

Senate Bill No. 716

An act relating to domestic violence; amending ss. 25.385, 39.902, 741.28, and 943.171, F.S.; redefining the terms “domestic violence” and “family or household member”; amending s. 28.241, F.S.; deleting reference to limitations on filing fees for domestic violence injunctions to conform to the act; amending s. 39.903, F.S.; providing duty of the Department of Children and Family Services to operate the domestic violence program; amending ss. 390.01115, 470.002, 626.9541, 641.3903, 985.213, and 985.215, F.S.; correcting cross references; amending s. 741.281, F.S.; deleting requirement that a court order certain defendants to attend a batterers’ intervention program; amending s. 741.2902, F.S.; deleting provisions relating to filing fees and costs to conform to the act; amending s. 741.30, F.S.; eliminating the filing fee and revising provisions for reimbursement of costs for issuance of such injunctions; specifying when a person has standing to file a petition for an injunction against domestic violence; specifying where the petition may be filed; providing for incidents that describe violence or threats of violence; specifying when a court may grant relief; providing factors for the court to consider in determining imminent danger; providing for recording of proceedings; providing for the presence of an advocate from a state attorney’s office, law enforcement agency, or domestic violence center at injunction proceedings, upon request; amending s. 741.31, F.S.; specifying additional acts that violate an injunction against domestic violence; providing a penalty; amending s. 938.01, F.S.; revising provisions relating to distribution of additional court costs assessed in specified circumstances; repealing s. 4(2) of ch. 2001-184, Laws of Florida, and s. 7(2) of ch. 2001-232, Laws of Florida, relating to the transfer of certain funds for administration of the Prevention of Domestic and Sexual Violence Program; repealing s. 741.466, F.S., relating to transfer of the Prevention of Domestic and Sexual Violence Program from the Department of Community Affairs to the Department of Children and Family Services; amending s. 784.046, F.S.; providing for actions by victims of dating violence; providing a definition; providing a cause of action for an injunction for protection in cases of dating violence; providing a procedure for filing a petition; providing for a hearing and temporary or final judgment; redesignating the Domestic and Repeat Violence Injunction Statewide Verification System as the Domestic, Dating, and Repeat Violence Injunction Statewide Verification System; providing for notice to the sheriff; amending ss. 784.047 and 784.048, F.S.; providing penalties for violating an injunction for protection against dating violence; providing a violation of such injunction constitutes the offense of aggravated stalking; providing a penalty; providing effective dates.

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

Section 1. Subsection (2) of section 25.385, Florida Statutes, is amended to read:

25.385 Standards for instruction of circuit and county court judges in handling domestic violence cases.—

(2) As used in this section:

(a) The term “domestic violence” has the meaning set forth in s. 741.28 means any assault, battery, sexual assault, sexual battery, 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.

(b) “Family or household member” has the meaning set forth in s. 741.28 means spouse, former spouse, 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.

Section 2. Subsection (5) of section 28.241, Florida Statutes, 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 3. Subsections (1) and (3) of section 39.902, Florida Statutes, are amended to read:

39.902 Definitions.—As used in this part, the term:

(1) “Domestic violence” has the meaning set forth in s. 741.28 means any assault, battery, sexual assault, sexual battery, 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.

(3) “Family or household member” has the meaning set forth in s. 741.28 means spouses, former spouses, adults 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.

Section 4. Subsections (3), (4), (5), and (6) of section 39.903, Florida Statutes, are renumbered as subsections (4), (5), (6), and (7), respectively, and a new subsection (3) is added to said section, to read:

39.903 Duties and functions of the department with respect to domestic violence.—

(3) The department shall operate the domestic violence program, which provides supervision, direction, coordination, and administration of state-wide activities related to the prevention of domestic violence.

Section 5. Paragraphs (b) and (e) of subsection (2) of section 390.01115, Florida Statutes, are amended to read:

390.01115 Parental Notice of Abortion Act.—

(2) DEFINITIONS.—As used in this section, the term:

(b) “Child abuse” has the meaning ascribed in s. 39.0015(3) and refers to the acts of child abuse against a minor by a family member as defined in s. 741.28(2).

(e) “Sexual abuse” has the meaning ascribed in s. 39.01 and refers to the acts of sexual abuse against a minor by a family member as defined in s. 741.28(2).

