

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/CS/SB 316

SPONSOR: Appropriations Subcommittee on Health and Human Services, Finance and Taxation Committee, Children and Families Committee and Senator Saunders

SUBJECT: Domestic Violence

DATE: March 12, 2002

REVISED: \_\_\_\_\_

|    | ANALYST  | STAFF DIRECTOR | REFERENCE | ACTION       |
|----|----------|----------------|-----------|--------------|
| 1. | Dowds    | Whiddon        | CF        | Favorable/CS |
| 2. | Matthews | Johnson        | JU        | Favorable    |
| 3. | Fournier | Johansen       | FT        | Favorable/CS |
| 4. | Peters   | Belcher        | AHS       | Favorable/CS |
| 5. |          |                | AP        |              |
| 6. |          |                |           |              |

## I. Summary:

CS/CS/CS/SB 316 revises a number of provisions relating to domestic violence, as follows:

- Clarifies the mandatory co-residency requirement in the definitions of “domestic violence” and “family or household member” except under specified circumstances;
- Amends statutory cross-references to reflect the entire definitions section of s. 741.28, F.S., instead of specific terms and subsections as related to domestic violence;
- Increases that portion of the required filing charges for petitions for dissolution of marriage which fund in part the Domestic Violence Trust Fund;
- Clarifies the circumstances under which injunctive relief against domestic violence may be sought and provides a list of factors to be considered by the court for injunctive relief;
- Revises the venue requirements for domestic violence injunctions to allow the additional option of filing the petitions in the circuit where the petitioner currently or temporarily resides without a minimum residency period;
- Prohibits charging a fee for filing a petition for injunction for protection against domestic violence, and provides for reimbursement of the clerks of court and law enforcement agencies with funds appropriated by the Legislature;
- Requires recording of all proceedings on protective injunctions against domestic violence;
- Requires the court to allow the presence of advocates for the petitioner or respondent in the proceeding or hearing for protective injunctions against domestic violence, if requested;
- Expands the list of underlying actions that constitute violations of an injunction for protection under s. 741.31, F.S.;
- Clarifies the law regarding the court’s role in ordering a person charged with domestic violence to a pre-trial diversion program;

- Sets forth a new formula for distributing the funds deposited in the Additional Court Cost Clearing Trust Fund that provides a designated percentage to the Department of Children and Families for the domestic violence program;
- Provides the Department of Children and Families with clear authority to operate a domestic violence program;
- Repeals s. 741.466, F.S., and the subsections of chapters 2001-184 and 2001-232, L.O.F., which prescribe the initial transfer of the domestic violence programs and funding from the Department of Community Affairs to the Department of Children and Families;
- Establishes in s. 784.046, F.S., which provides for injunctions for protection against repeat violence, a separate cause of action for injunctions for protection against dating violence; and
- Conforms statutory cross-references to the revised injunction for protection against repeat violence and dating violence in s. 784.046, F.S.

This bill substantially amends the following sections of the Florida Statutes: 25.385, 39.902, 39.903, 390.01115, 470.002, 626.9541, 641.3903, 741.28, 741.281, 741.30, 741.31, 784.046, 784.047, 784.048, 938.01 and 943.171.

The bill repeals s. 741.466, Florida Statutes.

## II. Present Situation:

### **Act of Domestic Violence: Definitions**

Domestic violence encompasses a variety of criminal acts committed against a family or household member. Acts of domestic violence include assault, aggravated assault, battery, 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. *See* s. 741.28(1), F.S. Injunctive relief and services and sanctions thereunder are contingent upon the applicable definition of “domestic violence” and “family or household member.” Prior or present co-residency between the offender and the family or household member is required under the definition of “domestic violence.” However, the residency requirement does not appear in the definition for “family or household member.”<sup>1</sup> Family or household member includes 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, regardless past or present marital status or residency.<sup>2</sup>

The difference in co-residency requirements of these two terms poses potentially inconsistent directives and results for two distinct groups of family and householder members, i.e., those members who have a child in common and those members related by blood or marriage. There is no data regarding how these definitions have been applied by the courts statewide. Depending

<sup>1</sup> When the definitions for “family or household member” and “domestic violence” were redefined, the residency requirement was only removed from the term family or household member.” *See* ch. 94-135, L.O.F.

<sup>2</sup> The terms “domestic violence” and “family or household member” are also defined in four other statutory sections. With the exception of s. 414.0252(4), F.S. (relating to Family Self-Sufficiency), prior or present co-residency is required in s. 25.385(2)(a), F.S. (Standards for instruction of circuit and county court judges in handling domestic violence cases), s. 39.902(1), F.S. (Definitions in Part XI on Domestic Violence in Chapter 39 Relating to Children), and s. 943.171(2)(a), F.S., (Basic skills training in handling domestic violence cases by law enforcement).

on whether the residency requirement is imposed, either group may or may not be able to seek injunctive relief from domestic violence. *See Sharpe v. Sharpe*, 695 So.2d 1302 (Fla. 5<sup>th</sup> DCA 1997)(injunctive relief for domestic violence under s. 741.28, F.S., is not available to sister-in-law against brother-in-law because although relatives by marriage, they had not nor were residing together).

