

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 Committee on Rules

BILL: CS/CS/CS/SB 318

INTRODUCER: Rules Committee; Education Committee; Children, Families, and Elder Affairs Committee; and Senator Montford

SUBJECT: Child Abuse, Abandonment, and Neglect

DATE: April 5, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Preston</u>	<u>Hendon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Bouck</u>	<u>Sikes</u>	<u>ED</u>	<u>Fav/CS</u>
3.	<u>Preston</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 318 expands the public records exemption that protects the name of a reporter of child abuse, abandonment, or neglect to also include other identifying information. Such information would be confidential and exempt, and would only be released to specified persons, officials, and agencies specified in law.

The bill has no fiscal impact.

The bill takes effect July 1, 2019.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.³ The Public Records Act states that

[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁴

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes relating to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records.⁵ Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the Legislature.

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

Only the Legislature may create an exemption to public records requirements.¹⁰ An exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹¹ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹²

³ Public records laws are found throughout the Florida Statutes.

⁴ Section 119.01(1), F.S.

⁵ *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

⁶ Section 119.011(12), F.S., defines “public record” to mean “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.” Section 119.011(2), F.S., defines “agency” as “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.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ *Id.*

¹² The bill may, however, contain multiple exemptions that relate to one subject.

and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹³

When creating or expanding a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹⁴ Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature or pursuant to a court order. Records designated as ‘exempt’ may be released at the discretion of the records custodian under certain circumstances.¹⁵

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions,¹⁶ with specified exceptions.¹⁷ The Act requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁸ The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹⁹

Reporting of Child Abuse, Abandonment and Neglect

Current law requires that any individual who knows, or who has reasonable cause to suspect, that a child is being abused, abandoned or neglected by a caregiver to report that knowledge to the Department of Children and Families’ (department’s) central abuse hotline.²⁰ Any known or suspected child abuse by a non-caregiver and sexual abuse of a child is also required to be reported. Reporters in a number of occupational categories are required to provide their names to the hotline, including a:

- Physician, osteopathic physician, medical examiner, chiropractic physician, nurse, or hospital personnel engaged in the admission, examination, care, or treatment of persons;
- Health or mental health professional other than one listed above;
- Practitioner who relies solely on spiritual means for healing;
- School teacher or other school official or personnel;
- Social worker, day care center worker, or other professional child care, foster care, residential, or institutional worker;

¹³ FLA. CONST., art. I, s. 24(c)

¹⁴ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁶ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹⁷ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁸ Section 119.15(3), F.S.

¹⁹ Section 119.15(6)(b), F.S.

²⁰ In the past six months, the central abuse hotline has received a monthly average of 28,372 initial or follow-up calls. Of these reports, 20,414 (72 percent) were accepted for investigation. Department of Children and Families, *Child Intakes Received – Data Table*, available at <http://www.dcf.state.fl.us/programs/childwelfare/dashboard/intakes-received.shtml?Landing%20Page%20InvRec=2>.

- Law enforcement officer; or
- Judge.

Confidentiality of Records

Section 39.202, F.S., currently provides that the names of reporters of known or suspected child abuse, abandonment or neglect to the central abuse hotline shall be entered into the record of the report, but shall be held confidential and exempt from disclosure, except as authorized in law. The name of any person reporting child abuse, abandonment, or neglect may not be released to any person other than employees of the department responsible for child protective services, the central abuse hotline, law enforcement, the child protection team, or the appropriate state attorney, without the written consent of the person reporting. This does not prohibit the subpoenaing of a person reporting child abuse, abandonment, or neglect when deemed necessary by the court, the state attorney, or the department, provided the fact that such person who made the report is not disclosed.²¹ There are currently no provisions for protecting the confidentiality of any information that might identify an individual.²²

The central abuse hotline records the number from which a call or fax is placed or the Internet protocol (IP) address from which the report is received. This information is entered into the report of abuse, abandonment, or neglect and become a part of the record of the report, but is also confidential and exempt, subject to release specified in law.²³

The department's operating procedures contain additional protections for ensuring confidentiality. In addition to redaction of the reporter's name from released records, any summary information released from the record shall be in narrative form and shall "not include the name or other identifying information with respect to any person identified in any investigation." To further prevent inadvertent disclosure of confidential information, the procedure also prohibits the department from attaching "any investigation record documents" to the narrative summary.²⁴

III. Effect of Proposed Changes:

Section 1 amends s. 39.202, F.S., to expand the public records exemption protecting the name of a reporter of child abuse, neglect and abandonment to also include other identifying information. Such information would be confidential and exempt, and would only be released to specified persons, officials, and agencies that are involved in the investigation as specified in law. This exemption from the public records law will expire on October 2, 2024, unless reenacted by the Legislature.

²¹ Section 39.202(5), F.S.

²² Department of Children and Families, *DCF 2019 Agency Analysis of SB 318* (Jan. 30, 2019).

²³ Section 39.201(2)(h), F.S.

²⁴ Department of Children and Families Operating Procedure, CFOP 15-12, *Procedures For Releasing Selected Information Pertaining To A Report Of Abuse, Neglect, Exploitation Or Abandonment Of A Child Or Adult* (Dec. 15, 2006), available at: <http://www.dcf.state.fl.us/admin/publications/cfops/CFOP%2015-xx%20Documentation%20Management/CFOP%2015-12.%20Procedures%20for%20Releasing%20Selected%20Information%20Pertaining%20to%20a%20Report%20of%20Abuse.%20Neglect.%20Exploitation%20or%20Abandonment%20of%20a%20Child%20or%20Adult.pdf> (last visited Feb. 13, 2019).

The bill also removes from the authorized access to confidential and exempt records the designee of a licensed residential group home.²⁵

Section 2 provides legislative intent that the exemption to the public records law is a public necessity. The bill explains that protecting only the name of a reporter of child abuse, abandonment, or neglect may allow the identity of the reporter to be discerned by some other identifying information, rendering the protection ineffective. The expanded exemption is necessary to ensure all instances of suspected child abuse, abandonment, or neglect are reported to the Department of Children and Families.

Section 3 provides an effective date of July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

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 bill creating or expanding an exemption to the public records requirements. This bill expands the information exempted to other identifying information, rather than just the name of a reporter of child abuse, abandonment, or neglect. Thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect all information of a reporter of child abuse, abandonment, or neglect. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

²⁵ Such residential group homes are described in s. 39.523, F.S.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

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. Statutes Affected:

The bill amends section 39.202 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS/CS by Rules on April 3, 2019:

The committee substitute:

- Adds the authorization for access to a confidential and exempt report by a designee of designee of a licensed child-caring agency as defined in s. 39.01.(41), F.S.

CS/CS by Education on March 19, 2019:

The committee substitute:

- Expands the public records exemption that currently protects the name of a reporter of child abuse, abandonment, and neglect to include other identifying information, and provides a public necessity statement.

- Removes the provisions including in the public records exemption specified school personnel who provide information as a part of a child abuse investigation.
- Removes the authorization for access to a confidential and exempt report by a designee of a licensed residential group home described in s. 39.523, F.S.

CS by Children, Families, and Elder Affairs on February 19, 2019:

The committee substitute:

- Removes language that would define school personnel providing information to a child abuse investigation as a reporter.
- Removes language that would protect the identity of all reporters of child abuse.
- Exempts the identity of school personnel who provide information to a child abuse investigation from the public records law.
- Repeals the new exemption from the public records law on October 2, 2024 unless reenacted by the Legislature.
- Provides a statement of public necessity for the exemption.

B. Amendments:

None.