

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/CS/HB 111	FINAL HOUSE FLOOR ACTION:		
SUBJECT/SHORT TITLE	Pub. Rec./Identity of Witness to a Murder	113	Y's 3	N's
SPONSOR(S):	Judiciary Committee; Criminal Justice Subcommittee; Stafford; McGhee and others	GOVERNOR'S ACTION:	Approved	
COMPANION BILLS:	CS/CS/SB 550			

SUMMARY ANALYSIS

CS/CS/HB 111 passed the House on March 30, 2017, and subsequently passed the Senate on April 13, 2017. 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, by may be disclosed by a criminal justice agency:

- 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; or
- To the parties in a pending criminal prosecution as required by law.

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 made part of a court file.

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

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

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

The bill was approved by the Governor on May 9, 2017, ch. 2017-11, L.O.F., and will become effective on July 1, 2017.

I. SUBSTANTIVE INFORMATION

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

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."

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

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.”

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).

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.