

**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: SB 1390

INTRODUCER: Senator Joyner

SUBJECT: Public Records/Victims of Domestic Violence

DATE: January 24, 2012      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	Cibula	JU	<b>Pre-meeting</b>
2.			GO	
3.			RC	
4.				
5.				
6.				

**I. Summary:**

Pursuant to ss. 741.30 and 784.046, F.S., the Florida Association of Court Clerks and Comptrollers (Association), offers 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. This process necessarily requires the petitioner to provide the Association with personal contact information. In many instances, the petitioner is a victim of a crime, and thus, the information he or she provides to the Association may be exempt from public records requirements pursuant to s. 119.07, F.S. 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.

This bill substantially amends ss. 741.30 and 784.046, F.S., to expand an existing exemption to the public records law. The bill requires the automated notification of service of injunction to apprise the petitioner of his or her right to request in writing that specified information held by the Association be exempt from public record. Such information shall be exempt upon the written request by the petitioner for 5 years after the receipt of the written request. The bill grants access to any state or federal agency that is authorized by law to have access to such documents in furtherance of the agencies' statutory duties.

The bill conforms to the legislative review requirements of the Open Government Sunset Review Act, by providing for the repeal of the public records exemption effective October 2, 2017, unless reviewed and reenacted by the Legislature. The bill also provides a statement of public necessity as required by the State Constitution.

The bill substantially amends sections 741.30 and 784.046, Florida Statutes.

## II. Present Situation:

### Public Records Law

Florida's public records laws further the state policy of ensuring governmental transparency through broad public access to government records.<sup>1</sup> Generally, all state, county, and municipal records are open to the public because a personal, constitutional right guarantees that "every person" may inspect or copy any public record of the legislative, executive, and judicial branches of government, as well as the public records of counties and municipalities.<sup>2</sup>

Each agency has a duty to provide access to public records. Thus, a custodian of public records<sup>3</sup> must "acknowledge requests to inspect or copy records promptly and respond to such requests in good faith."<sup>4</sup> Public records encompass "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."<sup>5</sup>

### Public Records Exemptions

The Legislature is authorized to provide by general law for the exemption of records from the public records requirements.<sup>6</sup> A general law providing for such an exemption must meet the requirements established in the Constitution,<sup>7</sup> as well as by the Open Government Sunset Review Act.<sup>8</sup> The law must include a public necessity statement that states with specificity the public necessity justifying the exemption,<sup>9</sup> and the law must be no broader than necessary to accomplish its purpose.<sup>10</sup> Additionally, under the Open Government Sunset Review Act, an exemption may be created or maintained only if the identifiable public purpose it serves is no broader than necessary to meet one of three purposes enumerated in s. 119.15(6)(b), F.S. By way of example, an exemption will be valid if its identifiable public purpose is no broader than necessary to "[protect] 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."<sup>11</sup>

While the determination of what constitutes a public record is a question of law,<sup>12</sup> Florida courts will not imply an exemption from the open records requirement.<sup>13</sup> Refusing to encroach upon the

<sup>1</sup> FLA. CONST. art. I, s. 24(a); Section 119.01, F.S.

<sup>2</sup> FLA. CONST. art. I, s. 24(a).

<sup>3</sup> A custodian of public records is defined as the "elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having public records, or his or her designee." Section 119.011(5), F.S.

<sup>4</sup> Section 119.07(1)(c), F.S.

<sup>5</sup> Section 119.011(12), F.S.

<sup>6</sup> FLA. CONST. art. I, s. 24(c) (Any bill providing for such an exemption must pass by two-thirds vote of each house.)

<sup>7</sup> *Id.*

<sup>8</sup> Section 119.15, F.S.

<sup>9</sup> FLA. CONST. art. I, s. 24(c).

<sup>10</sup> *Id.*

<sup>11</sup> Section 119.15(6)(b)(2), F.S. ("However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted.")

<sup>12</sup> *Rogers v. Hood*, 906 So. 2d 1220 (2005).

legislative process for creating public records exemptions, The Supreme Court of Florida, in *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, stated, “we believe that an exemption from public records access is available only after the legislature has followed the express procedure provided in Article I, section 24(c) of the Florida Constitution.”

The Open Government Sunset Review Act provides for legislative review of exemptions from the open government laws. Pursuant to s. 119.15, F.S, any new exemption, or expansion of an existing exemption, shall be repealed on October 2 in the fifth year after the exemption was enacted. The Attorney General’s Office has found that the constitutional requirement of a two-thirds vote applies equally “to re-adoption of exemptions as well as initial creation of exemptions.”<sup>14</sup> The Legislature may act to reenact an exemption indefinitely,<sup>15</sup> but will be bound by the constitutional requirement of a two-thirds vote for enactment of exemptions.<sup>16</sup>

### **Public Record Exemptions for Victims of Crimes**

Recognizing that the personal safety of victims of crimes may be compromised when public records information about the victim is released, the Legislature has provided public record exemptions for victims of crimes.<sup>17</sup> For example, 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 is exempt from the public records requirements.<sup>18</sup> More broadly, the Legislature enacted a blanket exemption from the public records laws for “[a]ny document that reveals the identity, home or employment telephone number, home or employment address, or personal assets of the victim of a crime and identifies that person as the victim of a crime, which document is received by any agency that regularly receives information from or concerning the victims of crime.”<sup>19</sup>

Furthermore, an exemption from the public records laws exists for any information, not otherwise held confidential or exempt, which reveals the home or employment telephone number, home or employment 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.<sup>20</sup> To apply for an exemption, the victim files a written request to the appropriate agency, which must include official verification that an applicable crime has occurred.

