

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Judiciary Committee

BILL: SB 1446
 INTRODUCER: Senator Detert
 SUBJECT: Domestic Violence Fatality Review Teams
 DATE: April 6, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Favorable
2.	Treadwell	Maclure	JU	Favorable
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill provides that information and records acquired by the domestic violence fatality review teams (FRTs) are not subject to discovery or introduction into evidence in any criminal or administrative proceeding under certain circumstances.

The bill also provides that a person who has attended a meeting of the FRTs may not testify in criminal or administrative proceedings regarding certain records or information that was produced or presented by the team.

Finally, the bill deletes the requirement that the Governor’s Task Force on Domestic Violence provide information and technical assistance to the FRTs. The Governor’s Task Force on Domestic Violence was part of an executive order that expired on June 30, 2001.

This bill substantially amends section 741.316, Florida Statutes.

II. Present Situation:

In Florida, domestic violence is defined 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.¹

¹ Section 741.28(2), F.S.

In 2008, the total number of domestic violence offenses reported in Florida was 113,123. Of the total, 194 offenses were classified as murder or manslaughter.²

Domestic violence fatality review teams (FRTs) were first formed in Florida in the mid-1990's. These teams began as local initiatives supported with federal grant funds.³ In 2000, the Legislature enacted s. 741.316, F.S., which allows organizations to establish FRTs at the local, regional, or state level. The teams, which are not funded by the state, work independently and may be composed of representatives from municipal, county, state, and federal agencies, as well as individuals or organizations that are involved with, or affected by, a domestic violence fatality.⁴ The goals of the FRTs are to review fatal and near-fatal incidents of domestic violence, related domestic violence matters, and suicides, and to identify changes in policy or procedure that may prevent future deaths.⁵ There are currently 19 active FRTs in Florida.⁶

Immunity and Public Records and Meeting Exemptions

Domestic violence FRTs are immune from liability for “any act or proceeding undertaken or performed within the scope of the functions of the team” unless the act or proceeding was undertaken in bad faith.⁷ Information gathered by FRTs is protected from discovery and introduction into evidence in civil or disciplinary proceedings. In addition, persons attending FRT meetings are prohibited from testifying in civil or disciplinary actions regarding records or information produced or presented at the meeting.⁸

However, these provisions do not apply to criminal or administrative proceedings. Because FRT members are not protected from criminal subpoenas, case reviews typically occur after the final disposition of the related criminal case. For this reason, fatality reviews are conducted years after the crimes occurred, which can result in the loss of key information and people.⁹ In contrast, child abuse death review team members are protected from subpoenas in criminal cases as well as in civil proceedings.¹⁰

² Florida Department of Law Enforcement, *Crime in Florida, 2008 Florida Uniform Crime Report (2009)*, available at http://www.fdle.state.fl.us/Content/getdoc/4f6a6cd0-6479-4f4f-a5a4-cd260e4119d8/CIF_Annual08.aspx (last visited Apr. 3, 2010).

³ Florida Department of Law Enforcement, *Florida Domestic Violence Fatality Review Team 2008 Annual Report, Executive Summary* (2008).

⁴ *Id.* See also s. 741.316, F.S.

⁵ Florida Department of Law Enforcement, *supra* note 3.

⁶ As of June 19, 2009, there were active FRTs in the following counties: Alachua, Brevard, Broward, Columbia, Duval, Escambia, Highlands, Hillsborough, Lee, Manatee, Miami-Dade, Orange, Palm Beach, Pasco, Pinellas, Santa Rosa, Sarasota, Seminole, and St. John's. Department of Children and Families, *2010 Analysis of SB 1446* (Feb. 4, 2010) (on file with the Senate Committee on Judiciary).

⁷ Section 741.316(4)(a), F.S.

⁸ Section 741.316(5), F.S.

⁹ Comm. on Children, Families, and Elder Affairs, Florida Senate, *Open Government Sunset Review of Section 741.3165, F.S., Domestic Violence Fatality Review Teams (Interim Report 2010-208)* (Sept. 2009), available at http://www.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-208cf.pdf.

¹⁰ Section 383.402(14), F.S.

Senate Review of the Public Records and Meeting Exemptions

During the interim, the Senate Committee on Children, Families, and Elder Affairs (committee) reviewed the public records and meetings exemptions related to FRTs, which provide that:

- Confidential and exempt information obtained by an FRT retains its confidential and exempt status when held by, or included in a report from, the FRT;
- Any record created by an FRT revealing the identity of a victim or a victim's children is confidential and exempt from public disclosure; and
- Meetings and proceedings of an FRT at which identifying information regarding a victim or a victim's child are discussed are exempt from the public meetings requirements;¹¹

The public necessity for the exemptions was described by the Legislature as follows:

[In the absence of public records and public meetings exemptions], sensitive personal information concerning victims and victims' children and family members would be disclosed and open communication and coordination among parties involved in the domestic violence fatality reviews would be hampered. Accordingly, the Legislature finds that the harm that would result in the release of such information substantially outweighs any minimal public benefit derived therefrom.¹²

The committee noted that the specific records affected by the exemption pertain to persons who are killed, or in some instances narrowly escape being killed, as the result of domestic violence. Since the fatality review teams in Florida typically review only records of closed cases, much of the information reviewed is public record. However, the teams also review confidential records in order to carry out their duties, and the exemption insures that these records will remain confidential or exempt when held by the FRT.¹³ These confidential records include:

- Reports to the child abuse hotline and all records generated as a result of such reports;¹⁴
- Criminal intelligence or investigative information that reveals the identity of a victim of sexual offenses;¹⁵

¹¹ Comm. on Children, Families, and Elder Affairs, *supra* note 9, at 4 (citing s. 741.3165, F.S.).

