

STORAGE NAME: h2309.flc

DATE: April 7, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FAMILY LAW AND CHILDREN
ANALYSIS**

BILL #: HB 2309

RELATING TO: Domestic Violence

SPONSOR(S): Committee on Family Law and Children, Representative Roberts and others

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) FAMILY LAW AND CHILDREN YEAS 8 NAYS 0
 - (2)
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I. SUMMARY:

This proposed committee bill addresses an array of issues concerning domestic violence. Among its primary components, the bill amends the definitions for "domestic violence" and "family or household member" to provide consistent definitions throughout the statutes, and to clarify that current or prior co-residency between the victim and perpetrator, except in instances where the victim and perpetrator have a child in common, is required to establish an act of domestic violence. The bill provides two additional conditions for identifying when a family violence indicator must be placed on a child support enforcement case. The bill amends the definitions of "domestic violence centers" and "domestic violence advocate" in s. 90.5036, F.S., relating to domestic violence advocate-victim privilege and provides that an advocate must be registered with the Department of Children and Family Services. The bill provides factors for the court to consider in determining whether a petitioner, who is requesting an injunction for the protection against domestic violence, has reasonable cause to believe he or she is in imminent danger. The bill provides legislative intent regarding extending a temporary injunction and granting a continuance of a full hearing, as long as the victim is in immediate and present danger. The court must provide written findings if it denies an extension or continuance, explaining why the victim is no longer in immediate and present danger. Under the bill, the Batterers' Intervention Program must provide notification to the court file of a respondent's completion and discharge for the program. If a respondent requests that the injunction be dissolved, the court must deny the motion if the respondent has failed to complete a Batterers' Intervention Program, if ordered, unless there is substantial justification for doing so. If a respondent requests that the injunction be modified, and the respondent has failed to complete a Batterers' Intervention Program, the court must not grant the modification unless the respondent shows good cause for failure to complete the program or good cause for a modification of the injunction. This bill provides that a family or household member arrested or charged with intentionally causing the death of another family or household member shall qualify as a "legally authorized person" under s. 470.002, F.S. The Office of State Courts Administrator is directed to examine current court practices relative to visitation and custody orders. A report must be submitted by January 1, 2001, to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The bill provides an effective date of July 1, 2000.

This bill has a fiscal impact of at least \$5000. There may be an additional fiscal impact, which is indeterminate at this time, but should be minimal.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

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|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Domestic Violence, Defined

"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 member is required.

"Family or household member" is defined as 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. s. 741.28(2), F.S.

These terms are defined in five sections of Florida law:

- Section 25.835, F.S., Standards for Instruction of Circuit and County Court Judges in Handling Domestic Violence Cases. This section 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.
- Section 39.902, F.S., Definitions. This section requires the Department of Children and Family Services to develop, certify, and fund domestic violence centers.
- Section 414.0252, F.S. Definitions. This section provides the definitions applied to ch. 414, relating to Family Self-Sufficiency. These definitions are used in determining eligibility for the WAGES program.
- Section 741.28, F.S., Domestic Violence Definitions. This section provides the definitions applied to the domestic violence sections of ch. 741, F.S., relating to domestic relations between husband and wife. The primary utilization is a cause of action for an injunction of protection against domestic violence.

- Section 943.17, F.S., Basic Skills Training in Handling Domestic Violence Cases. This section directs the Criminal Justice Standards and Training Commission to establish the standards for instruction of law enforcement officers in the subject of domestic violence.

Each of these sections, with the exception of s. 414.0252, F.S., requires prior or present co-residency within the definition of “domestic violence” and has an inconsistent corresponding definition of “family or household member” which does not contain the requirement for co-residency between persons who have a child in common.

In addition, the courts have questioned whether the Legislature intended to allow for injunctions for protection against domestic violence between persons related by blood or marriage, who do not or have never resided together. See *Sharpe v. Sharpe*, 695 So.2d 1302 (Fla. 5th DCA 1997). In *Sharpe*, the court stated “[a]lthough the legislature thereafter amended subsection (e) [providing that a cause of action of an injunction may be sought between persons related by blood or marriage who are or were residing within a single dwelling unit; see s. 741.30(1)(e), F.S. (1990).], to eliminate the requirement that one related to the offender by blood or marriage must have resided with such offender in the same household, it failed to amend the very definition of domestic violence.”

