IN THE
SUPREME COURT OF FLORIDA

CASE NO.: SC16-1921

NICOLE LOPEZ,

Petitioner,

vs.

SEAN HALL,

Respondent.

On Review from the District Court of Appeal,
First District of Florida

FIRST CORRECTED NOTICE OF SUPPELMENTAL AUTHORITY

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NOTICE OF SUPPLEMENTAL AUTHORITY

Petitioner Nicole Lopez submits as supplemental authority the following statutes and legislative history:

Florida Statutes:

$741.30(g), Fla. Stat. (2017)

§61.16(1), Fla. Stat. (2017)

§68.093(7), Fla. Stat. (2017)

§120.595(6), Fla. Stat. (2017)

§409.2567(4), Fla. Stat. (2017)

§429.87(1), Fla. Stat. (2017)

§605.0703(5), Fla. Stat. (2017)

§742.045, Fla. Stat. (2017)

§742.08, Fla. Stat. (2017)

§776.032, Fla. Stat. (2017)

Legislative History

Chapter 2017-156, House Bill No. 1385

House of Representatives Final Bill Analysis – Bill #: HB 1385

Copies of all of the foregoing statutes are attached to this notice. The supplemental authority is pertinent to the pending issue posed in Issue One of Petitioner's Brief on the Merits

Respectfully submitted,

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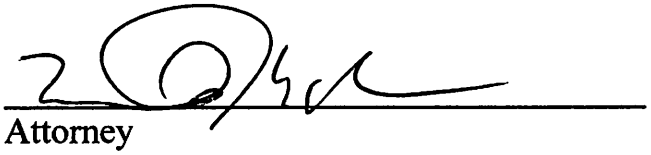
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished to **Earl M. Johnson, Jr., Esq.,** via email at: jaxlawnfl@gmail.com; this 5th day of September, 2017.

Attorney

CERTIFICATE OF COMPLIANCE

Undersigned counsel certifies that the size and style of type used in this notice is 14-point Times Roman.



Attorney

741.30Domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement; public records exemption.—

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

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

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

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

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

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

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

(g)Notwithstanding any other law, attorney fees may not be awarded in any proceeding under this section.

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

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

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

(k)Notwithstanding any provision of chapter 47, a petition for an injunction for protection against domestic violence may be filed in the circuit where the petitioner currently or temporarily resides, where the respondent resides, or where the domestic violence occurred. There is no minimum requirement of residency to petition for an injunction for protection.

(2)(a)Notwithstanding any other provision of law, the assessment of a filing fee for a petition for protection against domestic violence is prohibited effective October 1, 2002. However, subject to legislative appropriation, the clerk of the circuit court may, on a quarterly basis, submit to the Office of the State Courts Administrator a certified request for reimbursement for petitions for protection against domestic violence issued by the court, at the rate of $40 per petition. The request for reimbursement shall be submitted in the form and

manner prescribed by the Office of the State Courts Administrator. From this reimbursement, the clerk shall pay any law enforcement agency serving the injunction the fee requested by the law enforcement agency; however, this fee shall not exceed $20.

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

(c)1.The clerk of the court shall assist petitioners in seeking both injunctions for protection against domestic violence and enforcement for a violation thereof as specified in this section.

2.All clerks' offices shall provide simplified petition forms for the injunction, any modifications, and the enforcement thereof, including instructions for completion.

3.The clerk of the court shall advise petitioners of the opportunity to apply for a certificate of indigence in lieu of prepayment for the cost of the filing fee, as provided in paragraph (a).

4.The clerk of the court shall ensure the petitioner's privacy to the extent practical while completing the forms for injunctions for protection against domestic violence.

5.The clerk of the court shall provide petitioners with a minimum of two certified copies of the order of injunction, one of which is serviceable and will inform the petitioner of the process for service and enforcement.

6.Clerks of court and appropriate staff in each county shall receive training in the effective assistance of petitioners as provided or approved by the Florida Association of Court Clerks.

7.The clerk of the court in each county shall make available informational brochures on domestic violence when such brochures are provided by local certified domestic violence centers.

8.The clerk of the court in each county shall distribute a statewide uniform informational brochure to petitioners at the time of filing for an injunction for protection against domestic or repeat violence when such brochures become available. The brochure must include information about the effect of giving the court false information about domestic violence.

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

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

PETITION FOR
INJUNCTION FOR PROTECTION
AGAINST DOMESTIC VIOLENCE

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

Petitioner resides at: (a) (address)

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

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

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

Physical description of respondent: (d)

Race

Sex

Date of birth

Height

Weight

Eye color

Hair color

Distinguishing marks or scars

Aliases of respondent: (e)

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

The following describes any other cause of action currently pending between the petitioner and respondent: (g)

The petitioner should also describe any previous or pending attempts by the petitioner to obtain an injunction for protection against domestic violence in this or any other circuit, and the results of that attempt

Case numbers should be included if available.

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

committed or threatened to commit domestic violence defined in s. 741.28, Florida Statutes, as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another. With the exception of persons who are parents of a child in common, the family or household

members must be currently residing or have in the past resided together in the same single dwelling unit.

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

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

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

intentionally injured or killed a family pet.

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

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

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

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

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

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

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

A minor child or minor children reside with the petitioner whose names and ages are as follows:

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

Petitioner is unable to obtain safe alternative housing because:

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

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

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

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

Restraining the respondent from committing any acts of domestic violence.

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

Providing a temporary parenting plan, including a temporary time-sharing schedule, with regard to the minor child or children of the parties which might involve prohibiting or limiting time-sharing or requiring that it be supervised by a third party.

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

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

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

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

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

(initials)

(d)If the sworn petition seeks to determine a parenting plan and time-sharing schedule with regard to the minor child or children of the parties, the sworn petition shall be accompanied by or shall incorporate the allegations required by s. 61.522 of the Uniform Child Custody Jurisdiction and Enforcement Act.

(4)Upon the filing of the petition, the court shall set a hearing to be held at the earliest possible time. The respondent shall be personally served with a copy of the petition, financial affidavit, Uniform Child Custody Jurisdiction and Enforcement Act affidavit, if any, notice of hearing, and temporary injunction, if any, prior to the hearing.

(5)(a)If it appears to the court that an immediate and present danger of domestic violence exists, the court may grant a temporary injunction ex parte, pending a full hearing, and may grant such relief as the court deems proper, including an injunction:

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

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

3.On the same basis as provided in s. 61.13, providing the petitioner a temporary parenting

plan, including a time-sharing schedule, which may award the petitioner up to 100 percent of the time-sharing. The temporary parenting plan remains in effect until the order expires or an order is entered by a court of competent jurisdiction in a pending or subsequent civil action or proceeding affecting the placement of, access to, parental time with, adoption of, or parental rights and responsibilities for the minor child.

(b)Except as provided in s. 90.204, in a hearing ex parte for the purpose of obtaining such ex parte temporary injunction, no evidence other than verified pleadings or affidavits shall be used as evidence, unless the respondent appears at the hearing or has received reasonable notice of the hearing. A denial of a petition for an ex parte injunction shall be by written order noting the legal grounds for denial. When the only ground for denial is no appearance of an immediate and present danger of domestic violence, the court shall set a full hearing on the petition for injunction with notice at the earliest possible time. Nothing herein affects a petitioner's right to promptly amend any petition, or otherwise be heard in person on any petition consistent with the Florida Rules of Civil Procedure.

