

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 Governmental Oversight and Accountability Committee

BILL: SB 884

INTRODUCER: Children, Families, and Elder Affairs Committee

SUBJECT: OGSR/Domestic Violence Fatality Review Team

DATE: April 1, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Walsh	Walsh	CF	Favorable
2.	Naf	Wilson	GO	Favorable
3.			RC	
4.				
5.				
6.				

I. Summary:

This bill is the result of an Open Government Sunset Review conducted by the Committee on Children, Families, and Elder Affairs.

Current law allows a domestic violence fatality review team (team or teams) to be established at a local, regional, or state level. The purpose of the team is to learn how to prevent domestic violence by intervening early and improving the response of an individual and the system to domestic violence. In accomplishing this purpose, teams may review events leading up to a domestic violence incident, available community resources, current laws and policies, actions taken by the systems and individuals related to the incident and the parties, and any information or action deemed relevant by the team.

Current law provides a public-records and a public-meetings exemption for the teams. Any confidential or exempt information obtained by a team retains its confidential or exempt status. In addition, any information that identifies a victim of domestic violence or the victim's children is confidential and exempt from public-records requirements when contained in a record created by a team. Those portions of meetings of a team regarding domestic violence fatalities and their prevention, during which confidential or exempt information is discussed, are exempt from public-meetings requirements. These exemptions are subject to review under the Open Government Sunset Review Act and will sunset on October 2, 2010, unless saved from repeal through reenactment by the Legislature. This bill reenacts the exemptions.

This bill substantially amends s. 741.3165, F.S.

II. Present Situation:

Florida's Public-Records Laws

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.

Section 24(a), art. I, of the State Constitution, provides that:

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.

The Public Records Law is contained in chapter 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

¹ Section 119.011(12), F.S., defines "public records" 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 Section 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).

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 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 Act¹¹ provides for the systematic review of an exemption from the Public Records Act in the fifth year after its enactment. The act states that an exemption may be created, revised, or maintained only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.¹² An identifiable public purpose is served if the exemption meets one of three specified criteria and if 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.¹³ An exemption meets the statutory criteria if it:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which ... would be defamatory ... or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which ... would injure the affected entity in the marketplace.¹⁴

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

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 Section 119.15(4)(b), F.S., provides that an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

⁸ Section 24(c), art. I 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).

¹¹ Section 119.15, F.S.

¹² Section 119.15(6)(b), F.S.

¹³ *Id.*

¹⁴ *Id.*

The act also requires the Legislature to consider six questions that go to the scope, public purpose, and necessity of the exemption.¹⁵

Domestic Violence Fatality Review Teams

In Florida, domestic violence is defined as:

[A]ny 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.¹⁶

In 2008, the total number of domestic violence offenses reported across Florida was 113,123. Of the total, 194 offenses were classified as murder or manslaughter.¹⁷

Domestic Violence Fatality Review Teams (FRTs) were first formed in Florida in the mid-1990's. These teams began as local initiatives supported with federal grant funds.¹⁸ In 2000, the Legislature enacted s. 741.316, F.S., which allows organizations to establish FRTs at the local, regional, or state level. The teams, which are not funded by the state, work independently and may be composed of representatives from municipal, county, state and federal agencies, as well as individuals or organizations that are involved with, or affected by, a domestic violence fatality.¹⁹ The goals of the FRTs are to review fatal and near-fatal incidents of domestic violence, related domestic violence matters, and suicides, and to identify changes in policy or procedure that may prevent future deaths.²⁰

There are 19 active FRTs in Florida.²¹ In addition, the Department of Children and Families (DCF), in partnership with the Florida Coalition Against Domestic Violence (FCADV), has recently created a statewide domestic violence fatality review team, funded by a federal grant.²² The specified goals of the statewide FRT are to identify gaps in service delivery to domestic

¹⁵ Section 119.15(6)(a), F.S.

¹⁶ Section 741.28(2), F.S.

¹⁷ Florida Department of Law Enforcement (FDLE), Crime in Florida, Uniform Crime Report (2009).

¹⁸ FDLE, *Florida Domestic Violence Fatality Review Team 2008 Annual Report, Executive Summary* (2008).

¹⁹ *Id.* See also, s. 741.316, F.S.

²⁰ *Id.*

²¹ As of June 19, 2009, there were active FRTs in the following counties: Alachua, Brevard, Broward, Columbia (Third Judicial Circuit), Duval, Escambia, Hillsborough, Lee, Manatee, Miami-Dade, Orange, Palm Beach, Pasco, Pinellas, Polk/Highlands, Santa Rosa, Sarasota, Seminole and St. John's. E-mail from Nina Zollo, FCADV, Vice President of Legal and Policy, with attachment (June 22, 2009 5:05 PM) (on file with the Senate Committee on Children, Families and Elder Affairs).