### **Dating Violence**

To date, twenty-nine states, plus the District of Columbia, Puerto Rico and the Virgin Islands, have included dating violence victims in some or all of their domestic violence laws, most of which apply some form of a dating relationship to their protective order. In Florida, individuals in dating relationships currently can be granted a protective injunction as a victim of repeat violence, however, the statutory threshold for seeking a repeat violence injunction, i.e. two incidents of violence one of which in the last 6 months, is higher than that of the domestic violence injunction which requires an act of violence or reasonable cause to believe there is imminent danger of violence. *See* s. 784.046, F.S.

### **Domestic Violence Centers: Funding**

Domestic violence centers have been established by the Legislature to provide services to victims of domestic violence. There are 38 certified domestic violence centers in Florida. Certified by the Department of Children and Families, domestic violence centers are required to offer a wide range of services to and on behalf of victims and their minor children and other dependents. Services include but are not limited to information and referral services, counseling and case management services, temporary emergency shelter 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. *See* s. 39.905(1), F.S. During the fiscal year 2000-2001, 14,158 victims of domestic violence and their children were provided with emergency shelter, and 23,834 victims (including both residents and non-residents of the emergency shelters) were provided with one-to-one case management by domestic violence centers. However, a recent needs assessment conducted of domestic violence services in Florida revealed that there were a number of unmet needs. The highest-ranked and most important unmet needs were identified as permanent and transitional housing, mental health and transportation.

Domestic violence centers are primarily funded by the Domestic Violence Trust Fund. *See* s. 741.01(2), F.S. Funds deposited into the Domestic Violence Trust Fund are generated by a \$30 marriage license fee, an \$18 charge on each petition for a dissolution of marriage, and fines assessed for violations of protective injunctions against domestic violence.<sup>3</sup> Overall funding in local, state and federal dollars as well as private donations for the Fund has decreased. Over a 5-year period, the funding for the Domestic Violence Trust Fund has decreased steadily from a total of \$6,239,959 in fiscal year 1996-1997 to \$5,746,772 in fiscal year 1999-2000.<sup>4</sup> In 2001, the Legislature authorized the imposition of a new \$201 surcharge for various violent offenses of which \$85 is to be deposited into the Domestic Violence Trust Fund for the domestic violence centers. *See* ch. 2001-50, L.O.F.; s. 938.08, F.S. The amount of surcharges collected to date has been negligible. Moreover, up to \$500,000 of that surcharge revenue deposited into the Domestic

<sup>3</sup> s.741.02(2), F.S.; s.28.101(1)(c), F.S.; and s.741.30(8)(a), F.S., respectively. According to the Department of Children and Families, revenue from marriage license fees and dissolution of marriage fees have decreased approximately \$500,000 over the past two years. In 1999, approximately \$2,915,000 were collected from dissolution of marriage fees.

<sup>4</sup> For the fiscal year 2000-2001, the total available revenue from the fund increased to \$6,322,396.

Violence Fund can now be allocated first to the Governor's Office for the administration of a statewide public domestic violence awareness campaign before the surcharge remainder is allocated to the domestic violence centers.

### **Fees Required for Dissolution of Marriage Petitions**

As noted, a portion of the filing fees for dissolution of marriage are used to fund the Domestic Violence Trust Fund. Filing fees and other service charges for petitions for dissolution of marriage are currently governed by sections 28.101 and 28.241, F.S.:

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|---|---|---|
| <b>s. 28.241, F.S.</b><br>(Maximum of \$200 (or \$210 if there is established or maintained a public guardian in statewide public guardianship office under Part IX of ch. 744, F.S.)<br><br>Petitions for trial or appellate proceedings, as applicable to petitions for dissolutions of marriage) | \$40.00   | Clerk of the court  |
|   | \$8.00  | For deposit (\$7) in the General Revenue Fund   |
|   | \$2.50  | For deposit in Court Education Trust Fund (s. 25.384, F.S.)   |
|   | \$____<br>optional<br>local<br>government<br>fees             | For maintaining facilities including a law library, for use by courts; maintaining equipment or establishing to maintaining legal aid program |
|   | \$15.00<br>(optional<br>maximum<br>local<br>government<br>fee | For public guardian out of statewide public guardianship office   |
| <b>s. 28.101, F.S.</b><br><br>Petitions for Dissolution of Marriage   | \$5.00  | Child Welfare Training Trust Fund (s. 402.40, F.S.)   |
|   | \$12.50   | Displaced Homemaker Trust Fund (s. 446.50, F.S.) <sup>5</sup>   |
|   | \$18.00   | Domestic Violence Trust Fund (s.741.01(2), F.S.)  |
|   | \$25.00   | Family Courts Trust Fund (s.25.388, F.S.)   |
| <b>s.28.101, F.S.</b><br>Recording and Reporting of Final Judgments of Dissolution of Marriage  | \$7.00  | Department of Health (s. 382.023, F.S.)   |

Not all counties have exercised their authority to impose costs up to the statutory cap in s. 28.241, F.S. The fees associated with filing a petition for dissolution of marriage vary from county to county. At the lower end, Calhoun and Leon counties collect \$144 and \$158, respectively. At the higher end, Hillsborough and Miami-Dade counties collect \$272.50 and \$278.00 in fees, respectively.

