

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7015 PCB GOS 22-06 OGSR/Identity of a Witness to Murder

SPONSOR(S): Government Operations Subcommittee, Fetterhoff

TIED BILLS: **IDEN./SIM. BILLS:** SB 7032

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|---------------|----------------|--|
| Orig. Comm.: Government Operations Subcommittee | 17 Y, 0 N | Mwakyanjala | Toliver |
| 1) Criminal Justice & Public Safety Subcommittee | 17 Y, 0 N | Frost | Hall |
| 2) State Affairs Committee | | | |

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

First degree murder is a capital felony and is the unlawful killing of a human being: when committed with premeditation to cause the death of the person killed or any human being; or by a person engaged in perpetrating, or attempting to perpetrate a specified felony.

Second degree murder is the unlawful killing of a human being, when perpetrated by an imminently dangerous act and demonstrating a depraved mind regardless of human life. Third degree murder is the unlawful killing of a human being, without design to effect death, by a person engaged in the commission of, or the attempt to commit, any felony other than a felony enumerated by statute.

In 2017, the Legislature created a public record exemption for criminal intelligence information or criminal investigative information that reveals the personal identifying information of a witness to a murder, for two years after the date on which the murder is observed by a witness. Such records are confidential and exempt from public record requirements.

The bill saves from repeal the public record exemption for criminal intelligence information or criminal investigative information that reveals the personal identifying information of a witness to a murder, which will repeal on October 2, 2022, if the bill does not become law.

The bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it 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.
- Protect trade or business secrets.³

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.⁴ If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created then a public necessity statement and a two-thirds vote for passage are not required.

Murder

Chapter 782, F.S., defines homicide and assigns penalties for an offense. First degree murder is a capital felony⁵ and is the unlawful killing of a human being when committed:

- With premeditation to cause the death of the person killed or any human being; or
- By a person engaged in perpetrating, or attempting to perpetrate, any:
 - Drug trafficking offense;⁶
 - Arson;
 - Sexual battery;
 - Robbery or home-invasion robbery;
 - Burglary;
 - Kidnapping;
 - Escape;
 - Aggravated child abuse;
 - Aggravated abuse of an elderly person or disabled adult;
 - Aircraft piracy;
 - Unlawful throwing, placing, or discharging of a destructive device or bomb;
 - Carjacking;
 - Aggravated stalking;

¹ S. 119.15, F.S.

² S. 119.15(3), F.S.

³ S. 119.15(6)(b), F.S.

⁴ Art. I, s. 24(c), Fla. Const.

⁵ The offense is punishable by death or life imprisonment. S. 775.082, F.S.

⁶ Specified in s. 893.135(1), F.S.

- Murder of another human being;
- Resisting an officer with violence;
- Aggravated fleeing or eluding with serious bodily injury or death;
- A felony act of terrorism;⁷
- Human trafficking; or
- Unlawful distribution of a specified controlled substance,⁸ which is the proximate cause of a user's death.⁹

The unlawful killing of a human being, when perpetrated by an imminently dangerous act and demonstrating a depraved mind regardless of human life, is murder in the second degree;¹⁰ a first degree felony, punishable by a term of imprisonment not exceeding life.¹¹ If a person is killed during the commission of, or during the attempt to commit an enumerated felony,¹² by a person other than the person engaged in such felony, the person committing or attempting to commit such felony commits second degree murder, a first degree felony.^{13, 14}

Third degree murder is the unlawful killing of a human being, without design to effect death, by a person engaged in the commission of, or the attempt to commit, any felony other than a felony¹⁵ enumerated by statute.

Public Record Exemption under Review

In 2017, the Legislature created a public records exemption for criminal intelligence information¹⁶ or criminal investigative information¹⁷ that reveals the personal identifying information of a witness to a murder, for two years after the date on which the murder is observed by the witness.¹⁸ Such records are confidential and exempt from public record requirements.¹⁹ A criminal justice agency may 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.

⁷ Or an act in furtherance of terrorism, including a felony under ss. 775.30, 775.32, 775.33, 775.34, or 775.35, F.S.

⁸ A substance controlled under s. 893.03(1), F.S., cocaine; opium or any synthetic or natural salt, compound, derivative, or preparation of opium; methadone; alfentanil; carfentanil; fentanyl; sufentanil; or specified controlled substance analogs.

⁹ S. 782.04, F.S.

¹⁰ S. 782.04(2), F.S.

¹¹ Ss. 775.082, 775.083, and 775.084, F.S.

