

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 691 Pub. Rec./Staff and Volunteers of Domestic Violence Centers

**SPONSOR(S):** Children, Families & Seniors Subcommittee, Borrero

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 68

| REFERENCE                                    | ACTION           | ANALYST  | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|--|------------------|----------|--|
| 1) Children, Families & Seniors Subcommittee | 17 Y, 0 N, As CS | Woodruff | Brazzell                                 |
| 2) Government Operations Subcommittee        |                  |          |  |
| 3) Health & Human Services Committee         |                  |          |  |

### SUMMARY ANALYSIS

The Domestic Violence Program protects adults and their children from domestic violence and helps survivors develop ways to avoid further harm. The Department of Children and Families (DCF) is statutorily responsible for the statewide domestic violence program.

DCF is responsible for receiving and approving or rejecting applications for the certification of domestic violence centers. Florida has 41 certified domestic violence centers. These certified centers provide crisis counseling and support services to survivors of domestic violence and their children. Certified domestic violence centers employ staff and rely on volunteers to provide services to survivors. A domestic violence advocate is an employee or a volunteer of a certified center who has 30 hours of training in assisting victims of domestic violence.

Current law provides no public records exemption to protect the personal information of current or former staff and domestic violence advocates of certified domestic violence centers certified by DCF. There is also no public records exemption to protect the personal information of the spouses and children of current or former staff and domestic violence advocates. DCF has received reports from certified domestic violence centers that their employees and domestic violence advocates have been physically threatened, stalked, and emotionally abused by perpetrators because of the protective services the centers provide to survivors of domestic violence and their children.

HB 691 creates a public record exemption to protect certain personal information of current or former staff and domestic violence advocates of certified domestic violence centers, their spouses, and children.

The bill subjects this public record exemption to the Open Government Sunset Review Act, and thus the exemption will be repealed on October 2, 2024, unless it is reviewed and saved from repeal by the Legislature. The bill also provides a statement of public necessity as required by the Florida Constitution.

The bill does not appear to have a fiscal impact on the state or local governments.

**Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records or public meeting exemption. The bill creates a new public record exemption for certain personal information of current or former staff and volunteers, as well as for certain personal information of their spouses and children; thus, it requires a two-thirds vote for final passage.**

### FULL ANALYSIS

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0691a.CFS

DATE: 3/4/2021

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### **Domestic Violence**

Domestic violence is a pattern of behavior, violence, or threats of violence that one person uses to establish power and control over a current or former intimate partner.<sup>1</sup> The use of threats, intimidation, isolation, and using children as pawns are examples of the tactics domestic violence perpetrators use against victims of domestic violence.

Florida law defines 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.<sup>2</sup> A family or household member includes spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.<sup>3</sup>

In 2018, 104,914 domestic violence offenses were reported to law enforcement.<sup>4</sup> That same year, 215 individuals died as a result of domestic violence homicide, representing approximately 19 percent of all homicides in Florida.<sup>5</sup>

##### **Domestic Violence Program**

The Domestic Violence Program protects adults and their children from domestic violence and helps survivors develop ways to avoid further harm. The Department of Children and Families (DCF) is statutorily responsible for the statewide domestic violence program and is responsible for performing specified duties and functions with respect to domestic violence. Under section 39.903, F.S., DCF must:

- Operate the domestic violence program and coordinate and administer statewide activities related to the prevention of domestic violence.
- Receive and approve or reject applications for initial certification of domestic violence centers, and annually renew the certification thereafter.
- Inspect the premises of domestic violence centers that are applying for an initial certification or facing potential suspension or revocation of certification to effectively evaluate the state of compliance with minimum standards.
- Promote the involvement of certified domestic violence centers in the coordination, development, and planning of domestic violence programming in the circuits.
- Coordinate with state agencies that have health, education, or criminal justice responsibilities to raise awareness of domestic violence and promote consistent policy implementation.
- Cooperate with, assist in and participate in, programs of other properly qualified state agencies, including any agency of the federal government, schools of medicine, hospitals, and clinics, in planning and conducting research on the prevention of domestic violence and the provision of services to clients.
- Contract with an entity or entities for the delivery and management of services for the state's domestic violence program if DCF determines that doing so is in the best interest of the state.

