

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: SB 1188

INTRODUCER: Senator Dean

SUBJECT: Dating Violence

DATE: April 2, 2008

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|-----------|
| 1. | Dugger | Cannon | CJ | Favorable |
| 2. | | | JU | |
| 3. | | | JA | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

I. Summary:

This bill would add the analogous provisions currently applicable to domestic violence investigations as described in “Present Situation under Requirements Regarding Domestic Violence Investigations” to s. 784.046, F.S., so that they would also apply to the dating violence statute.

The bill would also make conforming changes to s. 901.15(7), F.S., permitting a law enforcement officer to make a warrantless arrest when there is probable cause to believe that the person has committed an act of dating violence (similar to domestic violence).

This bill would substantially amend sections 784.046 and 901.15 of the Florida Statutes.

II. Present Situation:

Definitions

“Domestic violence” is defined 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 family or household member.”¹

“Dating violence” is defined as “violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on the consideration of the following factors:

¹ s. 741.28, F.S.

- A dating relationship must have existed within the past 6 months;
- The nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and
- The frequency and type of interaction between the persons involved in the relationship must have included that the persons have been involved over time and on a continuous basis during the course of the relationship.

The term does not include violence in a casual acquaintanceship or violence between individuals who only have engaged in ordinary fraternization in a business or social context.”²

Requirements Regarding Domestic Violence Investigations

Section 741.29, F.S., provides requirements for law enforcement officers who are investigating alleged incidents of domestic violence. Specifically, the statute requires law enforcement officers who are investigating alleged incidents of domestic violence to:

- Assist the victim to obtain medical treatment if required.
- Advise the victim that there is a domestic violence center that may provide services to the victim.
- Give the victim a “Legal Rights and Remedies Notice to Victims” form that describes available legal rights and remedies.³
- Handle the incident pursuant to the arrest policy provided in s. 901.15(7), F.S.⁴
- Obtain, where possible, a written statement from the victim and witness concerning the alleged domestic violence incident.
- Make a written police report that:
 - Clearly indicates that the alleged offense was an incident of domestic violence;
 - Includes a description of the physical injuries observed;
 - Includes, if applicable, the grounds for not arresting anyone or arresting two or more parties;
 - Includes a statement indicating that the Legal Rights and Remedies Notice to Victims form was given to the victim.
- Give the police report to the officer’s supervisor, file such report in a manner that will permit data on domestic violence cases to be compiled, and send a copy of such report to the nearest certified domestic violence center.

Section 741.29, F.S., also provides that when complaints are received from two or more parties, a law enforcement officer must:

² s. 784.046, F.S.

³ This form is developed and distributed by the Florida Department of Law Enforcement and serves as a model form to be used by all law enforcement agencies throughout the state. *See* s. 741.29, F.S.

⁴ Section 901.15(7), F.S., provides that a law enforcement officer may arrest a person without a warrant when there is probably cause to believe that the person has committed an act of domestic violence. The statute further specifies that the decision to arrest shall not require the consent of the victim.

- Evaluate each complaint separately to determine whether there is probable cause for arrest.
- Try to determine who was the primary aggressor.

The statute further specifies that if a law enforcement officer determines upon probable cause that an act of domestic violence has been committed, the officer may arrest the person suspected of its commission and charge such person with the appropriate crime.

Section 741.29, F.S., also provides that:

- The decision to arrest and charge does not require the consent of the victim.
- Arrest is the preferred response only with respect to the primary aggressor and not the preferred response with respect to a person who acts reasonably to protect or defend oneself.

Additionally, any person who willfully violates a condition of pretrial release, when the original arrest was for an act of domestic violence, commits a first degree misdemeanor and must be held in custody until his or her first appearance.

These previously discussed provisions in s. 741.29, F.S., apply to incidents of domestic violence. There are currently no analogous provisions in s. 784.046, F.S., that apply to incidents of dating violence.

III. Effect of Proposed Changes:

This bill would add the analogous provisions currently applicable to domestic violence investigations as described in “Present Situation under Requirements Regarding Domestic Violence Investigations” to s. 784.046, F.S., so that they would also apply to the dating violence statute.

The bill would also make conforming changes to s. 901.15(7), F.S., permitting a law enforcement officer to make a warrantless arrest when there is probable cause to believe that the person has committed an act of dating violence (similar to domestic violence).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the FDLE, there will be a minimal fiscal impact resulting from modifying the existing “Legal Rights and Remedies Notice to Victims” brochure, but the department will absorb this cost.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.