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## SECRET COURT PROCEEDINGS

### HB 1363/SB 1304 Public Records/Trust Proceedings

Federal courts have held that when parties call on the courts, they must accept the openness that goes with dispute resolution by public officials. Efforts advancing in the legislature would hide the names of parties in certain trust proceedings and withhold from public view all court filings in certain trust proceedings. Parties could call on the courts to resolve their disputes but behind closed doors. This legislation is counter to longstanding common law right to access to court records. The Eleventh Circuit Court of Appeal recently reaffirmed this right, noting that **“access to judicial proceedings is crucial to our tradition and history and continued public confidence in our system of justice.”**

If a beneficiary to a trust wants to limit access, the party can seek to close court proceedings and seal records. Judges, with knowledge of the facts and law, have discretion to decide the issue. **HB 1363** and **SB 1304**, however, would require a judge to seal any document filed in a trust proceeding involving a family trust company, licensed family trust company, or foreign licensed family trust company regardless of the facts of the case. Parties may be public figures or openly discussing the proceedings on social media, yet information and documents related to the case would be withheld from the public. It seems like the legislature wants to take away powers of the judiciary. Isn't that the point of separation of powers in our constitutions?



- Court Records
- Criminal Justice & Law Enforcement
- Education Records
- Agency Records
- Cybersecurity
- Home Address
- Health Records

The Senate Judiciary Committee unanimously approved **SB 1304**. The House Civil Justice & Property Rights Subcommittee approved **HB 1363** over 5 no votes.

## COURT RECORDS

### **HB 197 Pub. Rec./Nonjudicial Record of the Arrest of a Minor**

David Smith (R-Winter Springs)

Exempts and makes confidential the record of the arrest of a minor who has successfully completed a diversion program for a misdemeanor or a felony, other than a forcible felony. The Judiciary Committee unanimously voted in favor of the bill, and it is now on the House Calendar for consideration by the entire chamber.

### **SB 1846 Public Records/Respondent's Name**

Aaron Bean (R-Jacksonville)

Makes confidential and exempts a respondent's name, at trial and on appeal, and all petitions or applications for voluntary and involuntary admission for mental health examinations or treatment (Baker Act) and for application or petitions for substance abuse treatment or assessment (Marchman Act). The Children, Families & Elder Affairs Committee unanimously voted in favor of SB 1846, and the Senate Judiciary Committee will hear the bill next Monday.

### **SB 756 Public Records/Human Trafficking Victims**

Manny Diaz (R-Hialeah Gardens)

Exempts and makes confidential all documents related to a petition to expunge criminal records resulting from arrest or charges for offenses committed while a person was victim of human trafficking. Expands expunction for offenses listed as habitual violent felony offender designation if the defendant was found not guilty or did not pled guilty or nolo contendere to such offense. The Senate Rules Committee unanimously approved SB 756.

## CRIMINAL JUSTICE & LAW ENFORCEMENT RECORDS

### **HB 773/SB 1046 Public Records/Law Enforcement Geolocation Information**

Ed Hooper (R-Palm Harbor)

Exempts law enforcement geolocation information. Defines law enforcement geolocation information as information collected using a global positioning system or another mapping, locational, or directional information system that allows tracking of the location or movement of a law enforcement officer or vehicle. FAF spoke in opposition of the bill at the Senate Governmental Oversight and Accountability Committee meeting, explaining that the exemption will not serve its purpose. It has also been argued that



technologically advanced individuals could get this information from their homes. If true, exempting this information from public records will do nothing to protect officers from harm - wrongdoers seeking to harm law enforcement officers would still be able to find the locations of officers. It seems unlikely that those intending to do harm are going to seek geolocation information via a public records request. In addition, the location information sheds light on whether officers are fairly and effectively distributed throughout a jurisdiction. Withholding the information only keeps the information from concerned and validly interested citizens and shades the accountability of law enforcement. The sponsor and committee chair were receptive to these concerns. Nonetheless, **SB 1046** unanimously passed in the Committee hearing, and it is now in Rules.

The House Criminal Justice & Public Safety Subcommittee adopted an amendment to **HB 773** allowing a person seeking the exempt geolocation information to petition a court to release the records upon a showing of good cause. While this is an improvement, access to the records would then be limited to only those with the time and resources to file a petition. The Subcommittee unanimously approved **HB 773**.

