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DATE: March 5, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 199

RELATING TO: Domestic Violence Battery

SPONSOR(S): Crime and Punishment Committee and Representative Merchant

STATUTE(S) AFFECTED: s. 784.09, s. 741.29, s. 901.15, s. 943.171

COMPANION BILL(S): SB 148

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME AND PUNISHMENT YEAS 7 NAYS 0
- (2) CRIMINAL JUSTICE (FISCAL)
- (3)
- (4)
- (5)

I. SUMMARY:

The bill creates s. 784.09, F.S., which enhances the penalty for domestic violence battery to a third degree felony when committed in the presence of a child 16 years of age or under. It applies only in cases where a law enforcement officer is able determine that a single individual is the primary aggressor. It specifically does not apply when the domestic battery occurs in the presence of children under circumstances where both parties involved are arrested for the incident. A defendant with no prior criminal convictions, and facing this offense alone, would not be eligible for a state prison sentence.

The bill adds a public policy statement in s. 901.15, F.S., to "strongly discourage" arresting and charging both parties in mutual combat type of domestic batteries.

The bill amends s. 741.29, F.S., and indicates that with regard to two or more combatants, the preferred response is to arrest only the primary aggressor. This section applies in either of two instances. The later of the two instances is where the officer receives complaints from two or more persons. With regard to the first instance, however, it should be noted that this section is triggered **after** an officer has determined that there is probable cause to arrest two or more combatants for misdemeanor or felony level offenses.

The most significant aspect of this bill is to subject domestic violence battery to heightened penalties when committed in the presence of children. That objective is consistent with the implicit public policy of the state to strongly discourage domestic violence in the presence of children. That objective may appear to be in conflict with the express public policy statement in the bill which "strongly discourages arrest and charges of both parties for violence on each other. . . ." However, one reason for the apparent conflict is that the bill is trying to accomplish not only the objective stated above, but also an objective of directing the arrest and prosecution in domestic violence cases toward the primary aggressor.

Also, as the bill is drafted, a primary aggressor who commits a domestic battery in the presence of **any** child (16 years or under) **anywhere** is guilty of a felony of the third degree.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

1. Battery

F.S., 784.03(1) defines and provides the penalty for the offense of *battery* as follows:

- ▶ The offense of *battery* occurs when a person actually and intentionally touches or strikes another person against the other person's will or intentionally causes bodily harm to an individual. Battery is a first degree misdemeanor, punishable by up to a \$1,000 fine and/or up to one year in county jail.

F.S. 741.28(1) defines *domestic violence* as follows:

- ▶ *Domestic violence* means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, or any criminal offense resulting in physical injury or death of one family or household member by another who is or was residing in the same single dwelling unit.

2. Domestic Violence Investigations

Under s. 741.29, F.S., a law enforcement officer "shall" handle such incidents in accordance with the arrest policy set forth in s. 901.15, F.S., (regarding arrests without a warrant). As it pertains to incidents of domestic violence, an officer may arrest any and all parties for whom the officer determines probable cause to arrest. F.S. 901.15(7) provides:

- ▶ . . . With respect to an arrest for an act of domestic violence, the decision to arrest shall not require consent of the victim or consideration of the relationship of the parties. A law enforcement officer who acts in good faith and exercises due care in making an arrest under this subsection is immune from civil liability that otherwise might result by reason of his action.

In addition, an officer must make a detailed report regarding the incident. The report must include information such as a description of the injuries observed, a statement that the legal right and remedies notice was provided to the victim, and in cases where no arrest was made, an explanation as to why no arrest was made. Further, this section requires an officer to turn his report in to his supervisor, and instructs the law enforcement agency to provide a copy of the report to the nearest locally certified domestic violence center with 24 hours from receipt of the report.

F.S. 741.29(4) directs officers who receive complaints from two or more parties, to evaluate each complaint separately to determine whether there is probable cause to arrest. Under s. 901.15(7), F.S., an officer may arrest **any** person without a warrant for acts of domestic violence, and for any battery.

3. Basic Skills Training

F.S. 943.171(1) currently requires that all law enforcement basic skills courses include a minimum of 6 hours of training in handling domestic violence cases.

