

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 248

SPONSOR: Committees on Judiciary and Children and Families and Senator Saunders

SUBJECT: Domestic Violence

DATE: March 13, 2001

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dowds</u>	<u>Whiddon</u>	<u>CF</u>	<u>Favorable/CS</u>
2.	<u>Matthews</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable/CS</u>
3.	_____	_____	<u>AHS</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____

## I. Summary:

This bill amends a number of provisions relating to domestic violence injunctions as follows:

- Clarifies that domestic violence involves violence perpetrated between family or household members who have resided or currently reside together, except that the residency requirement is not applicable when the violence occurs between a victim and offender who have a child in common.
- Clarifies the criteria for the petition and issuance of a domestic violence injunction.
- Adds two other means by which a family violence indicator must be placed on a child support enforcement case, which is then transmitted to the Federal Case Registry.
- Deletes a provision relating to court-ordered attendance at a batter's intervention program for criminal defendant's admitted to a pre-trial diversion program.
- Requires domestic violence proceedings be recorded if judicial means and resources are available.

The following sections of the Florida Statutes are amended: 25.385, 39.902, 61.1825, 741.28, 741.281, 741.30, and 943.171.

## II. Present Situation:

### Acts of Domestic Violence

There is no criminal domestic violence offense per se. The term "domestic violence" is an umbrella term which encompasses a variety of criminal acts committed by one family or household member against another. The criminal acts may include assault, aggravated assault, sexual battery, aggravated battery, sexual assault, stalking, aggravated stalking, kidnapping, false

imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another. *See* s. 741.28(1), F.S. The term “domestic violence” requires a prior or present residency between the victim and offender in order to be deemed domestic violence. The term “family or household member” is further defined to include a spouse, a former spouse, a person related by blood or marriage, a person who is presently residing with another as if a family or who has resided together in the past with another as family, and a person who has a child in common. These two terms read together have been construed as to require co-residency between the victim and the offender in one circuit but not in another for purposes of classifying the incident as domestic violence. *See* s. 741.28(2), F.S. Consequently certain services, sanctions and other provisions may or may not be applicable.<sup>1</sup>

### **Court Proceedings Relative to Domestic Violence**

An action exists for injunctive relief against domestic violence for any person who: 1) is a victim of domestic violence or 2) has reasonable cause to believe he or she is in imminent danger of becoming a victim. *See* s. 741.30, F.S. Some courts have been found to focus on the former criteria to the exclusion of the other, thus limiting conditions under which a petition for domestic violence may be granted. The requirement that the petitioner be in “imminent danger” has sometimes been interpreted and applied differently in circuits. Court-ordered relief for a petition for domestic violence injunction may include, but not be limited to:

- Issue an injunction against the respondent from committing further domestic violence.
- Awarding the use and possession of the dwelling to the petitioner
- Awarding temporary custody of any minor children to the petitioner and limited visitation of the children to respondent
- Awarding temporary child support for the minor children
- Ordering the respondent to participate in a batterer’s intervention or treatment program.

Once ordered, a domestic violence injunction remains in effect until the injunction is modified or dissolved by the request of either party. No specific allegations are required. *See* s. 741.30 (6)(b), F.S. In many circuits, the final judgment is the only record evidencing the proceeding on the petition for domestic violence injunction which means the record is scarce or unavailable for purposes of rehearing or appeal.

### **Batterer’s Intervention Program**

As noted earlier, the court can order a domestic violence offender to attend and participate in the batterer’s intervention program. *See* ss. 741.281, F.S. and 741.30 (6)(a)5, F.S. Responsibility for certification and monitoring of these programs lies with the Department of Corrections. *See* ch. 95-195, L.O.F., s. 741.32, F.S. In addition, the law requires the court to order a criminal defendant admitted to a pre-trial diversion program to attend the batterer’s intervention program as a condition of the pre-trial program. *See* s. 741.281, F.S. Pre-trial diversion programs offer counseling, education, supervision and treatment for eligible first-time offenders or persons who were previously convicted of not more than one nonviolent misdemeanor who are charged with

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<sup>1</sup>No data exists regarding how these definitions have been applied or impacted persons petitioning for domestic violence injunctions statewide. *See Sharpe v. Sharpe*, 695 So.2d 1302 (Fla. 5<sup>th</sup> DCA 1997)(statutory domestic violence did not and could not occur between sister-in-law and brother-in-law) who did not reside together nor had resided together)

any misdemeanor or felony of the third degree. *See* s. 948.08, F.S. However, in practice, it is prosecutorial discretion whether an offender is offered plea or sentencing terms involving participation in the pre-trial diversion program which may or may not include participation in the batterer's intervention program. Therefore, although the program administrator, the victim, the state attorney and the judge who presided at the initial criminal hearing must approve, the court can only refuse or accept the terms of a pre-trial diversion program participation. The terms are not subject to judicial review or input.<sup>2</sup> The state attorney makes the final determination as to whether the person has fulfilled his or her obligation under the program

### **Family Violence Indicator**

In order to protect location information in child support orders maintained in State and Federal Case Registries<sup>3</sup> when there is reasonable evidence of domestic violence or child abuse, or the safety of parties or children could be jeopardized by such disclosure, states are required to have procedures for placement of family violence indicators on the record. In 1999, Florida enacted law to prescribe the manner in which a family violence indicator must be placed on a child support order in the State Case Registry. *See* ch. 99-375, L.O.F. A party must execute a sworn statement requesting the indicator and must have reason to believe that the release of the information to the Federal Case Registry may result in physical or emotional harm to the party or the child. A recent federal policy directive provided that a protective order was reasonable evidence of domestic violence or abuse for purposes of placing a family violence indicator.

