

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 1778

SPONSOR: Committee on Children and Families and Senator Cowin

SUBJECT: Domestic Violence

DATE: April 6, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dowds</u>	<u>Whiddon</u>	<u>CF</u>	<u>Favorable/CS</u>
2.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
3.	_____	_____	<u>FT</u>	_____
4.	_____	_____	<u>APJ</u>	_____
5.	_____	_____	<u>AP</u>	_____
6.	_____	_____	_____	_____

I. Summary:

CS/SB 1778 creates a mandatory 5 day period of incarceration for persons found guilty of or who pled nolo contendere to a crime of domestic violence, who have intentionally caused bodily harm. The bill raises the level of the crime for second or subsequent battery convictions. A surcharge of \$201 is imposed on persons who are found in violation of assault and battery related offenses, stalking and domestic violence offenses, the funds from which will be provided for domestic violence centers, to the sheriffs to cover the additional jail costs and for law enforcement training on domestic violence, and for a public awareness campaign on domestic violence. The bill requires attendance in the batterer’s intervention program as a condition of probation, community control or other community supervision when there is a crime of domestic violence, unless the offender does not qualify for the batterer’s intervention program.

This bill substantially amends sections 39.301, 741.01, 741.281, 784.03, and 948.03 of the Florida Statutes. This bill creates sections 741.283 and 938.08 of the Florida Statutes.

II. Present Situation:

Crime 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.

The criminal offenses specifically identified in s. 741.28(1), F.S., as acts of domestic violence constitute the following levels of crime:

- Assault (s. 784.011, F.S.): misdemeanor of the second-degree.
- Aggravated assault (s. 784.021, F.S.): felony of the third-degree.
- Sexual battery upon a person 12 years of age or older (s. 794.011, F.S.):
 - Felony of the second-degree if no physical force or violence that would likely cause serious personal injury is used.
 - Felony of the first-degree if certain circumstances exist, such as (but not limited to) the victim is physically helpless, the victim is coerced by threats of force or violence, or the victim is coerced by threats of retaliation.
 - Life felony if a deadly weapon or physical force that would likely cause serious personal injury is used or threatened.
 (Note: Higher level of crime is applied if the victim is under the age of 12 years.)
- Battery (s. 784.03, F.S.): misdemeanor of the first-degree.
- Aggravated Battery (s. 784.045, F.S.): felony of the second-degree.
- Sexual Assault: There is no specific crime defined in statute as “sexual assault,” but it could be interpreted to include other sex related crimes.
- Stalking (s. 784.048, F.S.): misdemeanor of the first-degree.
- Aggravated Stalking (s. 784.048, F.S.): felony of the third-degree.
- Kidnapping (s. 787.01, F.S.): felony of the first-degree.
- False Imprisonment (s. 787.02, F.S.): felony of the third-degree.

Chapter 784, F.S., sets forth Florida’s assault and battery related offenses which are applied regardless of whether the offense was committed against a family or household member and thus considered a domestic violence offense. Specific assault and battery related offenses provided for in ch. 784, F.S., that were not identified as acts of domestic violence above are as follows:

- Felony Battery (s. 784.041, F.S.): felony of the third-degree
- Culpable Negligence (s. 784.05, F.S.): misdemeanor of the second-degree
- Assault or Battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers (s. 784.07, F.S.): the particular assault or battery charge is reclassified (e.g. a battery case is reclassified from a misdemeanor of the first-degree to a felony of the third degree)
- Battery on detention or community facility staff or juvenile probation officer (s. 784.075, F.S.): felony of the third-degree
- Battery on health services personnel (s. 784.076, F.S.): felony of the third-degree
- Assault or Battery on persons 65 years of age or older (s. 784.08, F.S.): the particular assault or battery charge is reclassified (e.g. a battery case is reclassified from a misdemeanor of the first-degree to a felony of the third-degree)
- Assault or Battery on specified officials or employees (s. 784.081, F.S.): the particular assault or battery charge is reclassified (e.g. a battery case is reclassified from a misdemeanor of the first-degree to a felony of the third-degree)
- Assault or Battery by a person being detained in a prison, jail or other detention facility (s. 784.082, F.S.): the particular assault or battery charge is reclassified (e.g. a battery case is reclassified from a misdemeanor of the first-degree to a felony of the third-degree)

- Assault or Battery on code inspectors (s. 784.083, F.S.): the particular assault or battery charge is reclassified (e.g. a battery case is reclassified from a misdemeanor of the first-degree to a felony of the third-degree)
- Battery of child by throwing, tossing, projecting, or expelling certain fluids and materials (s. 784.085, F.S.): felony of the third-degree

Section 784.03, F.S., provides that the level of crime for the offense of battery is elevated from a misdemeanor of the first-degree to a felony of the third-degree for a person with two prior battery convictions who commits a third or subsequent battery offense.