Section 6. Subsection (18) of section 470.002, Florida Statutes, is amended to read:

470.002 Definitions.—As used in this chapter:

(18) “Legally authorized person” means, in the priority listed, the decedent, when written inter vivos authorizations and directions are provided by the decedent, the surviving spouse, unless the spouse has been arrested for committing against the deceased an act of domestic violence as defined in s. 741.28(1), a son or daughter who is 18 years of age or older, a parent, a brother or sister 18 years of age or over, a grandchild who is 18 years of age or older, or a grandparent; or any person in the next degree of kinship. In addition, the term may include, if no family exists or is available, the following: the guardian of the dead person at the time of death; the personal representative of the deceased; the attorney in fact of the dead person at the time of death; the health surrogate of the dead person at the time of death; a public health officer; the medical examiner, county commission or administrator acting under chapter 245, or other public administrator; a representative of a nursing home or other health care institution in charge of final disposition; or a friend or other person not listed in this subsection who is willing to assume the responsibility as authorized person.

Section 7. Paragraph (g) of subsection (1) of section 626.9541, Florida Statutes, is amended to read:

626.9541 Unfair methods of competition and unfair or deceptive acts or practices defined.—

(1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.—The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

(g) Unfair discrimination.—

1. Knowingly making or permitting any unfair discrimination between individuals of the same actuarially supportable class and equal expectation of life, in the rates charged for any life insurance or annuity contract, in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.

2. Knowingly making or permitting any unfair discrimination between individuals of the same actuarially supportable class and essentially the same hazard, in the amount of premium, policy fees, or rates charged for any policy or contract of accident, disability, or health insurance, in the benefits payable thereunder, in any of the terms or conditions of such contract, or in any other manner whatever.

3. For a health insurer, life insurer, disability insurer, property and casualty insurer, automobile insurer, or managed care provider to underwrite a policy, or refuse to issue, reissue, or renew a policy, refuse to pay a claim, cancel or otherwise terminate a policy, or increase rates based upon the fact that an insured or applicant who is also the proposed insured has made a claim or sought or should have sought medical or psychological treatment in the past for abuse, protection from abuse, or shelter from abuse, or that a claim was caused in the past by, or might occur as a result of, any future assault, battery, or sexual assault by a family or household member upon another family or household member as defined in s. 741.28(2). A health insurer, life insurer, disability insurer, or managed care provider may refuse to underwrite, issue, or renew a policy based on the applicant's medical condition, but shall not consider whether such condition was caused by an act of abuse. For purposes of this section, the term "abuse" means the occurrence of one or more of the following acts:

- a. Attempting or committing assault, battery, sexual assault, or sexual battery;
- b. Placing another in fear of imminent serious bodily injury by physical menace;
- c. False imprisonment;
- d. Physically or sexually abusing a minor child; or
- e. An act of domestic violence as defined in s. 741.28.

This subparagraph does not prohibit a property and casualty insurer or an automobile insurer from excluding coverage for intentional acts by the insured if such exclusion does not constitute an act of unfair discrimination as defined in this paragraph.

Section 8. Paragraph (b) of subsection (12) of section 641.3903, Florida Statutes, is amended to read:

641.3903 Unfair methods of competition and unfair or deceptive acts or practices defined.—The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

(12) PROHIBITED DISCRIMINATORY PRACTICES.—A health maintenance organization may not:

(b) Refuse to provide services or care to a subscriber solely because medical services may be or have been sought for injuries resulting from an assault, battery, sexual assault, sexual battery, or any other offense by a family or household member, as defined in s. 741.28(2), or by another who is or was residing in the same dwelling unit.

Section 9. Section 741.28, Florida Statutes, is amended to read:

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

~~(1)~~(3) “Department” means the Florida Department of Law Enforcement.

~~(2)~~(4) “Domestic violence” means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member ~~who is or was residing in the same single dwelling unit.~~

~~(3)~~(2) “Family or household member” means 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 are parents of ~~have~~ a child in common regardless of whether they have been married ~~or have resided together at any time.~~ With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

(4) “Law enforcement officer” means any person who is elected, appointed, or employed by any municipality or the state or any political subdivision thereof who meets the minimum qualifications established in s. 943.13 and is certified as a law enforcement officer under s. 943.1395.

