

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1443 Electronic Access to Official Records

**SPONSOR(S):** Persons-Mulicka

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1616

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	16 Y, 0 N	Mathews	Jones
2) Justice Appropriations Subcommittee	12 Y, 0 N	Smith	Keith
3) Judiciary Committee			

### SUMMARY ANALYSIS

Protective injunctions are available under Florida law for victims of the following forms of violence:

- Domestic violence;
- Repeat violence;
- Sexual violence;
- Dating violence; and
- Stalking.

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records, guaranteeing each person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. Independent of constitutional and statutory provisions that require court files to be generally open to the public, the courts have found that both civil and criminal court proceedings in Florida are public events, and that courts must adhere to the well-established common law right of access to court proceedings and records.

Through administrative rule, the Florida Supreme Court has adopted standards for access to electronic court records; however, clerk of court websites differ as to the level of case detail available electronically. Section 28.2221, F.S., requires the clerk of court or county recorder to make electronically available the identity of an adult against whom a final judgment for protective injunction for a minor has been filed. Current law only requires that such information be made available to the general public on an internet website. As such, it may be difficult for an interested party to find such information, despite it being made available somewhere on the internet.

HB 1443 amends s. 28.2221, F.S., to clarify that each clerk of court must make the identities of adults against whom a protective injunction for the protection of a minor has been entered, as specified under s. 28.2221, F.S., viewable to the general public through a searchable database on the clerk's own website. The database must be easily accessible in a clear and conspicuous location on the homepage of the clerk's website. The required information must be made available for search by the general public. Additionally, the bill requires each clerk to post a notice on its homepage that any affected party may request the addition of such information to the database.

The bill has no impact on state government and an indeterminate fiscal impact on local government. See Fiscal Analysis & Economic Impact Statement.

The bill has an effective date of July 1, 2024.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Protective Injunctions

An injunction is a court order prohibiting a person from doing a specified act or commanding a person to undo some wrong or injury.<sup>1</sup> Protective injunctions are available under Florida law for victims of the following forms of violence:

- Domestic violence;<sup>2</sup>
- Repeat violence;<sup>3</sup>
- Sexual violence;<sup>4</sup>
- Dating violence;<sup>5</sup> and
- Stalking.<sup>6</sup>

A protective injunction may prohibit a person from:

- Remaining in the dwelling that the respondent shares with the petitioner;
- Going to or being within 500 feet of the petitioner's residence, school, place of employment, or other specified place;
- Committing an act of domestic violence or threatening to commit an act of violence against the petitioner;
- Telephoning, contacting, or otherwise communicating with the petitioner;
- Knowingly and intentionally coming within 100 feet of the petitioner's motor vehicle;
- Defacing or destroying the petitioner's personal property; or
- Maintaining possession of firearms or ammunition.<sup>7</sup>

A court may also require a respondent to complete a batterer's intervention program.<sup>8</sup> Violation of a protective injunction is a first-degree misdemeanor, punishable by up to one year in jail and a \$1,000 fine.<sup>9</sup>

A petitioner seeking a protective injunction must allege in a sworn petition that:

- He or she is a victim of domestic violence; repeat, sexual, or dating violence; or stalking; or
- In the case of a petition for a domestic violence injunction, he or she has reasonable cause to believe he or she is in imminent danger of such violence.<sup>10</sup>

As soon as possible following the filing of the petition, a court must set a hearing to determine whether an immediate and present danger of the violence alleged exists.<sup>11</sup> However, if the court finds the

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<sup>1</sup> Black's Law Dictionary 540 (6th ed. 1995).

<sup>2</sup> Domestic violence is an 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. Ss. 741.28(2) and 741.30, F.S.

<sup>3</sup> S. 784.046, F.S.

<sup>4</sup> *Id.*

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

<sup>6</sup> S. 784.0485, F.S., governs the issuance of injunctions against stalking and cyberstalking. This process largely parallels the provisions and procedures relating to domestic violence injunctions.

<sup>7</sup> S. 741.31, F.S.

<sup>8</sup> *Id.*; s. 741.30, F.S.

<sup>9</sup> Ss. 741.31, 775.082, 775.083, 784.047, and 784.0487, F.S.

<sup>10</sup> Ss. 741.30(1)(a), 784.046, and 784.0485, F.S.

