

CHAPTER 97-298

Committee Substitute for Senate Bill No. 148

An act relating to domestic violence; amending s. 741.29, F.S.; prescribing preferred arrest policy for a law enforcement officer investigating alleged domestic violence; requiring certain reports by law enforcement officers; defining the offense of violating pretrial release condition when original arrest was for act of domestic violence; providing penalties; amending s. 901.15, F.S.; prescribing public policy for arrest in domestic violence cases; providing for arrest of a person without warrant when there is probable cause to believe a person originally arrested for an act of domestic violence has violated a pretrial release condition; amending s. 921.0014, F.S.; providing for a sentencing multiplier in certain cases of domestic violence; amending s. 943.171, F.S.; requiring certain training for law enforcement officers; providing an effective date.

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

Section 1. Subsections (2) and (4) of section 741.29, Florida Statutes, are amended, and subsection (6) is added to that section, to read:

741.29 Domestic violence; investigation of incidents; notice to victims of legal rights and remedies; reporting.—

(2) When a law enforcement officer investigates an allegation that an incident of domestic violence has occurred, the officer shall handle the incident pursuant to the arrest policy provided in s. 901.15(7)(a), and as developed in accordance with subsections (3), (4), and (5). Whether or not an arrest is made, the officer shall make a written police report that is complete and clearly indicates the alleged offense was an incident of domestic violence. Such report shall be given to the officer's supervisor and filed with the law enforcement agency in a manner that will permit data on domestic violence cases to be compiled as part of the field arrest and incident reporting form and as prescribed by the department of the alleged incident which clearly indicates that the alleged offense was an incident of domestic violence. Such report must include:

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

(b) If a law enforcement officer decides not to make an arrest or decides to arrest two or more parties, the officer shall include in the report the grounds for not arresting anyone or for arresting two or more parties. If an arrest was not made, an indication by the law enforcement officer, in writing, of the reasons why an arrest was not made.

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

Whenever possible, the law enforcement officer shall obtain a written statement from the victim and witnesses concerning the alleged domestic vio-

lence. The officer shall submit the report 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 shall, without charge, send a copy of the initial police report, as well as any subsequent, supplemental, or related report, which excludes victim/witness statements or other materials that are part of an active criminal investigation and are exempt from disclosure under chapter 119, to the nearest locally certified domestic violence center within 24 hours after the agency's receipt of the report. The report furnished to the domestic violence center must include a narrative description of the domestic violence incident.

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

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

(6) A person who willfully violates a condition of pretrial release provided in s. 903.047, when the original arrest was for an act of domestic violence as defined in s. 741.28, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and shall be held in custody until his or her first appearance.

Section 2. Subsection (7) of section 901.15, Florida Statutes, 1996 Supplement, is amended, and subsection (12) is added to that section, to read:

901.15 When arrest by officer without warrant is lawful.—A law enforcement officer may arrest a person without a warrant when:

- (7) There is probable cause to believe that the person has committed:
 - (a) An act of domestic violence, as defined in s. 741.28;
 - (b) Child abuse, as defined in s. 827.04(2) and (3); or
 - (c) Any battery upon another person, as defined in s. 784.03.

With respect to an arrest for an act of domestic violence, the decision to arrest shall not require consent of the victim or consideration of the relationship of the parties. It is the public policy of this state to strongly discourage arrest and charges of both parties for domestic violence on each other and to encourage training of law enforcement and prosecutors in this area. A law enforcement officer who acts in good faith and exercises due care in making an arrest under this subsection is immune from civil liability that otherwise might result by reason of his action.

(12) There is probable cause to believe that the person has committed an act that violates a condition of pretrial release provided in s. 903.047 when the original arrest was for an act of domestic violence as defined in s. 741.28.

Section 3. Paragraph (b) of subsection (1) of section 921.0014, Florida Statutes, 1996 Supplement is amended to read:

921.0014 Sentencing guidelines; worksheet computations; score-sheets.—

(1)

(b) WORKSHEET KEY:

Legal status points are assessed when any form of legal status existed at the time the offender committed an offense before the court for sentencing. Four (4) sentence points are assessed for an offender's legal status.

