

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 4-A

SPONSOR: Senators Burt, Campbell, Brown-Waite, Silver, Horne and Bronson

SUBJECT: Public Records/Death Penalty

DATE: December 16, 1999 REVISED: 1-5-00 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/2 amendments</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The current public records exemption which provides for the confidentiality of information that would identify an executioner, or a person administering a lethal injection pursuant to s. 922.105, F.S., would be expanded to include a person “prescribing, preparing, compounding, or dispensing” the lethal injection.

This bill would substantially amend the following sections of the Florida Statutes: 922.106 and 945.10.

II. Present Situation:

In November 1992, the citizens of Florida voted to adopt a constitutional amendment that would guarantee the public’s access to governmental records and meetings which was designated as s. 24 of Art. I of the Florida Constitution. The pertinent parts of s. 24 read as follows:

(a) Every person has 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 persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

(c) This section shall be self-executing. The legislature, however, may provide by general law for the exemption of records from the requirements of subsection (a) . . . provided that such law shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law. Laws enacted pursuant to this subsection shall contain only

exemptions for the requirements of subsections (a) or (b) and provisions governing the enforcement of this section, and shall relate to one subject.

Section 119.01, F.S., reiterates the initial general state policy on public records, which was later guaranteed under the Florida Constitution by amendment in 1992. Section 119.01, F.S., states that it is the policy of this state that all state, county, and municipal records shall be open for personal inspection by any person.

Public records kept by a state agency are deemed to be “open” and able to be inspected by any person without a demonstration of a special interest in the information requested unless certain records, regardless of the records form, are specifically exempted by statute from being openly inspected by the public. A state agency may not, on its own initiative or authority, exclude information from being public record.

However, the Legislature may specifically exempt certain information, state, county, or municipal records, from public record because of the sensitivity of the information or privileged status of the information that requires public access be limited as subjectively determined by the Legislature.

Section 922.105, F.S., provides that electrocution is the method to be used to carry out a death sentence, except that if electrocution is found to be unconstitutional, lethal injection shall become the method for implementing a sentence of death. Subsection (4) provides that a person authorized by law to prepare, compound, or dispense medication and designated by the Department of Corrections may prepare, compound, or dispense a lethal injection. Furthermore, for purposes of this section, prescription, preparation, compounding, dispensing, and administration of a lethal injection does not constitute the practice of medicine, nursing, or pharmacy.

This section includes the person administering the lethal injection and also the person who “prescribes, prepares, compounds, and dispenses” the lethal injection; however, the statutes that were enacted simultaneously with s. 922.105, F.S., to create the corresponding public records exemption for identifying information on the person or persons carrying out the death sentence by lethal injection cover only the person administering the lethal injection.

Section 922.106, F.S., provides a public records exemption for any information which, if released, would identify the person administering the lethal injection pursuant to s. 922.105, F.S. This section is subject to the Open Government Sunset Review Act of 1995 and will be repealed on October 2, 2003, unless reviewed and reenacted by the Legislature. This exemption does not include the person “prescribing, preparing, compounding, or dispensing” the lethal injection.

Similarly, s. 945.10, F.S., specifically provides for the confidentiality of information that would identify the executioner of the death penalty, or the person administering a lethal injection pursuant to s. 922.105, F.S. It does not currently cover the person “prescribing, preparing, compounding, or dispensing” the lethal injection.

III. Effect of Proposed Changes:

The current public records exemption which provides for the confidentiality of information that would identify an executioner, or a person administering a lethal injection pursuant to s. 922.105, F.S., would be expanded to include a person “prescribing, preparing, compounding, or dispensing” the lethal injection. Sections 922.106 and 945.10, F.S., would each be amended to include this new language. Thus, information identifying the person prescribing, preparing, compounding, or dispensing the lethal injection would be specifically exempted from Florida’s public records law under s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution.

The bill also makes a technical change in sections 922.106 and 945.10, F.S., so that the current statutory reference to s. 922.105, F.S., which currently implements lethal injection if electrocution is found unconstitutional, will be changed to s. 922.101, F.S., which will become the new implementing section for lethal injection.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill would expand the current public records exemption for an executioner or a person who administers the death penalty by lethal injection to include the person “prescribing, preparing, compounding, or dispensing” the lethal injection.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

It appears that the criteria necessary to create, modify, or maintain a public records exemption, which are set out in the Florida Constitution and Florida Statutes, have been met.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Criminal Justice:

Technical amendment that on page 1, lines 18 and 19, changes the word “the” to “any” person prescribing, preparing, compounding, dispensing or administering the lethal injection because now there may be more than one person involved with implementing lethal injection. It also deletes a cross-reference.

#2 by Criminal Justice:

Clarifying and technical amendment that on page 2, lines 5-8, deletes the same cross-reference deleted by amendment #1, as well as provides a public necessity statement for the expansion of the exemption. It also makes the bill’s effective date contingent upon the passage of the lethal injection death penalty legislation.