

**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 Judiciary

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BILL: SB 980

INTRODUCER: Senator Harrell

SUBJECT: Public Records/Petition for Certain Protective Injunctions

DATE: March 1, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Tulloch	Cibula	JU	<b>Pre-meeting</b>
2.	_____	_____	GO	_____
3.	_____	_____	RC	_____

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**I. Summary:**

SB 980 creates a public records exemption that temporarily blocks public access to all information contained in a petition for a protective injunction alleging domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking filed with the court. The information in the petition for these protective injunctions will be confidential and exempt only until the respondent, i.e., alleged batterer or stalker, is served by a law enforcement officer with a copy of the petition, the notice of hearing, and copies of any affidavits or temporary injunctions.

The bill provides that the temporary exemption is a public necessity as it will ensure the physical safety of alleged victims and their families from retaliation by an abuser, as well as the physical safety of the law enforcement officers serving these petitions.

The bill takes effect July 1, 2019.

**II. Present Situation:**

**Public Records Law**

Article I, section 24 of 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>1</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>2</sup>

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

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

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.<sup>3</sup> The Public Records Act states that

[i]t 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>4</sup>

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>5</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>6</sup>

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>7</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>8</sup>

Only the Legislature may create an exemption to public records requirements.<sup>9</sup> An exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>10</sup> Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions<sup>11</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>12</sup>

When creating or expanding a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’<sup>13</sup> Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the

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<sup>3</sup> Public records laws are found throughout the Florida Statutes.

<sup>4</sup> Section 119.01(1), F.S.

<sup>5</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” 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>6</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>7</sup> Section 119.07(1)(a), F.S.

<sup>8</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

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

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

<sup>11</sup> The bill may, however, contain multiple exemptions that relate to one subject.

<sup>12</sup> FLA. CONST., art. I, s. 24(c).

<sup>13</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 Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

Legislature or pursuant to a court order. Records designated as ‘exempt’ may be released at the discretion of the records custodian under certain circumstances.<sup>14</sup>

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

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,<sup>15</sup> with specified exceptions.<sup>16</sup> It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>17</sup> 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.<sup>18</sup>

### **Public Records and the Judicial Branch**

The Public Records Act does not apply to judicial records.<sup>19</sup> As a coequal branch of government, the judicial branch “is not an ‘agency’ subject to the supervision or control by another coequal branch of government.”<sup>20</sup>

However, the judicial branch is required to maintain access to public records and court proceedings pursuant to article 1, section 24 of the Florida Constitution.<sup>21</sup> To meet its

<sup>14</sup> *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

<sup>15</sup> 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 (s. 119.15(4)(b), F.S.). 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 (s. 119.15(2), F.S.).

<sup>16</sup> Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

<sup>17</sup> Section 119.15(3), F.S.

<sup>18</sup> Section 119.15(6)(b), F.S.

<sup>19</sup> *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). *See also Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). Likewise, the Public Records Act does not apply to the Legislature. Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the Legislature.

<sup>20</sup> *Times Pub. Co. v. Ake*, 645 So. 2d 1003, 1004 (Fla. 2d DCA 1994), *approved*, 660 So. 2d 255 (Fla. 1995). *See also* FLA. CONST., art. II, s. 3 (providing for the separation of powers between the executive, judicial, and legislative branches; stating “[n]o person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.”). *See also* Florida Attorney General, GOVERNMENT-IN-THE-SUNSHINE MANUAL, A REFERENCE FOR COMPLIANCE WITH FLORIDA’S PUBLIC RECORDS AND OPEN MEETINGS LAWS, *Judiciary* at 10-11, (Vol. 39, 2017 Ed.), available at [http://myfloridalegal.com/webfiles.nsf/wf/mnos-akbs9l/\\$file/2017+sunshine+law+manual.pdf](http://myfloridalegal.com/webfiles.nsf/wf/mnos-akbs9l/$file/2017+sunshine+law+manual.pdf).