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<sup>13</sup> *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Indian River County Hospital District v. Indian River Memorial Hospital, Inc.*, 766 So. 2d 233, 237 (Fla. 4th DCA 2000).

<sup>14</sup> Op. Att’y Gen. Fla. 03-18 (July 31, 2003).

<sup>15</sup> Section 119.15(3), F.S.

<sup>16</sup> FLA. CONST. art. I, s. 24(c).

<sup>17</sup> See sections 119.071 and 119.0714, F.S.

<sup>18</sup> Section 119.0714(1)(h), F.S.

<sup>19</sup> Section 119.071(2)(j)1., F.S.

<sup>20</sup> *Id.*

### **Injunctions for Victims of Violence**

Sections 741.30 and 784.046, F.S., 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.<sup>21</sup> This process necessarily requires the petitioner to provide the Association with personal contact information. In many instances, the petitioner is a victim of a crime, and thus the information he or she provides to the Association may be exempt from public records requirements pursuant to s. 119.07, F.S. 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.

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

Sections 1 and 2 amend s. 741.30, F.S., and s. 784.046, F.S., respectively. Proposed changes to these statutes pertain to a petitioner who requests notification from the Florida Association of Court Clerks of the service of an injunction for protection against domestic violence, repeat violence, sexual violence, or dating violence and related court actions. The bill requires a notification to apprise such a petitioner of his or her right to make a public records exemption request. The bill provides that such a petitioner may request exemption from public records requirements for the following records:<sup>22</sup>

- Information which reveals a home or employment telephone number or address,
- Cellular telephone number,
- Electronic mail address, or
- Other electronic means of identification of the petitioner.

The bill provides that, upon the written request of the petitioner, the information held by the Association in conjunction with the automated injunction notification process is exempt from public record. Such information would cease to be exempt 5 years after the Association's receipt of the petitioner's written request. The bill grants access to state or federal agencies authorized by law to have access to such documents in furtherance of the agencies' statutory duties.

The bill specifies that the public records exemption is subject to the Open Government Sunset Review Act and repeals the exemption effective October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 3 provides a public necessity statement, as required by the State Constitution.<sup>23</sup> The statement of public necessity explains that without the public record exemption:

- A victim could be exposed to public humiliation and shame;

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<sup>21</sup> Chapter 2011-187, Laws of Fla.

<sup>22</sup> The petitioner's personal identifying information will remain confidential and exempt for 5 years after receipt of the request.

<sup>23</sup> FLA. CONST. art. I, s. 24(c).

- A victim could become inhibited from availing herself or himself of relief under state law; and
- Personal identifying and location information could be used to determine the location of the victim, placing the victim in jeopardy.

Section 4 provides an effective date of October 1, 2012.

**Other Potential Implications:**

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new public records exemption; thus, it requires a two-thirds vote for final passage.

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands the current exemption; thus, it includes a public necessity statement.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article I, s. 24(c) of the State Constitution, contains a restriction on the scope of general laws enacted to create public records exemptions. Specifically, general laws creating public records exemptions “shall contain only exemptions from the requirements of [Article I, s. 24(a) or (b)] and provisions governing the enforcement of [s. 24(c)]”. Lines 68-72 and lines 146-149 of the bill appear to contain substantive law, in that they require the Association to apprise a petitioner of his or her right to make a public records exemption request. So long as these lines of the bill are considered “provisions governing” Article I, s. 24(c) of the State Constitution, and not substantive law other than creation of an exemption, their inclusion in this bill will not violate the State Constitution.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

**B. Private Sector Impact:**

None

**C. Government Sector Impact:**

The bill does not appear to have any fiscal impact on the judiciary.<sup>24</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill requires the notification of service of an injunction to apprise the petitioner of his or her right to make the public records exemption request. As such, petitioners might only become aware of this right after providing personal information to the Association. Since the information only becomes exempt from public records upon the petitioner's written request, it would appear that a petitioner should be notified of his or her right to make the public records exemption request at the same time that the petitioner is making the request to be notified that the injunction was served. Otherwise, information provided to the Association prior to the petitioner making the request for exemption could be public record.

The bill provides that information held by the Association in conjunction with the automated injunction notification process which reveals specified personal information is exempt from public record. However, this information will necessarily have to be provided to the law enforcement agency who is serving the injunction. Thus, the bill should exempt information held by both the Association and law enforcement agencies.

In section 3, the bill provides that it is a public necessity that a petitioner's personal identifying and location information held by the Association in conjunction with the automated notification process be held confidential and exempt from s. 119.07(1), F.S. However, the remainder of the bill only requires that such information be held exempt from s. 119.07(1), F.S., and not held confidential. As confidentiality is a distinct and more absolute removal from availability by the public,<sup>25</sup> confusion may arise over the use of the term in section 3 of the bill. In order to ensure that the public necessity statement conforms to the bill, the reference to information being held confidential should either be removed, or used uniformly throughout the bill.

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<sup>24</sup> Fla. Office of the State Courts Administrator, *2012 Judicial Impact Statement: SB 1390*, Jan. 9, 2012 (on file with the Senate Committee on Judiciary).

<sup>25</sup> *WFTV, Inc. v. School Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004). "There is a difference between records the Legislature has determined to be exempt from The Florida Public Records Act and those which the Legislature has determined to be exempt from The Florida Public Records Act and confidential. If information is made confidential in the statutes, the information is not subject to inspection by the public and may only be released to the persons or organizations designated in the statute."

**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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