

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 Committee on Judiciary

BILL: SB 1062

INTRODUCER: Senator Powell

SUBJECT: Public Records/Protective Injunction Petitions

DATE: March 13, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	Pre-meeting
2.			GO	
3.			RC	

I. Summary:

SB 1062 creates a new public records exemption. The bill makes a petition for injunction and its contents confidential and 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,¹ repeat violence,² dating violence,³ sexual violence,⁴ and stalking.

The bill requires petitions for a protective injunction that are confidential and exempt under this bill to be removed from publicly available websites. The process for removal differs depending on when the petition is placed on a website. 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 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.

The bill includes a statement of public necessity.

This public record exemption is subject to the Open Government Sunset Review Act and stand repealed on October 2, 2022, unless reviewed and saved from repeal through legislative reenactment.

¹ Section 741.30(1), F.S.

² Section 784.046(2), F.S.

³ *Id.*

⁴ *Id.*

II. Present Situation:

The State Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.⁵ 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.⁶

In addition to the State Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.⁷ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁸ 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.⁹

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.¹⁰ 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.”¹¹ A violation of the Public Records Act may result in civil or criminal liability.¹²

The Legislature may create an exemption to public records requirements.¹³ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁴ 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.¹⁵ A statutory exemption that does not meet these criteria may be unconstitutional and may not be judicially saved.¹⁶

⁵ FLA. CONST., art. I, s. 24(a).

⁶ FLA. CONST., art. I, s. 24(a).

⁷ 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.

⁸ Public records laws are found throughout the Florida Statutes.

⁹ Section 119.01(1), F.S.

¹⁰ 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 “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.”

¹¹ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

¹² Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹³ FLA. CONST., art. I, s. 24(c).

¹⁴ FLA. CONST., art. I, s. 24(c).

¹⁵ FLA. CONST., art. I, s. 24(c).

¹⁶ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly-created or substantially-amended public records or open meetings exemptions.¹⁷ It requires the automatic repeal of the exemption on October 2 of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁸ The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹⁹

Injunctions

A person may petition the court for several types of injunctions for protection, including injunctions against domestic violence,²⁰ repeat violence,²¹ dating violence²² sexual violence,²³ and stalking.²⁴

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.²⁵

Repeat violence constitutes two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner's immediate family member.²⁶

Dating violence is violence between individuals who have or have had a continuing and significant romantic relationship.²⁷ 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.

important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.
¹⁷ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System.

¹⁸ Section 119.15(3), F.S.

¹⁹ Section 119.15(6)(b), F.S.

²⁰ Section 741.30(1), F.S.

²¹ Section 784.046(2), F.S.

²² *Id.*

²³ *Id.*

²⁴ Section 784.0485(1), F.S.

²⁵ Section 741.28(2), F.S.

²⁶ Section 784.046(1)(b), F.S.

²⁷ Section 784.046(1)(d), F.S.

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.²⁸

A form for a petition for injunction against domestic violence is provided in Florida law.²⁹ 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.³⁰

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.³¹

Florida Family Law Rules of Procedure

The Florida Family Law Rules of Procedure protect from disclosure certain sensitive information recorded in family law cases.³² 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.³³ 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.³⁴

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,³⁵ and the address is then considered a confidential court record.³⁶

The Federal Parent Locator Service (FPLS) helps state and local child support agencies locate parents for participation in child support.³⁷ 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

²⁸ Section 784.046(1)(c), F.S.

²⁹ Section 741.30(3)(b), F.S., provides a petition for injunction for protection against domestic violence.

³⁰ Sections 741.30(4) and 784.046(5), F.S.

³¹ Section 741.30(5)(a), F.S.

³² RULE 12.012, FLA. FAM. L. R. P.

³³ RULE 12.010(a)(1), FLA. FAM. L. R. P.

³⁴ RULES 12.004(c) and 12.007(c), FLA. FAM. L. R. P.

³⁵ Section 741.30(3)(b), F.S., authorizes a petitioner to furnish his or her address in a separate confidential filing.

³⁶ RULE 12.007(b), FLA. FAM. L. R. P.

³⁷ 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).

child abuse.³⁸ In parent locator cases, a state court may override a family violence indicator to release information from the FPLS.³⁹ 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 proceedings are confidential and not available for public inspection until the court issues a final judgment.⁴⁰

III. Effect of Proposed Changes:

This bill creates a new public records exemption. The bill makes a petition for injunction and its contents confidential and 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,⁴¹ repeat violence,⁴² dating violence,⁴³ sexual violence,⁴⁴ and stalking.

The bill includes a statement of public necessity. Regarding the public records exemption on injunctions that are dismissed, the public necessity asserted to justify the exemption is that the records may be defamatory to the person named in the petition and 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.

The bill requires petitions for a protective injunction that are confidential and exempt under this bill to be removed from publicly available websites. The process for removal, however, differs depending on when the petition is placed on a website. 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 and any related documents. 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 stand repealed on October 2, 2022, unless reviewed and saved from repeal through legislative reenactment.

The bill takes effect July 1, 2017.

³⁸ RULE 12.650(b)(4), FLA. FAM. L. R. P.

³⁹ 42 U.S.C. s. 653; RULE 12.650(a), FLA. FAM. L. R. P.

⁴⁰ RULE 12.650(b)(4)(i), FLA. FAM. L. R. P.

⁴¹ Section 741.30(1), F.S.

⁴² Section 784.046(2), F.S.

⁴³ *Id.*

⁴⁴ *Id.*

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.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article I, s. 24(c) of the Florida Constitution, requires all proposed public records exemptions to be no broader than the stated purpose or public necessity. The justification of necessity provided in this bill for a petition for injunction is that disclosure could otherwise defame and damage the reputation of the person identified in the petition.

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 confidential and 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:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.0714, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.