In House Bills 997 and 1701 (1991), the Legislature did not remove the requirement that the parties must reside or have resided together in the same household in subsection (e) of 741.30(1), but instead substituted the phrase “family or household member” in place of “persons related by blood or marriage who are or were residing within a single dwelling unit.” The bills provided definitions for “family or household member” and “domestic violence,” similar to what is in statute today. The term “domestic violence” refers to family or household member who is or was residing in the same single dwelling unit. Therefore, the requirement of co-residency remained intact in the 1991 changes.

Family Violence Indicators

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 required state 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.

Advocate-Victim Privilege

In 1995, the Legislature provided for a privilege of confidentiality for communication relating to the incident of domestic violence, disclosed by a victim of domestic violence to a domestic violence advocate. Ch. 95-187, L.O.F. The privilege may be claimed by the

victim or the victim's attorney on behalf of the victim; a guardian or conservator of the victim; the personal representative of a deceased victim; or the domestic violence advocate, but only on behalf of the victim. s. 90.5036(3), F.S. A domestic violence advocate is defined, under s. 90.5036, F.S., as "an employee or volunteer who has 30 hours of training in assisting victims of domestic violence and is an employee or volunteer for a program for victims of domestic violence whose primary purpose is the rendering of advice, counseling, or assistance to victims of domestic violence."

Section 39.905, F.S. relates to the certification of domestic violence centers. Domestic violence centers, in order to receive certification under the law, must provide certain services to victims of domestic violence. s. 39.905, F.S. (1999). Centers must 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 services 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. *Id.* Certification requires that centers demonstrate the ability to sustain operations through a history of 18 consecutive months of operation as a domestic violence center prior to certification.

In addition, in order for the privilege to apply, the domestic violence advocate must be registered under s. 39.905 at the time the communication is made. According to a 1999 Senate Interim Project Report, domestic violence advocates reports that this is being interpreted as excluding those centers within the 18 month certifying process. Fla. S. Comm. on Children and Families, Interim Project Report 2000-15, *Domestic Violence Initiatives in Florida* (1999). Although no case law speaks to this issue, the 1995 legislative analysis on the bill that implemented this section states that the privilege applies only to statements made at certified domestic violence centers. Fla. S. Comm. on Judiciary, CS/SB 502 (1995) Staff Analysis (rev. Apr. 6, 1995). Therefore, the victim cannot expect confidentiality of communications held with a domestic violence advocate of a center in the 18 month certification period.

Injunctions for Protection Against 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 Batterers' Intervention Program. *Id.* If there is an immediate and present danger of domestic violence, the court may grant an ex parte temporary injunction without prior notice to the alleged perpetrator, pending a full hearing on the sworn petition. s. 741.30(5)(a), F.S. If the temporary injunction is granted ex parte, it remains in effect for up to 15 days and a full hearing must be set for a date no later than that on which the temporary injunction will expire. *Id.* The court may grant a continuance of the full hearing for good cause shown, including the need to obtain service of process. s. 741.30(5)(c), F.S. The injunction may similarly be extended as necessary during the continuance period. *Id.*

According to a 1999 Senate Interim Project Report, domestic violence advocates report that the 1997 statutory change to require that the victim be in "imminent" danger in order to obtain an injunction is interpreted differently among the circuits because the term has not

been defined, and is subjected to varying applications. Fla. S. Comm. on Children and Families, Interim Project Report 2000-15, *Domestic Violence Initiatives in Florida* (1999). Some courts feel that due to the extreme ramifications of injunctions, "imminent" must be defined as an impending threat to the victim. *Id.*

Batterers' Intervention Programs

In 1995, the Legislature established the Office for Certification and Monitoring of Batterers' Intervention Programs, within the Department of Corrections, as a means to standardize "programming available to the justice system to protect victims and their children and to hold the perpetrators of domestic violence accountable for their acts." s. 741.32(1), F.S. The primary purpose of these programs is victim safety and the safety of children. s. 741.325(1), F.S.

The court may order a respondent to attend a batterers' intervention program as a condition of an injunction for protection against domestic violence. s. 741.30(6)(d), F.S. The court must order a respondent to attend a batterers' intervention program if it finds that the respondent willfully violated the ex parte injunction; the respondent, in this state or any other state, has been convicted of, had adjudication withheld on, or pled nolo contendere to a crime involving violence or a threat of violence; or the respondent, in this state or any other state, has had at any time a prior injunction for protection entered against the respondent after a hearing with notice. *Id.* In addition, if a person is found guilty of, has had adjudication withheld on, or has pled nolo contendere to a crime of domestic violence, the court must order the defendant to attend a batterers' intervention program as a condition of probation. s. 741.281, F.S.

