

DOMESTIC VIOLENCE REVIEW

Office of the State Courts Administrator

Office of Court Improvement

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DOMESTIC RELATIONS JUDGE HONORED FOR PROMOTION OF COMMUNITY JUSTICE



DADE CITY – [Sixth Judicial Circuit](#) Judge Lynn Tepper, who presides over Family Court cases in East Pasco County, is the recipient of the 2008

Lifetime Achievement Award, presented by the Florida Association of Community Corrections (FACC), a professional organization whose members include federal, state, county, and juvenile probation officers.

Judge Tepper was selected because of her “dedication to providing fair and equal justice

and her willingness to instruct the criminal justice community,’ according to FACC President John McMahon. “Judge Tepper’s commitment to the betterment of the community and profession,” along with “visionary programs, such as ‘One Court–One Family’ and Drug Court,” made her the unanimous choice of the FACC’s Board of Directors, McMahon said. The award was announced during FACC’s recent annual training conference, which was in St. Petersburg this year.

FACC was established in 1992 to provide county probation organizations with a means “to identify, develop and promote effective

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programs . . . increase the professionalism of personnel . . . increase public awareness of the benefits of these programs.” The group also initiates and supports legislation aimed at the prevention, reduction and deterrence of criminal and delinquent behavior. In addition to private and public probation organizations, membership now includes representatives of correctional agencies, such as Florida Department of Juvenile Justice, Florida Department of Corrections, sheriff’s offices and private providers of substance abuse and other rehabilitative services.

Judge Tepper’s career on the bench began after she won a 1984 election to become a Pasco County judge. After one term, she was elected unopposed to a seat on the circuit bench and has held that position since 1989. She is a graduate of Bard College in Annandale-on-Hudson, NY, and earned her Juris Doctorate degree at Stetson University College of Law in Gulfport. Prior to election as a judge, she was in private practice, clerked in U.S. Bankruptcy Court and was an assistant public defender.

As a Family Court judge in Dade City, she oversees domestic relations cases. Prior to the funding and formal establishment of Pasco County Drug Court last year, Judge Tepper – without financial support or staff – began and presided over a similar, scaled-down and successful version of the specialty court that

emphasizes treatment for people with drug problems. She also had informally presided over a “One Court–One Family” concept for about a decade before the Florida Supreme Court Opinion establishing Unified Family Courts.

Judge Tepper’s innovative handling of domestic relations matters has lead to televised appearances on *Nightline* (“Is Abuse an Excuse”), *CNN’s Crier & Co.* (“Norplant: Is It Constitutional?”), *Oprah Winfrey* (“Shame: Does it work?”), and *Montel Williams* (“Troubled Teens”). She serves or has served on the Florida Gender Bias Study Commission, the Florida Bench/Bar Commission, Florida Domestic Violence Implementation Task Force, Florida Bar Legal Needs of Children’s Commission, Steering Committee on Families and Children in Courts, Supreme Court Committee on Alternative Dispute Resolution, Task Force on Treatment Based Drug Courts, Gov. Lawton Chiles’ Domestic Violence Clemency Review panels, the Pasco Family Law Advisory Group, the American Bar Association’s Law and Literacy Committee, New Port Richey Marine Institute and the Board of PEG/PAC (a family literacy organization).

Previous awards have included “Public Citizen of the Year” from the Florida Literacy Coalition; the ACE (Adult and Community Education) of Florida’s Public Official of the Year; and “Humanitarian of the Year” from the Florida Animal Control Association.

CIRCUIT NEWS

Featured Circuit

In each issue of "The Domestic Violence Review" we hope to feature news of interest from the circuits. Please submit news articles to newberry@flcourts.org.

The [Twelfth Judicial Circuit](#) has made concerted and successful efforts toward enhancing their Family Law Advisory Group (FLAG) in the past year with respect to domestic violence. Their FLAG Mission is "to improve the quality of judicial services provided to families involved in the court system by using community resources to review and improve existing procedures and to study, identify and implement innovative programs and practices." The Twelfth Judicial Circuit FLAG consists of many members from a variety of professions throughout the community. All FLAG members work as a team to accomplish the general mission of the FLAG.

