

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 845 Pub. Rec./Petition for Certain Protective Injunctions  
**SPONSOR(S):** Oversight, Transparency & Public Management Subcommittee, Hage and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 980

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N	Padgett	Hall
2) Oversight, Transparency & Public Management Subcommittee	12 Y, 0 N, As CS	Moehrle	Harrington
3) Judiciary Committee			

### SUMMARY ANALYSIS

An individual who believes that he or she is the victim of domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking may petition the court for a protective injunction if certain requirements are met. If the petition for injunction is facially sufficient, the information in the petition and related documents are served upon the respondent. Unless subject to a public records exemption, the information contained in the injunction is a public record. Because the documents are a public record, a respondent may access the petition prior to formally being served. This may endanger both the petitioner and the law enforcement officer responsible for serving the respondent, as well as aid the respondent in evading process.

The bill creates a public record exemption for any information used to identify a petitioner or respondent in a protective injunction against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking, and any affidavits, notice of hearing, and temporary injunction until the respondent has been personally served.

The bill may have a minimal fiscal impact on some clerks of court because it requires additional redactions to public records. Staff may require additional training related to the new public record exemption. See Fiscal Comments.

**Article I, s. 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 new public record exemption; thus, it requires a two-thirds vote for final passage.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

###### Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for exemption from public records requirements provided the exemption passes by two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption (public necessity statement), and is no broader than necessary to meet its public purpose.<sup>1</sup>

The Florida Statutes also address the public policy regarding access to government records. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt. Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose 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."<sup>3</sup> In addition, the exemption may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protect trade or business secrets.<sup>4</sup>

###### Court Proceedings and Files

Independent of constitutional and statutory provisions that require court files to be generally open to the public, the courts have found that "both civil and criminal court proceedings in Florida are public events" and that courts must "adhere to the well established common law right of access to court proceedings and records."<sup>5</sup> A court may close a court file or a portion thereof on equitable grounds, but the ability to do so is limited. The Florida Supreme Court has ruled that closure of court proceedings or records should occur only when necessary to:

- Comply with established public policy set forth in the constitution, statutes, rules, or case law;
- Protect trade secrets;
- Protect a compelling governmental interest (e.g., national security; confidential informants);
- Obtain evidence to properly determine legal issues in a case;
- Avoid substantial injury to innocent third parties (e.g., to protect young witnesses from offensive testimony; to protect children in a divorce); or
- Avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of civil proceeding sought to be closed."<sup>6</sup>

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<sup>1</sup> Art. I, s. 24(c), Fla. Const.

<sup>2</sup> S. 119.15, F.S.

<sup>3</sup> S. 119.15(6)(b), F.S.

<sup>4</sup> *Id.*

<sup>5</sup> *Barron v. Florida Freedom Newspapers, Inc.*, 531 So. 2d 113, 116 (Fla. 1988) (ruling that court files in divorce cases are generally open despite the desire of the parties for privacy).

<sup>6</sup> *Id.* at 118.

## Public Record Exemptions for Certain Court Records and Files

Section 119.0714(1), F.S., provides public records exemptions for various types of personal information contained in a court file. Information currently exempt from public records requirements includes records prepared by an agency attorney,<sup>7</sup> various law enforcement confidential records,<sup>8</sup> social security numbers,<sup>9</sup> bank account numbers,<sup>10</sup> and petitions for injunction that were dismissed as facially insufficient.<sup>11</sup> In addition, a petitioner seeking an injunction for protection against domestic violence may furnish the petitioner's address to the court in a separate confidential filing for safety reasons.<sup>12</sup>

### Injunctions for Protection Against Specified Acts of Violence

#### *Domestic Violence Injunctions*

A person who is the victim of domestic violence<sup>13</sup> or who reasonably believes that he or she is in imminent danger of becoming the victim of domestic violence may file a petition for injunction for protection against domestic violence.<sup>14</sup> Domestic violence is defined as 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.<sup>15</sup> The sworn petition must allege the existence of domestic violence and include specific facts and circumstances upon which relief is sought.<sup>16</sup> Domestic violence laws only apply to petitioners in the following situations: the respondent is a spouse, former spouse, related by blood or marriage, currently living with the petitioner or at some point lived with the petitioner.<sup>17</sup> Therefore, in instances where the respondent does not meet any of these requirements, the petitioner must file a petition for injunction for protection against repeat violence, or a petition for injunction for protection against dating violence, or a petition for injunction for protection against sexual violence.<sup>18</sup>

#### *Repeat Violence Injunctions*

A person or immediate family member who is the victim of repeat violence may file a petition for protection against repeat violence.<sup>19</sup> Repeat violence means that two incidents of violence have been committed against the victim or immediate family member by another person, one of which must have been within 6 months of filing the petition.<sup>20</sup> Repeat violence has the same definition as domestic violence.<sup>21</sup>

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<sup>7</sup> S. 119.0714(1)(a), F.S.

