

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1229 Public Records

**SPONSOR(S):** Judiciary Committee, Civil Justice & Property Rights Subcommittee, Persons-Mulicka and others

**TIED BILLS:**           **IDEN./SIM. BILLS:** CS/SB 1508

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Property Rights Subcommittee	17 Y, 0 N, As CS	Brascomb	Jones
2) Judiciary Committee	18 Y, 0 N, As CS	Brascomb	Kramer

### SUMMARY ANALYSIS

Protective injunctions are available under Florida law for victims of the following forms of violence:

- Domestic violence;
- Repeat violence;
- Sexual violence;
- Dating violence; and
- Stalking.

Article I, s. 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records, guaranteeing each person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. Independent of constitutional and statutory provisions that require court files to be generally open to the public, the courts have found that both civil and criminal court proceedings in Florida are public events, and that courts must adhere to the well-established common law right of access to court proceedings and records.

Through administrative rule, the Florida Supreme Court has adopted standards for access to electronic court records; however, clerk of court websites differ as to the level of case detail available electronically. As a result, when a criminal case is not prosecuted but a protective injunction is obtained against a respondent, potential employers and other members of the public may have difficulty finding or verifying the existence of the injunction, including by use of a background check.

CS/CS/HB 1229 requires each county recorder or clerk of the court to post on its public website an entry of a final judgment for an injunction for protection which includes the identity of each adult defendant or respondent against whom the injunction is entered. Moreover, the bill:

- Requires the information to be made available to the general public on the website at the affected party's request if this information is not on the website by a specified date.
- Provides a process for this request and for noticing the affected party's right to make this request.
- Provides that the affected party may petition the circuit court for an order directing compliance with the bill's requirements.
- Specifies that final judgments for protective injunctions must be recorded in official records.

The bill may have an insignificant negative fiscal impact on local governments.

The bill provides an effective date of July 1, 2021.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Protective Injunctions

Protective injunctions are available under Florida law for victims of the following forms of violence:

- Domestic violence;<sup>1</sup>
- Repeat violence;<sup>2</sup>
- Sexual violence;<sup>3</sup>
- Dating violence;<sup>4</sup> and
- Stalking.<sup>5</sup>

A protective injunction may prohibit a person from:

- Going to or being within 500 feet of the petitioner's residence, school, place of employment, or other specified place;
- Committing an act of violence against the petitioner;
- Telephoning, contacting, or otherwise communicating with the petitioner; and
- Knowingly and intentionally coming within 100 feet of the petitioner's motor vehicle.<sup>6</sup>

A court may also require a respondent to surrender a firearm, vacate a shared dwelling with the petitioner, or complete a batterer's intervention program.<sup>7</sup> Violation of a protective injunction is a first degree misdemeanor, punishable by up to one year in jail and a \$1,000 fine.<sup>8</sup>

A petitioner for a protective injunction must allege in a sworn petition that:

- He or she is a victim of domestic violence; repeat, sexual, or dating violence; or stalking; or
- In the case of a petition for a domestic violence injunction, he or she has reasonable cause to believe he or she is in imminent danger of such violence.<sup>9</sup>

As soon as possible following the filing of the petition, a court must set a hearing to determine whether an immediate and present danger of the violence alleged exists.<sup>10</sup> Upon finding an immediate and present danger, the court may grant an ex parte<sup>11</sup> temporary injunction for 15 days.<sup>12</sup> A court must then set a hearing with notice to the respondent, and upon such hearing with notice, may grant protective injunctive relief as it deems proper.<sup>13</sup>

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<sup>1</sup> Domestic violence is an 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. Ss. 741.28(2) and 741.30, F.S.

<sup>2</sup> S. 784.046, F.S.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> S. 784.0485, F.S., governs the issuance of injunctions against stalking and cyberstalking. This process largely parallels the provisions and procedures relating to domestic violence injunctions.

<sup>6</sup> S. 741.31, F.S.

<sup>7</sup> *Id.*; s. 741.30, F.S.

<sup>8</sup> Ss. 741.31, 775.082, 775.083, 784.047, and 784.0487, F.S.

<sup>9</sup> Ss. 741.30(1)(a), 784.046, and 784.0485, F.S.

<sup>10</sup> Ss. 741.30(5)(a), 784.046, and 784.0485, F.S.

