

**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.)

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Prepared By: The Professional Staff of the Criminal Justice Committee

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BILL: SPB 7012

INTRODUCER: For consideration by the Criminal Justice Committee

SUBJECT: Reenactment of Public Record Exemption/Certain Specified Personal Information of DJJ Direct Care Employees

DATE: January 18, 2011

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon		<b>Pre-meeting</b>
2.				
3.				
4.				
5.				
6.				

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**I. Summary:**

The bill reenacts the public record exemption in s. 119.071(4)(d)1.i., F.S., which provides that certain personal information of current or former specified direct care employees of the Department of Juvenile Justice (DJJ), their spouses, and children are exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

This bill reenacts sub-subparagraph i. of section 119.071(4)(d)1. of the Florida Statutes.

**II. Present Situation:**

**Public Access**

Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1892. In 1992, Florida voters approved an amendment to the State Constitution which raised the statutory right of access to public records to a constitutional level.

Paragraphs (a) and (c) of Section 24, Art. I of the State Constitution provide the following:

(a) Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department

created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

(c) This section shall be self-executing. The Legislature, however, may provide by general law passed by a two-thirds vote of each house for the exemption of records from the requirements of subsection (a) and the exemption of meetings from the requirements of subsection (b); provided that such law shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the state purpose of the law. . . . Laws enacted pursuant to this subsection shall contain only exemptions from the requirements of subsections (a) and (b) and provisions governing the enforcement of this section, and shall relate to one subject.

### **Florida's Public Records Law**

Florida's public records law is contained in ch. 119, F.S., and specifies conditions under which the public must be given access to governmental records. Section 119.07(1)(a), F.S., provides that every person who has custody of a public record<sup>1</sup> must permit the record to be inspected and examined by any person, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record. Unless specifically exempted, all agency<sup>2</sup> records are to be available for public inspection.

Section 119.011(12), F.S., defines the term "public record" to include all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are "intended to perpetuate, communicate, or formalize knowledge."<sup>3</sup> All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.<sup>4</sup>

Only the Legislature is authorized to create exemptions to open government requirements.<sup>5</sup> Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.<sup>6</sup> A bill enacting an exemption<sup>7</sup> may not contain other substantive provisions although it may contain multiple exemptions relating to one subject.<sup>8</sup>

<sup>1</sup> s. 119.011(1), F.S., defines "public record" to include "all documents, papers, letters, maps, books, tapes, photographs, film, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."

<sup>2</sup> s. 119.011(2), F.S., defines "agency" as "...any state, county, district, authority, or municipal officer, department, division, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

<sup>3</sup> *Shevin v. Byron, Harless, Shafer, Reid, and Assocs., Inc.*, 379 So. 2d 633, 640(Fla. 1980).

<sup>4</sup> *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979)

<sup>5</sup> Article I, s. 24(c) of the State Constitution.

<sup>6</sup> *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

There is a difference between records that the Legislature exempts from public inspection and those that the Legislature makes confidential and exempt from public inspection. If a record is made confidential with no provision for its release so that its confidential status will be maintained, such record may not be released by an agency to anyone other than the person or entities designated in the statute.<sup>9</sup> If a record is simply exempt from mandatory disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.<sup>10</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act established in s. 119.15, F.S., provides a review and repeal process for public records exemptions. In the fifth year after enactment of a new exemption or in the fifth year after substantial amendment of an existing exemption, the exemption is repealed on October 2, unless reenacted by the Legislature. Each year, by June 1, the Division of Statutory Revision of the Joint Legislative Management Committee 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.

### **Current Exemptions in Section 119.071(4)(d)1., F.S.**

The Legislature has enacted exemptions from the public records law for the home addresses, telephone numbers, social security numbers, photographs, spouse's places of employment, and schools and daycare locations of the children of the following agency personnel (active and former):

- Law enforcement;
- Correctional and correctional probation officers;
- Certain personnel at the Department of Children and Family Services;
- Department of Health personnel;
- Department of Revenue personnel;
- Certified firefighters;
- Justices, judges, magistrates, administrative law judges and child support hearing officers;
- Code enforcement officers;
- Guardians ad litem;
- Local government agent and water management district human resources administrators;
- Department of Juvenile Justice personnel;
- Local and statewide prosecuting attorneys; and
- Public defenders, criminal conflict and civil regional counsel, and their assistants.

The particular DJJ employees that the exemption applies to include the following direct care employees (and their spouses and children):

- juvenile probation officers

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<sup>7</sup> s. 119.15, F.S., provides that an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

<sup>8</sup> Article 1, s. 24(c) of the State Constitution.

<sup>9</sup> Attorney General Opinion 85-62, August 1, 1985.

<sup>10</sup> *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d. 289 (Fla.1991).

- juvenile probation supervisors
- detention superintendents
- assistant detention superintendents
- senior juvenile detention officers
- juvenile detention officer supervisors
- juvenile detention officers
- house parents I and II
- house parent supervisors
- group treatment leaders
- group treatment leader supervisors
- social service counselors
- rehabilitation therapists

The exemption was created in 2006 for these DJJ direct care employees and their families. It will expire on October 2, 2011, unless the Legislature reviews and reenacts it pursuant to the Open Government Sunset Review Act under s. 119.15, F.S.

The Senate Criminal Justice professional staff reviewed the public record exemption created in s. 119.071(4)(d)1.i., F.S., during the 2010 interim and recommends that it be reenacted. According to the DJJ, the exempted records contain information that is of a sensitive, personal nature concerning those DJJ employees who have direct contact and provide care and supervision to juvenile offenders from the time of their arrest until they are released back into society.

The DJJ states that it is paramount to the safety of these employees and their families that their personal information remain exempted. Direct care employees and their families are subject to the same risk of threats and reprisals from juveniles, their families and gang members as those who work in law enforcement, corrections, and the court system. For instance, the children of these employees are subjected to this risk if they attend the same school or ride the same bus as the juvenile offender, the offender's family or friends. Additionally, the DJJ asserts that providing easier access to the employee's personal information will interfere in the department's administration of the juvenile justice system by jeopardizing the workplace safety of its employees.

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

The bill reenacts the public record exemption in s. 119.071(4)(d)1.i., F.S., which provides that certain personal information of current or former specified direct care employees of the DJJ, their spouses, and children are exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The covered direct care employees include juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, senior juvenile detention officers, juvenile detention officer supervisors, juvenile detention officers, house parents I and II, house parent supervisors, group treatment leaders, group treatment leader supervisors, social service counselors, and rehabilitation therapists.

The bill will take effect October 1, 2011.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

The DJJ recommends that the exemption language covering specified direct care employees be updated to reflect several technical position title reclassifications that have occurred since the exemption was created.

**VII. Related Issues:**

The First Amendment Foundation believes that the exemption is overly broad and recommends an amendment to narrow the exemption language by requiring direct care employees, prior to the exemption taking effect, to provide a written statement indicating that they have made reasonable efforts to protect such information from being accessible through other means available to the public.

**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:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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