

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1648

SPONSOR: Judiciary Committee and Senator Burt

SUBJECT: Public Records Exemption/Judiciary

DATE: February 23, 2002      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matthews	Johnson	JU	Favorable/CS
2.	Rhea	Wilson	GO	Favorable
3.			APJ	
4.			AP	
5.				
6.				

**I. Summary:**

This bill provides public records exemptions in conjunction with changes made in an accompanying bill relating to family court reform. The bill makes confidential and exempts the following:

- Social security numbers collected and used by the courts and the clerks of the court for the purpose of facilitating comprehensive case management, processing; and resolution; and
- Specified communications and documents made during presuit and voluntary mediations in order to promote the use of mediations, minimize court involvement, and enhance alternative dispute resolution options to the adversarial process.

This bill creates s. 44.1026 of the Florida Statutes and a yet undesignated section of the Florida Statutes.

**II. Present Situation:**

*Social Security Numbers*

In the wake of family court reform which has attempted to implement an integrated and comprehensive approach to handling all cases related to a single child or family, it has become more imperative for the courts and the clerks to be alerted and made aware of these cases. Integral to the development and implementation of a unique identifier system that identifies, coordinates, monitors and links all related cases to the same person or family is the collection of personal identifying information. As with most governmental entities, some courts and clerks of court have come to rely on the social security number either in its entirety or partially to develop unique identifier systems. However, the availability of the personal identifying information in these records, some of which constitute public records, make such information susceptible to

unauthorized, unintended and criminal uses whereby the rights, privileges and safety of a citizen may be placed at risk.

### *Mediation*

Family court reform efforts in Florida and other states have begun integrating and promoting the use of alternative dispute resolution options into the judicial process. These options include opportunities for participants to develop skills to deal with current and future conflicts with minimal or no court involvement. The promotion of a broad spectrum of alternative dispute resolution options has focused on family law matters, due to the increasing volume of family law cases and the high percentage of unrepresented litigants in these cases. The alternative dispute resolution options, including mediation, are typically less adversarial in nature. These options are also potentially more effective in diffusing the highly charged emotions underlying family law cases and better at addressing complex family problems.

Chapter 44, F.S., sets forth the statutory framework for mediation alternatives to judicial action. Its primary focus is on court-ordered mediation and arbitration, which occur after litigation has already begun. Court-ordered mediation is the alternative most frequently applied in family law cases. Statutory confidentiality provisions encourage the flow of information and disclosure by parties in mediation proceedings and limit their use in subsequent legal proceedings. *See* s. 44.102, F.S. Additionally, there is a provision providing for the court referral to mediation of certain contested family law issues in chapter 61, F.S. *See* s. 61.183, F.S. This section also provides for the confidentiality and public records exemption of communications made during the mediation. Concern was raised regarding the conflict between mediation provisions in chapters 44 and 61, F.S., in that the same confidentiality provisions and other rules governing mediation were not, but should be, applicable to all specified matters relating to family law. It was also recommended that in order to encourage resolution of matters without resorting to the adversarial process, these provisions should also be available to pre-suit and voluntary mediations. There is no commensurate confidentiality or public records exemption for oral or written communications made in presuit and voluntary mediations although these types of mediations occur frequently in family matters on a formal and informal basis.

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

**Section 1** provides that social security numbers collected and used by the court and the clerk of the court in accordance with s. 25.375, F.S., are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. The provisions are subject to repeal within 5 years in accordance with s. 119.15, F.S., unless the Legislature re-enacts the public records exemptions.

**Section 2** provides legislative findings that the public availability of a person's social security number collected and used by the court system and clerks and retained in public records can threaten a person's safety, invade his or her privacy, lead into unnecessary and illegal intrusion, and result in personal identity theft. However, it also finds that persons interacting with the judicial system are frequently involved in multiple related court actions of which the court needs to be made aware. It further finds that the collection of personal identifying information such as the social security number is integral to the development and implementation of a unique

identifier system that facilitates the identification, coordination, management and tracking of these related cases. Therefore, there is a public necessity to exempt such information as this time.

**Section 3** provides that oral and written communications or documents in presuit and voluntary mediation as defined are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the *Florida Constitution*. Executed settlement agreements and matters that may be the subject of mandatory reporting requirements on abuse, acts or threats of violence, and professional misconduct are not confidential or exempt.

**Section 4** provides legislative findings to state the public necessity of the exemption in order to enhance the effective and efficient use of mediation and to promote confidence and candor during the mediation process by the participants. The Legislature further finds that the mediation process necessitates open dialogue and potentially full disclosure by the participants in order to develop potential and creative solutions to the issues in dispute. Participants, however, need to have assurances that their communications will not be used adversely or prejudicially in a subsequent legal proceeding in the event no mediation is reached or in the event a mediation agreement is subsequently contested. Confidentiality and exemption from public records additionally help to preserve the mediator's role as a neutral party when he or she is the recipient of specified communications in mediations.

**Section 5** provides that these exemptions become effective upon becoming a law but that their effectiveness is contingent on the passage of SB 1226 and CS/SB 734 or similar legislation in the 2002 regular Legislative session.

#### IV. Constitutional Issues:

##### A. Municipality/County Mandates Restrictions:

None.

##### B. Public Records/Open Meetings Issues:

###### **Public Records<sup>1</sup> Law**

Section 24 of article I of the *Florida Constitution* provides the right of access to public records by stating that every person has the right to inspect or copy any public records made or received in connection with official state business. This right of access to public records applies to the legislative, executive, and judicial branches of government; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or by the Constitution. Exemptions may be provided by general law. There must be an expressed statement of public necessity which

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<sup>1</sup> Public records are defined as 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 connection with the transaction of official business by any agency. See s. 119.011(1), F.S. An agency is defined to include 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. See s. 119.011(2), F.S.

justifies the exemption. The exemption can be no broader than necessary to accomplish the purpose of the law.

The corresponding general law is found in chapter 119, F.S. Chapter 119, F.S. 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. The public purpose must be sufficiently compelling to override the Florida's strong public policy of open government. That is, the public purpose cannot be accomplished without the exemption and satisfies one of three other criterion relating to the sensitivity and confidentiality of the information. The custodian of a public record must permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee. *See s. 119.07(1), F.S.*

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act of 1995 provides for the automatic 5-year review and repeal of an exemption provided under the Public Records Act. *See s. 119.15, F.S.* If the Legislature intends to re-enact the new exemption or the substantial amendment of an existing exemption, the Legislature must act to re-enact it in the fifth (and final year) of the exemption period, otherwise, it stands repealed on October 2 of that year.

The bill creates an exemption to public records requirements and contains the requisite statement of public necessity.

#### **C. Trust Funds Restrictions:**

None.

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

#### **A. Tax/Fee Issues:**

None.

#### **B. Private Sector Impact:**

The public records exemption given for communications during presuit and voluntary mediation in family law matters may help participants to fully disclosure and participate in the mediation without concern that such communications may be used contrary to their interests in a subsequent legal proceeding.

The public records exemption given for social security numbers may protect the disclosure of personal identifying information that may otherwise be used in a manner contrary to the rights, privileges and safety of individuals, including their personal identity theft.

**C. Government Sector Impact:**

The public records exemptions given in this bill will assist the judiciary in developing an effective judicial case management system and in promoting alternative resolutions to the judicial process that better serves the needs of children and families in the judicial process.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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

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