

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.)

Prepared By: Judiciary Committee

BILL: SB 974

SPONSOR: Children and Families Committee

SUBJECT: Domestic Violence Fatality Review

DATE: March 8, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sanford</u>	<u>Whiddon</u>	<u>CF</u>	Favorable
2.	<u>Chinn</u>	<u>Maclure</u>	<u>JU</u>	Favorable
3.	_____	_____	<u>GO</u>	_____
4.	_____	_____	<u>RC</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Senate Bill 974 re-enacts and modifies the public records and public meetings exemptions relating to the duties of domestic violence fatality review teams. The bill amends the exemptions statute to:

- authorize agencies and individuals with information relevant to the duties of the team to release this information to the teams, subject to any restrictions imposed by federal law;
- protect personal identifying information relating to victims and family members developed by the teams from public disclosure; and
- clarify that only those portions of meetings of domestic violence fatality review teams in which confidential information is discussed are confidential and exempt from the provisions of Florida's public meeting requirements.

The bill also repeals the public records exemption on October 1, 2010, unless reviewed and re-enacted by the Legislature.

This bill substantially amends section 741.3165, Florida Statutes.

II. Present Situation:

Constitutional Access to Public Records and Meetings

Florida has a long history of providing public access to the records of governmental and other public entities. Currently, s. 24(a) of Article I of the Florida Constitution, provides the right of access to public records, stipulating that "[e]very person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state." The corresponding general law is found in ch. 119, F.S., which

requires the custodian of a public record to permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under the supervision of the custodian of the public record or the custodian's designee.ⁱ

Pursuant to s. 24(c) of Article I of the Florida Constitution, exemptions may be provided by general law enacted by the Legislature which are based on an expressed statement of public necessity justifying the exemption and which are no broader than necessary to accomplish the purpose of the law.

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, establishes a process to create and maintain exemptions to the requirements relating to access to public records. The process sets forth criteria that must be met and considered in a legislative review to be sufficiently significant to override the public policy of access to executive branch government records. In addition, exemptions granted pursuant to s. 119.15, F.S., are repealed on October 2nd of the fifth year after enactment of the exemption, unless the Legislature re-enacts the exemption.

Public Disclosure Exemption for Domestic Violence Review Teams

Domestic violence is statutorily defined as “any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member” (s. 741.28(2), F.S.). According to Florida Department of Law Enforcement (FDLE) statistics, a total of 120,697 incidents of domestic violence were reported to law enforcement in Florida in 2003. The rate of such incidents per 100,000 people is at an all-time low of 707.0, having declined steadily from the highest rate of 926.9 reached in 1995. Of the 120,697 offenses, 179 were murders and another 11 were classified as manslaughter, totaling 190 deaths.

As of November 2003, approximately 27 states and the District of Columbia conducted or planned to conduct some sort of domestic violence fatality review. In slightly more than half the jurisdictions, the teams were established statutorily.ⁱⁱ

Domestic violence fatality review teams were originally established in Florida in 1997 by the Governor's Task Force on Domestic Violence with funding from the Violence Against Women Grants Office of the U.S. Department of Justice. The Governor's Task Force selected four jurisdictions to create local fatality review teams: Miami/Dade County, Tampa/Hillsborough County, Palm Beach County, and Volusia/Putnam Counties. Subsequently, the Task Force received funding to create six additional teams.

In the 2000 legislative session, the Florida Legislature authorized the creation of domestic violence fatality review teams statewide (s. 741.316, F.S.). Paired with the creation of the teams was an exemption from disclosure of confidential information gathered by the teams (s. 741.3165, F.S.).

The Legislature outlined the purpose of the domestic violence fatality review teams as “to learn how to prevent domestic violence by intervening early and improving the response of an individual and the system to domestic violence” (s. 741.316(2), F.S.).

At the time the teams were legislatively authorized, the Legislature granted them immunity from liability for “any act or proceeding undertaken or performed within the scope of the functions of the team” unless the act or proceeding was undertaken in bad faith (s. 741.316(5)(a), F.S.). Additionally, information gathered by the teams is protected from discovery and introduction into evidence in civil proceedings, and persons attending team meetings are prohibited from testifying in civil or disciplinary actions regarding records or information produced or presented to the team (s. 741.316(6), F.S.).

Several teams have reported that a portion of their duties included interviewing family members and survivors of near-fatal incidents of domestic violence. Since the current statute only maintains confidentiality for information which is confidential when it comes to the team, the personal identifying information in new records created as a result of these interviews does not appear to be protected from disclosure, except for the protection against discovery or introduction into court proceedings found in (s. 741.316(6), F.S.).

The specific records affected by the exemption pertain to persons who are killed or, in some instances, narrowly escape being killed, as the result of domestic violence. Since, at this time, the teams in Florida only review records of closed cases, much of the information is public record. However, the teams report the necessity of reviewing confidential records in order to carry out their duties. These confidential records include:

- Reports to the child abuse hotline and all records generated as a result of such reports;
- Criminal intelligence or investigative information which reveals the identity of a victim of sexual offenses;ⁱⁱⁱ
- Information relating to persons with sexually transmitted diseases when this information is held by the Department of Health;^{iv}
- Mental health clinical records;^v
- Reports of adult abuse made to the central abuse hotline and all records generated as a result of such reports;^{vi}
- Patient medical records;^{vii}
- Records of juvenile offenders;^{viii}
- Medical records and pre-sentence investigative reports of adult offenders;^{ix} and
- Educational records.^x

Some records are not available to the teams as a result of federal restrictions on information sharing. These include:

- Information relating to substance abuse treatment;^{xi}
- Information relating to clients of domestic violence centers;^{xii}
- Military records;^{xiii} and
- Sources of information gathered by news reporters.^{xiv}

Each team is charged with the responsibility of collecting data regarding domestic violence on a form determined by FDLE; FDLE is then required to prepare a report to the Legislature, the

Governor, and the Chief Justice of the Supreme Court using the data provided by the teams. This report is due on July 1 of each year (s. 741.316(3), F.S.).