#### **HB 7009/SB 7030 OGSR/Health Information of an Inmate**

Reinstates exemption for protected health information of inmates and offenders held by the Department of Corrections and the identity of any inmate or offender who has been tested for HIV, as well as the test results. The House unanimously passed **HB 7009**. The Senate Rules Committee unanimously approved **SB 7030**.

#### **HB 7015/SB 7032 OGSR/Criminal Intelligence Information or Criminal Investigative Information**

Reinstates exemption for personal identifying information of a witness to a murder for two years. **HB 7015** unanimously cleared the House State Affairs Committee. The Senate Rules Committee unanimously voted in favor of **SB 7032**.

#### **SB 7024 OGSR/Alleged Victim or Victim of Sexual Harassment**

Reinstates exemption for personal identifying information of an alleged victim of sexual harassment. Also expands the exemption to prevent release of identifying information of a victim of sexual harassment. The identifying information is exempt only if it identifies that person as an alleged victim or as a victim of sexual harassment. It does not apply to all agency records identifying the victim. Confidentiality may be waived in writing by the alleged victim or victim. The Senate unanimously passed **SB 7024** and it is now in the House.

## HB 1513 Public Records/Autopsy Reports of Child Victims of Domestic Violence

Chuck Clemons (R-Jonesville)

Exempts and makes confidential the autopsy report of a minor whose death is related to an act of domestic violence by a family or household member. Allows a surviving parent who did not commit the act of domestic violence leading to the minor's death to view and copy the report. Local, state, or federal agencies may view or copy an autopsy report. A court, upon a showing of good cause, may order any person to view or copy an autopsy report. The Government Operations Subcommittee unanimously approved the bill, and it is now in the Judiciary Committee.

## EDUCATION RECORDS

### HB 703/SB 520 Public Records and Public Meetings

Sam Garrison (R-Orange Park),

Jeff Brandes (R-St. Petersburg)

Exempts and makes confidential personal identifying information of an applicant for president of a state university or college. Information of an applicant included in the final group of candidates becomes public either when the final group is established or 21 days before a meeting to interview an applicant **or** take final action to select a president. The House version allows public access to names at just 14 days before an interview or final action. Exempts from the Sunshine Law meetings to vet applicants or which would reveal personal identifying information of applicants.



The justifications for the bill – the need for better candidates and protecting candidates from retaliation – have been refuted by research. The open process has resulted in hiring of candidates who have improved Florida's universities and colleges. Further, under the proposed legislation there is nothing preventing search committee or boards of trustees (selected by the Governor and the Board of Governors) from selecting one insider candidate to lead a college or university. The committees or boards could publicly name three candidates: one handpicked by the committee or board and two less qualified candidates. Nothing will prevent undue political interference in the hiring process.

The Senate heard **SB 520** and will vote on the measure Thursday, Feb. 10. The House Government Operations Subcommittee passed **HB 703** 11-7.

### GOS11 OGSR/Campus Emergency Response

Reinstates exemption for campus emergency response plans and exemption for meetings that would reveal campus emergency response plans. The public necessity

statement for the exemption stated that public access to emergency responses could hamper or disable a public institution's response to terrorism. However, universities and colleges cited the exemption to withhold information about COVID-19 response plans. The sponsor of the original bill, Rep. Byron Donalds (R-Naples), explained that the exemption was not intended to withhold pandemic response plans and encouraged schools to release the plans. Without access to COVID-19 response plans, students, their family members and faculty do not know whether colleges and universities are following their own plans or whether the plans are effective. Because the exemption withholds more records than necessary to achieve its stated purpose, FAF opposes **GOS11**. The House Government Operations Subcommittee passed the bill with four lawmakers voting no.

## AGENCY RECORDS

### **HB 159 Pub. Rec./Lottery Winners**

Tracie Davis (D-Jacksonville)

Exempts and makes confidential the name of a winner of a lottery prize valued at \$250,000 or more. The name can become public if a winner consents to release. In addition, the name becomes public 90 days after the prize is claimed. The exemption is intended to protect winners from potential violence and harm. The 90-day exemption gives winners the chance to make necessary security precautions before public disclosure. The release of winners' names ensures public oversight of the lottery, specifically allowing the public to detect any suspicious patterns of lottery winnings. The House approved **HB 159** with Rep. Anthony Sabatini (R-Clermont) casting the only no vote.

