

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

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BILL: SB 1564

INTRODUCER: Senator Garcia

SUBJECT: Domestic Violence

DATE: April 17, 2017

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Jones</u>	<u>Hrdlicka</u>	<u>CJ</u>	<u>Favorable</u>
2.	<u>McAuliffe</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

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## I. Summary:

SB 1564 amends s. 741.283, F.S., to increase the penalties for both first-time and subsequent domestic violence offenders who intentionally cause bodily harm to another person and are adjudicated guilty. The bill also enhances the penalties if the domestic violence offense took place in front of a child, under 16 years of age, who is a family or household member of the victim or the perpetrator.

Section 775.08435, F.S., is amended to add an additional circumstance in which a court is prohibited from withholding the adjudication of a defendant. The bill prohibits a court from withholding adjudication for a third degree felony that is a crime of domestic violence unless certain conditions are met.

The bill creates s. 741.30(1)(g), F.S., to prohibit attorney's fees from being awarded in any injunction proceeding for protection against domestic violence.

Under this bill, counties may incur additional costs associated with the minimum sentences for certain offenders. See Section V. Fiscal Impact Statement

The bill is effective October 1, 2017.

## II. Present Situation:

Domestic violence affects thousands of individuals and families in Florida. In 2015, there were 107,666 domestic violence offenses reported to law enforcement.<sup>1</sup>

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<sup>1</sup> Florida Department of Law Enforcement, *Domestic Violence*, available at <http://www.fdle.state.fl.us/cms/FSAC/Crime-Trends/Domestic-Violence.aspx> (last visited March 29, 2017).

Section 741.28(2), F.S., defines domestic violence 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. A family or household member includes:

- Spouses;
- Former spouses;
- Persons related by blood or marriage;
- Persons who are presently residing together as if a family or who have resided together in the past as if a family in the same single family dwelling unit; and
- Persons who are parents of a child in common, regardless of whether they have been married.<sup>2</sup>

### **Criminal Penalties for Domestic Violence Offenses**

Florida law requires certain mandatory penalties related to domestic violence offenses. Section 741.281, F.S., requires a court to sentence any person convicted<sup>3</sup> of a domestic violence crime to a minimum term of one year probation with the condition that the person attend a batterer's intervention program.<sup>4</sup>

Section 741.325, F.S., requires batterer's intervention programs be based on a psychoeducational model that addresses tactics of power and control by one person over another. A batterer's intervention program must be at least 29 weeks in length and include 24 weekly sessions, and include appropriate intake, assessment, and orientation programming.<sup>5</sup>

In addition to the mandatory probation and the batterer's intervention program, certain domestic violence offenses require a defendant serve jail time. If a person is adjudicated guilty of a domestic violence offense and intentionally caused bodily harm to another person, a court must sentence the person to a minimum of five days in the county jail.<sup>6</sup>

### **Withholding Adjudication of Guilt**

Section 775.08435, F.S., prohibits a court from withholding adjudication of guilt in certain felony cases. A court may not withhold adjudication of guilt for a defendant on:

- A capital, life, or first degree felony<sup>7</sup> offense.

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<sup>2</sup> The family or household members must be currently residing or have in the past resided together in the same single dwelling unit; this excludes persons who have a child in common. Section 741.28(3), F.S.

<sup>3</sup> This provision applies to any person found guilty of, having an adjudication withheld on, or pleading nolo contendere to a crime of domestic violence. Section 741.281, F.S.

<sup>4</sup> Section 741.281, F.S., allows a court to use its discretion to impose a batterer's intervention program if the court states on the record to why such a program would be inappropriate. The court must also impose a batterer's intervention program as a condition of probation unless the court determines that the person does not qualify for such a program.

<sup>5</sup> Section 741.325(1), F.S.

<sup>6</sup> The court is not required to order five days in the county jail when the court orders an offender to a period of incarceration in a state correction facility. Section 741.283, F.S.

<sup>7</sup> A first degree felony is punishable by up to 30 years imprisonment and up to a \$10,000 fine. Sections 775.082 and 775.083, F.S.

- A second degree felony<sup>8</sup> offense unless:
  - The state attorney makes a written request to withhold adjudication; or
  - The court makes written findings that a withhold of adjudication is reasonably justified based on the circumstances or mitigating factors in s. 921.0026, F.S.<sup>9</sup>
- A third degree felony<sup>10</sup> offense if the defendant has a prior withholding of adjudication for a felony offense that did not arise from the same criminal episode as the current felony offense unless:
  - The state attorney requests in writing that adjudication be withheld; or
  - The court makes written findings that a withholding of adjudication is reasonably justified based on the circumstances or mitigating factors in s. 921.0026, F.S.<sup>11</sup>