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<sup>1</sup> Florida Coalition Against Domestic Violence, 2019 Annual Report, p. 3, <https://www.myflfamilies.com/service-programs/domestic-violence/docs/2019%20Annual%20%20Report.pdf> (last visited Feb 28, 2021).

<sup>2</sup> S. 741.28(1), F.S.

<sup>3</sup> S. 741.28(2), F.S.

<sup>4</sup> Florida Coalition Against Domestic Violence, 2019 Annual Report, p. 4, <https://www.myflfamilies.com/service-programs/domestic-violence/docs/2019%20Annual%20%20Report.pdf> (last visited Feb 28, 2021).

<sup>5</sup> *Id.*

- Consider applications from certified domestic violence centers for capital improvement grants and award those grants in accordance with s. 39.9055, F.S.
- Adopt by rule procedures to administer this section, including developing criteria for the approval, suspension, or rejection of certification of domestic violence centers and developing minimum standards for domestic violence centers to ensure the health and safety of the clients in the centers.

## Domestic Violence Centers

Domestic violence centers provide services to survivors of domestic violence.<sup>6</sup> Florida has 41 certified domestic violence centers. The certified domestic violence centers provide crisis counseling and support services to victims of domestic violence and their children.<sup>7</sup>

The domestic violence centers provide services free of charge and include:

- Emergency shelter.
- A 24-hour crisis and information hotline.
- Safety planning.
- Counseling, case management, and child assessments.
- Education for community awareness.
- Training for law enforcement and other professionals.
- Other ancillary services such as relocation assistance, daycare, and transitional housing.<sup>8</sup>

Current law requires domestic violence centers to be certified by DCF in order to receive state funding.<sup>9</sup> DCF sets criteria for certification and sets minimum standards to ensure the health and safety of clients served.<sup>10</sup> To be eligible for certification as a domestic violence center, an applicant must apply to DCF and be a not-for-profit entity. A domestic violence center's primary mission must be to provide services to survivors of domestic violence.

An applicant may seek certification to serve an area that has an existing certified domestic violence center; however, the applicant must show there is an unmet need in the area.<sup>11</sup> An applicant can only apply if its domestic violence center has been providing services to survivors for 18 consecutive months, including 12 months as an emergency shelter.<sup>12</sup> After DCF certifies a domestic violence center, the certification is good for one year and automatically expires on June 30. If there is a favorable report from DCF, it will annually renew a domestic violence center's certification.<sup>13</sup>

Certified domestic violence centers employ staff and rely on volunteers to provide services to survivors. A domestic violence advocate is an employee or a volunteer of a certified center who has 30 hours of training in assisting victims of domestic violence and is an employee or volunteer for a program for survivors of domestic violence whose primary purpose is the rendering of advice, counseling, or assistance to survivors of domestic violence.<sup>14</sup> A volunteer is an unpaid staff member who provides

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<sup>6</sup> S. 39.902(2), F.S. S. 741.28(2), F.S., defines "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." Further, s. 741.28(3), F.S., defines "family or household member" as "spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit."

<sup>7</sup> Department of Children and Families, *Domestic Violence Overview*, <https://www.myflfamilies.com/service-programs/domestic-violence/overview.shtml> (last visited Feb. 20, 2021).

<sup>8</sup> *Id.*

<sup>9</sup> S. 39.905(6)(a), F.S.

<sup>10</sup> S. 39.905(9), F.S.; R. 65H-1, F.A.C.

<sup>11</sup> R. 65H-1.012, F.A.C.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> S. 90.5036, F.S.; R. 65H-1.011(9), F.A.C., states "'domestic violence advocate' means an employee or volunteer of a certified domestic violence center who: provides direct services to individuals victimized by domestic violence; has received 30 hours of domestic violence core competency training; and, has been identified by the domestic violence center as an individual who may assert a claim to privileged communications with domestic violence victims under section 39.905, F.S."

direct or indirect services for a certified domestic violence center. All employees and volunteers receive some degree of training on domestic violence.<sup>15</sup>

Staff, including volunteers, of certified domestic violence centers are required to submit to a background screening, except personnel who assist on an intermittent basis for less than 10 hours per month if a person who meets the screening requirement is always present and has the volunteer within his or her line of sight.<sup>16</sup> As a practical matter, certified domestic violence centers generally require background checks for all volunteers.