### **SB 7018 OGSR/Injured or Deceased Employee/Department of Financial Services**

Reinstates exemption for personal identifying information of injured or deceased employees contained in records held by the Department of Financial Services for the administration of workers' compensation. "Personal identifying information" includes employee's name, date of birth, home address, email address, and phone number. Data may be released in aggregate format without identifying information. The House approved the bill with zero no votes, and it heads to the Governor for approval.

### **SB 934 Public Records/Homelessness Counts and Information Systems**

Joe Gruters (R-Sarasota)

Exempts and makes confidential individual identifying information of a person contained in a Point-in-Time Count or homeless management information system. Individual identifying information is defined as information that directly or indirectly identifies a specific person, can be manipulated to identify a specific person, or can be linked with other available information to identify a specific person. Information can be released in the aggregate if it does not disclose the individual identifying information of a person. The Rules Committee unanimously approved **SB 934**.



### **SB 7026 OGSR/Dependent Eligibility Verification Services**

Reinstates exemption for records collected by the Department of Management Services for purposes of dependent eligibility verification services conducted for the state group insurance program. Enumerates the specific records DMS holds as exempt, replacing the catch-all “any other information” for purposes of verifying eligibility. The Senate unanimously passed **SB 7026**.

### **HB 1445 Pub. Rec./Dependent Eligibility Verification Services**

Mike Giallombardo (R-Cape Coral)

In addition to reinstating exemption for records collected by DMS for purposes of dependent eligibility verification, **HB 1445** adds to the list of documents that may be requested to verify a dependent’s eligibility. The bill unanimously passed the House Finance & Facilities Subcommittee and is now in the Government Operations Subcommittee.

### **HB 1243 Pub. Rec. and Public Meetings/Elder Abuse Fatality Review Teams\***

Fred Hawkins (R-St. Cloud)

Provides that information exempt and confidential when held by another agency maintains its exempt and confidential status when obtained by an elder abuse fatality review team looking into the death of an elder caused by abuse or neglect. Exempts and makes confidential information in a record created by an elder abuse fatality review team revealing the identity of a victim of elder abuse. Exempts from the Sunshine Law meetings or review teams at which exempt information is discussed.

The bill was amended by the Children, Families & Seniors Subcommittee to exempt not only the names of victims but also a victim’s residential facility. This portion of the amendment is overbroad and would prevent the public from knowing whether teams have reviewed deaths at certain facilities and the results of a review. **HB 1243** passed over one no vote by Rep. Dotie Joseph (D-North Miami).

### **HB 1351 Pub. Rec./Guardianship Data Transparency\***

Linda Chaney (R-St. Petersburg)

**HB 1349** creates the Guardianship Data Commission within the Department of Elderly

Affairs to collect reliable and consistent data on guardianship and recommend changes to existing laws, rules, and policies. HB 1351 exempts and makes confidential all records collected by the Office of Public and Professional Guardians and the Department of Elderly Affairs pursuant to the Department's data collection and maintenance on guardianship, alleged incapacitated persons, and guardians (including whether a guardian has undergone a background check). The House Children, Families & Seniors Subcommittee approved an amendment to limit the exemption to personal identifying information of a ward or petitioner in the database. Information may be released to other governmental entities for use in the performance of its official duties and responsibilities. FAF supports the amendment to narrow the exemption to information of wards and allow public access to information of guardians. The Subcommittee unanimously approved **HB 1351**.

### **HB 7017 OGSR/Public and Professional Guardians/Department of Elderly Affairs**

Reinstates exemption for records held by the Department of Elderly Affairs about investigations into complaints filed with the Department. Exempts the names of complainant and ward involved; the ward's personal health and financial records; and photographs and videos related to the complaint or obtained during the investigation. Allows access by court order and allows release of information once the investigation is complete or no longer active. The Children, Families & Seniors Subcommittee unanimously voted in favor of the bill and it is now in the State Affairs Committee.