B. EFFECT OF PROPOSED CHANGES:

1. Enhancing Domestic Violence

This bill creates s. 784.09, F.S., which enhances the penalty for domestic violence battery to a third degree felony when committed in the presence of a child 16 years of age or under. It applies only in cases where a law enforcement officer is able determine that a single individual is the primary aggressor. It specifically does not apply when the domestic battery occurs in the presence of children under circumstances where both parties involved are arrested for the incident. For those battery offenses which fall within the scope of this bill, the effect would be to subject the offender to penalties under the sentencing guidelines. The bill does not specify or designate a particular ranking for this third degree felony on the *Offense Severity Ranking Chart* of the guidelines. As an unranked third degree felony, this offense would be treated as a Level 1 felony offense under s. 921.0013, F.S. A defendant with no prior criminal convictions, facing this offense alone, would not be eligible for a state prison sentence. This is true even assuming points were scored for moderate injury.

In some cases, a judge could depart from the sentencing guidelines and impose a sentence of up to 5 years in prison. See s. 784.03, 775.082, F.S. However, such a departure is restricted to circumstances described in statutes and case law, and is the exception rather than the rule. See s. 921.0016, F.S.

A significant aspect of this bill is the exemption for domestic violence batteries which would otherwise meet the criteria for enhanced penalties, whenever both parties are equally at fault in committing domestic batteries upon each other. Directly related to this issue is the language amending s. 901.15(7), F.S., that declares it is the public policy of the state to "strongly discourage" arresting and charging both parties in mutual combat type of domestic violence batteries, and to encourage training of law enforcement officers and prosecutors in this regard. It would be speculative to try to determine the effect this language would have upon law enforcement officers responding to domestic violence calls where, although domestic violence undoubtedly occurred, the circumstances are ambiguous as to whether one side was more "aggressive" than the other. (See Section V, "Comments" for further discussion related to this issue).

2. Primary Aggression

A corollary to this issue is the effect that the language in Section 2 (4)(b) will have on law enforcement officers. This section of the bill amends s. 741.29, F.S., and addresses the "primary aggressor," in domestic violence batteries. It indicates that with regard to two or more combatants, the preferred response is to arrest only the primary aggressor. This section applies in either of two instances. The later of the two instances is where the officer receives complaints from two or more persons. With regard to the first instance, however, it should be noted that this section is triggered **after** an officer has determined that probable cause to arrest exists for two or more combatants. That is to say that at the point in time where the officer is to decide who the primary aggressor is,

he /she has already determined that sufficient facts exist (in terms of probable cause) to believe that two or more persons have committed **either** misdemeanor or felony level acts of domestic violence against each other. Probable cause to arrest exists when the totality of the facts and circumstances within the officer's knowledge would cause a reasonable person to believe that an offense has been committed, and that the defendant committed it. See State v. Russell, 659 So.2d 465 (3rd DCA. 1995).

3. New Reporting Requirements

The revisions to s. 741.29(2), F.S., regarding reporting requirements basically enhance the obligations of a law enforcement officer in reporting domestic violence incidents to incorporate a manner of collecting the data so that such information may be compiled. Under the current provisions of s. 741.29(2)(b), F.S., an officer is obligated to indicate in his report reasons why, in a particular case, an arrest is **not** made. Under section (e) of the bill, a new requirement is added that law enforcement officers state grounds indicating why, in a particular case, an arrest of two or more persons **was** made.

4. Pretrial Release

The bill creates a first degree misdemeanor offense for willful violations of conditions of Pretrial release on domestic violence arrests. It also mandates that such violators remain in custody until the first appearance hearing is held. In addition, the bill allows a law enforcement officer to arrest a person without a warrant when there is probable cause to believe the person has violated a condition of Pretrial release on a pending domestic violence charge.

5. Basic Skills Training in Primary Aggression

The bill's amendment to s. 943.171(1), F.S., is to require that law enforcement training include instruction on identifying the primary aggressor in domestic violence cases.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

To a limited extent, this bill imposes new responsibilities on law enforcement officers that may be overlooked among some law enforcement agencies by making these "new" responsibilities mandated by statute if they are not already expressed or implied within an agency's internal department policy.

It also increases the responsibility of officers at domestic violence calls to try and identify the primary aggressor and arrest only that individual.

- (3) any entitlement to a government service or benefit?

No.

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

- (2) what is the cost of such responsibility at the new level/agency?

Not applicable.

- (3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

One aspect of this bill is to discourage arrests of all parties in domestic violence cases where they are all equally violent to each other. To that extent, whenever no arrest is made under those circumstances, the persons involved would be left to resolve the matter among themselves.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

Not applicable.

- (2) Who makes the decisions?

Not applicable.

- (3) Are private alternatives permitted?

Not applicable.

(4) Are families required to participate in a program?

Not applicable.

(5) Are families penalized for not participating in a program?

Not applicable.

b. Does the bill directly affect the legal rights and obligations between family members?

