

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1124

SPONSOR: Senator Myers

SUBJECT: Domestic Violence

DATE: April 10, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dowds</u>	<u>Whiddon</u>	<u>CF</u>	<u>Favorable/CS</u>
2.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The Committee Substitute for Senate Bill 1124 establishes domestic violence fatality review teams for the purpose of reviewing fatal and near fatal incidents of domestic violence, related domestic violence matters, and suicides. The CS also does the following:

- Specifies the parameters of the operation and membership of the teams.
- Authorizes the establishment of domestic violence fatality review teams at the state, regional, or local level.
- Stipulates data collection and reporting requirements.
- Requires that the Florida Department of Law Enforcement use data provided by the teams to prepare an annual report on domestic violence fatalities.
- Provides immunity from liability to the members of the teams, witnesses, reporters, and investigators.
- Stipulates that investigations, proceedings, and records of a domestic violence fatality review team are not subject to discovery or introduction into evidence in any civil action or in any disciplinary proceeding that is the result of matters pertaining to the review teams evaluation and review.
- Provides for administrative placement of the teams within the Department of Children and Family Services.

The CS creates section 741.316 of the Florida Statutes.

II. Present Situation:

A. Overview on Domestic Violence Fatality Review

Domestic violence claims the lives of several thousand people per year nationally. Domestic violence fatalities are handled by the criminal justice system, which investigates the death and identifies and charges the perpetrators, when appropriate. This focus on the fatality does little to

review the effectiveness of the various systems charged with serving and protecting those vulnerable to domestic violence and death. Consequently, many community members, including judges, court administrators, elected officials, prosecutors, law enforcement officials, and battered women's advocates are looking for workable and fair models to review domestic violence fatalities, with a view to preventing future deaths.

Informal and semi-formal domestic violence death reviews have been conducted in a number of states in the past decade. California, Nevada and Delaware have introduced legislation to regulate the review process and protect review participants from liability. The principal purpose of domestic violence fatality review is to reduce domestic violence related deaths and injuries through the identification and subsequent rectification of problems in the civil and criminal justice systems, including the delivery of multiple services to families. Another commonly stated goal of the review teams is to educate the community in general, and women in particular, about the heightened risk of lethal domestic violence.

B. Task Force Initiative to Implement Fatality Review Teams in Florida

There are no provisions in current Florida law designating a review of the deaths of victims of domestic violence. The only review performed is the investigation of the death by law enforcement for the purpose of identifying and charging the perpetrator.

The Governor's Task Force on Domestic Violence was established in September 1993 by Executive Order, with a mission to end domestic violence. The Task Force was charged with documenting Florida's level of awareness and responsiveness to battered persons and their victims. Since its inception, the Task Force has proffered three reports on domestic violence awareness within the state and has made recommendations aimed towards ending domestic violence, including greater public education and awareness, increased funding for victims' services and criminal justice programs, and legislative reforms aimed at reducing domestic violence.

In May of 1998, the Governor's Task Force on Domestic Violence for the state of Florida chose four jurisdictions to lead the way in implementing fatality review teams in Florida. With funding through the Violence Against Women Grants from the U. S. Department of Justice, this initiative was designed to reduce domestic violence in general, and lethal violence in particular. The four sites chosen to participate were Miami Dade County, Hillsborough County, Palm Beach County, and Volusia/Putnam Counties. These Fatality Review Teams were created to bring together professionals from diverse agencies and backgrounds in an effort to review adult and child domestic violence-related fatalities with a view towards identifying how these tragedies might have been prevented. Since the establishment of these four teams, five new domestic violence fatality review teams have been formed for the following areas: Fort Myers, Jacksonville, Orlando, Pensacola, and Pasco/Pinellas County.

C. Potential Liability Issue: Domestic Violence Fatality Review Team Providing or Releasing Certain Information

Members of a domestic violence fatality review team receive, review, and deliberate over information from sources such as medical records, law enforcement, and witnesses of incidents, which at a minimum is very sensitive, and may also be exempt from public disclosure. Team

members could potentially be held liable for acts that occur as a result of providing or releasing this information. Section 768.28, F.S., stipulates that actions against the state or its subdivisions to recover damages in tort for injury or loss caused by a negligent or wrongful act of any employee may be prosecuted subject to the limitations specified in this act.

Under s. 768.28(9), F.S., an officer, employee, or agent of the state or any of its subdivisions is immune from tort action for a negligent action in the scope of the employment or function, unless the individual acted in bad faith, maliciously, or in wanton and willful disregard of human rights, safety, or property. A governmental agency employing the employee or agent is liable for torts committed by the employee in conducting such actions, unless the tortious acts were committed outside the scope of the employee's employment or the individual acted in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

III. Effect of Proposed Changes:

The Committee Substitute for Senate Bill 1124 establishes domestic violence fatality review teams for the purpose of reviewing fatal and near fatal incidents of domestic violence, related domestic violence matters, and suicides. Statewide parameters for the focus and direction of the teams are provided, which will create a common foundation as teams are developed around the state. The CS also provides a mechanism for statewide data collection on fatalities and near fatalities.