(c)Any such ex parte temporary injunction shall be effective for a fixed period not to exceed 15 days. A full hearing, as provided by this section, shall be set for a date no later than the date when the temporary injunction ceases to be effective. The court may grant a continuance of the hearing before or during a hearing for good cause shown by any party, which shall include a continuance to obtain service of process. Any injunction shall be extended if necessary to remain in full force and effect during any period of continuance.

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

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

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

3.On the same basis as provided in chapter 61, providing the petitioner with 100 percent of the time-sharing in a temporary parenting plan that remains in effect until the order expires or an order is entered by a court of competent jurisdiction in a pending or subsequent civil action or proceeding affecting the placement of, access to, parental time with, adoption of, or parental rights and responsibilities for the minor child.

4.On the same basis as provided in chapter 61, establishing temporary support for a minor child or children or the petitioner. An order of temporary support remains in effect until the order expires or an order is entered by a court of competent jurisdiction in a pending or subsequent civil action or proceeding affecting child support.

5.Ordering the respondent to participate in treatment, intervention, or counseling services to be paid for by the respondent. When the court orders the respondent to participate in a batterers' intervention program, the court, or any entity designated by the court, must provide the respondent with a list of batterers' intervention programs from which the respondent must choose a program in which to participate.

6.Referring a petitioner to a certified domestic violence center. The court must provide the petitioner with a list of certified domestic violence centers in the circuit which the petitioner may contact.

7.Ordering such other relief as the court deems necessary for the protection of a victim of domestic violence, including injunctions or directives to law enforcement agencies, as

provided in this section.

(b)In determining whether a petitioner has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence, the court shall consider and evaluate all relevant factors alleged in the petition, including, but not limited to:

1.The history between the petitioner and the respondent, including threats, harassment, stalking, and physical abuse.

2.Whether the respondent has attempted to harm the petitioner or family members or individuals closely associated with the petitioner.

3.Whether the respondent has threatened to conceal, kidnap, or harm the petitioner's child or children.

4.Whether the respondent has intentionally injured or killed a family pet.

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

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

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

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

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

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

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

(c)The terms of an injunction restraining the respondent under subparagraph (a)1. or ordering other relief for the protection of the victim under subparagraph (a)7. shall remain in effect until modified or dissolved. Either party may move at any time to modify or dissolve the injunction. No specific allegations are required. Such relief may be granted in addition to other civil or criminal remedies.

(d)A temporary or final judgment on injunction for protection against domestic violence entered pursuant to this section shall, on its face, indicate that:

1.The injunction is valid and enforceable in all counties of the State of Florida.

2.Law enforcement officers may use their arrest powers pursuant to s. 901.15(6) to enforce the terms of the injunction.

3.The court had jurisdiction over the parties and matter under the laws of Florida and that reasonable notice and opportunity to be heard was given to the person against whom the order is sought sufficient to protect that person's right to due process.

4.The date respondent was served with the temporary or final order, if obtainable.

(e)An injunction for protection against domestic violence entered pursuant to this section, on its face, may order that the respondent attend a batterers' intervention program as a condition of the injunction. Unless the court makes written factual findings in its judgment or

order which are based on substantial evidence, stating why batterers' intervention programs would be inappropriate, the court shall order the respondent to attend a batterers' intervention program if:

1.It finds that the respondent willfully violated the ex parte injunction;

2.The respondent, in this state or any other state, has been convicted of, had adjudication withheld on, or pled nolo contendere to a crime involving violence or a threat of violence; or

3.The respondent, in this state or any other state, has had at any time a prior injunction for protection entered against the respondent after a hearing with notice.

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

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

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

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

(8)(a)1.The clerk of the court shall furnish a copy of the petition, financial affidavit, Uniform Child Custody Jurisdiction and Enforcement Act affidavit, if any, notice of hearing, and temporary injunction, if any, to the sheriff or a law enforcement agency of the county where the respondent resides or can be found, who shall serve it upon the respondent as soon thereafter as possible on any day of the week and at any time of the day or night. When requested by the sheriff, the clerk of the court may transmit a facsimile copy of an injunction that has been certified by the clerk of the court, and this facsimile copy may be served in the same manner as a certified copy. Upon receiving a facsimile copy, the sheriff must verify receipt with the sender before attempting to serve it upon the respondent. In addition, if the sheriff is in possession of an injunction for protection that has been certified by the clerk of the court, the sheriff may transmit a facsimile copy of that injunction to a law enforcement officer who shall serve it in the same manner as a certified copy. The clerk of the court shall be responsible for furnishing to the sheriff such information on the respondent's physical description and location as is required by the department to comply with the verification procedures set forth in this section. Notwithstanding any other provision of law to the contrary, the chief judge of each circuit, in consultation with the appropriate sheriff, may authorize a law enforcement agency within the jurisdiction to effect service. A law enforcement agency serving injunctions pursuant to this section shall use service and verification procedures consistent with those of the sheriff.

2.When an injunction is issued, if the petitioner requests the assistance of a law enforcement agency, the court may order that an officer from the appropriate law enforcement agency accompany the petitioner and assist in placing the petitioner in possession of the dwelling or residence, or otherwise assist in the execution or service of the injunction. A law enforcement officer shall accept a copy of an injunction for protection

against domestic violence, certified by the clerk of the court, from the petitioner and immediately serve it upon a respondent who has been located but not yet served.

3.All orders issued, changed, continued, extended, or vacated subsequent to the original service of documents enumerated under subparagraph 1., shall be certified by the clerk of the court and delivered to the parties at the time of the entry of the order. The parties may acknowledge receipt of such order in writing on the face of the original order. In the event a party fails or refuses to acknowledge the receipt of a certified copy of an order, the clerk shall note on the original order that service was effected. If delivery at the hearing is not possible, the clerk shall mail certified copies of the order to the parties at the last known address of each party. Service by mail is complete upon mailing. When an order is served pursuant to this subsection, the clerk shall prepare a written certification to be placed in the court file specifying the time, date, and method of service and shall notify the sheriff.

If the respondent has been served previously with the temporary injunction and has failed to appear at the initial hearing on the temporary injunction, any subsequent petition for injunction seeking an extension of time may be served on the respondent by the clerk of the court by certified mail in lieu of personal service by a law enforcement officer.

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

(c)1.Within 24 hours after the court issues an injunction for protection against domestic violence or changes, continues, extends, or vacates an injunction for protection against domestic violence, the clerk of the court must forward a certified copy of the injunction for service to the sheriff with jurisdiction over the residence of the petitioner. The injunction must be served in accordance with this subsection.

