

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: SB 2574

INTRODUCER: Senator Fasano

SUBJECT: Public Records/Employee Leave for Victims of Sexual Violence

DATE: March 21, 2008

REVISED: 03/26/08

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Toman</u>	<u>Jameson</u>	<u>CF</u>	<u>Fav/1 amendment</u>
2.			<u>CM</u>	
3.			<u>GO</u>	
4.			<u>JU</u>	
5.				
6.				

Please see Section VIII. for Additional Information:

- A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes
- B. AMENDMENTS..... Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

Senate Bill 2574 contains the public records exemption for Senate Bill 994, to which it is linked. Senate Bill 994 requires the submission of specified documentation in order for an employee to seek leave from his or her employer in connection with an incident of sexual violence.

The bill makes confidential and exempt from s. 119.07(1), F.S., and article I, s. 24(a) of the Florida Constitution, personal identifying information that is contained in records documenting an act of sexual violence that are submitted to a public agency by an agency employee.

This bill specifies that the exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and provides that the exemption will stand repealed on October 2, 2013, unless reviewed and saved from repeal through reenactment by the Legislature.

This bill provides a statement of public necessity for the exemption.

This bill creates a new public records exemption and, as a result, is subject to the requirement of article I, s. 24(c) of the Florida Constitution that two-thirds of the members present and voting in each house must pass the bill.

This bill substantially amends the following section of the Florida Statutes: 741.313.

II. Present Situation:

Sexual Violence

Approximately one of every nine adult women in Florida has been the victim of forcible rape.¹ Victims of rape are six times more likely than non-victims to experience posttraumatic stress disorder, as well as other mental health and substance abuse problems. According to the Florida Council Against Sexual Violence (FCASV), victims are more likely to remain productive and stable if they are able to make and keep appointments needed for recovery, to actively participate in legal proceedings, and to make their homes secure.²

Senate Bill 994

Senate Bill 994, to which this bill is linked, requires employers to allow employees to request or take up to three working days of leave with or without pay within a 12-month period if the employee, or a member of the employee's family or household, is the victim of sexual violence and the leave is requested to seek an injunction for protection, to obtain medical care, to access victim services, to obtain legal assistance, or to secure safe housing.

Senate Bill 994 requires employers to keep confidential all information relating to an employee's leave granted under the bill. However, a public employee's personnel records are a public record unless specifically exempted from Florida's public records law.

Public Records Law

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.³ One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.⁴ Consistent with the Constitution, Florida's Public Records Act provides that, unless specifically exempted, all public records must be made available for public inspection and copying.⁵

Only the Legislature is authorized to create exemptions to open government requirements.⁶ Exemptions must be created by general law, which must specifically state the public necessity justifying the exemption.⁷ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.⁸ A bill enacting an exemption or substantially amending an existing exemption⁹ may not contain other substantive provisions.¹⁰

¹ Ruggiero, K. J. & Kilpatrick, D.G., *Rape in Florida: A Report to the State*, Charleston, SC: National Violence Against Women Prevention Research Center, Medical University of South Carolina (2003). This estimate is conservative because it does not include women who have never been forcibly raped but who have experienced attempted rapes, alcohol or drug facilitated rapes, incapacitation rapes, or statutory rapes. It also does not include victims under the age of 18 or victims who are male.

² FCASV, *Employment Protections for Victims of Sexual Violence*, SB 994 and HB 489 (2008).

³ Sections 1390, 1391 F.S. (Rev. 1892).

⁴ Fla. Const. art. I, s. 24(a).

⁵ Section 119.07, F.S.

⁶ Fla. Const. art. I, s. 24(c).

