

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 14, 1998 Revised: \_\_\_\_\_

Subject: Public Records/Guardianship Office

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Wiehle</u>	<u>Moody</u>	<u>JU</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

**I. Summary:**

The bill provides for a public records exemption for any medical, financial, or mental health records necessary to evaluate the public guardianship system, to assess the need for additional public guardianship offices or services, or to develop the annual report of the Statewide Public Guardianship Office. The bill provides a statement of public necessity.

The bill is tied to SB 1178 relating to the Statewide Public Guardianship Office.

This bill creates section 744.7081 of the Florida Statutes.

**II. Present Situation:**

Section 24, Art. I, Fla. Const., expresses Florida’s public policy regarding access to government records in providing that:

- (a) Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

The section, however, permits the Legislature to provide by general law for the exemption of records from these requirements. The general law exempting the records must state with

specificity the public necessity justifying the exemption and can be no broader than necessary to accomplish the stated purpose of the law.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07, F.S., provides:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Section 119.15, F.S., provides that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes 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:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

### **III. Effect of Proposed Changes:**

The bill creates an exemption from s. 119.07(1), F.S., and s. 24(a), Art. I, Fla. Const., in order to provide the executive director of the newly created Statewide Public Guardianship Office access to medical, financial, or mental health records necessary to evaluate the public guardianship system, to assess the need for additional public guardianship offices or services, or to develop the annual report as required.

Specifically, the bill creates s. 744.7081, F.S., to permit access to records by the Statewide Public Guardianship Office. The office will have access to any medical, financial, or mental health records necessary to evaluate the public guardianship system, to assess the need for additional public guardianship offices or services, or to develop the annual report of the Statewide Public Guardianship Office. These records are to be provided to the Statewide Public Guardianship Office by an agency or the court upon request by the Office. Any confidential or exempt

information in the records continues to be confidential or exempt. All other records held by the Office relating to the medical, financial, or mental health of vulnerable citizens who are elderly persons or disabled adults as defined in chapter 415, persons with a developmental disability as defined in chapter 393, or persons with a mental illness as defined in chapter 394 are confidential and exempt from public records law.

The bill makes legislative findings that the health and safety of the public necessitates that the Statewide Public Guardianship Office have access to medical, financial, and mental health records of the states' vulnerable citizens as specified. The bill establishes a further legislative finding that the exemption provided for is a public necessity because the public disclosure of sensitive information as well as information otherwise confidential or exempt could lead to discrimination against affected citizens and could make these citizens reluctant to seek assistance for themselves or their family members. This result would then negatively affect the effective and efficient operation of the Statewide Public Guardianship Office.

The bill takes effect upon the same date as SB 1178 or similar legislation creating the Statewide Public Guardianship Office, provided that such legislation is adopted in the same legislative session or an extension thereof.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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