This bill heightens accountability for primary aggressors in domestic violence settings by subjecting them to a higher penalty. It will also increase the instances where family members are left to resolve domestic violence issues within the home.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

D. SECTION-BY-SECTION ANALYSIS:

1. Section 1. - Creates section 784.09, F.S., as described in section II, B, 1.
2. Section 2. - Amends section 741.29, F.S., as described in section II, B, 2, and 3.
3. Section 3. - Amends section 901.15, F.S., as described in section II, B, 4.
4. Section 4. - Amends section 943.171, F.S., as described in section II, B, 5.
5. Section 5 - Provides for an effective date of October 1, 1997.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Indeterminate, See *Fiscal Comments*.

2. Recurring Effects:

Indeterminate, See *Fiscal Comments*.

3. Long Run Effects Other Than Normal Growth:

Indeterminate, See *Fiscal Comments*.

4. Total Revenues and Expenditures:

Indeterminate, See *Fiscal Comments*.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Indeterminate, See *Fiscal Comments*.

2. Recurring Effects:

Indeterminate, See *Fiscal Comments*.

3. Long Run Effects Other Than Normal Growth:

Indeterminate, See *Fiscal Comments*.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Not applicable.

2. Direct Private Sector Benefits:

Not applicable.

3. Effects on Competition, Private Enterprise and Employment Markets:

Not applicable.

D. FISCAL COMMENTS:

F.S. 921.001(9)(b), requires that any legislation that creates a felony must provide that the change result in a net zero sum impact in the overall prison population, as determined by the Criminal Justice Estimating Conference, unless the legislation contains a funding source sufficient in its base or rate to accommodate the change, or a provision to specifically abrogate the application of the law.

The Criminal Justice Estimating Conference (CJEC) met on February 21, 1997, to determine the fiscal impact of this bill. At that meeting, the Department of Corrections projected that this bill would create the need for 77 additional beds per year. The CJEC adopted this prison impact projection. The Department also estimates that the total annual community supervision cost will be \$2,024,926.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirement of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

The most significant aspect of this bill is to subject domestic violence battery to heightened penalties when committed in the presence of children. That objective is consistent with the implicit public policy of the state to strongly discourage domestic violence in the presence of children. That objective may appear to be in conflict with the express public policy statement in the bill which "strongly discourages arrest and charges of both parties for violence on each other and to encourage training of law enforcement. . . in this area." However, one reason for the apparent conflict is that bill is trying to accomplish not only the objective stated above, but also an objective of directing the arrest and prosecution in domestic violence cases toward the primary aggressor.

A consequence of encouraging law enforcement officers and prosecutors to directly focus on primary domestic abusers, is closer scrutiny of the facts at the scene by the investigating

officer, and perhaps the diversion or prevention arrests of domestic violence victims when they were merely trying to defend themselves.

Another, foreseeable consequence is that for cases where the potential for violence has apparently diminished by the arrival of law enforcement officers, rather than arresting both parties involved when they are equally at fault, officers would be statutorily "strongly discouraged" from arresting either party since no primary aggressor could be identified. With such statutory discouragement, there would be an increase in the number of instances where equally violent parties, would be left to resolve these matters between themselves. Another factor to consider in this situation, is that due to the unpredictable nature of domestic violence calls, situations may arise where officers walk away from incidents where future violence could be avoided by arrest. In some circumstances, an officer may be unable to identify the primary aggressor because of factually ambiguous circumstances, or because fear of the primary aggressor may make witnesses or victims reluctant to provide the necessary information.

Also, as the bill is drafted, a primary aggressor who commits a domestic battery in the presence of **any** child (16 years or under) **anywhere** is guilty of a felony of the third degree. The question of whether all such domestic batteries should be treated the same is a matter of public policy.

There may also be an unintended result of a statutorily stated preference to arrest and charge only the primary aggressor in domestic violence batteries. With such language in the statute, it would create an opportunity for defense lawyers to raise a defense to battery charges by claiming that even though their client struck the victim, and it was not in self-defense, their client was not the "primary aggressor" and should therefore be acquitted.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The committee adopted amendments to HB 199 which amend s. 901.15, F.S., in two respects. First, by adding the public policy statement discouraging arrests of both parties for domestic violence on each other to paragraph (7). Second, the amendment created paragraph (12) which allows a law enforcement officer to arrest a person without a warrant when there is probable cause to believe that the person has violated a condition of Pretrial release when the original arrest was for an act of domestic violence. Also, adopted was the creation, under s. 741.29(6), F.S., of a first degree misdemeanor offense for willful violation of a condition of pretrial release when the original arrest was for an act of domestic violence.

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

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