

STORAGE NAME: h1637.go
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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL OPERATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1637

RELATING TO: Confidentiality of identifying information regarding domestic violence victims

SPONSOR(S): Representative Hill

STATUTE(S) AFFECTED: Creates ss. 741.401 through 741.409

COMPANION BILL(S): SB 946 (s); HB 1639 (c); and SB 1292 (c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) GOVERNMENTAL OPERATIONS
- (2) LAW ENFORCEMENT & PUBLIC SAFETY
- (3)
- (4)
- (5)

I. SUMMARY:

HB 1637 provides for the creation of ss. 741.401, F.S., through 741.409, F.S., dealing with domestic violence, and establishing an Address Confidentiality Program (ACP). This program would allow a victim, or an alleged victim of domestic violence to use an address set up by the Secretary of State, as a blind address. The definition of "domestic violence" is expanded from the definition found in s. 741.28, F.S., to include a *threat* of such acts as found in s. 741.28, F.S., regardless of whether these acts or threats have been reported to law enforcement officers. The Secretary of State would act as mail forwarder, and agent for the program participant for purposes of service of process, at no cost to the program participant.

The period of participation would be four years, with renewal procedures established by the Secretary of State. Access to the actual location of program participants would be prevented from the public at large, governmental agencies would have limited access, with restrictions.

HB 1637 provides for the Secretary of State's designated address to be used by program participants for purposes of school and work. Under this program, program participants are permitted to request absentee ballots, and automatically be sent absentee ballots for all elections in the jurisdictions the participants reside, in the same manner as absentee voters, except the program participants would not have to make new requests each year.

HB 1637 appears to have a significant fiscal impact on state government, with estimates of a fully operational program costing from approximately \$130,000, to \$4,556,000 per year. The most probable cost range is believed to be \$2,000,000 to \$3,000,000 per year.

The fiscal impact on local governments is difficult to determine.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Chapter 741 F.S. - DOMESTIC RELATIONS:

Section 741.28, F.S., defines "domestic violence" to mean: any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, or any criminal offense resulting in physical injury or death of one family or household member by another who is or was residing in the same single dwelling unit.

Section 741.29, F.S., provides that law enforcement officers who investigate an alleged incident of domestic violence are required to advise the victim that there is a domestic violence center from which the victim may receive services, and to give the victim notice, written in simple English, as well as Spanish, on a standard form distributed by the Florida Department of Law Enforcement (FDLE), of the legal rights and remedies available to the victim. Law enforcement officers may arrest the person or persons suspected of committing domestic violence, without the consent of the victim. or consideration of the relationship of the parties.

Section 741.281, F.S., provides that if a person is found guilty of committing a crime of domestic violence, that person shall be ordered by the court to a minimum term of 1 year's probation and the court shall order that the defendant attend a batterers' intervention program as a condition of probation. If a person is admitted to a pretrial diversion program instead, the court still shall order, as a condition of the program, that the defendant attend a batterers' intervention program. Certified batterers' programs are at least 29 weeks long, and are user-fee funded, with the batterer paying such fees.

Section 741.30, F.S., provides that if a court believes an individual has been, or may become, a victim of domestic violence, it may issue an injunction against the person or persons suspected of committing such domestic violence.

Washington State is the only known state with an established Address Confidentiality Program. While access to the Washington program is more limited than that proposed in HB 1637, this bill is modeled after the Washington program.

B. EFFECT OF PROPOSED CHANGES:

HB 1637 creates ss. 741.401, F.S., through 741.409, F.S., expanding the definition of "domestic violence", and establishing a program to protect victims or potential victims of domestic violence. This program, similar to the Washington State Address Confidentiality Program, makes location information of such victims, or potential victims of domestic violence, accessible only to certain governmental agencies, or named persons in court orders, under restricted conditions.

Proponents of HB 1637 state that victims of actual, or of perceived possible, domestic violence, frequently establish new addresses in order to escape possible danger. According to bill proponents, the purpose of this bill is (by creating an Address Confidentiality Program), to enable state and local agencies to respond to requests for public records without disclosing the location of alleged victims of domestic violence, to enable interagency cooperation with the administering agency in providing

confidentiality of the addresses of victims of alleged domestic violence, and to enable state and local agencies to accept a program participant's use of an address designated as a substitute address.

The only state which has a similar Address Confidentiality Program (ACP) program actually in place, is Washington. HB 1637 was drafted to establish a program patterned after the Washington State program, which, according to the Washington Secretary of State's Address Confidentiality Program Manager, attempts to protect adjudicated victims of domestic violence who have permanently left an abusive situation, and established a new location. Keeping the new location a secret from the abuser is accomplished in two ways.

