

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 729 Lethality Assessments

SPONSOR(S): Justice Appropriations Subcommittee, Criminal Justice Subcommittee, Baker

TIED BILLS: **IDEN./SIM. BILLS:** SB 638

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	14 Y, 0 N, As CS	Leshko	Hall
2) Justice Appropriations Subcommittee	12 Y, 0 N, As CS	Saag	Keith
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 741.29, F.S., requires a law enforcement officer who investigates an alleged incident of domestic violence (DV) to: assist the victim in obtaining medical treatment if such treatment is required as a result of the alleged incident to which the officer responds; advise the victim that there is a DV center where the victim may receive services; give the victim immediate notice of her or his available legal rights and remedies; and obtain a written statement from the victim and any witnesses, if possible.

In 2005, in order to enhance collaboration between law enforcement agencies and DV service providers, the Maryland Network Against Domestic Violence developed and implemented the Lethality Assessment Program, including a lethality screen and protocols. The "lethality screen" is an 11-item questionnaire that assesses a victim's level of risk for being killed by the perpetrator of the alleged DV offense. If, after administering the lethality screen, the officer determines that a victim is at "high risk," meaning the victim is at an increased risk of homicide, the officer conveys to the victim the danger she or he is in and connects the victim with a DV hotline for the purpose of developing a safety plan. As of December 2023, Connecticut, Maryland, North Carolina, Oklahoma, Pennsylvania, and Wisconsin utilize the Lethality Assessment Program. Florida law enforcement agencies do not currently use a statewide lethality screen or assessment.

CS/HB 729 amends s. 741.29, F.S., to require a law enforcement officer who investigates an alleged incident of DV to administer a lethality assessment if the allegation of DV is made against an intimate partner, regardless of whether an arrest is made, and include the results of the assessment in his or her written police report. The bill provides a list of 12 questions an officer must ask a victim when conducting a lethality assessment and requires the officer to advise the victim of the results of the assessment and refer the victim to the nearest locally certified DV center if the victim meets certain criteria. The bill specifies that if a victim refuses, or is unable, to provide sufficient information to complete the lethality assessment, the officer must document the lack of an assessment in the written police report and refer the victim to the nearest locally certified DV center.

The bill further requires the Florida Department of Law Enforcement (FDLE) to consult with the Department of Children and Families and at least one DV advocacy organization to develop the policies, procedures, and training necessary to implement a statewide lethality assessment and to establish a statewide process for referring a victim to a certified DV center. The bill requires FDLE to adopt a statewide lethality assessment form by January 1, 2025. The bill requires all law enforcement officers who respond to or investigate crimes of DV to be trained on the policies and procedures for administering a lethality assessment by October 1, 2026, and prohibits an officer from administering such an assessment before he or she has completed such training. The bill requires the training to be accessible to law enforcement officers in an online format.

The bill provides an appropriation from the Criminal Justice Standards and Training Trust Fund to FDLE for Fiscal Year 2024-2025 to implement the training and education provisions of the bill.

The bill provides an effective date of July 1, 2024.

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

STORAGE NAME: h0729c.JUA

DATE: 2/13/2024

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Domestic Violence

Domestic violence means any criminal offense resulting in the physical injury or death of one family or household member¹ by another family or household member, including:

- Assault;²
- Aggravated assault;³
- Battery;⁴
- Aggravated battery;⁵
- Sexual assault;⁶
- Sexual battery;⁷
- Stalking;⁸
- Aggravated stalking;⁹
- Kidnapping;¹⁰ and
- False imprisonment.^{11,12}

In 2020,¹³ Florida law enforcement agencies received 106,615 domestic violence reports,¹⁴ resulting in 63,345 arrests.¹⁵ Of those 106,615 reports, 20,735 involved a spouse, 29,663 involved a cohabitant, and 20,142 involved a person with an undefined relationship with the victim.¹⁶ Additionally, in 2020, 15

¹ "Family or household member" means 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 in the past resided together in the same single dwelling unit. S. 741.28(3), F.S.

² "Assault" means an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent. S. 784.011(1), F.S.

³ "Aggravated assault" means an assault with a deadly weapon without intent to kill or with intent to commit a felony. S. 784.021(1), F.S.

⁴ "Battery" means the actual and intentional touching or striking of another against his or her will or intentionally causing bodily harm to another person. S. 784.03(1)(a), F.S.

⁵ "Aggravated battery" means a battery in which the offender intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; used a deadly weapon; or victimized a person the offender knew or should have known was pregnant. S. 784.045(1), F.S.