One important aspect of their active and effective FLAG is the development of committees and subcommittees. Members are able to select and engage in their areas of interest and expertise. Committees are fluid in that they are formed as tasks are identified and in response to issues as they arise, and committees are disbanded upon completion of projects or as appropriate. At this time the FLAG has active committees for the following: Social Investigation and Parenting Plan Recommendation Program, Mental Health Evaluation Program, Expert Witness Applicant Review, Judicial Education, Family Division Procedures, Parenting Plan, Parenting

Coordination, Child Support Communications, Family Violence, and Dependency Court Improvement. The Family Violence Committee, which was established in September of 2007, has been instrumental in improving the collaboration of partners and coordination of domestic violence programs and practices throughout the community.

The Family Violence Committee is currently divided into subcommittees including the Silent Witness Subcommittee, Court Information Subcommittee, Elder Abuse Subcommittee and Domestic Violence Awareness Month Subcommittee. The Court Information Subcommittee provides information to litigants involved in DV proceedings and has most recently developed brochures for petitioners and respondents. The Silent Witness Subcommittee has coordinated the display of a domestic violence exhibit in area businesses to raise awareness. The Domestic Violence Awareness Month Subcommittee has been coordinating with local family violence shelters, SPARCC and HOPE, to provide information about several awareness events in October. This subcommittee also coordinated "email blasts" to raise awareness for each week in October, providing information about domestic violence, dating violence, elder abuse, batterer profiles, recidivism, and case law to the FLAG membership and family court professionals.

Another practice that has been well received by members is the inclusion of presentations about specific topics at the general FLAG meetings. In response to requests from members, the

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FLAG had Dr. Lara Embry speak earlier this year about Battered Women's Syndrome, Post Traumatic Stress Disorder, and the family court system. Dr. Embry earned her Ph.D. in Clinical Psychology from the University of Washington. During her practice, she has served the courts by conducting many family and child psychological evaluations. Dr. Embry spoke about the historical development of each disorder and explained how those who suffer interact with the family court system. At the next meeting, Magistrate Susan Maulucci presented on the "Next Step Program", which is a professional mentoring program to assist children who are transitioning from the foster care system into adulthood and the workforce. Guest speakers provide education and add an appealing dynamic to FLAG meetings.

Michelle Artman-Smith, Family Court Manager stated, "we are trying to promote communication and awareness by making

information available to the members and generating a better community response to family violence. The FLAG committee may be the informational hub, but the community agencies and professionals are the ones getting together to do the work." For example, two domestic violence centers in the area participating in the FLAG, HOPE and SPARCC, hosted events at the same time this year during domestic violence awareness month. They deliberately held events on the same day in hope to reach more victims and share media coverage.

Representation by advocacy organizations within the FLAG and the Family Violence Committee has enabled court personnel and service provider staff to cultivate stronger relationships and provide an opportunity for the exchange of information. The Twelfth Judicial Circuit FLAG is a vehicle to bring family violence issues to the courts and to the community.

Circuit Trainings

Fifteen circuits have accepted the Office of Court Improvement's (OCI) offer to utilize available federal funding for multidisciplinary training initiatives.

The 5th, 6th, 10th, 12th, and 13th judicial circuits are joining forces with the [Florida Chapter of the Association of Family and Conciliation Courts](#) for its Seventh Annual Conference, "[Thinking Outside the Box: Innovative Approaches to Families In The Courts](#)". The conference is being held February 27-28, 2009, in Tampa.

The other participating circuits are working with OCI staff in planning a variety of local training events tailored to their specific needs. We look forward to reporting on these events in future editions of "The Domestic Violence Review."

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NEWS FROM THE OFFICE OF COURT IMPROVEMENT

Case Law Updates

OCI's staff attorneys conduct research and distribute monthly legislative and case law updates to family court personnel. These updates are circulated by email and are available on the Florida court website. ([Case Law Updates](#)) The following case was included in the June-July 2008 update and identified by staff to be of particular interest for this issue: First District Courts of Appeal [Acevedo v. Williams](#), 985 So.2d 669, (Fla. 1st DCA 2008).

The mother of a 17 year old girl petitioned the court for an injunction against dating violence against the girl's 18 year old paramour. The court granted the injunction; however, the appellate court held that the trial court erred in entering the injunction. The 17 year old consented to the relationship, their sexual relationship did not constitute sexual battery pursuant to statute, and the record contained no evidence upon which the trial court could have concluded that the girl was a victim of any sort of dating violence as defined in section 784.046, Florida Statutes (2008).