<sup>5</sup> The Displaced Homemaker Trust Fund is also funded by a portion of the marriage license fees (@\$7.50 each). For FYI 2000-2001, \$2,158,714.05 in fees were collected for deposit from fees (i.e., \$1,21,020.55 in divorce fees @ \$12.50 each and \$1,037,693 in marriage license fees @\$7.50each). The Displaced Homemaker Trust Fund was established for the purpose of aiding "displaced homemakers" with employment, financial and educational counseling and training services. A displaced homemaker is defined as one who is 35 years old or older, has worked unpaid in the home, inadequately employed, has difficulty in finding work, and is no longer able to depend on the income of a family member. See s.446.50, F.S. It is unknown to what extent if any, clients of displaced homemakers trust funded-services overlap with clients of domestic violence centers.

**Transfer of Domestic Violence Programs from Department of Community Affairs to Department of Children and Families**

Part XIII of ch. 39, F.S., sets forth the duties of the Department of Children and Families (DCF) with respect to domestic violence. The duties of the DCF articulated in this part include certifying and funding domestic violence centers, managing the domestic violence center capital improvement grant program, serving as a clearinghouse for information relating to domestic violence, preparing an annual report on the status of domestic violence in this state, and conducting or assisting other agencies in conducting research on domestic violence.

Two other domestic violence related initiatives had concurrently been operated by the Department of Community Affairs (DCA) through its Prevention of Domestic and Sexual Violence Program: the Governor's Task Force on Domestic and Sexual Violence and the Violence Against Women Program. Effective July 1, 2000, these initiatives were transferred by type two transfer from DCA to DCF. Authorization was also provided to transfer funding from the Additional Court Cost Clearing Trust Fund that had been used by DCA for these initiatives. The substantive law changes necessary to effect these transfers were placed in the appropriations implementing bill (ch. 2000-171, L.O.F.) and applied only to FY 2000-2001.

The Additional Court Cost Clearing Trust Fund (s. 938.01, F.S.), as it appeared in Florida Statutes in 1999, provided for the distribution of the following funds: \$3.00 assessment against each person convicted of a state penal or criminal statute or a municipal or county ordinance (excluding parking violations), or for whom adjudication is withheld pursuant to s. 318.14(9) or (10), F.S., (i.e., certain exceptions to noncriminal traffic violations) and funds collected pursuant to s. 318.21, F.S., which is five and one-tenth percent of all civil penalties collected by the county court (with the exception of an initial \$2 per penalty) to be used for criminal justice purposes. The funds were distributed to the Department of Law Enforcement (FDLE) and DCA as follows: \$2.75 of each \$3 assessment and 92 percent of the funds collected under s. 318.21, F.S., were disbursed to FDLE for the Criminal Justice Standards and Training Trust Fund; and \$.25 of the \$3 assessment and 8 percent of the funds collected under s. 318.21, F.S., were disbursed to DCA. The funds distributed to DCA were used to administer its criminal justice program.

During the 2001 legislative session, four different bills were adopted which continued the amendments to s. 938.01, F.S., and the transfer language for the Prevention of Domestic and Sexual Violence Program (chapters 2001-122, 2001-184, 2001-232, and 2001-254, L.O.F.). The amount of the transfer for FY 2001-2002 was to be based on the need of the program and historic use of the funds and to be determined by the Governor's Office of Planning and Budgeting, in consultation with FDLE, DCA and DCF. Chapters 2001-232 and 2001-184, L.O.F., further provided that in subsequent years, the transfer of funds is to be based on the amount appropriated in the General Appropriation Act. The Prevention of Domestic Violence and Sexual Violence Program and funding transfer provisions of ch. 2001-232, L.O.F., were placed in statute as s. 741.466, F.S.

For FY 1999-2000, the last year that the Prevention of Domestic and Sexual Violence Program was housed in DCA, the department reports that \$194,456 of the funds from the Additional

Court Cost Clearing Trust Fund were expended on the domestic violence programs. FDLE reports that \$217,730 were committed to DCF for the domestic violence programs for both FY 2000-2001 and FY 2001-2002. DCF reports that these funds have been used to provide for the administration of the domestic violence initiatives that were transferred from DCA, including, but not limited to, supporting the Governor's Task Force on Domestic Violence and required activities (such as training and technical assistance to the Domestic Violence Fatality Review Teams) and managing the federal Violence Against Women Act grant funds.

### **Protective Injunctions**

A victim of domestic violence or a person who has reasonable cause to believe that he or she is in imminent danger of becoming a victim of domestic violence may seek protective injunctive relief through an injunction for protection against domestic violence. *See* s. 741.30, F.S. While either criteria may serve as the basis for filing a petition, some courts have been found to focus on only one of the criteria to the exclusion of the other, thus limiting conditions under which a petition will be granted. The requirement that the petitioner be in "imminent danger" of becoming a victim of domestic violence is considered by some to be problematic. The criteria has been interpreted and applied differently across judicial circuits which may have significant ramifications for the alleged perpetrator and victim.

