

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1099 Stalking and Aggravated Stalking

SPONSOR(S): Plakon and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 950

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Krol	Cunningham
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

The bill makes a variety of changes to s. 784.048, F.S., the stalking statute. Specifically, the bill:

- Revises stalking-related definitions, primarily the definition of “credible threat.”
- Increases the penalties for three of the four aggravated stalking offenses from third degree felonies to either second or first degree felonies.
- Requires 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.
- Requires the court, for any sentence, to consider issuing an injunction restraining a defendant from victim contact for up to ten years.
- Establishes a cause of action for an injunction for protection against stalking and aggravated stalking, similar to injunctions for protection against domestic violence.

The bill amends the offense severity ranking chart of the Criminal Punishment Code to conform to the penalty revisions made by the bill.

The Criminal Justice Estimating Conference met on January 17, 2012, and determined that the bill would have a significant prison bed impact on the Department of Corrections. See fiscal section.

The bill is effective July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Stalking

Section 784.048, F.S., criminalizes the offenses of stalking and aggravated stalking. Stalking is a first degree misdemeanor¹ and is committed when a person willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person.²

Section 784.048, F.S., establishes four aggravated stalking offenses, each of which is a third degree felony.³

- Subsection (3) provides that aggravated stalking occurs when a person willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another 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. This offense is ranked in Level 6 of the offense severity ranking chart (36 sentencing points).
- Subsection (4) provides that aggravated stalking 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. This offense is ranked in Level 7 of the offense severity ranking chart (56 sentencing points).
- Subsection (5) provides that aggravated stalking occurs when a person willfully, maliciously, and repeatedly follows, harasses, or cyberstalks a minor under 16 years of age. This offense is ranked in Level 6 of the offense severity ranking chart (36 sentencing points).
- Subsection (7) provides that aggravated stalking occurs when a person, after being sentenced for sexual battery, a lewd or lascivious offense, or lewd or lascivious exhibition via computer transmission and after having been issued a no contact order under s. 921.244, F.S., willfully, maliciously, and repeatedly follows, harasses, or cyberstalks the victim. This offense is ranked in Level 7 of the offense severity ranking chart (56 sentencing points).

Section 748.048, F.S., provides the following definitions:

- “Harass” means “engaging in a course of conduct directed at a specific person that causes substantial emotional distress and serves no legitimate purpose.”⁴
- “Course of conduct” means “a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose.”⁵
- “Credible threat” means “a threat made with the intent to cause the person who is the target of the threat to reasonably fear for his or her safety. The threat must be against the life of, or a threat to cause bodily injury to, a person.”⁶
- “Cyberstalk” means “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.”⁷

In 1995, the constitutionality of Florida’s stalking statute was upheld by the Florida Supreme Court against an overbreadth and vagueness challenge.⁸

¹ Punishable by up to one year in county jail and a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

² Section 784.048(2), F.S.

³ Punishable by up to 5 years imprisonment and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S.

⁴ Section 784.048(1), F.S.

⁵ Section 784.048(1)(b), F.S.

⁶ Section 784.048(1)(c), F.S.

⁷ Section 784.048(1)(d), F.S.

⁸ *Bouters v. State*, 659 So.2d 235 (1995), *cert.denied*, 116 S.Ct. 245, 516 U.S. 894, 133 L.Ed.2d 171.

The Criminal Punishment Code - Offense Severity Ranking Chart

The Criminal Punishment Code applies to sentencing for felony offenses (except capital felonies) committed on or after October 1, 1998.⁹ Criminal offenses are ranked in the Offense Severity Ranking Chart from Level 1 (least severe) to Level 10 (most severe) and are assigned points based on the severity of the offense as determined by the legislature.¹⁰ As the offense level increases, the number of points rises. If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony.¹¹

A defendant's sentence is calculated based on points, which are assigned for factors including: the offense for which the defendant is being sentenced; victim injury; additional offenses that the defendant committed at the time of the primary offense; the defendant's prior record and other aggravating factors.¹² The points are added in order to determine the "lowest permissible sentence" for the offense. If the total sentence points equals or is less than 44 points, the lowest permissible sentence is a non-state prison sanction (i.e., jail). If the total sentence points exceed 44 points, a prison sentence is the lowest permissible sentence. In each instance, the sentencing range is the lowest permissible sentence up to the maximum penalty provided in s. 775.082, F.S., which is based on the degree of the felony.¹³

