

STORAGE NAME: h1645.flc

DATE: March 29, 1999

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
FAMILY LAW AND CHILDREN
ANALYSIS**

BILL #: HB 1645 (PCB HCS 99-04)

RELATING TO: Public Records/Child Death Reviews

SPONSOR(S): Committee on Health Care Services and Representative Peaden

COMPANION BILL(S): HB 1647 (compare), HB 1879 (similar), SB 928 (similar)

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

- (1) HEALTH CARE SERVICES YEAS 16 NAYS 0
- (2) GOVERNMENTAL OPERATIONS YEAS 6 NAYS 0
- (3) FAMILY LAW AND CHILDREN
- (4)
- (5)

I. SUMMARY:

This bill, which relates to exemptions from the public records laws, is a companion bill to HB 1647 regarding child death reviews. This bill provides that all information that is confidential or exempt from public records requirements and subsequently obtained by the state and local death review teams, or a panel or committee assembled by either team, remains confidential and exempt from public records requirements. Information obtained by hospital or health care practitioners from the child death review teams or panels or committee assembled by the teams will also remain confidential and exempt.

Additionally, all information acquired by the review teams are not subject to subpoena, discovery, introduction into evidence in any civil or criminal proceedings, or a public records request.

Records and reports of the child death review teams and their panels or committees, as well as portions of meetings and proceedings, which relate solely to child deaths and in which specific persons or incidents are discussed, are confidential and exempt from the provisions of ss. 119.07 and 286.011, F.S., and ss. 24 (a) and (b), Article I of the State Constitution.

State teams and local teams will also be permitted to share relevant information, and persons violating the provisions of this section commit a misdemeanor of the first degree, punishable as provided in ss. 775.082 or 775.083, F.S.

Pursuant to section 24 of Article I of the State Constitution, this bill also provides a statement of public necessity for the exemption which finds that disclosure of sensitive and personal information concerning children would hamper communication and coordination among the parties involved and result in harm to the public.

The exemptions in this bill will be subject to the Open Government Sunset Review Act of 1995.

This bill should not have any fiscal impact on the public or private sector.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Public Records and Public Meeting Laws.

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.

Access to government meetings is addressed in the Florida Statutes as well. Section 286.011, F.S., states:

All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

Section 119.15, F.S., provides that an exemption to the public records and meeting requirements 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.

Comprehensive Mortality Review Program.

Each year in Florida approximately twenty-eight hundred children die after the neonatal period. On average seven children from birth through nineteen years old die each day in Florida. According to the 1997 Kids Count Data Book, Florida ranked among the top ten states with the highest child death rate of children ages one through 14.

In 1997, a total of 2,740 children between the ages of birth and 19 years old died in Florida. Of these children, 1,358 were less than one year old and the leading cause of death was related to perinatal conditions and congenital anomalies. Of the 516 children who were between 1 and 9 years old and the 866 who were 10 through 19 years old, the majority of deaths was due to injuries.

Studies done by the Florida Department of Health show that in Florida in 1997, the leading causes of death for infants under one year old were perinatal conditions (653), congenital anomalies (268), and Sudden Infant Death Syndrome (139). For children ages 1 to 4, the leading causes of death were unintentional injury (127), congenital anomalies (39), and malignant neoplasm (29). The leading causes of injury-related death in children 1 to 4 were attributed to drowning (70), motor vehicles (25), and residential fires (11). The leading causes of death for children ages 5-9 were unintentional injuries, cancer, and congenital anomalies. The leading causes of death due to unintentional injuries for this age group were attributed to motor vehicles (26), drowning (21), and fires (10). For children ages 10-14, the leading causes of death were unintentional injuries (102), cancer (27), and suicide (16). The injuries which caused the most deaths for ages 10-14 were injuries relating to motor vehicles (70), drowning (13), and firearms (5). For teens ages 15-19, the leading causes of death were unintentional injury (317), homicide and legal intervention (105), and suicide (69). The leading causes of death due to unintentional injuries for ages 15-19 were attributed to motor vehicles (267), drowning (8), and firearms (5).

Currently, 48 states and the District of Columbia have established either state or local child fatality review teams to review child deaths. Florida has local child fatality review teams in Hillsborough, Polk, and Palm Beach counties but does not have a database relating only to child deaths in the state or an established mechanism for reviewing diagnoses or conclusions reached by medical examiners in cases of child deaths. Little in-depth causal information relating to the number of child deaths in Florida is available.

Certain programs and task forces currently exist in Florida whose review process may deal with the issue of child death. These programs include Emergency Medical Services, the Domestic Violence Task Force, Fetal and Infant Mortality Review, Pregnancy Associated Mortality Review, and the Child Abuse and Neglect Mortality Review. Each of these reviews targets specific areas and is limited in scope. There is, however, no statewide review process that solely reviews child deaths. The Pregnancy Associated Mortality Review (PAMR) and a Fetal and Infant Mortality Review (FIMR) are established within the Department of Health. There is no statutory authority providing for these two reviews. The reviews were created by the Department of Health under its general public health authority. Both PAMR and FIMR are currently experiencing funding difficulties.

The purpose of PAMR is to identify gaps in care, systemic service delivery problems, and areas in which linkages between community resources can be improved to facilitate improvements in the systems of care. The review process focuses on the systems of perinatal care and examines pregnancy-associated deaths, including those related to physical, psychosocial, and environmental factors.