During 1999, a total of 126,044 domestic violence offenses were reported in Florida. Of these offenses, 35,570 were committed by the spouse, 10,498 by a parent, 9,883 by a child, 9,168 by a sibling, 7,951 by another family member, 40,700 by a cohabitant and 12,274 by other individuals. Of the total offenses, 23,414 were for aggravated assault and 2,806 were for sex related crimes which potentially could result in a physical injury.

Each of the domestic violence crimes is punishable pursuant ss. 775.082 or 775.83, F.S.

- Section 775.082, F.S., provides for the following terms of imprisonment based on the level of crime committed:
 - Felony of the first-degree: Term of imprisonment not to exceed 30 years or, when specifically provided in statute, not to exceed life imprisonment.
 - Felony of the second-degree: Term of imprisonment not to exceed 15 years.
 - Felony of the third-degree: Term of imprisonment not to exceed 5 years.
 - Misdemeanor of the first-degree: Term of imprisonment not to exceed 1 year.
 - Misdemeanor of the second-degree: Term of imprisonment not to exceed 60 days.
- Section 775.083, F.S., provides for the following fines based on the level of crime committed:
 - Felony of the first or second-degree: Fine is not to exceed \$10,000
 - Felony of the third-degree: Fine is not to exceed \$5,000
 - Misdemeanor of the first-degree: Fine is not to exceed \$1,000
 - Misdemeanor of the second-degree: Fine is not to exceed \$500

Offenders committing certain of the domestic violence crimes above who are habitual felony offenders, habitual violent felony offenders, and violent career criminals, as defined in s. 775.084, F.S., are sentenced using a different and higher level of punishment than provided for in s. 775.082, F.S., and s. 775.083, F.S.

A court may place a defendant in a criminal case on probation or into community control under certain circumstances (s. 948.01, F.S.). The probation or community control requires such conditions as reporting to the probation and parole supervisors as directed, working at obtaining and maintaining suitable employment, making reparation or restitution, supporting any legal dependents and submitting to random testing for a controlled substance or alcohol (s. 948.03, F.S.). In addition, the court may order any additional conditions it considers necessary.

There are a number of fees that persons convicted of a crime, including a crime of domestic violence, are ordered to pay. Below is a list of fees identified in statute for persons convicted of a crime, including both those required to be assessed and those permitted at the court or county's discretion. This is not an exhaustive list.

- The cost of supervision is required to be paid by the offender on probation, the amount for which varies depending on whether the offense was a misdemeanor or felony and often varies from county to county. For felony probationers, a monthly fee to the Department of Corrections is imposed [s. 948.09(1)(a), F.S.] up to the per diem cost of supervision, which is \$103.72. The cost of supervision actually assessed by the courts ranges from \$30 per month up to \$103.50 per month. For misdemeanor probations, the monthly cost of supervision is imposed by the county or the probation service provider. This cost varies from county to county but must be no less than \$40 per month [s. 948.09(1)(b), F.S.].
- Section 775.089, F.S., requires the court to order a defendant to make restitution to the victim for the damage or loss caused by the offense or the criminal episode. The restitution can be ordered to reimburse the victim for lost income that was a result of the offense, and if the offense resulted in bodily injury, for the cost of medical care and therapy.
- There are court costs and fines imposed by the court, some of which are payments that are required to be ordered and others that counties or courts are permitted to assess. The actual amounts ordered to be paid vary from county to county. Some of these assessments include the following:
 - The fines provided for in s. 775.083, F.S., as noted above.
 - An application fee of \$40 for anyone seeking a public defender [s. 27.52(1)(c), F.S.].
 - A local option to impose a \$20 fee for crime prevention programs [s.775.083(2)(b), F.S.].
 - An assessment of \$3 to be placed in the Additional Court Cost Clearing Trust Fund [s. 938.01(1), F.S.].
 - An assessment of \$50 to be placed in the Crimes Compensation Trust Fund [s. 938.03(1), F.S.].
 - A 5 percent surcharge on fines to be deposited in the Crimes Compensation Trust Fund (s. 948.04, F.S.).
 - A \$20 court cost for crime stoppers program [s. 938.06(1), F.S.].
 - Costs of all prosecution [s. 938.27(1), F.S.].

