

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 Judiciary

BILL: SB 1974

INTRODUCER: Senator Pizzo

SUBJECT: Public Records/Domestic Violence Injunction

DATE: March 12, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Favorable
2.	_____	_____	CJ	_____
3.	_____	_____	RC	_____

I. Summary:

SB 1974 creates a public records exemption for a petition, records, and documents relating to a petition for a domestic violence injunction when the petition was withdrawn, dismissed, or a ruling was issued in favor of the respondent and the court has ordered that those items be sealed upon the petition of the respondent.

The bill further provides that the exemption is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2026, unless it is reviewed and saved from repeal through enactment by the Legislature.

The bill also contains a statement of public necessity as required by s. 24(c), Art. I of the State Constitution. According to the statement, allowing the sealing of those petitions, records, and documents would allow the requestors to continue their lives without facing barriers to employment and other life opportunities including possible discrimination and public criticism.

The bill takes effect on the same date that SB 1972, or similar legislation takes effect, if that legislation is adopted in the same legislative session or an extension thereof and becomes a law.

II. Present Situation:

Access to Public Records - Generally

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 The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three

¹ FLA. CONST. art. I, s. 24(a).

branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Court Files, Records, and Exemptions

Pursuant to section 119.0714, F.S., nothing in the public records chapter may be construed to exempt a public record that was made a part of a court file *unless* the record has been specifically closed by court order, or falls into one of eleven enumerated categories. The final exemption, enacted in 2017, provides an exemption for a petition, and its contents for an injunction for protection against domestic violence which is dismissed without a hearing, dismissed at an ex parte hearing due to failure to state a claim or lack of jurisdiction, or dismissed for any reason having to do with the sufficiency of the petition itself *without an injunction being issued*. The exemption applies to records relating to petitions dismissed on or after July 1, 2017.⁵

Court Rules

Article V, section 2 of the State Constitution grants rulemaking power to the Florida Supreme Court. Subject to that rulemaking power, the Court has adopted rules that “govern public access to and the protection of the records of the judicial branch of government.”⁶ Rule 2.420 of the Florida Rules of Judicial Administration states that the public shall have access to all records of the judicial branch except as provided in the rule. The “judicial branch” is defined to include the clerks of court when acting as an arm of the court. Another portion of the rule states that the clerk of the court will designate and maintain the confidentiality of information contained within a court record that is described in the rule.⁷

Rule 2.420(c)(7) of the Florida Rules of Judicial Administration states that “all records made confidential under . . . Florida and federal law” shall be confidential. The rule lists a series of records that will be maintained as confidential including, but not limited to, records relating to adoption, HIV test results and the identity of persons tested, birth records and portions of death and fetal death records, information that can be used to identify a minor who petitions for a waiver of parental or guardian notice of consent when seeking to terminate a pregnancy, and clinical records under the Baker Act.

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2020-2022).

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Chapter 2017-14, s. 3, Laws of Fla.

⁶ Fla. R. Jud. Admin. 2.420(a).

⁷ Fla. R. Jud. Admin. 2.420(d)(1).

However, the rule does not include the domestic violence injunction petition listed above. According to correspondence from the Florida Court Clerks and Comptrollers, in 2017, the Clerks requested guidance from the Florida Supreme Court to resolve their dilemma after the legislation was passed in 2017. Should the clerks release the confidential information that the Legislature intended to be confidential, or did they need to wait until the Court added the item to Rule 2.420 before keeping the items confidential?⁸

The Court ultimately decided that it would *not* amend the rule to include the domestic violence injunction materials.⁹ The Rules of Judicial Administration Committee stated that it did not believe that the statute was an appropriate subject for court rule. The Committee reasoned that the statute did not make the petition and its contents confidential upon filing, but rather upon dismissal for certain reasons and in certain circumstances. Because the clerks would not necessarily be able to glean why the petition was dismissed from the face of the order, there was no feasible way for the clerks to reliably determine in all cases when the provisions of the statute came into play. The Committee concluded and recommended that the burden of ensuring the confidentiality of the injunction petition should be upon the party or the party's attorney against whom the injunction was sought when the petition was dismissed for the reasons that would trigger the confidentiality protections in statute. They felt that the burden should not be upon the clerks by creating a new section in the Rules of Judicial Administration.¹⁰ This remains the current solution.

