

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 417 Pub. Rec./Child Advocacy Center Personnel and Child Protection Team Members
SPONSOR(S): Oversight, Transparency & Administration Subcommittee; Jenne
TIED BILLS: IDEN./SIM. **BILLS:** SB 1212

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	12 Y, 0 N	Langston	McElroy
2) Oversight, Transparency & Administration Subcommittee	13 Y, 0 N, As CS	Toliver	Harrington
3) Health & Human Services Committee			

SUMMARY ANALYSIS

A child protection team (CPT) is a medically directed, multidisciplinary team that supplements the child protective investigation efforts in cases of child abuse and neglect. CPTs provide expertise in evaluating alleged child abuse and neglect, assess risk and protective factors, and provide recommendations for interventions to protect children and enhance a caregiver's capacity to provide a safer environment.

Child advocacy centers (CACs) are community-based, child-focused facilities where child victims of abuse or neglect are interviewed, and may receive medical exams, therapy, and other critical services.

HB 417 exempts from public records requirements the home addresses, telephone numbers, dates of birth, and photographs of:

- Certain current or former directors, managers, supervisors, and clinical employees of a CAC;
- CPT employees whose duties are related to certain types of CPT investigations or that provide services as part of a multidisciplinary case review team; and
- Spouses and children of the above CAC and CPT personnel.

The bill also exempts the places of employment of spouses and children of these personnel as well as the names and locations of schools and day care facilities attended by these children.

The bill provides a statement of public necessity as required by the Florida Constitution.

The bill also provides for repeal of the exemption on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill may have a minimal fiscal impact on state or local governments. See Fiscal Comments.

The bill provides an effective date of July 1, 2018.

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

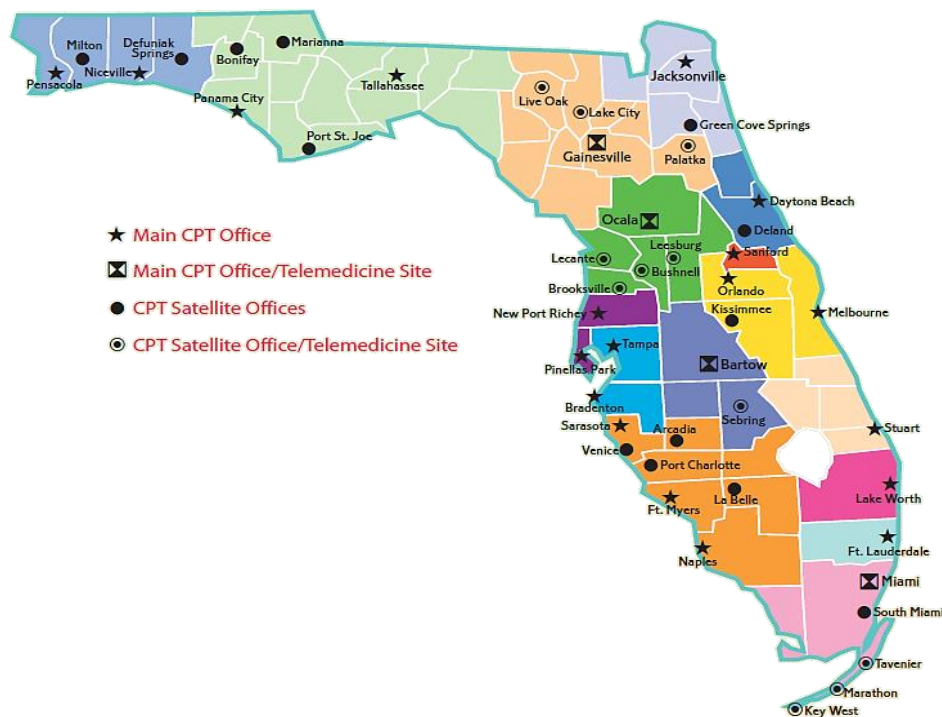
A. EFFECT OF PROPOSED CHANGES:

Present Situation

Child Protection Teams

A child protection team (CPT) is a medically directed, multidisciplinary team that supplements the child protective investigation efforts of the Department of Children and Families (DCF) and local sheriffs' offices in cases of child abuse and neglect.¹ CPTs provide expertise in evaluating alleged child abuse and neglect, assess risk and protective factors, and provide recommendations for interventions to protect children and enhance a caregiver's capacity to provide a safer environment when possible.² The Department of Health (DOH) Children's Medical Services program contracts for CPT services with local community-based programs.³

CPTs are divided into 15 circuits across the state and provide services to all 67 counties by utilizing satellite offices and telemedicine sites.⁴ Each circuit is supervised by one or more child protection team medical directors, depending on its size and the subdivision of the particular circuit.⁵



Certain reports of child abuse, abandonment, and neglect to the DCF central abuse hotline must be referred to CPTs:

¹ S. 39.01(13), F.S.; see also Florida Department of Health, Children's Medical Services. *Child Protection Teams* http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child_protection_safety/child_protection_teams.html (last visited December 11, 2017).

