

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1019 Public Records

**SPONSOR(S):** Health & Human Services Committee; Healthy Families Subcommittee; Spano and others

**TIED BILLS:** HB 7141 **IDEN./SIM. BILLS:** SB 1436

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Healthy Families Subcommittee	11 Y, 0 N, As CS	Entress	Brazzell
2) Government Operations Subcommittee	13 Y, 0 N	Williamson	Williamson
3) Health & Human Services Committee	17 Y, 0 N, As CS	Entress	Calamas

### SUMMARY ANALYSIS

Human trafficking is a form of modern-day slavery, which involves the exploitation of persons for commercial sex or forced labor. Safe homes, safe foster homes, and other residential facilities provide services and residential care to child victims of sexual exploitation. Adult victims of human trafficking involving commercial sexual activity can be served in residential facilities as well.

This bill, which is linked to the passage of HB 1017, HB 7141, or similar legislation, creates a public record exemption 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. Specifically, the bill provides that the information regarding the location of these facilities that is held by an agency is confidential and exempt from public record requirements. However, the bill allows this information to be provided to any agency in order to maintain health and safety standards and to address emergency situations.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

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

**Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records exemption. The bill creates a public records exemption; thus, it requires a two-thirds vote for final passage.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.<sup>1</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>2</sup> 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:

- 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 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.
- Protects trade or business secrets.

#### Human Trafficking

Florida law defines human trafficking as "soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person."<sup>3</sup> Human trafficking is a form of modern-day slavery, which involves the exploitation of persons for commercial sex or forced labor.<sup>4</sup> Trafficking subjects victims to force, fraud, or coercion.<sup>5</sup> Individuals experiencing this type of sexual exploitation often become bonded with their exploiters and do not see themselves as victims.<sup>6</sup> These individuals experience trauma and are exposed to danger but are often unable to leave their exploiter to seek help.<sup>7</sup>

#### Residential Treatment for Victims of Human Trafficking

##### *Safe Houses*

The Safe Harbor Act provided for "safe houses". Safe houses are homes for sexually exploited children who have been adjudicated dependent or delinquent and need to reside in a secure<sup>8</sup> residential facility.<sup>9</sup> Safe houses must provide a living environment that has set aside gender-specific, separate, and distinct living quarters for sexually exploited children and must have staff members who are awake on duty 24 hours a day.<sup>10</sup> Safe houses must also hold a license as a family foster home or residential child-caring agency.<sup>11</sup> Each facility must be appropriately licensed in this state as a residential child-caring agency as defined in s. 409.175, F.S., and must have applied for accreditation within 1 year after

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<sup>1</sup> Section 24(c), Art. I of the State Constitution.

<sup>2</sup> See s. 119.15, F.S.

<sup>3</sup> Section 787.06 (2)(d), F.S.

<sup>4</sup> Section 787.06(1)(a), F.S.

<sup>5</sup> Healthy Families Subcommittee Presentation by Professor Terry Coonan, FSU Human Rights Center, 1/14/14, s. 787.06(1)(a), F.S.

<sup>6</sup> Testimony from the Detective McBride, Healthy Families Subcommittee, February 15, 2014.

<sup>7</sup> Testimony from the Detective McBride, Healthy Families Subcommittee, February 15, 2014.

<sup>8</sup> The term "secure" is defined as a facility providing services is supervised 24 hours a day by staff members who are awake while on duty.

<sup>9</sup> Section 409.1678 (1)(b), F.S.

<sup>10</sup> Section 409.1678 (1)(b), F.S.

<sup>11</sup> Section 409.1678 (1)(b), F.S.

being licensed.<sup>12</sup> A safe house serving children who have been sexually exploited must have available staff or contract personnel who have the clinical expertise, credentials, and training to provide:

- Security;
- Crisis intervention services;
- General counseling and victim-witness counseling;
- A comprehensive assessment;
- Residential care;
- Transportation;
- Access to behavioral health services;
- Recreational activities;
- Food;
- Clothing;
- Supplies;
- Infant care;
- Miscellaneous expenses associated with caring for these children;
- Provide necessary arrangement for or provision of educational services, including life skills services and planning services for the successful transition of residents back to the community; and
- Ensuring necessary and appropriate health care and dental care.<sup>13</sup>

The Department of Children and Families or the local community-based care organization is required to assess sexually exploited dependent children for placement in a safe house if the child is older than six. The assessment is required to incorporate and address the following:

- Current and historical information from any law enforcement reports;
- Psychological testing or evaluation that has occurred;
- Current and historical information from the guardian ad litem, if one has been assigned;
- Current and historical information from any current therapist, teacher, or other professional who has knowledge of the child and has worked with the child; and
- Any other information concerning the availability and suitability of safe-house placement.<sup>14</sup>

The child may be placed in a safe house if such placement is determined to be appropriate as a result of this assessment and if one is available, but placement is not required.<sup>15</sup>

There are currently two safe houses in Florida, with a total of 11 beds statewide. A third safe house is projected to open in 2014 with seven beds.<sup>16</sup> If a trafficker learned the location of a safe house and went to the safe house, the safe house staff as well as the individuals residing in the safe house could be in danger of physical or emotional harm.

#### *Safe Foster Homes*

HB 7141 creates the term, “safe foster homes” and defines the term as “a foster home certified by DCF to care for sexually exploited children.” The bill requires safe foster homes to provide the same services and meet the same requirements as safe houses, except for the requirement to have awake staff on duty 24 hours a day.