<sup>11</sup> Ss. 741.30(5)(a), 784.046, and 784.0485, F.S.

petitioner is in immediate and present danger, it may grant a temporary injunction in an ex parte proceeding,<sup>12</sup> pending a full hearing, and grant relief including, but not limited to:

- Restraining the respondent from committing any acts of domestic violence;
- Awarding to the petitioner the temporary exclusive use and possession of a shared residence or excluding the respondent from the petitioner's residence; and
- Providing to the petitioner a temporary parenting plan,<sup>13</sup> including a timesharing schedule,<sup>14</sup> which may award the petitioner up to 100 percent of the timesharing.<sup>15</sup>

A court must then set a hearing with notice to the respondent, and upon such hearing with notice, may grant protective injunctive relief as it deems proper.<sup>16</sup>

### Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, section 24(a) of the Florida Constitution 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.<sup>17</sup>

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. Furthermore, the Open Government Sunset Review Act (OGSRA)<sup>18</sup> 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."<sup>19</sup> However, the exemption may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; or
- Protecting trade or business secrets.<sup>20</sup>

The OGSRA does not apply to an exemption that applies solely to the Legislature or the State Court System.<sup>21</sup> Further, the OGSRA does not apply to an amendment to public records law that narrows the scope of an existing exemption.<sup>22</sup>

### *Public Records and Court Proceedings*

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<sup>12</sup> "Ex parte," Latin for "from one party," refers to motions for orders that can be granted without waiting for a response from the other side. These are generally orders that are in place only until further hearings can be held. Legal Information Institute, *Ex Parte*, [https://www.law.cornell.edu/wex/ex\\_parte](https://www.law.cornell.edu/wex/ex_parte) (last visited Feb. 6, 2024).

<sup>13</sup> A "parenting plan" governs the relationship between parents relating to decisions that must be made regarding the minor child and must contain a timesharing schedule for the parents and child. S. 61.046(14), F.S.

<sup>14</sup> "Timesharing schedule" means a timetable that must be included in a parenting plan that specifies the time, including overnights and holidays, which a minor child will spend with each parent. S. 61.046(23), F.S.

<sup>15</sup> S. 741.30(5)(a), F.S.

<sup>16</sup> Ss. 741.30(6)(a), 784.046, and 784.0485, F.S.

<sup>17</sup> Art. I, s. 24(c), Fla. Const.

<sup>18</sup> S. 119.15, F.S.

<sup>19</sup> S. 119.15(6)(b), F.S.

<sup>20</sup> *Id.*

<sup>21</sup> S. 119.15(2)(b), F.S.

<sup>22</sup> S. 119.15(4)(b), F.S.

Independent of constitutional and statutory provisions that require court files to be generally open to the public, case law provides that "both civil and criminal court proceedings in Florida are public events" and that courts must "adhere to the well-established common law right of access to court proceedings and records."<sup>23</sup> A court may close a court file or a portion thereof on equitable grounds, but its ability to do so is limited. The Florida Supreme Court has ruled that closure of court proceedings or records should occur only when necessary to:

- Comply with established public policy set forth in the constitution, statutes, rules, or case law.
- Protect trade secrets.
- Protect a compelling governmental interest such as national security or the identity of confidential informants.
- Obtain evidence to properly determine legal issues in a case.
- Avoid substantial injury to innocent third parties, such as to protect a child in a divorce.
- Avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of civil proceeding sought to be closed.<sup>24</sup>

Currently, s. 119.0714(1), F.S., provides public record exemptions for several types of personal information contained in court files, including, but not limited to:

- Records prepared by an agency attorney;<sup>25</sup>
- Various law enforcement confidential records;<sup>26</sup>
- Social security numbers;<sup>27</sup>
- Bank account numbers; and
- A petition for an injunction for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking and cyberstalking that has been dismissed without a hearing, dismissed due failure to state a claim or lack of jurisdiction, or dismissed for any other reason having to do with the sufficiency of the petition itself without an injunction being issued.<sup>28</sup>

#### *Public Records Exemptions Relating to Certain Victim Information*

Section 119.071(2)(h)1., F.S., provides that the following criminal intelligence information or criminal investigative information is confidential and exempt:

- Any information that reveals the identity of the victim of:
  - Child abuse;<sup>29</sup>
  - Human trafficking, if the victim is under 18;<sup>30</sup> or
  - Any sexual offense.<sup>31</sup>
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense.<sup>32</sup>

#### *Access to Electronic Court Records*

Through administrative rule, the Florida Supreme Court has adopted standards for access to electronic court records and an access security matrix.<sup>33</sup> There are different levels of permissible access

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<sup>23</sup> *Barron v. Florida Freedom Newspapers, Inc.*, 531 So.2d 113, 116 (Fla. 1988).

<sup>24</sup> *Id.* at 118.

<sup>25</sup> S. 119.0714(1)(a), F.S.

<sup>26</sup> S. 119.0714, F.S.

<sup>27</sup> S. 119.0714(1)(i), F.S.

<sup>28</sup> S. 119.0714(1)(j), F.S.

<sup>29</sup> Ch. 827, F.S.

<sup>30</sup> S. 787.06(3)(a), F.S.

