

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1099 Stalking and Aggravated Stalking  
**SPONSOR(S):** Criminal Justice Subcommittee; 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	9 Y, 0 N, As CS	Krol	Cunningham
2) Judiciary Committee		Krol	Havlicak

### 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.”
- Creates a statutory cause of action for an injunction for protection against stalking and cyberstalking.
- Provides a first degree misdemeanor penalty for violating an injunction against stalking or cyberstalking.
- Requires the court, for any sentence, to consider issuing an injunction restraining a defendant from victim contact for up to ten years.

The bill may have an impact on local government because the bill creates a first degree misdemeanor penalty for persons who violate an injunction against stalking or cyberstalking. This could have a negative jail bed impact for counties and municipalities.

The bill is effective October 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 misdemeanor<sup>1</sup> and is committed when a person willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person.<sup>2</sup>

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

- 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.
- 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.
- 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.
- 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.

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.<sup>4</sup>
- “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.”<sup>5</sup>
- “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.”<sup>6</sup>
- “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.<sup>7</sup>

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

##### *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 or a threat implied by a pattern of conduct, or a combination of the two, which places the person who is the target of the threat in

---

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

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

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

<sup>4</sup> Section 784.048(1)(a), F.S.

<sup>5</sup> Section 784.048(1)(b), F.S.

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

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

<sup>8</sup> *Bouters v. State*, 659 So.2d 235 (Fla. 1995), *cert.denied*, 516 U.S. 894 (1995).

reasonable fear for his or her safety or the safety of his or her immediate family or household member...<sup>9</sup> and which is 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 adds the definition of “immediate family” as “a person’s spouse, parent, child, grandparent, or sibling.”

The bill removes “intent to place the person in reasonable fear of death or bodily injury” 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 allows the sentencing court to consider, as part of any sentence, 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.

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

A victim of domestic violence<sup>10</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 relief.<sup>11</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>12</sup> The court must set a hearing at the earliest possible time after a petition is filed.<sup>13</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>14</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<sup>15</sup> 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>

---

<sup>9</sup> As defined in s. 741.28, F.S., which defines “family or household member” as “spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. 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.”

<sup>10</sup> 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.”

<sup>11</sup> Section 741.30(1), F.S.

<sup>12</sup> Section 741.30(3), F.S.

<sup>13</sup> Section 741.30(4), F.S.

<sup>14</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>15</sup> Punishable by up to 1 year imprisonment or a fine of up to \$1,000.

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

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

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 largely parallels the provisions discussed above regarding the domestic violence injunction.

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.<sup>21</sup>
- 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.<sup>22</sup>
- 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.<sup>23</sup>

### *Effect of the Bill*

The bill creates a statutory cause of action for an injunction for protection against stalking and cyberstalking, which is substantially similar to the current causes of action for injunctions for protection against domestic violence, repeat violence, sexual violence, and dating violence. The cause of action that the bill establishes, however, does not include a requirement that physical injury or death be involved.

The bill provides the following procedures and protections for obtaining a temporary or final injunction against stalking or cyberstalking, which are similar to those currently existing for domestic violence and repeat violence injunctions:

- A stalking victim may file a sworn petition for an injunction for protection against stalking or cyberstalking in circuit court.
- The petition for protection must allege the incidents of stalking or cyberstalking 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, nor pay a filing fee.
- Upon filing the petition, the court must set a hearing at the earliest time possible. The respondent must be personally served with a copy of the petition, notice of hearing, and temporary injunction, if any, before the hearing.

---

<sup>18</sup> 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."

<sup>19</sup> 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.

<sup>20</sup> 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.

<sup>21</sup> Section 741.30(3)(b), F.S.

<sup>22</sup> See s. 784.046(1)(a) and (d), F.S., for the definitions of "violence" and "dating violence," respectively.

<sup>23</sup> See s. 784.046(1)(a) and (b), F.S., for the definitions of "violence" and "repeat violence," respectively.

- If it appears to the court that an immediate and present danger of stalking or cyberstalking exists, the court may grant a temporary injunction ex parte, pending a full hearing.
- The terms of an injunction restraining the respondent or ordering other relief for the protection of the victim remain in effect until modified or dissolved.
- The clerk of the court must provide the petitioner with a certified copy of the protective injunction entered by the court.
- A final judgment on an injunction for protection against stalking or cyberstalking provides that it is a violation of s. 790.233, F.S., and a first degree misdemeanor for the respondent to have in his or her care, custody, possession, or control any firearm or ammunition.
- Within 24 hours after the court issues the injunction, the clerk of the court must forward a certified copy of the injunction for service to the sheriff.
- Within 24 hours after receiving the injunction, the sheriff must make information related to the injunction available to other law enforcement agencies by electronically transmitting the information to the Florida Department of Law Enforcement.

The bill also creates a first degree misdemeanor penalty<sup>24</sup> for violating an injunction against stalking or cyberstalking, similar to the current criminal penalty that exists for violating a domestic violence or repeat violence injunction.

The bill also provides that a person who suffers an injury or loss as a result of a violation of an injunction for protection against stalking or cyberstalking may be awarded economic damages<sup>25</sup> for that injury or loss by the court issuing the injunction.

#### B. SECTION DIRECTORY:

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

Section 2. Creates s. 784.0485, F.S., relating to stalking or cyberstalking; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement.

Section 3. Creates s. 784.0487, F.S., relating to violation of an injunction for protection against stalking or cyberstalking.

Section 4. Provides an effective date of October 1, 2012.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

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

##### 2. Expenditures:

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

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

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

<sup>24</sup> Punishable by up to one year in jail and a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

<sup>25</sup> The bill provides that damages includes costs and attorney fees for enforcement of the injunction.

2. Expenditures:

The bill creates a first degree misdemeanor penalty for persons who violate an injunction against stalking or cyberstalking. The bill also provides that it is a violation of s. 790.233, F.S., and a first degree misdemeanor for the respondent to have in his or her care, custody, possession, or control any firearm or ammunition. This could have a negative jail bed impact for counties and municipalities.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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:

The bill provides that it is a violation of s. 790.233, F.S., and a first degree misdemeanor for the respondent to have in his or her care, custody, possession, or control any firearm or ammunition. However, s. 790.233, F.S., contains no reference specifying violations related to s. 784.0485, F.S., which is created by the bill.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 31, 2012, the Criminal Justice Subcommittee adopted a strike all amendment and reported the bill favorably as a committee substitute. The amendment:

- Deletes the enhanced criminal penalties for aggravated stalking and the conforming changes to the Criminal Punishment Code.
- Deletes the provision that required a court to order defendants found guilty of stalking or aggravated stalking to batterers' intervention program.
- Provides procedures and protections for obtaining a temporary or final injunction against stalking or cyberstalking.
- Provides a first degree misdemeanor penalty for violating an injunction against stalking or cyberstalking.

The analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.