PUBLICATIONS

The [2008 Domestic Violence Strategic Plan](#) reflects the work of the Office of the State Courts Administrator's (OSCA), Office of Court Improvement (OCI) staff and a statewide group of judges, court personnel, and stakeholders. Members of this group analyzed practices and procedures for handling domestic violence cases, identified issues, and made recommendations for improvement. This document is designed to serve as a guiding tool for the courts and partners on both the state and local levels.

The OCI is pleased to announce that the updated [2008 Domestic Violence Benchbook](#) has been printed and distributed to more than 400 family law judges in Florida. Staff would like to express appreciation to circuit court administration staff for assistance in disseminating the bench books. OCI first developed Florida's domestic violence benchbook in 2005 to address the highly litigated legal issues in domestic violence cases. OCI will continue to update the benchbook to assist both new and experienced judges in Florida who are assigned to hear domestic violence cases.

In recognition of a need expressed by both the 2007-2008 Domestic Violence Strategic Planning Group and the state's Domestic Violence Coordinators, OCI staff worked with these two groups to create informational brochures for litigants in injunction for protection cases. There are two separate brochures, one for [petitioners](#) and one for [respondents](#). In October brochures were distributed throughout the circuits for use in clerk's offices and courthouses.

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What's New in the OCI?

OCI staff is currently working with an advisory group of judges including Judge Tepper, Judge Ramsberger, Judge Collins, Judge Kelly, Judge Robbins, and Judge Senterfitt on two important domestic violence projects to be completed by July 2009.

The advisory group has convened by conference call several times in the last few months and has provided insightful guidance to staff. Members focused first on the development of an online

virtual court training program for judges and court personnel.

The advisory group is now assisting OCI staff with creating a video to educate litigants on injunctions for protection to help them navigate through the court process. The advisory group has devoted their time, despite their demanding schedules, to review and enhance content for these projects. OCI staff appreciates the advisory group's expertise and contributions to date. More information about these projects will be forthcoming.

FLORIDA LAW PROVIDES FOR FOUR DISTINCT TYPES OF ORDERS OF PROTECTION AGAINST VIOLENCE

*By Judge Amy Karan and Lauren Lazarus
(First Published in December, 2003)*

ORDERS for PROTECTION AGAINST DOMESTIC VIOLENCE

As of July 1, 2003, Florida law provides for four distinct types of orders of protection against violence, also commonly known, locally and nationally, as *restraining orders*, and in Florida, legally called *injunctions*. These orders protect a person from domestic, repeat, dating, and sexual violence. This article surveys the differences between these four types of injunctive relief, and serves as a guide for practitioners to navigate their way through the four distinct causes of action. It is intended to be a primer on the law in this area rather than an in depth analysis.

All four types of injunctions are civil proceedings, and the Florida Family Law Rules of Procedure and the Florida Rules of Evidence apply.¹ The Florida Supreme Court has

promulgated forms, some of which are mandatory. In order to ensure statewide uniformity and recognition by law enforcement, all courts are required to use the Supreme Court's temporary injunction and final judgment of injunction forms.² The forms, including petitions, various motions and orders are available online for viewing, printing, and/or downloading at www.flcourts.org.

When determining which cause of action is appropriate the practitioner must first consider standing to file which is based solely upon the relationship between the parties.

When filing a case, it is advisable to use the Florida Family Law Rules version of the petition,

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track the statutory language, or contact your clerk's office to obtain a copy of the version in use in your county. All filing and service fees have been eliminated as of July 1, 2003.³

Once a petition has been filed, it is presented to a judge to consider whether an ex parte temporary injunction, valid for up to 15 days, should be granted.⁴ Florida law only requires the court to review the four corners of the petition to determine whether there appears to be "an immediate and present danger of violence," the standard for issuance of temporary injunctions.⁵ No police reports, photographs of injuries, or other supporting evidence need be presented.

If a temporary injunction is issued, a full evidentiary hearing must be scheduled within the 15-day period. The court may grant a continuance of the hearing for an additional 15 days, for good cause shown by either party, which includes an extension to obtain service of process.⁶

If the ex parte temporary injunction is denied because the court finds no appearance of an immediate and present danger, a final hearing must be granted. If the temporary injunction is denied because the petition is filed under the incorrect statute, a motion to amend to the correct statute should be filed. At the final hearing, the petitioner must prove the case by a preponderance of the evidence. As with the temporary injunction, no supporting documentation is required by law, although all admissible evidence should be presented.

