SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: January 23, 1998 Revised: _____ _____ _____ _____

Subject: Criminal Justice Specialized Courts

	Analyst	Staff Director	Reference	Action
1.	Gomez	Miller	CJ	Favorable/CS
2.			JU	
3.			WM	
4.				
5.				

I. Summary:

This CS is the result of the Criminal Justice Committee's interim project on specialized criminal justice courts. The report's recommendations are incorporated into the substance of this CS.

Domestic Violence Courts. Criminal domestic violence defendants are not currently required to attend a batterers' intervention program that is certified. However, respondents to a civil domestic violence injunction may only attend certified programs. It was reported during site visits that this double standard will create administrative problems. This CS harmonizes the civil and criminal provisions by requiring that criminal defendants be ordered to a *certified* program.

The statutes which define domestic violence on a family member have been read by appellate courts to require that the family member petitioning for a domestic violence injunction must have lived in the same household as the alleged perpetrator. This CS revises the definition of domestic violence so that it does not require the victim to live with the offender.

Habitual Offender Courts. Staff's review of case law revealed a puzzling conflict among the appellate courts on how repeat offender courts may be created. A recent Fourth District Court of Appeal's opinion reversed a habitual offender sentence on the grounds that the Broward County repeat offender court was not properly created through a local rule, a more cumbersome process than creation through an administrative order. This CS resolves the conflict by stating expressly in statute that chief judges may create repeat offender courts through administrative order.

This CS substantially amends the following sections of the Florida Statutes: 741.28, 741.281, 741.2902, and 775.084.

II. Present Situation:

A. Introduction.

The Senate President directed the staff of the Criminal Justice Committee to perform a review of Florida's specialized criminal justice courts during the 1997-98 legislative interim. The report entitled *An overview of Florida's Criminal Justice Specialized Courts* was issued in October 1997. The report is designed to provide the policy maker with a comprehensive overview of the present status of specialized courts. The report focuses on the Florida experience with three of these new courts: treatment-based drug courts, domestic violence courts, and repeat offender courts. The report discusses the efficacy of certain specialized courts and includes staff recommendations. These recommendations are incorporated into the substance of this CS.

B. Domestic Violence Provisions.

Where once domestic violence was treated as a private matter, today it is widely recognized to be a criminal act. The Florida Legislature has provided in statute: "It is the intent of the Legislature that domestic violence be treated as a criminal act rather than a private matter." § 741.2901(2), F.S. However, there is not a stand-alone criminal offense called domestic violence, rather most injunction violations may be prosecuted as a first degree misdemeanor. §§ 741.2901, F.S. and 741.31(4), F.S. Further, the Legislature has required state attorneys to adopt "pro-prosecution" policies for criminal acts occurring in a domestic setting. §741.2901(2), F.S.

*Domestic violence injunctions***.** Section 741.28(1), F.S., defines "domestic violence" as any of the following crimes when committed against a family or household member by a person who is or was residing in the same single dwelling unit:

- assault and aggravated assault;
- battery and aggravated battery;
- sexual assault and sexual battery;
- stalking and aggravated stalking;
- kidnaping and false imprisonment; and
- any criminal offense resulting in physical injury or death.

Section 741.28(2), F.S., defines "family or household member" as follows:

- spouses and 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 have a child in common regardless of whether they have been married or have resided together at any time.

Any person who is the victim of domestic violence or has reasonable cause to believe he or she is in imminent danger of becoming the victim of domestic violence may file a petition for an injunction for protection. § 741.30(1)(a), F.S.

Another provision of statutes allows for issuance of an injunction for the repeated violence to a victim, when no relationship exists between perpetrator and victim. § 784.046, F.S.

*Residency with the offender required***.** According to a recent Fifth District Court of Appeal's opinion, relatives by blood or marriage must currently reside together or have resided together in the past in order to obtain a domestic violence injunction. *Sharpe v. State*, 22 Fla. Law Weekly D1541 (Fla. 5th DCA 1997). This opinion relies on the definition of domestic violence, which by its terms requires residency with the offender. However, as the court's opinion acknowledges, the definition of family or household member is more broadly defined, not appearing to require residency with the offender. Moreover, a previous co-residency requirement in the definition of family or household member was deleted by the Legislature after another court opinion construed this definition to require co-residency. *Evans v. Evans*, 599 So. 2d 205 (Fla. 2d DCA 1992). Nonetheless, the recent Fifth District Court of Appeal's opinion stated that even though it might assume the Legislature intended to amend the co-residency requirement in the domestic violence definition when it did so to include the family and household member definition, it would not "amend clear and unambiguous statutory language." *Sharpe, supra.*

During staff's site visits conducted as part of the interim project, several judges pointed to this recent decision and suggested to staff that the Legislature resolve the apparent conflict by clarifying that current or prior residency with the offender is not required for those relatives related by blood or marriage. The interim report concluded that making this legislative change would clarify what is a current conflict in the statutes, and effectuate what appears to be prior legislative intent.

