

**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 Committee on Governmental Oversight and Accountability

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**BILL:** CS/SB 1062

**INTRODUCER:** Governmental Oversight and Accountability Committee and Senators Powell and Bracy

**SUBJECT:** Public Records/Protective Injunction Petitions

**DATE:** March 23, 2017      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
2.	<u>Kim</u>	<u>Ferrin</u>	<u>GO</u>	<b>Fav/CS</b>
3.	_____	_____	<u>RC</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1062 creates a new public records exemption. The bill makes a petition for injunction and its contents exempt from disclosure if the petition is dismissed without a hearing or at an ex parte hearing due to a failure to state a claim, lack of jurisdiction, or based on insufficiency of the petition itself without an injunction being issued.

This bill applies to all types of injunctions for protection, including injunctions against domestic violence,<sup>1</sup> repeat violence,<sup>2</sup> dating violence,<sup>3</sup> sexual violence,<sup>4</sup> stalking, and cyberstalking.<sup>5</sup>

The bill requires petitions for a protective injunction that are exempt under this bill to be removed from publicly available websites. If a petition is placed on a website, and later dismissed on or after July 1, 2017, which is the effective date of the bill, the webmaster with the clerk of the court or county recorder is responsible for removing the petition. If the petition is placed on the website before July 1, 2017, the respondent named in the petition must first request removal in writing.

The bill requires a two-thirds vote by both chambers for passage.

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<sup>1</sup> Section 741.30(1), F.S.

<sup>2</sup> Section 784.046(2), F.S.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Section 784.0485, F.S.

The bill includes a statement of public necessity.

This public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2022, unless reviewed and saved from repeal through legislative reenactment.

The bill has an effective date of July 1, 2017.

## II. Present Situation:

### Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>6</sup> This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.<sup>7</sup>

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.<sup>8</sup> Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.<sup>9</sup> The Public Records Act states that

it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.<sup>10</sup>

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>11</sup> The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”<sup>12</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>13</sup>

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<sup>6</sup> FLA. CONST., art. I, s. 24(a).

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

<sup>8</sup> The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S.

Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

<sup>9</sup> Public records laws are found throughout the Florida Statutes.

<sup>10</sup> Section 119.01(1), F.S.

<sup>11</sup> Section 119.011(12), F.S., defines “public record” to mean “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.” Section 119.011(2), F.S., defines “agency” to mean as “any state, county, district, 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>12</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>13</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

The Legislature may create an exemption to public records requirements.<sup>14</sup> An exemption must pass by a two-thirds vote of the House and the Senate.<sup>15</sup> In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>16</sup> A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.<sup>17</sup>

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”<sup>18</sup> Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.<sup>19</sup>

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

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.<sup>20</sup> The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.<sup>21</sup> The OGSR also requires specified questions to be considered during the review process.<sup>22</sup> In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

The OGSR process does not apply to public records exemptions that are required by federal law or which apply solely to the Legislature or the State Court System.<sup>23</sup>

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<sup>14</sup> FLA. CONST., art. I, s. 24(c).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). See also *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004).

<sup>18</sup> If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

<sup>19</sup> *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

<sup>20</sup> Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

<sup>21</sup> Section 119.15(3), F.S.

<sup>22</sup> Section 119.15(6)(a), F.S. The specified questions 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?

<sup>23</sup> Section 119.15(2), F.S.

## Injunctions

A person may petition the court for several types of injunctions for protection, including injunctions against domestic violence,<sup>24</sup> repeat violence,<sup>25</sup> dating violence<sup>26</sup> sexual violence,<sup>27</sup> stalking, and cyberstalking.<sup>28</sup>

Domestic violence is an assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.<sup>29</sup>

Repeat violence constitutes two incidents of violence or stalking committed by the respondent, one of which must have been within six months of the filing of the petition, which are directed against the petitioner or the petitioner's immediate family member.<sup>30</sup>

Dating violence is violence between individuals who have or have had a continuing and significant romantic relationship.<sup>31</sup> The existence of a dating relationship is determined based on the following:

- A dating relationship must have existed within the past 6 months;
- The nature of the relationship must have been characterized by the expectation of affection or sexual involvement; and
- The frequency and type of interaction must have included that the persons have been involved over time and on a continuous basis during the course of the relationship.

