

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2280

SPONSOR: Children and Families Committee and Senator Mitchell

SUBJECT: Child Abuse/Public Records

DATE: April 13, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matthews</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable</u>
2.	<u>Dowds</u>	<u>Whiddon</u>	<u>CF</u>	<u>Favorable/CS</u>
3.	_____	_____	<u>RC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill provides an exemption from the constitutional and statutory open public records laws for those portions of any records held by a guardian ad litem in cases involving allegations of child abuse, neglect, or abandonment that would identify a child, the child’s parent or other persons responsible for the child’s welfare. Access to guardian ad litem records is provided to persons authorized by the court who will use the information for academic research and government audit purposes. It provides findings of public necessity and provides for future review and repeal of the statutory exemption by a date certain.

This bill substantially amends section 39.202 of the Florida Statutes.

II. Present Situation:

Public Records

Section 24 of article I of the Florida Constitution provides the right of access to public records by stating that every person has the right to inspect or copy any public records¹ made or received in connection with official state business. This right of access to public records applies to the legislative, executive, and judicial branches of government; counties, municipalities, and districts; and each constitutional officer, board, commission, or entity created pursuant to law or by the Constitution. Exemptions may be provided by general law based on an expressed statement of public necessity which justifies the exemption that can be no broader than necessary to accomplish the purpose of the law.

¹Public records are defined as “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” See s. 119.011(1), F.S. An agency is defined to include “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.” See s. 119.011(2), F.S.

The corresponding general law is found in ch. 119, F.S., which provides additional requirements for the establishment of a public records exemption. There must be an identifiable public purpose and it must be no broader than necessary to meet the public purpose it serves. The public purpose must be sufficiently compelling to override the strong public policy of open government such that the public purpose can not be accomplished without the exemption and satisfies one of three other criterion relating to the sensitivity and confidentiality of the information. The custodian of a public record must permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee, s. 119.07(1), F.S.

The Open Government Sunset Review Act of 1995 provides for the automatic 5-year review and repeal of an exemption under the Public Records Act, unless the Legislature acts upon it to re-enact the exemption, s.119.15, F.S.

The Guardian Ad Litem

The Florida Guardian Ad Litem Program² operates in each of the 20 judicial circuits under the administrative supervision of the chief judge according to the Court's State of Florida Guardian Ad Litem Minimal Standards of Operation. Guardians ad litem are governed by part X of ch. 39, F.S. (ss. 39.820-39.8295, F.S.). A guardian ad litem may be appointed for an abused, abandoned, or neglected child to act as the child's advocate, s. 39.822, F.S.

There is no exemption for records obtained by a court-appointed guardian ad litem during the course of his or her representation of a child in cases involving allegations of abuse, abandonment, or neglect of a child. Most of the information contained in a guardian ad litem's records concern the child(ren) and his/her family and are of a personal and sensitive nature. Disclosure of the records could be traumatic or damaging to the reputation of the parents, other children in the home, and extended family members.

III. Effect of Proposed Changes:

Section 1 amends s. 39.202, F.S., relating to the confidentiality of reports and records in cases of child abuse and neglect. A new subsection (5) is added to hold those portions of any records held by a guardian ad litem in cases involving allegations of abuse, neglect, or abandonment that would identify a child, the child's parent, or other persons responsible for the child's welfare to be confidential and exempt from the provisions of s. 119.07(1), F.S., and section 24(a) of article I of the *Florida Constitution*. This section also provides for the automatic review and repeal of the exemption by October 2, 2005, pursuant to the Open Government Sunset Review Act of 1995.

Access to guardian ad litem records is provided to persons authorized by the court who will use the information for academic research or government audit purposes. The confidentiality of any information obtained by such authorized persons must be maintained, and compliance with all laws and rules governing the use of such information for academic research and government audit purposes is required.

²The State of Florida Guardian Ad Litem (GAL) Program resulted from the Federal Child Abuse Prevention and Treatment Act of 1974. This act provided financial assistance to the states for programs which prevented, identified, and treated child abuse and neglect by requiring the appointment of guardians ad litem to represent children involved in judicial proceedings alleging child abuse or neglect.

Section 2 provides findings of public necessity for the exemption including the necessity to protect information of a sensitive personal nature; to reduce safety risks to the child(ren), parent(s), and other persons responsible for the child's welfare; to preclude the dissemination of defamatory information; and to ensure the effective and efficient administration of the guardian ad litem program.

Section 3 provides a contingent effective date based on the passage of corresponding legislation.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill exempts from disclosure under statutory and constitutional law those portions of any records held by guardians ad litem in cases involving allegations of abuse, neglect, or abandonment that would identify a child, a child's parents, or other persons responsible for the child's welfare.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Section 24 of article I of the *Florida Constitution* establishes a constitutional right of access to any public record 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 those records exempted otherwise by law or specifically made confidential by the constitution. Subsection (c) authorizes the Legislature to enact general laws creating exemptions provided that such laws "shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law." *Cf., Halifax Hosp. Med. Cntr v. News-Journal Corp*, 724 So. 2d 567 (Fla. 1999)

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