Section 10. Section 741.281, Florida Statutes, is amended to read:

741.281 Court to order batterers’ intervention program attendance.—If a person is found guilty of, has had adjudication withheld on, or has pled nolo contendere to a crime of domestic violence, as defined in s. 741.28, that person shall be ordered by the court to a minimum term of 1 year’s probation and the court shall order that the defendant attend a batterers’ intervention program as a condition of probation. ~~If a person is admitted to a pretrial diversion program and has been charged with an act of domestic violence, as defined in s. 741.28, the court shall order as a condition of the program that the defendant attend a batterers’ intervention program.~~ The court must impose the condition of the batterers’ intervention program for a defendant ~~admitted to pretrial diversion~~ under this section, but the court, in its discretion, may determine not to impose the condition if it states on the record why a batterers’ intervention program might be inappropriate. The court must impose the condition of the batterers’ intervention program for a defendant placed on probation unless the court determines that the person does not

qualify for the batterers' intervention program pursuant to s. 741.325. Effective July 1, 2002, the batterers' intervention program must be a certified program under s. 741.32. The imposition of probation under this section shall not preclude the court from imposing any sentence of imprisonment authorized by s. 775.082.

Section 11. Paragraph (f) of subsection (2) of section 741.2902, Florida Statutes, is amended to read:

741.2902 Domestic violence; legislative intent with respect to judiciary's role.—

(2) It is the intent of the Legislature, with respect to injunctions for protection against domestic violence, issued pursuant to s. 741.30, that the court shall:

~~(f) Consider requiring the respondent to pay, to the clerk of the court and sheriff, filing fees and costs waived pursuant to s. 741.30(2)(a), or to reimburse the petitioner for filing fees and costs paid by the petitioner.~~

Section 12. Effective October 1, 2002, paragraph (a) of subsection (2) of section 741.30, Florida Statutes, 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 assessment of a filing fee for a petition for protection against domestic violence is prohibited effective October 1, 2002. However, subject to legislative appropriation, the clerk of the circuit court may, on a quarterly basis, submit to the Office of the State Courts Administrator a certified request for reimbursement for petitions for protection against domestic violence issued by the court, at the rate of \$40 per petition. The request for reimbursement shall be submitted in the form and manner prescribed by the Office of the State Courts Administrator. From this reimbursement, the clerk shall pay any law enforcement agency serving the injunction the fee requested by the law enforcement agency; however, this fee shall not exceed \$20. Notwithstanding any other provision of law, the total charge, including any administration fees, law enforcement agency charges, and court costs or service charges, for any court to issue an injunction concerning domestic violence under chapter 741 or chapter 784 shall not exceed \$50. The total charge by any law enforcement agency to serve an injunction or restraining order concerning violence shall not exceed \$20. The remaining \$30 fee collected for an injunction under chapter 741 shall only be applied to the initial \$40 service charge collected by the clerk of the court as provided in s. 28.241(1). In the event the victim does not have sufficient funds with which to pay filing fees 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.

Section 13. Subsections (1), (3), and (6) of section 741.30, Florida Statutes, are amended, subsections (7), (8), and (9) are renumbered as subsections (8), (9), and (10), respectively, and a new subsection (7) is added to said section, 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.—

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

(a) Any person described in paragraph (e), who is either the victim of ~~any act of domestic violence as defined in s. 741.28,~~ or has reasonable cause to believe he or she is in imminent danger of becoming the victim of any act of domestic violence, has standing in the circuit court to file a sworn petition for an injunction for protection against domestic violence.

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

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

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

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

(f) This cause of action for an injunction shall not require that either party be represented by an attorney.

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

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

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

(j) Notwithstanding any provision of chapter 47, a petition for an injunction for protection against domestic violence may be filed in the circuit where

the petitioner currently or temporarily resides, where the respondent resides, or where the domestic violence occurred. There is no minimum requirement of residency to petition for an injunction for protection.

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

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

PETITION FOR
INJUNCTION FOR PROTECTION
AGAINST DOMESTIC VIOLENCE

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

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

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

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

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

(d) Physical description of respondent:

Race....

Sex....

Date of birth....

Height....

Weight....

Eye color....

Hair color....

Distinguishing marks or scars....

(e) Aliases of respondent:

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

(g) The following describes any other cause of action currently pending between the petitioner and respondent:
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The petitioner should also describe any previous or pending attempts by the petitioner to obtain an injunction for protection against domestic violence in this or any other circuit, and the results of that attempt

Case numbers should be included if available.

(h) ~~Petitioner is either a victim of domestic violence has suffered or has reasonable cause to believe he or she is in imminent danger of becoming a victim of fear imminent domestic violence because respondent has~~(mark all sections that apply and describe in the spaces below the incidents of violence or threats of violence, specifying when and where they occurred, including, but not limited to, locations such as a home, school, place of employment, or visitation exchange)....:

....committed or threatened to commit domestic violence defined in s. 741.28, Florida Statutes, as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another. With the exception of persons who are parents of a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

....previously threatened, harassed, stalked, or physically abused the petitioner.