<sup>11</sup> "Ex parte" refers to motions, hearings or orders granted on the request of and for the benefit of one party only. This is an exception to the general rule of court procedure that requires both parties to be present at any argument before a judge, and to the rule that an attorney may not notify a judge without previously notifying the opposition. Ex parte matters are usually temporary orders (like a restraining order or temporary custody) pending a formal hearing or an emergency request for a continuance. The People's Law Dictionary, *Ex Parte*, <https://dictionary.law.com/Default.aspx?selected=696> (last visited Apr. 15, 2021).

<sup>12</sup> *Id.*

<sup>13</sup> Ss. 741.30(6)(a), 784.046, and 784.0485, F.S.

## Public Records

Article I, s. 24(a) of the Florida 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 Art. I, s. 24(a) of the Florida Constitution provided the exemption passes by two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption, and is no broader than necessary to meet its public purpose.<sup>14</sup>

The Florida Statutes also address the public policy regarding access to government records. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt. Furthermore, the Open Government Sunset Review Act<sup>15</sup> provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."<sup>16</sup> However, the exemption may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; or
- Protecting trade or business secrets.<sup>17</sup>

The Open Government Sunset Review Act does not apply to an exemption that applies solely to the Legislature or the State Court System.<sup>18</sup> Neither does it apply to an amendment to public records law that narrows the scope of an existing exemption.<sup>19</sup>

### *Public Records and Court Proceedings*

Independent of constitutional and statutory provisions that require court files to be generally open to the public, case law provides that "both civil and criminal court proceedings in Florida are public events" and that courts must "adhere to the well-established common law right of access to court proceedings and records."<sup>20</sup> A court may close a court file or a portion thereof on equitable grounds, but its ability to do so is limited. The Florida Supreme Court has ruled that closure of court proceedings or records should occur only when necessary to:

- Comply with established public policy set forth in the constitution, statutes, rules, or case law.
- Protect trade secrets.
- Protect a compelling governmental interest such as national security or the identity of confidential informants.
- Obtain evidence to properly determine legal issues in a case.
- Avoid substantial injury to innocent third parties, such as to protect a child in a divorce.
- Avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of civil proceeding sought to be closed.<sup>21</sup>

Currently, s. 119.0714(1), F.S., provides public record exemptions for several types of personal information contained in court files, including:

- Records prepared by an agency attorney;<sup>22</sup>

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<sup>14</sup> Art. I, s. 24(c), Fla. Const.

<sup>15</sup> S. 119.15, F.S.

<sup>16</sup> S. 119.15(6)(b), F.S.

<sup>17</sup> *Id.*

<sup>18</sup> S. 119.15(2)(b), F.S.

<sup>19</sup> S. 119.15(4)(b), F.S.

<sup>20</sup> *Barron v. Florida Freedom Newspapers, Inc.*, 531 So.2d 113, 116 (Fla. 1988).

<sup>21</sup> *Id.* at 118.

<sup>22</sup> S. 119.0714(1)(a), F.S.

- Various law enforcement confidential records;<sup>23</sup>
- Social security numbers;<sup>24</sup> and
- Bank account numbers.<sup>25</sup>

### *Public Records Exemptions Relating to Certain Victim Information*

Section 119.071(2)(h)1., F.S., provides that the following criminal intelligence information or criminal investigative information is confidential and exempt:

- Any information that reveals the identity of the victim of:
  - Child abuse;<sup>26</sup>
  - Human trafficking, if the victim is under 18;<sup>27</sup> or
  - Any sexual offense.<sup>28</sup>
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense.<sup>29</sup>

### *Access to Electronic Court Records*

Through administrative rule, the Florida Supreme Court has adopted standards for access to electronic court records and an access security matrix.<sup>30</sup> There are different levels of permissible access depending on “the user’s role and applicable statutes, court rules, and applicable administrative policy. Access may be restricted to certain user roles based on case type, document type, or information contained within court records.”<sup>31</sup>

Current law authorizes access for the general public for all records except those that are expunged or sealed, automatically confidential under Rule 2.420(d)(1), Fla. R. Jud. Admin., or made confidential by court order. However, the general public may not remotely access images of records in cases governed by the Florida Family Law Rules of Procedure, Florida Rules of Juvenile Procedure, or Florida Probate Rules, pursuant to s. 28.2221(5)(a), F.S.<sup>32</sup>

