in Chattahoochee)

To obtain an injunction for protection against repeat violence, one must file a sworn petition that two incidents of violence or stalking have been committed by the respondent against the person seeking protection, one of which must have occurred within 6 months of filing the petition requesting protection s 784 046, F S. Violence as used for this purpose is defined as any assault, battery, sexual battery, or stalking by one person against another *Id.*

2 Role of the Clerk of the Court

Petitioners must file petitions for an injunction for protection with the court The clerk of the court is directed to assist the petitioner in preparing the form, which includes providing informational brochures, simplified forms, privacy, trained assistants, and alternative means of paying the filing fee s 741 30(2)(c), F S, 1996 Supp After the petition has been filed, the court is required to set a hearing at the earliest possible time s 741.30(4), F S , 1996 Supp. Prior to the hearing, the respondent must be served with a copy of the petition, financial affidavit, uniform child custody jurisdiction act affidavit, if any, notice of hearing and temporary injunction, if any *Id*

3. Ex Parte Injunctions

When the court believes that "an immediate and present danger of domestic or repeat violence exists," the court may issue a temporary injunction *ex parte*. s. 741 30, F S., 1996

Supp and s 784 046, F S respectively An order is *ex parte* if it is issued at the instance and for the benefit of one party only, and without notice to, or contestation by, any person adversely interested. Black's Law Dictionary, 4th Ed Rev 661, 1970

To obtain an *ex parte* injunction the petitioner need only offer the verified pleading or affidavits as evidence, unless the respondent appears at the hearing or has received reasonable notice of the hearing. s. 741 30(5)(b), F.S , 1996 Supp. and 784 046((6)(b), F S. If the court denies a petition for an *ex parte* domestic violence injunction, it must do so in a written order, stating the legal grounds for denial s 741 30(5)(b), F.S., 1996 Supp "If the only ground for denial is no appearance of an immediate and present danger of domestic violence, the court must set a full hearing on the petition for injunction with notice at the earliest possible time." *Id.*

In the temporary *ex parte* injunction, the court may provide the following forms of relief for a period of fifteen days. restraining the respondent from committing any acts of domestic violence, awarding the petitioner exclusive use and possession of the residence the parties may share, excluding the respondent from the petitioner's residence; awarding temporary custody of children; ordering any other relief deemed necessary by the court for the protection of the victim. s. 741 30(5)(a), F S , 1996 Supp

4. Injunctions after notice and an opportunity to be heard

Current law provides that upon notice and hearing, the court may grant such relief as the court deems proper, including an injunction: restraining the respondent from committing any acts of domestic violence, awarding to the petitioner the exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner, on the same basis as provided in chapter 61, awarding temporary custody of, or temporary visitation rights with regard to, a minor child or children of the parties, on the same basis as provided in chapter 61, establishing temporary support for a minor child or children or the petitioner, ordering the respondent to participate in treatment, intervention, or counseling services, and ordering such other relief as the court deems necessary for the protection of a victim of domestic violence, including injunctions or directives to law enforcement agencies s 741.30(6)(a), F S., 1996, Supp.

Presently, an injunction for protection against domestic or repeat violence issued after notice and an opportunity to be heard, is granted for a fixed period not to exceed 1 year, unless upon petition of the victim, the court extends the injunction for successive fixed periods not to exceed 1 year. s 741 30(6)(b), F.S , 1996, Supp. and s 784 046, F.S respectively The court has broad discretion to grant an extension of an injunction for protection against domestic violence after considering the circumstances and no specific allegations are required s. 741 30(6)(b), F.S., 1996, Supp.

An injunction issued under s. 741 30, F S , 1996, Supp , must, on its face, indicate that the injunction is valid and enforceable in all counties of the State of Florida and that law

enforcement officers may use their arrest powers pursuant to s 901 15(6) to enforce the terms of the injunction s. 741.30(6)(c), F.S., 1996, Supp There is no similar requirement for an injunction for protection against repeat violence. ch 784, F S.

B. Hearing

After granting an ex parte injunction, a full hearing must follow within fifteen days s. 741.30(5)(c), F S., 1996 Supp ; *Lewis v. Lewis*, No. 96-2905/2907, slip op. at 5-6 (Fla 1st DCA Mar. 20, 1997) (holding that the trial court erred by not allowing the parties to present evidence and witnesses at a hearing to continue an injunction for protection before determining custody arrangements) However, "the court may grant a continuance of the ex parte injunction and the full hearing before or during a hearing for good cause shown by any party, which include a continuance to obtain service of process " s 741 30(5)(c), F S , 1996 Supp.

At the full hearing, the respondent and the petitioner have the right to present evidence and a reasonable opportunity to know the claims of the opposing party *See* Blacks' Law Dictionary, 4th Ed. Rev, 801, citing *Morgan v. U.S.*, 58 S.Ct 773, 776, 777 Although trial courts have been placed under extreme time pressures to consider the extension of an ex parte injunctions, the right to a full evidentiary hearing has been upheld by the First District Court of Appeal *Lewis v. Lewis*, No 96-2905/2907, slip op at 5. In this particular case, the court found that "the constitution, statute and rules at the very least require that parties will have a reasonable opportunity to present their case prior to the court making its decision " *Id.* at 6

C. Costs

Section 28.241 (1), F.S , provides for a \$40 service charge for filing any civil action with the clerk of court. The section also provides for the following additional fees.

- An \$8 service charge for each civil action, of the \$8, \$7 is remitted to general revenue, \$1 to the clerk
- An additional charge of \$2 50 that is paid into the Court Education Trust fund
- The governing authority of the county may provide, by ordinance or any special local law, for additional charges for law libraries and legal aid
- The county also may charge an additional \$10 for each civil action for costs associated with public guardianship
- Postal charges may also be included for mailing.

The sum of the fees may not exceed \$200

Section 30 231, F.S , provides a sheriffs' service fee of \$20

Currently, in the event the victim does not have sufficient funds with which to pay filing fees for a protective injunction to the clerk of the court or service fees to the sheriff or law enforcement agency and signs an affidavit stating so, the fees shall be waived by the clerk of the court or the

sheriff or law enforcement agency to the extent necessary to process the petition and serve the injunction, subject to a subsequent order of the court relative to the payment of such fees

D. Enforcement

Law enforcement officers may lawfully arrest a person without a warrant if there is probable cause to believe that the person has committed a criminal act in violation of an injunction against domestic violence or an injunction against repeat violence, over the objection of the petitioner, if necessary. s. 901.15(6), F.S., 1996, Supp. Further, law enforcement officers may lawfully arrest a person without a warrant if there is probable cause to believe that the person has committed an act of domestic violence, as defined in s. 741.28; child abuse, as defined in s. 827.04(2) and (3), or any battery upon another person, as defined in s. 784.03 s. 901.15(7), F.S., 1996, Supp. With respect to an arrest for an act of domestic violence, the decision to arrest shall not require consent of the victim or consideration of the relationship of the parties. *Id.* A law enforcement officer who acts in good faith and exercises due care in making an arrest under this subsection is immune from civil liability that otherwise might result by reason of his action. *Id.* Finally, law enforcement officers may lawfully arrest a person without a warrant if there is probable cause to believe that the person has committed an act of repeat violence in violation of an injunction for protection from repeat violence entered pursuant to s. 784.046. s. 901.15(8), F.S., 1996, Supp.

E. Treatment, Intervention and Counseling

An injunction for protection against domestic violence may order a respondent to counseling, treatment, or intervention services s. 741.30(6)(a)5., F.S., 1996 Supp.

F. False Accusation

Anyone who knowingly makes a false statement under oath in an official proceeding, is guilty of a felony of the third degree punishable as provided by law. s. 837.02, F.S.

G. Full Faith and Credit: Enforcement of Injunctions Issued in Other States

1 Federal law

Federal law provides that any protection order issued by a court of one State or Indian tribe with jurisdiction over the parties and which gave the person against whom the injunction was issued reasonable notice and an opportunity to be heard sufficient to protect that person's right to due process must be accorded full faith and credit by the court of another State or Indian tribe and enforced as if it were the order of that court. 18 U.S.C. s. 2265(a) and (b)(1994) If the order sought to be accorded full faith and credit was issued ex parte, notice and an opportunity to be heard must be provided within the time required by State or tribal law, and in any event within a reasonable time after the order is issued, sufficient to protect the right to due process of the person against whom the order is sought. *Id.* The federal law specifically denies full faith and credit to any protection order that was issued against the

alleged victim of domestic violence if no written pleading was filed requesting the petition, or if a written pleading was filed, the court did not make specific findings that each party was entitled to an order of protection 28 U S C s. 2265(c)(1994)

2 Other states

Twelve states have passed specific legislation to extend full faith and credit to foreign protection orders. Of those 12 states, only does not attach conditions which must be met before the state will enforce foreign protection orders.

3 Florida law

Current Florida law makes no provision specifically for the enforcement of an injunction for protection against domestic violence or an injunction for protection against repeat violence issued outside the State of Florida. In Florida, a copy of any foreign judgment certified in accordance with the laws of the United States or of this state may be recorded in the office of the clerk of the circuit court of any county. s. 55 503, F S. The clerk must file, record, and index the foreign judgment in the same manner as a judgment of a circuit or county court of this state. A judgment so recorded shall have the same effect and shall be subject to the same rules of civil procedure, legal and equitable defenses, and proceedings for reopening, vacating, or staying judgments, and it may be enforced, released, or satisfied, as a judgment of a circuit or county court of this state. *Id.* The person recording the foreign judgment must pay to the clerk of court whatever fee is required for the recording of an original action demanding the relief or judgment granted in the foreign judgment. *Id.* This applies to any foreign judgment that is final and conclusive and enforceable where it was issued, even though appeal may be pending or the order is still subject to appeal. s. 55 603, F S.

