

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB OTM 20-06 OGSR/Residential Facilities Serving Victims of Sexual Exploitation

SPONSOR(S): Oversight, Transparency & Public Management Subcommittee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Oversight, Transparency & Public Management Subcommittee		Toliver	Smith

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Human trafficking is the “transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person.” An estimated 40.6 million persons were the victims of human trafficking in 2016, with one in four victims being children.

Safe houses and safe foster homes are certified by the Department of Children and Families to care for sexually exploited children. Safe houses and safe foster homes must provide “a safe, separate, and therapeutic environment tailored to the needs of commercially sexually exploited children who have endured significant trauma and are not eligible for relief under the federal Trafficking Victims Protection Act.” Safe houses and safe foster homes must also provide a variety of services to aid sexually exploited children, such as victim-witness and family counseling, behavioral health care, and substance abuse screening.

Current law provides public record exemptions for information about the location of safe houses, safe foster homes, other residential facilities serving child victims of sexual exploitation, and residential facilities serving adult victims of human trafficking involving commercial sexual activity. However, the information may be provided to any agency in order to maintain health and safety standards and to address emergency situations.

The bill saves from repeal the public record exemptions, which will repeal on October 2, 2020, if this bill does not become law.

The bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it 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.
- Protect trade or business secrets.³

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.⁴ If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created then a public necessity statement and a two-thirds vote for passage are not required.

Human Trafficking

Human trafficking⁵ is a form of modern-day slavery, which involves the exploitation of persons for commercial sex or forced labor.⁶ An estimated 40.6 million persons were the victims of human trafficking in 2016, with one in four victims being children.⁷ Human traffickers use various techniques to instill fear in victims and to keep them enslaved⁸ including the use of "violence, threats, deception, [and] debt bondage."⁹ Some traffickers keep their victims under lock and key.¹⁰ However, the most frequently used practices are less obvious techniques that include isolating victims from the public and family members; confiscating passports, visas, or other identification documents; using or threatening to use violence toward victims or their families; telling victims that they will be imprisoned or deported for immigration violations if they contact authorities; and controlling the victims' funds by holding the money

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Article I, s. 24(c), FLA. CONST.

⁵ The term "human trafficking" is defined to mean the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person. Section 787.06(2)(d), F.S.

⁶ Section 787.06(1)(a), F.S.

⁷ *Forced labour, modern slavery and human trafficking*, INTERNATIONAL LABOUR ORGANIZATION, <http://www.ilo.org/global/topics/forced-labour/lang--en/index.htm> (last visited Nov. 27, 2019).

⁸ Section 787.06(1)(c), F.S.

⁹ *The Facts*, POLARIS PROJECT, <https://polarisproject.org/human-trafficking/facts> (last visited Dec. 3, 2019).

¹⁰ *Id.*

ostensibly for safekeeping.¹¹ It is estimated that human trafficking “generates \$150 billion dollars in illegal profits a year.”¹²

Residential Treatment for Victims of Human Trafficking

Safe Houses

A “safe house” is a group residential placement certified by the Department of Children and Families (DCF) to care for sexually exploited children.¹³ Safe houses must provide “a safe, separate, and therapeutic environment tailored to the needs of commercially sexually exploited children who have endured significant trauma and are not eligible for relief and benefits under the federal Trafficking Victims Protection Act.”¹⁴ To that end, each safe house must use strength-based and trauma informed approaches to care, serve exclusively one sex, group child victims by age or maturity level, and care for child victims in a manner that separates them from children with other needs.¹⁵ Safe houses must have staff members who are awake and on duty 24 hours a day.¹⁶ A safe house serving children who have been sexually exploited must provide a variety of services such as victim-witness and family counseling, behavioral health care, and substance abuse screening.¹⁷ Safe houses are inspected by DCF prior to certification and annually thereafter.¹⁸

Safe Foster Homes

A “safe foster home” is a family foster home¹⁹ certified by DCF to care for sexually exploited children.²⁰ The state requires safe foster homes provide the same services and meet the same requirements as safe houses, except the requirement to have staff awake and on duty 24 hours a day does not apply.²¹

Additional Residential Facilities

Traditional residential facilities serve both children and adults who are victims of sexual exploitation. If these facilities serve adults, they cannot be designated safe houses or safe foster homes.²²