Injunctions for protection can also be granted in cases of repeat violence, where a domestic violence relationship does not exist. *See* s. 784.046, F.S. Protective injunctions for victims of repeat violence can be sought when there have been two incidents of violence or stalking committed by the respondent, one of which must have been within the last 6 months. This form of injunctive relief is available to persons regardless of the relationship of the perpetrator to the victim. The threshold at which a repeat violence injunction may be granted, i.e. two incidents of violence one of which in the last 6 months, is higher than that of the domestic violence injunction which requires an act of violence or reasonable cause to believe there is imminent danger of violence.

### **Proceedings and Terms of Protective Injunction Against Domestic Violence**

The total charge, including any administration fees, law enforcement agency charges, and court costs or service charges, for any court to issue an injunction concerning domestic violence may not exceed \$50. *See* s. 741.30(2)(a), F.S. The total charge by any law enforcement agency to serve an injunction or restraining order concerning violence may not exceed \$20. If the victim does not have sufficient funds with which to pay filing fees and signs an affidavit to that effect, the fees must be waived by the clerk of the court or the sheriff or law enforcement officer to the extent necessary to process the petition and serve the injunction.

Federal grant regulations have recently been amended to provide that a state is not eligible for Violence Against Women Act grant funding if the state law provides for a fee to be assessed to a victim for the filing of a protective order. The federal law provides that any such laws must be removed from the statute by October 28, 2002.

The venue for petitioning for protective injunctive relief against domestic violence is governed by the general statutory venue provisions in chapter 47, F.S. Such actions can only be brought in the county where the defendant (or respondent) resides or where the cause of action occurred. *See* s. 47.011, F.S. The purpose of the venue statutes is to require that the litigation be instituted

where the least amount of expense and inconvenience to the defendant would be incurred.<sup>6</sup> However, advocates have noted the dilemma for domestic violence victims when they flee for safety from the county of residence or from where the domestic violence occurred for protection. The petitioners are then unable to petition for an injunction for protection in the county to which they have fled.

Current law is silent as to whether these injunction proceedings are open or closed to the public. *See* s. 741.30, F.S. Practice varies across the state and has raised the question of whether individuals other than the parties to the injunction and their attorneys can be present at these hearings.

The injunctive relief may include an order to restrain the respondent from committing acts of domestic violence, give the petitioner use and possession of the dwelling, award temporary custody or visitation of any minor children, establish temporary child support for minor children, and require the respondent to participate in the batterer's intervention program. The terms of the protective injunction against domestic violence remain in effect until the injunction is modified or dissolved. *See* s. 741.30 (6)(b), F.S. Either party may move to modify or dissolve the injunction, and no specific allegations are required. On reconsideration or appeal, the moving party may present evidence regarding the initial issuance of the injunction. *See Madan v. Madan*, 729 So.2d 416 (Fla. 3d DCA 1999). However, in many cases, the only record of any testimony, evidence or factors considered in the hearing is the final judgment denying or granting the modification or dissolution of the injunction. In those counties where these hearings are not recorded, an insufficient record or lack of record can be very problematic for reconsideration or appeal of injunction, particularly by the petitioner. Under current practice, any party requesting *reporting* of a proceeding (i.e., by a court reporter) must be allowed to have the proceeding recorded by a court reporter but must pay for the reporting fees. *See* Fla. R. Jud. Admin. 2.070(b).<sup>7</sup> Other recording costs are currently funded by counties.

Generally, violations of the provisions of an injunction are enforceable through civil or criminal remedies including contempt proceedings and monetary assessments. *See* s. 741.30 (8)(a), F.S. A violation of the provision of an injunction that prohibits a respondent from possessing any firearms or ammunition is a first degree misdemeanor. *See* s. 741.30(6)(f), F.S. Certain statutory prohibitions, even if not specified in an injunction order, will constitute a violation, punishable as a first degree misdemeanor. Those statutory prohibitions include refusing to vacate a shared dwelling, going to specific places frequented by petitioner, committing of an act of domestic violence against petitioner, committing an intentional threat of violence against the petitioner, and communicating with the petitioner. *See* s. 741.31(4)(a), F.S.

### **Batterer's Intervention Program**

The Legislature established a batterer's intervention programs to hold the perpetrators of domestic violence responsible for their acts and to protect the victims of domestic violence and their children. As of July 2001, the Department of Children and Families has assumed

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<sup>6</sup>*See Kilpatrick v. Boynton*, 374 So. 2d 557, 558 (Fla. 4<sup>th</sup> DCA 1979).

