

Florida State Courts System

Office of the State Courts Administrator

Office of Court Improvement

Domestic Violence Resources for Court Staff

June, 2007

This project was sponsored by Grant No. 2005-WF-AX-0055 awarded by the Violence Against Women Grants Office, Office of Justice Programs, U.S. Department of Justice. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice or the Florida Department of Children and Families.

Domestic Violence Resources for Court Staff

The nature of domestic violence is as complex and multifaceted as the legal responses to it. This resource on domestic violence is intended to help court staff who deal with domestic violence injunction cases and the petitioners and respondents involved in those cases. As local practices may vary, you should consult with a supervisor if you have questions about specific issues in your circuit.

Florida Law

Section 741.28, Florida Statutes says that, “‘Domestic violence’ means 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 family or household member.” This definition includes intimate partners as mentioned above, but it will also include non-intimate family members and other household members. The dynamics of intimate partner violence and non-intimate partner violence can be very different, however, no one deserves to live in an abusive situation and Florida has created a broad cause of action to assist people living with abuse.

Click [HERE](#) to read Section 741.28, Florida Statutes in its entirety

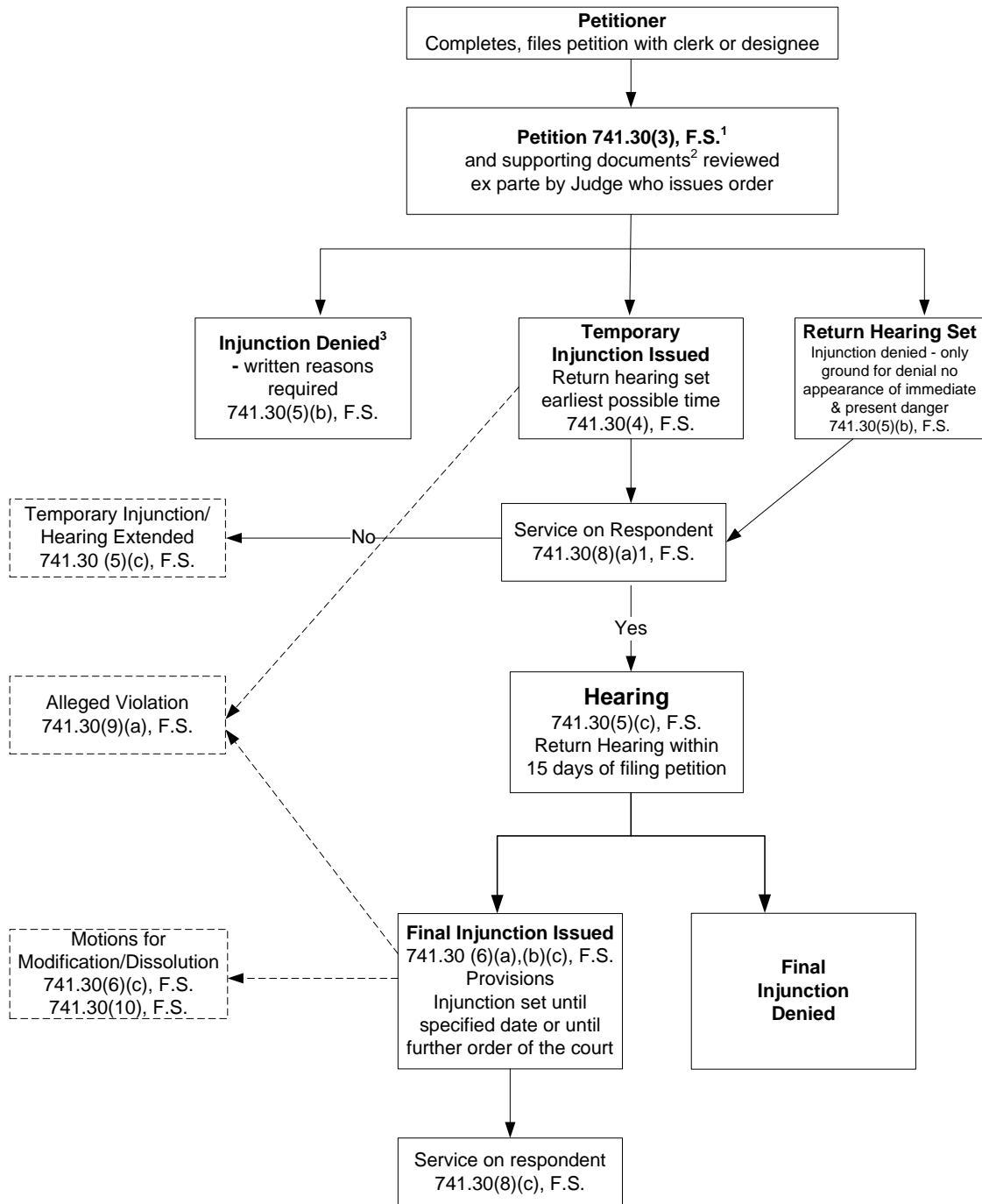
Anyone meeting the above definition may start a civil case in circuit court by petitioning the court for an injunction for protection against domestic violence. It is important to remember that a petitioner may be involved in both a civil injunction case and a criminal domestic violence case at the same time. This document will focus on civil cases, but you may also want to familiarize yourself with your circuit’s procedures for handling criminal domestic violence cases.

