

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 441 Court Records  
**SPONSOR(S):** Civil Justice & Claims Subcommittee; Diamond  
**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 202

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	15 Y, 0 N, As CS	MacNamara	Bond
2) Oversight, Transparency & Administration Subcommittee	14 Y, 0 N	Toliver	Harrington
3) Judiciary Committee			

### SUMMARY ANALYSIS

The clerks of court are responsible for maintaining court records and generally making those records available for public inspection and copying. Where such records contain confidential information, the Florida Rules of Judicial Administration require a clerk of court to keep such records confidential. So that the clerk knows that information qualifies as confidential, the rules require the filer of any document containing confidential information to file a "Notice of Confidential Information within Court Filing" along with the document. This notice must indicate that either the entire document is confidential or identify the location of the confidential information within the document being filed.

The bill provides immunity from liability for clerks of court for the release of information that is made confidential by the Florida Rules of Judicial Administration where the filer failed to disclose the existence of the confidential information to the clerk as required by court rule. The bill also amends current law to remove outdated language.

The bill may have a positive fiscal impact on state government expenditures. The bill does not appear to have a fiscal impact on local governments.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Law**

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.<sup>1</sup> This right to access public records includes records made or received by legislative, executive, and judicial branches of government.<sup>2</sup>

A clerk of court is a custodian of public records. As custodian, clerks are required to provide access and copies of public records. Certain records are confidential or exempt<sup>3</sup> from disclosure under public records laws, including personal information of certain individuals such as law enforcement personnel, firefighters, justices and judges, state attorneys, magistrates, and others as specified by statute.<sup>4</sup> A clerk of court, as the custodian of public records, is responsible for maintaining official records and court records that may be confidential or exempt.

##### Court Records and Confidential Information

An official record is recorded by the clerk as part of a general series called "Official Records" and includes such documents as court orders, mortgages, deeds, notices of levy, tax warrants, and liens.<sup>5</sup>

Florida Rule of Judicial Administration 2.420(d) sets out procedures for determining confidentiality of court records. It requires filers and allows parties and affected non-parties to file a "Notice of Confidential Information within Court Filing," which triggers a review by the clerk of the court and a process to temporarily or permanently maintain the information as confidential.<sup>6</sup> Once the form notice is filed, the clerk of court must review filings identified as containing confidential information to determine whether the information is facially subject to confidentiality.<sup>7</sup>

For court records filed with the clerk of court on and after January 1, 2012, the clerk must maintain any social security numbers and financial account numbers in those records as confidential and exempt from disclosure under public records law.<sup>8</sup> Clerks are not liable for inadvertently releasing social security, bank account, charge, debit, and credit card numbers found in court records that were filed before January 1, 2012.<sup>9</sup> However, a person whose social security number or financial account number is contained in an older record, or his or her attorney or legal guardian, may request that the clerk redact the numbers from the record.<sup>10</sup>

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

<sup>2</sup> *Id.*

<sup>3</sup> There is a difference between records the Legislature designates as exempt from public record 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).

<sup>4</sup> S. 119.071(3)(d), F.S.

<sup>5</sup> S. 28.222(2) and (3), F.S.

<sup>6</sup> Fla. R. Jud. Admin. 2.420(d)(2).

<sup>7</sup> Fla. R. Jud. Admin. 2.420(d)(2)(B).

<sup>8</sup> S. 119.0714(2)(e), F.S.

<sup>9</sup> S. 119.0714(2)(d), F.S.

<sup>10</sup> See s. 119.0714(2), F.S.

Rule 2.420(d)(1)(B) of the Florida Rules of Judicial Administration requires the clerk of the court to designate and maintain the confidentiality of the following records or information, which are exempt from disclosure under existing law:

- Chapter 39, F.S., records relating to dependency matters, termination of parental rights, guardians ad litem, child abuse, neglect, and abandonment (ss. 39.0132(3) and (4)(a), F.S.).
- Adoption records (s. 63.162, F.S.).
- Social Security, bank account, charge, debit, and credit card numbers (s. 119.0714(1)(i)-(j) and (2)(a)-(e), F.S.).
- HIV test results and the identity of any person upon whom an HIV test has been performed (s. 381.004(2)(e), F.S.).
- Records, including test results, held by the Department of Health or its authorized representatives relating to sexually transmissible diseases (s. 384.29, F.S.).
- Birth records and portions of death and fetal death records (ss. 382.008(6) and 382.025(1), F.S.).
- Information that can be used to identify a minor petitioning for a waiver of parental notice when seeking to terminate pregnancy (s. 390.01116, F.S.).
- Clinical records under the Baker Act (s. 394.4615(7), F.S.).
- Records of substance abuse service providers which pertain to the identity, diagnosis, and prognosis of and service provision to individuals (s. 397.501(8), F.S.).
- Clinical records of criminal defendants found incompetent to proceed or acquitted by reason of insanity (s. 916.107(8), F.S.).
- Estate inventories and accountings (s. 733.604(1), F.S.).
- The victim's address in a domestic violence action on petitioner's request (s. 741.30(3)(b), F.S.).
- Protected information regarding victims of child abuse or sexual offenses (ss. 119.071(2)(h) and 119.0714(1)(h), F.S.).
- Gestational surrogacy records (s. 742.16(9), F.S.).
- Guardianship reports, orders appointing court monitors, and orders relating to findings of no probable cause in guardianship cases (ss. 744.1076 and 744.3701, F.S.).
- Grand jury records (ss. 905.17 and 905.28(1), F.S.).
- Records acquired by courts and law enforcement regarding family services for children (s. 984.06(3)-(4), F.S.).
- Juvenile delinquency records (ss. 985.04(1) and 985.045(2), F.S.).
- Records disclosing the identity of persons subject to tuberculosis proceedings and records held by the Department of Health or its authorized representatives relating to known or suspected cases of tuberculosis or exposure to tuberculosis (ss. 392.545 and 392.65, F.S.).
- Complete presentence investigation reports (Fla. R. Crim. P. 3.712).
- Forensic behavioral health evaluations under ch. 916, F.S. (s. 916.1065, F.S.).
- Eligibility screening, substance abuse screening, behavioral health evaluations, and treatment status reports for defendants referred to or considered for referral to a drug court program (s. 397.334(10)(a), F.S.).