"Final judgments" for protection against violence, commonly known as "permanent injunctions," remain in effect until modified or dissolved by the court. Therefore, at the court's discretion, the injunction may be indefinite or expire on a date certain. Petitioners should request the duration of the injunction they are seeking at the time of final hearing.

Injunctions may be extended beyond their expiration date, provided the request to extend is filed prior to actual expiration. In determining whether the injunction should be extended, the occurrence of new violence is not required. The court may consider the circumstances leading to the imposition of the original injunction, as well as subsequent events that may cause the petitioner to have continuing reasonable fear that violence is likely to recur in the future.⁷

When determining which cause of action is appropriate, the practitioner must first consider standing to file which is based solely upon the relationship between the parties. The four types of injunctions, the required standing, the elements of each cause of action, and the available relief will be discussed separately.

DOMESTIC VIOLENCE

Sections 741.28 through 741.31, Florida Statutes, define domestic violence, create a cause of action for an injunction for protection against domestic violence, outline the relief available and set forth the violations that constitute crimes. Ch. 741 is the exclusive civil method to obtain protection against domestic violence.⁸

"Domestic violence" is defined by §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 household member by another.

Standing to file is conferred upon family or household members, which are defined as: spouses; former spouses; persons related by blood or marriage (including minors);⁹ any person who is or was residing within a single

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dwelling with petitioner as if a family;¹⁰ or a person with whom the petitioner has a child in common (regardless of marriage or cohabitation).

The petition may be filed in the circuit where the petitioner is currently or temporarily residing, where the respondent resides, or where the domestic violence occurred.¹¹ This allows a victim of violence, who has fled their home county, to obtain protection in their county of temporary residence without having to return to the site of the potential danger.

In domestic violence cases, no acts of violence need have occurred prior to the filing if petitioner has a reasonable fear that domestic violence is imminent.

The court may issue an ex parte temporary injunction if the required relationship exists and the court finds that there is an immediate and present danger of domestic violence. The petitioner must plead and prove he or she has been a victim of domestic violence or that there is reasonable cause to believe he or she is in imminent danger of becoming a victim. Note that the statute is phrased in the disjunctive and only one of the two criteria need be satisfied: petitioner *has been* a victim, or has *reasonable fear* of imminent violence.¹²

When determining whether an immediate and present danger exists, the court considers the totality of the circumstances. In 2002, the legislature detailed 10 specific factors for the court to take into account. These are indicators of elevated danger and include acts or threats of violence; attempts to harm petitioner, family members or close associates; restraining

petitioner from leaving the home or contacting police; prior orders of protection; injuring or killing a family pet; threats to use a gun or knife; previous criminal history; threats to kidnap or harm petitioner's children; and destruction of personal property.¹³

If the court enters an ex parte temporary injunction, the court may award the following requested relief in addition to the standard injunctions against acts of violence and "the no contact within 500 feet" provisions: exclusive use of a shared dwelling (regardless of title); exclusion of the respondent from petitioner's residence, place of employment, school, or other designated places frequented by petitioner, family, or household members; temporary custody of minor children; and temporary surrender of firearms and ammunition.¹⁴

If the court awards exclusive use of a shared home, provisions will be made for the respondent to retrieve items of personal health and hygiene, tools of the trade, along with other property that the parties may agree on. The respondent will be allowed to return to the premises to retrieve these items at a designated time, in the presence of law enforcement, who will normally stand by for a short period of time (usually 30 minutes or less). In a Ch. 741 proceeding, the court has no authority to make any equitable distribution of property. All disputed matters regarding the division or distribution of property must be brought before the court in a Ch. 61 or other appropriate proceeding.