<sup>21</sup> *See* GOVERNMENT-IN-THE-SUNSHINE MANUAL at 60-65, *supra*. Even before article I, section 24 was passed to require access to public records and meetings by all branches of government, the Florida Supreme Court had recognized that access to court proceedings must be safeguarded as open, “public events.” *See Barron v. Florida Freedom Newspapers, Inc.*, 531 So. 2d 113, 116–19 (Fla. 1988) (“[B]oth civil and criminal court proceedings in Florida are public events and adhere to the well established common law right of access to court proceedings and records. . . . The reason for openness is basic to our form of government. Public trials are essential to the judicial system’s credibility in a free society.”) (citing *Craig v. Harney*, 331 U.S. 367, 374 (1947); *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580 n. 17 (1980)). *See also* William A. Buzzett and Deborah K. Kearney, *Commentary to 1992 Addition [of FLA. CONST., art. I, s. 24]*, Fla. Stat. Ann. (Westlaw 1992), noting the following history leading to the passage of article I, section 24:

Florida’s public records and open meetings laws have been a matter of statute since 1967. (Earlier requirements for public records had existed for some time.) Those statutes were not designed to apply to

constitutional obligation, the judicial branch adopted Florida Rule of Judicial Administration 2.420 entitled “Public Access to and Protection of Judicial Branch Records.” In pertinent part, Rule 2.420 provides:

**(a) Scope and Purpose.** Subject to the rulemaking power of the Florida Supreme Court provided by article V, section 2, Florida Constitution, the following rule shall govern public access to and the protection of the records of the judicial branch of government. The public shall have access to all records of the judicial branch of government, except as provided below. . . .

....  
**(c) Confidential and Exempt Records.** The following records of the judicial branch shall be confidential:

- ....
- (7) All records made confidential under the Florida and United States Constitutions and Florida and federal law;
  - (8) All records presently deemed to be confidential by court rule, including the Rules for Admission to the Bar, by Florida Statutes, by prior case law of the State of Florida, and by the rules of the Judicial Qualifications Commission;

....  
**(d) Procedures for Determining Confidentiality of Court Records.**

(1) The clerk of the court shall designate and maintain the confidentiality of any information contained within a court record that is described in subdivision (d)(1)(A) or (d)(1)(B) of this rule. The following information shall be maintained as confidential:

....  
 (B) except as provided by court order, information subject to subdivision (c)(7) or (c)(8) of this rule that is currently confidential or exempt from section 119.07, Florida Statutes, and article I, section 24(a) of the Florida Constitution as specifically stated in any of the following statutes or as they may be amended or renumbered:

....  
 (xii) The victim’s address in a domestic violence action on petitioner's request. § 741.30(3)(b), Fla. Stat.

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the legislative or judicial branches of state government, but were expressly intended to apply throughout the executive branch and to local governments, including counties, municipalities, and districts. The Supreme Court, the Senate and the House of Representatives each provided some form of access to records and proceedings by rule. In 1978, the Constitution Revision Commission proposed elevating these laws to constitutional status and applying them to records and meetings of the Legislature. That proposal was not adopted.

In *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992), the Florida Supreme Court determined that, based on separation of powers requirements, the public records law did not apply to the legislative branch, nor to constitutional officers of the other branches. The decision meant that records of legislators, as well as those of the governor and cabinet officers, at least with respect to the exercise of their constitutional powers, were not subject to the law. The decision caused a stir among the public and particularly the press. Efforts were quickly begun for constitutional change, which concluded with the successful passage of this amendment.

As evidenced by Rule 2.420, the judiciary may adopt, and has adopted, “legislative statements of policy as part of the rules governing matters within the jurisdiction of the judiciary,” including the disclosure or public inspection of court records.<sup>22</sup>

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

In s. 119.0714(1), F.S., the Legislature has provided that certain information, such as social security numbers<sup>23</sup> and bank account numbers,<sup>24</sup> contained in court records and files should be either exempt or confidential and exempt from the disclosure requirements of the public records laws. Rule of Judicial Administration 2.420 has not expressly adopted all of the statutory public records exemptions contained in s. 119.0714, F.S. However, the rule cross-references s. 119.0714, F.S., in listing social security numbers and bank account numbers as information the clerk of court must keep confidential when it is contained in a court file.<sup>25</sup>

### ***Exemptions Relating to Petitions for Protective Injunctions for Domestic, Repeat, Dating, and Sexual Violence and Stalking***

In 2017, the Legislature amended s. 119.0714(1), F.S., to add a public records exemption for information contained in a petition for a protective injunction that has been dismissed by a court.<sup>26</sup> The exemption is specific to dismissed petitions seeking protective injunctions against

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<sup>22</sup> See *Florida Pub. Co. v. State*, 706 So. 2d 54, 56 (Fla. 1st DCA 1998) (citing *Timmons v. Combs*, 608 So.2d 1, 3 (Fla.1992)). See also *Barron*, 531 So. 2d 113, 118 (“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 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. We find that, under appropriate circumstances, the constitutional right of privacy established in Florida by the adoption of article I, section 23, could form a constitutional basis for closure under (e) or (f). . . . Further, we note that it is generally the content of the subject matter rather than the status of the party that determines whether a privacy interest exists and closure should be permitted. However, a privacy claim may be negated if the content of the subject matter directly concerns a position of public trust held by the individual seeking closure.”) (holding that while a court has the power to close a proceeding, because a “strong presumption of openness exists for all court proceedings,” the court must consider certain factors before granting a request to close a proceeding).