....attempted to harm the petitioner or family members or individuals closely associated with the petitioner.

....threatened to conceal, kidnap, or harm the petitioner’s child or children.

....intentionally injured or killed a family pet.

....used, or has threatened to use, against the petitioner any weapons such as guns or knives.

....physically restrained the petitioner from leaving the home or calling law enforcement.

....a criminal history involving violence or the threat of violence (if known).

....another order of protection issued against him or her previously or from another jurisdiction (if known).

....destroyed personal property, including, but not limited to, telephones or other communication equipment, clothing, or other items belonging to the petitioner.

....engaged in any other behavior or conduct that leads the petitioner to have reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence.

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

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

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

...Petitioner is unable to obtain safe alternative housing because: . . .

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

(j) Petitioner genuinely fears imminent domestic violence by respondent.

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

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

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

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

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

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

...Directing the respondent to participate in a batterers' intervention program or other treatment pursuant to s. 39.901, Florida Statutes.

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

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

I HAVE READ EVERY STATEMENT MADE IN THIS PETITION AND EACH STATEMENT IS TRUE AND CORRECT. I UNDERSTAND THAT THE STATEMENTS MADE IN THIS PETITION ARE BEING MADE UNDER PENALTY OF PERJURY, PUNISHABLE AS PROVIDED IN SECTION 837.02, FLORIDA STATUTES.

...(initials)...

(d) If the sworn petition 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.

(6)(a) Upon notice and hearing, when it appears to the court that the petitioner is either the victim of domestic violence as defined by s. 741.28 or has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence, the court may grant such relief as the court deems proper, including an injunction:

1. Restraining the respondent from committing any acts of domestic violence.
2. 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.
3. 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.
4. On the same basis as provided in chapter 61, establishing temporary support for a minor child or children or the petitioner.
5. Ordering the respondent to participate in treatment, intervention, or counseling services to be paid for by the respondent. When the court orders the respondent to participate in a batterers' intervention program, the court, or any entity designated by the court, must provide the respondent with a list of all certified batterers' intervention programs and all programs which have submitted an application to the Department of Corrections to become certified under s. 741.325, from which the respondent must choose a program in which to participate. If there are no certified batterers' intervention programs in the circuit, the court shall provide a list of acceptable programs from which the respondent must choose a program in which to participate.
6. Referring a petitioner to a certified domestic violence center. The court must provide the petitioner with a list of certified domestic violence centers in the circuit which the petitioner may contact.
7. 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, as provided in this section.
 - (b) In determining whether a petitioner has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence, the court shall consider and evaluate all relevant factors alleged in the petition, including, but not limited to:
 1. The history between the petitioner and the respondent, including threats, harassment, stalking, and physical abuse.
 2. Whether the respondent has attempted to harm the petitioner or family members or individuals closely associated with the petitioner.
 3. Whether the respondent has threatened to conceal, kidnap, or harm the petitioner's child or children.
 4. Whether the respondent has intentionally injured or killed a family pet.
 5. Whether the respondent has used, or has threatened to use, against the petitioner any weapons such as guns or knives.

6. Whether the respondent has physically restrained the petitioner from leaving the home or calling law enforcement.

7. Whether the respondent has a criminal history involving violence or the threat of violence.

8. The existence of a verifiable order of protection issued previously or from another jurisdiction.

9. Whether the respondent has destroyed personal property, including, but not limited to, telephones or other communications equipment, clothing, or other items belonging to the petitioner.

10. Whether the respondent engaged in any other behavior or conduct that leads the petitioner to have reasonable cause to believe that he or she is in imminent danger of becoming a victim of domestic violence.

In making its determination under this paragraph, the court is not limited to those factors enumerated in subparagraphs 1.-10.

(c)(b) The terms of an injunction restraining the respondent under subparagraph (a)1. or ordering other relief for the protection of the victim under subparagraph (a)7. shall remain in effect until modified or dissolved. 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.

(d)(e) 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.

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

1. It finds that the respondent willfully violated the ex parte injunction;
2. The respondent, in this state or any other state, has been convicted of, had adjudication withheld on, or pled nolo contendere to a crime involving violence or a threat of violence; or
3. The respondent, in this state or any other state, has had at any time a prior injunction for protection entered against the respondent after a hearing with notice.

It is mandatory that such programs be certified under s. 741.32.

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

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

(h) All proceedings under this subsection shall be recorded. Recording may be by electronic means as provided by the Rules of Judicial Administration.

