

DOMESTIC VIOLENCE CHECKLIST

STANDING

- Petitioner and respondent must be family or household members. § 741.30(1)(e).**
 - “Family or household member” means spouses, former spouses, persons related by blood or marriage, persons who are presently living together as if a family or who have lived together in the past as if a family and persons who are parents of a child together regardless of whether or not they have been married or lived together. § 741.28(3).
 - With the exception of persons who have a child in common, the family or household members must be currently residing together or have in the past resided together in the same single dwelling unit. § 741.28(3).
 - A minor child can file by and through a parent as “next best friend.”

- There is no minimum residency requirement.** A petition may be filed in the circuit where the petitioner currently or temporarily resides, where the respondent resides, or where the domestic violence occurred. § 741.30(1)(j).

- Petitioner must be a victim of domestic violence or in imminent danger of becoming a victim. § 741.30(1)(a).**
 - Domestic violence includes: assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any other criminal offense resulting in physical injury or death to one family or household member by another family or household member. § 741.28(2).
 - In determining whether Petitioner has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence, the court must consider all relevant factors alleged in the petition for injunction for protection against domestic violence, including, but not limited to:
 - The history between the petitioner and the respondent, including threats, harassment, stalking, and physical abuse.
 - Whether the respondent has attempted to harm the petitioner or family members or individuals closely associated with the petitioner.
 - Whether the respondent has threatened to conceal, kidnap, or harm the petitioner’s child or children.

- Whether the respondent has used, or has threatened to use, against the petitioner any weapons such as guns or knives.
- Whether the respondent has intentionally injured or killed a family pet.
- Whether the respondent has physically restrained the petitioner from leaving the home or calling law enforcement.
- Whether the respondent has a criminal history involving violence or the threat of violence.
- The existence of a verifiable order of protection issued previously or from another jurisdiction.
- Whether the respondent has destroyed personal property, including, but not limited to, telephones or other communication equipment, clothing, or other items belonging to the petitioner.
- 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.
§ 741.30(6)(b).

- No bond shall be required for entry of an injunction.**
§ 741.30(2)(b).

EX-PARTE (TEMPORARY) INJUNCTIONS

- Determine whether it appears to the court that an immediate and present danger of domestic violence exists. § 741.30(5)(a).**
 - The court can only consider the verified pleadings or affidavits unless respondent appears at the hearing or has received reasonable notice of the hearing. § 741.30(5)(b).
- If the ex parte (temporary) injunction is denied:**
 - **If the court finds no basis for the issuance of an injunction,** the petition may be denied without a return hearing; however, a denial of a petition for an ex-parte (temporary) injunction shall be by *written order noting the legal grounds for denial.* § 741.30(5)(b).
 - **When the only ground for denial is no appearance of an immediate and present danger of domestic violence,** the petition for ex parte (temporary) injunction may be denied but the court shall set a full hearing on the petition for injunction with notice at the earliest possible time.
§ 741.30(5)(b).

- **If the ex parte (temporary) injunction is granted:**
 - Any such temporary injunction shall be effective for a fixed period not to exceed 15 days. § 741.30(5)(c).
 - A full hearing shall be set for a date no later than the date when the temporary injunction ceases to be effective. § 741.30(5)(c).
 - The court may grant a continuance of the hearing before or during a hearing for good cause shown by either party, which shall include a continuance to obtain service of process. § 741.30(5)(c).
 - Any injunction shall be extended if necessary to remain in full force and effect during any period of continuance. § 741.30(5)(c).

POSSIBLE RELIEF WITH EX-PARTE (TEMP.) INJUNCTIONS

- Restrain respondent from committing any acts of domestic violence against petitioner or any member of petitioner's family or household members. § 741.30(5)(a)1.
- Restrain respondent from contact with petitioner or any member of petitioner's immediate family or household. Florida Supreme Court Approved Family Law Forms 12.980(c)(1) and (c)(2).
- Award petitioner temporary exclusive use and occupancy of the dwelling that the parties share or excluding the respondent from the residence of the petitioner. § 741.30(5)(a)2.
- Exclude respondent from petitioner's place of employment or school. Florida Supreme Court Approved Family Law Forms 12.980(c)(1) and (c)(2).
- Exclude respondent from places frequented regularly by petitioner and/or any named family or household member of petitioner. Florida Supreme Court Approved Family Law Forms 12.980(c)(1) and (c)(2).
- Award temporary custody of a minor child or children of the parties on the same basis as provided in section 61.13. § 741.30(5)(a)3. A UCCJEA form must be filed by petitioner if seeking such relief. § 741.30(3)(d).
- Order respondent to surrender any firearms and ammunition in his or her possession to the specified sheriff's office pending further order of the court. Florida Supreme Court Approved Family Law Form 12.980(c)(2).
- Order 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. § 741.30(6)(a)7.

