

STORAGE NAME: h0599a.sa.doc
DATE: March 25, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
STATE ADMINISTRATION
ANALYSIS**

BILL #: HB 599
RELATING TO: Public Record/Child Support Services
SPONSOR(S): Representative(s) Mack and others
TIED BILL(S):

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

- (1) CHILD AND FAMILY SECURITY YEAS 5 NAYS 0
 - (2) STATE ADMINISTRATION YEAS 5 NAYS 0
 - (3) COUNCIL FOR HEALTHY COMMUNITIES
 - (4)
 - (5)
-

I. SUMMARY:

The bill provides for an exemption to the public records law, pursuant to s. 119.07(1), Florida Statutes, for public disclosure of identifying information that may endanger parents or children served by county child support enforcement agencies. The disclosure exemption in this bill provides similar protection to non-title IV-D clients served by county child support enforcement agencies as is provided to Title IV-D cases served by the Department of Revenue. Non-Title IV-D cases involve parents who do not receive cash assistance and who are not required by Title IV-D of the Social Security Act to participate in the state child support enforcement program.

The Department of Revenue's child support enforcement program is prohibited under Title IV-D and s. 409.2557, F.S. from disclosing any information that identifies the parents to federal, state or local legislative bodies or committees, if a protective order has been entered or if there is reason to believe that the release of the information will result in harm to the parents or child.

In some counties, the Clerks of the Courts or the county government have established child support enforcement programs to assist non-Title IV-D parents with enforcement of their child support orders. With the exception of Broward County, the child support enforcement services are offered by the Clerks of Circuit Courts.

Pursuant to s. 24 of Article I of the State Constitution, the bill contains a statement of public necessity for the exemption. The statement finds that identifying information for individuals seeking child support services from the Department of Revenue, the state's Title IV-D agency, would be exempt as a protection against domestic violence and abuse. Therefore individuals seeking services from a non-Title IV-D, county child support enforcement agency, should have the same disclosure protections afforded to persons receiving the services from the department.

The bill has an effective date of July 1, 2001.

The bill may have a fiscal impact that cannot be determined at this time.

For comments by the staff of State Administration, see "Other Comments" section.

There are three amendments traveling with this bill; two by the Committee on Child and Family Security and one by the Committee on State Administration.

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 Laws.

Article I, s. 24, 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.

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.

Child Support Enforcement

Congress created the federal Child Support Enforcement Program as Title IV-D of the Social Security Act in 1975 to address the escalating costs of welfare programs and the many fathers who were not doing their part to help support their children. It is designed to:

- Promote parental responsibility for children in welfare and non-welfare families,
- Help the federal government and states recover their welfare payments to needy families by allowing the states and federal government to retain the child support payments they collect from non-custodial parents who owe support, and
- Keep families currently not on welfare from becoming welfare recipients by helping them collect child support payments owed to them.

The Department of Revenue is the state agency responsible for the administration of the child support enforcement program under s. 409.2557, F.S., as required by Title IV-D of the Social Security Act. The services of the department's child support enforcement program include establishment of paternity and child support orders, enforcement of support orders, and distribution of child support collection for all recipients of public assistance (Title IV-D cases), as well as for individuals who are not recipients of public assistance but request the services of the program (non-Title IV-D cases). The Department of Revenue, through federal Title IV-D requirements for the child enforcement program, is also responsible for some of the state systems established to facilitate the collection and disbursement of child support payments, including the parent locator service, State Case Registry and State Disbursement Unit.

Section 409.2577, F.S., requires the Department of Revenue to establish a parent locator service to assist in locating parents who have deserted their children, and to assist in locating other individuals who have an obligation of support. The locator service is required to use all sources of information available. It may request and is to receive information from any person or the state or any of its political subdivisions, or any officer thereof. The department can disapprove an application for location services if there is reasonable evidence of domestic violence or child abuse and the disclosure of the information could be harmful to the custodial parent or child.

Section 61.1825, F.S., establishes a State Case Registry that contains records for each case in which services are being provided by the Title IV-D agency and for each non-Title IV-D case where the support order was established or modified in the state on or after October 1, 1998. A mechanism is provided to protect families where domestic violence or child abuse may result if the information on the family is disclosed.

Section 61.1824, F.S., creates the State Disbursement Unit to provide one central address for the collection and disbursement of child support payments made in all Title IV-D cases and in non-Title IV-D cases in which the initial support order was issued in this state on or after January 1, 1994. Local depositories operated by the Clerk of the Circuit Court are required to transmit data regarding the child support payment to the State Disbursement Unit.

Pursuant to **s. 409.2579, F.S.**, information concerning parents receiving services through the Department of Revenue's Title IV-D child support enforcement program is provided confidentiality and exemption from disclosure as required by s. 119.07(1), F.S. Use or disclosure of the information is provided for and limited to:

- Administration of the plans and programs provided under certain sections of the Social Security Act;
- Any investigation or proceeding connected with the administration of these plans or programs;
- Administration of other federal or federally assisted programs which provide services on the basis of need;
- Reporting abuse or neglect to the appropriate agency; and
- Identifying and location information for the State Case Registry.

The Department of Revenue's child support enforcement program is prohibited from disclosing any information that identifies the parents to federal, state or local legislative bodies or committees if a protective order has been entered or if there is reason to believe that the release of the information will result in harm to the parents or child.

The Department of Revenue contracts with the Clerk of the Circuit Court in Manatee County and the State Attorney for the Eleventh Judicial Circuit for the provision of its Title IV-D child support enforcement program in these counties. Parents receiving non-Title IV-D services through these contracts receive the same confidentiality and exemption from disclosure protection provided to parents receiving Title IV-D child support enforcement services from the Department of Revenue.