²² DCF received an award from the Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program (the Arrest Program), administered by the United States Department of Justice. The Arrest Program is a discretionary grant program designed to encourage state, local, and tribal governments and courts to treat domestic violence, dating violence, sexual assault, and stalking as serious violations of criminal law requiring the coordinated involvement of the entire criminal justice system. See the Arrest Program website at http://www.ovw.usdoj.gov/arrest_grant_desc.htm (last visited December 4, 2009) for more information.

violence victims, promote training, and coordinate activities among agencies involved in domestic violence issues.²³

Public Records and Meetings Exemptions for Domestic Violence Fatality Review Teams

In 2000, when the Legislature authorized FRTs, it also granted them immunity from liability for “any act or proceeding undertaken or performed within the scope of the functions of the team” unless the act or proceeding was undertaken in bad faith.²⁴ Additionally, information gathered by the teams is protected from discovery and introduction into evidence in civil proceedings, and persons attending team meetings are prohibited from testifying in civil or disciplinary actions regarding records or information produced or presented to the team.²⁵

The Legislature also enacted public records and meetings exemptions related to FRTs, providing that:

- Confidential and exempt information obtained by an FRT retains its confidential and exempt status when held by, or included in a report from, the FRT; and
- Meetings and proceedings of an FRT at which identifying information regarding a victim or a victim’s child are discussed are exempt from the public meetings requirements.²⁶

The public necessity for the exemptions was described by the Legislature as follows:

[In the absence of public records and public meetings exemptions], sensitive personal information concerning victims and victims’ children and family members would be disclosed and open communication and coordination among parties involved in the domestic violence fatality reviews would be hampered. Accordingly, the Legislature finds that the harm that would result in the release of such information substantially outweighs any minimal public benefit derived therefrom.²⁷

In 2005, when the exemption was reviewed as required by the Open Government Sunset Review Act, it was reenacted and expanded in response to the report’s findings. Specifically, the report noted:

Several [fatality review] teams reported that a portion of their duties included interviewing family members and survivors of near-fatal incidents of domestic violence. Since the current statute only maintains confidentiality for information which is confidential when it comes to the team, the personal identifying information in new records created as a result of these interviews does not appear to be protected from disclosure,

²³ FCADV website at <http://www.fcadv.org/projects-fatality.php> (last visited December 4, 2009).

²⁴ Section 741.316(4)(a), F.S.

²⁵ Section 741.316(5), F.S.

²⁶ Chapter 2000-219, s. 1, L.O.F.

²⁷ Chapter 2000-219, s. 2, L.O.F.

except for the protection against discovery or introduction into court proceedings found in s. 741.316(6), F.S.²⁸

In addition, the report found that the scope of the public meetings exemption was being interpreted in varying ways by FRTs, and recommended that the Legislature clarify “that the meeting exemption only applies to the portions of the meeting in which identifying information is discussed . . .”²⁹ Section 741.3165, F.S., was amended pursuant to these recommendations, with the Legislature finding public necessity as follows:

In the course of collecting information on domestic violence, the review teams may interview a survivor of domestic violence or the children of the survivor. These individuals may be unlikely to cooperate if they could be identified in records held by a review team because identification could result in potential threats and additional public embarrassment, as well as the exposure of information of a personal, sensitive nature. If these persons were reluctant to participate because they could be identified, this would defeat the purpose of the review teams and limit the collection of potentially valuable information that could be used to make policy and other recommendations that might reduce the frequency of domestic violence in our society.

...

In the course of collecting information on domestic violence, the review teams obtain confidential or exempt information from other agencies and this information is discussed during meetings of the review teams. If the portions of those meetings at which this confidential or exempt information is discussed are not closed, confidential or exempt information could be disclosed, which would defeat the purpose of those exemptions.³⁰

Because the exemption was substantially amended in 2005, it is now subject to another sunset review.³¹

III. Effect of Proposed Changes:

The bill reenacts and saves from repeal s. 741.365, F.S., allowing the records reviewed by an FRT, and the information that identifies a victim or a victim’s children when that information is included in records created by an FRT or discussed at an FRT meeting, to remain confidential and exempt from public disclosure.

²⁸ Florida Senate, Committee on Children and Families, Open Government Sunset Review of s. 741.3165, Records Held by a Domestic Violence Fatality Review Team (Interim Project Report 2005-202) (November 2004).

²⁹ *Id.*

³⁰ Chapter 2005-212, s. 2, L.O.F.

³¹ Chapter 2005-212, s. 1, L.O.F.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill retain existing public-records and public-meetings exemptions.

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.