

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 Judiciary Committee

BILL: SB 1188

INTRODUCER: Senator Dean

SUBJECT: Dating Violence

DATE: April 15, 2008

REVISED: _____

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

I. Summary:

This bill creates the “Barwick-Ruschak Act” and provides a variety of requirements that law enforcement officers who are investigating alleged incidents of dating violence must follow. Such requirements include providing victims of dating violence notice of their legal rights and remedies, providing victims information about local domestic violence centers, and including certain information in police reports.

This bill also provides that a person who willfully violates a condition of pretrial release, where the initial arrest was for an act of dating violence, commits a misdemeanor of the first degree and must be held in custody until his or her first appearance.

This bill makes conforming changes to permit 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 substantially amends sections 784.046 and 901.15, Florida Statutes.

II. Present Situation:

Domestic Violence Investigations

Recently it was estimated that more than 1.5 million adults in the United States are victims of domestic violence each year, and more than 85 percent of the victims are women.¹ In Florida, 120,386 incidents of domestic violence were reported in 2005.² Domestic violence accounted for 176 of the state's 881 murders during 2005.³ In May 2006 "there were 153,198 protection orders in the [Florida Department of Law Enforcement] FDLE's Florida Crime Information Center's (FCIC) database."⁴

Section 741.29, F.S., provides procedures that law enforcement officers who are investigating alleged incidents of domestic violence⁵ must follow. 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" form⁶ that describes available legal rights and remedies.
- Handle the incident pursuant to the arrest policy provided in s. 901.15(7), F.S.⁷
- Obtain, where possible, a written statement from the victim and any witnesses 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.

¹ Margaret Graham Tebo, *When Home Comes to Work*, ABA JOURNAL (Sept. 2005), available at http://www.abajournal.com/magazine/when_home_comes_to_work/ (last visited April 11, 2008) (citing statistics from Legal Momentum, an advocacy and research organization based in New York City).

² FLORIDA STATISTICAL ANALYSIS CTR., FLORIDA DEP'T OF LAW ENFORCEMENT, *Domestic Violence Fatality Review Team, 2006 Annual Report*, 1, available at http://www.fdle.state.fl.us/publications/Domestic_Violence_Fatality_Report_2006.pdf (last visited April 10, 2008).

³ *Id.*

⁴ *Id.*

⁵ 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." Section 741.28(2), F.S.

⁶ 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.

⁷ Section 901.15(7), F.S., provides that a law enforcement officer may arrest a person without a warrant when there is probable cause to believe that the person has committed an act of domestic violence. The statute further specifies that the decision to arrest does not require the consent of 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 evaluate each complaint separately to determine whether there is probable cause for arrest and the officer must also try to determine who was the primary aggressor.⁸

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 the person with the appropriate crime.⁹ The law enforcement officer does not need the consent of the victim to arrest and charge the alleged offender.¹⁰

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.¹¹

The provisions in s. 741.29, F.S., apply to incidents of domestic violence, but there are currently no analogous provisions that apply to incidents of dating violence.

Dating Violence

Dating violence “occurs when one partner attempts to maintain power and control over the other through one or more forms of abuse, including sexual, physical, verbal, and emotional abuse.”¹² Statistics show that one in five teenaged girls involved in a serious relationship has experienced being hit, slapped, or pushed by a partner, and 21 percent of college students report that they have experienced dating violence.¹³ Some effects of dating violence are binge drinking, fighting, smoking, posttraumatic stress and dissociation, anxiety, and depression.¹⁴ A 2000 study showed that 11 states did not recognize dating violence in their statutes, with Florida being one of them.¹⁵ A search of the Florida Statutes currently produces four statutes that reference dating violence: ss. 741.313,¹⁶ 784.046, 784.047, and 784.048, F.S.¹⁷

⁸ Section 741.29(4), F.S. A law enforcement officer should only arrest the primary aggressor and not the person acting in self defense or who was protecting a family member.

⁹ Section 741.29(3), F.S.

¹⁰ *Id.*

¹¹ Section 741.29(6), F.S.

¹² NAT'L COALITION AGAINST DOMESTIC VIOLENCE, *Dating Violence*, <http://www.ncadv.org/files/datingviolence.pdf> (last visited April 10, 2008).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* (citing NAT'L CTR. FOR VICTIMS OF CRIME, *Dating Violence Laws: A Statutory Overview* (2000)).

¹⁶ Section 741.313, F.S., dealing with unlawful action against employees seeking protection, provides that an employee can use the specified leave time to “seek an injunction for protection against domestic violence or an injunction for protection in cases of repeat violence, *dating violence*, or sexual violence” (emphasis added). However, the rest of the statute does not reference dating violence.

¹⁷ Sections 784.046, 784.047, and 784.048, F.S., provide how a victim can obtain an injunction for repeat violence, sexual violence, or dating violence, and provide the penalties for violating the injunction, as well as for stalking a victim who has obtained such an injunction.