¹² Chapter 2000-219, s. 2, Laws of Fla.

¹³ Public records do not necessarily lose their exempt status once they are disclosed. In *Ragsdale v. State*, the Florida Supreme Court held that: “[T]he applicability of a particular exemption is determined by the document being withheld, not by the identity of the agency possessing the record . . . the focus in determining whether a document has lost its status as a public record must be on the policy behind the exemption and not on the simple fact that the information has changed agency hands.” *Ragsdale v. State*, 720 So. 2d 203, 206 (Fla. 1998). *See also*, *City of Riviera Beach v. Barfield*, 642 So. 2d 1135, 1137 (Fla. 4th DCA 1994), *review denied*, 651 So. 2d 1192 (Fla. 1995) in which the court held: “[T]he primary focus must be on the statutory classification of the information sought rather than upon in whose hands the information rests. Had the legislature intended the exemption . . . to evaporate upon the sharing of that information . . . , it would have expressly provided so in the statute.”

¹⁴ Section 39.202, F.S.

¹⁵ Section 119.071(2)(h), F.S.

- Information relating to persons with sexually transmitted diseases when this information is held by the Department of Health;¹⁶
- Mental health clinical records;¹⁷
- Reports of adult abuse made to the central abuse hotline and all records generated as a result of such reports;¹⁸
- Patient medical records;¹⁹
- Records of juvenile offenders;²⁰
- Medical records and pre-sentence investigative reports of adult offenders;²¹ and
- Educational records.²²

Some records are not available to the teams as a result of federal restrictions on information sharing. These include:

- Information relating to substance abuse treatment;²³
- Information relating to clients of domestic violence centers;²⁴
- Military records;²⁵ and
- Sources of information gathered by news reporters.²⁶

In addition to protecting the records *reviewed* by an FRT, s. 741.3165, F.S., protects information that identifies a victim or a victim's children when that information is included in records *created* by an FRT or discussed at an FRT meeting.²⁷

As a result of its review, the committee recommended that the Legislature:

- Retain the public records exemption established in s. 741.3165, F.S., which protects information held by domestic violence fatality review teams; and
- Amend the domestic violence fatality review statute to protect fatality review team members from being subpoenaed in a related criminal trial.

Governor's Task Force on Domestic Violence

The Governor's Task Force on Domestic Violence (task force) was created to serve the public purpose of directing policies on reducing and eliminating domestic violence and domestic violence fatalities. The task force was required to produce an annual report including a summary

¹⁶ Section 384.29, F.S.

¹⁷ Section 394.4615, F.S.

¹⁸ Section 415.107, F.S.

¹⁹ Section 456.057, F.S.

²⁰ Section 985.04, F.S.

²¹ Section 945.10, F.S. (regarding pre-sentence records)

²² Section 1002.22(2)(d), F.S.

²³ 42 U.S.C.A. s. 290dd-2 (2009).

²⁴ 42 U.S.C.A. s. 10402(a)(2)(E) (2009).

²⁵ 5 U.S.C.A. s. 552(a) and (b)(6) (2009).

²⁶ U.S. CONST. amend. I.

²⁷ Comm. on Children, Families, and Elder Affairs, *supra* note 9, at 7.

of task force findings, other special areas of interest, and efforts of the local FRTs.²⁸ Before it expired on June 30, 2001, the task force provided support and technical assistance to FRTs. Since its expiration, the task force has not been reauthorized.²⁹

Domestic violence FRTs are now assigned to the Department of Children and Families (department) for administrative purposes.³⁰ The department provides technical support to FRTs and, although not directed, has assumed the responsibility of supporting FRTs with the collection and reporting of data from their reviews.³¹

III. Effect of Proposed Changes:

The bill deletes the requirement that the Governor’s Task Force on Domestic Violence provide information and technical assistance to local domestic violence fatality review teams (FRTs). The Governor’s task force was part of an executive order that expired on June 30, 2001.

The bill provides that information and records acquired by the FRTs are not subject to discovery or introduction into evidence in any criminal or administrative proceeding – in addition to a civil or disciplinary proceedings under current law. However, if the information, documents, and records are otherwise available from other sources, they are not immune from discovery or introduction into evidence at the criminal or administrative proceeding solely because the information, documents, or records were presented to or reviewed by the FRT.

The bill provides that a person who has attended a meeting of the FRT may not testify in criminal or administrative proceedings – in addition to civil or disciplinary hearings under current law – regarding certain records or information that were produced or presented by the team. However, if the person who testifies before the FRT is a member of the FRT, he or she may testify as to matters otherwise within his or her knowledge.

The bill or s. 741.316, F.S., as currently written, does not define the term “proceeding.”³²

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²⁸ The Governor’s Task Force on Domestic Violence was created by Executive Order 93-269, and amended by Executive Orders 94-17, 94-256, 95-473, and 99-99, with the mission to end domestic violence. Executive Order 00-226.

²⁹ Department of Children and Families, *supra* note 6.

³⁰ Section 741.316(6), F.S.

³¹ Department of Children and Families, *supra* note 6.

³² Section 92.153(c), F.S., defines the term “proceeding” to mean “any civil or criminal action before a court; any investigation, inquiry, or proceeding before a grand jury, a state attorney, or a state, county, municipal, or other governmental department, division, bureau, commission or other body, or any officer thereof; any action before an officer or person authorized to issue a summons; or any administrative action authorized by law.”

B. Public Records/Open Meetings Issues:

Because information, documents, and records gathered by a domestic violence fatality review team maintain any confidential status and are currently protected from discovery and introduction into evidence in civil and disciplinary proceedings, there does not appear to be a violation of public records laws by expanding this protection to include criminal and administrative proceedings.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.