

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/SB 1616

INTRODUCER: Judiciary Committee and Senator Calatayud

SUBJECT: Electronic Access to Official Records

DATE: February 14, 2024

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>Kolich</u>	<u>Sadberry</u>	<u>AP</u>	<u>Pre-meeting</u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/SB 1616 amends current law to make an official records search easier and more user-friendly for someone who is trying to identify adults against whom a protective injunction has been issued to protect a minor from domestic violence; repeat violence, sexual violence, or dating violence; or stalking. While the information is currently posted on “an Internet website for general public display” the information must now be posted more conspicuously on the homepage of the official website for each clerk of court.

Specifically, the respondent’s identity and related case information must be viewable through a publicly searchable database that is available in a clear and conspicuous location on the homepage of the clerk’s official website.

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

The bill deletes all references to “each county recorder” throughout the bill. The original language in statute included references to “each county recorder or clerk of the court.”

The bill has an indeterminate fiscal impact to the clerks. See Section V., Fiscal Impact Statement.

The bill takes effect July 1, 2024.

## II. Present Situation:

### Serena's Law

The Legislature unanimously passed “Serena’s Law” in 2021.<sup>1</sup> Serena, from Collier County, was sexually assaulted as a child between the ages of 11 and 14. Although the perpetrator was not criminally prosecuted, a protective injunction<sup>2</sup> against sexual violence was obtained against him. At least two other injunctions were issued against the perpetrator for the protection of minors, but the injunctions did not show up in background searches when the perpetrator was vetted for volunteer activities involving children.<sup>3</sup>

Serena’s law was created to remedy this information gap. The law allows members of the public to more easily access court records and identify people who have had a final judgment for an injunction issued against them for domestic violence, sexual violence, and stalking when the misconduct involves a minor. The law requires each county recorder or clerk of the court to publish on an Internet website the identity of the person who is named as a respondent in the protective injunction, as well as the fact that the injunction has been entered, unless the defendant or respondent is a minor.<sup>4</sup>

If the information described above was not made publicly available by the county recorder or clerk of the court on a publicly available Internet website before July 1, 2021, it had to be made available to the general public if the affected party, or victim, identified the information and requested that it be made available on the Internet website. The law provides a process for this request and for notifying an affected party of the right to make this request. Additionally, an affected party may petition the circuit court for an order directing the county recorder or clerk of court to comply with the previously described requirements.

Finally, the law requires that final judgments for injunctions for protection in chapters 741 and 784, F.S., be recorded in official records. Chapter 741 deals with domestic violence and chapter 784 deals with assault, battery, and culpable negligence.

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<sup>1</sup> Ch. 2021-131, s. 1, Laws of Fla.

<sup>2</sup> An injunction is a court order commanding someone to do a certain act or prohibiting them from doing a certain act. (BLACK’S LAW DICTIONARY (11th ed. 2019)). Under Florida law, protective injunctions are available for victims of domestic violence, repeat violence, sexual violence, dating violence, and stalking. See sections 741.30, 784.046, and 784.0485, F.S.

<sup>3</sup> The Florida Senate, *Senate Bill Analysis and Fiscal Impact Statement for CS/SB 1508* (March 26, 2021)

<https://www.flsenate.gov/Session/Bill/2021/1508>.

<sup>4</sup> Section 28.2221(2)(a), F.S.

## Access to Electronic Court Records

Through administrative rule, the Florida Supreme Court adopted standards for access to electronic court records and an access security matrix.<sup>5</sup> There are different levels of permissible access 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>6</sup> Under these standards, “remote electronic access may be more restrictive than in-person in-house electronic access that is provided at clerks’ offices.”<sup>7</sup>

Permitted access for the general public (without registration agreement) includes:

- All records, except those that are expunged or sealed, automatically confidential under Rule 2.420(d)(1), Fla. R. Jud. Admin., or made confidential by court order.
- No remote access to 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>8</sup>

There are no user security requirements in this “User Role 7.” Anonymous web-based access is permitted.<sup>9</sup>

### III. Effect of Proposed Changes:

The bill amends Serena’s law to make the search to locate a respondent much easier and user-friendly. While the information is currently posted on “an Internet website for general public display” the information must now be posted more conspicuously on the homepage of the official website for each clerk of court.

The respondent’s identity and the required 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 bill requires that *notice* of the right of an affected party to request the addition of information to the searchable database must be displayed clearly and conspicuously on the clerk’s official website. The notice must state that any person has a right to request that a clerk add the information to the searchable database on the clerk’s official website if the information involves the identity of a respondent against whom a final judgment for an injunction for the protection of a minor has been issued.

The bill deletes all references to “each county recorder” throughout the bill. The original language in Serena’s law included references to “each county recorder or clerk of the court.”

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<sup>5</sup> *In Re: Access to Electronic Court Records* (Administrative Order), No. 20-108 (Nov. 20, 2020) and *Standards for Access to Electronic Court Records* (Nov. 2020), Florida Supreme Court, available at <https://www.floridasupremecourt.org/content/download/693366/7743882> (last visited March 18, 2021).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

The bill takes effect July 1, 2024.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, section 18 of the Florida Constitution.

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 Florida Court Clerks and Comptrollers note that, if the intent of the legislation is for the clerks to create a new searchable database, there would be an indeterminate negative fiscal impact created by the increased workload and the need for enhanced technology resources. If a current database or index of official records could be used, there is no fiscal impact.<sup>10</sup>

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<sup>10</sup> Florida Court Clerks & Comptrollers, *Bill Analysis for HB 1443 and SB 1616* (Feb. 1, 2024) <https://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=35759>.

**VI. Technical Deficiencies:**

The bill deletes the phrase “county recorder or” on lines 13, 28, 36-37, 47, 50, 55, and 63. According to the Florida Court Clerks & Comptrollers, deleting this phrase could create complications in Broward and Orange counties. In those locations, the county recorder is a separate office from the clerk of the court. If the requirement that the county recorder provide this information and the references to the county recorder offices are deleted from statute, it could have the effect of exempting these counties from the original intent of Serena’s law.<sup>11</sup>

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 28.2221 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Judiciary on February 5, 2024:**

A technical amendment was adopted to replace the word “must” with the word “shall” throughout the bill.

**B. Amendments:**

None.

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

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<sup>11</sup> *Id.*