

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 Governmental Oversight and Accountability

BILL: CS/SB 1212

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Book

SUBJECT: Public Records/Child Advocacy Centers

DATE: February 5, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Preston</u>	<u>Hendon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Brown</u>	<u>Caldwell</u>	<u>GO</u>	<u>Favorable</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1212 makes exempt from public records requirements the home addresses, telephone numbers, dates of birth, and photographs of current and former employees of a child advocacy center (CAC). This same information of current or former child protection team (CPT) members whose duties are related to child abuse and neglect investigations is also made exempt under the bill. The bill additionally exempts names, home addresses, telephone numbers, photographs, dates of birth, places of employment, and schools and day care facilities of spouses and children.

In the required public necessity statement, the bill provides as justification for the exemption that the exemption is needed to keep personnel and their families safe from persons disgruntled by the actions of CACs and CPTs and who may commit violence against them.

The bill includes a provision for an Open Government Sunset Review and provides an automatic repeal date of October 2, 2023, unless the Legislature reviews and saves the exemption from repeal before that date.

The bill requires a two-thirds vote from each chamber to pass.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that

it is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House of Representatives and the Senate.⁹ The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁰ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.¹¹

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid, and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹² Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian under certain circumstances.¹³

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁴ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁵ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁶ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁷
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁸ or
- It protects trade or business secrets.¹⁹

The OGSR also requires specified questions to be considered during the review process.²⁰ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.
¹² If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹³ A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁴ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

¹⁵ Section 119.15(3), F.S.

¹⁶ Section 119.15(6)(b), F.S.

¹⁷ Section 119.15(6)(b)1., F.S.

¹⁸ Section 119.15(6)(b)2., F.S.

¹⁹ Section 119.15(6)(b)3., F.S.

²⁰ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²¹ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²²

Child Advocacy Centers (CAC)

Child advocacy centers (CAC) are community-based, child-focused facilities where child victims of abuse or neglect are interviewed and may receive medical exams, therapy, and other critical services.²³ Professionals at CACs consult about investigations, treatment, and prosecution of child abuse cases. The primary function of a CAC is to minimize trauma for child victims, improve prosecutions and provide efficient and thorough provision of necessary services to the child victim and the child's family.²⁴ CACs provide services such as:

- Forensic interviews conducted in a non-threatening, child-friendly environment.
- Crisis intervention and emotional support for victims and non-offending family members.
- Counseling for victims and non-offending family members.
- Medical evaluations and services.
- Multidisciplinary review of cases by a team of professionals, such as law enforcement officials, child protection teams, prosecutors, medical professionals, mental health professionals, victim assistance staff, and child advocates.
- Evidence-based prevention and intervention programs to reduce the likelihood of child maltreatment and to provide safe and caring homes for children.
- Professional training and community education on child abuse.²⁵

The Florida Network of Children's Advocacy Centers (FNCAC) is the statewide membership organization for all local CACs in Florida.²⁶ Currently, Florida provides 27 CACs throughout the state.²⁷

To receive funding, a CAC must appropriately screen employees and volunteers²⁸, and:

- Be a private, nonprofit incorporated agency or a governmental entity; and

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- Whom does the exemption uniquely affect, as opposed to the general public?
 - What is the identifiable public purpose or goal of the exemption?
 - Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
 - Is the record or meeting protected by another exemption?
 - Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²¹ FLA. CONST. art. I, s. 24(c).

²² Section 119.15(7), F.S.

²³ Florida Network of Child Advocacy Centers, *What is a CAC?*, available at: <https://www.fncac.org/what-cac> (last visited Jan. 29, 2018).

²⁴ *Id.*

²⁵ *Id.*

²⁶ Florida Network of Child Advocacy Centers, *About Us*, available at: <https://www.fncac.org/about-us> (last visited Jan. 29, 2018).

²⁷ *Id.*

²⁸ Section 39.035(2), F.S.

- Be a child protection team, or by written agreement incorporate the participation and services of a child protection team, with established community protocols that meet the requirements of the National Network of Children’s Advocacy Centers, Inc.