H. Child custody and visitation

All matters relating to child custody must be determined by the courts in accordance with the best interests of the child. s. 61 13(2)(b), F S., 1996 Supp. For purposes of shared parental responsibility and primary residence, best interests includes an evaluation of 11 specified factors affecting the welfare and interests of the child. s. 61 13(3), F S., 1996 Supp. Further, the court must consider evidence that a parent has been convicted of a felony of the second degree or higher involving domestic violence as a rebuttable presumption of detriment to the child. *Id.* If this presumption is not rebutted, then the court may not grant shared parental responsibility, including visitation, residence of the child, and decisions made regarding the child to the convicted parent. *Id.*

I. Mediation

Currently, the court cannot refer a case to mediation if it finds that there has been a "significant history of domestic abuse that would compromise the mediation process" s. 44 102, F S., 1996, Supp. According to the State Courts Administrator's Office, more than half of Florida's twenty

judicial circuits currently have in place some requirement that family law cases involving the custody of children must go to mediation before a trial

III. Effect of Proposed Changes:

A. Terms of the Injunction

The bill adds kidnaping and false imprisonment to the of acts included in the definition of domestic violence. The bill expands the relief a court may grant when issuing an injunction to specifically permit the court to also grant any relief the court deems necessary to protect any minor child of a victim of domestic violence.

The bill restricts those individuals eligible to file a petition for an injunction for protection to those who have been a victim of domestic violence in the past 6 months or who have reasonable cause to believe they are in *imminent* danger of becoming a victim. Under existing provisions, any one who has been a victim of domestic violence or has reasonable cause to believe they may become a victim has standing to file a petition for an injunction for protection s 741 30(1)(a), F S , 1996 Supp , *See also, Rey v. Perez-Gurri*, 662 So.2d at 1330.

The bill amends the period for which an injunction for protection against domestic violence may be issued after hearing to last indefinitely until modified or dissolved. The bill deletes any limitation of the duration of terms of an injunction for protection against domestic violence that award the petitioner exclusive use and possession that the parties share or excluding the respondent from the residence, that award temporary child custody, visitation, or support, or that order the respondent or petitioner to participate in treatment, intervention or counseling services. The bill specifies that either party may petition at any time to dissolve an injunction against domestic violence but makes no similar provision for an injunction against repeat violence. While this change would provide victims with extended protection, any relief granted on child custody, visitation, and support would also become indefinite in duration. This is contrary to the "temporary" child support, custody, or visitation the court is permitted by statute to grant in such injunctions s 741 30(6)(a), F.S., 1996, Supp. The bill amends the period for which an injunction against *repeat* violence may be issued after hearing to be for at least one year and to last indefinitely until further court order.

This amendment may limit those who might otherwise be eligible to seek an injunction for protection. Petitioners will have to prove that an act of domestic violence occurred within the past 6 months or that they have reasonable cause to believe they are in imminent danger. The court might interpret imminent danger by using the standard of self defense articulated in criminal case law. However, given the nature of domestic violence, court may determine that such a definition is inappropriate in the context of domestic violence.

An injunction issued under s. 741 30, F S., 1996, Supp., must, on its face, indicate that the injunction is valid and enforceable in all counties of the State of Florida and that law enforcement officers may use their arrest powers pursuant to s 901 15(6) to enforce the terms of the

injunction. s. 741.30(6)(c), F.S., 1996, Supp. The bill adds this requirement to injunctions against repeat violence. The bill adds to the information that an injunction against domestic violence must indicate on its face. Under the bill it must also state that the person against whom the injunction is issued had notice and an opportunity to be heard sufficient to protect that person's right to due process and, if obtainable, the date that person was served with the temporary or final order. However, the bill does not add these requirements to an injunction against repeat violence. This change is to ensure that the fact that an injunction against domestic violence issued in the State of Florida meets the requirements for an order to be accorded full faith and credit under federal law are evident on the face of the injunction.

B. Hearing

The bill provides that any person, including an officer of the court, offering evidence or recommendations in a domestic violence case must do so under oath at a hearing with all parties present or in writing with copies to all parties. This portion of the bill is intended to address a specific concern that has arisen in at least one jurisdiction in which information and recommendations are provided by court personnel directly to the court without the parties being given an opportunity to present evidence or inquiry in opposition.

The bill provides that any injunction issued must remain in full force and effect during any period of continuance.

C. Costs

The bill amends s. 741.30(2)(a), F.S., to provide that, notwithstanding any other provision of law, the total charge for any court to issue an injunction concerning domestic violence, including any administrative fee, law enforcement agency charges, and any court costs or service charges, cannot exceed \$50. The total charge by any law enforcement agency to serve an injunction or restraining order concerning violence cannot exceed \$20. The remaining \$30 of the \$50 total can be applied only to the initial \$40 service charge collected by the clerk of court as provided in s. 28.241(1), F.S.

The bill amends s. 28.241(5), F.S., to provide that the clerk of court fees established in that section which would apply to an injunction concerning domestic violence are limited as provided in s. 741.30(2)(a), F.S.

D. Treatment, Intervention and Counseling

When a respondent is ordered to participate in treatment, intervention or counseling, such as a batterer's intervention course, the bill requires the court to provide the respondent with a list of providers acceptable to any court in the circuit from which the respondent must select a provider. In driving under the influence (DUI) and reckless driving cases, the court may direct the defendant to attend and complete a counseling course, but the court is not required to provide a list of possible providers. See ss. 316.193 and 316.192, F.S. However, unlike batterers'

intervention programs which may have hundreds of possible providers, all but two to three counties in Florida offer only one DUI course *See Task Force Report*, p 3 (noting that "in May 1996, approximately 1300 applications for batterers intervention provider programs and assessor certification were mailed to interested persons around the state and nation.. and an additional 100 applications have been mailed from the department."). Providing respondents with a list of possible courses may ease burdens placed on the court to select one provider, as well as provide useful information to guide the respondent's selection of a provider.

The bill allows the court to refer a petitioner to counseling if the court finds that it would be in the petitioner's best interest. A similar list of providers is to be made available to assist petitioners in selecting counseling providers.

E. False Accusation

The bill requires all petitions for an injunction for protection against domestic violence to contain, directly above the signature line, a statement in all capital letters and bold type, stating that the petitioner has read every statement made in the petition, that each statement is true and correct, and are being made under penalty of perjury, punishable as provided in s. 837.02, F.S. Further, the bill provides that evidence of a false accusation of domestic violence or child abuse is a factor to be considered by the court in a determination of shared parental responsibility or primary residency. In an effort to ensure that petitioners are aware of this repercussion, the bill requires court clerks to include the ramifications of false accusation within the informational brochure provided by statute to the petitioner.

The bill does not stipulate, however, the standard of proof that the court will rely upon when determining whether a parent has made a false allegation. Those accused of filing a false allegation may contend that they are entitled to a clear and convincing standard, based on procedural due process concerns. Based on the liberty interest involved, the loss of child custody, and the risk of erroneous deprivation, the court may agree. *See Matthews v. Eldridge*, 424 U.S. 319 (1976).

F. Full faith and credit: enforcement of injunctions issued in other states

1 Federal law

The Full Faith and Credit Clause of Article IV of the United States Constitution, states

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State; And the Congress may by general Laws prescribe the Manner in which such Acts, Records, and Proceedings shall be proved and the Effect thereof

In 1994, the Congress passed the Violence Against Woman Act that included a provision that full faith and credit was to be given by each state and Indian tribe to the protective orders

issued by other states and Indian tribes, provided the orders met certain criteria 18 U S C s 2265(a) and (b)(1994). The issuing court must:

- have jurisdiction over the parties,
- have provided the person against whom the injunction was issued reasonable notice and an opportunity to be heard sufficient to protect that person's right to due process,

If the order was issued ex parte, this second criterion may be met if the issuing court provided the notice and hearing within the time required by its law. The federal law specifically denies full faith and credit to any protection order that was issued against person who has filed a written pleading for protection if no written pleading was filed requesting the petition or, if a written pleading was filed, the court did not make specific findings that each party was entitled to an order of protection. 28 U.S.C. s 2265(c)(1994).

Nowhere in the act did Congress exercise its authority under the second portion of the Full Faith and Credit Clause of the Constitution and therefore left to the states the determination of the manner in which such protective orders shall be proven and given effect

The bill states that pursuant to federal law this state must enforce the protection orders issued in other states without setting out the express criteria that such orders must meet before the federal law cited applies 18 U S.C s 2265 This could result in the violation of the rights of individuals who are mistakenly arrested based upon orders to which the federal law does not apply

2 Other states

Twelve states have passed specific legislation to extend full faith and credit to foreign protection orders. Of those 12 states, only Alabama does not attach conditions which must be met before the state will enforce foreign protection orders In 1995, Alabama added a paragraph of law that simply states that the protective orders of other states will be accorded full faith and credit and enforced as if it were an order of this state AL Code 1975 s 30-4-4 (1996 Supp).

3. Florida law

a. Statutory registration of foreign injunctions

Foreign orders of protection can be registered with the clerk of the court and then enforced as if it were an order issued in Florida s 55.503, F.S The bill however, specifically provides that the current Florida law regarding enforcement of foreign judgments will not apply to injunctions for protection Further, the bill prohibits law enforcement from requiring a registration affidavit as a condition of enforcement

b. Enforcement

The bill provides that a foreign order of protection will be accorded full faith and credit and enforced as if it were an order of this state provided that the issuing court had jurisdiction over the parties and the subject matter and that reasonable notice and an opportunity to be heard was given to the person against whom the order is sought sufficient to protect the person's due process rights. This attempts to restate the federal criteria at 18 U.S.C. s. 2265.

However, the bill makes no provision for determining the first criterion of the federal law, whether the issuing authority had jurisdiction over the parties. Instead, law enforcement upon being presented with a copy of a foreign injunction, must enforce all of its terms, except those matters related to child custody or support, as if it were issued in Florida. The bill specifically states that a true or certified copy of the order is not necessary. Eliminating any requirement that the order bear some indicia of authenticity, could result in the arrest and consequent violation of rights of persons who have no valid order against them.

The bill contains no specific language for determining the second criterion of the federal law, whether the issuing authority provided the respondent with notice and an opportunity to be heard. Only reasonable efforts of verification that the order has in fact been served on the respondent are required, and that requirement may be met by having the petitioner swear that the respondent was served or knows of the contents of the order. If the respondent is present, that person may also swear whether the order was or was not served. If both parties are present and one swears there was service and one swears there was not, it appears the officer will have to make a decision as to credibility and then proceed. Eliminating any requirement there be a determination of some certainty that the respondent has been served and therefore is on notice that their action is a violation of law, could result in the arrest and consequent violation of rights of persons who are not in violation of any valid order of which they had knowledge from another state. The bill makes it a misdemeanor to intentionally provide to a law enforcement officer a copy of an order of protection known by that person to be false or invalid or for a respondent who has been served with a protective order to deny that service has occurred.

c. Voluntary registration of foreign injunctions

The bill provides a voluntary registration process which permits a person to present a certified copy of a foreign order of protection to any sheriff in Florida and after swearing out an affidavit that the order as presented is currently in effect and has not been superseded, may request that the order be registered in the injunction registry. FDLE must develop a special notation for foreign orders of protection. If it is not apparent on the order, the sheriff will use best efforts to ascertain whether the order was served on the respondent. The sheriff must assign a case number and give the protected person a receipt showing registration of the foreign order. There shall be no fee to register a foreign order of protection.

