

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: SPB 7036

INTRODUCER: For consideration by the Children, Families, and Elder Affairs Committee

SUBJECT: OGSR/Identifying Information of Persons Reporting Child Abuse, Abandonment, or Neglect

DATE: January 18, 2024 **REVISED:** _____

| ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---------------|------------------|-----------|--|
| 1. <u>Rao</u> | <u>Tuszynski</u> | _____ | Submitted as Committee Bill/Fav |

I. Summary:

The Open Government Sunset Review Act requires the Legislature to review each public record exemption and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The Department of Children and Families (DCF) operates the Florida central abuse hotline (hotline), which accepts reports of child abuse, abandonment, or neglect 24 hours a day, seven days a week. Any person who knows or suspects that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child’s welfare must report such information or suspicion to the hotline. Current law provides a public record exemption for the name of any person reporting child abuse, abandonment, or neglect, as well as other identifying information of such reporter.

SPB 7036 saves from repeal the public record exemption concerning all identifying information of a person —other than a person’s name, which is already protected by law— reporting child abuse, abandonment, or neglect.

The bill takes effect October 1, 2024

II. Present Situation:

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR Act)¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It

¹ Section 119.15, F.S.

requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²

The OGSR Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet 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.
- Protect trade or business secrets.³

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.⁴ If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created, then a public necessity statement and a two-thirds vote for passage are not required.

Florida Central Abuse Hotline

The Department of Children and Families (DCF) operates the Florida central abuse hotline (hotline), which accepts reports 24 hours a day, seven days a week of known or suspected child abuse, abandonment, or neglect.⁵ Reports may be made to the hotline in writing, through a call to the statewide toll-free number, or through electronic reporting.⁶

Current law requires any person to immediately report to the hotline if the person knows or suspects that a child:⁷

- Has been abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare;
- Is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care;
- Has been abused by an adult other than a parent, legal custodian, caregiver or other person responsible for the child's welfare; or
- Is the victim of sexual abuse or juvenile sexual abuse.⁸

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Article I, s. 24(c), FLA. CONST.

⁵ Section 39.101(1)(a), F.S.

⁶ Sections 39.201(1)(a) and 39.101(1)(a), F.S.

⁷ Sections 39.201(1)(a)1 F.S., and 39.201(1)(a)2., F.S.

⁸ "Juvenile sexual abuse" means any sexual behavior by a child which occurs without consent, without equality, or as a result of coercion. Section 39.01(38), F.S. For definitions of "coercion," "consent," and "equality," see s. 39.01(38), F.S.

Generally, reports from the general public to the hotline may be made anonymously;⁹ however, certain reporters must provide their names to the hotline because of their occupation.¹⁰ These occupational categories include:

- Physicians, osteopathic physicians, medical examiners, chiropractic physicians, nurses, hospital personnel engaged in the admission, examination, care, or treatment of persons or any other health care or mental health professional.
- Practitioners who rely solely on spiritual means for healing.
- School teachers or other school officials or personnel.
- Social workers, day care center workers, or other professional child care, foster care, residential, or institutional workers.
- Law enforcement officers.
- Judges.
- Animal control officers.¹¹

If a reporter provides his or her name, the name is entered into the record of the report but is confidential and exempt from public record requirements and may not be disclosed except as specifically authorized by law.¹²

DCF uses electronic equipment that automatically provides the telephone number or the Internet protocol address from which the report is received.¹³ This information becomes part of the report but is confidential and exempt from public record requirements.¹⁴

Failure to report known or suspected child abuse, abandonment, or neglect is a crime.¹⁵ A person who knowingly and willfully fails to make a report of abuse, abandonment, or neglect, or who knowingly and willfully prevents another person from making a report, is guilty of a third-degree felony.¹⁶ Any person who makes a child abuse, abandonment, or neglect report in good faith is immune from criminal or civil liability that might otherwise result from reporting.¹⁷

Child Protective Investigations

Once the hotline receives a report, if the allegations of the report meet the statutory criteria for child abuse, abandonment, or neglect, the report must be accepted as a child protective investigation.¹⁸ If the allegations meet such criteria, an investigation must be commenced either

⁹ Section 39.201(1)(b)1., F.S.

¹⁰ Section 39.201(1)(b)2., F.S.

¹¹ *Id.*

¹² Sections 39.201(1)(c) and 39.202(1), F.S.

¹³ Section 39.101(3)(b)1. and 2., F.S.

