

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 Children, Families, and Elder Affairs

BILL: CS/SB 1212

INTRODUCER: Senator Book

SUBJECT: Public Records/Child Advocacy Centers

DATE: January 17, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	Pre-meeting
2.	_____	_____	GO	_____
3.	_____	_____	RC	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

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

The bill includes a constitutionally required public necessity statement. The exemption will stand repealed on October 2, 2023, pursuant to the Open Government Sunset Review Act unless it is reenacted.

The bill requires a two-thirds vote from each chamber for passage. The bill has no impact on state revenues or expenditures and has an effective date of July 1, 2018.

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 provides 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 public records requirements.⁹ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁰ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹ A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹²

When creating a public records exemption, the Legislature may provide that a record is

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” to mean 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 *Id.*

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). See also *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004).

“confidential and exempt” or “exempt.”¹³ 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” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.¹⁴

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁵ 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.¹⁶

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.¹⁷ 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;¹⁸
- 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;¹⁹ or
- It protects trade or business secrets.²⁰

The OGSR also requires specified questions to be considered during the review process.²¹ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and

¹³ 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).

¹⁴ *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

¹⁵ 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.

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(b), F.S.

¹⁸ Section 119.15(6)(b)1., F.S.

¹⁹ Section 119.15(6)(b)2., F.S.

²⁰ Section 119.15(6)(b)3., F.S.

²¹ Section 119.15(6)(a), F.S. The specified questions are:

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

a two-thirds vote for passage are required.²² 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 otherwise provided for by law.²³

Child Advocacy Centers

Child advocacy centers 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.²⁴ Child advocacy centers bring together professionals to confer and conclude about investigations, treatment and prosecution of child abuse cases. The primary goal of a CAC is to minimize the level of trauma experienced by child victims, improve prosecutions and provide efficient and thorough provision of necessary services to the child victim and the child's family.²⁵ 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, CPTs, 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 to effectively respond to child abuse.²⁶

The Florida Network of Children's Advocacy Centers (FNCAC) is the statewide membership organization representing all local CACs in Florida.²⁷ Florida law provides requirements for membership in the FNCAC and requires that CACs either be a child protection team or have a written agreement that incorporates the participation and services of a CPT.²⁸ There are currently 27 CACs in Florida.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 of Children and Families (DCF or department) and local sheriffs' offices in cases of child abuse and neglect.³⁰ CPTs provide

²² FLA. CONST. art. I, s. 24(c).

²³ Section 119.15(7), F.S.

²⁴ Florida Network of Child Advocacy Centers, What is a CAC?, available at: <https://www.fncac.org/what-cac> (last visited January 9, 2018).

²⁵ *Id.*

²⁶ *Id.*

²⁷ Florida Network of Child Advocacy Centers, About Us, available at: <https://www.fncac.org/about-us> (last visited January 9, 2018).

²⁸ Section 39.3035, F.S.

²⁹ Florida Network of Child Advocacy Centers, About Us, available at: <https://www.fncac.org/about-us> (last visited January 9, 2018).

³⁰ Florida Department of Health, Children's Medical Services. Child Protection Teams, available at:

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 when possible.³¹ The Department of Health (DOH) Children's Medical Services (CMS) program contracts for CPT services with local community-based programs.

CPTs are located in each service circuit of the department and provide services to all 67 counties by utilizing satellite offices and telemedicine sites. Each is supervised by one or more child protection team medical directors, depending on its size and the subdivision of the particular circuit.³²

Current law authorizes the Children's Medical Services Program in the Department of Health to develop, maintain, and coordinate child protection team services through contracts with local community-based programs.³³ The existence of suspicion of child abuse or neglect that has been reported to the Florida Abuse Hotline and accepted for investigation provides automatic eligibility for CPT assessment activities. There are no financial criteria for team services.

Certain reports of child abuse, abandonment, and neglect to the DCF central abuse hotline must be referred to child protection teams:

- Injuries to the head, bruises to the neck or head, burns, or fractures in a child of any age.
- Bruises anywhere on a child five years of age or younger.
- Any report alleging 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.
- Symptoms of serious emotional problems in a child when emotional or other abuse, abandonment, or neglect is suspected.³⁴

When a CPT accepts a referral from DCF or law enforcement, it may provide one or more of the following services:

- Medical diagnosis and evaluation;
- Child forensic interviews;
- Child and family assessments;
- Multidisciplinary staffings;
- Psychological and psychiatric evaluations; and

http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child_protection_safety/child_protection_teams.html (last visited January 9, 2018).

³¹ *Id.*

³² Florida Department of Health, Children's Medical Services, Child Protection Teams: CPT Statewide Directory, *available at*: <http://www.floridahealth.gov/alternatesites/cms-kids/home/contact/cpt.pdf>. (last accessed January 9, 2018).

³³ Section 39.303, F.S.

³⁴ *Id.*

- Expert court testimony.³⁵

CPT staff also provide training services for child protection investigators, community providers of child welfare services, and emergency room staff and other medical providers in the community.³⁶

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 meet the requirements of s. 39.3035, F.S.;
- 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 to provide services as part of a multidisciplinary case review team; and
- Spouses and children of the above CAC and CPT personnel.

In addition, the bill exempts names of spouses and children, as well as places of employment and the names and locations of schools and day care facilities attended by children of these personnel.

The bill also provides that the public records exemption is subject to the Open Government Sunset Review Act pursuant to s. 119.15, F.S., and will be repealed October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 provides a public necessity statement as required by the Florida Constitution, specifying that CAC and CPT personnel and their families are be in danger of physical and emotional harm from disgruntled individuals who may react inappropriately and violently to actions taken by such 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 an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Voting Requirement

Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of each

³⁵ *Id.*

³⁶ *Id.*

chamber for public records exemptions to pass.

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; therefore, it includes a public necessity statement.

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 certain identifying information of certain CPT and CAC personnel and their families to protect their safety. Thus, the bill does not appear to be in conflict with the constitutional requirement that an exemption be no broader than necessary to accomplish its purpose.

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.