

By the Committee on Crime & Punishment and Representatives Merchant, Ball, Heyman, Fasano, Byrd, Saunders, Feeney and Argenziano

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 an exception
8 to applicability; amending s. 741.29, F.S.;
9 requiring certain reports by law enforcement
10 officers; prescribing preferred arrest policy
11 for a law enforcement officer investigating
12 alleged domestic violence; defining the offense
13 of violating pretrial release condition when
14 original arrest was for act of domestic
15 violence; providing penalties; amending s.
16 901.15, F.S.; prescribing public policy for
17 arrest in domestic violence cases; providing
18 for arrest of a person without warrant when
19 there is probable cause to believe a person
20 originally arrested for an act of domestic
21 violence has violated a pretrial release
22 condition; amending s. 943.171, F.S.; requiring
23 certain training for law enforcement officers;
24 providing an effective date.

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

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28 Section 1. Section 784.09, Florida Statutes, is
29 created to read:

30 784.09 Battery as domestic violence; enhanced
31 penalty.--The penalty for battery shall be reclassified from a

1 misdemeanor of the first degree to a felony of the third
2 degree, punishable as provided in s. 775.082, s. 775.083, or
3 s. 775.084, if:

4 (1) The battery is committed under circumstances that
5 constitute an act of domestic violence as defined in s.
6 741.28; and

7 (2) The battery is committed in the presence of a
8 child who is 16 years of age or younger.

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10 This section does not apply to arrests or charges of both
11 parties to a domestic violence incident when such arrests or
12 charges are for battery of each other.

13 Section 2. Subsections (2) and (4) of section 741.29,
14 Florida Statutes, are amended, and subsection (6) is added to
15 said section, to read:

16 741.29 Domestic violence; investigation of incidents;
17 notice to victims of legal rights and remedies; reporting.--

18 (2) When a law enforcement officer investigates an
19 allegation that an incident of domestic violence has occurred,
20 the officer shall handle the incident pursuant to the arrest
21 policy provided in s. 901.15(7)(a), and as developed in
22 accordance with subsections (3), (4), and (5). Whether or not
23 an arrest is made, the officer shall make a written police
24 report that is complete and clearly indicates the alleged
25 offense was an incident of domestic violence. Such report
26 shall be given to the officer's supervisor and filed with the
27 law enforcement agency in a manner that will permit data on
28 domestic violence cases to be compiled ~~as part of the field~~
29 ~~arrest and incident reporting form and as prescribed by the~~
30 ~~department of the alleged incident which clearly indicates~~

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1 ~~that the alleged offense was an incident of domestic violence.~~
2 Such report must include:
3 (a) A description of physical injuries observed, if
4 any.
5 (b) If a law enforcement officer decides not to make
6 an arrest or decides to arrest two or more parties, the
7 officer shall include in the report the grounds for not
8 arresting anyone or for arresting two or more parties.~~If an~~
9 ~~arrest was not made, an indication by the law enforcement~~
10 ~~officer, in writing, of the reasons why an arrest was not~~
11 ~~made.~~
12 (c) A statement which indicates that a copy of the
13 legal rights and remedies notice was given to the victim.
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15 Whenever possible, the law enforcement officer shall obtain a
16 written statement from the victim and witnesses concerning the
17 alleged domestic violence. The officer shall submit the report
18 to the supervisor or other person to whom the employer's rules
19 or policies require reports of similar allegations of criminal
20 activity to be made. The law enforcement agency shall, without
21 charge, send a copy of the initial police report, as well as
22 any subsequent, supplemental, or related report, which
23 excludes victim/witness statements or other materials that are
24 part of an active criminal investigation and are exempt from
25 disclosure under chapter 119, to the nearest locally certified
26 domestic violence center within 24 hours after the agency's
27 receipt of the report. The report furnished to the domestic
28 violence center must include a narrative description of the
29 domestic violence incident.
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1 (4)(a) When complaints are received from two or more
2 parties, the officers shall evaluate each complaint separately
3 to determine whether there is probable cause for arrest.

4 **(b) If a law enforcement officer has probable cause to**
5 **believe that two or more persons have committed a misdemeanor**
6 **or felony, or if two or more persons make complaints to the**
7 **officer, the officer shall try to determine who was the**
8 **primary aggressor. Arrest is the preferred response only with**
9 **respect to the primary aggressor.**

10 **(6) A person who willfully violates a condition of**
11 **pretrial release provided in s. 903.047, when the original**
12 **arrest was for an act of domestic violence as defined in s.**
13 **741.28, commits a misdemeanor of the first degree, punishable**
14 **as provided in s. 775.082 or s. 775.083, and shall be held in**
15 **custody until his or her first appearance.**

16 Section 3. Subsection (7) of section 901.15, Florida
17 Statutes, 1996 Supplement, is amended, and subsection (12) is
18 added to said section, to read:

19 901.15 When arrest by officer without warrant is
20 lawful.--A law enforcement officer may arrest a person without
21 a warrant when:

22 (7) There is probable cause to believe that the person
23 has committed:

24 (a) An act of domestic violence, as defined in s.
25 741.28;

26 (b) Child abuse, as defined in s. 827.04(2) and (3);
27 or

28 (c) Any battery upon another person, as defined in s.
29 784.03.

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1 With respect to an arrest for an act of domestic violence, the
2 decision to arrest shall not require consent of the victim or
3 consideration of the relationship of the parties. It is the
4 public policy of this state to strongly discourage arrest and
5 charges of both parties for domestic violence on each other
6 and to encourage training of law enforcement and prosecutors
7 in this area.A law enforcement officer who acts in good faith
8 and exercises due care in making an arrest under this
9 subsection is immune from civil liability that otherwise might
10 result by reason of his action.

11 (12) There is probable cause to believe that the
12 person has committed an act that violates a condition of
13 pretrial release provided in s. 903.047 when the original
14 arrest was for an act of domestic violence as defined in s.
15 741.28.

16 Section 4. Subsection (1) of section 943.171, Florida
17 Statutes, is amended to read:

18 943.171 Basic skills training in handling domestic
19 violence cases.--

20 (1) The commission shall establish standards for
21 instruction of law enforcement officers in the subject of
22 domestic violence. Every basic skills course required in
23 order for law enforcement officers to obtain initial
24 certification shall, after January 1, 1986, include a minimum
25 of 6 hours of training in handling domestic violence cases.
26 Such training must include training in the recognition and
27 determination of the primary aggressor in domestic violence
28 cases.

29 Section 5. This act shall take effect October 1, 1997.
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