

**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.)

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Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

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BILL: CS/CS/SB 238

INTRODUCER: Governmental Oversight and Accountability Committee, Criminal Justice Committee and Senator Joyner

SUBJECT: Public Records/Names of Spouses and Children of Public Defenders and Criminal Conflict and Civil Regional Counsel

DATE: January 16, 2014      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	<b>Fav/CS</b>
2.	Naf	McVaney	GO	<b>Fav/CS</b>
3.			RC	

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 238 expands an existing public records exemption for certain personal identification and location information of current and former public defenders, of current and former criminal conflict and civil regional counsel, and of the spouses and children of such defenders and counsel. This bill provides that the exemption also protects the *names* of such spouses and children.

The addition to the exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2019, unless reviewed and saved from repeal by the Legislature. The bill also clarifies the existing, general Open Government Sunset Review Act repeal date for agency personnel public records exemptions.

The bill contains a statement of public necessity as required by the Florida Constitution.

Because this bill expands a public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for passage.

## 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.<sup>1</sup> The records of the legislative, executive, and judicial branches are specifically included.<sup>2</sup>

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act<sup>3</sup> guarantees every person's right to inspect and copy any state or local government public record<sup>4</sup> at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>5</sup>

Only the Legislature may create an exemption to public records requirements.<sup>6</sup> Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>7</sup> 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 provisions<sup>8</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>9</sup>

The Open Government Sunset Review Act<sup>10</sup> 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.<sup>11</sup> It further provides that a public records exemption may be created

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> *Id.*

<sup>3</sup> Chapter 119, F.S.

<sup>4</sup> 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)).

<sup>5</sup> Section 119.07(1)(a), F.S.

<sup>6</sup> 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).

<sup>7</sup> FLA. CONST., art. I, s. 24(c).

<sup>8</sup> The bill may, however, contain multiple exemptions that relate to one subject.

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

<sup>10</sup> Section 119.15, F.S.

<sup>11</sup> 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.<sup>12</sup>

### **Current Exemptions Relating to Agency Personnel in s. 119.071(4)(d), F.S.**

Section 119.071(4)(d), F.S., currently provides public records exemptions for specified personal identification and location information of the following current or former agency personnel, as well as for specified personal identification and location information of their spouses and children, including the following:

- Law enforcement and specified agency investigative personnel;<sup>13</sup>
- Certified firefighters;
- Justices and judges;
- Local and statewide prosecuting attorneys;
- Magistrates, administrative law judges, and child support hearing officers;
- Local government agency and water management district human resources administrators;
- Code enforcement officers;
- Guardians ad litem;
- Department of Juvenile Justice direct-care personnel;
- Public defenders and criminal conflict and civil regional counsel;
- Department of Business and Professional Regulation investigators and inspectors; and
- County tax collectors.

Although there is some inconsistency among the types of information exempted,<sup>14</sup> all of the exemptions protect the following information:

- The home addresses and telephone numbers of the agency personnel;
- The home addresses, telephone numbers, and places of employment of the spouses and children of the agency personnel; and
- The names and locations of schools and day care facilities attended by the children of the agency personnel.

Nine of the exemptions protect the names of the following current or former agency personnel's spouses and children:

- Law enforcement and specified agency investigative personnel;
- Certified firefighters;
- Justices and judges;
- Local and statewide prosecuting attorneys;

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<sup>12</sup> Section 119.15(5)(b), F.S.

<sup>13</sup> Included in this category are the following: active or former sworn or civilian law enforcement personnel, including Department of Corrections officers and correctional probation officers, Department of Children and Families abuse and exploitation investigators, Department of Health child abuse investigators, and Department of Revenue collection and enforcement personnel.

<sup>14</sup> Some of the exemptions also protect photographs, dates of birth, and names of agency personnel and their spouses and children.

- Local government agency and water management district human resources administrators;
- Code enforcement officers;
- Guardians ad litem;
- Department of Juvenile Justice direct-care personnel;
- Department of Business and Professional Regulation inspectors and investigators; and
- County tax collectors.