Removing this requirement for relatives related by blood or marriage will expand the "net" to include some individuals with tenuous connections to a victim. For example, in *Evans*, the alleged perpetrator was the adult son estranged from the petitioner, his stepmother. The two had never lived together in the same household. In *Sharpe*, the petitioner was the widow of the respondent's brother. If the co-residency requirement were removed, a domestic violence injunction would be available under these facts.

*Certification of programs***.** Domestic violence injunctions may be enforced and violations sanctioned by either indirect contempt or through a criminal prosecution for violation of a first degree misdemeanor. §§ 741.2901, F.S. and 741.31(4), F.S. Under certain circumstances, the court *must* order the respondent to a domestic violence injunction to attend a batterers' intervention program unless it makes written findings stating that such a program is inappropriate. § 741.30, F.S. The court *must* order attendance in a batterers' intervention program as a condition of probation or in a pre-trial diversion program for defendants charged with a domestic violence related offense. § 741.281, F.S. The 1997 Legislature amended these statutory provisions to require injunction respondents to attend *certified* batterers' intervention programs. § 741.30(6)(a)

& (d), F.S. The Legislature did not provide the same certification requirement for defendants sentenced to a batterers' intervention program as condition of probation in a domestic violence related offense. These defendants may attend non-certified programs.

This issue was also brought to staff's attention during one of the site visits. It was reported that the double standard will create an "administrative nightmare" in that the court and intake agency will have to keep track of at least two separate lists of providers for selection. The judges that staff interviewed believed it is more beneficial to have one standard which requires certification. Staff found in its report that certification would provide quality assurance and ensure uniformity among providers as well as uniformity of application to criminal defendants and injunction respondents.

The Legislature has stated, "there should be standardized programming available to the justice system to protect victims and their children and to hold the perpetrators of domestic violence accountable for their acts." § 471.32(1), F.S. Consequently, the Legislature created in the Department of Corrections, an Office for Certification and Monitoring of Batterers' Intervention Programs. *Id*. "The purpose of certification of programs is to uniformly and systematically standardize programs to hold those who perpetrate acts of domestic violence responsible for those acts and to ensure safety for victims of domestic violence." *Id*. The certification and monitoring is funded through user fees as provided in section 945.76, F.S.

According to the Department of Corrections, 18 of the 20 judicial circuits have at least one certified batterers' intervention program in operation. In the two circuits without a certified program, the non-certified programs are moving toward certification. The two judicial circuits without a certified program are the second and the sixteenth circuits.

C. Repeat Offender Courts.

There are several provisions in statute authorizing, and in some cases requiring, enhanced penalties for habitual or career criminals, both violent and nonviolent. The Legislature has stated, "priority should be given to the investigation, apprehension, and prosecution of career criminals in the use of law enforcement resources and to the incarceration of career criminals in the use of available prison space." § 775.0841, F.S. The Legislature has also stated that prosecutors are to make all reasonable efforts "to persuade the court to impose the most severe sanction authorized upon a person convicted after prosecution as a career criminal." § 775.0843, F.S.

The first repeat offender courts in Florida were formed in the Fourth Judicial Circuit (Duval County) and in the Sixth Judicial Circuit (Pinellas County) in 1989. Repeat offender courts in Duval and Pinellas Counties were created by administrative orders issued by the chief judges.[1] The

[1]The Chief Judge in Pinellas County Court entered an administrative order in 1995, only after several challenges. The order states that it was entered in an abundance of caution to eliminate further challenges to the court, and held that an administrative order was not necessary in light of the Supreme Court's pronouncement in *In re Certification of Judicial Manpower*, *supra*. *See* In re: Establishment of Career Criminal Section within the Criminal Law Division, Administrative Order 95-51, In the Circuit Court of the Sixth Judicial Circuit in and for Pinellas County, 11 April 1995, The Honorable Ray E. Ulmer, Jr., Chief Judge.

creation of these courts has been upheld. *See Dennis v. State*, 673 So. 2d 881 (Fla. 1st DCA 1996). In Palm Beach County, however, the creation of a repeat offender court by an administrative order issued by the Fifteenth Judicial Circuit Chief Judge was overturned by the Fourth District Court of Appeal. *Hartley v. State*, 650 So. 2d 1044 (Fla. 4th DCA 1995); *Butler v. State*, 684 So. 2d 825 (Fla. 4th DCA 1996). The Court stated, "the designation of a special court to exclusively handle habitual felony cases constitutes a subject matter related division which must be accomplished by local rule." *Id.* at 1047. As the Court pointed out, "the differences between the procedural requirements for the establishments of local rules and administrative orders are quite significant." *Id*. *citing*, Fla.R.Jud.Admin 2.050(b)(2). Administrative orders are simply entered by circuit court chief judges and do not require Supreme Court approval. On the other hand, local rules must be approved by a majority of all the judges in the circuit, the local bar must be notified and permitted to be heard, and the proposed rule must then be approved by the Supreme Court.