For those persons ordered to participate in a batterers' intervention program as a result of a criminal offense, the probation officer provides a vehicle for ensuring attendance and participation in the program. However, for those persons ordered to participate as a provision of an injunction for protection, there is no mechanism that enables statewide follow-through and a consistent application of penalty for non-participation and violation of the injunction.

Recording of Domestic Violence Proceedings

Currently, domestic violence proceedings are not required to be recorded. The Office of State Courts Administrator reports that 34 of 65 counties who reported, routinely record domestic violence proceedings as a matter of local procedure. Two other counties record only the criminal order to show cause hearings, and one county records only indirect criminal contempt hearings. In *Lawrence v. Walker*, 24 Fla. L. Weekly D2571 (Fla. 4th D.C.A. 1999), in a concurring opinion, Chief Judge Warner noted that the court was compelled to affirm an appeal from a final judgment for protection against domestic violence because there was no transcript of the evidentiary hearing, so the appellate court could not evaluate the merits of the contentions raised by the appellant. The appellant assumed that the evidentiary hearing was a criminal proceeding, and would be recorded. *Id.* Under the Family Law Rules of Procedure, there is no requirement for civil proceedings to be recorded. *Id.* If the parties so desire, they must arrange in advance for the recording of the hearing. *Id.* Chief Judge Warner stated "[i]t is indeed unfortunate that parties frequently are unaware of this requirement until after the fact. With so much litigation being conducted pro se, it seems to me that in the notice for final hearing on the injunction the parties should be alerted that if they want the hearing reported it is up to them to arrange for the services of a court reporter to transcribe the proceedings. Without a record, a

party's ability to exercise their appellate rights is, in most cases, lost before the final judgment is ever entered." *Id.*

"Legally Authorized Person" under Ch. 470

Chapter 470, F.S., relates to funeral directing, embalming, and direct disposition. Under this chapter, a "legally authorized person" is required to provide written or oral permission to a direct disposer to take possession of a dead body or to an embalmer for embalming services. See s. 470.019(2)(j) and s. 470.036(1)(t), F.S. A "legally authorized person" is defined as the decedent, when written authorizations and directions have been provided prior to death, the surviving spouse, son or daughter over the age of 18, parent, brother or sister over the age of 18, grandchild over the age of 18, or grandparent, in that priority. s. 470.002(18), F.S. The list goes on to provide for others who would be considered a "legally authorized person" when there is no family.

In a situation where a family or household member has intentionally caused the death of another family or household member, by an act of domestic violence, there have been some cases where the accused family or household member would be considered the "legally authorized person" under ch. 470. There have been situations where the accused, as a "legally authorized person" has refused to provide authorization for the release of the body of the victim.

Senate Interim Project on Domestic Violence

In 1999, the Senate Committee on Children and Families issued a report on domestic violence issues in Florida. See Fla. S. Comm. on Children and Families, Interim Project Report 2000-15, *Domestic Violence Initiatives in Florida* (1999). Staff of the Committee met with local shelter directors around the state, and worked in cooperation and consultation with the Office of State Courts Administrator, the Florida Coalition of Against Domestic Violence, the Florida Task Force on Domestic Violence Fatality Prevention, the Attorney General's office, the Department of Children and Family Services, Florida Department of Law Enforcement, and WAGES staff. A bill was drafted addressing the concerns raised by the report. The Senate Committee on Children and Families offered a committee bill (SB 708) at its February 8, 2000, Committee Meeting. The bill received unanimous approval by the Committee and has been placed on the calendar in the Senate. The bill before the House Committee on Family Law and Children is similar to the Senate bill, and addresses the same issues.

C. EFFECT OF PROPOSED CHANGES:

This bill amends the definitions for "domestic violence" and "family or household member" in four sections of the Florida Statutes to provide conformity among the definitions and to clarify that present or prior co-residency between the victim and a family or household member is required in establishing an act of domestic violence, with the exception of when the victim and perpetrator have a child in common. These amendments correct a current inconsistency between these definitions. The clarifications 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 have ever lived together.

The bill 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 under the bill, they would not be required to take an additional step of providing a sworn statement stating there is an injunction. It also provides greater assurance that Florida is in full compliance with federal regulations relative to this issue.