⁶ "Sexual assault" has the same meaning as sexual battery.

⁷ "Sexual battery" means oral, anal, or female genital penetration by, or in union with, the sexual organ of another or the anal or female genital penetration of another by any object, but does not include an act done for a bona fide medical purpose. S. 794.011(1)(j), F.S.

⁸ "Stalking" means willfully, maliciously, and repeatedly following, harassing, or cyberstalking another. S. 784.048(2), F.S.

⁹ "Aggravated stalking" means willfully, maliciously, and repeatedly following, harassing, or cyberstalking another and making a credible threat to that person. S. 784.048(3), F.S.

¹⁰ "Kidnapping" means forcibly, secretly, or by threat confining, abducting, or imprisoning another against his or her will and without lawful authority, with the intent to: hold for ransom or reward or as a shield or hostage; commit or facilitate commission of any felony; inflict bodily harm upon or terrorize the victim or another person; or interfere with the performance of any governmental or political function. S. 787.01(1)(a), F.S.

¹¹ "False imprisonment" means forcibly, by threat, or secretly confining, abducting, imprisoning, or restraining another person without lawful authority and against his or her will. S. 787.02(1)(a), F.S.

¹² S. 741.28(2), F.S.

¹³ The Florida Department of Law Enforcement (FDLE) has not issued an updated report specifically detailing domestic violence offenses since 2020.

¹⁴ The reports include offenses of murder, manslaughter, rape, fondling, aggravated assault, aggravated stalking, simple assault, threats or intimidation, and stalking.

¹⁵ FDLE, *Reported Domestic Violence Offenses: Relationship of Victim to Offender for Florida, 1992-2020*, https://www.fdle.state.fl.us/CJAB/UCR/Annual-Reports/UCR-Domestic-Violence/03/DV_Victim_Totals_by_Relationship.aspx (last visited Feb. 1, 2024).

¹⁶ *Id.*

percent of all murders in Florida were related to domestic violence.^{17,18} Florida's Computerized Criminal History recorded 68,109 domestic violence offenses in 2022.¹⁹

Furthermore, during fiscal year 2022-2023, Florida's 41 certified domestic violence centers:²⁰

- Provided emergency shelter to 12,836 individuals;
- Provided outreach services to 36,324 individuals;
- Answered 80,493 crisis hotline calls;
- Completed 183,902 safety plans with victims; and
- Provided 418,501 direct service information and referrals to victims, family members, and individuals seeking services.²¹

Investigations

Section 741.29, F.S., requires a law enforcement officer who investigates an alleged incident of domestic violence to:

- Assist the victim in obtaining medical treatment if such treatment is required as a result of the alleged incident to which the officer responds;
- Advise the victim that there is a domestic violence center where the victim may receive services;
- Give the victim immediate notice of her or his available legal rights and remedies;²² and
- Obtain a written statement from the victim and any witnesses, if possible.²³

Additionally, an officer investigating a domestic violence incident is required to make a written police report, regardless of whether an arrest is made.²⁴ The report must include:

- A description of physical injuries observed, if any;
- The grounds for not arresting anyone or for arresting two or more parties, if applicable; and
- A statement which indicates that a copy of the legal rights and remedies notice was given to the victim.²⁵

The officer's agency must provide the written report, along with a narrative description of the domestic violence incident, to the nearest locally certified domestic violence center within 24 hours after the agency's receipt of the report.²⁶

Fatality Review Teams

Section 741.316, F.S., authorizes the establishment of domestic fatality review (DFR) teams at the local, regional, and state level. A DFR team is an organization that is composed of representatives from and including:

- Law enforcement agencies.
- State attorneys' offices.

¹⁷ FDLE, *Florida Statewide Reported Violent Crime, by Offense and Year, 1971-2020*, https://www.fdle.state.fl.us/CJAB/UCR/Annual-Reports/UCR-Offense-Data/05/Total_Violent_Crime.aspx (last visited Feb. 1, 2024).

¹⁸ FDLE, *Reported Domestic Violence in Florida: Victim Totals by Offense, 1992-2020*, https://www.fdle.state.fl.us/CJAB/UCR/Annual-Reports/UCR-Domestic-Violence/04/DV_Victim_Totals_by_Offense.aspx (last visited Feb. 1, 2024).