G. Child Custody and Visitation

The bill provides that whether an injunction against domestic violence exists the court must consider evidence of domestic violence or child abuse as evidence of detriment to the child. There is no language creating a rebuttable presumption as to detriment as there is if the evidence of domestic violence is a conviction of a felony of the second degree or higher involving domestic violence

The bill amends the provision that the court currently must consider evidence that a parent has been convicted of a felony of the second degree or higher involving domestic violence as a rebuttable presumption of detriment to the child to include felonies of the *third* degree or higher. In 1995, the legislature created s 784 035, F S., to provide that a third conviction of a misdemeanor involving acts of domestic violence can be prosecuted as a felony of the third degree The change proposed by this bill would allow evidence of a conviction under this "third strike" rule to create a rebuttable presumption of detriment to the child

The bill repeats the current statutory language "spousal" abuse, restricting this provision to parents in initial divorce litigation, excluding those who have not been married or who are no longer married (unless the abuse occurred during the marriage) despite the fact that s 61 13(3), F S , 1996, Supp , applies to all modification proceedings on child custody and applies equally to parents whose children are born out of wedlock *Arthur v. Anderson*, 681 So 2d 796 (Fla 3d DCA 1996)(citations omitted) Further, domestic violence as defined under Florida law includes acts of abuse between persons who have a child in common whether or not they have ever been married or resided together at any time s. 741.28(2), F.S.

H. Mediation

The bill would prohibit any case in which the court finds there to be a history of domestic violence from being mediated This would end use of mediation as an alternative to trial for child support and custody or other economic issues regardless of whether the history of domestic violence is significant enough to interfere with the mediation process Instead persons who have had any history of domestic violence, and it is assumed that any allegation proven or not at any point in time prior to the case being mediated would qualify as "history", will have to work out a settlement themselves or must go to trial.

According the Office of the State Courts Administrator, a large and increasing number of persons who are parties to a family law case are not represented by attorneys Foreclosing the option of mediation could make it more difficult for an alleged victim to negotiate a fair settlement or could significantly add to the costs for persons who could avoid trial through the mediation process According to the Office of the State Courts Administrator's Dispute Resolution Center which certifies and monitors the training of mediators in Florida, all family law mediators receive training in domestic violence issues and dynamics Specifically, the training teaches mediators how to identify the indicators of domestic violence and understand the impact it has on the parties and their capacity to participate meaningfully in the mediation process

IV. Constitutional Issues:

A Municipality/County Mandates Restrictions:

The bill will reduce the amount of the fees for filing specified types of civil actions. This will result in less funds for the state, the clerks of the circuit court, and local governments. Also, the bill establishes a lower service fee for the sheriffs, which will result in losses to these offices. The total loss for any of these entities is indeterminable.

B Public Records/Open Meetings Issues:

The bill provides that law enforcement, the judiciary, and the clerks of court are prohibited from disclosing the location of a petitioner seeking to enforce or register a foreign order. This may need to be clarified to ensure that employees and others assisting in the enforcement can communicate to assure petitioner's safety as necessary and alternative means of service for petitioner need to be provided so that the accused may conduct discovery or make counterclaims. Further, this may be an exemption to the public records law and therefore would need to be contained in a separate bill. Art 1, s 24(d), Florida Constitution

C Trust Funds Restrictions

None

D. Other Constitutional Issues:

Requiring law enforcement officers to arrest a person based upon an order that neither the validity of which nor the fact that the person against whom it was issued may not have notice of its existence is required to be confirmed, could deprive persons arrested based upon such orders of due process under the Federal and State constitutions if in fact the orders are not valid or the person arrested had no notice of the order against them. Expanding the federal law to encompass all protective orders rather than those meeting the federal criteria could result in enforcement of an order that was issued in violation of a person's constitutional rights. Providing absolute immunity to law enforcement officers and the officers' employing agencies from any liability, civil or criminal, that might be incurred or imposed by reason of actions in carrying out enforcement of a foreign protection order, would close off any recourse for constitutional violations related to the invalidity of the order or its service during the arrest or while held in custody awaiting the opportunity to be heard.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B Private Sector Impact:

The bill will reduce the costs and fees for filing for a domestic violence injunction or restraining order and will reduce the charge for any law enforcement agency to serve an injunction or restraining order.

Persons who are wrongfully arrested will have costs of litigation and may suffer other negative financial impacts.

C. Government Sector Impact.

Indeterminate. The bill reduces filing fees and charges for a domestic violence injunction or restraining order and reduces sheriffs' charges for serving these injunctions and orders. This will result in indeterminable losses to the sheriffs, the clerks of the circuit court, local governments, and the state

The administrative responsibilities imposed on the sheriffs relative to registration of foreign orders will have an indefinite fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Attorney General's opinion on the enforcement of foreign injunctions states that registration of a foreign injunction in Florida would require notice to the respondent. AGO 96-71 (September 12, 1996) However, the notice requirement for registration specifically refers only registration by a judgment creditor. s. 55.505, F.S. That opinion also interprets the federal law as preempting any registration mandate. *Id* However, the federal law is silent as to any enactment requirements.

VIII. Amendments:

None

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date April 16, 1997 Revised: _____

Subject Child Custody/Abuse

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1	<u>Moody</u>	<u>Lang</u>	<u>JU</u>	<u>Favorable/CS</u>
2	_____	_____	_____	_____
3	_____	_____	_____	_____
4	_____	_____	_____	_____
5	_____	_____	_____	_____

I. Summary:

A. Terms of the Injunction

- Requires petitioners seeking an injunction for protection have cause to believe he or she is in imminent danger of becoming a victim of domestic violence
- Requires that the act of domestic violence occurred within 6 months before filing a petition for an injunction for protection against domestic violence
- Provides the court may grant any relief the court deems necessary to protect any minor child of a victim of domestic violence
- Amends the period for which certain relief awarded in an injunction for protection against domestic violence may be issued after hearing to last until modified or dissolved
- Deletes any time limitation for other types of relief the domestic violence injunction may contain
- Amends the period for which certain relief awarded in an injunction for protection against repeat violence may be issued after hearing to last until modified or dissolved
- Requires that an injunction against domestic or repeat violence indicate on its face that the person against whom the injunction is issued had notice and an opportunity to be heard sufficient to protect that person's right to due process and, if obtainable, the date that person was served with the temporary or final order.

B. Hearings

- Provides that any person, including an officer of the court, offering evidence or recommendations in a domestic violence case must do so under oath at a hearing with all parties present or in writing with copies to all parties

- Provides that an injunction for protection against domestic violence is in full force and effect for the period of continuance whenever a hearing is continued.

C. Costs

The bill places a \$50 limit on the total costs and fees for a court to issue an injunction or restraining order, with a limit of \$20 on the total charge for any law enforcement agency to serve an injunction or restraining order and the remaining \$30 to be applied to the clerk's fee

D. Enforcement

- Requires that an injunction for protection against repeat violence must state on its face that the injunction is valid and enforceable in all counties in the State of Florida
- Requires that an injunction for protection against repeat violence must state on its face that law enforcement officers may use their arrest powers under 901 15(6) to enforce the terms of the injunction
- Provides for good faith immunity from any liability, both civil or criminal, for law enforcement officers in enforcing injunctions for protection against repeat violence

E. Treatment, Intervention and Counseling

- Provides that the court may order a petitioner to treatment, intervention, or counseling if it is in the petitioner's best interest
- Requires the court to provide a list of counseling services available to those respondents or petitioners ordered to attend treatment, intervention, or counseling

F. False Accusation

- Provides that evidence of a false accusation of domestic violence or child abuse must be considered by the court in child custody determinations
- Requires that information about the effect of a false accusation be included in the brochure the clerk of the court is required by current law to provide to any one filing for an injunction for protection against domestic or repeat violence
- Requires that every petition for an injunction for protection against domestic violence contain specified language directly above the signature line about the penalty for a false accusation

G. Full Faith and Credit: Enforcement of Injunctions Issued in Other States

The bill creates a new section to implement the federal law requiring states to grant full faith and credit to the protection orders of other states or Indian tribes. The bill does not require the person seeking enforcement of the order to be a resident of Florida or to ever register the foreign judgment under s. 55 505, F S Instead the bill provides

- An optional procedure for placing a foreign injunction on the registry of injunctions for protection currently maintained by the Florida Department of Law Enforcement and for registering it.
- An optional procedure for registering a foreign injunction with local law enforcement
- Procedures for law enforcement to follow to enforce an order of protection from a foreign jurisdiction, including verification of identities and reasonable efforts to verify service.
- Complete good faith immunity to law enforcement in enforcing a foreign injunction
- That the foreign injunction shall be in force in Florida until its date of expiration,
- Criminal penalties for persons attempting to enforce an order they know to be false or falsely denying having received service of a valid order.
- That law enforcement officers may use their arrest powers under 901 15(6) to enforce the terms of a foreign injunction.
- That specified acts, if done in violation of a foreign order of protection against domestic violence that is accorded full faith and credit under Florida Law are misdemeanors

H. Child Custody and Visitation

- Provides that evidence of domestic violence or child abuse must be considered by the court in child custody determinations.
- Provides that evidence of a false accusation of domestic violence or child abuse must be considered by the court in child custody determinations.
- Evidence of domestic or child abuse would be evidence of detriment to a child for purposes of denying shared parental responsibility or restricting visitation rights even if no injunction for protection against domestic violence was in existence
- Evidence that a parent has been convicted of a felony of the third degree or higher involving domestic violence creates a rebuttable presumption of detriment to a child

I. Mediation

The bill provides that upon the motion of any party, the court must not refer the case to mediation if it finds that there is a history of domestic violence that would compromise the mediation process

The bill has an effective date of October 1, 1997.