Open Government Sunset Review Act

The Open Government Sunset Review Act¹¹ (the Act) prescribes a legislative review process for newly created or substantially amended¹² public records or open meetings exemptions, with specified exceptions.¹³ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁴

The Act 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.¹⁵ 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:

⁸ Correspondence from Marcia M. Johnson, President, Florida Court Clerks & Comptrollers, to the Honorable Jorge Labarga, Chief Justice of the Florida Supreme Court, (July 31, 2017) (on file with the Senate Committee on Judiciary).

⁹ Correspondence from John A. Tomasino, Clerk of the Supreme Court of Florida, to Marcia M. Johnson, President, Florida Court Clerks & Comptrollers (Jan. 10, 2018) (on file with the Senate Committee on Judiciary).

¹⁰ Correspondence from Judson Lee Cohen, Chair, Rules of Judicial Administration Committee to John A. Tomasino, Clerk of the Supreme Court of Florida (Nov. 21, 2017) (on file with the Senate Committee on Judiciary).

¹¹ Section 119.15, F.S.

¹² An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹³ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁴ Section 119.15(3), F.S.

¹⁵ Section 119.15(6)(b), F.S.

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;¹⁶
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁷ or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.¹⁸

The Act also requires specified questions to be considered during the review process.¹⁹ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁰ If the exemption is continued without substantive changes or if the exemption is continued and 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.²¹

Statement of Public Necessity

The State Constitution, in s. 24(c), Art. I, requires that each law establishing a public record exemption provide a statement of public necessity. The public necessity statement must specify the reason for the public necessity exemption and may be no broader than necessary to accomplish the stated purpose of the law. The law must pass each House of the Legislature by a two-thirds vote.

III. Effect of Proposed Changes:

The bill creates a public records exemption for a petition, records, and documents that have been ordered sealed by a court when a person, who was the respondent to a domestic violence injunction petition, requested the court to seal the items and the domestic violence injunction petition was withdrawn or dismissed or there was a ruling in favor of the respondent. The bill

¹⁶ Section 119.15(6)(b)1., F.S.

¹⁷ Section 119.15(6)(b)2., F.S.

¹⁸ Section 119.15(6)(b)3., F.S.

¹⁹ Section 119.15(6)(a), F.S. The specified questions are:

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

²⁰ See *generally* s. 119.15, F.S.

²¹ Section 119.15(7), F.S.

states that these items are confidential and exempt from s. 119.07(1), F.S. and s. 24(a), Art. I of the State Constitution.

Statement of Public Necessity

The bill provides a public necessity statement supporting the creation of the public records exemption. The statement provides that it is a public necessity that petitions filed under ss. 741.30 and 741.301, F.S., and all records and documents related to the petitions be made confidential and exempt from s. 119.07(1), F.S. and s. 24(a), Article I of the State Constitution unless the domestic violence injunction petition was withdrawn or dismissed or if a ruling was granted in favor of the respondent. If the petition was granted by the court, there can be no expunction.

The public necessity statement provides that people who have been accused of domestic violence face barriers to employment and other life opportunities, and the knowledge that they were accused of domestic violence, even though no injunction was granted, would expose them to possible discrimination and strong public criticism. Accordingly, it is necessary that these petitions and related documents be made confidential and exempt so that the petitioner for the sealing may have the chance to continue living without those consequences when an injunction was never issued. Making these petitions and related documents confidential and exempt will allow the requestors to have a chance to continue life without the negative consequences associated with a domestic violence injunction, particularly when the domestic violence injunction was never issued against them.

Open Government Sunset Review Act

The bill complies with the provisions of the Open Government Sunset Review Act. Section 741.301(2)(b), F.S. states that the new exemption language is subject to the Act and will stand repealed on October 2, 2026, unless reviewed and saved from repeal by reenactment by the Legislature.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

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 bill creating or expanding an exemption to the public records requirements. Because this bill creates an exemption for domestic violence injunction records when the injunction was never issued, the bill requires a two-thirds vote.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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 section 741.301, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.