

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

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Prepared By: Governmental Oversight and Productivity Committee

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BILL: CS/SB 1098

SPONSOR: Governmental Oversight and Productivity Committee and Senator Smith

SUBJECT: Public Records Exemption

DATE: April 13, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Collins</u>	<u>Whiddon</u>	<u>CF</u>	<b>Favorable</b>
2.	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	<b>Fav/CS</b>
3.	_____	_____	<u>RC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

The committee substitute for Senate Bill 1098 adds the staff of a child advocacy center meeting the standards set forth in s. 39.3035, F.S., to the list of individuals and entities entitled to have access to confidential records resulting from allegations of child abuse, neglect, or abandonment, when the staff is actively involved in providing the services of the center to a child.

The bill also creates makes information obtained by a guardian ad litem under Part I of ch. 39, F.S., in the discharge of official duty confidential and exempt. Further, it makes home addresses, telephone numbers, places of employment, and photographs of current of former guardians ad litem, and the names, telephone numbers, places of employment of the spouses and children of guardians, exempt.

This bill amends the following sections of the Florida Statutes: 39.202, 39.0132 and 119.07(6).

## II. Present Situation:

The responsibility for conducting protective investigations on reports of child abuse, neglect, and abandonment is statutorily provided to the Department of Children and Families (DCF or the department) or its agents (i.e., the sheriff's offices that have assumed this function) in ch. 39, F.S. However, the full scope of investigative, assessment, and prosecution work required on some child abuse cases involves many state and local agencies. In a number of communities across the state, child advocacy centers have been formed to support the child protective investigative process.

Children's Advocacy Centers (CAC) are primarily designed and governed at the local level to provide support to the child protective investigations process. These centers work to coordinate

the activities of the several agencies involved in the child abuse investigation to reduce the number of times the child must be interviewed, thereby reducing trauma to the child, to facilitate joint investigations, and to provide for prompt access to mental health and other appropriate services.

While the services offered by Children's Advocacy Centers vary based upon their funding and needs of the community, each center offers some combination of the following services:

- a neutral, child-friendly setting where all the agencies can interview and examine the child;
- medical evaluations of the child;
- coordination of multi-discipline team meeting of all of the agencies involved in a case;
- on-site victim advocacy; and
- mental health services.

The CACs have local governing boards to address organizational issues such as fiscal policies and public relations and are composed of volunteers from the community. Although they are locally governed, CACs operate under the auspices of the National Children's Alliance (NCA). The alliance is a not-for-profit organization that provides training, technical assistance, and networking opportunities to CACs operating nationwide. The NCA establishes standards for CAC accreditation and offers full membership and non-competitive grant funding to those CACs meeting 10 standards. Centers that do not meet all of the standards for full membership are designated as associate members and are eligible to apply for competitive grants. Seventeen of the 22 CACs in Florida are full members of the NCA.

The Florida Network of Children's Advocacy Centers, Inc., is a state chapter of the National Children's Alliance. All 22 of Florida's CACs participate in this network. Membership is voluntary, and the organization provides guidance and technical assistance to the CACs. The network is staffed with an Executive Director and one half-time assistant. A board of directors organizes activities.

Minimum standards for membership in the Florida Network are established in s. 39.3035, F.S., and are similar to those for membership in the National Children's Alliance. These criteria require that a center:

- be a private, not-for-profit incorporated agency or governmental entity;
- be a Child Protection Team (CPT) or have a written agreement that incorporates the participation and service of the CPT;
- have a neutral, child-focused facility;
- have staff who are supervised and approved by a local board of directors or governmental agency;
- have a multi-disciplinary case review team that minimally consists of representation from the State Attorney's office, Department of Children and Family Services (DCF), CPT, mental health services, law enforcement, and the child advocacy center staff;
- track the cases seen through the child advocacy center with minimum requirements on the data to be collected identified;
- provide referrals for medical exams and mental health services;
- provide training in the community; and

- have interagency agreements for the multidisciplinary approach to handling child sexual abuse and serious child abuse.

Children's Advocacy Centers in Florida are required to meet these standards and be full members of the Florida Network of Children's Advocacy Centers in order to be eligible to receive state funds appropriated by the Legislature [s. 9.3035(3), F.S.].

Currently, records held by the department concerning reports of child abuse, neglect, or abandonment are confidential and exempt from public disclosure, pursuant to s. 39.202(1), F.S. With the exception of the name of the reporter, these records are permitted to be disclosed only to those entities identified in s. 39.202(2), F.S., within the limitations and conditions specified in statute. The list of entities in s. 39.202, F.S., does not include child advocacy centers.

For some of the CACs, the existing statutory provisions guiding the disclosure of these records allow limited access to the records. Access to confidential records by CAC staff is dependent on the type of services that are provided by the CAC in the community or on the contractual relationship, if any, the CAC has with the Department of Health.

Some of the Child Advocacy Centers are also child protection teams. The CACs that are also a CPT under contract with the Department of Health (DOH) are authorized for disclosure as a contract provider of DOH with a responsibility for child protective investigations under s. 39.202(2)(a), F.S. The Department of Health also interprets s. 39.202(5), F.S., to include providing information regarding the abuse, neglect, or abandonment of the child to the child advocacy center staff at the multi-disciplinary staffings since they are performing necessary evaluations of the child.