⁷ *Id.*

⁸ *Id.*

There is a difference between records that the Legislature makes exempt from public inspection and those that it makes exempt and confidential.¹¹ If the Legislature makes a record exempt and confidential, the information may not be released by an agency to anyone other than to the persons or entities designated in the statute.¹² If a record is simply made exempt from disclosure requirements, the exemption does not prohibit the showing of such information.¹³

An exemption from the Public Records Act may be created, revised or retained only if it serves an identifiable public purpose and it is no broader than necessary to meet the public purpose it serves.¹⁴ An identifiable public purpose is served if the exemption meets one of three specified 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. An exemption meets the statutory criteria if it:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program;
- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or would jeopardize the safety of such individuals; or
- Protects information of a confidential nature, the disclosure of which would injure the affected entity in the marketplace.¹⁵

The Act also requires the Legislature to consider six questions that go to the scope, public purpose and necessity for the exemption.¹⁶

Open Government Sunset Review Act

Section 119.15, F.S., the Open Government Sunset Review Act, provides for the systematic review of exemptions from the Public Records Act on a five-year cycle ending October 2 of the fifth year following the enactment or substantial amendment of an exemption.¹⁷ Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.¹⁸ While the standards in the Open Government Sunset Review Act may appear to limit the Legislature in the exemption review process, those aspects of the act that are only statutory as opposed to constitutional, do not limit the Legislature because one session of the Legislature

⁹ Pursuant to s. 119.15 (4)(b), F.S., an existing exemption is considered substantially amended if the exemption is expanded to cover additional records.

¹⁰ Fla. Const. art. I, s. 24(c).

¹¹ *WFTV, Inc. v. School Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA), *review denied*, 892 So.2d 1015 (Fla. 2004).

¹² *Id.*

¹³ *Id.* at 54.

¹⁴ Section 119.15(6)(b), F.S.

¹⁵ *Id.*

¹⁶ Section 119.15(6)(a), F.S.: (1) What specific records or meetings are affected by the exemption? (2) Whom does the exemption uniquely affect, as opposed to the general public? (3) What is the identifiable public purpose or goal of the exemption? (4) Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how? (5) Is the record or meeting protected by another exemption? (6) Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

¹⁷ Section 119.15(3), F.S.

¹⁸ Section 119.15(5)(a), F.S.

cannot bind another.¹⁹ The Legislature is only limited in its review process by constitutional requirements.

III. Effect of Proposed Changes:

This bill is linked to SB 994, which requires the submission of documentation in order for an employee to seek leave pursuant to s. 741.313, F.S., in connection with an incident of sexual violence.

The bill amends s. 741.313(7), F.S., to provide a public records exemption for personal identifying information that is contained in records documenting an act of sexual violence that are submitted to a public agency by an agency employee as required by SB 994. The proposed exemption will also apply to written requests for leave and agency time sheets that reflect leave granted pursuant to SB 994, for one year after the leave has been taken.

The bill provides that the exemption is subject to the Open Government Sunset Review Act and that it stands repealed on October 2, 2013, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill amends ch. 2007-108, L.O.F., providing a statement of public necessity for the exemption and a finding that disclosure could:

- Expose the victim of sexual violence to humiliation;
- Deter the victim of sexual violence from seeking the relief provided by the statute; and
- Enable the partner of the victim of sexual violence to determine the victim's schedule and location.

The bill provides an effective date contingent on SB 994 taking effect and becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill creates a public records exemption for personal identifying information that is contained in records documenting an act of sexual violence that are submitted to a public agency by an agency employee as required by the provisions of SB 994. Consequently, the bill is subject to the requirement of article I, s. 24(c) of the Florida Constitution that two-thirds of the members present and voting in each house of the Legislature pass the bill.

¹⁹ *Straughn v. Camp*, 293 So.2n 689, 694 (Fla. 1974).

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There may be minimal costs of complying with the confidentiality and exemption requirements; however, these costs are indeterminate.

VI. Technical Deficiencies:

At lines 49-50, the bill refers to the "partner or former partner" of the victim of domestic *or sexual* violence. Although applicable to domestic violence, the use of the term "partner" in the context of sexual violence may be inappropriate.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

Barcode 353696 by Children, Families and Elder Affairs on March 26, 2008:

Clarifies that the bill protects information that otherwise might allow a perpetrator of sexual violence to know the schedule and location of the victim.