Florida's FIMR project was initiated in 1993 and has been implemented by the Healthy Start Coalitions since its inception. Currently, there are 13 FIMR projects in operation throughout the

state with participation of 13 healthy start coalitions in 31 of the state's 67 counties. The FIMR process was implemented in order to establish a needs assessment and continuous quality improvement mechanism for communities, which complements the community-based nature of the Healthy Start coalitions. The Healthy Start Program assists pregnant women and infants to obtain health care and social support needed to reduce the risks for maternal and infant health and to promote good health and developmental outcomes. Healthy Start coalitions are responsible for developing comprehensive plans for maternal and child health care, monitoring the performance of health care delivery systems for pregnant women and children up to age three, and allocating resources in order to improve pregnancy outcomes and the health status of children.

Recently, Florida received federal grants through the Children's Justice Act that required the state to develop a process for the examinations of child deaths in the state. As a result of these grants, a multidisciplinary working group was established to design a system for universal child death review in Florida. The working group included representatives from the health professions, medical examiners, law enforcement, child welfare, child advocacy, and interested citizens. From these meetings, a plan was developed for the creation of local multidisciplinary and multiagency review groups to analyze all child deaths and create a uniform database for use by a statewide team. The plan includes the child death review project as part of a Comprehensive Mortality Review Program for Florida's Maternal and Child Health Population. Such a program would be established through the Department of Health and would require funding from General Revenue.

The department's plan for the Comprehensive Mortality Review Program is that it would include the Pregnancy Associated Mortality Review and the Fetal and Infant Mortality Review Project (both of which already exist), as well as a new Child Fatality Review Team created by statute.

B. EFFECT OF PROPOSED CHANGES:

Information that is confidential or exempt from public records requirements and subsequently obtained by the state and local death review teams, or a panel or committee assembled by either team, will remain confidential and exempt from public records requirements. Such information obtained by hospital or health care practitioners from the child death review teams or panels or a committee assembled by the teams will also remain confidential and exempt.

Additionally, all information acquired by the review teams are not subject to subpoena, discovery, introduction into evidence in any civil or criminal proceedings, or a public records request.

Records and reports of the child death review teams and their panels or committees, as well as portions of meetings and proceedings, which relate solely to child deaths and in which specific persons or incidents are discussed, are confidential and exempt from the provisions of ss. 119.07 and 286.011, F.S., and ss. 24 (a) and (b), Article I of the State Constitution.

State teams and local teams will also be permitted to share relevant information, and persons violating the provisions of this section commit a misdemeanor of the first degree, punishable as provided in ss. 775.082 or 775.083, F.S.

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?

N/A

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

N/A

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

This bill would reduce access to the records and meetings regarding child death reviews which are currently not exempt from the public records and public meeting laws.

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

An agency or program is not eliminated or reduced.

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

N/A

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

N/A

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

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

N/A

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

N/A

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

N/A

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

N/A

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

N/A

3. Personal Responsibility:

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

This bill would reduce access to the records and meetings regarding child death reviews which are currently not exempt from the public records and public meeting laws.

- 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?

N/A

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

This bill would reduce access to the records and meetings regarding child death reviews which are currently not exempt from the public records and public meeting laws.

5. Family Empowerment:

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

The bill does not purport to provide services to families or children, however it would reduce access to the records and meetings regarding child death reviews.

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

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

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

N/A

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

N/A

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

N/A

- 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:

The bill does not create or change a program providing services to families or children, however it would reduce access to the records and meetings regarding child death reviews.

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Creates section 383.410, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates s. 383.410, F.S., relating to confidentiality, to provide that all information obtained by the State Child Death Review Team or local team, or a panel or committee assembled by either team that is confidential and exempt from public records requirements shall retain its confidential and exempt status. Such information obtained by hospital or health care practitioners from the child death review teams or panels or a committee assembled by the teams shall also retain its confidential and exempt status.

Records and reports of the child death review teams and their panels or committees, as well as portions of meetings and proceedings, which relate solely to child deaths and in which specific persons or incidents are discussed, are confidential and exempt from the provisions of ss. 119.07 and 286.011, F.S., and ss. 24 (a) and (b), Article I of the State Constitution.

All information and records acquired by the review teams are not subject to subpoena, discovery, introduction into evidence in any civil or criminal proceedings, or a public records request.

Additionally, state teams and local teams may share relevant information, and persons violating the provisions of this section commit a misdemeanor of the first degree, punishable as provided in ss. 775.082 or 775.083, F.S. (Up to one year imprisonment and \$1000 fine).

This section is subject to the Open Government Sunset Review Act of 1995.

Section 2. Provides legislative findings as to the public necessity for exempting records from the public records law. The Legislature finds that access by the state and local child death review teams and their panels and committees to records that are otherwise confidential increases the potential for reduced morbidity or mortality for children and improves the overall quality of life for children. The Legislature also finds that it is a public necessity that confidential information obtained by the child death review teams, their panels or committees, and hospital or health care practitioners, as well as reports and records of the review teams, remain confidential. Due to the sensitive and personal nature of the information concerning children, the Legislature finds that disclosure of such records would hamper communication and coordination among the parties involved and harm to the public would result.

Section 3. Provides an effective date contingent upon passage of HB 1647 or similar legislation.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

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

N/A

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not place any mandates on local governments.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the ability of local governments to raise revenue.

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

This bill does not reduce state tax shared with counties or municipalities.

V. COMMENTS:

The language in the bill refers primarily to exempting information acquired by the review teams which relate solely to child deaths and which discuss specific persons. However, paragraph (4) provides that all records acquired by the review teams are not subject to subpoena, discovery, introduction into evidence in any civil or criminal proceedings, or a public records request. Such language would likely render the public record exemption invalid as being overbroad.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

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