In one county contacted, the standard court cost for persons convicted of a first-degree misdemeanor was \$295 and ranged from \$808 for third-degree felony convictions to \$2,333 for first-degree felony convictions.

The Department of Corrections is responsible for collecting and disbursing all costs ordered by the courts for persons placed on probation or other community placement for a felony conviction [ss. 948.01(1) and 948.09(7), F.S.]. The clerk of the court performs this function for the remaining probation and other community placement convictions [s. 29.002(2), F.S.]. In FY 1999-2000, the percentage of collection of court costs on cases supervised by the Department of Corrections which successfully terminated from supervision was 85 percent; the collection percentage of court costs for all cases terminating from supervision in the same period was only

57 percent. The collection percentage for fines is lower, 39 percent for successful terminations and 28 percent for all cases terminating from supervision.

County Jails

Sections 951.06 and 951.061, F.S., provide for the county commissioners to designate a chief correctional officer which may be the sheriff. The sheriff is responsible for enforcing all laws concerning the operation and maintenance of the county jail and for the expenditures of the jail and entire county correctional system as funded by the county commission. The 2000 Annual Report on County Detention Facilities reports that on the average, there were 48,590 inmates in Florida's county detention facilities on any given day during 2000. This figure is a 2.7 percent increase in the inmate population from 1999. The Florida Sheriff's Association estimates that the expenditures required to operate a jail range from \$40 to \$90 per day per inmate.

Domestic Violence Trust Fund

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.

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.). The standards developed for the batterer's intervention program target offenders in intimate partner relationships where the violence is perpetrated to exercise power and control (s. 741.325, 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 found guilty of, has had adjudication withheld on, or has pled nolo contendere to a crime of domestic violence, as defined in s. 741.28, F.S., to a minimum of 1 year probation and to attend the batterer's intervention program. Persons admitted to a pretrial diversion program who have been charged with an act of domestic violence are to be ordered by the court to attend the batterer's intervention program as a condition of the pretrial diversion program. The condition of attending the batterer's intervention program must be imposed by the court for a defendant placed on probation or admitted to pretrial diversion, unless the court determines and states why the batterer's intervention program is not appropriate. Certification of the batterer's intervention program, pursuant to s. 741.32, F.S., is preferred but not mandatory. The batterer's intervention program is a user-fee funded program. The individuals who attend are required to pay an initial fee of \$30 to the Department of Corrections and a weekly fee to the program which is based on a sliding fee scale ranging from zero to \$50 weekly (the average is usually \$15 to \$20 per week) for 26 weeks.

Law Enforcement Training in Domestic Violence

Section 943.171, F.S., requires that every course required of law enforcement to obtain initial certification include a minimum of 6 hours of training in handling domestic violence cases. This training is to include the recognition and determination of the primary aggressor in domestic violence cases. In addition the Criminal Justice Standards and Training Commission is required, pursuant to s. 943.1701, F.S., to develop policies and procedures for the basic law enforcement training and continuing education that includes a number of aspects of responding to domestic violence calls, including but not limited to, the dynamics of domestic violence, the legal rights and remedies available to victims of domestic violence, special needs of children at the scene of domestic violence and the subsequent impact on their lives, and the duties and responsibilities of law enforcement in responding to domestic violence calls.

Injunctions to Remove Domestic Violence Perpetrators

Injunctions for protection to remove an abuser from the home where domestic violence exists can be obtained in two different ways. Section 741.30, F.S., provides for any persons who are victims of domestic violence or believe themselves to be in imminent danger of domestic violence to request an injunction for protection against domestic violence. Section 39.504, F.S., allows the Department of Children and Family Services, law enforcement, state attorney, or other responsible persons to request an injunction from the court to prevent any act of child abuse.

