

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 Fiscal Policy

BILL: CS/SB 1542

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

SUBJECT: Public Records and Public Meetings/Elder Abuse or Vulnerable Adult Abuse Fatality Review Team

DATE: April 24, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Delia</u>	<u>Cox</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Howard</u>	<u>Money</u>	<u>AHS</u>	<u>Favorable</u>
3.	<u>Delia</u>	<u>Yeatman</u>	<u>FP</u>	<u>Favorable</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1542 creates public record and public meeting exemptions related to elder and vulnerable adult fatality review teams (EV-FRTs). Specifically, the bill requires that any information obtained by an EV-FRT for the purposes of conducting a case review which is exempt or confidential and exempt from public records requirements retains its exempt or confidential and exempt status when held by an EV-FRT. The bill also creates a public record exemption for records created or held by an EV-FRT which reveals the identity of a victim, the identity of persons responsible for the welfare of the victim, and such information is confidential and exempt under the bill.

Any information that is maintained as exempt or confidential and exempt within chapter 415, Florida Statutes, retains its exempt or confidential and exempt status when held by the review team.

The bill creates a public meeting exemption for portions of an EV-FRT meeting in which the identity of the victim, the identity of the person responsible for the welfare of the victim, or otherwise exempt or confidential and exempt information is discussed. Records created by an EV-FRT during such portions of meetings are also exempt from public disclosure.

The bill includes a public necessity statement and states that the public record and public meeting exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2028, unless saved from repeal by reenactment by the Legislature.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 has no fiscal impact on state government.

The bill will become effective on the same date that SB 1540 (2023) or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

II. Present Situation:

Public Records Law

The State Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ 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 who acts on behalf of the government.²

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.³ 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.⁴

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes that relate to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records.⁵ 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.

Section 119.011(12), F.S., defines “public records” to include:

[a] ll 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 connections with the transaction of official business by any agency.

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Public records laws are found throughout the Florida Statutes.

⁴ Section 119.01(1), F.S.

⁵ *Locke v. Hawkes*, 595 So. 2d 32, 34 (Fla. 1992); *see also Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to “perpetuate, communicate, or formalize knowledge of some type.”⁶

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.⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

Only the Legislature may create an exemption to public records requirements.⁹ An exemption must be created by general law and must specifically state the public necessity which justifies the exemption.¹⁰ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill that enacts an exemption may not contain other substantive provisions¹¹ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹²

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.¹³ Records designated as “confidential and exempt” are not subject to inspection by the public and may only be released under the circumstances defined by statute.¹⁴ Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁵

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act (the Act), prescribe a legislative review process for newly created or substantially amended public records or open meetings exemptions,¹⁶ with specified exceptions.¹⁷ The Act requires the repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁷ Section 119.07(1)(a), F.S.

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violations of those laws.

⁹ FLA CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ The bill may, however, contain multiple exemptions that relate to one subject.

¹² FLA. CONST., art. I, s. 24(c)

¹³ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁴ *Id.*

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁶ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings.

¹⁷ Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

date.¹⁸ In practice, many exemptions are continued by repealing the sunset date, rather than reenacting the exemption.

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.¹⁹ An exemption serves an identifiable purpose if the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption *and* it meets one of the following purposes:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;²⁰
- The release of sensitive personal information would be defamatory or jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²¹ or
- It protects trade or business secrets.²²

The Act also requires specified questions to be considered during the review process.²³ In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption or repealing the sunset date, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁴ If the exemption is reenacted or saved from repeal without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.²⁵

Open Meeting Laws

The State Constitution provides that the public has a right to access governmental meetings.²⁶ Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or

¹⁸ Section 119.15(3), F.S.

¹⁹ Section 119.15(6)(b), F.S.

²⁰ Section 119.15(6)(b)1., F.S.

²¹ Section 119.15(6)(b)2., F.S.

²² Section 119.15(6)(b)3., F.S.

²³ Section 119.15(6)(a), F.S. The specific questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means?
If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²⁴ FLA. CONST., art. I, s. 24(c).

