

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/SB 248

SPONSOR: Children and Families Committee and Senator Saunders

SUBJECT: Domestic Violence

DATE: February 21, 2001 REVISED: _____

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

I. Summary:

Committee Substitute for Senate Bill 248 amends the definitions for “domestic violence” and “family or household member” in four sections of the Florida Statutes to require present or prior co-residency between the victim and the family or household member in establishing an act of domestic violence, with the exception of when the victim and perpetrator have a child in common.

The filing charge for petitions for dissolution of marriage is increased from \$18 to \$36. The funds from the filing charge are deposited into the Domestic Violence Trust Fund and used for funding domestic violence centers.

The committee substitute clarifies the circumstances in existing law under which a person can petition the court for an injunction for protection against domestic violence. A set of factors is provided that, if alleged in the petition, can be considered by the court in determining whether a petitioner is in imminent danger of becoming a victim of domestic violence.

The committee substitute provides that in a cause of action for an injunction for protection against domestic violence, the full hearing must be recorded if the means to do so are available among existing resources.

The requirement that the court order defendants to attend a batterer’s intervention program as a condition of their admittance to a pretrial diversion program when there has been a charge of domestic violence is deleted.

Two additional conditions are provided for identifying when a family violence indicator must be placed on a child support enforcement case, which is then transmitted to the Federal Case Registry.

This committee substitute substantially amends the following sections of the Florida Statutes: 25.385(2)(a), 25.385(2)(b), 28.101(1)(c), 39.902(1), 39.902(3), 61.1825(3), 741.28(1), 741.28(2), 741.281, 741.30(1), 741.30(3), 741.30(6), 943.171(2)(a), and 943.17(2)(b).

II. Present Situation:

Act of Domestic Violence

There is no criminal offense designated as “domestic violence.” Instead, “domestic violence” is a term which encompasses a variety of criminal acts committed against a family or household member. Section 741.28(1), F.S., provides that such 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. Prior or present co-residency between the offender and the family or household member is required. The definition of “family or household member,” s. 741.28(2), F.S., includes 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 with the offender. However, contrary to the definition of “domestic violence,” prior or present co-residency is not required to be considered a “family or household member.” The difference between the two definitions has provided an inconsistent directive for two groups of family and household members when the offender and perpetrator have never lived together: those in which there is a child in common and those involving individuals related by blood or marriage. As a result of the inconsistency, the determination of whether or not a criminal act is considered an act of domestic violence could either require co-residency and thus exclude these two groups or not require co-residency and include these groups of individuals. Certain services, sanctions and other provisions become applicable to acts determined to be “domestic violence.”

The terms “domestic violence” and “family or household member” are defined in four other sections of Florida law.

- s. 25.385(2)(a), F.S., -- Standards for instruction of circuit and county court judges in handling domestic violence cases
- s. 39.902(1), F.S., -- Definitions (in Part XI on Domestic Violence in Chapter 39 Relating to Children)
- s. 943.171(2)(a), F.S., -- Basic skills training in handling domestic violence cases (Chapter 943 on Department of Law Enforcement)
- s. 414.0252(4), F.S., -- Family Self-Sufficiency

Each of these definitions, with the exception of s. 414.0252(4), F.S., requires prior or present co-residency and has an inconsistent corresponding definition of “family or household member” which does not contain the requirement for co-residency.

There is no concrete information regarding how these definitions have been applied across the state. However, relative to injunctions for protection against domestic violence, on June 27, 1997, the Fifth District Court of Appeal of Florida ruled in the Sharpe vs Sharpe case that statutory domestic violence did not, and could not, occur between the two individuals in the absence of

residence by the individuals in the same household. The domestic violence injunction that the sister-in-law received against her brother-in-law was reversed. Current compliance with this ruling in the circuits is not known.

Domestic Violence Centers

Domestic violence centers have been established by the Legislature to provide services to victims of domestic violence. The provisions for certification under s. 39.905(1), F.S., require that domestic violence centers offer a wide range of services to and on behalf of victims of domestic violence, minor children and other dependents of victims of domestic violence, including but not limited to information and referral services, counseling and case management services, temporary emergency shelter for more than 24 hours, a 24-hour hotline, training for law enforcement personnel, assessment and appropriate referral of resident children, and educational services for community awareness. During fiscal year 1999-2000, 14,358 victims of domestic violence and their children were provided with emergency shelter, and 21,823 victims, including both residents and non-residents of the emergency shelters, were provided with one-to-one case management by domestic violence centers. However, a recent needs assessment conducted of domestic violence services in Florida found a number of unmet needs of women experiencing domestic violence. The unmet needs that ranked the highest and identified as most important included permanent and transitional housing, mental health and transportation.