² Florida Department of Health, Children's Medical Services. *Child Protection Teams* http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child_protection_safety/child_protection_teams.html (last visited December 11, 2017).

³ S. 39.303, F.S.

⁴ Children's Medical Services, *Child Protection Teams: CPT Statewide Directory*, available at <http://www.floridahealth.gov/alternatesites/cms-kids/home/contact/cpt.pdf> (last accessed December 11, 2017).

⁵ *Id.*

- Injuries to the head, bruises to the neck or head, burns, or fractures in a child of any age.
- Bruises anywhere on a child five years of age or younger.
- Any report alleging sexual abuse of a child.
- Any sexually transmitted disease in a prepubescent child.
- Reported malnutrition or failure of a child to thrive.
- Reported medical neglect of a child.
- A sibling or other child remaining in a home where one or more children have been pronounced dead on arrival or have been injured and later died as a result of suspected abuse, abandonment or neglect.
- Symptoms of serious emotional problems in a child when emotional or other abuse, abandonment, or neglect is suspected.⁶

Each CPT must be capable of providing the following services:

- Medical diagnosis and evaluation;
- Child forensic interviews;
- Child and family assessments;
- Multidisciplinary staffings;
- Psychological and psychiatric evaluations;
- Community awareness campaigns; and
- Expert court testimony.⁷

CPT staff also provide training services for child protection investigators, community providers of child welfare services, and emergency room staff and other medical providers in the community.⁸

Child Advocacy Centers

Child advocacy centers (CACs) are community-based, child-focused facilities where child victims of abuse or neglect are interviewed and may receive medical exams, therapy, and other critical services.⁹ CACs bring together professionals to confer and conclude about investigations, treatment, and prosecution of child abuse cases.¹⁰ The primary goal of a CAC is to minimize the level of trauma experienced by child victims, improve prosecutions, and provide efficient and thorough provision of necessary services to the child victim and the child's family.¹¹ CACs provide services such as:

- Forensic interviews conducted in a non-threatening, child-friendly environment;
- Crisis intervention and emotional support for victims and non-offending family members;
- Counseling for victims and non-offending family members;
- Medical evaluations and services;
- Multidisciplinary review of cases by a team of professionals, such as law enforcement officials, CPTs, prosecutors, medical professionals, mental health professionals, victim assistance staff, and child advocates;
- Evidence-based prevention and intervention programs to reduce the likelihood of child maltreatment and to provide safe and caring homes for children; and
- Professional training and community education to effectively respond to child abuse.¹²

The Florida Network of Children's Advocacy Centers (FNCAC) is the statewide membership organization representing all local CACs in Florida.¹³ Membership in FNCAC¹⁴ requires that each CAC:

⁶ S. 39.303(4), F.S.

⁷ S. 39.303(3), F.S.

⁸ S. 39.303(3)(h), F.S.

⁹ Department of Health, *Agency Legislative Bill Analysis for 2018 House Bill 417*, (October 31, 2017), on file with the Health Quality Subcommittee.

¹⁰ Florida Network of Child Advocacy Centers, *What is a CAC?*, <http://www.fncac.org/what-cac> (last visited December 22, 2017).

¹¹ *Id.*

¹² *Id.*

¹³ Florida Network of Child Advocacy Centers, *About Us*, <https://www.fncac.org/about-us> (last visited December 22, 2017).

- Be a private, nonprofit incorporated agency or a governmental entity;
- Be a child protection team, or by written agreement incorporate the participation and services of a child protection team;
- Have a neutral, child-focused facility where interviews take place with children in appropriate cases of suspected child sexual abuse or physical abuse;
- Have a minimum designated staff that is supervised and approved by the local board of directors or governmental entity;
- Have a multidisciplinary case review team that meets on a regularly scheduled basis or as the caseload of the community requires;
- Provide case tracking of child abuse cases seen through the center;
- Provide referrals for medical exams and mental health therapy;
- Provide training for various disciplines in the community that deal with child abuse; and
- Have an interagency commitment covering those aspects of agency participation in a multidisciplinary approach to the handling of child sexual abuse and serious physical abuse cases.¹⁵

The Nancy J. Cotterman Center in Broward County has received three public records requests for information relating to its CPT and CAC personnel.¹⁶

Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access government records and meetings.¹⁷ The public may inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹⁸ The public also has a right to notice of, and access to meetings of any collegial public body of the executive branch of state government or of any local government at which official acts are to be taken or at which public business is to be transacted or discussed.¹⁹ The Legislature's meetings must also be open and noticed to the public, unless there is an exception provided for by the Constitution.²⁰

Florida law specifies the conditions under which public access must be provided to government records and meetings.²¹ The Public Records Act²² guarantees every person's right to inspect and copy any state or local government public record.²³ The Sunshine Law²⁴ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be noticed and open to the public.²⁵

¹⁴ There are currently 27 CACs in Florida. *Id.*

¹⁵ Section 39.3035(1), F.S.