### **III. Effect of Proposed Changes:**

**Sections 1, 2, 3, and 4** amend the definitions for the terms “*domestic violence*” and the term “*family or household member*” in the following sections to clarify that with the exception of persons who have children in common, domestic violence can only occur between family or household members who have resided or currently reside together in the same single dwelling unit:

- s. 25.385, F.S. (relating to the Florida Court Educational Council which provides judicial instruction for domestic violence cases).
- s.39.902, F.S. (relating to definitions applicable to Part XI of ch. 39, F.S., the Department of Children and Families involving certification and funding of domestic violence centers).
- s.741.28, F.S. (relating to the primary definition used for cross-reference in a number of statutory provisions about proceedings, services and sanctions for domestic violence).<sup>4</sup>

<sup>2</sup> *See Cleveland v. State*, 417 So. 2d 653 (Fla. 1982).

<sup>3</sup> In accordance with federal law, each state is required to establish and maintain a state case registry of child support orders. *See* Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. s654. The information contained therein must be electronically transferred to the Federal Case Registry where other states can then access location information for the limited purposes of establishing paternity; establishing, modifying, or enforcing child support obligations; or making or enforcing child custody or visitation orders.

<sup>4</sup> Other statutory provisions that cross-reference s. 741.28, F.S., and the definition of domestic violence, deal with such arenas as the consideration of ordering shared responsibility for a child in child support and custody proceedings, the recovery of compensatory and punitive damages against the perpetrator, allowing law enforcement to arrest a person without a warrant when pretrial detention can be ordered, and sentencing guidelines. The definitions for “domestic violence” and “family or

- s. 943.17(2)(a), F.S. (relating to law enforcement training in handling domestic violence cases).

**Section 5** amends s. 612.1825, F.S., relating to the *family violence indicators* in the State Case Registry. It provides two additional conditions for flagging child support records in the State Case Registry with the family violence indicator. These indicators prevent the disclosure of information in the records which may otherwise result in harm to the individual or child if transmitted to the Federal Case Registry. A family violence indicator must now additionally be placed when: 1) a temporary or final injunction for protection against domestic violence, repeat violence or by a court from another state has been granted and 2) the Domestic and Repeat Violence Injunction Statewide Verification System indicates that a party has been granted a domestic violence or repeat violence injunction.

**Section 6** amends s. 741.281, F.S., relating to court-ordered attendance at *batterers' intervention programs*. It eliminates the requirement for court-ordered attendance of a domestic violence criminal defendant at a batterer's intervention program as a condition for admittance to a pre-trial diversion program. This modification corrects an inconsistency relative to the lack of the court's jurisdiction to dictate the terms of a defendant's participation in the pre-trial diversion program.

**Section 7** amends s. 741.30, F.S., relating to grounds, petitions, and *proceedings for domestic violence injunctions*. It clarifies that either a person who is a victim of domestic violence or who has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence may petition for a domestic violence injunction. It also expands the statutorily suggested form for the petition for domestic violence injunction. The expansion includes a check-off list of descriptive incidents or threats of violence that may be grounds for an injunction. The petitioner is required to check those incidents that are applicable and to provide the specifics as to time and location of the incidents. This list is the same list of factors which the court must consider at the final hearing when determining whether a petitioner has reasonable cause to believe that he or she is in imminent danger of becoming a victim of domestic violence. In addition, all proceedings for injunctions for protection against domestic violence must now be recorded if court means and resources are available. If the court resources are not available, the parties must be notified that they are responsible for the recording of such if they so desire.

**Section 8** provides that the act is effective July 1, 2001.

#### 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:**

The addition of two other means by which a family violence indicator may be placed on a State Case Registry child support case affords domestic violence victims more immediate protection since they would not have to take the extra step to execute a sworn statement if a domestic violence injunction already exists. It also provides greater assurance that Florida is in full compliance with federal regulations relative to this issue.

**C. Government Sector Impact:**

The Office of State Courts Administrator (OSCA) reports that the combined impact of the bill can not be determined but may be insignificant, particularly given the removal of provisions from the bill impacting court workload. OSCA anticipates that definitional changes to domestic violence and the requirement to consider additional factors when granting petitions for domestic violence injunctions may increase petition filings and court hearings. The Florida Family Law Rules of Court will have to be revised to implement and conform with the statutory changes regarding the form for the petition for domestic violence injunction.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.