

# STALKING VIOLENCE CHECKLIST

Effective October 1, 2012

## DEFINITION

- A person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of stalking, a misdemeanor of the first degree. §784.048(2), Florida Statutes.
- A person who willfully, maliciously, and repeatedly follows, harasses or cyberstalks another person, and makes a credible threat to that person commits the offense of aggravated stalking, a felony of the third degree. §784.048(3), Florida Statutes.
- “Harass” means to engage in a course of conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose.
- “Course of conduct” means a pattern of conduct composed of a series of acts over a period of time, however short, which evidences a continuity of purpose.
- “Credible threat” means a verbal or nonverbal threat, or a combination of the two, including threats delivered by electronic communication or implied by a pattern of conduct, which places the person who is the target of the threat in reasonable fear for his or her safety or the safety of his or her family members or individuals closely associated with the person, and which is made with the apparent ability to carry out the threat to cause such harm. It is not necessary to prove that the person making the threat has the intent to actually carry out the threat. The present incarceration of the person making the threat is not a bar to prosecution.
- “Cyberstalk” means to engage in a course of conduct to communicate, or to cause to be communicated, words, images or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose. §784.048(1)(a-d), Florida Statutes.

## STANDING

- A person who is the victim of stalking or the parent or legal guardian of a minor child who is living at home who seeks an injunction for protection against stalking on behalf of the minor child has standing in the circuit court to file a sworn petition for an injunction for protection against stalking. §784.0485(1)(a), Florida Statutes.

- The injunction for protection may be sought regardless of whether any other cause of action is currently pending between the parties, and may be sought by any affected person. §784.0485(1)(b-c), Florida Statutes.
- The cause of action for an injunction does not require either party to be represented by an attorney. §784.0485(1)(d), Florida Statutes.
- The court may not issue mutual orders of protection; however, the court is not precluded from issuing separate injunctions for protection against stalking. §784.0485(1)(e), Florida Statutes.
- A petition for an injunction for protection against stalking may be filed in the circuit where the petitioner currently or temporarily resides, where the respondent resides, or where the stalking occurred. There is no minimum requirement of residency to petition for an injunction for protection. §784.0485(1)(f), Florida Statutes.
- Notwithstanding any other law, the clerk of court may not assess a filing fee to file a petition for protection against stalking. §784.0485(2)(a), Florida Statutes.
- 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, notice of hearing, and temporary injunction, if any, before the hearing. §784.0485(4), Florida Statutes.
- If an injunction is issued and 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 to assist in the execution or service of the injunction. A law enforcement officer shall accept a copy of an injunction for protection against stalking, 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. §784.048(8)(a)(2), Florida Statutes.

#### TEMPORARY INJUNCTIONS

- If it appears to the court that stalking 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 restraining the respondent from committing any act of stalking. §784.0485(5)(a), Florida Statutes.
- Evidence other than verified pleadings or affidavits may not 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. If the

only ground for denial is no appearance of an immediate and present danger of stalking, the court shall set a full hearing on the petition for injunction with notice at the earliest possible time. A petitioner retains the right to promptly amend any petition. §784.0485(5)(b), Florida Statutes.

- The ex parte temporary injunction is effective for a fixed period not to exceed 15 days. A full hearing 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. An injunction shall be extended if necessary to remain in full force and effect during any period of continuance. §784.0485(5)(c), Florida Statutes.

#### **POSSIBLE RELIEF GRANTED WITH TEMPORARY INJUNCTIONS**

- The court may grant such relief as the court deems proper, including an injunction:
  - Restraining the respondent from committing any act of stalking.
  - Ordering the respondent to participate in treatment, intervention, or counseling services to be paid for by the respondent.
  - Referring a petitioner to appropriate services. The court may provide the petitioner with a list of certified domestic violence centers, certified rape crisis centers, and other appropriate referrals in the circuit which the petitioner may contact.
  - Ordering such other relief as the court deems necessary for the protection of a victim of stalking, including injunctions or directives to law enforcement agencies. §784.0485(6)(a), Florida Statutes.
- The terms of the injunction shall remain in effect until modified or dissolved. Either party may move at any time to modify or dissolve the injunction. §784.0485(6)(b), Florida Statutes.
- A temporary or final judgment on injunction for protection against stalking entered pursuant to this section shall, on its face, indicate:
  - That the injunction is valid and enforceable in all counties of this state.
  - That law enforcement officers may use their arrest powers to enforce the terms of the injunction.
  - That the court has jurisdiction over the parties and matter under the laws of this state 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.
  - The date that the respondent was served with the temporary or final order, if obtainable. §784.0485(6)(c), Florida Statutes.

- The fact that a separate order of protection is granted to each opposing party is not legally sufficient to deny any remedy to either party or to prove that the parties are equally at fault or equally endangered. §784.0485(6)(d), Florida Statutes.
- A final judgment on an injunction for protection against stalking must, on its face, provide that it is a violation of §790.233 and a misdemeanor of the first degree for the respondent to have in his or her care, custody, possession, or control any firearm or ammunition. §784.0485(6)(e), Florida Statutes.

#### **FINAL INJUNCTIONS**

- All proceedings under this subsection shall be recorded. §784.0485(6)(f), Florida Statutes.
- The court shall allow an advocate from a state attorney's office, a law enforcement agency, a certified rape crisis center, or a certified domestic violence center to be present with the petitioner or respondent during any court proceedings or hearings related to the injunction for protection if the petitioner or respondent has made such a request and the advocate is able to be present. §784.0485(7), Florida Statutes.