One source of funding for domestic violence centers is the Domestic Violence Trust Fund. Section 741.01(2), F.S., establishes the Domestic Violence Trust Fund and provides that the funds generated are to be used for the specific purpose of funding domestic violence centers. Funds deposited into the Domestic Violence Trust Fund include a \$30 fee charged for each marriage license issued [s. 741.01(2), F.S.], an \$18 charge on each petition for a dissolution of marriage [s. 28.101(1)(c), F.S.], and fines assessed in response to violations of an injunction for protection against domestic violence [s. 741.30 (8)(a)].

The funding from the Domestic Violence Trust Fund has been steadily decreasing over the last 4 years, with total available revenue declining from \$6,239,959 in fiscal year 1996-1997 to \$5,746,772 in fiscal year 1999-2000. While filing fees for dissolution of marriages have experienced a net increase of \$8,684 and fines for violating domestic violence injunctions have increased \$5,976, filing fees from marriage licenses issued have decreased \$507,849 since fiscal year 1996-1997.

Fees Required for Dissolution of Marriage Petitions

Section 28.101, F.S. identifies specific charges required in filing for a petition for dissolution of marriage. Of these filing charges, \$60.50 are transferred to other specific trust funds, including the Child Welfare Training Trust Fund, the Domestic Violence Trust Fund, the Displaced Homemaker Trust Fund, and the Family Courts Trust Fund. Section 28.241, F.S., provides for specific service charges for trial and appellate procedures, which are applied to petitions for dissolution of marriage, and allow the governing authority of the county to impose additional charges. The fees associated with filing a petition for dissolution of marriage can vary from county to county. The costs for four counties contacted ranged from \$151.50 to \$160.00.

Court Proceedings Relative to Domestic Violence

Section 741.30, F.S., provides for injunctive relief against domestic violence for victims of domestic violence or any person with reasonable cause to believe that he or she is in imminent danger of becoming a victim. The relief available through injunctions for protection against domestic violence includes restraining the respondent from committing acts of domestic violence, giving the petitioner use and possession of the dwelling, awarding temporary custody or visitation of any minor children, establishing temporary child support for minor children, and ordering the respondent to participate in the batterer's intervention program. While two criteria exist for filing a petition, some courts have been found to focus on one of the criteria to the exclusion of the alternative criteria, thus limiting conditions under which a petition will be granted. The requirement that the petitioner be in "imminent danger" of becoming a victim of domestic violence is considered by some to be problematic because of its varying interpretations and applications across the circuits and by others to be necessary because of the significant ramifications to the alleged perpetrator.

Section 741.30 (6)(b), F.S., provides that the terms of the injunction are to remain in effect until the injunction is modified or dissolved. Either party may move to modify or dissolve the injunction, and no specific allegations are required. The Third District Court of Appeals of Florida ruled in the Madan versus Madan case (1999) that s. 741.30(6)(b), F.S., provides for either party to move at any time to modify or dissolve the injunction, and this motion includes presenting evidence regarding the initial procurement of the injunction. In a number of courts in the state, the only record maintained of the injunction for protection against domestic violence proceeding is the final judgement. In those instances, there is no record of the testimony provided and evidence submitted during the hearing. If injunctions for protection can be reconsidered and new evidence presented, then the testimony, evidence and factors considered at the initial injunction proceedings provide an important comprehensiveness to the information.

Batterer's Intervention Program

The Legislature established a batterer's intervention program to protect the victims of domestic violence and their children and hold the perpetrators of domestic violence responsible for their acts. The Department of Corrections is responsible for certifying and monitoring the batterer's intervention programs in Florida (s. 741.32, F.S.). Persons found guilty of an act of domestic violence or persons for whom an injunction for protection against domestic violence has been entered can be ordered to attend and participate in the batterer's intervention program [ss. 41.281 and 741.30 (6)(a)5, F.S.]. In addition, s. 741.281, F.S., requires the court to order a person admitted to a pretrial diversion program who has been charged with an act of domestic violence to attend the batterer's intervention program as a condition of the pretrial diversion program.

Persons who are first offenders or who were previously convicted of not more than one nonviolent misdemeanor who are charged with any misdemeanor or felony of the third degree are eligible for release to the pretrial intervention program where counseling, education, supervision and treatment are provided (s. 948.08, F.S.). Approval of the administrator of the program and consent of the victim, the state attorney, and the judge who presided at the initial appearance hearing of the offender is required. The state attorney is also provided the authority to make the final determination as to whether the prosecution shall continue if the person has not fulfilled his

obligation under the program. The court has the authority to refuse consent to the pretrial intervention program but the statute does not provide for any form of review (*Cleveland v. State*, 417 So. 2d 653, Supreme Court 1982). As a result, applying a condition of the batterer's intervention program to the requirement of admittance to the pretrial diversion program is not a judicial function.

Family Violence Indicator

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 required states to establish and maintain a State Case Registry. Information contained in the State Case Registry must be transmitted to the Federal Case Registry which other states access for 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. In order to protect location information in the State and Federal Case Registries when the safety of parties or children could be jeopardized by disclosure, states are required to have procedures for placement of family violence indicators.

In 1999, legislation was passed which prescribed that a family violence indicator must be placed on a State Case Registry when a party executes a sworn statement requesting an indicator and they 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 (ch. 99-375, L.O.F.). Federal requirements compel states to place the family violence indicator on a case if there is reasonable evidence of domestic violence or child abuse and the disclosure of such information could be harmful to the party or child. A recent federal policy directive provided that a protective order was reasonable evidence of domestic violence or abuse.

III. Effect of Proposed Changes:

Act of Domestic Violence

CS/SB 248 amends the definitions for "domestic violence" and "family or household member" in four sections of Florida Statute to require present or prior co-residency between the victim and the family or household member in establishing an act of domestic violence, with the exception of when the victim and perpetrator have a child in common. These amendments would correct a current inconsistency between the definitions of "domestic violence" and "family or household member." They would also direct the application of domestic violence related legal actions and initiatives to those victims and perpetrators who have lived in the same dwelling either currently or in the past, or those victims and perpetrators who have a child in common, regardless of whether they had ever lived together. This may be broadening or narrowing the class of individuals who have in the past been defined as victims of domestic violence or persons who have committed an act of domestic violence, depending on how the definition of domestic violence and family household member is being applied in each of the venues where the definition is utilized.

The sections of Florida Statute where the definitions of “domestic violence” are being amended are as follows:

- s. 25.385, F.S., Standards for instruction of circuit and county court judges in handling domestic violence cases: This section of law directs the Florida Court Educational Council to establish standards for the instruction of those circuit and county court judges with the responsibility for domestic violence cases. Since the definition of domestic violence is a component of the instruction to the judges, the revision in the definition would potentially require some minor alteration of information provided to the judges.
- s. 39.902, F.S., Definitions: Part XI of ch. 39, F.S., requires the Department of Children and Families to develop, certify and fund domestic violence centers. The amendment to the definition of domestic violence would not alter service delivery for the domestic violence centers since a substantial portion of their funding is either from Temporary Assistance for Needy Families (TANF), which uses the definitions provided for in s. 414.0252(4), F.S., or private, neither of which require co-residency.
- s. 943.17(2)(a), F.S., Basic skills training in handling domestic violence cases: Under this section, the Criminal Justice Standards and Training Commission is directed to establish the standards for instruction of law enforcement officers in the subject of domestic violence. As with the instruction for judges, the revision to the definition would potentially change the information provided to law enforcement.
- s. 741.28(1), F.S., Domestic Violence definitions: This definition is used in a number of applications in the domestic violence sections of ch. 741, F.S., relating to domestic relations between husband and wife. The primary utilization of this definition is as a cause of action (and therefore who can petition) for an injunction for protection against domestic violence. The impact of the revision to the definition of domestic violence in issuing of injunctions is indeterminant since the current application of the co-residency requirements in the circuits is not known.