This bill substantially amends the following sections of the Florida Statutes: 28.24, 44 102, 61 13, 741 28, 741 30, 784.046, 784.047, 901.15; and creates section 741.315 of the Florida Statutes.

II. Present Situation:

A. Terms of the Injunction

1 The right to injunction for protection against domestic or repeat violence

Presently “domestic violence” is defined as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, or any criminal offense resulting in physical injury or death of one family or household member by another who is or was residing in the same single dwelling unit. s. 741.28(1), F.S. Further, “family or household member” is defined as spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who have a child in common regardless of whether they have been married or have resided together at any time s. 741.28(2), F.S. Any person who is the victim of domestic violence or has reasonable cause to believe they may become a victim of domestic violence may file for an injunction for protection s. 741.30, F.S., 1996 Supp.

Courts have found that an injunction for protection is appropriate when the petitioner proves he or she has *reasonable cause* to believe that he or she may become a victim of domestic violence and the respondent has the capacity to fulfill this belief. *Rey v. Perez-Gurri*, 662 So 2d 1328 (3rd DCA, 1995) (holding that a temporary injunction for protection was appropriate where respondent had made verbal threats to the petitioner and had demonstrated the past behavior linked to the threat); *Cf. Trowell v. Meads*, 618 So 2d 351 (1st DCA, 1993) (finding that although the defendant had committed an assault upon the plaintiff via the telephone, it was unreasonable for her to believe she was about to become a victim of domestic violence since the defendant was involuntarily confined at the Florida State Hospital in Chattahoochee)

To obtain an injunction for protection against repeat violence, one must file a sworn petition that two incidents of violence or stalking have been committed by the respondent against the person seeking protection, one of which must have occurred within 6 months of filing the petition requesting protection s. 784.046, F.S. Violence as used for this purpose is defined as any assault, battery, sexual battery, or stalking by one person against another. *Id*

2 Role of the Clerk of the Court

Petitioners must file petitions for an injunction for protection with the court. The clerk of the court is directed to assist the petitioner in preparing the form, which includes providing informational brochures, simplified forms, privacy, trained assistants, and alternative means of paying the filing fee s. 741.30(2)(c), F.S., 1996 Supp. After the petition has been filed, the court is required to set a hearing at the earliest possible time. s. 741.30(4), F.S., 1996 Supp. Prior to the hearing, the respondent must be served with a copy of the petition, financial

affidavit, uniform child custody jurisdiction act affidavit, if any, notice of hearing and temporary injunction, if any. *Id.*

3. Ex Parte Injunctions

When the court believes that “an immediate and present danger of domestic or repeat violence exists,” the court may issue a temporary injunction *ex parte* s. 741.30, F S , 1996 Supp. and s. 784.046, F S respectively. An order is *ex parte* if it is issued at the instance and for the benefit of one party only, and without notice to, or contestation by, any person adversely interested. Black’s Law Dictionary, 4th Ed. Rev. 661, 1970.

To obtain an *ex parte* injunction the petitioner need only offer the verified pleading or affidavits as evidence, unless the respondent appears at the hearing or has received reasonable notice of the hearing. s. 741 30(5)(b), F.S., 1996 Supp. and 784.046((6)(b), F S. If the court denies a petition for an *ex parte* domestic violence injunction, it must do so in a written order, stating the legal grounds for denial s. 741 30(5)(b), F S , 1996 Supp. “If the only ground for denial is no appearance of an immediate and present danger of domestic violence, the court must set a full hearing on the petition for injunction with notice at the earliest possible time ” *Id*

In the temporary *ex parte* injunction, the court may provide the following forms of relief for a period of fifteen days restraining the respondent from committing any acts of domestic violence; awarding the petitioner exclusive use and possession of the residence the parties may share, excluding the respondent from the petitioner’s residence, awarding temporary custody of children; ordering any other relief deemed necessary by the court for the protection of the victim. s. 741 30(5)(a), F S , 1996 Supp

4. Injunctions after notice and an opportunity to be heard.

Current law provides that upon notice and hearing, the court may grant such relief as the court deems proper, including an injunction restraining the respondent from committing any acts of domestic violence, awarding to the petitioner the exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner; on the same basis as provided in chapter 61, awarding temporary custody of, or temporary visitation rights with regard to, a minor child or children of the parties, on the same basis as provided in chapter 61, establishing temporary support for a minor child or children or the petitioner, ordering the respondent to participate in treatment, intervention, or counseling services; and ordering such other relief as the court deems necessary for the protection of a victim of domestic violence, including injunctions or directives to law enforcement agencies s. 741 30(6)(a), F S , 1996, Supp

Presently, an injunction for protection against domestic or repeat violence issued after notice and an opportunity to be heard, is granted for a fixed period not to exceed 1 year, unless upon petition of the victim, the court extends the injunction for successive fixed periods not

to exceed 1 year s. 741.30(6)(b), F.S., 1996, Supp. and s. 784.046, F.S. respectively. The court has broad discretion to grant an extension of an injunction for protection against domestic violence after considering the circumstances and no specific allegations are required. s. 741.30(6)(b), F.S., 1996, Supp.

An injunction issued under s. 741.30, F.S., 1996, Supp., must, on its face, indicate that the injunction is valid and enforceable in all counties of the State of Florida and that law enforcement officers may use their arrest powers pursuant to s. 901.15(6) to enforce the terms of the injunction. s. 741.30(6)(c), F.S., 1996, Supp. There is no similar requirement for an injunction for protection against repeat violence. ch. 784, F.S.

B. Hearing

After granting an ex parte injunction, a full hearing must follow within fifteen days s. 741.30(5)(c), F.S., 1996 Supp., *Lewis v. Lewis*, No. 96-2905/2907, slip op. at 5-6 (Fla. 1st DCA Mar. 20, 1997) (holding that the trial court erred by not allowing the parties to present evidence and witnesses at a hearing to continue an injunction for protection before determining custody arrangements). However, "the court may grant a continuance of the ex parte injunction and the full hearing before or during a hearing for good cause shown by any party, which include a continuance to obtain service of process." s. 741.30(5)(c), F.S., 1996 Supp.

At the full hearing, the respondent and the petitioner have the right to present evidence and a reasonable opportunity to know the claims of the opposing party. *See Blacks' Law Dictionary*, 4th Ed. Rev. 801, citing *Morgan v. U.S.*, 58 S.Ct. 773, 776, 777. Although trial courts have been placed under extreme time pressures to consider the extension of an ex parte injunctions, the right to a full evidentiary hearing has been upheld by the First District Court of Appeal *Lewis v. Lewis*, No. 96-2905/2907, slip op. at 5. In this particular case, the court found that "the constitution, statute and rules at the very least require that parties will have a reasonable opportunity to present their case prior to the court making its decision." *Id.* at 6.

C. Costs

Section 28.241 (1), F.S., provides for a \$40 service charge for filing any civil action with the clerk of court. The section also provides for the following additional fees:

- An \$8 service charge for each civil action; of the \$8, \$7 is remitted to general revenue, \$1 to the clerk
- An additional charge of \$2.50 that is paid into the Court Education Trust fund.
- The governing authority of the county may provide, by ordinance or any special local law, for additional charges for law libraries and legal aid
- The county also may charge an additional \$10 for each civil action for costs associated with public guardianship.
- Postal charges may also be included for mailing.

The sum of the fees may not exceed \$200

Section 30.231, F.S., provides a sheriff's service fee of \$20

Currently, in the event the victim does not have sufficient funds with which to pay filing fees for a protective injunction to the clerk of the court or service fees to the sheriff or law enforcement agency and signs an affidavit stating so, the fees shall be waived by the clerk of the court or the sheriff or law enforcement agency to the extent necessary to process the petition and serve the injunction, subject to a subsequent order of the court relative to the payment of such fees.

D. Enforcement

Law enforcement officers may lawfully arrest a person without a warrant if there is probable cause to believe that the person has committed a criminal act in violation of an injunction against domestic violence or an injunction against repeat violence, over the objection of the petitioner, if necessary s 901.15(6), F.S., 1996, Supp. Further, law enforcement officers may lawfully arrest a person without a warrant if there is probable cause to believe that the person has committed an act of domestic violence, as defined in s. 741.28, child abuse, as defined in s. 827.04(2) and (3), or any battery upon another person, as defined in s. 784.03 s 901.15(7), F.S., 1996, Supp. With respect to an arrest for an act of domestic violence, the decision to arrest shall not require consent of the victim or consideration of the relationship of the parties. *Id.* A law enforcement officer who acts in good faith and exercises due care in making an arrest under this subsection is immune from civil liability that otherwise might result by reason of his action. *Id.* Finally, law enforcement officers may lawfully arrest a person without a warrant if there is probable cause to believe that the person has committed an act of repeat violence in violation of an injunction for protection from repeat violence entered pursuant to s 784.046. s 901.15(8), F.S., 1996, Supp

E. Treatment, Intervention and Counseling

An injunction for protection against domestic violence may order a respondent to counseling, treatment, or intervention services s 741.30(6)(a)5., F.S., 1996 Supp

F. False Accusation

Anyone who knowingly makes a false statement under oath in an official proceeding, is guilty of a felony of the third degree punishable as provided by law. s 837.02, F.S.

G. Full Faith and Credit: Enforcement of Injunctions Issued in Other States

1. Federal law

Federal law provides that any protection order issued by a court of one State or Indian tribe with jurisdiction over the parties and which gave the person against whom the injunction was issued reasonable notice and an opportunity to be heard sufficient to protect that person's right to due process must be accorded full faith and credit by the court of another State or Indian tribe and enforced as if it were the order of that court 18 U.S.C. s. 2265(a) and

(b)(1994) If the order sought to be accorded full faith and credit was issued ex parte, notice and an opportunity to be heard must be provided within the time required by State or tribal law, and in any event within a reasonable time after the order is issued, sufficient to protect the right to due process of the person against whom the order is sought. *Id* The federal law specifically denies full faith and credit to any protection order that was issued against the alleged victim of domestic violence if no written pleading was filed requesting the petition, or if a written pleading was filed, the court did not make specific findings that each party was entitled to an order of protection 28 U S C. s. 2265(c)(1994)

2 Other states

Twelve states have passed specific legislation to extend full faith and credit to foreign protection orders. Of those 12 states, only does not attach conditions which must be met before the state will enforce foreign protection orders.