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

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

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

5.a.Subject to available funding, the Florida Association of Court Clerks and Comptrollers shall develop an automated process by which a petitioner may request notification of service of the injunction for protection against domestic violence and other court actions related to the injunction for protection. The automated notice shall be made within 12 hours after the sheriff or other law enforcement officer serves the injunction upon the respondent. The

notification must include, at a minimum, the date, time, and location where the injunction for protection against domestic violence was served. When a petitioner makes a request for notification, the clerk must apprise the petitioner of her or his right to request in writing that the information specified in sub-subparagraph b. be held exempt from public records requirements for 5 years. The Florida Association of Court Clerks and Comptrollers may apply for any available grants to fund the development of the automated process.

b.Upon implementation of the automated process, information held by clerks and law enforcement agencies in conjunction with the automated process developed under sub-subparagraph a. which reveals the home or employment telephone number, cellular telephone number, home or employment address, electronic mail address, or other electronic means of identification of a petitioner requesting notification of service of an injunction for protection against domestic violence and other court actions related to the injunction for protection is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, upon written request by the petitioner. Such information shall cease to be exempt 5 years after the receipt of the written request. Any state or federal agency that is authorized to have access to such documents by any provision of law shall be granted such access in the furtherance of such agency's statutory duties, notwithstanding this sub-subparagraph. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

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

(9)(a)The court may enforce a violation of an injunction for protection against domestic violence through a civil or criminal contempt proceeding, or the state attorney may prosecute it as a criminal violation under s. 741.31. The court may enforce the respondent's compliance with the injunction through any appropriate civil and criminal remedies, including, but not limited to, a monetary assessment or a fine. The clerk of the court shall collect and receive such assessments or fines. On a monthly basis, the clerk shall transfer the moneys collected pursuant to this paragraph to the State Treasury for deposit in the Domestic Violence Trust Fund established in s. 741.01.

(b)If the respondent is arrested by a law enforcement officer under s. 901.15(6) or for a violation of s. 741.31, the respondent shall be held in custody until brought before the court as expeditiously as possible for the purpose of enforcing the injunction and for admittance to bail in accordance with chapter 903 and the applicable rules of criminal procedure, pending a hearing.

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

History.—s. 1, ch. 79-402; s. 481, ch. 81-259; s. 4, ch. 82-135; s. 10, ch. 84-343; s. 1, ch. 85-216; s. 1, ch. 86-264; s. 21, ch. 87-95; s. 1, ch. 87-395; s. 6, ch. 91-210; s. 3, ch. 91-306; s. 1, ch. 92-42; s. 5, ch. 94-134; s. 5, ch. 94-135; s. 5, ch. 95-195; s. 3, ch. 96-392; s. 56, ch. 96-418; s. 5, ch. 97-155; s. 2, ch. 98-284; s. 158, ch. 98-403; ss. 12, 13, ch. 2002-55; s. 6, ch. 2002-65; s. 113, ch. 2003-402; s. 9, ch. 2005-239; s. 35, ch. 2008-61; s. 8, ch. 2009-180; s. 7, ch. 2009-215; s. 1, ch. 2011-187; s. 10, ch. 2012-147; s. 1, ch. 2012-154; s. 4, ch. 2014-35; s.

4, ch. 2016-187; s. 1, ch. 2017-65; s. 3, ch. 2017-156.

61.16Attorney's fees, suit money, and costs.—

(1)The court may from time to time, after considering the financial resources of both parties, order a party to pay a reasonable amount for attorney's fees, suit money, and the cost to the other party of maintaining or defending any proceeding under this chapter, including enforcement and modification proceedings and appeals. In those cases in which an action is brought for enforcement and the court finds that the noncompliant party is without justification in the refusal to follow a court order, the court may not award attorney's fees, suit money, and costs to the noncompliant party. An application for attorney's fees, suit money, or costs, whether temporary or otherwise, shall not require corroborating expert testimony in order to support an award under this chapter. The trial court shall have continuing jurisdiction to make temporary attorney's fees and costs awards reasonably necessary to prosecute or defend an appeal on the same basis and criteria as though the matter were pending before it at the trial level. In all cases, the court may order that the amount be paid directly to the attorney, who may enforce the order in that attorney's name. In determining whether to make attorney's fees and costs awards at the appellate level, the court shall primarily consider the relative financial resources of the parties, unless an appellate party's cause is deemed to be frivolous. In Title IV-D cases, attorney's fees, suit money, and costs, including filing fees, record ing fees, mediation costs, service of process fees, and other expenses incurred by the clerk of the circuit court, shall be assessed only against the nonprevailing obligor after the court makes a determination of the nonprevailing obligor's ability to pay such costs and fees. The Department of Revenue shall not be considered a party for purposes of this section; however, fees may be assessed against the department pursuant to s. 57.105(1).

(2)In an action brought pursuant to Rule 3.840, Florida Rules of Criminal Procedure, whether denominated direct or indirect criminal contempt, the court shall have authority to:

(a)Appoint an attorney to prosecute said contempt.

(b)Assess attorney's fees and costs against the contemptor after the court makes a determination of the contemptor's ability to pay such costs and fees.

(c)Order that the amount be paid directly to the attorney, who may enforce the order in his or her name.

History.—s. 1, ch. 22676, 1945; s. 16, ch. 67-254; s. 17, ch. 71-241; s. 6, ch. 92-138; s. 6, ch. 93-188; s. 4, ch. 93-208; s. 9, ch. 94-124; s. 1, ch. 94-169; s. 1365, ch. 95-147; s. 6, ch. 96-183.

Note.—Former s. 65.17.

68.093Florida Vexatious Litigant Law.—

(1)This section may be cited as the "Florida Vexatious Litigant Law."

(2)As used in section, the term:

(a)"Action" means a civil action governed by the Florida Rules of Civil Procedure and proceedings governed by the Florida Probate Rules, but does not include actions concerning family law matters governed by the Florida Family Law Rules of Procedure or any action in which the Florida Small Claims Rules apply.

(b)"Defendant" means any person or entity, including a corporation, association, partnership, firm, or governmental entity, against whom an action is or was commenced or is sought to be commenced.

(c)"Security" means an undertaking by a vexatious litigant to ensure payment to a defendant in an amount reasonably sufficient to cover the defendant's anticipated, reasonable expenses of litigation, including attorney's fees and taxable costs.

(d)"Vexatious litigant" means:

1.A person as defined in s. 1.01(3) who, in the immediately preceding 5-year period, has commenced, prosecuted, or maintained, pro se, five or more civil actions in any court in this state, except an action governed by the Florida Small Claims Rules, which actions have been finally and adversely determined against such person or entity; or

2.Any person or entity previously found to be a vexatious litigant pursuant to this section.

An action is not deemed to be "finally and adversely determined" if an appeal in that action is pending. If an action has been commenced on behalf of a party by an attorney licensed to practice law in this state, that action is not deemed to be pro se even if the attorney later withdraws from the representation and the party does not retain new counsel.

(3)(a)In any action pending in any court of this state, including actions governed by the Florida Small Claims Rules, any defendant may move the court, upon notice and hearing, for an order requiring the plaintiff to furnish security. The motion shall be based on the grounds, and supported by a showing, that the plaintiff is a vexatious litigant and is not reasonably likely to prevail on the merits of the action against the moving defendant.