Public Record Exemption under Review

In 2015, the Legislature created public record exemptions for information about the location of safe houses, safe foster homes, residential facilities serving victims of commercial sexual exploitation, and residential facilities serving adult victims of human trafficking.²³ Specifically, the information regarding the location of these facilities held by an agency is confidential and exempt²⁴ from public records requirements.²⁵ However, the confidential and exempt information may be provided to any agency as necessary to maintain health and safety standards and to address emergency situations in the

¹¹ *Id.*

¹² *Profits and Poverty: The Economics of Forced Labour*, INTERNATIONAL LABOUR ORGANIZATION, http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_243391/lang--en/index.htm (last visited Nov. 27, 2019).

¹³ Section 409.1678(1)(b), F.S.

¹⁴ Section 409.1678(2)(a), F.S.

¹⁵ Section 409.1678(2)(c), F.S. Safe houses also must hold a license as a residential child-caring agency as defined in s. 409.175, F.S.

¹⁶ *Id.*

¹⁷ Section 409.1678(2)(d), F.S.

¹⁸ Section 409.1678(2)(f), F.S.

¹⁹ Section 409.1678(2)(c), F.S. Safe foster homes also must hold a license as a family foster home as defined in s. 409.175, F.S.

²⁰ Section 409.1678(1)(a), F.S.

²¹ Section 409.1678(2)(c), F.S.

²² Section 409.1678(1)(a) and (b), F.S. The definitions of “safe foster home” and “safe house” are specifically restricted to “sexually exploited children.”

²³ Chapter 2015-147, L.O.F., codified as ss. 409.1678(6) and 787.06(9), F.S.

²⁴ There is a difference between records the Legislature designates 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, Aug. 1, 1985).

²⁵ *See* ss. 409.1678(6) and 787.06(9), F.S.

residential facility.²⁶ The public record exemptions do not apply to facilities licensed by the Agency for Health Care Administration.²⁷

The 2015 public necessity statement²⁸ for the exemptions provides that:

Safe houses, safe foster homes, and other residential facilities serving victims of sexual exploitation . . . or adult victims of human trafficking involving commercial sexual activity, are intended as refuges for sexually exploited victims from those who exploited them. If the individuals who victimized these people were able to learn the location of such facilities, they may attempt to contact their victims, exploit their vulnerabilities, and return them to the situations in which they were victimized. Even without the return of these victims to their former situations, additional contact with those who victimized them would have the effect of continuing their victimization and inhibiting their recoveries. Additionally, knowledge about the location of safe houses, safe foster homes, and other residential facilities serving victims of sexual exploitation . . . or adult victims of human trafficking involving commercial sexual activity, could enable other individuals to locate and attempt to victimize the residents.²⁹

During the 2019 interim, subcommittee staff met with staff from DCF and the Department of Legal Affairs (DLA) to discuss the exemptions as part of the review process. DCF, the entity which certifies safe houses and safe foster homes, stated that as of 2019 there were seven safe houses and 28 safe foster homes operating in the state. DCF and DLA staff indicated that they have not received any complaints concerning the exemptions nor did they encounter issues in implementing the exemptions. Neither agency was aware of any litigation involving the exemptions. DCF and DLA recommended the exemptions be reenacted as is.

Effect of the Bill

The bill removes the scheduled repeal date of the public record exemptions, thereby maintaining the exemptions for information about the location of safe houses, safe foster homes, other residential facilities serving child victims of commercial sexual exploitation, and residential facilities serving adult victims of human trafficking involving commercial sexual activity.

B. SECTION DIRECTORY:

Section 1 amends s. 409.1678, F.S., to save from repeal the public record exemption for information related to the location of safe houses and safe foster homes.

Section 2 amends s. 787.06, F.S., to save from repeal the public record exemption for information related to the location of a residential facility offering services for adult victims of human trafficking.

Section 3 provides an effective date of October 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

²⁶ Sections 409.1678(6)(b) and 787.06(9)(b), F.S.

²⁷ Sections 409.1678(6)(c) and 787.06(9)(c), F.S.

²⁸ Article I, s. 24(c), FLA. CONST., requires each public record exemption “state with specificity the public necessity justifying the exemption.”

²⁹ Chapter 2015-147, L.O.F.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not confer rulemaking authority nor does it require the promulgation of rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.