

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 Fiscal Policy

BILL: CS/CS/SB 638

INTRODUCER: Appropriations Committee on Criminal and Civil Justice; Criminal Justice Committee;
and Senator Grall

SUBJECT: Lethality Assessments

DATE: February 20, 2024 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wyant</u>	<u>Stokes</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Kolich</u>	<u>Harkness</u>	<u>ACJ</u>	<u>Fav/CS</u>
3.	<u>Wyant</u>	<u>Yeatman</u>	<u>FP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 638 amends s. 741.29, F.S., to require law enforcement officers who investigate an alleged incident of domestic violence to administer a lethality assessment if the allegation is against an intimate partner, regardless of whether an arrest is made.

The bill also requires the Department of Law Enforcement (FDLE) to consult with the Department of Children and Families (DCF) and at least one domestic violence advocacy organization to develop policies, procedures, and training necessary for implementation of a statewide evidence-based lethality assessment. Such policies, procedures, and training must establish how to determine whether a victim and aggressor are intimate partners and establish a statewide process for referring a victim to a certified domestic violence center.

The bill provides that FDLE must adopt a statewide lethality assessment form that includes a series of specified questions. The approved form and training on how to administer the assessment must be accessible to a law enforcement officer in an online format.

All law enforcement officers who respond to or investigate crimes of domestic violence must be trained for administering a lethality assessment by October 1, 2026. An officer may not administer a lethality assessment if he or she has not received training. The bill requires a law enforcement officer to advise the victim of the results of the assessment and refer the victim to

the nearest locally certified domestic violence center if the victim's responses meet the criteria for referral.

If a victim does not, or is unable to, provide information to a law enforcement officer sufficient to allow the officer to administer a lethality assessment, the officer must document the lack of an assessment in the written police report and refer the victim to the nearest locally certified domestic violence center. An officer may not include in a probable cause statement, written police report, or incident report the domestic violence center to which a victim was referred.

The bill requires a notation of the score of a lethality assessment, if administered, to be included in a written police report, 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.

The bill also requires FDLE to submit an annual report to the President of the Senate and the Speaker of the House of Representatives.

The bill may have a negative workload impact on the FDLE. See Section V., Fiscal Impact Statement.

The bill is effective on July 1, 2024.

II. Present Situation:

Domestic violence is 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.¹

Domestic Violence in Florida

In 2020, 106,615 crimes of domestic violence were reported to Florida law enforcement agencies, resulting in 63,217 arrests.² Of those 106,615 reported domestic violence offenses, the relationship of the victims to the offenders varied, including:

- 20,735 were spousal;³
- 29,663 were co-habitants;⁴ and

¹ Section 741.28, F.S.; "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 are parents of a child in common regardless of whether they 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.

² Florida Department of Law Enforcement, *Crime in Florida: Florida Uniform Crime Report*, available at: <https://www.fdle.state.fl.us/CJAB/UCR/Annual-Reports/UCR-Domestic-Violence> (Last accessed December 12, 2023).

³ Florida Department of Law Enforcement, *Domestic Violence, Victim to Offender Relationships*, available at: <https://www.fdle.state.fl.us/CJAB/UCR/Annual-Reports/UCR-Domestic-Violence/Domestic-Violence-Relationships-Chart.aspx> (Last accessed December 14, 2023). Spouse means the victim and offender are married by law or have been previously married. This category included ex-spouses.

⁴ *Id.* Co-Habitant means the victim lived with the offender as a married couple without legal marriage. This category includes former co-habitants.

- 20,142 were other.⁵

Domestic Violence Training

Section 943.171, F.S., requires basic skills training in handling domestic violence cases. Every basic skills course required in order for law enforcement officers to obtain initial certification shall include a minimum of six hours of training in handling domestic violence cases and training must include the recognition and determination of the primary aggressor in domestic violence cases and the issues involved in child-to-parent cases.

Domestic Violence Investigations

Section 741.29, F.S., provides domestic violence investigations require an officer who investigates an alleged incident of domestic violence to:

- Assist the victim to obtain medical treatment if such is required;⁶
- Advise the victim that there is a domestic violence center from which the victim may receive services;⁷
- Give the victim immediate notice of the legal rights and remedies available;⁸
- Make a written report, whether or not an arrest is made, that is complete and clearly indicates the alleged offense was an incident of domestic violence. The 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.⁹ Such report must include:
 - A description of physical injuries observed, if any.
 - If a law enforcement officer decides not to make an arrest or decides to arrest two or more parties, the officer must include the grounds for not arresting anyone or for arresting two or more parties.
 - A statement which indicates that a copy of the legal rights and remedies notice was given to the victim;
- Obtain a written statement from the victim and witnesses concerning the alleged domestic violence when possible; and
- Make an arrest whenever the officer determines probable cause that an act of domestic violence has been committed.^{10, 11}

⁵ *Id.* Other means the victim and offender had a child together but were never married and never lived together.

