

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1642

SPONSOR: Judiciary Committee and Senator Burt

SUBJECT: Public Records Exemption

DATE: March 3, 2002                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>APJ</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

The committee substitute provides that a complaint filed with the Statewide Complaint Receipt and Referral Center is active criminal intelligence information and active criminal investigative information and is exempt from chapter 119, F.S. and s. 24(a), Article I of the constitution during the time they are active. Upon the termination of the status of the complaint as active criminal intelligence information and active criminal investigative information the personal identifying information contained in the records becomes exempt.

The committee substitute also provides that the identity of a student who reports the presence of illegal drugs or weapons or firearms on or off any school campus or who reports impending or suspected activities that may result in injury to any person on or off any school campus is exempt from chapter 119 and s. 24(a), Article I of the constitution.

This bill creates unnumbered sections of the Florida Statutes and substantially amends s. 230.235 of the Florida Statutes.

**II. Present Situation:**

The Statewide Complaint Receipt and Referral Center is created in SB 1316. Senate Bill 1316 creates a Fraud Prevention Unit to be located within the Office of the Attorney General. The Fraud Prevention Unit’s mission is to improve the state’s response to fraud and crimes related to fraud using cooperative efforts between state agencies, businesses in the private sector, and private citizen volunteers. The bill requires the Fraud Prevention Unit to:

- Establish a Statewide Complaint Receipt and Referral Center
- Create a public and private partnership to address criminal fraud prevention

- Support the development of a coordinated service network to assist fraud victims
- Support projects that initiate or expand local crime-prevention efforts
- Design its efforts to focus primarily on organized multi-jurisdictional fraud, white collar crime, and other types of fraud that involve large numbers of victims
- Use and promote the services of the Federal Trade Commission

Subsection (2) directs the FPU to establish the Statewide Complaint Receipt and Referral Center within the Department of Agriculture and Consumer Services, another state agency, or a designated private entity. The purpose of the center is to provide immediate information and general assistance to victims of fraud and serve as a bridge between the public, state agencies, consumer organizations, and private businesses. The bill requires the center to establish a program for collecting and analyzing information and data concerning fraud, focusing on the goals of prevention, reporting, and restoration. The center must:

- Provide a statewide methodology to manage complaint information from consumers, businesses, consumer-support organizations, and regulatory and enforcement agencies
- Identify related complaints
- Collect, analyze, and produce accurate data concerning the scope of fraud
- Develop and implement prevention and education programs to reduce fraud victimization and provide response strategies to fraud victims
- Share complaint information and fraud data among public and private investigations

The complaint information collected by the center will not otherwise be exempt from chapter 119 or s. 24(a), Article I of the constitution.

Section 230.235, F.S., provides the zero tolerance policy for crime and victimization in school districts. Each school district is directed to adopt a policy of zero tolerance for crime and substance abuse and victimization of students. Within this policy, each school district is required to enter into an agreement with the county sheriff's office or local police department specifying guidelines for ensuring that felonies and violent misdemeanors are reported to law enforcement. The agreement is to include the role of the school resource officers, in handling reported incidents, special circumstances in which school officials may handle incidents without filing a report to law enforcement, and a procedure for ensuring that school personnel properly report appropriate delinquent acts and crimes. ,

Currently, when a student wants to report a crime or information regarding a possible crime the law does not provide for protection of the student's identity unless the student uses a crime hotline or other method for providing anonymous tips to law enforcement. Where the student provides information directly to a teacher or administrator in the school there is no current provision to allow the teacher or the principle to refuse to identify the child if the student, the teacher or school administrator, files any written report.

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

**Section 1** of the committee substitute provides that any complaint filed with the Statewide Complaint Receipt and Referral Center created in SB 1316 is exempt from the provisions of chapter 119 and s. 24(a), Article I of the constitution as active criminal intelligence and active

criminal investigative information. Further, upon the termination of the active criminal investigation or active criminal intelligence status of the complaint the personal identifying information contained in the complaint continues to be exempt. The personal identifying information within the exemption is address, date of birth, social security number, financial account numbers or other financial account information, credit card or debit card information, credit history or credit history reports, and the complainant's mother's maiden name.

