

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 1266

INTRODUCER: Criminal Justice Committee and Senator Gruters

SUBJECT: Public Records/Victim of a Crime/Officers Involved in Use of Force Incidents

DATE: April 15, 2025

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|--------------|----------------|-----------|--------------------|
| 1. | <u>Wyant</u> | <u>Stokes</u> | <u>CJ</u> | <u>Fav/CS</u> |
| 2. | <u>Wyant</u> | <u>Yeatman</u> | <u>RC</u> | <u>Pre-meeting</u> |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1266 amends s. 119.071, F.S., to revise the public records exemption for documents that identify a person as a victim of a crime. The bill specifies any *public record* that reveals the identity, *name, personal identification number*, home or employment address, or personal assets of the victim, *or any other personal identifying or location information that could be used to locate, intimidate, harass, or abuse the victim or the victim's family*, which *public record is generated* or received by any agency that regularly *generates* or receives information from or concerning the victims of crime, is *confidential* and exempt.

The bill provides definitions for “employing agency head,” “officer,” “use of force incidents,” and “victim.”

The bill allows for a victim of a crime to waive the exemption or confidentiality at any time in writing.

The bill allows for the release of information as needed for any judicial proceeding but prohibits those entitled to access from revealing to any outside party any confidential and exempt information except as reasonably necessary to prepare a defense and to pursue legal remedies.

The bill requires any public record that contains specified information or any information that could be used to locate, intimidate, harass, or abuse any officer who is involved in a use of force incident to be held confidential and exempt for a period of 72 hours immediately following such incident. Additionally, the exemption or confidentiality may be extended until the employing

agency head determines there is no further necessity, and upon such, must notify the officer five days before the release of any public record that identifies the officer.

The bill allows for a law enforcement officer that has been involved in a use of force incident to waive the exemption or confidentiality at any time in writing.

This exemption applies to information held by an agency before, on, or after July 1, 2025, and is repealed on October 2, 2030, unless reenacted by the Legislature.

The bill provides a statement of public necessity as required by the State Constitution, and because it expands the public records exemption it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill takes effect July 1, 2025.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 119, F.S., known as the Public Records Act, provides requirements for public records held by executive branch and local government agencies.

Violation of Public Record Law

Any person who willfully and knowingly violates any public record law commits a first degree misdemeanor.^{5,6}

Pursuant to s. 119.105, F.S., any person who comes into possession of exempt or confidential information contained in police reports is prohibited from using that information for any

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2024-2026) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 1, (2024-2026).

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.10(2)(a), F.S.

⁶ A first degree misdemeanor is punishable by a term of imprisonment not exceeding 1 year and a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

commercial solicitation of the victims or the relatives of the victims of the reported crimes or accidents, and is further prohibited from knowingly disclosing such information to any third party for the purpose of such solicitation during the period of time that the information remains exempt or confidential. Any person who violates such prohibitions commits a third degree felony.^{7,8}

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act⁹ (the Act), prescribe a legislative review process for newly created or substantially amended¹⁰ public records or open meetings exemptions, with specified exceptions.¹¹ The act requires the repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset date.¹² In practice, many exemptions are continued by repealing the sunset date, rather than reenacting the exemption.

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹³ An exemption serves an identifiable purpose if the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption and it meets one of the following purposes:

- It allows the state or its political subdivisions to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁴
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁵ or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.¹⁶

The Act also requires specified questions to be considered during the review process.¹⁷ In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

⁷ Section 119.10(2)(b), F.S.

⁸ A third degree felony is generally punishable by not more than 5 years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S.

⁹ Section 119.15, F.S.

¹⁰ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹¹ Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹² Section 119.15(3), F.S.

¹³ Section 119.15(6)(b), F.S.

¹⁴ Section 119.15(6)(b)1., F.S.

¹⁵ Section 119.15(6)(b)2., F.S.

¹⁶ Section 119.15(6)(b)3., F.S.

¹⁷ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are again required.¹⁸ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.¹⁹

Marsy's Law

On November 6, 2018, a constitutional revision to Art. I of the State Constitution was approved by voters; such revision is colloquially known as “Marsy’s Law.”²⁰ Marsy’s Law provides crime victims specific rights, including the right:

- To be free from intimidation, harassment, and abuse.
- Within the judicial process, to be reasonably protected from the accused and any person acting on behalf of the accused.
- To prevent the disclosure of information or records that could be used to locate or harass the victim or the victim’s family, or which could disclose confidential or privileged information of the victim.²¹

