

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Criminal Justice Committee

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BILL: SB 950

INTRODUCER: Senator Simmons

SUBJECT: Stalking & Aggravated Stalking

DATE: January 4, 2012

REVISED: 01/17/12

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	<b>Pre-meeting</b>
2.			JU	
3.			BC	
4.				
5.				
6.				

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**I. Summary:**

Senate Bill 950 amends the stalking statute, s. 784.048, F.S., by revising stalking definitions, primarily the definition of “credible threat.” It also increases the criminal penalties for three of the four aggravated stalking offenses, establishes a cause of action for an injunction for protection against stalking and aggravated stalking, requires the court to consider issuing an injunction restraining a defendant from victim contact for up to ten years, and requires attendance by a stalking or aggravated stalking defendant in a batterers’ intervention program pursuant to s. 741.281, F.S. Finally, it amends the severity ranking chart of the Criminal Punishment Code to conform with the penalty revisions made by the bill.

This bill substantially amends section 784.048 of the Florida Statutes. It also amends section 921.0022, Florida Statutes, to conform to revisions made by the bill.

**II. Present Situation:**

**Stalking**

Section 784.048, F.S., criminalizes the offense of stalking and aggravated stalking. Stalking is a first degree misdemeanor, punishable by serving up to one year in county jail and potentially paying up to a \$1,000 fine. Stalking is committed when a person willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person.<sup>1</sup>

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<sup>1</sup> Section 784.048(2), F.S.

Aggravated stalking is a third degree felony, punishable by serving up to five years in prison and potentially paying up to a \$5,000 fine. There are four aggravated stalking offenses as follows. Willful, malicious, and repeated following, harassing, or cyberstalking a person while making a credible threat with the intent to place that person in reasonable fear of death or bodily injury for himself, his child, sibling, spouse, parent, or dependent is the first enumerated aggravated stalking offense in the statute.<sup>2</sup>

The second aggravated stalking offense occurs when a person, after an injunction for protection against repeat violence, sexual violence, dating violence, domestic violence, or any other court imposed prohibition of conduct toward the subject person or his property, knowingly, willfully, maliciously, and repeatedly follows, harasses, or cyberstalks that person.<sup>3</sup>

The third aggravated stalking offense occurs when a person willfully, maliciously, and repeatedly follows, harasses, or cyberstalks a minor under 16 years of age.<sup>4</sup> The last enumerated offense occurs when a person has been sentenced for sexual battery, a lewd or lascivious offense, or lewd or lascivious exhibition via computer transmission and has been issued a no contact order under s. 921.244, F.S., willfully, maliciously, and repeatedly follows, harasses, or cyberstalks the victim.<sup>5</sup>

The stalking law provides the following definitions. It defines “harass” as “engaging in a course of conduct directed at a specific person that causes substantial emotional distress and serves no legitimate purpose.”<sup>6</sup> “Course of conduct” is defined as a “pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose.”<sup>7</sup>

“Credible threat” means it is made with the intent to cause the targeted person to reasonably fear for his or her safety. It must also be made against the life of, or threat to cause bodily injury to a person.”<sup>8</sup> Lastly, “cyberstalk” is defined to mean engaging in a course of conduct to communicate through words or images by electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose.<sup>9</sup>

In 1995, the constitutionality of Florida’s stalking statute was upheld by the Florida Supreme Court against an overbreadth and vagueness challenge.<sup>10</sup>

### **Injunctions for Protection against Domestic Violence, Repeat Violence, Sexual Violence, or Dating Violence**

A victim of domestic violence<sup>11</sup> or a person who has reasonable cause to believe that he or she is in imminent danger of becoming a victim of domestic violence may seek protective injunctive

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<sup>2</sup> Section 784.048(3), F.S.

<sup>3</sup> Section 784.048(4), F.S.

<sup>4</sup> Section 784.048(5), F.S.

<sup>5</sup> Section 784.048(7), F.S.

<sup>6</sup> Section 784.048(1), F.S.

<sup>7</sup> Section 784.048(1)(b), F.S.

<sup>8</sup> Section 784.048(1)(c), F.S.

<sup>9</sup> Section 784.048(1)(d), F.S.

<sup>10</sup> *Bouters v. State*, 659 So.2d 235 (1995), *cert.denied*, 116 S.Ct. 245, 516 U.S. 894, 133 L.Ed.2d 171.

relief.<sup>12</sup> In seeking protective injunctive relief, a person must file a sworn petition with the court that alleges the existence of domestic violence and includes specific facts and circumstances upon which relief is sought.<sup>13</sup> The court must set a hearing at the earliest possible time after a petition is filed.<sup>14</sup> The respondent must be personally served with a copy of the petition, financial affidavit, Uniform Child Custody Jurisdiction and Enforcement Act affidavit, if any, notice of hearing, and any temporary injunction that has been issued.<sup>15</sup> The court can enforce a violation of an injunction through a civil or criminal contempt proceeding, or the state attorney may prosecute it as a first degree misdemeanor under s. 741.31, F.S.<sup>16</sup> Either party may move the court to modify or dissolve an injunction at any time.<sup>17</sup>

Section 784.046, F.S., governs the issuance of injunctions for protection against repeat violence,<sup>18</sup> dating violence,<sup>19</sup> and sexual violence.<sup>20</sup> This statute basically parallels the provisions discussed above in the domestic violence law.