First, the victim is allowed to use a substitute mailing address. The Secretary of State provides cost-free (to the applicant/client), security mail forwarding service, and serves as each client's legal agent for receipt of mail and service of process. Second, the location of the client is not made available to the public. Essentially, HB 1637 creates a program to provide an additional layer of protection to victims of domestic violence, and those who swear that they have good reason to believe they fear for their safety, or they fear for the safety of a minor or incapacitated person in their care.

HB 1637 limits the disclosure of address and telephone information. Agencies may, upon approval of the Secretary of State, and with numerous restrictions, use, but not disclose, participants' actual location information.

Exceptions to disclosure are made for law enforcement agencies, and persons identified in court orders. However, the Secretary of State is required to immediately notify the program participant when such a disclosure takes place. The purpose of the exceptions evidently are to permit contact by law enforcement agencies, or court order named persons. The requirement that the participant be given immediate notification of disclosure, could easily defeat the purpose of the two named exceptions in which disclosure is permitted. For example, an individual who had falsely entered the program to avoid arrest, could be inadvertently aided in continuing their flight from law enforcement agencies as a result of the required written notification.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. The Secretary of State may adopt rules to administer the program.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. HB 1637 would provide for the establishment of a state program and administering organization responsible for handling mail, and service of process for participants of the Address Confidentiality Program.

(3) any entitlement to a government service or benefit?

Yes. Program participants receive mail forwarding and service of process services.

b. If an agency or program is eliminated or reduced:

Not Applicable

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

(2) what is the cost of such responsibility at the new level/agency?

(3) how is the new agency accountable to the people governed?

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

This bill does not reduce government activity in individuals' or organizations' affairs. It does, however, provide an additional measure of protection, and thus freedom, for individuals to conduct their own affairs in that victims/alleged victims can change their addresses, and their new addresses will not be disclosed.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes. HB 1637 would restrict access to information which is currently lawfully available. In addition, even when information is released to law enforcement agencies, or persons identified to receive information pursuant to court orders, the administering agency must give written notice to the program participant that the information was provided to such law enforcement agency, or court order-identified person. Such notification may interfere with the currently lawful activities of law enforcement agencies, or the courts. The Florida Department of Law Enforcement estimates that in most cases in which an investigation has reached the arrest stage, depending on circumstances, it would take from 3 to 5 days to process the location information (once received), assign an investigator, and actually make the physical arrest.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

The applicant to the ACP asserts the need in a statement provided to the Secretary of State.

- (2) Who makes the decisions?

The applicant to the ACP program is the primary determinator, subject to subsequent verification by the Secretary of State.

(3) Are private alternatives permitted?

Yes. No one is required to apply or participate in the ACP.

(4) Are families required to participate in a program?

Inasmuch as the applicant to the ACP is an adult person, parent, or guardian acting on behalf of another, it appears that there may be situations when family members, or those in the applicant's care would be required to participate also.

(5) Are families penalized for not participating in a program?

No.

b. Does the bill directly affect the legal rights and obligations between family members?

Yes. Information as to the location of one, or more, family members may be prohibited from another family member, or members, if the other family member, or members, were engaged in domestic violence, or were alleged to be engaged in domestic violence, or it is believed by the applicant that the other family member, or members, may engage in domestic violence. Accordingly, for example, court ordered visitation rights may be disrupted.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

Yes, to the extent that the statements provided by applicants are used to provide participation in the program.

(2) service providers?

Yes.

(3) government employees/agencies?

Yes.

D. SECTION-BY-SECTION RESEARCH:

Section 1 - Creates s. 741.401, F.S., provides legislative findings and purpose (see II B. EFFECT OF PROPOSED CHANGES).

Section 2 - Creates s. 741.402, F.S., provides definitions of "address", "program participant", and "domestic violence".

Section 3 - Creates s. 741.403, F.S., provides for whom, and how a person may apply for participation in the Address Confidentiality Program; provides for requirements for participants; provides for the length of the period of participation, and for renewal; provides for remedies for fraudulent application; provides for remedies for fraudulently attempting to gain access to program participants' actual address.

Section 4 - Creates s. 741.404, F.S., provides for certification cancellation.

Section 5 - Creates s. 741.405, F.S., provides for use, and limitations of use, of addresses by state and local agencies, or other governmental entities.

Section 6 - Creates s. 741.406, F.S., provides for voting procedures for program participants, and restrictions on disclosure of information by the supervisor of elections.

Section 7 - Creates s. 741.407, F.S., provides for prohibition on disclosure information; provides for exceptions to the disclosure prohibition in the case of law enforcement agencies, and persons named in court orders; provides for disclosure in the case of certification cancellation; provides for immediate written notification to the program participant, that such information was disclosed.