¹² Enumerated felonies include drug trafficking under s. 893.135(1), F.S.; arson; sexual battery; robbery or home-invasion robbery; burglary; kidnapping; escape; aggravated child abuse or aggravated abuse of an elderly person or disabled adult; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; carjacking; aggravated stalking; murder of another human being; aggravated fleeing or eluding with serious bodily injury or death; resisting an officer with violence; and a felony act of terrorism or act in furtherance of terrorism. S. 782.04(3), F.S.

¹³ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Ss. 775.082, 775.083, and 775.084, F.S.

¹⁴ S. 782.04(3), F.S.

¹⁵ Enumerated felonies include drug trafficking under s. 893.135(1), F.S.; arson; sexual battery; robbery or home-invasion robbery; burglary; kidnapping; escape; aggravated child abuse or aggravated abuse of an elderly person or disabled adult; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; carjacking; aggravated stalking; murder of another human being; aggravated fleeing or eluding with serious bodily injury or death; resisting an officer with violence; a felony act of terrorism or act in furtherance of terrorism; and drug distribution of a specified controlled substance when such drug is the proximate cause of a user's death. S. 782.04(4), F.S.

¹⁶ The term "criminal intelligence information" means 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. S. 119.011(3)(a), F.S.

¹⁷ The term "criminal investigative information" means 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. S. 119.011(3)(b), F.S.

¹⁸ Ch. 2017-11, Laws of Fla. codified in ss. 119.011(3)(c), 119.071(2)(m), and 119.0714(1)(h), F.S.

¹⁹ There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems 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, 53 (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 1994); *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 statute. (See Op. Att'y Gen. Fla. 85- 62 (1985).

- 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.²⁰

The 2017 public necessity statement²¹ for the exemption provides that the Legislature finds that:

The judicial system cannot function without the participation of witnesses. Complete cooperation and truthful testimony of witnesses is essential to the determination of the facts of a case. The public disclosure of personal identifying information of a witness to a murder could have an undesirable chilling effect on witnesses stepping forward and providing their eyewitness accounts of murders. A witness to a murder may be unwilling to cooperate fully with law enforcement officers if the witness knows his or her personal identifying information can be made publicly available. A witness may be less likely to call a law enforcement officer and report a murder if his or her personal identifying information is made available in connection with the murder that is being reported or under investigation. The Legislature further finds that a witness could become the subject of intimidation tactics or threats by the perpetrator of the murder if the witness's personal identifying information is publicly available.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2022, unless reenacted by the Legislature.²²

During the 2021 interim, subcommittee staff sent questionnaires to county sheriffs, police departments, and state attorney's offices throughout the state as well as the Florida Department of Law Enforcement.²³ The overwhelming majority of respondents that collected or possessed criminal intelligence or criminal investigative information relating to witnesses of a murder recommended that the exemption be reenacted: 29 recommended reenacting the public exemption law as is, five recommended reenacting the public record exemption with changes,²⁴ and one recommended the exemption be allowed to repealed.²⁵ Most respondents indicated that the exemption was functioning well and all respondents were unaware of any litigation concerning the exemption.²⁶

Effect of the Bill

The bill removes the scheduled repeal of the exemption; thereby, maintaining the public record exemption for criminal intelligence information or criminal investigative information that reveals the personal identifying information of a witness to a murder, for two years after the date on which the murder is observed by the witness.

B. SECTION DIRECTORY:

Section 1: Amends s. 119.071, F.S., to remove the scheduled repeal date of the public record exemption.

Section 2: Provides an effective date of October 1, 2022.

²⁰ S. 119.071(2)(m), F.S.

²¹ Article I, s. 24(c), Fla. Const., requires each public record exemption to "state with specificity the public necessity justifying the exemption."

²² S. 119.071(5)(k)4., F.S.

²³ Open Government Sunset Review Questionnaire, Personal Identifying Information of a Murder Witness, responses on file with the Government Operations Subcommittee.

²⁴ Three respondents believed the two-year timeframe was insufficient and called for the period to be extended to four to five years or until the conclusion of the criminal case. One respondent recommended the public record exemption to be adopted into Marsy's Law to cover witnesses as well as victims. Another respondent recommended to include changes made with the help of DCF and school counselors/principles of any juvenile affected as a witness to a murder or who is family to a witness of a murder. *Id.*

²⁵ One respondent recommended to repeal the exemption with no additional explanation given. *Id.*

²⁶ *Id.*

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES