

SEXUAL VIOLENCE CHECKLIST

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DEFINITION

- Any one incident of:
1. Sexual battery, as defined in chapter 794;
 2. A lewd or lascivious act, as defined in chapter 800, committed upon or in the presence of a person younger than 16 years of age;
 3. Luring or enticing a child, as described in chapter 787;
 4. Sexual performance by a child, as described in chapter 827; or
 5. Any other forcible felony wherein a sexual act is committed or attempted,

Any one of the incidents listed above meet the definition, *regardless of whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney.* § 784.046(1)(c).

STANDING

- Any person who is the victim of sexual violence or the parent or legal guardian of any minor who is living at home and who seeks an injunction for protection against sexual violence on behalf of the minor child has standing in the circuit court to file a sworn petition for an injunction for protection against sexual violence if:
1. The petitioner reported the sexual violence to law enforcement and is cooperating in any criminal proceeding against the respondent, regardless of whether criminal charges based on the sexual violence have been filed, reduced, or dismissed by the state attorney; or
 2. The respondent who committed the sexual violence against the victim or minor child was sentenced to a term of imprisonment in state prison for the sexual violence and the respondent's term of imprisonment has expired or is due to expire within 90 days following the date the petition is filed. § 784.046(2)(c).

Notice: In order for the parent or legal guardian to file on a minor child's behalf against a respondent who is **not** the minor child's parent, stepparent, or legal guardian the following must be met:

- ___ (a) The minor child must also be living at home with the parent or legal guardian, who is filing as the petitioner on their behalf, and
- ___ (b) The parent or legal guardian must have reasonable cause to believe that the minor child is a victim of sexual violence. § 784.046(4)(a)2.

Notice: In order for the parent or legal guardian to file on a child's behalf against a parent, stepparent, or legal guardian of the minor child the following requirements must also be met:

___ (a) The minor child must be living at home with the parent or legal guardian who is filing as the petitioner on the child's behalf and

___ (b) The parent or legal guardian must have been an eyewitness to, or have direct physical evidence or affidavits from eyewitnesses of, the specific facts and circumstances of the violence. § 784.046(4)(a)1.

- Petitioner must allege the incidents of sexual violence and shall include the specific facts and circumstances that form the basis upon which relief is sought. § 784.046(4)(a).
- No bond shall be required for entry of an injunction. § 784.046(3)(c), Fla. Fam. L. R. P. 12.610(c)(2)(B).
- Upon the filing of the petition, the court shall set a hearing to be held at the earliest possible time. § 784.046(5), Fla. Fam. L. R. P. 12.610(b)(3).
- The respondent shall be personally served with a copy of the petition, notice of hearing, and temporary injunction, if any, prior to the hearing. § 784.046(5), Fla. Fam. L. R. P. 12.610(b)(2)(B).

TEMPORARY INJUNCTIONS

- Determine whether it appears to the court that an immediate and present danger of sexual violence exists. § 784.046(6)(a), Fla. Fam. L. R. P. 12.610(c)(1)(A).
- The court can only consider the verified pleadings/affidavits unless the respondent appears at the hearing or has received reasonable notice of the hearing. § 784.046(6)(b).
- Amended petitions and affidavits must be considered by the court as if originally filed. Fla. Fam. L. R. P. 12.610(c)(1)(A).
- A denial of a petition for an ex-parte injunction shall be by written order noting the legal grounds for denial. Fla. Fam. L. R. P. 12.610(b)(3), Florida Supreme Court Approved Family Law Form 12.980(b)(2).
- When the only ground for denial is that there does not exist "an appearance of an immediate and present danger of sexual violence," the 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. Fla. Fam. L. R. P. 12.610(b)(3), Florida Supreme Court Approved Family Law Form 12.980(b)(1).

- If the ex-parte (temporary) injunction is granted:
 - ◆ Any such ex-parte temporary injunction shall be effective for a fixed period not to exceed 15 days. § 784.046(6)(c), Fla. Fam. L. R. P. 12.610(c)(4).
 - ◆ If the respondent who committed the sexual violence against the victim or minor child was sentenced to a term of imprisonment in state prison for the sexual violence, then the ex-parte temporary injunction shall be effective for 15 days following the date the respondent is released from incarceration. § 784.046(6)(c).
 - ◆ A full hearing shall be set for a date no later than the date when the temporary injunction ceases to be effective. § 784.046(6)(c), Fla. Fam. L. R. P. 12.610(c)(4).
 - ◆ The court may grant a continuance of the ex-parte temporary injunction and the full hearing before or during a hearing, for good cause shown by any party, or upon its own motion for good cause, including failure to obtain service. § 784.046(6)(c), Fla. Fam. L. R. P. 12.610(c)(4).