⁶ Section 741.29 (1), F.S.

⁷ Section 741.29 (1), F.S.

⁸ Section 741.29 (1), F.S. The Legal Rights and Remedies Notice to Victims must include a general summary of s. 741.30, F.S., the resource listing and phone number for the area domestic violence center, and a copy of the following statement: "If you are a victim of domestic violence, you may ask the state attorney to file a criminal complaint. You also have the right to go to court and file a petition requesting an injunction for protection from domestic violence which may include, but need not be limited to, provisions which restrain the abuser from further acts of abuse; direct the abuser to leave your household; prevent the abuser from entering your residence, school, business, or place of employment; award you custody of minor children; and direct the abuser to pay support to you and the minor children if the abuser has a legal obligation to do so.

⁹ Section 741.29 (2), F.S.

¹⁰ Section 741.29(3), F.S.

¹¹ Section 901.15(7), F.S., provides that a law enforcement officer may arrest a person without a warrant when there is probable cause to believe that the person has committed an act of domestic violence. The decision to arrest does 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 or dating violence on each other and to encourage training of law enforcement and prosecutors in these areas.

When complaints are received from two or more parties, the officers must evaluate each complaint separately to determine whether there is probable cause for arrest. If the officer has probable cause to believe that two or more persons have committed a crime, or two or more persons make complaints, the officer must attempt to determine who was the primary aggressor.¹² Section 943.171, F.S., requires the training in handling domestic violence cases to include the recognition and determination of the primary aggressor. Arrest is the preferred response only for the primary aggressor and not the preferred response for a person who acts in a reasonable manner to protect or defend oneself or another family or household member.¹³

A law enforcement officer may not be held liable, in any civil action, for an arrest based on probable cause, enforcement in good faith of a court order, or service of process in good faith under this chapter arising from an alleged incident of domestic violence brought by any party to the incident.¹⁴

The use of lethality assessments in incidents of Domestic Violence

Effective July 1, 2023, Utah implemented a bill requiring police to perform a lethality assessment for domestic violence calls. Since the law went into effect in Utah, the Director of Public Policy at the Utah Domestic Violence Coalition reported that victim resource providers have seen 80 percent more people statewide reaching out for help.¹⁵

Maryland is another state that has implemented lethality assessments as a statewide approach. Maryland Network Against Domestic Violence (MNADV) created and implemented the Lethality Assessment Program Maryland Model in 2005.¹⁶ The program was created based on the research conducted and supported by a grant from the National Institute of Justice. The program was developed as a way for first responders to identify victims of intimate partner violence who are at the greatest risk of being killed. The program has been adopted in 31 additional states since the initial implementation in Maryland. Researchers found that although the program did not appear to have a significant effect on reducing the frequency of intimate partner violence, at follow-up, it appeared to significantly reduce the severity and frequency of the violence that survivors experience and increased help seeking and safety planning.¹⁷ Overall, the evaluation concluded that although additional research is needed on the Lethality Assessment Program, it shows promise as an evidence-informed intervention that increases survivors' safety and empowers them to make self-care decisions.¹⁸

¹² Section 741.29(4)(a), F.S.

¹³ Section 741.29(4)(b), F.S.

¹⁴ Section 741.29(5), F.S.

¹⁵ See KSL News Radio, *Utah domestic violence victim advocates call for funding amid a surge of demand*, Adam Small, November 7, 2023, available at: <https://kslnewsradio.com/2056767/utah-domestic-violence-victim-advocates-call-for-funding/> (Last accessed December 8, 2023).

¹⁶ See Maryland Network Against Domestic Violence, *Lethality Assessment Program*. Available at: <https://www.mnadv.org/lethality-assessment-program/lap-program-overview-2/> (Last accessed December 14, 2023).

¹⁷ See National Institute of Justice, *How Effective are Lethality Assessment Programs for Addressing Intimate Partner Violence?*, available at: <https://nij.ojp.gov/topics/articles/how-effective-are-lethality-assessment-programs-addressing-intimate-partner> (Last accessed December 14, 2023).

¹⁸ Inter-University Consortium for Political and Social Research, *Police Departments' Use of Lethality Assessments: An Experimental Evaluation*, Messing, Jill, Campbell, Jacquelyn, Wilson, Janet, Brown, Sheryll, and Patchell, Beverly, January 13, 2016, available at: <https://doi.org/10.3886/ICPSR34975.v1> (Last accessed December 14, 2023).

There is no current law in Florida pertaining to the administration of a lethality assessment.

III. Effect of Proposed Changes:

The bill amends s. 741.29, F.S., to require law enforcement officers who investigate an alleged incident of domestic violence to administer a lethality assessment if the allegation is against an intimate partner, regardless of whether an arrest is made.