Further, a CAC must provide:

- A neutral, child-focused facility where joint department and law enforcement interviews take place with children in cases of suspected child sexual abuse or physical abuse.
- Staff subject to supervision of a board of directors or governmental entity.
- A case review team that regularly meets or as the caseload requires, with representatives from the Office of the State Attorney, the Department of Children and Families (department), the child protection team, mental health services, law enforcement, and the child advocacy center staff. Medical personnel and a victim’s advocate may participate.
- Case tracking and data collection on child abuse cases by sex, race, age, and other relevant data; cases referred for prosecution; and cases referred for mental health therapy.
- Community training and referrals for medical exams and mental health therapy.
- A written, interagency commitment, on a multidisciplinary approach to the handling of child sexual abuse and serious physical abuse cases.²⁹

Child Protection Teams

A child protection team (CPT) is a medically directed, multidisciplinary team that supplements the child protective investigation efforts of the department and local sheriffs’ offices in cases of child abuse and neglect.³⁰ CPTs provide expertise in evaluating alleged child abuse and neglect, assess risk and protective factors, and provide recommendations for interventions to protect children and enhance a caregiver’s capacity to provide a safer environment.³¹ The Department of Health (DOH) Children’s Medical Services (CMS) program contracts for CPT services with local community-based programs. CPTs, located in each of the 15 service circuits of the department, are supervised by one or more child protection team medical directors.³²

The following reports made to the department central abuse hotline that must be referred to a CPT for assessment are:

- Injuries to the head, bruises to the neck or head, burns, or fractures in a child of any age.
- Bruises on a child five years of age or younger.
- Allegations of sexual abuse of a child.
- Any sexually transmitted disease in a prepubescent child.
- Reported malnutrition or failure of a child to thrive.
- Reported medical neglect of a child.
- A sibling or other child remaining in a home where one or more children have been pronounced dead on arrival or have been injured and later died as a result of suspected abuse, abandonment, or neglect.

²⁹ Section 39.3035(1), F.S.

³⁰ Florida Department of Health, Children’s Medical Services. *Child Protection Teams*, available at: http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child_protection_safety/child_protection_teams.html (last visited Jan. 30, 2018).

³¹ *Id.*

³² Section 39.303(1), F.S.

- Symptoms of serious emotional problems in a child when emotional or other abuse, abandonment, or neglect is suspected.³³

Upon referral from the department or law enforcement, the CPT may provide:

- Medical diagnoses and evaluations;
- Child forensic interviews;
- Child and family assessments;
- Multidisciplinary staffings;
- Psychological and psychiatric evaluations; and
- Expert court testimony.³⁴

III. Effect of Proposed Changes:

Section 1 amends s. 119.071, F.S., to exempt from public records requirements the home addresses, telephone numbers, dates of birth, and photographs of:

- Current or former directors, managers, supervisors, and clinical employees of a CAC that meets statutory requirements;
- Current or former CPT employees whose duties include supporting the investigation of child abuse or sexual abuse, child abandonment, child neglect, or child exploitation or providing services as part of a multidisciplinary case review team; and
- Spouses and children of CAC and CPT personnel, and including the places of employment, schools, and day care facilities attended by these family members.

The bill also provides that the public records exemption is subject to an Open Government Sunset Review and will stand repealed October 2, 2023, unless reviewed and saved from repeal by the Legislature before that date.

Section 2 provides a public necessity statement for the exemption, specifying that CAC and CPT personnel and their families may be in danger of physical and emotional harm from disgruntled individuals who may react inappropriately and violently to actions taken by the personnel. The bill further finds that the risk continues after the personnel no longer holds a position at a CAC or CPT. The bill finds that the harm that may result from the release of such personal identifying and location information outweighs any public benefit that may be derived from the disclosure of the information.

Section 3 provides that the bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

³³ Section 39.303(4), F.S.

³⁴ Section 39.303(3), F.S.

B. Public Records/Open Meetings Issues:**Voting Requirement**

Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of each chamber for a public records exemption to pass.

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public records exemption bill to contain a public necessity statement for a newly created or expanded public record or public meeting exemption and to state with specificity the public necessity of the exemption. The public necessity statement provides that the exemption is needed to protect the safety of personnel of the CAC and CPT and their families from potential violence by persons disgruntled by the actions of the CAC and CPT.

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill seeks to prevent the disclosure of specified identifying information of CPT and CAC personnel and their families to protect their safety. Therefore, the bill appears to be no broader than necessary to accomplish the public necessity of the exemption.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 119.071 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 by Children, Families, and Elder Affairs on January 16, 2018:

The amendment does the following:

- Removes the reference to “social security numbers” from the exemption and the public necessity statement because there is currently a general exemption for social security numbers.
- Adds the names of spouses and children of exempted personnel to the information to be held exempt. This will standardize information to be held exempt.
- Alters the public necessity statement to more closely mirror the substance of the bill by adding the qualifying phrase “whose duties include supporting the investigation of child abuse or sexual abuse, child abandonment, child neglect, or child exploitation or to provide services as a part of a multidisciplinary case review team” in reference to child protection team members.

- B. **Amendments:**

None.