

STORAGE NAME: h0431.sgc.doc
DATE: January 10, 2002

**HOUSE OF REPRESENTATIVES
SMARTER GOVERNMENT COUNCIL
ANALYSIS**

BILL #: HB 431
RELATING TO: Public Records / Guardian ad litem
SPONSOR(S): Representative(s) Sorensen
TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) STATE ADMINISTRATION YEAS 4 NAYS 0
 - (2) SMARTER GOVERNMENT COUNCIL YEAS 12 NAYS 0
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

Current law does not provide a public records exemption for personal identifying information regarding a guardian ad litem (GAL) staff person or certified GAL volunteer.

This bill creates a public records exemption for the home addresses, telephone numbers, social security numbers, and photographs of current and former GAL staff and certified GAL volunteers. The bill also creates an exemption for the names, home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of current or former GAL staff and certified GAL volunteers. Additionally, this exemption requires a custodial agency, which is not the employing agency, to maintain the confidentiality of such information if GAL staff, GAL volunteers, or the employing agency of such staff submits a written request for confidentiality to that custodial agency.

This bill provides a public necessity statement, as required by the Florida Constitution, which states that the availability of personal information regarding current or former GAL staff and GAL 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.

This bill provides for future review and repeal of the public records exemption.

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

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Public Records Law

Florida Constitution

Article I, s. 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records as follows:

Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Article I, s. 24(c), Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records from the requirements of s. 24. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Florida Statutes

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1)(a), F.S., provides:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Open Government Sunset Review Act of 1995

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, provides that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes, 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:

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.

Guardian ad litem

“Guardian ad litem” (GAL) as referred to in a civil or criminal proceeding includes

- A certified GAL program;
- A duly certified volunteer;
- A staff attorney, contract attorney, or certified pro bono attorney working on behalf of a GAL or the program;
- Staff members of a 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 as provided for by law.¹

The GAL program may use any private funds collected by such program, or any state funds so designated, to conduct a security background investigation² before certifying a volunteer to serve. A person cannot be certified as a GAL if that person has been convicted of, regardless of adjudication,³ or entered a plea of nolo contendere⁴ or guilty to, any offense prohibited under the

¹ Section 39.820(1), F.S.

² A security background investigation must include employment history checks, checks of references, local criminal records checks through local law enforcement agencies, and statewide criminal records checks through the Florida Department of Law Enforcement. Section 39.821(1), F.S.

³ Black's Law Dictionary defines “adjudication” as the “legal process of resolving a dispute. The formal giving or pronouncing a judgment or decree in a court proceeding; also the judgment of decision given.” Sixth edition, 1990, at 42.

provisions specified in s. 435.04(2), F.S. Such provisions include adult abuse, murder, manslaughter, aggravated assault, kidnapping, and false imprisonment. The GAL program has the sole discretion in determining whether to certify a person based on that person's security background investigation.⁵

A GAL must be court appointed at the earliest possible time in any judicial proceeding relating to child abuse, abandonment, or neglect.⁶ The GAL or the GAL program representative must review all disposition recommendations and changes in placements. Additionally, such persons must be present at all critical stages of the dependency proceeding or submit a written report of recommendations to the court.⁷

Current law does not provide a public records exemption for personal identifying information regarding a GAL staff person or certified GAL volunteer.

C. EFFECT OF PROPOSED CHANGES:

This bill 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 (GAL) staff and certified GAL volunteers. The bill also creates an exemption for the names, home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of current or former GAL staff and certified GAL volunteers. Additionally, this exemption requires a custodial agency, which is not the employing agency, to maintain the confidentiality of such information if GAL staff, GAL volunteers, or the employing agency of such staff submits a written request for confidentiality to that custodial agency.

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 GAL staff and GAL 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.

Additionally, 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.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes."

⁴ Black's Law Dictionary defines "nolo contendere" as a "plea in a criminal case which has a similar legal effect as pleading guilty. Type of plea which may be entered with leave of court to a criminal complaint or indictment by which the defendant does not admit or deny the charges though a fine or sentence may be imposed pursuant to it." A defendant may only plead nolo contendere with the consent of the court. The major difference between a plea of guilty and a plea of nolo contendere is that the latter may not be used against the defendant in a civil action based upon the same acts. Sixth edition, 1990, at 1048.

⁵ Section 39.821(1), F.S.

⁶ Section 39.822(1), F.S.

⁷ Section 39.822(3), F.S.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

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.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

The guardian ad litem Circuit Director, for the 16th Judicial Circuit, states that there are numerous instances in which clients have made threatening remarks to GAL staff and GAL volunteers. Clients have left "pronounced" threats on GAL answering machines regarding knowledge of staff's and volunteers' home addresses and the location of staff's and volunteers' children. Clients are able to locate personal information on staff and volunteers pursuant to a public records request. The director states that clients are "much more savvy" with regards to public records, especially with access made easy because of the Internet.⁸

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Heather A. Williamson, M.S.W.

Staff Director:

J. Marleen Ahearn, Ph.D., J.D.

AS REVISED BY THE SMARTER GOVERNMENT COUNCIL:

Prepared by:

Heather Williamson, M.S.W.

Staff Director:

Don Rubottom

⁸ Alexandra Leto, GAL Circuit Director for the 16th Judicial Circuit, December 10, 2001.