

ENROLLED  
HB 313

2008 Legislature

1                                   A bill to be entitled  
2           An act relating to dating violence; providing a short  
3           title; amending s. 784.046, F.S.; revising provisions  
4           relating to dating violence incidents to provide  
5           requirements for investigations, notice to victims, and  
6           reporting similar to those for incidents of domestic  
7           violence and to apply certain immunity provisions thereto;  
8           prohibiting certain willful violations of conditions of  
9           pretrial release; providing penalties; amending s. 901.15,  
10          F.S.; providing for warrantless arrests of persons for  
11          dating violence; conforming provisions; providing an  
12          effective date.

13

14   Be It Enacted by the Legislature of the State of Florida:

15

16           Section 1.   This act may be cited as the "Barwick-Ruschak  
17           Act."

18           Section 2.   Subsection (11) of section 784.046, Florida  
19           Statutes, is renumbered as subsection (16), and a new subsection  
20           (11) and subsections (12), (13), (14), and (15) are added to  
21           that section, to read:

22           784.046   Action by victim of repeat violence, sexual  
23           violence, or dating violence for protective injunction; dating  
24           violence investigations, notice to victims, and reporting;  
25           pretrial release violations ~~powers and duties of court and clerk~~  
26           ~~of court; filing and form of petition; notice and hearing;~~  
27           ~~temporary injunction; issuance; statewide verification system;~~  
28           enforcement.--

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29           (11) Any law enforcement officer who investigates an  
 30 alleged incident of dating violence shall assist the victim to  
 31 obtain medical treatment if such is required as a result of the  
 32 alleged incident to which the officer responds. Any law  
 33 enforcement officer who investigates an alleged incident of  
 34 dating violence shall advise the victim of such violence that  
 35 there is a domestic violence center from which the victim may  
 36 receive services. The law enforcement officer shall give the  
 37 victim immediate notice of the legal rights and remedies  
 38 available on a standard form developed and distributed by the  
 39 Department of Law Enforcement. As necessary, the Department of  
 40 Law Enforcement shall revise the Legal Rights and Remedies  
 41 Notice to Victims to include a general summary of this section,  
 42 using simple English as well as Spanish, and shall distribute  
 43 the notice as a model form to be used by all law enforcement  
 44 agencies throughout the state. The notice shall include:

45           (a) The resource listing, including telephone number, for  
 46 the area domestic violence center designated by the Department  
 47 of Children and Family Services; and

48           (b) A copy of the following statement: "IF YOU ARE THE  
 49 VICTIM OF DATING VIOLENCE, you may ask the state attorney to  
 50 file a criminal complaint. You also have the right to go to  
 51 court and file a petition requesting an injunction for  
 52 protection from dating violence which may include, but need not  
 53 be limited to, provisions that restrain the abuser from further  
 54 acts of abuse; direct the abuser to leave your household; and  
 55 prevent the abuser from entering your residence, school,  
 56 business, or place of employment."

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57           (12) When a law enforcement officer investigates an  
58 allegation that an incident of dating violence has occurred, the  
59 officer shall handle the incident pursuant to the arrest policy  
60 provided in s. 901.15(7), and as developed in accordance with  
61 subsections (13), (14), and (16). Whether or not an arrest is  
62 made, the officer shall make a written police report that is  
63 complete and clearly indicates that the alleged offense was an  
64 incident of dating violence. Such report shall be given to the  
65 officer's supervisor and filed with the law enforcement agency  
66 in a manner that will permit data on dating violence cases to be  
67 compiled. Such report must include:

68           (a) A description of physical injuries observed, if any.

69           (b) If a law enforcement officer decides not to make an  
70 arrest or decides to arrest two or more parties, the grounds for  
71 not arresting anyone or for arresting two or more parties.

72           (c) A statement which indicates that a copy of the legal  
73 rights and remedies notice was given to the victim.

74  
75 Whenever possible, the law enforcement officer shall obtain a  
76 written statement from the victim and witnesses concerning the  
77 alleged dating violence. The officer shall submit the report to  
78 the supervisor or other person to whom the employer's rules or  
79 policies require reports of similar allegations of criminal  
80 activity to be made. The law enforcement agency shall, without  
81 charge, send a copy of the initial police report, as well as any  
82 subsequent, supplemental, or related report, which excludes  
83 victim or witness statements or other materials that are part of  
84 an active criminal investigation and are exempt from disclosure

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85 under chapter 119, to the nearest locally certified domestic  
86 violence center within 24 hours after the agency's receipt of  
87 the report. The report furnished to the domestic violence center  
88 must include a narrative description of the dating violence  
89 incident.

90 (13) Whenever a law enforcement officer determines upon  
91 probable cause that an act of dating violence has been committed  
92 within the jurisdiction, the officer may arrest the person or  
93 persons suspected of its commission and charge such person or  
94 persons with the appropriate crime. The decision to arrest and  
95 charge shall not require consent of the victim or consideration  
96 of the relationship of the parties.

97 (14) (a) When complaints are received from two or more  
98 parties, the officers shall evaluate each complaint separately  
99 to determine whether there is probable cause for arrest.

100 (b) If a law enforcement officer has probable cause to  
101 believe that two or more persons have committed a misdemeanor or  
102 felony, or if two or more persons make complaints to the  
103 officer, the officer shall try to determine who was the primary  
104 aggressor. Arrest is the preferred response only with respect to  
105 the primary aggressor and not the preferred response with  
106 respect to a person who acts in a reasonable manner to protect  
107 or defend himself or herself or another family or household  
108 member from dating violence.

109 (15) A person who willfully violates a condition of  
110 pretrial release provided in s. 903.047, when the original  
111 arrest was for an act of dating violence as defined in this  
112 section, commits a misdemeanor of the first degree, punishable

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113 as provided in s. 775.082 or s. 775.083, and shall be held in  
 114 custody until his or her first appearance.

115 (16)~~(11)~~ A law enforcement officer acting in good faith  
 116 under this section and the officer's employing agency shall be  
 117 immune from all liability, civil or criminal, that might  
 118 otherwise be incurred or imposed by reason of the officer's or  
 119 agency's actions in carrying out the provisions of this section.

120 Section 3. Subsection (7) of section 901.15, Florida  
 121 Statutes, is amended to read:

122 901.15 When arrest by officer without warrant is  
 123 lawful.--A law enforcement officer may arrest a person without a  
 124 warrant when:

125 (7) There is probable cause to believe that the person has  
 126 committed an act of domestic violence, as defined in s. 741.28,  
 127 or dating violence, as provided in s. 784.046. The decision to  
 128 arrest shall not require consent of the victim or consideration  
 129 of the relationship of the parties. It is the public policy of  
 130 this state to strongly discourage arrest and charges of both  
 131 parties for domestic violence or dating violence on each other  
 132 and to encourage training of law enforcement and prosecutors in  
 133 these areas ~~this area~~. A law enforcement officer who acts in  
 134 good faith and exercises due care in making an arrest under this  
 135 subsection, under s. 741.31(4) or s. 784.047, or pursuant to a  
 136 foreign order of protection accorded full faith and credit  
 137 pursuant to s. 741.315, is immune from civil liability that  
 138 otherwise might result by reason of his or her action.

139 Section 4. This act shall take effect October 1, 2008.