Community sanction violation points are assessed when a community sanction violation is before the court for sentencing. Six (6) sentence points are assessed for each community sanction violation, and each successive community sanction violation; however, if the community sanction violation includes a new felony conviction before the sentencing court, twelve (12) community sanction violation points are assessed for such violation, and for each successive community sanction violation involving a new felony conviction. Multiple counts of community sanction violations before the sentencing court shall not be a basis for multiplying the assessment of community sanction violation points.

Prior serious felony points: If the offender has a primary offense or any additional offense ranked in level 8, level 9, or level 10, and one or more prior serious felonies, a single assessment of 30 points shall be added. For purposes of this section, a prior serious felony is an offense in the offender's prior record that is ranked in level 8, level 9, or level 10 under s. 921.0012 or s. 921.0013 and for which the offender is serving a sentence of confinement, supervision, or other sanction or for which the offender's date of release from confinement, supervision, or other sanction, whichever is later, is within 3 years before the date the primary offense or any additional offense was committed.

Prior capital felony points: If the offender has one or more prior capital felonies, points shall be added to the subtotal sentence points of the offender equal to twice the number of points the offender receives for the primary offense and any additional offense. A prior capital felony is a capital felony offense for which the offender has been found guilty; or a felony in another jurisdiction which is a capital felony in that jurisdiction, or would be a capital felony if the offense were committed in this state.

Possession of a firearm, semiautomatic firearm, or machine gun: If the offender is convicted of committing or attempting to commit any felony other than those enumerated in s. 775.087(2) while having in his possession: a

firearm as defined in s. 790.001(6), an additional 18 sentence points are assessed; or if the offender is convicted of committing or attempting to commit any felony other than those enumerated in s. 775.087(3) while having in his possession a semiautomatic firearm as defined in s. 775.087(3) or a machine gun as defined in s. 790.001(9), an additional 25 sentence points are assessed.

Sentencing multipliers:

Drug trafficking: If the primary offense is drug trafficking under s. 893.135, the subtotal sentence points are multiplied, at the discretion of the court, for a level 7 or level 8 offense, by 1.5. The state attorney may move the sentencing court to reduce or suspend the sentence of a person convicted of a level 7 or level 8 offense, if the offender provides substantial assistance as described in s. 893.135(4).

Law enforcement protection: If the primary offense is a violation of the Law Enforcement Protection Act under s. 775.0823(2), the subtotal sentence points are multiplied by 2.5. If the primary offense is a violation of s. 775.0823(3), (4), (5), (6), (7), or (8), the subtotal sentence points are multiplied by 2.0. If the primary offense is a violation of s. 784.07(3) or s. 775.0875(1), or of the Law Enforcement Protection Act under s. 775.0823(9) or (10), the subtotal sentence points are multiplied by 1.5.

Grand theft of a motor vehicle: If the primary offense is grand theft of the third degree involving a motor vehicle and in the offender's prior record, there are three or more grand thefts of the third degree involving a motor vehicle, the subtotal sentence points are multiplied by 1.5.

Domestic violence in the presence of a child: If the offender is convicted of the primary offense and that offense is determined to be a crime of domestic violence as defined in s. 741.28 and to have been committed in the presence of a child who is related by blood or marriage to the victim or perpetrator and who is under the age of 16, the subtotal sentence points are multiplied, at the discretion of the court, by 1.5.

Criminal street gang member: If the offender is convicted of the primary offense and is found to have been a member of a criminal street gang at the time of the commission of the primary offense pursuant to s. 874.04, the subtotal sentence points are multiplied by 1.5.

Section 4. Subsection (1) of section 943.171, Florida Statutes, is amended to read:

943.171 Basic skills training in handling domestic violence cases.—

(1) The commission shall establish standards for instruction of law enforcement officers in the subject of domestic violence. Every basic skills course required in order for law enforcement officers to obtain initial certification shall, after January 1, 1986, include a minimum of 6 hours of training

in handling domestic violence cases. Such training must include training in the recognition and determination of the primary aggressor in domestic violence cases.

Section 5. This act shall take effect October 1, 1997.

Approved by the Governor June 3, 1997.

Filed in Office Secretary of State June 3, 1997.