Section 8 - Creates s. 741.408, F.S., provides for state and local agencies and nonprofit agencies that provide counseling and shelter services to assist persons applying to be program participants; provides that such counseling rendered to applicants is not to be construed as legal advice.

Section 9 - Creates s. 741.409, F.S., provides that Secretary of State may adopt rules to facilitate the administration of this chapter by state and local agencies, and other governmental entities.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

The Secretary of State, in a fiscal analysis for the Florida Senate, estimates a first year budget of \$4,884,000. The Executive Director of the Governor's Task Force on Domestic and Sexual Violence believes the number of persons who will become program participants is less than the number used by the Secretary of State in estimating the fiscal impact. Another fiscal impact estimate, made by the Attorney General's Office, is \$130,497. The disparity is so great that a closer look at Washington State's demographics and experience was taken.

Washington State's population is approximately 5.7 million persons, and there were 17,328 domestic violence cases (not including homicides and manslaughters), reported in 1996, for a .3% rate of domestic violence cases relative to the population. Florida has a population of approximately 14,450,000, and there were 132,495 domestic violence cases (not including homicides and manslaughters), reported in 1996, for an approximately 1% rate of domestic violence cases relative to population, or about 333% of the per capita rate in Washington.

Computing the number of adjudicated victims, who are ACP participants in Washington (currently 890, with a waiting list of another 1,140 applicants), to the number of reported violence cases in 1996 (17,328) yields a rate of 5.14% to 11.7%. At 5.14% of 132,495 cases reported in Florida (in 1996), the number of program participants would be 6,810 persons. At 11.7%, the number of program participants would be 15,502. Both the 5.14% rate, and the 11.7% are probably unrealistically low, as HB 1637 provides that not only actual victims of domestic violence may apply to the program (as required in Washington, and which is evidenced by court action), but this bill permits anyone who states that they believe that they are victims of domestic violence, and that they fear for their safety, or the safety of one in their care, to apply.

The field of eligible participants is further expanded by HB 1637's broader definition of domestic violence which includes threats of violent acts. Moreover, those acts, or threats of acts, and perceptions of danger, are not required to have been reported to law enforcement officers.

2. Recurring Effects:

The Secretary of State estimates an annual cost to administer the program at approximately \$4,543,000. The Executive Director of the Governor's Task Force on Domestic Violence estimates an annual cost of approximately \$400,000. The Attorney General's Office reportedly estimates the annual cost at around \$130,000. The State of Washington, which has had a very similar program in place for over four years, experiences a cost of from \$200 to \$217 per person, with a current operating budget of approximately \$200,000 per year.

Based solely on *adjudicated cases*, using the 5.14% and 11.7% rates of program participants, multiplying the number of reported domestic violence cases (132,495), by the estimated cost per program participant of \$200 to \$217, the recurring fiscal impact would be \$1,362,049 to \$3,363,916 per year. The actual amount may be significantly higher due to the larger field of qualified applicants.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

The estimates from agencies involved, or potentially involved, are so disparate, that there is a question of their reliability. Based on data extrapolated from Washington State's experience, the annual cost of a fully operational program seems to be in the median area of \$2,300,000. Startup costs could vary widely, depending on the initial commitment to the program, and amounts spent in areas such as: plant, equipment, personnel and overhead expenses.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

HB 1637 provides for local agencies to provide assistance to persons applying to participate in the ACP, but it is not possible to determine what the fiscal impact would be.

2. Recurring Effects:

See number 1. - Non-Recurring Effects.

3. Long Run Effects Other Than Normal Growth:

See number 1. - Non-recurring effects.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

It is difficult to estimate the extent of the fiscal impact on the private sector, but it appears that private firms and individuals who are creditors of program participants, would be unable to contact a debtor-participant for 4 years, or more. It is common for most creditors to write off a debt in much less time than that, so creditors could easily be forced to absorb such debts.

2. Direct Private Sector Benefits:

None, except for the benefits realized by program participants.

3. Effects on Competition, Private Enterprise and Employment Markets:

D. FISCAL COMMENTS:

See FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

HB 1637 does not require counties or municipalities to spend funds or to take action which requires the expenditure of funds.

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B. REDUCTION OF REVENUE RAISING AUTHORITY:

HB 1637 does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

HB 1637 does not reduce the percentage of state tax shared with counties and municipalities.

V. COMMENTS:

Fiscal impact statements from two agencies are notably far apart. As compared to actual costs of a similar program in another state, population comparisons, consideration of the number of program participants relative to the number of reported domestic violence cases, and other relatively objective criteria, one of the agency estimates was over \$2,000,000 higher than the analyst's estimate, and the other agency's estimate was over \$2,000,000 lower. The program, as presented in HB 1637, may unintentionally hamper law enforcement authorities and the courts in their duties.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

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