A civil domestic violence injunction is a legal judgment that prohibits a respondent from committing acts of domestic violence upon a petitioner and imposes various other restrictions on the respondent. The law establishing the cause of action for domestic violence injunctions is section 741.30, Florida Statutes. Injunction cases are independent causes of action, in other words, there does not need to be any other type of case pending (such as a divorce or a paternity case) to proceed with the injunction case. A court may not require that a party seeking a domestic violence injunction institute another action, e.g., a dissolution of marriage action, as a condition of relief in the domestic violence injunction.

Click [HERE](#) to read section 741.30, Florida Statutes in its entirety

On the next page you will see a graphical depiction of how a civil domestic violence injunction case works through the court system.

DOMESTIC VIOLENCE FLOWCHART



¹ Statutory citations are from the 2006 statutes

² Supporting Documents - UCCJEA, Financial Affidavit, Confidential Address, Child Support Guidelines Worksheet

³ Petitioner may refile/submit supplemental affidavit

At a hearing for a domestic violence injunction, some of the factors the judge will consider include:

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 issues previously or from another jurisdiction;
9. Whether the respondent has destroyed personal property, including, but not limited to, telephones and other communications equipment, clothing, or other items belonging to the petitioner; and
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.

When a judge decides to issue an injunction for protection against domestic violence, the following factors must also be decided:

1. Whether the respondent may have any contact with the petitioner, and if so, under what conditions;
2. Who will have exclusive use of the parties' shared residence;
3. Temporary custody arrangements with minor children;
4. Whether temporary visitation will occur and whether it will be supervised;
5. Whether temporary child support will be ordered;

6. Whether temporary spousal support will be ordered; and
7. Whether other relief as the court deems necessary for the protection of the petitioner will be ordered.

Click [HERE](#) to see a checklist for domestic violence cases

Rules and Forms

While Florida Statutes create the foundation for domestic violence injunction cases, the procedures necessary to carry out the process are listed in Rule 12.610, Florida Family Law Rules of Procedure. In conjunction with this rule, the Florida Supreme Court has approved a series of mandatory, standardized forms to be used in injunction cases. The list of forms includes petitions, motions, orders, final judgments, and the necessary supporting forms such as the Uniform Child Custody Jurisdiction and Enforcement Affidavit (UCCJEA), Child Support Guidelines Worksheets, and the Petitioner's Request for Confidential Filing of Address.

Click [HERE](#) to see the Florida Family Law Rules including Rule 12.610

Click [HERE](#) for the Florida Supreme Court Approved Family Law Forms

Case Management

The role of court staff in domestic violence cases is highly complex, and the importance of properly carrying out that role can not be overstated. To assist court staff and to establish uniform standards for case management across the state, the Domestic Violence Case Management Guidelines were created.

Click [HERE](#) to read the Domestic Violence Case Management Guidelines

Other Types of Violence

In Florida, there are additional ways for a person to seek protection from violence if they do not fit the definition in Section 741.28, Florida Statutes. Many other types of cases will be covered by Section 784.046, Florida Statutes, which provides for injunctions against repeat violence, dating violence and sexual violence.

Repeat Violence

Repeat violence means that two incidents of violence have been committed against a petitioner or a member of his/her immediate family by another person, one of which must have been within 6 months of filing the petition. Repeat violence includes assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, or false imprisonment, or any criminal offense resulting in physical injury or death.

Click [HERE](#) to see a checklist on Repeat Violence

Dating Violence

Dating violence is violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. The dating relationship must have existed within the past six months, the nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties, and the frequency and type of interaction must have included that the persons have been involved over time and on a continuous basis during the course of the relationship.

Dating violence does not include violence in a casual acquaintanceship or violence between individuals who only have engaged in ordinary fraternization in a business or social context. Dating violence includes assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, or false imprisonment, or any criminal offense resulting in physical injury or death.

Click [HERE](#) to see a checklist on Dating Violence

Sexual violence

Sexual violence is any one incident of sexual battery, a lewd or lascivious act committed upon or in the presence of a person younger than 16 years of age, luring or enticing a child, a sexual performance by a child, or any other forcible felony wherein a sexual act is committed or attempted regardless of whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney.

