

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – HB 313 provides a variety of requirements for law enforcement officers who are investigating alleged incidents of dating violence.

B. EFFECT OF PROPOSED CHANGES:

In September, 2007, Tiffany Barwick and Michael Ruschak, both students at the University of Central Florida, were shot and killed. Andrew Allred, Barwick's ex-boyfriend, is charged with the killings. The afternoon before they were killed, Barwick and Ruschak went to Seminole County Sheriff's officials to report an escalating pattern of threats from Barwick's ex-boyfriend. At the time, the law relating to domestic violence required that victims be given notice of their legal rights and remedies. In contrast, the law relating to dating violence contained no such requirements.

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:

- 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" form³ that describes available legal rights and remedies.
- Handle the incident pursuant to the arrest policy provided in s. 901.15(7), F.S.⁴

¹ s. 741.28, F.S.

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.

- Obtain, where possible, a written statement from the victim and witness concerning the alleged domestic violence incident.
- Make a written police report that:
 - o Clearly indicates that the alleged offense was an incident of domestic violence;
 - o Includes a description of the physical injuries observed;
 - o Includes, if applicable, the grounds for not arresting anyone or arresting two or more parties;
 - o 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:

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

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

The above provisions of s. 741.29, F.S., only pertain to incidents of *domestic violence* and do not currently pertain to incidents of *dating violence*.

Effect of the Bill

HB 313 adds the above provisions to s. 784.046, F.S., the *dating violence* statute, so that they apply to incidents of dating violence as well as domestic violence. HB 313 also makes conforming changes to s. 901.15(7), F.S., which will 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.

C. SECTION DIRECTORY:

Section 1. Entitles the bill the "Barwick-Ruschak Act."

Section 2. Amends s. 784.046, F.S., relating to action by victim of repeat violence, sexual violence, or dating violence for protective injunction; powers and duties of court and clerk of courts; filing and form of petition; notice and hearing; temporary injunction; issuance; statewide verification system; enforcement.

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.

Section 3. Amends s. 901.15, F.S., relating to when arrest by officer without warrant is lawful.

Section 4. This bill takes effect October 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate. See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

In their fiscal analysis of this bill, FDLE stated that modifying the existing "Legal Rights and Remedies" brochure will have minimal fiscal impact, which FDLE will absorb.

This bill may have a fiscal impact in that it imposes additional requirements on local law enforcement.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.⁵

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

⁵ Constitution of the State of Florida, article VII, section 18(d)

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES