

ORIGINAL

FILED
THOMAS D. HALL

JUN 06 2000

IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT
BY

STATE OF FLORIDA,

Petitioner,

v.

JOHANN S. WARREN,

Respondent.

CASE NO. SC00-695

PETITIONER'S REPLY BRIEF ON THE MERITS

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

JAMES W. ROGERS
TALLAHASSEE BUREAU CHIEF
CRIMINAL APPEALS
FLORIDA BAR NO. 325791

KARLA D. ELLIS
FLORIDA BAR NO. 122017
ASSISTANT ATTORNEY GENERAL
OFFICE OF THE ATTORNEY GENERAL
PL-01, THE CAPITOL
TALLAHASSEE, FL 32399-1050
(850) 414-3300 Ext 4571

COUNSEL FOR PETITIONER

TABLE OF CONTENTS

	<u>PAGE(S)</u>
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
PRELIMINARY STATEMENT	v
CERTIFICATE OF FONT AND TYPE SIZE	v
STATEMENT OF THE CASE AND FACTS	v
ARGUMENT	2

ISSUE I

DID THE TRIAL COURT ERR IN GRANTING THE MOTION TO DISMISS WHEN THE DEFENDANT WAS CHARGED WITH FELONY BATTERY DUE TO HIS TWO PRIOR CONVICTIONS OF BATTERY AND AGGRAVATED BATTERY PURSUANT TO § 784.03(2), FLA. STAT. (1997)? ,	2
CONCLUSION	4
CERTIFICATE OF SERVICE	5
APPENDIX	

TABLE OF CITATIONS

<u>CASES</u>	<u>PAGE(S)</u>
<u>Claims Management, Inc. v. Drewno</u> , 727 So. 2d 395 (Fla. 1st DCA 1999)*	3
<u>Winemiller v. State</u> , 568 So. 2d 483 (Fla. 4th DCA 1990)	2
 <u>FLORIDA STATUTES (1997)</u>	
§ 784.03(2)	2
 <u>OTHER</u>	
ch. 96-392, § 5 Law of Fla.)	2

PRELIMINARY STATEMENT

Petitioner, the State of Florida, the Appellant in the First District Court of Appeal and the prosecuting authority in the trial court, will be referenced in this brief as Petitioner, the prosecution, or the State. Respondent, Johann S. Warren, the Appellee in the First District Court of Appeal and the defendant in the trial court, will be referenced in this brief as Respondent or his proper name.

The record on appeal will be referenced as in the Initial Brief. "IB" and "AB" will designate Petitioner's Initial Brief and Respondent's Answer Brief, respectively, followed by any appropriate page number.

All emphasis through bold lettering is supplied unless the contrary is indicated.

CERTIFICATE OF FONT AND TYPE SIZE

Counsel certifies that this brief was typed using Courier New 12 or larger.

STATEMENT OF THE CASE AND FACTS

The States re-adopts its statement of the case and facts in its initial brief.

ARGUMENT

ISSUE I

DID THE TRIAL COURT ERR IN GRANTING THE MOTION TO DISMISS WHEN THE DEFENDANT WAS CHARGED WITH FELONY BATTERY DUE TO HIS TWO PRIOR CONVICTIONS OF BATTERY AND AGGRAVATED BATTERY PURSUANT TO § 784.03(2), FLA. STAT. (1997)?

The States re-adopts its arguments presented in its initial brief. The State further points out that the Respondent's argument in its answer brief would completely defeat the legislative intent which is reflected in the plain language of the statute and in the statute's final bill analysis.

In examining the final bill analysis and legislative history of § 784.03(2) of the Florida Statutes, which was enacted from ch. 96-392, § 5, Laws of Fla., the 1996 Florida Legislature intended for a person who had two prior convictions for any battery to be convicted of a third degree felony upon conviction of a third or subsequent battery of any kind. (Appendix, page 7). It specifically stated that

SB 2830, 1st Eng., provides that a person who has two prior convictions for *any battery offense* (not just batteries constituting acts of domestic violence), who commits a third or subsequent battery, commits a third degree felony.

Appendix, page 7. When reading the final bill analysis in its entirety, the evil that the legislature intended to correct was domestic and repeated acts of violence. See ch. 96-392, § 5, at 2435, Laws of Fla.; Winemiller v. State, 568 So. **2d 483, 484** (Fla. 4th DCA 1990) (**considering** the act as a whole, the evil to be corrected, the language of the

act, including its title, the history of its enactment, and the state of the law already in existence is paramount in determining legislative intent).

Therefore, contrary to Respondent's assertion on the merits, (AB 6), Respondent's prior conviction for aggravated battery can qualify as one of the two convictions of battery to enhance his third battery offense to a felony. The legislative intent from the final bill analysis clearly stated that two prior convictions of any battery offense can be used to enhance a third or subsequent battery offense to a felony. See Claims Management, Inc. v. Drewno, 727 So. 2d 395, 398 (Fla. 1st DCA 1999) (determining legislative intent in defining the phrase "arising out of" by examining the final bill analysis).


This Court should not construe the statute so as to defeat the intention of the legislature - to punish people for repeated acts of violence. It is obvious from the final bill analysis that the 1996 Legislature intended for the word 'battery' to encompass any kind of battery, whether misdemeanor or felony. Accordingly, the State asks this honorable Court to disapprove of the First District's decision in this case.

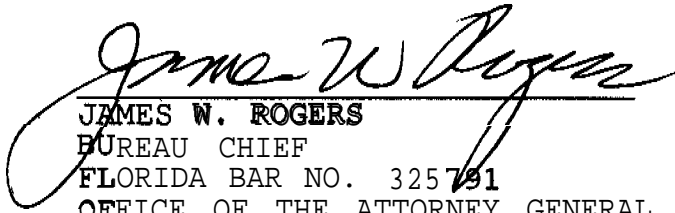
CONCLUSION

Based on the foregoing discussions, the State respectfully requests this Honorable Court to reverse the district court's decision and trial court's order which granted Respondent his motion to dismiss and re-instate the original information charging Respondent with felony battery.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL



KARLA D. ELLIS
FLORIDA BAR NO. 122017
ASSISTANT ATTORNEY GENERAL


JAMES W. ROGERS
BUREAU CHIEF
FLORIDA BAR NO. 325791
OFFICE OF THE ATTORNEY GENERAL
PL-01, THE CAPITOL
TALLAHASSEE, FL 32399-1050
(850) 414-3300 Ext 4571

COUNSEL FOR PETITIONER
[AGO# L00-1-5001]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing PETITIONER'S REPLY BRIEF ON THE MERITS has been furnished by U.S. Mail to Glen P. Gifford, Assistant Public Defender, Leon County Courthouse, 301 South Monroe Street, Suite 401, Tallahassee, FL 32301, this 6th day of June, 2000.



Karla D. Ellis
Attorney for the State of Florida

[C:\USERS\CRIMINAL\PLEADING\00105001\Warrenbr.wpd --- 6/5/00, 3:55 pm]

Appendix

COMMITTEE **ON:** Criminal Justice

ACTION: Favorably

DATE: April 22, 1996

TIME: 2:00 PM -- 5:00 PM

OTHER COMMITTEE REFERENCES:

Ways and Means

PLACE: Room A, Senate Office Building

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FINAL BILL VOTE		SENATORS										
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
X		Bankhead										
X		Bronson										
		Crist										
X		Johnson										
X		Jones										
		Silver										
		Wexler										
		VICE CHAIRMAN										
		Horne										
X		CHAIRMAN										
		Burt										
5	0	TOTAL										
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay

APPEARANCE: Key Sponsor _____ Senator 1 Sponsor's Aide _____ Other _____
 (File with Secretary of the Senate) 04/22/96 5:31 F

HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIMINAL JUSTICE
FINAL BILL ANALYSIS & ECONOMIC IMPACT STATEMENT

COPY

BILL #: SB 2830, 1st Engrossed
RELATING TO: Domestic or Repeat Violence
SPONSOR(S): Senator Myers

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STATUTE(S) AFFECTED: Creates: s. 61.052(6), F.S.
Amends: ss. 741.281, 741.30(6)(d) and (7)(c), 741.31, 784.03,
790.065(2)(c), and 901.15(7), F.S.
Repeals: s. 784.035, F.S.

COMPANION BILL(S): CS/SB 1658, 1st Eng. (s), CS/SB 2378 (s), CS/HB 945, 1st Eng. (c),
CS/HB 2585 (c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) SENATE CRIMINAL JUSTICE YEAS 5 NAYS 0
- (2) SENATE WAYS AND MEANS (W/D)
- (3)
- (4)
- (5)

I. SUMMARY:

SB 2830, 1st Eng., amends provisions of law relating to domestic violence injunctions, batterers' intervention programs, repeat battery offenses, and the sale and delivery of firearms. The substantive changes include:

- An injunction for protection against domestic violence arising out of a dissolution of marriage proceeding must be issued as a separate order under chapter 741, F.S., and shall not be included in the judgment of dissolution of marriage.
- The provisions of current law that require courts to order certain persons to attend batterers' intervention programs are modified to give the courts additional discretion.
- The bill clarifies that a law enforcement **officer's** decision to arrest in a domestic violence situation does not require the victim's consent or the **officer's** consideration of the relationship of the parties.
- Upon a person's third or subsequent conviction for any **battery** offense, the offense is reclassified from a first degree misdemeanor to a third degree felony.
- The bill expands the persons who are prohibited from receiving or possessing a firearm to include any person who has been arrested for stalking (a first degree misdemeanor) or aggravated stalking (two third degree felony offenses).

On April 12, 1996, the CJEC determined that CS/HB 2585 (the substance of which passed the Legislature in this bill) has a significant, but indeterminate, impact on the state's overall prison population. The bill's impact on the state's prison population is attributable to the penalty enhancement for repeat battery offenses.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Domestic Violence and Injunctions for Protection Against Domestic Violence

Section 741.28(1), F.S., defines domestic violence as:

Any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, or any criminal offense resulting in physical injury or death of one family or household member by another who is or was residing in the same single dwelling unit, [Note: *the offense of "sexual assault" does not exist in the Florida Statutes.*]

A family or household member means:

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 have a child in common regardless of whether they have been married or have resided together at any time.

Section 741.30(1), F.S., creates a cause of action for an injunction for protection against domestic violence. Any family or household member who is the victim of an act of domestic violence, or has reasonable cause to believe he or she may become the victim of domestic violence, may petition the circuit court for an injunction for protection against domestic violence. After proper notice and a hearing, the court may grant relief, including an injunction:

- Restraining the respondent from committing any act of domestic violence.
- Awarding the exclusive use and possession of the dwelling that the parties share to the petitioner, or excluding the respondent from the petitioner's residence.
- On the same basis as provided in chapter 61, F.S. [Dissolution of Marriage; Support; and Custody]:
 - ▶ Awarding temporary custody of, or temporary visitation rights with regard to, a minor child or children of the parties.
 - ▶ Establishing temporary support for the petitioner or a minor child or children.
- Ordering the respondent to participate in treatment, intervention, or counseling services.
- Ordering other relief that the court finds necessary for the protection of a domestic violence victim, including directives to law enforcement agencies.

Any relief granted must be for a fixed period not exceeding one year, unless the victim petitions the court to extend the injunction for successive fixed periods not exceeding one year. The court has broad discretion to grant an extension after considering the circumstances [s. 741.30(6)(b), F.S.] An injunction for protection against domestic violence must be served on the respondent as soon as possible after it is granted.

In 1994, the Legislature directed the Florida Department of Law Enforcement (FDLE) to establish a Domestic and Repeat Violence Injunction Statewide Verification System. This statewide communication system electronically transmits information relating to domestic violence and repeat violence injunctions to and between criminal justice agencies throughout the state.

In 1995, in order to determine the effectiveness of the enforcement of injunctions for protection against domestic violence, the Legislature directed the Association of Court Clerks, in coordination with the Executive Office of the Governor and the Governor's Task Force on Domestic Violence, to prepare a report that describes:

- The number of domestic *violence* injunction violations filed by petitioners or others on their behalf;
 - The number of times the state attorney assists the court in enforcing domestic violence injunction violations by filing a motion for an order to show cause, or similar motion;
 - The judicial action taken on the domestic violence injunction violations;
 - The number of times domestic violence injunction violations are prosecuted as crimes under ss. 741.31 and 784.047, F.S., or any other section of Florida law [Note: s. 784.047, F.S., provides penalties for violating protective injunctions involving *repeat* violence, not domestic violence]; and
- Any other information that shows the effectiveness of judicial actions to enforce domestic violence injunction violations [see s. 741.31(5), F.S.].

The report must be submitted to the Executive Office of the Governor, the Senate President, the House Speaker, and the Chief Justice of the Supreme Court by December 1, 1996.

Batterers' Intervention Programs

During the 1995 legislative session, the Legislature amended the domestic violence statutes to require courts to order certain persons to attend batterers' intervention programs. *Effective July 7, 1996*, if a person is:

- Found guilty of committing a crime of domestic violence; *or*
- Charged with committing an act of domestic violence and admitted to a pretrial diversion program,

the court must order the person to attend a batterers' intervention program, as a condition of either probation or the pretrial diversion program (as applicable), *unless* the court "makes written factual findings in its judgment or order which are based on competent substantial evidence, stating why a batterers' intervention program would be inappropriate" [s. 741.281, F.S.].

[*Effective July 7, 1996*, s. 741.281, F.S., requires the court to sentence a person who is found guilty of committing a domestic violence crime to a one-year mandatory minimum period of probation, to facilitate the enforcement of the person's participation in the batterers' intervention program. However, the mandatory minimum probation requirement does not

preclude the court from imposing a term of incarceration as otherwise provided by law for a domestic violence crime.]

Effective July 7, 1996, an injunction for protection against domestic violence must, on its face, order the respondent to attend a batterers' intervention program as a condition of the injunction, *unless* the court "makes written factual findings in its judgment or order which are based on substantial evidence, stating why a batterers' intervention program would be inappropriate" [s. 741.30(6)(d), F.S.].

Battery Offenses / Warrantless Arrest

Section 784.03, F.S., provides that the offense of battery occurs when a person:

- Actually and intentionally touches or strikes another person against the will of the other; *or*
- Intentionally causes bodily harm to another person.

Currently, battery is a *first* degree *misdemeanor*, punishable by up to one year in county jail and/or a fine not exceeding \$1,000.

In 1995, the Legislature created s. 784.035, F.S., to provide that:

A third or subsequent offense of battery, when committed under circumstances that constitute the battery as an act of domestic violence as defined in s. 741.28, and when the previous offenses of battery were committed under circumstances that constituted domestic violence as defined in s. 741.28, constitutes a *felony of the third degree*, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 901.15, F.S., describes circumstances when a law enforcement officer may arrest a person without a warrant. Subsection (7) provides, in part, that a law enforcement officer may arrest a person without a warrant *if* the officer has probable cause to believe that a person has committed an act of domestic violence *and* the officer reasonably believes that there is danger of violence unless the person alleged to have committed the act of domestic violence is arrested without delay.

Sale and Delivery of Firearms

Section 790.065, F.S., addresses the sale and delivery of firearms. Current law prohibits the following persons from receiving or possessing a firearm:

- A person who has been indicted or against whom an information has been filed for an offense that is a *felony* under either state or federal law;
- A person against whom an injunction for protection against domestic violence has been entered "under s. 741.30 or s. 784.047" [Note: s. 784.047, F.S., addresses *penalties* for violating protective injunctions involving repeat *violence* -- the section does not address injunctions for protection against *domestic violence*];

- A person who has been arrested for a dangerous crime enumerated in s. 907.041(4)(a), F.S.; or
- A person who has been arrested for any of the following *felonies*: criminal anarchy, extortion, explosives violations, controlled substance violations, resisting an officer with violence; weapons and firearms violations, treason, assisting self-murder, or sabotage.

B. EFFECT OF PROPOSED CHANGES:

Domestic Violence and Injunctions for Protection Against Domestic Violence

SB 2830, 1st Eng., provides that an injunction for protection against domestic violence arising out of the dissolution of marriage proceeding must be issued as a separate order under chapter 741, F.S., and shall not be included in the judgment of dissolution of marriage.

