

STORAGE NAME: h1673a.jo.doc
DATE: April 11, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIAL OVERSIGHT
ANALYSIS**

BILL #: HB 1673
RELATING TO: Domestic Violence
SPONSOR(S): Representative Kyle
TIED BILL(S): None

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

- (1) JUDICIAL OVERSIGHT YEAS 9 NAYS 2
 - (2) CRIME PREVENTION, CORRECTIONS & SAFETY
 - (3) SMARTER GOVERNMENT
 - (4)
 - (5)
-

I. SUMMARY:

HB 1673 creates the "Family Protection Act." The bill provides for a minimum term of imprisonment of five days, in any addition to other statutory penalties, for anyone who is found guilty of, has had adjudication withheld on, or has pled nolo contendere to a crime of domestic violence which involved physical injury to another.

The bill provides that a person who is convicted of battery and has a prior conviction for battery, aggravated battery, or felony battery and commits a subsequent battery may be charged with felony battery. Under current law, a defendant must have two prior battery convictions before he or she can be charged with a felony. The bill defines "conviction" as "a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered."

HB 1673 adds an additional surcharge of \$200 to any sanction for a violation of statutes prohibiting assault, battery, felony battery, aggravated battery, or any offense of domestic violence. The sanction is made a condition of any probation, community control, or other court-ordered supervision. The bill requires the clerk of the court to deposit \$85 of the surcharge into the Domestic Violence Trust Fund. The remainder is used by the county sheriff to defray the costs of incarceration and to train law enforcement to prevent domestic violence. The bill permits the Executive Office of the Governor to spend up to \$500,000 each year from the proceeds of the surcharge to administer a statewide public awareness campaign regarding domestic violence.

The bill requires persons convicted of domestic violence offenses to attend a batterer's intervention program as a condition of probation or community control and requires the defendant to pay the costs of the program.

The bill takes effect July 1, 2001.

The Committee on Judicial Oversight adopted a strike-everything amendment. See Section VI Amendments or Committee Substitute Changes

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 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

Section 741.28(1), F.S., defines "domestic violence" as:

any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another who is or was residing in the same single dwelling unit.

Currently, there are no specific minimum mandatory terms of imprisonment that apply to all domestic violence crimes as defined in s. 741.28, F.S.

Battery and Felony Battery

A person commits battery if he or she intentionally touches or strikes another person against the will of the other or if a person intentionally causes bodily harm to another person. See s. 784.03(1), F.S. Battery is a first degree misdemeanor, punishable by up to one year in jail. See s. 775.082, F.S. If a defendant has two prior convictions for battery and commits a third or subsequent battery, the defendant is guilty of a third degree felony, punishable by up to five years in prison. See ss. 784.03(2), 775.082, F.S.

In State v. Warren, 755 So. 2d 145 (Fla. 1st DCA 2000), the court held that a prior conviction for aggravated battery did not count as prior battery conviction for purposes of s. 784.03, F.S. The court explained that the plain language of section 784.03 required that only convictions for misdemeanor battery be counted as prior convictions. Warren, 755 So. 2d at 147. The court certified the question to the Florida Supreme Court. Warren, 755 So. 2d at 147. The Fifth District reached the same conclusion and certified the same question in State v. Haney, 766 So. 2d 346 (Fla. 5th DCA 2000). The court has accepted review of Warren, dispensed with oral argument, and briefing was completed in June, 2000. The court has not issued its opinion.

Section 784.03(2), F.S., defines "conviction" as "a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld." In Raulerson v. State, 763 So. 2d 285 (Fla. 2000), the court resolved controversy over the meaning of the word "conviction" in the felony driving

while license suspended or revoked statute and held that a withhold of adjudication was a conviction for purposes of the statute.

Section 741.01, F.S., directs the Executive Office of the Governor to establish a Domestic Violence Trust Fund. The trust fund is funded by a \$30 add-on to marriage license fees and is used to fund domestic violence centers. See s. 741.01(2), F.S.

Section 741.32, F.S., established an Office for Certification and Monitoring of Batterers' Intervention Programs within the Department of Corrections. The office certifies and monitors programs that provide services to those adjudged to have committed acts of domestic violence. See s. 741.32(2), F.S.

C. EFFECT OF PROPOSED CHANGES:

HB 1673 is entitled the "Family Protection Act."

The bill provides for a minimum term of imprisonment of five days in the county jail if a person is found guilty of, has had adjudication withheld on, or has pled nolo contendere to a crime of domestic violence which involves physical injury to another. The bill does not prohibit the imposition of additional sanctions, such as longer terms of imprisonment or placing the defendant on probation or community control. The county jail term is not required if the defendant is sentenced to a nonsuspended term in the state prison.