<sup>23</sup> Section 119.0714(1)(i), F.S.

<sup>24</sup> Section 119.0714(1)(j), F.S.

<sup>25</sup> See also Fla. R. Jud. Admin. 2.420(d)(1)(B)(iii) (recognizing exemption of “[s]ocial Security, bank account, charge, debit, and credit card numbers. § 119.0714(1)(i)-(j), (2)(a)-(e), Fla. Stat. (Unless redaction is requested pursuant to § 119.0714(2), Fla. Stat., this information is exempt only as of January 1, 2012.)).

<sup>26</sup> Section 119.0714(1)(k)1.-2., F.S. For petitions filed on or after July 1, 2017, the exemption is automatic. For petitions filed before July 1, 2017, a request to make the petition exempt must be submitted to the court. *Id.*

domestic violence,<sup>27</sup> repeat violence,<sup>28</sup> dating violence,<sup>29</sup> sexual violence,<sup>30</sup> stalking,<sup>31</sup> and cyberstalking.<sup>32</sup> Although Rule of Judicial Administration 2.420 does not expressly adopt the foregoing legislative exemption, it expressly recognizes that a victim's address may be kept confidential when requested by the petitioner pursuant to s. 741.30(3)(b), F.S.<sup>33</sup> The Family Law Rules of Procedure 12.610 goes further, providing that a victim's address in a petition for a protective injunction against domestic, repeat, dating, or sexual violence and stalking may be kept confidential when requested by the victim in a separate document.

## **Petitions for Protective Injunctions for Domestic, Repeat, Dating, and Sexual Violence, and Stalking or Cyberstalking**

### *Court Filing and Due Process*

A petition for an injunction for protection against domestic violence,<sup>34</sup> repeat violence,<sup>35</sup> dating violence<sup>36</sup> sexual violence,<sup>37</sup> stalking, and cyberstalking<sup>38</sup> generally requires the following information:

- The petitioner's name and address.
- The respondent's information, including name and aliases, addresses of home and employment, and a physical description of the respondent.
- Information concerning any other cases open between the parties, including case numbers.

<sup>27</sup> Section 741.28(2), F.S. 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>28</sup> Section 784.046(1)(b), F.S. 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.

<sup>29</sup> Section 784.046(1)(d), F.S. Dating violence is violence between individuals who have or have had a continuing and significant romantic relationship.

<sup>30</sup> Section 784.046(1)(c), 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.

<sup>31</sup> Section 784.048(2), F.S. Stalking is defined as a crime committed by a person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person.

<sup>32</sup> Section 784.048(1)(d), F.S.

<sup>33</sup> The petitioner or victim must file a separate document requesting that his or her address be kept confidential. The petitioner may be in a safe place, such as a shelter or the home of a family member or friend, where disclosing the address not only puts him or herself in danger but others as well. See National Association for Court Management, A GUIDE TO DOMESTIC VIOLENCE CASES 25-26 (17th Ed.), available at [https://cms.flcourts.org/core/fileparse.php/531/urlt/Domestic-Violence-Guide2017\\_0.pdf](https://cms.flcourts.org/core/fileparse.php/531/urlt/Domestic-Violence-Guide2017_0.pdf).

<sup>34</sup> Section 741.30(1), F.S.

<sup>35</sup> Section 784.046(2), F.S.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Section 784.0485(1), F.S. 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, causing substantial emotional distress to that person and serving no legitimate purpose. Aggravated stalking occurs when a person willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person and makes a credible threat to that person. Section 784.048(3), F.S.

- Details concerning the respondent’s behavior leading the petitioner to file for a protective injunction.<sup>39</sup>

Upon filing a petition for a protective injunction, the clerk of court will open a court file, assign a case number, and create a docket for the case. The fact that a case has been docketed is generally available online to the public, and the parties (including the petitioner and respondent) will have additional online access to the pleadings filed in the case, including the petition.<sup>40</sup> Even if the petitioner requests that his or her address be kept confidential,<sup>41</sup> once the petition is filed and docketed, the other information in the petition becomes a public record.

