

STORAGE NAME: h1639.go

DATE: April 3, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL OPERATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1639

RELATING TO: Public Records/Address Confidentiality Program

SPONSOR(S): Representative Hill

STATUTE(S) AFFECTED: Creates s. 741.465, F.S.

COMPANION BILL(S): SB 1292 (i); HB 1637 (c); and SB 946 (c)

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

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

I. SUMMARY:

HB 1639 creates a public records exemption for certain personal information about program participants in the Address Confidentiality Program for Victims of Domestic Violence (ACP). HB 1637, a companion bill, would establish this program.

HB 1639 provides that the residential, school and work addresses, corresponding telephone numbers, and social security numbers of such program participants would be exempt from disclosure.

HB 1639 provides that these exemptions are subject to the Open Government Sunset Review Act of 1995, and will repeal on October 2, 2002, unless otherwise reviewed and reenacted by the Legislature.

HB 1639 provides a public necessity statement for the exemption, as is required by Article I, s. 24, of The Florida Constitution.

HB 1639 does not appear to have a fiscal impact on state or local governments.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Public Records Law

Article I, s. 24, Florida Constitution, 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.

Article I, s. 24, Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records from the requirements of s. 24. 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.

Current Law Regarding 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.

Address Confidentiality Program for Victims of Domestic Violence

HB 1637, the companion bill to HB 1639, creates ss. 741.401, F.S., through 741.409, F.S., expanding the definition of "domestic violence" to include threats of such acts as defined in s. 741.28, whether or not the acts, or threats have been reported to law enforcement officers, and establishing a program to protect persons who have been, or are victims, or believe they may become victims, of domestic violence. This 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) 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.

Current Law Regarding Victim and Witness Protection

Currently "*active criminal intelligence information*" and "*active criminal investigative information*" are exempt from public disclosure pursuant to s. 119.07(3)(b), F.S. "Criminal intelligence information" means information with respect to an identifiable person or group of persons collected by a **criminal justice agency** in an effort to anticipate, prevent, or monitor possible criminal activity. "Criminal investigative information" means information with respect to an identifiable person or group of persons compiled by a **criminal justice agency** in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.

"Criminal intelligence information" and "criminal investigative information" do **not** include, according to s. 119.011(3), F.S.:

1. The time, date, location, and nature of a reported crime.
2. The **name**, sex, age, and **address** of a person arrested or **of the victim of a crime except as provided in s. 119.07(3)(f)**.
3. The time, date, and location of the incident and of the arrest.
4. The crime charged.

5. Documents given or required by law or agency rule to be given to the person arrested, except as provided in s. 119.07(3)(f), and except that the court in a criminal case may order that certain information required by law or agency rule to be given to the person arrested be maintained in a confidential manner ... until released at trial if it is found that the release of such information would:
 - a. **Be defamatory to the good name of a victim or witness or would jeopardize the safety of such victim or witness;** and
 - b. Impair the ability of a state attorney to locate or prosecute a codefendant.
6. Informations and indictments except as provided in s. 905.26.

Criminal intelligence information is considered “*active*” as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities. “Criminal investigative information” is considered “*active*” as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future. s. 119.011(3)(d), F.S.

A “**criminal justice agency**” means any law enforcement agency, court, or prosecutor. The term also includes any other agency charged by law with criminal law enforcement duties, or any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting such law enforcement agencies in the conduct of active criminal investigation or prosecution or for the purpose of litigating civil actions under the Racketeer Influenced and Corrupt Organization Act, during the time that such agencies are in possession of criminal intelligence information or criminal investigative information pursuant to their criminal law enforcement duties. The term also includes the Department of Corrections. s. 119.011(4), F.S.

Section 119.07(3)(f), F.S., provides that any criminal intelligence information or criminal investigative information including the photograph, name, address, or other fact or information which reveals the identity of the victim of the crime of sexual battery as defined in ch. 794, F.S.; the identity of the victim of the crime of lewd, lascivious, or indecent assault upon or in the presence of a child, as defined in ch. 800, F.S.; or the identity of the victim of the crime of child abuse as defined by ch. 827, F.S., and any criminal intelligence information or criminal investigative information or other criminal record, including those portions of court records and court proceedings, which may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in chs. 794, 800, or 827, F.S., is exempt from public disclosure.

