

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 689 Domestic Violence Centers
SPONSOR(S): Criminal Justice & Public Safety Subcommittee, Borrero
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 70

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	17 Y, 0 N, As CS	Padgett	Hall
2) Children, Families & Seniors Subcommittee	18 Y, 0 N	Woodruff	Brazzell
3) Judiciary Committee	20 Y, 0 N	Padgett	Kramer

SUMMARY ANALYSIS

Domestic violence occurs when a person shows a pattern of behavior to control a partner through physical, sexual, or emotional abuse. Florida law defines “domestic violence” 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.

A domestic violence center provides services to survivors of domestic violence as its primary mission. Such services include:

- Housing for survivors of domestic violence and their dependents.
- Domestic violence counseling and referral services.
- Law enforcement training.
- Educational services and advocacy programs.

Department of Children and Families employees and employees or volunteers of a domestic violence center are prohibited from disclosing the location of a center, or any records relating to clients of a domestic violence center, as such information is deemed confidential and exempt from disclosure under the public records laws in ch. 119, F.S. A knowing and willful violation of the prohibition is a first degree misdemeanor. However, current law does not specifically prohibit a person who is not affiliated with a domestic violence center from disclosing the location of a center.

CS/HB 689 creates s. 39.9057, F.S., which provides a first degree misdemeanor to penalize a person who maliciously:

- Publishes, disseminates, or discloses any descriptive information or image that may identify the location of a domestic violence center certified under s. 39.905, F.S.; or
- Discloses the location of a domestic violence center.

A second or subsequent conviction is punishable as a third degree felony.

The bill requires a person to act maliciously, meaning a person must be found to have published, disseminated, or disclosed such information wrongfully, intentionally, and without legal justification or excuse to be subject to the criminal penalty created by the bill.

The bill will likely have a positive, insignificant prison and jail bed impact due to the creation of new felony and misdemeanor offenses.

The bill provides an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Certified Domestic Violence Centers

Domestic violence occurs when a person shows a pattern of behavior to control his or her partner through physical, sexual, or emotional abuse.¹ Florida law defines “domestic violence” 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.²

A domestic violence center is an agency that provides services to victims of domestic violence as its primary mission.³ Section 39.903, F.S., requires the Department of Children and Families (DCF) to perform duties related to domestic violence centers. In part, DCF is required to approve or reject the applications for initial certification of domestic violence centers, and annually review certification renewal.⁴ Certified domestic violence centers must comply with and meet minimum statutory requirements, including the ability to house victims of domestic violence and their dependents, the provision of counseling services, endorsement by a local law enforcement agency, and evidence of a stable financial operating plan.⁵ Florida has 41 certified domestic violence centers.⁶

Confidentiality of Domestic Violence Center Locations

Federal law prohibits the disclosure of the address or location of any shelter facility that maintains a confidential location to the public, except by written authorization of the person responsible for the operation of the shelter.⁷

There are at least 19 states, including Florida, that require the location of a domestic violence center to remain confidential.⁸ Eight of those states impose penalties for unlawfully disclosing such location, and four states create criminal offenses for unlawfully disclosing the information relating to the location of a domestic violence center.⁹ California¹⁰ and South Carolina¹¹ have criminal penalties if a person “maliciously” discloses the location of a domestic violence shelter. Georgia makes it a criminal offense to “knowingly” disclose the location of a domestic violence shelter.¹² No state explicitly prohibits maliciously publishing an image that may identify the location of a domestic violence center.

Public Records Act

Chapter 119, F.S., provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each

¹ Psychology Today, *Domestic Violence*, <https://www.psychologytoday.com/us/basics/domestic-violence> (last visited Mar. 29, 2021).

² S. 741.28(1), F.S.

³ S. 39.902(2), F.S.

⁴ S. 39.903(2), F.S.

⁵ S. 39.905(1), F.S.

⁶ Department of Children and Families, *Domestic Violence Overview*, <https://www.myflfamilies.com/service-programs/domestic-violence/overview.shtml> (last visited Mar. 29, 2021).

⁷ 42 U.S.C. §§10401 and 10406(c)(5)(H).