The judge who is assigned the petition must hold a hearing at the earliest possible time.<sup>42</sup> If an immediate and present danger of domestic violence appears to exist, a judge may issue a temporary injunction *ex parte* prior to the full hearing.<sup>43</sup> Otherwise, the respondent/alleged batterer or stalker is entitled to due process, including a copy of the petition, any attached affidavits or temporary injunctions, and notice of the full hearing.

Generally, due to the risk of violence, petitions for domestic, repeat, dating, or sexual violence and stalking or cyberstalking must be personally served on the respondent/alleged batterer or stalker by a law enforcement officer.<sup>44</sup>

### ***Safety Risks Associated with Filing for Protective Injunctions***

Filing for an injunction for protection against domestic or other types of violence and stalking is often a victim’s first step toward separating from the abuser, but it is also the most dangerous time for a victim. Filing a petition for a protective injunctive places the abuser on notice that the victim is serious about the separation. “Men who have killed their wives state that threats of separation were most often the precipitating events that led to the murder.”<sup>45</sup>

In light of today’s technology, it is possible that an abuser may know the victim’s every move.<sup>46</sup> Many victims report that abusers routinely check on-line or otherwise contact the courthouse to monitor whether the victim has filed for an injunction or a divorce. “The availability of information that the victim intends to leave the abuser prior to service of court documents

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<sup>39</sup> See Section 741.30(3)(b), F.S. (providing a form petition for protective injunction against domestic violence); s. 784.046(4)(b), F.S. (providing a form petition for protective injunction against repeat, sexual, or dating violence); s. 784.0485(3)(b), F.S. (providing a form petition for protective injunction against stalking and cyberstalking).

<sup>40</sup> See Florida Courts, *Standards for Access to Electronic Court Records*, 2 (March 2014), available at <https://www.flcourts.org/Resources-Services/Court-Technology/Technology-Standards>.

<sup>41</sup> *Id.*

<sup>42</sup> Sections 741.30(4) and 784.046(5), F.S.

<sup>43</sup> Section 741.30(5)(a), F.S.

<sup>44</sup> See Section 741.30(4), (8)(a)1, F.S.; s. 784.046(5), (8)(a)1., F.S.; s. 784.0485(4), (8)(a)1., F.S.

<sup>45</sup> National Association for Court Management, *A GUIDE TO DOMESTIC VIOLENCE CASES 9-10* (17th Ed.), available at [https://cms.flcourts.org/core/fileparse.php/531/urlt/Domestic-Violence-Guide2017\\_0.pdf](https://cms.flcourts.org/core/fileparse.php/531/urlt/Domestic-Violence-Guide2017_0.pdf). According to the Florida Coalition Against Domestic Violence, FDLE reported that, in 2017, there were 106,797 domestic violence offenses, including 180 domestic homicides. For the first half of 2018, FDLE reported that there were 51,433 domestic violence offenses, including 101 domestic violence homicides. See n. 44, *infra*.

<sup>46</sup> *Id.* at 15.

dramatically decreases the amount of time victims have to take additional affirmative actions to remain safe.”<sup>47</sup>

Additionally, publicly accessible court records give an abuser advance warning of a visit from law enforcement officers. With this information, the abuser may plan to retaliate against those officers, placing them in danger, or attempt to elude being personally served with the petition.<sup>48</sup>

***Attorney Solicitation of Respondents to Petitions for Protective Injunctions for Domestic, Repeat, Dating, and Sexual Violence and Stalking***

Another risk to petitioners/victims is created by solicitation letters from attorneys and third party attorney referral services. Because a respondent’s name and address is listed in a petition for a protective injunction, attorneys or attorney referral services can access the respondent’s information through a public records request. The attorney or attorney referral service then mails a solicitation letter to the respondent offering legal assistance or a referral to a lawyer to assist the respondent with the recently filed petition.<sup>49</sup>

Unfortunately, these letters often reach the respondent before law enforcement can serve the respondent with a copy of the petition and notice of hearing. There have been several reported cases of respondents receiving advance notice of a pending case through these letters and violently retaliating against the petitioner.<sup>50</sup>

Although the judicial branch has approved a rule regulating The Florida Bar which prohibits attorneys from these types of solicitation practices, the rule does not apply when an attorney has previously represented the respondent.<sup>51</sup> Additionally, third party referral services are not subject to The Florida Bar rules.