III. Effect of Proposed Changes:

CS/SB 1778 creates a mandatory 5 day period of incarceration for persons found guilty of or who pled nolo contendere to a crime of domestic violence, who have intentionally caused bodily harm. The bill raises the level of the crime for second or subsequent battery convictions. A surcharge of \$201 is imposed on persons who are found in violation of assault and battery related offenses, stalking and domestic violence offenses, the funds from which will be provided for domestic violence centers, to the sheriffs to cover the additional jail costs and for law enforcement training on domestic violence, and for a public awareness campaign on domestic violence. The bill requires attendance in the batterer's intervention program as a condition of probation, community control or other community supervision when there is a crime of domestic violence, unless the offender does not qualify for the batterer's intervention program.

Section 1. titles the legislation the "Family Protection Act."

Section 2. requires that child protective investigation staff be provided with training on the use of the injunction processes provided for in ss. 741.30 and 39.504, F.S., to remove a domestic violence perpetrator as a strategy for protecting the child. This requirement was added to s. 39.301, F.S., which provides for the initiation of the protective investigation process of reports of child abuse, neglect and abandonment.

Section 3. requires that a term of imprisonment in the county jail of a minimum of 5 days be ordered for a person who was found guilty of or pled nolo contendere to a crime of domestic violence, pursuant to s. 741.28, F.S. The bill stipulates that the person committing the crime must have intentionally caused bodily harm to another person and therefore excludes from the minimum 5 days sentencing persons whose domestic violence offense did not result in intentional harm. The bill provides that the 5 day minimum jail sentence is a part of the total sentence imposed on the offender. The exception is for offenders who are sentenced to a period of imprisonment in state prison which is not suspended. The minimum 5 day jail sentence does not prevent the court from sentencing the offender to probation, community control or an additional period of incarceration.

Section 4. modifies s. 784.03, F.S., and the number of battery convictions required before the act of battery becomes a felony of the third-degree from two prior convictions to one conviction. A plea of nolo contendere is added to what is considered a battery conviction for the purposes of this higher criminal charge for subsequent battery crimes. The bill provides that the commission of a battery offense after one conviction of battery, aggravated battery, or felony battery is a felony of the third-degree. This provision applies to all battery convictions, regardless of whether the offense was an act of domestic violence.

Section 5. creates a new section in ch. 938, Part I, F.S., Mandatory Costs in All Cases, to require that the court impose a surcharge of \$201 to sanctions imposed on a person who is convicted of the offense of assault, aggravated assault, battery, felony battery, aggravated battery, stalking, assault or battery of law enforcement and other related officers, assault or battery on persons 65 years of age and older, assault or battery on specified officials or employees, assault or battery by a person detained in a prison or other detention facility, assault or battery on code inspectors, battery of a child by throwing certain fluids or material or for any act of domestic violence. The

payment of the \$201 surcharge is required to be a condition of the probation, community control or any other court-ordered supervision. Of the surcharge payments made, \$85 is to be deposited into the Domestic Violence Trust Fund which is used to fund domestic violence centers. The clerk of the court is authorized to retain \$1 of each surcharge it collects to compensate the clerk for processing the payment. The remainder of the surcharge is to be provided to the sheriff to defray the costs of the mandatory 5 day imprisonment in jail required by the bill and to provide additional domestic violence training to law enforcement personnel. This bill does not provide for the portion of the funds to be provided for training for law enforcement and, therefore, provides the sheriff with discretion as how much funding is applied to the cost of the jail and how much for training.

Section 6. amends s. 948.03, F.S., to require that persons convicted of an offense of domestic violence be ordered to attend and successfully complete the batterer's intervention program as a condition of their probation, community control, or any other court ordered community supervision. If the court determines that the person does not qualify for the batterer's intervention program based on the guidelines developed for the program as required by s. 741.325, F.S., then participation in the batterer's intervention program is not to be imposed. The batterer's intervention program which the offender attends is required to be a certified program, pursuant to s. 741.32, F.S. This requirement becomes effective July 1, 2002 and thus provides communities without certified batterer's intervention programs sufficient time to get the programs certified. The offender is required to pay the costs of attending the program.

Section 7. amends s. 741.01, F.S., to provide that \$500,000 of the funds deposited into the Domestic Violence Trust Funds as a result of the surcharge provided for in this bill be used by the Executive Office of the Governor to administer a statewide public-awareness campaign regarding domestic violence.

