

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1385 Domestic Violence  
**SPONSOR(S):** Nuñez  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1564

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	9 Y, 0 N	Hall	White
2) Justice Appropriations Subcommittee	15 Y, 0 N	Smith	Gusky
3) Judiciary Committee			

### SUMMARY ANALYSIS

Florida law classifies certain offenses as domestic violence (DV) crimes when one member of a family or household perpetrates the crime on another member of the family or household. Certain DV offenses are subject to mandatory probation terms and requirements, including the requirement to attend a batterer's intervention program (BIP). The BIP is designed to address tactics of power and control by one person over another and require the offender to take responsibility for his or her actions.

Penalties for DV offenses may be increased if it is proven that the offender intentionally caused bodily harm to another, or committed the offense in the presence of a related child. Furthermore, in certain circumstances when an offender is charged with a felony offense the court is prohibited from withholding the adjudication of the defendant, unless a statutory exception applies.

The bill amends s. 741.281, F.S., to require a court to order certain defendants to attend *and complete* a BIP. A failure to complete a BIP would result in a violation of probation, subjecting the offender to further criminal penalty. Additionally, the bill increases mandatory jail time for offenders who have been adjudicated guilty and who intentionally caused bodily harm to another, and further increases the penalty if, in addition to the previous two factors, the violence was committed in the presence of a related child under 16 years of age. Specifically:

- An offender adjudicated guilty, who intentionally committed bodily harm to another person, must serve 10 days in jail for a first offense; 15 days in jail for a second offense; and 20 days in jail for a third or subsequent offense.
- An offender described above whose violence was committed in the presence of a related child under age 16, must serve 15 days in jail for a first offense; 20 days in jail for a second offense; and 30 days in jail for a third or subsequent offense.

Additionally, the bill amends s. 775.08435, F.S., to prohibit a court from withholding the adjudication of a defendant when he or she committed a third degree felony offense of domestic violence. The court would be prohibited from doing so, unless one of the following exceptions applies:

- The state attorney makes a written request for adjudication to be withheld; or
- The court makes written findings that the withholding of adjudication is reasonably justified based on the circumstances or statutory mitigating factors.

The bill amends s. 741.30, F.S., to include a provision prohibiting a court from awarding attorney's fees in any proceeding for an injunction for protection against domestic violence. This prohibition addresses the current conflict between Florida's District Courts of Appeal regarding the issue.

The bill does not appear to have a fiscal impact on state government.

The bill may increase expenditures by local governments by increasing the minimum number of days that domestic violence offenders are incarcerated in local jails.

The bill provides an effective date of October 1, 2017.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h1385c.JUA

**DATE:** 4/3/2017

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Domestic Violence-Related Crimes**

Florida law defines a domestic violence crime as a violation of any of the following statutes, when the offense is committed on one family or household member by another family or household member:

- Section 784.071, F.S., relating to assault;
- Section 784.021, F.S., relating to aggravated assault;
- Section 784.03(1)(b), F.S., relating to battery;
- Section 784.03(2), F.S., relating to felony battery;<sup>1</sup>
- Section 784.041(1), F.S., relating to felony battery;<sup>2</sup>
- Section 784.041(2), F.S., relating to felony battery by strangulation;
- Section 784.045, F.S., relating to aggravated battery;<sup>3</sup>
- Section 794.011, F.S., relating to sexual assault or sexual battery;
- Section 784.048, F.S., relating to stalking or aggravated stalking;<sup>4</sup>
- Section 787.01, F.S., relating to kidnapping;
- Section 787.02, F.S., relating to false imprisonment; or
- Any criminal offense resulting in physical injury or death.

For the purpose of defining domestic violence offenses, s. 741.28, F.S., defines a “family or household member” to mean “spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have resided together in the same single dwelling unit.”

##### *Criminal Penalties for Domestic Violence Offenders*

Florida law requires certain mandatory penalties related to domestic violence offenses. The court must sentence any person convicted<sup>5</sup> of a domestic violence crime to a minimum term of one year probation with a condition requiring the person to attend a batterer’s intervention program (BIP). The court must order BIP participation, unless it states on the record why BIP participation is inappropriate or determines that the offender does not qualify for a BIP. The programs are modeled to address tactics of power and control by one person over another and require the offender to take responsibility for his

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<sup>1</sup> This form of felony battery occurs when a person actually or intentionally touches or strikes another person against their will, or intentionally causes bodily harm to another person, and the offender has a prior conviction for battery, aggravated battery, or felony battery. The existence of the prior conviction enhances the offense from a first degree misdemeanor to a third degree felony. s. 784.03, F.S.