²⁵ Section 119.15(7), F.S.

²⁶ FLA. CONST., art. I, s. 24(b).

discussed.²⁷ This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.²⁸

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the “Government in the Sunshine Law,”²⁹ or the “Sunshine Law,”³⁰ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public.³¹ The board or commission must provide the public reasonable notice of such meetings.³² Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public’s access to the facility.³³ Minutes of a public meeting must be promptly recorded and open to public inspection.³⁴ Failure to abide by open meetings requirements will invalidate any resolution, rule or formal action adopted at a meeting.³⁵ A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.³⁶

The Legislature may create an exemption to open meetings requirements by passing a general law by at least a two-thirds vote of each house of the Legislature.³⁷ The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.³⁸ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.³⁹

Elder Abuse Fatality Review Teams

Beginning in 2020, Florida law has authorized the creation of elder abuse fatality review teams (EA-FRTs).⁴⁰

²⁷ *Id.*

²⁸ FLA. CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: “The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public.”

²⁹ *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

³⁰ *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

³¹ Section 286.011(1)-(2), F.S.

³² *Id.*

³³ Section 286.011(6), F.S.

³⁴ Section 286.011(2), F.S.

³⁵ Section 286.011(1), F.S.

³⁶ Section 286.011(3), F.S.

³⁷ FLA. CONST., art. I, s. 24(c).

³⁸ *Id.*

³⁹ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a public records statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

⁴⁰ Chapter 2020-17, L.O.F.

A state attorney, or his or her designee, may initiate an elder abuse fatality review team in his or her judicial circuit to review deaths of elderly persons caused by, or related to, abuse or neglect.⁴¹ EA-FRTs may include, but need not be limited to, representatives from any of the following entities or persons located in the review team's judicial circuit:

- Law enforcement agencies.
- The state attorney.
- The medical examiner.
- A county court judge.
- Adult protective services.
- The area agency on aging.
- The State Long-Term Care Ombudsman Program.
- The Agency for Health Care Administration.
- The Office of the Attorney General.
- The Office of the State Courts Administrator.
- The clerk of the court.
- A victim services program.
- An elder law attorney.
- Emergency services personnel.
- A certified domestic violence center.⁴²
- An advocacy organization for victims of sexual violence.
- A funeral home director.
- A forensic pathologist.
- A geriatrician.
- A geriatric nurse.
- A geriatric psychiatrist or other individual licensed to offer behavioral health services.
- A hospital discharge planner.
- A public guardian.
- Any other persons who have knowledge regarding fatal incidents of elder abuse, domestic violence, or sexual violence, including knowledge of research, policy, law, and other matters connected with such incidents involving elders, or who are recommended for inclusion by the review team.⁴³

Participation in an EA-FRT is voluntary; members serve 2-year terms, to be staggered as determined by the co-chairs, without compensation.⁴⁴ The state attorney of the relevant circuit calls the first organizational meeting of the team, during which two members are chosen to serve as co-chairs.⁴⁵ Members also establish schedules for future meetings at the initial meeting.⁴⁶ Chairs may be reelected by a majority vote of an EA-FRT for no more than two consecutive terms, and each team must meet at least once each fiscal year.⁴⁷

⁴¹ Section 415.1103(1)(a), F.S.

⁴² Section 39.905, F.S. outlines requirements of certified domestic violence centers.

⁴³ Section 415.1103(1)(b), F.S.

⁴⁴ Section 415.1103(1)(c), F.S.

⁴⁵ Section 415.1103(1)(d), F.S.

