

## HOUSE OF REPRESENTATIVES FINAL BILL ANALYSIS

<b>BILL #:</b>	CS/HB 239	<b>FINAL HOUSE FLOOR ACTION:</b>		
<b>SUBJECT/SHORT TITLE</b>	Public Records/Protective Injunction Petitions	116	Y's 0	N's
<b>SPONSOR(S):</b>	Civil Justice & Claims Subcommittee; Lee and others	<b>GOVERNOR'S ACTION:</b>	Approved	
<b>COMPANION BILLS:</b>	CS/CS/SB 1062			

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### SUMMARY ANALYSIS

CS/HB 239 passed the House on April 5, 2017, and subsequently passed the Senate on April 19, 2017. The bill creates a limited public records exemption related to protective injunctions.

An individual who believes that he or she is the victim of domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking may petition the court for an injunction for protection if certain requirements are met.

The bill exempts from public record requirements a petition, and the contents thereof, for an injunction for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking when the petition is dismissed without a hearing, dismissed at an ex parte hearing due to failure to state a claim or lack of jurisdiction, or dismissed for any reason having to do with the sufficiency of the petition itself without an injunction being issued on or after July 1, 2017. If such an injunction for protection was dismissed prior to July 1, 2017, the petition, and the contents thereof, are exempt only if the respondent requests.

The bill provides a public necessity statement as required by the Florida Constitution.

The bill was approved by the Governor on May 9, 2017, ch. 2017-14, L.O.F., and will become effective on July 1, 2017.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **Background**

##### Public Records

Article I, s. 24(a) of the Florida 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 Art. I, s. 24(a) of the Florida Constitution provided the exemption passes by two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption (public necessity statement), and is no broader than necessary to meet its public purpose.<sup>1</sup>

The Florida Statutes also address the public policy regarding access to government records. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt. Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."<sup>3</sup> However, the exemption may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- 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; or
- Protect trade or business secrets.<sup>4</sup>

The Open Government Sunset Review Act does not apply to an exemption that applies solely to the Legislature or the State Court System.<sup>5</sup>

##### Public Records and Court Proceedings and Files

Independent of constitutional and statutory provisions that require court files to be generally open to the public, the courts have found that "both civil and criminal court proceedings in Florida are public events" and that courts must "adhere to the well-established common law right of access to court proceedings and records."<sup>6</sup> A court may close a court file or a portion thereof on equitable grounds, but the ability to do so is limited. The Florida Supreme Court has ruled that "closure of court proceedings or records should occur only when necessary (a) to comply with established public policy set forth in the constitution, statutes, rules, or case law; (b) to protect trade secrets; (c) to protect a compelling governmental interest [e.g., national security; confidential informants]; (d) to obtain evidence to properly determine legal issues in a case; (e) to avoid substantial injury to innocent third parties [e.g., to protect

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<sup>1</sup> Fla.Const., art. I, s. 24(c).

<sup>2</sup> s. 119.15, F.S.

<sup>3</sup> s. 119.15(6)(b), F.S.

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

<sup>5</sup> s. 119.15(2)(b), F.S.

<sup>6</sup> *Barron v. Florida Freedom Newspapers, Inc.*, 531 So.2d 113, 116 (Fla. 1988)(ruling that court files in divorce cases are generally open despite the desire of the parties for privacy).

young witnesses from offensive testimony; to protect children in a divorce]; or (f) to avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of civil proceeding sought to be closed.”<sup>7</sup>

### Public Record Exemptions for Certain Court Records and Files

Currently, s. 119.0714(1), F.S., provides public record exemptions for various types of personal information contained in court files. Information currently exempt from public record requirements includes records prepared by an agency attorney,<sup>8</sup> various law enforcement confidential records,<sup>9</sup> social security numbers,<sup>10</sup> and bank account numbers.<sup>11</sup>

### Injunctions for Protection against Specified Acts of Violence

#### *Domestic Violence*

Any person who is the victim of domestic violence or who reasonably believes that he or she is in imminent danger of becoming the victim of domestic violence may file a petition for an injunction for protection against domestic violence.<sup>12</sup> Section 741.28, F.S., defines the term “domestic violence” as any 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. The sworn petition must allege the existence of domestic violence and include specific facts and circumstances upon which relief is sought.<sup>13</sup>

There are two hearings contemplated by the statute. The first is an ex parte hearing that occurs shortly after filing. The only evidence admissible in the ex parte hearing is verified pleadings or affidavits, unless the respondent appears at the hearing or has received reasonable notice of the hearing.<sup>14</sup> If it appears to the court that an immediate and present danger of domestic violence exists when the petition is filed, the court may grant a temporary injunction ex parte.<sup>15</sup> The court may grant such relief as it deems proper, including an injunction restraining the respondent from committing any acts of domestic violence, awarding to the petitioner the temporary exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner, and providing the petitioner a temporary parenting plan.<sup>16</sup> A temporary injunction is only effective for a fixed period that cannot exceed 15 days.<sup>17</sup> However, if the petition is insufficient, the court must dismiss the petition at the ex parte hearing. Importantly, where the petition is dismissed as insufficient at the ex parte hearing, the respondent is not notified of the petition.

