

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 318

SPONSOR: Senator Rossin

SUBJECT: Public Records/Fleeing with Minors

DATE: April 18, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dowds</u>	<u>Whiddon</u>	<u>CF</u>	<u>Favorable</u>
2.	_____	_____	<u>RC</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

SB 318 provides an exemption from public records disclosure of that information which is reported to the state attorneys and sheriffs by persons who take their minor children with them when fleeing domestic violence and are working to gain exemption from the interference with custody offense.

This bill substantially amends section 787.03 of the Florida Statutes.

II. Present Situation:

Section 24 of Article I of the Florida Constitution provides the right of access to public records by stating that every person has the right to inspect or copy any public records made or received in connection with official state business. This right of access to public records applies to the legislative, executive, and judicial branches of government; counties, municipalities, and districts; and each constitutional officer, board, commission, or entity created pursuant to law or by the Constitution. Exemptions may be provided by general law based on an expressed statement of public necessity which justifies the exemption that can be no broader than necessary to accomplish the purpose of the law.

The corresponding general law is found in ch. 119, F.S., which provides additional requirements for the establishment of a public records exemption. There must be an identifiable public purpose, and it must be no broader than necessary to meet the public purpose it serves. The public purpose must be sufficiently compelling to override the strong public policy of open government such that the public purpose can not be accomplished without the exemption and satisfies one of three other criteria relating to the sensitivity and confidentiality of the information. The custodian of a public record must permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee, s. 119.07(1), F.S.

The Open Government Sunset Review Act of 1995 provides for the automatic 5-year review and repeal of an exemption under the Public Records Act, unless the Legislature acts upon it to re-enact the exemption, s. 119.15, F.S.

Section 787.03, F.S., provides for the offense of interference with custody for a person who has custody of a child to take, detain, conceal, or entice the child away with the intent of depriving another person of his or her right to custody. Subsection (6) of s. 787.03, F.S., exempts a spouse from liability for the interference with custody offense if the spouse is a victim of domestic violence or has reasonable cause to believe he or she will become a victim of domestic violence, as defined in s. 741.28, F.S., and takes the child for the purpose of seeking shelter from the domestic violence.

SB 320 requires that in order for a spouse who takes a child due to domestic violence to fall within this exemption to the offense of interference with custody, the spouse must commence custody proceedings and report the taking to police or the state attorney, including information on his or her address and telephone number, within a specified period of time. The release of this information would reveal the location of the spouse and child and could place them in danger of physical or psychological harm from the individual from whom they were fleeing.

III. Effect of Proposed Changes:

SB 318 amends s. 787.03(6), F.S., and requires that information provided to a state attorney or sheriff pursuant to paragraph (b) of s. 787.03(6), F.S., as amended by SB 320 or similar legislation, is exempt from the public disclosure. This section is subject to the Open Government Sunset Review Act and shall stand repealed on October 2, 2005 unless reenacted by the Legislature.

The bill states that it is of public necessity for information which is reported to the state attorneys and sheriffs by persons who take their minor children with them when fleeing domestic violence to be exempt from public disclosure because the information is of a sensitive, personal nature and concerns individuals who are under threat of physical or psychological harm if their whereabouts are revealed.

SB 318 provides for an effective date of July 1, 2000 and is subject to successful passage of SB 320 or other similar legislation.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Section 24 of Article I of the State Constitution establishes a constitutional right of access to any public record made or received in connection with the official business of any public

body, officer or employee of the state, or persons acting on their behalf, except those records exempted otherwise by law or specifically made confidential by the constitution.

SB 318 would exempt from public record review information provided to the state attorneys and sheriffs by the spouse who fled with the child and is working to gain exemption from the interference with custody offense as required by s. 787.03(6)(b), F.S.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
