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## SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: November 6, 1997 Revised: \_\_\_\_\_

Subject: Domestic Violence / Confidentiality

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Crosby</u>	<u>Whiddon</u>	<u>CF</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

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### I. Summary:

The purpose of Committee Substitute for Senate Bill 118 is to enable state and local agencies to respond to requests for public records without disclosing the location of a victim of domestic violence, enable interagency cooperation to provide for address confidentiality for victims of domestic violence, and enable state and local agency use of a substitute mailing address for such victims. For purposes of the new sections of law created by this legislation, the definition of "domestic violence" is expanded to include not only certain violent acts against an individual but also the threat of such acts, whether or not they have been reported to law enforcement officials. The bill provides for an application process for participation in a program to provide address confidentiality for victims of domestic violence. Upon receipt of a properly and completely filed application, the Attorney General shall certify, to the extent possible under the budget, applicants as participants in the program and serve as the agent for purposes of service of process and receipt of mail. The bill specifies instances when a participant may be eliminated from the program. A program participant may request that state and local agencies or other governmental entities use the designated address; those agencies must use that address unless the Attorney General determines there is adequate reason for the agency to use the individual's actual physical address. Criteria for this determination are specified as is the agency's right to appeal the decision of the Attorney General pursuant to chapter 120, F.S.

The Committee Substitute for Senate Bill 118 also allows a program participant to vote by absentee ballot and prohibits the supervisor of elections from making the participant's name, address, or telephone number available for public inspection except in certain specified instances. The prohibition against disclosure of a participant's address also applies to the Attorney General except under certain circumstances. A provision for assistance and counseling for program applicants is also stated in this bill.

This bill specifies that the program is to be implemented only to the extent that it is funded and that the general revenue appropriation may not exceed \$150,000 for fiscal year 1998-1999. Furthermore, the percentage by which the appropriation may be increased in future years is specified.

This bill creates the following sections of the Florida Statutes: 741.401, 741.402, 741.403, 741.404, 741.405, 741.406, 741.407, 741.408, and 741.409.

## **II. Present Situation:**

Presently there is no address confidentiality program for victims of domestic violence in Florida. Several sections of law, however, are highlighted as relevant to the issue of domestic violence.

Section 741.28, F.S., defines “domestic violence” as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, or any criminal offense resulting in physical injury or death of one family or household member by another who is or was residing in the same single dwelling unit.

Section 741.30, F.S. (1996 Supp.), creates a cause of action for an injunction for protection against domestic violence.

Section 741.29, F.S., requires law enforcement officers who investigate an alleged incident of domestic violence to advise the victim that there is a domestic violence center from which the victim may receive services and to give the victim notice of his or her legal rights and remedies on a standard form distributed by the Florida Department of Law Enforcement.

Section 415.605, F.S., provides for the creation of domestic violence centers to receive and house victims of domestic violence. Confidentiality of information received by domestic violence centers is assured under s. 415.608, F.S. (1996 Supp.). This section also provides confidentiality related to the location of the domestic violence centers except to law enforcement, medical or certain other individuals, or by court order.

## **III. Effect of Proposed Changes:**

Section 1 describes the purpose of this program and provides enabling language to allow agencies to respond to requests for public records without disclosing the location of a victim of domestic violence, encourages interagency cooperation with the Attorney General in administering this program, and allows agencies to accept a program participant’s use of the substitute mailing address.

Section 2 provides definitions to be used for the purposes of this program. The term, “domestic violence” is broadly defined to include the threat of acts committed against an individual in a domestic situation, regardless of whether these acts have been reported to law enforcement officials.

Section 3 describes the application and certification process for program participation. To the extent possible within the funds appropriated for this program, the Attorney General is directed to approve an application if it is filed in the manner and on the form prescribed by the Attorney General. The application must contain the following information:

- ▶ A sworn statement indicating that the individual is a victim of domestic violence and fears for his or her safety or the safety of his or her children;
- ▶ A designation of the Attorney General as the agent for service of process and receipt of mail;
- ▶ The applicant's actual mailing address and telephone number;
- ▶ A statement that the applicant's new address must not be disclosed due to an increased risk of domestic violence; and
- ▶ The applicant's signature.