⁸ Michelle Kirby, *Confidentiality of Information on Safe Houses*, OLR Research Report, <https://www.cga.ct.gov/2014/rpt/2014-R-0011.htm> (last visited Mar. 29, 2021).

⁹ *Id.*

¹⁰ S. 273.7, Cal. Penal Code.

¹¹ S. 16-3-2080, S.C. Code.

¹² S. 19-13-23, O.C.G.A.

agency.¹³ Any person who willfully and knowingly violates the public records laws in ch. 119, F.S., commits a first degree misdemeanor.^{14,15} A public officer who violates any provision of ch. 119, F.S., commits a noncriminal infraction, punishable by a fine of up to \$500.¹⁶ A public officer who knowingly violates any provision of the public records laws in ch. 119, F.S., commits a first degree misdemeanor and is subject to suspension and removal from office, or impeachment.¹⁷

Exemption for Location of Domestic Violence Centers and Clients

DCF employees and employees or volunteers of a domestic violence center are prohibited from disclosing the location of a center or any records relating to clients of a domestic violence center, as such information is deemed confidential and exempt from disclosure under the public records laws in ch. 119, F.S.¹⁸ There is currently no criminal penalty if a person unaffiliated with DCF or a domestic violence center discloses the location of a center.

A client of a domestic violence center may provide written consent to disclose information or records, which may be provided by staff or a volunteer of the center to law enforcement, firefighting, medical, or other personnel in the following circumstances:

- To medical personnel in a medical emergency.
- Upon a court order based upon an application by a law enforcement officer for a criminal arrest warrant which alleges that the individual sought to be arrested is located at the domestic violence shelter.
- Upon a search warrant that specifies the individual or object of the search and alleges that the individual or object is located at the shelter.
- To firefighting personnel in a fire emergency.
- To any other person necessary to maintain the safety and health standards in the domestic violence shelter.
- Information solely about the location of the domestic violence shelter may be given to those with whom the agency has an established business relationship.¹⁹

The restriction on the disclosure or use of the information about domestic violence center clients does not apply to:

- Communications from domestic violence shelter staff or volunteers to law enforcement officers when the information is directly related to a client's commission of a crime or threat to commit a crime on the premises of a domestic violence shelter; or
- Reporting suspected abuse of a child or a vulnerable adult as required by law. However, when cooperating with protective investigation services staff, the domestic violence shelter staff and volunteers must protect the confidentiality of other clients at the domestic violence center.²⁰

A domestic violence victim may request that information which reveals personal information such as his or her telephone number or home address be made exempt from disclosure under the public records laws. Such request must contain official verification that a specified crime²¹ has occurred.²²

Freedom of Speech

¹³ S. 119.01(1), F.S.

¹⁴ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

¹⁵ S. 119.10(2), F.S.

¹⁶ S. 119.10(1)(a), F.S.

¹⁷ S. 119.10(1)(b), F.S.

¹⁸ S. 39.908(1), F.S.

¹⁹ S. 39.908(2), F.S.

²⁰ S. 39.908(3), F.S.

²¹ A victim of the following crimes is eligible to have identifying information in a public record exempt from disclosure: sexual battery, aggravated child abuse, aggravated stalking, harassment, aggravated battery, or domestic violence. S. 119.07(2)(j), F.S.

²² *Id.*

The First Amendment of the U.S. Constitution states that, “Congress shall make no law ... abridging the freedom of speech....”²³ While this language generally prohibits the government from restricting the speech of citizens, the prohibition on restricting speech is not absolute. Even speech that enjoys the broadest First Amendment protection, such as political speech, may still be subject to “regulations of the time, place, and manner of expression which are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication.”²⁴

Additionally, speech may be restricted on the basis of its content if the restriction passes the strict scrutiny test, which means that the government may regulate the content of speech if there is a “compelling interest” and it is “the least restrictive means to further the articulated interest.”²⁵ The Supreme Court of the United States has held that, “[c]ontent-based prohibitions, enforced by severe criminal penalties, have the constant potential to be a repressive force in the lives and thoughts of a free people. To guard against that threat the Constitution demands that content-based restrictions on speech be presumed invalid, and that the Government bear the burden of showing their constitutionality.”²⁶