The bill conforms procedures relating to domestic violence injunctions to the procedures already in place for repeat violence injunctions. Specifically, the sheriff must make information relating to the *service* of an injunction for protection against domestic violence available to other law enforcement agencies within 24 hours after the respondent has been served with the injunction for protection against domestic violence.

Additionally, SB 2830, 1st Eng., requires the Association of Court Clerks to include additional information in the report regarding the effectiveness of the enforcement of domestic violence injunctions that is due by December 1, 1996. Specifically, the report described in s. 741.31, F.S., must also determine:

The effectiveness of batterers' intervention programs, measured in quantifiable terms, including the number of respondents ordered to a batterers' intervention program but later assessed as inappropriate for the program, the number referred to other programs after such assessment, the number who successfully complete the program to which they were assigned, the number who fail to complete the program to which they were assigned and the reason for such failure, the number of respondents who attend a batterers' intervention program and subsequently engage in domestic violence, and any other measures that would reveal the effectiveness of such programs.

Batterers' Intervention Programs

SB 2830, 1st Eng., modifies the legislation passed last year that requires courts to order certain persons to attend batterers' intervention programs, as follows.

- Effective July 1, 1996, if a person is found guilty of, has had adjudication withheld on, or has pled nolo contendere to committing a crime of domestic violence, or is charged with committing an act of domestic violence and admitted to a pretrial diversion program, the court must order the person to attend a batterers' intervention program, as a condition of either probation or the pretrial diversion program (as applicable), unless the court, in its discretion, determines not to impose the condition and states on the record why a batterers' intervention program might be inappropriate. The bill expands the group of domestic violence offenders subject to participation in batterers' intervention programs and removes the requirement that

the court make written factual findings stating why a batterers' intervention program would be inappropriate if the court chooses not to impose the condition.

Effective July 7, 1996, an injunction for protection against domestic violence may, on its face, order the respondent to attend a batterers' intervention program as a condition of the injunction. Unless the court makes written factual findings in its judgment or order which are based on substantial evidence, stating why a batterers' intervention program would be inappropriate, the court shall order the respondent to attend a batterers' intervention program if:

1. It finds that the respondent willfully violated the ex pane injunction:
2. The respondent, in this state or any other state, has been convicted of, had adjudication withheld on, or pled nolo contendere to a crime involving violence or a threat of violence: or
3. The respondent, in this state or any other state, has had at any time a prior injunction for protection entered against the respondent after a hearing with notice.

SB 2830, 1st Eng., amends s. 741.31, F.S., to provide that regardless of whether a person is criminally prosecuted under that section for violating an injunction for protection against domestic violence, if the court finds a willful violation of a domestic violence injunction, the court must order the respondent to attend a batterers' intervention program unless the court makes written factual findings in its judgment or order which are based on substantial evidence, stating why a batterers' intervention program would be inappropriate.

Battery Offenses / Warrantless Arrest

SB 2830, 1st Eng., provides that a person who has two prior convictions for *any* battery offense (not just batteries constituting acts of domestic violence), who commits a third or subsequent battery, commits a third degree felony. The bill also removes the provision in the warrantless arrest section that requires a law enforcement officer to reasonably believe that there is danger of violence unless the person is arrested without delay. Additionally, the bill clarifies that the law enforcement officer's decision to arrest in a domestic violence situation does not require the victim's consent or the officer's consideration of the relationship of the parties.

Sale and Delivery of Firearms

The bill expands the persons who are prohibited from receiving or possessing a firearm to include any person who has been arrested for stalking (a first degree misdemeanor) or aggravated stalking (two third degree felony offenses). The bill also clarifies that a person who has been the respondent of an injunction for protection against repeat violence is prohibited from receiving or possessing a firearm.

C. SECTION-BY-SECTION ANALYSIS:

Section 1 adds subsection (6) to s. 61.052, F.S., relating to dissolution of marriage, as described above.

Section 2 amends s. 741.281, F.S., which requires courts to order certain persons to attend batterers' intervention programs, as described above. The amendments addressing mandatory batterers' intervention program attendance contained in SB 2830, 1st Eng., take effect on July 1, 1996, and as such, there will not be a conflict with the provisions passed last year because those provisions have yet to take effect.

