

STORAGE NAME: h2307.go

DATE: April 11, 2000

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

BILL #: HB 2307 (PCB FLCH 00-06)

RELATING TO: Public Records/Guardian Ad Litem

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

TIED BILL(S): HB 2305

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

- (1) FAMILY LAW AND CHILDREN YEAS 8 NAYS 0
 - (2) GOVERNMENTAL OPERATIONS
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill, which relates to exemptions from the public records laws, is a companion bill to HB 2305 (PCB FLCH 00-04), regarding the protection of dependent children. This bill provides an exemption from the public records requirements for certain specified portions of records held by a guardian ad litem in cases regarding allegations of abuse, neglect, or abandonment of a child, unless otherwise provided by Chapter 39, F.S. or as required by the court.

Pursuant to s. 24 of Article I of the State Constitution, this bill provides a statement of public necessity for the exemption which finds that disclosure of sensitive and personal information, contained in records held by a guardian ad litem, would compromise the health, safety, and welfare of the child, the child's parents, or other persons responsible for the child's welfare, or could be defamatory to, or cause unwarranted damage to the good name or reputation of these persons. Also, the disclosure of such information could impede the effective and efficient administration of the guardian ad litem program. This statutory exemption from disclosure is subject to the Open Government Sunset Review Act of 1995, and will be repealed on October 2, 2005, unless reviewed and saved from repeal through reenactment by the Legislature.

This bill would take effect on the same date as an unnumbered House Bill 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.

Article I, s. 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records in providing 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, 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 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.

Guardians Ad Litem

A guardian ad litem is a person appointed by the court to represent the best interests of a child in a proceeding for dependency issues or family law issues, generally. The guardian is a party to the proceeding as a representative of the child, and serves in such capacity until discharged by the court. See s. 39.820(1), F.S. Under chapter 39, F.S., a guardian is appointed in any child abuse, abandonment, or neglect proceeding, whether criminal or civil. See s. 39.822, F.S.

Confidentiality Under Chapter 39

Under s. 39.0132, F.S., all court records required under this chapter are not open to public inspection. The clerk is instructed to keep these records separate from other records of the circuit court. In addition, all information obtained pursuant to ch. 39 "in the discharge of official duty by any judge, employee of the court, authorized agent of the Department [of Children and Family Services], correctional probation officer, or law enforcement agent is confidential and exempt from s. 119.07(1) and may not be disclosed to anyone other than" authorized personnel. Guardians ad litem do not fall in any of the protected categories.

Under s. 39.202, F.S., all records held by the Department of Children and Family Services, concerning reports of child abandonment, abuse, or neglect, are confidential and exempt from public disclosure. In addition, all records of the child protection team of the Department of Health are confidential and exempt from public disclosure. Knowingly or willfully disclosing confidential information contained in the central abuse hotline or in the records of any child abuse, abandonment, or neglect case, is a misdemeanor of the second degree. See s. 39.205(3), F.S.

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HB 2305, by the Committee on Family Law and Children, revises, reorganizes and clarifies various provisions relation to the protection of dependent children, generally under ch. 39, F.S. HB 2305, if passed, would have an effective date of July 1, 2000.

C. EFFECT OF PROPOSED CHANGES:

This bill would allow only certain specified portions of records held by guardians ad litem in cases regarding the allegations of abuse, neglect, or abandonment of a child, to be confidential and held exempt from disclosure under public records laws, unless otherwise provided by Chapter 39, F.S. or as required by the court. Disclosure of sensitive and personal information, contained in records held by a guardian ad litem, could compromise the health, safety, and welfare of the child, the child's parents, or other persons responsible for the child's welfare, or could be defamatory to, or cause unwarranted damage to the good name or reputation of these persons. Also, the disclosure of such information could impede the effective and efficient administration of the guardian ad litem program.

This statutory exemption from disclosure is subject to the Open Government Sunset Review Act of 1995, and will be repealed on October 2, 2005, unless reviewed and saved from repeal through reenactment by the Legislature.

SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 39.202, F.S, relating to confidentiality of reports and records in cases of child abuse or neglect, to add a new subsection (5), creating an exemption from public disclosure of certain portions of records held by guardians ad litem, in cases regarding allegations of abuse, neglect, or abandonment of a child, unless otherwise provided for by ch. 39, or as required by the court. This section provides for repeal of this section on October 2, 2005, unless reviewed and saved from repeal through reenactment by the Legislature. Any person or entity authorized by the court who is engaged in the use of such records or information for purposes of bona fide academic research or government audit shall be allowed access to guardian ad litem records with certain restrictions.

Section 2. Provides legislative findings as to the public necessity for this public records exemption. The Legislature finds that portions of records held by guardians ad litem in cases of abuse, neglect, or abandonment of a child, need to be held confidential and exempt from disclosure in order to protect information of a sensitive, personal nature concerning the child, the child's parents, or other persons responsible for the child's welfare. The disclosure of such information could jeopardize the safety of the parties involved, or be defamatory to the individuals. In addition, if such records were disclosed, the effective and efficient administration of the guardian ad litem program could be impeded, by hindering the investigative process and the child advocacy of the guardians ad litem.

Section 3. Provides an effective date contingent upon passage of an unnumbered House Bill or similar legislation.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

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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 expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenue 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 effective date of the bill in Section 3 references an unnumbered House Bill. At this point staff recommends an amendment to reference the tied bill, HB 2305.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 29, 2000, the Committee on Family Law and Children adopted a strike everything amendment to the PCB, and reported the bill favorably as it now reads. The strike everything amendment made two substantive changes. First, it narrowed the scope of the records to be exempted from "all records" held by a guardian ad litem to "those portions of any record concerning allegations of abuse, neglect, or abandonment of a child, held by a guardian ad litem that contain personally identifiable information, or that would identify a child, a child's parents, or another person responsible for a child's welfare".

Second, it provided that any person or entity authorized by the court who is engaged in the use of such records or information for purposes of bona fide academic research or government audit shall be allowed access to guardian ad litem records with certain restrictions.

VII. SIGNATURES:

COMMITTEE ON FAMILY LAW AND CHILDREN:

Prepared by:

Staff Director:

Carol Preston

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AS REVISED BY THE COMMITTEE ON GOVERNMENTAL OPERATIONS:

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