There are 17,692 domestic violence advocates registered in the DCF domestic violence advocate-victim privilege database. Of those, 2,727 are current employees and volunteers of certified domestic violence centers, and 14,965 are no longer employed or volunteer at a certified domestic violence center. Advocates are not removed from the privilege database after they leave because they may be later subpoenaed for information and need to be able to assert the privilege, or they may become employed by or volunteer at another program.<sup>17</sup>

DCF has received reports from certified domestic violence centers that their employees and volunteers have been physically threatened, stalked, and emotionally abused by perpetrators because of the protective services the centers provide to survivors of domestic violence and their children.<sup>18</sup> DCF has also received reports that these threats have led staff to leave their employment due to safety concerns and stress.<sup>19</sup>

## Public Records

The state Constitution guarantees every person the right to inspect or copy any public record made or received in connection with the official business of the legislative, executive, or judicial branches of government.<sup>20</sup> The Legislature, however, may provide by general law for the exemption of records from the constitutional requirement.<sup>21</sup> The general law must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the law.<sup>22</sup> A bill enacting an exemption must pass by a two-thirds vote of the members present and voting.<sup>23</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Further, the Open Government Sunset Review Act provides that a public record exemption may be created or maintained only if it serves an identified public purpose.<sup>24</sup> In addition, it 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 government program, which administration would be significantly impaired without the exemption;
- Protect personal identifying information that, if released, would be defamatory or would jeopardize an individual's safety; or
- Protect trade or business secrets.<sup>25</sup>

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<sup>15</sup> Rule 65H-1.011(17), F.A.C., states "'volunteer' means unpaid staff members trained in the dynamics of domestic violence who provide direct and indirect services to those seeking and receiving services from a domestic violence center".

<sup>16</sup> S. 39.001(2)(a), F.S.

<sup>17</sup> Email from John Paul Fiore, Legislative Specialist, DCF, RE: Domestic Violence Advocate (Email on file with the Children, Families, Seniors Subcommittee) (Feb. 24, 2021).

<sup>18</sup> Department of Children and Families, *2021 Agency Bill Analysis for HB 691*, p. 2, Jan. 11, 2021.

<sup>19</sup> *Id.*

<sup>20</sup> Fla. Const., art. I, s. 24(a).

<sup>21</sup> Fla. Const., art. I, s. 24(c).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> S. 119.15, F.S.

<sup>25</sup> S. 119.15(6)(b), F.S.

The Act also requires the automatic repeal of a public record or public meeting exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>26</sup>

There is currently no public records exemption for the home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former staff and volunteers of domestic violence centers certified by DCF. There is also no public records exemption for the names, home addresses, telephone numbers, places of employment, dates of birth, and photographs of the spouse and children of current or former staff and volunteers of certified domestic violence centers, or for the names and locations of schools and day care facilities attended by the children of center personnel.

### **Effect of Proposed Changes**

HB 691 creates a public records exemption for the home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former staff and domestic violence advocates of domestic violence centers certified by DCF.

The bill also creates a public records exemption for the names, home addresses, telephone numbers places of employment, dates of birth, and photographs of the spouses and children of current or former staff and domestic violence advocates of certified domestic violence centers. It also creates an exemption for the names and locations of schools and day care facilities attended by the children of these personnel.

The bill includes a statement of public necessity as required by the Florida Constitution, stating that the exemption is necessary to protect the domestic violence centers' personnel and their family members from a heightened risk of physical and emotional harm from perpetrators of domestic violence and to provide safeguards to staff and volunteers who are offering their time to protect victims of domestic violence.

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

**Section 1:** Amends s. 119.017, relating to general exemption from inspection or copying of public records.

**Section 2:** Provides a public necessity statement.

**Section 3:** Provides an effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created or expanded public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a new public record exemption to protect certain personal information of current or former staff and volunteers of certified domestic violence centers, their spouses, and children.

B. RULE-MAKING AUTHORITY:

The bill does not require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 3, 2021, the Children, Families, and Seniors Subcommittee adopted an amendment and reported the bill favorably as amended. The amendment narrows the group of volunteers to whom the exemption applies by changing the term “volunteer” to “domestic violence advocate”, as defined in s. 90.5036(1)(b), F.S.

The analysis is drafted to the amended bill as passed by the Children, Families, and Seniors Subcommittee.