Sexual violence is any one incident of:

- Sexual battery;
- A lewd or lascivious act committed upon or in the presence of a person younger than 16 years of age;
- Luring or enticing a child;
- Sexual performance by a child; or
- Any other forcible felony wherein a sexual act is committed or attempted, regardless of whether criminal charges were filed, reduced, or dismissed by the state attorney.<sup>32</sup>

Stalking is defined as a crime committed by a person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person.<sup>33</sup> Cyberstalking means to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person,

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<sup>24</sup> Section 741.30(1), F.S.

<sup>25</sup> Section 784.046(2), F.S.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Section 784.0485(1), F.S.

<sup>29</sup> Section 741.28(2), F.S.

<sup>30</sup> Section 784.046(1)(b), F.S.

<sup>31</sup> Section 784.046(1)(d), F.S.

<sup>32</sup> Section 784.046(1)(c), F.S.

<sup>33</sup> Section 784.048(2), F.S.

causing substantial emotional distress to that person and serving no legitimate purpose.<sup>34</sup> Aggravated stalking occurs when a person willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person and makes a credible threat to that person.<sup>35</sup>

A form for a petition for injunction against domestic violence is provided in Florida law.<sup>36</sup> A similar form for a petition for injunction for protection against the other types of violence noted above is provided in sections 784.046(4)(b) and 784.0485(3)(b), F.S.

Upon the filing of a petition for a protective injunction, the court must hold a hearing at the earliest possible time.<sup>37</sup> If an immediate and present danger of domestic violence appears to exist, the court may grant a temporary injunction ex parte prior to the full hearing.<sup>38</sup>

### **Florida Family Law Rules of Procedure**

The Florida Family Law Rules of Procedure protect from disclosure certain sensitive information recorded in family law cases.<sup>39</sup> The main types of cases governed by the Florida Family Law Rules of Procedure are matters arising from dissolution of marriage, annulment, support including child support, paternity, adoption, and injunctions for protection.<sup>40</sup> Rule 12.004(a), Florida Family Law Rules of Procedure, authorizes a judge hearing a family law case to access and review files of any related case. However, parties, judges, and court personnel are prohibited from disclosing confidential information and documents contained in related case files unless disclosure complies with state and federal law.<sup>41</sup>

A petitioner for a domestic violence injunction may request that his or her address be kept confidential and exempt from public records disclosure pursuant to statute,<sup>42</sup> and the address is then considered a confidential court record.<sup>43</sup>

The Federal Parent Locator Service (FPLS) helps state and local child support agencies locate parents for participation in child support.<sup>44</sup> A family violence indicator is a notation in the FPLS that has been placed on a record when a state has reasonable evidence of domestic violence or child abuse.<sup>45</sup> In parent locator cases, a state court may override a family violence indicator to release information from the FPLS.<sup>46</sup> The state clerk of the court, however, must ensure the protection of records of open cases relating to family violence. All court records in these

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<sup>34</sup> Section 784.048(1)(d), F.S.

<sup>35</sup> Section 784.048(3), F.S.

<sup>36</sup> Section 741.30(3)(b), F.S., provides a petition for injunction for protection against domestic violence.

<sup>37</sup> Sections 741.30(4) and 784.046(5), F.S.

<sup>38</sup> Section 741.30(5)(a), F.S.

<sup>39</sup> RULE 12.012, FLA. FAM. L. R. P.

<sup>40</sup> RULE 12.010(a)(1), FLA. FAM. L. R. P.

<sup>41</sup> RULES 12.004(c) and 12.007(c), FLA. FAM. L. R. P.

<sup>42</sup> Section 741.30(3)(b), F.S., authorizes a petitioner to furnish his or her address in a separate confidential filing.

<sup>43</sup> RULE 12.007(b), FLA. FAM. L. R. P.