The public necessity statements for these agency personnel public-records exemptions suggest that the persons engaged in the specified occupations are at risk of becoming objects of public ire, because the specified occupations require decisions, actions, or information-sharing that could elicit significant emotional reactions from the public. In extreme instances, those emotional reactions could lead to acts of violence against the agency personnel and their families.

### **Public Defenders and Criminal Conflict and Civil Regional Counsel**

Public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel are appointed by the courts to represent defendants in criminal cases.<sup>15</sup> Criminal conflict and civil regional counsel also represent clients in matters before the courts involving alleged child abuse, alleged child neglect, and potential termination of parental rights.<sup>16</sup>

Current law provides a public records exemption for the following personal identification and location information of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel:

- Home addresses, telephone numbers, dates of birth, and photographs of such defenders or counsel;
- Home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such defenders or counsel; and
- Names and locations of schools and day care facilities attended by the children of such defenders or counsel.<sup>17</sup>

The public records exemption does not protect the names of the spouses and children of such defenders or counsel. According to the Offices of the Public Defender, some defenders and counsel protected by the exemption have received verbal threats to their families.<sup>18</sup>

### **III. Effect of Proposed Changes:**

Current law provides a public records exemption for personal identification and location information of current and former public defenders, of current and former criminal conflict and civil regional counsel, and of the spouses and children of such defenders and counsel. This bill expands the exemption to also protect the *names* of the spouses and children.

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<sup>15</sup> See s. 27.51, F.S., and s. 27.511, F.S.

<sup>16</sup> See s. 27.511(6)(a), F.S.

<sup>17</sup> Section 119.071(4)(d)2.j., F.S.

<sup>18</sup> Information obtained from a phone call between Governmental Oversight and Accountability staff and Offices of the Public Defender staff (January 10, 2014).

The bill provides for repeal of the expanded portion of the exemption on October 2, 2019, pursuant to the Open Government Sunset Review Act, unless reviewed and reenacted by the Legislature.

Current law provides that the agency personnel public records exemptions in s. 119.071(4)(d), F.S., which include the defender and counsel exemption, will repeal pursuant to the Open Government Sunset Review Act on October 2, 2017, unless reenacted by the Legislature. This bill clarifies that the general repeal date applies unless otherwise expressly provided in that paragraph of law.

It also provides a statement of public necessity as required by the Florida Constitution. The statement of public necessity concludes that some people with whom public defenders and criminal conflict and civil regional counsel have contact may seek to harm their spouses and children and that therefore, the exemption is warranted.

The bill's effective date is October 1, 2014.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

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 newly created or expanded public records or open meetings exemption to pass by a two-thirds vote of the members present and voting in each house of the Legislature. Because this bill expands a public records exemption, a two-thirds vote is required.

###### **Public Necessity Statement**

Article I, s. 24(c) of the Florida Constitution requires a bill creating or expanding a public records or open meetings exemption to contain a public necessity statement. Because this bill expands a public records exemption, it contains a public necessity statement.

###### **Breadth of Exemption**

Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded public records or open meetings exemption to be no broader than necessary to accomplish the stated purpose of the law. This bill expands a public records exemption by including the names of spouses and children of specified agency personnel in the existing exemption that protects certain personal information. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill could create a minimal impact on agencies, because staff responsible for complying with public records requests could require training related to the changes in the exemption. The costs should be absorbed, however, as they are part of the day-to-day responsibilities of the agency.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends section 119.071 of the Florida Statutes.

IX. **Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

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

**CS/CS by Governmental Oversight and Accountability on January 16, 2014:**

The CS/CS clarifies that the general Open Government Sunset Review repeal date for the agency personnel public records exemptions, which include the defender and counsel exemption, applies unless otherwise specified in the paragraph of law.

**CS by Criminal Justice on November 4, 2013:**

The CS modifies the statement of public necessity to provide a more complete description of the volatile nature of the work of public defenders and criminal conflict and regional counsel.

B. Amendments:

None.

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

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