¹⁴ Section 39.101(3)(b)3., F.S.

¹⁵ Section 39.205(1), F.S.

¹⁶ A third-degree felony is punishable by up to five years in prison, or a fine of up to \$5,000. See s. 775.082(3)(e) and 775.083(1)(c), F.S.

¹⁷ Section 39.203(1)(a), F.S.

¹⁸ Section 39.201(4)(a), F.S.

immediately or within 24 hours after the report is received, depending on the nature of the allegation.¹⁹ Such investigations must be performed by DCF or its agent.²⁰

The child protective investigation assesses the safety and perceived needs of the child and family.²¹ It includes a face-to-face interview with the child, other siblings, parents, and other adults in the household, as well as an onsite assessment of the child's residence.²² Based upon the information received by the hotline, interviews with each family member, and a review of the family's history, the investigator must determine which collateral sources, including neighbors, teachers, friends, and professional sources, are likely to have relevant and reliable information about the child's situation.²³ The investigator interviews the collateral sources and, under DCF operating procedure, must protect their identities to the extent possible when discussing information shared by collateral sources with the child's family.²⁴

Confidentiality of Records

Current law provides that all records concerning child abuse, abandonment, or neglect, including hotline reports and all records generated as a result of such reports, are confidential and exempt²⁵ from public record requirements.²⁶ Access to records concerning child abuse, abandonment, or neglect —*excluding the name, or other identifying information of the reporter*— is granted to:

- Certain employees, authorized agents, or contract providers of DCF, the Department of Juvenile Justice, the Department of Health, the Agency for Persons with Disabilities, the Agency for Health Care Administration, the Department of Education, and county agencies responsible for carrying out specific duties related to these agencies, and agencies with comparable jurisdictions in other states.
- Criminal justice agencies and the state attorney of the judicial circuit where the child resides or the alleged abuse or neglect occurred.
- The parent or legal custodian of any child who is alleged to have been abused, abandoned, or neglected, and the child and their attorneys.
- Any person alleged to have caused the abuse, abandonment, or neglect of a child. If that person is not a parent, the record will be limited to information about the protective investigation and will not include any information about the subsequent dependency proceedings.

¹⁹ Section 39.101(2), F.S.

²⁰ Section 39.301(8), F.S.

²¹ Section 39.301(7), F.S.

²² *Id.*

²³ Department of Children and Families Operating Procedure CFOP 170-5, Interviewing Collateral Contacts, (Sept. 20, 2023), <https://www.myflfamilies.com/sites/default/files/2023-09/CFOP%20170-05%20Child%20Protective%20Investigations.pdf> (last visited Jan. 9, 2023)

²⁴ *Id.*

²⁵ There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature designates confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied, 892 So.2d 1015 (Fla. 2004); *State v. Wooten*, 260 So. 3d 1060, 1070 (Fla. 4th DCA 2018); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See *Op. Att'y Gen. Fla. 04- 09* (2004).

²⁶ Section 39.202(1), F.S.

- A court, if access to such records is necessary for the determination of an issue before it, and a grand jury, if access is necessary for its official business.
- Any appropriate official of DCF, the Agency for Health Care Administration, or the Agency for Persons with Disabilities who is responsible for administering or supervising the agency's program for the prevention, investigation, or treatment of child abuse, abandonment, or neglect; for taking administrative action concerning agency employees who are alleged to have committed such acts; or for employing and continuing employment of agency personnel.
- Any person authorized by DCF who uses information of child abuse, abandonment, or neglect for research, statistical, or audit purposes. Information identifying the subjects of such records or information must be treated as confidential by the researcher and may not be released in any form.
- The Division of Administrative Hearings for purposes of any administrative challenge.
- An official of a Florida advocacy council investigating a report of known or suspected child abuse, abandonment, or neglect.
- An official of the Auditor General or the Office of Program Policy Analysis and Government Accountability for the purpose of conducting audits or examinations pursuant to law.
- The Guardian ad Litem for the child.
- The Public Employees Relations Commission for the sole purpose of obtaining evidence for appeals filed under s. 447.207, F.S.
- Employees or agents of the Department of Revenue responsible for child support enforcement activities.
- Any person in the event that the death of a child is the result of abuse, abandonment, or neglect.
- An employee of a local school district who is the designated liaison between the school district and DCF and the principal of a public school, private school, or charter school where the child is a student.
- An employee or agent of the Department of Education who is responsible for the investigation or prosecution of misconduct by a certified educator.
- Staff of a children's advocacy center that is established and operated under s. 39.3035, F.S.
- A physician, psychologist, or mental health professional licensed in Florida and engaged in the care or treatment of the child.
- Persons with whom DCF is seeking to place the child or to whom placement has been granted, including foster parents, the designee of a licensed child-caring agency as defined in s. 39.523, an approved relative or nonrelative with whom a child is placed, preadoptive parents, adoptive parents, or an adoptive entity acting on behalf of preadoptive or adoptive parents.

