

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 Appropriations Committee on Criminal and Civil Justice

BILL: SB 7062

INTRODUCER: For consideration by the Appropriations Committee on Criminal and Civil Justice

SUBJECT: Public Records/Lethality Assessment

DATE: February 7, 2024

REVISED: _____

ANALYST

Kolich

STAFF DIRECTOR

Harkness

REFERENCE

Favorable

ACTION

I. Summary:

SB 7062 amends s. 741.29, F.S., to create a public records exemption for a lethality assessment form that contains a victim's information and responses to a lethality assessment.

This bill is linked to SB 638, which requires law enforcement officers who investigate an alleged incident of domestic violence to administer a lethality assessment if the allegation is against an intimate partner, regardless of whether an arrest is made. Lethality assessments are used to determine a victim's risk of serious bodily injury or death at the hands of their aggressor and will be administered for any call relating to intimate partner violence.

The exemption is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment.

The bill provides a public necessity statement as required by the State Constitution.

Because the bill creates a new public record exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill takes effect on the same date that SB 638 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:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three

¹ FLA. CONST. art. I, s. 24(a).

branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the Legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Finally, ch. 119, F.S., known as the Public Records Act, provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

The Public Records Act provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

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

All 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.

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

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any 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

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate (2022-2024)* and Rule 14.1, *The Rules of the Florida House of Representatives*, Edition 1 (2022-2024).

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

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 violating those laws.

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.⁹ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁰

General exemptions from the public records requirements are contained in the Public Records Act.¹¹ Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.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

Legislative Review Process and Future Repeal

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act¹⁶ (the Act), prescribe a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ The Act requires the repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

⁹ FLA. CONST. art. I, s. 24(c).

¹⁰ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding 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); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹¹ *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹² *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

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.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ 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.

¹⁹ Section 119.15(3), F.S.

Exemption Must Serve an Identifiable Public Purpose and Be Drafted No Broader than Necessary

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.²⁰ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

Public Necessity Statement and Two-thirds Vote Requirement

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and 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.²⁶

Domestic Violence

Domestic violence is any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S. The specified 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?

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

offense resulting in physical injury or death of one family or household member by another family or household member.²⁷

Domestic Violence in Florida

In 2020, 106,615 crimes of domestic violence were reported to Florida law enforcement agencies, resulting in 63,217 arrests.²⁸ Of those 106,615 reported domestic violence offenses, the relationship of the victims to the offenders varied, including:

- 20,735 were spousal;²⁹
- 29,663 were co-habitants;³⁰ and
- 20,142 were other.³¹

Domestic Violence Training

Section 943.171, F.S., requires basic skills training in handling domestic violence cases. Every basic skills course required in order for law enforcement officers to obtain initial certification shall include a minimum of six hours of training in handling domestic violence cases and training must include the recognition and determination of the primary aggressor in domestic violence cases and the issues involved in child-to-parent cases.

Domestic Violence Investigations

Section 741.29, F.S., provides domestic violence investigations require an officer who investigates an alleged incident of domestic violence to:

- Assist the victim to obtain medical treatment if such is required;³²
- Advise the victim that there is a domestic violence center from which the victim may receive services;³³
- Give the victim immediate notice of the legal rights and remedies available;³⁴

²⁷ Section 741.28, F.S.; “Family or household member,” means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

²⁸ Florida Department of Law Enforcement, *Crime in Florida: Florida Uniform Crime Report*, available at: <https://www.fdle.state.fl.us/CJAB/UCR/Annual-Reports/UCR-Domestic-Violence> (Last accessed December 12, 2023).

²⁹ Florida Department of Law Enforcement, *Domestic Violence, Victim to Offender Relationships*, available at: <https://www.fdle.state.fl.us/CJAB/UCR/Annual-Reports/UCR-Domestic-Violence/Domestic-Violence-Relationships-Chart.aspx> (Last accessed December 14, 2023). Spouse means the victim and offender are married by law or have been previously married. This category included ex-spouses.

³⁰ *Id.* Co-Habitant means the victim lived with the offender as a married couple without legal marriage. This category includes former co-habitants.

³¹ *Id.* Other means the victim and offender had a child together but were never married and never lived together.

³² Section 741.29 (1), F.S.

³³ Section 741.29 (1), F.S.

³⁴ Section 741.29 (1), F.S. The Legal Rights and Remedies Notice to Victims must include a general summary of s. 741.30, F.S., the resource listing and phone number for the area domestic violence center, and a copy of the following statement: “If you are a victim of domestic violence, you may ask the state attorney to file a criminal complaint. You also have the right to go to court and file a petition requesting an injunction for protection from domestic violence which may include, but need not be limited to, provisions which restrain the abuser from further acts of abuse; direct the abuser to leave your household; prevent the abuser from entering your residence, school, business, or place of employment; award you custody of minor children; and direct the abuser to pay support to you and the minor children if the abuser has a legal obligation to do so.