The definitions of “domestic violence centers” and “domestic violence advocates” in s. 90.5036, F.S., are amended to clarify that the privilege of confidential communication applies to conversations between victims and employees and volunteers of all domestic violence centers, including those currently in the certification process. Domestic violence centers are more specifically defined as agencies that offer assistance to victims of domestic violence as their primary mission and provide all the services required for domestic violence centers. This will provide employees and volunteers of those domestic violence centers in their required history building period, in addition to the certified centers as currently interpreted, with the privilege of maintaining the communications with victims of domestic violence as confidential. In addition, this section provides that the advocate must be registered with the Department of Children and Family Services.

The bill clarifies existing law in requiring 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.

The bill sets forth as the intent of the Legislature that the process of granting ex parte temporary injunctions protect victims of domestic violence, and that protection should be for as long as the victim is in immediate and present danger. The court may grant an extension of a temporary injunction and a continuance of the full hearing, for good cause shown by any party, or upon the court’s own motion. The bill requires that if an extension of a temporary injunction and a continuance of a full hearing is denied, the court must provide written findings as to why the victim is no longer in immediate and present danger.

The bill requests that the Supreme Court examine its current practice and rules of court with respect to ex parte temporary injunctions for protection against domestic violence, and the conditions under which continued protection is necessary. The Court is asked to consider revising and adopting rules to effectuate the legislative intent of this act.

The bill requires the Batterers’ Intervention Program to provide notification to the court’s case file of the respondent’s enrollment and discharge. The notification of discharge is to specify the category of discharge, and, if for other than completion of the program, give the reason for discharge. The categories of discharge include completion of the program, rejection of services, or termination from the program. Respondents who have been ordered to participate in the Batterers’ Intervention Program as a condition of their injunction and who request a dissolution of the injunction are required to have completed the Batterers’ Intervention program, unless there is substantial justification for failure to complete the program. The court is directed to deny a respondent’s request to dissolve the

injunction unless substantial justification exists for failure to complete the program or there is a substantial need for an immediate remedy. The court is also required to deny a respondent's request to modify an injunction, when respondent has failed to complete the program, unless the respondent can show good cause as to the failure to complete or good cause for the modification.

The bill 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 court resources. If the means are not available, notice must be given to the parties prior to the full hearing, that if they desire a record of the hearing, they must provide for the recording themselves.

This bill would bar a person from qualifying as a "legally authorized person" under ch. 470, F.S., if the person was arrested or charged with intentionally causing the death of a family or household member.

The Office of State Courts Administrator is directed to examine current court practices relative to visitation and custody issues. The specific issues to be examined include the consideration given to visitation and custody during hearings considering an injunction for protection against domestic violence; the determination of visitation and custody, as well as specific terms utilized in granting visitation and custody when injunctions are ordered; and the disposition of injunctions for protection arising out of the dissolution of marriage proceedings. Recommendations are to be developed for ensuring the most appropriate consideration of visitation and custody issues during the injunction process and of injunction for protection issues during the dissolution of marriage proceedings. The Office of State Courts Administrator is to collaborate with identified state agencies and organizations, as well as other key stakeholders they identify, in the examination and recommendation development process. A report is required by January 1, 2001, to be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends subsection (2) of s. 25.385, F.S., relating to the standards for instruction of circuit and county court judges in handling domestic violence cases. This section amends the definitions of "domestic violence" and "family or household member" to provide conformity throughout the statutes and 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.

Section 2. Amends subsections (1) and (3) of s. 39.902, F.S., relating to the definitions provided for in Part XI of Chapter 39, entitled "Domestic Violence." This section amends the definitions of "domestic violence" and "family or household member" to provide conformity throughout the statutes and 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.

Section 3. Amends subsection (3) of s. 61.1825, F.S., relating to the State Case Registry. This section provides 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 information may result in harm to the individual or the child. The conditions include 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.

Section 4. Amends paragraphs (a) and (b) of subsection (1) and subsection (2) of s. 90.5036, F.S., relating to domestic violence advocate-victim privilege. This section amends the definition of “domestic violence center” to include those agencies that provides services to victims of domestic violence as their primary mission, and provides all services mandated in s. 39.905(1)(c), F.S. This section also provides that in order to claim the privilege, the advocate must be registered with the Department of Children and Family Services.

