

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1193 Pub. Rec./Victims of Violence

**SPONSOR(S):** Judiciary Committee; Criminal Justice Subcommittee; Jones and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 1390

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Williams	Cunningham
2) Government Operations Subcommittee	14 Y, 0 N	Thompson	Williamson
3) Judiciary Committee	15 Y, 0 N, As CS	Williams	Havlicak

### SUMMARY ANALYSIS

Current law requires the Florida Association of Court Clerks and Comptrollers (Association), subject to available funding, to develop an automated process by which a petitioner may request notification of service of the injunction for protection against domestic violence, repeat violence, sexual violence, or dating violence. This process requires the petitioner to provide the clerk of court (clerk) and possibly law enforcement agencies with personal contact information. In many instances, the petitioner is a victim of a crime, thus, the information he or she provides to the clerk and law enforcement agencies may be exempt from public records requirements. However, a person does not have to be a crime victim in order to petition for a protective injunction. In these instances, the petitioner's information may be public record.

The bill requires the clerk to apprise the petitioner of his or her right to request in writing that specified information held by the clerk and law enforcement agencies be exempt from public records requirements. Such appraisal must be made during the time that the petitioner is making the request to be notified that the injunction was served. The bill provides that such information is exempt from public records requirements, upon the written request by the petitioner, for five years after receipt of the written request.

The bill grants access by any state or federal agency that is authorized by law to have access to such documents in furtherance of the agencies' statutory duties, and provides for repeal of the public record exemptions effective October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill also provides a statement of public necessity as required by the State Constitution. It provides an effective date of October 1, 2012.

**Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates new exemptions; thus, it appears to require a two-thirds vote for final passage.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.<sup>1</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

##### Public Record Exemptions for Victims of Violent and Sexual Crimes

The law currently provides several protections from public records requirements for victims of various violent and sexual crimes.

The following information is confidential and exempt<sup>3</sup> from public records requirements:

- Any information, including the photograph, name, address, or other fact, that reveals the identity of the victim of child abuse;
- Any information that may reveal the identity of a victim of sexual offense; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense.<sup>4</sup>

Current law also provides an exemption from public records requirements for any information not otherwise held confidential or exempt from public records requirements, that reveals the home or employment telephone number or address, or personal assets of a person who has been the victim of sexual battery, aggravated child abuse, aggravated stalking, harassment, aggravated battery, or domestic violence, upon an officially verified written request by the victim. Such information ceases to

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<sup>1</sup> Section 24(c), Art. I of the State Constitution.

<sup>2</sup> Section 119.15, F.S.

<sup>3</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

<sup>4</sup> Section 119.071(2)(h)1., F.S.

be exempt 5 years after receipt of the written request. Any state or federal agency authorized to have access to such documents must be granted access in the furtherance of its duties.<sup>5</sup>

Current law also exempts information or records that have been made part of a court file and that may reveal the identity of a person who is a victim of a sexual offense.<sup>6</sup>

### Injunctions for Victims of Violence

Sections 741.30 and 784.046, F.S., currently provide guidelines for the service of injunctions for protection against domestic violence, repeat violence, sexual violence, or dating violence. During the 2011 Legislative Session, these statutes were amended to require the Florida Association of Court Clerks and Comptrollers (Association), subject to available funding, to develop an automated process by which a petitioner may request notification of service of an injunction for protection against domestic violence, repeat violence, sexual violence, or dating violence.<sup>7</sup> This process requires the petitioner to provide the Association and possibly law enforcement agencies with personal contact information. In many instances, the petitioner is a victim of a crime, thus, the information he or she provides to the Association and law enforcement agencies may be exempt from public records requirements. However, a person does not have to be a crime victim in order to petition for a protective injunction. In these instances, the petitioner's information may be public record.

### **Effect of the Bill**

The bill amends ss. 741.30 and 784.046, F.S., to allow a petitioner who requests notification of service of an injunction for protection against domestic violence, repeat violence, sexual violence, or dating violence to request that certain information be held exempt from public records requirements for 5 years after receipt of the request. The exemption applies to information that reveals the home or employment telephone number or address, cellular telephone number, electronic mail address, or other electronic means of identification of the petitioner.

The clerk of court (clerk) must apprise the petitioner of his or her right to make the public record exemption request at the same time that the petitioner is making the request to be notified that the injunction was served.

The bill provides that information held by the clerks and law enforcement agencies in conjunction with the automated injunction notification process which reveals the above-described information is exempt from public records requirements, upon written request of the petitioner. Such information ceases to be exempt 5 years after the clerk's receipt of the petitioner's written request. Notwithstanding this exemption, the bill grants access to the exempt information to any state or federal agency that is authorized by law to have access to such documents in the furtherance of the agencies' statutory duties.

The bill provides for repeal of the exemption on October 2, 2017, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.<sup>8</sup>

### **B. SECTION DIRECTORY:**

Section 1. Amends s. 741.30, F.S., relating to domestic violence injunctions.

Section 2. Amends s. 784.046, F.S., relating to repeat violence, sexual violence, or dating violence injunctions.

Section 3. Provides a public necessity statement.

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<sup>5</sup> Section 119.071(2)(j)1., F.S.

<sup>6</sup> Section 119.0714(1)(h), F.S.

<sup>7</sup> Chapter 2011-187, L.O.F.

<sup>8</sup> Section 24(c), Art. I of the State Constitution.

Section 4. Provides an effective date of October 1, 2012.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill does not appear to have any impact on state revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on state expenditures.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

#### 2. Other:

##### Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates new public record exemptions; thus, it requires a two-thirds vote for final passage.

##### Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates new public record exemptions; thus, it includes a public necessity statement.

### B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or additional rulemaking authority.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

#### Other Comments: Retroactive Application

The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively.<sup>9</sup> The bill does not contain a provision requiring retroactive application. As such, the public record exemption would apply prospectively.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 17, 2012, the Criminal Justice Subcommittee adopted two amendments and reported the bill favorably as a committee substitute.

- Amendment 1. Conforms the public necessity statement to the bill by providing that a petitioner's personal identifying and location information held by the Association and law enforcement agencies in conjunction with the automated notification process be held exempt from public records requirements (rather than confidential and exempt).
- Amendment 2. Requires the Association to apprise a petitioner of his or her right to make the public records exemption request at the same time that the petitioner is making the request to be notified that the injunction was served, (rather than when the notification of service is sent). The amendment also provides that information held by both the Association and *law enforcement agencies* in conjunction with the automated notification process be held exempt from public records requirements.

On February 1, 2012, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Requires the clerk to apprise the petitioner of his or her right to make the public record exemption request at the same time that the petitioner is making the request to be notified that the injunction was served; and
- Clarifies that upon implementation of the automated process, specified information held by the clerks and law enforcement agencies in conjunctions with the automated process is exempt from public records.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.

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<sup>9</sup> *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).