

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB GVOPS 11-07 OGSR Interference with Custody

**SPONSOR(S):** Government Operations Subcommittee

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 570

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	14 Y, 0 N	Williamson	Williamson

### SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record 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.

Current law provides a third-degree felony for the offense of interference with custody. The offense does not apply when a person having a legal right to custody of a minor or incompetent person is the victim of domestic violence, reasonably believes he or she is about to become a victim of such violence, or believes the welfare of the minor or incompetent person is in danger. Such person must file a report with the office of the sheriff or state attorney of the county where the minor or incompetent person resided at the time he or she was taken. The report must contain the name of the person taking the minor or incompetent person, the current address and telephone number of that person and of the minor or incompetent person, and the reasons the minor or incompetent person was taken.

Current law provides a public record exemption for the address and telephone number of the person taking the minor or incompetent person, and of the minor or incompetent person, contained in the report made to a sheriff or state attorney.

The bill reenacts the public record exemption, which will repeal on October 2, 2011, if this bill does not become law.

The bill does not appear to have a fiscal impact on state or local governments.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Open Government Sunset Review Act

The Open Government Sunset Review Act<sup>1</sup> sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It 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.

The 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:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects 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.
- Protects trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.<sup>2</sup> 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<sup>3</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### Interference with Custody

In 1974, the Legislature created the offense of interference with custody. At present, there are two variations to the offense. It is a third-degree felony:

- For any person, without legal authority, to knowingly or recklessly take a minor or incompetent person from the custody of his or her parent, a guardian, a public agency in charge of the minor or incompetent person, or any other lawful custodian.<sup>4</sup>
- In the absence of a court order determining custody or visitation rights, for a parent, stepparent, legal guardian, or relative who has custody of the minor or incompetent person to take or conceal the minor or incompetent person with a malicious intent to deprive another person of his or her right to custody.<sup>5</sup>

Current law provides three defenses to the offense of interference with custody.<sup>6</sup> The statute also provides that the offense of interference with custody does not apply when a person having a legal right to custody of a minor or incompetent person is the victim of domestic violence, reasonably believes he or she is about to become a victim of such violence, or believes the welfare of the minor or incompetent person is in danger.<sup>7</sup> In order to avail himself or herself of this exception, such person must:

- Within 10 days of the taking, make a report to the sheriff or state attorney for the county in which the minor or incompetent person resided. The report must include the name of the person

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 24(c), Art. I of the State Constitution.

<sup>3</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

<sup>4</sup> Section 787.03(1), F.S.

<sup>5</sup> Section 787.03(2), F.S.

<sup>6</sup> See s. 787.03(4), F.S.

<sup>7</sup> Section 787.03(6)(a), F.S.

taking the minor or incompetent person, the current address and telephone number of the person and of the minor or incompetent person, and the reasons the minor or incompetent person was taken.<sup>8</sup>

- Within a reasonable time of the taking, commence a custody proceeding consistent with the federal Parental Kidnapping Prevention Act<sup>9</sup> or the Uniform Child Custody Jurisdiction and Enforcement Act.<sup>10,11</sup>
- Inform the sheriff or state attorney of any address or telephone number changes for the person and the minor or incompetent person.<sup>12</sup>

#### Public Record Exemption under Review

Current law provides that the address and telephone number of the person taking the minor or incompetent person, and of the minor or incompetent person, contained in the report made to a sheriff or state attorney, are confidential and exempt<sup>13</sup> from public records requirements.<sup>14</sup> A sheriff or state attorney may allow an agency<sup>15</sup> to inspect and copy records containing the confidential and exempt information in the furtherance of that agency's duties and responsibilities.<sup>16</sup>

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2011, unless reenacted by the Legislature.<sup>17</sup>

#### **Effect of Bill**

The bill removes the repeal date, thereby reenacting the public record exemption and saving it from repeal.

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

Section 1 amends s. 787.03, F.S., to reenact the public record exemption for certain information related to the offense of interference with custody.

Section 2 provides an effective date of October 1, 2011.

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

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

##### **1. Revenues:**

None.

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<sup>8</sup> Section 787.03(6)(b)1., F.S.

<sup>9</sup> 28 U.S.C. s. 1738A.

<sup>10</sup> Sections 61.501 – 61.542, F.S.

<sup>11</sup> Section 787.03(6)(b)2., F.S.

<sup>12</sup> Section 787.03(6)(b)3., F.S.

<sup>13</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (*See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 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 the statutory exemption. (*See* Attorney General Opinion 85-62, August 1, 1985).

<sup>14</sup> Section 787.03(6)(c)1., F.S.

<sup>15</sup> Section 119.011(2), F.S., defines “agency” to mean “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.”

<sup>16</sup> Section 787.03(6)(c)2., F.S.

<sup>17</sup> Section 787.03(6)(c)3., F.S.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.