<sup>7</sup> The rules already require reporting of all criminal and juvenile proceedings and any other judicial proceedings required by law or court rule to be reported at public expense. All other court reporting is only required if required by law or by court to be reported at public expense (e.g., all criminal and juvenile proceedings, mental health cases, and capital cases). *See* Fla. R. Jud. Admin. 2.070(g).

responsibility from the Department of Corrections, for certifying and monitoring the batterer's intervention programs in Florida. *See* ch. 2001-183, L.O.F.; s. 741.32, F.S. Persons convicted of an act of domestic violence or persons for whom an injunction for protection against domestic violence has been entered can be ordered to attend and participate in the batterer's intervention program. *See* ss. 741.281 and 741.30 (6)(a)5, F.S.

In addition, the Legislature requires a court to order a person *charged* with domestic violence to attend a batterer's intervention program as a condition of admittance into a pretrial diversion or intervention program. *See* ch. 95-195, L.O.F., s. 741.281, F.S. Pretrial intervention programs where counseling, education, supervision and treatment are provided, are available as a condition for release to persons who are first-time offenders or who have been previously convicted of a nonviolent misdemeanor and are subsequently charged with a misdemeanor or third degree felon. *See* s. 948.08, F.S. The program administrator, the victim, the state attorney and the judge's approval are all required, however, no provision for judicial review is made. The Florida Supreme Court has determined that the decision for admittance into the pretrial diversion program flows from a prosecutorial decision and thus is not a judicial determination subject to judicial review. *See Cleveland v. State*, 417 So. 2d 653, 654 (Fla. 1982). Prosecutorial discretion is vested solely with the state attorney. *See State v. Jogan*, 388 So. 2d 322 (Fla. 3d DCA 1980). Therefore, applying a condition of the batterer's intervention program to the requirement of admittance to the pretrial diversion program is not a judicial function, as implied by s. 741.281, F.S.

### III. Effect of Proposed Changes:

#### Act of Domestic Violence

The bill amends the definitions for "domestic violence" and "family or household member" in ss. 741.28, 25.385, 39.902, and 943.171(2) of the Florida Statutes to reconcile an inconsistency in current definitions for "domestic violence" and family or household member" and clarify that prior or present co-residency between the victim and the family or household member is required for purposes of domestic violence injunctive relief, with the exception of parents of a child in common.

The following statutory sections are also amended to add a cross-reference to the revised definitions for "domestic violence" and "family or household members"<sup>8</sup> in s. 741.28, F.S.:

- Section 25.385, F.S.: *Instruction standards for trial court judges handling domestic violence case*--This section directs the Florida Court Educational Council to establish instruction standards for circuit or county court judges handling domestic violence cases. Since the definition of domestic violence is a component of the instruction to the judges, the revised definition would potentially require some minor alteration of information provided to the judges.

<sup>8</sup> Although the definition for "domestic violence" in these sections originally mirrored the definition in s. 741.28, F.S., legislative changes made in 1995 and 1997 to the definition of "domestic violence" in s. 741.28, F.S., which included additional categories of offenses were not made concurrently to the definition in those sections.



- Section 39.902, F.S.: *Definitions in Part XI of ch. 39, F.S., as relates to the development, certification and funding of domestic violence centers by the Department of Children and Families*--The amended definition of domestic violence would not alter service delivery for the domestic violence centers since a substantial portion of their funding is either from Temporary Assistance for Needy Families (TANF), which uses the definitions provided for in s. 414.0252(4), F.S., or private sources, neither of which require co-residency.
- Section 943.17(2)(a), F.S.: *Basic skills training for law enforcement in handling domestic violence cases*-- The Criminal Justice Standards and Training Commission is directed to establish the instruction standards for law enforcement officers on domestic violence. As with the instruction for judges, the revision to the definition would potentially change the information provided to law enforcement.

Additionally, ss. 390.01115, 470.002, 626.9541, and 641.3903, F.S., are amended to reference the entire set of definitions contained in s. 741.28, F.S., instead of specific terms and subsections. This will prevent the need for future amendments to these sections for the purpose of conforming to additions or deletions in this section.

#### **Domestic Violence Center Funding Through Increased Divorce Fees**

Section 28.101 (1)(c), F.S., is amended to increase fees for filing a dissolution of marriage. Specifically, it increases that portion of the total fees that would be deposited into the Domestic Violence Trust Fund. That fee portion is increased from \$18 to \$36.

#### **Transfer of Domestic Violence Programs from Department of Community Affairs to the Department of Children and Families**

Section 938.01, F.S., is amended by the bill to establish a new formula for distributing the funds deposited into the Additional Court Cost Clearing Trust Fund, which includes a designated portion to DCF for the domestic violence program. The new formula provides for all trust fund dollars collected to be distributed as follows: 92 percent to the FDLE Criminal Justice Standards and Training Trust Fund, six and three-tenths percent to the FDLE Operating Trust Fund for the criminal justice program, and one and seven-tenths percent to the DCF Domestic Violence Trust Fund for the domestic violence program as provided for under s. 39.903(3), F.S., which simplifies and closely mirrors the historic allocation of funds. This amendment will provide a predefined recurring funding source for the domestic violence programs which are now at DCF and replace the method used for FY 2000-2001 and FY 2001-2002 for determining the amount of funding to be disbursed for the transferred programs.