(7) The court shall allow an advocate from a state attorney's office, an advocate from a law enforcement agency, or an advocate from a certified domestic violence center who is registered under s. 39.905 to be present with the petitioner or respondent during any court proceedings or hearings related to the injunction for protection, provided the petitioner or respondent has made such a request and the advocate is able to be present.

Section 14. Paragraph (a) of subsection (4) of section 741.31, Florida Statutes, is amended to read:

741.31 Violation of an injunction for protection against domestic violence.—

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

1. Refusing to vacate the dwelling that the parties share;
2. Going to, or being within 500 feet of, the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;
3. Committing an act of domestic violence against the petitioner;
4. Committing any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to the petitioner; or

5. Telephoning, contacting, or otherwise communicating with the petitioner directly or indirectly, unless the injunction specifically allows indirect contact through a third party;

6. Knowingly and intentionally coming within 100 feet of the petitioner's motor vehicle, whether or not that vehicle is occupied;

7. Defacing or destroying the petitioner's personal property, including the petitioner's motor vehicle; or

8. Refusing to surrender firearms or ammunition if ordered to do so by the court

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

Section 15. Subsection (2) of section 943.171, Florida Statutes, is amended to read:

943.171 Basic skills training in handling domestic violence cases.—

(2) As used in this section, the term:

(a) ~~“Domestic violence” has the meaning set forth in s. 741.28 means any assault, battery, sexual assault, sexual battery, or any criminal offense resulting in the physical injury or death of one family or household member by another who is or was residing in the same single dwelling unit.~~

(b) ~~“Household member” has the meaning set forth in s. 741.28(4) means spouse, former spouse, 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.~~

Section 16. Paragraph (b) of subsection (2) of section 985.213, Florida Statutes, is amended to read:

985.213 Use of detention.—

(2)

(b)1. The risk assessment instrument for detention care placement determinations and orders shall be developed by the Department of Juvenile Justice in agreement with representatives appointed by the following associations: the Conference of Circuit Judges of Florida, the Prosecuting Attorneys Association, the Public Defenders Association, the Florida Sheriffs Association, and the Florida Association of Chiefs of Police. Each association shall appoint two individuals, one representing an urban area and one representing a rural area. The parties involved shall evaluate and revise the risk assessment instrument as is considered necessary using the method for revision as agreed by the parties. The risk assessment instrument shall take into consideration, but need not be limited to, prior history of failure to appear, prior offenses, offenses committed pending adjudication, any unlawful possession of a firearm, theft of a motor vehicle or possession of a stolen

motor vehicle, and probation status at the time the child is taken into custody. The risk assessment instrument shall also take into consideration appropriate aggravating and mitigating circumstances, and shall be designed to target a narrower population of children than s. 985.215(2). The risk assessment instrument shall also include any information concerning the child's history of abuse and neglect. The risk assessment shall indicate whether detention care is warranted, and, if detention care is warranted, whether the child should be placed into secure, nonsecure, or home detention care.

2. If, at the detention hearing, the court finds a material error in the scoring of the risk assessment instrument, the court may amend the score to reflect factual accuracy.

3. A child who is charged with committing an offense of domestic violence as defined in s. 741.28(1) and who does not meet detention criteria may be held in secure detention if the court makes specific written findings that:

- a. Respite care for the child is not available; and
- b. It is necessary to place the child in secure detention in order to protect the victim from injury.

The child may not be held in secure detention under this subparagraph for more than 48 hours unless ordered by the court. After 48 hours, the court shall hold a hearing if the state attorney or victim requests that secure detention be continued. The child may continue to be held in detention care if the court makes a specific, written finding that detention care is necessary to protect the victim from injury. However, the child may not be held in detention care beyond the time limits set forth in s. 985.215.

4. For a child who is under the supervision of the department through probation, home detention, nonsecure detention, conditional release, post-commitment probation, or commitment and who is charged with committing a new offense, the risk assessment instrument may be completed and scored based on the underlying charge for which the child was placed under the supervision of the department and the new offense.

Section 17. Paragraph (d) of subsection (2) of section 985.215, Florida Statutes, is amended to read:

985.215 Detention.—

(2) Subject to the provisions of subsection (1), a child taken into custody and placed into nonsecure or home detention care or detained in secure detention care prior to a detention hearing may continue to be detained by the court if:

(d) The child is charged with committing an offense of domestic violence as defined in s. 741.28(1) and is detained as provided in s. 985.213(2)(b)3.