3. Florida law

Current Florida law makes no provision specifically for the enforcement of an injunction for protection against domestic violence or an injunction for protection against repeat violence issued outside the State of Florida. In Florida, a copy of any foreign judgment certified in accordance with the laws of the United States or of this state may be recorded in the office of the clerk of the circuit court of any county s. 55.503, F S The clerk must file, record, and index the foreign judgment in the same manner as a judgment of a circuit or county court of this state A judgment so recorded shall have the same effect and shall be subject to the same rules of civil procedure, legal and equitable defenses, and proceedings for reopening, vacating, or staying judgments, and it may be enforced, released, or satisfied, as a judgment of a circuit or county court of this state *Id* The person recording the foreign judgment must pay to the clerk of court whatever fee is required for the recording of an original action demanding the relief or judgment granted in the foreign judgment *Id* This applies to any foreign judgment that is final and conclusive and enforceable where it was issued, even though appeal may be pending or the order is still subject to appeal. s 55 603, F S

H. Child custody and visitation

All matters relating to child custody must be determined by the courts in accordance with the best interests of the child. s 61.13(2)(b), F.S., 1996 Supp For purposes of shared parental responsibility and primary residence, best interests includes an evaluation of 11 specified factors affecting the welfare and interests of the child. s 61 13(3), F S., 1996 Supp. Further, the court must consider evidence that a parent has been convicted of a felony of the second degree or higher involving domestic violence as a rebuttable presumption of detriment to the child *Id* If this presumption is not rebutted, then the court may not grant shared parental responsibility, including visitation, residence of the child, and decisions made regarding the child to the convicted parent *Id*

I. Mediation

Currently, the court cannot refer a case to mediation if it finds that there has been a “significant history of domestic abuse that would compromise the mediation process” s 44 102, F S , 1996, Supp According to the State Courts Administrator’s Office, more than half of Florida’s twenty judicial circuits currently have in place some requirement that family law cases involving the custody of children must go to mediation before a trial

III. Effect of Proposed Changes:

A. Terms of the Injunction

The bill adds kidnaping and false imprisonment to the of acts included in the definition of domestic violence. The bill expands the relief a court may grant when issuing an injunction to specifically permit the court to also grant any relief the court deems necessary to protect any minor child of a victim of domestic violence.

The bill restricts those individuals eligible to file a petition for an injunction for protection to those who have been a victim of domestic violence in the past 6 months or who have reasonable cause to believe they are in *imminent* danger of becoming a victim. Under existing provisions, any one who has been a victim of domestic violence or has reasonable cause to believe they may become a victim has standing to file a petition for an injunction for protection. s 741.30(1)(a), F S., 1996 Supp.; *See also, Rey v. Perez-Gurri*, 662 So.2d at 1330.

The bill amends the period for which an injunction for protection against domestic violence may be issued after hearing to last until modified or dissolved The bill deletes any limitation of the duration of terms of an injunction for protection against domestic violence that award the petitioner exclusive use and possession that the parties share or excluding the respondent from the residence, that award temporary child custody, visitation, or support, or that order the respondent or petitioner to participate in treatment, intervention or counseling services The bill specifies that either party may petition at any time to dissolve an injunction against domestic violence but makes no similar provision for an injunction against repeat violence. While this change would provide victims with extended protection, any relief granted on child custody, visitation, and support would also become indefinite in duration. This is contrary to the “temporary” child support, custody, or visitation the court is permitted by statute to grant in such injunctions s 741.30(6)(a), F S , 1996, Supp The bill amends the period for which an injunction against *repeat* violence may be issued after hearing to be for at least one year and to last until modified or dissolved

This amendment may limit those who might otherwise be eligible to seek an injunction for protection. Petitioners will have to prove that an act of domestic violence occurred within the past 6 months or that they have reasonable cause to believe they are in imminent danger The court might interpret imminent danger by using the standard of self defense articulated in criminal case

law. However, given the nature of domestic violence, court may determine that such a definition is inappropriate in the context of domestic violence.

An injunction issued under s 741.30, F.S., 1996, Supp., must, on its face, indicate that the injunction is valid and enforceable in all counties of the State of Florida and that law enforcement officers may use their arrest powers pursuant to s 901.15(6) to enforce the terms of the injunction. s 741.30(6)(c), F.S., 1996, Supp. The bill adds this requirement to injunctions against repeat violence. The bill adds to the information that an injunction against domestic or repeat violence must indicate on its face. Under the bill it must also state that the person against whom the injunction is issued had notice and an opportunity to be heard sufficient to protect that person's right to due process and, if obtainable, the date that person was served with the temporary or final order. This change is to ensure that the fact that an injunction against domestic violence issued in the State of Florida meets the requirements for an order to be accorded full faith and credit under federal law are evident on the face of the injunction.

B. Hearing

The bill provides that any person, including an officer of the court, offering evidence or recommendations in a domestic violence case must do so under oath at a hearing with all parties present or in writing with copies to all parties. This portion of the bill is intended to address a specific concern that has arisen in at least one jurisdiction in which information and recommendations are provided by court personnel directly to the court without the parties being given an opportunity to present evidence or inquiry in opposition.

The bill provides that any injunction issued against domestic violence must remain in full force and effect during any period of continuance.

C. Costs

The bill amends s 741.30(2)(a), F.S., to provide that, notwithstanding any other provision of law, the total charge for any court to issue an injunction concerning domestic violence, including any administrative fee, law enforcement agency charges, and any court costs or service charges, cannot exceed \$50. The total charge by any law enforcement agency to serve an injunction or restraining order concerning violence cannot exceed \$20. The remaining \$30 of the \$50 total can be applied only to the initial \$40 service charge collected by the clerk of court as provided in s 28.241(1), F.S.

The bill amends s 28.241(5), F.S., to provide that the clerk of court fees established in that section which would apply to an injunction concerning domestic violence are limited as provided in s 741.30(2)(a), F.S.

D. Treatment, Intervention and Counseling

When a respondent is ordered to participate in treatment, intervention or counseling, such as a batterer's intervention course, the bill requires the court to provide the respondent with a list of providers acceptable to any court in the circuit from which the respondent must select a provider. In driving under the influence (DUI) and reckless driving cases, the court may direct the defendant to attend and complete a counseling course, but the court is not required to provide a list of possible providers. See ss 316.193 and 316.192, F.S. However, unlike batterers' intervention programs which may have hundreds of possible providers, all but two to three counties in Florida offer only one DUI course. See *Task Force Report*, p 3 (noting that "in May 1996, approximately 1300 applications for batterers intervention provider programs and assessor certification were mailed to interested persons around the state and nation and an additional 100 applications have been mailed from the department."). Providing respondents with a list of possible courses may ease burdens placed on the court to select one provider, as well as provide useful information to guide the respondent's selection of a provider.

The bill allows the court to refer a petitioner to treatment, intervention, or counseling if the court finds that it would be in the petitioner's best interest. A similar list of providers is to be made available to assist petitioners in selecting providers.

E. False Accusation

The bill requires all petitions for an injunction for protection against domestic violence to contain, directly above the signature line, a statement in all capital letters and bold type, stating that the petitioner has read every statement made in the petition, that each statement is true and correct, and are being made under penalty of perjury, punishable as provided in s. 837.02, F.S. Further, the bill provides that evidence of a false accusation of domestic violence or child abuse is a factor to be considered by the court in a determination of shared parental responsibility or primary residency. In an effort to ensure that petitioners are aware of this repercussion, the bill requires court clerks to include the ramifications of false accusation within the informational brochure provided by statute to the petitioner.

The bill does not stipulate, however, the standard of proof that the court will rely upon when determining whether a parent has made a false allegation. Those accused of filing a false allegation may contend that they are entitled to a clear and convincing standard, based on procedural due process concerns. Based on the liberty interest involved, the loss of child custody, and the risk of erroneous deprivation, the court may agree. See *Matthews v Eldridge*, 424 U.S. 319 (1976).

F. Full faith and credit: enforcement of injunctions issued in other states**1. Federal law**

The Full Faith and Credit Clause of Article IV of the United States Constitution, states:

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State, And the Congress may by general Laws prescribe the Manner in which such Acts, Records, and Proceedings shall be proved and the Effect thereof.

In 1994, the Congress passed the Violence Against Woman Act that included a provision that full faith and credit was to be given by each state and Indian tribe to the protective orders issued by other states and Indian tribes, provided the orders met certain criteria 18 U.S.C. s 2265(a) and (b)(1994) The issuing court must:

- have jurisdiction over the parties,
- have provided the person against whom the injunction was issued reasonable notice and an opportunity to be heard sufficient to protect that person's right to due process,

If the order was issued ex parte, this second criterion may be met if the issuing court provided the notice and hearing within the time required by its law. The federal law specifically denies full faith and credit to any protection order that was issued against person who has filed a written pleading for protection if no written pleading was filed requesting the petition or, if a written pleading was filed, the court did not make specific findings that each party was entitled to an order of protection 28 U.S.C. s 2265(c)(1994)

Nowhere in the act did Congress exercise its authority under the second portion of the Full Faith and Credit Clause of the Constitution and therefore left to the states the determination of the manner in which such protective orders shall be proven and given effect

The bill states that pursuant to federal law this state must enforce the protection orders issued in other states without setting out the express criteria that such orders must meet before the federal law cited applies. 18 U.S.C. s 2265 This could result in the violation of the rights of individuals who are mistakenly arrested based upon orders to which the federal law does not apply.

2. Other states

Twelve states have passed specific legislation to extend full faith and credit to foreign protection orders. Of those 12 states, only Alabama does not attach conditions which must be met before the state will enforce foreign protection orders. In 1995, Alabama added a paragraph of law that simply states that the protective orders of other states will be accorded full faith and credit and enforced as if it were an order of this state. AL Code 1975 s 30-4-4 (1996 Supp)

3 Florida law

a. Statutory registration of foreign injunctions

Foreign orders of protection can be registered with the clerk of the court and then enforced as if it were an order issued in Florida. s. 55.503, F S The bill however, specifically provides that the current Florida law regarding enforcement of foreign judgments will not apply to injunctions for protection Further, the bill prohibits law enforcement from requiring a registration affidavit as a condition of enforcement

b Enforcement

The bill provides that a foreign order of protection will be accorded full faith and credit and enforced as if it were an order of this state provided that the issuing court had jurisdiction over the parties and the subject matter and that reasonable notice and an opportunity to be heard was given to the person against whom the order is sought sufficient to protect the person's due process rights. This attempts to restate the federal criteria at 18 U S C s. 2265

However, the bill makes no provision for determining the first criterion of the federal law, whether the issuing authority had jurisdiction over the parties Instead, law enforcement upon being presented with a copy of a foreign injunction, must enforce all of its terms, except those matters related to child custody or support, as if it were issued in Florida. The bill specifically states that a true or certified copy of the order is not necessary. Eliminating any requirement that the order bear some indicia of authenticity, could result in the arrest and consequent violation of rights of persons who have no valid order against them.