All applications must be filed with the office of the Attorney General and no application fee can be charged. Upon the date of certification by the Attorney General, a participant is certified for four years unless the certification is withdrawn or invalidated prior to that date. A renewal process is to be established by rule. It is a second degree misdemeanor to falsely attest in the application or to knowingly provide false information. It is a felony of the third degree to attempt to gain access to a participant's actual physical address through fraud or to knowingly enter the program to evade civil liability or criminal prosecution.

Section 4 lists reasons for the Attorney General's cancellation of certification to include:

- ▶ The participant has obtained a name change;
- ▶ The participant has changed his or her residential address without providing the required 14 days notice to the Attorney General;
- ▶ Mail that has been forwarded to a participant's address and is returned to the Attorney General as undeliverable or service of process documents are returned; or
- ▶ A program participant became certified by utilizing false information.

Section 5 provides that a program participant may request that state and local agencies or other governmental entities use and accept the address assigned by the Attorney General as the participant's substitute address unless the Attorney General has determined that the agency or entity has a bona fide statutory or administrative need to use the individual's actual physical address. Furthermore, the agency or entity requesting the actual physical address must provide information identifying the specific program and record for which the waiver is requested, naming the individuals who will have access to the record and explaining how the use of the individual's

substitute address will prevent the agency from meeting its obligations under the law. When granting a waiver, the Attorney General must notify the agency and require the agency to:

- ▶ Maintain the confidentiality of a program participant's address information;
- ▶ Limit use of and access to the address;
- ▶ Designate a date after which the agency may no longer maintain the record of the address;  
and
- ▶ Comply with any other provisions and qualifications deemed appropriate by the Attorney General.

If the Attorney General denies a waiver, the denial must be in writing and include the specific reason for the denial. Acceptance or denial of an agency or entity's waiver request represents final agency action and appeal may be taken pursuant to chapter 120, F.S. During any review, evaluation, or application such agency will use the participant's substitute address. Finally, this section also provides that a program participant may use the substitute address as a work address and that the Attorney General shall forward the participant's first class mail at no charge, presumably to the participant.

The Committee Substitute for Senate Bill 118 does not specify the time period in which the Attorney General must make a decision regarding a waiver. There is also some concern related to the authority placed in the Attorney General to overrule the provisions related to an exemption of public records. If the Legislature determines that this information warrants exemption from the public records laws, the waiver authority granted to the Attorney General may be an over-delegation of authority.

Section 6 states that a program participant may vote by absentee ballot and prohibits the supervisor of elections from making the participant's name, address, or telephone number available for public inspection except in certain specified instances such as when requested by a law enforcement agency for the purpose of executing an arrest warrant or as directed by a court order. As is the case with all other absentee voters in the jurisdiction, program participants shall automatically receive absentee ballots for all elections in the jurisdiction in which they reside.

Section 7 provides that the prohibition against disclosure of a participant's address also applies to the Attorney General except when requested by a law enforcement agency for the purpose of executing an arrest warrant, directed by a court order, or when program certification is canceled. Additionally, the Attorney General must immediately notify the program participant in writing when a disclosure occurs due to a court order or certification cancellation.

Section 8 provides that state, local and nonprofit agencies providing counseling and shelter services to victims of domestic violence may also provide assistance to program applicants. This assistance specifically does not constitute legal advice.

Section 9 gives the Attorney General the authority to adopt rules to facilitate the administration of this chapter of law.

Section 10 specifies that this program may be implemented only to the extent that it is funded by the Legislature. The general revenue appropriation may not exceed \$150,000 for fiscal year 1998-1999, and specifies the percentage by which the appropriation can be increased in future years.