The bill provides that a person who commits battery and has one prior conviction for battery, aggravated battery, or felony battery can be convicted of felony battery. Under current law, a defendant must have two prior battery convictions. By adding aggravated battery and felony battery to the list of crimes that can serve as a prior conviction, this bill would have the effect of overruling Warren and Haney.

The bill amends the definition of "conviction" for purposes of the battery statute to clarify that a conviction occurs when a plea of nolo contendere is entered. This will prevent litigation, similar to what occurred in Raulerson, over the meaning of the word "conviction."

The bill imposes a \$200 surcharge in addition to any sanction imposed for violations of ss. 784.011 (assault), 784.03 (battery), s. 784.041 (felony battery), and 784.045 (aggravated battery), F.S., or for any offense involving domestic violence. Payment of the surcharge shall be a condition of probation, community control, or any other court-ordered supervision. The bill requires that the clerk of the court deposit \$85 from the surcharge into the Domestic Violence Trust Fund established pursuant to s. 741.01, F.S. The remaining portion of the surcharge shall be used to defray the costs of incarcerating persons sentenced to minimum mandatory sentences for domestic violence and to provide additional training for law enforcement to combat domestic violence.

HB 1673 requires that the court order a person convicted of a domestic violence offense to attend a batterers' intervention program certified pursuant to s. 741.32, F.S. Attendance at such a program shall be a condition of probation or community control and the defendant must pay the costs of such a program.

The bill permits the Executive Office of the Governor to spend up to \$500,000 each year from the proceeds of the surcharge deposited in the Domestic Violence Trust Fund to conduct a public-awareness campaign regarding domestic violence.

The bill takes effect on July 1, 2001.

D. SECTION-BY-SECTION ANALYSIS:

See Section II.C. Effect of Proposed Changes.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments

2. Expenditures:

See Fiscal Comments

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments

2. Expenditures:

See Fiscal Comments

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will impose additional costs on persons convicted of battery, aggravated battery, and crimes of domestic violence.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference has not considered the fiscal impact of the bill.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The portions of this bill relating to criminal laws are exempt from the mandates provision pursuant to Article VII, Section 18(d), Fla. Const.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The 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:

The bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

In State v. Thompson, 750 So. 2d 643 (Fla. 1999), and Heggs v. State, 759 So. 2d 620 (Fla. 2000), the court struck down criminal statutes that contained provisions relating to civil remedies for domestic violence as violations of the Florida Constitution's single subject requirement. Article III, Section 6, of the Florida Constitution requires that laws embrace only one subject and that subject shall be briefly expressed in the title. It can be argued that this bill, which enhances criminal penalties for domestic violence and offenses related to domestic violence (such as battery) and which permits the Governor to spend money on a public-awareness campaign regarding domestic violence, violates that provision.

The court requires that provisions of a bill have "natural and logical connection" in order to survive single subject scrutiny. See Chenoweth v. Kemp, 396 So. 2d 1122 (Fla. 1981). It can be argued that all provisions of this bill have the natural and logical connection. Section 1 of the bill provides a name, the "Family Protection Act". Section 2 provides a minimum mandatory sentence for persons who commit domestic violence offenses. Section 3 clarifies the battery statute. The crime of battery is related to domestic violence since it is specifically included in the statutory definition of domestic violence. Section 4 for the bill provides for increased court costs for persons convicted of crimes that are included in the definition of domestic violence. Section 5 requires persons convicted of domestic violence crimes to attend a batterers' intervention program. Section 6 of the bill permits the Governor to expend funds to conduct a public-awareness campaign regarding domestic violence. All of these provisions, it can be argued, relate to the prevention of domestic violence. Therefore, it can be argued all sections of this bill have a natural and logical connection.

In contrast, the court struck down laws that contained provisions relating to private investigator licensing and habitual felony offender sentencing in State v. Johnson, 616 So. 2d 1 (Fla. 1993), civil remedies for domestic violence coupled with comprehensive revisions to the sentencing guidelines or violent career criminal statutes in Heggs and Thompson. It can be argued that this bill is far narrower in scope than the statutes at issue in those cases and, therefore, embraces only one subject.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 11, 2001, the Committee on Judicial Oversight adopted a strike-everything amendment. The amendment requires that a defendant be adjudicated guilty of domestic violence crimes before the trial court is required to impose the 5 day mandatory minimum sentence. The amendment increases the surcharge from \$200 to \$201 and permits the clerk of the court to keep the addition to the surcharge. The amendment gives the surcharge to the governing board of the county, rather than the county sheriff for use in paying costs of incarceration. The bill gives the trial court the option of not ordering certain defendants to attend the batterer's intervention program if the trial court finds attendance in the program would not be appropriate.

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VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

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