

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.²

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act³ guarantees every person's right to inspect and copy any state or local government public record⁴ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁵

Only the Legislature may create an exemption to public records requirements.⁶ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁷ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁹

The Open Government Sunset Review Act¹⁰ requires a newly created or expanded public records exemption to be repealed on October 2 of the fifth year after enactment, unless reviewed and reenacted by the Legislature.¹¹ It further provides that a public records exemption may be created

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Chapter 119, F.S.

⁴ Section 119.011(12), F.S., defines "public records" to mean "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." Section 119.011(2), F.S., defines "agency" to mean "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 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." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁵ Section 119.07(1)(a), F.S.

⁶ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *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 (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 2004); and *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 the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

⁷ FLA. CONST., art. I, s. 24(c).

⁸ The bill may, however, contain multiple exemptions that relate to one subject.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ Section 119.15, F.S.

¹¹ Section 119.15(3), F.S.

or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet the public purpose it serves.¹²

Public Record Exemption for Expunged Criminal History Records

A criminal history record of a minor or an adult that is ordered expunged must be physically destroyed by any criminal justice agency having custody of such record, except that the FDLE must retain criminal history records in all cases.¹³ Current law provides that a criminal history record ordered expunged that is retained by FDLE is confidential and exempt from public records requirements, and is not available to any person or entity except upon order of the court with jurisdiction.¹⁴

In addition, information relating to the existence of an expunged criminal history record is confidential and exempt from public record requirements, except that FDLE must disclose the existence of such record to specified entities for their respective licensing, access authorization, and employment purposes as well as to criminal justice agencies for their respective criminal justice purposes.¹⁵ Disclosure of the existence of such record to unauthorized persons is a first degree misdemeanor.¹⁶

SB 1644 (linked to this bill)

SB 1644 creates s. 943.0583, F.S., entitled “human trafficking victim expunction.” The bill authorizes a victim of human trafficking to petition the court for the expunction of any conviction for an offense, except an offense listed in s. 775.084(1)(b)1., F.S.,¹⁷ committed while he or she was a victim of human trafficking, which offense was committed as a part of the human trafficking scheme of which he or she was a victim, or at the direction of an operator of the scheme. The bill defines “victim of human trafficking” to mean a person subjected to coercion for the purpose of being used in human trafficking, a child under 18 years of age subjected to human trafficking, or an individual subjected to human trafficking as defined by federal law.

III. Effect of Proposed Changes:

The bill, which is linked to the passage of SB 1644, creates a public record exemption for a criminal history record of a victim of human trafficking that is ordered expunged. Specifically, such record retained by FDLE is confidential and exempt from public record requirements and cannot be disclosed to any person or entity except upon order of a court of competent jurisdiction.

¹² Section 119.15(5)(b), F.S.

¹³ Section 943.0585(4), F.S.

¹⁴ *Id.*

¹⁵ Section 943.0585(4)(c), F.S.

¹⁶ *Id.* A first degree misdemeanor is punishable by serving up to one year in county jail and/or paying a fine not exceeding \$1,000. Sections 775.082 and 775.083, F.S.

¹⁷ The offenses listed in s. 775.084(1)(b)1., F.S, are arson; sexual battery; robbery; kidnapping; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; aggravated assault with a deadly weapon; murder; manslaughter; aggravated manslaughter of an elderly person or disabled adult; aggravated manslaughter of a child; unlawful throwing, placing, or discharging of a destructive device or bomb; armed burglary; aggravated battery; or aggravated stalking.

A criminal justice agency may retain a notation indicating compliance with an order to expunge.

The bill also provides the following statement of public necessity as required by the Florida Constitution:¹⁸

The Legislature finds that it is a public necessity that persons who are victims of human trafficking and who have been convicted of crimes committed at the behest of their traffickers are themselves victims of crimes. Such victims face barriers to employment and other life opportunities as long as these criminal convictions remain on record and accessible to potential employers and others. It is necessary that these records be made confidential in order for human trafficking victims to have the chance to rebuild their lives and reenter society.

Finally, the bill provides for repeal of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature.

The bill will take effect on the same date that SB 1644 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting 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 Florida 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.

The public necessity statement provides that it is necessary that the protected records be made confidential. The Legislature may wish to clarify that it finds it is a public necessity that the records be made confidential and exempt from public records requirements.

¹⁸ Article 1, Sec. 24(c), FLA. CONST.

Breadth of Exemption

Article I, s. 24(c) of the Florida 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 limited to expunged criminal records of victims of human trafficking.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the FDLE, there is no fiscal impact as a result of this bill.¹⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

It appears that a notation the bill authorizes a criminal justice agency to retain indicating compliance with an order to expunge may be confidential and exempt from public records requirements in accordance with s. 984.0585(4)(c), F.S. Because this bill does not republish the existing public records exemption along with the exemption created by the bill, however, it is unclear whether the current public records exemption would apply to such a notation. If not, the next annual adoption and reenactment of the Florida Statutes would provide sufficient legislative intent for s. 984.0585(4)(c), F.S., to apply to a notation retained by a criminal justice agency that indicates compliance with an order to expunge a human trafficking victim's criminal history.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Criminal Justice on April 1, 2013:

Deletes the provision making information related to the existence of an expunged criminal history record that is provided under paragraph (8) (b) confidential and exempt.

¹⁹ FDLE Legislative Analysis for SB 1734, dated March 14, 2013, on file with the Senate Criminal Justice Committee.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
