

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 1291

Domestic Violence Fatality Review Teams

**SPONSOR(S):** Coley

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 1446

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	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	<u>Public Safety &amp; Domestic Security Policy Committee</u>	<u>13 Y, 0 N, As CS</u>	<u>Krol</u>	<u>Cunningham</u>
2)	<u>Health Care Services Policy Committee</u>	<u></u>	<u></u>	<u></u>
3)	<u>Criminal &amp; Civil Justice Policy Council</u>	<u></u>	<u></u>	<u></u>
4)	<u></u>	<u></u>	<u></u>	<u></u>
5)	<u></u>	<u></u>	<u></u>	<u></u>

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**SUMMARY ANALYSIS**

Domestic Violence Fatality Review Teams (FRTs) were first formed in Florida in the mid-1990's. FRTs, which are not funded by the state, work independently and may be composed of representatives from municipal, county, state and federal agencies, as well as individuals or organizations that are involved with, or affected by, a domestic violence fatality. The goals of FRTs are to review fatal and near-fatal incidents of domestic violence, related domestic violence matters, and suicides, and to identify changes in policy or procedure that may prevent future deaths.

Information gathered by FRTs is protected from discovery and introduction into evidence in civil or disciplinary proceedings. In addition, persons attending FRT meetings are prohibited from testifying in civil or disciplinary actions regarding records or information produced or presented at the meeting. These provisions do not apply to criminal or administrative proceedings.

HB 1291 provides that information and records acquired by the FRTs are not subject to discovery or introduction into evidence in any criminal or administrative proceeding in certain circumstances.

The bill also provides that a person who has attended a meeting of the FRTs may not testify in criminal or administrative proceedings regarding certain records or information that was produced or presented by the team.

HB 1291 deletes the requirement that the Governor's Task Force on Domestic Violence provide information and technical assistance to FRTs. The Governor's Task Force on Domestic Violence was part of an Executive Order that expired on June 30, 2001.

The bill deletes a repealed reporting requirement from the title of s. 741.316, F.S.

HB 1291 does not appear to have a fiscal impact and is effective July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation:**

In Florida, domestic violence is defined as:

[A]ny 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.<sup>1</sup>

In 2008, the total number of domestic violence offenses reported across Florida was 113,123. Of the total, 194 offenses were classified as murder or manslaughter.<sup>2</sup>

Domestic Violence Fatality Review Teams (FRTs) were first formed in Florida in the mid-1990's. These teams began as local initiatives supported with federal grant funds.<sup>3</sup> In 2000, the Legislature enacted s. 741.316, F.S., which allows organizations to establish FRTs at the local, regional, or state level. The teams, which are not funded by the state, work independently and may be composed of representatives from municipal, county, state and federal agencies, as well as individuals or organizations that are involved with, or affected by, a domestic violence fatality.<sup>4</sup> The goals of the FRTs are to review fatal and near-fatal incidents of domestic violence, related domestic violence matters, and suicides, and to identify changes in policy or procedure that may prevent future deaths.<sup>5</sup> There are currently 19 active FRTs in Florida.<sup>6</sup>

##### **Public Records and Meeting Exemptions for Domestic Violence Fatality Review Teams**

Fatality Review Teams are immune from liability for "any act or proceeding undertaken or performed within the scope of the functions of the team" unless the act or proceeding was undertaken in bad faith.<sup>7</sup> Information gathered by FRTs is protected from discovery and introduction into evidence in civil

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<sup>1</sup> Section 741.28(2), F.S.

<sup>2</sup> Florida Department of Law Enforcement (FDLE), Crime in Florida, 2008 Florida Uniform Crime Report (2009).

<sup>3</sup> FDLE, Florida Domestic Violence Fatality Review Team 2008 Annual Report, Executive Summary (2008).

<sup>4</sup> *Id.* See also, s. 741.316, F.S.