The domestic violence injunction statute specifically prohibits the entry of any form of "mutual" injunctions. Separate injunctions may be issued under individual and distinct case numbers, in circumstances where each party files for an order of protection, and pleads and

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proves sufficient facts to warrant the entry of an order.¹⁵

Violations of the injunction by the respondent, such as refusing to vacate a shared dwelling; returning to the shared dwelling; coming within 500 feet of petitioner's home, place of employment, or other designated place; telephoning, contacting, or otherwise communicating with the petitioner, directly or indirectly; committing any act of domestic violence against the petitioner; and/or having any firearms in respondent's possession are first degree criminal misdemeanors.¹⁶ Other violations, such as failure to pay ordered support; failing to attend the court ordered counseling; or violation of visitation orders may result in contempt of court charges. Certain violations of the injunction, such as intentionally crossing a state line to violate an injunction; causing an intimate partner to cross state lines by force or fraud and causing bodily injury to that person in violation of an injunction; and interstate stalking are also crimes under the Federal Violence Against Women Act (VAWA).¹⁷ Even if the petitioner, or a third party, invites the respondent to come to the residence, or otherwise into contact with the petitioner, it is a violation of the injunction. However, petitioners who initiate contact with the respondent cannot be charged with violating the injunction. If petitioner makes contact, the respondent should file a motion to dissolve the injunction or dismiss the case, although it is not always grounds for dismissal. As of July 1, 2003, final hearings for injunctions against domestic violence must be recorded at the court's expense. This eliminates the necessity for bringing a court reporter to the final hearing. The notice of hearing will set forth what type of recording the court provides.¹⁸

The injunctive relief which may be awarded in the permanent injunction against domestic violence include the same provisions for

protection against violence and include injunctions against contact and acts of violence, award of temporary visitation;¹⁹ child support;²⁰ and spousal support; ordering the respondent to attend a certified batterers' intervention program,²¹ parenting classes, substance abuse or other counseling; and a mandatory prohibition against possession of firearms and ammunition. Both federal and Florida law make it a crime for a respondent to possess any firearms or ammunition while subject to a qualifying order of protection against domestic violence.²² Surrender of all personal firearms is mandatory, although law enforcement officers, as defined by §943.10(14), Florida Statutes, may keep their service weapons while on official duty unless otherwise prohibited by the employing law enforcement agency.²³

There is no statutory authority for an award of attorneys' fees in a Ch. 741 injunction proceeding. Neither trial nor appellate fees may be awarded under any theory, including §57.105, Florida Statutes.²⁴

While orders entered in a Ch. 61 proceeding take priority over those entered in an injunction action,²⁵ the circuits have varying procedures regarding where the injunction case is handled when there is a concurrent domestic relations case. Each circuit should have an administrative order on the issue, or it should be explained in the circuit's unified family court plan. The entry of a final judgment of dissolution of marriage does not automatically result in the dismissal of an injunction.²⁶ Similarly, if there is a pending temporary injunction against domestic violence, it is error for the court to dismiss the action simply because there is a pending dissolution of marriage action.²⁷

Florida injunctions are enforceable in all counties of the state as well as nationwide. Similarly, a qualifying final order of protection against domestic violence issued by a court of a

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foreign state, must be accorded full faith and credit by the courts of Florida and enforced by law enforcement as if they were Florida court orders.²⁸

REPEAT VIOLENCE

A petitioner who does not have a “domestic relationship” as defined in Ch. 741 may be eligible to obtain an injunction for protection under the repeat violence statute.²⁹ Since the enactment of laws providing for protection against dating and sexual violence, repeat violence cases have become mostly love triangle cases (new girlfriend vs. old girlfriend, former husband vs. new husband, etc.), employer-employee and co-worker relationships, schoolmates, neighborhood disputes, and roommates who do not have a dating or intimate relationship.

Any person who is the victim of repeat violence, or the parent or legal guardian of a minor child living at home who is the victim of repeat violence, has standing to file for an injunction against repeat violence.³⁰

In repeat violence cases, the petitioner must plead and prove he or she has been the victim of two incidents of violence, or stalking. 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. One of the incidents of violence or stalking must have occurred within six months of the filing of the petition and be directed against the petitioner or petitioner’s immediate family member.³¹

The standard for relief here is much different than that in domestic violence cases. In domestic violence cases, no acts of violence need have occurred prior to the filing if

petitioner has a reasonable fear that domestic violence is imminent. In repeat violence cases, not only must the violence have already occurred, there must be two acts of violence or a stalking in order for relief to be warranted. No matter how egregious the violence may be, if it is simply one act the petition will fail.³²