A child who meets any of these criteria and who is ordered to be detained pursuant to this subsection shall be given a hearing within 24 hours after

being taken into custody. The purpose of the detention hearing is to determine the existence of probable cause that the child has committed the delinquent act or violation of law with which he or she is charged and the need for continued detention. Unless a child is detained under paragraph (d) or paragraph (e), the court shall utilize the results of the risk assessment performed by the juvenile probation officer and, based on the criteria in this subsection, shall determine the need for continued detention. A child placed into secure, nonsecure, or home detention care may continue to be so detained by the court pursuant to this subsection. If the court orders a placement more restrictive than indicated by the results of the risk assessment instrument, the court shall state, in writing, clear and convincing reasons for such placement. Except as provided in s. 790.22(8) or in subparagraph (10)(a)2., paragraph (10)(b), paragraph (10)(c), or paragraph (10)(d), when a child is placed into secure or nonsecure detention care, or into a respite home or other placement pursuant to a court order following a hearing, the court order must include specific instructions that direct the release of the child from such placement no later than 5 p.m. on the last day of the detention period specified in paragraph (5)(b) or paragraph (5)(c), or subparagraph (10)(a)1., whichever is applicable, unless the requirements of such applicable provision have been met or an order of continuance has been granted pursuant to paragraph (5)(f).

Section 18. Effective July 1, 2002, subsection (1) of section 938.01, Florida Statutes, as amended by section 29 of chapter 2001-254, Laws of Florida, section 19 of chapter 2001-122, Laws of Florida, section 1 of chapter 2001-184, Laws of Florida, section 3 of chapter 2001-232, Laws of Florida, and section 30 of chapter 2001-254, Laws of Florida, is amended to read:

938.01 Additional Court Cost Clearing Trust Fund.—

(Substantial rewording of subsection. See s. 938.01(1), F.S., for present text.)

(1) All courts created by Art. V of the State Constitution shall, in addition to any fine or other penalty, assess \$3 as a court cost against every person convicted for violation of a state penal or criminal statute or convicted for violation of a municipal or county ordinance. Any person whose adjudication is withheld pursuant to the provisions of s. 318.14(9) or (10) shall also be assessed such cost. In addition, \$3 from every bond estreatment or forfeited bail bond related to such penal statutes or penal ordinances shall be remitted to the Department of Revenue as described in this subsection. However, no such assessment may be made against any person convicted for violation of any state statute, municipal ordinance, or county ordinance relating to the parking of vehicles.

(a) All costs collected by the courts pursuant to this subsection shall be remitted to the Department of Revenue in accordance with administrative rules adopted by the executive director of the Department of Revenue for deposit in the Additional Court Cost Clearing Trust Fund. These funds and the funds deposited in the Additional Court Cost Clearing Trust Fund pursuant to s. 318.21(2)(c) shall be distributed as follows:

1. Ninety-two percent to the Department of Law Enforcement Criminal Justice Standards and Training Trust Fund.

2. Six and three-tenths percent to the Department of Law Enforcement Operating Trust Fund for the Criminal Justice Grant Program.

3. One and seven-tenths percent to the Department of Children and Family Services Domestic Violence Trust Fund for the domestic violence program pursuant to s. 39.903(3).

(b) The funds deposited in the Department of Law Enforcement Criminal Justice Standards and Training Trust Fund, the Department of Law Enforcement Operating Trust Fund, and the Department of Children and Family Services Domestic Violence Trust Fund may be invested. Any interest earned from investing such funds and any unencumbered funds remaining at the end of the budget cycle shall remain in the respective trust fund.

(c) All funds in the Department of Law Enforcement Criminal Justice Standards and Training Trust Fund shall be disbursed only in compliance with s. 943.25(9).

Section 19. Subsection (2) of section 4 of chapter 2001-184, Laws of Florida, and subsection (2) of section 7 of chapter 2001-232, Laws of Florida, are repealed.

Section 20. Section 741.466, Florida Statutes, is repealed.

Section 21. Effective January 1, 2003, section 784.046, Florida Statutes, is amended to read:

784.046 Action by victim of repeat violence or dating violence for protective injunction; powers and duties of court and clerk of court; filing and form of petition; notice and hearing; temporary injunction; issuance; statewide verification system; enforcement.—

(1) As used in this section, the term:

(a) “Violence” means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, or stalking, aggravated stalking, kidnapping, or false imprisonment, or any criminal offense resulting in physical injury or death, by a person against any other person.

(b) “Repeat violence” means two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner’s immediate family member.

(c) “Dating violence” means violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on the consideration of the following factors:

1. A dating relationship must have existed within the past 6 months;

2. The nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and

3. The frequency and type of interaction between the persons involved in the relationship must have included that the persons have been involved over time and on a continuous basis during the course of the relationship.