Criminal Punishment Code - Offense Severity Ranking Chart

Felony offenses subject to the Criminal Punishment Code²⁷ are listed in a single offense severity ranking chart (OSRC), which uses 10 offense levels to rank felonies from least severe (level 1) to most severe (level 10). Each felony offense is assigned to a level according to the severity of the offense, commensurate with the harm or potential for harm to the community that is caused by the offense, as determined by statute.²⁸ A person’s primary offense, any other current offenses, and prior offenses are scored using the points designated for the offense severity level of each offense.²⁹ A person may also accumulate points for factors such as victim injury, violating a community sanction, and certain sentencing multipliers.³⁰ The final calculation, following the scoresheet formula, determines the lowest permissible sentence that the trial court may impose, absent a valid reason for departure.³¹ If an offense is unranked, the Criminal Punishment Code specifies a default level on the OSRC depending on the felony degree of the offense.³²

Effect of Proposed Changes

CS/HB 689 creates s. 39.9057, F.S., which specifies that any person who maliciously publishes, disseminates, or discloses any descriptive information or image that may identify the location of a domestic violence center certified under s. 39.905, F.S., or who otherwise maliciously discloses the location of a center, commits a first degree misdemeanor. A second or subsequent conviction is punishable as a third degree felony. The crime is not ranked on the OSRC and defaults to a Level 1 offense on the OSRC.

The bill does not require a person who maliciously discloses an image containing a domestic violence center to have actual knowledge that the image contains a domestic violence center or to identify the center as such.

Although the bill requires a person to maliciously publish, disseminate, or disclose information or images that may identify the location of a domestic violence center to be held criminally liable, the bill

²³ U.S. Const., amend. I.

²⁴ Kathleen Ann Ruane, *Freedom of Speech and Press: Exceptions to the First Amendment*, Congressional Research Service (Sept. 8, 2014), <https://fas.org/sqp/crs/misc/95-815.pdf> (last visited Mar. 29, 2021).

²⁵ *Sable Communications of California v. F.C.C.*, 492 U.S. 115 (1989).

²⁶ *Ashcroft v. American Civil Liberties Union*, 542 U.S. 656, 660 (2004).

²⁷ All felony offenses, other than capital felonies, committed on or after October 1, 1998, are subject to the Criminal Punishment Code.

²⁸ S. 921.0022, F.S.

²⁹ Ss. 921.0022 and 921.0024, F.S.

³⁰ S. 921.0024(2), F.S.

³¹ *Id.*

³² S. 922.0023, F.S.

does not define the term “maliciously.” However, case law defines “maliciously” to mean an act that is done “wrongfully, intentionally, and without legal justification or excuse.”³³

The bill provides an effective date of July 1, 2021.

B. SECTION DIRECTORY:

Section 1: Creates s. 39.9057, F.S., relating to unlawful disclosure of certified domestic violence center location; penalties.

Section 2: Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have a positive insignificant prison bed impact due to the creation of a new felony offense.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have a positive insignificant jail bed impact due to the creation of a new misdemeanor offense.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

The bill prohibits a person from maliciously disclosing or otherwise communicating any descriptive information or images that may disclose the location of a domestic violence center. Because the bill criminalizes speech on the basis of content, the First Amendment of the U.S. Constitution may be implicated and a court will likely apply the strict scrutiny standard of review to any legal challenge. Thus, the government must demonstrate the state has a compelling interest and the statute is narrowly tailored to achieve the stated interest. The state likely has a compelling interest in

³³ See *Kennedy v. State*, 59 So. 3d 376, 380 (Fla. 4th DCA 2011); See also *Reed v. State*, 837 So. 2d 366 (Fla. 2002).

protecting a victim of domestic violence by keeping the location of a domestic violence center confidential. As such, any court decision would likely turn on whether the statute is tailored narrowly enough, and is the least restrictive means of preventing the disclosure of the location of a domestic violence center.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 9, 2021, the Criminal Justice & Public Safety Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Provided a person who is convicted a second or subsequent time of maliciously publishing, disseminating, or disclosing any descriptive information or image that may identify the location of a domestic violence center, or who otherwise maliciously discloses the location of a domestic violence center, commits a third degree felony.

This analysis is drafted to the committee substitute as passed by the Criminal Justice & Public Safety Subcommittee.