While there are currently no safe foster homes in Florida, there are therapeutic foster homes which specialize in caring for and treating children who have experienced sexual exploitation. The Citrus Health Network developed the Citrus Helping Adolescents Negatively Impacted by Commercial Exploitation (CHANCE) Program in South Florida.<sup>17</sup> The program uses therapeutic foster care and a

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<sup>12</sup> According to DCF, there are currently no entities that accredit safe houses and safe houses are not sure what type of accreditation they are required to have. No safe houses have applied for accreditation at this time.

<sup>13</sup> Section 409.1671, F.S.

<sup>14</sup> Section 39.524, F.S.

<sup>15</sup> Section 39.524, F.S.

<sup>16</sup> E-mail Correspondence with the Florida Department of Children and Families, 12/20/13, on file with subcommittee staff.

<sup>17</sup> Testimony from Human Trafficking Panel, Healthy Families Subcommittee Meeting, February 19, 2014.

community response team for victims of commercial sexual exploitations.<sup>18</sup> The program places children in a therapeutic foster home, where only one child is placed.<sup>19</sup> The parents receive specialized training for this population. Foster parents are required to be available 24 hours per day, 7 days per week, to respond to crises or the need for special therapeutic interventions.<sup>20</sup> The foster homes are also required to have an advanced alarm system to alert the foster parents of intruders and allow the parents to be aware if the child is leaving the home.<sup>21</sup> The CHANCE program also includes the following intensive clinical and support services:

- Assessment and evaluation of the child and the family;
- Individual therapy 2-5 times per week with a therapist trained in trauma focused-cognitive behavioral therapy and motivational interviewing;
- Family therapy available as necessary;
- Assignment of a life coach who is a survivor of commercial sexual exploitation for each child;
- Assignment of a peer mentor to provide peer support and encouragement;
- Clinical staff available 24/7 for crisis management or supportive intervention;
- Certified behavioral analyst services to address the behavioral needs of this population;
- Targeted case management to facilitate linkage to all appropriate support services;
- Regular monitoring by the treatment team to ensure all service and treatment plan goals are consistently pursued; and
- Group therapy with other survivors of commercial sex exploitation.<sup>22</sup>

It is likely that the therapeutic foster homes participating in the CHANCE Program will qualify to be designated safe foster homes upon the passage of HB 7141.

#### *Additional Residential Facilities*

Residential facilities serving children who are victims of sexual exploitation are not required to be designated safe houses or safe foster homes. While HB 7141 requires such designation if the facilities are receiving state funds specifically allocated to serving this population, children who are not served using this funding can reside in other residential facilities which are not designated safe houses or safe foster homes.

Similarly, adults cannot be served in safe houses or safe foster homes. Adult victims of human trafficking may receive care and treatment in residential facilities, but those facilities cannot be designated safe houses or safe foster homes.

#### **Effect of Proposed Changes**

The bill creates a public record exemption for information about the location of safe houses, safe foster homes, residential facilities serving victims of sexual exploitation, and residential facilities serving adult victims of human trafficking. Specifically, the bill provides that the information regarding the location of these facilities that is held by an agency, as defined in 119.011, F.S.,<sup>23</sup> is confidential and exempt<sup>24</sup> from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. However, the bill

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Agency is defined in s. 119.011, F.S., as any state, county, district, 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 chapter 119, F.S., 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.

<sup>24</sup> There is a difference between records the Legislature has determined to be exempt from public records requirements and those that have been determined to be confidential and exempt. If the Legislature has determined the information to be confidential and exempt then the information is not subject to inspection. Also, if the information is deemed to be confidential and exempt it may only be released to those person and entities designated in statute. However, the agency is not prohibited from disclosing the records in all circumstances where the records are only exempt from public records requirements. 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); see Attorney General Opinion 85-62 (August 1, 1985).

allows this information to be provided to any agency as necessary to maintain health and safety standards and to address emergency situations.

The bill provides that the public record exemption is subject to the Open Sunset Review Act and stands repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides statements of public necessity as required by the State Constitution.<sup>25</sup>

The bill provides an effective date contingent upon the passage of HB 1017, HB 7141, or similar legislation.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 409.1678, F.S., relating to safe harbor for children who are victims of sexual exploitation.

**Section 2:** Amends s. 787.06, F.S., relating to human trafficking.

**Section 3:** Creates an unnumbered section of law relating to a public necessity.

**Section 4:** Provides a contingent effective date.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

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

<sup>25</sup> Section 24(c), Art. I of the State Constitution.

revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly-created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for information relating to the identification and location of safe houses. The exemption does not appear to be in conflict with the constitutional requirement that the exemption must be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 3, 2012, the Healthy Families Subcommittee adopted a strike-all amendment. The amendment made the following changes:

- Specified that the address of safe houses and safe foster homes, rather than safe houses and short-term safe houses, are exempt and confidential from public records to conform the language with the changes made in PCB HFS 14-02;
- Consolidated the public records exemption to one chapter of law; and
- Exempted the address of safe houses and safe foster homes from all state and local agencies, rather than only the department of children and families and local government agencies.

On April 3, 2012, the Health and Human Services Committee adopted a strike-all amendment. The amendment made the following changes:

- Exempted location information about residential facilities serving child victims of sexual exploitation, and residential facilities offering services for adult victims of human trafficking, in addition to safe houses and safe foster homes.
- Changed the effective date of the bill to the same date that HB 1017, HB 7141, or similar legislation passes.

The analysis is drafted to the committee substitute to the committee substitute as passed by the Health and Human Services Committee.