Under Marsy’s Law, a “victim” means a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act or against whom the crime or delinquent act is committed. The term includes the victim’s lawful representative, the parent or guardian of a minor, or the next of kin of a homicide victim, except upon a showing that the interest of such individual would be in actual or potential conflict with the interests of the victim. The term does not include the accused.²²

Pursuant to Art. I, s. 16(c) of the Florida Constitution, the victim can assert and seek enforcement of such rights in any trial or appellate court, or before any other authority with jurisdiction over the case, as a matter of right. The court or other authority must act promptly on such a request, affording a remedy by due course of law for the violation of any right.²³

In 2023, the Florida Supreme Court held that Marsy’s Law “does not guarantee to a victim the categorical right to withhold his or her name from disclosure.”²⁴ The Court held that “Marsy’s Law speaks only to the right of victims to ‘prevent the disclosure of information or records that could be used to locate or harass’ them or their families” and that “one’s name, standing alone, is

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- Whom does the exemption uniquely affect, as opposed to the general public?
 - What is the identifiable public purpose or goal of the exemption?
 - Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
 - Is the record or meeting protected by another exemption?
 - Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

¹⁸ See generally s. 119.15, F.S.

¹⁹ Section 119.15(7), F.S.

²⁰ Art. I, s. 16(b)-(e), Fla. Const.

²¹ Art. I, s. 16(b), Fla. Const.

²² Art. I, s. 16(e), Fla. Const.

²³ Art. I, s. 16(c), Fla. Const.

²⁴ *City of Tallahassee v. Fla. Police Benv. Assn., Inc.*, 375 So. 3d 178, 183 (2023).

not that kind of information or record; it communicates nothing about where the individual can be found and bothered.”²⁵ The Court noted that by reading Marsy’s Law to only shield information that can be used to locate or harass, rather than identify, it can give effect to Marsy’s Law while also protecting a defendant’s right to confront adverse witnesses at trial.

Additionally, the question of whether police officers acting in an official capacity can be Marsy’s Law “victims” was presented to the Court. However, the Court decided to answer the question of anonymity stating, “we decide only what Marsy’s Law says and does not say; we do not pass upon the validity of any statutory right of certain persons, in certain situations, to withhold their identities from disclosure.”²⁶

Public Record Exemption for the Victim of a Crime

Section 119.071(2)(j), F.S., provides a public record exemption for any document that reveals the identity, home or employment telephone number, home or employment address, or personal assets of the victim of a crime and also identifies that person as the victim of a crime, which document is received by any agency that regularly receives information from or concerning the victims of crime.²⁷

Additionally, any information not otherwise held confidential or exempt from public record requirements which reveals the home or employment telephone number, home or employment address, or personal assets of a person who has been the victim of sexual battery, aggravated child abuse, aggravated stalking, harassment, aggravated battery, or domestic violence is exempt from public record requirements upon written request by the victim, which request must include official verification that an applicable crime has occurred. Such an exemption will cease five years after the receipt of the written request.²⁸

III. Effect of Proposed Changes:

The bill amends s. 119.071, F.S., to revise a public records exemption for documents that identify a person as a victim of a crime. The bill specifies any *public record* that reveals the identity, *name, personal identification number*, home or employment address, or personal assets of the victim, *or any other personal identifying or location information that could be used to locate, intimidate, harass, or abuse the victim or the victim’s family*, which *public record* is *generated* or received by any agency that regularly *generates* or receives information from or concerning the victims of crime, is *confidential* and exempt.

The bill provides the following definitions:

- “Employing agency head” means an elected or appointed head official of an employing agency as defined in s. 943.10(4), F.S., and who is certified under s. 943.13, F.S.
- “Officer” means any full-time, part-time, or auxiliary law enforcement officer, correctional officer, or correctional probation officer certified under s. 943.13, F.S.

²⁵ *Id.* at 184 (internal citations omitted).

²⁶ *Id.* at 188.

²⁷ Section 119.071(2)(j)1., F.S.

²⁸ *Id.* Notwithstanding this exemption, any state or federal agency that is authorized to have access to such documents by any provision of law must be granted access in the furtherance of such agency’s statutory duties.

- “Use of force incidents” means any incident that occurs within the scope of an officer’s employment or official duties an involves the officer’s use of deadly force as defined in s. 776.06, F.S., or any other use of force that results in great bodily harm.
- “Victim” means a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act or against whom the crime or delinquent act is committed. The term includes the victim’s lawful representative, the parent or guardian of a minor, or the next of kin of a homicide victim, except upon a showing that the interest of such person would be in actual or potential conflict with the interests of the victim. The term does not include the accused.