⁴⁶ *Id.*

⁴⁷ *Id.*

Each EA-FRT determines its local operations, including, but not limited to, the process for case selection.⁴⁸ The state attorney refers cases to be reviewed by each EA-FRT, with reviews limited to closed cases⁴⁹ in which an elderly person's death was caused by, or related to, abuse or neglect.⁵⁰ All identifying information concerning the elderly person must be redacted by the state attorney in documents received for review.⁵¹ Administrative costs of operating the EA-FRT must be borne by the team members or entities they represent.⁵²

EA-FRTs are required to do all of the following:

- Review deaths of elderly persons in the team's judicial circuit which are found to have been caused by, or related to, abuse or neglect;
- Take into consideration the events leading up to a fatal incident, available community resources, current law and policies, and the actions taken by systems or individuals related to the fatal incident;
- Identify potential gaps, deficiencies, or problems in the delivery of services to elderly persons by public and private agencies which may be related to deaths reviewed by the EA-FRT;
- Whenever possible, develop communitywide approaches to address the causes of, and contributing factors to, deaths reviewed by the EA-FRT; and
- Develop recommendations and potential changes in law, rules, and policies to support the care of elderly persons and to prevent elder abuse deaths.⁵³

An EA-FRT may share any relevant information that pertains to the review of the death of an elderly person with other review teams throughout Florida.⁵⁴ An EA-FRT member may not contact, interview, or obtain information by request directly from a member of the deceased elder's family as part of the review unless a team member is authorized to do so in the course of his or her employment duties.⁵⁵ A member of the deceased elder's family may voluntarily provide information or any record to an EA-FRT but must be informed that such information or any record is subject to public disclosure unless a public records exemption applies.⁵⁶

Annually by September 1, each EA-FRT is required to submit a summary report to the Department of Elder Affairs (DOEA) which includes, but is not limited to:

⁴⁸ Section 415.1103(1)(e), F.S.

⁴⁹ The term "closed case" means a case that does not involve information considered active as defined in s. 119.011(3)(d), F.S. Section 119.011(3)(d), F.S., defines "active" to mean criminal intelligence information which is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities. Criminal investigative information must be considered "active" as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future. In addition, criminal intelligence and criminal investigative information must be considered "active" while such information is directly related to pending prosecutions or appeals. The word "active" does not apply to information in cases which are barred from prosecution under the provisions of s. 775.15, F.S., or other statute of limitation.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Section 415.1103(1)(f), F.S.

⁵³ Section 415.1103(3), F.S.

⁵⁴ Section 415.1103(4)(a), F.S.

⁵⁵ Section 415.1103(4)(b), F.S.

⁵⁶ *Id.*

- Descriptive statistics regarding cases reviewed by the team, including demographic information on victims and the causes and nature of their deaths;
- Current policies, procedures, rules, or statutes the review team has identified as contributing to the incidence of elder abuse and elder deaths, and recommendations for system improvements and needed resources, training, or information dissemination to address such identified issues; and
- Any other recommendations to prevent deaths from elder abuse or neglect, based on an analysis of the data and information presented in the report.⁵⁷

Annually by November 1, the DOEA is required to prepare a summary report of the EA-FRT information submitted.⁵⁸ The DOEA must submit its summary report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the DCF.⁵⁹

Members of EA-FRTs do not incur any monetary or civil liability as a result of the performance of their duties as a review team member in regard to any discussions by, or deliberations or recommendations of, the team or the member unless such member acted in bad faith, with wanton and willful disregard of human rights, safety, or property.⁶⁰

Active EA-FRTs

There are currently two EA-FRTs in Florida: one in the 4th Judicial Circuit⁶¹ and the other in the 5th Judicial Circuit.⁶² The 4th Circuit team reviews cases in Clay, Duval, and Nassau counties and considers case facts that led to the fatal incident — this includes community resources, current laws and policies, and actions taken by systems or individuals.⁶³ The 5th Circuit team reviews cases in Citrus, Hernando, Lake, Marion, and Sumter Counties.⁶⁴

The 4th Circuit EA-FRT submitted their second annual report to the DOEA in September 2022. The 4th Circuit EA-FRT spent much of its inaugural year training members and implementing appropriate case selection and review procedures.⁶⁵ According to the team, when it came time for actual case selections and reviews the 4th Circuit EA-FRT encountered several unanticipated challenges, which ultimately prevented the team from effectively conducting any fatality case reviews in 2021.⁶⁶ The report detailed these challenges in the following reported findings:

⁵⁷ Section 415.1103(5)(a), F.S.