Section 11. This bill shall take effect October 1, 1998.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

In compliance with s. 24(c), Art. I, Florida Constitution, requiring that any law enacted relating to an exemption from public records contain only exemptions from public records and relate to only one subject, SB 118 was introduced with a companion bill. This companion bill, SB 116, requires that information related to participants in the address confidentiality program for victims of domestic violence be exempt from Florida's public records law.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A person who falsely attests that disclosure of his or her address may endanger that person's safety commits a misdemeanor of the second degree and is subject to a fine not to exceed \$500. A person who attempts to gain access to a participant's address through fraud or who knowingly accesses the program to avoid criminal prosecution or civil liability commits a felony of the third degree and is subject to a fine of up to \$5000.

C. Government Sector Impact:

Based on the state of Washington’s experience with this program, proponents of this bill estimate that very few people will actually participate and that the fiscal impact in Florida will be approximately \$130,000 to \$150,000. Last year, the Attorney General reported that, in the first year, actual costs would be \$130,497 (for FY 1997-1998). After considering various factors, however, the fiscal impact of this legislation seems difficult to determine for a number of reasons. These are discussed *infra*.

The first problem is the fact that the program created by this bill, and the forecasted fiscal impact, is indeed based on a similar program which has been operating in the state of Washington since 1991. Though the programs are similar, the populations are not, as diagramed below.

	<b>Total Population</b>	<b>Domestic Violence Incidences*</b>	<b>Incidences as a percentage of total population</b>
Washington	5,700,000	17,328	.3%
Florida	14,450,000	132,495	.9%

\*Total reported domestic violence cases in 1996 (not including homicide and manslaughter).

In 1996, Washington had 917 participants in its program. The proponents of this bill previously stated that the participation rate Florida can expect is similar to that of Washington. Based upon this expectation it is reasonable to expect that Florida would, therefore, have a comparable 5.29% participation rate; this figure is based on actual reported incidences of domestic violence. Thus, Florida can expect at least approximately 7,000 participants. Again, using Washington’s projections, where the total 1996 budget was \$190,601 and the cost per participant was approximately \$158 that year, Florida’s yearly cost to administer this program, therefore, should be estimated at approximately \$1,106,000.

An additional factor influencing the fiscal impact of this bill is the broadness of the population to be served. Victims of domestic violence, as currently defined in s. 741.28, F.S., have actually been assaulted, stalked, or victimized. This program allows participation by any individual who feels that there is a threat of this violence -- whether or not reported to law enforcement officials. Additionally, there is no provision herein to require that program participants be a resident of the state of Florida, as is required in Washington, nor that program participants maintain actual residence in Florida.

The specific appropriation and increase may well be problematic because, again, there is no data provided to indicate the actual number of people who will enroll in the proposed program. By the terms of this committee substitute, the number of persons served must be consistent with funds appropriated for this program.

An undetermined and additional fiscal impact may fall upon the supervisors of elections in each county for costs associated with maintaining confidential voter records. The state of Washington, the only other state with this type of address confidentiality program, reports that actually very few program participants utilize the opportunity offered by the Washington program to maintain confidential voting records. Therefore, the cost will probably be minimal.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Although the focus of the bill is on providing confidentiality of the address of an individual who is a victim of domestic violence, it is critical to remember that this program must be tied to an overall victim safety plan. For example, it is unclear how simple address confidentiality will ensure safety for an individual when there is no requirement to obtain a new social security number. Even if the victim does obtain a new social security number, there remain problems associated with the victim's need to convince the federal social security administration of the need for confidentiality.

In discussions with the director of Washington's program, Margaret McKinney, she indicates that a critical element in the success of their program is the intake of applicants by professionals in domestic violence centers. These professionals recommend this program to victims of domestic violence when they come to a shelter or are referred to a counselor. Furthermore, the address confidentiality program is stressed as only part of the victims' overall safety plan. Additionally, the marketing of this program is accomplished strictly through domestic violence centers. Comparatively speaking, the Committee Substitute for Senate Bill 118 contains no provision for a screening process and no language to indicate that this program will be "marketed" only through counselors at domestic violence shelters. Again, there is no provision herein to require program participants be a resident of the state of Florida, as is required in Washington, nor that they maintain actual residence in Florida.

**VIII. Amendments:**

None.