

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 679 Public Records  
SPONSOR(S): Civil Justice Subcommittee  
TIED BILLS: None IDEN./SIM. BILLS: SB 1436

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee		Bond	Bond

SUMMARY ANALYSIS

Victims of domestic, repeat, dating, or sexual violence, or stalking or cyberstalking may seek an injunction for protection if certain requirements are met.

The bill creates a public records exemption to provide that a petition for an injunction against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking that is dismissed without a hearing or at an ex parte hearing due to failure to state a claim, lack of jurisdiction, or any reason having to do with the sufficiency of the petition itself without an injunction being issued, and the contents of such a petition, is confidential and exempt from s. 119.07(1), F.S., and article I, s. 24(a) of the Florida Constitution.

The bill repeals the exemption on October 2, 2021, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

The bill may have a minimal fiscal impact on the state and local governments. See Fiscal Comments section.

The effective date of the bill is July 1, 2016.

**Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records or public meetings exemption. The bill creates a public records exemption for certain court files related to a petition for an injunction against violence; thus, it requires a two-thirds vote for final passage.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Public Records, In General**

##### Florida Constitution

Article I, s. 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, s. 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 (public necessity statement), and is no broader than necessary to meet its public purpose.<sup>1</sup>

##### Florida Statutes

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.

The Open Government Sunset Review Act<sup>2</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>3</sup> However, the exemption 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; or
- Protect trade or business secrets.<sup>4</sup>

The Open Government Sunset Review Act requires the automatic repeal of a public records exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>5</sup>

#### **Public Records and Court Proceedings and Files**

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."<sup>6</sup> The court found that "closure of court proceedings or records should occur only when necessary (a) to comply with established public policy set forth in the constitution, statutes, rules, or case law; (b) to protect trade secrets; (c) to protect a compelling governmental interest [e.g., national security; confidential informants]; (d) to obtain evidence to properly determine legal issues in a case; (e) to avoid substantial injury to innocent third parties [e.g., to protect young witnesses from offensive testimony; to protect children in a divorce]; or (f) to avoid substantial injury to a party by disclosure of

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<sup>1</sup> FLA. CONST. art. I, s. 24(c).

<sup>2</sup> s. 119.15, F.S.

<sup>3</sup> s. 119.15(6)(b), F.S.

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

<sup>5</sup> s. 119.15(3), F.S.

<sup>6</sup> *Barron v. Florida Freedom Newspapers, Inc.*, 531 So.2d 113, 116 (Fla. 1988)(ruling that court files in divorce cases are generally open despite the desire of the parties for privacy).

matters protected by a common law or privacy right not generally inherent in the specific type of civil proceeding sought to be closed.<sup>7</sup>

### **Public Record Exemption for Certain Court Files**

Currently, s. 119.0714(1), F.S., in relevant part, provides public records exemptions for various types of personal information of contained in court files. Information currently exempt from public records requirements includes records prepared by an agency attorney,<sup>8</sup> various law enforcement confidential records,<sup>9</sup> social security numbers,<sup>10</sup> and bank account numbers.<sup>11</sup>

### **Injunctions for Protection against Specified Acts of Violence**

#### *Domestic Violence*

Any person who is the victim of domestic violence<sup>12</sup> or who reasonably believes that he or she is in imminent danger of becoming the victim of domestic violence may file a petition for an injunction for protection against domestic violence.<sup>13</sup> The sworn petition must allege the existence of domestic violence and include specific facts and circumstances upon which relief is sought.<sup>14</sup>

The petition is immediately presented to a judge, who must review the petition. If it appears to the court that an immediate and present danger of domestic violence exists when the petition is filed, the court may grant a temporary injunction *ex parte*.<sup>15,16</sup> Temporary injunctions are only effective for a fixed period that cannot exceed 15 days.<sup>17</sup> The hearing on the petition must be set for a date on or before the date when the temporary injunction expires.<sup>18</sup> If the petition is insufficient, the court must dismiss the petition. Importantly, where the petition is dismissed as insufficient, the respondent is not notified of the petition.

If the petition is sufficient, a hearing must be set at the earliest possible time after a petition is filed and the respondent must be personally served with a copy of the petition.<sup>19</sup> At the hearing, specified injunctive relief may be granted if the court finds that the petitioner is:

- The victim of domestic violence; or
- Has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence.<sup>20</sup>

Alternatively, the court may dismiss the petition at the hearing.

#### *Repeat, Dating, and Sexual Violence*

Section 784.046, F.S., governs the issuance of injunctions against repeat violence,<sup>21</sup> dating violence,<sup>22</sup> and sexual violence.<sup>23</sup> This statute largely parallels the provisions and procedures discussed above regarding domestic violence injunctions.

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<sup>7</sup> *Id.* at 118.

<sup>8</sup> s. 119.0714(1)(a), F.S.

<sup>9</sup> ss. 119.0714(1)(c) through 119.0714(1)(h), F.S.

<sup>10</sup> s. 119.0714(1)(i), F.S.

<sup>11</sup> s. 119.0714(1)(j), F.S.

<sup>12</sup> Section 741.28, F.S., defines “domestic violence” as any 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.

