

statement of public necessity which justifies the exemption that can be no broader than necessary to accomplish the purpose of the law.

The corresponding general law is found in ch. 119, F.S., which requires the custodian of a public record to permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under the supervision of the custodian of the public record or the custodian's designee [s. 119.07(1), F.S.]. Chapter 119, F.S., also provides additional requirements for the establishment of a public records exemption. There must be an identifiable public purpose, and it must be no broader than necessary to meet the public purpose it serves [s. 119.15(4)(b), F.S.]. The public purpose must be sufficiently compelling to override the strong public policy of open government such that the public purpose cannot be accomplished without the exemption and satisfies one of the following three criteria relating to the sensitivity and confidentiality of the information:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

The Open Government Sunset Review Act of 1995 provides for the automatic 5-year review and repeal of an exemption under the Public Records Act, unless the Legislature acts upon it to re-enact the exemption (s.119.15, F.S.).

Guardian Ad Litem

Guardians Ad Litem are individuals who are appointed by the court to represent or act in the best interest of a child. The predominant use of a guardian ad litem is to represent the child in a child abuse, abandonment, or neglect judicial proceeding, whether civil or criminal, pursuant to ch. 39, F.S. The overarching function of the guardian ad litem as articulated in s. 39.822, F.S., is to review all disposition recommendations and changes in the child's placement and to be present at all critical stages of the dependency proceeding or submit a written report of recommendations to the court. Specific duties of the guardian ad litem at various stages of the dependency process are stipulated in numerous sections of ch. 39, F.S. This responsibility to represent the best interest of the child in child abuse proceedings can include presenting recommendations to the court as to the placement of the child, reunification of the child with his or her parents or termination of parental rights that may be in conflict with the desires of the adult caretakers. This conflict has resulted in at least two guardian ad litem programs reporting that threats have been made against program staff and volunteers.

Section 39.820, F.S., provides that a guardian ad litem can be

- A certified guardian ad litem program;
- A duly certified volunteer;
- A staff attorney, contract attorney, or certified pro bono attorney working on behalf of a guardian ad litem or the program;
- Staff members of a guardian ad litem program office;
- A court-appointed attorney; or
- A responsible adult who is appointed by the court to represent the best interests of a child in a proceeding.

Historically, the court has appointed either the guardian ad litem program or an attorney or other person outside of an organized guardian ad litem program to represent the child as the guardian ad litem. The representation provided to the child is in accordance with the court order and statutes governing the specific action. It is reported that a large majority of the ch. 39, F.S., cases are referred to the guardian ad litem program and that the remaining cases are referred to a mixture of private guardians ad litem and the guardian ad litem programs.

Currently, there is at least one guardian ad litem program in each judicial circuit. Virtually all of the guardian ad litem programs are administered by the circuit court and provide services to the entire circuit. The remainder serve individual counties, with one program operated by the county Bar Association. The guardian ad litem programs in each of the circuits are assigned predominantly ch. 39, F.S., dependency cases. However, the court may also assign to the guardian ad litem program children involved in divorce cases (ch. 61, F.S.), cases in criminal court (ch. 914, F.S.), delinquency cases (chapters 984 and 985, F.S.), and domestic violence cases (ch. 741, F.S.). For the year 2000, the court appointed the guardian ad litem program to 12,077 cases, but a guardian ad litem was actually assigned to only 7,024 of those cases due to lack of available guardians ad litem. Of the 7,024 children receiving guardian ad litem services, 5,238 were dependency cases, 841 were family or divorce cases, 706 were children involved with the criminal court, 88 were in the delinquency system, and 151 were domestic violence cases.

The very nature of the role of the guardian ad litem, that of assisting the court determine what action would be in the best interest of the child, can place the guardian ad litem in the position of recommending actions to the court that are contrary to the wishes of one or both parents. In the dependency proceedings and divorce court arenas, where the issues are child abuse, custody, and visitation, these recommended actions can often influence the court's decision regarding which parent a child will live with, how often a parent may see their child, and even whether a parent can retain their parental rights. These are very emotional issues which have the potential for retaliation against the persons who not only make the decisions but those who affect the decision.