<sup>8</sup> Ss. 119.0714(1)(c)–119.0714(1)(h), F.S.

<sup>9</sup> S. 119.0714(1)(i), F.S.

<sup>10</sup> S. 119.0714(1)(j), F.S.

<sup>11</sup> S. 119.0714(k), F.S.

<sup>12</sup> S. 741.30(3)(b), F.S.; *see also* Family Law Form 12.980(a)

<sup>13</sup> The court may enter an injunction for protection against domestic violence, repeat violence (s. 784.046(1)(b), F.S.), dating violence (s. 784.046(1)(d), F.S.), sexual violence (s. 784.046(1)(c), F.S.), or stalking or cyberstalking (s. 784.0485, F.S.). The requirements for filing a petition for injunction and the court and service procedures are parallel to those for domestic violence injunctions.

<sup>14</sup> S. 741.30(1), F.S.

<sup>15</sup> S. 741.28(2), F.S.

<sup>16</sup> S. 741.30(3), F.S.

<sup>17</sup> Instructions for Florida Supreme Court Approved Family Law Form 12.980(a), Florida Courts, <https://www.flcourts.org/content/download/403225/3457684/980a.pdf> (last visited Mar. 15, 2019).

<sup>18</sup> *Id.*

<sup>19</sup> Instructions for Florida Supreme Court Approved Family Law Form 12.980(f), Florida Courts, <https://www.flcourts.org/content/download/403241/3457780/980f.pdf> (last visited Mar. 15, 2019).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

### *Dating Violence Injunctions*

A person who is a victim of dating violence, and has reasonable cause to believe her or she is in imminent danger of becoming the victim of another act of dating violence, of that he or she is in imminent danger of becoming a victim of dating violence may file a petition for injunction for protection against dating violence.<sup>22</sup> Dating violence is defined as “violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature.”<sup>23</sup> The dating relationship must have existed within the past 6 months, the nature of the relationship must have been characterized by wither the expectation of affection or sexual involvement between the parties, and the frequency and type of interaction must have included that the person have been involved over time and on a continuous basis during the relationship.<sup>24</sup>

### *Sexual Violence Injunctions*

A person who is a victim of sexual violence or the parent or legal guardian of a minor child who is living at home and is the victim of sexual violence may file a petition for injunction for protection against sexual violence.<sup>25</sup> Sexual violence is defined as any one incident of:

- Sexual battery as defined in Chapter 794, F.S.;
- A lewd or lascivious act, as defined in Chapter 800, F.S., committed upon in in the presence of a person younger than 16 years of age;
- Luring or enticing a child, as defined in Chapter 787, F.S.;
- Sexual performance by a child, as described in Chapter 827, F.S.; or
- Any other forcible felony wherein a sexual act is committed or attempted.<sup>26</sup>

In order for a person to receive an injunction, he or she must have reported the sexual violence to a law enforcement agency and be cooperating in the criminal proceeding if there is one. Additionally, a person may seek an injunction if the respondent was either sent to prison for committing a sexual violence crime delineated above against the petitioner or a minor child living at home and is out of prison or is getting out of prison within 90 days of the petition being filed.<sup>27</sup>

### *Stalking Injunctions*

A person who is a victim of stalking may file a petition for injunction for protection against stalking. Stalking is defined as “repeated following, harassment, or cyberstalking of one person by another.”<sup>28</sup> Cyberstalking is defined as engaging in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of email or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose.<sup>29</sup>

### *Temporary Injunctions*

A petition for protective injunction is immediately presented to a judge, who must review the petition. If the petition is facially sufficient, the petition and related documents become public record. If it appears to a court that an immediate and present danger of domestic violence exists, it may grant a temporary

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<sup>22</sup> Instructions for Florida Supreme Court Approved Family Law Form 12.980(n), Florida Courts, <https://www.flcourts.org/content/download/403257/3457876/980n.pdf> (last visited Mar. 15, 2019).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Instructions for Florida Supreme Court Approved Family Law Form 12.980(q), Florida Courts, <https://www.flcourts.org/content/download/403263/3457912/980q.pdf> (last visited Mar. 15, 2019).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Instructions for Florida Supreme Court Approved Family Law Form 12.980(t), Florida Courts, <https://www.flcourts.org/content/download/403269/3457948/980t.pdf> (last visited Mar. 15, 2019).