FINAL (PERMANENT) INJUNCTIONS

- 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 section 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. § 741.30(7).
- All proceedings shall be recorded. Recording may be by electronic means as provided by the Rules of Judicial Administration. § 741.30(6)(h).**
- Upon notice and hearing, when it appears to the court that the petitioner is a victim of domestic violence or has reasonable cause to believe he or she is in imminent danger of becoming a victim, the court may grant such relief as the court deems proper. § 741.30(6)(a).**
- The final judgment of injunction for protection against domestic violence may:**
 - be effective indefinitely; until modified or dissolved by the judge at either party's request, upon notice and hearing; or
 - expire on a date certain at the judge's discretion.
§ 741.30(5)(c), Florida Supreme Court Approved Family Law Form 12.980(e).
- The final injunction order ***must*** include the statement that the respondent (unless respondent is a law enforcement officer defined in section 943.10 holding an active certification) may not have in his or her care, custody, possession or control any firearm or ammunition. § 741.30(6)(g), § 790.233(1).

POSSIBLE RELIEF WITH FINAL (PERM.) INJUNCTIONS

- In addition to the types of possible relief listed in the ex-parte temporary injunction section on page 3, the court may also:**
 - Establish temporary support for a minor child or children or the petitioner.
 - The temporary support, custody and or visitation provisions that are established in a permanent domestic violence injunction remain in effect until the order expires or an order, which addresses support, custody and or visitation, is

entered in a pending or subsequent civil action. § 741.30(6)(a)3.,4.

- Refer the petitioner to a certified domestic violence center. The court **must** provide the petitioner with a list of certified domestic violence centers in the circuit. § 741.30(6)(a)6.
- Order counseling for any minor children and order any other provisions relating to minor children. Florida Supreme Court Approved Family Law Form 12.980(d)(1).
- Order a substance abuse and/or mental health evaluation for the respondent and order the respondent to attend any treatment recommended by the evaluation(s). § 741.30(6)(a)5.
- Order the respondent to enroll and complete a certified batterers' intervention program. It is mandatory that such programs be certified under section 741.32. If the court orders the respondent to this type of program the court **must** provide the respondent with a list of all certified batterers' intervention programs and all programs that have submitted an application to DCF to become certified. § 741.30(6)(a)5.
- 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. At any time in the past in this state or another state, an injunction has been entered against the respondent after a hearing with notice. § 741.30(6)(e).
- Establish type of contact/visitation with minor child(ren) the noncustodial parent may have. Florida Supreme Court Approved Family Law Form 12.980(d)(1).
- Establish temporary alimony. Florida Supreme Court Approved Family Law Forms 12.980(d)(1) and (2).

REQUIREMENTS FOR WRITTEN ORDERS – TEMPORARY & FINAL

- **A judgment should indicate on its face that:**
 - The injunction is valid and enforceable in all counties in Florida. § 741.30(6)(d)1.

- Law enforcement officers may use their arrest powers pursuant to section 901.15(6) to enforce the terms of injunction. § 741.30(6)(d)2.
 - The court had jurisdiction over the parties and matter.
 - Reasonable notice and opportunity to be heard was given to respondent sufficient to protect that person's right to due process. § 741.30(6)(d)3.
 - The date respondent was served with the temporary or final order, if obtainable. § 741.30(6)(d)4.
- **Special requirement for final injunctions:**
- A final injunction ***must***, on its face, indicate that it is a violation of section 790.233, and a first degree misdemeanor, for respondent to have in his or her care, custody, possession, or control any firearm or ammunition. § 741.30(6)(g).

ENFORCEMENT

- It is the intent of the Legislature that domestic violence be treated as a criminal act rather than a private matter. Consequently, criminal prosecution shall be the favored method of enforcing compliance with injunctions. § 741.2901(2).
- The Florida Department of Law Enforcement has established and maintains a Domestic, Dating, Sexual and Repeat Violence Injunction Statewide Verification System capable of electronically transmitting information to and between criminal justice agencies relating to domestic violence injunctions issued by the courts throughout the state. **The Department must have the respondent's name, race, sex, and date of birth.**
- 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 section 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 fine. § 741.30(9)(a).

See also Office of the State Courts Administrator's 2005 Domestic Violence Benchbook for further information on the provisions of chapter 741 and applicable federal and critical case law. To request a copy of the Domestic Violence Benchbook, e-mail or call Dana Dowling at dowlingd@flcourts.org or 850/414.8389. The DV Benchbook can also be found on the Florida Supreme Court Webpage at www.flcourts.org/gen_public/family/publications.shtml