<sup>2</sup> This form of felony battery occurs when a person actually or intentionally touches or strikes another person against the will of the other and causes great bodily harm, permanent disability, or permanent disfigurement. s. 784.041(1), F.S.

<sup>3</sup> This form of battery can occur if any of the following additional circumstances are present in the course of committing a battery: 1) a person intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; 2) a person uses a deadly weapon; or 3) the victim of the battery was pregnant at the time of the offense and the offender knew or should have known the victim was pregnant. s. 784.045, F.S.

<sup>4</sup> Aggravated stalking can occur if any of the following additional circumstances are present in the commission of the crime: 1) the offender makes a credible threat to the victim; 2) stalking occurs after the issuance of an injunction against repeat violence, sexual violence, or dating violence; or an injunction for protection against domestic violence, or any other court-ordered prohibition of conduct; 3) the victim is under 16 years of age; or 4) the offender has been sentenced for sexual battery, lewd and lascivious molestation, or soliciting a minor and is prohibited from contacting the victim. s. 784.048, F.S.

<sup>5</sup> This provision applies to any person found guilty of, having an adjudication withheld on, or pleading nolo contendere to a crime of domestic violence. s. 741.281, F.S.

or her actions.<sup>6</sup> By law, the BIP is required to be at least 29 weeks in length and include 24 weekly sessions, plus appropriate intake, assessment, and orientation programming.<sup>7</sup>

In addition to mandatory probation and BIP participation, certain domestic violence offenders must serve mandatory jail time. If a person is adjudicated guilty of a crime of domestic violence and the person intentionally caused bodily harm to another person, the court must sentence the offender to serve a minimum of five days in the county jail as part of any sentence imposed.<sup>8</sup> Additionally, if an offender is convicted of a felony offense of domestic violence and a jury determines the offense was committed in the presence of a child under the age of 16 who is a family household member of the victim or the perpetrator, the offender's minimum sentence is increased.<sup>9</sup>

*Effect of the Bill*

The bill amends s. 741.281, F.S., to require a court to order the defendant to both attend *and complete*<sup>10</sup> a BIP as a condition of probation. A failure to complete a BIP would result in a violation of probation, thereby subjecting the defendant to further criminal penalty.

Additionally, the bill amends s. 741.28, F.S., to increase the penalties for both first-time and subsequent domestic violence offenders who intentionally cause bodily harm to another person and are adjudicated guilty. The penalties are further enhanced for these offenders if the crime took place in front of a child, under 16 years of age, who is a family or household member of the victim or the perpetrator.<sup>11</sup> The court must order an offender to serve a minimum county jail sentence as follows:<sup>12</sup>

<b>Domestic Violence Offense Mandatory Jail Sentence</b>		
	Adjudication of Guilt + Intentionally Caused Bodily Harm to Another	Adjudication of Guilt + Intentionally Caused Bodily Harm to Another + Presence of Child
1 <sup>st</sup> Offense	10 days	15 days
2 <sup>nd</sup> Offense	15 days	20 days
3 <sup>rd</sup> or Subsequent Offense	20 days	30 days

**Withholding Adjudication of Guilt**

Florida law contains a prohibition on withholding adjudication of guilt in certain felony cases. Currently, a sentencing court may not withhold adjudication of guilt upon a defendant for a capital, life, or first degree felony.<sup>13</sup> For a second degree felony, the court cannot withhold adjudication unless either the state attorney makes a written request to do so, or the court makes written findings that a withhold of adjudication is reasonably justified based on the circumstances or statutorily recognized mitigating

<sup>6</sup> s. 741.325, F.S.

<sup>7</sup> s. 741.325(1)(c), F.S.

<sup>8</sup> The court is not required to order five days in the county jail when the court orders an offender to a period of incarceration in a state correction facility. s. 741.283, F.S.

<sup>9</sup> The subtotal sentencing points may be multiplied by a multiplier of 1.5 to increase the offender's lowest permissible sentence. s. 921.0024, F.S.

<sup>10</sup> *Emphases added.*

<sup>11</sup> It is anticipated this enhancement will need to be plead in the charging document and found by a jury as the United States Supreme Court has held that "[f]acts that increase the mandatory minimum sentence are therefore elements and must be submitted to the jury and found beyond a reasonable doubt." *Alleyne v. United States*, 133 S. Ct. 2151, 2158 (2013).

<sup>12</sup> The mandatory jail time does not apply if the court sentences a defendant to a nonsuspended period of incarceration in a state correctional facility.

