

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 1277 Pub.Rec./Persons with Disabilities Registry

SPONSOR(S): Health & Human Services Committee, Plasencia

TIED BILLS: CS/HB 1275 **IDEN./SIM. BILLS:** CS/SB 786

FINAL HOUSE FLOOR ACTION: 114 Y's

0 N's

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

CS/HB 1277 passed the House on April 20, 2023, and subsequently passed the Senate on May 1, 2023.

Some local law enforcement agencies use disability registries in an attempt to create safer interactions between law enforcement and individuals with certain disabilities or conditions. Enrollment in such a registry usually consists of certain information voluntarily submitted by an individual, including the individual's identifying information and the condition that individual has that may be relevant to their interactions with law enforcement officers. Currently, all records and personal identifying information contained in a disability registry are public records.

CS/HB 1275 creates uniform requirements for the operation of Persons with Disabilities Registries by law enforcement agencies. It specifies who is authorized to enroll an individual in a registry and who may disenroll an individual from a registry. The bill also authorizes a Persons with Disabilities Registry to include an enrollee's personal identifying information and disability or condition that may be relevant to interactions with law enforcement officers. The release of such information could be harmful to the enrollee.

CS/HB 1277, which is linked to the passage of CS/HB 1275, creates a public records exemption for all records and personal identifying information relating to the enrollment of individuals in a Persons with Disabilities Registry held by a local law enforcement agency.

The bill provides that the public records exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2028, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

The bill has an insignificant negative fiscal impact on state and local law enforcement agencies. See Fiscal Comments.

The bill was approved by the Governor on June 29, 2023, ch. 2023-313, L.O.F., and will become effective on the same date as CS/HB 1275 which is January 1, 2024.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.¹ The Legislature, however, may provide by general law for exemption from public record requirements provided the exemption passes by two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption, and is no broader than necessary to meet its public purpose.²

The Florida Statutes also address the public policy regarding access to government records. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt.³ Furthermore, the Open Government Sunset Review Act⁴ provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."⁵ An identifiable public purpose is served if the exemption meets one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protect trade or business secrets.⁶

Pursuant to the Open Government Sunset Review Act, a new public record exemption or substantial amendment of an existing public record exemption is repealed on October 2nd of the fifth year following enactment, unless the Legislature reenacts the exemption.

Persons with Disabilities Registries

CS/HB 1275, with which this bill is linked, creates uniform requirements for the operation of Persons with Disabilities Registries by law enforcement agencies. The bill requires a person's condition to be diagnosed and certified by a specified professional prior to being eligible for enrollment in a registry. Such diagnosis and certification must be provided by a licensed physician, physician assistant, advanced practice registered nurse, psychologist, mental health counselor, or psychiatrist. The bill requires law enforcement agencies to enroll and disenroll individuals in Persons with Disabilities Registries as follows:

- An adult with a condition may enroll and disenroll themselves;

¹ Art. I, s. 24(a), FLA. CONST.

² Art. I, s. 24(c), FLA. CONST.

³ A public record exemption means a provision of general law which provides that a specified record, or portion thereof, is not subject to the access requirements of s. 119.07(1), F.S., or s. 24, Art. I of the State Constitution. See s. 119.011(8), F.S.

⁴ Section 119.15, F.S.

⁵ Section 119.15(6)(b), F.S.

⁶ *Id.*

- An adult with a condition may also be enrolled and disenrolled by their legal guardian—the local law enforcement agency must notify the individual of their enrollment within 5 business days; and
- A minor may be enrolled and disenrolled by their parent or legal guardian—the local law enforcement agency must notify the individual of their enrollment in writing within 5 business days of the enrollee's 18th birthday.

The bill requires a parent or legal guardian of a child or an incapacitated adult to provide documentation of the legal authority to enroll the child or incapacitated adult in a registry. Documentation may be in the form of a birth certificate, power of attorney, court order establishing parental rights or guardianship, or letters of guardianship.

A local law enforcement agency must remove an individual from a registry within 5 business days of an enrollee's verbal or written request for removal.

The bill authorizes a registry to include certain information, including, but not limited to:

- The enrollee's name, address, contact information, personal identifying information, and condition that may be relevant to interactions with law enforcement officers;
- The name, address, contact information, and personal identifying information of a parent or legal guardian who enrolled an individual; and
- The certification of the condition.

CS/HB 1275 authorizes a local law enforcement agency to provide access to their disability registry, and relevant information from the registry, to law enforcement officers engaged in official duties.

Effect of the Bill

CS/HB 1277 creates a public records exemption for all records and personal identifying information relating to the enrollment of individuals in a persons with disabilities registry held by a local law enforcement agency. Additionally, the bill provides that information made confidential and exempt may be disclosed upon a showing of good cause before a court of competent jurisdiction, or in furtherance of the official duties and responsibilities of the agency holding the information, to:

- Another local law enforcement agency;
- A county emergency management agency;
- A local fire department; or
- Another local, state, or federal agency.

Further, the entities or persons receiving such information shall maintain the exempt status of the information.

The bill provides that the public records exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2028, unless saved from repeal by reenactment by the Legislature.

The bill provides a public necessity statement for the public record exemption, as required by the State Constitution. It states that the Legislature recognizes that criminals often target individuals who have the same conditions as those enrolled in a persons with disabilities registry in acts of abuse or exploitation. The Legislature further recognizes that records relating to enrollment in a persons with disabilities registry would include personal medical information about the persons listed in the registry. Therefore, the Legislature finds that the disclosure of such information would deter persons from being enrolled in a persons with disabilities registry, which would prevent local law enforcement agencies from effectively and efficiently administering that registry. The Legislature further finds that the release of personal identifying information of an individual in a persons with disabilities registry could jeopardize

the safety of such individuals. The harm from disclosing that personal identifying information outweighs any public benefit that can be derived from widespread and unfettered access to such information. The exemption is narrowly written so that a local law enforcement agency may share the personal information of an individual enrolled in a persons with disabilities registry with other local law enforcement agencies, county emergency management agencies, local fire departments, and other local, state, or federal agencies in furtherance of that agency's official duties and responsibilities. Providing information in a persons with disabilities registry to these agencies is necessary for the goal of such a registry to be achieved, which is to create safer interactions between these agencies and individuals with certain conditions.

The effective date of the bill is the same date that CS/HB 1275 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have a minimal fiscal impact on state and local law enforcement agencies because agency staff responsible for complying with public record requests may require training relating to the creation of the public record exemption. The costs, however, would be absorbed as they are part of the day-to-day responsibilities of agencies.