<sup>31</sup> Sexual offenses include commercial sex trafficking under ss. 787.06(3)(b), (d), (f), or (g), F.S.; sexual battery under ch. 794, F.S.; prostitution under ch. 796, F.S.; lewd and lascivious acts under ch. 800, F.S.; sexual performance by a child under ch. 827, F.S.; and child pornography under ch. 847, F.S.

<sup>32</sup> This information may be disclosed by a law enforcement agency in specified circumstances. See s. 119.071(2)(h)1., F.S.

<sup>33</sup> Fla. Office of the State Courts Administrator, *Standards for Access to Electronic Court Records* (Sept. 2022), <https://www.flcourts.gov/content/download/850949/file/standards-for-access-to-electronic-court-records-september-2022.pdf> (last visited Feb. 6, 2024).

depending on “the user’s role and applicable statutes, court rules, and applicable administrative policy. Access may be restricted to certain user roles based on case type, document type, or information contained within court records.”<sup>34</sup>

Current law authorizes access for the general public for all records except those that are expunged or sealed, automatically confidential under Rule 2.420(d)(1), Fla. R. Jud. Admin.,<sup>35</sup> or made confidential by court order. However, the general public may not remotely access images of records in cases governed by the Florida Family Law Rules of Procedure, Florida Rules of Juvenile Procedure, or Florida Probate Rules, pursuant to s. 28.2221(5)(a), F.S.<sup>36</sup>

### *Serena’s Law*

Pursuant to s. 28.2221, F.S., each county recorder or clerk of court must post on its website an entry of final judgment for an injunction for protection of a minor under ss. 741.30, 784.046, or 784.0485, F.S., which includes the identity of each adult defendant or respondent against whom the injunction is entered.

Although administrative rules require electronic access to certain court records, clerk of court websites differ on how much case detail is available electronically. As a result, when a criminal case is not prosecuted but a civil protective injunction is obtained against a perpetrator, potential employers and other members of the public may have difficulty discovering or be unable to discover that injunction, including through the use of a third-party background check.

### **Effect of Proposed Changes**

HB 1443 amends s. 28.2221, F.S., to clarify that each clerk of court must make available the identity of a respondent against whom a final judgment for an injunction for protection of a minor for domestic violence, repeat violence, sexual violence, dating violence, or stalking is issued. Such information must be viewable through a searchable database that is available in a clear and conspicuous location on the homepage of the clerk’s official website. The required information must be made available for search by the general public.

The bill requires that notice of the right of any affected party under the bill to request the addition of such information to the searchable database must be displayed clearly and conspicuously on the clerk’s official website. Such notice must state that any person has a right to request that the clerk of the court add information to the searchable database on the clerk of court’s website if that information involves the identity of a respondent against whom a protective injunction of a minor has been issued.

The bill provides an effective date of July 1, 2024.

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

**Section 1:** Amends s. 28.2221, F.S., relating to electronic access to official records.

**Section 2:** Provides an effective date of July 1, 2024.

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

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

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<sup>34</sup> *Id.*

<sup>35</sup> Pursuant to Rule 2.420(d)(1), Fla. R. of Judicial Admin., certain matters are automatically confidential, including, but not limited to, adoption records, chapter 39 records relating to dependency matters and termination of parental rights, clinical records under the Baker Act, the victim’s address in domestic violence matters, protected information regarding victims of child abuse or sexual offenses, and information that can be used to identify a petitioner or respondent in a petition for injunction against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking.

<sup>36</sup> *Supra* note 33 at 6.

1. Revenues:

None.

2. Expenditures:

None.

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 an insignificant, yet indeterminate fiscal impact on clerks of the court expenditures related to creating the searchable database as prescribed under the bill. If current databases or indices of Official Records could be utilized, there would be no additional cost to the clerks. In the event that individual clerks' offices are required to create a new database in order to comply with the provisions of the bill, an indeterminate negative fiscal impact could be realized.<sup>37</sup> However, statewide revenue projections for funding received by the clerks' Fine and Forfeiture Funds are forecasted to increase by \$5.7 million in Fiscal Year 2023-24 and by \$5.4 million in Fiscal Year 2024-25<sup>38</sup>, which could help offset any potential impact.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill creates new requirements for a clerk of court; however, an exemption may apply because the fiscal impact may be insignificant.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

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<sup>37</sup> Florida Association of Court Clerks and Comptrollers, Agency Analysis of 2024 House Bill 1443, p. 2 (Feb. 1, 2024).

<sup>38</sup> Office of Economic and Demographic Research, Revenue Estimating Conference, Article V Fees & Transfers, Executive Summary, p. 2 (Dec. 20, 2023). <http://edr.state.fl.us/Content/conferences/articleV/ArticleVsummary.pdf> (last visited Feb. 6, 2024).