This definition of “domestic violence” is used as one of the bases for ordering participation in the batterer’s intervention program (s. 741.281, F.S.). However, the batterer’s intervention program is limited to perpetrators involved in violence between intimate partners [s. 741.325(8), F.S.]. Co-residency is not a requirement; therefore, the amendment to the definition of domestic violence would not impact the participants referred to the program.

Persons arrested for an act of domestic violence who willfully violate a condition of pretrial release are considered to have committed a misdemeanor of the first degree and shall be held in custody until their appearance (s. 741.29, F.S.). Section 741.2901, F.S., directs the state attorney to adopt a pro-prosecution policy for acts of domestic violence. For both of these purposes, s. 741.28(1), F.S., defines what constitutes an act of domestic violence.

The Address Confidentiality Program (ss. 741.401 - 741.409, F.S.) offers victims of domestic violence use of the address designated by the Attorney General as their address

in their effort to establish a new and safe location for themselves and their family. This program was implemented in January 1999, and the applicants thus far have been victims of domestic violence by primarily spouses or former spouses. The few other applicants have been victims of domestic violence by individuals with whom they have resided.

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.

Domestic Violence Center Funding

The committee substitute amends s. 28.101 (1)(c), F.S., to increase the fee charged in petitions for dissolution of marriages that is deposited into the Domestic Violence Trust Fund from \$18 to \$36. The projections from the Department of Children and Families and the Office of State Courts Administrator of the additional revenue anticipated to be generated from this fee increase range from \$1.4 to \$1.5 million. A portion of this increase will replace declining revenue from marriage license fees.

Court Proceedings Relative to Domestic Violence

The committee substitute clarifies existing law that a person can petition the court for an injunction for protection against domestic violence based on either one of two circumstances: the person has been a victim of domestic violence or the person is in imminent danger of becoming a victim of domestic violence. It also provides the court with factors that, if alleged in the petition, can be considered in determining whether a petitioner is in imminent danger of becoming a victim of domestic violence.

Section 741.30, F.S., is amended to add a requirement that all injunctions for protection against domestic violence proceedings be recorded if the means to do so are available among existing court resources. If the means are not available, the parties must be notified that they are responsible for the recording of such if they so desire.

Batterer's Intervention Program

The committee substitute deletes from s. 741.281, F.S., the requirement that the court order defendants to attend a batterer's intervention program as a condition of their admittance to a pretrial diversion program when there has been a charge of domestic violence. This modification corrects an inconsistency relative to the courts jurisdiction with those defendants diverted from prosecution and into intervention programs. However, it also eliminates a requirement for persons who have been charged with an act of domestic violence to attend the batterer's intervention program.

Family Violence Indicator

The committee substitute amends s. 61.1825, F.S., to provide two additional conditions for identifying when a family violence indicator must be placed on a child support enforcement case, which is then transmitted to the Federal Case Registry, to prevent the disclosure of information on the case when release of the information may result in harm to the individual or child. These conditions are when a temporary or final injunction for protection against domestic violence, repeat violence or by a court from another state has been granted and when the Domestic and Repeat Violence Injunction Statewide Verification System indicates that a party has been granted a domestic violence or repeat violence injunction. The addition of these two conditions for determining when a family violence indicator must be added offers more immediate protection for the victims, since they would not have to take the extra step to issue a sworn statement if there was an injunction. It also provides greater assurance that Florida is in full compliance with federal regulations relative to this issue.

IV. Constitutional Issues:

Municipality/County Mandates Restrictions:

None.

Public Records/Open Meetings Issues:

None.

Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

Tax/Fee Issues:

None.

Private Sector Impact:

None.

Government Sector Impact:

The Office of State Courts Administrator reports there are elements of the bill as filed that may impact the workload of the state court system. Most of these elements have been removed from the committee substitute. The exception is the requirement that the court consider certain additional factors in determining whether to grant an injunction which may result in additional hearing time. The Office of State Courts Administrator reports that the combined impact of all

the elements in the initial bill could not be determined, but an insignificant fiscal impact upon the state courts system is anticipated.

Additionally, if the definition of domestic violence has been interpreted in the most restrictive manner by the circuits, i.e., to exclude family and household members who have never lived together, then the elimination of the co-residency requirement for those instances where the victim and perpetrator have a child in common could increase the number of petitions for injunction for protection against domestic violence.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
