

STORAGE NAME: h1995a.go

DATE: April 8, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL OPERATIONS
ANALYSIS**

BILL #: HB 1995

RELATING TO: Public Records Exemption

SPONSOR(S): Representative A. Greene

COMPANION BILL(S): SB 1172 (identical), HB 731 (compare), and SB 1174 (compare)

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

- (1) GOVERNMENTAL OPERATIONS YEAS 5 NAYS 0
 - (2) CRIMINAL JUSTICE APPROPRIATIONS
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

This bill creates a public record exemption for certain information provided to a sheriff or state attorney by a person who takes a minor child with them when fleeing domestic violence. The information would include the name of the person fleeing, the current address and telephone number of the person and child, the reasons the child was taken, and any change of address or telephone number.

The exemption is subject to review and repeal in accordance with the Open Government Sunset review Act. This bill provides a finding of Legislative public necessity, as required by Art. I, sec. 24 of the Florida Constitution.

The effective date of this bill is tied to passage of HB 731, or similar legislation which would require persons to make reports to a sheriff or state attorney when taking a child with them when fleeing domestic violence.

Note. On April 8, 1999, the Committee on Governmental Operations adopted an amendment which locates the proposed legislation in the same section of the Florida Statutes amended by the substantive bill, HB 731.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Public Records Law

Article I, section 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records. This section provides that:

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, section 24, Florida Constitution, also provides that the Legislature may, by general law, exempt public records from the requirements of section 24(a). Such a general law exempting records from public disclosure 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., the Open Government Sunset Review Act of 1995, states that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than necessary to meet that public purpose. 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 that such purpose 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.

Victims of Crime

Section 119.07 (3)(s), F.S. (1998 Supp.), exempts from public record any document which reveals the identity, address, telephone number, or personal assets of an actual victim of crime, including domestic violence, but only upon request by the victim and upon verification that a crime occurred.

B. EFFECT OF PROPOSED CHANGES:

This bill creates a public record exemption for certain information provided to a sheriff or state attorney by a person who takes a minor child with them when fleeing domestic violence. The information would include the name of the person fleeing, the current address and telephone number of the person and child, the reasons the child was taken, and any change of address or telephone number.

The exemption is subject to review and repeal in accordance with the Open Government Sunset Review Act. This bill provides a finding of Legislative public necessity, as required by Art. I, sec. 24 of the Florida Constitution.

The effective date of this bill is tied to passage of HB 731, or similar legislation which would require persons to make reports to a sheriff or state attorney when taking a child with them when fleeing domestic violence.

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. By exempting certain information from public records laws, individuals who take minors with them when they flee domestic violence will be more likely to report their names and addresses to sheriffs and state attorneys, which will aid in the resolution of child custody proceedings.

(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?

Yes. Individuals will no longer have access to certain public records.

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

The bill does not reduce or eliminate an agency or a program.

(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?

Yes. Individuals will no longer have access to certain public records.

- 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?

Yes. Individuals will no longer have access to certain public records.

5. Family Empowerment:

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

While the bill does not purport to provide services to families or children, it does provide certain protections for persons who are fleeing domestic violence.

- (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:

This bill does not create or change a program providing services to families or children.

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

N/A

E. SECTION-BY-SECTION ANALYSIS:

None.

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:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill 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:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

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This bill does not create or amend a section of the Florida Statutes, as most public record exemptions do.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 8, 1999, the Committee on Governmental Operations adopted an amendment which locates the proposed legislation in the same section of the Florida Statutes amended by the substantive bill, HB 731.

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

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