- Make a written report, whether or not an arrest is made, that is complete and clearly indicates the alleged offense was an incident of domestic violence. The report shall be given to the officer's supervisor and filed with the law enforcement agency in a manner that will permit data on domestic violence cases to be compiled.³⁵ Such report must include:
 - A description of physical injuries observed, if any.
 - If a law enforcement officer decides not to make an arrest or decides to arrest two or more parties, the officer must include the grounds for not arresting anyone or for arresting two or more parties.
 - A statement which indicates that a copy of the legal rights and remedies notice was given to the victim.
- Obtain a written statement from the victim and witnesses concerning the alleged domestic violence when possible; and
- Make an arrest whenever the officer determines probable cause that an act of domestic violence has been committed.^{36, 37}

When complaints are received from two or more parties, the officers must evaluate each complaint separately to determine whether there is probable cause for arrest. If the officer has probable cause to believe that two or more persons have committed a crime, or two or more persons make complaints, the officer must attempt to determine who was the primary aggressor.³⁸ Section 943.171, F.S., requires the training in handling domestic violence cases to include the recognition and determination of the primary aggressor. Arrest is the preferred response only for the primary aggressor and not the preferred response for a person who acts in a reasonable manner to protect or defend oneself or another family or household member.³⁹

A law enforcement officer may not be held liable, in any civil action, for an arrest based on probable cause, enforcement in good faith of a court order, or service of process in good faith under this chapter arising from an alleged incident of domestic violence brought by any party to the incident.⁴⁰

The Use of Lethality assessments in Incidents of Domestic Violence

Effective July 1, 2023, Utah implemented a bill requiring police to perform a lethality assessment for domestic violence calls. Since the law went into effect in Utah, the Director of Public Policy at the Utah Domestic Violence Coalition reported that victim resource providers have seen 80 percent more people statewide reaching out for help.⁴¹

³⁵ Section 741.29 (2), F.S.

³⁶ Section 741.29(3), F.S.

³⁷ Section 901.15(7), F.S., provides that a law enforcement officer may arrest a person without a warrant when there is probable cause to believe that the person has committed an act of domestic violence. The decision to arrest does not require consent of the victim or consideration of the relationship of the parties. It is the public policy of this state to strongly discourage arrest and charges of both parties for domestic violence or dating violence on each other and to encourage training of law enforcement and prosecutors in these areas.

³⁸ Section 741.29(4)(a), F.S.

³⁹ Section 741.29.(4)(b), F.S.

⁴⁰ Section 741.29(5), F.S.

⁴¹ See KSL News Radio, *Utah domestic violence victim advocates call for funding amid a surge of demand*, Adam Small, November 7, 2023, available at: <https://kslnnewsradio.com/2056767/utah-domestic-violence-victim-advocates-call-for-funding/> (Last accessed December 8, 2023).

Maryland is another state that has implemented lethality assessments as a statewide approach. Maryland Network Against Domestic Violence (MNADV) created and implemented the Lethality Assessment Program Maryland Model in 2005.⁴² The program was created based on the research conducted and supported by a grant from the National Institute of Justice. The program was developed as a way for first responders to identify victims of intimate partner violence who are at the greatest risk of being killed. The program has been adopted in 31 additional states since the initial implementation in Maryland. Researchers found that although the program did not appear to have a significant effect on reducing the frequency of intimate partner violence, at follow-up, it appeared to significantly reduce the severity and frequency of the violence that survivors experience and increased help seeking and safety planning.⁴³ Overall, the evaluation concluded that although additional research is needed on the Lethality Assessment Program, it shows promise as an evidence-informed intervention that increases survivors' safety and empowers them to make self-care decisions.⁴⁴

There is no current law in Florida pertaining to the administration of a lethality assessment.

III. Effect of Proposed Changes:

The bill amends s. 741.29, F.S., to create a public records exemption for a lethality assessment form that contains a victim's information and responses to a lethality assessment. Lethality assessments are used to determine a victim's risk of serious bodily injury or death at the hands of their aggressor and will be administered for any call relating to intimate partner violence.

The exemption is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment.

The bill provides the following public necessity statement:

The Legislature finds that it is a public necessity that a lethality assessment form that contains a victim's information and responses to the lethality assessment be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature finds that the release of information included on a lethality assessment form could subject victims of domestic violence to an increased risk of abuse. Such information contained on a lethality assessment form is sensitive in nature. The Legislature further finds that such victims are more likely to participate in a lethality assessment if such

⁴² See Maryland Network Against Domestic Violence, *Lethality Assessment Program*. Available at: <https://www.mnadv.org/lethality-assessment-program/lap-program-overview-2/> (Last accessed December 14, 2023).

⁴³ See National Institute of Justice, *How Effective are Lethality Assessment Programs for Addressing Intimate Partner Violence?*, available at: <https://nij.ojp.gov/topics/articles/how-effective-are-lethality-assessment-programs-addressing-intimate-partner> (Last accessed December 14, 2023).

⁴⁴ Inter-University Consortium for Political and Social Research, *Police Departments' Use of Lethality Assessments: An Experimental Evaluation*, Messing, Jill, Campbell, Jacquelyn, Wilson, Janet, Brown, Sheryll, and Patchell, Beverly, January 13, 2016, available at, <https://doi.org/10.3886/ICPSR34975.v1> (Last accessed December 14, 2023).

form is protected from public disclosure. The Legislature finds that the harm that may result from the release of such information outweighs the public benefit that may be derived from the disclosure of this information.

The bill takes effect on the same date that SB 638 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

IV. Constitutional Issues:

Municipality/County Mandates Restrictions:

None.

A. 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 enacts a new exemption for records pertaining to a victim's information and responses on a lethality assessment form; therefore, the bill requires a two-thirds vote to be enacted.

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. Section 2 of the bill contains a statement of public necessity for the exemption.

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 purpose of the law is to protect victims of domestic violence. This bill exempts only records pertaining a victim's information and responses on a lethality assessment form from the public records requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

B. Trust Funds Restrictions:

None.

C. State Tax or Fee Increases:

None.

D. 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 741.29 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.)

None.

B. Amendments:

None.