A court may not withhold adjudication when a defendant has committed a second degree felony and has a prior withhold of adjudication from a different offense, or when the defendant committed a third degree felony and has two or more prior withholdings of adjudication from a different offense.<sup>12</sup>

### **Domestic Violence Injunctions**

Section 741.30, F.S., provides a cause of action for an injunction for protection against domestic violence. Any person who is a family or household member and who either is the victim of domestic violence or has reasonable cause to believe he or she is in imminent danger of becoming a victim of any act of domestic violence, may petition for an injunction for the protection against domestic violence.<sup>13</sup>

After reviewing the petition, if a court finds there is an immediate and present danger of domestic violence, the court may grant a temporary injunction, pending a full hearing.<sup>14</sup> Following a hearing, if the court determines the petitioner is the victim of domestic violence or is in imminent danger of becoming a victim of domestic violence, the court may enter an injunction.<sup>15</sup>

### ***Attorney's fees for Domestic Violence Injunction Hearings***

Section 741.30, F.S., does not address the award of attorney's fees related to domestic violence injunction hearings. Florida courts are in conflict regarding whether s. 57.105, F.S., allows a court to order attorney fees incurred in domestic violence injunction proceedings.<sup>16</sup> The Third

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<sup>8</sup> A second degree felony is punishable by up to 15 years imprisonment and up to a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>9</sup> Section 921.0026, F.S., provides 14 statutory mitigating circumstances a court may consider when sentencing a defendant for a felony offense.

<sup>10</sup> A third degree felony is punishable by up to five years imprisonment and up to a \$5,000 fine. Sections 775.082, 775.083, and 775.084, F.S.

<sup>11</sup> Section 775.08435(1), F.S.

<sup>12</sup> Section 775.08435(1), F.S.

<sup>13</sup> Section 741.30(1), F.S.

<sup>14</sup> Section 741.30(5)(a), F.S.

<sup>15</sup> Section 741.30(6), F.S.

<sup>16</sup> Section 57.105, F.S., authorizes a court to award reasonable attorney's fees when the court finds the losing party or the losing party's attorney should have known that a claim or defense presented to the court or at trial was either: 1) not

District Court of Appeal held there is no statutory authority to award attorney's fees as sanctions in a domestic violence injunction case.<sup>17</sup> Whereas, the First District Court of Appeal held that there is no statutory prohibition against an award of attorney's fees pursuant s. 57.105, F.S., for domestic violence injunction hearings.<sup>18</sup>

### III. Effect of Proposed Changes:

#### Criminal Penalties for Domestic Violence Offenses

Section 1 amends s. 741.281, F.S., to require a court to order the defendant to both attend *and complete* a batterer's intervention program as a condition of probation. A failure to complete a batterer's intervention program may result in a violation of probation.

Section 2 also amends s. 741.283, F.S., to increase the penalties for both first-time and subsequent domestic violence offenders who intentionally cause bodily harm to another person and are adjudicated guilty. The section requires a court to order a defendant to serve the following time in a county jail:

- 10 days for a first offense;
- 15 days for a second offense; and
- 20 days for a third or subsequent offense.

The penalties are further enhanced if the domestic violence offense took place in front of a child, under 16 years of age, who is a family or household member of the victim or the perpetrator. The bill requires a court to order a defendant to serve the following time in a county jail:

- 15 days for a first offense;
- 20 days for a second offense; and
- 30 days for a third or subsequent offense.<sup>19</sup>

#### Withholding Adjudication of Guilt

Section 4 amends s. 775.08435, F.S., to limit the authority of a court withholding the adjudication of a defendant. A court may not withhold adjudication for a third degree felony that is a crime of domestic violence unless:

- The state attorney makes a written request for the adjudication to be withheld; or
- The court makes written findings that the withholding of adjudication is reasonably justified based on the circumstances or mitigating factors in s. 921.0026, F.S.

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supported by the material facts necessary to establish the claim or defense; or 2) would not be supported by the application of then-existing law to those material facts.

<sup>17</sup> *Ratigan v. Stone*, 947 So. 2d 607, 608 (Fla. 3d DCA 2007).

<sup>18</sup> *Hall v. Lopez*, 2016 41 Fla. L. Weekly D 1763 (Fla. 1st DCA 2016).

<sup>19</sup> The mandatory jail time does not apply if the court sentences a defendant to a nonsuspended period of incarceration in a state correctional facility.

**Domestic Violence Injunctions*****Attorney's fees for Domestic Violence Injunction Hearings***

Section 3 amends s. 741.30, F.S., to prohibit attorney's fees from being awarded in any injunction proceeding for protection against domestic violence.

The bill is effective October 1, 2017.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

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

**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:**

Under this bill, counties may incur additional costs associated with the minimum sentences for certain offenders. The Criminal Justice Impact Conference found that the bill will have no state prison bed impact.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 741.281, 741.283, 741.30, and 775.08435.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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

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