⁵⁸ *Id.*

⁵⁹ Section 415.1103(5)(b), F.S.

⁶⁰ Section 415.1103(6), F.S.

⁶¹ Office of the State Attorney for the Fourth Judicial Circuit, *Elder Abuse Fatality Review Team (EA-FRT)*, available at <https://sao4th.com/resources/for-the-public/elder-abuse-fatality-review-team-eafirt/> (last visited March 28, 2023) (hereinafter cited as, “The 4th Circuit EA-FRT Page”).

⁶² Office of the State Attorney for the Fifth Judicial Circuit, *State Attorney Creates Elder Abuse Fatality Review Team*, available at <https://www.sao5.org/State-Attorney-Creates-Elder-Abuse-Fatality-Review-Team-1-9147.html> (last visited March 28, 2023) (hereinafter cited as, “The 5th Circuit EA-FRT Page”).

⁶³ The 4th Circuit EA-FRT Page.

⁶⁴ The 5th Circuit EA-FRT Page.

⁶⁵ The 4th Judicial Circuit EAFRT, *Second Annual Report to the Department of Elder Affairs* at p. 6, available at [EAFRT-Second-Annual-Report-2022.pdf \(sao4th.com\)](https://sao4th.com/Second-Annual-Report-2022.pdf) (last visited March 28, 2023).

⁶⁶ *Id.*

- Finding # 1: The current language provided in s. 415.1103, F.S., inhibits effective case identification and significantly restricts the case selection process for elder abuse fatality review teams;
- Finding # 2: The current language provided in s. 415.1103, F.S., prevents the EA-FRT from locating, identifying, and requesting records from sources other than the SAO, and places an undue burden upon the SAO with respect to records productions;
- Finding # 3: The lack of public records exemptions limits what information may be reviewed and held by the EA-FRT for review;
- Finding # 4: The public meeting requirements under Sunshine Law prevents the EA-FRT from thoroughly discussing case information or conducting meaningful case reviews; and
- Finding # 5: As noted in the First Annual EA-FRT Report (2021), exploitation is a form of elder abuse, which may contribute to a vulnerable, older adult victim's death.⁶⁷

In an attempt to address the issues identified above, the report included a number of legislative recommendations, including:

- Amending s. 415.1103, F.S., to allow all members of the team to identify and refer cases for fatality review by the EA-FRT;
- Amending s. 415.1103, F.S., to allow any member of the EA-FRT to contribute relevant case-related records accessible to him or her through the agency or organization the member represents on the team (so long as permitted by Florida law and agency rules or standards), as well as to allow the EA-FRT to request any additional records necessary to conducting a fatality case review;
- The adoption of new or amended legislation to add all public records law exemptions necessary to protecting the confidentiality and integrity of case-related information and victim information;
- The adoption of new or amended legislation exempting all EA-FRT's from Sunshine Law public meeting requirements for any meeting at which specific case review information is anticipated to be discussed; and
- Amending s. 415.1103, F.S., to add exploitation to the listed maltreatments-related to a victim's death, which would authorize a fatality case review by the EA-FRT.⁶⁸

Findings 3 and 4 of the 4th Circuit EAFRT

Due to the risk of revealing confidential and sensitive victim-related and case-related information, the 4th Circuit EAFRT states that it has been unable to possess or review any information from cases ripe for review unless it is completely redacted beforehand by the state attorney's office.⁶⁹ Additionally, the 4th Circuit EAFRT stated that given the sensitive and potentially inflammatory information that the EAFRT is responsible for reviewing in a fatality case review, all EAFRT meetings during which cases are reviewed should be confidential and closed to the public.⁷⁰ The EAFRT believes it would benefit from having the same public records and open meeting exemptions and victim confidentiality protections provided to domestic violence fatality review teams under ss. 741.316 and 741.3165.⁷¹

⁶⁷ *Id.* at p. 17-18.

⁶⁸ *Id.* at p. 19.

⁶⁹ *Id.* at p. 18.

⁷⁰ *Id.*

⁷¹ *Id.*

Florida's Domestic Violence Fatality Review Teams

Florida law also authorizes Domestic Violence Fatality Review Teams (DV-FRT), which are multidisciplinary teams that review fatal and near-fatal incidents of domestic violence, related domestic violence matters, and suicides.⁷² DV-FRTs can be established at the local, regional, or state level.⁷³ The DV-FRTs are assigned to the DCF for administrative purposes only, so the structure and activities of a team are determined at the local level.⁷⁴

The DV-FRTs have a similar membership to the EA-FRTs and include, but are not limited to, representatives from the following agencies or organizations:

- Law enforcement agencies;
- The state attorney's office;
- The medical examiner's office;
- Certified domestic violence centers;
- Child protection service providers;
- The office of the court administration;
- The clerk of the court;
- Victim services programs;
- Child death review teams;
- Members of the business community;
- County probation or corrections agencies; and
- Any other persons who have knowledge regarding domestic violence fatalities, nonlethal incidents of domestic violence or suicide, including research, policy, law or other related matters.⁷⁵

The DV-FRTs review events leading up to the domestic violence incident, available community resources, current laws and policies, actions taken by systems and individuals related to the incident and parties, and any information or action deemed relevant by the team.⁷⁶ The teams' purpose is to learn how to prevent domestic violence by intervening early and improving the response of an individual and the system to domestic violence.⁷⁷ Each team determines the number and type of incidents it will review and makes policy and other recommendations as to how incidents of domestic violence may be prevented.⁷⁸

Active DV-FRTs

As of 2019 there were 25 local DV-FRTs and one statewide team.⁷⁹ In the past reviews have revealed that 26 percent of those committing the homicides in domestic violence cases were

⁷² Section 741.316(1), F.S.

⁷³ Section 741.316(2), F.S.

⁷⁴ Sections 741.316(5) and 741.316(2), F.S.

⁷⁵ Section 741.316(1), F.S.

⁷⁶ Section 741.316(2), F.S.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Report of the Attorney General's Statewide Domestic Violence Fatality Review Team, *Faces of Fatality, Vol. IX*, June 2019, at p. 4, available at <https://www2.myflfamilies.com/service-programs/domestic-violence/docs/FACES%20OF%20FATALITY%20IX.pdf> (last visited March 28, 2023).

known to have exhibited alleged stalking behavior.⁸⁰ There were known allegations of death threats made by the perpetrator toward the decedent in more than 50 percent of the reviewed fatalities, and 17 percent were known to have made previous attempts to kill the decedent.⁸¹ Reviewers identified that nearly 70 percent of perpetrators had a known prior history of committing acts of domestic violence against the decedent, and that 77 percent of perpetrators had a known history of substance abuse.⁸²

III. Effect of Proposed Changes:

The bill creates both a public records exemption and a Sunshine Law exemption, for information held and reviewed by an elder or vulnerable adult abuse fatality review team (EV-FRT) and portions of public meetings of EV-FRTs, respectively.

The bill specifies that information that is exempt or confidential and exempt retains such status when held by an EV-FRT if the information is:

- Exempt or confidential and exempt from s. 119.07(1), F.S., and Article 1, s. 24(a) of the State Constitution; and
- Obtained by an EV-FRT while executing its duties under the bill.

The bill also creates a public records exemption for any information contained in a record created by an EV-FRT which reveals the identity of a victim of abuse, exploitation, or neglect or the identity of persons responsible for the welfare of a victim.

Additionally, any information maintained as exempt or confidential and exempt within ch. 415, F.S., retains such status while held by an EV-FRT.