(b)At the hearing upon any defendant's motion for an order to post security,

the court shall consider any evidence, written or oral, by witness or affidavit, which may be relevant to the consideration of the motion. No determination made by the court in such a hearing shall be admissible on the merits of the action or deemed to be a determination of any issue in the action. If, after hearing the evidence, the court determines that the plaintiff is a vexatious litigant and is not reasonably likely to prevail on the merits of the action against the moving defendant, the court shall order the plaintiff to furnish security to the moving defendant in an amount and within such time as the court deems appropriate.

(c)If the plaintiff fails to post security required by an order of the court under this section, the court shall immediately issue an order dismissing the action with prejudice as to the defendant for whose benefit the security was ordered.

(d)If a motion for an order to post security is filed prior to the trial in an action, the action shall be automatically stayed and the moving defendant need not plead or otherwise respond to the complaint until 10 days after the motion is denied. If the motion is granted, the moving defendant shall respond or plead no later than 10 days after the required security has been furnished.

(4)In addition to any other relief provided in this section, the court in any judicial circuit may, on its own motion or on the motion of any party, enter a prefiling order prohibiting a vexatious litigant from commencing, pro se, any new action in the courts of that circuit without first obtaining leave of the administrative judge of that circuit. Disobedience of such an order may be punished as contempt of court by the administrative judge of that circuit. Leave of court shall be granted by the administrative judge only upon a showing that the proposed action is meritorious and is not being filed for the purpose of delay or harassment. The administrative judge may condition the filing of the proposed action upon the furnishing of security as provided in this section.

(5)The clerk of the court shall not file any new action by a vexatious litigant pro se unless the vexatious litigant has obtained an order from the administrative judge permitting such filing. If the clerk of the court mistakenly permits a vexatious litigant to file an action pro se in contravention of a prefiling order, any party to that action may file with the clerk and serve on the plaintiff and all other defendants a notice stating that the plaintiff is a pro se vexatious litigant subject to a prefiling order. The filing of such a notice shall automatically stay the litigation against all defendants to the action. The administrative judge shall automatically dismiss the action with prejudice within 10 days after the filing of such notice unless the plaintiff files a motion for leave to file the action. If the administrative judge issues an order permitting the action to be filed, the defendants need not plead or otherwise respond to the complaint until 10 days after the date of service by the plaintiff, by United States mail, of a copy of the order granting leave to file the action.

(6)The clerk of a court shall provide copies of all prefiling orders to the Clerk of the Florida Supreme Court, who shall maintain a registry of all vexatious litigants.

(7)The relief provided under this section shall be cumulative to any other relief or remedy available to a defendant under the laws of this state and the Florida Rules of Civil Procedure, including, but not limited to, the relief provided under s. 57.105.

History.—s. 1, ch. 2000-314.

120.595Attorney's fees.—

(1)CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION 120.57(1).—

(a)The provisions of this subsection are supplemental to, and do not abrogate, other provisions allowing the award of fees or costs in administrative proceedings.

(b)The final order in a proceeding pursuant to s. 120.57(1) shall award reasonable costs and a reasonable attorney's fee to the prevailing party only where the nonprevailing adverse party has been determined by the administrative law judge to have participated in the proceeding for an improper purpose.

(c)In proceedings pursuant to s. 120.57(1), and upon motion, the administrative law judge shall determine whether any party participated in the proceeding for an improper purpose as defined by this subsection. In making such determination, the administrative law judge shall consider whether the nonprevailing adverse party has participated in two or more other such proceedings involving the same prevailing party and the same project as an adverse party and in which such two or more proceedings the nonprevailing adverse party did not establish either the factual or legal merits of its position, and shall consider whether the factual or legal position asserted in the instant proceeding would have been cognizable in the previous proceedings. In such event, it shall be rebuttably presumed that the nonprevailing adverse party participated in the pending proceeding for an improper purpose.

(d)In any proceeding in which the administrative law judge determines that a party participated in the proceeding for an improper purpose, the recommended order shall so designate and shall determine the award of costs and attorney's fees.

(e)For the purpose of this subsection:

1."Improper purpose" means participation in a proceeding pursuant to s. 120.57(1) primarily to harass or to cause unnecessary delay or for frivolous purpose or to needlessly increase the cost of litigation, licensing, or securing the approval of an activity.

2."Costs" has the same meaning as the costs allowed in civil actions in this state as provided in chapter 57.

3."Nonprevailing adverse party" means a party that has failed to have substantially changed the outcome of the proposed or final agency action which

is the subject of a proceeding. In the event that a proceeding results in any substantial modification or condition intended to resolve the matters raised in a party's petition, it shall be determined that the party having raised the issue addressed is not a nonprevailing adverse party. The recommended order shall state whether the change is substantial for purposes of this subsection. In no event shall the term "nonprevailing party" or "prevailing party" be deemed to include any party that has intervened in a previously existing proceeding to support the position of an agency.

(2)CHALLENGES TO PROPOSED AGENCY RULES PURSUANT TO SECTION 120.56(2).—If the appellate court or administrative law judge declares a proposed rule or portion of a proposed rule invalid pursuant to s. 120.56(2), a judgment or order shall be rendered against the agency for reasonable costs and reasonable attorney's fees, unless the agency demonstrates that its actions were substantially justified or special circumstances exist which would make the award unjust. An agency's actions are "substantially justified" if there was a reasonable basis in law and fact at the time the actions were taken by the agency. If the agency prevails in the proceedings, the appellate court or administrative law judge shall award reasonable costs and reasonable attorney's fees against a party if the appellate court or administrative law judge determines that a party participated in the proceedings for an improper purpose as defined by paragraph (1)(e). No award of attorney's fees as provided by this subsection shall exceed $50,000.

(3)CHALLENGES TO EXISTING AGENCY RULES PURSUANT TO SECTION 120.56(3) AND (5).—If the appellate court or administrative law judge declares a rule or portion of a rule invalid pursuant to s. 120.56(3) or (5), a judgment or order shall be rendered against the agency for reasonable costs and reasonable attorney's fees, unless the agency demonstrates that its actions were substantially justified or special circumstances exist which would make the award unjust. An agency's actions are "substantially justified" if there was a reasonable basis in law and fact at the time the actions were taken by the agency. If the agency prevails in the proceedings, the appellate court or administrative law judge shall award reasonable costs and reasonable attorney's fees against a party if the appellate court or administrative law judge determines that a party participated in the proceedings for an improper purpose as defined by paragraph (1)(e). No award of attorney's fees as provided by this subsection shall exceed $50,000.

(4)CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION 120.56(4).—

(a)If the appellate court or administrative law judge determines that all or part of an agency statement violates s. 120.54(1)(a), or that the agency must immediately discontinue reliance on the statement and any substantially similar

statement pursuant to s. 120.56(4)(f), a judgment or order shall be entered against the agency for reasonable costs and reasonable attorney's fees, unless the agency demonstrates that the statement is required by the Federal Government to implement or retain a delegated or approved program or to meet a condition to receipt of federal funds.