Section 3 amends s. 741.30(6)(d) and (7)(c), F.S., which addresses domestic violence injunctions and the statewide verification system for injunctions for protection, as described above.

Section 4 amends s. 741.31, F.S., relating to violations of injunctions for protection against domestic violence, as described above.

Section 5 amends s. 784.03, F.S., effective October 7, 1996, to provide that a person who has two prior battery convictions who commits a third or subsequent battery offense, commits a third degree felony. The bill defines "conviction" to mean a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld.

Section 6 repeals s. 784.035, F.S., relating to enhanced penalties for battery as domestic violence.

Section 7 amends s. 790.065(2)(c), F.S., to prohibit additional persons from being able to receive or possess firearms, and to clarify existing provisions, as described above.

Section 8 amends s. 901.15(7), F.S., relating to warrantless arrests, as described above.

Section 9 provides a severability clause.

Section 10 provides that except as otherwise specifically provided, the act takes effect on July 1, 1996.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Net Revenue Effects:

See fiscal comments.

2. Recurring Effects:

See fiscal comments.

3. Lone Run Effects Other Than Normal Growth:

See fiscal comments.

4. Total Revenues and Expenditures

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See fiscal comments,

2. Recurring Effects:

See fiscal comments.

3. Long Run Effects Other Than Normal Growth:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

To the extent that additional persons will be prohibited from purchasing firearms, this bill may have a negative impact on businesses that sell firearms. A precise impact is indeterminate.

2. Direct Private Sector Benefits:

Indeterminate.

3. Effects on Competition, Private Enterprise and Employment Markets:

Indeterminate.

D. FISCAL COMMENTS:

The bill provides that upon a person's third or subsequent conviction for battery, the battery offense is reclassified from a first degree misdemeanor to a third degree felony. For calendar year 1994, FDLE indicates that 98,007 "aggravated assaults" and 201,803 "simple assaults" were reported to law enforcement agencies in Florida. There were 44,004 arrests for "aggravated assault" and 57,536 arrests for "simple assaults." However, this information does not reveal the number of arrests for a third or subsequent **battery** offense.

Section 921.001(9)(b), F.S., requires the Criminal Justice Estimating Conference (CJEC) to review any legislation that creates or modifies a criminal penalty to determine the bill's impact on the state prison system. On April 12, 1996, the CJEC determined that CS/HB 2585 (the substance of which passed the Legislature in this bill) has a significant, but indeterminate, impact on the state's overall prison population. The bill's impact on the

state's prison population is attributable to the penalty enhancement for repeat battery offenses.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill may require counties or municipalities to spend funds or to take an action requiring the expenditure of funds (*see Fiscal Comments*). However, the bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

SB 2830, by Senator Myers, was reported favorably by the Senate Criminal Justice Committee on April 22, 1996, and was referred to the Senate Committee on Ways and Means on April 23, 1996. On April 24, 1996, the bill was withdrawn from the Ways and Means Committee and placed on the calendar. SB 2830 was placed on the Senate special order calendar on May 1, 1996, and passed the Senate [YEAS 32, NAYS 0]. On May 3, 1996, the House received SB 2830, read the bill the second time, and adopted a **strike-everything** amendment that included the language contained in **CS/HB 2585**. SB 2830, as amended, passed the House [YEAS 114, NAYS 0]. On May 4, 1996, the Senate considered SB 2830 outside the extended call of the session, concurred in the House amendment, and passed the bill, as amended [YEAS 38, NAYS 0].

CS/HB 2585, by the Committee on Criminal Justice, Representatives **Betancourt**, Villalobos, and others; died on the House calendar.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON CRIMINAL JUSTICE:
Prepared by:

Staff Director:

Kiistin S. Pinaree

Lynn C. Cobb

STORAGE NAME : s2830z.cj

DATE: June 19, 1996

PAGE 10

FINAL ANALYSIS PREPARED BY COMMITTEE ON CRIMINAL JUSTICE:

Prepared by:

Staff Director:

Kristin S. Pingree

Lynn C. Cobb

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

COPY

Date: April 17, 1996

Revised: _____

Subject: Domestic Violence

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	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	
1.	Dugger <u>W.W.</u>	Thomas <u>Ant</u>	CJ	_____
2.	_____	_____	WM	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

SB 2830 would clarify that a third or subsequent **conviction** for battery as an act of domestic violence, **regardless of whether the sentence was suspended or the adjudication of guilt was withheld**, would constitute a third degree felony. (The statute currently provides that a third or subsequent **offense** of battery as an act of domestic violence constitutes a third degree felony.)