III. Effect of Proposed Changes:

SB 1112 amends s. 119.07(3)(I), F.S., to create a public records exemption for the home addresses, telephone numbers, social security numbers, and photographs of current and former guardian ad litem staff and certified guardian ad litem volunteers in the guardian ad litem programs. The spouses and children of these guardian ad litem staff and volunteers are also

provided an exemption for their names, home addresses, telephone numbers, social security numbers, photographs, places of employment, school and child care. This exemption requires an agency that has custody of this personal information, excluding the employing agency, to maintain the confidentiality of such information only if the guardian ad litem staff or volunteer, or the employing agency of such staff, submits a written request for confidentiality to that custodial agency. In addition, this exemption is made subject to the Open Government Sunset Review Act of 1995 and will repeal on October 2, 2007, unless reviewed and saved from repeal through reenactment by the Legislature.

This public records exemption mirrors the protections provided in s. 119.07(3), F.S., to judges, law enforcement personnel, Department of Children and Families abuse and fraud investigators, Department of Health abuse investigators, Department of Revenue child support enforcement or revenue collection and enforcement personnel, firefighters, state attorneys, statewide prosecutors, code enforcement officers, and human resource, labor relations or employee relations directors or managers.

This bill provides a public necessity statement, as required by s. 24, Art. I of the State Constitution, which states that the availability of personal information regarding current or former guardian ad litem staff and guardian ad litem volunteers could threaten their safety in that they would be vulnerable to threats, harassment, intimidation, or the risk of personal injury because of their duties. Such staff and volunteer duties include investigating cases, interviewing witnesses, viewing case evidence, and reporting to the circuit court regarding the best interest of a child involved in cases pertaining to abuse, neglect, family disputes, termination of parental rights, and family criminal matters.

The bill takes effect July 1, 2002.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill specifies that exemption to the public records law is provided to staff of the child guardian ad litem program. The “staff” of the guardian ad litem program to which the exemption applies is not clear and could be interpreted to apply to all staff, both those who perform the guardian ad litem functions and office support staff who do not have a direct role in the investigative responsibilities. In addition, “child guardian ad litem program” lacks a specific reference to the guardian ad litem program provided for in ch. 39, F.S.

VII. Related Issues:

Private guardians ad litem, who are not staff, volunteers or in some manner affiliated with the guardian ad litem programs, are appointed by the court to represent the best interest of the children for a multitude of issues. Sections of family law that allow or even require the court to appoint a guardian ad litem for a child include the following: ch. 39, F.S., in dependency cases, ch. 61, F.S., in dissolution of marriage proceedings, ch. 63, F.S., for abandoned newborns in termination of parental rights proceedings, ch. 390, F.S., for minors petitioning the court to waive notification of parents for abortion, ch. 393, F.S., for a person with mental retardation for whom involuntary admission to residential services is being petitioned, ch. 397, F.S., for a minor for whom involuntary assessment and treatment for substance abuse services is being petitioned, ch. 743, F.S., for a minor when there is a petition to remove disability of non-age, ch. 744, F.S., for a minor when there is a claim settlement, ch. 914, F.S., for a minor who is a victim or witness to abuse in a criminal proceeding, and chapters 984 and 985, F.S., for youth in the juvenile justice system. A large portion of these issues does not deal with the type of family matters that would easily result in threats to the guardian ad litem. However, some guardians ad litem appointed independently of the guardian ad litem program do represent a child in dependency proceedings or other potentially volatile issues, such as divorce and delinquency. There may be individual instances where the same protection from threats, harassment and intimidation may be warranted for private guardians ad litem. However, consideration should also be given to broadness of the exemption for individuals whose guardian ad litem responsibilities are only a portion of their employment and to the difficulties associated with ensuring proper application of the exemption to a large group with no common employing agency.

VIII. Amendments:

1 by Children and Families:

Clarifies that the staff to whom the public records exemption applies are only those staff with the guardian ad litem responsibilities in child guardian ad litem provided for in s. 39.821, F.S.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