The bill contains no specific language for determining the second criterion of the federal law, whether the issuing authority provided the respondent with notice and an opportunity to be heard Only reasonable efforts of verification that the order has in fact been served on the respondent are required, and that requirement may be met by having the petitioner swear that the respondent was served or knows of the contents of the order If the respondent is present, that person may also swear whether the order was or was not served If both parties are present and one swears there was service and one swears there was not, it appears the officer will have to make a decision as to credibility and then proceed. Eliminating any requirement there be a determination of some certainty that the respondent has been served and therefore is on notice that their action is a violation of law, could result in the arrest and consequent violation of rights of persons who are not in violation of any valid order of which they had knowledge from another state. The bill makes it a misdemeanor to intentionally provide to a law enforcement officer a copy of an order of protection known by that person to be false or invalid or for a respondent who has been served with a protective order to deny that service has occurred

c Voluntary registration of foreign injunctions

The bill provides a voluntary registration process which permits a person to present a certified copy of a foreign order of protection to any sheriff in Florida and after swearing out an affidavit that the order as presented is currently in effect and has not been superseded, may request that the order be registered in the injunction registry. FDLE must develop a special notation for foreign orders of protection. If it is not apparent on the order, the sheriff will use best efforts to ascertain whether the order was served on the respondent. The sheriff must assign a case number and give the protected person a receipt showing registration of the foreign order. There shall be no fee to register a foreign order of protection.

G. Child Custody and Visitation

All matters relating to child custody must be determined by the courts in accordance with the best interests of the child. s. 61.13(2)(b), F.S., 1996 Supp. For purposes of shared parental responsibility and primary residence, best interests includes an evaluation of 11 specified factors affecting the welfare and interests of the child. s. 61.13(3), F.S., 1996 Supp. The bill adds both evidence of domestic violence or child abuse *and* evidence of a false accusation of domestic violence or child abuse to these factors.

The bill provides that whether an injunction against domestic violence exists the court must consider evidence of domestic violence or child abuse as evidence of detriment to the child. There is no language creating a rebuttable presumption as to detriment as there is if the evidence of domestic violence is a conviction of a felony of the second degree or higher involving domestic violence.

The bill amends the provision that the court currently must consider evidence that a parent has been convicted of a felony of the second degree or higher involving domestic violence as a rebuttable presumption of detriment to the child to include felonies of the *third* degree or higher. In 1995, the legislature created s. 784.035, F.S., to provide that a third conviction of a misdemeanor involving acts of domestic violence can be prosecuted as a felony of the third degree. The change proposed by this bill would allow evidence of a conviction under this "third strike" rule to create a rebuttable presumption of detriment to the child.

The bill repeats the current statutory language "spousal" abuse, restricting this provision to parents in initial divorce litigation, excluding those who have not been married or who are no longer married (unless the abuse occurred during the marriage) despite the fact that s. 61.13(3), F.S., 1996, Supp., applies to all modification proceedings on child custody and applies equally to parents whose children are born out of wedlock. *Arthur v. Anderson*, 681 So. 2d 796 (Fla. 3d DCA 1996)(citations omitted). Further, domestic violence as defined under Florida law includes acts of abuse between persons who have a child in common whether or not they have ever been married or resided together at any time. s. 741.28(2), F.S.

H. Mediation

The bill would allow the court, upon the motion of any party, to prohibit any case in which the court finds there to be a history of domestic violence that would compromise the mediation process from being mediated. This would permit parties to bring this issue to the court's attention when necessary to prevent the use of mediation when it may be inappropriate. The bill amends the current qualifier in the statute that the history of domestic violence be "significant".

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

The bill will reduce the amount of the fees for filing specified types of civil actions. This will result in less funds for the state, the clerks of the circuit court, and local governments. Also, the bill establishes a lower service fee for the sheriffs, which will result in losses to these offices. The total loss for any of these entities is indeterminable.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues

Requiring law enforcement officers to arrest a person based upon an order that neither the validity of which nor the fact that the person against whom it was issued may not have notice of its existence is required to be confirmed, could deprive persons arrested based upon such orders of due process under the Federal and State constitutions if in fact the orders are not valid or the person arrested had no notice of the order against them. Expanding the federal law to encompass all protective orders rather than those meeting the federal criteria could result in enforcement of an order that was issued in violation of a person's constitutional rights. Providing absolute immunity to law enforcement officers and the officers' employing agencies from any liability, civil or criminal, that might be incurred or imposed by reason of actions in carrying out enforcement of a foreign protection order, would close off any recourse for constitutional violations related to the invalidity of the order or its service during the arrest or while held in custody awaiting the opportunity to be heard.

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

None.

B. Private Sector Impact.

The bill will reduce the costs and fees for filing for a domestic violence injunction or restraining order and will reduce the charge for any law enforcement agency to serve an injunction or restraining order.

Persons who are wrongfully arrested will have costs of litigation and may suffer other negative financial impacts.

C. Government Sector Impact:

Indeterminate The bill reduces filing fees and charges for a domestic violence injunction or restraining order and reduces sheriffs' charges for serving these injunctions and orders. This will result in indeterminable losses to the sheriffs, the clerks of the circuit court, local governments, and the state.

The administrative responsibilities imposed on the sheriffs relative to registration of foreign orders will have an indefinite fiscal impact.

VI. Technical Deficiencies:

None

VII. Related Issues:

The Attorney General's opinion on the enforcement of foreign injunctions states that registration of a foreign injunction in Florida would require notice to the respondent AGO 96-71 (September 12, 1996). However, the notice requirement for registration specifically refers only registration by a judgment creditor s 55 505, F S That opinion also interprets the federal law as preempting any registration mandate *Id* However, the federal law is silent as to any enactment requirements

VIII. Amendments:

None

STORAGE NAME: h0055s1z.flc

DATE: June 13, 1997

****AS PASSED BY THE LEGISLATURE****

CHAPTER #: 97-155, Laws of Florida

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FAMILY LAW AND CHILDREN
FINAL BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 55

RELATING TO: Protection Against Domestic Violence

SPONSOR(S): Committee on Family Law and Children and Representative Morse

STATUTE(S) AFFECTED: Sections 28.241, 44.102, 61.13, 741.28, 741.30, 741.31, 784.046, 784.047, 901.15 and creating s. 741.315.

COMPANION BILL(S): CS/SB 1006, CS/SB 910, CS/SB 2300, CS/HB 87, HB 1687

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) Family Law and Children YEAS 9 NAYS 0
- (2)
- (3)
- (4)
- (5)

I. SUMMARY:

CS/HB 55 prohibits the court from referring cases to mediation whenever there is a finding of a history of domestic violence. It provides that conviction of a third degree felony or higher involving domestic violence creates a rebuttable presumption of detriment to a child in making a custody determination. It also provides that evidence of spousal or child abuse is evidence of detriment to a child for the purpose of denying shared parental responsibility or restricting visitation rights, regardless of whether an injunction for protection against domestic violence has been entered.

The bill adds kidnaping and false imprisonment to the list of offenses included in the definition of domestic violence. It also requires that petitioners seeking an injunction for protection against domestic violence have cause to believe that he or she is in imminent danger of becoming a victim of domestic violence.

The bill creates a new section of law to implement federal law requiring states to grant full faith and credit to protection orders issued by other states or Indian tribes. The bill provides that a person need not be a resident of Florida nor register the foreign judgment, as is required for other foreign orders, under section 55.505, F.S. Instead, the bill provides:

- an optional procedure for placing a foreign order for protection on the registry for injunctions currently maintained by the Florida Department of Law Enforcement;
- an optional procedure for registering a foreign order for protection with local law enforcement agencies;
- procedures for law enforcement to follow to enforce an foreign order of protection, including verification of identities and reasonable efforts to verify service;
- complete good faith immunity to law enforcement in enforcing a foreign injunction; and
- criminal penalties for knowingly attempting to enforce an invalid order or falsely denying service of a valid order.

The bill has an indeterminate fiscal impact

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Mediation

Currently, the court cannot refer a case to mediation if it finds that there has been a "significant history of domestic abuse that would compromise the mediation process," s 44.104, F.S., 1996 Supplement. According to the Office of the State Courts Administrator, more than half of Florida's twenty judicial circuits have in place some requirement that family law cases involving the custody of children must go to mediation before a trial.

According to the Office of the State Courts Administrator, a large and increasing number of persons who are parties to family law cases are not represented by attorneys. According to the Office of the State Courts Administrator's Dispute Resolution Center, which certifies and monitors the training of mediators in Florida, all family law mediators receive training in domestic violence issues and dynamics. Specifically, the training teaches mediators how to identify the indicators of domestic violence and to understand the impact domestic violence has on the parties and their capacity to participate meaningfully in the mediation process.

Child Custody and Visitation

Paragraph 61.13(2)(b), Florida Statutes, requires the court to order parental responsibility to be shared unless the court finds that shared parental responsibility would be detrimental to the child. The court must consider evidence of spousal abuse or child abuse as evidence of detriment. If the court determines that shared parental responsibility would be detrimental to the child, it may order sole residential responsibility and make visitation arrangements that will best protect the child or abused spouse from further harm.

This section also requires the court to consider evidence that a parent has been convicted of a felony of the second degree or higher involving domestic violence as establishing a rebuttable presumption of detriment to the child. If this presumption is not rebutted, the court may not grant shared parental responsibility to the convicted parent. The convicted parent, however, is not relieved of any obligation to pay child support.

Florida courts have ruled that the provisions of section 61.13 apply to all modifications on child custody, whether or not the parents of the children have been married to one another, *see Arthur v. Anderson*, 681 So.2d 796 (Fla. 3rd DCA 1996).

