

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

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

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

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

FINAL HOUSE FLOOR ACTION: 115 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 691 passed the House on April 27, 2021, as CS/SB 68.

The Domestic Violence Program within the Department of Children and Families (DCF) protects adults and their children from domestic violence and helps survivors avoid further harm. DCF certifies and funds domestic violence centers, which 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, including domestic violence advocates who assist survivors of domestic violence.

Certified domestic violence centers have reported to DCF that 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, possibly creating a safety risk.

Current law has no public records exemption for the personal information of current or former staff and domestic violence advocates of certified domestic violence centers. There is also no public records exemption for the personal information of the spouses and children of current or former staff and domestic violence advocates. This means their personal information may be accessible to perpetrators.

The bill creates a public records exemption for certain personal information of current or former staff and domestic violence advocates of certified domestic violence centers, their spouses, and children.

The bill subjects the public records exemption to the Open Government Sunset Review Act; thus the exemption will be repealed on October 2, 2024, unless it is reviewed and saved from repeal by the Legislature.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

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

The bill was approved by the Governor on June 4, 2021, ch. 2021-48, L.O.F., the effective date of this bill is July 1, 2021.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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.¹ 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.² 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.³

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

Domestic Violence Program

The Domestic Violence Program protects adults and their children from domestic violence and helps survivors avoid further harm. The Department of Children and Families (DCF) is statutorily responsible for the statewide domestic violence program. Under section 39.903, F.S., DCF must coordinate and administer the statewide domestic violence program and certify and fund domestic violence centers. DCF relies on certified domestic violence centers to provide crisis counseling and support services to survivors and their children.

Domestic Violence Centers

Section 39.905(1)(c), F.S., requires centers to provide certain services, including, but not limited to emergency shelter, a 24-hour crisis and information hotline, crisis counseling and support, and other ancillary services such as relocation assistance, daycare, and transitional housing.⁶

In order to receive state funding from DCF, domestic violence centers must be certified and provide a local match.⁷ DCF sets criteria for certification to ensure the health and safety of clients served.⁸ Certification is good for one year and automatically expires on June 30, unless renewed by DCF.⁹

¹ 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 Mar. 5, 2021).

² S. 741.28(1), F.S.

³ S. 741.28(2), F.S.

⁴ Florida Coalition Against Domestic Violence, *supra* n. 1 at p. 4.

⁵ *Id.*

⁶ *Id.*

⁷ S. 39.905(6)(a), F.S.

⁸ S. 39.905(9), F.S.; R. 65H-1, F.A.C.

⁹ *Id.*

Certified domestic violence centers employ staff and rely on volunteers to serve survivors. Certified domestic violence must maintain current, accurate, and complete personnel records for all employees and volunteers, including position descriptions and training records.¹⁰ 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.¹¹ A volunteer is an unpaid staff member who provides direct or indirect services for a certified domestic violence center. All employees and volunteers receive some degree of training on domestic violence.¹²

Staff and volunteers of certified domestic violence centers are required to submit to a background screening, unless they assist on an intermittent basis for less than 10 hours per month and are within the line of sight of personnel who has met the screening requirements.¹³

Domestic Violence Personnel Data

Current law creates a privilege for a domestic violence victim to refuse to disclose, and to prevent any other person from disclosing, a confidential communication made by the victim to a domestic violence advocate or any record made in the course of advising, counseling, or assisting the victim.¹⁴ The victim or victim's attorney, the victim's guardian or conservator, personal representatives of a deceased victim, or the domestic violence advocate may claim the privilege.¹⁵ This privilege protects domestic violence victims from further harm by abusers who may obtain information from the disclosure of confidential information between a victim and a domestic violence advocate and records made during the delivery of domestic violence services.

The communication privilege only applies if the domestic violence advocate registers for the privilege at the time the communication is made.¹⁶ Current law requires certified centers to ensure all employees and volunteers register for the privilege, and provide a list to DCF of those who have registered.¹⁷ DCF maintains a registry of employees and volunteers who have invoked the privilege. This database includes 17,692 domestic violence advocate registrants.¹⁸ 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.¹⁹ DCF does not remove advocates from the database after they leave a center 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.²⁰

DCF has received reports from certified domestic violence centers that 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.²¹ DCF has also

¹⁰ R. 65H-1.013(8)(f), F.A.C.

¹¹ 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."

¹² 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".

¹³ S. 39.001(2)(a), F.S.

¹⁴ S. 90.5036(2), F.S.

¹⁵ S. 90.5036(3), F.S.

¹⁶ *Supra* note 14.

¹⁷ S. 39.905(1)(g), F.S.

¹⁸ Email from John Paul Fiore, Legislative Specialist, DCF, RE: Domestic Violence Advocate (Email on file with the Children, Families, Seniors Subcommittee) (Feb. 24, 2021).

¹⁹ *Id.*

²⁰ *Id.*

²¹ Department of Children and Families, *2021 Agency Bill Analysis for HB 691*, p. 2, Jan. 11, 2021.

received reports that these threats have led staff to leave their employment due to safety concerns and stress.²²

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.²³ The Legislature, however, may provide by general law for the exemption of records from the constitutional requirement.²⁴ 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.²⁵ A bill enacting an exemption must pass by a two-thirds vote of the members present and voting.²⁶

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 (Act) provides that a public record exemption may be created or maintained only if it serves an identified public purpose.²⁷ 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.²⁸

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.²⁹

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 domestic violence advocates of certified domestic violence centers. 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 the Bill

The bill 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 certified domestic violence centers.

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 creates an exemption

²² *Id.*

²³ Fla. Const., art. I, s. 24(a).

²⁴ Fla. Const., art. I, s. 24(c).

²⁵ *Id.*

²⁶ *Id.*

²⁷ S. 119.15, F.S.

²⁸ S. 119.15(6)(b), F.S.

²⁹ S. 119.15(3), F.S.

for the names and locations of schools and day care facilities attended by the children of certified domestic violence 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 domestic violence advocates who are offering their time to protect survivors of domestic violence.

The bill takes effect upon becoming a law.

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.