The Statewide Complaint Receipt and Referral Center may use the exempt information to carry out the duties of the center and the duties of the Fraud Prevention Unit as provided in SB 1316. Additionally, the information may be provided to other governmental agencies, or its agents, employees, or contractors if disclosure is necessary for the receiving entity to perform its duties and responsibilities. The information may only be provided to other entities upon the express written consent of the complainant.

The provisions are subject to repeal within 5 years in accordance with s. 119.15, F.S., unless the Legislature re-enacts the public records exemptions.

**Section 2** of the bill provides legislative findings that failure to provide the exemption would inhibit active criminal investigations or the obtaining of criminal investigative information. Additionally, the failure to exempt personal identifying information contained in a complaint beyond the termination of a criminal investigation would be an invasion of a complainant's privacy and may further expose the complainant to fraud, including identity theft.

**Section 3** of the bill creates a public records exemption for the name of any student who provides information to school officials regarding the presence of weapons or firearms or illegal drugs on or off any school campus or who reports impending or suspected activities that may result in injury to any person on or off any school campus. The principle may disclose the identity of the student to law enforcement officials, persons approved by the principle or the child's parents or legal guardian. Further, the bill provides that if information made exempt by this subsection is used in a criminal, civil, or administrative proceeding, the exempt status of such information must be maintained.

**Section 4** of the bill provides legislative findings that the name of a child who reports the presence of illegal drugs or dangerous weapons or who reports impending or suspected activities that may result in injury to any person by held exempt to protect the child from danger. Additionally, failure to provide the protections in the bill would impair the effective and efficient administration of a school program to provide students the opportunity to anonymously report illegal activities.

**Section 5** provides that the provisions of sections 1 and 2 become effective on the effective date of the provisions of SB 1316 or similar legislation adopted in the 2002 regular Legislative session. Section 3 and 4 shall take effect upon becoming a law.

#### IV. Constitutional Issues:

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

None.

##### B. Public Records/Open Meetings Issues:

###### **Public Records<sup>1</sup> Law**

Section 24 of article I of the *Florida Constitution* provides the right of access to public records by stating that every person has the right to inspect or copy any public records made or received in connection with official state business. This right of access to public records applies to the legislative, executive, and judicial branches of government; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or by the Constitution. Exemptions may be provided by general law. There must be an expressed statement of public necessity that justifies the exemption. The exemption can be no broader than necessary to accomplish the purpose of the law.

The corresponding general law is found in chapter 119, F.S. Chapter 119, F.S. provides additional requirements for the establishment of a public records exemption. There must be an identifiable public purpose and it must be no broader than necessary to meet the public purpose it serves. The public purpose must be sufficiently compelling to override the Florida's strong public policy of open government. That is, the public purpose can not be accomplished without the exemption and satisfies one of three other criterion relating to the sensitivity and confidentiality of the information. The custodian of a public record must permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee. *See* § 119.07(1), F.S.

###### **Open Government Sunset Review Act**

The Open Government Sunset Review Act of 1995 provides for the automatic 5-year review and repeal of an exemption provided under the Public Records Act. *See* §119.15, F.S. If the Legislature intends to re-enact the new exemption or the substantial amendment of an existing exemption, the Legislature must act to re-enact it in the fifth (and final year) of the exemption period, otherwise, it stands repealed on October 2 of that year.

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<sup>1</sup>Public records are defined as 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. See ' 119.011(1), F.S. An agency is defined to include 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. See ' 119.011(2), F.S.

The bill creates an exemption to public records requirements and contains the requisite statement of public necessity.

C. Trust Funds Restrictions:

None.

**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:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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