

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 Criminal Justice Committee

BILL: SB 312

INTRODUCER: Senator Jones

SUBJECT: Public Records, Public Defenders and Regional Conflict Counsel

DATE: January 20, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Favorable
2.	_____	_____	GO	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Senate Bill 312 creates a public records exemption for personal identifying and locating information for current and former public defenders and their assistants, for current and former criminal conflict and civil regional counsel and their assistants, and for the spouses and children of those individuals.

The bill states a public necessity for the exemption. It also provides for repeal of the public records exemption on October 2, 2015, unless it is saved from repeal by the Open Government Sunset Review process and reenactment by the Legislature.

This bill substantially amends section 119.071(4)(d) of the Florida Statutes.

II. Present Situation:

Public Access

Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1892. In 1992, Florida voters approved an amendment to the State Constitution which raised the statutory right of access to public records to a constitutional level.

Paragraphs (a) and (c) of Section 24, Art. I of the State Constitution provide the following:

(a) Every person has the right to inspect or copy any public records 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 with respect to records exempted pursuant to this section or

specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

(c) This section shall be self-executing. The Legislature, however, may provide by general law passed by a two-thirds vote of each house for the exemption of records from the requirements of subsection (a) and the exemption of meetings from the requirements of subsection (b); provided that such law shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the state purpose of the law. . . . Laws enacted pursuant to this subsection shall contain only exemptions from the requirements of subsections (a) and (b) and provisions governing the enforcement of this section, and shall relate to one subject.

Florida's Public Records Law

Florida's public records law is contained in ch. 119, F.S., and specifies conditions under which the public must be given access to governmental records. Section 119.07(1)(a), F.S., provides that every person who has custody of a public record¹ must permit the record to be inspected and examined by any person, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record. Unless specifically exempted, all agency² records are to be available for public inspection.

Section 119.011(12), F.S., defines the term "public record" to include 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. The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are "intended to perpetuate, communicate, or formalize knowledge."³ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁴

Only the Legislature is authorized to create exemptions to open government requirements.⁵ Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to

¹ s. 119.011(1), F.S., defines "public record" to include "all documents, papers, letters, maps, books, tapes, photographs, film, 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."

² s. 119.011(2), F.S., defines "agency" as "...any state, county, district, authority, or municipal officer, department, division, 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."

³ *Shevin v. Byron, Harless, Shafer, Reid, and Assocs., Inc.*, 379 So. 2d 633, 640(Fla. 1980).

⁴ *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979)

⁵ Article I, s. 24(c) of the State Constitution.

accomplish the stated purpose of the law.⁶ A bill enacting an exemption⁷ may not contain other substantive provisions although it may contain multiple exemptions relating to one subject.⁸

There is a difference between records that the Legislature exempts from public inspection and those that the Legislature makes confidential and exempt from public inspection. If a record is made confidential with no provision for its release so that its confidential status will be maintained, such record may not be released by an agency to anyone other than the person or entities designated in the statute.⁹ If a record is simply exempt from mandatory disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.¹⁰

Open Government Sunset Review Act

The Open Government Sunset Review Act established in s. 119.15, F.S., provides a review and repeal process for public records exemptions. In the fifth year after enactment of a new exemption or in the fifth year after substantial amendment of an existing exemption, the exemption is repealed on October 2, unless reenacted by the Legislature. Each year, by June 1, the Division of Statutory Revision of the Joint Legislative Management Committee is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

Current Exemptions in Section 119.071(4)(d), Florida Statutes Pertaining to Similarly-Situated Agency Personnel

The Legislature has previously enacted exemptions from the public records law for the home addresses, telephone numbers, social security numbers, spouse's places of employment, and schools and daycare locations of the children of the following agency personnel (active and former):

- Law enforcement
- Correctional and correctional probation officers
- Certain personnel at the Department of Children and Family Services
- Department of Health personnel
- Department of Revenue personnel
- Certified firefighters
- Justices, judges, magistrates, administrative law judges and child support hearing officers
- Code enforcement officers
- Guardians ad litem
- Local government agent and water management district human resources administrators
- Department of Juvenile Justice personnel and
- Local and statewide prosecuting attorneys.

⁶ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

⁷ s. 119.15, F.S., provides that an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

⁸ Article 1, s. 24(c) of the State Constitution.

⁹ Attorney General Opinion 85-62, August 1, 1985.

¹⁰ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d. 289 (Fla.1991).

The common characteristic among this varied list of agency personnel seems to be that the persons who do these jobs could realistically become the object of public ire simply because of the nature of the job. These particular jobs require decisions, actions or information-sharing that affect the lives of citizens in ways that could create within them significant emotional reactions. Sometimes such reactions can lead to irrational behavior such as direct threats or actual retaliation against the agency worker.

Public Defenders and Criminal Conflict and Civil Regional Counsel

Both Public Defenders (and their assistants) and Criminal Conflict and Civil Regional Counsel (and their assistants) are appointed by the courts to represent defendants in criminal cases. Additionally, Criminal Conflict and Civil Regional Counsel represent clients in matters before the courts involving alleged child abuse, alleged child neglect, and potential termination of parental rights.

Clients of both agencies have a great deal at stake in the outcome of their legal matters and situations tend to get emotionally charged at times. A quick survey of the Offices of the Public Defender substantiates the volatile nature of the lawyer-client relationship in these particular types of cases. In one circuit two different Assistant Public Defenders were battered in the courtroom, one suffering a broken jaw and the other a fractured eye socket. It is not unusual for female attorneys to be the object of unwanted attention from clients, nor is it unusual that attorneys receive death threats or promises of harm. One attorney actually had to get an injunction against a client. In one extreme case, the mother of a client killed a Public Defender's administrative assistant after the client's mother was unable to find the Public Defender.

III. Effect of Proposed Changes:

Section 1 of the bill creates an exemption from public records for the home addresses, telephone numbers, and photographs of current or former public defenders, their assistants, criminal conflict and civil regional counsel and their assistants. The exemption also encompasses the spouses and children of those current or former agency personnel and includes their social security numbers, places of employment, and the names and locations of the children's schools and daycares. This section of the bill also provides for review of the exemption under the Open Government Sunset Review Act and for its repeal unless it is reenacted prior to October 2, 2015.

Section 2 provides the statement of public necessity for the exemption. It states that persons may become disgruntled by the outcome of the case in which they are represented by the public defender or the criminal conflict and civil regional counsel which could result in the attorneys or their families becoming targets of acts of violence. The statement concludes that disclosure of the personal information exempted by the bill would jeopardize their safety.

Section 3 provides the effective date of the exemption, July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill creates a public records exemption that will limit public access to certain personal identifying information relating to minor children. This bill meets the requirements of s. 24, Art. I of the State Constitution, by containing a statement of public necessity to justify the exemption, by relating to only subject, and by containing only one exemption. This bill requires a two-thirds vote of each house of the Legislature for enactment.

C. Trust Funds Restrictions:

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. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

None.

B. Amendments:

None.