Since the 2000 legislation only authorized the creation of the teams rather than requiring their creation and since no funding source accompanied the authorizing legislation, the growth of the teams has not been substantial. In fact, by 2004, only 13 teams were active in Florida. Of these, 10 submitted the required data forms to FDLE for inclusion in its 2004 report. The total number of cases submitted was 53.

The introduction to the 2004 FDLE report, as in previous years, contains the following cautionary language:

This report is not meant to statistically represent all domestic violence deaths in Florida. The cases reviewed for this annual report were independently selected by the fatality review team members and occurred during different years....

(C)aution should be taken before attempting to generalize or draw conclusions about state policy based on this limited and unscientific sample....

Specific actions noted by FDLE to have been implemented in communities with active teams as a result of cases reviewed in 2004 included:

- Continuation of lethality training with the justice system and community social services agencies;
- Linkage of family members to needed services;
- Establishment of a Domestic Violence University designed to train court personnel on domestic violence issues (Miami/Dade);
- Creation of a model policy for first responders (Broward County);
- Initiation of follow-up hearings at 30 and 75 days for domestic violence injunctions (Duval County);
- Onset of reviewing near-fatality cases (Orange County);
- Re-establishment of the Domestic Violence and Sexual Assault Council (Lee County); and
- Provision of responses to newspaper articles regarding domestic violence cases (Palm Beach County).

In addition, team leaders have identified improved communications among professionals and greater sensitivity to domestic violence issues in the communities at large resulting from the work of the teams.

Senate Interim Project Report 2005-202

As part of an open government sunset review, staff of the Senate Committee on Children and Families reviewed the exemptions to the public records requirements in s. 741.3165, F.S.^{xv} Staff found that the exemptions provided for in s. 741.3165 have provided the necessary protection so that members can analyze fatalities and near-fatalities in their communities in an atmosphere of full communication and cooperation. However, a review of statutes of other states addressing similar issues suggests that Florida's statute might be improved through a provision specifically

authorizing agencies or individuals with confidential information relevant to the work of the teams to release that information to the teams, a provision clarifying that only those portions of the team meetings dealing with confidential information should be closed, and a provision protecting personal identifying information relating to victims and family members when that information is developed by the teams. The report recommends that the exemptions to the public records and public meetings requirements in s. 741.3165, F.S., be re-enacted with these modifications.

III. Effect of Proposed Changes:

Senate Bill 974 authorizes agencies or individuals with information relevant to a domestic violence fatality review team's duties to release that information to the team, subject to federal restrictions. The bill also makes confidential and exempt personal identifying information of victims and family members when that information is developed by the teams. The changes clarify that only those portions of the team's meetings in which confidential information is discussed are exempt from the requirements of the open meetings law. Additionally, because the bill would substantially amend the existing public records exemption, it provides for future repeal and legislative review of the exemptions in five years pursuant to s. 119.15(3)(a), F.S.

Pursuant to s. 24(c) of Article I of the Florida Constitution, the bill contains a statement describing the public necessity for the exemption. Senate Bill 974 provides the following rationale for expansion of the present exemption: the protection of sensitive and personal information, the need for interviewed parties to be able to speak freely without fear of statements being made public, and the need for sharing of confidential information among review teams, persons, and organizations.

This bill provides an effective date of October 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill also makes confidential and exempt personal identifying information of victims and family members when that information is developed by domestic violence fatality review teams. Additionally, the changes clarify that only those portions of the team's meetings in which confidential information is discussed are exempt from the requirements of the open meetings law.

Under Article I, s. 24(c) of the State Constitution, records may be exempted from open government requirements only where the exemption is no broader than necessary to accomplish the stated purpose of the law. A law creating an exemption must contain only exemptions for the public records and meetings requirements and provisions governing enforcement and must relate to one subject. This bill appears to be consistent with these constitutional provisions.

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.

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

VIII. Summary of Amendments:

None.

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

ⁱ Section 119.07(1), F.S.

ⁱⁱ Websdale, Neil, *Reviewing Domestic Violence Deaths*, NIJ Journal Issue No. 250, November 2003, p. 28.

ⁱⁱⁱ s. 119.07(6)(f), F.S.

^{iv} s. 384.29, F.S.

^v s. 394.4615, F.S.

^{vi} s. 415.107, F.S.

^{vii} s. 456.057, F.S.

^{viii} s. 985.04, F.S.

^{ix} s. 945.10, F.S.

^x s. 1002.22(3)(d), F.S.

^{xi} 42 USCA s. 290dd-2.

^{xii} 42 USCA s. 10402(a)(2)(E).

^{xiii} 5 USCA s. 552(a) and (b)(6).

^{xiv} U.S. Constitution, Amendment 1.

^{xv} The Florida Senate, Committee on Children and Families, *Open Government Sunset Review of s. 741.3165, Records Held by a Domestic Violence Fatality Review Team*, Interim Project Report 2005-202 (November 2004).