Although administrative rules require electronic access to certain court records, clerk of court websites differ on how much case detail is available electronically. As a result, when a criminal case is not prosecuted but a protective injunction is obtained against a perpetrator, potential employers and other members of the public may have difficulty finding or verifying that injunction, including through the use of a background check.<sup>33</sup>

### **Effect of Proposed Changes**

CS/CS/HB 1229 amends s. 28.2221, F.S., to require each county recorder or clerk of the court to post on its public website an entry of a final judgment for an injunction for protection under ss. 741.30, 784.046, or 784.0485, F.S., which includes the identity of each adult defendant or respondent against whom the injunction is entered. If the information is not available on a publicly available website by July 1, 2021, the recorder or clerk must make it publicly available if the affected party identifies the information and requests that it be made publicly available. The recorder or clerk may not charge a fee to include this information pursuant to the request.

<sup>23</sup> S. 119.0714, F.S.

<sup>24</sup> S. 119.0714(1)(i), F.S.

<sup>25</sup> S. 119.0714(1)(j), F.S.

<sup>26</sup> Ch. 827, F.S.

<sup>27</sup> S. 787.06(3)(a), F.S.

<sup>28</sup> Sexual offenses include commercial sex trafficking under ss. 787.06(3)(b), (d), (f), or (g), F.S.; sexual battery under ch. 794, F.S.; prostitution under ch. 796, F.S.; lewd and lascivious acts under ch. 800, F.S.; sexual performance by a child under ch. 827, F.S.; and child pornography under ch. 847, F.S.

<sup>29</sup> This information may be disclosed by a law enforcement agency in specified circumstances. See s. 119.071(2)(h)1., F.S.

<sup>30</sup> *In Re: Access to Electronic Court Records*, Case No. 20-108, Florida Supreme Court (Nov. 20, 2020)

<https://www.floridasupremecourt.org/content/download/693366/7743882> (last visited Apr. 15, 2021).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Jack Lowenstein, *SWFL legislator wants to pass ‘Serena’s Law’ to close loophole for child predators* (Mar. 1, 2021), <https://floridanewstimes.com/swfl-wants-to-pass-serenas-law-to-close-the-loopholes-of-child-predators/157845/> (last visited Apr. 15, 2021).

No later than 30 days after July 1, 2021, the recorder or clerk must conspicuously and clearly display on its publicly available website and in its office notice of the affected party's right to request the addition of such information to the publicly available website. The bill provides that any affected person may petition the circuit court for an order directing compliance with these provisions.

The bill amends s. 28.29, F.S. to require that final judgments for injunctions for protection be recorded in official records.

The bill provides an effective date of July 1, 2021.

**B. SECTION DIRECTORY:**

**Section 1:** Provides a title.

**Section 2:** Amends s. 28.2221, F.S., relating to electronic access to official records.

**Section 3:** Amends s. 28.29, F.S., relating to recording of orders and judgments.

**Section 4:** Provides an effective date of July 1, 2021.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

This bill may have an indeterminate fiscal impact on clerks of court due to increased labor costs to track the status of petitions for protective injunctions and post notices of injunctions on their publicly available websites. However, these increased costs may be absorbed within existing resources.

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

None.

**D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill creates new requirements for a county clerk or recorder; however, an exemption may apply because the fiscal impact may be insignificant.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 30, 2021, the Civil Justice & Property Rights Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Removed a provision providing that a public records exemption for certain active criminal intelligence information and active criminal investigative information involving certain victims does not apply to the identity of a person, other than a minor, who is charged with or found guilty of any offense specified in the exemption.
- Amended the date by which the county recorder or clerk must display on its publicly available website and in its office notice of the affected party's rights from December 31, 2021, to no later than 30 days after July 1, 2021.
- Removed a provision requiring newspaper publication of notices.
- Required that a final judgment for injunctions for protection be recorded in official records.

On April 15, 2021, the Judiciary Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Clarified that each county recorder or clerk must post on its public website an entry of a final judgment for an injunction for protection, unless the defendant or respondent is a minor.
- Clarified that the website on which a county recorder or clerk must make the identity of a protective injunction defendant or respondent publicly available may be the same website that is required by other provisions of the bill.

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