Effect of the Bill

The bill substantively changes the definition of the term "credible threat" to "a verbal or nonverbal threat, including a threat delivered by electronic communication, a threat implied by a pattern of conduct, or a combination of the two, made with the intent to place the person who is the target of the threat in reasonable fear for his or her safety or the safety of his or her immediate family, and made with the apparent ability to carry out the threat to cause such harm." The bill provides that it is not necessary to prove that the person making the threat had the intent to actually carry out the threat and that the present incarceration of the person making the threat is not a bar to prosecution.

The bill also 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 modifies the definition of "course of conduct" to specify that "a pattern of conduct" *includes two or more* acts over a period of time which indicate a continuity of purpose.

The bill adds the definition of "immediate family" as "a person's spouse, parent, child, grandparent, or sibling."

The bill removes "intent to cause the person who is the target of the threat to reasonably fear for his or her safety" as an element of aggravated stalking as defined in s. 784.048(3), F.S. Consequently, under subsection (3), aggravated stalking occurs when a person willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person, and makes a credible threat to that person.

The bill increases the criminal penalties for three of the four aggravated stalking offenses.

- The penalty for violating of s. 784.048(4), F.S. (knowingly, willfully, maliciously, and repeatedly following, harassing, or cyberstalking a person, after an injunction for protection against repeat violence, sexual violence, etc.), is increased from a third degree felony to a second degree felony.¹⁴ This offense remains ranked in Level 7 of the offense severity ranking chart.
- The penalty for violating s. 784.048(5), F.S. (willfully, maliciously, and repeatedly following, harassing, or cyberstalking a minor under 16 years of age), is increased from third degree

⁹ Section 921.002, F.S.

¹⁰ Section 921.0022, F.S.

¹¹ Section 921.0023, F.S.

¹² Section 921.0024, F.S.

¹³ The statutory maximum sentence for a first degree felony is thirty years, for a second degree felony is fifteen years and for a third degree felony is five years. Section 775.082, F.S.

¹⁴ Punishable by up to 15 years imprisonment and a fine of up to \$10,000. Section 775.082 and 775.083, F.S.

felony to a first degree felony.¹⁵ This offense remains ranked in Level 6 of the offense severity ranking chart.

- The penalty for violating s. 784.048(7), F.S. (willfully, maliciously, and repeatedly following, harassing, or cyberstalking a victim where the offender 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), is increased from a third degree felony to a first degree felony. This offense remains ranked in Level 7 of the offense severity ranking chart.

The bill amends s. 921.0022, F.S., to correctly reflect the three penalty increases in the offense severity ranking chart.

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

A victim of domestic violence¹⁶ 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 relief.¹⁷ 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.¹⁸ The court must set a hearing at the earliest possible time after a petition is filed.¹⁹ 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.²⁰

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 misdemeanor²¹ under s. 741.31, F.S.²² Either party may move the court to modify or dissolve an injunction at any time.²³

Section 784.046, F.S., governs the issuance of injunctions for protection against repeat violence,²⁴ dating violence,²⁵ and sexual violence.²⁶ This statute basically parallels the provisions discussed above in the domestic violence law.

¹⁵ Punishable by up to 30 years imprisonment and a fine of up to \$10,000. Section 775.082 and 775.083, F.S.

¹⁶ Section 741.28(2), F.S., defines “domestic violence” 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.”

¹⁷ Section 741.30(1), F.S.

¹⁸ Section 741.30(3), F.S.

¹⁹ Section 741.30(4), F.S.

²⁰ *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.

²¹ Punishable by up to 1 year imprisonment or a fine of up to \$1,000.

²² Section 741.30(9), F.S.

²³ Section 741.30(10), F.S.

²⁴ 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.” 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.”

²⁵ Section 784.046(1)(d), F.S., defines “dating violence” 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.

²⁶ Section 784.046(1)(c), F.S., defines “sexual violence” as “any one incident of: 1. Sexual battery, as defined in ch. 794, F.S.; 2. A lewd or lascivious act, as defined in ch. 800, F.S., committed upon or in the presence of a person younger than 16 years of age; 3. Luring or enticing a child, as described in ch. 787, F.S.; 4. Sexual performance by a child, as described in ch. 827, F.S.; 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.