(b)Upon notification to the administrative law judge provided before the final hearing that the agency has published a notice of rulemaking under s. 120.54(3)(a), such notice shall automatically operate as a stay of proceedings pending rulemaking. The administrative law judge may vacate the stay for good cause shown. A stay of proceedings under this paragraph remains in effect so long as the agency is proceeding expeditiously and in good faith to adopt the statement as a rule. The administrative law judge shall award reasonable costs and reasonable attorney's fees accrued by the petitioner prior to the date the notice was published, unless the agency proves to the administrative law judge that it did not know and should not have known that the statement was an unadopted rule. Attorneys' fees and costs under this paragraph and paragraph (a) shall be awarded only upon a finding that the agency received notice that the statement may constitute an unadopted rule at least 30 days before a petition under s. 120.56(4) was filed and that the agency failed to publish the required notice of rulemaking pursuant to s. 120.54(3) that addresses the statement within that 30-day period. Notice to the agency may be satisfied by its receipt of a copy of the s. 120.56(4) petition, a notice or other paper containing substantially the same information, or a petition filed pursuant to s. 120.54(7). An award of attorney's fees as provided by this paragraph may not exceed $50,000.

(c)Notwithstanding the provisions of chapter 284, an award shall be paid from the budget entity of the secretary, executive director, or equivalent administrative officer of the agency, and the agency shall not be entitled to payment of an award or reimbursement for payment of an award under any provision of law.

(d)If the agency prevails in the proceedings, the appellate court or administrative law judge shall award reasonable costs and attorney's fees against a party if the appellate court or administrative law judge determines that the party participated in the proceedings for an improper purpose as defined in paragraph (1)(e) or that the party or the party's attorney knew or should have known that a claim was not supported by the material facts necessary to establish the claim or would not be supported by the application of then-existing law to those material facts.

(5)APPEALS.—When there is an appeal, the court in its discretion may award reasonable attorney's fees and reasonable costs to the prevailing party if the court finds that the appeal was frivolous, meritless, or an abuse of the

appellate process, or that the agency action which precipitated the appeal was a gross abuse of the agency's discretion. Upon review of agency action that precipitates an appeal, if the court finds that the agency improperly rejected or modified findings of fact in a recommended order, the court shall award reasonable attorney's fees and reasonable costs to a prevailing appellant for the administrative proceeding and the appellate proceeding.

(6)OTHER SECTIONS NOT AFFECTED.—Other provisions, including ss. 57.105 and 57.111, authorize the award of attorney's fees and costs in administrative proceedings. Nothing in this section shall affect the availability of attorney's fees and costs as provided in those sections.

History.—s. 25, ch. 96-159; s. 11, ch. 97-176; s. 48, ch. 99-2; s. 6, ch. 2003-94; s. 13, ch. 2008-104; s. 3, ch. 2017-3.

409.2567Services to individuals not otherwise eligible.—

(1)All support services provided by the department shall be made available on behalf of all dependent children. Services shall be provided upon acceptance of public assistance or upon proper application filed with the department. The federally required application fee for individuals who do not receive public assistance is $1, which shall be waived for all applicants and paid by the department. The annual fee required under 42 U.S.C. s. 654(6)(B) for cases involving an individual who has never received temporary cash assistance and for whom the department has collected at least $500 of support shall be paid by the department.

(2)An attorney-client relationship exists only between the department and the legal services providers in Title IV-D cases. The attorney shall advise the obligee in Title IV-D cases that the attorney represents the agency and not the obligee.

(3)All administrative costs shall be assessed only against the nonprevailing obligor after the court makes a determination of the nonprevailing obligor's ability to pay such costs and fees. In any case where the court does not award all costs, the court shall state in the record its reasons for not awarding the costs. The court shall order payment of costs without requiring the department to have a member of the bar testify or submit an affidavit as to the reasonableness of the costs.

(4)The Department of Revenue shall not be considered a party for purposes of this section; however, fees may be assessed against the department pursuant to s. 57.105(1).

(5)The Department of Revenue may seek a waiver from the Secretary of the United States Department of Health and Human Services to authorize the Department of Revenue to provide services in accordance with Title IV-D of the Social Security Act to individuals who are owed support without need of an application. The department may seek a waiver if it determines that the estimated increase in federal funding to the state derived from the waiver would exceed any additional cost to the state if the waiver is granted. If the waiver is granted, the Department of Revenue shall adopt rules to implement the waiver and begin providing Title IV-D services if support payments are not being paid as ordered, except that the individual first must be given written notice of the

right to refuse Title IV-D services and a reasonable opportunity to respond.
History.—s. 6, ch. 76-220; s. 1, ch. 77-174; s. 13, ch. 78-433; s. 3, ch. 82-140; s. 144, ch. 86-220; s. 17, ch. 87-95; s. 12, ch. 88-176; s. 22, ch. 92-138; s. 16, ch. 93-208; s. 7, ch. 94-124; s. 7, ch. 94-318; s. 41, ch. 96-175; s. 47, ch. 96-418; s. 53, ch. 97-170; s. 27, ch. 98-397; s. 38, ch. 2001-158; ss. 31, 32, ch. 2005-39; s. 10, ch. 2005-82; s. 6, ch. 2007-85; s. 11, ch. 2010-187.

429.87Civil actions to enforce rights.—

(1)Any person or resident whose rights as specified in this part are violated has a cause of action against any adult family-care home, provider, or staff responsible for the violation. The action may be brought by the resident or the resident's guardian, or by a person or organization acting on behalf of a resident with the consent of the resident or the resident's guardian, to enforce the right. The action may be brought in any court of competent jurisdiction to enforce such rights and to recover actual damages, and punitive damages when malicious, wanton, or willful disregard of the rights of others can be shown. Any plaintiff who prevails in any such action is entitled to recover reasonable attorney's fees, costs of the action, and damages, unless the court finds that the plaintiff has acted in bad faith or with malicious purpose or that there was a complete absence of a justiciable issue of either law or fact. A prevailing defendant is entitled to recover reasonable attorney's fees pursuant to s. 57.105. The remedies provided in this section are in addition to other legal and administrative remedies available to a resident or to the agency.

(2)To recover attorney's fees under this section, the following conditions precedent must be met:

(a)Within 120 days after the filing of a responsive pleading or defensive motion to a complaint brought under this section and before trial, the parties or their designated representatives shall meet in mediation to discuss the issues of liability and damages in accordance with this paragraph for the purpose of an early resolution of the matter.

1.Within 60 days after the filing of the responsive pleading or defensive motion, the parties shall:

a.Agree on a mediator. If the parties cannot agree on a mediator, the defendant shall immediately notify the court, which shall appoint a mediator within 10 days after such notice.

b.Set a date for mediation.

c.Prepare an order for the court that identifies the mediator, the scheduled date of the mediation, and other terms of the mediation. Absent any disagreement between the parties, the court may issue the order for the mediation submitted by the parties without a hearing.

2.The mediation must be concluded within 120 days after the filing of a responsive pleading or defensive motion. The date may be extended only by agreement of all parties subject to mediation under this subsection.

3.The mediation shall be conducted in the following manner:

a.Each party shall ensure that all persons necessary for complete settlement

authority are present at the mediation.

b.Each party shall mediate in good faith.

4.All aspects of the mediation which are not specifically established by this subsection must be conducted according to the rules of practice and procedure adopted by the Supreme Court of this state.

