

By Representative Merchant

1                                   A bill to be entitled  
2           An act relating to domestic violence; creating  
3           s. 784.09, F.S.; reclassifying the offense of  
4           battery as a third-degree felony if such  
5           offense constitutes an act of domestic violence  
6           and is committed in the presence of a minor  
7           under a specified age; providing applicability;  
8           amending s. 741.29, F.S.; prescribing standards  
9           for arrest policy for a law enforcement officer  
10          investigating alleged domestic violence;  
11          requiring certain reports by law enforcement  
12          officers; amending s. 943.171, F.S.; requiring  
13          certain training for law enforcement officers;  
14          providing an effective date.

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16 Be It Enacted by the Legislature of the State of Florida:

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18           Section 1. Section 784.09, Florida Statutes, is  
19 created to read:

20           784.09 Battery as domestic violence; enhanced  
21 penalty.--The penalty for battery shall be reclassified from a  
22 misdemeanor of the first degree to a felony of the third  
23 degree, punishable as provided in s. 775.082, s. 775.083, or  
24 s. 775.084, if:

25           (1) The battery is committed under circumstances that  
26 constitute an act of domestic violence as defined in s.  
27 741.28; and

28           (2) The battery is committed in the presence of a  
29 child who is 16 years of age or younger.  
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1 This section does not apply to arrests or charges of both  
2 parties to a domestic violence incident when such arrests or  
3 charges are for battery of each other. It is the public policy  
4 of this state to strongly discourage arrest and charges of  
5 both parties for violence on each other and to encourage  
6 training of law enforcement and prosecutors in this area.

7 Section 2. Subsections (2) and (4) of section 741.29,  
8 Florida Statutes, are amended to read:

9 741.29 Domestic violence; investigation of incidents;  
10 notice to victims of legal rights and remedies; reporting.--

11 (2) When a law enforcement officer investigates an  
12 allegation that an incident of domestic violence has occurred,  
13 the officer shall handle the incident pursuant to the arrest  
14 policy provided in s. 901.15(7)(a), and as developed in  
15 accordance with subsections (3), (4), and (5). Whether or not  
16 an arrest is made, the officer shall make a written police  
17 report as part of the field arrest and incident reporting form  
18 and as prescribed by the department of the alleged incident  
19 which clearly indicates that the alleged offense was an  
20 incident of domestic violence. Such report must include:

21 (a) A description of physical injuries observed, if  
22 any.

23 (b) If an arrest was not made, an indication by the  
24 law enforcement officer, in writing, of the reasons why an  
25 arrest was not made.

26 (c) A statement which indicates that a copy of the  
27 legal rights and remedies notice was given to the victim.

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29 Whenever possible, the law enforcement officer shall obtain a  
30 written statement from the victim and witnesses concerning the  
31 alleged domestic violence. The officer shall submit the report

1 to the supervisor or other person to whom the employer's rules  
2 or policies require reports of similar allegations of criminal  
3 activity to be made. The law enforcement agency shall, without  
4 charge, send a copy of the initial police report, as well as  
5 any subsequent, supplemental, or related report, which  
6 excludes victim/witness statements or other materials that are  
7 part of an active criminal investigation and are exempt from  
8 disclosure under chapter 119, to the nearest locally certified  
9 domestic violence center within 24 hours after the agency's  
10 receipt of the report. The report furnished to the domestic  
11 violence center must include a narrative description of the  
12 domestic violence incident.

13 (4)(a) When complaints are received from two or more  
14 parties, the officers shall evaluate each complaint separately  
15 to determine whether there is probable cause for arrest.

16 (b) If a law enforcement officer has probable cause to  
17 believe that two or more persons have committed a misdemeanor  
18 or felony, or if two or more persons make complaints to the  
19 officer, the officer shall try to determine who was the  
20 primary aggressor. Arrest is the preferred response only with  
21 respect to the primary aggressor. If the officer believes that  
22 all parties are equally responsible, arrest is not the  
23 preferred response for any party, and the officer shall  
24 exercise his or her best judgment in determining whether to  
25 arrest any party.

26 (c) To determine who is the primary aggressor, the  
27 officer shall consider:

- 28 1. The intent of the law to protect the victim;  
29 2. The history of domestic violence between the  
30 parties;

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1           3. The relative severity of the injuries inflicted on  
2 each person;

3           4. Evidence from the persons involved in the domestic  
4 violence;

5           5. The likelihood of future injury to each person;

6           6. Whether one of the persons acted in self-defense;

7           7. Evidence from witnesses of the domestic violence;

8 and

9           8. Any weapon used or the use of which is threatened  
10 by either party.

11           (d) A law enforcement officer shall not:

12           1. Threaten, suggest, or otherwise indicate the  
13 possible arrest of all parties to discourage future requests  
14 for intervention by law enforcement personnel; or

15           2. Base the decision of whether to arrest on:

16           a. The consent or request of the victim; or

17           b. The officer's perception of the willingness of the  
18 victim or of a witness to the domestic violence to testify or  
19 participate in a judicial proceeding.

20           (e) When a law enforcement officer investigates an  
21 allegation that domestic violence has occurred, the officer  
22 shall make a complete report and file the report with the  
23 officer's supervisor in a manner that will permit data on  
24 domestic violence cases to be compiled. If a law enforcement  
25 officer decides not to make an arrest or decides to arrest two  
26 or more parties, the officer shall include in the report the  
27 grounds for not arresting anyone or for arresting two or more  
28 parties.

29           Section 3. Subsection (1) of section 943.171, Florida  
30 Statutes, is amended to read:

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