The confidential and exempt information must be released as needed in furtherance of any judicial proceeding, access may not be denied to a criminal defendant, and the protections provided may not interfere with the constitutional rights of any defendant. Those entitled to access the confidential and exempt information as part of any judicial proceeding may not reveal to any outside party any confidential and exempt information obtained, except as reasonably necessary to prepare a defense and to pursue legal remedies.

A person who violates such prohibition commits a first degree misdemeanor.

The bill allows for a victim of a crime to waive the exemption or confidentiality at any time in writing.

The bill requires any public record that reveals the identity, including name or personal identification number, home or cellular telephone number, home address, personal assets, or any information that could be used to locate, intimidate, harass, or abuse any officer who is involved in a use of force incident to be held confidential and exempt for a period of 72 hours immediately following such incident. Additionally, the exemption or confidentiality may be extended until the employing agency head determines there is no further necessity, and upon such, must notify the officer five days before the release of any public record that identifies the officer.

The bill allows for a law enforcement officer that has been involved in a use of force incident to waive the exemption or confidentiality at any time in writing.

This exemption applies to information held by an agency before, on, or after July 1, 2025, and is repealed on October 2, 2030, unless reenacted by the Legislature.

The bill provides a statement of public necessity as required by the State Constitution. The public necessity statement provides that the release of certain personal identifying and location information would constitute an unwarranted risk and may jeopardize the safety of victims and their family members. Additionally, the statement of public necessity provides that the immediate release of identifying and location information for an officer involved in a use of force incident may place officers at risk.

The bill takes effect July 1, 2025.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The bill does not appear to require the cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the State Constitution.

B. Public Records/Open Meetings Issues:**Vote Requirement**

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill expands an exemption for records pertaining to victims of crimes and officers involved in a use of force incident; therefore, the bill requires a two-thirds vote of each chamber for enactment.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect victims of crime and such victim's family members, and the bill exempts only records pertaining to those persons from the public records requirements.

The bill requires any public record that reveals the identity or location information for law enforcement officers involved in use of force incidents to be held confidential and exempt for 72 hours or until deemed no longer necessary. By potentially holding an officer's information in any public record containing certain information, in perpetuity, the exemption may be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Section 119.071(2)(j)1.e., F.S., as created by the bill, is subject to the requirements of Article III, Section 6 of the Florida Constitution, the single subject rule. The Florida Supreme Court has held that the single subject clause contains three requirements: first, each law must embrace only one subject; second, the law may include any matter that properly connected with the subject; and third, the subject must be briefly expressed in the title.²⁹ The subject matter to consider when determining whether a bill embraces a single subject is the bill's title's subject, and the test is whether the bill is designed to accomplish separate objectives with no natural or logical connection to each other.³⁰

The bill as amended includes officers, whereas the bill originally filed only included victims. This may subject the law to constitutional challenges.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill creates a new public records exemption for an officer involved in a use of force incident, and in doing so, requires any public record that reveals the identity or any other information that could be used to locate, intimidate, harass, or abuse such officer to be held confidential and exempt for a period of 72 hours immediately following the incident.

The language concerning any public record that identifies an officer may create an issue with outside agencies that maintain public records, but that have no notice that such record should be confidential and exempt. Some agencies may not be aware that a law enforcement officer was involved in a use of force incident but may have custody of records that contain information of such an officer, such as an agency in custody of property appraiser documents. Without any requirement for an officer or an agency head to request this information be confidential and exempt, such agency would not be aware of the exemption.

²⁹ *Franklin v. State*, 887 So. 1063, 1072 (Fla. 2004).

³⁰ *See Ex parte Knight*, 41 So. 786, 788 (Fla. 1906); *Bd. of Pub. Instruction v. Doran*, 224 So. 2d 693, 699 (Fla. 1969).

Additionally, the new public records exemption creates an issue with the potential for a law enforcement officer's information to be held confidential and exempt in perpetuity. This language may be broader than necessary, *see* Breadth of Exemption.

VIII. Statutes Affected:

This bill substantially amends section 119.071 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on April 1, 2025:

This committee substitute:

- Provides a definition for “employing agency head,” “officer,” “use of force incident,” and “victim.”
- Requires any public record that contains specified information or information that could be used to locate, intimidate, harass, or abuse any officer who is involved in a use of force incident to be held confidential and exempt for a period of 72 hours immediately following such incident.
- Allows for the exemption or confidentiality concerning such officers to be extended until the employing agency head determines there is no further necessity and provides a requirement for notice to the officer five days before the release of any such record.
- Allows a victim or an officer involved in a use of force incident to waive the exemption or confidentiality at any time.
- Provides a public necessity statement for officers involved in a use of force incident.

B. Amendments:

None.