Section 92.56, F.S., provides that, under certain circumstances, court records, including testimony from witnesses, that reveal the photograph, name, or address of the victim of certain alleged offenses are confidential and exempt.

Section 945.10, F.S., provides, in part, that information held by the Department of Corrections, which if released would jeopardize a person’s safety, or concerns a victim’s statement and identity, is confidential and exempt.

Section 960.28, F.S., provides, in part, that information received or maintained by the Department of Legal Affairs identifying an alleged victim who seeks payment of medical expenses (under s. 960.28, F.S.) is confidential and exempt.

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Section 794.03, F.S., provides that identifying information regarding the victim of any sexual offense identified within ch. 794, F.S., is confidential and exempt. The portion of that section mandating criminal sanctions for identifying a victim of a sexual offense in any instrument of mass communication was held unconstitutional. *State v. Globe Communications Corp.*, 648 So. 2d 110, 112 (Fla. 1994) (“If a newspaper lawfully obtains truthful information about a matter of public significance then state officials may not constitutionally punish publication of the information.”)

B. EFFECT OF PROPOSED CHANGES:

HB 1639 provides that residential, school and work addresses, corresponding telephone numbers, and social security numbers of participants in the Address Confidentiality Program for Victims of Domestic Violence (ACP), are exempt from s. 119.07(1) F.S., and Article I, Florida Constitution.

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?

No.

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

Yes. Certain information relative to ACP participants would be held exempt from disclosure.

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

No.

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?

N/A.

4. Individual Freedom:

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

Yes. ACP participants would be able to live, work, and attend school without interference from private or governmental entities which otherwise might occur if those entities had access to the exempt information.

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

Yes. Unlike HB 1637, the companion bill, there are no exceptions in this bill for disclosure to any entities, whether private, general government, court order named individuals, or law enforcement.

5. Family Empowerment:

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

Not Applicable.

(1) Who evaluates the family's needs?

(2) Who makes the decisions?

(3) Are private alternatives permitted?

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

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

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

Yes. Family members of ACP participants would be prevented from accessing the address(es) and telephone numbers of the ACP participants. A possible situation affected would, for example, be a case when a mother had a court order permitting her visitation with a child, and the child is in the custody of an ACP participant. Accordingly, the mother would be denied information as to the whereabouts of her child.

- 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:

Not Applicable.

(1) parents and guardians?

(2) service providers?

(3) government employees/agencies?

D. SECTION-BY-SECTION RESEARCH:

Section 1 - Creates s. 741.465, F.S.; providing an exemption from the public records law, and Article I of the Florida Constitution, for address(es), telephone number(s), and social security number(s) of an ACP participant; provides that exempt information is subject to the Open Government Sunset Review Act of 1995, and will stand repealed on October 2, 2002, unless otherwise reviewed and reenacted by the Legislature.

Section 2 - Provides a public necessity statement for the exemption discussed above in Section 1.

Section 3 - Provides a contingent effective date.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

None.

1. Non-recurring Effects:

2. Recurring Effects:

3. Long Run Effects Other Than Normal Growth:

4. Total Revenues and Expenditures:

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

None.

1. Non-recurring Effects:
2. Recurring Effects:
3. Long Run Effects Other Than Normal Growth:

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:
None.
2. Direct Private Sector Benefits:
None.
3. Effects on Competition, Private Enterprise and Employment Markets:

It is not possible to determine what the impact might be on businesses, such as those who are creditors of ACP participants, and who may be prevented from collecting some of their receivables, or businesses prevented from enforcing other contracts due to their inability to reach contract parties who are ACP participants.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

HB 1639 does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

HB 1639 does not reduce the authority of counties or municipalities to raise revenues in the aggregate.

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

HB 1639 does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

One technical amendment is needed to tie the effective date to HB 1637.

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

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