Click [HERE](#) to see a checklist on Sexual Violence

Click [HERE](#) to read Section 784.046, Florida Statutes in its entirety

Children and Domestic Violence

Significant numbers of children are profoundly affected by domestic violence. While children can be victims of direct abuse, they also may be abused while trying to intervene on behalf of a parent, used to control an adult victim, and suffer long term psychological issues as a result of the domestic violence with which they grew up.

- Each year, it is estimated that between 3.3 million and 10 million children are exposed to violence against their mothers or female caretakers by family members (Volpe, 1996).
- Children in homes where domestic violence occurs are physically abused or neglected at a rate 15 times higher than the national average (Volpe, 1996).
- Research suggests that being battered is the single most common factor among mothers of abused children. Almost two-thirds of abused children are parented by battered women. These abused children are three times more likely to have been abused by their fathers or stepfathers than by their mothers (McKay, 1994).
- Studies have shown that both child maltreatment and domestic violence occur in an estimated 30 to 60 percent of families with some form of family violence (McKay, 1994).
- Eighty to 90 percent of children living in homes with domestic violence are aware of the violence (Volpe, 1996).

References

McKay, M. (1994). The link between domestic violence and child abuse: Assessment and treatment considerations. *Child Welfare League of America*, 73, 29-39.

Volpe, J.S. (1996). *Effects of Domestic Violence on Children and Adolescents: An Overview*. The American Academy of Experts in Traumatic Stress.

A Special Injunction for Children

While an adult victim of domestic may file a petition for an injunction for protection against domestic violence, there is another option available under Florida's dependency statutes to specifically protect a child who may be in danger of becoming a victim of violence. Section 39.504, Florida Statutes. This injunction shares similarities with a domestic violence injunction, but it also has many unique features. This type of injunction requires that a shelter petition or dependency petition must first be filed, or that the child has been taken into the custody of the state. This type of injunction expires at the time of disposition of the dependency case. The following chart compares elements of dependency and domestic violence injunctions.

Comparison of Injunctions under Chapter 39 and Chapter 741

Chapter 39, Dependency

Chapter 741, Domestic Violence

<p>Purpose is to protect and promote the best interests of the child.</p>	<p>Purpose is to protect adults, but children may be included in terms of injunction.</p>
<p>DCF may file the motion, but law enforcement, state attorney, the court itself, or “a responsible adult” may file for the injunction on behalf of the child.</p>	<p>Victim is the petitioner and must file petition with the court.</p>
<p>Offender may at any time offer evidence of “changed circumstances” in order to modify the injunction. Best interest of the child is still the court’s benchmark.</p>	<p>Either party may move to modify or dissolve the injunction at any time. Risk to children is not a factor.</p>
<p>May order treatment for offender. May <u>also</u> order offender to pay for medical, psychiatric, or psychological treatment of the child or other family members.</p>	<p>May order treatment for respondent only, such as: BIP, substance abuse, mental health, etc.</p>
<p>Supervised visitation may be ordered with access to DCF visitation centers and supervision.</p>	<p>Supervised visitation may be ordered but will depend upon the availability of local resources.</p>
<p>Law enforcement has a duty and responsibility to enforce, however, arrest authority is expressly granted.</p>	<p>Law enforcement to enforce the injunction with specific directions as to arrest authority.</p>
<p>Violation is a first degree misdemeanor.</p>	<p>Violation may be handled as civil or criminal contempt, or as a first degree misdemeanor.</p>
<p>Injunction ends at disposition.</p>	<p>Injunction ends on a specific date or upon further order of the court.</p>

Additional Information on Domestic Violence

Who are the Victims?

- According to the U.S. Department of Justice, women are the victims of domestic violence at a rate about 5 times that of men; almost 85% of domestic violence victims are women.
- Though there is variation in some categories, domestic violence occurs across all groups regardless of religion, age, income, education level, marital status, sexual orientation, and race/ethnicity.
- The National Crime Victim Survey showed that, in 1998, 876,000 women and 157,330 men were victims of violence by intimate partners.
- The Florida Domestic Violence Court Assessment undertaken by the Office of the State Courts Administrator in 2003 found women were petitioners in 80% of cases, while men were petitioners in 20% of cases. Conversely, men were respondents in 80% of cases, while women were respondents in 20% of the cases.
- The Florida Department of Law Enforcement reports that a total of 119,772 domestic violence offenses were reported to Florida law enforcement agencies in 2004.
- During fiscal year 2004-05, a total of 64,470 petitions for injunctions for protection from domestic violence were filed in Florida's courts.

The Cycle of Violence

The cycle of violence theory was developed by Dr. Lenore Walker based on her work with battered women (The Battered Woman, Lenore E. Walker, Harper & Row: New York, 1979.) Other theories have been developed to describe or explain the dynamics of domestic violence, but Dr. Walker's theory remains the most universally accepted.

Phase One- the tension building phase

Emotional abuse and "minor" battering incidents occur. Every minor battering incident has residual tension-building effects.