Currently, a statutory cause of action does not exist specifically for an injunction for protection against stalking or aggravated stalking. A person desiring such an injunction must pursue injunction relief through the domestic violence injunction statute or the repeat violence injunction statute as outlined above. The domestic violence definition requires "...stalking or aggravated stalking resulting in physical injury or death of one family or household member by another member."<sup>21</sup> Similarly, the violence definition requires "...stalking or aggravated stalking resulting in physical injury or death by one person against any other person" and the repeat

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<sup>11</sup> **Domestic violence** is defined 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 family or household member.**" Section 741.28(2), F.S.

<sup>12</sup> Section 741.30(1), F.S.

<sup>13</sup> Section 741.30(3), F.S.

<sup>14</sup> Section 741.30(4), F.S.

<sup>15</sup> *Id.* When an immediate and present danger of domestic violence exists, the court may grant a temporary injunction ex parte, pending a full hearing. Section 741.30(5), F.S.

<sup>16</sup> Section 741.30(9), F.S.

<sup>17</sup> Section 741.30(10), F.S.

<sup>18</sup> Section 784.046(1)(a), F.S., defines **violence** as "any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, **stalking, aggravated stalking**, kidnapping, or false imprisonment, or any criminal offense **resulting in physical injury or death**, by a person against any other person." Section 784.046(1)(b), F.S., defines **repeat violence** as "**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."

<sup>19</sup> Dating violence is defined as "violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature." The following factors come into play when determining the existence of such a relationship: (1) a dating relationship must have existed within the past six 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 persons involved in the relationship must have been involved over time and on a continuous basis during the course of the relationship. Dating violence does not include violence in a casual acquaintanceship or between individuals who have only engaged in ordinary fraternization. Section 784.046(1)(d), F.S.

<sup>20</sup> Sexual violence is defined as any one incident of "1. Sexual battery, as defined in chapter 794; 2. A lewd or lascivious act, as defined in chapter 800, committed upon or in the presence of a person younger than 16 years of age; 3. Luring or enticing a child, as described in chapter 787; 4. Sexual performance by a child, as described in chapter 827; or 5. Any other forcible felony wherein a sexual act is committed or attempted." For purposes of this definition, it does not matter whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney. Section 784.046(1)(c), F.S.

<sup>21</sup> See *supra* note 11.

violence definition requires "...two incidents of stalking, one being within six months of the petition's filing, which are directed against the petitioner or an immediate family member."<sup>22</sup>

### **Batterer's Intervention Program**

The Legislature established a batterer's intervention program to protect the victims of domestic violence and their children and to hold the perpetrators of domestic violence responsible for their acts. The Department of Children and Families is responsible for certifying and monitoring the batterer's intervention programs in Florida.<sup>23</sup> The goals of the programs are to increase victim safety, eliminate violence in intimate relationships, and stop other forms of abusive behavior. Persons found guilty of an act of domestic violence or persons for whom an injunction for protection against domestic violence has been entered can be ordered to attend and participate in the batterers' intervention program.<sup>24</sup>

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

Senate Bill 950 amends the stalking statute, s. 784.048, F.S., by revising some of the stalking definitions, primarily the definition of "credible threat." It increases the criminal penalties for three of the four aggravated stalking offenses, establishes a cause of action for an injunction for protection against stalking and aggravated stalking, requires the court to consider issuing an injunction restraining a defendant from victim contact for up to ten years, and requires attendance by a stalking or aggravated stalking defendant in a batterers' intervention program pursuant to s. 741.281, F.S. It also amends the severity ranking chart of the Criminal Punishment Code to conform to the penalty revisions made by the bill.

#### **Stalking**

The substantive changes to the definitions in the stalking statute largely consist of the revised definition of "credible threat." Under the bill, it means a "verbal or nonverbal threat (including one delivered by electronic communication), made with the intent to place the targeted person in reasonable fear of his safety or that of his immediate family, and made with the apparent ability to carry it out. However, it is not necessary to prove that the person making the threat had the intent to actually carry it out. Additionally, the bill deletes the current language requiring that the threat be against the life of, or a threat to cause bodily injury to, a person.

The bill also provides a definition of "immediate family" to include a person's spouse, parent, child, grandparent, or sibling.

The penalty enhancements for aggravated stalking vary by one or two degrees. One of the aggravated stalking offenses increases by a degree as follows. When a person, after an injunction for protection against repeat violence, sexual violence, dating violence, domestic violence, or any other court imposed prohibition of conduct toward the subject person or his property, knowingly, willfully, maliciously, and repeatedly follows, harasses, or cyberstalks that person, it becomes a

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<sup>22</sup> See *supra* note 18.