Currently, a statutory cause of action does not exist *specifically* for an injunction for protection against stalking or aggravated stalking. As such, persons desiring an injunction based on stalking behavior must pursue injunctive relief through the domestic violence or the repeat violence injunction statutes outlined above, which each include stalking and/or aggravated stalking as a basis for petitioning for an injunction.

- Domestic violence injunctions require "...stalking or aggravated stalking resulting in physical injury or death of one family or household member by another member."²⁷
- Dating violence injunctions require "...stalking or aggravated stalking resulting in physical injury or death between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature."²⁸
- Repeat violence injunctions require "...two incidents of stalking or aggravated stalking, one being within six months of the petition's filing, which are directed against the petitioner or an immediate family member."²⁹

As such, a person desiring an injunction based on stalking behavior must pursue injunctive relief through the domestic violence injunction statute or the repeat violence injunction statute outlined above.

Effect of the Bill

The bill amends s. 784.048, F.S., to require the sentencing court, as part of any sentence, to consider issuing an injunction restraining the defendant from any victim contact for up to ten years. The bill expresses legislative intent that the length of the restraining order 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 has his or her sentence suspended and is placed 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 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 bill requires the petition for protection to allege the incidents of stalking or aggravated stalking and include specific facts and circumstances that form the basis upon which relief is sought. The court may not require the petitioner to file a bond upon the issuance of the injunction. The bill requires the clerk of the court to provide the petitioner with a certified copy of any protective injunction against stalking entered by the court.

Batterer's Intervention Program

Section 741.32, F.S., establishes 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 Family Services is responsible for certifying and monitoring the batterer's intervention programs in Florida.³⁰ The goals of the programs are to increase victim safety, eliminate violence in intimate relationships, and stop other forms of abusive behavior. A judge can order a person to attend the batterers' intervention program if:

- A person is found guilty of an act of, has had adjudication withheld on, or has plead nolo contendere to domestic violence;³¹
- An injunction for protection against domestic violence has been entered against him or her;³²
- A person has willfully violated an injunction for protection against domestic violence;³³

²⁷ *Supra* note 14.

²⁸ Section 784.046(1)(d), F.S.

²⁹ *Id.*

³⁰ Section 741.32, F.S.

³¹ Section 741.281, F.S.

³² Section 741.30(6)(e), F.S.

³³ *Id.*

- A person, 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 and an injunction for protection against domestic violence has been entered against him or her;³⁴ or
- A person, in this state or any other state, has had at any time a prior injunction for protection entered against him or her after a hearing with notice and an injunction for protection against domestic violence has been entered against him or her.³⁵

Effect of the Bill

The bill requires 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.

B. SECTION DIRECTORY:

Section 1. Amends s. 784.048, F.S., stalking; definitions; penalties.

Section 2. Amends s. 921.0022, F.S., Criminal Punishment Code; offense severity ranking chart.

Section 3. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may result in a slightly positive fiscal impact on the Department of Children and Family Services through the collection of fees by persons court-ordered to attend batterer's intervention programs.³⁶

2. Expenditures:

The Criminal Justice Estimating Conference met on January 17, 2012, and determined that the bill would have a significant prison bed impact on the Department of Corrections.

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	\$611,307	\$611,307
2013-2014	10	7	\$134,180	\$180,201	\$314,381	\$925,688
2014-2015	13	3	\$242,627	\$250,120	\$492,747	\$1,418,435
2015-2016	17	4	\$322,800	\$456,533	\$779,333	\$2,197,768
2016-2017	24	7	\$449,524	\$405,006	\$854,530	\$3,052,298
Total	24	24	\$1,179,518	\$1,872,780	\$3,052,298	\$3,052,298
Prepared by Florida Legislature, Office of Economic and Demographic Research, January 13, 2012						

³⁴ *Id.*

³⁵ *Id.*

³⁶ Section 731.327, F.S.

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 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.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Persons convicted of aggravated stalking will potentially be subject to increased fines not exceeding \$10,000, and those convicted of stalking or aggravated stalking will be subject to paying the \$30 fee for each 29-week batterers' intervention program he or she is ordered to attend under the bill.³⁷

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

³⁷ Section 741.327(2), F.S.