

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1929 CS PCB JU 05-11 Public Records Exemptions
SPONSOR(S): Judiciary Committee, Simmons
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Judiciary Committee	12 Y, 0 N	Hogge	Hogge
1) Governmental Operations Committee	7 Y, 0 N	Williamson	Everhart
2) Justice Council	10 Y, 0 N, w/CS	Hogge	De La Paz
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill adds the executive director and his or her designees of a Children’s Advocacy Center meeting certain statutory standards to the list of persons, officials, and agencies entitled to access confidential records resulting from allegations of child abuse, neglect, or abandonment, when the staff is actively involved in providing services to a child. Children’s Advocacy Centers support the child protective investigative process. These centers work to coordinate the activities of the several agencies involved in the child abuse investigation to reduce the number of times a child must be interviewed, to facilitate joint investigations, and to provide for prompt access to mental health and other appropriate services.

The bill also creates two public records exemptions pertaining to guardians ad litem. The first restores an exemption guardians ad litem enjoyed when they were considered court employees before Revision 7 to Article V was implemented by the Legislature. It makes confidential and exempt certain information obtained by guardians ad litem in the discharge of their official duties. The exemption prohibits guardians ad litem from disclosing the information to anyone other than certain authorized personnel.

The second exemption makes the following information exempt from public disclosure:

- Home addresses, telephone numbers, places of employment, and photographs of current or former guardians ad litem.
- Names, home addresses, telephone numbers, places of employment of the spouses and children of guardians ad litem.

The bill appears to have a minimal fiscal impact on state government.

The bill requires a two-thirds vote of the members present and voting for final passage by the House.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill decreases public access to records regarding guardians ad litem.

B. EFFECT OF PROPOSED CHANGES:

Child Advocacy Centers

Effect of Bill

The executive director and his or her designees of a child advocacy center meeting certain statutory standards¹ would be added to the list of persons, officials, and agencies entitled to access confidential records resulting from allegations of child abuse, neglect, or abandonment, when the staff is actively involved in providing services to a child.

Background

Currently, responsibility for conducting protective investigations on reports of child abuse, neglect, and abandonment rests with the Department of Children and Family Services (DCF) or its agents (i.e., sheriff's offices that have assumed this function). In a number of communities, Child Advocacy Centers² support the child protective investigative 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, to facilitate joint investigations, and to provide for prompt access to mental health and other appropriate services.³

Records concerning reports of child abuse, neglect, or abandonment held by DCF are confidential and exempt from public disclosure.⁴ These records may only be released to specified persons, officials, and agencies. Child Advocacy Centers are not included among those to whom the records may be released.

Guardians ad litem

Effect of Bill

The bill creates two public records exemptions pertaining to guardians ad litem. The first makes confidential and exempt information obtained by guardians ad litem in the discharge of their official duties. The exemption prohibits guardians ad litem from disclosing the information to anyone other than certain authorized personnel such as court personnel and DCF staff.

Background

¹ S. 39.3035, Fla. Stat. (2004) .S.,

² Created pursuant to s. 39.3035, Fla. Stat. (2004)

³ While the services offered by these centers vary based upon their funding and community needs, 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.

⁴ S. 39.202(1), Fla. Stat. (2004)

This restores an exemption that guardians ad litem enjoyed when they were considered court employees before Revision 7 to Article V was implemented by the Legislature. At that time, they were transferred to the Justice Administrative Commission and no longer covered under the exemption for court employees.

Effect of Bill

The second exemption is makes exempt certain personal and location information of guardians ad litem, and their spouses and children. The following information is made exempt from public disclosure:

- Home addresses, telephone numbers, places of employment, and photographs of current or former guardians ad litem.
- Names, home addresses, telephone numbers, places of employment of the spouses and children of guardians ad litem.

The bill provides for future review and repeal of the exemption on October 2, 2010, pursuant to the Open Government Sunset Review Act of 1995. It also provides a statement of public necessity.

Background

This exemption is similar in type to those the Legislature has extended to others such as code enforcement officers, judicial officials, prosecuting attorneys, employee relations directors, and law enforcement personnel.

C. SECTION DIRECTORY:

Section 1 amends s. 39.202, F.S., relating to confidentiality of reports and records in cases of child abuse or neglect.

Section 2 amends s. 39.0132, F.S., making certain information obtained by a guardian ad litem in the discharge of official duties confidential and exempt from disclosure under the public records laws.

Section 3 provides a statement of public necessity.

Section 4 amends s. 119.07, F.S., creating a public records exemption for certain information pertaining to current and former guardians ad litem, and their spouses and children.

Section 5 provides an effective date of October 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

See "FISCAL COMMENTS" section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None. This bill does not affect persons in the private sector.

D. FISCAL COMMENTS:

The bill could create a fiscal impact on state government because state staff would have to be trained with regards to the categories of information that are confidential or exempt from public disclosure versus records that are available for public inspection and copying. State government could also incur costs associated with redacting exempt information prior to releasing a record.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not: require counties or municipalities to spend funds or to take an action requiring the expenditure of funds; reduce the percentage of a state tax shared with counties or municipalities; or reduce the authority that municipalities have to raise revenue.

2. Other:

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. Thus, this bill requires a two-thirds vote for passage.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Public Records Law

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature may, however, provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act of 1995 provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or, 3. Protecting trade or business secrets.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 18, 2005, the Justice Council adopted one amendment to the bill as filed and reported the bill favorably as a committee substitute. The committee substitute differs from the bill as filed in only one respect: rather than permitting "staff" of Children's Advocacy Centers to have access to confidential records resulting from allegations of child abuse, neglect, or abandonment as in the bill as filed, the committee substitute specifies that only the executive director and his or her designees may have access to these records.