

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.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: CS/SB 70

INTRODUCER: Children, Families, and Elder Affairs and Senator Garcia

SUBJECT: Domestic Violence Centers

DATE: February 5, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Moody	Cox	CF	Fav/CS
2.			CJ	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 70 creates s. 39.9057, F.S., making it a first degree misdemeanor to maliciously publish, disseminate, or disclose any information or image which may identify a domestic violence center certified under s. 39.905, F.S. Any person who violates the law commits a misdemeanor of the first degree, punishable by up to one year imprisonment or \$1,000 fine as provided in s. 775.082, F.S., or s. 775.083, F.S.

The bill reclassifies the penalty from a first degree misdemeanor to a third degree felony for a second or subsequent violation. A third degree felony is punishable by up to five years imprisonment or \$5,000 fine as provided in s. 775.82, F.S, s. 775.83, F.S., or s.775.084, F.S.

The bill creates a new first degree misdemeanor. To the extent this results in persons being sentenced to jail, it will likely have a positive insignificant jail bed impact (i.e. an increase of 10 or fewer beds). The Criminal Justice Impact Conference has not heard the bill at this time. However, the bill creates a third degree felony. To the extent this results in persons being sentenced to prison, the bill will likely have a positive insignificant prison bed impact (i.e. an increase of 10 or fewer beds). See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2021.

II. Present Situation:

Certified Domestic Violence Centers

Section 39.903, F.S., requires the DCF to comply with a variety of duties related to domestic violence centers. In part, the DCF is required to approve or reject the applications for initial certification of domestic violence centers, and annually renew the certification thereafter.¹ Certified domestic violence centers must comply and meet minimum statutory requirements.²

The DCF and domestic violence center employees and volunteers must keep the location of the centers and any information received by center clients as such information is deemed confidential and exempt³ from the requirements of ch. 119, F.S.⁴ Center clients may provide written consent to disclose information or records pertaining to them, and information about a client or the location of a center may be provided by staff or volunteers to law enforcement, firefighting, medical, or other personnel in the following circumstances:

- To medical personnel in a medical emergency.
- Upon a court order based upon an application by a law enforcement officer for a criminal arrest warrant which alleges that the individual sought to be arrested is located at the domestic violence shelter.
- Upon a search warrant that specifies the individual or object of the search and alleges that the individual or object is located at the shelter.
- To firefighting personnel in a fire emergency.
- To any other person necessary to maintain the safety and health standards in the domestic violence shelter.
- Information solely about the location of the domestic violence shelter may be given to those with whom the agency has an established business relationship.⁵

Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁶

¹ Section 39.903(2), F.S.

² Section 39.905(1), F.S. (requiring, for instance, certified domestic violence centers to: provide a facility which will serve as a center to receive and house persons who are victims of domestic violence, including children of the victim; provide services such as information and referral services, counseling and case management services, temporary emergency shelter for more than 24 hours, a 24-hour hotline, and training for law enforcement personnel; file with the DCF a list of the names of the domestic violence advocates who are employed or who volunteer at the domestic violence center who may claim privilege under s. 90.5036, F.S.)

³ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

⁴ Section 39.908(1), F.S.

⁵ Section 39.908(2), F.S.

⁶ Section 119.01(1), F.S. 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.”

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁷ The Florida Supreme Court has interpreted the statutory definition of “public record” to include material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.⁸

A domestic violence victim may request in writing that information which reveals his or her home or employment telephone number, home address, or personal assets is exempt from s. 119.07(1), F.S., and s. 24(a), Art. 1 of the Florida Constitution, but such request must contain official verification that an applicable crime has occurred.⁹

Any public officer who violates any provision of the Public Records Act commits a noncriminal infraction or, if he or she knowingly violated it, is subject to suspension and removal or impeachment and commits a misdemeanor of the first degree.^{10, 11} Any person who willfully and knowingly violates any provision of Public Records Act commits a misdemeanor of the first degree.