The term does not include violence in a casual acquaintanceship or violence between individuals who only have engaged in ordinary fraternization in a business or social context.

(2) There is created a cause of action for an injunction for protection in cases of repeat violence and there is created a separate cause of action for an injunction for protection in cases of dating violence.

(a) Any person who is the victim of repeat violence or the parent or legal guardian of any minor child who is living at home and who seeks an injunction for protection against repeat violence on behalf of the minor child has standing in the circuit court to file a sworn petition for an injunction for protection against repeat violence.

(b) Any person who is the victim of dating violence and has reasonable cause to believe he or she is in imminent danger of becoming the victim of another act of dating violence, or any person who has reasonable cause to believe he or she is in imminent danger of becoming the victim of an act of dating violence, or the parent or legal guardian of any minor child who is living at home and who seeks an injunction for protection against dating violence on behalf of that minor child, has standing in the circuit court to file a sworn petition for an injunction for protection against dating violence.

~~(c)~~(b) This cause of action for an injunction may be sought whether or not any other petition, complaint, or cause of action is currently available or pending between the parties.

~~(d)~~(e) This cause of action for an injunction shall not require that the petitioner be represented by an attorney.

(3)(a) The clerk of the court shall provide a copy of this section, simplified forms, and clerical assistance for the preparation and filing of such a petition by any person who is not represented by counsel.

(b) In the event the person desiring to file for an injunction pursuant to this section does not have sufficient funds with which to pay filing fees to the clerk of the court or service fees to the sheriff or law enforcement agency and signs an affidavit so stating, 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.

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

(d) The clerk of the court shall provide the petitioner with a certified copy of any injunction for protection against repeat violence or dating violence entered by the court.

(4)(a) The sworn petition shall allege the incidents of repeat violence or dating violence and shall include the specific facts and circumstances which form the basis upon which relief is sought. With respect to a minor child who is living at home, the parent or legal guardian of the minor child must have been an eyewitness to, or have direct physical evidence or affidavits from eyewitnesses of, the specific facts and circumstances which form the basis upon which relief is sought.

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

PETITION FOR INJUNCTION FOR PROTECTION
AGAINST REPEAT VIOLENCE OR DATING VIOLENCE

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

- 1. Petitioner resides at ...(address)...
- 2. Respondent resides at ...(address)...

3.a. Petitioner has suffered repeat violence as demonstrated by the fact that the respondent has: ...(enumerate incidents of violence)...

.....
.....
.....

b. Petitioner is a victim of dating violence and has reasonable cause to believe that he or she is in imminent danger of becoming the victim of another act of dating violence or has reasonable cause to believe that he or she is in imminent danger of becoming a victim of dating violence, as demonstrated by the fact that the respondent has: ...(list the specific incident or incidents of violence and describe the length of time of the relationship, whether it has been in existence during the last 6 months, the nature of the relationship of a romantic or intimate nature, the frequency and type of interaction, and any other facts that characterize the relationship.)...

.....
.....
.....

4. Petitioner genuinely fears repeat violence by the respondent.

5. Petitioner seeks: an immediate injunction against the respondent, enjoining him or her from committing any further acts of ~~repeat~~ violence; an injunction enjoining the respondent from committing any further acts of ~~repeat~~ violence; and an injunction providing any terms the court deems necessary for the protection of the petitioner and the petitioner’s immediate family, including any injunctions or directives to law enforcement agencies.

(5) Upon the filing of the petition, the court shall set a hearing to be held at the earliest possible time. The respondent shall be personally served with a copy of the petition, notice of hearing, and temporary injunction, if any, prior to the hearing.

(6)(a) When it appears to the court that an immediate and present danger of ~~repeat~~ violence exists, the court may grant a temporary injunction which may be granted in an ex parte hearing, pending a full hearing, and may grant such relief as the court deems proper, including an injunction enjoining the respondent from committing any acts of ~~repeat~~ violence.

(b) In a hearing ex parte for the purpose of obtaining such temporary injunction, no evidence other than the verified pleading or affidavit shall be used as evidence, unless the respondent appears at the hearing or has received reasonable notice of the hearing.

(c) Any such ex parte temporary injunction shall be effective for a fixed period not to exceed 15 days. A full hearing, as provided by this section, shall be set for a date no later than the date when the temporary injunction ceases to be effective. 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.

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

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

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

(c) The terms of the injunction shall remain in full force and effect until modified or dissolved. Either party may move at any time to modify or dissolve the injunction. Such relief may be granted in addition to other civil or criminal remedies.