<sup>23</sup> Section 741.32, F.S.

<sup>24</sup> Section 741.281, F.S.

second degree felony (currently a third degree felony), punishable by imprisonment not exceeding 15 years and a potential fine not exceeding \$10,000.

The other two penalty enhancements increase by two degrees as follows. When a person willfully, maliciously, and repeatedly follows, harasses, or cyberstalks a minor under 16 years of age, it becomes a first degree felony, punishable by imprisonment not exceeding 30 years and a potential fine not exceeding \$10,000. Similarly, when a person has been sentenced for sexual battery, a lewd or lascivious offense, or lewd or lascivious exhibition via computer transmission and has been issued a no contact order under s. 921.244, F.S., willfully, maliciously, and repeatedly follows, harasses, or cyberstalks the victim, it becomes a first degree felony. (Both offenses are currently third degree felonies.)

### **Injunctions for Protection Against Stalking and Aggravated Stalking**

The bill requires the sentencing court to consider issuing an injunction restraining the defendant from any victim contact for up to ten years. The length of this restraining injunction is intended to be based upon the seriousness of the case facts, the probability of future violations, and the victim's safety. The court may issue the injunction regardless of whether the defendant is in prison, county jail, or on probation.

The bill also creates a statutory cause of action for an injunction for protection against stalking and aggravated stalking, similar to the current causes of action for injunctions against domestic violence, repeat violence, sexual violence, and dating violence. The new cause of action, however, does not include a requirement that physical injury or death is involved. The bill allows a stalking victim or the parent of a child under 16 on behalf of the child to file a sworn petition for an injunction for protection against stalking or aggravated stalking in circuit court.

The petition for protection must allege the incidents of stalking or aggravated stalking and include specific facts and circumstances upon which relief is sought. The court may not require the petitioner to file a bond upon the issuance of the injunction. Finally, the clerk of the court must provide the petitioner with a certified copy of any protective injunction against stalking entered by the court.

### **Batterer's Intervention Program**

The bill also imposes a new requirement for the court to order a defendant found guilty of stalking or aggravated stalking to attend a batterers' intervention program pursuant to s. 741.281, F.S.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons convicted of aggravated stalking will potentially be subject to increased fines not exceeding \$10,000. Defendants convicted of stalking or aggravated stalking will also be subject to paying the \$30 fee for each 29-week batterers' intervention program he or she is ordered to attend under the bill.

C. Government Sector Impact:

The Criminal Justice Estimating Conference met on January 17, 2012 and estimated the following net impact on the inmate population over the next five years:

Fiscal Year	Projected Cumulative Prison Beds Required	Projected Additional Annual Prison Beds Required	FUNDS REQUIRED			
			Annual Operating Costs	Annual Fixed Capital Outlay Costs	TOTAL Annual Funds	TOTAL Cumulative Funds
2012-2013	3	3	\$30,387	\$580,920	<b>\$611,307</b>	<b>\$611,307</b>
2013-2014	10	7	\$134,180	\$180,201	<b>\$314,381</b>	<b>\$925,688</b>
2014-2015	13	3	\$242,627	\$250,120	<b>\$492,747</b>	<b>\$1,418,435</b>
2015-2016	17	4	\$322,800	\$456,533	<b>\$779,333</b>	<b>\$2,197,768</b>
2016-2017	24	7	\$449,524	\$405,006	<b>\$854,530</b>	<b>\$3,052,298</b>
<b>Total</b>	<b>24</b>	<b>24</b>	<b>\$1,179,518</b>	<b>\$1,872,780</b>	<b>\$3,052,298</b>	<b>\$3,052,298</b>

Prepared by Florida Legislature, Office of Economic and Demographic Research, January 13, 2012

FY 2010-11 operating costs per inmate were obtained from DOC. The \$53.35 per diem is for all department facilities (excluding private institutions and approximately 150 beds in PRCs) and includes operations, health services, and education services. It does not include debt service costs. It also does not include indirect and administrative costs of \$3.40 per inmate (state facilities). Operating costs in future years were increased by the change in the CPI from the National Economic Estimating Conference.

FY 2006-07 capital costs per bed were based on Department of Corrections cost to build Suwanee CI (\$94,000,000 for 2,003 lawful capacity beds) as reported at the Criminal Justice Impact Conference held February 23, 2010. Capital costs in later years were increased by the change in the chained price index for state and local construction spending obtained from Global Insights, Inc.

**Note: This impact statement is not intended to represent the direct appropriations impact of this bill. Rather, it provides a stand-alone estimate of the prison bed need of this particular bill. Cost data are included to allow a comparison of the impact of this bill with other proposed legislation. The actual appropriation associated with passage of this bill will differ depending on a number of factors including the existing inventory of prison beds.**

VI. Technical Deficiencies:

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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