

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 111 Public Records/Identity of Witness to a Murder
SPONSOR(S): Judiciary Committee, Criminal Justice Subcommittee, Stafford and McGhee and others
TIED BILLS: IDEN./SIM. **BILLS:** CS/CS/SB 550

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	14 Y, 0 N, As CS	White	White
2) Oversight, Transparency & Administration Subcommittee	13 Y, 0 N	Moore	Harrington
3) Judiciary Committee	16 Y, 1 N, As CS	White	Camechis

SUMMARY ANALYSIS

Current law provides public record exemptions for information identifying certain parties involved in the investigation of a crime. Such parties include confidential informants or confidential sources, a victim of a child abuse offense, a victim of a human trafficking offense who is less than 18 years of age, and a victim of a sexual offense.

The bill creates a public record exemption for criminal intelligence or criminal investigative information that reveals the personal identifying information of a witness to a murder. The information is confidential and exempt for two years after the date on which the murder is observed by the witness. The bill authorizes a criminal justice agency to disclose the confidential and exempt information:

- In the furtherance of its official duties and responsibilities.
- To assist in locating or identifying the witness if the agency believes the witness to be missing or endangered.
- To another governmental agency for use in the performance of its official duties and responsibilities.
- To the parties in a pending criminal prosecution as required by law.

The bill repeals the exemption on October 2, 2022, unless reviewed and saved from repeal by the Legislature.

The bill also provides that the public record exemption continues to apply to personal identifying information of a witness to a murder when it is disclosed in discovery to a person who is arrested or when it is made part of a court file.

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

The bill takes effect on July 1, 2017.

The bill may have a minimal fiscal impact on the state and local governments. Please see "FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT," *infra*.

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 for personal identifying information of a witness to a murder; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Public Records

Florida Constitution

Article I, s. 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

The Legislature, however, may provide by general law for the exemption of records from the requirements of art. I, s. 24(a) of the Florida Constitution provided the exemption passes by two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption (public necessity statement), and is no broader than necessary to meet its public purpose.¹

Florida Statutes

The Florida Statutes also address the public policy regarding access to government records. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt.

The Open Government Sunset Review Act² provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."³ In addition, the exemption may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protect trade or business secrets.⁴

The Open Government Sunset Review Act requires the automatic repeal of a public record exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.⁵

Public Record Exemptions for Certain Investigation Information

Currently, s. 119.071(2), F.S., in relevant part, provides public record exemptions for various types of criminal investigative information⁶ or criminal intelligence information⁷ that reveals the identifying

¹ FLA. CONST. art. I, s. 24(c).

² s. 119.15, F.S.

³ s. 119.15(6)(b), F.S.

⁴ *Id.*

⁵ s. 119.15(3), F.S.

⁶ Section 119.011(3)(b), F.S., defines the term "criminal investigative information" as "information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance."

⁷ Section 119.011(3)(a), F.S., defines the term "criminal intelligence information" as "information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity."

information of specified parties involved in the investigation of a crime. Information revealing the identity of:

- A confidential informant or a confidential source is exempt from disclosure.⁸
- A victim under the age of 18 of a human trafficking or child abuse offense is confidential and exempt from disclosure.⁹
- A victim of a sexual offense is confidential and exempt from disclosure.¹⁰

It should be noted that there is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature designates as *confidential* and exempt. A record classified as exempt from public disclosure may be disclosed by the custodian of the record when determined appropriate by the custodian.¹¹ If the Legislature designates a record as confidential and exempt from public disclosure, the record may not be released by the custodian of the record to anyone other than the persons or entities specifically designated in statute.¹²

The identifying information of the above-described crime victims remains confidential and exempt from public disclosure even when such information is:

- Provided in discovery to a person who has been arrested.¹³ An exemption from public record requirements does not render a record privileged for purposes of criminal discovery.¹⁴
- Made part of a court record.¹⁵

Such victim information may only be disclosed by a law enforcement agency (LEA):

- In the furtherance of its official duties and responsibilities.
- For print, publication, or broadcast if the LEA determines that such release would assist in locating or identifying a person that the LEA believes to be missing or endangered. The information provided must be limited to that needed to identify or locate the victim and may not include the sexual nature of the offense committed against the person.
- To another governmental agency in the furtherance of its official duties and responsibilities.