(b)If the parties do not settle the case pursuant to mediation, the last offer of the defendant made at mediation shall be recorded by the mediator in a written report that states the amount of the offer, the date the offer was made in writing, and the date the offer was rejected. If the matter subsequently proceeds to trial under this section and the plaintiff prevails but is awarded an amount in damages, exclusive of attorney's fees, which is equal to or less than the last offer made by the defendant at mediation, the plaintiff is not entitled to recover any attorney's fees.

(c)This subsection applies only to claims for liability and damages and does not apply to actions for injunctive relief.

(d)This subsection applies to all causes of action that accrue on or after October 1, 1999.

(3)Discovery of financial information for the purpose of determining the value of punitive damages may not be had unless the plaintiff shows the court by proffer or evidence in the record that a reasonable basis exists to support a claim for punitive damages.

(4)In addition to any other standards for punitive damages, any award of punitive damages must be reasonable in light of the actual harm suffered by the resident and the egregiousness of the conduct that caused the actual harm to the resident.

History.—s. 13, ch. 93-209; s. 13, ch. 98-338; s. 32, ch. 99-225; s. 3, ch. 2006-197.

Note.—Former s. 400.629.

605.0703Procedure for judicial dissolution; alternative remedies.—

(1)Venue for a proceeding brought under s. 605.0702 lies in the circuit court of the county where the limited liability company's principal office is or was last located, as shown by the records of the department, or, if there is or was no principal office in this state, in the circuit court of the county where the company's registered office is or was last located.

(2)It is not necessary to make members parties to a proceeding to dissolve a limited liability company unless relief is sought against such members individually.

(3)A court in a proceeding brought to dissolve a limited liability company may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the limited liability company's assets wherever located, and carry on the business of the limited liability company until a full hearing can be held.

(4)In a proceeding brought under s. 605.0702, the court may, upon a showing of sufficient merit to warrant such a remedy:

(a)Appoint a receiver or custodian under s. 605.0704;

(b)Order a purchase of a petitioning member's interest pursuant to s. 605.0706; or

(c)Upon a showing of good cause, order another remedy the court deems appropriate in its discretion, including an equitable remedy.

(5)Section 57.105 applies to a proceeding brought under s. 605.0702.

History.—s. 2, ch. 2013-180.

742.045Attorney's fees, suit money, and costs.—The court may from time to time, after considering the financial resources of both parties, order a party to pay a reasonable amount for attorney's fees, suit money, and the cost to the other party of maintaining or defending any proceeding under this chapter, including enforcement and modification proceedings. An application for attorney's fees, suit money, or costs, whether temporary or otherwise, shall not require corroborating expert testimony in order to support an award under this chapter. The court may order that the amount be paid directly to the attorney, who may enforce the order in his or her name. In Title IV-D cases, any costs, including filing fees, recording fees, mediation costs, service of process fees, and other expenses incurred by the clerk of the circuit court, shall be assessed only against the nonprevailing obligor after the court makes a determination of the nonprevailing obligor's ability to pay such costs and fees. The Department of Revenue shall not be considered a party for purposes of this section; however, fees may be assessed against the department pursuant to s. 57.105(1).
History.—s. 7, ch. 91-246; s. 7, ch. 93-188; s. 17, ch. 93-208; s. 1, ch. 95-151; s. 1061, ch. 97-102.

742.08Default of support payments.—Upon default in payment of any moneys ordered by the court to be paid, the court may enter a judgment for the amount in default, plus interest, administrative costs, filing fees, and other expenses incurred by the clerk of the circuit court which shall be a lien upon all property of the defendant both real and personal. Costs and fees shall be assessed only after the court makes a determination of the nonprevailing party's ability to pay such costs and fees. In Title IV-D cases, any costs, including filing fees, recording fees, mediation costs, service of process fees, and other expenses incurred by the clerk of the circuit court, shall be assessed only against the nonprevailing obligor after the court makes a determination of the nonprevailing obligor's ability to pay such costs and fees. The Department of Revenue shall not be considered a party for purposes of this section; however, fees may be assessed against the department pursuant to s. 57.105(1). Willful failure to comply with an order of the court shall be deemed a contempt of the court entering the order and shall be punished as such. The court may require bond of the defendant for the faithful performance of his or her obligation under the order of the court in such amount and upon such conditions as the court shall direct.

History.—s. 7, ch. 26949, 1951; s. 27, ch. 92-138; s. 18, ch. 93-208; s. 1062, ch. 97-102; s. 281, ch. 99-8.

776.032 Immunity from criminal prosecution and civil action for justifiable use or threatened use of force.—

(1)A person who uses or threatens to use force as permitted in s. 776.012, s. 776.013, or s. 776.031 is justified in such conduct and is immune from criminal prosecution and civil action for the use or threatened use of such force by the person, personal representative, or heirs of the person against whom the force was used or threatened, unless the person against whom force was used or threatened is a law enforcement officer, as defined in s. 943.10(14), who was acting in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using or threatening to use force knew or reasonably should have known that the person was a law enforcement officer. As used in this subsection, the term "criminal prosecution" includes arresting, detaining in custody, and charging or prosecuting the defendant.

(2)A law enforcement agency may use standard procedures for investigating the use or threatened use of force as described in subsection (1), but the agency may not arrest the person for using or threatening to use force unless it determines that there is probable cause that the force that was used or threatened was unlawful.

(3)The court shall award reasonable attorney's fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of any civil action brought by a plaintiff if the court finds that the defendant is immune from prosecution as provided in subsection (1).

(4)In a criminal prosecution, once a prima facie claim of self-defense immunity from criminal prosecution has been raised by the defendant at a pretrial immunity hearing, the burden of proof by clear and convincing evidence is on the party seeking to overcome the immunity from criminal prosecution provided in subsection (1).

History.—s. 4, ch. 2005-27; s. 6, ch. 2014-195; s. 1, ch. 2017-72.

CHAPTER 2017-156

House Bill No. 1385

An act relating to domestic violence; amending s. 741.281, F.S.; specifying that a person must complete a batterers' intervention program ordered as a condition of probation in certain circumstances; amending s. 741.283, F.S.; increasing the minimum terms of imprisonment for domestic violence; providing enhanced minimum terms in certain circumstances; amending s. 741.30, F.S.; prohibiting the award of attorney fees in specified domestic violence proceedings; amending s. 775.08435, F.S.; prohibiting the withholding of adjudication for specified domestic violence offenses; providing exceptions; providing an effective date.

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

Section 1. Section 741.281, Florida Statutes, is amended to read:

741.281 Court to order batterers' intervention program attendance.—If a person is found guilty of, has adjudication withheld on, or pleads nolo contendere to a crime of domestic violence, as defined in s. 741.28, that person shall be ordered by the court to a minimum term of 1 year's probation and the court shall order that the defendant attend and complete a batterers' intervention program as a condition of probation. The court must impose the condition of the batterers' intervention program for a defendant under this section, but the court, in its discretion, may determine not to impose the condition if it states on the record why a batterers' intervention program might be inappropriate. The court must impose the condition of the batterers' intervention program for a defendant placed on probation unless the court determines that the person does not qualify for the batterers' intervention program pursuant to s. 741.325. The imposition of probation under this section does not preclude the court from imposing any sentence of imprisonment authorized by s. 775.082.

Section 2. Section 741.283, Florida Statutes, is amended to read:

741.283 Minimum term of imprisonment for domestic violence.—

(1)(a) Except as provided in paragraph (b), if a person is adjudicated guilty of a crime of domestic violence, as defined in s. 741.28, and the person has intentionally caused bodily harm to another person, the court shall order the person to serve a minimum of 10 ~~5~~ days in the county jail for a first offense, 15 days for a second offense, and 20 days for a third or subsequent offense as part of the sentence imposed, unless the court sentences the person to a nonsuspended period of incarceration in a state correctional facility.

(b) If a person is adjudicated guilty of a crime of domestic violence, as defined in s. 741.28, and the person has intentionally caused bodily harm to

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

another person, and the crime of domestic violence takes place in the presence of a child under 16 years of age who is a family or household member, as defined in s. 741.28, of the victim or the perpetrator, the court shall order the person to serve a minimum of 15 days in the county jail for a first offense, 20 days for a second offense, and 30 days for a third or subsequent offense as part of the sentence imposed, unless the court sentences the person to a nonsuspended period of incarceration in a state correctional facility.

(2) This section does not preclude the court from sentencing the person to probation, community control, or an additional period of incarceration.

Section 3. Paragraphs (g), (h), (i), and (j) of subsection (1) of section 741.30, Florida Statutes, are redesignated as paragraphs (h), (i), (j), and (k), respectively, and paragraph (g) is added to that subsection, to read:

741.30 Domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement; public records exemption.—

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

(g) Notwithstanding any other law, attorney fees may not be awarded in any proceeding under this section.

Section 4. Paragraph (c) of subsection (1) of section 775.08435, Florida Statutes, is redesignated as paragraph (d), and a new paragraph (c) is added to that subsection, to read:

775.08435 Prohibition on withholding adjudication in felony cases.—

(1) Notwithstanding the provisions of s. 948.01, the court may not withhold adjudication of guilt upon the defendant for:

(c) A third degree felony that is a crime of domestic violence as defined in s. 741.28, unless:

1. The state attorney requests in writing that adjudication be withheld; or

2. The court makes written findings that the withholding of adjudication is reasonably justified based on circumstances or factors in accordance with s. 921.0026.

Section 5. This act shall take effect October 1, 2017.

Approved by the Governor June 23, 2017.

Filed in Office Secretary of State June 23, 2017.

HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS

BILL #:	HB 1385	**FINAL HOUSE FLOOR ACTION:**	
SUBJECT/SHORT TITLE	Domestic Violence	117 **Y's** 0	**N's**
SPONSOR(S):	Nunez and others	**GOVERNOR'S ACTION:**	Approved
COMPANION BILLS:	SB 1564		

SUMMARY ANALYSIS

HB 1385 passed the House on April 26, 2017, and subsequently passed the Senate on May 5, 2017. The bill provides enhanced penalties for certain domestic violence offenses. Florida law classifies certain offenses as domestic violence (DV) when one member of a family or household perpetrates the crime on another member of the family or household.

The bill increases mandatory jail time for domestic violence offenders who have been adjudicated guilty and who intentionally caused bodily harm to another. Additionally, such mandatory jail time is futher increased if, in addition to the previous two factors, the violence was committed in the presence of a related child under 16 years of age. Specifically:

- An offender adjudicated guilty, who intentionally committed bodily harm to another person, must serve 10 days in jail for a first offense, 15 days in jail for a second offense, and 20 days in jail for a third or subsequent offense.
- An offender described above, whose violence was committed in the presence of a related child under age 16, must serve 15 days in jail for a first offense, 20 days in jail for a second offense, and 30 days in jail for a third or subsequent offense.

The bill also:

- Prohibits a court from withholding the adjudication of a defendant when he or she commits a third degree felony offense of domestic violence except in limited circumstances.
- Requires a court to order certain defendants to attend and complete batterer's intervention program (BIP). Failure to complete the BIP results in a violation of probation, subjecting the offender to further criminal penalty.
- Prohibits a court from awarding attorney fees in any proceeding for an injunction for protection against domestic violence.

The bill may increase expenditures by local governments by increasing the minimum number of days that domestic violence offenders are incarcerated in local jails.

The bill was approved by the Governor on June 23, 2017, ch. 2017-156, L.O.F., and will become effective on October 1, 2017.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Domestic Violence-Related Crimes

Florida law defines a domestic violence crime as a violation of any of the following statutes, when the offense is committed on one family or household member by another family or household member:

- Section 784.011, F.S., relating to assault;
- Section 784.021, F.S., relating to aggravated assault;
- Section 784.03(1)(b), F.S., relating to battery;
- Section 784.03(2), F.S., relating to felony battery;[1]
- Section 784.041(1), F.S., relating to felony battery;[2]
- Section 784.041(2), F.S., relating to felony battery by strangulation;
- Section 784.045, F.S., relating to aggravated battery;[3]
- Section 794.011, F.S., relating to sexual assault or sexual battery;
- Section 784.048, F.S., relating to stalking or aggravated stalking;[4]
- Section 787.01, F.S., relating to kidnapping;
- Section 787.02, F.S., relating to false imprisonment; or
- Any criminal offense resulting in physical injury or death.

For the purpose of defining domestic violence offenses, s. 741.28, F.S., defines a "family or household member" to mean "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."

Criminal Penalties for Domestic Violence Offenders

Florida law requires certain mandatory penalties related to domestic violence offenses. The court must sentence any person convicted[5] of a domestic violence crime to a minimum term of one year probation with a condition requiring the person to attend a batterer's intervention program (BIP). The court must order BIP participation, unless it states on the record why BIP participation is inappropriate or determines that the offender does not qualify for BIP. The programs are modeled to address tactics of power and control by one person over another and require the offender to take responsibility for his or

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[1] This form of felony battery occurs when a person actually or intentionally touches or strikes another person against their will, or intentionally causes bodily harm to another person, and the offender has a prior conviction for battery, aggravated battery, or felony battery. The existence of the prior conviction enhances the offense from a first degree misdemeanor to a third degree felony. s. 784.03, F.S.

[2] This form of felony battery occurs when a person actually or intentionally touches or strikes another person against the will of the other and causes great bodily harm, permanent disability, or permanent disfigurement. s. 784.041(1), F.S.

[3] This form of battery can occur if any of the following additional circumstances are present in the course of committing a battery: 1) a person intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; 2) a person uses a deadly weapon; or 3) the victim of the battery was pregnant at the time of the offense and the offender knew or should have known the victim was pregnant. s. 784.045, F.S.

[4] Aggravated stalking can occur if any of the following additional circumstances are present in the commission of the crime: 1) the offender makes a credible threat to the victim; 2) stalking occurs after the issuance of an injunction against repeat violence, sexual violence, or dating violence; or an injunction for protection against domestic violence, or any other court-ordered prohibition of conduct; 3) the victim is under 16 years of age; or 4) the offender has been sentenced for sexual battery, lewd and lascivious molestation, or soliciting a minor and is prohibited from contacting the victim. s. 784.048, F.S.