The duties of DCF in Part XIII of ch. 39, F.S., are expanded to include the operation of the domestic violence program. The domestic violence program is described in s. 39.903, F.S., as providing supervision, direction, coordination, and administration of statewide activities related to the prevention of domestic violence. This provision sets forth clear authority for DCF to administer and receive trust fund dollars for the new domestic violence programs transferred from DCA.

Section 741.466, F.S., which provides for the transfer of the Prevention of Domestic Violence and Sexual Violence Program from DCA to DCF and stipulates that the amount of funds to be

distributed from the Additional Court Cost Clearing Trust Fund is to be based on historic use and current need, as determined by the Governor's Office of Planning and Budgeting, is repealed. The subsections of chapters 2001-184 and 2001-232, L.O.F., which stipulate the distribution of funds from the Additional Court Cost Clearing Trust Funds to DCF for the Prevention of Domestic Violence and Sexual Violence Program and the determination of the amount of funds to be disbursed, are also repealed.

### **Injunctions and Court Proceedings Relative to Domestic Violence**

The bill amends s. 741.30, F.S., relating to injunctions, hearings and issuances of injunctions relating to domestic violence. It clarifies existing law 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 a check-off list of 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.

It requires that all proceedings for protective injunctions against domestic violence be recorded. Such recording will provide an evidentiary basis for review by the court in any subsequent hearing for modification or dissolution or appeal.

It revises the general venue requirement for protective injunctions against domestic violence to permit the additional option of the filing of a petition in circuits where the petitioner currently or temporarily resides. There is no minimum residency requirement.

It prohibits the assessment of any filing fee for a petition for protection against domestic violence, effective October 1, 2002. Subject to legislative appropriation, the clerk of the circuit court may submit to the Office of the State Courts Administrator the copies of petitions for protection against domestic violence for reimbursement at the rate of \$40 per petition. From this reimbursement the clerk shall pay any law enforcement agency serving the injunction a fee not to exceed \$20.

It also requires the court, upon request, to permit the petitioner or respondent to be accompanied by an advocate either from the state attorney's office, a law enforcement agency or a certified domestic violence center in an injunction for protection hearing, if requested.

It expands the list of underlying acts constituting first degree misdemeanor violations of a protective injunction against domestic violence as follows: knowingly or intentionally coming within 100 feet of the petitioner's occupied or unoccupied motor vehicle, defacing or destroying the petitioner's personal property, and refusing to surrender firearms or ammunition, if ordered by the court. In addition, it adds a distance specification of 500 feet for violations involving going to the petitioner's residence, school, place of employment or other frequented place.

### **Dating Violence**

The bill establishes in s. 784.046, F.S., which provides for injunctions for protection against repeat violence, a separate cause of action for injunctions for protection against dating violence. Injunctions for protections against dating violence would be provided using the same stipulations

as for injunctions for protection against repeat violence contained in s. 784.046, F.S., with the following exceptions:

- A petition for an injunction for protection against dating violence can be filed if the person is a victim of dating violence or in imminent danger of becoming a victim of dating violence.
- Dating violence is specifically defined and does not require two incidents of violence with one of the incidents occurring within the last 6 months.

The definition of dating violence stipulates that violence has occurred between individuals who have or have had a continuing and significant relationship. The relationship must be of a romantic or intimate nature. Factors to consider in determining the existence of such a relationship are articulated and include that a substantive dating relationship must have existed within the past 6 months, that the nature of the relationship must have included an expectation of affection or sexual involvement, and that the frequency and type of interaction must include involvement over time and on a continuous basis. Specifically excluded from what is considered dating violence is violence between individuals who have been in a casual acquaintanceship or only engaged in ordinary fraternization in a business or social context.

Parents or legal guardians can file a petition for an injunction for protection against dating violence on behalf of a minor child who is living at home and who seeks an injunction.

Sections 784.047 and 784.048, F.S., F.S., are amended to conform with the addition of an injunction for protection against dating violence to s. 784.046, F.S. Section 784.047, F.S., provides that a person who violates an injunction for protection against repeat violence, and with this bill, injunction for protection against dating violence, by committing one of the delineated actions, commits a misdemeanor of the first degree. The bill provides that a person against whom an injunction for protection against repeat violence and, now, an injunction against dating violence has been issued, who maliciously and repeatedly follows or harasses another commits the offense of aggravated stalking which is a felony of the third degree. *See* s. 784.048, F.S.

#### **Batterer's Intervention Program**

The bill clarifies the court's proper role in ordering persons to attend batter's intervention programs as a condition of their admittance to a pretrial diversion program. The revision to s. 741.281, F.S., recognizes that it is not within the court's jurisdictional authority, but with the prosecutor's discretion to condition a charged person's admittance to a pretrial diversion program upon the person's attendance to a batter's intervention program.