¹⁶ Email from Miriam Firpo-jimenez, *RE: NJCC Public Records Exemption Question* (Nov. 9, 2017), on file with Health Quality Subcommittee.

¹⁷ FLA. CONST., art. I, s. 24.

¹⁸ FLA. CONST., art. I, s. 24(a).

¹⁹ FLA. CONST., art. I, s. 24(b).

²⁰ *Id.*

²¹ Ch. 119, F.S.

²² *Id.*

²³ "Public record" means "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." S.

119.011(12), F.S. "Agency" means "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." S.

119.011(2), F.S. The Public Records Act does not apply to legislative or judicial records, *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992), however, the Legislature's records are public pursuant to s. 11.0431, F.S.

²⁴ S. 286.011, F.S.

²⁵ S. 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in the Florida Constitution. Article III, section 4(e) of the Florida Constitution provides that legislative committee meetings must be open and noticed to the public. In addition, prearranged gatherings, between

The Legislature may create an exemption to public records or open meetings requirements.²⁶ An exemption must specifically state the public necessity justifying the exemption²⁷ and must be tailored to accomplish the stated purpose of the law.²⁸ There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be confidential and exempt.²⁹

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public record or open meeting exemptions.³⁰ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment.³¹ The Legislature must reenact the exemption in order to save it from repeal.³²

The OGSR provides that a public record or open meeting exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary³³ to meet one of the following purposes:

- Allow the state or its political subdivision to effectively and efficiently administer a program, the administration of which would be significantly impaired without the exemption; or
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only personal identifying information may be exempted under this provision; or
- Protect trade or business secrets.³⁴

In addition, the Legislature must find that the identifiable public purpose is compelling enough to override Florida's open government public policy and that the purpose of the exemption cannot be accomplished without the exemption.³⁵

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.³⁶ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then neither a public necessity statement nor a two-thirds vote is required. If the Legislature allows an exemption to sunset, the previously exempt records will retain their exempt status unless provided for by law.³⁷

Effect of Proposed Changes

more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

²⁶ FLA. CONST., art. I, s. 24(c).

²⁷ *Id.*

²⁸ *Id.*

²⁹ A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991) *review denied*, 589 So. 2d 289 (Fla. 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See *WFTV, Inc. v. Sch. Bd. of Seminole Cnty*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004); Op. Att'y Gen. Fla. 85-692 (1985).

³⁰ S. 119.15, F.S. An exemption is considered to be substantially amended if it expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

³¹ S. 119.15(3), F.S.

³² *Id.*

³³ S. 119.15(6)(b), F.S.

³⁴ *Id.*

³⁵ *Id.*

³⁶ FLA. CONST., art. I, s. 24(c).

³⁷ S. 119.15(7), F.S.

HB 417 exempts from public records requirements the home addresses, telephone numbers, dates of birth, and photographs of:

- Current or former directors, managers, supervisors, and clinical employees of a CAC that meet the requirements of s. 39.3035, F.S.;
- CPT employees whose duties include supporting the investigation of child abuse or sexual abuse, child abandonment, child neglect, or child exploitation or to provide services as part of a multidisciplinary case review team; and
- Spouses and children of the above CAC and CPT personnel.

Additionally, the bill exempts the places of employment of spouses and children of these personnel and the names and locations of schools and day care facilities attended by the children of those personnel.

The bill provides a public necessity statement as required by the Florida Constitution, specifying that CAC and CPT personnel and their families may be in danger of physical and emotional harm from disgruntled individuals who may react inappropriately and violently to actions taken by such personnel. The bill further provides that the risk continues after the personnel no longer holds a position at a CAC or CPT. The bill finds that the harm that may result from the release of such personal identifying and location information outweighs any public benefit that may be derived from the disclosure of the information.

The bill also provides that the public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides an effective date of July 1, 2018.

B. SECTION DIRECTORY:

Section 1: Amends s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 2: Provides a statement of public necessity.

Section 3: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could have a minimal fiscal impact on agencies because agency staff responsible for complying with public record requests may require training related to the creation of the public record exemption. In addition, agencies could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of agencies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; therefore, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; therefore, it includes a public necessity statement.

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill seeks to prevent the disclosure certain identifying information of certain CPT and CAC personnel and their families to protect their safety. Thus, the bill does not appear to be in conflict with the constitutional requirement that an exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 10, 2018, the Oversight, Transparency & Administration Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment made three changes to the bill. The amendment:

- Removes references to “social security numbers” as there is a general public record exemption for social security numbers for all current and former agency personnel in s. 119.071(4)(a), F.S.;
- Removes the requirement that personnel submit a written request in order to use the exemption; and
- Alters the public necessity statement to more closely mirror the substance of the bill by adding the qualifying phrase “whose duties include supporting the investigation of child abuse or sexual abuse, child abandonment, child neglect, or child exploitation or to provide services as a part of a multidisciplinary case review team” in reference to child protection team members.

This analysis is drafted to the committee substitute as passed by the Oversight, Transparency & Administration Subcommittee.