The following circumstances were found insufficient for issuance of repeat violence injunctions: telephone threats alone;³³ receiving unwanted letters and flowers;³⁴ nonthreatening e-mails, phone messages, chance encounters at restaurants, and leaving notes, cards, and a rose on petitioner’s doorstep, even after petitioner had clearly indicated she wanted no further contact.³⁵

On the other hand, repeated videotaping of a neighbor constituted stalking for purposes of the issuance of a repeat violence injunction,³⁶ and barking dogs coupled with threats were found sufficient where the petitioner was substantially and unreasonably disturbed.³⁷

The court may award the following relief in a repeat violence injunction: injunctions from committing acts of violence ordering the respondent to appropriate counseling, and such other relief necessary for the protection of the petitioner.³⁸

There is no requirement that the court record the final hearing in any of the Ch. 784 injunction proceedings (repeat, dating or sexual violence), so counsel should bring a court reporter if a transcript is desired.

The firearms prohibitions do not apply in repeat violence injunctions. However, the respondent may be required to surrender firearms if the court finds it necessary to protect the petitioner.³⁹

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DATING VIOLENCE

The legislature created a cause of action for protection against dating violence in 2002. Any person who is the victim of dating violence, or the parent or legal guardian of a minor child living at home who is the victim of dating violence, has standing to file for an injunction under this section.⁴⁰

“Dating violence” means violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature.⁴¹ Despite the fact that the cause of action for an injunction against dating violence is contained in Ch. 784, the law provides that persons in dating relationships must meet the same statutory criteria as is required for issuance of an injunction against domestic violence. That is, the petitioner is a victim of dating violence or has a reasonable belief that violence is imminent. No acts of violence need have occurred prior to filing.⁴² Because the dynamics of a dating relationship are the same as those in traditional Ch. 741 “domestic” relationships, the standard for protection is the same.

There are three factors for the court to consider in determining whether a “dating relationship” exists: the relationship existed within the past six months; the relationship was characterized by the expectation of affection or sexual involvement between the parties; and the frequency and type of interaction was that the persons were involved over time and on a continuous basis during the course of the relationship.⁴³ A dating relationship does not exist in circumstances where contact between the parties has been that of a casual acquaintance or ordinary fraternization in a business or social context.⁴⁴

While the standard for issuance of the injunction is the same as the domestic violence statute, the available injunctive relief mirrors

that in repeat violence cases. The court may award injunctions against acts of violence, referrals to appropriate counseling, and such other orders necessary to protect the petitioner.

As of the date of this writing, there are no reported cases construing the dating violence statute.

SEXUAL VIOLENCE

Effective July 1, 2003, “The Victim’s Freedom Act” became law, and created a cause of action under Ch. 784 for an injunction against sexual violence.⁴⁵

“Sexual violence” is defined as one incident of sexual battery; a lewd or lascivious act committed upon, or in the presence of, a person younger than 16; luring or enticing a child’s sexual performance; or any other forcible felony where a sexual act is committed or attempted.⁴⁶

A person who is the victim of an act of sexual violence, or the parent or legal guardian of a minor child living at home who is the victim of an act of sexual violence, has standing to file. The petitioner must have reported the incident to law enforcement and be cooperating in any criminal proceeding against the respondent; or, if the respondent was sentenced to a term of imprisonment for the act of sexual violence, the sentence must have expired, or be due to expire within 90 days.⁴⁷

If the respondent is incarcerated, the temporary injunction is effective for 15 days following release from incarceration rather than 15 days from the date of issuance as with the other protective injunctions. The final hearing must be set prior to expiration of the temporary injunction.⁴⁸

Authority to serve an injunction for protection

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against sexual violence upon an incarcerated respondent is shifted from a law enforcement officer to a state prison correctional officer. If the respondent is not served before release, the copies will be forwarded to the sheriff of the county where the offender was released.⁴⁹

This category of protection order was created to provide protection for persons, including minors, who are victims of one act of sexual violence but have no domestic or dating relationship with the perpetrator. Previously, the only remedy available was the repeat violence statute, where two acts are required. This new enactment closes a gap in protection for sex crime victims. The relief available is the same as in repeat violence cases. This law is too new for any case law analysis.