Section 5. Amends subsection (18) of s. 470.002, F.S., relating to funeral directing. This section provides who would be considered the “legally authorized person,” within chapter 470, unless barred under s. 741.2901, F.S.

Section 6. Amends subsections (1) and (2) of s. 741.28, F.S., relating to domestic violence definitions. This section amends the definitions of “domestic violence” and “family or household member” to provide conformity throughout the statutes and 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.

Section 7. Amends subsection (3) of s. 741.2901, F.S., relating to the prosecution of domestic violence cases. This section provides that if a family or household member is arrested or charged with intentionally causing the death of another family or household member, that person shall not qualify as a “legally authorized person” under s. 470.002, F.S., relating to funeral directing.

Section 8. Amends subsections (1), (3), (5), and (6), of s. 741.30, F.S., relating to domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; and enforcement. This section provides factors for the court to consider in determining whether the petitioner has reasonable cause to believe that he or she is in imminent danger of becoming a victim of domestic violence. This section provides legislative intent that a temporary injunction may be extended and a continuance of the full hearing granted for reasons including lack of service of process, if the victim remains in immediate and present danger. The court is required to provide written findings, explaining why the victim is no longer in immediate and present danger, if the extension and continuance is denied. This section provides that the Batterers’ Intervention Program provide notification of respondent’s enrollment and discharge from a program, to be placed in the court file. A motion by respondent to dissolve an injunction must be denied if the respondent has not completed the Batterers’ Intervention Program, if ordered as part of the injunction, unless the court finds that there is substantial justification for the respondent’s failure to complete the program. If the respondent requests a modification of an injunction, and has failed to complete the Batterers’ Intervention Program, a showing of good cause for the failure to complete or good cause for the modification is necessary. This section also provides that the full hearing on the injunction must 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.

Section 9. Amends subsection (2) of s. 943.171, F.S., relating to basic skills training in handling domestic violence cases. This section amends the definitions of “domestic

violence” and “family or household member” to provide conformity throughout the statutes and 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.

Section 10. Directs the Office of State Courts Administrator to examine current court practices relative to visitation and custody issues. The specific issues to be examined include the consideration given to visitation and custody during injunction for protection against domestic violence hearings; the determination of visitation and custody, and specific terms utilized in granting visitation and custody when injunctions are ordered; and the disposition of injunctions for protection arising out of dissolution of marriage proceedings. Recommendations are to be developed for ensuring the most appropriate consideration of visitation and custody issues during the injunction process and of injunction for protection issues during the dissolution of marriage proceedings. The Office of State Courts Administrators is to collaborate with identified state agencies and organizations, and any other key stakeholders, in the examination and recommendation development process. A report is required by January 1, 2001, to be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 11. Provides that the Legislature requests the Supreme Court to examine its current practice and rules of court with respect to ex parte temporary injunctions for protection against domestic violence and conditions under which continued protection is necessary and consider revising and adoption rules to effectuate the legislative expression of this act.

Section 12. Provides an effective date of July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See “Fiscal Comments” section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See “Fiscal Comments” section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Department of Corrections, which houses the Office of Certification and Monitoring of Batterers' Intervention Programs, reports that there would be an unknown cost associated with the identification and reporting of enrolled and non-enrolled respondents, but that this cost would be minimal.

The Office of State Courts Administrator reports that the requirement to study current practices of courts with respect to visitation and custody in domestic violence cases will require a case file audit of a sample of domestic violence cases. A fiscal impact of \$5,000 is projected. Funds are for OPS staff to perform these audits and generate the necessary reports, as well as for travel expenses related to the audit. OSCA reports that staffing for collaboration with other organizations, preparation of the report, and development of recommendations can be accomplished using existing resources.

If the definition of domestic violence has been interpreted in the most restrictive manner by the circuits, i.e., to exclude those 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, thus resulting in an increase of filing fees collected, and judicial resources expended.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take an action requiring expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state sales tax shared with municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 29, 2000, the Committee on Family Law and Children adopted three amendments which may be summarized as follows:

Amendment #1 Clarified legislative intent that lack of service of process during the ex parte injunction process not leave the victim unprotected.

Amendment #2 Was a technical, clarifying amendment.

Amendment #3 Was a technical, clarifying amendment.

VII. SIGNATURES:

COMMITTEE ON FAMILY LAW AND CHILDREN:

Prepared by:

Staff Director:

Carol Preston

Carol Preston