



Court Watch
Justice doesn't just happen

2008 Florida Statutes

741.28 Domestic violence; definitions.--As used in §741.28-741.31:

- (1) "Department" means the Florida Department of Law Enforcement.
- (2) "**Domestic violence**" means 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.
- (3) "**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.
- (4) "Law enforcement officer" means any person who is elected, appointed, or employed by any municipality or the state or any political subdivision thereof who meets the minimum qualifications established in §943.13 and is certified as a law enforcement officer under §943.1395.

741.281 Court to order batterers' intervention program attendance

If a person is found guilty of, has had adjudication withheld on, or has pled nolo contendere to a crime of domestic violence, as defined in §741.28, that person shall be ordered by the court to a minimum term of 1 year's probation and the court shall order that the defendant attend a batterers' intervention program as a condition of probation. The court must impose the condition of the batterers' intervention program for a defendant under this section, but the court, in its discretion, may determine not to impose the condition if it states on the record why a batterers' intervention program might be inappropriate. **The court must impose the condition of the batterers' intervention program for a defendant placed on probation unless the court determines that the person does not qualify for the batterers' intervention program pursuant to §741.325.** Effective July 1, 2002, the batterers' intervention program must be a certified program under §741.32. The imposition of probation under this section shall not preclude the court from imposing any sentence of imprisonment authorized by §775.082.

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741.32 Certification of batterers' intervention programs

- (1) The Legislature finds that the incidence of domestic violence in Florida is disturbingly high, and despite efforts of many to curb this violence, that 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.
- (2) There is hereby established in the Department of Children and Family Services an Office for Certification and Monitoring of Batterers' Intervention Programs. The department may certify and monitor both programs and personnel providing direct services to those persons who are adjudged to have committed an act of domestic violence as defined in [§741.28](#), those against whom an injunction for protection against domestic violence is entered, those referred by the department, and those who volunteer to attend such programs. The purpose of certification of programs is to uniformly and systematically standardize programs to hold those who perpetrate acts of domestic violence responsible for those acts and to ensure safety for victims of domestic violence. The certification and monitoring shall be funded by user fees as provided in [§741.327](#).

741.325 Guideline authority

The Department of Children and Family Services shall promulgate guidelines to govern purpose, policies, standards of care, appropriate intervention approaches, inappropriate intervention approaches during the batterers' program intervention phase (to include couples counseling and mediation), conflicts of interest, assessment, program content and specifics, qualifications of providers, and credentials for facilitators, supervisors, and trainees. The department shall, in addition, establish specific procedures governing all aspects of program operation, including administration, personnel, fiscal matters, victim and batterer records, education, evaluation, referral to treatment and other matters as needed. In addition, the rules shall establish:

- (1) That the primary purpose of the programs shall be victim safety and the safety of the children, if present.
 - (2) That the batterer shall be held accountable for acts of domestic violence.
 - (3) That the programs shall be at least 29 weeks in length and shall include 24 weekly sessions, plus appropriate intake, assessment, and orientation programming.
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- (4) That the program be a psychoeducational model that employs a program content based on tactics of power and control by one person over another.
- (5) That the programs and those who are facilitators, supervisors, and trainees be certified to provide these programs through initial certification and that the programs and personnel be annually monitored to ensure that they are meeting specified standards.
- (6) The intent that the programs be user-fee funded with fees from the batterers who attend the program as payment for programs is important to the batterer taking responsibility for the act of violence, and from those seeking certification. Exception shall be made for those local, state, or federal programs that fund batterers' intervention programs in whole or in part.
- (7) Standards for rejection and suspension for failure to meet certification standards.
- (8) That these standards shall apply only to programs that address the perpetration of violence between intimate partners, spouses, ex-spouses, or those who share a child in common or who are cohabitants in intimate relationships for the purpose of exercising power and control by one over the other. It will endanger victims if courts and other referral agencies refer family and household members who are not perpetrators of the type of domestic violence encompassed by these standards. Accordingly, the court and others who make referrals should refer perpetrators only to programming that appropriately addresses the violence committed.

948.038 Batterers' intervention program as a condition of probation, community control, or other court-ordered community supervision

As a condition of probation, community control, or any other court-ordered community supervision, the court shall order a person convicted of an offense of domestic violence, as defined in §741.28, to attend and successfully complete a batterers' intervention program unless the court determines that the person does not qualify for the batterers' intervention program pursuant to §741.325. The batterers' intervention program must be a program certified under §741.32, and the offender must pay the cost of attending the program.