[5] This provision applies to any person found guilty of, having an adjudication withheld on, or pleading nolo contendere to a crime of domestic violence. s. 741.281, F.S.

her actions.[6] By law, the BIP is required to be at least 29 weeks in length and include 24 weekly sessions, plus appropriate intake, assessment, and orientation programming.[7]

In addition to mandatory probation and BIP participation, certain domestic violence offenders must serve mandatory jail time. If a person is adjudicated guilty of a crime of domestic violence and the person intentionally caused bodily harm to another person, the court must sentence the offender to serve a minimum of five days in the county jail as part of any sentence imposed.[8] Additionally, if an offender is convicted of a felony offense of domestic violence and a jury determines the offense was committed in the presence of a child under the age of 16 who is a family or household member of the victim or the perpetrator, the offender's minimum sentence is increased.[9]

Effect of the Bill
The bill amends s. 741.281, F.S., to require a court to order the defendant to both attend *and complete*[10] a BIP as a condition of probation. A failure to complete the BIP will result in a violation of probation, thereby subjecting the defendant to further criminal penalty.

Additionally, the bill amends s. 741.283, F.S., to increase the penalties for both first-time and subsequent domestic violence offenders who intentionally cause bodily harm to another person and are adjudicated guilty. The penalties are further enhanced for these offenders if the crime took place in front of a child, under 16 years of age, who is a family or household member of the victim or the perpetrator.[11] The court must order an offender to serve a minimum county jail sentence as follows:[12]

Domestic Violence Offense Mandatory Jail Sentence		
	Adjudication of Guilt + Intentionally Caused Bodily Harm to Another	Adjudication of Guilt + Intentionally Caused Bodily Harm to Another + Presence of Child
1st Offense	10 days	15 days
2nd Offense	15 days	20 days
3rd or Subsequent Offense	20 days	30 days

Withholding Adjudication of Guilt
Florida law contains a prohibition on withholding adjudication of guilt in certain felony cases. Currently, a sentencing court may not withhold adjudication of guilt upon a defendant for a capital, life, or first degree felony.[13] For a second degree felony, the court cannot withhold adjudication unless either the

[6] s. 741.325, F.S.
[7] s. 741.325(1)(c), F.S.
[8] The court is not required to order five days in the county jail when the court orders an offender to a period of incarceration in a state correctional facility. s. 741.283, F.S.
[9] The subtotal sentencing points may be multiplied by a multiplier of 1.5 to increase the offender's lowest permissible sentence. s. 921.0024, F.S.
[10] *Emphasis added.*
[11] It is anticipated this enhancement will need to be plead in the charging document and found by a jury as the United States Supreme Court has held that "[f]acts that increase the mandatory minimum sentence are therefore elements and must be submitted to the jury and found beyond a reasonable doubt." *Alleyne v. United States*, 133 S. Ct. 2151, 2158 (2013).
[12] The mandatory jail time does not apply if the court sentences a defendant to a nonsuspended period of incarceration in a state correctional facility.
[13] s. 775.08435(1)(a), F.S.

state attorney makes a written request to do so, or the court makes written findings that a withhold of adjudication is reasonably justified based on the circumstances or statutorily recognized mitigating factors. The same prohibition and exceptions apply when a defendant has committed a third degree felony and has a prior withholding of adjudication for another felony offense. Regardless of the presence of mitigating circumstances,[14] a court may not withhold adjudication when a defendant has committed a second degree felony and has a prior withhold of adjudication from a different offense, or when the defendant committed a third degree felony and has two or more prior withholdings of adjudication from a different offense.[15]

Effect of the Bill

The bill amends s. 775.08435, F.S., to add an additional circumstance in which the court is prohibited from withholding the adjudication of a defendant unless certain exceptions apply. The bill prohibits the court from withholding adjudication for a third degree felony that is a crime of domestic violence unless the state attorney makes a written request for the adjudication be withheld, or the court makes written findings that the withholding of adjudication is reasonably justified based on the circumstances or statutory mitigating factors. The third degree felony domestic violence offenses to which this prohibition will apply include the following:

- Section 784.021, F.S., relating to aggravated assault;
- Section 784.03(2), F.S., relating to felony battery;[16]
- Section 784.041(1), F.S., relating to felony battery;[17]
- Section 784.041(2), F.S., relating to felony battery by strangulation;
- Section 784.048, F.S., relating to aggravated stalking; and
- Section 787.02, F.S., relating to false imprisonment.

Domestic Violence Injunctions

Florida law creates a cause of action for an injunction for protection against domestic violence. A family or household member, who is either the victim of domestic violence or has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence, may petition for an injunction for the protection against domestic violence.[18] If the court finds there is an immediate and present danger of domestic violence, it may grant a temporary injunction, pending a full hearing.[19] Following a full hearing, if the court determines the petitioner is the victim of domestic violence or is in imminent danger of becoming a victim of domestic violence, the court may enter a final injunction.

Section 741.30, F.S., does not currently address the award of attorney fees in domestic violence injunction hearings. Florida courts are in conflict regarding whether other statutory authority[20] allows a court to order attorney fees incurred in such proceedings. The Third District Court of Appeal[21] has held

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[14] Section 921.0026, F.S., sets forth 14 statutory mitigating circumstances that a court may consider when sentencing for a felony offense.

[15] s. 775.08435, F.S.

[16] This form of felony battery occurs when a person actually or intentionally touches or strikes another person against their will, or intentionally causes bodily harm to another person, and the offender has a prior conviction for battery, aggravated battery, or felony battery. The existence of the prior conviction enhances the offense from a first degree misdemeanor to a third degree felony. s. 784.03, F.S.

[17] This form of felony battery occurs when a person actually or intentionally touches or strikes another person against the will of the other and causes great bodily harm, permanent disability, or permanent disfigurement. s. 784.041(1), F.S.

[18] s. 741.30, F.S.

[19] s. 741.30(5)(a), F.S.

[20] Section 57.105, F.S., authorizes a court to award reasonable attorney's fees when the court finds the losing party or the losing party's attorney should have known that a claim or defense presented to the court or at trial was either: 1) not supported by the material facts necessary to establish the claim or defense; or 2) would not be supported by the application of then-existing law to those material facts.

[21] *See Ratigan v. Stone*, 947 So. 2d 607, 608 (Fla. 3d DCA 2007); *see also Cisneros v. Cisneros*, 831 So. 2d 257, 258 (Fla. 3d DCA 2002).

there is no statutory authority to award attorney fees as sanctions in such domestic violence proceedings, while the First District Court of Appeal[22] has held that the practice is allowed because there is no statutory prohibition against awarding attorney's fees in the proceedings.

Effect of the Bill
The bill creates s. 741.30(1)(g), F.S., to prohibit attorney fees from being awarded in a proceeding for an injunction for protection against domestic violence under the section.

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 government revenues.

2. Expenditures: The bill does not appear to have any impact on state government expenditures. The Criminal Justice Impact Conference met on March 29, 2017, and determined the bill would have no impact on prison population.

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 may increase expenditures by local governments by increasing the minimum numbers of days that domestic violence offenders are incarcerated in local jails. The bill creates new minimum jail sentence requirements for certain misdemeanor domestic violence crimes, and increases existing minimum jail sentence requirements, which could increase the average daily population of local jails.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

[22] *Hall v. Lopez*, 2016 Fla. App. LEXIS 11493 (Fla. 1st DCA 2016).