(d) A temporary or final judgment on injunction for protection against repeat violence or dating 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 that the respondent was served with the temporary or final order, if obtainable.

(8)(a)1. The clerk of the court shall furnish a copy of the petition, notice of hearing, and temporary injunction, if any, to the sheriff or a law enforcement agency of the county where the respondent resides or can be found, who shall serve it upon the respondent as soon thereafter as possible on any

day of the week and at any time of the day or night. The clerk of the court shall be responsible for furnishing to the sheriff such information on the respondent's physical description and location as is required by the department to comply with the verification procedures set forth in this section. Notwithstanding any other provision of law to the contrary, the chief judge of each circuit, in consultation with the appropriate sheriff, may authorize a law enforcement agency within the chief judge's jurisdiction to effect this type of service and to receive a portion of the service fee. No person shall be authorized or permitted to serve or execute an injunction issued under this section unless the person is a law enforcement officer as defined in chapter 943.

2. When an injunction is issued, if the petitioner requests the assistance of a law enforcement agency, the court may order that an officer from the appropriate law enforcement agency accompany the petitioner and assist in the execution or service of the injunction. A law enforcement officer shall accept a copy of an injunction for protection against repeat violence or dating violence, certified by the clerk of the court, from the petitioner and immediately serve it upon a respondent who has been located but not yet served.

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

(c)1. Within 24 hours after the court issues an injunction for protection against repeat violence or dating violence or changes or vacates an injunction for protection against repeat violence or dating violence, the clerk of the court must forward a copy of the injunction to the sheriff with jurisdiction over the residence of the petitioner.

2. Within 24 hours after service of process of an injunction for protection against repeat violence or dating violence upon a respondent, the law enforcement officer must forward the written proof of service of process to the sheriff with jurisdiction over the residence of the petitioner.

3. Within 24 hours after the sheriff receives a certified copy of the injunction for protection against repeat violence or dating violence, the sheriff must make information relating to the injunction available to other law enforcement agencies by electronically transmitting such information to the department.

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

5. Within 24 hours after an injunction for protection against repeat violence or dating violence is lifted, terminated, or otherwise rendered no longer effective by ruling of the court, the clerk of the court must notify the sheriff or local law enforcement agency receiving original notification of the injunction as provided in subparagraph 2. That agency shall, within 24 hours after receiving such notification from the clerk of the court, notify the department of such action of the court.

(9)(a) The court shall enforce, through a civil or criminal contempt proceeding, a violation of an injunction for protection. The court may enforce the respondent's compliance with the injunction by imposing a monetary assessment. The clerk of the court shall collect and receive such assessments. On a monthly basis, the clerk shall transfer the moneys collected pursuant to this paragraph to the State Treasury for deposit in the Crimes Compensation Trust Fund established in s. 960.21.

(b) If the respondent is arrested by a law enforcement officer under s. 901.15(10) for committing an act of repeat violence or dating violence in violation of a repeat or dating violence injunction for protection, the respondent shall be held in custody until brought before the court as expeditiously as possible for the purpose of enforcing the injunction and for admittance to bail in accordance with chapter 903 and the applicable rules of criminal procedure, pending a hearing.

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

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

Section 22. Section 784.047, Florida Statutes, is amended to read:

784.047 Penalties for violating protective injunction against ~~repeat~~ violators.—A person who willfully violates an injunction for protection against repeat violence or dating violence, issued pursuant to s. 784.046, or a foreign protection order accorded full faith and credit pursuant to s. 741.315 by:

- (1) Refusing to vacate the dwelling that the parties share;
- (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;
- (3) Committing an act of repeat violence or dating violence against the petitioner;
- (4) Committing any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to the petitioner; or
- (5) Telephoning, contacting, or otherwise communicating with the petitioner directly or indirectly, unless the injunction specifically allows indirect contact through a third party;

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

Section 23. Subsection (4) of section 784.048, Florida Statutes, is amended to read:

784.048 Stalking; definitions; penalties.—

(4) Any person who, after an injunction for protection against repeat violence or dating violence pursuant to s. 784.046, or an injunction for protection against domestic violence pursuant to s. 741.30, or after any other court-imposed prohibition of conduct toward the subject person or that person's property, knowingly, willfully, maliciously, and repeatedly follows or harasses another person commits the offense of aggravated stalking, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 24. Except as otherwise provided herein, this act shall take effect January 1, 2003.

Approved by the Governor April 22, 2002.

Filed in Office Secretary of State April 22, 2002.