Address of Domestic Violence Victim Exempt

Chapter 741, F.S., establishes an Address Confidentiality Program in which the Attorney General serves as the address¹² of a domestic violence victim who fears for his or her safety or his or her children’s safety.¹³ Addresses, telephone numbers, and social security numbers of participants in the program that are held by the Attorney General, supervisor of elections, and Department of State are exempt from public records disclosure under s. 119.07(1), F.S., and s. 24(a), Art. 1 of the Florida Constitution, except in limited circumstances.¹⁴

⁷ 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.”

⁸ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁹ Section 119.071(2)(j), F.S. Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record. *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁰ Section 119.10(1), F.S.

¹¹ A first degree misdemeanor is punishable by up to one year in jail and up to a \$1,000 fine. Sections 775.082 and 775.083, F.S.

¹² Section 741.465(1), F.S., states that “address” means a residential street address, school address, or work address, as specified on the individual’s application to be a program participant in the Address Confidentiality Program for Victims of Domestic Violence.

¹³ Section 741.403(1), F.S. Section 741.30, F.S., permits domestic violence victims to file petition for an injunction in a confidential filing if, for safety reasons, the petitioner requires the location of the current residence to be confidential.

¹⁴ Section 741.465(1) and (2), F.S. (providing exceptions to the exemption from s. 119.071(1), F.S., and s. 24(a), Art. 1 of the Florida Constitution, including to law enforcement for purposes of assisting in the execution of a valid arrest warrant; if directed by a court order, to a person identified in the order; or, if held by the Attorney General, if the certification has been canceled).

Federal and Other States' Legislation

The Federal government awards grants to states to prevent incidents of domestic violence, including funds for shelters.¹⁵ Federal law provides that the address or location of any shelter facility that maintains a confidential location shall not be made public, except by written authorization of the person responsible for the operation of the shelter.¹⁶

There are at least 19 states, including Florida, that require the location of safe houses to be confidential.¹⁷ Eight of the states impose penalties for the unlawful disclosure of the location, and four states create criminal offenses for unlawfully disclosing the information relating to the location of safe houses.¹⁸

Reclassification

Florida currently has numerous statutes that reclassify criminal offenses under specified circumstances. Generally, criminal laws provide for reclassification to the next highest degree. Examples of criminal offenses that provide for such reclassification include, in part:

- A violation of driving under the influence is a first degree misdemeanor that provides for the offense to be reclassified to a third degree¹⁹ felony upon a third conviction within a 10 year period.²⁰
- A violation of driving while license suspended is a second degree misdemeanor²¹ for a first offense.²² A second or subsequent conviction is reclassified from a second degree misdemeanor to a first degree misdemeanor.²³ Further, a third or subsequent conviction is reclassified to a third degree felony if the violation or the most recent prior conviction is related to a violation of specified driving offenses.²⁴
- A violation of the theft statute under s. 812.014, F.S., can be classified from a second degree misdemeanor up to a first degree felony²⁵ depending on the circumstances, type, and value of the property stolen. Additionally, theft offenses are reclassified when a person is convicted more than once, such as a petit theft where the property is valued at more than \$100, but less

¹⁵ 42 U.S.C.A. §§ 10401, 10406(a).

¹⁶ 42 U.S.C.A. §§ 10401, 10406(H).

¹⁷ Michelle Kirby, *OLR Research Report*, p. 1, available at <https://www.cga.ct.gov/2014/rpt/2014-R-0011.htm> (last visited February 4, 2021). "Safe house" refers to a shelter provided to people who are in danger, including domestic and family violence shelters, trafficking shelters, shelters for victims of dating violence or sexual assault, temporary emergency shelters, and transitional housing for victims and their dependents.

¹⁸ *Id.* (noting that California, Georgia, South Carolina, and Washington have criminal statutes for disclosing information relating to the location of safe houses).

¹⁹ A third degree felony is punishable by up to five years imprisonment, a \$5,000 fine, or enhanced penalties as a habitual felony offender. Sections 775.082, 775.083, and 775.084, F.S.

²⁰ Section 316.193(2)(b)1., F.S.

²¹ A second degree misdemeanor is punishable by up to 60 days in county jail and up to a \$500 fine. Sections 775.082 and 775.083, F.S.