<sup>29</sup> *Id.*

injunction ex parte.<sup>30</sup> A hearing must be set at the earliest possible time after a petition is filed and the respondent must be personally served with a copy of the petition.<sup>31</sup> The court may grant such relief as it deems proper, including an injunction restraining the respondent from committing any acts of domestic violence, awarding to the petitioner the temporary exclusive use and possession of a shared dwelling, excluding the respondent from the petitioner's residence, or providing the petitioner a temporary parenting plan.<sup>32</sup> Temporary injunctions cannot exceed 15 days.<sup>33</sup> The court may grant a continuance of the hearing for good cause, which may include obtaining service of process.<sup>34</sup> A temporary injunction must be extended, if necessary, during any period of continuance.<sup>35</sup> For domestic violence cases, the court will grant a temporary injunction for protection against domestic violence with minor child or without minor child, depending on whether a petitioner has a child.<sup>36</sup> If a temporary injunction is granted for a petition with minor child, that child or children will also be included in the injunction.

At the final hearing, permanent injunctive relief may be granted if the court finds that the petitioner is:

- The victim of domestic violence; or
- Has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence.<sup>37</sup>

### *Service of Process*

Following the filing of a petition for injunction, the clerk of the court forwards a copy of the petition, related affidavits, notice of hearing, and a copy of the temporary injunction, if one is issued, to the sheriff of the county where the respondent lives or can be found.<sup>38</sup> Upon receipt of the petition and related documents, the sheriff must personally serve the respondent as soon as possible.<sup>39</sup> However, since the documents immediately become public record, under current law a respondent may access the petition and related documents prior to being formally served. This could endanger both the petitioner and law enforcement officer responsible for serving the respondent, as well as aid the respondent in evading process.

### **Effect of Proposed Changes**

The bill provides that any information that can be used to identify a petitioner or respondent in a petition for a protective injunction against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking, and any affidavits, notice of hearing, and temporary injunction is confidential and exempt<sup>40</sup> from public records until the respondent has been personally served.

The bill provides a statement of public necessity as required by the Florida Constitution, stating that the public records exemption is necessary because release of the information contained in a petition for an

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<sup>30</sup> The judge may issue a temporary injunction based solely on information provided by the petitioner.

<sup>31</sup> S. 741.30(4), F.S.

<sup>32</sup> S. 741.30(5), F.S.

<sup>33</sup> S. 741.30(5)(c), F.S.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> Family Law Form 12.980(a), *supra*

<sup>37</sup> S. 741.30(6)(a), F.S.

<sup>38</sup> S. 741.30(8)(a)1., F.S.

<sup>39</sup> *Id.*

<sup>40</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 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 Attorney General Opinion 85-62* (August 1, 1985).

injunction before it is served on the respondent could significantly threaten both the physical safety of the person seeking protection through injunctive proceedings, as well as law enforcement officers who are tasked with serving the injunction.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 119.0714, F.S., relating to court files, court records, official records.

**Section 2:** Provides a public necessity statement.

**Section 3:** Provides an effective date of July 1, 2019.

**II. 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:

See Fiscal Comments.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

The bill may have a minimal fiscal impact on the clerks of court because it requires additional redactions to public records. Staff may require additional training related to the new public record exemption. The costs, however, would likely be absorbed in existing resources as they are part of the day-to-day responsibilities of the clerks.

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

Vote Requirement

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

### Public Necessity Statement

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

### Breadth of Exemption

Article I, section 24(c) of the State Constitution requires a newly created or expanded public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill limits the public record exemption to the narrow window of time between the filling of the petition for injunction and service of the respondent. As such, the exemption does not appear to be in conflict with the constitutional requirement that it 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 March 20, 2019, the Oversight, Transparency & Public Management Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment narrows the exemption to only protect information in the petition that can identify a petitioner or a respondent.

This analysis is drafted to the committee substitute as approved by the Oversight, Transparency & Public Management Subcommittee.