Section 741.316, F.S., is created to provide for domestic violence review fatality teams and the parameters of their operation. The membership of a domestic violence review team is specified as including representatives from such organizations as law enforcement, state attorney, medical examiner, certified domestic violence center, child protection services, child death review team, county probation or corrections, or any other person with knowledge regarding domestic violence fatalities, nonlethal incidents of domestic violence, or suicide (s. 741.316(1), F.S.).

Subsection (2) of s. 741.316, F.S., provides that the purpose of the domestic violence review teams is to learn how to prevent domestic violence by intervening early and improving individual and systems' responses to domestic violence. A domestic violence review team may be established at a local, regional, or state level. The structure and activities of any team formed is to be determined by that team, including the number and type of incidents that the team will review. The domestic violence review teams are directed to make policy and other recommendations to prevent domestic violence incidents.

Subsection (3) of s. 741.316, F.S., stipulates the data collection and reporting requirements. Each domestic violence fatality review team is directed to collect data regarding incidents of domestic violence in a consistent statewide manner utilizing a form agreed to by the Florida Department of Law Enforcement (FDLE). The FDLE is charged with using the data provided by the teams to prepare an annual report on domestic violence fatalities. This report is to be submitted to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court.

Subsection (4) of s. 741.316, F.S., directs the Governor's Task Force on Domestic Violence to provide information and technical assistance to the local domestic violence fatality review teams.

Subsection (5) of s. 741.316, F.S., stipulates that members of the review team, witnesses, incident reporters, or investigators are immune from liability, unless they act outside the scope of the domestic violence fatality review team. This subsection also states that the immunity provided in this subsection does not affect the provisions of s. 768.28, F.S. Section 768.28, F.S., provides limited immunity within the specifications identified in subsection (9). However, this immunity would not apply to members of the team, or to any witnesses who appeared, or persons who reported on incidents relative to the case, who are not employees or officers of the state or its subdivision. For those individuals protected by s. 768.28, F.S., the immunity granted through this section and the ability to be prosecuted within the specified limitations, would apply.

The CS provides that the information and records of a domestic violence fatality review team are not subject to discovery or introduction into evidence in any civil action or in any disciplinary proceeding that is the result of matters pertaining to the review teams evaluation and review. Any person in attendance at a domestic violence fatality review team meeting may not testify in any civil action or disciplinary proceeding as to records or information produced or presented to a team.

The domestic violence fatality review teams are to be administratively housed with the Department of Children and Family Services.

The CS takes effect July 1, 2000.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The CS does not call for funding for the implementation or operation of the domestic violence fatality review teams. It is reported that these teams will operate using volunteer members and without any specific appropriation, as the existing nine teams are currently functioning.

The Florida Department of Law Enforcement (FDLE) reports that the CS's requirement to prepare an annual report on domestic violence data collected by the domestic violence fatality review teams will have a fiscal impact on the department as far as data-capturing and reporting the domestic violence fatality and near fatality incidents collected and provided by review teams. The FDLE has provided two options for data collection.

Option 1:

Option 1 would require the creation of a UNIX Oracle database which is consistent with the current databases already in-house within the FDLE. According to the FDLE, this option will provide for future growth and additional data sharing capabilities between data systems. With this system, the FDLE would be able to search existing databases within the department that might have information related to the incidents that are reviewed (i.e., criminal history records, injunction information, etc.).

Provided are estimated resources that it will take to create and maintain the new program to meet the requirements of this CS and to build the infrastructure for additional future data sharing:

First Year Costs

Criminal Justice Communication Liaison \$55,428
System Programmer I \$68,757
Database Analyst \$69,955
Host Computer System \$150,000
Maintenance & Support \$15,000
Software License \$50,000
Software Maintenance & Support \$12,500
TOTAL \$421,640

Recurring Costs

Staff \$178,537
Host Computer System Maintenance & Support \$15,000
Software Maintenance & Support \$12,500
TOTAL \$206,037

Option 2:

Option 2 would require the development of an NT Windows-based stand-alone program that will meet the minimal requirements of this CS based on the estimated workload. This data system would simply allow for the retrieval and storage of data received from the review teams.

Provided are the estimated resources required to meet the minimal requirements of this CS in a stand-alone system that will receive data and generate reports:

First Year Costs

Criminal Justice Communication Liaison \$55,428
System Programmer II \$68,757
Host Computer System \$25,000
Maintenance & Support \$2,500
Software License \$5,000
Software Maintenance & Support \$500
TOTAL \$157,185

Recurring Costs

Staff \$113,783
Host Computer System Maintenance & Support \$2,500
Software Maintenance & Support \$500
TOTAL \$116,783

The FDLE's cost analysis does not include the developmental costs of an entire program, i.e., forms to collect data, training manuals, training curriculum, data entry and data corrections. These costs include the development of a database to receive and maintain the collected data and the development of programming reporting requirements and edits.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.