If the court at the ex parte hearing determines the petition is sufficient, a temporary injunction is issued and the court must set a second hearing at the earliest possible time.<sup>18</sup> The respondent is notified of the second hearing as a part of the temporary injunction form. The second hearing on the petition must

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<sup>7</sup> *Id.* at 118.

<sup>8</sup> s. 119.0714(1)(a), F.S.

<sup>9</sup> ss. 119.0714(1)(c) through 119.0714(1)(h), F.S.

<sup>10</sup> s. 119.0714(1)(i), F.S.

<sup>11</sup> s. 119.0714(1)(j), F.S.

<sup>12</sup> s. 741.30(1), F.S.; see also flcourts.org, *Instructions for Florida Supreme Court Approved Family Law Form 12.980(a) Petition for Injunction for Protection Against Domestic Violence (11/15)*, available online at: <https://www.flcourts.org/core/fileparse.php/293/urlt/980a.pdf>.

<sup>13</sup> s. 741.30(3), F.S.

<sup>14</sup> s. 741.30(5)(b), F.S.

<sup>15</sup> s. 741.30(5)(a), F.S.

<sup>16</sup> s. 741.30(5), F.S.

<sup>17</sup> s. 741.30(5)(c), F.S.

<sup>18</sup> s. 741.30(4), F.S.

be set for a date on or before the date when the temporary injunction expires. The court may grant a continuance of the hearing for good cause, which may include obtaining service of process. A temporary injunction must be extended, if necessary, during any period of continuance.<sup>19</sup>

At the second hearing, specified injunctive relief may be granted if the court finds that the petitioner is the victim of domestic violence; or has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence.<sup>20</sup> Alternatively, the court may dismiss the petition at the second hearing based on insufficient evidence or the nonappearance of the petitioner.

#### *Repeat, Dating, and Sexual Violence*

Section 784.046, F.S., governs the issuance of injunctions against repeat violence, dating violence, and sexual violence. This process largely parallels the provisions and procedures discussed above regarding domestic violence injunctions. The forms of violence are described as follows:

- Section 784.046(1)(b), F.S., defines the term “repeat violence” to mean 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. Section 784.046(1)(a), F.S., defines the term “violence” to mean any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, or false imprisonment, or any criminal offense resulting in physical injury or death, by a person against any other person.
- Section 784.046(1)(d), F.S., defines the term “dating violence” to mean violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. Dating violence does not include violence in a casual acquaintanceship or between individuals who have only engaged in ordinary fraternization. The existence of such a relationship is determined by considering the following factors:
  - A dating relationship must have existed within the past six months;
  - The nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and
  - The persons involved in the relationship must have been involved over time and on a continuous basis during the course of the relationship.
- Section 784.046(1)(c), F.S., defines the term “sexual violence” to mean 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. For purposes of this definition, it does not matter whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney.

#### *Stalking and Cyberstalking*

Section 784.0485, F.S., governs the issuance of injunctions against stalking and cyberstalking. This process largely parallels the provisions and procedures discussed above regarding domestic violence injunctions. The terms stalking and cyberstalking are not defined in s. 784.0485, F.S.

#### **Effect of the Bill**

The bill creates s. 119.0714(1)(k), F.S., to provide that a petition, and the contents of the petition, for an injunction against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking that is dismissed without a hearing, is dismissed at an ex parte hearing due to failure to state a claim or a lack of jurisdiction, or is dismissed for any reason having to do with the sufficiency of

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<sup>19</sup> s. 741.30(5)(c), F.S.

<sup>20</sup> s. 741.30(6)(a), F.S.

the petition itself without an injunction being issued after July 1, 2017, is exempt<sup>21</sup> from s. 119.07(1), F.S., and art. I, s. 24(a) of the Florida Constitution.

As to petitions dismissed prior to July 1, 2017, the bill exempts from public record the petition upon request by the respondent. The request must be in the form of a signed, legibly written request specifying the case name, case number, document heading, and page number. The request must be delivered by mail, facsimile, electronic transmission, or in person to the clerk of the court. The clerk may not charge a fee for removal.

The bill provides a public necessity statement as required by the Florida Constitution, specifying that it is a public necessity to protect certain dismissed injunctions, and the contents of such injunctions, because the existence of such a petition and of the unverified allegations contained in such a petition could be defamatory to an individual, cause unwarranted damage to the reputation of such individual, and that correction of the public record by the removal of such a petition is the sole means of protecting the reputation of an individual named in such a petition.

## **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.

#### **2. Expenditures:**

See Fiscal Comments.

### **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:**

The bill does not appear to have a direct economic impact on the private sector.

### **D. FISCAL COMMENTS:**

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<sup>21</sup> There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates as *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 (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 2004); and *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, the record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See 85-62 Fla. Op. Att'y Gen. (1985).

The bill could have a minimal fiscal impact on court clerks because staff responsible for complying with public records requests may require training related to the creation of the public record exemption. In addition, clerks could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of clerks.