However, there are groups of children not referred for CPT medical assessments who are often served by the CACs, including children who have been the victims of neglect or child-on-child abuse, for whom child advocacy centers would not have access to department records under current statutes. In these types of situations the CAC staff must excuse themselves from multidisciplinary team staffings when confidential information is being shared. This practice hinders efficient case planning and service delivery for children who have been referred to the CAC by the department. This practice may also prevent some of the CACs from becoming accredited by the NCA.

Part XII of ch. 39, F.S., provides for the guardians ad litem program. Section 39.820(1), F.S., defines "guardian ad litem" to include: a certified guardian ad litem program, a duly certified volunteer, a staff attorney, contract attorney, or certified pro bono attorney working on behalf of a guardian ad litem or the program; staff members of a program office; a court-appointed attorney; or a responsible adult who is appointed by the court to represent the best interests of a child in a proceeding as provided for by law, including, but not limited to, ch. 39, F.S., who is a party to any judicial proceeding as a representative of the child, and who serves until discharged by the court.

Section 39.821, F.S., establishes qualifications for guardians ad litem, and mandates a security background investigation before certifying a volunteer to serve. Section 39.822, F.S., requires the

court to appoint a guardian ad litem at the earliest possible time to represent the child in any child abuse, abandonment, or neglect judicial proceeding, whether civil or criminal.

Currently, s. 39.0132, F.S., protects records of all cases brought before it pursuant to the chapter. Additionally, all information obtained pursuant to the part in the discharge of official duty by any judge, employee of the court, authorized agency of the department, correctional probation officer, or law enforcement agent is confidential and exempt from s. 119.07(1), F.S.,<sup>1</sup> and may not be disclosed to anyone other than the authorized personnel of the court, the department and its designees, correctional probation officers, law enforcement agents, guardian ad litem, and other entitled under ch. 39, F.S. to receive that information, except upon order of the court.

Until changes made by Article V revisions to the court, guardians ad litem were employees of the court and, as a result, the provisions of s. 39.0132, F.S., were applicable. As guardians ad litem technically are no longer employees of the court, it would appear the exemption does not cover them any longer.

### **III. Effect of Proposed Changes:**

The bill amends s. 39.202, F.S., adding the staff of a child advocacy center (that meets the standards set forth in s. 39.3055, F.S.), to the list of individuals and entities entitled to have access to confidential records resulting from allegations of child abuse, neglect, or abandonment, when the staff is actively involved in providing the services of the center to a child. This change will enable the staff of CACs to act as full members of the multidisciplinary team for cases in which they are actively involved in the investigation or case planning process. The implementation of this bill will also facilitate a more coordinated response to meeting children's needs, ensure a more thorough case planning process, as well as facilitate counseling and referrals for additional community resources to be provided to victims and non-offending parents.

The bill also creates an exemption for all information obtained pursuant to Part I of ch. 39, F.S., held by guardians ad litem. This exemption protects the same information guardians ad litem held when they were employees of the courts and the same information held by a judge, employee of the court, authorized agency of the department, correctional probation officer, or law enforcement agent.

Further, the bill creates an exemption in s. 119.07(6)(i), F.S., for the home addresses, telephone numbers, places of employment, and photographs of current or former guardians ad litem, and the names, home addresses, telephone numbers, and places of employment of the spouses and children of such persons.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

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<sup>1</sup> This exemption was enacted prior to the adoption of Article I, s. 24 of the State Constitution. As a result, it was "grandfathered" and does not have to meet the narrower requirements of the constitutional provision for an exemption.

**B. Public Records/Open Meetings Issues:**

Article I, s. 24(c) of the State Constitution, provides that bills creating exemptions “. . . shall relate to one subject.” The committee substitute amends s. 39.202, F.S., adding the staff of a child advocacy center to the list of individuals and entities entitled to have access to confidential records resulting from allegations of child abuse, neglect, or abandonment, when the staff is actively involved in providing the services of the center to a child. The bill also creates an exemption for all information obtained pursuant to Part I of ch. 39, F.S., held by guardians ad litem. Further, the bill creates an exemption in s. 119.07(6)(i), F.S., for the home addresses, telephone numbers, places of employment, and photographs of current or former guardians ad litem, and the names, home addresses, telephone numbers, and places of employment of the spouses and children of such persons. Thus, the bill relates to confidential records of children protected by ch. 39, F.S., as well as personal identifying information of the guardians ad litem and their family members. As a result, it could be argued that the portion of the bill protecting personal information of the guardians and their families is not the same subject.

Further, it could be argued that the exemption for “all information” obtained by a guardian is overbroad under the standard enunciated in Article I, s. 24(c) of the State Constitution. That provision states that “. . . the law 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.” The statement of public necessity notes that the information obtained by a guardian ad litem is sensitive and personal to the child and that release of that information could expose the child to harm or injure the reputation of the child or the child’s family. All such information held by *other* persons with responsibilities under ch. 39, F.S., however, is fully protected. The exemption covering that information held by those other persons was created prior to the adoption of Article I, s. 24 of the State Constitution and, therefore, is not subject to the overbreadth standard.

**C. Trust Funds Restrictions:**

None.

**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.

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

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## **VIII. Summary of Amendments:**

None.

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