The Fourth District precedent remains on the books and is applicable to the repeat offender court established in Broward County in 1997. Very recently, the Fourth District so held in a case in which it reversed the defendant's sentence and remanded the case "for resentencing before a trial judge within a properly formed division of the circuit court." *Hall v. State*, Case No. 97-0561(Fla. 4th DCA Jan. 7. 1998) (This opinion is not final until the court considers a motion for rehearing.)

Consequently, there is a conflict among the district courts of appeal on whether repeat offender courts may be created through administrative order. The Second District Court of Appeal has held that only the Supreme Court could decide matters dealing with judicial assignments. *Green v. State*, 694 So. 2d 876 (Fla. 2d DCA 1997). To further confuse matters, the Supreme Court while approving the Duval County repeat offender court did so in an unpublished opinion. Thus, the Supreme Court has not taken a definitive stand on whether a repeat offender court can be created through an administrative order.

D. Creation of a division or specialized court.

The Florida Constitution provides that "[a]ll courts except the Supreme Court may sit in divisions as may be established by general law." Art. V, § 7, Fla. Const. Shortly after the adoption of this constitutional provision, the Legislature provided in statute that court divisions "may be established by local rule approved by the Supreme Court." § 43.30, F.S; *See also* Art. V. § 20(c)(10). Thus, as a general rule the creation of specialized court divisions is a matter left to the 20 judicial circuits.

An exception to the general rule came in 1990 when the Legislature *required* the creation of a family law division in Florida's courts. ch. 90-273, *Laws of Fla*. This legislation directed the Supreme Court to ensure that the family law divisions operate with as much consistency as possible throughout the state. In turn, the Supreme Court directed the judicial circuits to establish family law divisions by local rules or, alternatively, where a circuit was too small to administratively justify a separate division, the courts were to develop a means to coordinate family law matters. *In re Report of the Commission on Family Courts*, 588 So. 2d 586 (Fla.

1991). The effect of this legislation was to preempt section 43.30, F.S., allowing local autonomy in creating divisions. *In re Report Of the Commission on Family Courts*, 646 So. 2d 178,181 (1994).

Drug courts may be created by an administrative order of the chief judge in a circuit. The Florida Supreme Court has rejected a challenge to a drug court on the grounds that it was a division which should have been created through local rule. *Mann v. Chief Judge of the Thirteenth Judicial Circuit*, 22 Fla. L. Weekly S409 (Fla. July 7, 1997). The Court stated, "Despite its characterization as a division, we find that the drug court is more properly viewed as a specialized section or subdivision of the criminal division of the circuit court." *Id. at* S409. The Court rejected the argument that a specialized section of a court should be created through local rule, stating:

> To require every specialized section of the major subject-matter divisions of a court to be approved by local rule would place too great a burden upon the efficient administration of justice.

Id.

III. Effect of Proposed Changes:

This CS revises the definition of domestic violence so that it does not require the victim to live with the offender. This would clarify legislative intent and legislatively overrule an appellate court's reading of the statute requiring that the victim have lived with the offender in order to qualify for the protections of the domestic violence provisions.

This CS requires that criminal defendants attend batterers' intervention programs that *are certified*, a requirement currently in place for respondents to a civil domestic violence injunction. It provides a limited exception for a circuit which has no certified batterers' intervention programs, in which case the court must order the defendant attend a non-certified program.

This CS states expressly that circuit courts may create repeat offender courts through administrative order, at the option of the chief judge. This resolves a current conflict among the district courts on how a repeat offender court may be created.

This CS shall take effect October 1, 1998.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that non-certified batterers' intervention programs decided to undergo certification as a result of this CS, these programs would experience a fiscal impact. According to the Department of Corrections, a non-certified program would have to pay a one time fee for certification. Currently this fee is $300.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Coalition of Batterers' Intervention Programs of Florida recently required that all its members undergo the certification process and be certified by the end of 1998. According to the Coalition's President, it supports requiring certification for all programs.

VIII. Amendments:

None.

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