

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/CS/HB 1193 (CS/CS/SB 1390)	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Judiciary Committee; Criminal Justice Subcommittee; Jones and others (Governmental Oversight and Accountability; Judiciary and Joyner)	116 Y's	0 N's
COMPANION BILLS:	CS/CS/SB 1390	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/CS/HB 1193 passed the House on February 23, 2012, and subsequently passed the Senate on March 6, 2012.

The bill requires the clerk of court to apprise a petitioner of his or her right to request in writing that specified information held by the clerk and law enforcement agencies in conjunction with the automated process by which a petitioner may request notification of service of the injunction for protection against domestic violence, repeat violence, sexual violence, or dating violence, be exempt from public records requirements. Such appraisal must be made during the time that the petitioner is making the request to be notified that the injunction was served. The bill provides that such information is exempt from public records requirements, upon the written request by the petitioner, for five years after receipt of the written request.

The bill grants access by any state or federal agency that is authorized by law to have access to such documents in furtherance of the agencies' statutory duties, and provides for repeal of the public record exemption effective October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a statement of public necessity as required by the State Constitution.

The bill does not appear to have a fiscal impact on state or local government.

The bill was approved by the Governor on April 27, 2012, ch. 2012-154, Laws of Florida. The effective date of the bill is October 1, 2012.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Public Records Law

Article I, s. 24(a) of the State 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, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State 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.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects 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
- Protects trade or business secrets.

Public Record Exemptions for Victims of Violent and Sexual Crimes

The law currently provides several protections from public records requirements for victims of various violent and sexual crimes.

The following information is confidential and exempt³ from public records requirements:

- Any information, including the photograph, name, address, or other fact, that reveals the identity of the victim of child abuse;
- Any information that may reveal the identity of a victim of sexual offense; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense.⁴

Current law also provides an exemption from public records requirements for any information not otherwise held confidential or exempt from public records requirements, that reveals the home or employment telephone number or address, or personal assets of a person who has been the victim of sexual battery, aggravated child abuse, aggravated stalking, harassment, aggravated battery, or domestic violence, upon an officially verified written request by the victim. Such information ceases to

¹ Art. I, Section 24(c), Fla. Const.

² Section 119.15, F.S.

³ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

⁴ Section 119.071(2)(h)1., F.S.

be exempt 5 years after receipt of the written request. Any state or federal agency authorized to have access to such documents must be granted access in the furtherance of its duties.⁵

Current law also exempts information or records that have been made part of a court file and that may reveal the identity of a person who is a victim of a sexual offense.⁶

Injunctions for Victims of Violence

Sections 741.30 and 784.046, F.S., currently provide guidelines for the service of injunctions for protection against domestic violence, repeat violence, sexual violence, or dating violence. During the 2011 Legislative Session, these statutes were amended to require the Florida Association of Court Clerks and Comptrollers (Association), subject to available funding, to develop an automated process by which a petitioner may request notification of service of an injunction for protection against domestic violence, repeat violence, sexual violence, or dating violence.⁷ This process requires the petitioner to provide the Association and possibly law enforcement agencies with personal contact information. In many instances, the petitioner is a victim of a crime, thus, the information he or she provides to the Association and law enforcement agencies may be exempt from public records requirements. However, a person does not have to be a crime victim in order to petition for a protective injunction. In these instances, the petitioner's information may be public record.

Effect of the Bill

The bill amends ss. 741.30 and 784.046, F.S., to allow a petitioner who requests notification of service of an injunction for protection against domestic violence, repeat violence, sexual violence, or dating violence to request that certain information be held exempt from public records requirements for 5 years after receipt of the request. The exemption applies to information that reveals the home or employment telephone number or address, cellular telephone number, electronic mail address, or other electronic means of identification of the petitioner.

The bill requires the clerk of court (clerk) to apprise the petitioner of his or her right to make a public record exemption request at the same time that the petitioner is making the request to be notified that the injunction was served.

The bill provides that information held by the clerks and law enforcement agencies in conjunction with the automated injunction notification process which reveals the above-described information is exempt from public records requirements, upon written request of the petitioner. Such information ceases to be exempt 5 years after the clerk's receipt of the petitioner's written request. Notwithstanding this exemption, the bill grants access to the exempt information to any state or federal agency that is authorized by law to have access to such documents in the furtherance of the agencies' statutory duties.

The bill provides for repeal of the exemption on October 2, 2017, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.⁸

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

⁵ Section 119.071(2)(j)1., F.S.

⁶ Section 119.0714(1)(h), F.S.

⁷ Chapter 2011-187, L.O.F.

⁸ Art. I, Section 24(c), Fla. Const.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.