Similarly, Rule 2.425, of the Florida Rules of Judicial Administration, relates to the minimization of filing sensitive information. Under this rule, designated sensitive information is formatted to limit the amount of confidential information filed with a court. In relevant part, the rule, unless authorized by statute, rule of court, or court order provides that court filings should not contain any portion of an individual's:

- Social security number,
- Bank account number,
- Credit card account number,
- Charge account number, or
- Debit account number.<sup>11</sup>

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<sup>11</sup> Fla. R. Jud. Admin. 2.425(a)(3).

Rule 2.515 of the Florida Rules of Judicial Administration requires every document of a party represented by an attorney be signed by at least one attorney of record. The attorney's signature constitutes a certificate by the attorney that, among other things, the document contains no confidential or sensitive information or that any such information has been protected by identifying the confidential or sensitive information in accordance with the requirements of the Florida Rules of Judicial Administration.<sup>12</sup>

### Clerks of Court Liability

Clerks also enjoy immunity from liability under common law. This may be in the form of either judicial immunity or qualified immunity.

The doctrine of judicial immunity insures that judges are immune from liability for damages for acts committed within their judicial jurisdiction and is essential to the preservation of an independent judiciary.<sup>13</sup> Judges enjoy absolute immunity for acts performed in the course of their judicial capacities unless they clearly act without jurisdiction.<sup>14</sup> This doctrine has been extended to quasi-judicial officials, such as a clerk of court, performing judicial acts.<sup>15</sup> In Florida, judicial immunity applies to all forms of suits against judicial officials, not just suits for money damages.<sup>16</sup>

Acts or omissions by a government official that are not protected by absolute immunity, such as judicial immunity, may be protected by qualified immunity.<sup>17</sup> The central purpose of qualified immunity is to protect public officials from undue interferences with their duties and from potentially disabling threats of liability. The doctrine insulates government officials from personal liability for money damages for actions taken pursuant to their discretionary authority insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.

Qualified immunity applies to all except the plainly incompetent or those who knowingly violate the law and turns upon the objective legal reasonableness of the official's action assessed in light of the legal rules that were clearly established at the time when the action was taken. To abrogate or limit a government official's immunity, a statute must be clear.<sup>18</sup>

### **Effect of Proposed Changes**

The bill provides that a clerk of court is not liable if confidential information is disclosed due to the filer's failure to disclose the existence of the confidential information to the clerk, as required by the Florida Rules of Judicial Administration.

The bill also removes outdated language.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 119.0714, F.S., related to court files; court records; official records.

Section 2 provides and effective date of July 1, 2017.

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<sup>12</sup> Fla. R. Jud. Admin. 2.515(a)(4).

<sup>13</sup> *Berry v. State*, 400 So.2d 80, 82–83 (Fla. 4th DCA 1981).

<sup>14</sup> *Id.* at 83.

<sup>15</sup> *See Zoba v. City of Coral Springs*, 189 So.3d 888 (Fla. 4th DCA 2016); *see also Fong v. Forman*, 105 So.3d 650 (Fla. 4th DCA 2013).

<sup>16</sup> *Fuller v. Truncale*, 50 So.3d 25, 30 (Fla. 1st DCA 2010).

<sup>17</sup> "Qualified Immunity" is defined to mean "[i]mmunity from civil liability for a public official who is performing a discretionary function, as long as the conduct does not violate clearly established constitutional or statutory rights." *Black's Law Dictionary* 643 (9th ed. abr., 2010).

<sup>18</sup> *Bates v. St. Lucie County Sheriff's Office*, 31 So.3d 210, 213 (Fla. 4th DCA 2010).

## 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:

The bill has the potential to result in an indeterminate positive impact for clerks through savings on legal fees.<sup>19</sup>

### 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 any direct economic impact on the private sector.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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<sup>19</sup> 2017 Clerks of Court Operations Corporation, Agency Bill Analysis for HB 411, p. 3 (February 11, 2017).

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 13, 2017, the Civil Justice & Claims Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removes the term "inadvertent" from the bill and thus limits the liability of the clerk for any disclosure of confidential information where the filer fails to disclose the nature of the confidential information within the document being filed.

This analysis is drafted to the committee substitute as passed by the Civil Justice & Claims Subcommittee.