The bill requires the FDLE to consult with the DCF and at least one domestic violence advocacy organization to develop the policies, procedures, and training necessary for implementation of a statewide evidence-based lethality assessment. Such policies, procedures, and training must establish how to determine whether a victim and aggressor are intimate partners and establish a statewide process for referring a victim to a certified domestic violence center. By January 1, 2025, FDLE must adopt a statewide lethality assessment form that includes specified questions. The form and training on how to administer the assessment must be accessible to a law enforcement officer in an online format.

To administer a lethality assessment, a law enforcement officer must ask the following questions in the same or similar wording and in the same order:

- Did the aggressor ever use a weapon against you or threaten you with a weapon?
- Did the aggressor ever threaten to kill you or your children?
- Do you believe the aggressor will try to kill you?
- Has the aggressor ever choked you or attempted to choke you?
- Does the aggressor have a gun or could the aggressor easily obtain a gun?
- Is the aggressor violently or constantly jealous, or does the aggressor control most of your daily activities?
- Did you leave or separate from the aggressor after you were living together or married?
- Is the aggressor unemployed?
- To the best of your knowledge, has the aggressor ever attempted suicide?
- Do you have a child whom the aggressor believes is not the aggressor's biological child?
- Has the aggressor ever followed, spied on, or left threatening messages for you?
- Is there anything else that worries you about your safety and, if so, what worries you?

All law enforcement officers who respond to or investigate crimes of domestic violence must be trained on the policies and procedures for administering a lethality assessment by October 1, 2026. A law enforcement officer may not administer a lethality assessment if the officer has not received training. The bill requires a law enforcement officer to advise the victim of the results of the assessment and refer the victim to the nearest locally certified domestic violence center if:

- The victim answers affirmatively to any of the first four questions;
- The victim answers negatively to the first four questions but affirmatively to at least four of questions 5 through 11; or
- As a result of the victim's response to question 12, the law enforcement officer believes the victim is in a potentially lethal situation.

If a victim does not, or is unable to, provide information to the officer sufficient to allow the officer to administer a lethality assessment, the bill requires the law enforcement officer to

document the lack of a lethality assessment in the written police report and refer the victim to the nearest locally certified domestic violence center. The bill specifies a law enforcement officer may not include in a probable cause statement, written police report, or incident report the domestic violence center to which the victim was referred.

The bill requires a notation of the score of a lethality assessment, if administered, to be included in a written police report, 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.

The bill also requires FDLE to submit a report by January 1, 2025 and annually thereafter, to the President of the Senate and the Speaker of the House of Representatives. The report must include the current policies and procedures for administering a lethality assessment, any proposed statutory changes necessary for statewide implementation, and any proposed changes to the lethality assessment or the lethality assessment form to maintain compliance with evidence-based standards.

The bill provides technical changes and reenacts s. 39.06, F.S.

The bill provides an effective date July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may increase the workload for the FDLE. The FDLE requested an Education and Training Specialist position totaling \$91,816 to address the estimated workload associated with developing the online training portion.¹⁹ As of December 2023, the FDLE had 2 vacant Education and Training Specialist positions that could be filled to address this workload. The department also cites a \$45,000 technology cost to develop the training associated with the lethality assessment form and complete programming changes to the Automated Training Management System (ATMS), which could be absorbed within existing resources.

VI. Technical Deficiencies:

Due to ongoing efforts to combat domestic violence, the specific questions used in a lethality assessment may change. Listing specific questions may limit law enforcement's ability to update the lethality assessment as necessary if evidence-based standards change.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 741.29 of the Florida Statutes.

This bill reenacts section 39.906 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS by Appropriations Committee on Criminal and Civil Justice on February 8, 2024:**

- Provides that FDLE may consult with the Florida Sheriff's Association, the Florida Police Chiefs Association, and the Florida Partnership to End Domestic Violence to develop the policies, procedures, and training necessary for implementation of the assessment.
- Specifies that the policies, procedures, and training must establish how to determine whether a victim and aggressor are intimate partners and establishes a statewide process for referring a victim to a certified domestic violence center.

¹⁹ See FDLE, 2024 FDLE Legislative Bill Analysis SB 638, December 6, 2023 (on file with the Senate committee on Criminal Justice).

- Requires FDLE to adopt a statewide lethality assessment form by a specified date and requires the form to be accessible to law enforcement in an online format.
- Requires FDLE to submit an annual report.
- Changes the date that all law enforcement officers who respond to or investigate crimes of domestic violence must be trained on administering a lethality assessment.

CS by Criminal Justice on January 10, 2024:

The committee substitute:

- Revises the questions provided for a lethality assessment.
- Provides for the law enforcement officer to refer the victim to the nearest locally certified domestic violence center if certain criteria is met through the victim's responses.

B. Amendments:

None.