***Judge Amy Karan** is the administrative judge of Miami-Dade County's Dedicated Domestic Violence Court. She serves as faculty for the National Judicial College, Florida's College of Advanced Judicial Studies, and the National Council of Juvenile and Family Court Judges. Judge Karan is chair of The Florida Bar Family Law Section domestic violence subcommittee, the 11th Judicial Circuit's standing committee on domestic violence, and the advisory panel for Miami-Dade County's Domestic Violence Fatality Review Team.*

***Lauren Lazarus** serves as director of the domestic violence court in the 11th Judicial Circuit of Florida. In May 1998 she founded Miami-Dade County's Domestic Violence Fatality Review Team, which develops intervention and prevention strategies to reduce domestic violence-related deaths.*

This column was originally submitted to "The Florida Bar Journal" on behalf of The Florida Bar Family Law Section, Richard D. West, chair, and Michele K. Cummings and Jeffrey Weissman, editor, December, 2003.

CONCLUSION

The authors hope this article has distinguished the differences between Florida's four orders of protection against violence. The practitioner will best serve the client by becoming familiar with the four types of injunctions and the nuances of standing and proof necessary to warrant relief in each cause of action. The practitioner can then appropriately apply for, defend against, and have a reasonable expectation of prevailing in these important and often dangerous matters.

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¹ Fla. Fam. L. R. P. 12.010; Fla. Stat. §90.103.

² Fla. Fam. L. R. P. 12.610 (C)(2)(A); Florida Family Law Forms 12.980(d)(1), 12.980(e)(1), 12.980(e)(2), 12.980(l), 12.980(m), 12.980(p) and 12.980(q).

³ Fla. Stat. §§741.30(2)(a); 784.046(3).

⁴ Fla. Stat. §§741.30(5)(b), 784.046(6)(c).

⁵ Fla. Stat. §§741.30(5)(b), 784.046(6)(b).

⁶ Fla. Stat. §§741.30(5)(c), 784.046 (6)(c).

⁷ *Spiegel v. Haas*, 697 So. 2d 222 (Fla. 3d D.C.A. 1997); *Patterson v. Simonek*, 709 So. 2d 189 (Fla.3d D.C.A. 1998).

⁸ *Orth v. Orndorff*, 835 So. 2d 1283 (Fla. 2d D.C.A. 2003); *Campbell v. Campbell*, 584 So. 2d 125 (Fla. 4th D.C.A. 1991).

⁹ Children may file against their parents, however no custody, visitation, or support issues may be addressed. *Rinas v. Rinas*, 847 So. 2d 555 (Fla. 5th D.C.A. 2003); *Rosenthal v. Roth*, 816 So. 2d 667 (Fla. 3d D.C.A. 2002) (brother and sister who had not lived together for over 40 years qualified under the plain meaning of this section).

¹⁰ *Slovenski v. Wright*, 849 So. 2d 349 (Fla. 2d D.C.A. 2003) (overnight visits are insufficient to establish “residing within a single dwelling”).

¹¹ Fla. Stat. §741.30(1)(j) (notwithstanding any provision of Fla. Stat. ch. 47).

¹² Fla. Stat. §741.30(5)(a).

¹³ Fla. Stat. §741.30(6)(b).

¹⁴ Fla. Stat. §741.30 (5)(a). At this juncture, the surrender of firearms is discretionary with the court; however, surrender of firearms pending final hearing is usually ordered to ensure safety.

¹⁵ Fla. Stat. §741.30(i); *Martin v. Hickey*, 733 So. 2d 600 (Fla. 3d D.C.A. 1999); *Hixson v. Hixson*, 698 So. 2d 639 (Fla. 4th D.C.A. 1997); *Brooks v. Barrett*, 694 So. 2d 38 (Fla. 1st D.C.A. 1997).

¹⁶ Fla. Stat. §741.31(4).

¹⁷ 18 U.S.C. §2261-2262.

¹⁸ Fla. Stat. §741.30(6)(h). In most courts only audiotape recordings are made by the court. If parties desire transcripts, they must arrange for the transcription of the audiotape at their own expense.

¹⁹ Fla. Stat. §741.30(6)(a)(3). Awards of temporary custody and temporary visitation rights are made on the same basis as provided in Fla. Stat. ch. 61. Pursuant to Fla. Stat. §61.13(2)(b)2, evidence that a parent has been convicted of a felony of the third degree or higher involving domestic violence as defined in §741.28 and ch. 775, creates a rebuttable presumption of detriment to the child.

