

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 Judiciary Committee

BILL: CS/SB 2574

INTRODUCER: Judiciary Committee and Senator Fasano

SUBJECT: Public Records/Victim of Sexual Violence

DATE: April 17, 2008

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Jameson	CF	Fav/1 amendment
2.	Earlywine	Cooper	CM	Favorable
3.	Rhea	Wilson	GO	Favorable
4.	Daniell	Maclure	JU	Fav/CS
5.			RC	
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|-----------------------------------------|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill makes confidential and exempt from Florida's public records law and the Florida Constitution personal identifying information contained in records documenting an act of sexual violence which is submitted to a public agency by an agency employee seeking leave related to that violence. (See **Senate Bill 994** section of this analysis.)

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to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and provides that the exemption will stand repealed on October 2, 2013, unless reviewed and saved from repeal through reenactment by the Legislature.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 substantially amends section 741.313, Florida Statutes.

II. Present Situation:

Sexual Violence

Data from the National Women's Study and the National Violence Against Women Survey estimate that 13.4 percent of adult women in the United States have been victims of a forcible rape sometime during their lifetime.¹ Based on this national data, one report found:

[A]pproximately 11.1% of adult women in Florida have been victims of one or more completed forcible rapes during their lifetime. According to the 2000 Census, there are about 6.4 million women age 18 or older living in Florida. This means that ... about one out of every nine adult women, or nearly 713,000 adult women in Florida, has been the victim of forcible rape sometime in her lifetime.²

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.³ According to the Florida Council Against Sexual Violence (FCASV),⁴ 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.⁵

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 sought to seek an injunction for protection or to obtain medical care, victim services, legal assistance, or safe housing.

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 1892.⁶ 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.⁷ Consistent with the constitution, Florida's

¹ Kenneth J. Ruggiero and Dean G. Kilpatrick, *Rape in Florida: A Report to the State*, NAT'L VIOLENCE AGAINST WOMEN PREVENTION RESEARCH CTR., 1 (May 15, 2003), available at http://www.fcasv.org/2005_Web/Statistics/OneNineReport.pdf (last visited April 9, 2008).

² *Id.* at 2.

³ *Id.* at 10.

⁴ The Florida Council Against Sexual Violence is a "statewide nonprofit organization committed to victims and survivors of sexual violence and the sexual assault crisis programs who serve them." The FCASV has become a resource to Florida on sexual violence issues by hosting conferences and trainings throughout the state, providing technical assistance to agencies, and providing up-to-date information to the public. See Florida Council Against Sexual Violence, *About Us*, http://www.fcasv.org/2005_Web/AboutUs.htm. (last visited April 9, 2008).

⁵ Florida Council Against Sexual Violence, *Employment Protections for Victims of Sexual Violence, SB 994 and HB 489* (2008).

⁶ Sections 1390, 1391, F.S. (Rev. 1892).

⁷ FLA. CONST. art. I, s. 24(a).

Public Records Act provides that, unless specifically exempted, all public records must be made available for public inspection and copying.⁸

Only the Legislature is authorized to create exemptions to open government requirements.⁹ Exemptions must be created by general law, which must specifically state the public necessity justifying the exemption.¹⁰ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.¹¹ A bill enacting an exemption or substantially amending an existing exemption¹² may not contain other substantive provisions.¹³

There is a difference between records that the Legislature makes exempt from public inspection and those that it makes exempt and confidential.¹⁴ 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.¹⁵ If a record is simply made exempt from disclosure requirements, the exemption does not prohibit the showing of such information.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 in the fifth year after its enactment.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

The act states that 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.¹⁹ 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.²⁰ 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

⁸ Section 119.07, F.S.

⁹ FLA. CONST. art. I, s. 24(c).

¹⁰ *Id.*

¹¹ *Id.*

¹² 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.

¹³ FLA. CONST. art. I, s. 24(c).

¹⁴ *WFTV, Inc. v. School Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA).

¹⁵ *Id.*

¹⁶ *Id.* at 54.

¹⁷ Section 119.15(3), F.S.

¹⁸ Section 119.15(5)(a), F.S.

¹⁹ Section 119.15(6)(b), F.S.

²⁰ *Id.*

- Protects information of a confidential nature, the disclosure of which would injure the affected entity in the marketplace.²¹

The act also requires the Legislature to consider six questions that go to the scope, public purpose, and necessity for the exemption.²²

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 cannot bind another.²³ The Legislature is only limited in its review process by constitutional requirements.

III. Effect of Proposed Changes:

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 which is submitted to a public agency by an agency employee as required by SB 994.²⁴ 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, Laws of Florida, providing a statement of public necessity for the exemption and a finding that disclosure could:

- Expose the victim of sexual violence to humiliation and shame;
- Deter the victim of sexual violence from seeking the relief provided by the statute; and
- Enable the perpetrator 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.

²¹ *Id.*

²² Section 119.15(6)(a), F.S. The questions provided by the statutes are: (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?

²³ See *Childers v. American Auto. Ass'n, Inc.*, 424 So. 2d 116, 118 n.2 (Fla. 1st DCA 1982).

²⁴ This bill is linked to SB 994, which amends s. 741.313, F.S., to require 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 sought to seek an injunction for protection or to obtain medical care, victim services, legal assistance, or safe housing.

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 which is submitted to a public agency by an agency employee as required by the provisions of SB 994. Consequently, the bill must be passed by a two-thirds vote of each house of the Legislature, pursuant to article I, s. 24(c) of the Florida Constitution.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

To the extent this bill reassures victims of sexual violence that their personal identifying information is confidential and exempt from disclosure, it may encourage victims to seek the relief provided by s. 741.313, F.S.

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:

None.

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.)

CS by Judiciary on April 16, 2008:

The committee substitute clarifies that the bill protects information that otherwise might allow a perpetrator (rather than a partner of a victim) of sexual violence to know the schedule and location of the victim.

- B. **Amendments:**

None.