<sup>5</sup> *Id.*

<sup>6</sup> As of June 19, 2009, there were active FRTs in the following counties: Alachua, Brevard, Broward, Columbia, Duval, Escambia, Highlands, Hillsborough, Lee, Manatee, Miami-Dade, Orange, Palm Beach, Pasco, Pinellas, Santa Rosa, Sarasota, Seminole and St. John's. Department of Children and Families 2010 Analysis of HB 1291.

<sup>7</sup> Section 741.316(4)(a), F.S.

or disciplinary proceedings. In addition, persons attending FRT meetings are prohibited from testifying in civil or disciplinary actions regarding records or information produced or presented at the meeting.<sup>8</sup> These provisions do not apply to criminal or administrative proceedings. Because FRT members are not protected from criminal subpoenas, case reviews typically occur after the final disposition of the related criminal case. For this reason, fatality reviews are conducted years after the crimes occurred, which can result in the loss of key information and people.<sup>9</sup> In contrast, child abuse death review team members are protected from subpoenas in criminal cases as well as in civil proceedings.<sup>10</sup>

The Governor's Task Force on Domestic Violence (task force) was created to serve the public purpose of directing policies on reducing and eliminating domestic violence and domestic violence fatalities. The task force was required to produce an annual report including a summary of task force findings, other special areas of interest, and efforts of the local FRTs.<sup>11</sup> Before it expired on June 30, 2001, the task force provided support and technical assistance to FRTs. Since its expiration, the task force has not been reauthorized.<sup>12</sup>

FRTs are now assigned to the Department of Children and Families (department) for administrative purposes.<sup>13</sup> The department provides technical support to FRTs and, although not directed, has assumed the responsibility of supporting FRTs with the collection and reporting of data from their reviews.<sup>14</sup>

#### **Effect of Proposed Changes:**

HB 1291 deletes the requirement that the Governor's Task Force on Domestic Violence provide information and technical assistance to local domestic violence fatality review teams (FRTs). The Governor's Task Force on Domestic Violence was part of an Executive Order that expired on June 30, 2001.

The bill provides that information and records acquired by the FRTs are not subject to discovery or introduction into evidence in any criminal or administrative proceeding in certain circumstances.

The bill provides that a person who has attended a meeting of the FRT may not testify in criminal or administrative proceedings regarding certain records or information that was produced or presented by the team.

The bill deletes "report by the Department of Law Enforcement" from the title of s. 741.316, F.S. This reporting requirement was repealed in 2008.<sup>15</sup>

#### **B. SECTION DIRECTORY:**

Section 1. Amends s. 741.316, F.S., relating to Domestic violence fatality review teams; definition; membership; duties; report by the Department of Law Enforcement.

Section 2. Provides an effective date of July 1, 2010.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

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<sup>8</sup> Section 741.316(5), F.S.

<sup>9</sup> Florida Senate, Committee on Children, Families, and Elder Affairs. Interim Report 2010-208. Open Government Sunset Review of Section 741.3165, F.S., Domestic Violence Fatality Review Teams. (September 2009).

<sup>10</sup> Section 383.402(14), F.S.

<sup>11</sup> The Governor's Task Force on Domestic Violence was created by Executive Order 93-269, and amended by Executive Orders 94-17, 94-256, 95-473, and 99-99, with the mission to end domestic violence. (Executive Order 00-226).

<sup>12</sup> Department of Children and Families 2010 Analysis of HB 1291.

<sup>13</sup> Section 741.316(6), F.S.

<sup>14</sup> Department of Children and Families 2010 Analysis of HB 1291.

<sup>15</sup> Ch. 2008-112 L.O.F., SB 1792.

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to spend funds or take any action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 16, 2010, the Public Safety & Domestic Security Policy Committee adopted an amendment to the bill. The amendment:

- Removes a repealed reporting requirement from the title of s. 741.316, F.S.

The bill was reported favorably as a Committee Substitute. This analysis reflects the committee substitute.