The bill takes effect January 1, 2003.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

This bill mandates that all domestic violence proceedings be recorded, the manner of which is not specified. These costs are currently funded by counties. The bill does not

appropriate any state funds at this time. Some counties that are unable to afford funding for these expenses have received some federal grants through the Office of State Courts Administrator. The last available data (which was based on an informal phone survey conducted by the Office of State Courts Administrator) indicates that at least 35 of the 67 counties recorded domestic violence hearings as of March 2000. Approximately 58,758 petitions for injunctive relief against domestic violence were filed in the calendar year of 2000. According to the Office of State Courts Administrator, the time spent to dispose of these proceedings is 37 minutes based on Delphi-based case weight<sup>9</sup> analysis. No other reliable data is collected regarding the number of and costs related to recordings of these proceedings. However, the Florida Association of Counties and the Office of State Courts Administrator anticipate that there will be a fiscal impact, albeit indeterminate at this time. Those additional expenditures may include costs for court reporters or recording equipment, tapes, storage of the tapes, and personnel to operate the equipment.

This bill also prohibits the imposition of a fee for filing a petition for protection from domestic violence. Under current law this fee could be waived for indigent petitioners, and the collection rate for the fee is not known. Based on the 58,758 petitions filed in 2000, the maximum fees collected would have been \$2.9 million. The bill provides for reimbursement of the clerks of court and law enforcement agencies by legislatively appropriated funds, but the bill does not contain an appropriation.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

- Section 10 of the bill amends s. 741.30, F.S., to provide the option of filing a petition for protective injunctive relief against domestic violence in the “circuit” where the petitioner currently or temporarily resides. Moreover, there is no minimum residency requirement. There are some due process considerations for respondents attendant with this venue provision. Under current law, the privilege of being sued lies with the defendant in his or her “county” of residence or in the county where the action accrued or in the “county” where the property of litigation is located except under specified circumstances. The respondent must have the ability and opportunity to offer a defense at a full hearing. Except as may be provided constitutionally, a legislature may fix the venue or place of trial of civil actions so long as it does not transgress fundamental guaranties of equal protection and does not arbitrarily and

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<sup>9</sup>The weight represents the average number of minutes needed to process a case from filing to final resolution and also reflects time spent on post-judgment activity over the life of the case.

unreasonably discriminate against particular persons.<sup>10</sup> *See Bertram & Co. v. Barrett*, 155 So.2d 409 (Fla. 1st DCA 1963).

- Section 10 of the bill amends subsection (6) of section 741.30, F.S., to require recording services in all domestic violence proceedings. This provision may establish precedence for its statewide funding in the future as an essential element of a uniform state courts system which has not yet been determined by the Legislature. In 1999, a constitutional amendment was adopted to provide for the shifting of major costs of Florida's judicial system from the counties to the state. *See* art. V, s. 14, Fla. Const. In 2000, the Legislature established a statutory framework for defining those constitutionally mandated or essential elements of a state-funded court system, including the public defenders' offices, the state attorneys' offices, and court-appointed counsel, and those court-related functions that are the responsibility of the counties for funding purposes. *See* ch. 2000-237, L.O.F. The Legislature also provided for a four-year implementation schedule to be completed by July 1, 2004. The Joint Legislative Committee on Article V was appointed to coordinate and oversee this effort but no final determination has yet been made as to the essential elements of a uniform state courts system.

## **V. Economic Impact and Fiscal Note:**

### **A. Tax/Fee Issues:**

Additional revenue will be generated from the increase in that portion of filing fees for dissolution of marriage that are deposited into the Domestic Violence Trust Fund. These additional funds may be used to support the needs of victims serviced by the domestic violence centers. The Department of Children and Families and the Office of State Courts Administrator project that the fee increase from \$18 to \$36 will generate \$1,556,640 in additional revenue.

The prohibition of filing fees for petitions for an injunction for protection against domestic violence will result in a decrease in local revenue. Current law allows these fees to be waived, and as a matter of practice this fee is routinely waived by the clerk, but the outright prohibition effective October 1, 2002 will affect the revenue received by the circuit courts and law enforcement agencies. The bill provides for reimbursement by the Office of the State Courts Administrator, subject to appropriation of funds by the legislature.

While the bill provides a new method for distributing dollars in the Additional Court Cost Clearing Trust Fund, it does not alter the level of assessments or fees being imposed and deposited into the trust fund

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<sup>10</sup> Under criminal actions or prosecutions such as would arise if the respondent against whom an injunction is issued violates a term of the injunction, the respondent would be constitutionally entitled to have the prosecution in the "county" where the crime occurred. *See* art. I, s. 16, *Florida Constitution*.

**B. Private Sector Impact:**

Victims of domestic violence now may obtain an injunction in whatever circuit they are residing for safety concerns, regardless of what county they are residing in and how long they have resided there, and without paying a filing fee. Injunctions are currently enforceable throughout the state. A broader category of persons, including victims of dating violence, may seek protective injunctive relief against dating violence.

It is indeterminate what impact the clarification in the prior or current co-residency requirement will have on domestic violence scenarios involving relatives by blood or marriage as it is currently unknown how the co-residency requirement was being applied for injunctions in the circuits.