¹⁹ Florida Department of Health, *Domestic Violence Offenses, Rate per 100,000 Population, 2022*, <https://www.flhealthcharts.gov/ChartsDashboards/rdPage.aspx?rdReport=NonVitalIndNoGrp.TenYrsRpt&cid=312> (last visited Feb. 1, 2024). (Florida's Computerized Criminal History is fingerprint-based, and unless prints were taken at a later stage in the criminal justice process, does not include reports involving a notice to appear, direct files, or sworn complaints where no physical arrest was made.)

²⁰ Section 39.902(2), F.S., defines "domestic violence center" as an agency that provides services to victims of domestic violence as its primary mission.

²¹ Florida Department of Children and Families (DCF), Office of Domestic Violence, *Annual Report January 2024*, <https://www.myflfamilies.com/sites/default/files/2023-12/Office%20of%20Domestic%20Violence%20Annual%20Report%20to%20the%20Legislature%202022%20to%202023.pdf> (last visited Feb. 1, 2024).

²² S. 741.29(1), F.S.

²³ S. 741.29(2), F.S.

²⁴ The report must be given to the officer's supervisor and filed with the law enforcement agency in a manner that will permit data on domestic violence cases to be compiled. *Id.*

²⁵ S. 741.29(2)(a-c), F.S.

²⁶ S. 741.29, F.S.

- Medical examiners' offices.
- Certified domestic violence centers.
- Child protection service providers.
- Court administration offices.
- Clerks of court offices.
- Victim services programs.
- Child death review teams.
- The business community.
- County probation or corrections agencies.
- Any person who has knowledge regarding domestic violence fatalities, nonlethal incidents of domestic violence, or suicide, including research, policy, law, and other matters connected with fatal incidents.
- Other representatives as determined by the review team.²⁷

The DFR teams review fatal and near-fatal incidents of domestic violence, related domestic violence matters, and suicides in order to identify statewide trends, systemic gaps, and potential solutions that allow for increased early intervention, safety, and justice for victims and their children, that hold perpetrators accountable for their violence through coordinated community response efforts, and that prevent the likelihood of domestic violence fatalities in the future.²⁸ The review may include a survey of:

- Events leading up to domestic violence incidents;
- Available community resources;
- Current laws and policies;
- Actions taken by systems and individuals related to the incident and the parties;
- Public records and records for which public record exemptions are granted; and
- Any information or action deemed relevant by the team.²⁹

Additionally, DFR teams utilize knowledge about coercive control tactics used by offenders and indicators that a victim is at an increased risk of domestic violence homicide to guide the formulation of recommendations relating to perpetrator accountability and safety measures for victims and their children.³⁰

In 2022, the Statewide Domestic Violence Fatality Review Team reviewed 27 domestic violence homicides and attempted homicides. Approximately 45 percent of those homicides or attempts were committed by an intimate partner, 37 percent by a spouse, and 15 percent by a former intimate partner.³¹

Lethality Assessment Program

In 2005, in order to enhance collaboration between law enforcement agencies and domestic violence service providers to better attend to the safety needs of victims of intimate partner violence (IPV), the Maryland Network Against Domestic Violence developed and implemented the Lethality Assessment Program, which includes a lethality screen³² and protocols.^{33,34} The "lethality screen" is an 11-item questionnaire that assesses a victim's level of risk for being killed by the perpetrator of an alleged IPV

²⁷ S. 741.316(1)(a)–(m), F.S.

²⁸ DCF, *supra*, at 21.

²⁹ S. 741.316(2), F.S.

³⁰ DCF, *supra*, at 21.

³¹ *Id.*

³² Maryland Network Against Domestic Violence (MNADV), *Domestic Violence Lethality Screen for First Responders*, <https://nij.ojp.gov/sites/g/files/xyckuh171/files/media/document/domestic-violence-screening.pdf> (last visited Feb. 1, 2024).

³³ National Institute of Justice, *Research Designs in the Real World: Testing the Effectiveness of an Intimate Partner Violence Intervention*, <https://nij.ojp.gov/topics/articles/research-designs-real-world-testing-effectiveness-intimate-partner-violence> (last visited Feb. 1, 2024).

