

STORAGE NAME: h0449.go

DATE: April 19, 2000

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

BILL #: HB 449

RELATING TO: Public Records/Fleeing With Minors

SPONSOR(S): Representative A. Greene and others

TIED BILL(S): HB 447

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

- (1) CRIME & PUNISHMENT YEAS 6 NAYS 0
 - (2) FAMILY LAW & CHILDREN (W/D)
 - (3) GOVERNMENTAL OPERATIONS
 - (4) CRIMINAL JUSTICE APPROPRIATIONS
 - (5)
-

I. SUMMARY:

HB 449 provides an exemption for public records disclosure of specified information which is provided to the state attorney or sheriffs by persons who take their minor children with them when fleeing domestic violence.

The exemption is subject to review and repeal in accordance with the Open Government Sunset Review Act. This bill provides an appropriate public necessity statement, but requires a tie to the parent bill, HB 447.

This bill provides an effective date of July 1, 2000, but will not be effective unless the parent bill, or similar legislation becomes a law.

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 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.

C. 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.

HB 449 provides that information provided to a sheriff or state attorney pursuant to s. 787.03(6)(b), F.S., as that section would be amended by tied bill HB 447, is exempt from the public records law. This section is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2005 unless reenacted by the Legislature.

The bill also provides that the Legislature finds that exempting information which is reported to the state attorneys and sheriffs by persons who take their minor children with them when fleeing domestic violence is a public necessity. The bill further provides that such information is of a sensitive, personal nature and concerns individuals who are under threat of physical and psychological harm if their whereabouts are revealed.

The bill provides an effective date of July 1, 2000, unless the parent bill (HB 447) is not enacted.

D. SECTION-BY-SECTION ANALYSIS:

See, Effects of Proposed Changes.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

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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 is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

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 a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

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C. OTHER COMMENTS:

HB 449 exempts from public review specified information provided to the sheriff or state attorney under s. 787.03(6)(b), F.S. A narrow statement of the public necessity justifying the exemption is included in the bill to comply with the requirements of s. 24(c), Art. I, Fla. Const.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Representative Greene offers two amendments tying this bill to the parent bill.

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

Staff Director:

David M. De La Paz

David M. De La Paz

AS FURTHER REVISED BY THE COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Staff Director:

Russell J. Cyphers, Jr.

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