Injunctions for Protection and their Enforcement

Subsection 741.28(1) defines "domestic violence" as "any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, or any criminal offense resulting in physical injury or death of one family or household member by another who is or was residing in the same single dwelling unit."

Subsection 741.28(2) defines "family or household member" as "spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as a family, and persons

who have a child in common regardless of whether they have been married or have resided together at any time.”

Paragraph 741.30(6)(a) provides that, upon notice and hearing, the court may grant such relief as the court deems proper, including an injunction:

- restraining the respondent from committing any acts of domestic violence.
- awarding to the petitioner the exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner.
- on the same basis as provided in chapter 61, awarding temporary custody of, or temporary visitation rights with regard to, a minor child or children of the parties.
- on the same basis as provided in chapter 61, establishing temporary support for a minor child or children of the petitioner.
- ordering the respondent to participate in treatment, intervention, or counseling services.
- ordering such other relief as the court deems necessary for the protection of a victim of domestic violence, including injunctions or directives to law enforcement agencies.

An injunction for protection against domestic violence or an injunction for protection against repeat violence is granted for a fixed period not to exceed one year, unless upon petition of the victim, the court extends the injunction for successive fixed periods not to exceed one year, ss. 741.30(6)(b) and 784.046, F.S.

An injunction issued under s. 741.30, F.S., must, on its face, indicate that the injunction is valid and enforceable in all counties of the State of Florida and that law enforcement officers may use their arrest powers pursuant to s. 901.15(6) to enforce the terms of the injunction. There is no similar requirement for an injunction for protection against repeat violence.

Injunctions Issued in Other States

1. Federal Law

The Full Faith and Credit Clause of Article IV of the United States Constitution provides as follows:

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State; And the Congress may by general Laws prescribe the Manner in which such Acts, Records, and Proceedings shall be proved and the Effect thereof.

In 1994, Congress enacted the Violence Against Women Act (VAWA), 18, U.S.C.S. 2265 ff, which requires that any protection order issued by a court of one state or Indian tribe which had jurisdiction over the parties and which gave the person against whom the injunction was issued reasonable notice and an opportunity to be heard sufficient to protect that person's right to due process must be accorded full faith and credit by the court of another state or Indian tribe and enforced as if it were the order of that court, 18 U.S.C.S. 2265(a) and (b) (1994). If the order sought to be accorded full faith and credit was issued *ex parte*, notice and an opportunity to be heard must be provided within the time required by state or tribal law, and in any event within a reasonable time after the order is issued, sufficient to protect the right to due process of the person against whom the order is sought.

A "protective order" is defined in 18 U.S.C.S. 2266 as including any injunction or other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person, including temporary and final orders issued by civil or criminal courts (other than support or child custody orders) whether obtained by filing an independent action or as a *pendente lite* order in another proceeding so long as any civil order was issued in response to a complaint, petition, or motion filed by or on behalf a person seeking protection.

Nowhere in VAWA did Congress exercise its authority under the second portion of the Full Faith and Credit Clause of the Constitution. The states, therefore, are left with the authority to determine the manner in which protective orders shall be proven and given effect.

2. Other States

Twelve states have passed specific legislation to extend full faith and credit to foreign protection orders. Of these 12 states, only Alabama does not attach conditions which must be met before the state will enforce foreign protection orders.

3. Florida Law

Sections 55.501-55.509 F.S., are known as the Florida Enforcement of Foreign Judgments Act. These sections make no specific provision for the enforcement of an injunction for protection against domestic violence or an injunction for protection against repeat violence issued outside the state of Florida. As to foreign judgments In general, these sections provide that a copy of any foreign judgment certified in accordance with the laws of the United States or of Florida may be recorded in the office of the clerk of the circuit court of any county, s. 55.503, F.S. The clerk must file, record, and index the foreign judgment in the same manner as a judgment of a circuit or county court of this state. Notice must be provided to the individual against whom the judgment applies, and such judgment is not enforceable for 30 days after the mailing of notice by the clerk, s. 55.505(2) and (3), F.S.

A judgment recorded pursuant to the Florida Enforcement of Foreign Judgments Act has the same effect and is subject to the same rules of civil procedure, legal and equitable defenses, and proceedings for reopening, vacating, or staying judgments, as a judgment entered by a circuit or county court of this state. It may be enforced, released, or satisfied in the same manner as a judgment of a circuit or county court of this state, s. 55.503(2), FIS. The person recording the foreign judgment must pay the clerk of court whatever fee is required for the recording of an original action demanding the relief or judgment granted in the foreign judgment, 55.503(3), F.S. These provisions apply to any foreign judgment that is final and conclusive and enforceable where it was issued, even though an appeal may be pending or the order may be still subject to appeal, s. 55.603, F.S.

On September 12, 1996, the Office of the Attorney General, State of Florida, issued an opinion which clarified the relationship between the Violence Against Women Act and Florida law, AGO 96-71. According to that opinion, VAWA requires that a protection order issued by another State or an Indian tribe in accordance with its provisions be treated and enforced as if it were a protective order issued by a Florida court. Further, "the federal act preempts any registration requirement by mandating that any foreign

domestic violence protection order be enforced as if it were an order of the court of the enforcing state. Thus, the provisions of state law such as the Enforcement of Foreign Judgments Act are inapplicable to the enforcement of a foreign protection order issued in compliance with VAWA," p. 2. Finally, according to the opinion, "while legislative action to clarify these issues may be helpful, enforcement of foreign protective orders is not contingent upon the passage of such legislation," *id.*

Law Enforcement Immunity

Law enforcement officers may lawfully arrest a person without a warrant if there is probable cause to believe that the person has committed a criminal act in violation of an injunction against domestic violence or an injunction against repeat violence, over the objection of the petitioner, if necessary, s. 901.15(6), F.S. Further, subsection 901.15(7), F.S. authorizes law enforcement officers to lawfully arrest a person without a warrant if there is probable cause to believe that the person has committed an act of domestic violence as defined in s. 741.28 F.S., child abuse as defined in s. 827.04(2) and (3), F.S., or any battery upon another person as defined in s. 784.03, F.S. This subsection also provides that, with respect to an arrest for domestic violence, the decision to arrest may not require consent of the victim nor consideration of the relationship between the parties.

A law enforcement officer who acts in good faith and exercises due care in making an arrest under this subsection is immune from civil liability that might otherwise result by reason of his or her actions. Finally, section 901.15(8) provides that law enforcement officers may lawfully arrest a person without a warrant if there is probable cause to believe that the person has committed an act of repeat violence in violation of an injunction from repeat violence entered pursuant to s. 784.046.

Costs for Injunctions

Section 28.241 (1), Florida Statutes, provides for a \$40 service charge to be paid to the clerk of court for filing any civil action, suit or proceeding in which there are not more than five defendants. The section also provides for the following additional fees:

1. An additional service charge of \$2 for each defendant in excess of five.
2. An additional service charge of \$10 from each party seeking each severance that is granted.
3. An additional service charge of \$35 for all proceedings of garnishment, attachment, replevin, and distress.
4. An \$8 service charge for each civil action; of the \$8, \$7 is remitted to general revenue, \$1 to the clerk.
5. An additional charge of \$2.50 that is paid into the Court Education Trust Fund.
6. The governing authority of the county may provide, by ordinance or any special local law, for additional charges for law libraries and legal aid.
7. The county may also charge an additional \$10 for each civil action for costs associated with public guardianship.
8. Postal charges may also be included for mailing costs.

The sum of all fees and service charges permitted under this subsection may not exceed \$200.

Section 30.231, Florida Statutes, limits sheriffs fees for service to \$20.

B. EFFECT OF PROPOSED CHANGES:

Mediation

The bill provides that upon motion or request of a party, a court shall not refer any case to mediation if it finds there has been a history of domestic violence that would compromise the mediation process.

Child Custody and Visitation

The bill requires that the court consider evidence of spousal abuse or child abuse as evidence of detriment to a child in a custody proceeding, regardless of whether an injunction against domestic violence has been entered.

The bill amends the provision that the court must consider evidence that a parent has been convicted of a felony of the second degree or higher involving domestic violence as a rebuttable presumption of detriment to the child to include felonies of the **third** degree or higher. In 1995, the legislature created s. 784.035, F.S., which provides that a third conviction of a misdemeanor involving acts of domestic violence can be prosecuted as a felony of the third degree. This bill would thus allow evidence of a conviction under this "third strike" provision to create a rebuttable presumption of detriment to the child.

Injunctions for Protection and their Enforcement

The bill adds kidnaping and false imprisonment to the list of offenses included in the definition of domestic violence.

The bill expands the relief a court may grant when issuing an injunction to specifically permit the court to also grant any relief the court deems necessary to protect any minor child of a victim of domestic violence.

The bill amends the period for which either an injunction against domestic violence or an injunction against repeat violence may be issued after hearing to last indefinitely until further court order. The bill specifies that either party may petition at any time to dissolve an injunction against domestic violence. It does not contain a similar provision as to an injunction against repeat violence.

The bill adds the requirements for facial validity presently in effect for injunctions against domestic violence to injunctions against repeat violence. However, it adds new requirements for injunctions against domestic violence and does not add these same requirements to injunctions against repeat violence. These new requirements are that the person against whom the injunction is issued had notice and an opportunity to be heard sufficient to protect that person's right to due process and, if obtainable, the date that person was served with the temporary or final order.

Injunctions Issued in Other States

The bill exempts foreign orders of protection from the requirement for registration with the clerk of the court. It requires law enforcement officers, upon being presented with a copy of a foreign injunction, to enforce all its terms, except those related to child custody

or support, as though the injunction had been issued in Florida. It specifically eliminates the need for a trueed or certified copy of an order for enforcement.

The bill creates a new misdemeanor offense of intentionally providing to a law enforcement officer a copy of an order of protection known by that person to be false or invalid or of falsely denying that service of a protective order has occurred.

The bill creates a voluntary registration process for foreign orders of protection. This process permits a person to present a certified copy of a foreign order of protection to any sheriff in Florida and, after swearing out an affidavit that the order as presented is currently in effect and has not been superseded, to request that the order be registered in the injunction registry. The Florida Department of Law Enforcement is directed to develop a special notation for foreign orders of protection. The sheriff must use best efforts to ascertain whether the order was served on the respondent, if this information is not apparent on the face of the document. The sheriff is required to assign a case number to the order and to give the protected person a receipt showing registration of the foreign order. Fees for registration are prohibited.