Florida law defines dating violence as “violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature.”¹⁸ The existence of such a relationship shall be determined based on the consideration of the following factors:

- A dating relationship must have existed within the past six 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.¹⁹

Violence in a casual acquaintanceship or between individuals who have engaged in ordinary fraternization in a business or social context is not considered dating violence in Florida.²⁰

III. Effect of Proposed Changes:

This bill creates the “Barwick-Ruschak Act”²¹ and provides a variety of requirements that law enforcement officers who are investigating alleged incidents of dating violence must follow.

The bill provides that a law enforcement officer who investigates an alleged incident of dating violence must help the victim obtain medical treatment, if necessary, and must advise the victim that there is a domestic violence center where the victim may receive services. Additionally, the officer must give the victim the Legal Rights and Remedies Notice to Victims form,²² which lists area domestic violence centers and informs the victim of his or her legal rights.

When responding to an allegation of dating violence, the law enforcement officer may handle the incident pursuant to the arrest policy in s. 901.15(7), F.S. The bill also makes 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. If the officer determines upon probable cause that an act of dating violence occurred, the officer may arrest the person(s) suspected of its commission and charge the person(s) with the appropriate crime.

¹⁸ Section 784.046(1)(d), F.S.

¹⁹ *Id.*

²⁰ *Id.*

²¹ This bill is in response to the murders of Tiffany Barwick and Michael Ruschak in Oviedo, Florida. On September 24, 2007, Barwick went to the police twice to complain about escalating threats, including a photo of her with bullet holes and an e-mail that said “next time I see you, I’m going to kill you,” from Barwick’s ex-boyfriend, Andrew Allred. Police were unable to do anything and hours later, Allred shot and killed Barwick and Ruschak. *See* Abraham Aboraya, *Oviedo homicides spur new law*, SEMINOLE CHRONICLE (April 9, 2008), available at <http://www.seminolechronicle.com/vnews/display.v/ART/47fd2baf22916> (last visited April 10, 2008); *Barwick-Ruschak Bill advances in the Fla. Senate*, STAR-BANNER (April 8, 2008), available at <http://www.ocala.com/article/20080408/NEWS/950158197> (last visited April 10, 2008).

²² The Legal Rights and Remedies Notice to Victims form is developed by the Florida Department of Law Enforcement and is published in both English and Spanish. The form must include a general summary section and is distributed throughout the state to be used by law enforcement agencies. *See* s. 741.29, F.S.

When complaints are received from two or more parties, the law enforcement officer must evaluate each complaint separately to determine whether there is probable cause for arrest. The officer must also try to determine who the primary aggressor was and arrest only that person and not the person who acts in a reasonable manner to protect or defend himself or herself or another family member from dating violence.

Regardless of whether an arrest is made, the law enforcement officer must make a complete and clear written police report that indicates that the alleged offense was an incident of dating violence. The report is to be given to the officer's supervisor and filed with the law enforcement agency so that data on dating violence cases can be compiled. The written police report must include:

- A description of physical injuries observed, if any;
- The grounds for not arresting anyone or for arresting two or more parties; and
- A statement indicating that a copy of the legal rights and remedies notice was given to the victim.

Whenever possible, the law enforcement officer must obtain a written statement from the victim and any witnesses concerning the alleged dating violence. These reports are to be submitted to the supervisor or other person to whom the employer's rules or policies require reports of similar allegations of criminal activity to be made.

The law enforcement agency must send a copy of the initial police report, and any subsequent reports, to the nearest locally certified domestic violence center within 24 hours of receipt of the reports, at no charge. The law enforcement agency shall exclude any victim or witness statements or any other material that is a part of an active criminal investigation and is therefore exempt from disclosure under ch. 119, F.S.

The bill provides that any person who willfully violates a condition of pretrial release provided in s. 903.047, F.S.,²³ when the initial arrest was for an act of dating violence, commits a first-degree misdemeanor²⁴ and shall be held in custody until his or her first appearance.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

²³ Section 903.047, F.S., provides that as a condition of pretrial release, a defendant must refrain from criminal activity of any kind, must refrain from any contact of any kind with the victim, and must comply with all conditions of pretrial release.

²⁴ A first-degree misdemeanor under this section is punishable by up to one year in prison (s. 775.082, F.S.) or a fine not to exceed \$1,000 (s. 775.083, F.S.).

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill requires a law enforcement agency to send a copy of the initial police report and any subsequent reports to the nearest locally certified domestic violence center, at no charge. The agency may incur some cost to send these reports, but the fiscal impact is indeterminate at this time.

The Florida Department of Law Enforcement's (FDLE) Professionalism Program Area currently provides a domestic violence legal rights and remedies brochure. According to FDLE, modifying the existing brochure to comply with the bill's requirements will have a minimal fiscal impact, but FDLE will absorb this cost.²⁵

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²⁵ Conversation with Lynn Dodson, Director Legislative Affairs, Fla. Dep't of Law Enforcement (April 11, 2008).