In some counties, the Clerks of the Courts or the county government have established child support enforcement programs to assist non-Title IV-D parents with enforcement of their child support orders. These programs compliment their local depository services for the collection of child support payments. With the exception of Broward County, the child support enforcement services are offered by the Clerks of Circuit Courts. The services of these county programs mirror many of the enforcement services offered by the Department of Revenue, but vary in type and level of assistance. In Broward County, a comprehensive child support enforcement program for non-Title IV-D parents is offered through County Administration, instead of the Clerks of the Circuit Courts. As with the Title IV-D parents, information on some of the non-Title IV-D parents served through these programs is required to be maintained or accessible to the parent locator service, State Case Registry, and State Disbursement Unit. This information is not protected from public disclosure under existing state and federal statutes.

While Title IV-D parents are provided with the protection of confidentiality for the sensitive and detailed information obtained during the enforcement process, non-Title IV-D parents receiving child support enforcement services through either the county or the Clerks of the Circuit Court are not provided the same protection. As a result of the services provided through these county child support enforcement programs, sensitive information is on file that is not protected by the Department of Revenue's public records exemption.

The Florida Statutes do not provide a definition of "non-Title IV-D county child support enforcement agency."

C. EFFECT OF PROPOSED CHANGES:

The bill provides that the same exemptions afforded to the confidential information of individuals receiving child support services from the Title IV-D agency also be afforded to the confidential

information of those individuals receiving child support services from a non-Title IV-D county child support enforcement agency.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Provides that the identifying information of individuals seeking or receiving child support services from a non-Title IV-D county child support enforcement agency be held confidential and exempt from public disclosure pursuant to s. 119.07(1), Florida Statutes and Section 24 (a) of Article I of the State Constitution.

The section also limits the disclosure of this information to certain specified purposes:

- Any investigation, prosecution, or criminal or civil proceeding connected with the administration of any non-Title IV-D county child support enforcement program;
- Mandatory disclosure of identifying and location information as provided in section 61.13(9), F.S., by the non-Title IV-D county child support enforcement agency when providing non-Title IV-D services; or
- Mandatory disclosure of information as required by sections 409.2577, 61.181, 61.1825, and 61.1826, Florida Statutes, and Title IV-D of the Social Security Act, which refer to the parent locator service, State Case Registry, and State Disbursement Unit.

This section prohibits a county child support enforcement agency from disclosing information that identifies an applicant for or recipient of child support services, or the location of such an individual or child to any individual against whom a protective order has been entered if the county child support agency has reason to believe that the release of that information could result in physical or emotional harm to the individual or child.

The section defines "county child support enforcement agency" as a department, division, or other agency of a county government which is operated by the county to provide child support enforcement services to county residents. This definition is intended to exclude the Clerks of the Circuit Courts, as they are separate constitutional officers, pursuant to section 1 of Article VIII of the Florida Constitution. At this time, only Broward County would be provided with the confidentiality and exemption from disclosure based on this definition. However, other counties choosing in the future to offer child support enforcement services through a county office other than the Clerks of the Circuit Courts would be provided the protection of this public records provision.

The section provides for review and repeal of the exemption created by the bill in 2005 under the Open Government Sunset Review Act of 1995.

Section 2. Provides for a statement of public necessity for the exemption of identifying information concerning applicants for and recipients of child support services that is in the possession of non-Title IV-D county child support enforcement agencies. The justification for the exemption is that individuals receiving child support services from the Title IV-D agency are afforded protections for personal identifying information and those same protections should be extended to those individuals receiving child support services from non-Title IV-D county child support enforcement agencies.

Section 3. Provides for an effective date of July 1, 2001..

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to the Department of Revenue this bill may have a fiscal impact on the department but the impact cannot be determined at this time.

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 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:

Section 24 of Article I of the State 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.

This bill exempts from disclosure under statutory and constitutional law, information that reveals the identity of applicants for or recipients of child support services in the possession of non-Title IV-D county child support enforcement agencies.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

Comments by State Administration

The Committee on State Administration has identified several technical concerns with this bill:

- The title of this bill does not address the exceptions to the exemption.
- The repeal date of this exemption is incorrect. The repeal date should fall on October 2 of the fifth year after the exemption is enacted. This bill requires review and reenactment by the Legislature within four years after the exemption is enacted. The repeal date should be October 2, 2006.
- The public necessity statement addresses the information that is made "exempt" by this bill. It fails to address that this information is made both "confidential and exempt."

An amendment by the sponsor has been filed which remediates these concerns.

This bill does not appear to have a fiscal impact on state or local governments.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 15, 2001, the Committee on Child & Family Security adopted the following amendments to HB 599:

Amendment # 1 [Section 1, page 2, lines 4 & 13]

Adds "non-Title IV-D" to "county child support enforcement agency" to clarify entity addressed by provisions of the bill.

Amendment # 2 [Section 2, page 2, between lines 15 to 17]

Adds provision that excludes local depositories, pursuant to s. 61.181, operated by the clerk of the court, from county child support enforcement entity addressed by the bill.

On March 29, 2001, the Committee on State Administration adopted an amendment to HB 599. This amendment corrects the repeal date for the public records exemption, and restructures and edits the public necessity statement. The committee reported the bill favorably with one amendment.

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VII. SIGNATURES:

COMMITTEE ON CHILD AND FAMILY SECURITY:

Prepared by:

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Staff Director:

Bob Barrios

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