

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 Children, Families, and Elder Affairs Committee

BILL: SB 888

INTRODUCER: The Children, Families, and Elder Affairs Committee

SUBJECT: OGSR/Information Held by Guardians Ad Litem

DATE: February 2, 2010 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------|
| 1. | Walsh | Walsh | CF | Favorable |
| 2. | _____ | _____ | JU | _____ |
| 3. | _____ | _____ | GO | _____ |
| 4. | _____ | _____ | RC | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

Section 39.0132(4)(a)2., F.S., provides that any information related to the best interest of a child and held by a Guardian ad Litem is confidential and exempt from the requirements of public records law. This information includes medical, mental health, substance abuse, child care, education, law enforcement, court, social services, and financial records, and any other information that is otherwise confidential pursuant to Chapter 39, F.S. The subparagraph stands repealed on October 2, 2010, unless reviewed and saved from repeal through reenactment by the Legislature.

This bill substantially amends s. 39.0132(4)(a)2., F.S.

II. Present Situation:

Florida Public Records Law

Florida has a long history of providing public access to government records. The Legislature enacted the first public records law in 1892.¹ In 1992, Floridians adopted an amendment, article I, section 24, to the State Constitution that raised the statutory right of access to public records to a constitutional level.

The Public Records Act² specifies conditions under which public access must be provided to records of the executive branch and other agencies. Unless specifically exempted, all agency³

¹ Sections 1390, 1391, F.S. (Rev. 1892).

² Chapter 119, F.S.

records are available for public inspection. Section 119.011(12), F.S., defines *public record* very broadly to include “all documents, ... tapes, photographs, films, sound recordings, ... made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Unless made exempt, all such materials are open for public inspection.⁴

Only the Legislature is authorized to create exemptions to open government requirements. Exemptions must be created by general law, and such law must specifically state the public necessity justifying the exemption.⁵ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.⁶ A bill enacting an exemption or substantially amending an existing exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.⁷

Open Government Sunset Review Act

The Open Government Sunset Review Act⁸ provides for the systematic review of an exemption from the Public Records Act in the fifth year after its enactment. The act states that an exemption may be created, revised, or maintained only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.⁹ An identifiable public purpose is served if the exemption meets one of three specified criteria and if 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.¹⁰ An exemption meets the statutory criteria if it:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which ... would be defamatory ... or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals; or
- 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 ... would injure the affected entity in the marketplace.¹¹

Guardian Ad Litem

The Florida Guardian ad Litem Program is a partnership of community advocates and professional staff acting on behalf of Florida’s abused and neglected children.¹² A guardian ad

³ Section 119.011(2), F.S., defines *agency* as “any state, county, ... or municipal officer, department, ... or other separate unit of government created or established by law ... and any other public or private agency, person, ... acting on behalf of any public agency.”

⁴ *Tribune Co. v. Cannella*, 458 So. 2d 1075, 1077 (Fla. 1984).

⁵ Art. 1, § 24(c), Fla. Const.

⁶ *Id.*

⁷ *Id.*

⁸ Section 119.15, F.S.

⁹ Section 119.15(6)(b), F.S.

¹⁰ *Id.*

¹¹ *Id.*

¹² Florida Guardian ad Litem Program, <http://www.guardianadlitem.org/> (last visited December 4, 2009).

litem (GAL) is “a volunteer appointed by the court to protect the rights and advocate the best interests of a child involved in a court proceeding.”¹³ As of July 8, 2009, there were approximately 27,000 children represented by close to 7,000 volunteers in the Guardian ad Litem Program.¹⁴

According to the Statewide Guardian ad Litem Program, a GAL’s responsibilities include but are not limited to the following:¹⁵

- Visiting the child and keeping the child informed about the court proceedings;
- Gathering and assessing independent information on a consistent basis about the child in order to recommend a resolution that is in the child's best interest;
- Reviewing records;
- Interviewing appropriate parties involved in the case, including the child;
- Determining whether a permanent plan has been created for the child in accordance with federal and state law and whether appropriate services are being provided to the child and family;
- Submitting a signed written report with recommendations to the court on what placement, visitation plan, services, and permanent plan are in the best interest of the child;
- Attending and participating in court hearings and other related meetings to advocate for a permanent plan, which serves the child's best interest; and
- Maintaining complete records about the case, including appointments scheduled, interviews held, and information gathered about the child and the child's life circumstances.

The Guardian ad Litem Program receives information of a sensitive nature from third party sources, such as medical providers, mental health providers, schools, and law enforcement. These records are maintained by a GAL and relate exclusively to children who allegedly have been abused, neglected, or abandoned and are in the dependency court system through no fault of their own. These records contain sensitive information that could harm the child should they be released.

This information may include *but is not limited to* the following:

- Medical records,
- Mental health records,
- Substance abuse records,
- Child care records,
- Education records,
- Law enforcement records,
- Court records,
- Social services records,
- Financial records, and

¹³ *Id.* at http://www.guardianadlitem.org/vol_faq.asp (last visited December 4, 2009).

¹⁴ Statewide Guardian ad Litem Office Press Release, July 8, 2009 available at: <http://www.guardianadlitem.org/documents/PressRelease07.08.09.pdf>, (last visited December 4, 2009).

¹⁵ Statewide Guardian ad Litem Office website, available at: http://www.guardianadlitem.org/vol_faq.asp (last visited December 4, 2009).

- Any other information maintained by a GAL which is identified as confidential information under Chapter 39, F.S.¹⁶

III. Effect of Proposed Changes:

The bill reenacts and saves from repeal s. 39.0132(4)(a)2., F.S., allowing any information related to the best interest of a child and held by a Guardian ad Litem to remain confidential and exempt from public disclosure.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill would retain the exemption specified in s. 39.0132(4)(a)2., F.S., protecting from disclosure any information related to the best interest of a child and held by a Guardian ad Litem.

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.

¹⁶ Section 39.0132(4)(a)2., F.S.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