<sup>13</sup> s. 741.30(1), F.S.

<sup>14</sup> s. 741.30(3), F.S.

<sup>15</sup> The court may grant such relief as it deems proper, including an injunction restraining the respondent from committing any acts of domestic violence, awarding to the petitioner the temporary exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner, and providing the petitioner a temporary parenting plan. s. 741.30(5), F.S.

<sup>16</sup> The only evidence admissible in the *ex parte* hearing is verified pleadings or affidavits, unless the respondent appears at the hearing *or* has received reasonable notice of the hearing. s. 741.30(5)(b), F.S.

<sup>17</sup> s. 741.30(5)(c), F.S.

<sup>18</sup> The court may grant a continuance of the hearing for good cause, which may include obtaining service of process. A temporary injunction must be extended, if necessary, during any period of continuance. s. 741.30(5)(c), F.S.

<sup>19</sup> s. 741.30(4), F.S.

<sup>20</sup> s. 741.30(6), F.S. Either party may move the court to modify or dissolve an injunction at any time. s. 741.30(6)(c) and (10), F.S.

### *Stalking and Cyberstalking*

Section 784.0485, F.S., governs the issuance of injunctions against stalking and cyberstalking. This statute largely parallels the provisions and procedures discussed above regarding domestic violence injunctions.

#### **Effect of the Bill**

The bill creates s. 119.0714(1)(k), F.S., to provide that a petition for an injunction against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking that is dismissed without a hearing or at an ex parte hearing due to failure to state a claim, lack of jurisdiction, or any reason having to do with the sufficiency of the petition itself without an injunction being issued, and the contents of such a petition, are confidential and exempt<sup>24</sup> from s. 119.07(1), F.S., and article I, s. 24(a) of the Florida Constitution.

As to injunctions dismissed prior to July 1, 2016, the bill provides a petition for an injunction against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking that is dismissed without a hearing or at an ex parte hearing due to failure to state a claim, lack of jurisdiction, or any reason having to do with the sufficiency of the petition itself without an injunction being issued, and the contents of such a petition, must be removed upon request by an individual named in the petition as a respondent. The request must be in the form of a signed, legibly written request specifying the case name, case number, document heading, and page number. The request must be delivered by mail, facsimile, electronic transmission, or in person to the clerk of the court. A fee may not be charged for the removal pursuant to the request.

The public necessity statement specifies that the Legislature finds that existence of such a petition and of the unverified allegations contained in such a petition could be defamatory to an individual and cause unwarranted damage to the reputation of such individual and that correction of the public record by the removal of such a petition is the sole means of protecting the reputation of an individual named in such a petition.

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<sup>21</sup> Section 784.046(1)(b), F.S., defines “repeat violence” to mean two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner’s immediate family member. Section 784.046(1)(a), F.S., defines “violence” to mean any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, or false imprisonment, or any criminal offense resulting in physical injury or death, by a person against any other person.

<sup>22</sup> Section 784.046(1)(d), F.S., defines “dating violence” to mean violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. Dating violence does not include violence in a casual acquaintanceship or between individuals who have only engaged in ordinary fraternization. The existence of such a relationship is determined by considering the following factors:

- A dating relationship must have existed within the past six months;
- The nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and
- The persons involved in the relationship must have been involved over time and on a continuous basis during the course of the relationship.

<sup>23</sup> Section 784.046(1)(c), F.S., defines “sexual violence” to mean any one incident of: sexual battery; a lewd or lascivious act committed upon or in the presence of a person younger than 16 years of age; luring or enticing a child; sexual performance by a child; or any other forcible felony wherein a sexual act is committed or attempted. For purposes of this definition, it does not matter whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney.

<sup>24</sup> There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates as *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 (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 2004); and *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, the record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See 85-62 Fla. Op. Att’y Gen. (1985).

The bill repeals the exemption on October 2, 2021, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.<sup>25</sup>

**B. SECTION DIRECTORY:**

Section 1 amends s. 119.0714, F.S., regarding court files, court records, and official records.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of July 1, 2016.

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

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

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

See Fiscal Comments.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

See Fiscal Comments.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill does not appear to have a direct economic impact on the private sector.

**D. FISCAL COMMENTS:**

The bill could have a minimal fiscal impact on court clerks because staff responsible for complying with public records requests may require training related to the creation of the public records exemption. In addition, clerks could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of clerks.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

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<sup>25</sup> FLA. CONST. art. I, s. 24(c).  
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### Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records or public meetings exemption. The bill creates a public records exemption; therefore, it requires a two-thirds vote for final passage.

### Public Necessity Statement and Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public records or public meetings exemption. The bill creates a public records exemption; therefore, it includes a public necessity statement. Article I, s. 24(c) of the Florida Constitution also requires a newly created public records or public meetings exemption to be no broader than necessary to accomplish the stated purpose of the law.

Where a proposed public records exemption is overly broad or lacks specificity in its application, the exemption is facially unconstitutional.<sup>26</sup>

#### B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

n/a

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<sup>26</sup> *Hallifax Hospital Medical Center v. News-Journal Corp.*, 724 So.2d 567 (Fla. 1999).