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<sup>47</sup> Florida Coalition Against Domestic Violence, *SB 980 Public Records/Petition for Certain Protective Injunctions* (2019) (on file with Senate Judiciary Committee).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* See also Letter from Chief Judge Mark H. Mahon, Fourth Judicial Circuit, to the Florida Steering Committee on Families and Children in the Courts, “Re: Solicitation letters in injunction for protection cases,” Aug. 1, 2016 (on file with the Senate Judiciary Committee).

<sup>50</sup> *Id.* See news articles attached to the Letter from Chief Judge Mahon to the Steering Committee on Families and Children in the Courts, *supra*.

<sup>51</sup> *Id.* See also Fla. Bar Rule 4-7.18(b)(1) “Direct Contact with Prospective Clients”:

(1) A lawyer may not send, or knowingly permit to be sent, on the lawyer’s behalf or on behalf of the lawyer’s firm or partner, an associate, or any other lawyer affiliated with the lawyer or the lawyer’s firm, a written communication directly or indirectly to a prospective client for the purpose of obtaining professional employment if: . . .

(G) the communication concerns a request for an injunction for protection against any form of physical violence and is addressed to the respondent in the injunction petition, if the lawyer knows or reasonably should know that the respondent named in the injunction petition has not yet been served with notice of process in the matter.

. . . .

(3) The requirements in subdivision (b)(2) of this rule do not apply to communications between lawyers, between lawyers and their own current and former clients, or between lawyers and their own family members, or to communications by the lawyer at a prospective client’s request.



### III. Effect of Proposed Changes:

This bill creates a public records exemption that temporarily blocks public access to a court file containing a petition for a protective injunction alleging domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking.

**Section 1** of the bill requires that all information in a petition for a protective injunction be maintained as confidential and exempt until the respondent has been personally served with a copy of the petition, the notice of hearing, and any affidavits or temporary injunctions.

**Section 2** states that is a public necessity that the information contained in petitions for protective injunctions be maintained as confidential and exempt until the respondent is served with process in order to ensure the physical safety of alleged victims and their families, as well as the law enforcement officers serving such petitions on respondents.

**Section 3** provides that the bill takes effect July 1, 2019.

### IV. Constitutional Issues:

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

None.

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

##### **Vote Requirement**

Because the bill creates a public records exemption, Article I, s. 24(c) of 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 that the exemption 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.

#### D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

**First Amendment Commercial Speech**

The bill appears to potentially restrict commercial speech. Commercial speech is protected by the First Amendment to the United States Constitution. “Commercial speech that is not false or deceptive and does not concern unlawful activities . . . may be restricted only in the service of a substantial governmental interest, and only through means that directly advance that interest.”<sup>52</sup> Government action restricting commercial speech is subject to the intermediate level of constitutional scrutiny, which asks “whether an imposition on commercial speech (1) promotes a substantial governmental interest; (2) directly advances the interest asserted; and (3) is not more extensive than necessary to serve that interest.”<sup>53</sup>

Here, the bill restricts some lawful commercial speech, but the restriction is temporary, lasting only until the petition for a protective injunction has been served on the respondent. Additionally, the temporary restriction on commercial speech appears to be narrowly tailored to promote a substantial government interest: the safety and protection of victims of domestic, repeat, dating, or sexual violence, or stalking and cyberstalking who have filed a petition for injunctive relief.

**Separation of Powers**

While the judicial branch is not subject to the Public Records Act, the judicial branch generally honors or adopts the public records exemptions passed by the Legislature. Additionally, the Florida Supreme Court has indicated that it has no objection to the Florida Steering Committee on Children and Families in the Courts pursuing this bill.<sup>54</sup>

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill affords greater protection to victims of domestic and other violence and stalking from physical violence, and affords these victims time to safely separate from the abuser.

C. Government Sector Impact:

The court system reports that the bill will have no significant fiscal or operational impact.

<sup>52</sup> *Rubenstein v. Florida Bar*, 72 F. Supp. 3d 1298, 1310–11 (S.D. Fla. 2014) (quoting *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626, 638 (1985))(internal quotations omitted).

<sup>53</sup> *Id.* at 1311 (citations omitted).

<sup>54</sup> See Judicial Branch 2019 Legislative Agenda, *Injunctions Against Violence of Stalking – Public Records*, p. 25 (on file with Senate Judiciary Committee).

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

While the bill makes the information contained in the actual petition temporarily confidential and exempt, it does not make the fact that a petition for a protective injunction has been filed and docketed confidential and exempt. In other words, a respondent may still see that he or she has been named as a party in a case if the respondent is routinely looking at the online court dockets (as reported by some victims).

**VIII. Statutes Affected:**

This bill substantially amends section 119.0714 of the 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.