

STORAGE NAME: h1037s1a.go

DATE: April 17, 2000

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
GOVERNMENTAL OPERATIONS
ANALYSIS**

BILL #: CS/HB 1037

RELATING TO: Public Records/Domestic Violence

SPONSOR(S): Committee on Family Law & Children, Representative Pruitt and others

TIED BILL(S): CS/HB 1039

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

- (1) FAMILY LAW AND CHILDREN YEAS 6 NAYS 0
- (2) LAW ENFORCEMENT AND CRIME PREVENTION YEAS 8 NAYS 0
- (3) GOVERNMENTAL OPERATIONS YEAS 4 NAYS 0
- (4) CRIMINAL JUSTICE APPROPRIATIONS
- (5)

I. SUMMARY:

This bill, which relates to public records exemptions is a companion bill to CS/HB 1039, regarding domestic violence fatality review teams. This bill provides that records which are exempt from disclosure under the public records law will not lose their exemption solely because the records are disclosed to a review team. Review teams are required to hold such records confidential. Proceedings and meetings conducted by a fatality review team are exempt from public meeting requirements, if the identity of a victim or the victim's children is discussed. This bill also provides that the investigations, proceedings, and records of a fatality review team are not subject to discovery or introduction into evidence in any civil action or disciplinary proceeding by any department or employing agency arising out of matters that are the subject of evaluation and review by the fatality review team. Any person who attends a meeting held by a fatality review team may not be permitted or required to testify in any civil action or disciplinary proceeding as to any evidence or other matters produced or presented during the proceedings of the organization as to any findings, recommendations, evaluations, opinions, or other actions of the organization or the members.

Pursuant to s. 24 of Article I of the Florida Constitution, this bill provides a statement of public necessity for the exemption that victims of domestic violence, those associated with the victim, and participants at team meetings must be able to disclose information without fear of reprisal. This statutory exemption is subject to the Open Government Sunset Review Act of 1995, and will be repealed on October 2, 2005, unless reviewed and reenacted by the Legislature. This bill would take effect on the same date as CS/HB 1039 or similar legislation, if adopted by the legislature.

This bill should not have any fiscal impact.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Public Records and Public Meeting Laws.

Section 24 of Article of the 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.

However, s. 24 of Article I of the Florida Constitution, permits the Legislature to provide by general law for the exemption of records from the requirements of s. 24. The general law exemption 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: the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government; and the 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.

Domestic Violence Fatality Review Teams

Domestic violence fatality review teams are not addressed within the Florida Statutes. In 1997, through funding by the Violence Against Women Grants Office of the U.S. Department of Justice, the Task Force selected four jurisdictions within Florida to create local fatality review teams. The jurisdictions chosen were Miami/Dade County, Tampa/Hillsborough County, Palm Beach County, and Volusia/Putnam Counties. These teams have created operational guidelines, and constituted various subcommittees regarding matters such as the ethics of death reviews, data collection, working with family members of decedents, and affecting policy changes. The Task Force received additional federal funding to create six more local fatality review teams. The funding pays for the creation of the team, and for training and travel expenses, but local funding is required for the administration of the teams.

Training is available for fatality review teams in the form of national summits on the issue and training materials that have been created through the summits. According to the Governor's Task Force, all the fatality review team members in Florida have participated in training at a summit held in Orlando in 1999. These teams do not have access to

confidential information but rely on sources of public information such as newspaper articles

CS/HB 1039

Committee Substitute for House Bill 1039 allows for the establishment of domestic violence fatality review teams, on a local, regional, or state level, to review fatal and near fatal incidents of domestic violence to evaluate both the incidents and ways to prevent such incidents. The bill provides a definition of domestic violence fatality review team, what information may be gathered by the teams, and the purpose of such teams. The review teams shall collect data regarding incidents of domestic violence in a manner consistent statewide and in a form determined by the Florida Department of Law Enforcement (FDLE). The FDLE will use the data to prepare an annual report on domestic violence fatalities and submit the report, by July 1 of each year, to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court. The Governor's Task Force on Domestic Violence shall provide information and technical assistance to local fatality review teams. Immunity from liability is conferred upon any person, acting within the scope of membership or functions of a team. The domestic violence fatality review teams shall be administratively placed within the Department of Children and Family Services. CS/HB 1039 has an effective date of July 1, 2000.

C. EFFECT OF PROPOSED CHANGES:

This bill would allow for records, that are currently exempt from disclosure under public records laws, to retain their exemption status even if the records are disclosed to a domestic violence fatality review team. The fatality review team would be required to keep such records confidential. Proceedings and meetings of any fatality review team regarding domestic violence fatalities and their prevention, in which the identity of a victim or the victim's children is discussed, would be exempt from public meeting requirements.