³⁴ MNADV, *Position Paper: Effectiveness of the Lethality Assessment Program*, <https://www.mnadv.org/wp-content/uploads/2021/02/LAP-Effectiveness-Position-Paper.pdf> (last visited Feb. 1, 2024).

offense. The following 11 questions represent the factors found to be the most predictive of homicide in relationships with IPV based on a six-year study of homicides and attempted homicides in 11 cities.³⁵

- Has the alleged perpetrator (he/she) ever used a weapon against you or threatened you with a weapon?
- Has he/she threatened to kill you or your children?
- Do you think he/she might try to kill you?
- Does he/she have a gun or can he/she get one easily?
- Has he/she ever tried to choke you?
- Is he/she violently or constantly jealous or does he/she control most of your daily activities?
- Have you left him/her or separated after living together or being married?
- Is he/she unemployed?
- Has he/she ever tried to kill himself/herself?
- Do you have a child that he/she knows is not his/hers?
- Does he/she follow or spy on you or leave threatening messages?³⁶

The lethality screen is suggested to be used when a past or current intimate partner relationship is involved and there is a “manifestation of danger” evidenced by at least one of the following:

- The officer believes that an assault or other violent act has occurred, whether or not there was probable cause for arrest;
- The officer is concerned for the victim’s safety once the officer leaves the incident scene;
- The officer is responding to a domestic violence call from a victim or at a location where IPV has occurred in the past; or
- The officer has a gut feeling that the victim is in danger.³⁷

If, after administering the lethality screen, the officer determines that a victim is at “high risk,” meaning the victim is at an increased risk of homicide, the protocol referral is triggered. The “protocol referral” consists of the following:

- The officer conveys to the victim the danger that she or he is in and that people in similar situations have been killed.
- The officer calls the local 24-hour domestic violence hotline at the collaborating advocacy organization for information on planning for the victim’s safety and gives the victim the choice of speaking directly with the hotline advocate.
- The officer provides the hotline advocate with basic information to assist in developing safety suggestions for the victim.
- If the victim chooses not to speak directly to the hotline advocate, the hotline advocate provides the officer with some immediate safety planning tips for the next 24 hours to share with the victim.³⁸

The victim is considered “high risk” if she or he:

- Provides a positive response to any of the first three questions listed above;
- Provides negative responses to the first three questions, but positive responses to at least four of the remaining questions; or
- If the officer believes the victim is in a potentially lethal situation based on her or his answer to the questions – Is there anything else that worries you about your safety? If yes, what worries you?³⁹

A 2014 study conducted in Oklahoma found the lethality screen to be highly sensitive, meaning 92 to 93 percent of women who screened as high-risk actually experienced near-fatal violence in the future.⁴⁰

³⁵ *Id.*

³⁶ MNADV, *supra*, at 32.

³⁷ National Institute of Justice, *A Closer Look at the Lethality Assessment Program*, <https://nij.ojp.gov/topics/articles/closer-look-lethality-assessment-program> (last visited Feb. 1, 2024).

³⁸ *Id.*

³⁹ MNADV, *supra*, at 32.

⁴⁰ MNADV, *supra*, at 34.

As of December 2023, Connecticut, Maryland, North Carolina, Oklahoma, Pennsylvania, and Wisconsin utilize the Lethality Assessment Program.⁴¹ Florida law enforcement agencies do not currently use a statewide lethality screen or assessment.

Law Enforcement Training

Sections 943.11 and 943.12, F.S., create the Criminal Justice Standards and Training Commission (CJSTC) and require CJSTC to establish uniform minimum training standards for the training of officers in the various criminal justice disciplines.⁴² Section 943.13, F.S., requires all law enforcement officer applicants to complete a CJSTC-approved basic recruit training program.⁴³ Section 943.171, F.S., requires every basic skills course necessary for a law enforcement officer's initial certification to include at least six hours of training in handling domestic violence cases. Such training must include training in the recognition and determination of the primary aggressor in domestic violence cases and issues involved in child-to-parent cases.

Effect of Proposed Changes

CS/HB 729 amends s. 741.29, F.S., to require a law enforcement officer who investigates an alleged incident of domestic violence to administer a lethality assessment if the allegation of domestic violence is made against an intimate partner, regardless of whether an arrest is made, and include the results of the assessment in his or her written police report.

The bill requires the Florida Department of Law Enforcement (FDLE) to consult with the Department of Children and Families and at least one domestic violence advocacy organization to develop the policies, procedures, and training necessary to implement a statewide lethality assessment. The bill further requires that such policies, procedures, and training provide how to determine if a victim and an aggressor are intimate partners and establish a statewide process for referring a victim to a certified domestic violence center. The bill requires FDLE to adopt a statewide lethality assessment form that includes all enumerated questions by January 1, 2025.