Section 8. amends s. 741.281, F.S., to conform to the requirements for participation in the batterer's intervention program for persons on probation as provided in s. 948.03, F.S. Specifically, s. 741.281, F.S., is amended to permit courts to not impose participation in the batterer's intervention program as a condition of probation only if the person does not qualify for the program based on the guidelines developed for the program as required by s. 741.325, F.S. In addition, the preference for batterer's intervention programs to be certified is changed to a requirement effective July 1, 2002.

Section 9. provides that this act will take effect on July 1, 2001.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill is mandating a minimum number of days which a person must serve in jail under certain circumstances. The cost associated with imprisoning an offender is the responsibility of the sheriff with funding from the county commissioners. While a portion of the surcharge applied to offenders will be provided to the sheriffs to defray the costs of incarcerating persons as provided in the bill, it cannot be determined whether the level of funds that will actually be generated will adequately compensate for the increased costs.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. **Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

The bill would mandate a \$201 surcharge for any conviction for assault, battery, felony battery, aggravated battery, or any offense of domestic violence, which resulted in a physical injury. This surcharge will be applied in addition to the cost of supervision for probation (at approximately \$30 to \$103 per month), a batterer's intervention program (\$30 initially and \$15 to \$20 per week on the average, if program participation is ordered), restitution (average amount not known) and other standard court costs and fines applied by the courts (in one county these assessments range from \$295 for a misdemeanor to \$2,333 for a first-degree felony). Based on 1999 offense data from the Florida Department of Law Enforcement (FDLE) and conviction data from the Office of State Courts Administrator (OSCA), it is estimated that this will affect 82,961 offenders. Assuming that the Department of Corrections' collection rate of 59 percent remains constant, this fee will generate approximately \$9.8 million annually. Of the amount collected, \$5.6 million (57.5 percent) would go to sheriffs to offset the cost of the mandatory jail time for misdemeanor domestic violence offenses (see below) and \$4.2 million (42.5 percent) would be deposited into the Domestic Violence Trust Fund for the funding of domestic violence centers.

B. Private Sector Impact:

Individuals convicted of the offenses above will be required to pay an additional surcharge of \$201. The funds collected as a result of assessing this surcharge will generate additional revenue for domestic violence centers. There may also be some increase in the number of offenders who must complete and pay for a batterer's intervention program, but the amount is indeterminate.

C. Government Sector Impact:

The provisions of the bill requiring a minimum term of imprisonment for domestic violence and lowering the number of prior offenses to upgrade battery to a felony have the potential to cause increased costs to state and local governments.

Minimum Term of Imprisonment for Domestic Violence: According to FDLE and Office of State Courts Administrator data, it is estimated that approximately 29,000 offenders would qualify for the minimum term of imprisonment. Based on a per diem cost of \$45.00 and 4 days jail time (most offenders currently serve 1 day for overnight jail at arrest), it is estimated that this would cost local governments approximately \$5.2 million, which is less than the estimated amount of revenues that would be received from the \$201 surcharge (see

above). The surplus funds would be available for domestic violence training as authorized in the bill.

Lowering the Number of Prior Offenses to Upgrade Battery to Felony: Current law requires that two prior convictions for battery are necessary before the instant offense would be upgraded to a felony; this bill would lower that to one prior conviction. This may have an effect on the supervised population, but the amount is unknown at this time and will be determined by the Criminal Justice Impact Conference.

The Office of State Courts Administrator reports that the provisions of this bill will result in a fiscal impact. However, the amount of the impact is difficult to quantify. Defendants will be less inclined to plead to an offense if mandatory jail time is inevitable. Victims may also be less willing to cooperate. This will potentially lead to increased judicial involvement and attendant costs for courtroom space and support personnel.

The Department of Corrections reports there will be no fiscal impact for the department.

The Office of Economic and Demographic Research indicates with a preliminary examination of the bill that the lowering of number of offenses to upgrade the battery offense to a felony may have a fiscal impact on the prison system. The bill will be placed on the agenda for the Criminal Justice Impact Conference.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The requirement for a mandatory 5 day jail sentence for crimes of domestic violence where there is physical injury removes the discretion of the prosecutor and court to consider the circumstances in determining the sentence to impose, including to negotiate a plea that excludes a period of incarceration. A potential consequence noted by observers in the field is the potential to include individuals in those offenders to which the mandatory jail sentence is applied whose circumstances may not warrant a mandatory jail sentence. One such group of individuals may be battered victims who, due to the complexity the domestic violence and the difficulty in determining the primary aggressor, may be included as these offenders.

VIII. Amendments:

None.