Tension builds as the frequency and severity of abusive incidents escalates; both partners experience the tension. The batterer is afraid of losing control of the victim, while the victim fears the violence of an acute battering incident.

In this phase, the batterer makes conscious decisions to use threats or violence to control the victim.

Phase Two – the acute battering incident

Characterized by the explosive discharge of the tensions built up during phase one; these incidents often involve very severe battering which may result in serious injury or death.

Severe violence is initiated by a “trigger” event. This may be an event in the relationship (she forgot to put mustard on the sandwich), an event completely unrelated to the relationship (getting stuck in traffic), or the batterer’s internal emotional state.

Batterers often start out by justifying their behavior to themselves as wanting to teach the victim a lesson. The built-up tension and rage take over, and the violence escalates and generally ends only when the batterer has no more physical energy to expend.

Generally the violence stops only after the batterer feels the victim has learned the lesson – by this time, the victim may be severely injured.

Phase Three – kindness and contrite, loving behavior

The tension built up in phase one and discharged in phase two is now gone; the relationship feels calmer and more peaceful to both parties.

The batterer usually realizes the violence has gone too far, and often expresses contrition or remorse for his behavior by apologizing and promising never to do it again. Often, this promise is based on his belief that the victim has finally learned the “lesson” being taught.

During this phase, the batterer often behaves in a charming, loving manner towards the victim – it is this phase and this behavior that reinforces the victim’s attachment to the batterer.

This phase is the time when victims find it most difficult to leave, and also the time when most victims come into contact with police, courts, and shelters (immediately after an acute battering incident).

And then the cycle begins again

The false hope and happiness of phase 3 fade rather rapidly and the cycle of violence begins again with the emotional abuse and tension building dynamic of phase one.

NOTE: Though the cycle of violence seems to accurately describe the experience of many domestic violence victims, we don’t know how many or what percent of violent relationships follow this cycle. In a significant number of violent relationships, there is never a phase three - never a break in the violence.

Attitudes and Behaviors of Men Who Batter

There is no way to spot a batterer in a crowd. It is not a question of class, race or socioeconomic status. Domestic violence is a gender issue. Most batterers are male. Research has indicated that batterers often share the following characteristics and behaviors:

- Use intimidation and violence
- Verbally abusive
- Minimize the abuse
- Substance abusers
- Break or strike things in anger
- History of violence
- Project blame for their own behavior
- Cruel to children and/ or animals
- Extremely jealous
- Controlling
- Physically and socially isolate partner and children
- Dr. Jekyll / Mr. Hyde personality
- Rape or use of force in sex

Tactics of Power and Control

Perpetrators of domestic violence use a myriad of coercive and intimidating tactics in their attempts to control and dominate their partners. Some of these tactics are physically injurious, the majority of them are not. All are psychologically and emotionally damaging to the victim and her children. These tactics include:

Emotional and Verbal Abuse such as name-calling; constant criticism; playing mind games; humiliating partner; guilt trips; The 'silent' treatment.

Sexual Coercion such as manipulating partner into sex, including using guilt trips or threats; unwanted touching; 'playful' use of force during sex; treating partner like a sex object; drugging partner or having sex while they are too drunk or high to make a clear decision about whether or not they want to have sex.

Financial/ Economic Abuse such as preventing partner from getting/keeping a job; using someone for their money; expecting sexual acts in return for spending money on partner; denying partner access to family income.

Sexism such as using belief that males are superior to females or that males should have certain privileges that females should not, to justify controlling partner; expecting males to make all the big decisions; "rules" for the relationship that are not the same for both partners.

Using Children such as pressuring partner to get pregnant; using children as a way to create dependency; threatening to take away the children; hurting or threatening to hurt the children; telling or threatening to tell the children negative things about the partner.

Denying, Minimizing, Blaming such as denying the abuse or acting as if it's not that serious; not taking partner's concerns about the abuse seriously; saying the partner "caused" the abuse by something s/he did or didn't do or saying s/he deserves it; not taking responsibility for one's own behavior.

Isolation and Extreme Jealousy such as controlling who partner is friends with, where s/he goes, what s/he does or trying to; separating partner from family; not letting partner work or be involved in his/her own activities; keeping constant tabs on partner, including through pager or cell phone; accusing partner of cheating as a way of manipulating him/her; using jealousy to justify controlling behavior.

Intimidation/Threats such as using looks, actions, gestures, voice to scare partner; throwing or smashing things; displaying weapons; destroying property; 'play fighting' meant to show strength and power over partner; threatening to hurt partner or someone s/he cares about; threatening to commit suicide.

Conclusion

This information and the related resources provided herein provide a basic understanding of domestic violence and the legal responses to it. These tools should prepare court staff to be ready to appropriately handle the needs of the people served by the Florida State Courts System.