Witness to a Crime

News articles during the past two years have reported on several unsolved homicides occurring in the Tampa area.¹⁶ The victim in one of the cases was Edward Harris, a 14-year-old boy who was murdered

⁸ s. 119.071(2)(f), F.S.

⁹ s. 119.071(2)(h)1.a., F.S.

¹⁰ s. 119.071(2)(h)1.b., F.S.

¹¹ 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).

¹² See 85-62 Fla. Op. Att’y Gen. (1985).

¹³ s. 119.011(3)(c)5., F.S.

¹⁴ See s. 119.07(8), F.S. (providing that the section, which is in part entitled “exemptions” and which requires a records custodian to redact the portion of a record to which an exemption applies, does not “expand or **limit** the provisions of Rule 3.220, Florida Rules of Criminal Procedure, regarding the right and extent of discovery by the state or by a defendant in a criminal prosecution or in collateral postconviction proceedings.” (emphasis added)); *Ramses, Inc. v. Demings*, 29 So. 3d 418, 421-423 (Fla. 5th DCA 2010) (recognizing the distinction between public records laws and criminal discovery rights and holding that unredacted videos showing undercover officers’ faces were still subject to public record exemptions even though the unredacted videos were released to the defendants in discovery under Fla. R. Crim. P. 3.220); *B.B. v. Dep’t. of Children and Family Servs.*, 731 So. 2d 30, 34 (Fla. 4th DCA 1999) (holding that a mother had a right to records “in her capacity as a party to the child dependency proceeding,” not as a “citizen” and that the statutory exemption for active criminal investigative information did not “override the discovery authorized by the Rules of Juvenile Procedure.”); and *Dep’t. of Highway Safety and Motor Vehicles v. Kropff*, 445 So. 2d 1068, 1069 (Fla. 3d DCA 1984) (“Although the Rules of Civil Procedure and the Public Records Act may overlap in certain areas, they are not coextensive in scope.”).

¹⁵ s. 119.0714(1)(h), F.S.

¹⁶ Dan Sullivan, *Federal officials increase rewards, offer protection, to solve four unsolved Tampa murders*, TAMPA BAY TIMES, (Oct. 29, 2015), <http://www.tampabay.com/news/publicsafety/crime/federal-officials-increase-rewards-offer-protection-to-solve-four-unsolved/2251784> (last visited Jan. 16, 2017); Sue Carlton, *Solutions to street violence elusive amid anti-snitching culture*, TAMPA BAY TIMES, (June 2, 2015), <http://www.tampabay.com/news/publicsafety/crime/carlton-no-snitching-no-answers/2232047> (last visited Jan. 16, 2017); Dan Sullivan, *In Tampa, a father and a city still seek answers a year after boy’s slaying*, TAMPA BAY TIMES, (May

in a park during a drive-by-shooting.¹⁷ A spokeswoman for the Tampa Police Department stated that between October 2014 and April 2015, Mr. Harris was the witness to multiple crimes that resulted in arrests. Mr. Harris's family has made statements indicating they believe he was murdered as a result of talking to police.¹⁸

Currently, there is no public record exemption for the personal identifying information of a witness to a crime.

Effect of the Bill

The bill creates s. 119.071(2)(m), F.S., to provide that criminal intelligence information or criminal investigative information that reveals the personal identifying information of a witness to a murder, as described in s. 782.04, F.S.,¹⁹ is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution for two years after the date on which the murder is observed by the witness.

