

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 Committee on Children, Families, and Elder Affairs

BILL: SB 680

INTRODUCER: Senators Bracy and Stewart

SUBJECT: Batterers' Intervention Programs

DATE: March 1, 2021 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Cox	CF	Pre-meeting
2.	_____	_____	AHS	_____
3.	_____	_____	AP	_____

I. Summary:

The bill requires the Department of Children and Families (DCF) to certify and monitor batterers' intervention programs that provide direct intervention services to specified individuals. The bill also provides requirements that must be met in order for a batterer's intervention program to be certified by the DCF.

The bill requires that batterers be held accountable for their acts of domestic violence and specifies measures that programs must have in order to accomplish that accountability. Programs are required to be 29 weeks in length and must include at least 24 weekly group sessions:

- Orientation sessions must be at least 90 minutes in length and must include all specified programming;
- Each weekly session must be at least 90 minutes in length and must include a specified minimum and maximum number of participants and facilitators.
- All participants in a group session must be the same gender.
- If a participant in the group is not fluent in the English language, at least one facilitator must be able to translate or effectively communicate in the participant's native language. That facilitator must be affiliated with the program.

The bill requires the program to be based on an intervention model that recognizes the use of power and control tactics by one person to inflict emotional or physical abuse on another and specifies issues that may not be included in the program content.

The bill requires the program to be funded by user fees paid by the batterers who attend the program and while a batterer may not be admitted to the program until the fee has been paid, a batterer who has been deemed indigent by the court and is unable to pay the user fee may not be refused admittance.

The bill requires the DCF to annually review the intervention programs and the DCF may reject or suspend the certification of a program that does not meet the required qualifications. The DCF must notify the court of any program suspensions and must adopt rules to implement the requirements of the bill.

The DCF provides that the bill does not result in expenditures to state or local government. See Section V. Fiscal Impact Statement.

The bill has an effective date of July 1, 2021.

II. Present Situation:

Domestic Violence

The National Coalition Against Domestic Violence defines domestic violence as the willful intimidation, physical assault, battery, sexual assault, and/or other abusive behavior as part of a systematic pattern of power and control perpetrated by one intimate partner against another. It includes physical violence, sexual violence, threats, economic, and emotional/psychological abuse.¹

Nationally, more than 10 million adults experience domestic violence annually. Further, it is estimated that 25 percent of women and 10 percent of men experience sexual violence, physical violence or stalking by an intimate partner during their lifetime.²

The Centers for Disease Control and Prevention (CDC) studies various types of violence including domestic violence, also known as intimate partner violence. The CDC states that domestic violence is a significant public health issue that has many individual and societal costs, including many survivors having experienced some form of physical injury as a result. Data from U.S. crime reports suggest that about 1 in 5 homicide victims are killed by an intimate partner and that over half of female homicide victims in the U.S. are killed by a current or former male intimate partner.³

Florida Law and Statistics

Florida law defines the term “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.⁴ The term “family or household member” is defined to mean 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, and persons who are parents of a child in common regardless of whether they

¹ National Coalition Against Domestic Violence, *Domestic Violence*, available at https://assets.speakcdn.com/assets/2497/domestic_violence-2020080709350855.pdf?1596828650457 (last visited February 25, 2021).

² *Id.*

³ The CDC, *Preventing Intimate Partner Violence*, available at <https://www.cdc.gov/violenceprevention/intimatepartnerviolence/fastfact.html> (last visited February 26, 2021).

⁴ Section 741.28(2), F.S.

have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.⁵

In 2019, 105,298 crimes of domestic violence were reported to Florida law enforcement agencies resulting in 66,069 arrests.⁶ Many more survivors of domestic violence do not report their abusers to the police or access services at domestic violence services due to reasons such as shame, fear, or being prevented from doing so by their abusers. For this reason, it is difficult to quantify the true extent of abuse in the United States and in Florida.⁷

Domestic Violence Injunctions

Currently, Florida law creates a cause of action for an injunction for protection against domestic violence. Any family or household member, who is either the victim of domestic violence as defined in s. 741.28, F.S., or has reasonable cause to believe he or she is in imminent danger of becoming the victim of any act of domestic violence, has standing in the circuit court to file a sworn petition for an injunction for protection against domestic violence.⁸

Upon notice and hearing, when it appears to the court that the petitioner is either the victim of domestic violence or has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence, the court may grant such relief as the court deems proper, including an injunction that orders the respondent to participate in treatment, intervention, or counseling services to be paid for by the respondent. When the court orders the respondent to participate in a batterers' intervention program (BIP), the court, or any entity designated by the court, must provide the respondent with a list of BIPs from which the respondent must choose a program in which to participate.⁹

If there is a violation of the injunction for protection against domestic violence when there has not been an arrest, the petitioner may contact the clerk of the circuit court of the county in which the violation is alleged to have occurred. The clerk shall either assist the petitioner in the preparation of an affidavit in support of the violation or direct the petitioner to the office operated by the court within the circuit that has been designated by the chief judge of that circuit as the central intake point for injunction violations and where the petitioner can receive assistance in the preparation of the affidavit in support of the violation.¹⁰

⁵ Section 741.28(3), F.S.

⁶ Florida Department of Children and Families, *Domestic Violence Statistics*, available at <https://www.myflfamilies.com/service-programs/domestic-violence/statistics.shtml#:~:text=In%202019%2C%20105%2C298%20crimes%20of,domestic%20violence%20and%20their%20children> (last visited February 25, 2021).

⁷ *Id.* During fiscal year 2019-20, Florida's certified domestic violence centers provided 563,721 nights of emergency shelter to 13,250 survivors of domestic violence and their children. Advocates created 153,757 tailored safety plans, provided a total of 233,602 hours of advocacy and counseling services, and received 73,817 domestic violence hotline calls from individual seeking emergency services, information, and safety planning assistance.

⁸ Section 741.30(1)(a) and (e), F.S.

⁹ Section 741.30(6)(a)5., F.S.

¹⁰ Section 741.31(1), F.S.

Whether or not there is a criminal prosecution for violation of an injunction, the court is required to order the respondent to attend a BIP if it finds a willful violation of a domestic violence injunction, unless the court makes written factual findings in its judgment or order which are based on substantial evidence, stating why a BIP would be inappropriate.¹¹

Effects of Domestic Violence on Children

Children are often the hidden or silent victims of domestic violence, and some are directly injured, while others are frightened witnesses.¹² Children with domestic violence exposure are more likely to have also experienced emotional abuse, neglect, and physical abuse. The Centers for Disease Control and Prevention have reported that in homes where violence between partners occurs, there is a 45% to 60% chance of co-occurring child abuse, a rate 15 times higher than the average. Even when they are not physically attacked, children witness 68% to 80% of domestic assaults.¹³

In Florida, in 2020, 23.30 percent of alleged maltreatments reported to the child abuse hotline were for household violence that threatens a child and intimate partner violence that threatens a child. The percentage of those reports that were verified was 13.61 percent.¹⁴

The exposure of children to domestic violence is addressed in a number of Florida Statutes:

- **Section 39.01(35), F.S.**, defines the term “harm” as including, in part, to:
 - Engage in violent behavior that demonstrates a wanton disregard for the presence of a child and could reasonably result in serious injury to the child.
 - Negligently fail to protect a child in his or her care from inflicted physical, mental, or sexual injury caused by the acts of another.
- **Section 39.806(1)(f), F.S.**, provides that grounds for termination of parental rights may be established if the parent or parents engaged in egregious conduct or had the opportunity and capability to prevent and knowingly failed to prevent egregious conduct that threatens the life, safety, or physical, mental, or emotional health of the child or the child’s sibling. Proof of a nexus between egregious conduct to a child and the potential harm to the child’s sibling is not required.
- **Section 921.0024(1)(b), F.S.**, relating to the criminal punishment code worksheet computation, provides certain offenses that are defined as an act of domestic violence in the presence of a child who is a family or household member is an aggravator that results in the subtotal sentence points being multiplied by 1.5.^{15, 16}

¹¹ Section 741.31(5), F.S.

¹² Psychology Today, *Domestic Violence, Alarming Effects of Children's Exposure to Domestic Violence*, 2019, available at: <https://www.psychologytoday.com/us/blog/progress-notes/201902/alarming-effects-childrens-exposure-domestic-violence>, (last visited February 25, 2021).

¹³ *Id.*

¹⁴ Florida Department of Children and Families, *Child Welfare Dashboard, Alleged Maltreatments*, available at <https://www.myflfamilies.com/programs/childwelfare/dashboard/alleged-maltreatments.shtml> (last visited February 25, 2021).

¹⁵ Specifically, the offender must be convicted of the primary offense and the primary offense is a crime of domestic violence, as defined in s. 741.28, which was committed in the presence of a child under 16 years of age who is a family or household member as defined in s. 741.28(3), F.S., with the victim or perpetrator.

¹⁶ The Criminal Punishment Code (Code) is Florida’s primary sentencing policy. Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10). Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as

Batterers' Intervention Programs

Batterers' Intervention Programs (BIPs) are programs that batterers attend either voluntarily or under court order to educate and rehabilitate the batterer. The goal of BIPs is to change offender thinking and behavior with the result that offenders are held accountable and victim safety is enhanced and to decrease the likelihood of further violence. An important feature of BIPs is that the programs are designed to first promote survivor safety, which is achieved through accountability. All offender participants must sign a waiver of confidentiality to permit disclosure of participation to survivors, probation, and the courts, as needed. This assists the BIPs' accountability to survivors by ensuring that survivors have information needed to make informed decisions through sharing information with courts and probation.¹⁷

The first BIPs in the United States were established in the 1970s in response to hotline calls from victims and offenders. Around the same time that legal systems began criminalizing domestic violence and mandating prosecution protocols, judges began requiring that offenders attend BIPs. The earliest programs often modeled themselves on substance abuse or mental health programs, with some taking the form of couples counseling. However, BIPs are not the same as marriage or couples counseling because those programs presume equality in the relationship and the presence of domestic violence negates this presumption. Moreover, couples counseling in situations of domestic violence is not a recommended best practices and can place victims at a continued risk of harm.¹⁸

Later, more effective BIPs focused on altering batterers' beliefs surrounding power and control over their intimate partner. The Duluth Model, developed in the 1980s, is a feminist, psycho-educational approach to ending domestic violence. This is achieved through "identifying behaviors that men use to create power and control and presenting options other than dominance and control."¹⁹

Florida Batterers' Intervention Programs

BIPs were first recognized in statute in 1995 and the responsibility for certifying and monitoring the programs was placed in the Department of Corrections (DOC) Office for Certification and Monitoring of Batterers' Intervention Programs (OCMBIP).²⁰

provided in s. 921.0023, F.S. Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the level escalates. Points may also be added or multiplied for other factors such as victim injury or the commission of certain offenses. Absent mitigation, the permissible sentencing range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S. See ss. 921.002-921.0027, F.S.

¹⁷ The Advocates for Human Rights, Stop Violence Against Women, *Batterers' Intervention Programs*, March 2019, available at https://www.stopvaw.org/batterers_intervention_programs (last visited February 25, 2021).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Chapter 95-195, L.O.F.

In 1995, the link between domestic violence, the detrimental effects on children and BIPs as part of the solution was reflected in legislative findings:

- The Legislature finds that the incidence of domestic violence in this state is disturbingly high and that, despite the efforts of many to curb this violence, one person dies at the hands of a spouse, ex-spouse, or cohabitant approximately every 3 days. Further, a child who witnesses the perpetration of this violence becomes a victim as he or she hears or sees it occurring. This child is at high risk of also being the victim of physical abuse by the parent who is perpetrating the violence and, to a lesser extent, by the parent who is the victim. These children are also at a high risk of perpetrating violent crimes as juveniles and, later, becoming perpetrators of the same violence that they witnessed as children. The Legislature finds that there should be standardized programming available to the justice system to protect victims and their children and to hold the perpetrators of domestic violence accountable for their acts. Finally, the Legislature recognizes that in order for batterers' intervention programs to be successful in protecting victims and their children, all participants in the justice system as well as social service agencies and local and state governments must coordinate their efforts at the community level.²¹

In 2001, the OCMBIP, along with all associated resources, powers, and responsibilities, was transferred from the DOC to the DCF. The fees assessed and collected under this section were required to be deposited in the Executive Office of the Governor's Domestic Violence Trust Fund and directed to the DCF to fund the cost of certifying and monitoring batterers' intervention programs.²²

At that time a \$300.00 fee was collected from batterers' intervention programs applying for state certification and a \$100.00 fee from individuals applying for state certification as an assessor under s. 741.327, F.S. (2001). In addition, court ordered perpetrators of domestic violence were required to pay a one-time \$30.00 participant's fee which is collected by the certified programs and forwarded to the OCMBIP on a monthly basis.²³

In 2012, the duties and functions of the DCF were revised relating to the domestic violence program. Those changes included, in part, the elimination of the certification of batterers' intervention programs as well as the authority for the DCF to collect fees associated with the certification program.²⁴ Specifically, with respect to the batterers' intervention programs:

- Legislative intent relating to certifying batterers' intervention programs was amended;
- The role of the DCF related to the certification of these programs was eliminated;
- Statutory references to certified batterers' intervention programs were eliminated;
- The requirement that batterers' intervention programs meet the requirements currently in law was unchanged, but the authority for the DCF to promulgate rules to establish these requirements was removed; and

²¹ *Id.*

²² Chapter 2001-183, L.O.F.

²³ HB 1729, Bill Analysis, March 22, 2001, available at:

https://www.flsenate.gov/Session/Bill/2001/1729/Analyses/20011729HFRC_2001h1729.frc.pdf (last visited February 24, 2021).

²⁴ Chapter 2012-147, L.O.F.

- References to batterers' intervention programs in statute were retained but references to the programs being certified by the DCF were removed.²⁵

The FY 2011-12 General Appropriations Act eliminated funding for the DCF's BIP certification staff, and as a result, the 2012 Legislature repealed s. 741.327, F.S. The DCF no longer certified and monitored BIPs and all administrative rules governing BIPs were repealed. No state agency has certified and monitored BIPs since 2012. Section 741.325, F.S., has remained in effect, and in some jurisdictions, courts require that BIPs comply with the statute's requirements if the BIP wants to receive perpetrator referrals from the court.²⁶

Current law only provides the following requirements for batterers' intervention programs:

- The primary purpose of the program shall be victim safety and the safety of children, if present.
- The batterer shall be held accountable for acts of domestic violence.
- The program shall be at least 29 weeks in length and include 24 weekly sessions, plus appropriate intake, assessment, and orientation programming.
- The program content shall be based on a psychoeducational model that addresses tactics of power and control by one person over another.
- The program shall be funded by user fees paid by the batterers who attend the program, which allows them to take responsibility for their acts of violence.²⁷

The DCF states that certain stakeholders, such as certified domestic violence centers, court systems, and law enforcement have expressed concern of the lack of certification and monitoring of BIPs.²⁸

III. Effect of Proposed Changes:

The bill amends s. 741.325, F.S., requiring the DCF to certify and monitor batterers' intervention programs that provide direct services to individuals who have:

- Been found to have committed an act of domestic violence;
- Had injunctions for protection against domestic violence entered against;
- Been referred by the DCF; or
- Volunteered to attend such programs.

The bill also provides requirements that must be met in order for a batterer's intervention program to be certified by the DCF. The primary purpose of the program continues to be the focus on victim safety and safety of children, including:

- Safety measures that must include, but not be limited to:
 - Coordination with the criminal justice system, domestic violence centers, social service agencies, and state and local agencies.

²⁵ *Id.*

²⁶ The DCF, *2021 SB 680 Agency Legislative Bill Analysis*, p. 2, January 15, 2021 (on file with the Senate Committee on Children, Families and Elder Affairs) (hereinafter cited as "The DCF Analysis").

²⁷ Section 741.325, F.S.

²⁸ The DCF Analysis, p. 5.

- Level 2 background screenings for program personnel in accordance with ch. 435, F.S., which prohibits the employment of perpetrators of domestic violence.
- Requirements for victim notification.
- Extensive recordkeeping requirements and written operating policies and manuals.
- Rigorous facilitator credentialing procedures and continuing education requirements.
- Specified measures for holding the batterer accountable for acts of domestic violence, including new program requirements that are not in current law and include:
 - Assigning to batterers responsibility for their acts;
 - Providing a strategy to assist the batterers in taking responsibility for their acts;
 - Improving batterers ability to articulate and identify emotions;
 - Encouraging the batterers to develop critical thinking skills;
 - Teaching batterers about the effects of domestic violence on children.
 - Improving the batterers' negotiation and conflict resolution skills;
 - Teaching the batterers communication skills and how to listen to others;
 - Challenging the batterers' gender roles expectations;
 - Teaching the batterers about the relationship between substance abuse and domestic violence; and
 - Supporting the principle that domestic violence is primarily a learned behavior and is not a natural response to provocation.

The bill requires that a BIP be at least 29 weeks in length and include at least 24 weekly group sessions plus appropriate intake, assessment, and orientation programming. When the DCF had the responsibility for certifying and monitoring BIPs it was required to promulgate guidelines to govern purpose, policies, standards of care, appropriate intervention approaches, inappropriate intervention approaches during the batterers' program intervention phase including couples counseling and mediation, conflicts of interest, assessment, program content and specifics, qualifications of providers, and credentials for facilitators, supervisors, and trainees.²⁹ Any rules or guidelines that were developed have been repealed or are no longer available. Currently, BIPs are only required to be based on a psychoeducational model that addresses tactics of power and control by one person over another.³⁰

The bill also requires program content that is based on an intervention model that recognizes the use of power and control tactics by one person to inflict emotional or physical abuse on another. The bill replaces the term "psychoeducational" with the term "intervention" when referring to program content but both terms focus on the use of power and control tactics by one person to harm another. It is unclear what the difference is in approach. The bill specifies things that may not be included in program content which is different than current law, including anger management techniques that identify anger as a primary cause of domestic violence and identification of poor impulse control as a primary cause of domestic violence.

The bill requires that all participants in a group session must be the same gender and if a participant in the group is not fluent in the English language, at least one facilitator must be able to translate or effectively communicate in the participant's native language. That facilitator must be affiliated with the program.

²⁹ Section 741.325, F.S. 2011.

³⁰ Section 741.325(1)(d), F.S. 2020.

The bill requires the program to be funded by user fees paid by the batterers who attend the program and while a batterer may not be admitted to the program until the fee has been paid, a batterer who has been deemed indigent by the court and is unable to pay the user fee may not be refused admittance.

The bill requires the DCF to annually review the intervention programs to ensure compliance and the DCF may reject or suspend the certification of a program that does not meet the required qualifications. The DCF must notify the court of any program suspensions and must adopt rules to implement the requirements of the bill.

The bill provides the DCF with rulemaking authority.

The bill also amends ss. 741.281, 741.2902, 741.30, 741.31, and 948.038, F.S., conforming references to changes made by the act.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

SB 682, which is tied to this bill, establishes a revived, reenacted statutory fee of not more than \$300 for the certification and monitoring of batterers' intervention programs

created in 1995 and repealed in 2012 and a currently existing \$30 fee to be paid by individuals attending a program.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DCF provides that the bill does not result in expenditures to state or local government.³¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends ss. 741.325, 741.281, 741.2902, 741.30, 741.31, and 948.038 of the Florida Statutes.

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.

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

³¹ The DCF Analysis, p. 6.