²⁰ Fla. Stat. §741.30(6)(a)(4). Temporary child support is to be awarded on the same basis as provided in Fla. Stat. ch. 61.

²¹ Fla. Stat. §741.30(6)(e). The court must order the respondent to attend a certified batterer’s intervention program in three instances: (1) the respondent has willfully violated the temporary injunction; (2) the respondent has been convicted of, had adjudication withheld, or plead no contest to a crime involving violence or a threat of violence; (3) the respondent has had at any time a prior injunction for protection entered after a hearing with notice; all other referrals are at the court’s discretion.

²² The Gun Control Act, 18 U.S.C. §922(g)(8); Fla. Stat. §741.30(6)(g).

²³ Fla. Stat. §741.31(4)(b)(2). It is the intent of the legislature that the disabilities regarding possession of

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firearms and ammunition are consistent with federal law. 18 U.S.C. §925 provides for the “official use” exemption for law enforcement officers and military personnel.

²⁴ *Cisneros v. Cisneros*, 831 So. 2d (Fla. 3d D.C.A. 2002); *Lewis v. Lewis*, 689 So. 2d (Fla. 1st D.C.A. 1997); *Baumgartner v. Baumgartner*, 693 So. 2d 84 (Fla. 2d D.C.A. 1997); *Belmont v. Belmont*, 761 So. 2d 406 (Fla. 2d D.C.A. 2000).

²⁵ Fla. Stat. §741.30(1)(c).

²⁶ *Farr v. Farr*, 840 So. 2d 1166 (Fla. 2d D.C.A. 2003).

²⁷ *Kniph v. Kniph*, 777 So. 2d 437 (Fla. 1st D.C.A. 2001); *White v. Cannon*, 778 So. 2d 467 (Fla. 3d D.C.A. 2001).

²⁸ Fla. Stat. §741.30(6)(d)(1); 18 U.S.C. §2265.

²⁹ Fla. Stat. §784.046.

³⁰ Fla. Stat. §784.046 (2)(a).

³¹ Fla. Stat. §784.046(1)(b).

³² *Buerster v. Fermin*, 844 So. 2d 804 (Fla. 4th D.C.A. 2003) (although respondent threatened, yelled, and screamed at the petitioner for two years, petitioner’s testimony established only one act of violence); *Long v. Edmundson*, 827 So. 2d 365 (Fla. 2d D.C.A. 2002) (only qualifying incident was one in which respondent waved a gun and pushed petitioner; threat on petitioner’s answering machine did not qualify as second incident); *Darrow v. Moschella*, 805 So.2d 1068 (Fla. 4th D.C.A. 2002) (several physical altercations on same day with brief pause in between found insufficient).

³³ *Gianni v. Kerrigan*, 836 So. 2d 1106 (Fla. 2d D.C.A. 2003); *Johnson v. Brooks*, 567 So. 2d 34 (Fla. 1st D.C.A. 1990).

³⁴ *McMath v. Biernacki*, 776 So. 2d 1039 (Fla. 1st D.C.A. 2001).

³⁵ *Ravitch v. Whelan*, 28 Fla. L. Weekly D1818a (Fla. 1st D.C.A. August 1, 2003).

³⁶ *Goosen v. Walker*, 714 So. 2d 1149 (Fla. 4th D.C.A. 1998).

³⁷ *Rae v. Flynn*, 690 So. 2d 1341(Fla. 3d D.C.A. 1997).

³⁸ Fla. Stat. §784.046(7). Note that all referrals to counseling under ch. 784 are discretionary.

³⁹ *Langner v. Cox*, 826 So. 2d 475(Fla. 1st D.C.A. 2002).

⁴⁰ Fla. Stat. §784.046(2)(b).

⁴¹ Fla. Stat. §784.046(1)(d).

⁴² Fla. Stat. §784.046(2)(b).

⁴³ Fla. Stat. §784.046(1)(d)(1)-(3).

⁴⁴ Fla. Stat. §784.046(1)(d)(3).

⁴⁵ House Bill 561, Fla. 2003.

⁴⁶ Fla. Stat. §784.046(1)(c).

⁴⁷ Fla. Stat. §784.046(2)(c).

⁴⁸ Fla. Stat. §784.046(6)(c).

⁴⁹ Fla. Stat. §784.046(8)(a)2.

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