POSSIBLE RELIEF GRANTED with TEMPORARY INJUNCTIONS

- Restrain the respondent from committing any acts of violence. § 784.046(7)(a).
- Restrain the respondent from contact with the petitioner. Florida Supreme Court Approved Family Law Form 12.980(r).
- Order other relief as the court deems necessary for the protection of the petitioner, including injunctions or directives to law enforcement agencies as provided in this section. § 784.046(7)(b), Florida Supreme Court Approved Family Law Form 12.980(r).
- Restrain respondent from knowingly coming within 100 feet of petitioner's automobile at any time. Florida Supreme Court Approved Family Law Form 12.980(r).
- Order respondent to not use or possess a firearm or ammunition and surrender any firearms and ammunition in respondent's possession to the specified sheriff's office pending further order of the court. Florida Supreme Court Approved Family Law Form 12.980(r).
- Restrain respondent from going to, in, or within 500 feet of
 - ◆ the petitioner's current or future residence
 - ◆ the petitioner's current or any subsequent place of employment or school
 - ◆ the places frequented regularly by the petitioner and/or petitioner's minor child(ren). Florida Supreme Court Approved Family Law Form 12.980(k).

FINAL INJUNCTIONS

- No electronic or audio tape recording or court reporting services are provided by the court in sexual violence cases. Florida Supreme Court Approved Family Law Forms 12.980(b)(1), 12.980(s).

- Upon notice and hearing, when it appears to the court that an immediate and present danger of violence exists, the court may grant such relief as the court deems proper, including injunctions or directives to law enforcement agencies as provided in this section. § 784.046(7).
- If a final injunction is granted:
 - ◆ Any relief granted shall be effective for a fixed period or until further order of the court. Fla. Fam. L. R. P. 12.610(c)(4)(B), 12.980(s).
 - ◆ The terms of the injunction shall remain in force and effect until modified or dissolved. Either party may move at any time to modify or dissolve the injunction. Such relief may be granted in addition to other civil and criminal remedies. § 784.046(7)(c).
 - ◆ Upon petition of the victim, the court may extend the injunction for successive periods or until further order of the court. Broad discretion resides with the court to grant an extension after considering the circumstances. No specific allegations are required. Fla. Fam. L. R. P. 12.610(c)(4)(B).

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REQUIREMENTS FOR TEMPORARY AND FINAL ORDERS

- The temporary and final judgment should indicate on its face that:
 - ◆ The injunction is valid and enforceable in all counties of the State of Florida.

- ◆ Law enforcement officers may use their arrest powers pursuant to section 901.15(6) to enforce the terms of the injunction.
- ◆ The court had jurisdiction over the parties and matter.
- ◆ Reasonable notice and opportunity to be heard was given to the respondent sufficient to protect the person's right to due process.
- ◆ The date respondent was served with the temporary or final order, if obtainable. § 784.046(7)(d)1-4.

MODIFICATION AND TERMINATION

- The petitioner or respondent may move the court to modify or vacate an injunction at any time. § 784.046(10), Fla. Fam. L. R. P. 12.610(c)(6).

ENFORCEMENT

- 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, dating, sexual, and repeat violence injunctions issued by the courts throughout the state. **The Department must have the respondent's name, race, sex and date of birth.** § 784.046(8)(b).
- The court shall enforce, through a civil or criminal contempt proceeding, a violation of an injunction for protection. The court may enforce the respondent's compliance with the injunction by imposing a monetary assessment. § 784.046(9)(a).
- If the violation meets the statutory criteria, it may be prosecuted as a crime. Fla. Fam. L. R. P. 12.6109(c)(5).
- If the respondent is arrested upon section 901.15(6) for committing an act of repeat, dating or sexual violence in violation of an injunction for protection, 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. § 784.046(9)(b).

FIRST DEGREE MISDEMEANOR

A person who willfully violates an injunction for protection against sexual violence issued pursuant to 784.046, or a foreign protection order accorded full faith and credit pursuant to section 741.315 commits a misdemeanor of the first degree punishable as provided in section 775.082 or section 775.083. §784.047.