Mandatory Sentencing

741.283 Minimum term of imprisonment for domestic violence

If a person is adjudicated guilty of a crime of domestic violence, as defined in §741.28, and the person has intentionally caused bodily harm to another person, the court shall order the person to serve a minimum of 5 days in the county jail as part of the sentence imposed, unless the court sentences the person to a nonsuspended period of incarceration in a state correctional facility. This section does not preclude the court from sentencing the person to probation, community control, or an additional period of incarceration.

Injunction Violations

741.31 Violation of an injunction for protection against domestic violence

- (1) In the event of 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.
 - (2) The affidavit shall be immediately forwarded by the office assisting the petitioner to the state attorney of that circuit and to such court or judge as the chief judge of that circuit determines to be the recipient of affidavits of violation. If the affidavit alleges a crime has been committed, the office assisting the petitioner shall also forward a copy of the petitioner's affidavit to the appropriate law enforcement agency for investigation. No later than 20 days after receiving the initial report, the local law enforcement agency shall complete their investigation and forward the report to the state attorney. The policy adopted by the state attorney in each circuit under §741.2901(2), shall include a policy regarding intake of alleged violations of injunctions for protection against domestic violence under this section. The intake shall be supervised by a prosecutor who, pursuant to §741.2901(1), has been designated and assigned to handle domestic violence cases. The state attorney shall determine within 30 working days whether its office will proceed to file criminal charges, or prepare a motion for an order to show cause as to why the respondent should not be held in criminal contempt, or prepare both as alternative findings, or file notice that the case remains under investigation or is pending subject to some other action.
 - (3) If the court has knowledge, based on its familiarity with the case, that the petitioner, the children of the petitioner, or another person is in immediate danger if the court fails to act prior to the decision of the state attorney to prosecute, it should immediately issue an order of appointment of the state attorney to file a motion for an order to show cause as to why the respondent should not be held in contempt. If the court does not issue an order of appointment of the state attorney, it shall immediately notify the state attorney that the court is proceeding to enforce the violation through criminal contempt.
 - (4) (a) A person who willfully violates an injunction for protection against domestic violence issued pursuant to §741.30, or a foreign protection order accorded full faith and credit pursuant to §741.315, by:
 1. Refusing to vacate the dwelling that the parties share;
 2. Going to, or being within 500 feet of, the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;
 3. Committing an act of domestic violence against the petitioner;
 4. Committing any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to the petitioner;
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5. Telephoning, contacting, or otherwise communicating with the petitioner directly or indirectly, unless the injunction specifically allows indirect contact through a third party;
6. Knowingly and intentionally coming within 100 feet of the petitioner's motor vehicle, whether or not that vehicle is occupied;
7. Defacing or destroying the petitioner's personal property, including the petitioner's motor vehicle; or
8. Refusing to surrender firearms or ammunition if ordered to do so by the court

commits a misdemeanor of the first degree, punishable as provided in §775.082 or §775.083.

- (b) 1. It is a violation of §790.233, and a misdemeanor of the first degree, punishable as provided in §775.082 or §775.083, for a person to violate a final injunction for protection against domestic violence by having in his or her care, custody, possession, or control any firearm or ammunition.
 2. It is the intent of the Legislature that the disabilities regarding possession of firearms and ammunition are consistent with federal law. Accordingly, this paragraph shall not apply to a state or local officer as defined in §943.10(14), holding an active certification, who receives or possesses a firearm or ammunition for use in performing official duties on behalf of the officer's employing agency, unless otherwise prohibited by the employing agency.
- (5) **Whether or not there is a criminal prosecution under subsection (4), the court shall order the respondent to attend a batterers' intervention program 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 batterers' intervention program would be inappropriate.**
- (6) Any person who suffers an injury and/or loss as a result of a violation of an injunction for protection against domestic violence may be awarded economic damages for that injury and/or loss by the court issuing the injunction. Damages include costs and attorneys' fees for enforcement of the injunction.

Point of Interest: The only place where Florida Statutes call for an anger management program to be completed is §828.12 Cruelty to Animals.