The bill requires all law enforcement officers who respond to or investigate crimes of domestic violence to be trained on the policies and procedures for administering a lethality assessment by October 1, 2026, and prohibits an officer from administering such an assessment before he or she has completed such training. The bill requires the training to be accessible to law enforcement officers in an online format.

The bill requires an officer to ask a victim the following 12 questions, in the same or similar wording and in the same order, when conducting a lethality assessment:

- Did the aggressor ever use a weapon against you or threaten you with a weapon?
- Did the aggressor ever threaten to kill you or your children?
- Do you believe the aggressor will try to kill you?
- Has the aggressor ever choked you or attempted to choke you?
- Does the aggressor have a gun or could the aggressor easily obtain a gun?
- Is the aggressor violent or constantly jealous, or does the aggressor control most of your daily activities?
- Did you leave or separate from the aggressor after you were living together or married?
- Is the aggressor unemployed?
- To the best of your knowledge, has the aggressor ever attempted suicide?
- Do you have a child whom the aggressor believes is not the aggressor's biological child?
- Has the aggressor ever followed, spied on, or left threatening messages for you?
- Is there anything else that worries you about your safety and, if so, what worries you?

⁴¹ National Criminal Justice Association, *How Lethality Assessments Can Help Prevent Domestic Violence*, Dec. 7, 2023, <https://www.ncja.org/crimeandjusticeneeds/how-lethality-assessments-can-help-prevent-domestic-violence#:~:text=Connecticut%2C%20Maryland%2C%20North%20Carolina%2C%20Oklahoma%2C%20Pennsylvania%2C%20Virginia%20and,assessment%20and%20support%20them%20with%20training%20and%20resources.> (last visited Feb. 1, 2024).

⁴² S. 943.12(5), F.S.

⁴³ S. 943.13(9), F.S.

The bill requires a law enforcement officer to advise a victim of the results of the assessment and refer the victim to the nearest locally certified domestic violence center if:

- The victim answers affirmatively to any of the first four questions;
- The victim answers negatively to the first four questions, but answers affirmatively to at least four of the next seven questions; or
- As a result of the victim's response to the 12th question, the law enforcement officer believes the victim is in a potentially lethal situation.

The bill specifies that if a victim refuses, or is unable, to provide sufficient information to complete the lethality assessment, the officer must document the lack of such an assessment in the written police report and refer the victim to the nearest locally certified domestic violence center. However, the bill prohibits the officer from including any information regarding the domestic violence center to which the victim was referred in a probable cause statement, written police report, or incident report.

The bill appropriates one full-time equivalent position, associated salary rate, and a total of \$142,594 from the Criminal Justice Standards and Training Trust Fund to FDLE for Fiscal Year 2024-2025 to implement the training and education provisions of the bill.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 741.29, F.S., relating to domestic violence; investigation of incidents; notice to victims of legal rights and remedies; reporting.

Section 2: Reenacts s. 39.906, F.S., relating to referral to centers and notice of rights.

Section 3: Provides an appropriation.

Section 4: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill authorizes one full-time equivalent position with associated salary rate of 41,108, and appropriates \$76,427 in recurring funds and \$66,176 in nonrecurring funds from the Criminal Justice Standards and Training Trust Fund to FDLE to implement the required policies, procedures, and training. This appropriation addresses workload resulting from the bill as well as training development and information technology costs indicated by FDLE.⁴⁴

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

⁴⁴ Florida Department of Law Enforcement, Agency Analysis of 2024 HB 729, pp. 3-6 (Dec. 6, 2023).

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes FDLE to develop policies and procedures to:

- Implement the lethality assessment.
- Provide how to determine if a victim and an aggressor are intimate partners.
- Establish a statewide process for referring a victim to a certified domestic violence center.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 30, 2024, the Criminal Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Required FDLE to adopt a statewide lethality assessment form by January 1, 2025.
- Changed the date by which specified law enforcement officers must be trained by from July 1, 2025, to October 1, 2026.
- Specified that the policies, procedures, and training developed must:
 - Provide how to determine if a victim and an aggressor are intimate partners.
 - Establish a statewide process for referring a victim to a certified domestic violence center.
- Added two questions to the lethality assessment.
- Added criteria used to determine when a law enforcement officer should refer a victim to a locally certified domestic violence center.
- Made technical changes.

On February 13, 2024, the Justice Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment provided an appropriation to address workload needs associated with training and education provisions in the bill.

This analysis is drafted to the committee substitute as passed by the Justice Appropriations Subcommittee.