The investigations, proceedings, and records of a fatality review team would not be subject to discovery or introduction into evidence in any civil action or disciplinary proceeding by any department or employing agency arising out of matters that are the subject of evaluation and review by the fatality prevention team. Any person who attended a meeting of a fatality review team could not be permitted or required to testify in any civil action or disciplinary proceeding or to any evidence or other matters produced or presented during the proceedings of a team, as to any findings, recommendations, evaluations, opinions, or other actions of the organization or its members.

This bill would be repealed on October 2, 2005, unless reviewed and reenacted by the Legislature prior to that date.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates s. 741.3165, F.S., relating to certain information exempt from disclosure. This section provides that any records currently exempt from disclosure under public records law, obtained by a domestic violence fatality review team do not lose their exemption status solely because the records are disclosed to the review team. The review teams must keep such records confidential. Proceedings and meetings conducted by a review team are exempt from public meeting requirements, if the identity of a victim or the victim's children is discussed.

This section also provides that the investigations, proceedings, and records of a review team are not subject to discovery or introduction into evidence in any civil action or disciplinary proceeding by any department or employing agency arising out of matters that are the subject of evaluation and review by the review team. Persons who attend meetings held by a review team may not be permitted or required to testify in any civil action or disciplinary proceeding as to any evidence or other matters produced or presented during the proceedings of the organization, as to any findings, recommendations, evaluations, opinions, or other actions of the organization or the members.

This section provides that the exemptions are applicable only to records held by a domestic violence fatality review team and are subject to the Open Government Sunset Review Act of 1995. This section will be repealed on October 2, 2005, unless reviewed and reenacted by the Legislature prior to that date.

Section 2. Provides a statement of public necessity for exempting records and proceedings of a domestic violence fatality review team from public disclosure. The public necessity statement is that victims of domestic violence, and those associated with the victim, must be able to disclose information without fear of reprisal. In addition, it is a public necessity that meetings of a fatality review team be closed to the public so that participants in the proceedings are not threatened with the fear of reprisal.

Section 3. Provides that this act shall take effect on the date that HB 1039, or similar legislation, takes effect.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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 require counties or municipalities to spend funds or take an action requiring expenditures of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties 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 state sales tax shared with municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

The amendment traveling with CS/HB 1037 addresses the concerns with CS/HB 1037 regarding the public records exemption. Section 1 of the amendment clarifies that the information or records obtained by or provided to the domestic violence fatality review team, which are otherwise confidential or exempt from s. 119.07(1), F.S., and s. 24(a) of Art. I of the Florida Constitution, will remain confidential. In addition, the amendment removes the provision from the public records exemption that does not allow any person in attendance at a domestic violence fatality review team to testify in any civil action or disciplinary proceeding as to any matters from the proceeding. This provision is found in the amendment to the tied bill, CS/HB 1039, which provides for the domestic violence fatality review teams.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 22, 2000, the Committee on Family Law and Children adopted a strike-everything amendment to HB 1037. HB 1037 provided that all records obtained or produced by a domestic violence fatality prevention task force or fatality review team were exempt from public disclosure. Proceedings and meetings conducted by a fatality prevention task force or fatality review team were exempt from public meeting requirements. CS/HB 1037 clarified and limited

STORAGE NAME: h1037s1a.go

DATE: April 17, 2000

PAGE 7

these provisions. For further details on CS/HB 1037, please see "Section-by-Section Analysis."

On April 11, 2000, the Committee on Law enforcement & Crime Prevention adopted a strike everything amendment to CS/HB 1037. The amendment clarifies language found in CS/HB 1037 and conforms it to the Senate companion.

The amendment also deletes the provision that provides that the investigations, proceedings, and records of a review team are not subject to discovery or introduction into evidence in any civil action or disciplinary proceeding by any department or employing agency arising out of matters that are the subject of evaluation and review by the review team. Persons who attend meetings held by a review team may be permitted or required to testify in any civil action or disciplinary proceeding as to any evidence or other matters produced or presented during the proceedings of the organization, as to any findings, recommendations, evaluations, opinions, or other actions of the organization or the members.

VII. SIGNATURES:

COMMITTEE ON FAMILY LAW AND CHILDREN:

Prepared by:

Staff Director:

Maggie Geraci

Carol Preston

AS REVISED BY THE COMMITTEE ON LAW ENFORCEMENT AND CRIME PREVENTION:

Prepared by:

Staff Director:

Allen Mortham Jr.

Kurt E. Ahrendt

AS FURTHER REVISED BY THE COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Staff Director:

Amy K. Tuck

Russell J. Cyphers, Jr.