The bill also exempts certain portions of EV-FRT meetings from the public meeting requirements of s. 286.011, F.S., and Article 1, s. 24(b) of the State Constitution. Specifically, the bill creates an exemption for portions of meetings relating to abuse, exploitation, or neglect or abuse-related deaths of elderly persons or otherwise vulnerable adults, and the prevention of such abuse, exploitation, neglect, or deaths, during which exempt or confidential and exempt information, information protected within ch. 415, F.S., the identity of the victim, or the identity of persons responsible for the welfare of the victim is discussed.

The public records and meetings exemptions created by the bill stand repealed on October 2, 2028, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act.

As it relates to the public records exemptions created in the bill, the bill includes legislative findings and a public necessity statement, specifying that information that is exempt or confidential and exempt from s. 119.07(1), F.S., and Article 1, s. 24(a) of the State Constitution remain exempt or confidential and exempt when held by an EV-FRT. The public necessity statement also provides that information which reveals the identity of a victim of elder or vulnerable adult abuse, exploitation, or neglect or the identity of persons responsible for the

⁸⁰ *Id.* at p. 5.

⁸¹ *Id.*

⁸² *Id.* at p. 4.

welfare of such victim must be confidential and exempt from public records requirements. The bill provides as a reason that the disclosure of such sensitive personal identifying information could hamper the open communication and coordination among the parties involved in the EV-FRT, and the harm that would result from the release of such information substantially outweighs any public benefit that would be achieved by disclosure.

The public necessity statement also addresses open meetings requirements, providing that it is a public necessity that portions of meetings of an EV-FRT during which exempt or confidential and exempt information, information protected within ch. 415, F.S., the identity of the victim, or the identity of persons responsible for the welfare of the victim is discussed, are exempt from s. 286.011, F.S., and Article 1, s. 24(b) of the State Constitution. The failure to close the portions of the meetings in which such sensitive personal information is discussed would defeat the purpose of the exemptions. The bill provides additional legislative findings, stating that the exemption is narrowly tailored to apply to only those portions of the meetings in which such sensitive personal identifying information is discussed and that the remainder of such meetings are to remain open to allow for public oversight.

The bill provides that the act shall take effect on the same date that SB 1540 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law. SB 1540 has an effective date of July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

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 bill creating or expanding an exemption to the public records requirements. This bill creates public records exemptions and a public meeting exemption; therefore, it requires a two-thirds vote.

Public Necessity Statement

Article I, section 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records or open meetings requirements to state with specificity the public necessity justifying the exemption. Section 2 includes a public necessity statement for both exemptions.

Breadth of Exemption***Public Records Exemption***

Article I, section 24(c), of the State Constitution requires exemptions to both public records and open meetings requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect information that reveals the identity of elder or vulnerable adult abuse victims, information that reveals the identity of persons responsible for the welfare of such victims, and otherwise existing confidential and exempt information. This bill exempts only such information from the public records requirements. Therefore, the exemption does not appear to be broader than necessary to accomplish the purpose of the law.

Public Meetings Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. Like the public records exemption, the stated purpose of the law is to protect information that reveals the identity of elder or vulnerable adult abuse victims, information that reveals the identity of persons responsible for the welfare of such victims, and otherwise existing confidential and exempt information. The bill appears to only exempt the portions of the meetings during which such information is discussed. Therefore, the exemption does not appear to be broader than necessary to accomplish the purpose of the law.

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:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 415.1103 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 April 4, 2023:

The Committee Substitute:

- Links the effective date of SB 1542 to that of SB 1540, 2023 Regular Session (SB 1540 has an effective date of July 1, 2023).
- Clarifies that any information that is exempt or confidential and exempt retains its status as such when reviewed by an EV-FRT.
- Clarifies that portions of meetings during which exempt or confidential and exempt information is reviewed are exempt from disclosure requirements. The amendment also makes a similar change to the bill's public necessity statement as it related to the open meetings exemption.

B. Amendments:

None.