**C. Government Sector Impact:**

The Office of State Courts Administrator also reports there are elements of the bill that may impact the workload of the state court system; however, the fiscal impact is indeterminate. If the definition of domestic violence has been previously interpreted in the most restrictive manner by the circuits, i.e. to exclude family and household members who have never lived together, then the elimination of the co-residency requirement for those instances where the victim and perpetrator are parents of a child in common could increase the number of petitions for the injunction for protection against domestic violence. Consideration of additional factors in determining whether to grant an injunction as well as additional prohibited activities that may constitute criminal violations of such injunction may also consume more court hearing time.

The prohibition against filing fees removes a potential source of funding for the courts and law enforcement agencies. Instead of receiving fees from petitioners who are able to pay them (although this fee is routinely waived by the clerk), the courts and law enforcement agencies will be dependent on annually appropriated funds to cover costs associated with these petitions.

The FDLE reports that the effect of the new formula for the Additional Court Cost Clearing Trust Fund would be as follows:

|   | <b>FY 2000-2001 Funds:<br/>Current s. 938.01, F.S.,<br/>Distribution of Funds</b> | <b>FY 2001-2002 Funds:<br/>Proposed s. 938.01, F.S.,<br/>Distribution Formula</b> |
|---|---|---|
| FDLE Criminal Justice Standards and Training Trust Fund     | \$12,899,233  | \$12,906,647  |
| FDLE Operating Trust Fund for the Criminal Justice Programs | \$ 912,001  | \$ 883,824  |
| DCF for the Domestic Violence Programs                      | \$ 217,730  | \$ 238,492  |

The new formula reduces the percentage of funds distributed to the FDLE Operating Trust Fund for the criminal justice program from 8 percent to six and three-tenths percent, or an estimated \$38,000. However, FDLE reports this is of no consequence to the department since some portion of the designated funds for the criminal justice program had already been provided to DCF.

The Department of Children and Families reports that this bill will not have a negative fiscal impact on the department.

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

The current definitions for “domestic violence” in s. 741.28, F.S., are cross-referenced in a number of statutory provisions. For some of the statutory provisions, amending the definitions do not result in any substantive impact. However, for the following provisions, the proposed modifications to the definition for “domestic violence” may have significant impact such that specified rights, criminal sanctions and civil liabilities may now extend to a broader class of individuals as either victims or offenders of domestic violence under the following sections:

- ✓ s. 464.018, F.S., provides for the commission of an act of domestic violence to be considered grounds for disciplinary action for persons licensed to practice nursing.
- ✓ s. 741.283, F.S., requires a minimum sentence of 5 days in the county jail for persons adjudicated guilty of a crime of domestic violence where intentional bodily harm was caused on another person.
- ✓ s. 741.29, F.S., makes a violation of certain conditions of pretrial release a misdemeanor if the original arrest was for an act of domestic violence.
- ✓ s. 768.35, F.S., provides that victims of continuing domestic violence can recover compensatory and punitive damages against the perpetrator. However, this provision additionally requires the victim to have suffered repeated physical or psychological injuries over an extended period of time.
- ✓ s. 901.15, F.S., provides that an officer may arrest a person without a warrant when there is probable cause to believe the person has committed an act of domestic violence.
- ✓ s. 907.041, F.S., provides that an act of domestic violence is considered a “dangerous crime” for which non-monetary pretrial release cannot be granted at first appearance, except under certain conditions.
- ✓ s. 921.0024, F.S., provides for a multiplier in computing the sentencing points under the Criminal Punishment Code if the primary offense was domestic violence and it was committed in the presence of a child of the victim or perpetrator.
- ✓ s. 943.0582, F.S., provides for the expungement of non-judicial records of the arrest of a minor who has successfully completed a prearrest or post arrest diversion program but excludes expungement of records of minors arrested for domestic violence.

- ✓ s. 948.03, F.S., requires courts to order persons convicted of an offense of domestic violence to attend the Batterer's Intervention Program as a condition of probation, community control and any other court ordered community supervision.
- Section 10 revises s. 741.30, F.S., to include specific venue requirements as pertain to petitions for protective injunction against domestic violence. It provides that the petition may also be filed in the "circuit" in lieu of the "county" where the petitioner currently or temporarily resides. This represents a departure from traditional venue requirements which specify "county" versus "circuit" as some circuits may contain more than one county. Additionally, this new venue provision may be more appropriately created in a new section under chapter 47, F.S., which already contains a number of venue provisions for specified causes of action.
- Section 10 also revises s.741.30, F.S., to add subsection (7) to require the court to allow an advocate either from the state attorney's office, a law enforcement agency or a certified domestic violence center in an injunction for protection hearing, if a party to the action requests. It is not specified who would qualify as an advocate and what role the advocate would play, if any, in the proceeding.
- Section 11 revises s. 741.31, F.S., to broaden the grounds for what constitutes a violation of an injunction to include the refusal to surrender firearms or ammunition as ordered by the court. As stated someone could be potentially subject to a first degree misdemeanor for not surrendering firearms or ammunitions which he or she may neither possess or own. It is not clear, even under existing law, whether the statutorily enumerated grounds, must be expressly included in the injunction or are otherwise impliedly included into the injunction. If the injunction does not expressly specify that which will be prohibited, this would raise some due process concerns including lack of adequate notice.

#### **VIII. Amendments:**

None.