### **HB 617 Pub. Rec. and Meetings/Statewide Council on Human Trafficking Direct-support Organization**

Toby Overdorf (R-Stuart)

Exempts and makes confidential any personal identifying information of a donor or prospective donor to End Human Trafficking, a direct-support organization (DSO) to the Statewide Council on Human Trafficking, who desires to remain anonymous. Exempts from Sunshine Law and Administrative Procedures Act portions of meetings of End Human Trafficking at which personal identifying information of a donor or prospective donor is discussed. Unanimously approved by the House Government Operations Subcommittee.

## **CYBERSECURITY**

### **HB 7019 OGSR/Technology Systems/State University or a Florida College System Institution**

Reinstates exemption for records held by a university or college to identify detection, investigation, or response practices regarding suspected or confirmed information technology security incidents, including suspected or confirmed breaches, if the disclosure would facilitate unauthorized access to or unauthorized modification,

release, or destruction of data or information technology resources. **HB 7019** was approved by the State Affairs Committee, with Rep. Carlos Guillermo Smith (D-Winter Park) casting the only no vote.

### **SAT3 Public Records and Public Meetings\***

Exempts and makes confidential information related to a cybersecurity incident or ransomware incident held by a local government, state agency, or sheriff to the extent disclosure of information would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of data or information and information technology resources, such as information relating to the security of the local government's technologies. Information may be disclosed in the furtherance of a government officials' duties or responsibilities and to another governmental entity. Exempts meetings from the Sunshine Law at which exempt information is discussed. While preventing cyber breaches of local government technology is important, individuals whose information has been breached may be in the dark regarding unauthorized access to this information. FAF suggests requiring reports of breaches and whether any measures were taken to prevent future breaches. The State Administration & Technology Appropriations Subcommittee unanimously approved the bill.

### **HB 1287 Pub. Rec./Information Held by a Utility Owned or Operated by a Unit of Local Government\***

Adam Botana (R-Bonita Springs)

Exempts information related to threat detection, defense, deterrence, or response plans and actions for information technology and operational technology systems of a utility owned or operated by a unit of local government, including, but not limited to, plans and actions made or taken in response to a ransomware or cyberattack on or threat to information technology or technology systems. Exempts information related to insurance or other risk mitigation products

or coverages for the protection of the information technology and operational technology systems and data of a utility owned or operated by a unit of local government. Exempts critical energy infrastructure information created or received by a utility owned or operated by a unit of local government. Again, the public should know whether their information was breached in a cyberattack. Utility customers should have access to information showing their information was stolen and what a utility did to prevent a future attack. The Tourism, Infrastructure & Energy Subcommittee unanimously approved the bill.



## HOME ADDRESS

### **SB 1420 Public Records/County and City Attorneys**

Danny Burgess (R-Zephyrhills)

Exempts the home address, telephone numbers, and dates of birth of current or former city and county attorneys. Exempts the names and places of employment of children and spouses of local government attorneys. The Senate Community Affairs Committee approved the bill and adopted an amendment excluding from the exemption photographs of local government attorneys and their family members.

## HEALTH RECORDS

### **SB 7002 OGSR/Information Relating to Medical Marijuana Held by the Department of Health**

Reinstates public records exemption for patient's or caregiver's personal identifying information held by the Department of Health in the Medical Marijuana Use Registry. Exempts a qualified physician's DEA number, residential address, and ID card. Information may be released to law enforcement agencies and for research purposes. The House unanimously approved SB 7002.

### **SB 7000 OGSR/Nonviable Birth Certificates**

Reinstates public records exemption for information submitted to the Department of Health for issuance of nonviable fetus birth certificate. Exempts information relating to the cause of death and parentage of a nonviable fetus, marital status of such fetus' parent, and any medical information included in nonviable birth records held by a state agency. The House unanimously voted in favor of the bill.

### **HB 1523 Pub. Rec. and Meetings/Professional Counselors Licensure Compact**

Traci Koster (R-Safety Harbor)

**HB 1521** creates a professional counselors licensure compact, permitting licensed professional counselors to apply to practice in another member state. Member states must submit licensure, adverse action, and investigative information on all licensed professional counselors to a shared database created pursuant to the compact. **HB 1523** exempts a counselor's personal identifying information, other than the counselor's name, licensure status and number. **HB 1523** also exempts meetings of the Counseling Compact Commission if matters exempted from federal or state law are discussed. The Professions & Public Health Subcommittee unanimously approved the bill, and it is now in Government Operations.