<sup>13</sup> s. 775.08435(1)(a), F.S.

factors. The same prohibition and exceptions apply when a defendant has committed a third degree felony and has a prior withholding of adjudication for another felony offense. Regardless of the presence of mitigating circumstances,<sup>14</sup> a court may not withhold adjudication when a defendant has committed a second degree felony and has a prior withhold of adjudication from a different offense, or when the defendant committed a third degree felony and has two or more prior withholdings of adjudication from a different offense.<sup>15</sup>

#### *Effect of the Bill*

The bill amends s. 775.08435, F.S., to add an additional circumstance in which the court is prohibited from withholding the adjudication of a defendant unless certain exceptions apply. The bill prohibits the court from withholding adjudication for a third degree felony that is a crime of domestic violence unless the state attorney makes a written request for the adjudication be withheld, or the court makes written findings that the withholding of adjudication is reasonably justified based on the circumstances or statutory mitigating factors. The third degree felony domestic violence offenses to which this prohibition would apply include the following:

- Section 784.021, F.S., relating to aggravated assault;
- Section 784.03(2), F.S., relating to felony battery;
- Section 784.041(1), F.S., relating to felony battery;
- Section 784.041, F.S., relating to felony battery by strangulation;
- Section 784.048, F.S., relating to aggravated stalking;
- Section 787.02, F.S., relating to false imprisonment.

#### **Domestic Violence Injunctions**

Florida law creates a cause of action for an injunction for protection against domestic violence. Any person, who is a family or household member, who is either the victim of domestic violence or has reasonable cause to believe he or she is in imminent danger of becoming a victim of any act of domestic violence, may petition for an injunction for the protection against domestic violence.<sup>16</sup> After reviewing the petition, if the court finds there is an immediate and present danger of domestic violence, it may grant a temporary injunction, pending a full hearing.<sup>17</sup> Following a full hearing, if the court determines the petitioner is the victim of domestic violence or is in imminent danger of becoming a victim of domestic violence, the court may enter a final injunction.

Section 741.30, F.S., does not currently specifically address the award of attorney's fees related to domestic violence injunction hearings. Florida courts are in conflict regarding whether other statutory authority<sup>18</sup> allows a court to order attorney fees incurred in domestic violence injunction proceedings. The Third District Court of Appeal<sup>19</sup> has held there is no statutory authority to award attorney's fees as sanctions in a domestic violence injunction case, while the First District Court of Appeal<sup>20</sup> has held that the practice is allowed because there is no statutory prohibition against awarding attorney's fees in the chapters of law governing domestic violence.

#### *Effect of the Bill*

The bill creates s. 741.30(1)(g), F.S., to prohibit attorney's fees from being awarded in any proceeding for an injunction for protection against domestic violence under this section.

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

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<sup>14</sup> Section 921.0026 sets forth 14 statutory mitigating circumstances that a court may consider when sentencing for a felony offense.

<sup>15</sup> s. 775.08435, F.S.

<sup>16</sup> s. 741.30, F.S.

<sup>17</sup> s. 741.30(5)(a), F.S.

<sup>18</sup> Section 57.105, F.S., authorizes a court to award reasonable attorney's fees when the court finds the losing party or the losing party's attorney should have known that a claim or defense presented to the court or at trial was either: 1) not supported by the material facts necessary to establish the claim or defense; or 2) would not be supported by the application of then-existing law to those material facts.

<sup>19</sup> See *Ratigan v. Stone*, 947 So. 2d 607, 608 (Fla. 3d 2007); see also *Cisneros v. Cisneros*, 831 So. 2d 257, 258 (Fla. 3d DCA 2002).

<sup>20</sup> *Hall v. Lopez*, 2016 Fla. App. LEXIS 11493 (Fla. 1st DCA 2016).

Section 1: Amending s. 741.281, F.S., relating to court to order batterers' intervention program attendance.

Section 2: Amending s. 741.283, F.S., relating to minimum term of imprisonment for domestic violence.

Section 3: Amending s. 741.30, F.S., relating to domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement; public records exemption.

Section 4: Amending s. 775.08435, F.S., relating to prohibition on withholding adjudication in felony cases.

Section 5: Providing an effective date of October 1, 2017.

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

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

1. Revenues: The bill does not appear to have any impact on state government revenues.
2. Expenditures: The bill does not appear to have any impact on state government expenditures. The Criminal Justice Impact Conference met on March 29, 2017, and determined the bill would have no impact on prison population.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues: The bill does not appear to have any impact on local government revenues.
2. Expenditures: The bill may increase expenditures by local governments by increasing the minimum number of days that domestic violence offenders are incarcerated in local jails. The bill creates new minimum jail sentence requirements for certain misdemeanor domestic violence crimes, and increases existing minimum jail sentence requirements, which could increase the average daily population of local jails.

### **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 take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other: None.

### **B. RULE-MAKING AUTHORITY: The bill does not appear to create a need for rulemaking or rulemaking authority.**

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

N/A