Law Enforcement Immunity

The bill provides that any law enforcement officer acting in good faith, and the officer's employing agency, will be immune from all liability, civil and criminal, that might otherwise be incurred or imposed by reason of the officer's or agencies actions in carrying out the provisions relating to foreign protective orders.

Costs of Injunctions

CS/HB 55 imposes a \$50 limit on the total charge for issuing an injunction concerning domestic violence. The sheriff's service fee is limited to \$20 and the remaining fee shall be applied to the initial \$40 service charge paid to the clerk of the court as authorized in s. 28.241 (1)(a), F.S. No additional fees are allowed.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly.

(1) any authority to make rules or adjudicate disputes?

The bill gives Florida courts additional authority to enforce foreign orders of protection.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

The bill requires law enforcement to register and enforce foreign orders of protection, if requested to do so by a person who is a party to an order.

- (3) any entitlement to a government service or benefit?

The bill allows persons holding foreign orders of protection clear access to the enforcement services of the State of Florida in order to enforce such orders.

- b. If an agency or program is eliminated or reduced:

No agency or program is eliminated or reduced by this bill.

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

- (2) what is the cost of such responsibility at the new level/agency?

Not applicable.

- (3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

This section is not applicable to this bill.

- (1) Who evaluates the family's needs?

The courts of another jurisdiction.

- (2) Who makes the decisions?

The courts.

- (3) Are private alternatives permitted?

No.

- (4) Are families required to participate in a program?

Yes, if orders of protection are entered.

- (5) Are families penalized for not participating in a program?

Yes, if orders of protection are entered. Violation of such orders constitutes contempt of court and may result in penalties.

- b. Does the bill directly affect the legal rights and obligations between family members?

Yes.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

Parents may choose to seek enforcement of foreign orders of protection from law enforcement.

- (2) service providers?

No.

- (3) government employees/agencies?

Law enforcement agencies will be required to enforce foreign orders of protection.

D. SECTION-BY-SECTION RESEARCH:

Section 1. Amends section 28.241(5), F.S., 1996 Supplement, to provide that the clerk of court fees for injunctions concerning domestic violence are limited as provided in s. 741.30 (2)(a), F.S.

Section 2. Amends s. 44.102(2)(b), F.S., 1996 Supplement, to require that, upon motion or request of a party, a court shall not refer any case to mediation if it finds there has been a history of domestic violence that would compromise the mediation process.

Section 3. Amends section 61.13, F.S., 1996 Supplement, to provide:

- that evidence of domestic violence or child abuse must be considered by the court in child custody determinations.
- that evidence of a false accusation of domestic violence or child abuse must be considered by the court in child custody determinations.
- that evidence of domestic violence or child abuse will be evidence of detriment to a child for purposes of denying shared parental responsibility or restricting visitation rights even if no injunction for protection against domestic violence was in existence.
- that evidence that a parent has been convicted of a felony of the third degree or higher involving domestic violence creates a rebuttable presumption of detriment to a child.

Section 4. Amends s. 741.28(1), F.S., to add kidnaping and false imprisonment to the list of offenses constituting domestic violence.

Section 5. Amends s. 741.30, F.S., to:

- require petitioners seeking an injunction for protection against domestic violence have cause to believe that he or she is in imminent danger of becoming a victim of domestic violence.
- provide that neither party is required to be represented by an attorney in a cause of action for an injunction.
- provide that any person, including an officer of the court, offering evidence or recommendations in a domestic violence case must do so under oath at a hearing with all parties present or in writing with copies to all parties.
- place a \$50 limit on the total costs and fees for a court to issue an injunction or restraining order, with a limit of \$20 on the total charge for any law enforcement agency to serve an injunction or restraining order and the remaining \$30 to be applied to the service charge collected by the clerk of the court.
- require that information about the effect of a false accusation be included in the brochure the clerk of the court is required by current law to provide to anyone filing for an injunction for protection against domestic or repeat violence.
- require that every petition for an injunction for protection against domestic violence contain specified language directly above the signature line about the penalty for a false accusation.
- require that if the sworn petition for an injunction against domestic violence seeks to determine issues of custody or visitation with regard to the minor child or children of the parties, the sworn petition shall be accompanied by or shall incorporate the allegations required by s. 61.132 of the Uniform Child Custody Jurisdiction Act.
- provide that an injunction for protection against domestic violence is in full force and effect for the period of continuance whenever a hearing is continued.
- provide that the court may refer a petitioner to a certified domestic violence center and the court must provide the petitioner with a list of those centers.
- provide that the court may order the respondent to participate in treatment, intervention, or counseling to be paid for by the respondent and the court must provide the respondent with a list of acceptable programs.
- provide that the terms to an injunction restraining the respondent or ordering other relief for the protection of the victim shall remain in effect until modified or dissolved and that either party may move at any time to modify or dissolve the injunction.
- require that an injunction against domestic violence indicate on its face that the person against whom the injunction is issued had notice and an opportunity to be heard sufficient to protect that person's right to due process and, if obtainable, the date that person was served with the temporary or final order.

Section 6. Amends s. 741.31 (4), F.S., 1996 Supplement, to include the violation of a foreign protection order accorded full faith and credit pursuant to section 741.305 as a violation of an injunction for protection against domestic violence.

Section 7. Creates section 741.315 to provide for the recognition of foreign protection orders which meet the criteria of 18 U.S.C. 2265. Provides that, notwithstanding the provisions of s. 55.505 or any other section, neither residence in this state nor registration of foreign injunctions for protection will be required for enforcement of such injunctions. In order to assist law enforcement and the courts in enforcing the orders, sets up a procedure for registering the foreign injunctions. Precludes law enforcement, the judiciary, and the clerks of court from disclosing the location of a petitioner seeking to

enforce or register a foreign order. Requires law enforcement officers to enforce foreign orders of protection as though they were entered by a court of this state, except as the orders relate to child custody, visitation, and support. As to those matters only, provides that enforcement may be obtained upon domestication of the foreign order pursuant to Chapter 55, F.S., unless the foreign order is a "pickup order" or "order of bodily attachment," requiring the immediate return of a child. Requires that before enforcing the foreign order, the law enforcement officer confirm the identity of the parties present and review the order to make sure that, on its face, it has not expired. Provides that a certified or true copy of the order shall not be required, so long as a conflicting copy is not presented. Requires law enforcement to use reasonable efforts to verify service of process. Sets forth means by which service of process may be verified. Provides that any person who intentionally provides a law enforcement officer with a copy of an order of protection known by that person to be false or invalid, or who denies having been served with an order of protection when that person has been served with such order, is guilty of a misdemeanor of the first degree. Provides that if 18 U.S.C. s. 2265 is held to be unconstitutional, this section shall be null and void.

Section 8. Amends subsection 784.046 (7) to provide that the terms to an injunction restraining the respondent or ordering other relief for the protection of the victim shall remain in effect until modified or dissolved and that either party may move at any time to modify or dissolve the injunction. It also requires that an injunction against domestic violence indicate on its face that the injunction is valid and enforceable in all counties in the State of Florida, that law enforcement officers may use their arrest powers to enforce the terms of the injunction, that the person against whom the injunction is issued had notice and an opportunity to be heard sufficient to protect that person's right to due process and, if obtainable, the date that person was served with the temporary or final order of injunction. The section adds subsection (11) to grant immunity to law enforcement officers and their employing agencies in carrying out the provisions of this section when the officer is acting in good faith.

Section 9. Amends section 784.047, F.S., to include the violation of a foreign injunction for protection as the basis for criminal penalties.

Section 10. Amends subsections 901.15(6), (7), and (8), F.S., 1996 Supplement, to conform these subsections to those described above regarding foreign protection orders.

Section 11. Provides for an effective date of October 1, 1997, except for this section, section 1, and the amendment of section 741.30(2)(a), F.S., 1996 Supplement, which shall take effect upon this act becoming law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See fiscal comments.

2. Recurring Effects:

See fiscal comments.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See fiscal comments.

2. Recurring Effects:

See fiscal comments.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

Persons who have secured orders for protection in other jurisdictions will have direction as to how they may be enforced in Florida.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

Local law enforcement agencies will be required to set up and maintain registries of the foreign orders of protection. In addition, the Florida Department of Law Enforcement will be required to make a special notation regarding these orders on the current registry of injunctions. The cost of these added duties is indeterminate.

The \$7 fee to be placed in General Revenue as provided in s. 28.241, F.S. will not be collected under HB 87. In addition, the \$2.50 fee payable to the Court Education Trust Fund, will not be collectable. The Florida Association of Court Clerks and Comptrollers

indicates however, that the fiscal impact is insignificant because most persons filing an injunction for domestic violence also file to have the fees waived through the indigence provision of s. 741.30 (2)(a), F.S. and s. 784.046(3)(b), F.S., and these petitions of indigence are usually granted.

The Office of the State Courts Administrator has indicated that there will be lost revenue every year due to the bill's elimination of the \$2.50 filing fee for the Florida Court Education Trust Fund. In all non-indigence domestic violence cases that \$2.50 fee will be lost. The loss is estimated to be \$150,000 for FY 97-98, \$155,000 for FY 98-99, and \$160,000 for FY 99-2000. There is a continuing need for education of judges and clerks in the area of domestic violence and it is the funding of the Court Education Trust Fund that supports those education efforts. It is the opinion of the Office of the State Courts Administrator that any reduction in the Trust Fund would restrict their ability to provide appropriate educational opportunities.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

At its meeting of April 17, 1997, the Committee on Family Law and Children adopted a strike-everything amendment to HB 1687 which made technical changes to the original bill. In addition, the strike-everything amendment added language based on the provisions of CS/SBs 302,910, 2300, and 1006, all relating to domestic violence, to the bill. HB 1687 was then amended together with CS/HB 55 and CS/HB 87 to produce a single bill which was substituted for the original text of HB 55. CS/HB 55 was then substituted for CS/SB 1006 in the Senate and passed the Senate as amended; YEAS 38 NAYS 0. It passed in the House as amended; YEAS 119 NAYS 0 and was approved by the Governor May 29, 1997.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON Family Law and Children:
Prepared by:

Legislative Research Director:

Carol E. Preston

Peggy Sanford

FINAL RESEARCH PREPARED BY COMMITTEE ON Family Law and Children:
Prepared by:

Legislative Research Director:

Carol E. Preston

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