A reporter may, however, provide written consent to release his or her name or other identifying information to these entities.²⁷ A reporter's name or other identifying information may be released without that person's written consent to DCF employees responsible for child protective

²⁷ Section 39.202(5), F.S.

services, the hotline, law enforcement, child protection teams,²⁸ or the appropriate state attorney.²⁹

An individual who knowingly or willfully discloses any confidential information contained in the hotline or in the records of any child abuse, abandonment, or neglect case to anyone other than an authorized person commits a second-degree misdemeanor.³⁰

Public Record Exemption under Review

In 2019, the Legislature created the public record exemption for other identifying information (as the name was already protected) with respect to any person reporting child abuse, abandonment, or neglect.³¹ Such information is confidential and exempt³² from public record requirements.³³

The 2019 public necessity statement³⁴ noted that prior to the existence of the public record exemption under review, the statute only protected the name of the reporter.³⁵ The public necessity statement asserted that:

By protecting only the name of the reporter of child abuse, abandonment, or neglect, the identity of the individual may be discerned by other identifying information, thus rendering the protection ineffective. Providing robust protections to reporters of child abuse, abandonment, or neglect improves the mandatory reporting scheme by ensuring that instances of suspected child abuse, abandonment, or neglect are reported to the Department of Children and Families. Therefore, it is necessary that individuals who are considered reporters under the current statutory scheme have their identifying information protected.³⁶

Pursuant to the OGS Act, the exemption will repeal on October 2, 2024, unless reenacted by the Legislature.³⁷ If the expansion of the exemption to include other identifying information with respect to any person reporting child abuse, abandonment, or neglect is not reenacted by the Legislature, the public record exemption will revert back to protecting only the name of such reporter.³⁸

²⁸ ‘Child Protection Team’ means a team of professionals established by the Department of Health to receive referrals from the protective investigators and protective supervision staff of DCF and to provide specialized and supportive services to the program in processing child abuse, abandonment, or neglect cases. Child protection teams must provide consultation to other programs of DCF and other persons regarding child abuse, abandonment, or neglect cases. Section 39.01(12), F.S.

²⁹ Section 39.202(5), F.S.

³⁰ Section 39.205(6), F.S. A second-degree misdemeanor is punishable by up to 60 days imprisonment, or a fine of up to \$500. See ss. 775.082(4)(b) and 775.083(1)(e), F.S.

³¹ Chapter 2019-49, Laws of Fla., codified as s. 39.202(2) and (5), F.S.

³² *Supra* note 25.

³³ Section 39.202(1), F.S.

³⁴ Article I, s. 24(c), FLA. CONST., requires each public record exemption to “state with specificity the public necessity justifying the exemption.”

³⁵ Chapter 2019-49, Laws of Fla.

³⁶ Chapter 2019-49, s. 2, Laws of Fla.

³⁷ Section 39.202(10), F.S.

³⁸ Chapter 2019-49, s. 9, Laws of Fla., codified as s. 39.202(10), F.S.

During the 2023 interim, House and Senate staff met with staff from DCF. DCF stated that the agency has not had any issues interpreting or applying the exemption and has not been a party to any litigation regarding the agency's interpretation of the exemption. DCF recommended the exemption be reenacted as is.

III. Effect of Proposed Changes:

Section 1 of the bill removes the scheduled repeal of the exemption, thereby maintaining the public record exemption for certain identifying information of a reporter to the hotline held by an agency.

Section 2 of the bill provides an effective date of October 1, 2024.

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 continues a current public records and public meetings exemption beyond its current date of repeal. The bill does not create or expand an exemption. Thus, the bill does not require an extraordinary vote for enactment.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill continues a current public records and public meetings exemption without expansion. Thus, a statement of public necessity is not required.

Breadth of 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. 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 substantively amends s. 39.202, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.