#### **POSSIBLE RELIEF GRANTED with FINAL INJUNCTIONS**

- The court may grant such relief as the court deems proper, including an injunction:
  - Restraining the respondent from committing any act of stalking.
  - Ordering the respondent to participate in treatment, intervention, or counseling services to be paid for by the respondent.
  - Referring a petitioner to appropriate services. The court may provide the petitioner with a list of certified domestic violence centers, certified rape crisis centers, and other appropriate referrals in the circuit which the petitioner may contact.
  - Ordering such other relief as the court deems necessary for the protection of a victim of stalking, including injunctions or directives to law enforcement agencies. §784.0485(6)(a), Florida Statutes.
- The terms of an injunction restraining the respondent shall remain in effect until modified or dissolved. §784.0485(6)(b), Florida Statutes.
- The sentencing court shall consider, as a part of any sentence, issuing an order restraining the defendant from any contact with the victim, which may be valid for up to 10 years, as determined by the court. It is the intent of the

Legislature that the length of any such order be based upon the seriousness of the facts before the court, the probability of future violations by the perpetrator, and the safety of the victim and his or her family members or individuals closely associated with the victim. §784.048(9)(a), Florida Statutes.

- The order may be issued by the court even if the defendant is sentenced to a state prison or a county jail or even if the imposition of the sentence is suspended and the defendant is placed on probation. §784.048(9)(b), Florida Statutes.

#### **REQUIREMENTS FOR TEMPORARY AND FINAL ORDERS**

- A temporary or final judgment on injunction for protection against stalking entered pursuant to this section shall, on its face, indicate:
  - That the injunction is valid and enforceable in all counties of this state.
  - That law enforcement officers may use their arrest powers to enforce the terms of the injunction.
  - That the court has jurisdiction over the parties and matter under the laws of this state 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.
  - The date that the respondent was served with the temporary or final order, if obtainable. §784.048(6)(c), Florida Statutes.
- A final judgment must provide that it is a misdemeanor of the first degree for the respondent to have in his or her care, custody, possession, or control any firearm or ammunition. §784.048(6)(e), Florida Statutes.

#### **MODIFICATIONS AND TERMINATION**

- Either party may move at any time to modify or dissolve the injunction. Specific allegations are not required. Such relief may be granted in addition to other civil or criminal remedies. §784.048(6)(b), Florida Statutes.

#### **ENFORCEMENT**

- The court may enforce a violation of an injunction through a civil or criminal contempt proceeding, or the state attorney may prosecute it as a criminal violation. §784.048(9)(a), Florida Statutes.
- If the respondent is arrested by a law enforcement officer for a violation, 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 pending a hearing. §784.048(9)(b), Florida Statutes.

#### **FIRST DEGREE MISDEMEANOR**

- A person who willfully violates an injunction for protection against stalking or cyberstalking or a foreign protection order accorded full faith and credit commits a misdemeanor of the first degree by:
  - Going to, or being within 500 feet of, the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family members or individuals closely associated with the petitioner;
  - Committing an act of stalking against the petitioner;
  - Committing any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to the petitioner;
  - Telephoning, contacting, or otherwise communicating with the petitioner, directly or indirectly, unless the injunction specifically allows indirect contact through a third party;
  - Knowingly and intentionally coming within 100 feet of the petitioner's motor vehicle, whether or not that vehicle is occupied;
  - Defacing or destroying the petitioner's personal property, including the petitioner's motor vehicle; or
  - Refusing to surrender firearms or ammunition if ordered to do so by the court. §784.0487(4)(a-g), Florida Statutes.
  
- A person may not have in his or her care, custody, possession, or control any firearm or ammunition if the person has been issued a final injunction that is currently in force and effect, restraining that person from committing acts of domestic violence, or from committing acts of stalking or cyberstalking or they commit a misdemeanor of the first degree. §790.233(1-2), Florida Statutes.

#### **THIRD DEGREE FELONY**

- Any person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person, and makes a credible threat to that person with the intent to place that person in reasonable fear of death or bodily injury of the person, or the person's child, sibling, spouse, parent, or dependent, commits the offense of aggravated stalking, a felony of the third degree, §784.048(3), Florida Statutes.
  
- Any person who, after an injunction for protection against repeat violence, sexual violence, or dating violence, or an injunction for protection against domestic violence, or after any other court-imposed prohibition of conduct toward the subject person or that person's property, knowingly, willfully,

maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of aggravated stalking, a felony of the third degree. §784.048(4), Florida Statutes.

- Any person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks a child minor under 16 years of age commits the offense of aggravated stalking, a felony of the third degree. §784.048(5), Florida Statutes.
- Any person who has been sentenced and prohibited from contacting the victim and willfully, maliciously, and repeatedly follows, harasses, or cyberstalks the victim commits the offense of aggravated stalking, a felony of the third degree. §784.048(7), Florida Statutes.
- Any law enforcement officer may arrest, without a warrant, any person that he or she has probable cause to believe has committed an act of stalking or cyberstalking. §784.048(6), Florida Statutes.
- The punishment imposed shall run consecutive to any former sentence imposed for a conviction for any offense under §§794.011, 800.04, or 847.0135(5). §784.048(8), Florida Statutes.