The bill authorizes a criminal justice agency²⁰ to disclose such information:

- In the furtherance of its official duties and responsibilities.
- To assist in locating or identifying the witness if the agency believes the witness to be missing or endangered.
- To another governmental agency for use in the performance of its official duties and responsibilities.
- To the parties in a pending criminal prosecution as required by law.

The bill repeals the exemption on October 2, 2022, unless reviewed and saved from repeal by the Legislature.

The bill also adds a cross-reference to the exemption for the personal identifying information of a witness to a murder in:

- Section 119.011(3)(c)5., F.S., to specify that such information remains confidential and exempt from public disclosure when the information is provided in discovery to a person who is arrested.
- Section 119.0714(1)(h), F.S., to specify that such information remains confidential and exempt from public disclosure when made part of the court record.²¹

The bill provides a statement of public necessity as required by the Florida Constitution.²² It specifies that the Legislature finds that personal identifying information of a witness to a murder should be made confidential and exempt to encourage “[c]omplete cooperation and truthful testimony of witnesses” because “[t]he judicial system cannot function without the participation of witnesses.”

31, 2016), <http://www.tampabay.com/news/publicsafety/tampa-father-still-seeking-answers-a-year-after-boys-slaying/2279651> (last visited Jan. 16, 2017).

¹⁷ Stephanie Slifer, *Dad believes son was killed in Tampa drive-by shooting for talking to cops*, CBS NEWS, (June 2, 2015), <http://www.cbsnews.com/news/dad-believes-son-was-killed-in-tampa-drive-by-shooting-for-talking-to-cops/> (last visited Jan. 16, 2017).

¹⁸ *Id.*

¹⁹ Section 782.04, F.S., relating to murder, makes the unlawful killing of a human being punishable as a capital felony or second or first degree felony, depending on the circumstances of the crime.

²⁰ Section 119.011(4), F.S., defines the term “criminal justice agency” as: “(a) Any law enforcement agency, court, or prosecutor; (b) Any other agency charged by law with criminal law enforcement duties; (c) Any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting such law enforcement agencies in the conduct of active criminal investigation or prosecution or for the purpose of litigating civil actions under the Racketeer Influenced and Corrupt Organization Act, during the time that such agencies are in possession of criminal intelligence information or criminal investigative information pursuant to their criminal law enforcement duties; or (d) The Department of Corrections.”

²¹ This exemption is not made subject to the Open Government Sunset Review Act, because the Act provides that it does not apply to an exemption that applies solely to the State Court System. s. 119.15(2)(b), F.S.

²² FLA. CONST. art. I, s. 24(c).

The bill takes effect on July 1, 2017.

B. SECTION DIRECTORY:

Section 1. Amends s. 119.011, F.S., relating to definitions.

Section 2. Amend s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 3. Amends s. 119.0714, F.S., relating to court files, court records, and official records.

Section 4. Provides a public necessity statement.

Section 5. Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could have a minimal fiscal impact on agencies because agency staff responsible for complying with public record requests may require training related to the creation of the public record exemption. In addition, agencies could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed by existing resources, as they are part of the day-to-day responsibilities of agencies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

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; therefore, 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; therefore, it includes a public necessity statement.

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 limited public record exemption for the personal identifying information of a witness to a murder, which does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 8, 2017, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute (CS). The CS differs from the bill as filed in that the CS:

- Adds authority for a criminal justice agency to disclose the personal identifying information of a witness to a murder in order to assist in locating or identifying the witness if the agency believes the witness to be missing or endangered.
- Adds a cross-reference in s. 119.011(3)(c)5., F.S., to the public record exemption created by the bill to specify that the personal identifying information of the witness remains confidential and exempt from public disclosure when the information is provided in discovery to a person who is arrested.

On March 16, 2017, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment specified that the personal identifying information of the witness to a murder, which is made confidential and exempt by the bill, may be disclosed to the parties in a pending criminal prosecution as required by law.

This analysis is drafted to the CS as passed by the Judiciary Committee.