<sup>44</sup> The Federal Office of Child Support Enforcement administers the program. More at <http://www.acf.hhs.gov/programs/css/fpls> (Last visited Feb. 8, 2016).

<sup>45</sup> RULE 12.650(b)(4), FLA. FAM. L. R. P.

<sup>46</sup> 42 U.S.C. s. 653; RULE 12.650(a), FLA. FAM. L. R. P.

proceedings are confidential and not available for public inspection until the court issues a final judgment.<sup>47</sup>

### III. Effect of Proposed Changes:

Section 1 of the bill provides that injunctions for protection are exempt from public disclosure pursuant to s. 119.07(1), F.S., and Art. I s. 24(a) of the State Constitution<sup>48</sup> if the court does not issue an injunction for protection for any of the following reasons:

- Failure to state a claim,
- Lack of jurisdiction; or
- Insufficiency of the petition.

The exemption from public disclosure applies to the following types of injunctions for protection: domestic violence,<sup>49</sup> repeat violence,<sup>50</sup> dating violence,<sup>51</sup> sexual violence,<sup>52</sup> stalking and cyberstalking.<sup>53</sup>

The bill requires petitions for a protective injunction to be removed from publicly available websites. If a petition is placed on a website, and later dismissed on or after the effective date of the bill, the webmaster with the clerk of the court or county recorder must remove the petition. If the petition is placed on the website prior to the effective date of the bill, it is the responsibility of the person named in the petition to request removal. The request must be in writing, signed, and include the case name and number, document heading, and page number. The person requesting removal must deliver the request by mail, fax, electronic transmission, or in person to the clerk of the court. The clerk may not charge a fee for removal.

This public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2022, unless reviewed and saved from repeal through legislative reenactment.

The bill includes a statement of public necessity. The public necessity statement provides that a petition for injunction and its contents are exempt from s. 119.07(1), F.S., and Article I, section 24(a), of the Florida Constitution if the petition is dismissed without a hearing or at an ex parte hearing due to a failure to state a claim, lack of jurisdiction, or based on insufficiency of the petition itself without an injunction being issued.

The public necessity statement asserted to justify the exemption is that the records may be defamatory to the person named in the petition, and may cause unwarranted damage to his or her reputation. Further, the only way to protect the reputation of the person named in the petition is by removing the petition and its contents.

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<sup>47</sup> RULE 12.650(b)(4)(i), FLA. FAM. L. R. P.

<sup>48</sup> Section 110.07(1), F.S., provides that public records must be made available to the public for inspection or copying.

<sup>49</sup> Section 741.30(1), F.S.

<sup>50</sup> Section 784.046(2), F.S.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> Section 784.0485(1), F.S.

The bill takes effect July 1, 2017.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The bill does not appear to require counties or municipalities to take an action requiring the significant expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

##### **B. Public Records/Open Meetings Issues:**

###### **Vote Requirement**

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for passage of a newly-created or expanded public records or public meetings exemption. Because the bill creates a public records exemption, the State Constitution requires passage by a two-thirds vote in each house of the Legislature.

###### **Public Necessity Statement**

Article I, s. 24(c) of the State Constitution, requires the exemption to be no broader than necessary to accomplish the stated purpose of the law. The public necessity statement appears to support the public policy for the exemption, and is no broader than the stated purpose of the exemption.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

This bill may preserve the reputation of a person named in a petition for injunction that is made exempt. Protecting a person's reputation may prevent negative financial consequences from being named as a respondent in a petition for a protective injunction.

##### **C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

The bill's effective date is July 1. Most public records exemptions have an effective date of October 1, which gives agencies time to learn and prepare for public records exemptions after the laws are published.<sup>54</sup>

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 119.0714, Florida Statutes.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Governmental Oversight and Accountability on March 22, 2017:**

The CS provides that petitions that are dismissed after July 1, 2017 are automatically removed from public access.

The CS makes petitions exempt rather than confidential and exempt.

- 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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<sup>54</sup> *Manual for Drafting Legislation, Sixth Edition*, Office of Bill Drafting Service, The Florida Senate, p. 66.