This bill would substantially amend, create, or repeal the following sections of the Florida Statutes: 784.035.

II. Present Situation:

Section 741.28, F.S., defines domestic violence as "any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, or criminal offense resulting in physical injury or death of one family or household member by another who is or was residing in the same single dwelling unit." Thus, a husband who commits a battery on his wife, for example, commits an act of domestic violence under this definition.

Under s. 784.03, F.S., a person commits a battery if he actually and intentionally touches or strikes another person against that person's will or intentionally causes bodily harm to another individual. The crime of battery is a first degree misdemeanor, punishable by imprisonment not exceeding one year and payment of a **fine** not exceeding \$1,000.

However, s. 784.035, F.S., enhances the first degree misdemeanor penalty to a third degree felony when the third or subsequent **offense** of battery constitutes an act of domestic violence as defined in s. 741.28, F.S., and the previous batteries were also acts of domestic violence. The

statute does not address whether the enhanced penalty applies when the sentence is suspended or the adjudication of guilt is withheld. A third degree felony is punishable by imprisonment not exceeding five years and payment of a **fine** not exceeding \$5,000. s. 775.082 and s. 775.083, F.S.

III. Effect of Proposed Changes:

SB 2830 would clarify that a third or subsequent conviction for battery as an act of domestic violence, **regardless of whether the sentence was suspended or the adjudication of guilt was withheld**, would constitute a third degree felony. (The statute currently provides that a third or subsequent **offense** of battery as an act of domestic violence constitutes a third degree felony.)

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the Criminal Justice Estimating Conference, there will be no impact on prison beds as a result of this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

G O P Y

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

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Date: April 22, 1996

Revised: _____

Subject: Domestic Violence

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	Dugger <i>D.D.</i>	Thomas <i>DLT</i>	CJ	Favorable
2.	_____	_____	WM	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

SB 2830 would clarify that a third or subsequent **conviction** for battery as an act of domestic violence, **regardless of whether the sentence was suspended or the adjudication of guilt was withheld**, would constitute a third degree felony. (The statute currently provides that a third or subsequent offense of battery as an act of domestic violence constitutes a third degree felony.)

This bill would substantially amend, create, or repeal the following sections of the Florida Statutes: 784.035.

II. Present Situation:

Section 741.28, F.S., defines domestic violence as "any assault, aggravated assault, battery, aggravated battery, **sexual assault**, sexual battery, stalking, aggravated stalking, or criminal offense resulting in physical injury or death of one family or household member by another who is or was residing in the same single dwelling unit." Thus, a husband who commits a battery on his wife, for example, commits an act of domestic violence under this definition.

Under s. 784.03, F.S., a person commits a battery if he actually and intentionally touches or strikes another person against that person's will or intentionally causes bodily harm to another individual. The crime of battery is a first degree misdemeanor, punishable by imprisonment not exceeding one year and payment of a **fine** not exceeding \$1,000.

However, s. 784.035, F.S., enhances the first degree misdemeanor penalty to a third degree felony when the third or subsequent **offense** of battery constitutes an act of domestic violence as defined in s. 741.28, F.S., and the previous batteries were also acts of domestic violence. The

statute does not address whether the enhanced penalty applies when the sentence is suspended or the adjudication of guilt is withheld. A third degree felony is punishable by imprisonment not exceeding **five** years and payment of a fine not exceeding \$5,000. **s. 775.082** and **s. 775.083**, F.S.

III. Effect of Proposed Changes:

SB 2830 would clarify that a third or subsequent **conviction** for battery as an act of domestic violence, **regardless of whether the sentence was suspended or the adjudication of guilt was withheld**, would constitute a third degree felony. (The statute currently provides that a third or subsequent **offense** of battery as an act of domestic violence constitutes a third degree felony.)

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the Criminal Justice Estimating Conference, there will be no impact on prison beds as a result of this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