²² Section 322.34(2)(a), F.S.

²³ Section 322.34(2)(b), F.S.

²⁴ Section 322.34(2)(c), F.S. The enumerated specified offenses include driving under the influence; refusal to submit to a urine, breath-alcohol, or blood alcohol test; a traffic offense causing death or serious bodily injury; or fleeing and eluding.

²⁵ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

than \$750, is a first degree misdemeanor but a person who has previously been convicted two or more times for petit theft commits a third degree felony.²⁶

Freedom of Speech

The First Amendment of the U.S. Constitution states that, “Congress shall make no law ... abridging the freedom of speech...”²⁷ This language prohibits the government from having the ability to constrain the speech of citizens.²⁸ However, the prohibition on restricting freedom of speech is not absolute.

Speech may be restricted on the basis of its content if the restriction passes a strict scrutiny test which means that the government may regulate the content of speech if there is a “compelling interest” and it is “the least restrictive means to further the articulated interest.”²⁹ Further, speech that enjoys the broadest First Amendment protection may still be subject to “regulations of the time, place, and manner of expression which are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication.”³⁰ Governments commonly restrict speech by making it subject to criminal penalties or civil fines and sanction a person if they use it.³¹

III. Effect of Proposed Changes

The bill creates s. 39.9057, F.S., making it a first degree misdemeanor to maliciously publish, disseminate, or disclose any information or image which may identify a domestic violence center certified under s. 39.905, F.S. The bill reclassifies the offense to a third degree felony when a person commits a second or subsequent violation of s. 39.9057, F.S.

The bill limits the application of the criminal penalty to any person who *maliciously* publishes, disseminates, or discloses any descriptive information, image or other information that may identify the location of a domestic violence center. Therefore, a person must be found to publish, disseminate, or disclose such information wrongfully, intentionally, and without legal justification or excuse to be subject to the criminal penalties created in the bill.³²

The bill is effective July 1, 2021.

²⁶ Section 812.04(3)(a), F.S.

²⁷ U.S. CONST. amend. I.

²⁸ Kathleen Ann Ruane, *Freedom of Speech and Press: Exceptions to the First Amendment*, Congressional Research Service, summary page, (September 8, 2014), available at <https://fas.org/sgp/crs/misc/95-815.pdf> (last visited February 4, 2021)(hereinafter cited as “Exceptions to the First Amendment”).

²⁹ *Id.*; See also *Sable Communications of California, Inc. v. Federal Communications Commission*, 492 U.S. 115, 126 (1989).

³⁰ *Exceptions to the First Amendment*, p. 6.

³¹ *Id.*

³² See *Kennedy v. State*, 59 So. 3d 376, 380 (Fla. 4th DCA 2011); See also *See Reed v. State*, 837 So.2d 366 (Fla.2002).

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

Section 1 of the bill creates a new criminal offense that may result in indeterminate local fund expenditures for costs relating to criminal prosecution and confinement if a jail sentence is imposed. However, these provisions relate to the defense, prosecution, or punishment of criminal offenses, and criminal law are exempt from the requirements of Art. VII, s. 18(d) of the Florida Constitution, relating to unfunded mandates.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill creates a new misdemeanor offense. To the extent that this results in persons being sentenced to jail, the bill will likely have a positive insignificant jail bed impact (i.e. an increase of 10 or fewer beds). To the extent that fines are imposed, they will be deposited in the Fine and Forfeiture Fund established in s. 142.01, F.S.

The Criminal Justice Impact Conference has not heard the bill at this time. However, the bill creates a third degree felony. To the extent this results in persons being sentenced to prison, the bill will likely have a positive insignificant prison bed impact (i.e. an increase of 10 or fewer beds).

The Department of Office Administration Services finds that there are no expenditures generated by this bill.³³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 39.9057 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on February 3, 2021:

The committee substitute reclassifies the criminal offense from a first degree misdemeanor to a third degree felony for a second or subsequent conviction.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

³³ The DCF, *Agency Analysis for SB 70*, p. 4, January 11, 2021 (on file with the Senate Committee on Children, Families, and Elder Affairs).